



CONSTITUIÇÕES DA AMÉRICA LATINA  
E CARIBE  
VOLUME IV



MINISTÉRIO DAS RELAÇÕES EXTERIORES



*Ministro de Estado*      Embaixador Celso Amorim  
*Secretário-Geral*      Embaixador Antonio de Aguiar Patriota

FUNDAÇÃO ALEXANDRE DE GUSMÃO



*Presidente*      Embaixador Jeronimo Moscardo

*Instituto de Pesquisa de  
Relações Internacionais*

*Diretor*      Embaixador Carlos Henrique Cardim

*Academia Brasileira  
de Direito Internacional*



*Presidente*      Wagner Menezes

A *Fundação Alexandre de Gusmão*, instituída em 1971, é uma fundação pública vinculada ao Ministério das Relações Exteriores e tem a finalidade de levar à sociedade civil informações sobre a realidade internacional e sobre aspectos da pauta diplomática brasileira. Sua missão é promover a sensibilização da opinião pública nacional para os temas de relações internacionais e para a política externa brasileira.

Ministério das Relações Exteriores  
Esplanada dos Ministérios, Bloco H  
Anexo II, Térreo  
70170-900 Brasília, DF  
Telefones: (61) 3411-6033/6034  
Fax: (61) 3411-9125  
Site: [www.funag.gov.br](http://www.funag.gov.br)

RAMON DE VASCONCELOS NEGÓCIO  
RODRIGO CARNEIRO CIPRIANO  
(ORGANIZADORES)

Constituições da América Latina e  
Caribe  
Volume IV



Brasília, 2010

Copyright © Fundação Alexandre de Gusmão  
Ministério das Relações Exteriores  
Esplanada dos Ministérios, Bloco H  
Anexo II, Térreo  
70170-900 Brasília – DF  
Telefones: (61) 3411-6033/6034  
Fax: (61) 3411-9125  
Site: www.funag.gov.br  
E-mail: funag@itamaraty.gov.br

**Capa:**

Los muchos colores de la sal que sólo al final termina  
blanca; salineras de Salinas.

**Equipe Técnica:**

Maria Marta Cezar Lopes  
Cíntia Rejane Sousa Araújo Gonçalves  
Erika Silva Nascimento  
Fabio Fonseca Rodrigues  
Júlia Lima Thomaz de Godoy  
Juliana Corrêa de Freitas

**Programação Visual e Diagramação:**

Juliana Orem e Maria Loureiro

---

Impresso no Brasil 2010

C775 Constituições da América Latina e Caribe /  
organizado por Ramon de Vasconcelos Negócio e  
Rodrigo Carneiro Cipriano. -- Brasília : FUNAG,  
2010.  
v. 4, 672p.

Texto em duas línguas português e espanhol.

ISBN: 978.85.7631.235-2

1. Constituição. 2. Direito constitucional. I.  
Vasconcelos Negócio, Ramon de II. Cipriano,  
Rodrigo Carneiro (Org.)

CDU: 342.4(8)

---

Depósito Legal na Fundação Biblioteca Nacional conforme  
Lei n° 10.994, de 14/12/2004.

## **Sumário**

Antígua e Barbuda, 7

Bahamas, 117

Barbados, 227

Cuba, 325

Dominica, 367

Granada, 477

República Dominicana, 573



# **Antigua e Barbuda**

## **THE ANTIGUA AND BARBUDA CONSTITUTION ORDER (1981)**

### **SCHEDULE 1 TO THE ORDER THE CONSTITUTION OF ANTIGUA AND BARBUDA**

**WHEREAS** the People of Antigua and Barbuda-

- (a) proclaim that they are a sovereign nation founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person, the entitlement of all persons to the fundamental rights and freedoms of the individual, the position of the family in a society of free men and women and free institutions;
- (b) respect the principles of social justice and, therefore, believe that the operation of their economic system should result in the material resources of their community being so distributed as to serve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

(c) assert their conviction that their happiness and prosperity can best be pursued in a democratic society in which all persons may, to the extent of their capacity, play some part in the national life;

(d) recognise that the law symbolises the public conscience, that every citizen owes to it an undivided allegiance not to be limited by any private views of justice or expediency and that the State is subject to the law;

(e) desire to establish a framework of supreme law within which to guarantee their inalienable human rights and freedoms, among them, the rights to liberty, property, security and legal redress of grievances, as well as freedom of speech, of the press and of assembly, subject only to the public interest:

**NOW, THEREFORE**, the following provisions shall have effect as the Constitution of Antigua and Barbuda:-

## **CHAPTER I THE STATE AND THE CONSTITUTION**

### **1.**

(1) Antigua and Barbuda shall be a unitary sovereign democratic State.

(2) The territory of Antigua and Barbuda shall comprise the islands of Antigua, Barbuda and Redonda and all other areas that were comprised in Antigua on 31st October 1981 together with such other areas as may be declared by Act of Parliament to form part of the territory of Antigua and Barbuda.

**2.** This Constitution is the supreme law of Antigua and Barbuda and, subject to the provisions of this Constitution, if any other laws is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

## **CHAPTER II PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

**3.** Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the



right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression (including freedom of the press) and of peaceful assembly and association; and
- (c) protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of other or the public interest.

#### 4.

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a crime of treason or murder of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and such circumstances as are permitted by law, of such force as is reasonably justifiable-

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny;
- or
- (d) in order lawfully to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

5.

(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say-

- (a) in consequence of his unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for Antigua and Barbuda or some other country, in respect of a criminal offence of which he has been convicted;
- (c) in execution of an order of the High Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law;
- (e) for the purpose of bringing him before a court in execution of the order of a court;
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence under any law;
- (g) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (j) for the purpose of preventing the unlawful entry of that person into Antigua and Barbuda, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Antigua and Barbuda or for the purpose of restricting that person while he is being conveyed through Antigua and Barbuda in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (k) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Antigua and Barbuda or prohibiting him from being within such

an area or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Antigua and Barbuda in which, in consequence of any such order, his presence would otherwise be unlawful.

- (2) Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the reason for his arrest or detention.
- (3) Any person who is arrested or detained shall have the right, at any stage and at his own expense, to retain and instruct without delay a legal practitioner of his own choice, and to hold private communications with him, and in the case of a minor he shall also be afforded a reasonable opportunity for communication with his parent or guardian.
- (4) When a person is arrested, excessive bail shall not be required in those cases where bail is being granted.
- (5) Any person who is arrested or detained-
  - (a) for the purpose of bringing him before a court in execution of the order of a court; or
  - (b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under any law,  
and who is not released shall be brought before the court within forty-eight hours after his detention and, in computing time for the purposes of this subsection, Sundays and public holidays shall be excluded.
- (6) If any person arrested or detained as mentioned in subsection (5) (b) of this section is not tried within a reasonable time, the, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial and, subject to subsection (4) of this section, such conditions may include bail.
- (7) Any person who is unlawfully arrested or detained by any other person shall, subject to such defences as may be provided by law, be entitled to compensation for such unlawful arrest or detention from the person who made the arrest or effected the detention, from any person or authority on

whose behalf the person making the arrest or effecting the detention was acting or from them both:

Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall nor be under any personal liability to pay compensation under this subsection in consequence of any act performed by him in good faith in the discharge of the functions of his office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.

(8) For the purposes of subsection (1) (b) of this section, a person charged with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

## 6.

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression “forced labour” does not include-

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service;

(d) any labour required during any period of public emergency or, in the event of any other emergency or calamity that threatens

the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

**7.**

- (1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Antigua on 31st October 1981.

**8.**

- (1) A person shall not be deprived of his freedom of movement, that is to say, the right to move freely throughout Antigua and Barbuda, the right to reside in any part of Antigua and Barbuda, the right to enter Antigua and Barbuda, the right to leave Antigua and Barbuda and immunity from expulsion from Antigua and Barbuda.
- (2) Any restrictions on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-
  - (a) for the imposition of restrictions on the movements or residence within Antigua and Barbuda of any person or on any person's right to leave Antigua and Barbuda that are reasonably required in the interests of defence, public safety or public order;
  - (b) for the imposition of restrictions on the movements or residence within Antigua and Barbuda or on the right to leave Antigua and Barbuda of persons generally or any class of persons in the interest of defence, public safety, public order, public morality, or public health or, in respect of the right to leave Antigua and Barbuda, of

securing compliance with any international obligation of Antigua and Barbuda particulars of which have been laid before the House and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) for the imposition of restrictions, by order of a court, on the movement or residence within Antigua and Barbuda of any person or on any person's right to leave Antigua and Barbuda either in consequence of his having been found guilty of a criminal offence under a law or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings relating to his extradition or lawful removal from Antigua and Barbuda;

(d) for the imposition of restrictions on the freedom of movement of any person who is not a citizen;

(e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Antigua and Barbuda;

(f) for the imposition of restrictions upon the movement or residence within Antigua and Barbuda or on the right to leave Antigua and Barbuda of any public officer that are reasonably required for the proper performance of his functions;

(g) for the removal of a person from Antigua and Barbuda to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under a law of which he has been convicted; or

(h) for the imposition of restrictions on the right of any person to leave Antigua and Barbuda that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3) (a) of this section so requests at any time during the period of that restriction not earlier than two months after the restriction was imposed or two months

after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal consisting of a president who shall be a legal practitioner of not less than seven years standing appointed by the Chief Justice and two other members appointed by the Governor-General acting in his discretion.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity for or expediency of the continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

## 9.

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.

(2) Every person having an interest in or right to or over property which is compulsorily taken possession of or whose interest in or right to or over any property is compulsorily acquired shall have the right of access to the High Court for-

(a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and

(b) the purpose of obtaining payment of that compensation: Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right to or over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which application or appeals to the High Court or applications to the other tribunals or authority may be brought).

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right-

- (i) in satisfaction of any tax, rate or due;
- (ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
- (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (iv) in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
- (vi) in consequence of any law with respect to the limitation of actions;
- (vii) for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relation to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),



and except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including and interest in or right to or over property), that is to say-

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who had not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purposes of giving effect to the trust.

(5) Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament or any legislature established for the former colony or Associated State of Antigua.

(6) For the purposes of this section, “use” is “public” if it is intended to result or results in a benefit or advantage to the public and, without prejudice to its generality, includes any use affecting the physical, economic, social or aesthetic well-being of the public.

**10.**

(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilisation of property in such a manner as to promote the public benefit;

(b) that authorises an office or agent of the Government, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, or to that authority or body corporate, as the case may be;

(c) that is reasonably required for the purpose of preventing or detecting crime;

(d) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(e) that authorises, for the purpose of enforcing the judgement or order of a court in any proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

- and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

**11.**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in

community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is under the age, of eighteen years, the consent of his parent or guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(4) Nothing contained in or done under that authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required-

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion,

- and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(5) Reference in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

## 12.

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression.

(2) For the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive information and ideas without interference, freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally

or to any person or class of persons) and freedom from interference with his correspondence or other means of communication.

(3) For the purposes of this section expression may be oral or written or by codes, signals, signs or symbols and includes recordings, broadcasts (whether on radio or television), printed publications, photographs (whether still or moving), drawings, carvings and sculptures or any other means of artistic expression.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) that is reasonably required-

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of Parliament and the courts, or regulating telephony, posts, broadcasting or other means of communication, public entertainment's, public shows; or

(b) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

- and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### 13.

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the promotion and protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) that is reasonably required-
  - (i) in the interests of defence, public order, public morality or public health; or
  - (ii) for the purpose of protecting the rights or freedoms of other persons; or
- (b) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,
  - and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

#### 14.

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as the law makes provision-

- (a) for the appropriation of public revenues or other public funds;
- (b) with respect to persons who are not citizens; or
- (c) whereby persons of any such description as in mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to race, place of origin, political opinions or affiliations, colour, creed or sex) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that that law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 8, 10, 11, 12 and 13 of this Constitution, being such a restriction as is authorised by paragraph (a) or (b) of subsection (3) of section 8, subsection (2) of section 10, subsection (4) of section 11, subsection (4) of section 12 or subsection (2) of section 13, as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

## 15.

(1) If any person is charged with a criminal offence then, unless the charge is withdrawn, he shall be afforded a fair hearing within a reasonable time by a independent and impartial court established by law.

(2) Every person who is charged with a criminal offence-

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the nature of the offence with which he is charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself before the court in person or by a legal practitioner of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take place in his absence-

(i) except where, under the provisions of any law entitling him thereto, he is given adequate notice of the charge, the date, time and place of the trial or continuance thereof and afforded a reasonable opportunity of appearing before the court;

Provided that where the foregoing conditions have been complied with, and the court is satisfied that owing to circumstances beyond his control he cannot appear, the trial shall not take place or continue in his absence; or

(ii) unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for a any criminal offence the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fees as may be prescribed by law, be given within a reasonable time after judgement a copy of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any criminal offence of which he could have been convicted at the trial for the offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any persons before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all that parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners representing them to such an extent as the court or other authority-

(a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do in the interests of defence, public safety, public order or public morality.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

(a) subsection (2) (a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;



(b) subsection (2) (e) if this section, to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5) of this section, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force so however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (d) and (e) of subsection (2), and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that it authorises the trial of a defendant by a magistrate for a summary offence to take place in the defendant's absence.

(14) In this section "criminal offence" means a criminal offence under any law.

**16.** Nothing contained in or done under the authority of a law enacted by Parliament shall be held to be inconsistent with or in contravention of section 5 or section 14 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable, for dealing with the situation that exists in Antigua and Barbuda during that period.

**17.**

(1) When a person is detained by virtue of any such law as is referred to in section 16 of this Constitution the following provisions shall apply, that is to say-

(a) he shall, with reasonable promptitude and in any case not more than seven days after the commencement of his detention, be informed in a language that he understands and in detail of the

grounds upon which he is detained and furnished with a written statement in English specifying those grounds in detail;

(b) not more than fourteen days after the commencement of his detention a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than one month after the commencement of his detention and thereafter during the detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a suitably qualified legal practitioner of at least seven years standing appointed by the Chief Justice;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal practitioner of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1) (d) or subsection (1) (e) of this section shall be construed as entitling a person to legal representation at public expense.

## **18.**

(1) If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

- (2) The High Court shall have original jurisdiction-
- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
  - (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3) of this section, - and may make such declaration and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 17 (inclusive) of this Constitution:  
Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleges are or have been available to the person concerned under any other law.
- (3) If in any proceedings in any court (other than the Court of Appeal, the High Court or a court-martial) any question arises as to the contravention of any of the provisions of sections 3 to 17 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.
- (4) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.
- (5) There shall be such provision as may be made by Parliament for conferring upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.
- (6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

**19.** Except as is otherwise expressly provided in this Constitution, no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the fundamental rights and freedoms of the individual herein before recognised and declared.

**20.**

(1) The Governor-General may, by Proclamation which shall be published in the Official Gazette, declare that a state of public emergency exists for the purposes of this Chapter.

(2) Every declaration shall lapse-

(a) in the case of a declaration made when Parliament is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and

(b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration, unless it has in the meantime been approved by resolutions of both Houses of Parliament.

(3) A declaration of public emergency may at any time be revoked by the Governor-General by Proclamation which shall be published in the Official Gazette.

(4) A declaration of public emergency that has been approved of by resolutions of the Houses of Parliament in pursuance of subsection (2) of this section shall, subject to the provisions of subsection (3) of this section, remain in force so long as the resolutions of those Houses remain in force and no longer.

(5) A resolution of a House of Parliament passed for the purposes of this section shall remain in force for three months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution each extension not exceeding three months from the date of the resolution effecting the extension and any such resolution may be revoked at any time by a resolution of that House.

(6) Any provision of this section that a declaration of emergency shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

(7) A resolution of a House of Parliament for the purposes of subsection (2) of this section and a resolution extending any such resolution shall not be passed unless it is supported by the votes of a majority of all members of that House.

(8) The Governor-General may summon the Houses of Parliament to meet for the purposes of subsection (2) of this section notwithstanding that Parliament stands dissolved, and the persons who were members of the Senate and the House immediately before the dissolution shall be deemed, for those purposes, still to be members of those Houses, but, subject to the provisions of sections 33 and 42 of this Constitution (which relate to the election of the President, Vice-President, the Speaker, and the Deputy Speaker) a House of Parliament shall not, when summoned by virtue of this subsection, transact any business other than debating and voting upon a resolution for the purpose of subsection (2) of this section.

## 21.

(1) In this Chapter, unless the context otherwise requires- “contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in Antigua and Barbuda other than a court established by a disciplinary law, and includes Her Majesty in Council and, in section 4 of this Constitution, a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means-

- (a) a naval, military or air force;
- (b) the Police force; or
- (c) a prison service;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“legal practitioner” means a person entitled to practice as a barrister in Antigua and Barbuda or, except in relation to proceedings before a court in which a solicitor has no right of audience, entitled to practice as a solicitor in Antigua and Barbuda.

(2) In relation to any person who is a member of a disciplined force raised under any law, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, and 7 of this Constitution.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Antigua and Barbuda, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(4) In this Chapter “public emergency” means any period during which-

(a) Her Majesty is at war; or

(b) there is in force a declaration of emergency under section 20 of this Constitution, or there are in force resolutions of both Houses of Parliament supported by the votes of not less than two-thirds of all the members of each House declaring that democratic institutions in Antigua and Barbuda are threatened by subversion.

(5) A Proclamation made by the Governor-General shall not be affective for the purposes of section 20 of this Constitution unless it contains a declaration that the Governor-General is satisfied-

(a) that a public emergency has arisen as a result of the imminence of a state of war between Her Majesty and a foreign State or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or

(b) that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

### **CHAPTER III**

#### **THE GOVERNOR-GENERAL**

**22.** There shall be a Governor-General of Antigua and Barbuda who shall be a citizen appointed by Her Majesty and shall hold office during

Her Majesty's pleasure and who shall be Her Majesty's representative in Antigua and Barbuda.

**23.**

(1) During any period when the office of Governor-General is vacant or the holder of the office of Governor-General is absent from Antigua and Barbuda or is for any other reason unable to perform the functions of his office those functions shall be performed by such person as Her Majesty may appoint.

(2) Any such person as aforesaid shall not continue to perform the functions of the office of Governor-General if the holder of the office of Governor-General has notified him that he is about to assume or resume those functions.

(3) The holder of the office of Governor-General shall not for the purposes of this section, be regarded as absent from Antigua and Barbuda or as unable to perform the functions of his office-

(a) by reason that he is in passage from one part of Antigua and Barbuda to another; or

(b) at any time when there is a subsisting appointment of a deputy under section 25 of this Constitution.

**24.** A person appointed to hold or act in the office of Governor-General shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath of office.

**25.**

(1) When the Governor-General-

(a) has occasion to be absent from the seat of government but not from Antigua and Barbuda;

(b) has occasion to be absent from Antigua and Barbuda for a period that he considers, in his discretion, will be of short duration,

- he may, acting in accordance with the advice of the Prime Minister, appoint any person in Antigua and Barbuda to be his deputy during such absence or illness and in that capacity to perform on his behalf

such of the functions of the office of Governor-General as may be specified in the instrument by which he is appointed.

(2) The power and authority of the Governor-General shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and subject to the provisions of this Constitution, a deputy shall conform to and observe all instructions that the Governor-General, in his discretion, may from time to time address to him:

Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court of law.

(3) A person appointed as deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by the Governor-General, acting in accordance with the advice of the Prime Minister.

**26.** The Governor-General shall keep and use the Public Seal for sealing all things that shall pass under the Public Seal.

## **CHAPTER IV PARLIAMENT**

### **PART 1 ESTABLISHMENT AND COMPOSITION OF PARLIAMENT**

**27.** There shall be a Parliament in and for Antigua and Barbuda which shall consist of Her Majesty, a Senate and a House of Representatives.

#### **THE SENATE**

**28.**

(1) The Senate shall consist of seventeen persons who, being qualified for appointment as Senators in accordance with the provisions of this Constitution, have been so appointed in accordance with the provisions



of this section and such temporary members (if any) as may be appointed in accordance with the provisions of section 32 of this Constitution.

(2) Ten Senators shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister.

(3) Four Senators shall be appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.

(4) Subject to subsection (7) of this section, one Senator shall be appointed by the Governor-General in his discretion from outstanding persons or persons representing such interests as the Governor-General considers ought to be represented in the Senate.

(5) One Senator shall be appointed by the Governor-General acting in accordance with the advice of the Barbuda Council.

(6) One Senator, being an inhabitant of Barbuda, shall be appointed by the Governor-General in accordance with the advice of the Prime Minister.

(7) Before appointing any person representing interests under subsection (4) of this section the Governor-General shall consult such persons as in his discretion he considers can speak for the interests concerned and ought to be consulted.

**29.** Subject to provisions of section 30 of this Constitution any person who at the date of his appointment-

(a) is a citizen of the age of twenty-one years or upwards;

(b) has resided in Antigua and Barbuda for a period of twelve months immediately preceding the date of his appointment; and

(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take an active part in the proceedings of the Senate,

- shall be qualified to be appointed as a Senator.

**30.**

(1) No person shall be qualified to be appointed as a Senator who-

(a) is, by virtue of his own act, under any acknowledgement or allegiance, obedience or adherence to a foreign power or state;

(b) is a member of the House;

(c) is an undischarged bankrupt, having been declared bankrupt under any law;

(d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;

(e) is under sentence of death imposed on him by a court or has been sentenced to imprisonment (by whatever name called) for a term of or exceeding twelve months and has not either suffered the punishment to which he was sentenced or such other punishment as may be competent authority have been substituted therefor, or received a free pardon;

(f) is disqualified for election to the House by or under any law by reason of his connection with any offence relating to elections;

(g) holds or is acting in any public office or in the office of judge of the Supreme Court or Ombudsman, or is a member of the Constituencies Boundaries Commission, the Judicial and Legal Services Commission, the Public Service Commission or the Police Service Commission;

(h) has, within the period of ten years immediately preceding the proposed date of his appointment as a Senator, been convicted on indictment by a court of competent jurisdiction of theft, fraud or other such crime involving dishonesty and who-

(i) has not appealed against that conviction; or

(ii) has appealed against that conviction and whose appeal has not been allowed; and

(iii) has not received a free pardon in respect of the offence; or

(i) is a minister of religion.

(2) Without prejudice to the provisions of subsection (1) (g) of this section, Parliament may provide that person shall not be qualified for appointment as a Senator in any of the following cases-

(a) if he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with the conduct of an election or the compilation or revision of any register of electors for the purposes of an election;

(b) subject to any exceptions and limitations prescribed by Parliament, if-

- (i) he holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment;
  - (ii) he belongs to any armed force of Antigua and Barbuda or to any class of person that is comprised in any such force; or
  - (iii) he belongs to the Police Force or to any class of person that is comprised in the Police Force.
- (3) For the purpose of subsection (1) (e) of this section-
- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
  - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

### 31.

- (1) Every Senator shall vacate his seat in the Senate-
- (a) at the next dissolution of Parliament after he has been appointed;
  - (b) if he is with his consent nominated as a candidate for election to the House;
  - (c) if he ceases to be a citizen;
  - (d) if he is absent from the sittings of the Senate for such period or periods and in such circumstances as may be prescribed by the rules of procedure of the Senate;
  - (e) subject to the provisions of subsection (2) of this section, if any circumstances arise that, if he were not a Senator, would cause him to be disqualified for appointment as such by virtue of subsection (1) of section 30 of this Constitution or of any law enacted in pursuance of subsection (2) of that section;
  - (f) if the Governor-General, acting in accordance with the advice of Prime Minister in the case of a Senator appointed in accordance with that advice, or in accordance with the advice of the Leader of the Opposition in the case of a Senator appointed in

accordance with that advice, or in accordance with the advice of the Barbuda Council in the case of a Senator appointed in accordance with that advice, or in his discretion in the case of a Senator appointed by him in his discretion, declares the seat of that Senator to be vacant;

(g) if, having been appointed under the provisions of section 28(6) of this Constitution, he ceases to be an inhabitant of Barbuda.

(2)

(a) If circumstances such as are referred to in subsection (1) (e) of this section arise because a Senator is convicted of a felony or of any other offence involving dishonesty, sentenced to death or imprisonment, adjudged to be of unsound mind, or declared bankrupt or is convicted of any offence relating to elections in circumstances that disqualify him for election to the House, and if it is open to the Senator to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a Senator but, subject to the provisions of this subsection, he shall not vacate his seat until the expiration of thirty days thereafter:

Provided that the President may, at the request of the Senator, from time to time extend that period for further periods of thirty days to enable the Senator to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the Senate.

(b) If on the determination of an appeal, such circumstances continue to exist and no further appeal is open to the Senator, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Senator to appeal, he shall forthwith vacate his seat.

(c) If at any time before the Senator vacates his seat such circumstances as aforesaid cease to exist his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a Senator.

**32.**

(1) Whenever a Senator is incapable of performing his functions as a Senator by reason of his absence from Antigua and Barbuda or by reason of his suspension under section 31(2) of this Constitution or by reason of illness, the Governor-General may appoint a person qualified for appointment as a Senator to be temporarily a member of the Senate during such absence, suspension or illness.

(2) The provisions of section 31 of this Constitution shall apply to a member of the Senate appointed under this section as they apply to a Senator appointed under section 28 of this Constitution and a appointment made under this section shall in any case cease to have effect if the person appointed is notified by the Governor-General that the circumstances giving rise to his appointment have ceased to exist.

(3) In the exercise of the powers conferred upon him by this section, the Governor-General shall act-

(a) in accordance with the advice of the Prime Minister in relation to a Senator appointed in pursuance of section 28(2) or 28(6) of this Constitution;

(b) in accordance with the advice of the leader of the Opposition in relation to a Senator appointed in pursuance of section 28(3) of this Constitution;

(c) in his discretion in relation to a Senator appointed by him pursuant to section 28(4) of this Constitution; and

(d) in accordance with the advice of the Barbuda Council in relation to a Senator appointed in pursuance of section 28(5) of this Constitution.

**33.**

(1) When the Senate first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a Senator to be President, and if the office of President falls vacant at any time before the next dissolution of Parliament, the Senate shall, as soon as practicable, elect another Senator to be President.

(2) When the Senate first meets after any general election and before it proceeds to any other business except the election of the President, it

shall elect a Senator to be Vice-President; and if the office of Vice-President falls vacant at any time before the next dissolution of Parliament, the Senate shall, as soon as practicable, elect another Senator to be Vice-President.

(3) The Senate shall not elect a Senator who is a Minister or Parliamentary Secretary to be President of Vice-President.

(4) No business (other than the election of a President) shall be transacted in the Senate at any time when the office of the President is vacant.

(5) A person shall vacate the office of President or Vice-President-

(a) if he ceases to be a Senator, except that the President shall not vacate his office by reason only that he has ceased to be a Senator on a dissolution of Parliament until the Senate first meets after that dissolution; or

(b) if he is appointed to be a Minister or Parliamentary Secretary or;

(c) in the case of the Vice-President, if he is elected to be President.

(6)

(a) If, under section 31(2) of this Constitution, the person who is President or Vice-President is suspended from the performance of his functions as a Senator, he shall also cease to perform his functions as President or Vice-President, as the case may be, and those functions shall, until he vacates his seat in the Senate or resumes the performance of his functions as Senator, be performed-

(i) in the case of the President, by the Vice-President or if the office of Vice-President is vacant or the person who is Vice-President is suspended from the performance of his functions as a Senator under section 31(2) of this Constitution, by such Senator (not being a Minister or a Parliamentary Secretary) as the Senate may elect for the purpose; and

(ii) in the case of the Vice-President, by such Senator (not being a Minister or Parliamentary Secretary) as the Senate may elect for the purpose.

(b) If the President or Vice-President resumes the performance of his functions as a Senator in accordance with the provisions of section 31(2) of this Constitution, he shall also resume the performance of his functions as President or Vice-President, as the case may be.

**34.** The President, Vice-President or other member presiding in the Senate may request the Attorney-General to attend any proceedings of the Senate if he considers that the business before the Senate in those proceedings makes the presence of the Attorney-General desirable; and where he is so requested the Attorney-General may take part in the proceedings of the Senate solely for the purpose of giving explanations concerning matters before the Senate in those proceedings and he shall not vote in the Senate.

**35.**

(1) The President, Vice-President or other member presiding in the Senate may request a Minister who is a member of the House to attend any proceedings of the Senate if he considers that the business before the Senate in those proceedings falls within the portfolio of the Minister concerned and if he considers the presence of such Minister desirable.

(2) A Minister who is so requested to attend any proceedings of the Senate may take part in the proceedings solely for the purpose of giving explanations concerning matters falling within his portfolio and he shall not vote in the Senate.

## **THE HOUSE OF REPRESENTATIVES**

**36.**

(1) Subject to the provisions of this section, the House shall consist of a number of elected members equal to the number of constituencies from time to time established by Order under Part 4 of this Chapter, who shall be elected in such a manner as may, subject to the provisions of this Constitution, be prescribed by or under any Act of Parliament.

(2) If the person holding the office of Speaker is not otherwise a member of the House, he shall be a member of the House by virtue of holding that office.

(3) If the person holding or acting in the office of Attorney-General is not otherwise a member of the House he shall be a member of the House by virtue of holding or acting in that office but shall not vote in the House.

**37.**

(1) The Speaker, Deputy Speaker or other member presiding in the House may request a Minister who is a Senator to attend any proceedings of the House if he considers that the business before the House in those proceedings falls within the portfolio of the Minister concerned and if he considers the presence of such Minister desirable.

(2) A Minister who is so requested to attend any proceeding of the House may take part in the proceedings solely for the purpose of giving explanations concerning matters falling within his portfolio and he shall not vote in the House.

**38.** Subject to the provisions of section 39 of this Constitution, any person who at the date of his election-

(a) is a citizen of the age of twenty-one years or upwards;

(b) has resided in Antigua and Barbuda for a period of twelve months immediately preceding the date of his election; and

(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take an active part in the proceedings of the House.

- shall be qualified to be elected as a member of the House.

**39.**

(1) No person shall be qualified to be elected as a member of the House who-

(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

(b) is a Senator or temporary member of the Senate;

(c) is an undischarged bankrupt, having been declared bankrupt under any law;

(d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;

(e) is under sentence of death imposed on him by a court or has been sentenced to imprisonment (by whatever name called) for a term of or exceeding twelve months and has not either suffered



the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor, or received a free pardon;

(f) is disqualified for appointment to the House by or under any law by reason of his connection with any offence relating to elections;

(g) holds or is acting in any public office or in the office of judge of the Supreme Court or Ombudsman or is a member of the Constituencies Boundaries Commission, the Judicial and Legal Services Commission, the Public Service Commission or the Police Service Commission;

(h) has, within the period of ten years immediately preceding the proposed date of his election as a member of the House, been convicted on indictment by a court of competent jurisdiction of theft, fraud, or other such crime involving dishonesty and who-

(i) has not appealed against that conviction, or

(ii) has appealed against that conviction and whose appeal has not been allowed; and

(iii) has not received a free pardon in respect of the offence; or

(i) is a minister of religion.

(2) Without prejudice to the provisions of subsection (1) (g) of this section, Parliament may provide that a person shall not be qualified for election as a member of the House in any of the following cases-

(a) if he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of an election or the compilation or revision of any register of electors for the purposes of an election;

(b) subject to any exceptions and limitations prescribed by Parliament, if-

(i) he holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment; or

(ii) he belongs to any armed force of Antigua and Barbuda or to any class of person that is comprised in any such force.

(3) For the purpose of subsection (1) (e) of this section.

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months but if any of such sentences exceeds that term they shall be regarded as one sentence; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

**40.**

- (1) Each of the constituencies established in accordance with the provisions of section 62 of this Constitution shall return one member to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.
- (2) Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Antigua and Barbuda as parliament may prescribe shall, unless he is disqualified by any law from registration as a voter for the purpose of electing a member of the House, be entitled to be registered as such a voter in accordance with the provisions of any law in that behalf and no other person may be registered.
- (3) Every person who is registered as a voter in pursuance of subsection (2) of this section in any constituency shall, unless he is disqualified by any law from voting in that constituency in any election of members of the House, be entitled so to vote in accordance with the provisions of any law in that behalf.
- (4) In any election of members of the House the votes shall be exercised freely and shall be given by secret ballot in such manner as parliament may prescribe.

**41.**

- (1) Every member of the House shall vacate his seat in the House-
  - (a) at the next dissolution of Parliament after he has been elected;
  - (b) if he ceases to be a citizen;
  - (c) if he is absent from the sittings of the House for such period or periods and in such circumstances as may be prescribed in the rules of procedure of the House;

(d) subject to the provisions of subsection (2) of this section, if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified from election as such by virtue of section 39(1) of this Constitution; or

(e) if, having been elected to the House by virtue of being a member of a political party, he resigns his party whip and withdraws his allegiance from that party:

Provided that he shall not be required to vacate his seat so long as he remains an independent member of the House.

(2)

(a) If circumstances such as are referred to in subsection (1) (d) of this section arise because a member of the House is convicted of a felony or of any other offence involving dishonesty, sentenced to death or imprisonment, adjudged to be of unsound mind, or declared bankrupt, or is convicted of any offence relating to elections in circumstances that disqualify him for election to the House, and if it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the House but, subject to the provision of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

(b) If on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal to leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(c) If at any time before the member of the House vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in

paragraph (a) of this subsection and he may resume the performance of his functions as a member of the House.

(3) Where an elected member of the House vacates his seat in the House pursuant to the provisions of paragraph (b) to (e) of subsection (1) of this section or of subsection (2) of this section or where the seat of an elected member of the House is vacant for any other reason except a dissolution of Parliament, there shall be a by-election to fill the seat in the House vacated by that member and the by-election shall be held no later than one hundred and twenty days after the day on which the seat of the member of the House became vacant unless Parliament is sooner dissolved.

#### 42.

(1) When the House first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament the House shall, as soon as practicable, elect another person to that office.

(2) The Speaker may be elected either from among the members of the House or from among persons who are not members of the House but are qualified to be elected as such.

(3) When the House first meets after any general election, and before it proceeds to any other business except the election of the Speaker, it shall elect a member of the House to be Deputy Speaker, and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament the House shall, as soon as practicable, elect another such member to that office.

(4) The House shall not elect a member who is a Minister or Parliamentary Secretary to be a Speaker or Deputy Speaker of the House.

(5) No business (other than the election of a Speaker) shall be transacted in the House at any time when the office of Speaker is vacant.

(6) A person shall vacate the office of Speaker-

(a) in the case of a Speaker elected from among persons who are not members of the House-

(i) when the House first meets after any dissolution of Parliament; or

(ii) if he ceases to be a citizen;

- (iii) if any circumstances arise that would cause him to be disqualified for election as a member of the House by virtue of any of the provisions of section 39 of this Constitution; or
- (b) in the case of a Speaker elected from among the members of the House-
  - (i) if he ceases to be a member of the House except that the Speaker shall not vacate his office by reason only that he has ceased to be a member of the House on a dissolution of Parliament until the House first meets after the dissolution; or
  - (ii) if he is appointed to be a Minister or Parliamentary Secretary.
- (7) A person shall vacate the office of Deputy Speaker-
  - (a) if he ceases to be a member of the House;
  - (b) if he is appointed to be a Minister or a Parliamentary Secretary; or
  - (c) if he is elected to be Speaker.
- (8)
  - (a) If, by virtue of section 41(2) of this Constitution, the Speaker or Deputy Speaker is required to cease to perform his functions as a member of the House, he shall also cease to perform his functions as Speaker or Deputy Speaker, as the case may be, and those functions shall, until he vacates his seat in the House or resumes the performance of the functions of his office, be performed-
    - (i) in the case of the Speaker, by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House by virtue of section 41(2) of this Constitution, by such member of the House (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose; or
    - (ii) in the case of the Deputy Speaker, by such member of the House (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose.
- (9) If the Speaker or Deputy Speaker resumes the performance of his functions as a member of the House in accordance with the provisions of

section 41(2) of this Constitution, he shall also resume the performance of his functions as Speaker or Deputy Speaker, as the case may be.

**43.**

(1) There shall be a Clerk to the Senate and a Clerk to the House but the two offices may be held by the same person.

(2) Subject to the provisions of any law enacted by Parliament, the office of Clerk of each House of Parliament and the offices of the members of their staff shall be public offices.

**44.**

(1) The High Court shall have jurisdiction to hear and determine any question whether-

(a) any person has been validly elected as a member of the House;

(b) any person has been validly appointed as a Senator or as a temporary member of the Senate;

(c) any person who has been elected as Speaker from among persons who were not members of the House was qualified to be so elected or has vacated the office of Speaker; or

(d) any member of the House has vacated his seat or is required under the provisions of section 41(2) of this Constitution to cease to perform any of his functions as a member of the House.

(2) Any application to the High Court for the determination of any question under subsection (1) (a) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General.

(3) An application to the High Court for the determination of any question under subsection (1) (b) or subsection (1) (c) of this section may be made by any member of the House or by the Attorney-General.

(4) An application to the High Court for the determination of any question under subsection (1) (d) of this section may be made-

(a) by any member of the House or by the Attorney-General; or

(b) in the case of the seat of a member of the House; by any person registered in some constituency as a voter for the purpose of electing members of the House.

(5) If any application is made by a person other than the Attorney-General to the High Court for the determination of any question under this section, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section.

(7) The circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section and the powers, practice and procedure of the High Court and the Court of Appeal in relation to any such application shall be regulated by such provision as may be made by Parliament.

(8) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) of this section and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

(9) In the exercise of his functions under this section the Attorney-General shall not be subject to the direction or control of any other person or authority.

#### **45.**

(1) Any person who sits or votes in either House of Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding five hundred dollars, or such other sum as may be prescribed by Parliament, for each day on which he or she sits or votes in that House.

(2) Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

## **PART 2 POWERS AND PROCEDURE OF PARLIAMENT**

**46.** Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Antigua and Barbuda.

47.

(1) Parliament may alter any of the provisions of this Constitution or of the Supreme Court Order in the manner specified in the following provisions of this section.

(2) A bill to alter this constitution or the Supreme Court Order shall not be regarded as being passed by the House unless on its final reading in the House the bill is supported by the votes of not less than two-thirds of all the members of the House.

(3) An amendment made by the Senate to such a bill as is referred to in subsection (2) of this section that has been passed by the House shall not be regarded as being agreed to by the House for the purpose of section 55 of this Constitution unless such agreement is signified by resolution supported by the votes of not less than two-thirds of all the members of the House.

(4) For the purposes of section 55(4) of this Constitution, an amendment of a bill to alter this Constitution or the Supreme Court Order shall not be suggested to the Senate by the House unless a resolution so to suggest the amendment has been supported by the votes of not less than two-thirds of all the members of the House.

(5) A bill to alter this section, schedule 1 to this constitution or any of the provisions of this Constitution specified in Part I of that schedule or any of the provisions of the Supreme Court Order specified in Part II of that schedule shall not be submitted to the Governor-General for his assent unless-

(a) there has been an interval of not less than ninety days between the introduction of the bill in the House and the beginning of the proceedings in the House on the second reading of the bill in that House;

(b) after it has been passed by both Houses of Parliament or, in the case of a bill to which section 55 of this Constitution applies, after its rejection by the Senate for the second time; and

(c) the bill has been approved on a referendum, held in accordance with such provisions as may be made in that behalf by Parliament, by not less than two-thirds of all the votes validly cast on that referendum.



(6) Every person who, at the time when the referendum is held, would be entitled to vote in elections of members of the House shall be entitled to vote on referendum held for the purposes of this section in accordance with such procedures as may be prescribed by parliament for the purposes of the referendum and no other person shall be entitled so to vote.

(7) The conduct of any referendum for the purposes of subsection (5) of this section shall be under the general supervision of the Supervisor of Elections and shall be in accordance with such provisions as may be made in that behalf by Parliament.

(8)

(a) A bill to alter this Constitution or the Supreme Court Order shall not be submitted to the Governor-General for his assent unless it is accompanied by a certificate under the hand of the Speaker (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsection (2), (3) or (4), as the case may be, of this section have been complied with and, where a referendum has been held, by a certificate of the Supervisor of Elections stating the results of the referendum.

(b) The certificate of the Speaker or, as the case may be, the Deputy Speaker under this subsection (2), (3) or (4) of this section have been complied with and shall not be enquired into in any court of law.

#### 48.

(1) No member of either House of Parliament shall take part in the proceedings of that House (other than proceedings necessary for the purpose of this section) until he has made and subscribed before that House the oath of allegiance:

Provided that the election of a President or Vice-President and the election of a Speaker and Deputy Speaker may take place before the members of the Senate or the House, as the case may be, have made and subscribed such oath.

(2) References in this section to a member of a House of parliament include references to any person who is a member of the House by virtue of

holding the office of Speaker or by virtue of holding or acting in the office of Attorney-General.

**49.**

(1) The President or, in his absence, the Vice-President or, if they are both absent, a Senator (not being a Minister or a Parliamentary Secretary) elected by the Senate for that sitting shall preside at any sitting of the Senate:

Provided that the President or Vice-President, as the case may be, shall not preside when a motion for his removal from office is before the Senate.

(2) The Speaker, or in his absence, the Deputy Speaker, or if they are both absent, a member of the House (not being a Minister or Parliamentary Secretary) elected by the House for that sitting shall preside at any sitting of the House:

Provided that the speaker or Deputy Speaker, as the case may be, shall not preside when a motion for his removal from office is before the House.

**50.**

(1) If at any sitting of either House of Parliament any member of that House who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the rules of procedure of that House, the person presiding at the sitting ascertains that a quorum of that House is still not present, that House shall be adjourned.

(2) For the purpose of this section a quorum of the Senate shall consist of six members, and a quorum of the House shall consist of six members or such greater number in each case as may be prescribed by Parliament and in neither case shall the person presiding at the sitting be included in reckoning whether there is a quorum present.

**51.**

(1) Save as otherwise provided in this Constitution, any question proposed for decision in a House of Parliament shall be determined by a majority of the votes of the members present and voting.

(2) The President or other member presiding in the Senate and the Speaker or other member presiding in the House shall not vote unless on any question the votes are equally divided, in which case, except as otherwise provided in this section, he shall have and exercise a casting vote:

Provided that in the case of the question of the final reading of a bill as referred to in section 47(2) of this Constitution a Speaker or other member presiding in the House who is an elected member of the House shall have an original vote but no casting vote.

(3) A Speaker who is not an elected member of the House shall have neither an original nor a casting vote and if, upon any question before the House when such a Speaker is presiding, the votes of the members are equally divided, the motion shall be lost.

## 52.

(1) The power of Parliament to make laws shall be exercised by bills passed by the Senate and the House (or in the cases mentioned in sections 54 and 55 of this Constitution by the House) and assented to by the Governor-General on behalf of Her Majesty.

(2) When a bill is presented to the Governor-General for assent in accordance with this Constitution, he shall signify that he assents thereto.

(3) When the Governor-General assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the Clerk of the House shall thereupon cause it to be published in the Official Gazette as law.

(4) No law made by Parliament shall come into operation until it has been published in the Official Gazette but Parliament may postpone the coming into operation of any such law.

## 53.

(1) A bill other than a money bill may be introduced in either House of Parliament; a money bill shall not be introduced in the Senate.

(2) Except on the proposal of a Minister authorised so to do by the Cabinet, neither House shall-

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:-

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of Antigua and Barbuda or the alteration of any such charge otherwise than by reduction:

(iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Antigua and Barbuda of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Crown; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

#### 54.

(1) If a money bill, having been passed by the House and sent to the Senate at least one month before the end of the session, is not passed by the Senate without amendment within one month after it is sent to the Senate, the bill shall, unless the House otherwise resolves, be presented to the Governor-General for assent notwithstanding that the Senate has not consented to the bill.

(2) There shall be endorsed on every money bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a money bill; and there shall be endorsed on any money bill that is presented to the Governor-General for assent in pursuance of subsection (1) of this section, the certificate of the Speaker signed by him that it is a money bill and that the provisions of that subsection have been complied with.

**55.**

(1) This section applies to any bill other than a money bill that is passed by the House in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions.

(2) A bill to which this section applies shall, on its rejection for the second time by the Senate, unless the House otherwise resolves, be submitted to the Governor-General for assent notwithstanding that the Senate has not consented to the bill:

Provided that-

(a) the foregoing provisions of this subsection shall not have effect unless at least three months have elapsed between the date on which the bill is passed by the House in the first session and the date on which it is passed by the House in the second session; and

(b) a bill such as is referred to in subsection (5) of section 47 of this Constitution shall not be submitted to the Governor-General for his assent unless the provisions of that subsection have been complied with and the power conferred on the House by this subsection to resolve that a bill shall not be presented to the Governor-General for assent shall not be exercised in respect of such a bill.

(3) For the purposes of this section a bill that is sent to the Senate from the House in any session shall be deemed to be the same bill as a former bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former bill or to represent any amendments which have been made by the Senate in the former bill in the preceding session.

(4) The House may, if it thinks fit, on the passage through the House of a bill that is deemed to be the same bill as a former bill sent to the Senate in the preceding session, suggest any amendments without inserting the amendments in the bill, and any such amendments shall be considered by the Senate and, if agreed to by the Senate, shall be treated as amendments

made by the Senate and agreed to by the House; but the exercise of this power by the house shall not affect the operation of this section in the event of the rejection of the bill in the Senate.

(5) There shall be inserted in any bill that is submitted to the Governor-General for assent in pursuance of this section any amendments that are certified by the Speaker to have been made in the bill by the Senate in the second session and agreed to by the House.

(6) There shall be endorsed on any bill that is presented to the Governor-General for assent in pursuance of this section the certificate of the Speaker signed by him that the provisions of this section have been complied with.

## 56.

(1) In sections 53, 54 and 55 of this Constitution, “money bill” means a public bill which, in the opinion of the speaker, contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes, of charges on public money, or the variation or repeal of any such charges; the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant; the appropriation, receipt, custody, investment, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or subordinate matters incidental to any of the matters aforesaid; and in this subsection the expressions “taxation”, “debt”, “public money” and “loan” do not include any taxation imposed, debt incurred or money provided or loan raised by any local authority or body for local purposes.

(2) For the purposes of section 52 of this Constitution, a bill shall be deemed to be rejected by the Senate if-

- (a) it is not passed by the Senate without amendment; or
- (b) it is passed by the Senate with any amendment that is not agreed to by the House.

(3) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred on him by section 54 or 55 of this Constitution or subsection (1) of this section, that function may be performed by the Deputy Speaker.

(4) Any certificate of the Speaker or Deputy Speaker given under section 54 or 55 of this Constitution shall be conclusive for all purposes and shall not be questioned in any court of law.

**57.**

(1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

(2) Each House of Parliament may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

**58.**

(1) Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of Parliament and its committees, or the privileges and immunities of the members and officers of either House of Parliament and of other persons concerned in the business of Parliament or its committees, no civil or criminal proceedings may be instituted against any member of either House of Parliament for words spoken before, or written in a report to, the House of Parliament of which he is a member or a committee thereof or any joint committee of the Senate and the House or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.

(2) References in this section to a member of a House of Parliament include references to any person who is a member of the House by virtue of holding the office of Speaker or by virtue of holding or acting in the office of Attorney-General.

(3) Where the Attorney-General or a Minister takes part in the proceedings of the Senate in accordance with a request made under section 34 or, as the case may be, under section 35 of this Constitution, and gives explanations in the Senate pursuant to those sections, the provisions of subsection (1) of this section shall apply in relation to the Attorney-General or, as the case may be, to that Minister as they apply in relation to a member of the Senate.

(4) Where a Minister takes part in the proceedings of the House in accordance with a request under section 37 of this Constitution and gives explanations in the House pursuant to that section, the provisions of subsection (1) of this section shall apply in relation to that Minister as they apply in relation to a member of the House.

### **PART 3 SUMMONING, PROROGATION AND DISSOLUTION OF PARLIAMENT**

#### **59.**

(1) Each session of Parliament shall be held at such place within Antigua and Barbuda and shall begin at such time (not being later than six months from the end of the preceding session if Parliament has been prorogued or four months from the end of that session if Parliament has been dissolved) as the Governor-General shall by Proclamation appoint.

(2) Subject to the provisions of subsection (1) of this section, not more than three months shall elapse between sittings of Parliament during any session of Parliament and, subject thereto, the sittings of Parliament shall be held at such time and place as Parliament may, by its rules of procedure or otherwise, determine.

#### **60.**

(1) Subject to the provisions of subsection (5) of this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution, and shall then stand dissolved.

(3) At any time when Her Majesty is at war, Parliament may extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time so, however, that the life of Parliament shall not be extended under this subsection for more than five years.

(4) Where between a dissolution of Parliament and the next ensuing general election of members to the House, an emergency arises of



such a nature that in the opinion of the Prime Minister, it is necessary for the two Houses to be summoned before the general election can be held, the Governor-General, acting in accordance with the advice of the Prime Minister, may summon the two Houses of the preceding Parliament but the election of members of the House shall proceed and the Parliament that has been summoned shall, if not sooner dissolved, again stand dissolved on the day on which the general election is held.

(5) The Governor-General in his discretion may dissolve Parliament if the majority of all the members of all the members of the House pass a resolution that they have no confidence in the Government and the Prime Minister does not within seven days of the passing of that resolution either resign from his office or advise a dissolution of Parliament.

#### **61.**

(1) A general election of members of the House shall be held at such time within three months after every dissolution of Parliament as the Governor-General, acting in accordance with the advice of the Prime Minister, shall appoint.

(2) As soon as practicable after every general election the Governor-General shall proceed under section 28 of this constitution to the appointment of Senators.

### **PART 4 DELIMITATION'S OF CONSTITUENCIES**

#### **62.**

(1) For the purpose of the election of members of the House, Antigua and Barbuda shall be divided into such number of constituencies, at least one of which shall be within Barbuda, having such boundaries as may be provided for by an Order made by the Governor-General in accordance with the provisions of section 65 of this Constitution.

(2) Each constituency shall return one member to the House.

**63.**

(1) There shall be a Constituencies Boundaries Commission for Antigua and Barbuda which shall be appointed from time to time to review the number, and the boundaries, of the constituencies and report thereon to the Speaker in accordance with the provisions of this Part and which shall consist of-

- (a) a chairman who shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister given after the Prime Minister has consulted with the Leader of the Opposition;
- (b) two members appointed by the Governor-General acting in accordance with the advice of the Prime Minister; and
- (c) one member appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.

(2) A person shall not be qualified to be appointed as a member of a Constituencies Boundaries Commission if he is a Senator, a member of the House or a public officer.

(3) Subject to the provisions of this section, a member of a Constituencies Boundaries Commission shall vacate his office if any circumstances arise that, if he were not a member of a Constituencies Boundaries Commission, would cause him to be disqualified for appointment as such.

(4) All members of a Constituencies Boundaries Commission shall vacate office and the Commission shall cease to exist-

- (a) twelve months after the date when the report of the Commission is submitted to the Speaker under section 64 of this Constitution;
- (b) on the date when an Order consequent upon the report of the Commission is made the Governor-General under section 65 of this Constitution, or
- (c) at the dissolution of Parliament next after the appointment of the Commission,

whichever is the earlier.

(5) A member of a Constituencies Boundaries Commission may be removed from office but only for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and he shall not be so removed except in accordance with the provisions of this section.

(6) A member of a Constituencies Boundaries Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Prime Minister or the Leader of the Opposition represents to the Governor-General that the question of removal of a member of a Constituencies Boundaries Commission from office for inability as aforesaid or for misbehaviour ought to be investigated then-

- (a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the Governor-General, acting in accordance with the advice of the Chief Justice, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the member of the Constituencies Boundaries Commission ought to be removed from office for inability as aforesaid or for misbehaviour.

(8) A Constituencies Boundaries Commission may regulate its own procedure.

(9) A Constituencies Boundaries Commission may, with the consent of the Prime Minister confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(10) A Constituencies Boundaries Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(11) In the exercise of its functions under this Constitution, a Constituencies Boundaries Commission shall not be subject to the control or direction of any other person or authority.

**64.**

(1) A Constituencies Boundaries Commission shall on its appointment forthwith proceed to review the number of constituencies into which Antigua and Barbuda is divided and the boundaries thereof and shall submit a report to the Speaker stating whether, and if so what, alterations the Commission recommends should be made to the number or the boundaries of those constituencies.

(2) A report by a Constituencies Boundaries Commission shall be submitted to the Speaker under this section not less than two or more than five years after the date when the last such report was submitted.

(3) In reviewing the number, and the boundaries, of the constituencies and making its report thereon, a Constituencies Boundaries Commission shall be guided by such general principles as may be prescribed by Parliament.

**65.**

(1) As soon as may be after a Constituencies Boundaries Commission has submitted a report under section 64 if this Constitution, the Prime Minister shall lay before the House for its approval the draft of an Order by the Governor-General for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft Order may make provision for any matters which appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.

(2) Where any draft Order submitted to the House under this section gives effect to any such recommendations with modifications, the Prime Minister shall lay before the House together with the draft Order a statement of the reasons for the modifications.

(3) If the motion for the approval of any draft Order laid before the House under this section is rejected by the House, or is withdrawn by leave of the House, the Prime Minister shall amend the draft Order and lay the amended draft before the House.

(4) If any draft Order laid before the House under this section is approved by resolution of the House, the Prime Minister shall submit it to the Governor-General who shall make an Order in terms of the draft; and

that Order shall come into force upon the next dissolution of Parliament after it is made.

(5) The question of the validity of any Order by the Governor-General purporting to be made under this section and reciting that a draft thereof had been approved by resolution of the House shall not be enquired into in any court of law.

## **PART 5 THE OMBUDSMAN**

### **66.**

(1) There shall be an officer of Parliament who shall be known as the Ombudsman who shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.

(2) The Ombudsman shall be appointed by resolutions of each House of Parliament for such term as may be prescribed therein.

(3) The Ombudsman shall not enter upon the duties of his office until he has taken and subscribed before the Speaker the oath of allegiance and the oath of office.

(4) Parliament may make provision for the functions, powers and duties of the Ombudsman.

(5) The Ombudsman may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(6) The Ombudsman shall be removed from office by resolutions of both Houses of Parliament if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to Parliament that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If by both Houses of Parliament it is resolved that the question of removing the Ombudsman under this section ought to be investigated, then-

(a) the Speaker shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the

Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Speaker and recommend to Parliament through the Speaker whether the Ombudsman ought to be removed under this section.

(8) If the question of removing the Ombudsman has been referred to a tribunal under this section, both Houses of Parliament may by resolution suspend the Ombudsman from the functions of his office and any such suspension may at any time be revoked by resolutions of both Houses of Parliament, and shall in any case cease to have effect if the tribunal recommends to Parliament through the Speaker that the Ombudsman should not be removed.

(9) If at any time the Ombudsman is for any reason unable to exercise the functions of his office, both Houses of Parliament may by resolutions appoint a person to act as Ombudsman, and any person so appointed shall, subject to the provisions of subsections (7) and (8) of this section, continue to act until the Ombudsman has resumed his functions or until the appointment to act has been revoked by resolutions of both Houses of Parliament.

(10) The Ombudsman shall, in the exercise of his functions under this Constitution, not be subject to the direction or control of any other person or authority.

## **PART 6 THE SUPERVISOR OF ELECTIONS**

### **67.**

(1) The Governor-General shall by notice published in the Gazette appoint a Supervisor of Elections on resolutions to that effect of both Houses of Parliament specifying the person nominated for appointment.

(2) The Supervisor of Elections shall have and exercise such functions, powers and duties as may be provided by law.

(3) The office of the Supervisor of Elections shall be a public office.

(4) Subject to the provisions of subsection (6) of this section, the Supervisor of Elections shall vacate his office when he attains such age, or at the expiration of such term, as may be prescribed by Parliament.

(5) A person holding the office of Supervisor of Elections may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(6) The Supervisor of Elections shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.

(7) If resolutions of both Houses of Parliament are passed to the effect that the question of removing the Supervisor of Elections under this section ought to be investigated then-

(a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Supervisor of Elections ought to be removed under this section.

(8) If the question of removing the Supervisor of Elections has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Supervisor of Elections from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Supervisor of Elections should not be removed.

(9) If at any time the Supervisor of Elections is for any reason unable to exercise the functions of his office, the Governor-General shall by notice published in the Official Gazette appoint a person to act as Supervisor of

Elections on resolutions to that effect of both Houses of Parliament specifying the person nominated for appointment, and any person so appointed shall, subject to the provisions of subsections (7) and (8) of this section, continue to act until the Supervisor of Elections has resumed his functions or until the appointment to act has been revoked by the Governor-General on resolutions to that effect by both Houses of Parliament.

## **CHAPTER V EXECUTIVE POWERS**

### **PART 1 GENERAL**

#### **68.**

- (1) The executive authority of Antigua and Barbuda is vested in Her Majesty.
- (2) Subject to the provisions of this Constitution, the executive authority of Antigua and Barbuda may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.
- (3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.

#### **69.**

- (1) There shall be a Prime Minister of Antigua and Barbuda who shall be appointed by the Governor-General.
- (2) Whenever there is occasion for the appointment of a Prime Minister, the Governor-General shall appoint as Prime Minister-
  - (a) a member of the House who is the leader in the House of the political party that commands the support of the majority of members of the House; or
  - (b) where it appears to him that such party does not have an undisputed leader in the House or that no party commands the support of such a majority, the member of the House who in his



judgement is most likely to command the support of the majority of members of the House,

- and is willing to accept the office of Prime Minister.

(3) Subject to the provision of section 82 of this Constitution and subsection

(4) of this section there shall be, in addition to the office of Prime Minister, such other offices of Minister (including Minister of State) of the Government as may be established by Parliament or, subject to the provisions of any law enacted by Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister.

(4) The Ministers other than the Prime Minister shall be such persons as the Governor-General, acting in accordance with the advice of the Prime Minister, shall appoint from among the members of the House and of the Senate.

(5) If occasion arises for making appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, then, notwithstanding any other provision of this section, a person who was a member of the House immediately before the dissolution may be appointed as Prime Minister or any other Minister and a person who was a Senator immediately before the dissolution may be appointed as any Minister other than Prime Minister.

(6) Appointments under this section shall be made by instrument under the Public Seal.

## **70.**

(1) There shall be a Cabinet for Antigua and Barbuda which shall have the general direction and control of the Government and shall be collectively responsible therefor to Parliament.

(2) The Cabinets shall consist of the Prime Minister and such number of other Ministers (of whom one shall be the Attorney-General), appointed in accordance with the provisions of section 69 of this Constitution as the Prime Minister may consider appropriate.

## **71.**

(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister

or any other Minister responsibility for any business of the Government, including the administration of any department of government.

(2) Where a Minister is incapable of performing his functions by reason of his absence from Antigua and Barbuda or by reason of illness, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a member of the House or a Senator to act in the office of such Minister during such absence or illness.

**72.** The Cabinet shall be summoned only by the Prime Minister or, in his absence, by such Minister as the Prime Minister shall appoint in that behalf.

**73.**

(1) Where the House passes a resolution supported by the votes of a majority of all the members of the House declaring that it has no confidence in the Prime Minister and the Prime Minister does not within seven days of the passing of that resolution either resign from his office or advise the Governor-General to dissolve Parliament, the Governor-General shall revoke the appointment of the Prime Minister.

(2) The Prime Minister shall also vacate his office-

(a) when after any dissolution of Parliament he is informed by the Governor-General that the Governor-General is about to reappoint him as Prime Minister or to appoint another person as Prime Minister; or

(b) where for any reason other than a dissolution of Parliament he ceases to be a member of the House.

(3) A Minister other than the Prime Minister shall vacate his office-

(a) when any person is appointed or re-appointed as Prime Minister;

(b) where for any reason other than a dissolution of Parliament he ceases to be a member of the House of Parliament from among the members of which he was appointed; or

(c) where his appointment is revoked by the Governor-General acting in accordance with the advice of the Prime Minister.

(4) Where at any time the Prime Minister is required under the provisions of section 41(2) of this Constitution to cease to perform his functions as a

member of the House, he shall cease during such time to perform any of his functions as Prime Minister.

(5) Where at any time a Minister other than the Prime Minister is required under section 31(2) or section 41 of this Constitution to cease to perform his functions as a member of the House to which he belongs, he shall cease during such time to perform any of his functions as Minister.

#### 74.

(1) Where the Prime Minister is absent from Antigua and Barbuda or is unable by reason of illness or of the provisions of section 73(4) of this Constitution to perform the functions conferred on him by this Constitution, the Governor-General may authorise some other member of the Cabinet to perform those functions (other than the functions conferred by subsection (2) of this section) and that member may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him in accordance with that advice of the Prime Minister, save that where the Governor-General considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness, or where the Prime Minister is unable to tender the advice by reason of the provisions of section 73(4) of this Constitution, the Governor-General may exercise those powers in his discretion.

#### 75.

(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among members of the House and of the Senate to assist Ministers in the performance of their duties.

(2) Where occasion arises for making an appointment under this section while Parliament is dissolved, a person who was a Senator or a member of the House immediately before the dissolution may be appointed as a Parliamentary Secretary.

(3) The office of a Parliamentary Secretary shall become vacant-

- (a) where for any reason other than a dissolution of Parliament he ceases to be a member of the House of Parliament from among the members of which he was appointed; or
- (b) upon the appointment or re-appointment of any person as Prime Minister; or
- (c) where the Governor-General, acting in accordance with the advice of the Prime Minister, so directs.

**76.** The Prime Minister, every other Minister and every Parliamentary Secretary shall, before entering upon the duties of his office, make and subscribe the oath of allegiance, the oath of office and the oath of secrecy.

**77.**

- (1) There shall be a Secretary to the Cabinet whose office shall be a public office.
- (2) The Secretary to the Cabinet, who shall have charge of the Cabinet office, shall be responsible in accordance with such instructions as may be given him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.
- (3) The Secretary to the Cabinet shall, before entering upon the duties of his office, make and subscribe the oath of secrecy.

**78.**

- (1) Where any Minister has been assigned responsibility for any department of government, he shall exercise direction and control over that department; and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary whose office shall be a public office.
- (2) For the purposes of this section:-
  - (a) two or more government departments may be placed under the supervision of one Permanent Secretary; and
  - (b) two or more Permanent Secretaries may supervise any department of government assigned to a Minister.

**79.**

(1) There shall (except at times when there are no members of the House who do not support the Government) be a Leader of the Opposition who shall be appointed by the Governor-General.

(2) Whenever there is occasion for the appointment of a Leader of the Opposition the Governor-General shall appoint the member of the House who appears to him most likely to command the support of a majority of the members of the House who do not support the Government; or, if no member of the House appears to him to command such support, the member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government:

provided that-

(a) if there are two or more members of the House who do not support the Government but none of them commands the support of the other or others, the Governor-General may, acting in his discretion, appoint any one of them as Leader of the Opposition, and

(b) in the exercise of his discretion the Governor-General shall be guided by the seniority of each based on his length of service as a member of the House, by the number of votes cast in favour of each at the last election of members of the House or by both such seniority and such number of votes.

(3) If the occasion arises to appoint a Leader of the Opposition during the period between a dissolution of Parliament and the day on which the ensuing election of members of the House is held, an appointment may be made as if Parliament had not been dissolved.

(4) The office of Leader of the Opposition shall become vacant-

(a) if he ceases to be a member of the House otherwise than by reason of a dissolution of Parliament;

(b) if, when the House first meets after a dissolution of Parliament, he is not then a member of the House;

(c) if, under the provisions of section 41(2) of this Constitution, he is required to cease to perform his functions as a member of the House; or

(d) if he is removed from office by the Governor-General under the provisions of subsection (5) of this section.

(5) If it appears to the Governor-General that the Leader of the Opposition is no longer able to command the support of a majority of the members of the House who do not support the Government or the support of the largest single group of members of the House who do not support the Government, he shall remove the Leader of the Opposition from office.

(6) The powers of the Governor-General under this section shall be exercised by him in his discretion.

(7) Where the office of Leader of the Opposition is vacant, whether because there is no member of the House so qualified for appointment or because the Leader of the Opposition has resigned his office or for any other reason, any provision in this Constitution requiring consultation with or the advice of the Leader of the Opposition shall, in so far as it requires such consultation or advice, be of no effect.

## 80.

(1) In the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution or any other law, and, without prejudice to the generality of this exception, in case where by this Constitution or any other law he is required to act-

(a) in his discretion;

(b) after consultation with any person or authority other than Cabinet; or

(c) in accordance with the advice of the Prime Minister or any person or authority other than the Cabinet.

(2) Nothing in subsection (1) of this section shall apply to the functions conferred upon the Governor-General by the following provisions of this Constitution, that is to say, sections 63(6), 67(6), 73(1), 87(8) and 99(5) (which require the Governor-General to remove the holders of certain offices from office in certain circumstances).

(3) Where in the exercise of his functions the Governor-General is required to act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, and it has become impracticable for the Governor-General to obtain such advice, he may exercise those functions in his discretion.

(4) Where in the exercise of his functions the Governor-General is required to act in accordance with the advice of, or after consultation with, the Leader of the Opposition and there is a vacancy in the office of the Leader of the Opposition or if the Governor-General considers that it is impracticable to obtain the advice of the Leader of the Opposition, the Governor-General may exercise those functions in his discretion.

(5) Where in the exercise of his functions the Governor-General is required to act after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(6) Any reference in this Constitution to the functions of Governor-General shall be construed as a reference to his powers and duties in the exercise of the executive authority of Antigua and Barbuda and to any other powers and duties conferred or imposed on him as Governor-General by or under this Constitution or any other law.

**81.** The Prime Minister shall keep the Governor-General regularly and fully informed concerning the general conduct of the Government and shall furnish the Governor-General as soon as possible with such information as the Governor-General, acting in his discretion, may request from time to time with respect to any particular matter relating to the Government.

**82.**

(1) There shall be an Attorney-General of Antigua and Barbuda who shall be the principal legal adviser to the Government and who shall be appointed by the Governor-General.

(2) No person shall be qualified to hold or to act in the office of Attorney-General unless he is a citizen entitled to practice as a barrister in Antigua and Barbuda.

(3) If the Attorney-General is an elected member of the House at the time of his appointment or subsequently becomes such a member, he shall be a Minister by virtue of holding the office of Attorney-General and the provisions of subsections (3) to (6) of section 69 of this Constitution shall apply to the office of Attorney-General.

- (4) Where the person holding the office of Attorney-General is a member of the House by virtue of holding that office he may be appointed by the Governor-General to be a Minister.
- (5) If an Attorney-General appointed to be a Minister under the preceding subsection vacates his office as Attorney-General he shall also vacate his office as a Minister.
- (6) If the Attorney-General is not a Minister he shall vacate his office if he ceases to be a citizen or if his appointment is revoked by the Governor-General.
- (7) If the office of the Attorney-General is vacant or the holder of the office is for any reason unable to perform the functions thereof the Governor-General may appoint a suitably qualified person to act in the office, but the provisions of subsections (3) and (4) of this section shall not apply to a person so appointed.
- (8) An appointment under the preceding subsection shall cease to have effect when it is revoked by the Governor-General.

**83.** The powers of the Governor-General under the preceding section shall be exercised by him in accordance with the advice of the Prime Minister.

**84.**

- (1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf-
- (a) grant to any person convicted of any offence against any law a pardon, either free or subject to lawful conditions;
  - (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;
  - (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
  - (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.
- (2) The powers of the Governor-General under subsection (1) of this section shall be exercised by him in accordance with the advice of a Minister



designated by him acting in accordance with the advice of the Prime Minister.

**85.** There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of-

- (a) the Minister referred to in subsection 84(2) of this Constitution who shall be Chairman;
- (b) the Attorney-General (if he is not the Chairman);
- (c) the Chief Medical Officer of the Government;
- (d) not more than four other members appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition.

**86.**

- (1) Where an offender has been sentenced to death by any court for an offence against any law, the Minister shall cause a written report of the case from the trial judge (or the Chief Justice, if a report from the trial judge cannot be obtained) together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.
- (2) The Minister may consult with the Advisory Committee before tendering any advice to the Governor-General under section 84(2) of this Constitution in any case not falling within subsection (1) of this section.
- (3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee.
- (4) The Advisory Committee may regulate its own procedure.
- (5) In this section “the Minister” means the Minister referred to in section 84(2) of this Constitution.

## **PART 2**

### **DIRECTOR OF PUBLIC PROSECUTIONS**

**87.**

- (1) There shall be a Director of Public Prosecutions whose office shall be a public office.

- (2) The Director of Public Prosecutions shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission.
- (3) If the office of Director of Public Prosecutions is vacant or if the holder of the office is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission, may appoint a person to act as Director.
- (4) A person shall not be qualified to be appointed to hold or act in the office of Director or Public Prosecutions unless-
- (a) he is qualified to practice as a barrister in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth; and
  - (b) he has practised for not less than seven years as a barrister in such court.
- (5) A person appointed to act in the office of Director of Public Prosecutions shall, subject to the provisions of subsections (6) (8) (9) and (10) of this section, cease so to act-
- (a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or
  - (b) at such earlier time as may be provided in the terms of his appointment.
- (6) Subject to the provisions of subsection (8) of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.
- (7) A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
- (8) The Director of Public Prosecutions shall be removed from office by the Governor-General if the question of his renewal from office has been referred to a tribunal appointed under subsection (9) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.

(9) If the chairman of the Judicial and Legal Services Commission represents to the Governor-General that the question of removing the Director of Public Prosecutions under this section ought to be investigated, then-

(a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Director of Public Prosecutions ought to be removed under this section.

(10) If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission, may suspend the Director from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director should not be removed.

(11) The prescribed age for the purposes of subsection (6) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament.

## **88.**

(1) The Director of Public Prosecutions shall, subject to section 89 of this Constitution, have power in any case in which he considers it proper to do so-

(a) to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence against any law;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority;

- (c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.
- (2) Subject to section 89 of this Constitution, the powers conferred on the Director of Public Prosecutions by paragraph (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:
- Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.
- (3) For the purposes of this section a reference to criminal proceedings includes an appeal from the determination of any court in criminal proceedings or a case stated or a question of law reserved in respect of those proceedings.
- (4) The functions of the Director of Public Prosecutions under subsection (1) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.
- (5) Subject to section 89 of this Constitution, in the exercise of the functions vested in him by subsection (1) of this section and by section 45 of this Constitution, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

## **89.**

- (1) The Attorney-General may, in the case of any offence to which this section applies, give general or special directions to the Director of Public Prosecutions as to the exercise of the powers conferred upon the Director of Public Prosecutions by section 88 of this Constitution and the Director of Public Prosecutions shall act in accordance with those directions.
- (2) This section applies to-
- (a) offences against any law relating to-
    - (i) official secrets;
    - (ii) mutiny or incitement to mutiny; and
  - (b) any offence under any law relating to any right or obligation of Antigua and Barbuda under international law.

## CHAPTER VI FINANCE

**90.** All revenues or other monies raised or received by Antigua and Barbuda (not being revenues or other monies that are payable, by or under any law for the time being in force in Antigua and Barbuda, into some other fund established for a specific purpose) shall be paid into and form a Consolidated Fund.

**91.**

- (1) No monies shall be withdrawn from the Consolidated Fund except—
  - (a) to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or
  - (b) where the issue of those monies has been authorised by an appropriation law or by a law made in pursuance of section 93 of this Constitution.
- (2) Where any monies are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government to the person or authority to whom payment is due.
- (3) No monies shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those monies has been authorised by or under a law enacted by Parliament.
- (4) There shall be such provision as may be made by Parliament prescribing the manner in which withdrawals may be made from the Consolidated Fund or any other public fund.
- (5) The investment of monies forming part of the Consolidated Fund shall be made in such a manner as may be prescribed by or under a law enacted by Parliament.
- (6) Notwithstanding the provision of subsection (1) of this section, provision may be made by or under a law enacted by Parliament authorising withdrawals to be made from the Consolidated Fund, in such circumstances and to such extent as may be prescribed by or under a law enacted by Parliament, for the purpose of making repayable advances.

**92.**

(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the House before, or not later than ninety days after, the commencement of each financial year, estimates of the revenues and expenditure of Antigua and Barbuda for that financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any law enacted by Parliament) have been approved by the House, a bill to be known as an appropriation bill shall be introduced in the House, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, for the purposes specified therein.

(3) If in respect of any financial year it is found-

(a) that the amount appropriated by the appropriation law for any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or

(b) that any monies have been expended for any purpose in excess of the amount appropriated for that purpose by the appropriation law or for a purpose to which no amount has been appropriated by that law.

- a supplementary estimate showing the sums required or spent shall be laid before the House and, when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced in the House providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

**93.** There shall be such provision as may be made by Parliament under which, if the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may authorise the withdrawal of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier.

**94.**

(1) There shall be such provisions as may be made by Parliament for the establishment of a Contingencies Fund, and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall as soon as possible be laid before the House and when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced as soon as possible in the House for the purpose of replacing the amount so advanced.

**95.**

(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by or under any law enacted by Parliament.

(2) The salaries and allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) When a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any other for which he might have opted.

(5) This section applies to the offices of the Governor-General, member of the Public Service Commission, member of the Police Service Commission, member of the Public Service Board of Appeal, the Director of Public Prosecutions, the Director of Audit, the Ombudsman and the Supervisor of Elections.

(6) Nothing in this section shall be construed as prejudicing the provisions of section 109 of this Constitution (which protects pensions rights in respect of service as a public officer).

**96.**

(1) All debt charges for which Antigua and Barbuda is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt created thereby.

**97.**

(1) There shall be a Director of Audit whose office shall be a public office.

(2) The Director of Audit shall-

(a) satisfy himself that all monies that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and

(b) at least once every year audit and report on the public accounts of Antigua and Barbuda, the accounts of all officers and authorities of the Government, the accounts of all courts of law in Antigua and Barbuda (including any accounts of the Supreme Court maintained in Antigua and Barbuda), the accounts of every Commission established by this Constitution and the accounts of the Clerk to the House and the Clerk to the Senate.

(3) The Director of Audit shall have power to carry out audits of the accounts, balance sheets and other financial statements of all enterprises that are owned or controlled by or on behalf of Antigua and Barbuda.

(4) The Director of Audit and any other officer authorised by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in subsections (2) and (3) of this section.

(5) The Director of Audit shall submit every report made by him in pursuance of this section to the Minister for the time being responsible for



finance who shall, after receiving such report, lay it before the House not later than seven days after the House next meets.

(6) If the Minister fails to lay a report before the House in accordance with the provisions of subsection (5) of this section the Director of Audit shall transmit copies of that report to the Speaker who shall, as soon as practicable, present them to the House.

(7) The Director of Audit shall exercise such other functions in relation to the accounts of the Government, the accounts of other authorities or bodies established by law for public purposes or the accounts of enterprises that are owned or controlled by or on behalf of Antigua and Barbuda as may be prescribed by or under any law enacted by Parliament.

(8) In the exercise of his functions under subsection (2), (3), (4), (5) and (6) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

**98.** The House shall, at the commencement of each session, appoint a Public Accounts Committee from among its members, one of whom shall be a member for Barbuda in the House, whose duties shall be to consider the accounts referred to in section 97(2) of this Constitution in conjunction with the report of the Director of Audit and in particular to report to the House-

- (a) in the case of any excess or unauthorised expenditure of public funds the reasons for such expenditure; and
- (b) any measures it considers necessary in order to ensure that public funds are properly spent,

- and any other such duties relating to public accounts as the House may from time to time direct.

## CHAPTER VII THE PUBLIC SERVICE

### PART 1 THE PUBLIC SERVICE COMMISSION

#### 99.

(1) There shall be a Public Service Commission for Antigua and Barbuda (hereinafter in this section referred to as the Commission) which shall consist of a chairman and not less than two nor more than six other members who shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the leader of the Opposition before tendering any advice to the Governor-General for the purposes of this subsection.

(2) A person shall not be qualified to be appointed as a member of the commission if-

- (a) he is a public officer;
- (b) he is a member of either House of Parliament;
- (c) he is below the age of twenty-five years; or
- (d) he is not resident in Antigua and Barbuda.

(3)

(a) A member of the Commission shall be appointed to hold office for a term of two years.

(b) Subject to the provisions of this section, the office of a member of the Commission shall become vacant at the expiration of the period for which he was appointed or if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) A member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been

referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated then-

- (a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.

(7) If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend that member from the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the member should not be removed.

(8) If the office of chairman of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.

(9) If at any time any member of the Commission is for any reason unable to exercise the function of his office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsections (6) and (7) of this section, continue to act until the office in

which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the Governor-General for the purposes of this subsection and of subsection (8) of this section.

(10) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath of office.

(11) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(12) The Commission may, by regulation or otherwise, regulate its own procedure.

(13) The Commission may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

(14) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(15) The Commission shall make an annual report on its activities to the Governor-General, who shall cause copies of the report to be laid before both Houses of Parliament.

## **100.**

(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to make appointments on promotion and transfer and to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(2) The Public Service Commission may with the approval of the Prime Minister by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or to any public officer.

(3) The provisions of this section shall not apply in relation to the following offices, that is to say-

- (a) any office to which section 101 of this Constitution applies;
- (b) the office of the Director of Public Prosecutions;
- (c) the office of the Director of Audit;
- (d) the office of the Attorney-General;
- (e) the office of the Supervisor of Elections;
- (f) any office to which section 103 of this Constitution applies;
- (g) any office in the Police Force.

(4) No person shall be appointed under this section to, or to act in, any office of the Governor-General's personal staff except with the concurrence of the Governor-General acting in his discretion.

(5) The Public Service Commission shall not remove or inflict any punishment on a public officer on the grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him unless the Judicial and Legal Services Commission concurs therein.

(6) In the performance of its functions the Public Service Commission shall act in a manner consistent with the general policy of the Government as conveyed to the Commission by the Prime Minister in writing.

### **101.**

(1) This section applies to the offices of Secretary to the Cabinet, Permanent Secretary, head of a department of government, deputy head of a department of government, any office of a chief professional adviser to a department of government and any office for the time being designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Antigua and Barbuda for the proper discharge of their functions or as an office in Antigua and Barbuda whose functions relate to external affairs.

(2) The power to appoint persons to hold or to act in offices to which this section applies (including the power to confirm appointments), and, subject

to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:

Provided that-

- (a) the power to appoint a person to hold or act in an office of permanent secretary on transfer from another such office carrying the same salary shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister;
  - (b) before the Public Service Commission tenders advice to the Governor-General with respect to the appointment of any person to hold an office to which this section applies (other than appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office, the Commission shall not advise the Governor-General to appoint that person;
  - (c) in relation to any office of Ambassador, High Commissioner or other principal representative of Antigua and Barbuda in any other country or accredited to any international organisation the Governor-General shall act in accordance with the advice of the Prime Minister, who shall, before tendering any such advice in respect of any person who holds any public office to which appointments are made by the Governor-General on the advice of or after consultation with some other person or authority, consult that person or authority.
- (3) References in this section to a department of government shall not include the office of the Governor-General, the department of the Attorney-General, the department of the Director of Public Prosecutions, the department of the Director of Audit, the department of the Supervisor of Elections, the department of the Clerk of the Senate or of the House or the Police Force.

## 102.

(1) The Director of Audit shall be appointed by the Governor-General acting in accordance with the advice of the Public Service Commission, tendered after the Commission has consulted the Prime Minister and has obtained the agreement of the Prime Minister to the appointment of that person.

(2) If the office of Director of Audit is vacant or if the holder of the office is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission tendered after the Commission has consulted the Prime Minister and has obtained the agreement of the Prime Minister to the appointment, may appoint a person to act as Director of Audit.

(3) The provisions of subsections (5) to (11) inclusive of section 87 of this Constitution (which relates to the appointment and removal of the Director of Public Prosecutions) shall apply in relation to the Director of Audit as they apply in relation to the Director of Public Prosecutions so, however, that in subsection (9) and (10) references to the Judicial and Legal Services Commission shall be read as references to the Public Service Commission.

### **103.**

(1) This section applies to the offices of magistrates and registrars of the High Court and assistant registrars of the High Court and to any public office in the department of the Attorney-General (other than the public office of Attorney-General) and the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to be qualified to practice as a barrister or solicitor in Antigua and Barbuda and such other offices connected with the Court as Parliament may prescribe.

(2) The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) and, subject to the provisions of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General acting in accordance with the advice of the Judicial and Legal Services Commission.

## **PART 2 THE POLICE SERVICE COMMISSION**

### **104.**

(1) There shall be a Police Service Commission for Antigua and Barbuda which shall consist of a Chairman and not less than two nor more than six

other members who shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the Governor-General for the purposes of this subsection.

(2) The provisions of subsections (2) to (15) inclusive of section 99 of this Constitution shall apply in relation to the Police Service Commission as they apply in relation to the Public Service Commission.

### **105.**

(1) Subject to the provision of this section, the power to appoint persons to hold or act in offices in the Police Force (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section to any one or more of its members or to the Commissioner of Police.

(2) Before the Police Service Commission, or any person or authority to whom powers have been delegated under this section, appoints to an office in the Police force any person who is holding or acting in an office power to make appointments to which is vested by this Constitution in the Public Service Commission, the Police Service Commission or that person or authority shall consult with the Public Service Commission.

(3) Before the Police Service Commission makes an appointment to the office of Commissioner or Deputy Commissioner or a like post however designated it shall consult the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister signifies to the Police Service Commission his objection to the appointment of that person to the office in question.

(4) Before the Police Service Commission makes an appointment to the office of Superintendent or a like post however designated it shall consult the Prime Minister.



(5) The power to appoint persons to hold or act in offices in the Police Force below the rank of Sergeant (including the power to confirm appointments) and, subject to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such person from office shall vest in the Commissioner of Police.

(6) The Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (5) of this section, other than the power to remove from office or reduce in rank, to any other member of the Police Force.

(7) A police officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of any judicial function conferred on him unless the Judicial and Legal Services Commission concurs therein.

(8) In this section references to the rank of Sergeant shall, if the ranks within the Police Force are altered (whether in consequence of the re-organisation or replacement of an existing part of the Force or the creation of an additional part), be construed as references to such rank or ranks as may be specified by the Police Service Commission by Order published in the Official Gazette, being a rank or ranks that in the opinion of the Commissioner most nearly correspond to the rank of Sergeant as it existed before the alteration.

### **PART 3**

#### **THE PUBLIC SERVICE BOARD OF APPEAL**

#### **106.**

(1) There shall be a Public Service Board of Appeal for Antigua and Barbuda (in this Part referred to as the Board) which shall consist of-

- (a) a chairman appointed by the Governor-General acting in his discretion;
- (b) two members appointed by the Governor-General acting in accordance with the advice of the Prime Minister who shall, before tendering that advice to the Governor-General, consult with the Leader of the Opposition;

(c) one member appointed by the Governor-General after consultation with the appropriate bodies representing the public service; and

(d) one member appointed by the Governor-General after consultation with the appropriate body representing members of the Police Force.

(2) The provisions of subsections (2) to (8) inclusive of section 99 of this Constitution shall apply in relation to the Board as they apply in relation to the Public Service Commission except that, in so applying subsection (8) of that section, the provision whereby the Governor-General acts in accordance with the advice of the Prime Minister shall be read as a provision whereby the Governor-General acts in his discretion.

(3) If at any time any member of the Board is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the person upon whose advice that member was appointed or, as the case may be, after consultation with the body that he had consulted before appointing that member, may appoint a person who is qualified to be appointed as a member of the Board to act as a member, and any person so appointed shall continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General acting in accordance with such advice or, as the case may be, after such consultation as above in this subsection:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the Governor-General under this subsection in respect of the appointment of any person to act for any member of the commission appointed under paragraph (b) of the subsection (1) of this section.

(4) The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(5) In this section-

“the appropriate bodies representing the public service” means the Antigua and Barbuda Civil Service Association or such other body representing the interests of public officers as the Governor-General may designate;

“the appropriate body representing members of the Police Force” means the Police Welfare Association or such other body representing

the interests of members of the Police Force as the Governor-General may designate.

**107.**

- (1) This section applies to-
- (a) any decision of the Governor-General acting in accordance with the advice of the Public Service Commission, or any decision of the Public Service Commission, to remove a public officer from office or to exercise disciplinary control over a public officer (including a decision made on appeal from or confirming a decision of any person to whom powers are delegated under section 100(2) of this Constitution);
  - (b) any decision of any person to whom powers are delegated under section 100(2) of this Constitution to remove a public officer from office or to exercise disciplinary control over a public officer (not being a decision which is subject to appeal to or confirmation by the Public Service Commission);
  - (c) any decision of the Public Service Commission to give such concurrence as is required by section 110(1) or (2) of this Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of an officer's service as a public officer;
  - (d) any decision of the Police Service Commission to remove a member of the Police Force from office or to exercise disciplinary control over such a member under section 105(1) of this Constitution;
  - (e) if it is so provided by Parliament, any decision of the Commissioner of Police under subsection (5) of section 105 of this Constitution, or of a person to whom powers are delegated under subsection (6) of that section, to remove a police officer from office or to exercise disciplinary control over a police officer;
  - (f) such decisions with respect to the discipline of any military, naval or air force of Antigua and Barbuda as may be prescribed by Parliament.
- (2) Subject to the provisions of this section an appeal shall lie to the Board from any decision to which this section applies at the instance of

the public officer, police officer or member of the naval, military or air force in respect of whom the decision is made:

Provided that in the case of any such decision as is referred to in subsection (1) (e) if this section, an appeal shall lie in the first instance to the Police Service Commission if it is so provided by Parliament, in which case the Commission shall have the like powers as are conferred on the Board by subsection (1) of section 108 of this Constitution.

**108.**

(1) Upon an appeal under section 107 of this Constitution or any law enacted in pursuance of that section, the Board may affirm or set aside the decision appealed against or make any other decision which the authority or person from which the appeal lies could have made.

(2) Every decision of the Board shall require the concurrence of a majority of all the members of the Board entitled to participate in the proceedings of the Board for the purpose of making that decision.

(3) Subject to the provisions of subsection (2) of this section, the Board may by regulation make provision for-

- (a) the procedure of the Board;
- (b) the procedure in appeals under this Part;
- (c) excepting from that provisions of section 107(1) of this Constitution decisions in respect of public officers holding offices whose emoluments do not exceed such sums as may be prescribed by the regulations or such decisions to exercise disciplinary control, other than decisions to remove from office, as may be so prescribed.

(4) Regulations made under this section may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government for the purpose of the exercise of the functions of the Board.

(5) The Board may, subject to the provisions of this section and to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

## **PART 4 PENSIONS**

### **109.**

- (1) The law to be applied with respect to any pensions benefits that were granted to any person before 1st November 1981 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.
- (2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall-
  - (a) in so far as those benefits are wholly in respect of a period of service as a judge or officer of the Supreme Court or a public officer that commenced before 1st November 1981, be the law that was in force on that date; and
  - (b) in so far as those benefits are wholly or partly in respect of a period of service as a judge or officer of the Supreme Court or a public office that commenced after 31st October 1981, be the law in force on the date on which that period of service commenced, or any law in force at a later date that is not less favourable to that person.
- (3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall for the purposes of this section, be deemed to be more favourable to him than the other law or laws.
- (4) All pensions benefits shall (except to the extent that they are by law charged upon and duly paid out of some other fund) be a charge on the Consolidated Fund.
- (5) In this section “pensions benefits” means any pensions, compensations, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.
- (6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the

circumstances in which such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(7) In this section references to service as a judge are references to service as a judge of the Supreme Court and references to service as a public officer include service in an office established under section 12 of the Supreme Court Order.

**110.**

- (1) Where under any law any person or authority has a discretion-
  - (a) to decide whether or not any pensions benefits shall be granted;
  - or
  - (b) to withhold, reduce in amount or suspend any such benefits that have been granted, those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.
- (2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.
- (3) The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of a judge of the Supreme Court, Director of Public Prosecutions or Director of Audit or Supervisor of Elections has been guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.
- (4) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person (who holds or has held any office to which, at the time of such action, section 103 of this Constitution applies) has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial and Legal Services Commission.

(5) In this section “pensions benefits” means any pensions, compensations, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) In this section references to service as a public officer include service in an office established under section 12 of the Supreme Court Order.

## **CHAPTER VIII CITIZENSHIP**

**111.** On and after 1st November 1981 a person shall, for the purposes of any law, be regarded as belonging to Antigua and Barbuda if, and only if, he is a citizen.

**112.** The following persons shall become citizens on 1st November 1981-

- (a) every person who, having been born in Antigua, was on 31st October 1981, a citizen of the United Kingdom and Colonies;
- (b) every person born outside Antigua if either of his parents or any one of his grandparents was born therein or was registered or naturalised while resident in Antigua;
- (c) every person who on 31st October 1981 was a citizen of the United Kingdom and Colonies-
  - (i) having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised while resident in Antigua as a British subject before the Act came into force; or
  - (ii) having while resident in Antigua become such a citizen by virtue of his having been naturalised or registered under that Act;
- (d) every person who, having been born outside Antigua was on 31st October 1981 a citizen of the United Kingdom and Colonies and if his father or mother becomes, or would but for his or her death or the renunciation of his or her citizenship of the United Kingdom and Colonies have becomes, a citizen by virtue of paragraph (a), (b) or (c) of this section;

(e) every woman who, having been married to a person who becomes, or but for his death or the renunciation of his citizenship of the United Kingdom and Colonies, would have become a citizen by virtue of paragraph (a), (b), (c) or (d) of this section, was a citizen of the United Kingdom and Colonies on 31st October 1981;

(f) every person who on 31st October 1981 was under the age of eighteen years and is the child, stepchild, or child adopted in a manner recognised by law, of such a person as is mentioned in any of the preceding paragraphs of this section.

**113.** The following persons shall become citizens at the date of their birth on or after 1st November 1981-

(a) every person born in Antigua and Barbuda:

Provided that a person shall not become a citizen by virtue of this paragraph if at the time of his birth-

(i) neither of his parents is a citizen and either of them possess such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Antigua and Barbuda; or

(ii) either of his parents is a citizen of a country with which Her Majesty is at war and the birth occurs in a place then under occupation by that country;

(b) every person born outside Antigua and Barbuda if at the date of his birth either of his parents is or would have been but for that parent's death, a citizen by virtue of section 112 of this Constitution or paragraph (a) of this section;

(c) every person born outside Antigua and Barbuda if at the date of his birth either of his parents is, or would have been but for that parent's death, a citizen employed in service under the Government or under an authority of the Government that requires him or her to reside outside Antigua and Barbuda for the proper discharge of his or her functions.

**114.**

(1) Subject to the provisions of paragraph (e) of section 112 and of section 117 of this Constitution, the following persons shall be entitled, upon making application, to be registered on or after 1st November 1981-



- (a) any person who, on 31st October 1981-
- (i) was married to a person who becomes a citizen by virtue of section 112 of this Constitution; or
  - (ii) was married to a person who, having died before 1st November 1981, would have but for his or her death, become a citizen by virtue of that section:  
Provided that such person is not, or was not at the time of the death of the spouse, living apart from the spouse under a decree of a competent court or a deed of separation;
- (b) any person who-
- (i) was married to a person who is or becomes a citizen; or
  - (ii) was married to a person who was or, but for his or her death, would have become a citizen:  
Provided that no application shall be allowed from such person before the marriage has subsisted for upwards of three years and that such person is not, or was not at the time of the death of the spouse, living apart from the spouse under a decree of a competent court or a deed of separation;
- (c)
- (i) every person being a Commonwealth citizen who on 31st October 1981 was domiciled in Antigua and had been ordinarily resident therein for a period of not less than seven years preceding that day;
  - (ii) any person who being a Commonwealth citizen is domiciled in Antigua and Barbuda and has for a period of not less than seven years immediately preceding his application been lawfully ordinarily resident in Antigua and Barbuda (whether or not that period commenced before 1st November 1981);
- (d) any person who, but for having renounced his citizenship of the United Kingdom and Colonies in order to qualify for the acquisition or retention of the citizenship of another country, would have become a citizen on 1st November 1981;

(e) any person who, having been a citizen, had to renounce his citizenship in order to qualify for the acquisition or retention of the citizenship of another country;

(f) any person under the age of eighteen years who is the child, stepchild or child adopted in a manner recognised by law of a citizen or is the child, stepchild or child so adopted of a person who is or would but for his death have been entitled to be registered as a citizen under this subsection.

(2) An application under this section shall be made in such manner as may be prescribed as respects that application by or under a law enacted by Parliament and, in the case of a person to whom subsection (1) (f) of this section applies, it shall be made on his behalf by his parent or guardian:

provided that if the person to whom subsection (1) (f) of this section applies is or has been married, the application may be made by that person.

## 115.

(1) A person, who on 1st November 1981, is a citizen or entitled to be registered as such and is also a citizen of some other country or entitled to be registered as such shall not solely on the ground that he is or becomes a citizen of that country, be-

(a) deprived of his citizenship;

(b) refused registration as a citizen; or

(c) required to renounce his citizenship of that other country, by or under any law.

(2) A person referred to in subsection (1) of this section shall not-

(a) be refused a passport of Antigua and Barbuda or have such a passport withdrawn, cancelled, or impounded solely on the ground that he is in possession of a passport issued by some other country of which he is a citizen; or

(b) be required to surrender or be prohibited from acquiring a passport issued by some other country of which he is a citizen before being issued with a passport of Antigua and Barbuda or as a condition of retaining such a passport.

**116.**

(1) Without prejudice to and subject to the provisions of sections 11, 112, 113, 114 and 115 of this Constitution, Parliament may, pursuant to the provisions of this section, make provision for the acquisition of citizenship by registration.

(2) An application for registration under this section may be refused by the Minister responsible for the matter in any case in which he is satisfied that there are reasonable grounds for refusing the application in the interests of defence, public safety, public morality or public order.

(3) There shall be such provision as may be made by Parliament-

(a) for the acquisition of citizenship of Antigua and Barbuda by persons who are not eligible or who are no longer eligible to become citizens under the provisions of this Chapter;

(b) for the renunciation by any person of his citizenship;

(c) for the certification of citizenship for persons who had acquired that citizenship and who desire such certification; and

(d) for depriving of his citizenship any person who is a citizen by virtue of registration if such registration as a citizen was obtained by false representation or fraud or wilful concealment of material facts or if he is convicted in Antigua and Barbuda of an act of treason or sedition;

Provided that any law enacted for the purposes of paragraph (d) of this section shall include provisions under which the person concerned shall have a right of appeal to a court of competent jurisdiction or other independent authority and shall be permitted to have legal representation of his own choice.

**117.** Any person not already owing allegiance to the Crown who applies for registration under section 114 of this Constitution shall before such registration, take the oath of allegiance.

**118.**

(1) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national

status of the father at the time of the father's death; and where that death occurred before 1st November 1981 the national status that the father would have had if he had died on that day shall be deemed to be his national status at the time of his death:

Provided that in the case of a child born out of wedlock references to the mother shall be substituted for such references to the father.

(2) In this Chapter-

“child” includes a child born out of wedlock and not legitimated;

“father”, in relation to a child born out of wedlock and not legitimated, includes a person who acknowledges and can show that he is the father of the child or has been found by a court of competent jurisdiction to be the father of the child;

“parent” includes the mother of a child born out of wedlock.

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

## **CHAPTER IX JUDICIAL PROVISIONS**

### **119.**

(1) Subject to the provisions of sections 25(2), 47(8)(b), 56(4), 65(5), 124(7)(b) and 124 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened and to make a declaration accordingly.

(3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy

as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.

(4) The Chief Justice may make provision, or authorise the making of provision, with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the court by or under this section, including provision with respect to the time within which any application under this section may be made.

(5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.

(6) The rights conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law.

(7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 44 of this Constitution.

## **120.**

(1) Where any question as to the interpretation of this Constitution arises in any court of law established for Antigua and Barbuda (other than the Court of Appeal, the High Court or a court-martial) and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, Her Majesty in Council.

**121.** Subject to the provisions of section 44 of this Constitution, an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases-

- (a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;
- (b) final decisions given in exercise of the jurisdiction conferred on the High Court by section 18 of this Constitution (which relates to the enforcement of the fundamental rights and freedom); and
- (c) such other cases as may be prescribed by Parliament.

**122.**

(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases-

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution; and
- (d) such other cases as may be prescribed by Parliament.

(2) Subject to the provision of section 44(8) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

- (a) decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council; and
- (b) such other cases as may be prescribed by Parliament.

(3) An appeal shall lie to Her Majesty in Council with the special leave of Her Majesty from any decision of the Court of Appeal in any civil or criminal matter.

(4) Reference in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred upon that court by this Constitution or any other law for the time being in force.

(5) In this section the prescribed value means the value of fifteen hundred dollars or such other value as may be prescribed by Parliament.

## CHAPTER X MISCELLANEOUS

### 123.

- (1) There shall be a Council for Barbuda which shall be the principal organ of local government in that island.
- (2) The Council shall have such membership and functions as Parliament may prescribe.
- (3) Parliament may alter any of the provisions of the Barbuda Local Government Act, 1976, specified in schedule 2 to this Constitution (which provisions are in this section referred to as “the said provisions”) in the manner specified in the following provisions of this section and in no other manner whatsoever.
- (4) A bill to alter any of the said provisions shall not be regarded as being passed by the House unless after its final reading in that House the bill is referred to the Barbuda Council by the Clerk, of the House and the Barbuda Council gives its consent to the bill by resolution of the Council, notice of which shall forthwith be given by the Council to the Clerk of the House.
- (5) An amendment made by the Senate to such a bill as is referred to in subsection (4) of this section which bill has been passed by the House and consented to by the Barbuda Council shall not be regarded as being agreed to by the House for the purpose of section 55 of this Constitution unless the Barbuda Council signifies to the Clerk of the House the consent by resolution of the Barbuda Council to that amendment.
- (6) For the purpose of section 55 (4) of this Constitution, an amendment of a bill to alter any of the said provisions shall not be suggested to the Senate by the House unless the Barbuda Council signifies to the Clerk of the House the consent by resolution of the Barbuda Council for the House so to suggest the amendment.
- (7)
  - (a) A bill to alter any of the said provisions shall not be submitted to the Governor-General for his assent unless it is accompanied by a certificate under the hand of the Speaker (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsection (4), (5) or (6), as the case may be, of this section have been complied with.

(b) The certificate of the Speaker or, as the case may be, the Deputy Speaker, under this subsection shall be conclusive that the provisions of subsection (4), (5) or (6), as the case may be, of this section have been complied with and shall not be enquired into in any court of law.

**124.** Where by this Constitution the Governor-General is required to perform any function in accordance with the advice of the Cabinet, the Prime Minister or any other Minister or the Leader of the Opposition or any other person, body or authority or after consultation with any person, body or authority, the question whether the Governor-General has received or acted in accordance with such advice, or whether such consultation has taken place, shall not be enquired into in any court of law.

**125.**

(1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected;

Provided that-

- (a) The resignation of a person from the office of President or Vice-President or from the office of Speaker or Deputy Speaker shall be addressed to the Senate or the House, as the case may be, and
- (b) the resignation of any person from membership of the Senate or the House shall be addressed to the President or the Speaker, as the case may be.

(2) The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it.

**126.**

(1) Where any person has vacated any office established by this Constitution or any office of Minister established under this Constitution, he may, if



qualified, again be appointed or elected to that office in accordance with the provisions of this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

## 127.

- (1) In this Constitution, unless the context otherwise requires-
- “citizen” means a citizen of Antigua and Barbuda and “citizenship” shall be construed accordingly;
  - “Commonwealth citizen” has such meaning as Parliament may by law prescribe;
  - “dollars” means dollars in the currency of Antigua and Barbuda;
  - “financial year” means any period of twelve months beginning on 1st January in any year or such other date as Parliament may prescribe;
  - “the Government” means the Government of Antigua and Barbuda;
  - “the House” means the House of Representatives;
  - “law” means any law in force in Antigua and Barbuda or any part thereof, including any instrument having the force of law and any unwritten rule of law and “lawful” and “lawfully” shall be construed accordingly;
  - “Minister” means a Minister of the Government;
  - “oath” includes affirmation;
  - “oath of allegiance” means the oath of allegiance set out in schedule 3 to this Constitution;
  - “oath of office” means, in relation to any office, the oath for the due execution of that office set out in schedule 3 to this Constitution;
  - “oath of secrecy” means the oath of secrecy set out in schedule 3 to this Constitution;
  - “Parliament” means the Parliament of Antigua and Barbuda;

“the Police Force” means the Police Force established by the Police Act(a) and includes any other police force established by or under a law enacted by Parliament to succeed to or to supplement the functions of the Police Force;

“President” and “Vice-President” means the respective persons holding office as President and Vice-President of the Senate;

“public office” means any office of emolument in the public service and includes an office of emolument in the Police Force;

“public officer” means a person holding or acting in any public office and includes an officer or member of the Police Force;

“the public service” means, subject to the provisions of this section, the service of the Crown in a civil capacity in respect of the government of Antigua and Barbuda;

“session” means the period beginning when the Senate or the House first meets after any prorogation or dissolution of Parliament and ending when Parliament is prorogued or is dissolved without having been prorogued;

“sitting” means in relation to either House of Parliament the period during which the House is sitting continuously without adjournment and includes any period during which it is in committee;

“Speaker” and “Deputy Speaker” means the respective persons holding office as Speaker and Deputy Speaker of the House;

(2) In this Constitution references to an office in the public service shall not be construed as including-

(a) references to the office of President or Vice-President, Speaker or Deputy Speaker, Prime Minister or any other Minister, Parliamentary Secretary, member of either House of Parliament or the Ombudsman;

(b) references to the office of a member of any Commission established by this Constitution or a member of the Advisory Committee on the Prerogative of Mercy or a member of the Public Service Board of Appeal;

(c) references to the office of a judge or officer of the Supreme Court;

(d) save in so far as may be provided by Parliament, references to the office of a member of any council, board, panel,

committee or other similar body (whether incorporated or not) established by or under any law.

(3) In this Constitution-

(a) references to this Constitution, the Supreme Court Order, the British Nationality Act 1948 or the Barbuda Local Government Act, 1976, or any provision thereof, include references to any law altering this Constitution or that Order, Act or provision, as the case may be;

(b) references to the Supreme Court, the Court of Appeal, the High court and the Judicial and Legal Services Commission are references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Supreme Court Order;

(c) references to the Chief Justice have the same meaning as in the Supreme Court Order;

(d) references to a judge of the Supreme Court are references to a judge of the High Court or Court of Appeal and, unless the context otherwise requires, includes references to a judge of the former Supreme Court of the Windward Islands and Leeward Islands; and

(e) references to officers of the Supreme Court are references to the Chief Registrar and other officers of the Supreme court appointed under the Supreme Court Order.

(4) For the purpose of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of his former tenure of any office.

(5) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.

(6) Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

(7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that-

(a) nothing in this subsection shall be construed as conferring on any person or authority the power to require the Director of Public Persecutions, the Director of Audit or the Supervisor of Elections to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(8) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(9) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(11) Without prejudice to the provisions of section 14 of the Interpretation Act 1978(a) (as applied by subsection (16) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power,

exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, direction, or designation.

(12) Subject to the provisions of subsection 3(a) of this section any reference in this Constitution to a law made before 1st November 1981 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect on 31st October 1981.

(13) In this Constitution references to altering this Constitution or any other law, or any provision thereof, include references-

- (a) to revoking it with or without re-enactment thereof or the making of different provision in lieu thereof;
- (b) to modifying it whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
- (c) to suspending its operation for any period or terminating any such suspension.

(14) In this Constitution, any reference to a time when Her Majesty is at war shall be construed as a reference to a time when Antigua and Barbuda is engaged in hostilities with another country.

(15) In relation to all matters previous to 1st November 19981 references in this Constitution to Antigua or to Antigua and Barbuda shall in relation to the periods specified include (to such extent as the context may require) references as follows:-

- (a) to the associated state of Antigua as respects the period from 27th February 1967 to 31st October 1981;
- (b) to the colony of Antigua as respects the period from 1st July 1956 to 26th February 1967; and
- (c) to the presidency of Antigua comprised in the colony of the Leeward Islands as respects the period from 5th March 1872 to 30th June 1956.

(16) The Interpretation Act 1978 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of the United Kingdom.

## **SCHEDULE 1 TO THE CONSTITUTION**

### **PART I THE PROVISIONS OF THE CONSTITUTION REFERRED TO IN SECTION 47(5)**

- (i) Chapter II;
- (ii) Chapter VI;
- (iii) Sections 22, 23, 68 and 80;
- (iv) Sections 27, 28, 36, 40, 44, 46, 52, 54, 57, 58, 59, 60, 61, 62, 63, 64 and 65.
- (v) Chapter VII (except sections 106, 107 and 108);
- (vi) Chapter VIII;
- (vii) Chapter I;
- (viii) Section 123;
- (ix) Section 127 in its application to any of the provisions mentioned in the foregoing items of this part.

### **PART II THE PROVISIONS OF THE SUPREME COURT ORDER REFERRED TO IN SECTION 47(5)**

Sections 4, 5, 6, 8, 11, 18 and 19.

## **SCHEDULE 2 TO THE CONSTITUTION**

Section 123(3) to (7)

### **PROVISIONS OF THE BARBUDA LOCAL GOVERNMENT ACT, 1976 REFERRED TO IN SECTION 123(3) TO (7)**

Sections 1 to 44 and the First Schedule

## **SCHEDULE 3 TO THE CONSTITUTION**

Section 127(1)

**OATH (OR AFFIRMATION) OF ALLEGIANCE**

I, \_\_\_\_\_, do swear (or solemnly affirm) that I will faithfully bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

So help me God. (To be omitted in affirmation).

**OATH (OR AFFIRMATION) OF OFFICE**

I, \_\_\_\_\_, do swear (or solemnly affirm) that I will honour, uphold and preserve the Constitution of Antigua and Barbuda and the law, that I will conscientiously, impartially and to the best of my ability discharge my duties as and do right to all manner of people without fear or favour, affection or ill-will.

So help me God. (To be omitted in affirmation).

**OATH (OR AFFIRMATION) OF SECRECY**

I, \_\_\_\_\_, do swear (or solemnly affirm) that I will not on any account, at any time whatsoever, disclose any counsel, advice, opinion or vote given by any Minister as a member of the Cabinet and that I will not, except with the authority of the Cabinet and to such extent as may be required for the proper conduct of the government of Antigua and Barbuda, directly or indirectly reveal the business or proceedings of the Cabinet or any matter coming to my knowledge as a member of (or Secretary to) the Cabinet.

So help me God. (To be omitted in a affirmation).

**SCHEDULE 2 TO THE ORDER  
TRANSITIONAL PROVISIONS**

1. Until such time as a person has assumed office as Governor-General having been appointed as such in accordance with section 22 of the Constitution, the person who on 31st October 1981 held office as

Governor of Antigua (or, if there is no such person, the person who was then acting as Governor) shall discharge the functions of the office of Governor-General.

**2.**

(1) The existing laws shall, as from 1st November 1981, be construed with such modifications, adaptations, qualifications, and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this paragraph), that prescription or provision shall, as from 1st November 1981, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution and the Supreme Court Order) as if it has been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

**3.**

(1) Until their boundaries are altered in pursuance of section 65 of the Constitution, the boundaries of the constituencies shall, for the purpose of the election of members of the House, be the same as those of the constituencies into which Antigua was divided on 31st October 1981 for the purpose of the election of members of the House of Representatives under the former Constitution and those boundaries shall be deemed to have been established under that section.

(2) The persons who, on 31st October 1981 were elected members of the House of Representatives under the former Constitution shall, as from 1st November 1981, be deemed to have been elected in pursuance of the provisions of section 36 of the Constitution in the respective constituencies corresponding to the constituencies by which they were returned to the House and shall hold their seats in the House in accordance with the provisions of the Constitution.



(3) The persons who, on 31st October 1981 were members of the Senate under the former Constitution, shall, as from 1st November 1981, be deemed to have been appointed Senators in pursuance of Section 28 of the Constitution and shall hold their seats as Senators in accordance with the provisions of the Constitution.

(4) The persons who, on 31st October 1981 were respectively the President and Vice-President of the Senate, the Speaker and Deputy Speaker of the House of Representatives and, the Attorney-General shall be deemed as from the commencement of the Constitution to have been elected as President and Vice-President, Speaker and Deputy Speaker, or, as the case may be, appointed as Attorney-General in accordance with the provisions of the Constitution and shall hold office in accordance with those provisions.

(5) Until Parliament otherwise provides any person who holds or acts in any office the holding of which would, immediately before the commencement of the Constitution, have disqualified him for membership of the Senate or of the House of Representatives under the former Constitution shall be disqualified to be appointed as a Senator or elected as a member of the House as though provisions in that behalf had been made in pursuance of sections 30 and 39 respectively of the Constitution.

(6) The Standing Orders of the Senate or the House of Representatives under the former Constitution as in force on 31st October 1981 shall, until it is otherwise provided under section 57(1) of the Constitution, be the rules of procedure of the Senate or the House, as the case may be, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(7) For the purposes of section 60 of the Constitution, the first sitting of Parliament shall be deemed to have taken place (after a dissolution) on 8th May 1980 (that is to say, the date on which the Parliament established by the former Constitution first sat after its most recent dissolution).

(8) Any person who, by virtue of this paragraph, is deemed as from 1st November 1981 to hold any seat or office in the Senate or the House shall be deemed to have taken and subscribed any necessary oath for these purposes under the Constitution.

(9) For the purposes of sections 63 and 64 of the Constitution, the Constituencies Boundaries Commission shall be deemed to have carried

out a review and to have submitted the relevant report thereon on the 1st October 1979 (that is to say, the date of the last Order made by the Governor under section 59 of the former Constitution giving effect to the last report of the Commission submitted in accordance with the provisions of the former Constitution).

**4.**

(1) The person who, on 31st October 1981, held the office of Premier under the former Constitution shall, as from 1st November 1981, hold office as Prime Minister as if he had been appointed thereto under section 69 of the Constitution.

(2) The persons who, on 31st October 1981, held office as Ministers (other than the Premier) or as Parliamentary Secretaries under the former Constitution shall, as from 1st November 1981, hold the like offices as if they had been appointed thereto under section 69 or, as the case may be, section 75 of the Constitution.

(3) Any person holding the office of Prime Minister or other Minister by virtue of the provisions of sub-paragraphs (1) and (2) of this paragraph who, on 31st October 1981, was charged under the former Constitution with responsibility for any matter or any department of Government, shall, as from 1st November 1981, be deemed to have been assigned responsibility for the matter or department under section 71 of the Constitution.

**5.** Until Parliament or, subject to the provisions of any law enacted by Parliament, the Governor-General, acting in accordance with the advice of the Prime Minister, otherwise provides, the office of Attorney-General shall be that of a Minister.

**6.** Subject to the provisions of the Constitution, every person who immediately before the commencement of the Constitution held or was acting in a public office under the former Constitution shall, as from the commencement of the Constitution, continue to hold or act in that office or the corresponding office established by the Constitution as if he had been appointed thereto in accordance with the provisions of the Constitution:

Provided that any person who under the former Constitution or any other law in force immediately before such commencement would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

**7.** The West Indies Associated States Supreme Court Order 1967(a), in so far as it has effect as a law, may be cited as the Supreme Court Order and for the purposes of the Order or any other law -

- (a) the Supreme Court established by the Order shall, unless Parliament otherwise provides, be styled the Eastern Caribbean Supreme Court; and
- (b) references in the Order to the Premier of Antigua or to the Premier of any independent State shall be construed as references to the Prime Minister of Antigua and Barbuda or, as the case may be, to the Prime Minister of that other State.

**8.** The West Indies Associated States (Appeals to Privy Council) Order 1967(b) may, in its application to Antigua and Barbuda, be cited as the Antigua and Barbuda Appeals to Privy Council Order and shall, to the extent that it has effect as a law, have effect as if the expression “Courts Order” included any law altering the Supreme Court Order and as if section 3 were revoked.

**9.** Nothing in section 9 of the Constitution shall effect the operation of any law in force immediately before 27th February 1967 or any law made on or after that date that alters a law in force immediately before that date and does not -

- (a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
- (b) make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or having an interest in the property; or
- (c) deprive any person of such right as is mentioned in subsection (2) of that section.

**10.** Until such time as Parliament otherwise prescribes, the expression “Commonwealth citizen” shall have the meaning assigned to it by the British Nationality Act 1948.

**11.** In this schedule -

- (1) “the Constitution” means the Constitution set out in Schedule 1 to this Order;
- (2) “the former Constitution” means the Constitution of Antigua as in force on 31st October 1981.

The provisions of section 127 of the Constitution shall apply for the purposes of interpreting this schedule and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.

# **Bahamas**

## **THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS (1973)**

### **PREAMBLE**

Whereas Four hundred and eighty-one years ago the rediscovery of this Family of Islands, Rocks and Cays heralded the rebirth of the New World;

And Whereas the People of this Family of Islands recognizing that the preservation of their Freedom will be guaranteed by a national commitment to Self-discipline, Industry, Loyalty, Unity and an abiding respect for Christian values and the Rule of Law;

Now Know Ye Therefore:

We the Inheritors of and Successors to this Family of Islands, recognizing the Supremacy of God and believing in the Fundamental Rights and Freedoms of the Individual, Do Hereby Proclaim in Solemn Praise the Establishment of a Free and Democratic Sovereign Nation founded on Spiritual Values and in which no Man, Woman or Child shall ever be Slave or Bondsman to anyone or their Labour exploited or their Lives frustrated by deprivation, and do

Hereby Provide by these Articles for the indivisible Unity and Creation under God of the Commonwealth of The Bahamas.

## **CHAPTER I THE CONSTITUTION**

**1. The State.** The Commonwealth of the Bahamas shall be a sovereign democratic State.

**2. The Constitution is supreme law.** This Constitution is the supreme law of the Commonwealth of The Bahamas and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution, shall prevail and the other law shall, to the extent of the inconsistency, be void.

## **CHAPTER II CITIZENSHIP**

**3. Persons who become citizens on 10th July 1973.** (1) Every person who, having been born in the former Colony of the Bahama Islands, in on 9th July 1973 a citizen of the United Kingdom and Colonies shall become a citizen of the Bahamas on 10th July 1973.

(2) Every person who, having been born outside the former Colony of the Bahama Islands, in on 9th July 1973 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of The Bahamas in accordance with the provisions of the preceding paragraph, become a citizen of The Bahamas on 10th July 1973.

(3) Every person who on 9th July 1973 is a citizen of the United Kingdom and Colonies having become such a citizen under the British Nationality Act 1948 by virtue of his having been registered in the former Colony of the Bahama Islands under that Act shall become a citizen of The Bahamas on 10th July 1973:

Provided that this paragraph shall not apply to any citizen of the United Kingdom and Colonies-

a) who was not ordinarily resident in that Colony on 31st December 1972, or

b) who became registered in that Colony on or after 1st January 1973, or

c) who on 9th July 1973 possesses the citizenship or nationality of some other country.

**4. Persons who become citizens on 9th July 1974.** Every person who on 9th July 1973 is a citizen of the United Kingdom and Colonies-

a) having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalized in the former Colony of the Bahama Islands before that Act came into force, or

b) having become such a citizen by virtue of his having been naturalized in the former Colony of the Bahama Islands under that Act,

shall become a citizen of The Bahamas on 9th July 1973 possesses the citizenship or nationality of some other country.

**5. Persons entitled to be registered as citizens.** (1) Any woman who, on 9th July 1973, is or has been married to a person-

a) who becomes a citizen of The Bahamas by virtue of Article 3 of this Constitution; or

b) who, having died before 10th July 1973, would, but for his death, have become a citizen of The Bahamas by virtue of that Article, shall be entitled, upon making application and upon taking the oath of allegiance or such declaration in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided That the right to be registered as a citizen of The Bahamas under this paragraph shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(2) Any person who, on 9th July 1973, possesses Bahamian Status under the provisions of the Immigration Act 1967(a) and is ordinarily resident in the Bahama Islands, shall be entitled, upon making application before 19th July 1974, to be registered as a citizen of The Bahamas.

(3) Notwithstanding anything contained in paragraph (2) of this Article, a person who has attained the age of eighteen years of who is a woman who is or has been married shall not, if he is a citizen of some country other than The Bahamas, be entitled to be registered as a citizen of The Bahamas under the provisions of that paragraph unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declarations as may be prescribed:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.

(4) Any application for registration under paragraph (2) of this Article shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security or public policy.

(5) Any woman who on 9th July 1973 is or has been married to a person who subsequently becomes a citizen of The Bahamas by registration under paragraph (2) of this Article shall be entitled, upon making application and upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that the right to be registered as a citizen of The Bahamas under this paragraph shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(6) Any application for registration under this Article shall be made in such manner as may be prescribed as respects that application:

Provided that such an application may not be made by a person who has not attained the age of eighteen years and is not a woman who is or has been married, but shall be made on behalf of that person by a parent or guardian of that person.



**6. Persons born in The Bahamas after 9th July 1973.** Every person born in The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date either of his parents is a citizen of The Bahamas.

**7. Persons born in The Bahamas after 9th July 1973 of non-citizen parents.**

(1) A person born in The Bahamas after 9th July 1973 neither of whose parents is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years or within twelve months thereafter in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this Article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed.

(2) Any application for registration under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

**8. Persons born outside The Bahamas after 9th July 1973.** A person born outside The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date his father is a citizen of The Bahamas otherwise than by virtue of this Article or Article 3(2) of this Constitution.

**9. Further provisions for persons born outside The Bahamas after 9th July 1973.** (1) Notwithstanding anything contained in Article 8 of this Constitution, a person born legitimately outside The Bahamas after 9th July 1973 whose mother is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years and before he attains the age of twenty-one years, in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this

Article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed.

(2) Where a person cannot renounce his citizenship of some other country under the law of that country, he may instead make such declaration concerning that citizenship as may be prescribed.

(3) Any application for registration under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

**10. Marriage to citizens of The Bahamas.** Any woman who, after 9th July 1973, marries a person who is or become a citizen of The Bahamas shall be entitled, provided she is still so married, upon making application in such manner as may be prescribed and upon taking the oath of allegiance of such declaration as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that the right to be registered as a citizen of The Bahamas under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security of public policy.

**11. Deprivation of citizenship.** (1) If the Governor-General is satisfied that any citizen of The Bahamas has at any time after 9th July 1973 acquired by registration, naturalization or other voluntary and formal act (other than marriage) the citizenship of any other country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Governor-General may by order deprive that person of his citizenship.

(2) If the Governor-General is satisfied that any citizen of The Bahamas has at any time after 9th July 1973 voluntarily claimed and exercised in any other country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Governor-general may be order deprive that person of his citizenship.

**12. Renunciation of citizenship.** Any citizen of The Bahamas who has attained the age of twenty-one years and who-

- a) is also a citizen or national of any other country; or
- b) intends to become a citizen or national of any other country,

shall be entitled to renounce his citizenship of The Bahamas by a declaration made and registered in such manner as may be prescribed:

Provided that-

- a) in the case of a person who is not a citizen or national of any other country at the date of registration of his declaration or renunciation, if he does not become such a citizen or national within six months from the date of registration he shall be, and shall be deemed to have remained, a citizen of The Bahamas notwithstanding the making and registration of his declaration of his declaration of renunciation; and
- b) the right of any person to renounce his citizenship of The Bahamas during any period when The Bahamas is engaged in any war shall be subject to such exceptions or qualification as may be prescribed in the interests of national security or public policy.

**13. Power of Parliament.**Parliament may make provision-

- a) for the acquisition of citizenship of The Bahamas by persons who do not become citizens of The Bahamas by virtue of the provisions of this Chapter;
- b) for depriving of his citizenship of The Bahamas any person who is a citizen of The Bahamas otherwise than by virtue of paragraphs (1) or (2) of Articles 6 or 8 of this Constitution; or
- c) for the certification of citizenship of The Bahamas for persons who have acquired that-citizenship and who desire such certification.

**14. Interpretation.** (1) Any reference in this Chapter to the father of a person shall, in relation to any person born out of wedlock other than a person legitimated before 10th July 1973, be construed as a reference to the mother of that person.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth, shall, in relation to a person born after the death of the father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 10th July 1973 and the birth occurred after 9th July 1973 the national status that the father would have had if he had died on 10th July 1973 shall be deemed to be his national status at the time of his death.

### **CHAPTER III**

## **PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

**15. Fundamental rights and freedoms of the individual.** Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- a) life, liberty, security of the person and the protection of the law;
- b) freedom of conscience, of expression and of assembly and association; and
- c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest,

**16. Protection of right to life.** (1) No person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable-

- a) for the defence of any person from violence or for the defence of property;
- b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c) for the purpose of suppressing a riot, insurrection or mutiny; or
- d) in order to prevent the commission by that person of a criminal offence.

or if he dies as a result of a lawful act of war.

**17. Protection from inhuman treatment.** (1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the Bahama Islands immediately before 10th July 1973.

**18. Protection from slavery and forced labour.** (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this Article, "forced labour" does not include-

- a) any labour required in consequence of the sentence or order of a court;

b) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour which that person is required by law to perform in place of such service;

c) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained; or

d) any labour required during a period of public emergency (that is to say, a period to which Article 29 of this Constitution applies) or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

**19. Protection from arbitrary arrest or detention.** (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-

a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;

b) in execution of the order of a court made in order to secure the fulfillment of any obligation imposed upon him by law;

c) for the purpose of bringing him before a court in execution of the order of a court;

d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;

e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his case or treatment or the protection of the community;

g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from the Bahamas of that person or the taking of proceedings relating thereto; and without prejudice to the generality of the foregoing, a law may, for the purposes of this sub-paragraph, provide that a person who is not a citizen of The Bahamas may be deprived of this liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reason for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him; and in the case of a person who has not attained the age of eighteen years he shall also be afforded a reasonable opportunity for communication with his parent or guardian.

(3) Any person who is arrested or detained in such a case as is mentioned in sub-paragraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said sub-paragraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other persons shall be entitled to compensation therefor from that other person.

(5) Where a person is detained by virtue of such a law as is referred to in Article 29 of this Constitution, the following provisions shall apply-

a) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, of the grounds upon which he is detained;

b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provisions of law under which his detention is authorized;

c) he may from time to time request that his case be reviewed under sub-paragraph (d) of this paragraph but, where he has made such a request, no subsequent request shall be made before the expiration of three months from the making of the previous request;

d) where a request is made under sub-paragraph (c) of this paragraph, the case shall, within one month of the making of the request, be reviewed by an independent and impartial tribunal established by law, presided over by the Chief Justice or another Justice of the Supreme Court appointed by him, and consisting of persons who are Justices of the Supreme Court or who are qualified to be appointed as Justices of the Supreme Court:

e) he shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal representative of his own choice, and he and any such legal representative shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case.

(6) On any review by a tribunal in pursuance of paragraph (5) of this Article of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.



(7) When any person is detained by virtue of such a law as is referred to in Article 29 of this Constitution the Prime Minister or a Minister authorized by him shall, not more than thirty days after the commencement of the detention and thereafter no more than thirty days after the making of the previous report, make a report to each House stating the number of persons detained as aforesaid and the number of cases in which the authority that ordered the detention has not acted in accordance with the recommendations of a tribunal appointed in pursuance of paragraph 85) of this Article:

provided that in reckoning any period of thirty days for the purposes of this paragraph no account shall be taken of any period during which parliament stands prorogued or dissolved.

**20. Provisions to secure protection of law.** (1) If any person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence-

- a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- c) shall be given adequate time and facilities for the preparation of his defence;
- d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or by a legal representative at the public expense where so provided by or under a law in force in The Bahamas;
- e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same condition as those applying to witnesses called by the prosecution;

f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and

g) shall, when charged on information in the Supreme Court, have the right to trial by jury;

and except with his own consent the trial shall not take place in his absence unless he so conduct himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right of obligation shall be established by law and shall be independent and impartial; and where

proceedings for such a determination are institute by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) All proceeding instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public,

(10) Nothing in paragraph (9) of this Article shall prevent the court from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court-

a) may be empowered by law so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private live of persons concerned in the proceedings;

b) may be empowered or required by law to do so in te interests of defence, public safety or public order; or

c) may be empowered or required to do so by rules of court and practice existing immediately before 10th July 1973 or by any law made subsequently to the extent that it makes provisions substantially to the same effect as provision contained in any such rules.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

a) sub-paragraph (2)(a) of this Article to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

b) sub-paragraph (2)(e) of this Article to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

c) paragraph (5) of this Article to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

**21. Protection for privacy of home and other property.** (1) Except with his consent, no person shall be subjected to the search of his person or his property of the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provisions-

a) which is reasonably required-

i) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilization of any other property in such a manner as to promote the public benefit; or

ii) for the purpose of protecting the rights and freedoms of other persons;

b) to enable an officer or agent of the Government of The Bahamas, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and belongs to that Government, authority or body corporate, as the case may be; or

c) to authorize, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order,

and except so far as that provisions or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

**22. Protection of freedom of conscience.** (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his consent (or, if he is a person who has not attained the age of eighteen years, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance of that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious body or denomination shall be prevented from or hindered in providing religious instruction for persons of that body or denomination in the course of any education provided by that body or denomination whether or not that body or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision which is reasonably required-

a) in the interest of defence, public safety, public order, public morality or public health; or

b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited interference of member of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

**23. Protection of freedom of expression.** (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this Article the said freedom includes freedom to hold opinions, to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision-

a) which is reasonably required-

i) in the interests of defence, public safety, public order, public morality or public health; or

ii) for the purposes of protecting the rights, reputations and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainment; or

b) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

**24. Protection of freedom of assembly and association.** (1) Except with his consent, no person shall be hindered in the enjoyment of his

freedom of peaceful assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties, or to form or belong to trade unions or other association for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision-

a) which is reasonably required-

i) in the interest of defence, public safety, public order, public morality or public health; or

ii) for the purpose of protecting the rights and freedoms of other persons; or

b) which imposes restriction upon person s holding office under the Crown or upon members of a discipline force, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

**25. Protection of freedom of movement.** (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, and for the purposes of this Article the said freedom means the right to move freely throughout The Bahamas, the right to reside in any part thereof, the right to enter The Bahamas, the right to leave The Bahamas and immunity from expulsion therefrom.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision-

a) which is reasonably required-

i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or the prevention of plant or animal diseases; or

ii) for the purpose of protecting the rights and freedoms of other persons,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

b) for the removal of a person from The Bahamas to be tried outside The Bahamas for a criminal offence or to undergo imprisonment in some other country in respect of a criminal offence of which he has been convicted;

c) for the imposition of restriction upon the movement of residence within The Bahamas of public officers or members of a disciplined force that are reasonably required for the purpose of the proper performance of their functions; or

d) for the imposition of restriction on the right of any person to leave The Bahamas of any person who is not a citizen of The Bahamas or the exclusion or expulsion therefrom of any such person; or

e) for the imposition of restrictions on the right of any person to leave The Bahamas in the public interest, or for securing compliance with any international obligation of the Government of The Bahamas particulars of which have been laid before Parliament.

(3) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this Article.

(4) For the purposes of sub-paragraph (c) of paragraph (2) of this Article "law" in that paragraph includes directions in writing regarding the conduct of public officers generally of any class of public officer issued by the Government of The Bahamas.

**26. Protection from discrimination on the grounds of race, etc.** (1) Subject to the provision of paragraph (4), (5) and (9) of this Article no law shall make any provision which is discriminatory either of itself or in its effect.



(2) Subject to the provisions of paragraphs (6), (9) and (10) of this Article, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the function of any public office or any public authority.

(3) In this Article, the expression “discriminatory” means affording different treatment to different person attributable wholly or mainly to their respective descriptions by race, place of origin political opinions colour or creed whereby person of one such description are subjected to disabilities or restrictions to which person of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Paragraph (1) of this Article shall not apply to any law so far as that law makes provision-

a) for the appropriation of revenues or other funds of The Bahamas or for the imposition of taxation (including the levying of feed for the grant of licenses); or

b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement of residence within, The Bahamas of persons who are not citizens of The Bahamas; or

c) with respect to adoption, marriage, divorce, burial, devolution f property on death or other matters of personal law; or

d) whereby persons of any such description as is mentioned in paragraph (3) for this Article may be subjected to any disability or restriction or may be accorded any privilege or advantage which having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

e) for authorizing the granting of licenses or certificates permitting the conduct of a lottery, the keeping of a gaming house or the carrying on of gambling in any of its forms subject to conditions which impose upon persons who are citizens of The Bahamas disabilities or restriction to which other persons are not made subject.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of paragraph (1) of this Article to the extent that it makes provision with respect to standards or qualifications (not being a standard or qualification specifically relating to race, place of origin, political opinions, colour or creed) in order to be eligible for service as a public officer or as a member of a disciplined force of for the service of a local government authority or a body corporate established by law for public purposes.

(6) Paragraph (2) of this Article shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in paragraphs (4) or (5) of this Article.

(7) Subject to the provisions of subparagraph (4)(e) and of paragraph (9) of this Article no person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.

(8) Subject to the provisions of this Article no person shall be treated in a discriminatory manner-

a) in respect of any conveyance or lease or agreement for, or in consideration of, or collateral to, a conveyance or lease of any freehold or leasehold hereditament which have been offered for sale or lease to the general public;

b) in respect of any covenant or provision in any conveyance or lease or agreement for, or in consideration of, or collateral to, a conveyance or lease restricting by discriminatory provision the transfer, ownership, use or occupation of any freehold or leasehold hereditament which have been offered for sale or lease to the general public.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision whereby persons of any such description as is mentioned in paragraph (3) of this Article may be

subjected to any restriction on the rights and freedoms guaranteed by Articles 21, 22, 23, 24 and 25 of this Constitution, being such a restriction as is authorized by Article 21(2)(a), 22(5), 23(2), 24(2) or 25(2)(a) or (e), as the case may be.

(10) Nothing in paragraph (2) of this Article shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

**27. Protection from deprivation of property.** (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say-

a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit or the economic well-being of the community; and

b) the necessity thereof is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

c) provision is made by a law applicable to that taking of possession or acquisition-

i) for the making of prompt and adequate compensation in the circumstances; and

ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and

d) any party to proceedings in the Supreme Court relating to such a claim is given by law the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing in this Article shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property-

a) in satisfaction of any tax, rate or due;

b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of The Bahamas;

c) as an incident of a lease, tenancy, mortgage, charge, bill of sale,pledge or contract;

d) upon the attempted removal of the property in question out of or into The Bahamas in contravention of any law;

e) by way of the taking of a sample for the purposes of any law;

f) where the property consist of an animal upon its being found trespassing or straying;

g) in the execution of judgments or orders of courts;

h) by reason of its being in a dilapidated or dangerous state of injurious to the health of human being, animals or plants;

i) in consequence of any law making provision for the validation of titles to land of (without prejudice to the generality of the foregoing words) the confirmation of such titles, or for the extinguishment of adverse claims, or with respect to prescription or the limitation of actions ,

j) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-

i) of work or reclamation, drainage, soil conservation or the conservation of other natura resources; or

ii) of agricultural development or improvement that the owner or occupier of the land has been required, and has without reasonable and lawful excuse, refused or failed to carry out; or

k) to the extent that the law in question makes provision for the vesting or taking of possession or acquisition or administration of-

i) enemy property;

ii) property of a deceased person, a person of unsound mind of a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

iii) property of a person adjudged insolvent or a defunct company that has been struck off the Register of Companies, of a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of that insolvent person or body corporate and, subject thereto, for the benefit of other person entitled to the beneficial interest in the property; or

iv) property subject to a trust, for the purpose of vesting the property in person appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law i question makes provision for the orderly marketing or production or growth or extraction of any agricultural or fish product or mineral or water or any article or thing prepared for market or manufactured therefor of for the reasonable restriction of the use of any property in the interest of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such property.

(4) Nothing contained in or done under that authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the

law in question makes provision for the compulsory taking possession in the public interest of any property, or the compulsory acquisition in the public interest or right is held by a body corporate established directly by law for public purpose in which no monies have been invested other than monies provided by Parliament or by any Legislature established for the former Colony of the Bahama Islands.

**28. Enforcement of fundamental rights.** (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction-

a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its power under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If, in any proceedings in any court established for The Bahamas other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the provisions of the said Articles 16 to 27 (inclusive), the court in which the question is referred shall refer the question to the Supreme Court.

(4) No law shall make provision with respect to rights of appeal from any determination of the Supreme Court in pursuance of this Article that is less

favorable to any party thereto than the rights of appeal from determinations of the Supreme Court that are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(5) Parliament may make laws to confer upon the Supreme Court such additional or supplementary powers as may appear to be necessary or desirable for enabling the Court more effectively to exercise the jurisdiction conferred upon it by paragraph (2) of this Article and may make provision with respect to the practice and procedure of the Court while exercising that jurisdiction.

**29. Provisions for time of war or emergency.** (1) This Article applies to any period when-

a) The Bahamas is at war; or

b) there is in force a proclamation (in this section referred to as a “proclamation of emergency”) made by the Governor-general and published in the Gazette declaring that a state of public emergency exists for the purposes of this section.

(2) Nothing contained in or done under that authority of any law shall be held to be inconsistent with or in contravention of Article 19, any provision of Article 20 other than paragraph (4) thereof, or any provision of Article 21 to 26 (inclusive) of this Constitution to the extent that the law in Question makes in relation to any period to which this Article applies provision, or authorizes the doing during any such period of anything, which is reasonably justifiable in the circumstances of any situation or existing during that period for the purpose of dealing with that situation.

(3) Where any proclamation of emergency has been made, copies thereof shall as soon as practicable be laid before both Houses of Parliament, and if for any cause those Houses are not due to meet within five days the Governor-General shall, by proclamation published in the Gazette, summon them to meet within five days and they shall accordingly meet and sit upon the day appointed by the proclamation and shall continue to sit and act as if they had stood adjourned or prorogued to that day:

provided that if the proclamation of emergency is made during the period between a dissolution of Parliament and the next ensuing general election-

a) the Houses to be summoned as aforesaid shall be the Houses referred to in Article 66 of this Constitution unless the Governor-General is satisfied that it will be practicable to hold that election within seven days of the making of the proclamation of emergency; and

b) if the Governor-General is so satisfied, he shall (instead of summoning the House so referred to meet within five days of the making of the proclamation ) summon the Houses of the new Parliament to meet as soon as practicable after the holding of that election.

(4) A proclamation of emergency shall, unless it is sooner revoked by the Governor-General, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under paragraph (5) of this Article, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(5) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of the provisions of this paragraph) a resolution is passed by each House of Parliament approving its continuance in force for a further period, not exceeding six months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

**30. Saving of existing law.** (1) Subject to paragraph (3) of this Article, nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of Articles 16 to 27 (inclusive) of this Constitution to the extent that the law in question-

a) is a law (in this Article referred to as “an existing law”) that was enacted or made before 10th July 1973 and has continued to be part of the law of The Bahamas at all times since that day;

b) repeals and re-enacts an existing law without alteration; or



c) alters an existing law and does not thereby render that law inconsistent with any provision of the said Articles 16 to 27 (inclusive) in a manner in which, or to an extent to which, it was not previously so inconsistent.

(2) In sub-paragraph (1)(c) of this Article the reference to altering an existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it; and in paragraph 81) of this Article “written law” includes any instrument having the force of law and in this paragraph and the said paragraph (1) references to the repeal and re-enactment of an existing law shall be construed accordingly.

(3) This Article does not apply to any regulation or other instrument having legislative effect made, or to any executive act done, after 9th July 1973 under the authority of any such law as is mentioned in paragraph (1) of this Article.

**31. Interpretation.** (1) In this Chapter-

“contravention”, in relation to any requirement, includes a failure to comply with that requirement; and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in The Bahamas other than a court established by a disciplinary law, and includes the Judicial Committee of Her Majesty’s Privy Council or any court substituted therefore by any law made under Article 105 of this Constitution and-

a) In Article 16, Article 18, Article 19, paragraphs (2), (3), (5), (8), (9) and (10) of Article 26 and paragraph (3) of Article 28 of this Constitution includes, in relation to an offence against a disciplinary law, a court established by such a law; and

b) In Article 18, Article 19 and paragraph (3) of Article 28 of this Constitution includes, in relation to an offence against a disciplinary law, any person or authority empowered to exercise jurisdiction in respect of that offence;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means-

- a) a naval, military or air force;
- b) the Police Service of The Bahamas; or
- c) the Prison Service of The Bahamas; or
- d) any other force or service specified by Act of Parliament to be a disciplined force for the purposes of this Chapter;

“legal representative” means a person entitled to practice in The Bahamas as Counsel and Attorney of the Supreme Court;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Any reference in Articles 16, 19, 25 and 27 of this Constitution to a criminal offence shall be construed as including an offence against disciplinary law, and any such reference in paragraphs (2) to (7) (inclusive) of Article 20 of this Constitution shall, in relation to proceedings before a court constituted by or under disciplinary law, be construed in the same manner.

(3) In relation to any person who is a member of a disciplined force raised under a law of any country other than The Bahamas and lawfully present in The Bahamas, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent, with or in contravention of any of the provisions of this Chapter.

#### **CHAPTER IV THE GOVERNOR-GENERAL**

**32. Establishment of office of Governor-General.** There shall be a Governor-General of The Bahamas who shall be appointed by Her Majesty and shall hold office during Her Majesty’s pleasure and who shall be Her Majesty’s representative in The Bahamas.

**33. Acting Governor-General.** (1) Whenever the office of Governor-General is vacant or the holder of the office is absent from The Bahamas or is for any other reason unable to perform the functions of his office, those functions shall be performed-

a) by any person for the time being designated by her Majesty in that behalf who is in The Bahamas and able to perform those functions; or

b) at any time when there is no person in The Bahamas so designated and able to perform those functions, by the holder of the office of Chief Justice; or

c) at any time referred to in sub-paragraph (b) of this paragraph when the office of Chief Justice is vacant or the holder thereof is absent from The Bahamas or is for any other reason unable to perform those functions, by the President of the Senate.

(2) The holder of the office of Governor-General or any person designated under sub-paragraph (1)(a) of this Article or by sub-paragraph (1)(b) of this Article shall not, for the purposes of this Article, be regarded as absent from The Bahamas or as unable to perform the function of the office of Governor-general at any time when there is a subsisting appointment of a deputy under Article 34 of this Constitution.

**34. Deputy to Governor-General.** (1) Whenever the Governor-General-

a) has occasion to be absent from The Bahamas for a period which he has reason to believe will be of short duration; or

b) is suffering from an illness that he has reason to believe will be of short duration,

he may, acting in accordance with the advice of the Prime Minister, by instrument under the Public Seal, appoint any person in The Bahamas to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the function of the office of Governor-General as may be specified in that instrument.

(2) The power and authority of the Governor-General shall nor be abridged, altered or in any way affected by the appointment of a deputy under this Article, and in the exercise of any function that is exercisable by the Governor-General actin in accordance with his own deliberate judgment or after consultation with any person or authority a deputy shall conform to and observe any instructions that the Governor-General, acting in like manner, may address to him;

Provided that the question whether or not a deputy has conformed to or observed any such instruction shall not be enquired into in any court.

(3) A person appointed as a deputy under this Article shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by the Governor-General acting in accordance with the advice of the Prime Minister.

**35. Personal staff of Governor-General.** (1) parliament may prescribe the office that are to constitute the personal staff of the Governor-General, the salaries and allowances that are to be paid in respect of the expenditure attaching to the office of Governor-General.

(2) Any salaries or other sums prescribed under paragraph (1) of this Article are hereby charged on and shall be paid out of the Consolidated Fund.

(3) Subject to the provisions of paragraph (4) of this Article, power to make appointments to the office for the time being prescribed under paragraph (1) of this Article as offices that are to constitute the personal staff of the Governor-general, and to remove and to exercise disciplinary control over persons holding or acting in any such office, is hereby vested in the Governor-General acting in accordance with his own deliberate judgment.

(4) The Governor-General, acting in accordance with his own deliberate judgment, may appoint to any of the offices prescribed under paragraph (1) of this Article such public officers as he may select from a list submitted by the Public Service Commission, but-

a) the provisions of paragraph (3) of this Article shall apply in relation to an officer so appointed as respects his service on the personal staff of the Governor-general but not as respects his service as a public officer;

b) an officer so appointed shall not during, continuance on the personal staff of the Governor-General, perform the functions of any public office; and

c) an officer so appointed may at any time be appointed by the Governor-General, if the Public Service Commission so recommend, to assume or resume the function of a public office and he shall thereupon vacate his office on the personal staff of the Governor-General, but the Governor-General may, in his own deliberate judgment, decline to release the officer for that appointment.

(5) All offices prescribed under paragraph (1) of this Article as offices that are to constitute the personal staff of the Governor-General shall, for the purposes of Chapter VIII, be deemed to be public offices.

**36. Public Seal.** The Governor-General shall keep and use the Public Seal for sealing all things that shall pass the Public Seal.

**37. Oaths to be taken by Governor-General.** A person appointed to the office of Governor-General or assuming the functions of that office under Article 33 of this Constitution shall, before entering upon the duties of that office, taken and subscribe the oath of allegiance and an oath for the due execution of the office of Governor-General in such form as is prescribed by any law in force in The Bahamas, such oaths being administered by the Chief Justice of such other Justice of the Supreme Court as may be designated by the Chief Justice.

## CHAPTER V PARLIAMENT

### PART 1 COMPOSITION OF PARLIAMENT

**38. Establishment of Parliament.** There shall be a Parliament of The Bahamas which shall consist of Her majesty, a Senate and a House of Assembly.

## **PART 2 THE SENATE**

**39. Composition of Senate.** (1) The Senate shall consist of sixteen members (in this Constitution referred to as “Senators”) who shall be appointed by the Governor-General by instrument under the Public Seal in accordance with the provisions of this Article.

(2) Nine Senators shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister.

(3) Four Senators shall be appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.

(4) Three Senators shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition.

(5) Whenever any person vacates his seat as a Senator for any reason other than a dissolution of Parliament, the Governor-General shall as soon as practicable appoint a person to fill the vacancy under the same provisions of this Article as those under which the person whose seat has become vacant was appointed.

**40. Purpose of appointment of certain Senators.** In the exercise of the functions conferred upon him by Article 39(4) of this Constitution, the purpose of the Prime Minister shall be to secure that the political balance of the Senate reflects that of the House of Assembly at the time.

**41. Qualification for appointment as Senator.** Subject to the provisions of Article 42 of this Constitution, a person shall be qualified to be appointed as a Senator if, and shall not be qualified to be so appointed unless, he is a citizen of The Bahamas, of the age of thirty years or upwards and has ordinarily resided in The Bahamas for a period of not less than one year immediately before the date of his appointment.

**42. Disqualifications for appointment as Senator.** (1) No person shall be qualified to be appointed as a Senator who-

a) is a citizen of a country other than The Bahamas having become such a citizen voluntarily;

b) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

c) is disqualified for membership of the Senate by any law in force in The Bahamas enacted in pursuance of paragraph (2) of this Article;

d) is a member of the House of Assembly;

e) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas and has not been discharged;

f) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in The Bahamas;

g) is under sentence of death imposed on him by a court in The Bahamas, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by a competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

h) is disqualified for membership of the House of Assembly by virtue of any law in force in The Bahamas by reason of his having been convicted of any offence relating to elections; or

i) is interested in any government contract and has not disclosed to the Governor-General the nature of such contract and of his interest therein.

(2) parliament may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the Senate by virtue of-

a) his holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;

b) his belonging to any armed force of The Bahamas or to any class of person so specified that is comprised in any such force; or

c) his belonging to any police force of The Bahamas or to any class of person so specified that is comprised in any such force.

(3) For the purposes of sub paragraph (1)(g) of this Article-

a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentence; and

b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

**43. Tenure of office of Senators.** (1) The seat of a Senator shall become vacant-

a) upon the next dissolution of Parliament after he has been appointed;

b) if he resigns by writing under his hand addressed to the President of the Senate, or, if the office of President is vacant or the President is absent from The Bahamas, to the Vice-President;

c) if, with his consent, he is nominated as a candidate for election to the House of Assembly;

d) if he is absent from The Bahamas for a period exceeding forty days at any time when the Senate is sitting, without the leave of the President given in accordance with the provisions of paragraph (2) of this Article;

e) if he ceases to be a citizen of The Bahamas;

f) subject to the provisions of paragraph (3) of this Article, if any circumstances arise that, if he were not a Senator, would cause him to be disqualified for appointment as such by virtue of sub-paragraph (a), (b), (c), (e), (f), (g) or (h) of Article 42(1) of this Constitution or of any law enacted in pursuance of Article 42(2) of this Constitution;



g) in the case of a Senator who was appointed as such in accordance with the advice of the Prime Minister or in accordance with the advice of the Leader of the Opposition or on the advice of the Prime Minister after consultation with the Leader of the Opposition, if the Governor-general, acting in accordance with the advice of the Prime Minister or in accordance with the advice of the Leader of the Opposition or on the advice of the Prime Minister after consultation with the Leader of the Opposition, as the case may be, by instrument under the Public Seal, declares the seat of that Senator to be vacant; or

h) if he becomes interested in any government contract:

Provided that-

i) if in the circumstances it appears to the Senate to be just so to do, the Senate may exempt any Senator from vacating his seat under the provisions of this sub-paragraph, if that Senator, before becoming interested in such contract as aforesaid or as soon as practicable after becoming so interested, discloses to the Senate the nature of such contract and his interest therein;

ii) if proceedings are taken under a law made under Article 45 of this Constitution to determine whether a Senator has vacated his seat under the provisions of this sub-paragraph he shall be declared by the court not to have vacated his seat if he establishes to the satisfaction of the court that he, acting reasonably, was not aware that he was or had become interested in such contract; and

iii) no proceedings under the preceding sub-paragraph shall be instituted by any person other than a Senator or Member of the House of Assembly.

(2) The President of the Senate may grant leave to any Senator to be absent from The Bahamas for any period not exceeding six months at any one time.

(3) If the circumstances such as are referred to in sub-paragraph (1)(f) of this Article arise because a Senator is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of a corrupt or illegal practice at elections and if it is open to the Senator

to appeal against the decision (either with the leave of a court of other authority or without such leave), he shall forthwith cease to perform his functions as a senator but, subject to paragraph (4) of this Article, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the President of the Senate may, at the request of the said Senator, from time to time extend that period for further periods of thirty days to enable the Senator to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval signified by resolution, of the Senate.

(4) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the Senator, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Senator to appeal, he shall forthwith vacate his seat.

(5) If at any time before the Senator vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (3) of this Article and he may resume the performance of his functions as a Senator.

**44. President and Vice-President.** (1) When the Senate first meets after this Constitution comes into operation or after any general election and before it proceeds to the despatch of any other business, the Senate shall, in accordance with such procedure as may be prescribed by the rules of procedure of the Senate, elect a Senator to be President of the Senate; and, if the office of President falls vacant at any time, the Senate shall, as soon as practicable, proceed in like manner to fill the vacant office.

(2) When the Senate first meets after this Constitution comes into operation or after any general election and before it proceeds to the despatch of any other business except the election of the President it shall elect a Senator to be Vice-President of the Senate; and if the office of Vice-President falls vacant at any time, the Senate shall, as soon as practicable, elect a Senator to that office.

(3) The Senate shall not elect a Senator who is a Minister or Parliamentary Secretary to be the President or Vice-President of the Senate.

(4) A person shall vacate the office of President or Vice-President of the Senate-

a) if he ceases to be a Senator;

b) if he is appointed to be a Minister or Parliamentary Secretary;

c) if he announces the resignation of his office to the Senate or if, by writing under his hand addressed, in the case of the President, to the President (or, if the office of President is vacant or the President is absent from The Bahamas, to the Clerk), he resigns that office; or

d) in the case of the Vice-President, if he is elected to be President.

(5) If, by virtue of Article 43(3) of this Constitution, the President or Vice-President is required to cease to perform his functions as a Senator he shall also cease to perform his functions as President or Vice-President, as the case may be, and those functions shall, until he vacates his seat in the Senate or resumes the performance of the functions of his office, be performed-

a) in the case of the President, by the Vice-President or, if the office of Vice-President is vacant or the Vice-President is required to cease to perform his functions as a Senator by virtue of Article 43(3) of this Constitution, by such Senator (not being a Minister or Parliamentary Secretary) as the Senate may elect for the purpose;

b) in the case of the Vice-President, by such Senator (not being a Minister or Parliamentary Secretary) as the Senate may elect for the purpose.

(6) If the President or Vice-President resumes the performance of his functions as a Senator in accordance with the provisions of Article 43(5) of this Constitution, he shall also resume the performance of his functions as President or Vice-President, as the case may be.

**45. Determination of questions as to membership.** (1) The Supreme Court shall have jurisdiction to hear and determine any question whether-

- a) any person has been validly appointed as a Senator; or
- b) any Senator has vacated his seat or is required under Article 43(3) of this Constitution to cease to perform his functions as a Senator.

(2) Subject to the following provisions of this Article and to the provisions of Article 43(1) of this Constitution, Parliament may by law make provision with respect to-

- a) the institution of proceedings for the determination of any question referred to in paragraph (1) of this Article; and
- b) the powers, practice and procedure of the Supreme Court in relation to any such proceedings.

(3) Proceedings for the determination of any question referred to in paragraph (1) of this Article shall not be instituted except with the leave of a Justice of the Supreme Court.

(4) No appeal shall lie from the decision of a Justice of the Supreme Court granting or refusing leave to institute proceedings in accordance with paragraph (3) of this Article.

### **PART 3 HOUSE OF ASSEMBLY**

**46. Composition of House of Assembly.** (1) The House of Assembly shall consist of thirty-eight members or such greater number of members as may be specified by an Order made by the Governor-General in accordance with the provisions of Article 70 of this Constitution.

(2) The members of the House shall be known as “Members of Parliament” and shall be persons who, being qualified for elections Members of Parliament in accordance with the provisions of this

Constitution, have been so elected in the manner provided by any law in force in The Bahamas.

**47. Qualifications for membership of House of Assembly.** Subject to the provisions of Article 48 of this Constitution a person shall be qualified to be elected as a member of the House of Assembly if, and shall not be qualified to be so elected unless, he-

- a) is a citizen of The Bahamas of the age of twenty-one years or upwards; and
- b) has ordinarily resided in The Bahamas for a period of not less than one year immediately before the date of his nomination for election.

**48. Disqualifications for election as members of House of Assembly.**  
(1) No person shall be qualified to be elected as a member of the House of Assembly who-

- a) is a citizen of a country other than The Bahamas having become such a citizen voluntarily;
- b) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;
- c) is disqualified for membership of the House of Assembly by any law enacted in pursuance of paragraph (2) of this Article;
- d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas and has not been discharged;
- e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in The Bahamas;
- f) is under sentence of death imposed on him by a court in The Bahamas, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

g) is disqualified for membership of the House of Assembly by any law in force in The Bahamas by reason of his holding, or acting in, any office the function of which involve-

i) any responsibility for, or in connection with, the conduct of any election; or

ii) any responsibility for the compilation or revision of any electoral register;

h) is disqualified for membership of the House of Assembly by virtue of any law in force in The Bahamas by reason of his having been convicted of any offence relating to elections;

i) is a Senator; or

j) is interested in any government contract and has not disclosed the nature of such contract and of his interest therein by publishing a notice in the Gazette within one month before the day of election.

(2) Parliament may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the House of Assembly by virtue of-

a) his holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;

b) his belonging to any armed force of The Bahamas or to any class or person so specified that is comprised in any such force; or

c) his belonging to any police force or to any class of person that is comprised in any such force.

(3) For the purposes of sub-paragraph (1)(f) of this Article-

a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentence exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and

b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

**49. Tenure of office of members of House of Assembly.** (1) Every member of the House of Assembly shall vacate his seat in the House-

- a) upon a dissolution of Parliament;
- b) if he resigns it by writing under his hand addressed to the Speaker or, if the office of Speaker is vacant or the Speaker is absent from The Bahamas, to the Deputy Speaker;
- c) if he is absent from the sitting of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;
- d) if he ceases to be a citizen of The Bahamas;
- e) subject to the provisions of paragraph (2) of this Article, if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election as such by virtue of sub-paragraph (a), (b), (c), (d), (e), (f), (g), or (h) of Article 48(1) of this Constitution; or
- f) if he becomes interested in any government contract:

Provided that-

- i) if in the circumstances it appears to the House or Assembly may exempt any member of the House from vacating his seat under the provisions of this sub-paragraph, if that member, before becoming interested in such contract as aforesaid or as soon as practicable after becoming so interested, discloses to the House the nature of such contract and his interest therein;
- ii) if proceedings are taken under a law made under Article 51 of his Constitution to determine whether a member of the House has vacated his seat under the provisions of this sub-paragraph he shall be declared by the court not to have vacated his seat if he establishes to the satisfaction of the court that he,

acting reasonably, was not aware that he was or had become interested in such contract; and

iii) no proceedings under the preceding sub-paragraph shall be instituted by any person other than a Senator or member of the House of Assembly.

(2) If circumstances such as are referred to in sub-paragraph (1)(e) of this Article arise because any member of the House is under sentence of death or imprisonment, declared bankrupt, adjudged to be of unsound mind or convicted of a offence relating to election and it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his function as a member of the House but, subject to paragraph (3) of this Article, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred any fifty days shall not be given without the approval, signified by resolution, of the House of Assembly.

(3) If, on the determination any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or of any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(4) If at any time before the ember vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph 82) of this Article and he may resume the performance of his function as a member of the House.

**50. Speaker and Deputy Speaker.** (1) When the House of Assembly first meets after any general election and before it proceeds to the despatch of any other business, the House shall, in accordance with such procedure as may be prescribed by the rules of procedure of the House, elect from among the members who are not Ministers or Parliamentary Secretaries one member to



be the Speaker of the Assembly and another member to be Deputy Speaker; and, if the office of Speaker or Deputy Speaker falls vacant at any time before the next dissolution of the House of Assembly, the House shall, as soon as practicable, proceed in like manner to fill the vacant office.

(2) A person shall vacate the office of Speaker or Deputy Speaker-

a) if he ceases to be a member of the House of Assembly:

Provided that the Speaker shall vacate his office by reason only that he has ceased to be a member on a dissolution of Parliament, until the House of Assembly first meets after that dissolution;

b) if he is appointed to be a Minister or Parliamentary Secretary;

c) if he announces the resignation of his office to the House of Assembly or if, by writing under his hand addressed, in the case of the Speaker, to the Clerk of the House and, in the case of the Deputy Speaker, to the Speaker (or if the office of Speaker is vacant or the Speaker is absent from The Bahamas, to the Clerk), he resigns that office; or

d) in the case of the Deputy Speaker, if he is elected to be Speaker.

(3) If by reason of Article 49(2) of this Constitution the Speaker or Deputy Speaker is required to cease to perform his functions as a member of the House of Assembly, he shall also cease to perform his function as Speaker or Deputy Speaker and those functions shall, until he vacates his seat in the House or resumes the performance of the functions to his office, be performed-

a) in the case of the Speaker, by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House of Assembly by virtue of Article 49(2) of this Constitution, by such member (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose;

b) in the case of the Deputy Speaker, by such member (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose.

(4) If the Speaker or Deputy Speaker resumes the performance of his functions as a member of the House in accordance with the provisions of Article 49(4) of this Constitution, he shall also resume the performance of his functions as Speaker or Deputy Speaker, as the case may be.

**51. Determination of questions as to member ship.** (1) An Election Court, consisting of two Justices to the Supreme Court appointed by the Chief Justice or, if for any reason two such Justices are not available, one such Justice and the Chief Magistrate or a Stipendiary and Circuit Magistrate appointed by the Chief Justice, shall have jurisdiction to hear and determine any question whether-

a) any person has been validly elected as a member of the House of Assembly;  
or

b) any member of the House of Assembly has vacated his seat or is required, under the provisions of Article 49(2) of this Constitution, to cease to perform his functions as a member.

(2) Subject to the following provisions of this Article and to the provisions of Article 49(1) of this Constitution, Parliament may make or provide for the making or provision, with respect to-

a) the institution of proceedings for the determination of any question referred to in paragraph (1) of this Article; and

b) the powers, practice and procedure of an Election Court in relation to any such proceedings.

(3) The determination by an Election Court of any question referred to in paragraph (1) of this Article shall be final.

(4) Proceedings for the determination of any question referred to in paragraph (1) of this Article shall not be instituted except with the leave of a Justice of the Supreme Court.

(5) An appeal shall lie to the Court or Appeal on a point of law from the decision of a Justice of the Supreme Court granting or refusing leave to institute

proceedings in accordance with this Article , but, subject as aforesaid, that decision shall be final.

#### **PART 4 POWERS AND PROCEDURE OF PARLIAMENT**

**52.** (1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of The Bahamas.

(2) Subject to the provisions of Articles 60, 61 and 62 of this Constitution, the power of Parliament to make laws shall be exercised by Bills passed by both Houses, either without amendment or with such amendments only as are agreed to by both Houses, and assented to by the Governor General in accordance with Article 63 of this Constitution.

**53. Privileges of Parliament.** (1) Without prejudice to the generality of Article 52(1) of this Constitution and subject to the provisions of paragraph (2) of this Article, Parliament may by law determine the privileges, immunities and powers of the Senate and the House of Assembly and the members thereof.

(2) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Senate of the House of Assembly while it is sitting, or through the President or the Speaker, the Clerk or any other officer of either House.

**54. Alteration of this Constitution.** (1) Subject to the provisions of this Article, Parliament may, by an Act of Parliament passed by both Houses, alter any of the provisions of this Constitution or (in so far as it forms part of the law of the Bahamas) any of the provisions of The Bahamas Independence Act, 1973.

(2) In so far as it alters-

a) Articles 32, 33, 34, 35, 41, 42, 43, 47, 48, 49, 79, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, or 136 of this Constitution; or

b) Articles 127 or 137 of this Constitution in their application to any of the provisions specified in sub-paragraph (a) of this paragraph, a Bill for an Act of Parliament under this Article shall not be passed by Parliament unless:-

i) at the final voting thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House, and

ii) the Bill, after its passage through both Houses, has been submitted to the electors qualified to vote for the election of members of the House of Assembly and, on a vote in such manner as Parliament may prescribe the majority of the electors voting have approved the Bill.

(3) In so far as it alters-

a) this Article;

b) Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38, 39, 40, 45, 46, 51, 52, 60, 61, 62, 65, 66, 67, 68, 69, 70, 71, 72, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, or 105 of this Constitution; or

c) Articles 106, 127 or 137 of this Constitution in their application to any of the provisions specified in sub-paragraphs (a) or (b) of this paragraph; or

d) any of the provision of the Bahamas Independence Act 1973, a Bill for an Act of Parliament under this Article shall not be passed by Parliament unless: -

i) at the final voting thereon in each House it is supported by the votes of not less than three-quarters of all the members of each House, and

ii) the Bill, after its passage through both Houses has been submitted to the electors qualified to vote for the elections of members of the House of Assembly and, on a vote taken in such manner as Parliament may prescribe the majority of the electors voting have approved the Bill.

(4) In this Article-

a) references to any of the provisions of this Constitution or the Bahamas Independence Act 1973 include references to any law that amends or replaces that provision; and

b) references to the alteration of any of the provisions of this Constitution or The Bahamas Independence Act 1973 include references to the amendment, modification or re-enactment with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of a different provision in lieu of that provision,

(5) No Act of Parliament shall be construed as altering this Constitution unless it is stated in the Act that it is an Act for that purpose.

**55. Regulation of procedure in Parliament.** (1) Subject to the provisions of this Constitution, each House may regulate its own procedure and for this purpose may make rules of procedure.

(2) Each House may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

**56. Presiding in the Senate and House of Assembly.** (1) The President of the Senate or, in his absence, the Vice-President or, if they are both absent, a Senator (not being a Minister or Parliamentary Secretary) elected by the Senate for that sitting shall preside at each sitting of the Senate.

(2) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member (not being a Minister or Parliamentary Secretary) elected by the House for that sitting shall preside at each sitting of the House of Assembly.

(3) References in this Article to circumstances in which the President, Vice-President, Speaker or Deputy Speaker is absent include references to circumstances in which the office of President, Vice-President, Speaker or Deputy Speaker is vacant.

**57. Quorum.** (1) If at any time during a sitting of either House objection is taken by a member that there is not a quorum present and, after such interval

as may be prescribed by the rules of procedure of that House the person presiding ascertain that there is still not a quorum present, he shall thereupon adjourn the House.

(2) For the purpose of this Article-

a) a quorum of the Senate shall consist of six Senators including the person presiding; and

b) a quorum of the House of Assembly shall consist of ten members including the person presiding, or of such greater number of members as may be specified by an Order made by the Governor-General in accordance with the provisions of Article 70 of this Constitution.

**58. Voting.** (1) Save as is otherwise provided in this Constitution, all questions proposed for decision in either House shall be determined by a majority of the votes of the members thereof present and voting.

(2) The person presiding in either House shall not vote-

a) unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote; or

b) except in the case of the final vote on a Bill for an Act of Parliament under Article 54 of this Constitution in which case he shall have an original vote.

**59. Introduction of Bills, etc.** (1) Subject to the provisions of this Constitution and of the rules of procedure of the Senate or the House of Assembly, as the case may be, any member of either House may introduce any Bill or propose any motion for debate in, or may present any petition to, that House, and the same shall be debated and disposed of according to the rules of procedure of that House.

(2) A bill other than a Money Bill may be introduced in either House, but a Money Bill shall not be introduced in the Senate.

(3) Except on the recommendation of the Cabinet signified by a Minister, the House of Assembly shall not-

a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding, makes provision for imposing or increasing any tax, for imposing any charge on the Consolidated Fund or any other public fund or altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to The Bahamas; or

b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision shall be made for any of the purposes aforesaid.

(4) The Senate shall not-

a) proceed upon any Bill, other than a Bill sent from the House of Assembly, or any amendment to a Bill which, in the opinion of the Person presiding, makes provisions for imposing or increasing any tax, for imposing any charge on the Consolidated Fund or any other public fund or altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to The Bahamas; or

b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision shall be made for any of the purposes aforesaid.

**60. Restriction on powers of Senate as to Money Bills.** (1) Subject to the provisions of this Consitutiton, if a Money Bill, having been passed by the House of Assembly and sent tot the Senate at least one month before the end of the session, is not passed by the Senate without amendment within one month after it is sent to that House, the Bill shall, unless the House of Assembly otherwise resolves, be present to te Governor-General for his assent notwithstanding that the Senate has not consented to the Bill.

(2) There shall be endorsed on every Money Bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a Money Bill; and there shall be endorsed on any Money Bill that is presented to the Governor-General for assent in pursuance of paragraph (1) of this Article the certificate of the Speaker signed by him that it is a Money Bill and that the provisions of that paragraph have been complied with.

**61. Restriction on powers of Senate as to Bill other than Money Bills.**

(1) If any Bill other than a Money Bill is passed by the House of Assembly in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions, that Bill shall, on its rejection for the second time by the Senate, unless the House of Assembly otherwise resolves, be presented to the Governor-general for assent notwithstanding that the Senate has not consented to the Bill:

Provided that the foregoing provisions of this paragraph shall not have effect unless at least nine months have elapsed between the date on which the Bill is passed by the House of Assembly in the first session and the date on which it is passed by the House of Assembly in the second session.

(2) For the purposes of this Article a Bill that is sent to the Senate from the House of Assembly in any session shall be deemed to be the same Bill as a former Bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former Bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former Bill or to represent any amendments which have been made by the Senate in the former Bill in the preceding session.

(3) The House of Assembly may, if it thinks fit, on the passage through the House of a Bill that is deemed to be the same Bill as a former Bill sent to the Senate in the preceding session, suggest any amendments without inserting the amendments in the Bill, and any such amendments shall be considered by the Senate, and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House of Assembly; but the exercise of this power by the House of Assembly shall not affect the operation of this Article in the event of the rejection of the Bill in the Senate.

(4) There shall be inserted in any Bill that is presented to the Governor-General for assent in pursuance of this Article any amendments that are certified by the Speaker to have been made in the Bill by the Senate in the second session and agreed to by the Assembly.



(5) There shall be endorsed on any Bill that is presented to the Governor-General for assent in pursuance of this Article the certificate of the Speaker signed by him that the provisions of this Article have been complied with.

(6) The provisions of this Article shall not apply to a Bill which is required by Article 54 of this Constitution to be passed by both Houses.

**62. Provisions relating to Articles 59, 60 and 61.** (1) In Articles 59, 60 and 61 of this Constitution “Money Bill” means a public Bill which, in the opinion of the Speaker, contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt or other financial purposes, of charges on the Consolidated Fund or any other public funds or on monies provided by Parliament or the variation or repeal of any such charges; the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant, the appropriation, receipt, custody, investment, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof, of the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or subordinate matters incidental to any of the matters aforesaid; and in this paragraph the expressions “taxation”, “debt”, “public fund”, “public money”, and “loan” do not include any taxation imposed, debt incurred, fund or money provided or loan raised by any local authority or body for local purposes.

(2) For the purposes of Article 61 of this Constitution, a Bill shall be deemed to be rejected by the Senate if-

- a) it is not passed by the Senate without amendment; or
- b) it is passed by the Senate with any amendment which is not agreed to by the House of Assembly.

(3) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any functions conferred upon him by paragraph (1) of this Article or by Articles 60 or 61 of this Constitution, that function may be performed by the Deputy Speaker.

(4) Any certificate of the Speaker or Deputy Speaker given under Article 60 or 61 of this Constitution shall be conclusive for all purposes and shall not be questioned in any court.

**63. Assent to Bills.** (1) A Bill shall not become law until the Governor-General has assented thereto in Her Majesty's behalf and has signed it in token of such assent.

(2) Subject to the provisions of Articles 60 and 61 of this Constitution, a Bill shall be presented to the Governor-General for assent if, and shall not be so presented unless, it has been passed by both Houses either without amendment or without amendment or with such amendments only as are agreed to by both Houses.

(3) Any Bill to which Article 54(2) or (3) of this Constitution applies shall be presented to the Governor-General endorsed with certificates of the requisite majorities in accordance with whichever of those paragraphs applies to the Bill, and with a certificate of the Parliamentary Registrar that it has been approved by the majority of the electors voting on the Bill.

(4) When a Bill is presented to the Governor-General for assent he shall signify that he assents or that he withholds assent.

**64. Oaths of allegiance.** No member of either House shall take part in the proceedings thereof unless he has taken the oath of allegiance in such manner as is prescribed by any law in force in The Bahamas:

Provided that the election of a President of the Senate or the election of a Speaker of the House of Assembly may take place before the members of the Senate or the House of Assembly, as the case may be, have taken such oath.

## **PART 5 SUMMONING, PROROGATION AND DISSOLUTION**

**65. Sessions of Parliament.** (1) Each session of Parliament shall be held at such place and commence at such time as the Governor-General may be proclaimed appoint.

(2) The time appointed for the commencement of any session of Parliament shall be such that a period of twelve months does not intervene between the end of one session and the first sitting of Parliament in the next session.

**66. Prorogation and dissolution of Parliament.** (1) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time by proclamation prorogue Parliament.

(2) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time by proclamation dissolve Parliament:

Provided that if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the confidence of a majority of the members of the House of Assembly, he shall dissolve Parliament.

(3) Subject to the provisions of paragraph (4) of this Article, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(4) At any time when The Bahamas is at war, parliament may extend the period of five years specified in paragraph (3) of this Article for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this paragraph for more than two years.

(5) If, between a dissolution of Parliament and the next ensuing general election of members to the House of Assembly, an emergency arises of such a nature that, in the opinion of the Prime Minister, it is necessary for the two Houses or either of them to be summoned before that general election can be held, the Governor-General, acting in accordance with the advice of the Prime Minister, may summon the thereupon be deemed (except for the purposes of Article 67 of this Constitution) not to have been dissolved but shall be deemed (except as aforesaid) to be dissolved on the date on which the polls are held in the next ensuing general election.

**67. General elections bye-elections and appointment of Senators. (1)**

After every dissolution of Parliament the Governor-General shall issue writs for a general election of members of the House of Assembly returnable within ninety days from that dissolution.

(2) As soon as may be after every general election the Governor-General shall proceed under Article 39 of this Constitution to the appointment of Senators.

(3) Whenever any person vacates his seat as a member of the House of Assembly for any reason other than a dissolution of Parliament, the Governor-General shall issue a writ for the election of a member to fill the vacancy and such election shall be held within sixty days after the occurrence of the vacancy or, where the question whether a vacancy has occurred is determined under Article 51 of this Constitution, after that determination, unless Parliament is sooner dissolved to the date by which Parliament will be dissolved under the provisions of Article 66 of this Constitution is less than four months after the occurrence of the vacancy or, as the case may be, that determination.

**PART 6  
DELIMITATION OF CONSTITUENCIES**

**68. Constituencies.** The Bahamas shall be divided into thirty-eight constituencies or such greater number as may be provided for by an Order made by the Governor-General in accordance with the provisions of Article 70 of this Constitution and each such constituency shall return one member to the House or Assembly.

**69. Constituencies Commission. (1)** There shall be a Constituencies Commission for The Bahamas (in this and the next following Article referred to as “the Commission”)

(2) The Members of the Commission shall be-

a) the Speaker who shall be Chairman;

b) a Justice of the Supreme Court who shall be Deputy Chairman and shall be appointed by the Governor-General acting on the recommendation of the Chief Justice;

c) two members of the House of Assembly who shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister; and

d) one member of the House of Assembly who shall be appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.

(3) The office of a member of the Commission shall become vacant-

a) if he ceases to be the Speaker, a Justice of the Supreme Court or a member of the House of Assembly, as the case may be; or

b) in the case of a member appointed under sub-paragraph (2)(b), (c) or (d) of this Article, if his appointment is revoked by the Governor-General.

(4) If the office of a member of the Commission, appointed under sub-paragraph (2)(b), (c) or (d) of this Article is vacant or any such member is for any reason unable to perform the functions of his office, the Governor-General may appoint a person qualified for appointment under the said sub-paragraph (b), (c) or (d), as the case may be, to act in the office of that member and any person so appointed may continue so to act until his appointment is revoked.

(5) In revoking the appointment of a member of the Commission under sub-paragraph (3)(b) of this Article, and in making or revoking an appointment to act in the office of a member of the Commission under paragraph (4) of this Article, the Governor-General shall act in the same manner as he would act if he were making an appointment to the office of that member under paragraph (2) of this Article.

(6) Any decision of the Commission shall require the concurrence of not less than three members of the Commission.

(7) Subject to the provisions of paragraph (6) of this Article, the Commission may act notwithstanding a vacancy in its membership, and no proceedings of the Commission shall be invalidated by reason only that some person not entitled to do so has taken part in them.

**70. Procedure for review of constituencies.** (1) The Commission shall in accordance with the provisions of this Article, at intervals of not more than five years, review the number and boundaries of the constituencies into which The Bahamas is divided and shall submit to the Governor-General a single report either-

a) stating that in the opinion of the Commission, no change is required; or

b) recommending certain changes,

and the Governor-General shall cause such report to be laid before the House of Assembly forthwith.

(2) In carrying out a review for the purposes of this Article, the Commission shall be guided by the general consideration that the number of voters entitled to vote for the purposes of electing every member of the House of Assembly shall, so far as is reasonably practicable, be the same and the need to take account of special considerations such as the needs of sparsely populated areas, the practicability of elected members maintaining contact with electors in such areas, size, physical features, natural boundaries and geographical isolation.

(3) When the Commission intends to proceed under paragraph (1) of this Article, it shall, by notice in writing, inform the Prime Minister, who shall cause a copy of the notice to be published in the Gazette.

(4) As soon as may be after the Commission has submitted a report recommending changes in the boundaries of any constituencies, the Prime Minister shall lay before the House of Assembly for its approval a draft of an Order by the Governor-General for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft may make provision for any matters (including variation of the quorum specified in Article 57 of this Constitution) which appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.

(5) Where any draft Order laid under this Article would give effect to any such recommendations with modifications, the Prime Minister shall lay before

the House of Assembly together with the draft a statement of the reasons for the modifications.

(6) If the motion for the approval of any draft Order laid under this Article is rejected by the House of Assembly, or is withdrawn by leave of the House, an amended draft shall be laid without undue delay by the Prime Minister before the House of Assembly.

(7) If any draft Order laid under this Article is approved by resolution of the House of Assembly, the Prime Minister shall submit it to the Governor-General who shall make an order (which shall be published in the Gazette) in terms of the draft; and that Order shall come into force on such day as may be specified therein and, until revoked by a further Order made by the Governor-general in accordance with the provisions of this Article, shall have the force of law in The Bahamas:

Provided that the coming into force of any such Order shall not affect any election to the House of Assembly until a proclamation is made by the Governor-General appointing the date for the holding of a general election of members of the House of Assembly or affect the constitution of the House of Assembly then in being.

(8) Save as provided in the next following paragraph the question of the validity of any Order by the Governor-General purporting to be made under this Article and reciting that a draft thereof has been approved by resolution of the House of Assembly shall not be inquired into in any court of law.

(9) Parliament may by law provide for an appeal to the Supreme Court against a statement or recommendation submitted by the Commission in pursuance of sub-paragraph (1)(a) or (b) of this Article.

## CHAPTER VI THE EXECUTIVE

**71. Executive Authority.** (1) The executive authority of The Bahamas is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of The Bahamas may be exercised on behalf of He Majesty by the Governor-General, either directly or through officers subordinate to him.

(3) Nothing in this Article shall prevent parliament from conferring functions on persons or authorities other than the Governor-General.

**72. The Cabinet.** (1) There shall be a Cabinet for The Bahamas which shall have the general direction and control of the government of The Bahamas and shall be collectively responsible thereof to Parliament.

(2) The Cabinet shall consist of the Prime Minister and not less than eight other Ministers (of whom one shall be the Attorney-General), as may be appointed in accordance with the provisions of Article 73 of this Constitution.

**73. Appointment of Ministers.** (1) Whenever there shall be occasion for the appointment of a Prime Minister, the Governor-General shall appoint as Prime Minister-

a) the member of the House of Assembly who is the leader of the party which commands the support of the majority of the members of that House, or

b) if it appears to him that party does not have an undisputed leader in that House or that no party commands the support of such a majority, the member of the House of Assembly who, in his judgment, is most likely to command the support of the majority of members of that House,

and who is willing to accept the office of Prime Minister.

(2) Subject to the provisions of paragraph (3) of this Article, the Ministers other than the Prime Minister shall be such persons as the Governor-General, acting in accordance with the advice of the Prime Minister, shall appoint from among the Senators and the members of the House of Assembly.

(3) If the Attorney-General is appointed from among the members of the House of Assembly, not more than three Ministers shall be appointed from among the Senators, and if the Attorney-General is appointed from among



the Senators, not more than two other Ministers shall be appointed from among the Senators.

(4) If occasion arises for making an appointment to the office of Prime Minister while Parliament is dissolved, a person who was a member of the House of Assembly immediately before the dissolution may, notwithstanding any other provision of this Article, be appointed as Prime Minister.

(5) If occasion arises for making an appointment to the office of any other Minister while Parliament is dissolved, a person who, immediately before the dissolution, was a Senator or a member of the House of Assembly may, subject to the provisions of paragraph (3) of this Article, be appointed as a Minister.

**74. Tenure of office of Ministers.** (1) If the House of Assembly passes a resolution, supported by the votes of a majority of all the members of the House, declaring that it has no confidence in the Prime Minister and the Prime Minister does not within seven days of the passing of such a resolution either resign or advise the Governor-General to dissolve Parliament, the Governor-General shall revoke the appointment of the Prime Minister.

(2) The Prime Minister shall also vacate his office-

a) if at any time between the holding of a general election and the first sitting of the House of Assembly thereafter he is informed by the Governor-General that the Governor-General in pursuance of Article 73(1) of this Constitution is about to re appoint him as Prime Minister or to appoint another person as Prime Minister; or

b) if for any reason other than a dissolution of Parliament he ceases to be a member of the House of Assembly.

(3) A Minister other than the Prime Minister shall vacate his office-

a) when any person is appointed or re-appointed as Prime Minister;

b) if for any reason other than a dissolution of Parliament he ceases to be a member of the House from among the members of which he was appointed; or

c) if his appointment is revoked by the Governor-General acting in accordance with the advice of the Prime Minister.

(4) If at any time the prime Minister is required under the provisions of paragraphs (2), (3) and (4) of Articles 49 of this Constitution to cease to perform his function as a member of the House of Assembly, he shall cease during such time to perform any of his functions as Prime Minister.

(5) If at any time a Minister other than the Prime Minister is required under the provisions of paragraphs (3), (4) and (5) of Article 43 or paragraphs (2), (3) and (4) of Article 49 of this Constitution to cease to perform his functions as a member of the House to which he belongs, he shall cease during such time to perform any of his functions as a Minister.

**75. Performance of functions of Prime Minister during absence, illness or suspension.** (1) Whenever the Prime Minister is absent from The Bahamas or is unable by reason of illness or of the provisions of paragraph (4) or Article 74 of this Constitution to perform the functions conferred upon him by this Constitution, the Governor-General may authorize some other member of the Cabinet to perform those functions (other than the function conferred by this Article) and that member may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this Article shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor-General considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness, or if the Prime Minister is unable to tender advice by reason of the provisions of paragraph (4) of Article 74 of this Constitution, the Governor-General may exercise those powers without the advice of the Prime Minister.

**76. Temporary Ministers.** (1) Whenever a Minister other than the Prime Minister is unable, by reason of his illness or absence from The Bahamas or

absence from his duties on leave, to perform the functions of his office, the Governor-General may, in writing, authorize another Minister to perform those functions or appoint a person to be a temporary Minister:

Provided that if occasion arises for the making of an appointment between a dissolution of Parliament and the next following general election, the preceding provisions of this Article shall have effect for the purpose as if Parliament had not been dissolved.

(2) Subject to the provisions of Article 74 of this Constitution, a temporary Minister shall hold office until he is notified by the Governor-general in writing that the Minister on account of whose inability to perform the function of his office he was appointed is again able to perform those functions of that Minister vacates his office.

(3) The Power conferred on the Governor-General by this Article shall be exercised by him in accordance with the advice of the Prime Minister.

**77. Allocation or portfolios to Ministers.** The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, charge the Prime Minister or any other Minister with responsibility for any business of the Government of The Bahamas, including the administration of any department of Government:

Provided that a Minister appointed from among members of the House of Assembly shall be charged with responsibility for finance.

**78. Functions of Attorney-General.** (1) The Attorney-General shall have power in any case in which he considers it desirable so to do-

a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;

b) to take over or continue any such criminal proceedings that may have been instituted by any other person or authority; and

c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(2) The powers conferred upon the Attorney-General under paragraph (1) of this Article may be exercised by him in person or through other person acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney-General by sub-paragraphs (1) (b) and c of this Article shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this Article shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) In the exercise of powers conferred upon him by this Article the Attorney-general shall not be subject to the direction or control of any other person or authority.

(5) For the purposes of this Article, any appeal from any determination in any criminal proceedings before any court or any case stated or question of law reserved for the purpose of any such proceedings to any other court shall be deemed to be part of those proceedings.

**79. Exercise of Governor-General's powers.** (1) The Governor-General shall, in the exercise of his functions, act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where by this Constitution or any other law he is required to act in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, any person or authority other than the Cabinet:

Provided that the Governor-general shall act in accordance with his own deliberate judgment in the performance of the following functions-

a) in the exercise of the power to appoint the Prime Minister conferred upon him by paragraphs (1) or (4) of Article 73 of this Constitution;

b) in the exercise of the powers conferred upon him by Article 75 of this Constitution (which relates to the performance of the functions of the Prime Minister during absence, illness or suspension) in the circumstances described in the proviso to paragraph (2) of that Article:

c) in the exercise of the power to appoint the Leader of the Opposition and to revoke any such appointment conferred upon him by Article 82 of this Constitution,

d) in the exercise of the power conferred on him by Article 83(a) of this Constitution during any vacancy in the office of Leader of the Opposition;

e) in the exercise of the power to dissolve Parliament conferred upon him by the proviso to Article 66(2) of this Constitution;

f) in removing a Justice of the Supreme Court from office under Article 96(5) of this Constitution;

g) in removing a Justice of Appeal from office under Article 102(5) of this Constitution;

h) in the powers relating to appointment, removal and disciplinary control over members of his personal staff, conferred on him by Article 35 of this Constitution.

(2) Where the Governor-General is directed to exercise any function on the recommendation of any person or authority, he shall exercise that function in accordance with such recommendation:

Provided that-

a) before he acts in accordance therewith, he may, acting in accordance with his own deliberate judgement, once refer that recommendation back for reconsideration by the person or authority concerned; and

b) if that person or authority, having reconsidered the original recommendation under sub-paragraph (a) of this proviso, substitutes thereof a different

recommendation, the provisions of this paragraph shall apply to that different recommendation as they apply to the original recommendation.

(3) Where the Governor-General is directed to exercise any function after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice or recommendation of that person or authority.

(4) Where the Governor-General is directed to exercise any function on the recommendation or advice of, or with the concurrence of, or after consultation with, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court.

(5) Where the Governor-General is directed to exercise any function on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, the following steps shall be taken-

a) the Prime Minister shall first consult the Leader of the Opposition and thereafter tender his recommendation to the Governor-General;

b) the Governor-General shall then inform the Leader of the Opposition of that recommendation and if the Leader of the Opposition concurs therein the Governor-General shall act in accordance with the recommendation:

c) if the Leader of the Opposition does not concur in the prime Minister and refer the recommendation back to him;

d) the Prime Minister shall then advice the Governor-General and the Governor-general shall act in accordance with that advice.

(6) Any reference in this Constitution to the functions of the Governor-general shall be construed as a reference to his powers and duties in the exercise of the executive authority of the Bahamas and to any other powers and duties conferred or imposed on him as Governor-general by or under this Constitution or any other law.

**80. Governor-General to be informed concerning matters of Government.** The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of The Bahamas and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the government of The Bahamas.

**81. Parliamentary Secretaries.** (1) The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the Senator and the members of the House of Assembly to assist Ministers in the performance of their duties.

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a person who was a Senator or a member of the House of Assembly immediately before the dissolution may be appointed as a Parliamentary Secretary.

(2) The office of a Parliamentary Secretary shall become vacant-

- a) it for any reason other than a dissolution of Parliament he ceases to be a member of the House from among the members of which he was appointed;
- b) upon the appointment or re-appointment of any person as Prime Minister; or
- c) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs.

**82. Leader of the Opposition.** (1) There shall be a Leader of the Opposition who shall be appointed by the Governor-General.

(2) Whenever there shall be occasion for the appointment of a Leader of the Opposition, the Governor-General shall appoint the member of the House of Assembly who, in his judgment, is best able to command the support of the majority of the members of the House in opposition of the Government; or if there is no such persons, the member of the House who, in his judgment,

commands the support of that largest single group of members in opposition to the Government who are prepared to support one leader:

Provided that this paragraph shall have effect in relation to any period between a dissolution of Parliament and the day on which the next election of members the House of Assembly is held as if Parliament had not been dissolved.

(3) The Leader of the Opposition shall vacate his office if-

a) after an election of members of the House of Assembly following any dissolution of Parliament he is informed by the Governor-General that the Governor-General is about to appoint another person as Leader of the Opposition:

b) for any reason other than a dissolution of Parliament he ceases to be a member of the House of Assembly;

c) under the provisions of paragraphs (2), (3) and (4) of Article 49 of this Constitution he is required to cease to perform his functions as a member of the House of Assembly; or

d) his appointment is revoked under the provisions of paragraph (4) of this Article.

(4) If in the judgment of the Governor-General the Leader of the Opposition is no longer the member of the House of Assembly best able to command the support of the majority of members of the House in opposition to the Government or the member of the House who commands the support of the largest single group of members in opposition to the Government who are prepared to support one leader, the Governor-General shall revoke the appointment of the Leader of the Opposition.

(5) Paragraph (4) of this Article shall not have effect while parliament is dissolved.

**83. Certain vacancies in office of Leader of the Opposition.** During any period in which there is a vacancy in the office of Leader of the Opposition by



reason of the fact that no person is both qualified in accordance with this Constitution for, and willing to accept appointment to, that office, the Governor-General shall-

a) act in accordance with his own deliberate judgment in the exercise of any function in respect of which it is provided in this Constitution that the Governor-general shall act on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

b) act on the recommendation of the Prime Minister in the exercise of any function in respect of which it is provided in this Constitution that the Governor-General shall act on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

**84. Oaths to be taken by Ministers, etc.** A Minister or Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

**85. Leave of absence for Ministers, etc.** The Governor-General, acting in accordance with the advice of the Prime Minister, may grant leave of absence from his duties to any Minister or Parliamentary Secretary.

**86. Summoning of and presiding in Cabinet.** (1) The Cabinet shall not be summoned except by that authority of the Prime Minister.

(2) The Prime Minister shall, so far as is practicable, attend and preside at all meetings of the Cabinet and in his absence such other Minister shall reside as the Prime Minister shall appoint.

**87. Quorum.** (1) No business shall be transacted at any meeting of the Cabinet if there are present at the meeting less than a majority of the members for the time being of the Cabinet.

(2) Subject to paragraph (1) of this Article, the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Cabinet (including any vacancy not filled when the Cabinet is first constituted

or is reconstituted at any time) and the validity of the transaction of business in the Cabinet shall to be affect by reason only of the fact that some person who was not entitled so to do took part in those proceedings.

**88. Permanent Secretaries.** Where any Minister has been charged with responsibility for any department of Government, he shall exercise general direction and control over that department; and, subject to such direction and control, the department shall be under the supervision of a public officer (in this Constitution referred to as a Permanent Secretary) appointed for the purpose:

Provided that two or more Government departments may be placed under the supervision of one Permanent Secretary.

**89. Constitution of offices, etc.** Subject to the provision of this Constitution and of any Act of Parliament, the Governor-general may constitute offices for The Bahamas, make appointments to any such office and terminate any such appointment.

**90. Powers of pardon, etc.** (1) The Governor-General may in Her Majesty's name and on Her Majesty's behalf-

- a) grant to any person convicted of any offence against the law of The Bahamas a pardon, either free or subjected to lawful conditions;
- b) grant to any persons a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;
- c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) The power of the Governor-general under paragraph (1) of this Article shall be exercised by him in accordance with the advice of a Minister designated by him, acting in accordance with the advice of the Prime Minister.

**91. Advisory Committee on Prerogative of Mercy.** There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of-

- a) the Minister referred to in paragraph (2) of Article 90 of this Constitution, who shall be Chairman;
- b) the Attorney-General; and
- c) not less than three or more than five other members appointed by the Governor-General.

**92. Functions of Advisory Committee.** (1) Where an offender has been sentenced to death by any court for an offence against the law of The Bahamas, the Minister shall cause a written report of the case from the trial Justice of the Supreme Court, together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.

(2) The Minister may consult with the Advisory Committee before tendering any advice to the Governor-General under paragraph (2) of Article 90 of this Constitution in any case not falling within paragraph (1) of this Article.

(3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee.

(4) The Advisory Committee may regulate its own procedure.

(5) In this Article “the Minister” means the Minister referred to in paragraph (2) of Article 90 of this Constitution.

## CHAPTER VII THE JUDICATURE

### PART 1 THE SUPREME COURT

**93. Establishment of Supreme Court.** (1) There shall be a Supreme Court

for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Justices of the Supreme Court shall be the Chief Justice and such number of other Justices as may be prescribed by Parliament.

(3) No office of Justice of the Supreme Court shall be abolished while there is a substantive holder thereof.

(4) The Supreme Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

**94. Appointment of Justices of Supreme Court.** (1) The Chief Justice shall be appointed by the Governor-General by instrument under the Public Seal on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) The other Justices of the Supreme Court shall be appointed by the Governor-General by instrument under the Public Seal acting on the advice of the Judicial and Legal service Commission.

(3) The qualifications for appointment as a Justice of the Supreme Court shall be such as may be prescribed by any law for the time being in force:

Provided that a person who has been appointed as a Justice of the Supreme Court may continue in office notwithstanding any subsequent variations in the qualifications so prescribed.

**95. Acting Justices.** (1) If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to that office and assumed those functions, they shall be performed by such other person, qualified under paragraph (3) of Article 94 of this Constitution for appointment as a Justice, as the Governor-general, acting in accordance with the advice of the Prime Minister may appoint for that purpose by instrument under the Public Seal.

(2) If the office of a Justice of the Supreme Court is vacant, or if any such Justice is anointed to act as Chief Justice or as a Justice of Appeal, or is for any reason unable to perform the functions of this office, the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may by instrument under the Public Seal appoint a person qualified under paragraph (3) of Article 94 of this Constitution for appointment as a Justice to act as a Justice of the Supreme Court, and any person so appointed shall, subject to the provisions of paragraph (5) of Article 96 of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor-General acting on the advice of the Judicial and Legal Service Commission.

(3) Any person appointed to act as a Justice under the provisions of this Article may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Justice for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him while he was so acting.

**96. Tenure of office of Justices of Supreme Court.** (1) Subject to the provisions of paragraphs (4) to (7) (inclusive) of this Article, a Justice of the Supreme Court shall hold office until he attains the age of sixty-five years:

Provided that the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Justice who attains the age of sixty-five years to continue in office until he has attained such later age, not exceeding sixty-seven years, as may (before the Justice has attained the age of sixty-five years) have been agreed between them.

(2) Notwithstanding that he has attained the age at which he is required by or under the provisions of this Article to vacate his office, a person holding the office of Justice of the Supreme Court may, with the permission of the Governor-General, acting in accordance with the advice of the Prime Minister, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) Nothing done by a Justice of the Supreme Court shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.

(4) A justice of the Supreme Court may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or nay other cause) or for misbehavior, and shall not be so removed except in accordance with the provisions of paragraph (5) of this Article.

(5) A Justice of the Supreme Court shall be removed from office by the Governor-general by instrument under the Public Seal if the question of the removal of that Justice from office has, at the request of the Governor-general, made in pursuance of paragraph (6) of this Article, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council and the Judicial Committee has advised her Majesty that the Justice ought to be removed from office for inability as aforesaid or for misbehavior.

(6) If the Prime Minister (in the case of the Chief Justice) or the Chief Justice after consultation with the Prime Minister (in the case of any other Justice) represents to the Governor-General that the question of removing a Justice of the Supreme Court from office for inability as aforesaid of for misbehavior ought to be investigated, then-

a) the Governor-General shall appoint a tribunal , which shall consist of a Chairman and not less than two other members , selected by the Governor-general acting in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice (in the case of any other Justice) from among persons who hold or have held high judicial office;

b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he should request that the question of the removal of that Justice should be referred by Her Majesty to the Judicial Committee; and

c) if the tribunal so recommends, the Governor-General shall request that the question should be referred accordingly.

(7) The provisions of the Commissions of Inquiry Act(a) as in force immediately before the appointed day shall, subject to the provisions of this Article, apply as nearly as may be in relation to tribunals appointed under paragraph (6) of this Article or, as the context may require, to the members thereof as they apply in relation to the Commissions or Commissioners appointed under that Act, and for that purpose shall have effect as if they formed part of this Constitution.

(8) If the question of removing a Justice of the Supreme Court from office has been referred to a tribunal appointed under paragraph (6) of this Article, the Governor-General, acting in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice after the Chief Justice has consulted with the Prime Minister (in the case of any other Justice), may suspend the Justice from performing the function of his office.

(9) Any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the Prime Minister or the Chief Justice (as the case may be), and shall in any case cease to have effect-

- a) if the tribunal recommends to the Governor-General that he should not request that the question of the removal of the Justice from office should be referred by Her Majesty to the Judicial Committee; or
- b) the Judicial Committee advises Her Majesty that the Justice ought not to be removed from office.

(10) The Provisions of this Article shall be without prejudice to the provisions of paragraph (2) of Article 95 of this Constitution.

**97. Oaths to be taken by Justices of Supreme Court.** A Justice of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and a judicial oath in such form as is prescribed by any law in force in The Bahamas.

## **PART 2 COURT OR APPEAL**

**98. Establishment of Court of Appeal.** (1) There shall be a Court of Appeal for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Justices of Appeal of the Court of Appeal shall be-

a) a President;

b) the Chief Justice by virtue of his office as head of the Judiciary but who, however, shall not sit in the Court of Appeal, unless he has been invited so to sit by the President of the Court; and

c) such number of other Justices of Appeal as may be prescribed by Parliament.

(3) No office of Justice of Appeal shall be abolished while there is a substantive holder thereof.

(4) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

**99. Justice of the Court of Appeal.** (1) The President of the Court of Appeal and other Justices of Appeal shall be appointed by the Governor-General by instrument under the Public Seal on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) The Qualifications for appointed as a Justice of Appeal may continue in office notwithstanding any subsequent variations in the qualifications so prescribed.

**100. Other arrangements for appeals.** (1) Notwithstanding anything contained in this Part of this Chapter, Parliament may make provisions-



a) for implementing arrangements made between the Government of The Bahamas and the Government or Governments of any other part or parts of the Commonwealth relating to the establishment of a court of appeal to be shared by The Bahamas with that part or those parts of the Commonwealth, and for the hearing and determination by such a court of appeal of appeals from decisions of any court in The Bahamas; or

b) for the hearing and determination of appeals from decisions of any court in The Bahamas by a court established for any other part of the Commonwealth.

(2) A law enacted in pursuance of paragraph (1) of this Article may provide that the jurisdiction conferred on any such court as is referred to in that paragraph shall be to the exclusion, in whole or in part, of the jurisdiction of the Court of Appeal established by this Part of this Chapter; and during any period when jurisdiction is so conferred to the exclusion of the whole jurisdiction of the said Court of Appeal, Parliament may suspend the provisions of this Part establishing that Court.

(3) In paragraph (1) of this Article the expression “any court in the Bahamas” includes the Court of Appeal established by this Part of this Chapter.

**101. Acting Justices of Court of Appeal.** (1) If the office of President of the Court of Appeal is vacant or if the President of the Court of Appeal is for any reason unable to perform the functions of this office, then, until a person has been appointed to that office and assumed its functions or, as the case may be, until the President of the Court of Appeal has resumed those functions, they shall be performed by such other person, qualified under paragraph (2) of Article 99 of this Constitution for appointment as a Justice of Appeal, as the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint for that purpose by instrument under the Public Seal.

(2) If the office of a Justice of Appeal (other than the President) is vacant, or if any such Justice is appointed to act as President of the Court of Appeal, or is for any reason unable to perform the functions of his office, the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may by instrument under the Public Seal appoint a person qualified under paragraph (2) of Article 99 of this Constitution for appointment as a Justice of Appeal, as the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint for that purpose by instrument under the Public Seal.

specified, until his appointment is revoked by the Governor-general acting on the advice of the Judicial and Legal Service Commission.

(3) Any person appointed to act as a Justice of Appeal under the provisions of this Article may notwithstanding that the period of this appointment has expired or his appointment has been revoked, sit as a Justice for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him while he was so acting.

**102. Tenure of office of Justices of Appeal.** (1) Subject to the provisions of paragraph (4) to (7) (inclusive) of his Article, a Justice of Appeal shall hold office until he attains the age of sixty-eight years:

Provided that the Governor-General, acting on the recommendations of the Prime Minister after consultation with the Leader of the Opposition, may permit a Justice of Appeal who attains the age of sixty-eight years to continue in office until he has attained such later age, not exceeding seventy years, as may (before the Justice of Appeal has attained the age of sixty-eight years) have been agreed between them.

(2) Notwithstanding that he has attained the age at which he is required by or under the provisions of this Article to vacate his office, a person holding the office of Justice of Appeal may, with the permission of the Governor-General, acting in accordance with the advice of the Prime Minister, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) Nothing done by a Justice of Appeal shall be invalid by reason only that he has attained the age at which he is required by this Article to vacate his office.

(4) A Justice of Appeal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehavior, and shall not be so removed except in accordance with the provisions of paragraph (5) of this Article.

(5) A Justice of Appeal shall be removed from office by the Governor-General by instrument under the Public Seal if the question of the removal of that Justice of Appeal from office has, at the request of the Governor-General made in pursuance of paragraph.

(6) of this Article, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council and the Judicial Committee has advised Her Majesty that the Justice of Appeal ought to be removed from office for inability as aforesaid or for misbehavior.

(6) If the Prime Minister (in the case of the President of the Court of Appeal) or the president of the Court of APPEal or the Chief Justice after consultation with the Prime Minister (in the case of any other Justice of Appeal) represented to the Governor-General that the question of removing a Justice of Appeal from office for inability as aforesaid or for misbehavior ought to be investigated, then-

a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the President of the Court of Appeal) of the President of the Court of Appeal (In the case of any other Justice of Appeal) from among persons who hold or have held high judicial office;

b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-general and recommend to the Governor-General whether he should request that the question of the removal of that Justice of Appeal should be referred by Her Majesty to the Judicial Committee; and

c) if the tribunal so recommends, the Governor-General shall request that the question should be referred accordingly.

(7) The provisions of the Commission of Inquiry Act (a) as in force immediately before the appointed day shall, subject to the provisions of this Article, apply as nearly as may be in relation to tribunals appointed under paragraph (6) of his Article or, as the context may enquire, to the members thereof as they apply in relation to Commission or Commissioners appointed

under that Act, and for that purpose shall have effect as if they formed part of this Constitution.

(8) If the question of removing a Justice of Appeal from office has been referred to a tribunal appointed under paragraph (69) of this Article, the Governor-General acting in accordance with the advice of the Prime Minister (in the case of the President of the Court of Appeal) or of the President of the Court of Appeal after the President of the Court of Appeal has consulted with the Prime Minister (in the case of any other Justice of Appeal), may suspend the Justice of Appeal from performing the functions of his office.

(9) Any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the prime Minister or the President of the Court of Appeal (as the case may be), and shall in any case cease to have effect if-

- a) the tribunal recommends to the Governor-general that he should not request that the question of the removal of the Justice of Appeal from office should be referred by Her Majesty to the Judicial Committee; or
- b) the Judicial Committee advises her Majesty that the Justice of Appeal ought not to be removed from office.

(10) The provisions of this Article shall be without prejudice to the provisions of paragraph (2) of Article 101 of this Constitution.

(11) The provisions of this Article and of Article 103 of this Constitution shall not apply to the Chief Justice.

**103. Oaths to be taken by Justices of Appeal.** A Justice of Appeal shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and a judicial oath in such form as is prescribed by any law in force in The Bahamas.

**PART 3**  
**APPEALS TO COURT OF APPEAL AND HER MAJESTY IN**  
**COUNCIL**

**104. Appeals relating to fundamental rights and freedoms.** (1) An appeal to the Court of appeal shall lie as of right from final decisions of the Supreme Court given in exercise of the jurisdiction conferred on the Supreme Court by Article 28 of this Constitution (which relates to the enforcement of fundamental rights and freedoms).

(2) An appeal shall lie as of right to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under Article 105(3) of this Constitution from any decisions given by the Court of Appeal in any such case.

**105. Appeals to Her Majesty in Council in other cases** (1) Parliament may provide for an appeal to lie from decisions of the Court of Appeal established by Part 2 of this Chapter to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under this Article, either as of right or with the leave of the said Court of Appeal, in such cases other than those referred to in Article 104(2) of this Constitution as may be prescribed by Parliament.

(2) Nothing in this Constitution shall affect any right of Her Majesty to grant special leave to appeal from decisions such as are referred to in paragraph 81) of this Article.

(3) Parliament may by law provide for the functions required in this Chapter to be exercised by the Judicial Committee of Her Majesty's Privy Council to be exercised by any other court established for the purpose in substitution for the Judicial Committee.

**106. Interpretation of "Court of Appeal".** References in this Part to "the Court of Appeal" include references to a shared court of appeal established under Article 100(1) of this Constitution when exercising jurisdiction in respect of The Bahamas.

## CHAPTER VIII THE PUBLIC SERVICE

### PART 1 THE PUBLIC SERVICE COMMISSION

#### **107. Establishment and composition of Public Service Commission.**

(1) There shall be a Public Service Commission for The Bahamas which shall consist of a Chairman and not less than two nor more than four other members, who shall be appointed by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.

(2) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a member of either House or a public officer.

(3) Subject to the provisions of Article 126 of this Constitution the office of a member of the Public Service Commission shall become vacant-

a) at the expiration of three years from the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed;

b) if he becomes a member of either House or a public officer.

(4) If the office of Chairman of the Public Service Commission is vacant or the holder thereof is for any reason unable to perform the function of his office then, until a person has been appointed to and has assumed the function of that office or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(5) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder thereof is for any reason unable to perform the functions of his office, the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition,

may appoint a person who is qualified for appointment as a member of the Commission to act in the office of that member; and any person so appointed shall, subject to the provisions of sub-paragraph (3)(b) for this Article and Article 126 of this Constitution, continue so to act until a person has been appointed to the office in which he is acting and has assumed the functions thereof or, as the case may be, the holder thereof resumes those functions or until his appointment so to act is revoked by the Governor-General, acting as aforesaid.

(6) A former member of the Public Service Commission shall not, within a period of five years commencing with the date on which he last held or acted in that office, be eligible for appointment to any office power to make appointments to which is vested by this Constitution in the Governor-General acting on the recommendation or in accordance with the advice of the Public Service Commission.

## **PART 2**

### **APPOINTMENTS ETC. OF PUBLIC OFFICERS**

**108. Appointments, etc. of public officers.** Subject to the provisions of this Constitution power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor-General, acting in accordance with the advice of the Public Service Commission.

**109. Appointments of Permanent Secretaries and certain other public officers.** (1) Notwithstanding anything contained in the preceding Article of this Chapter-

a) power to make appointments to the office of Permanent Secretary or Head of a Department of Government (or to be the holder of any such other office of similar status as the Governor-General may, acting in accordance with the advice of the Prime Minister specify by notice in the Gazette) is hereby vested in the Governor-General acting on the recommendation of the Public Service Commission after the Commission has consulted the Prime Minister;

b) power to make appointments to the office of Permanent Secretary on transfer from another such office carrying the same salary is hereby vested in the Governor-General acting on the advice of the Prime Minister.

(2) In this Article “Permanent Secretary” includes the Secretary of the Cabinet and the Financial Secretary.

**110. Delegation of Governor-Generals’s powers.** The Governor-General acting in accordance with the advice of the Public Service Commission, may by directions given by instrument under the Public Seal delegate, to such extent and subject to such conditions as may be specified in those directions, the powers vested in him by Article 108 of this Constitution (other than powers to make appointments to the office referred to in Article 109 of this Constitution and to remove or exercise disciplinary control over persons holding or acting in such offices) to such public officers as may be so specified.

**111. Appointments, etc. of principal representatives of The Bahamas abroad.** (1) Power to appoint persons to hold or act in the offices to which this Article applies (including power to make appointments on promotion and transfer and to confirm appointments) and to remove persons so appointed from any such office shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering any advice for the purposes of this Article in relation to any person who holds or acts in any public office other than an office to which this Article applies, the Prime Minister shall consult the Service Commission which is responsible for advising in respect of appointments to the office which the person concerned holds or in which he is acting.

(3) The office to which this Article applies are the offices of Ambassador, High Commissioner or any other principal representative of The Bahamas in any of the country or accredited to any international organization.

**112. Appointments on transfer in respect of certain offices.** (1) Power to make appointments on transfer to the offices to which this Article applies shall vest in the Prime Minister.

(2) The offices to which this Article applies are-

a) offices, the holders of which are required to reside outside The Bahamas for the proper discharge of their functions;



b) such offices in the Ministry responsible for the conduct of the external affairs of The Bahamas as may, from time to time, be designated by the Prime Minister.

**113. Appointment of Secretary to the Cabinet.** (1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) Power to appoint any person to the office of Secretary to the Cabinet and to remove such person from that office shall vest in the Governor-General acting in accordance with the advice of the Prime Minister.

(3) Before tendering advice for the purposes of this Article, the Prime Minister shall consult the Public Service Commission.

(4) The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for the supervision of any department of the Government for which the Prime Minister has responsibility.

### **PART 3 THE PUBLIC SERVICE BOARD OF APPEAL**

**114. Public Service Board of Appeal.** (1) There shall be a Public Service Board of Appeal for The Bahamas which shall consist of the following members, who shall be appointed by instrument under the Public Seal-

a) one member appointed by the Governor-General acting in accordance with the advice of the Chief Justice from among persons who hold or have held high judicial office or are qualified to hold high judicial office, who shall be Chairman;

b) one member appointed by the Governor-General acting in accordance with the advice of the Prime Minister; and

c) one member appointed by the Governor-General acting in accordance with the advice of the appropriate representative body.

(2) A person shall not be qualified for appointment as a member of the Board if he is a member of either House.

(3) Subject to the provisions of this Article and of Article 126 of this Constitution, the office of a member of the Board shall become vacant-

a) at the expiration of three years from the date of his appointment;

b) if he becomes a member of either House.

(4) if at any time any member of the Board is for any reason unable to exercise the functions of his office, the Governor-General may appoint a person who is qualified to be appointed as a member of the Board to act as a member, and any person so appointed shall, subject to the provisions of sub-paragraph (3)(b) of this Article and Article 126 of this Constitution, continue to act until the office in which he is acting has been filled to, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General.

(5) The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(6) In this Article “the appropriate representative body” means such body representing the interests of public officers as the Governor-general may, by Order, designate.

**115. Appeals in discipline cases.** (1) Subject to the provisions of this Article, an appeal shall lie to the Public Service Board of Appeal at the instance of the officer in respect of whom the decision is made from any decision of the Governor-General, acting in accordance with the advice of the Public Service Commission, that any public officer shall be removed from office or that any penalty should be imposed on him by way of disciplinary control.

(2) Upon an appeal under paragraph 81) of this Article the Board may affirm or set aside the decision appealed from or may make any other decision which the authority or person from whom the appeal lies could have made.

(3) Every decision of the Board shall require the concurrence of a majority of all its members.

(4) Subject to the provisions of paragraph (3) of this Article, the Board may be regulations make provision for-

- a) the procedure of the Board;
- b) the procedure in appeals under this Article;
- c) exceeding from the provisions of paragraph (1) of this Article decisions in respect of public officers holding offices whose emoluments do not exceed such sum as may be prescribed or such decisions to exercise disciplinary control, other than decisions to remove from office, as may be prescribed.

(5) Regulations made under this Article may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government of The Bahamas for the purpose of the exercise of the functions of the Board.

(6) The Board may, subject to the provisions of this Article and to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

#### **PART 4**

### **THE JUDICIAL AND LEGAL SERVICE COMMISSION**

**116. Establishment and composition of the Judicial and Legal Service Commission.** (1) There shall be a Judicial and Legal Service Commission for The Bahamas.

- (2) The members of the Judicial and Legal Service Commission shall be-
- a) the Chief Justice, who shall be Chairmen;
  - b) such other Justice of the Supreme Court or Justice of Appeal as may be designated by the Governor-General, acting on the recommendation of the Chief Justice, by instrument under the Public Seal;
  - c) the Chairman of the Public Service Commission; and

d) two person appointed by the Governor-General by instrument under the Public Seal, acting ont he recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(3) Subject to the provisions of Article 126 of this Constitution, the office of a member of the Judicial and Legal Service Commission referred to in subparagraph (2)(d) of this Article shall become vacant-

a) at the expiration of three years form the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed;

b) if he becomes a member of either House.

(4) A person shall not be qualified to be appointed as a member of the Commission under subparagraph (2) (b) of this Article unless he holds or is qualified to hold or has held high judicial office; and a person shall be disqualified for appointment as such if he is a member of either House.

(5) If the office of Chairman of the Judicial and Legal Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office, then until a person has been appointed to and has assumed the faction of that office or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting on the recommendation of the Chief Justice, or, if the is for any reason incapacitated from making a recommendation, of the other Justice of the Supreme Court or Justice of Appeal who is a member of the Commission.

(6) If at any time one of the members of the Commission referred to in subparagraphs (2)(b), (c) or (d) of this Article is for any reason unable to exercise the function of his office, the Governor-general, in the case of the Chairman of the Public Service Commission, may appoint another member of the Public Service Commission to act as a member, and in the case of a member referred to in sub-paragraphs (2)(b) or (d) of this Article may, acting ont he same recommendation as for the appointment of that members, appoint a person who is qualified to be appointed as a member of the Commission to act as a

member. Any person so appointed shall, subject to the provisions of subparagraph (3)(b) of this Article and Article 126 of this Constitution, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General, acting as aforesaid.

**117. Appointments, etc. of judicial and legal officers.** (1) Subject to the provisions of this Constitution, power to make appointments to public offices to which this Article applies and to remove and to exercise disciplinary control over persons holding or acting in such office is hereby vested in the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) This Article applies to such public offices for appointment to which persons are required to possess legal qualifications as may be prescribed by Parliament.

## **PART 5 THE POLICE SERVICE COMMISSION**

**118. Establishment and composition of the Police Service Commission.** (1) There shall be a Police Service Commission for the Bahamas which shall consist of a Chairman and two other members appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.

(2) No person shall be qualified to be appointed as a member of the Police Service Commission if he is a member of either House or a Public officer.

(3) Subject to the provisions of Article 126 of this Constitution, the office of a member of the Police Service Commission shall become vacant-

a) at the expiration of three years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed;

b) if he becomes a member of either House or a public officer.

(4) If the office of Chairman of the Police Service Commission is vacant or the holder thereof is for any reason unable to perform the function of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(5) If the office of a member of the Police Service Commission other than the Chairman is vacant or the holder thereof is for any reason unable to perform the functions thereof, the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may appoint a person who is qualified for appointments as a member of the Commission to act in the office of that member; and any person so appointed shall, subject to the provisions of sub-paragraph (3)(b) of this Article and Article 126 of this Constitution, continue so to act until a person has been appointed to the office in which he is acting and has assumed the functions thereof or, as the case may be, the holder thereof resumes those functions or until his appointment so to act is revoked by the Governor-General, acting as aforesaid.

**119. Appointment of Commissioner of Police and other officers of the Police Force.** (1) Power to make appointments to the office of Commissioner of Police and Deputy Commissioner of Police shall be vested in the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(2) Save as provided under paragraph (1) of this Article power to make appointments to offices in the Police Force of or above the rank of Assistant Commissioner of Police is vested in the Governor-General acting on the recommendation of the Prime Minister after consultation with the Police Service Commission.

(3) Save as provided in the preceding paragraphs of this Article, power to make appointments to offices in the Police Force of or above the rank of Inspector is vested in the Governor-General, acting on the advice of the Police Service Commission.

(4) There shall be in the Police Force such number of Police Promotion Boards, each consisting of officers in the Police Force above the rank of Inspector, as may be prescribed by regulations made under this paragraph.

(5) Power to make appointments to offices in the Police Force below the rank of Inspector shall be vested in the Commissioner of Police acting after consultation with a Police Promotion Board.

(6) Power to make posting and appointments on transfer within the Police Force of officers in that Force shall be vested in the Commissioner of Police.

**120. Removal of the Commissioner and Deputy Commissioner of Police.** (1) The Commissioner of Police and Deputy Commissioner of Police may be removed from office by the Governor-General but shall not be removed except in accordance with the provisions of paragraph (2) of this Article.

(2) The Commissioner of Police or Deputy Commissioner of Police shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under paragraph (3) of this Article and the tribunal has recommended to the Governor-general that he ought to be removed from office.

(3) If the Prime Minister represented to the Governor-General that the question of removing the Commissioner of Police or Deputy Commissioner of Police from office ought to be investigated, then-

a) the Governor-General acting in accordance with the advice of the Prime Minister shall suspend the Commissioner of Police or Deputy Commissioner of Police from performing the functions of his office, as the case may be;

b) the Governor-general shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor-general, acting in accordance with the advice of the Judicial and Legal Service Commission, from among persons who hold or have held or are eligible to hold high judicial office; and

c) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General whether the Commissioner of Police or Deputy Commissioner of Police ought to be removed from office.

(4) If the question of removing the Commissioner of Police or Deputy Commissioner of Police from office has been referred to a tribunal under paragraph (3) of this Article, the Governor-general shall revoke any such suspension if the tribunal recommends to the Governor-General that the Commissioner of Police or Deputy Commissioner of Police should not be removed from office.

**121. Removal and discipline of members of the Force.** (1) Save as provided under Article 120 of this Constitution, power to remove and to exercise disciplinary control over persons holding or acting in the office of or above the rank of Assistant Commissioner in the Police Force is vested in the Governor-General acting in accordance with the advice of the Police Service Commission after consultation with the Prime Minister.

(2) Save as provided in Article 120 of this Constitution and paragraphs (1) and (3) of this Article, power to remove and exercise disciplinary control over persons holding or acting in office in the Police Force is vested in the Governor-General acting in accordance with the advice of the Police Service Commission.

(3) The following powers are vested in the Commissioner of Police-

a) in respect of officer of or above the rank of Assistant Superintendent, the power to administer reprimands;

b) in respect of Inspector, the power to exercise disciplinary control other than removal or reduction in rank; and

c) in respect of officers below the rank of Inspector, the power to exercise disciplinary control including the power of removal.

(4) The Commissioner of Police may, by directions in writing, and subject to such conditions as he thinks fit, delegate to any officers of the Police Force of



or above the rank of Inspector any of his powers under sub-paragraph (3)(c) of this Article other than the power of removal; but an appeal from any award of punishment by such officer shall lie to the Commissioner.

(5) Parliament may by law provide that an appeal shall lie to the Governor-General from a decision of the commissioner of Police to remove or exercise disciplinary control over persons holding or acting in offices in the Police Force in such cases as may be prescribed by such law, and in determining any such appeal the Governor-general shall act in accordance with the advice of the Police Service Commission.

## **PART 6 PENSIONS**

**122. Protection of pension rights.** (1) Subject to the provisions of Articles 123 and 124 of this Constitution, the law applicable to the grant and payment to any officer, or to his widow, children, dependents or personal representatives, of any pensions, compensation, gratuity or other like allowance (in this an “award”) in respect of the service of that officer in a public office shall be that in force on the relevant date or any later law that is not less favorable to that person.

(2) In paragraph (1) of this Article “the relevant date” means-

- a) in relation to an award granted before 10th July 1973, the date on which the award was granted;
- b) in relation to an award granted or to be granted on or after 10th July 1973 to or in respect of any person who was a public officer before that date 9th July 1973;
- c) in relation to an award granted or to be granted to or in respect of any person who becomes a public officer on or after 10th July 1973, the date on which he becomes a public officer.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law specified by him in exercising the

option shall, for the purposes of this Article, be deemed to be more favorable to him than the other law or laws.

(4) Awards granted under any law in respect of service in a public office (not being awards that are a charge upon some other public fund of The Bahamas) are hereby charged on the Consolidated Fund.

(5) For the purposes of this Article and of Articles 123 and 124 of this Constitution, service as a Justice of the Supreme Court or Justice of Appeal shall be deemed to be service in the public service.

**123. Grant and withholding of pensions, etc.** (1) The power to grant any award under any pensions law for the time being in force in The Bahamas (other than an award to which, under that law, the person to whom it is payable is entitled as of right) and, in accordance with any provisions in that behalf contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor-general.

(2) The power vested in the Governor-general by paragraph (1) of this Article shall be exercised by him on the recommendation of the appropriate Service Commission.

(3) The appropriate Service Commission shall not recommend to the Governor-general that any award for which a person who holds or has held the office of a Justice of the Supreme Court or Justice of Appeal or Auditor-General is eligible shall not be granted, or that any award payable to him shall be withheld, reduced in amount or suspended, on the ground that he has been guilty of misbehavior unless he has been removed from office by reason of such misbehavior.

(4) In this Article and in Article 124 of this Constitution “the appropriate Service Commission” means-

a) in the case of an award that may be granted or is payable to a person who, having been a public officer, was immediately before the date on which he ceased to hold public office serving-

- i) as a Justice of the Supreme Court or Justice of Appeal;
- ii) in any public office to which the provision of Article 117 of this Constitution applied on that date,  
the judicial and Legal Service Commission;
- b) in the case of an award that may be granted or is payable to a person who, having been a public officer, was immediately before the date on which he ceased to hold public office, serving as a the date on which he ceased to hold public office, serving as a member of the Police Force, the Police Service Commission;
- c) in any other case the Public Service Commission.

(5) In this Article “pension law” means any law relating to the grant to any person or to the widow, children, dependents or personal representatives of that person, of an award of any pension, compensation, gratuity or other like allowance in respect of the service of that person in a public office an includes any instrument made under any such law.

**124. Appeals in respect of certain decisions affecting pensions benefits.**

(1) The provisions of this Article shall have effect for the purpose of enabling an officer or his personal representatives to appeal against any of the following decisions, that is to say:-

- a) a decision of the appropriate Service Commission embodying a recommendation in respect of an officer, under Article 123(2) of this Constitution, not to grant or to withhold, reduce in amount or suspend, and award;
- b) a decision of any authority to remove an officer from office if the consequence of the removal is that an award cannot be granted in respect of the officer’s service in a public office; or
- c) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is or in the opinion of the

authority might be, to reduce the amount of any award that may be granted in respect of the officer's service in a public office.

(2) Where any such decision as is referred to in paragraph (1) of this Article is taken by any Commission or authority, the Commission or authority shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the Commission or authority for the case to be referred to the Public Service Board of Appeal.

(3) The Board shall inquire into the facts of the case, and for that purpose-

a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;

b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and

c) shall have access to, and shall consider, all documents that were available to the Commission or authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the Commission or authority.

(4) When the Board has completed its consideration of the case, then-

a) if the decision that is the subject of reference to the Board is such a decision as is mentioned in sub-paragraph (1)(a) of this Article, the Board shall advise the appropriate Service Commission or authority whether the decision should be affirmed, reversed or modified and the Commission or authority shall act in accordance with that advice; and

b) if the decision that is the subject of the reference to the Board is such a decision as is referred to in sub-paragraph (1)(b) or (c) of this Article, the Board shall not have power to advise the Commission or authority concerned to affirm, reverse or modify the decision but-

i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the award that, under any law, might have been granted in respect of his service in a public office if he had retired voluntarily at the date of his removal and may direct that any law with respect to awards shall in any other respect that the Board may specify have effect as if he had so retired , and

ii) where some other disciplinary action has been taken in relation to the office the Board may direct that, on the grant of any award under any law in respect of the officer's service in a public office, that award shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of that award that, in the opinion of the Board, would or might otherwise be a consequence of the provisions of any other law.

(5) If the appeal relates to a case in which the officer exercises his right of appeal to the Board under Article 115(1) of this Constitution, the Board shall first consider his appeal under that Article and only if it decides to affirm the decision or to make some other decision the consequence of which would be to affect the officer's award, shall the Board proceed to consider the officer's appeal under this Article.

(6) For the purposes of this Article-

a) "legal representative" means a person entitled to practice in The Bahamas as a Counsel and Attorney of the Supreme Court; and

b) a notice shall be deemed to have been delivered to an office one week after it has been posted if, in the case of an officer on pension and resident outside The Bahamas whose residential address cannot be ascertained, it has been posted addressed to him at the address to which his pension is being paid.

## PART 7 MISCELLANEOUS

**125. Procedure of Commissions.** (1) In relation to any Commission established by this Chapter the Governor-general, acting in accordance with

the advice of the Commission, may by regulation or otherwise regulate its procedure and, subject to the consent of the Prime Minister, confer powers and impose duties on any public officer or any authority of the Government for the purpose of the discharge of the functions of the Commission.

(2) At any meeting of any Commission established by this Chapter a quorum shall be constituted if a majority of the members are present; and, if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members or the absence of any member, and any proceedings of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

(3) Any question proposed for decision at any meeting of any Commission established by this Chapter shall be determined by a majority of the votes of the members thereof present and voting, and if on any such question the votes are equally divided the member presiding shall have and exercise a casting vote.

(4) Any question whether-

a) any Commission established by this Chapter has validly performed any functions vested in it or under this Chapter;

b) any person has validly performed any functions delegated to him; or

c) any member of such a Commission or any other person or authority has validly performed any other function in relation to the work of the Commission,

shall not be enquired into in any court.

**126. Removal from office of certain persons.** (1) A member of a Commission established under this Chapter may be removed from office only for inability to exercise the function of his office (whether arising from infirmity of body or mind or any other cause) or for misbehavior and shall not be so removed except in accordance with the provisions of this Article.

(2) A member of a Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal

appointed under paragraph (3) of this Article and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehavior.

(3) If the Governor-General, acting in accordance with the advice of the prescribed authority, considers that the question of removing a member of a Commission under this Article ought to be investigated, then-

a) the Governor-General, acting in accordance with the advice of the prescribed authority shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice, or where the question concerns the Chairman of the Judicial and Legal Service Commission by the President of the court of Appeal, from among persons who hold or have held or are qualified to hold office as a Justice of the Supreme Court; and

b) the tribunal shall enquire into the matter and report on the facts thereof the Governor-general and recommend to him whether the member ought to be removed under this Article.

(4) If the question of removing a member of a Commission has been referred to a tribunal under this Article, the Governor-general, acting in accordance with the advice of the prescribed authority, may suspend that member from the exercise of the functions of his office and any such suspension may be at any time revoked by the Governor-general, and shall in any case cease to have effect if the tribunal recommends to the Governor-general that member should not be removed.

(5) In this Article-

“Commission” includes the Public Service Board of Appeal;

“the prescribed authority” means-

a) in relation to the Public Service Commission or the Judicial and Legal Service Commission, the Prime Minister when the question concerns the Chairman of either of those Commissions, and the Chairman of the Commission

concerned when the question concerns any other member of either of those Commissions; and

b) in relation to the Public Service Board of Appeal or the Police Service Commission, the Prime Minister.

**127. Public Service.** In this Constitution references to the public service shall not be construed as including service in-

a) the office of Governor-General, Prime Minister or other minister Parliamentary Secretary, Leader of the Opposition, President and Vice-President of the Senate, Senator, Speaker and Deputy Speaker of the House of Assembly, or member of the House of Assembly;

b) the office of a member of the Public Service Commission, the Public Service Board of Appeal, the Judicial and Legal Service Commission or the Police Service Commission;

c) the staff of the Department of Tourism or of any other department or agency of the Government established for special purposes by any law which specifies that offices therein shall not be public offices for the purposes of this Constitution;

d) the office of a member of any board, committee or other similar body (whether incorporated or not) established by any law in force in The Bahamas; or

e) except as otherwise provided in this Constitution the office of a Justice of the Supreme Court, a Justice of Appeal or any office on the personal staff of the Governor-General.

## CHAPTER IX FINANCE

**128. Consolidated Fund.** There shall be in and for the Bahamas a Consolidated Fund, into which, subject to the provision of any law for the time being in force in The Bahamas, shall be paid all revenues of The Bahamas.



**129. Estimates.** (1) The Minister of Finance shall, before the end of each financial year, cause to be prepared annual estimates of revenue and expenditure for public services during the succeeding financial year, which shall be laid before the House of Assembly.

(2) The estimates of expenditure shall show separately the sums required to meet statutory expenditure (as defined in Article 130(7) of this Constitution) and the sums required to meet other expenditure proposed to be paid out of the Consolidated Fund.

**130. Authority for Public Expenditure.** (1) The Minister of Finance shall, in respect of each financial year, at the earliest convenient moment before the commencement of that financial year, introduce in the House of Assembly an Appropriation Bill containing, under appropriate heads for the several services required, the estimated aggregated sums which are proposed to be expended (otherwise than by way of statutory expenditure) during that financial year.

(2) Subject to paragraphs (4) and (6) of this Article, the sums set out in the Appropriation Act in respect of a financial year shall represent the limit and extent of the public expenditure for that financial year.

(3) Where any sum is set out in the Appropriation Act in respect of a financial year and at the end of that year there is an unexpended balance of that sum, the unexpended balance shall lapse.

(4) The Minister of Finance may, in case of necessity, from time to time cause to be prepared supplementary estimates of expenditure which shall be laid before and voted on by the House of Assembly.

(5) In respect of all supplementary expenditure voted on by the House of Assembly in pursuance of paragraph (4) of this Article, the Minister of Finance may, at any time before the end of the financial year, introduce into the House of Assembly a Supplementary Appropriation Bill containing, under appropriate heads, the aggregate sums so voted and shall, as soon as possible after the end of each financial year, introduce into the House of Assembly a final Appropriation Bill containing any such sums which have not yet been included in any Appropriation Bill.

(6) That part of any estimate of expenditure laid before the House of Assembly which shows statutory expenditure shall not be voted on by the House, and such expenditure shall, without further authority of Parliament, be paid out of the Consolidated Fund.

(7) For the purposes of this Article and Article 129 of this Constitution-

a) “financial year” means any period of twelve months beginning of 1st January in any year or such other date as Parliament may prescribe; and

b) “statutory expenditure” means expenditure charged on the Consolidated Fund or on the General revenues and assents of the Bahamas by any provisions of this Constitution or of any other law for the time being in force in The Bahamas.

**131. Withdrawal of money from the Consolidated Fund.** No sum shall be paid out of the Consolidated Fund except upon the authority of a warrant under the hand of the Minister of Finance or under the hand of some person authorized by him in writing; and sums so issued shall be disposed of for meeting public expenditure authorized under Article 130 of this Constitution or, in the case of statutory expenditure, for the purposes appointed by law.

**132. Withdrawal of money in advance of Appropriation Act.** Where at any time for any justifiable reason, the Appropriation Bill in respect of any financial year has not come into operation by the beginning of that financial year, the Minister of Finance may, to such an extent and subject to such conditions as may be prescribed, or if no conditions have been prescribed on a resolution to that effect passed by the House of Assembly, issue a warrant for the payment out of the Consolidated Fund or other public funds of The Bahamas of such sums as he may consider necessary for the continuance of the public service, but a statement of the sums so authorized shall, as soon as practicable, be laid before and voted on by the House of Assembly and the aggregate sums so voted shall be included, under the appropriate heads, in the next Appropriation Bill immediately following.

**133. Contingencies Fund.** (1) Parliament may by law provide for the establishment of a Contingencies Fund and may authorize the Minister of

Finance to make advances from that Fund if he is satisfied that there is an unforeseen need for expenditure for which no provision or no sufficient provisions has been made by an Appropriation Act.

(2) Where any advances are made by virtue of an authorization conferred under paragraph (1) of this Article, a supplementary estimate of the sums required to replace the amount so advanced shall, as soon as practicable, be laid before and voted on by the House of Assembly and the sums so voted shall be included in a Supplementary Appropriation Bill or a Final Appropriation Bill.

**134. Public Debt.** The Public Debt of the Bahamas, including the interest on the debt, sinking fund payments and redemption monies in respect of that debt and the costs, charges and expenses incidental to the management of that debt, is hereby charged on the Consolidated Fund.

**135. Remuneration of Governor-General and certain other officers.**

(1) There shall be paid to the holders of the offices to which this Article applies such salaries and allowances as may be prescribed by or under any law.

(2) The salaries payable to the holders of the offices to which this Article applies are hereby charged on the Consolidated Fund.

(3) The salary and allowance payable to the holder of any office to which this Article applies and his other terms of service shall not be altered to his disadvantage after his appointment, and, for the purposes of this paragraph, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.

(4) This Article applies to the office of Governor-General, Justice of the Supreme Court, Justice of Appeal, Auditor-General and member of any Commission established by Chapter VIII of this Constitution or of the Public Service Board of Appeal.

**136. Establishment of office and functions of Auditor-General.** (1) There shall be an Auditor-General whose office shall be a public office.

(2) The Auditor-General shall be appointed by the Governor-General, by instrument under the Public Seal, acting on the recommendation of the Public Service Commission made after the Commission has consulted the Prime Minister.

(3) The accounts of the Supreme Court, the Senate, the House of Assembly, all departments and offices of the Government (but excluding the Department of the Auditor-General), the Public Service Commission, the Judicial and Legal Service Commission, the Police Service Commission and all Magistrates' Court shall, at least once in every year, be audited and reported on by the Auditor-General who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts.

(4) The Auditor-General shall submit his reports made under paragraph (3) of this Article without undue delay to the Speaker (or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker) who shall cause them to be laid before the House of Assembly without undue delay.

(5) In the exercise of this functions under the provisions of paragraphs (3) and (4) of this Article, the Auditor-general shall not be subject to the direction or control of any other person or authority.

(6) The accounts of the department of the Auditor-General shall be audited and reported on by the Minister of Finance and the provisions of paragraphs (3) and (4) of this Article shall apply in relation to the exercise by that Minister of those function as they apply in relation to audits and reports made by the Auditor-General.

(7) Nothing in this Article shall prevent the performance by the Auditor-General of-

a) such other functions in relation to the accounts of the Government and that accounts of other public authorities and other bodies administering public funds in The Bahamas as may be prescribed by or under any law for the time being in force in The Bahamas; or

b) such other functions in relation to the supervision and control of expenditure form public funds in The Bahamas as may be so prescribed.

(8) The Auditor-General may be removed from office only for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehavior, and shall not be so removed except in accordance with the provisions of paragraph (9) of this Article.

(9) The Auditor-General shall be removed from office by the Governor-general if the question of his removal from office has been referred to a tribunal appointed under paragraph (10) of this Article and the tribunal has recommended to the Governor-general that he ought to be removed from office for inability as aforesaid or for misbehavior.

(10) If the Prime Minister represents to the Governor-general that the question of removing the Auditor-General from office for inability as aforesaid or for misbehavior ought to be investigated, then-

a) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, from among persons who hold or have held or are eligible to hold high judicial office; and

b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-general and recommend to the Governor-General whether the Auditor-General ought to be removed from office for inability as aforesaid or for misbehavior.

(11) If the question of removing the Auditor-general from office has been referred to a tribunal under paragraph (9) of this Article, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Auditor-general from performing the functions of this office and any such suspension may at any time be revoked by the Governor-general, and shall in any case cease to have effect if the tribunal recommends to the Governor-general that the Auditor-General should not be removed from office.

## CHAPTER X INTERPRETATION

**137. Interpretation.** (1) In this Constitution, unless it is otherwise provided or required by the context-

“Act” or “Act of Parliament” means any law made by Parliament;

“The Bahamas” means The Commonwealth of The Bahamas;

“the Commonwealth” means, save as otherwise prescribed, The Bahamas, the United Kingdom, Canada, Australia, New Zealand, India, Sri Lanka, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Malta, Zambia, The Gambia, Singapore, Guyana, Lesotho, Botswana, Barbados, Mauritius, Swaziland, Tonga, Fiji, Western Samoa, Nauru, Bangladesh and any dependency of any such country;

“election” means an election of a member or members of the House of Assembly;

“the Gazette” means the Official Gazette of The Bahamas;

“House” means either the Senate or the House of Assembly or both, as the context may require;

“high judicial office” means the office of judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

“law” includes any instrument having the force of law and any un written rule of law, and “lawful” and “lawfully” shall be construed accordingly;

“Minister” includes a temporary Minister appointed under Article 76 of this Constitution, except in relation to Articles 72, 73, 76 and 86 of this Constitution;

“Minister of Finance” means the Minister, by whatever title styled, responsible for Government finance;

“oath” includes affirmation;

“Parliament” means the Parliament of The Bahamas;

“the Police Force” means the Police Force established in and for The Bahamas and maintained under the provisions of the Police Act 1965(a) or any law amending or replacing that Act;

“prescribed” means provided by or under an Act of Parliament;

“public office” means, subject to the provisions of paragraph (6) of this Article and Article 127 of this Constitution, any office of emolument in the public service;

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“the public service” means, subject to the provisions of Article 127 of this Constitution, the service of the Crown in a civil capacity in respect of the Government of The Bahamas;

“session” means, in relation to a House, the sitting of that House commencing when it first meets after this Constitution comes into operation or after any general election or prorogation of Parliament and terminating when Parliament is prorogued or is dissolved without having been prorogued;

“sitting” means, in relation to a House, a period during which that House is sitting continuously without adjournment and includes any period during which the House is in committee.

(2) For the purposes of this Constitution the territory of The Bahamas shall comprise all the areas that were comprised therein immediately before 10th July 1973 together with such other areas as Parliament may declare to form part thereof.

(3) For the purposes of Articles 42, 43, 48 and 49 of this Constitution-

a) “government contract” means, subject to such exception as Parliament may prescribe, any contract made with the Government of The Bahamas or with a department of that Government or with an officer of that Government contracting as such; and

b) a person shall be deemed to be interested in a government contract if-

i) subject to such exceptions as Parliament may prescribe, he is a party to such a contract or a partner in a firm or director or manager of a company which is a party to such a contract; or

ii) he is otherwise interested in such a contract in such manner as Parliament may prescribe.

(4) In this Constitution, unless it is otherwise provided or required by the context-

a) any reference to the date on which this Constitution comes into operation shall be construed as a reference to the appointed day referred to in section 1(2) of the Order in Council to which this Constitution is scheduled;

b) any reference to a law (which term shall, without prejudice to the definition in paragraph (1) of this Article, include an Act) shall be construed as including a reference to a law made at any time before this Constitution comes into operation;

c) any reference to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to act in that office during any period during which it is vacant or the holder thereof is unable (whether by reason of absence or of infirmity of body or mind or any other cause) to perform the functions of that office;

d) any reference to the holder of an office by a term designating or describing his office shall be construed as including a reference to any person for the time being acting in that office or, to the extent of his authority, otherwise authorized to perform the functions of that office.



(5) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in or otherwise to perform the functions of an office if the holder thereof is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of the office.

(6) For the purpose of this Constitution, a person shall not be considered to hold a public office by reason only that he is in receipt of a pension or other like allowance in respect of public service.

(7) References in this Constitution to the power to remove a public officer from his office shall, subject to the provisions of this Constitution, be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service.

(8) Save as otherwise provided in this Constitution, any provisions of this Constitution that vests in any person or authority power to remove any public officer (other than a public officer mentioned in paragraph(9) of this Article) from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

(9) If any circumstances arise that, under the provisions of this Constitution, require the Governor to remove a Justice of the Supreme Court or a Justice of Appeal or the Commissioner of Police, the Deputy Commissioner of Police or the Auditor-General from office for inability to discharge the functions of his office, such removal may be carried out either by dismissing that officer or by requiring him to retire.

(10) Where any power is conferred by this Constitution to make any proclamation, order, rules or regulations or to give any direction, the power shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, order, rules, regulation or direction.

(11) Any person appointed to an office under any provisions in this Constitution may resign that office. Except as otherwise provided in this Constitution such resignation shall be made in writing to the person in whom under this Constitution the power is vested to make appointments to the office concerned.

(12) Where two or more persons are holding the same office by reason of an appointment made in pursuance of paragraph (4) of this Article, then-

a) for the purposes of any function conferred upon the holder on that office; and

b) for the purposes of any reference in this Constitution to the absence, illness or inability to perform the functions of his office of the holder of that office,

the person last appointed to the office shall be deemed to be the sole holder of the office.

(13) The Interpretation Act of The Bahamas(a) and all amendments thereto as in force on 10th July 1973 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of The Bahamas.

# **Barbados**

## **THE CONSTITUTION OF BARBADOS (1966)**

### **PREAMBLE**

Whereas the love of free institutions and of independence has always strongly characterized the inhabitants of Barbados:

And whereas the Governor and the said inhabitants settled a Parliament in the year 1639:

And whereas as early as 18th February 1651 these inhabitants, in their determination to safeguard the freedom, safety and well being of the Island, declared, through their Governor, Lords of the Council and members of the Assembly, their independence of the Commonwealth of England:

And whereas the rights and privileges of the said inhabitants were confirmed by articles of agreement, commonly known as the Charter of Barbados, had, made and concluded on 11th January 1652 by and between the Commissioners of the Right Honorable the Lord Willoughby of Parham, Governor, of the one part, and the Commissioners on the behalf of the Commonwealth of England,

of the other part, in order to the rendition to the Commonwealth of England of the said Island of Barbados:

And whereas with the broadening down of freedom the people of Barbados have ever since then not only successfully resisted any attempt to impugn or diminish those rights and privileges so confirmed, but have consistently enlarged and extended them:

Now, therefore, the people of Barbados-

(a) proclaim that they are a sovereign nation founded upon principles that acknowledge the supremacy of God, the dignity of the human person, their unshakable faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions;

(b) affirm their belief that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

(c) declare their intention to establish and maintain a society in which all persons may, to the full extent of their capacity, play a due part in the institutions of the national life;

(d) resolve that the operation of the economic system shall promote the general welfare by the equitable distribution of the material resources of the community, by the human conditions under which all men shall labour and by the undeviating recognition of ability, integrity and merit;

(e) desire that the following provisions shall have effect as the constitution of Barbados:

## CHAPTER I THE CONSTITUTION

**1. Constitution is supreme law.** This Constitution is the supreme law of Barbados and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitutions, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

## CHAPTER II CITIZENSHIP

**2. Persons who become citizens on 30th November 1966.** (1) Every person who, having been born in Barbados, is on 29th November 1966 a citizen of the United Kingdom and Colonies shall become a citizen of Barbados on 30th November 1966.

(2) Every person who, having been born outside Barbados, is on 29th November 1966 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of Barbados in accordance with the provisions of subsection (1), become a citizen of Barbados on 30th November 1966.

(3) Any person who on 29th November 1966 is a citizen of the United Kingdom and Colonies -

(a) having become such a citizen under the British Nationality Act 1948(a) by virtue of his having been naturalized in Barbados as a British subject before that Act came into force; or

(b) having become such a citizen by virtue of his having been naturalized or registered in Barbados under that Act.

shall become a citizen of Barbados on 30th November 1966

**3. Person entitled to be registered as citizens.** (1) Any woman who on 29th November 1966 is or has been married to a person -

(a) who becomes a citizen of Barbados by virtue of section 2; or

(b) who, having died before 30th November 1966, would but for his death have become a citizen of Barbados by virtue of that section.

shall be entitled, upon making application, and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Barbados.

(2) Any person who is a Commonwealth citizen (otherwise than by virtue of being a citizen of Barbados) and who -

(a) has been ordinarily resident in Barbados continuously for a period of seven years or more at any time before 30th November 1966; and

(b) has not, since such period of residence in Barbados and before that date, been ordinarily resident outside Barbados continuously for a period of seven years or more.

shall be entitled, upon making application, to be registered as a citizen of Barbados:

Provided that the right to be registered as a citizen of Barbados under this subsection shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(3) Any woman who on 29th November 1966 is or has been married to a person who subsequently becomes a citizen of Barbados by registration under subsection (2) shall be entitled, upon making application, and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Barbados:

Provided that the right to be registered as a citizen of Barbados under this subsection shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(4) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application:

Provided that such an application may not be made by a person who has not attained the age of twenty one years and is not a woman who is or has been married but shall be made on behalf of that person by a parent or guardian of that person.

#### **4. Persons born in Barbados after 29th November 1966.**

Every person born in Barbados after 29th November 1966 shall become a citizen of Barbados at the date of his birth:

Provided that a person shall not become a citizen of Barbados by virtue of this section if at the time of his birth -

(a) his father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign state accredited to Her Majesty in right of Her Government in Barbados and neither of his parents is a citizen of Barbados; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

**5. Persons born outside Barbados after 29th November 1966.** A person born outside Barbados after 29th November 1966 shall become a citizen of Barbados at the date of his birth if at that date his father is a citizen of Barbados otherwise than by virtue of this section or section 2(2).

**6. Marriage to citizen of Barbados.** Any woman who, after 29th November 1966, marries a person who is or becomes a citizen of Barbados shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Barbados.

**7. Renunciation of citizenship.** Any citizen of Barbados who has attained the age of twenty-one years and who -

(a) is also a citizen or national of any other country; or

(b) intends to become a citizen or national of any other country, shall be entitled to renounce his citizenship of Barbados by a declaration made and registered in such manner as may be prescribed:

Provided that -

(a) in the case of a person who is not a citizen or national of any other country at the date of registration of his declaration of renunciation, if he does not become such a citizen or national within six months from the date of registration he shall be, and shall be deemed to have remained, a citizen of Barbados

notwithstanding the making and registration of his declaration of renunciation;  
and

(b) the right of any person to renounce his citizenship of Barbados during any period when Barbados is engaged in any war shall be subject to such exceptions or qualifications as any be prescribed in the interests of national security or public policy.

**8. Commonwealth citizens.** (1) Every person who under this Constitution or any Act of Parliament is a citizen of Barbados or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British nationality act 1948, continues to be a British subject under section 2 of that Act or is a British subject under the British Nationality Act 1965(a) shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, Zambia, the Gambia, Singapore, Guyana, Botswana, Lesotho and southern Rhodesia.

**9. Powers of Parliament.** Parliament may make provision -

(a) for the acquisition of citizenship of Barbados by persons who do not become citizens of Barbados by virtue of the provisions of this Chapter; or

(b) for depriving of his citizenship of Barbados any person who is a citizen of Barbados otherwise than by virtue of subsection (1) or (2) of section 2 or section 4 or section 5.

**10. Interpretation.** (1) In this chapter - “alien” means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;



“British protected person” means a person who is a British protected person for the purposes of the British Nationality Act 1948;

“prescribed” means prescribed by or under any Act of Parliament.

(2) Any reference in this Chapter to the father of a person shall, in relation to any person born out of wedlock other than a person legitimated before 30th November 1966, be construed as a reference to the mother of that person.

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the palace in which the ship or aircraft was registered or, as the case may be, in that country.

(4) any reference in this Chapter to the national status of the father of a person at the time of that person’s birth, shall, in relation to a person born after the death of the father, be construed as a reference to the national status of the father at the time of the father’s death; and where that death occurred before 30th November 1966 and the birth occurred after 29th November 1966 the national status that the father would have had if he had died on 30th November 1966 shall be deemed to be his national status at the time of his death.

### **CHAPTER III PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

**11. Fundamental rights and freedoms of the individual.** Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

(a) life, liberty and security of the person;

(b) protection for the privacy of his home and other property and from deprivation of property without compensation;

(c) the protection of the law; and

(d) freedom of conscience, of expression and of assembly and association,

the following provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

**12. Protection of right to life.** (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offense under the law of Barbados of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as re permitted by law, of such force as is reasonably justifiable -

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in order lawfully to prevent the commission by that person of a criminal offense,

or if he dies as the result of a lawful act of war.

**13. Protection of right to personal liberty.** (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say -

(a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether established for Barbados or some other country, in respect of a criminal offense of which he has been convicted;

- (b) in execution of an order of the High Court or the Court of Appeal or such other court as may be prescribed by Parliament punishing him for contempt of any such court or of another court or tribunal;
- (c) in execution of the order of a court made to secure the fulfillment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offense under the law of Barbados;
- (f) in the case of a person who has not attained the age of twenty-one years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Barbados, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Barbados or for the purpose of restricting that person while he is being conveyed through Barbados in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Barbados or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made or to such extent as may be reasonably justifiable for restraining

that person during any visit that he is permitted to make to any part of Barbados in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal adviser of his own choice, being a person entitled to practice in Barbados as a barrister or solicitor, and to hold private communication with him; and in the case of a person who has not attained the age of sixteen years he shall also be afforded a reasonable opportunity for communication with his parent or guardian.

(3) Any person who is arrested or detained -

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed or being about to commit a criminal offense. and who is not released, shall be brought before a court as soon as is reasonably practicable; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offense is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the foregoing provisions of this section to the extent that the law in question authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(6) Where a person is detained by virtue of such a law as is referred to in subsection (5), the following provisions shall apply -

(a) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, of the grounds upon which he is detained;

(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorized;

(c) he may from time to time request that his case be reviewed under paragraph (d) but, where he has made such a request, no subsequent request shall be made before the expiration of three months from the making of the previous request;

(d) where a request is made under paragraph (c), the case shall, within one month of the making of the request, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practice in Barbados as barristers or solicitors; and

(e) he shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal adviser of his own choice, being a person entitled to practice as aforesaid, and he and any such legal adviser shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case.

(7) On any review by a tribunal in pursuance of subsection (6) of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(8) When any person is detained by virtue of such a law as is referred to in subsection (5) the Prime Minister or a Minister authorized by him shall, not

more than thirty days after the commencement of the detention and thereafter not more than thirty days after the making of the previous report, make a report to each House stating the number of persons detained as aforesaid and the number of cases in which the authority that ordered the detention has not acted in accordance with the recommendations of a tribunal appointed in pursuance of subsection (6):

Provided that in reckoning any period of thirty days for the purposes of this subsection no account shall be taken of any period during which Parliament stands prorogued or dissolved.

**14. Protection from slavery and forced labour.** (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression “forced labour” does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the palace at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service; or

(d) any labour required during any period when Barbados is at war or in the event of any hurricane, earthquake, flood, fire or other like calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that calamity, for the purpose of dealing with that situation.

**15. Protection from inhuman treatment.** (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any punishment or the administration of any treatment that was lawful in Barbados immediately before 30th November 1966.

**16. Protection from deprivation of property.** (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law and where provision applying to that acquisition or taking of possession is made by a written law -

(a) prescribing the principles on which and the manner in which compensation therefor is to be determined and given; and

(b) giving to any person claiming such compensation a right or access, either directly or by way of appeal, for the determination of his interest in or right over the property and the amount of compensation, to the High Court.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section -

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property -

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law of forfeiture in consequence of a breach of the law;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge, contract, grant, permission or license;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of -

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent person or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any property in the interest of safeguarding the interests



of others or the protection of tenants, licensees or others having rights in or over such property.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision of the compulsory taking possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established directly by law for public purposes in which no monies have been invested other than monies provided by parliament or by any Legislature established for the former Colony of Barbados.

**17. Protection against arbitrary search or entry.** (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required -

(a) in the interests of defence, public safety, public order, public morality, public health, town or country planning the development or utilization of mineral resources, or the development or utilization of any other property in such manner as to promote the public benefit;

(b) for the purposes of protecting the rights or freedoms of other persons;

(c) for the purposes of authorizing an officer or agent of the Government, or of a local government authority or of a body corporate established directly by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purposes of any tax, duty, rate, cess or other impost or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be;

(d) for the purposes of authorizing the entry upon any premises in pursuance of an order of a court for the purpose of enforcing the judgment or order of a court in any proceedings; or

(e) for the purpose of authorizing the entry upon any premises for the purpose of preventing or detecting criminal offenses.

**18. Provisions to secure protection of law.** (1) If any person is charged with a criminal offense, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offense -

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offense charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge.

and, except with his consent, the trial shall not take place in his absence unless he so conducts himself as to render the proceedings in his presence impracticable and the court has ordered the trial to proceed in his absence.

(3) When a person is tried for any criminal offense, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offense on account of any act or omission that did not, at the time it took place, constitute such an offense, and no penalty shall be imposed for any criminal offense that is more severe in degree or nature than the most severe penalty that might have been imposed for that offense at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offense and either convicted or acquitted shall again be tried for that offense or for any other criminal offense, save upon the order of a superior court in the course of appeal proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offense if he shows that he has been granted a pardon for that offense.

(7) No person who is tried for a criminal offense shall be compelled to give evidence at the trial.

(8) Any court or other tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such court or other tribunal, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other tribunal, including the announcement of the decision of the court or other tribunal, shall be held in public.

(10) Nothing in subsection (9) shall prevent the court or other tribunal from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other tribunal -

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of decency, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required so to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be in consistence with or in contravention of -

(a) subsection (2)(a) to the extent that the law in question imposes upon any person charged with a criminal offense the burden of proving particular facts;

(b) subsection (2)(e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be aid their expenses out of public funds; or

(c) subsection (5) to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offense notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) Nothing contained in subsection (2)(d) shall be construed as entitling a person to legal representation at public expense.

**19. Protection of freedom of conscience.** (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community whether or not that community is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) Except with his own consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his guardian), no person attending any place of education shall be enquired to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion which is not his own.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) which is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited of members of any other religion; or

(b) with respect to standards or qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

**20. Protection of freedom of expression.**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interferences and freedom from interference with his correspondence or other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the administration or technical operation of telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or

(c) that imposes restrictions upon public officers or members of a disciplined force.

**21. Protection of freedom of assembly and association.**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interest of defence, public safety, public order, public morality or public health; or

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) that imposes restrictions upon public officers or members of a disciplined force.

**22. Protection of freedom of movement.** (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Barbados, the right to reside in any part of Barbados, the right to enter Barbados, the right to leave Barbados and immunity from expulsion from Barbados.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistency with or in contravention of this section to the extent that the law in question makes provision -

(a) for the imposition of restrictions on the movement or residence within Barbados of any person or on any person's right to leave Barbados that are reasonably required in the interests of defence, public safety or public order;

(b) for the imposition of restrictions on the movement or residence within Barbados or on the right to leave Barbados of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health;

(c) for the imposition of restrictions on the movement or residence within Barbados of any person who is not a citizen thereof or the exclusion or expulsion from Barbados of any such person;

(d) for the imposition of restrictions on the acquisition or use of land or other property in Barbados;

(e) for the imposition of restrictions, by order of a court, on the movement or residence within Barbados of any person or on any person's right to leave Barbados either in consequence of this having been found guilty of a criminal offense under the law of Barbados or for the purpose of ensuring that he appears before a court at a later date for trial for such a criminal offense or for proceedings preliminary to trial or for preceding relating to his extradition or lawful removal from Barbados;

(f) for the imposition of restrictions upon the movement or residence within Barbados or on the right to leave Barbados of public officers or members of a disciplined force;

(g) for the removal of persons from Barbados -

(i) to be tried or punished in some other country for a criminal offense under the law of that country;

(ii) to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offense under the law of Barbados of which he has been convicted;

(iii) to be detained in an institution in some other country for the purpose of giving effect to the order of a court made in pursuance of a law of Barbados relating to the treatment of offenders under a specified age;  
or

(iv) to be detained for care or treatment in a hospital or other institution in pursuance of a law of Barbados relating to persons suffering from defect or disease of the mind; or



(h) for the imposition of restrictions on the right of any person to leave Barbados that are reasonably required in order to secure the fulfillment of any obligations imposed on that person by law.

(4) Where a person's freedom of movement is restricted by virtue of such a provision as is referred to in subsection (3)(a), the following provisions shall apply -

(a) he shall, as soon as reasonably practicable and in any case not more than five days after the Commencement of the restriction, be furnished with a statement in writing, in a language that he understands, of the grounds upon which the restriction has been imposed;

(b) not more than fourteen days after the commencement of the restriction, a notification shall be published in the Gazette stating that his freedom of movement has been restricted and giving particulars of the provision of law under which the restriction is authorized;

(c) he may from time to time request that his case be reviewed under paragraph (d) but, where he has made such a request, no subsequent request shall be made before the expiration of three months from the making of the previous request;

(d) where a request is made under paragraph (c), the case shall, within one month of the making of the request, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practice in Barbados as barristers or solicitors; and

(e) he shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal adviser of his own choice, being a person entitled to practice as aforesaid, and he and any such legal adviser shall be parted to make written or oral representations or both to the tribunal appointed for the review of his case.

(5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted the tribunal may

make recommendations concerning the necessity of expediency of continuing that restriction to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority by whom it was ordered, but, unless, it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

### **23. Protection from discrimination on ground of race, etc.**

(1) Subject to the provisions of this section

(a) no law shall make any provision that is discriminatory either of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this section the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.

(3) Subsection (1)(a) shall not apply to any law so far as that law makes provision -

(a) with respect to persons who are not citizens of Barbados;

(b) with respect to adoption, marriage, divorce .....dissolutions of property on death or other matters of personal law;

(c) whereby person of any such description as is mentioned in subsection (2) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable;

(d) for authorizing the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or

(e) for the imposition of taxation or appropriation of revenue by the Government or by any local government authority for local purposes.

(4) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1)(a) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinion, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, or any office in the service of a local government authority or of a body corporate established by any law for public purposes.

(5) Subsection (1)(b) shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (3) or (4).

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (2) may be subjected to any restriction on the rights and freedoms guaranteed by sections 17, 19, 20, 21 and 22, being such a restriction as is authorized by subsection (2) of section 17, subsection (6) of section 19, subsection (2) of section 20, subsection (2) of section 21, or subsection (3) of section 22, as the case may be.

(7) Subsection (1)(b) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by this Constitution or any other law.

**24. Enforcement of protective provisions.**

(1) Subject to the provisions of subsection (6), if any person alleges that any of the provisions of sections 12 to 23, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other

person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (2); and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3).

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 12 to 23:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of sections 12 to 23, the person presiding in that court shall refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court pursuant of subsection (3), the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under this Constitution to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary

or desirable for the purpose of enabling the High Court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Parliament may make provision with respect to the practice and procedure

-

(a) of the High Court in relation to the jurisdiction and powers conferred upon it by or under this section;

(b) of the High Court and the Court of Appeal in relation to appeals to the Court of Appeal from decisions of the High Court in the exercise of such jurisdiction; and

(c) of subordinate courts in relation to references to the High Court under subsection (3);

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought; and, subject to any provision so made, provision may be made with respect to the matters aforesaid by rules of court.

(7) In this section “the Court of Appeal” has the same meaning as it has in section 87.

## **25. Time of emergency.**

(1) In this Chapter “period of public emergency” means any period during which -

(a) Barbados is engaged in any war; or

(b) there is in force a proclamation by the Governor General declaring that a state of public emergency exists; or

(c) there is in force a resolution of each House supported by the votes of not less than two thirds of all the members of that House declaring that democratic institutions in Barbados are threatened by subversion.

(2) A proclamation made by the Governor General shall not be effective for the purposes of subsection (1) unless it is declared therein that the Governor General is satisfied -

(a) that a public emergency has arisen as a result of the imminence of a state of war between Barbados and another State or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity, whether similar to the foregoing or not; or

(b) that action has been taken or is immediately threatened by any person of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

(3) A proclamation made by the Governor General for the purposes of this section shall, unless previously revoked, remain in force for one month or for such longer period, not exceeding six months, as the House of Assembly may determine by a resolution supported by the votes of a majority of all the members of that House;

Provided that any such proclamation may be extended from time to time for a further period not exceeding six months by resolution passed in like manner and may be revoked at any time by resolution supported by the votes of a majority of all the members of the House of Assembly.

(4) A resolution passed by a House for the purposes of subsection (1)(c) may be revoked at any time by a resolution of that House supported by the votes of a majority of all the members thereof.

**26. Saving of existing law.** (1) Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23 to the extent that the law in question -

(a) is a law (in this section referred to as “an existing law”) that was enacted or made before 30th November 1966 and has continued to be part of the law of Barbados at all times since that day;

(b) repeals and re-enacts an existing law without alteration; or

(c) alters an existing law and does not thereby render that law inconsistent with any provision of sections 12 to 23 in a manner in which, or to an extent to which, it was not previously so inconsistent.

(2) In subsection (1)(c) the reference to altering and existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it; and in subsection (1) “written law” includes any instrument having the force of law and in this subsection and subsection (1) references to the repeal and re-enactment of an existing law shall be construed accordingly.

**27. Interpretation.** (1) In this chapter -

“contravention”, in relation to any requirement, includes a failure to comply with that requirement;

“court” means any court of law having jurisdiction in Barbados other than a court established by a disciplinary law, and includes Her Majesty in Council and -

(a) in section 12, section 13, section 14, subsections (2), (3), (5), (8), (9) and (10) of section 18, section 22 and subsection (7) of section 23 includes, in relation to an offense against a disciplinary law, a court established by such a law; and

(b) in section 13, section 14 and subsection (7) of section 23 includes, in relation to an offense against a disciplinary law, any person or authority empowered to exercise jurisdiction in respect of that offense;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means -

(a) a naval, military or air force;

(b) a police force;

(c) a prison service; or

(d) a fire service;

“legal representative”, in relation to any court or other tribunal, means a person entitled to practice as a barrister or solicitor before such court or tribunal; and

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) References in sections 12, 13, 17 and 22 to a criminal offense shall be construed as including references to an offense against a disciplinary law, and such references in subsections (2) to (7) and (11)(a) of section 18 shall, in relation to proceedings before a court established by a disciplinary law, be similarly construed.

(3) In relation to any person who is a member of a disciplined force raised under the law of any country other than Barbados and lawfully present in Barbados, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23.

#### CHAPTER IV THE GOVERNOR GENERAL

**28. Establishment of office of Governor General.** There shall be a Governor General of Barbados who shall be appointed by Her Majesty and shall hold office during Her Majesty’s pleasure and who shall be Her Majesty’s representative in Barbados.

**29. Acting Governor General.** (1) Whenever the office of Governor General is vacant or the holder of the office is absent from Barbados or is for any other reason unable to perform the functions of his office, those functions shall be performed -



(a) by any person for the time being designated by Her Majesty in that behalf who is in Barbados and able to perform those functions; or

(b) at any time when there is no person in Barbados so designated and able to perform those functions, by the holder of the office of Chief Justice; or

(c) at any time referred to in paragraph (b) when the office of Chief Justice is vacant or the holder thereof is absent from Barbados or is for any other reason unable to perform those functions, by the President of the Senate.

(2) The holder of the office of Governor General or any person designated under paragraph (2) or by paragraph (b) of subsection (1) shall not, for the purposes of this section, be regarded as absent from Barbados or as unable to perform the functions of the office of Governor General at any time when there is a subsisting appointment of a deputy under section 30.

**30. Deputy to Governor General.** (1) Whenever the Governor General -

(a) has occasion to be absent from Barbados for a period which he has reason to believe will be of short duration; or

(b) is suffering from an illness that he has reason to believe will be of short duration,

he may, acting in accordance with the advice of the Prime Minister, by instrument under the Public Seal, appoint any person in Barbados to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor General as may be specified in that instrument.

(2) The power and authority of the Governor General shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and in the exercise of any function that is exercisable by he Governor General acting in his discretion or after consultation with any person or authority a deputy shall conform to and observe any instructions that the Governor General, acting in like manner, may address to him;

Provided that the question whether or not a deputy has conformed to observed any such instructions shall not be enquired into in any court.

(3) A person appointed as a deputy under this section shall that appointment for such period as may be specified in the instrument by which he is appointed and his appointment may be revoked at any time by the Governor General acting in accordance with the advice of the Prime Minister.

**31. Personal staff of Governor - General.** (1) Parliament may prescribe the offices that are to constitute the personal staff of the Governor - General, the salaries and allowances that are to be paid to the members of the staff and the other sums that are to be paid in respect of the expenditure attaching to the office of Governor - General.

(2) Any salaries or other sums prescribed under subsection (1) are hereby charged on and shall be paid out of the Consolidated Fund.

(3) Subject to the provisions of subsection (4), power to make appointments to the offices for the time being prescribed under subsection (1) as offices that are to constitute the personal staff of the Governor - General, and to remove and to exercise disciplinary control over persons holding or acting in any such office, is hereby vested in the Governor - General acting in his discretion.

(4) The Governor - General, acting in his discretion, may appoint to any of the offices prescribed under subsection (1) such public officers as he may select from a list submitted by the Public Service Commission, but -

(a) the provisions of subsection (3) shall apply in relation to an officer so appointed as respects his service on the personal staff of the Governor - General but not as respects his service as a public officer;

(b) an officer so appointed shall not, during his continuance on the personal staff of the Governor - General, perform the functions of any public office; and

(c) an officer so appointed may at any time be appointed by the Governor - General, if the Public Service Commission so recommend to assume or resume

the functions of a public office and he shall thereupon vacate his office on the personal staff of the Governor - General, but the Governor - General may, in his discretion, decline to release the officer for that appointment.

(5) All offices prescribed under subsection (1) as offices that are to constitute the personal staff of the Governor - General shall, for the purposes of Chapter Viii, be deemed to be public offices.

**32. Exercise of Governor - General's functions.** (1) The Governor - General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet in the exercise of his functions other than -

(a) any function which is expressed (in whatever terms) to be exercisable by him on or in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, any person or authority other than the Cabinet; and

(b) any function which is expressed (in whatever terms) to be exercisable by him in his discretion.

(2) Subsection (1) shall not apply to the functions conferred upon the Governor - General by the following provisions of this Constitution, that it to say -

(a) section 66(2) (which requires the Governor - General to revoke the appointment of the Prime Minister in certain circumstances);

(b) the proviso to section 61(2) (which requires the Governor - General to dissolve Parliament in certain circumstances); and

(c) section 84(4) (which requires the Governor - General to remove a Judge from office in certain circumstances).

(3) Where the Governor - General is directed to exercise any function on the recommendation of any person or authority, he shall exercise that function in accordance with such recommendation:

Provided that -

(a) before he acts in accordance therewith, he may, in his discretion, once refer that recommendation back for reconsideration by the person or authority concerned; and

(b) if that person or authority, having reconsidered the original recommendation under paragraph (a), substitutes therefor a recommendation under paragraph (a), substitutes therefor a different recommendation, the provisions of this subsection shall apply to that different recommendation as they apply to the original recommendation.

(4) Where the Governor - General is directed to exercise any function after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the Governor - General is directed to exercise any function in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court.

(6) Where the Governor - General is directed to exercise any function on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, the following steps shall be taken: -

(a) the Prime Minister shall first consult the Leader of the Opposition and thereafter tender his recommendation to the Governor - General;

(b) the Governor - General shall then inform the Leader of the Opposition of that recommendation and if the Leader of the Opposition concurs therein the Governor General shall act in accordance with the recommendation;

(c) if the Leader of the Opposition does not concur in the recommendation the Governor General shall so inform the Primer Minister and refer the recommendation back to him:

(d) the Prime Minister shall then advise the Governor General and the Governor General shall act in accordance with that advice.

(7) Any reference in this Constitution to the functions of the Governor General shall be construed as a reference to his powers and duties in the exercise of the executive authority of Barbados and to any other powers and duties conferred or imposed on him as Governor General by or under this Constitution or any other law.

**33. Public Seal.** The Governor General shall keep and use the Public Seal for sealing all things that shall pass the Public Seal.

**34. Oaths to be taken by Governor General.** A person appointed to the office Governor - General or assuming the functions of that office under section 29 shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and an oath for the due execution of the office of Governor General in the form set out in the First Schedule, such oaths being administered by the Chief Justice or such other Judge as may be designated by the Chief Justice.

## CHAPTER V PARLIAMENT

### PART 1 COMPOSITION OF PARLIAMENT

**35. Establishment of Parliament.** There shall be a Parliament of Barbados which shall consist of Her Majesty, a Senate and a House of Assembly.

**36. Senate.** (1) The Senate shall consist of twenty-one persons who, being qualified for appointment as Senators in accordance with the provisions of this Constitution, have been so appointed in accordance with the provisions of this section.

(2) Twelve Senators shall be appointed by the Governor General, acting in accordance with the advice of the Prime Minister, by instrument under the Public Seal.

(3) Two Senators shall be appointed by the Governor General, acting in accordance with the advice of the Leader of the Opposition, by instrument under the Public Seal.

(4) Seven Senators shall be appointed by the Governor General, acting in his discretion, by instrument under the Public Seal, to represent religious, economic or social interests or such other interests as the Governor - General considers ought to be represented:

Provided that before appointing any person under this subsection the Governor General shall consult such persons as, in his discretion, he considers can speak for those interest and ought to be consulted.

**37. Qualifications for membership of Senate.** Subject to the provisions of section 38, any person who at the date of his appointment -

(a) is a Commonwealth citizen of the age of twenty one years or upwards; and

(b) has been ordinarily resident in Barbados for the immediately preceding twelve months,

shall be qualified to be appointed as a Senator.

**38. Disqualifications for membership of Senate.** (1) No person shall be qualified to be appointed as a Senator who -

(a) is a member of the House of Assembly;

(b) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State;

(c) holds or is acting in the office of a Judge, the Director of Public Prosecutions or the Auditor - General;

(d) is under sentence of death imposed by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name

called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Barbados;

(f) has been adjudged or otherwise declared bankrupt under any law in force in Barbados and has not been discharged; or

(g) is disqualified for membership of the House of Assembly by or under any law in force in Barbados by reason of his having been convicted or reported guilty of any corrupt or illegal practice at elections.

(2) Without prejudice to the provisions of subsection (1)(c), Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to be appointed as a Senator if -

(i) he holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment;

(ii) he belongs to any armed force of Barbados or to any class of person that is comprised in any such force; or

(iii) he belongs to any police force of Barbados or to any class of person that is comprised in any such force.

(3) For the purposes of subsection (1)(d) -

(a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any one of those sentences exceeds that term they shall be regarded as one sentence; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

**39. Tenure of seats of Senators.** (1) The seat of a Senator shall become vacant -

- (a) upon the next dissolution of Parliament after he has been appointed;
- (b) if, with his consent, he is nominated as a candidate for election to the House of Assembly;
- (c) if he is absent from Barbados for a period exceeding forty days at any time when the Senate is sitting, without the leave of the President given in accordance with the provisions of subsection (2);
- (d) if he ceases to be a Commonwealth citizen;
- (e) subject to the provision of subsection (3), if any circumstances arise that, if he were not a Senator, would cause him to be disqualified for appointment as such by virtue of paragraphs (b) to (g) of section 38(1) or of any law enacted in pursuance of section 38(2);
- (f) in the case of a Senator who was appointed as such in accordance with the advice of the Prime Minister or in accordance with the advice of the Leader of the Opposition, if the Governor-General, acting in accordance with the advice of the Prime Minister or in accordance with the advice of the Leader of the Opposition, as the case may be, by instrument under the Public Seal, declares the seat of that Senator to be vacant.

(2) The President of the Senate may grant leave to any Senator to be absent from Barbados for any period not exceeding six months at any one time.

(3) (a) If the circumstances such as are referred to in subsection (1)(e) arise because a Senator is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of a corrupt or illegal practice at elections and if it is open to the Senator to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a Senator but, subject to paragraph (b), he shall not vacate his seat until the expiration of a period of thirty days thereafter:



Provided that the President of the Senate may, at the request of the said Senator, from time to time extend that period for further periods of thirty days to enable the Senator to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the Senate.

(b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the Senator, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Senator to appeal, he shall forthwith vacate his seat.

(c) If at any time before the Senator vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) and he may resume the performance of his functions as a Senator.

**40. President and Deputy President of Senate.** (1) When the Senate first meets after any dissolution of Parliament and before it proceeds to the despatch of any other business, it shall elect a Senator, not being a Minister or Parliamentary Secretary, to be President of the Senate; and whenever the office of President becomes vacant for any reason other than a dissolution of Parliament, the Senate shall, not later than its second sitting after the vacancy has arisen, elect another Senator to fill that office.

(2) When the Senate first meets after any dissolution of Parliament, it shall, as soon as practicable, elect a Senator, not being a Minister or Parliamentary Secretary, to be Deputy President of the Senate; and whenever the office of Deputy President becomes vacant for any reason other than a dissolution of Parliament, the Senate shall, as soon as convenient, elect another Senator to fill that office.

(3) A person shall vacate the office of President or Deputy President of the Senate -

(a) if he announces the resignation of his office to the Senate or if, by writing under his hand addressed, in the case of the President, to the Clerk of the

Senate or, in the case of the Deputy President, to the President (or, if the office of President is vacant or the President is absent from Barbados, to the Clerk), he resigns that office;

(b) if he ceases to be a Senator:

Provided that the President shall not vacate his office by reason only that he has ceased to be a Senator on a dissolution of Parliament, until the Senate first meets after such dissolution;

(c) if he is appointed to be a Minister or Parliamentary Secretary;

(d) if, by virtue of the provisions of section 39(3), he is required to cease to perform his functions as a Senator; or

(e) in the case of the Deputy President, if he is elected to be President.

**41. House of Assembly.** (1) The House of Assembly shall consist of twenty four members or such greater number of members as Parliament may prescribe.

(2) The members of the House (who shall be known as “Members of Parliament”) shall be persons who, being qualified for election as such in accordance with the provisions of this Constitution, have been so elected in the manner provided by any law in force in Barbados.

**42. Electoral law.** (1) Any law providing for the election of members of the House of Assembly shall -

(a) contain provisions for the division of Barbados into constituencies; and

(b) contain provisions designed to ensure that so far as is practicable any person entitled to vote at an election of members of the House.

(c) contain provisions relating to the conduct of elections of members of the House of Assembly, including provisions relating to the identification of electors, designed to ensure that so far as is practicable no person shall vote at an election of a member of the House of Assembly -

- (i) who is not entitled to vote; or
- (ii) when he is not entitled to vote; or
- (iii) where he is not entitled to vote.

(2) No election of a member of the House of Assembly shall be called in question on the ground that the law under which that election was conducted was inconsistent with this section.

**43. Qualifications for membership of the Assembly.** Subject to the provisions of section 44, any person who -

- (a) is a Commonwealth citizen of the age of twenty one years or upwards; and
- (b) has such connection with Barbados by residence therein as may be prescribed by Parliament,

shall be qualified to be elected as a member of the House of Assembly.

**44. Disqualifications for membership of the Assembly.** (1) No person shall be qualified to be elected as a member of the House of Assembly who -

- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State;
- (b) holds or is acting in the office of a Judge, the Director of Public Prosecutions or the Auditor General;
- (c) is a clerk in holy orders or other minister of religion;
- (d) is under sentence of death imposed by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a

court, or is under such a sentence of imprisonment the execution of which has been suspended;

(e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Barbados;

(f) has been adjudged or otherwise declared bankrupt under any law in force in Barbados and has not been discharged;

(g) is disqualified for membership of the House of Assembly by or under any law in force in Barbados by reason of his having been convicted or reported guilty of any corrupt or illegal practice at elections;

(h) is disqualified for such membership by or under any such law by reason of his having been convicted of making a false declaration of qualification for election;

(i) is disqualified for such membership by or under any such law on any ground not mentioned in the foregoing provisions of this subsection, being a ground for disqualification for membership of the the House of Assembly by or under any law, other than the Representation of the People Act 1957(a), in force in Barbados immediately before 30th November 1966.

(2) Without prejudice to the provisions of subsection (1)(b) and (c), Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to be elected as a member of the House of Assembly if -

(a) he holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment;

(b) he belongs to any armed force of Barbados or to any class of person that is comprised in any such force; or

(c) he belongs to any police force of Barbados or to any class of person that is comprised in any such force.

(3) For the purposes of subsection (1)(d)

(a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any of those sentences exceeds that term they shall be regarded as one sentence; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

**45. Tenure of seats of members of Assembly.** (1) The seat of a member of the House of Assembly shall become vacant -

(a) upon the next dissolution of Parliament after he has been appointed;

(b) if he resigns it in such manner as may be provided by any law in force in Barbados or, subject to any such law, by the Standing Orders of the House;

(c) if he is absent from the sittings of the House of Assembly for such period and in such circumstances as may be provided by any law in force in Barbados or, subject to any such law, by the Standing Orders of the House;

(d) if he ceases to be a Commonwealth citizen;

(e) if he contravenes the provisions of section 59 (relating to the taking of the oath of allegiance) or any provision requiring him to make a declaration of qualification for election before taking part in the proceedings of the House of Assembly contained in any law in force in Barbados;

(f) subject to the provisions of subsection (2), if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election as such by virtue of section 44(1) or any law enacted in pursuance of section 44(2).

(2)(a) If circumstances such as are referred to in subsection (1)(f) arise because a member is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of a corrupt

or illegal practice at elections or of making a false declaration of qualification and if it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member but, subject to paragraph (b), he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House of Assembly.

(b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(c) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) and he may resume the performance of his functions as a member.

#### **46. Determination of questions of membership of Senate and Assembly.**

(1) Any question whether -

(a) any person has been validly appointed as a Senator; or

(b) any person has vacated his seat as a Senator or is required under the provisions of paragraph (a) of section 39(3) to cease to perform his functions as a Senator,

shall be determined by the High Court, whose decision shall be final.

(2) Any question whether -

(a) any person has been validly elected as a member of the House of assembly;  
or

(b) any person has vacated his seat as such a member or is required under the provisions of paragraph (a) of section 45(2) to cease to perform his functions as such a member,

shall be determined by such authority or authorities as may be prescribed by any law in force in Barbados.

**47. Filling of Casual Vacancies in Senate and Assembly.** (1) Whenever any person vacates his seat as a Senator for any reason other than a dissolution of Parliament, the Governor General shall appoint a person to fill the vacancy under the same provisions of section 36 as the person whose seat has become vacant was appointed.

(2) Whenever any person vacates his seat as a member of the House of Assembly for any reason other than a dissolution of Parliament, the Governor General shall issue a writ for the election of a member to fill the vacancy returnable within ninety days from the occurrence of the vacancy.

## **PART 2 POWERS AND PROCEDURE OF PARLIAMENT**

**48. Power to make laws.** (1) Subject to the provision of this Constitution, Parliament may make laws for the peace, order and good government of Barbados.

(2) Without prejudice to the generality of subsection (1) and subject to the provisions of subsection (3), Parliament may by law determine the privileges, immunities and powers of the Senate and the House of Assembly and the members thereof.

(3) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Senate or the House of Assembly while it is sitting, or through the President or the Speaker, the Clerk or any other officer of either House.

**49. Alteration of this Constitution.** (1) Subject to the provisions of this section, Parliament may, by an Act of Parliament passed by both Houses, alter this Constitution.

(2) Subject to the provision of subsection (3), a Bill for an Act of Parliament under this section that alters any of the following provisions, that is to say -

(a) this section and section 1:

(b) Chapter II;

(c) Chapter III;

(d) section 28, 32, 35 to 39, 41, 42, 48, 60(2), 61, 62, 63 and 76 to 79 (other than subsection (7) of section 79);

(e) Chapter VII (other than section 83);

(f) Chapter VIII;

(g) Chapter IX;

(h) any provision of Chapter X in its application to any of the provisions specified in paragraphs (a) to (g),

shall not be passed in either House unless at the final voting thereon in the House it is supported by the votes of not less than two-thirds of all the members of the House.

(3) Subsection (2) shall not apply to a Bill in so far as it alters any of the provisions specified in that subsection for the purpose of giving effect to arrangements for the federation or union of Barbados with any other part of the Commonwealth or for the establishment of some other form of constitutional association between Barbados and any other part of the Commonwealth.

(4) A Bill for an Act of Parliament under this section to which subsection (2) does not apply shall not be passed in either House unless at the final voting



thereon in the House it is supported by the votes of a majority of all the members of the House.

(5) In this section -

(a) references to this Constitution or to any particular provision thereof include references to any other law in so far as that law alters the Constitution or, as the case may be, that provision; and

(b) references to altering this Constitution or any particular provision thereof include references -

(i) to repealing it, with or without re-enactment thereof or the making of different provision in lieu thereof;

(ii) to modifying it (whether by omitting, amending or overriding any of its provisions or inserting additional provisions in it or otherwise); and

(iii) to suspending its operation for any period or terminating any such suspension.

(6) No Act of Parliament shall be construed as altering this Constitution unless it is stated in the Act that it is an Act for that purpose.

(7) Nothing in subsection (2) shall be construed as including any of the provisions of the First Schedule or the Second Schedule among the provisions specified in that subsection.

**50. Regulation or procedure in Parliament.** (1) Subject to the provisions of this Constitution, each House may regulate its own procedure and for this purpose may make Standing Orders.

(2) Each House may act notwithstanding any vacancy in its membership and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

**51. Presiding in Senate.** (1) The President or, in his absence, the Deputy President or, if they are both absent, a member of the Senate (not being a Minister or a Parliamentary Secretary) elected by the Senate for the sitting shall preside at any sitting of the Senate.

(2) References in this section to circumstances in which the President or Deputy President is absent include references to circumstances in which the office of President or Deputy President is vacant.

**52. Quorum of Senate.** (1) If at any time during a sitting of the Senate objection is taken by a member that there is not a quorum present and, after such interval as may be prescribed by the Standing Orders of the Senate, the person presiding ascertains that there is still not a quorum present, he shall thereupon adjourn the Senate.

(2) For the purposes of this section a quorum of the Senate shall consist of eight Senators besides the person presiding.

(3) For the purposes of this section a quorum of the Senate shall consist of eight Senators besides the person presiding.

**53. Voting in Senate.** Save as is otherwise provided in this Constitution, all questions proposed for decision in the Senate shall be determined by a majority of the votes of the members thereof present and voting;

Provided that the person presiding shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote.

**54. Introduction of Bills, etc.** (1) Subject to the provision of this Constitution and of the Standing Orders of the Senate or the House of Assembly, as the case may be, any member of either House may introduce any Bill or propose any motion for debate in, or may present any petition to, that House, and the same shall be debated and disposed of according to the Standing Orders of that House.

(2) A Bill other than a Money Bill may be introduced in either House, the House of Assembly shall not -

(3) Except on the recommendation of the Cabinet signified by a Minister, the House of Assembly shall not -

(a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding, makes provision for imposing or increasing any tax, for imposing any charge on the Consolidated Fund or any other public fund or altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to Barbados; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision shall be made for any of the purposes aforesaid.

(4) The Senate shall not -

(a) proceed upon any Bill, other than a Bill sent from the House of Assembly, or any amendment to a Bill which, in the opinion of the person presiding, makes provision for imposing or increasing any tax, for imposing any charge on the Consolidated Fund or any other public fund or altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to Barbados; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision shall be made for any of the purposes aforesaid.

**55. Restriction on powers of Senate as to Money Bills.** (1) Subject to the provisions of this Constitution, if a Money Bill, having been passed by the House of Assembly and sent to the Senate at least one month before the end of the session, is not passed by the Senate without amendment within one month after it is sent to that House, the Bill shall, unless the House of Assembly otherwise resolves, be presented to the Governor General for his assent notwithstanding that the Senate has not consented to the Bill.

(2) There shall be endorsed on every Money Bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a Money Bill; and there shall be endorsed on any Money Bill that is presented to the Governor General

for assent in pursuance of subsection (1) the certificate of the Speaker signed by him that it is a Money Bill and that the provisions of that subsection have been complied with.

**56. Restrictions on powers of Senate as to Bills other than Money Bills.** (1) If any Bill other than a Money Bill is passed by the House of Assembly in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions, that Bill shall, on its rejection for the second time by the Senate, unless the House of Assembly otherwise resolves, be presented to the Governor General for assent notwithstanding that the Senate has not consented to the Bill:

Provided that the foregoing provisions of this subsection shall not have effect unless at least seven months have elapsed between the date on which the Bill is passed by the House of Assembly in the first session and the date on which it is passed by the House of Assembly in the second session.

(2) For the purposes of this section a Bill that is sent to the Senate from the House of Assembly in any session shall be deemed to be the same Bill as a former Bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former Bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former Bill or to represent any amendments which have been made by the Senate in the former Bill in the preceding session.

(3) The House of Assembly may, if it thinks fit, on the passage through the House of a Bill that is deemed to be the same Bill as a former Bill sent to the Senate in the preceding session, suggest any amendments in the Bill, and any such amendments shall be considered by the Senate, and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House of Assembly, but the exercise of this power by the House of Assembly shall not affect the operation of this section in the event of the rejection of the Bill in the Senate.

(4) There shall be inserted in any Bill that is present to the Governor General for assent in pursuance of this section any amendment that are certified by the Speaker to have been made in the Bill by the Senate in the second session and agreed to by the Assembly.

(5) There shall be endorsed on any Bill that is presented to the Governor General for assent in pursuance of this section the certificate of the Speaker signed by him that the provisions of this section have been complied with.

(6) The provisions of this section shall not apply a Bill which is required by section 49 to be passed by both Houses.

**57. Provisions relating to section 54, 55 and 56.** (1) In sections 54, 55 and 56 “Money Bill” means a public Bill which, in the opinion of the Speaker contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt or other financial purposes, of charges on the Consolidated Fund or any other public funds or on monies provided by Parliament or the variation or repeal of any such charges; the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant; the appropriation, receipt, custody, investment, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration administration or abolition of any sinking fund provided in connection with any such loan; or subordinate matters incidental to any of the matters aforesaid; and in this subsection the expressions “taxation”, “debt”, “public fund”, “public money” and “loan” do not include any taxation imposed, debt incurred, fund or money provided or loan raised by any local authority or body for local purposes.

(2) For the purposes of section 56, a Bill shall be deemed to be rejected by the Senate if -

(a) it is not passed by the Senate without amendment; or

(b) it is passed by the Senate with any amendment which is not agreed to by the House of Assembly.

(3) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred upon him by subsection (1) or by section 55 or 56, that function may be performed by the Deputy Speaker.

(4) Any certificate of the Speaker or Deputy Speaker given under section 55 or 56 shall be conclusive for all purposes and shall not be questioned in any court.

**58. Assent to Bills.** (1) A Bill shall not become law until the Governor General has assented thereto in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent.

(2) Subject to the provisions of sections 55 and 56, a Bill shall be present to the Governor General for assent if, and shall not be so presented unless, it has been passed by both Houses either without amendment or with such amendments only as are agreed to by both Houses.

(3) When a Bill is presented to the Governor General for assent he shall signify that he assents or that he withholds assent.

**59. Oath of allegiance.** No member of either House shall take part in the proceedings thereof unless he has taken the oath of allegiance in such manner as is prescribed by any law in force in Barbados.

### **PART 3**

#### **SUMMONING, PROROGATION AND DISSOLUTION**

**60. Session of Parliament.** (1) Each session of Parliament shall be held at such place and commence at such time as the Governor General may appoint.

(2) The time appointed for the commencement of any session of Parliament shall be such that a period of six months does not intervene between the end of one session and the first sitting of Parliament in the next session.

**61. Prorogation and dissolution of Parliament.** (1) The Governor General acting in accordance with the advice of the Prime Minister, may at any time by proclamation prorogue Parliament.

(2) The Governor General, acting in accordance with the advice of the Prime Minister, may at any time by proclamation dissolve Parliament:

Provided that if the office of Prime Minister is vacant and the Governor General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the confidence of a majority of the members of the House of Assembly, he shall dissolve Parliament.

(3) Subject to the provisions of subsection (4), Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(4) At any time when Barbados is at war, Parliament may extend the period of five years specified in subsection 83) for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than two years.

(5) If, between a dissolution of Parliament and the next ensuing general election of members to the House of Assembly, an emergency arises of such a nature that, in the opinion of the Prime Minister, it is necessary for the two Houses or either of them to be summoned before that general election can be held, the Governor General, acting in accordance with the advice of the Prime Minister, may summon the two Houses of the preceding Parliament, and that Parliament shall thereupon be deemed (except for the purposes of section 62) not to have been dissolved but shall be deemed (except as aforesaid) to be dissolved on the date on which the polls are held in the next ensuing general election.

**62. General election and appointment of Senators.** (1) After every dissolution of Parliament the Governor General shall issue writs for a general election of members of the House of Assembly returnable within ninety days from that dissolution.

(2) As soon as may be after every general election the Governor General shall proceed under section 36 to the appointment of Senators.

## CHAPTER VI EXECUTIVE POWERS

**63. Executive authority of Barbados.** (1) The executive authority of Barbados is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of Barbados may be exercised on behalf of Her Majesty by the Governor General either directly or through officers subordinate to him.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor General.

**64. Cabinet.** (1) There shall be a Cabinet for Barbados which shall consist of the Prime Minister and not less than five other Ministers appointed in accordance with the provisions of section 65.

(2) The Cabinet shall be the principal instrument of policy and shall be charged with the general direction and control for the government of Barbados and shall be collectively responsible therefore to Parliament.

**65. Appointment of Ministers.** (1) Whenever the Governor General has occasion to appoint a Prime Minister he shall, acting in his discretion, appoint the member of the House of Assembly who, in his judgment, is best able to command the confidence of a majority of the members of that House.

(2) The other Ministers shall be appointed by the Governor General, acting in accordance with the advice of the Prime Minister, from among the members of the two Houses.

(3) Subsections (1) and (2) shall have effect in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House of Assembly is held as if Parliament had not been dissolved.

(4) Appointments under this section shall be made by instrument under the Public Seal.



**66. Tenure of office of Ministers.** (1) The office of Prime Minister shall become vacant -

(a) if he ceases to be a member of the House of Assembly for any reason other than a dissolution of Parliament;

(b) when, after an election of members of the House of Assembly following any dissolution of Parliament and before that House first meets thereafter, the Prime Minister is informed by the Governor General, acting in his discretion, that the Governor General is about to re-appoint him as Prime Minister or appoint another person as Prime Minister; or

(c) if the Governor General revokes his appointment in accordance with the provisions of subsection (2).

(2) If the House of Assembly a resolution which has received the affirmative vote of a majority of all the members thereof resolves that the appointment of the Prime Minister ought to be revoked and the Prime Minister does not within three days of the passing of the resolution either resign or advise the Governor General to dissolve Parliament, the Governor General shall, by instrument under the Public Seal, revoke the appointment of the Prime Minister.

(3) The office of a Minister, other than the office of Prime Minister, shall become vacant -

(a) upon the appointment or re-appointment of any person to the office of Prime Minister;

(b) if this appointment to his office is revoked by the Governor General, acting in accordance with the advice of the Prime Minister, by instrument under the Public Seal;

(c) if, for any reason other than a dissolution of Parliament, he ceases to be a member of the House of which he was a member at the date of his appointment as a Minister; or

(d) if he is not a member of either House at the date of the first sitting of Parliament after a dissolution of Parliament.

**67. Performance of Prime Minister's functions in certain events.** (1)

Whenever the Prime Minister is unable, by reason of his illness or absence from Barbados, to perform the functions of his office, the Governor General may, by instrument under the Public Seal, authorize any other Minister who is a member of the House of Assembly to perform the functions conferred on the Prime Minister by this Constitution (other than the functions conferred by subsection (3)).

(2) The Governor General may, by instrument under the Public Seal, revoke any authority given under this section.

(3) The powers conferred on the Governor General by this section shall be exercised by him acting in his discretion if in his opinion it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or absence, and in any other case shall be exercised by the Governor General in accordance with the advice of the Prime Minister.

**68. Temporary Ministers.** (1) Whenever a Minister other than the Prime Minister is unable, by reason of his illness or absence from Barbados, to perform the functions of his office, the Governor General may, by instrument under the Public Seal, appoint a member of the Senate or the House of Assembly to be a temporary Minister and authorize him to perform the functions of that office:

Provided that this subsection shall have effect in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House of Assembly is held as if Parliament had not been dissolved.

(2) Subject to the provisions of section 66(3), a temporary Minister shall hold office until he is notified by the Governor General, by instrument under the Public Seal, that the Minister on account of whose inability to perform the functions of his office he was appointed is again able to perform those functions or until that Minister vacates his office.

(3) The powers conferred on the Governor General by this section shall be exercised by him in accordance with the advice of the Prime Minister.

**69. Oaths to be taken by Ministers.** The Prime Minister and every other Minister shall, before entering upon the duties of his office, take before the Governor General the oath of allegiance and an oath for the due execution of his office in the form set out in the First Schedule.

**70. Presiding in Cabinet.** The Prime Minister shall, so far as is practicable, attend and preside at all meetings of the Cabinet and in his absence such other Minister shall preside as the Prime Minister shall appoint.

**71. Governor General to be informed concerning matters of government.** The Prime Minister shall keep the Governor General fully informed concerning the general conduct of the government of Barbados and shall furnish the Governor General with such information as the Governor General, acting in his discretion may request with respect to any particular matter relating to the government of Barbados.

**72. Assignment of responsibilities to Ministers.** (1) Subject to the provisions of this Constitution, the Governor General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government, including the administration of any department of the Government:

Provided that one such other Minister (who shall be styled Attorney General) shall be assigned the functions of principal legal adviser to the Government.

(2) Nothing in this section shall empower the Governor General to confer on any Minister authority to exercise any power or to discharge any duty that is conferred or imposed by this Constitution or any other law on the Governor General or any person or authority other than that Minister.

**73. Parliamentary Secretaries.** (1) The Governor General, acting in accordance with the advice of the Prime Minister, may, by instrument under the Public Seal, appoint from among the members of the two Houses Parliamentary Secretaries to assist Ministers in the discharge or their functions:

Provided that this subsection shall have effect in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House of Assembly is held as if Parliament had not been dissolved.

(2) The provisions of section 66(3) and section 69 shall apply to Parliamentary Secretaries as they apply to Ministers.

**74. Leader of the Opposition.** (1) There shall be a Leader of the Opposition who shall be appointed by the Governor General by instrument under the Public Seal.

(2) Whenever the Governor General has occasion to appoint a Leader of the Opposition he shall appoint the member of the House of Assembly who, in his judgment, is best able to command the support of a majority of those members who do not support the Government, or if there is no such person, the member of that House who, in his judgment, commands the support of the largest single group of such members who are prepared to support one leader:

Provided that this subsection shall have effect in relation to any period between a dissolution of Parliament and the day on which the next election of members of the House of Assembly is held as if Parliament had not been dissolved.

(3) The office of Leader of the Opposition shall become vacant -

(a) if, after an election of members of the House of Assembly following any dissolution of Parliament and before that House first meets thereafter, he is informed by the Governor General that the Governor General is about to appoint another person as Leader of the Opposition;

(b) if he ceases to be a member of the House of Assembly for any reason other than a dissolution of Parliament; or

(c) if his appointment is revoked under the provisions of subsection (4).

(4) If, in the judgment of the Governor General, the Leader of the Opposition no longer is able to command the support of a majority of Government, or, as

the case may be, the support of the largest single group of such members who are prepared to support one leader, the Governor General may revoke the appointment of the leader of the Opposition.

(5) In the exercise of his functions under this section the Governor General shall act in his discretion:

Provided that, except during any period such as is mentioned in subsection (3)(a), if the Governor General considers that it is doubtful whether a person commands such support as is mentioned in subsection (2) he shall, in determining the question, act in accordance with the advice of the Speaker.

**75. Certain vacancies in office of Leader of Opposition.** During any period in which there is a vacancy in the office of Leader of the Opposition by reason of the fact that no person is both qualified in accordance with this Constitution for, and willing to accept, appointment to that office, the Governor General shall -

(a) act in his discretion in the exercise of any function in respect of which it is provided in this Constitution that the Governor General shall act in accordance with the advice of the Leader of the Opposition; and

(b) act on the recommendation of the Prime Minister in the exercise of any function in respect of which it is provided in this Constitution that the Governor General shall act on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

**76. Privy Council.** (1) There shall be a Privy Council for Barbados which shall consist of such person as the Governor General, after consultation with the Prime Minister, may appoint by instrument under the Public Seal.

(2) The Privy Council shall have such powers and duties as may be conferred or imposed upon it by this Constitution or any other law.

(3) The office of a member of the Privy Council appointed under this section shall become vacant -

(a) at the expiration of fifteen years from the date of his appointment or such shorter period as may be specified in the instrument by which he was appointed;

(b) when he attains the age of seventy-five years; or

(c) if his appointment is revoked by the Governor General, acting after consultation with the Prime Minister, by instrument under the Public Seal.

**77. Proceedings of Privy Council.** (1) The Privy Council shall not be summoned except by the authority of the Governor General acting in his discretion.

(2) The Governor General shall, so far as is practicable, attend and preside at all meetings of the Privy Council.

(3) Subject to the provisions of this Constitution, the Privy Council may regulate its own procedure.

(4) The question whether the Privy Council has validly performed any function vested in it by this Constitution shall not be inquired into in any court.

**78. Prerogative of mercy.** (1) The Governor General may, in Her Majesty's name and on Her Majesty's behalf -

(a) grant to any person convicted of any offense against the law of Barbados a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offense;

(c) substitute a less severe form of punishment for that imposed on any person for such an offense; or

(d) remit the whole or part of any punishment imposed on any person for such an offense or any penalty or forfeiture otherwise due to the Crown on account of such an offense.

(2) The Governor General shall, in the exercise of the powers conferred on him by subsection (1) or of any power conferred on him by any other law to remit any penalty or forfeiture due to any person other than the Crown, act in accordance with the advice of the Privy Council.

(3) Where any person has been sentenced to death for an offense against the law of Barbados, the Governor General shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the Governor General may require, to be forwarded to the Privy Council so that the Privy Council may advise him on the exercise of the powers conferred in him by subsection (1) in relation to that person.

(4) The power of requiring information conferred upon the Governor General by subsection (3) shall be exercised by him on the recommendation of the Privy Council or, in any case in which in his judgment the matter is too urgent to admit of such recommendation being obtained by the time within which it may be necessary for him to act, in his discretion.

**79. Establishment of office and functions of Director of Public Prosecutions.** (1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do -

(a) to institute and undertake criminal proceedings against any person before any court other than a court-martial in respect of any offense against the law of Barbados;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(4) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(6) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(7) The Director of Public Prosecutions shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and an oath for the due execution for his office in the form set out in the First Schedule.

## CHAPTER VII THE JUDICATURE

### PART 1 SUPREME COURT

**80. Establishment of Supreme Court.** (1) There shall be for Barbados a Supreme Court of Judicature, consisting of a High Court and a Court of Appeal, with such jurisdiction, powers and authority as may be conferred upon those Courts respectively by this Constitution or any other law.



(2) The judges of the Supreme Court shall be the Chief Justice and such number of Puisne Judges as may be prescribed by Parliament.

(3) No office of Puisne Judge shall be abolished while there is a substantive holder thereof.

(4) The Supreme Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

**81. Appointment of Judges.** (1) The Chief Justice shall be appointed by the Governor General, by instrument under the Public Seal, on the recommendation of the Prime Minister after consultation with the leader of the Opposition.

(2) The Puisne Judges shall be appointed by the Governor General, by instrument under the Public Seal, acting in accordance with the advice of the Judicial and Legal Service Commission.

(3) The qualifications for appointment as a Judge shall be such as may be prescribed by any law for the time being in force:

Provided that a person who has been appointed as a Judge may continue in office notwithstanding any subsequent variations in the qualifications so prescribed.

**82. Acting Judges.** (1) If the office of Chief Justice is vacant or if the holder thereof is performing the functions of the office of Governor General or is for any other reason unable to perform the functions of his office, then, until a person has been appointed to that office and assumed its functions or, as the case may be, until the holder thereof has resumed those functions, they shall be performed by such other person, qualified under section 81(3) for appointment as a Judge, as the Governor General, acting on the recommendation of the Prime Minister, may appoint to act as Chief Justice by instrument under the Public Seal.

(2) If the office of a Puisne Judge is vacant, or if any such Judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office, or if the Chief Justice advises the Governor General that the state of

business of the Supreme Court so requires, the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission, may, by instrument under the Public Seal, appoint a person qualified under section 81(3) for appointment as a Judge to act as a Judge, and any person so appointed shall continue to act until his appointment is revoked by the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(3) A person may be appointed under the provisions of this section to act as Chief Justice or other Judge notwithstanding that he has attained the age at which that office is required by section 84(1) to be vacated by the holder thereof.

(4) Any person so appointed may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Judge for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him while he was acting as such.

**83. Oaths to be taken by Judges.** A Judge shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the judicial oath in the form set out in the First Schedule.

**84. Tenure of office of Judges.** (1) Subject to the following provisions of this section, a person holding the office of a Judge shall vacate office when he attains the age of sixty five years:

Provided that the Governor General, acting in the case of the Chief Justice on the recommendation of the Prime Minister or in the case of any other Judge in accordance with the advice of the Judicial and Legal Service Commission, may permit a Judge who attains the age of sixty five years to continue in office until he has attained such later age, not exceeding sixty seven years, as may have been agreed between the Governor General and that Judge.

(2) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person may sit as a Judge for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him before he attained that age.

(3) A Judge may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehavior, and shall not be so removed except in accordance with the provisions of subsection (4).

(4) A Judge shall be removed from office by the Governor General, by instrument under the Public Seal, if the question of the removal of that Judge from office has, at the request of the Governor General, made in pursuance of subsection (5), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council and the Judicial Committee has advised Her Majesty that the Judge ought to be removed from office for inability as aforesaid or for misbehavior.

(5) If the Prime Minister (in the case of the Chief Justice) or the Chief Justice after consultation with the Prime Minister (in the case of any other Judge) advises the Governor General that the question of removing a Judge from office for inability as aforesaid or for misbehavior ought to be investigated, then -

(a) the Governor General shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Governor General in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice (in the case of any other Judge) from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court:

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor General and advise the Governor General whether he should request that the question of the removal of that Judge should be referred by Her Majesty to the Judicial Committee: and

(c) if the tribunal so advises, the Governor General shall request that the question should be referred accordingly.

(6) The provisions of the Second Schedule shall apply in relation to tribunals appointed under subsection (5).

(7) If the question of removing a Judge from office has been referred to a tribunal appointed under subsection (5), the Governor General, acting in accordance with the advice of the Prime Minister (in the case of the Chief Justice) or of the Chief Justice after the Chief Justice has consulted with the Prime Minister (in the case of any other Judge), may suspend the Judge from performing the functions of his office.

(8) Any such suspension may at any time be revoked by the Governor General, acting in accordance with the advice of the Prime Minister or the Chief Justice (as the case may be), and shall in any case cease to have effect -

(a) if the tribunal advises the Governor General that he should not request that the question of the removal of the Judge from office should be referred by Her Majesty to the Judicial Committee: or

(b) the Judicial Committee advises Her Majesty that the Judge ought not to be removed from office.

(9) The provisions of this section shall be without prejudice to the provisions of section 82(2).

## **PART 2 APPEALS**

**85. Constitution of Court of Appeal.** (1) Subject to the provisions of subsection (2), the Court of Appeal established by Part 1 of this Chapter shall be constituted by three Judges sitting together.

(2) A Judge shall not sit as a Judge of the Court of Appeal on the hearing of an appeal -

(a) from any decision given by himself or any decision given by any court of which he was sitting as a member; or

(b) against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

**86. Other arrangements for appeals.** (1) Notwithstanding anything contained in Part 1 of this Chapter, Parliament may make provision -

(a) for implementing arrangements made, between the Government of Barbados and the Government or Governments of any other part or parts of the Commonwealth relating to the establishment of a court of appeal to be shared by Barbados with that part or those parts of the Commonwealth, and for the hearing and determination by such a court of appeals from decisions of any court in Barbados; or

(b) for the hearing and determination of appeals from decisions of any court in Barbados by a court established for any other part of the Commonwealth.

(2) A law enacted in pursuance of subsection (1) may provide that the jurisdiction conferred on any such court as is referred to in that subsection shall be to the exclusion, in whole or in part, of the jurisdiction of the Court of Appeal established by Part 1 of this Chapter; and during any period when jurisdiction is so conferred to the exclusion of the whole jurisdiction of the said Court of Appeal, Parliament may suspend the provisions of the said Part 1 establishing that Court.

(3) In subsection (1) the expression “any court in Barbados” includes the Court of Appeal established by Part 1 of this Chapter.

**87. Appeals relating to fundamental rights and freedoms.** (1) An appeal to the Court of Appeal shall lie as of right from final decisions of the High Court given in exercise of the jurisdiction conferred on the High Court by section 24 (which relates to the enforcement for fundamental rights and freedoms).

(2) An appeal shall lie as of right to Her Majesty in Council from any decision given by the Court of Appeal in any such case.

(3) In this section “the Court of Appeal” means such court as may be vested with jurisdiction to hear appeals from any court in Barbados in pursuance of section 86 or, if there is no such court, the Court of Appeal established by Part 1 of this Chapter.

**88. Appeals to Her Majesty in Council in other cases.** (1) Parliament may provide for an appeal to lie from -

(a) decision of the Court of Appeal established by Part 1 of this Chapter; or

(b) decisions of any other court in exercise of jurisdiction conferred by a law enacted in pursuance of section 86(1),

to Her Majesty in Council, either as of right or with the leave of the said Court of Appeal or other court, as the case may be, in such cases other than those referred to in section 87(2) as may be prescribed by Parliament.

(2) Nothing in this Constitution shall effect any right of Her Majesty to grant special leave to appeal from decision such as are referred to in subsection (1).

## **CHAPTER VIII THE PUBLIC SERVICE**

### **PART 1 THE SERVICES COMMISSIONS**

**89. Establishment and composition of Judicial and legal Service Commission.** (1) There shall be a Judicial and Legal Service Commission for Barbados which shall consist of the following persons-

(a) the Chief Justice, who shall be Chairman;

(b) the Chairman of the Public Service Commission or some other member of the Public Service Commission nominated by the Chairman to represent him at any meeting of the Judicial and Legal Service Commission;

(c) three other members (hereinafter called “the appointed members”) appointed in accordance with the provisions of subsection (2).

(2) The appointed members shall be appointed by the Governor General, by instrument under the Public Seal, acting on the recommendation of the Prime

Minister after consultation with the leader of the Opposition, from among persons who are, or have been, judges of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court:

Provided that if, whenever an occasion arises for the appointment of an appointed member, the Governor General, acting as aforesaid, is satisfied that there is no suitable person who is or has been such a judge available and willing to be appointed, he may appoint a person who has been entitled to practice in Barbados as a barrister for not less than ten years but is not in active practice as a barrister.

(3) No person shall be qualified to be appointed as a member of the Judicial and Legal Service Commission if he is a member of either House or a public officer.

(4) Subject to the provisions of subsection (5), the office of an appointed member shall become vacant -

(a) at the expiration of three years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed;

(b) if he becomes a member of either House or a public officer or is appointed to the office of Chief Justice or Chairman of the Public Service Commission.

(5) The provisions of section 105 (which relate to removal from office) shall apply to the office of an appointed member, and the prescribed authority for the purposes of subsection (4) of that section shall be the Prime Minister and for the purposes of subsection (6) of that section shall be the Chief Justice.

(6) If the office of an appointed member is vacant or the holder thereof is for any reason unable to perform the functions of his office, the Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may, by instrument under the Public Seal, appoint a person who is qualified for appointment as an appointed member to act in the office of that member; and any person so appointed shall, subject to the provisions of subsection (4)(b), continue so to act until a person has been

appointed to the office in which he is acting and has assumed the functions thereof or, as the case may be, the holder thereof resumes those functions or until his appointment so to act is revoked by the Governor General, acting as aforesaid.

(7) An appointed member shall not, within a period of one year commencing with the date on which he last held or acted in the office of appointed member, be eligible for appointment to any office power to make appointments to which is vested by this Constitution in the Governor General acting on the recommendation or in accordance with the advice of the Judicial and Legal Service Commission.

**90. Establishment and composition of Public Service Commission.** (1) There shall be a Public Service Commission for Barbados which shall consist of a Chairman and not less than three nor more than five other members, who shall be appointed by the Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.

(2) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a member of either House or a public officer.

(3) Subject to the provisions of subsection (4), the office of a member of the Public Service Commission shall become vacant -

(a) at the expiration of three years from the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed;

(b) if he becomes a member of either House or a public officer.

(4) The provisions of section 105 (which relate to removal from office) shall apply to the office of a member of the Public Service Commission, and for the purposes of subsections (4) and (6) of that section the prescribed authority shall be the Prime Minister except that, in relation to a member who does not hold, or is not for the time being acting in, the office of Chairman of the Commission, the prescribed authority for the purposes of the said subsection (6) shall be the holder of the office of Chairman.



(5) If the office of Chairman of the Public Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(6) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder thereof is for any reason unable to perform the functions of his office, the Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may appoint a person who is qualified for appointment as a member of the Commission to act in the office of that member; and any person so appointed shall, subject to the provisions of subsection (3)(b), continue so to act until a person has been appointed to the office in which he is acting and has assumed the functions thereof or, as the case may be, the holder thereof resumes those functions or until his appointment so to act is revoked by the Governor General acting as aforesaid.

(7) A member of the Public Service Commission shall not, within a period of one year commencing with the date on which he last held or acted in that office, be eligible for appointment to any office power to make appointments to which is vested by this Constitution in the Governor General acting on the recommendation or in accordance with the advice of the Public Service Commission.

**91. Establishment and composition of Police Service Commission. (1)**

There shall be a Police Service Commission for Barbados which shall consist of a Chairman and not less than two nor more than four other members, who shall be appointed by the Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.

(2) No person shall be qualified to be appointed as a member of the Police Service Commission if he is a member of either House or a public officer.

(3) Subject to the provisions of subsection (4), the office of a member of the Police Service Commission shall become vacant -

(a) at the expiration of three years form the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed;

(b) if he becomes a member of either House or a public officer.

(4) The provisions of section 105 (which relate to removal from office) shall apply to the office of a member of the Police Service Commission, and for the purposes of subsections (4) and (6) of that section the prescribed authority shall be the Prime Minister except that, in relation to a member who does not hold, or is not for the time being acting in, the office of Chairman of the Commission, the prescribed authority for the purposes of the said subsection (6) shall be the holder of the office of Chairman.

(5) If the office of Chairman of the Police Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be performed by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(6) If the office of a member of the Police Service Commission other than the Chairman is vacant or the holder thereof is for any reason unable to perform the functions thereof, the Governor General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may appoint a person who is qualified for appointment as a member of the Commission to act in the office of that member; and any person so appointed shall, subject to the provisions of subsection (3)(b), continue so to act until a person has been appointed to the office in which he is acting and has assumed the functions thereof or, as the case may be, the holder thereof resumes those functions or until his appointment so to act is revoked by the Governor General, acting as aforesaid.

(7) A member of the Police Service Commission shall not, within a period of one year commencing with the date on which he last held or acted in that office, be eligible for appointment to any office power to make appointments to which is vested by this Constitution in the Governor General acting on the recommendation or in accordance with the advice of the Police Service Commission.

**92. Procedure of Commissions.** (1) In relation to any Commission established by this Chapter, the Governor General, acting in accordance with the advice of the Commission, may by regulation or otherwise regulate its procedure and, subject to the consent of the Prime Minister, confer powers and impose duties on any public officer or any authority of the Government for the purpose of the discharge of the functions of the Commission.

(2) At any meeting of any Commission established by this Chapter a quorum shall be constituted if three members are present; and, if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members or the absence of any member and any proceedings of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

(3) Any question proposed for decision at any meeting of any Commission established by this Chapter shall be determined by a majority of the votes of the members thereof present and voting, and if on any such question the votes are equally divided the member presiding shall have and exercise a casting vote.

## **PART 2**

### **APPOINTMENT, REMOVAL AND DISCIPLINE OF PUBLIC OFFICERS**

**93. Appointment, etc., of judicial and legal officers.** (1) Subject to the provisions of this Constitution, power to make appointments to the offices to which this section applies and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) This section applies to such public offices (other than the office of the Director of Public Prosecutions) for appointment to which persons are required to possess legal qualifications as may be prescribed by Parliament.

**94. Appointment, etc., of public officers.** (1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor General, acting in accordance with the advice of the Public Service Commission.

(2) Before the Public Service Commission advises the appointment to any public office of any person holding or acting in any office power to make appointments to which is vested by this Constitution in the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission or the Police Service Commission, it shall consult the Judicial and Legal Service Commission or the Police Service Commission, as the case may be.

(3) The provisions of this section shall not apply in relation to -

(a) the office of any member of the Governor General's personal staff;

(b) any office to which section 92 applies;

(c) any office in the Police Force;

(d) any office to which section 100 applies;

(e) the office of the Director of Public Prosecutions; and

(f) the office of the Auditor General.

**95. Delegation of powers under section 94.** (1) The Governor General, acting in accordance with the advice of the Public Service Commission, may by instrument under the Public Seal direct that, to such extent and subject to such conditions as may be specified in that instrument, the powers, other than the power to remove from office, vested in him by section 94(1), shall (without

prejudice to the exercise of such powers by the Governor General under that section) be exercisable by such one or more members of the Public Service Commission or by such public officer as may be so specified.

(2) In any case where an appointment is to be made by virtue of an instrument made under this section and the person to be appointed holds or is acting in any office power to make appointments to which is vested in the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission or the Police Service Commission, the person empowered by the said instrument to make the appointment shall consult the Judicial and Legal Service Commission or the Police Service Commission, as the case may be, before making the appointment.

(3) Where the power to exercise disciplinary control over any officer has been exercised by virtue of an instrument made under this section, the officer in respect of whom it was so exercised may apply for the case to be referred to the Governor General and thereupon the disciplinary action taken shall cease to have effect except in so far as it may have included the suspension of the officer from performing the functions of his office and the case shall be referred to the Governor General shall then take such action in respect of the officer as the Public Service Commission may advise.

**96. Appointment, etc., of members of the Police Force.** (1) Subject to the provisions of this Constitution, power to make appointments to offices in the Police Force and to remove and to exercise disciplinary control over persons holding or acting in such offices, is hereby vested in the Governor General, acting in accordance with the advice of the Police Service Commission.

(2) Before the Police Service Commission advises the appointment to any office in the Police Force of any person holding or acting in any office power to make appointments to which is vested by this Constitution in the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission or the Public Service Commission, it shall consult the Judicial and Legal Service Commission or the Police Service Commission, as the case may be, before making the appointment.

(3) Where the power to exercise disciplinary control over any officer has been exercised by virtue of an instrument made under this section, the officer in respect of whom it was so exercised may apply for the case to be referred to the Governor General and thereupon the disciplinary action taken shall cease to have effect except in so far as it may have included the suspension of the officer from performing the functions of his office and the case shall be referred to the Governor General accordingly; and, subject to the provisions of section 98, the Governor General shall then take such action in respect of the officer as the Public Service Commission may advise.

**97. Delegation of powers under section 96.** (1) The Governor General, acting in accordance with the advice of the Police Service Commission, may by instrument under the Public Seal direct that, to such extent and subject to such conditions as may be specified in that instrument, the powers, other than the power to remove from office, vested in him by section 96(1) in relation to offices in the Police Force below the rank of Inspector shall (without prejudice to the exercise for such powers by the Governor General under that section) be exercisable by such one or more members of the Police Service Commission or by such officers in the Police Force not below the rank of Superintendent as may be so specified.

(2) In any case where an appointment is to be made by virtue of an instrument made under this section and the person to be appointed holds or is acting in any office power to make appointments to which is vested in the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission or the Public Service Commission, the person empowered by the said instrument to make the appointment shall consult the Judicial and Legal Service Commission or the Public Service Commission, as the case may be, before making the appointment.

(3) Where the power to exercise disciplinary control over any member of the Police Force has been exercised by virtue of an instrument made under this section, the member of the Police Force in respect of whom it was so exercised may apply for the case to be referred to the Governor General and thereupon the disciplinary action taken shall cease to have effect except in so far as it may have included the suspension of the member from performing the functions of his office and the case shall be

referred to the Governor General accordingly; and, subject to the provisions of section 98, the Governor General shall then take such action in respect of that member of the Police force as the Police Service Commission may advise.

**98. Appeals to privy Council in disciplinary matters.** (1) Before the Governor General acts in accordance with the advice of any Commission established by this Chapter that any public officer shall be removed from office or that any penalty should be imposed on him by way of disciplinary control, he shall inform the officer of that advice and if the officer then applies for the case to be referred to the Privy Council, the Governor General shall not act in accordance with that advice but shall refer the case to the privy Council accordingly:

Provided that the Governor General acting in accordance with the advice of the Commission, may nevertheless suspend that officer from performing the functions of his office pending the determination of the reference to the privy Council.

(2) When a reference is made to the privy Council under the provisions of subsection (1), the privy Council shall consider the case and shall advise the Governor General what action should be taken in respect of the officer, and the Governor General shall then act in accordance with such advice.

**99. Appointment of permanent secretaries and certain other public officers.** (1) Notwithstanding anything contained in the preceding provisions of this Chapter -

(a) except as provided in paragraph (b), power to make appointments to the offices to which this section applies is hereby vested in the Governor General, acting on the recommendation of the appropriate Service Commission made after that Commission has consulted the Prime Minister; and

(b) power to make appointments to the office of a permanent secretary on transfer from another such office carrying the same salary is hereby vested in the Governor General, acting on the recommendation of the Prime Minister.

(2) This section applies to the offices of Secretary to the Cabinet, permanent secretary, Commissioner of Police, Chief Establishments Officer and Chief Personnel Officer.

(3) In this section -

“appropriate Service Commission” means -

(a) in relation to any office of Commissioner of Police, the Police Service Commission;

(b) in relation to any office to which section 93 applies as respects power to remove and exercise disciplinary control over any person holding or acting in that office, the Judicial and Legal Service Commission; and

(c) in relation to any other office, the Public Service Commission; “permanent secretary” means the public officer (whether or not styled permanent secretary) who, subject to the general direction and control of a minister, supervises any department of the Government, and, without prejudice to the generality of the foregoing definition, includes the Financial Secretary and the Solicitor General.

**100. Appointment, etc., of principal representatives abroad and subordinate staff.** (1) Power to make appointments to the offices to which this section applies and to remove persons holding or acting in such offices shall vest in the Governor General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering advice for the purposes of this section in relation to any person who holds any public office other than an office to which this section applies, the Prime Minister shall consult the appropriate Service Commission.

(3) This section applies to the office of Ambassador, High Commissioner or other principal representative of Barbados in any other country or accredited to any international organization.

(4) Before the Judicial and Legal Service Commission or the Public Service Commission advises the Governor General under section 93 or, as the case



may be, section 94 to appoint any person to any subordinate overseas office, the Commission shall consult the permanent secretary (as defined in section 99(3)) of the department responsible for the external affairs of Barbados.

(5) In this section -

“appropriate Service Commission” means -

(a) in relation to a person who holds an office in the Police Force, the Police Service Commission;

(b) in relation to a person who holds an office to which section 93 applies as respects power to remove and exercise disciplinary control over any person holding or acting in that office, the Judicial and Legal Service Commission; and

(c) in relation to any other person, the Public Service Commission; “subordinate overseas office” means an office on the staff of any officer mentioned in subsection (3) which is pensionable for the purposes of any law providing for the grant of pensions in respect of service in the public service.

**101. Appointment, etc., of Director of Public Prosecutions.** (1) The Director of Public Prosecutions (in this section referred to as “the Director”) shall be appointed by the Governor General, acting on the recommendation of the Judicial and Legal Service Commission, by instrument under the Public Seal.

(2) A person shall not be qualified to hold or to act in the office of Director unless he is qualified for appointment as a Judge.

(3) If the office of the Director is vacant or if the holder thereof is for any reason unable to perform the functions thereof, the Governor General, acting on the recommendation of the Judicial and Legal Service Commission, may appoint a person to act in the office of the Director; and any person so appointed shall, subject to the provisions of subsection (4), continue so to act until a person has been appointed to the office of the Director and has assumed the functions of that office or, as the case may be, the holder thereof has

resumed those functions or until his appointment so to act is revoked by the Governor General, acting as aforesaid.

(4) Subject to the provisions of subsection (5), the Director shall vacate office when he attains the age of sixty two years:

Provided that the Governor General acting on the recommendation of the Judicial and Legal Service Commission, may permit a Director who has attained the age of sixty two years to continue in office until he has attained such later age, not exceeding sixty five years, as may have been agreed between the Governor General and the Director.

(5) The provisions of section 105 (which relate to removal from office) shall apply to the office of the Director, and the prescribed authority for the purposes of subsections (4) and (6) of that section shall be the Judicial and Legal Service Commission.

**102. Appointment, etc., of Auditor General.** (1) The Auditor General shall be appointed by the Governor General, by instrument under the Public Seal, acting on the recommendation of the Public Service Commission made after the Commission has consulted the Prime Minister.

(2) If the office of Auditor General is vacant or the holder thereof is for any reason unable to perform the functions thereof, the Governor General, acting on the recommendation of the Public Service Commission made after the Commission has consulted the Prime Minister, may appoint a person to act in the office of Auditor General; and any person so appointed shall, subject to the provisions of subsection (3), continue so to act until a person has been appointed to the office of Auditor General and has assumed the functions of that office or, as the case may be, the holder thereof has resumed those functions or until his appointment so to act is revoked by the Governor General acting as aforesaid.

(3) Subject to the provisions of subsection (4), the Auditor General shall vacate office when he attains the age of sixty two years.

(4) The provisions of section 105 (which relate to removal from office) shall apply to the office of Auditor General, and the prescribed authority

for the purposes of subsection (4) of that section shall be the Prime Minister or the Chairman of the Public Service Commission and for the purposes of subsection (6) of that section shall be the Public Service Commission.

### **PART 3 PENSIONS**

**103. Protection of pension rights.** (1) Subject to the provisions of section 104, the law applicable to the grant and payment to any officer, or to his widow, children, dependants or personal representatives, of any pension, compensation, gratuity or other like allowance (in this section and section 104 referred to as an “award”) in respect of the service of that officer in a public office shall be that in force on the relevant date or any later law that is not less favorable to that person.

(2) In subsection (1) “the relevant date” means -

(a) in relation to an award granted before 30th November 1966, the date on which the award was granted;

(b) in relation to an award granted or to be granted on or after 30th November 1966 to or in respect of any person who was a public officer before that date, 29th November 1966;

(c) in relation to an award granted or to be granted to or in respect of any person who becomes a public officer on or after 30th November 1966, the date on which he becomes a public officer.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law specified by him in exercising the option shall, for the purposes of this section, be deemed to be more favorable to him than the other law or laws.

(4) Awards granted under any law in respect of service in a public office (not being awards that are a charge upon some other public fund of Barbados) are hereby charged on the Consolidated Fund.

(5) For the purposes of this section and of section 104, service as a Judge shall be deemed to be service in the public service.

**104. Grant and withholding of pensions, etc.** (1) The power to grant any award under any pensions law for the time being in force in Barbados (other than an award to which, under that law, the person to whom it is payable is entitled as of right) and, in accordance with any provisions in that behalf contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor General.

(2) Subject to the provisions of subsections (5) and (6), the power vested in the Governor General by subsection (1) shall be exercised by him on the recommendation of the appropriate Service Commission.

(3) The appropriate Service Commission shall not recommend to the Governor General that any award for which a person who holds or has held the office of a Judge, Director of Public Prosecutions or Auditor General is eligible shall not be granted, or that any award payable to him shall be withheld, reduced in amount or suspended, on the ground that he has been guilty of misbehavior unless he has been removed from office by reason of such misbehavior.

(4) In this section “the appropriate Service Commission” means -

(a) in the case of an award that may be granted or is payable to a person who, having been a public office, was immediately before the date on which he ceased to hold public office serving -

(i) as a Judge;

(ii) as the Director of Public Prosecutions;

(iii) in any office to which section 93 applies as respects power to remove and exercise disciplinary control over any person holding or acting in that office at the date of the exercise of the power vested as aforesaid.

the Judicial and Legal Service Commission.

(b) in the case of an award that may be granted or is payable to a person who, having been a public officer, was immediately before the date on which he ceased to hold public office, serving as a member of the Police Force, the Police Service Commission.

(c) in any other case the Public Service Commission.

(5) Where the appropriate Service Commission makes a recommendation to the Governor General under this section that any award that may be granted under any pensions law in respect of the service in a public office of any person should not be granted, or that any award payable under any such law in respect of such service should be withheld, reduced in amount or suspended, the Governor General shall inform the person concerned or his personal representatives of that recommendation, and if that person then applies, or, as the case may be, his personal representatives then apply, for the case to be referred to the Privy Council, the Governor General shall refer the case to the Privy Council accordingly.

(6) When a reference is made to the Privy Council under the provisions of subsection (5), the Privy Council shall consider the case and shall advise the Governor General whether the recommendation of the appropriate Service Commission should be affirmed, reversed or modified, and the Governor General shall then act in accordance with that advice.

(7) In this section “pensions law” means any law relating to the grant to any person or to the widow, children, dependants or personal representatives of that person, of an award for any pension, compensation, gratuity or other like allowance in respect of the service of that person in a public office.

#### **PART 4 MISCELLANEOUS**

**105. Removal from office of certain persons.** (1) Where it is provided in this Chapter that this section shall apply to any office, a person holding such office (in this section referred to as “the officer”) shall not be removed therefrom or suspended from the exercise of the functions thereof except in accordance with the provisions of this section; and the prescribed authority for the purposes

of subsection (4) or subsection (6) shall, in relation to any office, be the authority prescribed for that purpose by the provision for this Chapter by which this section is applied to that office.

(2) The officer may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehavior.

(3) The officer shall be removed from office by the Governor General if the question of his removal from office has been referred to a tribunal appointed under this section and the tribunal has advised the Governor General that he ought to be removed from office for inability as aforesaid or for misbehavior.

(4) If the prescribed authority advises the Governor General that the question of removing the officer from office under this section ought to be investigated, then -

(a) the Governor General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Governor General acting in accordance with the advice of the Chief Justice, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court or have been entitled to practice in Barbados as barristers or solicitors for not less than ten years; and

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor General and advise the Governor General whether the officer ought to be removed from office for inability as aforesaid or for misbehavior.

(5) The provisions of the Second Schedule shall apply to tribunals appointed under this section.

(6) If the question of removing the officer from office has been referred to a tribunal under this section, the Governor General, acting in accordance with the advice of the prescribed authority, may suspend the officer from performing the functions of his office, and any such suspension may at any time be revoked

by the Governor General, acting as aforesaid, and shall in any case cease to have effect if the tribunal advises the Governor General that the officer should not be removed from office.

**106. Protection of Commissions, etc., from legal proceedings.** The question whether -

(a) any Commission established by this Chapter has validly performed any function vested in it by or under this Chapter:

(b) any person has validly performed any function delegated to him in pursuance of the provisions of section 95 or, as the case may be, of section 97; 04

(c) any member of such a Commission or any other person or authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in paragraph (b), shall not be enquired into in any court.

## CHAPTER IX FINANCE

**107. Consolidated Fund.** There shall be in and for Barbados a Consolidated Fund, into which, subject to the provisions of any law for the time being in force in Barbados, shall be paid all revenues of Barbados.

**108. Estimate.** (1) The Minister responsible for finance shall, before the end of each financial year, cause to be prepared annual estimates of revenue and expenditure for public services during the succeeding financial year, which shall be laid before the House of Assembly.

(2) The estimates of expenditure shall show separately the sums required to meet statutory expenditure (as defined in section 109(7)) and the sums required to meet other expenditure proposed to be paid out of the Consolidated Fund.

**109. Authorization of expenditure.** (1) The Minister responsible for finance shall, in respect of each financial year, at the earliest convenient moment before the commencement of that financial year, introduce in the House of Assembly

an Appropriation Bill containing, under appropriate heads for the several services required the estimated aggregate sums which are proposed to be expended (otherwise than by way of statutory expenditure) during that financial year.

(2) Subject to subsection s(4) and (6), the sums voted on the estimates by the House of Assembly in respect of a financial year shall represent the limit and extent of the public expenditure for that financial year.

(3) Where any sum is voted on the estimates by the House of Assembly in respect of a financial year and at the end of that year there is an unexpended balance of that sum, the unexpended balance shall lapse.

(4) The Minister responsible for finance may, in case of necessity, from time to time cause to be prepared supplementary estimates of expenditure which shall be laid before and voted on by the House of Assembly.

(5) In respect of all supplementary expenditure voted on by the House of Assembly in pursuance of subsection (4), the Minister responsible for finance may, at any time before the end of the financial year, introduce into the House of Assembly a Supplementary Appropriation Bill containing under appropriate heads, the aggregate sums so voted, and shall, as soon as possible after the end of each financial year, introduce into the House of Assembly a final Appropriation bill containing any such sums which have not yet been included in any Appropriation bill.

(6) That part of any estimate of expenditure laid before the House of Assembly which shows statutory expenditure shall not be voted on by the House, and such expenditure shall, without further authority of Parliament, be paid out of the Consolidated Fund.

(7) For the purposes of this section and section 108 -

(a) “Financial year” means any period of twelve months beginning on 1st April in any year or such other date as Parliament may prescribe; and



(b) “statutory expenditure” means expenditure charged on the Consolidated Fund or on the general revenues and assets of Barbados by any provision of this Constitution or of any other law for the time being in force in Barbados.

**110. Meeting expenditure from consolidated Fund.** No sum shall be paid out of the Consolidated fund except upon the authority of a warrant under the hand of the Minister responsible for finance or under the hand of some person authorized by him in writing; and sums so issued shall be disposed of for meeting public expenditure authorized under section 109 or, in the case of statutory expenditure, for the purposes appointed by law.

**111. Public debt.** The public debt of Barbados, including the interest on that debt, sinking fund payments and redemption monies in respect of that debt and the costs, charges and expenses incidental to the management of that debt, is hereby charged on the Consolidated Fund.

**112. Remuneration of Governor General and certain other officers.**

(1) There shall be paid to the holders of the offices to which this section applies such salaries as may be prescribed by or under any law.

(2) The salaries payable to the holders of the offices to which this section applies are hereby charged on the Consolidated fund.

(3) The salary and allowances payable to the holder of any office to which this section applies and his other terms of service shall not be altered to his disadvantage after his appointment, and, for the purposes of this subsection, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.

(4) This section applies to the offices of Governor General, Judges, Director of Public Prosecutions, Auditor General, appointed members of the Judicial and Legal Service Commission and members of the Public Service Commission and the Police Service Commission.

**113. Establishment of office and functions of Auditor General.** (1) There shall be an auditor General, whose office shall be a public office.

(2) The accounts of the Supreme Court, the Senate, the House of Assembly and all departments and offices of the government (including the offices of the Cabinet, the Privy Council, the Judicial and Legal Service Commission, the Public Service Commission and the Police Service Commission but excluding the department of the Auditor General) shall, at least once in every year, be audited and reported on by the Auditor General who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts.

(3) The Auditor General shall submit his reports made under subsection (2) to the Speaker (or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker) who shall cause them to be laid before the House of Assembly.

(4) In the exercise of this functions under the provisions of subsections (2) and (3), the Auditor General shall not be subject to the direction or control of any other person or authority.

(5) The accounts of the department of the Auditor General shall be audited and reported on by the Minister responsible for finance and the provisions of subsections (2) and (3) shall apply in relation to the exercise by that Minister of those functions as they apply in relation to audits and reports made by the Auditor General.

(6) Nothing in this section shall prevent the performance by the Auditor General of -

(a) such other functions in relation to the accounts of the Government and the accounts of other public authorities and other bodies administering public funds in Barbados as may be prescribed by or under any law for the time being in force in Barbados; or

(b) such other functions in relation to the supervision and control of expenditure from public funds in Barbados as may be so prescribed.

## CHAPTER X MISCELLANEOUS AND INTERPRETATION

**114. Appointments.** (1) Where any person has vacated any office established by this Constitution (including any office established under section 41(1), 64(1) and 80(2)) he may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

(2) Where by this Constitution a power is conferred upon any person or authority to make any appointment to any public office, a person may be appointed to that office when that other person is on leave of absence pending relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then for the purposes of any function conferred upon the holder of that office the person last appointed shall be deemed to be the sole holder of the office.

(3) Subsection (2) shall have effect in relation to the office of a Judge as if that office were a public office

**115. Resignations.** (1) Any person who is appointed or elected to or otherwise selected for any office established by this Constitution (including any office established under section 41(1), 64(1) or 80(2), may resign from that office and, save as otherwise provided by section 40(3) or 45(1), shall do so by writing under his hand addressed to the person or authority by whom he was appointed, elected or selected.

(2) The resignation of any person from any such office as aforesaid signified by writing under his hand shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorized by that person or authority to receive it or employed to assist that person in her performance of the functions of his office.

**116. Vacation of office on attaining a prescribed age.** Where by this Constitution a person is required to vacate an office when he attains an age prescribed by or under the provisions of this Constitution, nothing done by

him in the performance of the functions of that office shall be invalid by reason only that he has attained the age so prescribed.

**117. Interpretation.** (1) In this Constitution -

“Act of Parliament” means any law made by Parliament;

“the Commonwealth” means Barbados, any country to which section 8 applies and any dependency of any such country;

“the Consolidated Fund” means the Consolidated Fund established by section 107;

“House” means the Senate or the House of Assembly, as the context may require;

“Judge” means the Chief Justice and any other Judge of the supreme Court;

“law” includes any instrument having the force of law and any unwritten rule of law;

“oath of allegiance” means the oath of allegiance set out in the First Schedule;

“Parliament” means the Parliament of Barbados;

“Police Force” means the Royal Barbados Police Force established under the Police Act, 1961(a);

“public office” means any office of emolument in the public service;

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“the public service” means subject to the provisions of subsection (7), the service of the Crown in a civil capacity in respect of the government of Barbados;

“session” means, in relation to Parliament, the sittings of Parliament commencing when it first meets after this Constitution comes into force or after the prorogation

or dissolution of Parliament at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

“sitting” means, in relation to a House, a period during which that House is sitting continuously without adjournment and includes any period during which the House is in committee;

“Speaker” and “Deputy Speaker” mean the member of the House of Assembly from time to time elected by that House to be respectively Speaker or Deputy Speaker of that House.

(2) For the purposes of this Constitution the territory of Barbados shall compose all the areas that were comprised therein immediately before 30th November 1966 together with such other areas as Parliament may declare to form part thereof.

(3) Any reference in this Constitution to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion or transfer to that office and to power to appoint a person to act in or perform the functions of that office during any period during which it is vacant or during which the holder thereof is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions.

(4) Any reference in this Constitution to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully performing the functions of that office.

(5) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to perform the functions of any office if the holder thereof is unable to perform those functions, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of that office was not or is not unable to perform those functions.

(6) For the purposes of this Constitution a person shall not be considered as holding a public office by reason only of the fact that he is in receipt for a pension or other like allowance in respect of public service.

(7) In this Constitution references to the public service shall not be construed as including service in -

(a) the office of Governor General, Prime Minister or other Minister, Parliamentary Secretary, Leader of the Opposition, President, Deputy President or member of the Senate, speaker, Deputy Speaker, or member of the House of Assembly or member of the Privy Council;

(b) the office of a member of the Judicial and Legal Service Commission, the public Service Commission or the Police Service Commission;

(c) the office of a member of any board, committee or other similar body (whether incorporated or not) established by any law in force in Barbados; or

(d) except as otherwise provided in this Constitution, the office of a Judge or any office on the personal staff of the Governor General.

(8) References in this Constitution to the power to remove a public officer shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that -

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require a Judge or the Director of Public Prosecutions or the Auditor General to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than the Governor General acting in accordance with the advice of a Commission established by this Constitution, vest in the Governor General acting on the recommendation of the Public Service Commission.

(9) Where any power is conferred by this Constitution to make any proclamation or order or to give any directions, the power shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, order or directions.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or nay other law.

(11) The interpretation Act 1966(a) as in force on 29th November 1966 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, an Act of The Legislature of Barbados passed after the commencement of the aforesaid Act.

## **FIRST SCHEDULE OATHS**

### **Oath of Allegiance**

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors, according to law. So help me God.

### **Oath for the due execution of the office of Governor General**

I, \_\_\_\_\_, do swear that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and successors, in the office of Governor General. So help me God.

### **Oath for the due execution of the office of Prime Minister or other Minister or Parliamentary secretary**

I, \_\_\_\_\_, being appointed Prime Minister/Minister/Parliamentary Secretary, do swear that I will do the best of my judgment, at all times when so required, freely give my counsel and advice to the Governor General (or any other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Barbados, and I do further swear that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular Minister or Parliamentary Secretary and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Barbados, directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any documents communicated to me as Prime Minister/Minister/Parliamentary Secretary or any matter coming to my knowledge in my capacity as such and that in all things I will be a true and faithful Prime Minister/Minister/Parliamentary Secretary, so Help me God.

**Oath for the due execution of the office of Director of Public Prosecutions**

I, \_\_\_\_\_, do swear that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of Director of Public Prosecutions. So help me god.

**Judicial Oath**

I, \_\_\_\_\_, do swear that I will well and truly serve Our Sovereign Lady Queen Elizabeth II, Her Heirs and Successors, in the office of Chief Justice/Judge of the Supreme Court and I will do right to all manner of people after the laws and usages of Barbados without fear or favour, affection or ill will. so help me God.

**SECOND SCHEDULE  
PROVISIONS RELATING TO CERTAIN TRIBUNALS**

1. If a member of the tribunal dies or resigns from his office or becomes unable to perform the functions thereof, another person qualified to be appointed as a member of the tribunal may be so appointed in his place.



**2.** The Governor General may appoint a secretary to the tribunal to record the proceedings of the tribunal and generally to perform such duties connected with the enquiry as the tribunal may direct.

**3.** If the members of the tribunal are equally divided on any question that arises during the proceedings of the tribunal, the chairman of the tribunal shall have and exercise a casting vote.

**4.** The tribunal may regulate its own procedure and may make rules for this purpose.

**5.** No member of the tribunal shall be liable to any action or suit for anything done by him as a member of the tribunal.

**6.** The tribunal shall have the powers of the Supreme Court to summon witnesses, to call for the production of documents and to examine persons appearing before it on oath. All summonses for the attendance of witnesses or the production of documents shall be signed by one of the members of the tribunal, and oaths may be administered by one of the members or by the secretary to the tribunal.

**7. (1)** All persons summoned to attend and give evidence or to produce documents at any sitting of the tribunal shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from the Supreme Court, and shall be entitled to the like expenses as if they had been summoned at the instance of the Crown to attend the Supreme Court on a criminal trial, if the same shall be allowed by the tribunal, but the tribunal may disallow the whole or any part of such expenses in any case if it thinks fit. The procedure for the payment of such witnesses shall be the same as nearly as may be for the payment of witnesses in the Supreme Court.

**(2)** Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every person attending, but leaving the enquiry without the permission of the tribunal, or refusing without sufficient cause to answer, or to answer fully and satisfactorily to the best of his knowledge and belief, all questions

put to him by or with the concurrence of the tribunal, or refusing or omitting without sufficient cause to produce any documents in his possession or under his control and mentioned or referred to in the summons served on him, and every person who shall at any sitting of the tribunal wilfully insult any member of the tribunal or the secretary or wilfully interrupt the proceedings of the tribunal shall be liable to a penalty not exceeding five hundred dollars to be recovered in a summary manner before any Magistrate.

(3) A person giving evidence before the tribunal shall not be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the tribunal, be entitled to all privileges to which a witness giving evidence before the Supreme Court is entitled in respect of evidence given by him before that Court.

**8.** The person to whom the enquiry relates shall be entitled to be represented at the enquiry by a person entitled to practice in Barbados as a barrister or solicitor, and any other person concerned in the enquiry may, by leave of the tribunal, be so represented.

**9.** The Governor General may direct the Commissioner of Police to detail constables to attend upon the tribunal to preserve order during the proceedings of the tribunal, and to serve summonses on witnesses, and to perform such ministerial duties as the tribunal may direct.

**10. (1)** The Governor General may direct -

(a) what remuneration, if any, shall be paid to the members of the tribunal and to the secretary and to any other persons employed in connection with the proceedings of the tribunal; and

(b) payment of any other expenses attendant upon the carrying out of the enquiry or upon any proceedings for any penalty under this Schedule.

(2) Any sums directed to be paid under the preceding subparagraph are hereby charged on the Consolidated Fund.

**11.** No proceeding shall be commenced for any penalty under this Schedule except by the direction of the Director of Public Prosecutions or of the tribunal. The tribunal may direct their secretary, or such other person as they may think fit, to commence and prosecute the proceedings for any such penalty.



# Cuba

## CONSTITUCIÓN DE LA REPÚBLICA DE CUBA (1976)

### PREÁMBULO

NOSOTROS, CIUDADANOS CUBANOS, herederos y continuadores del trabajo creador y de las tradiciones de combatividad, firmeza, heroísmo y sacrificio forjadas por nuestros antecesores; por los aborígenes que prefirieron muchas veces el exterminio a la sumisión; por los esclavos que se rebelaron contra sus amos; por los que despertaron la conciencia nacional y el ansia cubana de patria y libertad; por los patriotas que en 1868 iniciaron las guerras de independencia contra el colonialismo español y los que en el último impulso de 1895 las llevaron a la victoria de 1898, que les fuera arrebatada por la intervención y ocupación militar del imperialismo yanqui; por los obreros, campesinos, estudiantes e intelectuales que lucharon durante más de cincuenta años contra el dominio imperialista, la corrupción política, la falta de derechos y libertades populares, el des-empleo y la explotación impuesta por capitalistas y terratenientes; por los que promovieron, integraron y desarrollaron las primeras organizaciones de obreros y de campesinos, difundieron las ideas socialistas y fundaron los primeros movimientos marxista y marxista-leninista; por los integrantes de la vanguardia de la generación del centenario del natalicio

de Martí, que nutridos por su magisterio nos condujeron a la victoria revolucionaria popular de Enero; por los que, con el sacrificio de sus vidas, defendieron la Revolución contribuyendo a su definitiva consolidación; por los que masivamente cumplieron heroicas misiones internacionalistas;

GUIADOS por el ideario de José Martí y las ideas político-sociales de Marx, Engels y Lenin;

APOYADOS en el internacionalismo proletario, en la amistad fraternal, la ayuda, la cooperación y la solidaridad de los pueblos del mundo, especialmente los de América Latina y del Caribe;

DECIDIDOS a llevar adelante la Revolución triunfadora del Moncada y del Granma, de la Sierra y de Girón encabezada por Fidel Castro que, sustentada en la más estrecha unidad de todas las fuerzas revolucionarias y del pueblo, conquistó la plena independencia nacional, estableció el poder revolucionario, realizó las transformaciones democráticas, inició la construcción del socialismo y, con el Partido Comunista al frente, la continúa con el objetivo final de edificar la sociedad comunista;

CONSCIENTES de que los regímenes sustentados en la explotación del hombre por el hombre determinan la humillación de los explotados y la degradación de la condición humana de los explotadores; de que sólo en el socialismo y el comunismo, cuando el hombre ha sido liberado de todas las formas de explotación: de la esclavitud, de la servidumbre y del capitalismo, se alcanza la entera dignidad del ser humano; y de que nuestra Revolución elevó la dignidad de la patria y del cubano a superior altura;

DECLARAMOS nuestra voluntad de que la ley de leyes de la República esté presidida por este profundo anhelo, al fin logrado, de José Martí: “Yo quiero que la ley primera de nuestra República sea el culto de los cubanos a la dignidad plena del hombre”;

ADOPTAMOS por nuestro voto libre, mediante referendo, la siguiente Constitución:

## **CAPÍTULO I FUNDAMENTOS POLÍTICOS, SOCIALES Y ECONÓMICOS DEL ESTADO**

**Artículo 1.** Cuba es un Estado socialista de trabajadores, independiente y soberano, organizado con todos y para el bien de todos, como república unitaria y democrática, para el disfrute de la libertad política, la justicia social, el bienestar individual y colectivo y la solidaridad humana.

**Artículo 2.** El nombre del Estado cubano es República de Cuba, el idioma oficial es el español y su capital es la ciudad de La Habana.

**Artículo 3.** En la República de Cuba la soberanía reside en el pueblo, del cual dimana todo el poder del Estado. Ese poder es ejercido directamente o por medio de las Asambleas del Poder Popular y demás órganos del Estado que de ellas se derivan, en la forma y según las normas fijadas por la Constitución y las leyes.

Todos los ciudadanos tienen el derecho de combatir por todos los medios, incluyendo la lucha armada, cuando no fuera posible otro recurso, contra cualquiera que intente derribar el orden político, social y económico establecido por esta Constitución.

El socialismo y el sistema político y social revolucionario establecido en esta Constitución, probado por años de heroica resistencia frente a las agresiones de todo tipo y la guerra económica de los gobiernos de la potencia imperialista más poderosa que ha existido y habiendo demostrado su capacidad de transformar el país y crear una sociedad enteramente nueva y justa, es irrevocable, y Cuba no volverá jamás al capitalismo.

**Artículo 4.** Los símbolos nacionales son los que han presidido por más de cien años las luchas cubanas por la independencia, por los derechos del pueblo y por el progreso social:

- a bandera de la estrella solitaria;
- el himno de Bayamo;
- el escudo de la palma real.

**Artículo 5.** El Partido Comunista de Cuba, martiano y marxista-leninista, vanguardia organizada de la nación cubana, es la fuerza dirigente superior de la sociedad y del Estado, que organiza y orienta los esfuerzos comunes hacia los altos fines de la construcción del socialismo y el avance hacia la sociedad comunista.

**Artículo 6.** La Unión de Jóvenes Comunistas, organización de la juventud cubana de avanzada, cuenta con el reconocimiento y el estímulo del Estado en su función primordial de promover la participación activa de las masas juveniles en las tareas de la edificación socialista y de preparar adecuadamente a los jóvenes como ciudadanos conscientes y capaces de asumir responsabilidades cada día mayores en beneficio de nuestra sociedad.

**Artículo 7.** El Estado socialista cubano reconoce y estimula a las organizaciones de masas y sociales, surgidas en el proceso histórico de las luchas de nuestro pueblo, que agrupan en su seno a distintos sectores de la población, representan sus intereses específicos y los incorporan a las tareas de la edificación, consolidación y defensa de la sociedad socialista.

**Artículo 8.** El Estado reconoce, respeta y garantiza la libertad religiosa. En la República de Cuba, las instituciones religiosas están separadas del Estado.

Las distintas creencias y religiones gozan de igual consideración.

**Artículo 9.** El Estado:

- a) realiza la voluntad del pueblo trabajador y
  - encauza los esfuerzos de la nación en la construcción del socialismo;
  - mantiene y defiende la integridad y la soberanía de la patria;
  - garantiza la libertad y la dignidad plena del hombre, el disfrute de sus derechos, el ejercicio y cumplimiento de sus deberes y el desarrollo integral de su personalidad;
  - afianza la ideología y las normas de convivencia y de conducta propias de la sociedad libre de la explotación del hombre por el hombre;
  - protege el trabajo creador del pueblo y la propiedad y la riqueza de la nación socialista;
  - dirige planificada mente la economía nacional;
  - asegura el avance educacional, científico, técnico y cultural del país;



- b) como Poder del pueblo, en servicio del propio pueblo, garantiza
- que no haya hombre o mujer, en condiciones de trabajar, que no tenga oportunidad de obtener un empleo con el cual pueda contribuir a los fines de la sociedad y a la satisfacción de sus propias necesidades;
  - que no haya persona incapacitada para el trabajo que no tenga medios decorosos de subsistencia;
  - que no haya enfermo que no tenga atención medica;
  - que no haya niño que no tenga escuela, alimentación y vestido;
  - que no haya joven que no tenga oportunidad de estudiar;
  - que no haya persona que no tenga acceso al estudio, la cultura y el deporte;
- c) trabaja por lograr que no haya familia que no tenga una vivienda confortable.

**Artículo 10.** Todos los órganos del Estado, sus dirigentes, funcionarios y empleados, actúan dentro de los límites de sus respectivas competencias y tienen la obligación de observar estrictamente la legalidad socialista y velar por su respeto en la vida de toda la sociedad.

**Artículo 11.** El Estado ejerce su soberanía:

- a) sobre todo el territorio nacional, integrado por la Isla de Cuba, la Isla de la Juventud, las demás islas y cayos adyacentes, las aguas interiores y el mar territorial en la extensión que fija la ley y el espacio aéreo que sobre estos se extiende;
- b) sobre el medio ambiente y los recursos naturales del país;
- c) sobre los recursos naturales, tanto vivos como no vivos, de las aguas, el lecho y el subsuelo de la zona económica marítima de la República, en la extensión que fija la ley, conforme a la práctica internacional.

La República de Cuba repudia y considera ilegales y nulos los tratados, pactos o concesiones concertados en condiciones de desigualdad o que desconocen o disminuyen su soberanía y su integridad territorial.

Las relaciones económicas, diplomáticas y políticas con cualquier otro Estado no podrán ser jamás negociadas bajo agresión, amenaza o coerción de una potencia extranjera.

**Artículo 12.** La República de Cuba hace suyos los principios antiimperialistas e internacionalistas, y

- a) ratifica su aspiración de paz digna, verdadera y válida para todos los Estados, grandes y pequeños, débiles y poderosos, asentada en el respeto a la independencia y soberanía de los pueblos y el derecho a la autodeterminación;
- b) funda sus relaciones internacionales en los principios de igualdad de derechos, libre determinación de los pueblos, integridad territorial, independencia de los Estados, la cooperación internacional en beneficio e interés mutuo y equitativo, el arreglo; pacífico de controversias en pie de igualdad y respeto y los demás principios proclamados en la Carta de las Naciones Unidas y en otros tratados internacionales de los cuales Cuba sea parte;
- c) reafirma su voluntad de integración y colaboración con los países de América Latina y del Caribe, cuya identidad común y necesidad histórica de avanzar juntos hacia la integración económica y política para lograr la verdadera independencia, nos permitiría alcanzar el lugar que nos corresponde en el mundo;
- ch) propugna al unidad de todos los países del Tercer Mundo, frente a la política imperialista y neocolonialista que persigue la limitación o subordinación de la soberanía de nuestros pueblos y agravar las condiciones económicas de explotación y opresión; de las naciones subdesarrolladas;
- d) condena al imperialismo, promotor y sostén de todas las manifestaciones fascistas, colonialistas, neocolonialistas y racistas, como la principal fuerza de agresión y de guerra y el peor enemigo de los pueblos;
- e) repudia la intervención directa o indirecta en los asuntos internos o externos de cualquier Estado y, por tanto, la agresión armada, el bloqueo económico, así como cualquier otra forma de coerción económica o política, la violencia física contra personas residentes en otros países, u otro tipo de injerencia y amenaza a la integridad de los Estados y de los elementos políticos, económicos y culturales de las naciones;
- f) rechaza la violación del derecho irrenunciable y soberano de todo Estado a regular el uso y los beneficios de las telecomunicaciones en su territorio, conforme a la práctica universal y a los convenios internacionales que ha suscrito;
- g) califica de delito internacional la guerra de agresión y de conquista, reconoce la legitimidad de las luchas por la liberación nacional, así como la resistencia

armada a la agresión, y considera su deber internacionalista solidarizarse con el agredido y con los pueblos que combaten por su liberación y autodeterminación;

h) basa sus relaciones con los países que edifican el socialismo en la amistad fraternal, la cooperación y la ayuda mutua, asentadas en los objetivos comunes de la construcción de la nueva sociedad;

i) mantiene relaciones de amistad con los países que, teniendo un régimen político, social y económico diferente, respetan su soberanía, observan las normas de convivencia entre los Estados, se atienen a los principios de mutuas conveniencias y adoptan una actitud recíproca con nuestro país.

**Artículo 13.** La República de Cuba concede asilo a los perseguidos por sus ideales o luchas por los derechos democráticos, contra el imperialismo, el fascismo, el colonialismo y el neocolonialismo; contra la discriminación y el racismo; por la liberación nacional; por los derechos y reivindicaciones de los trabajadores, campesinos y estudiantes; por sus actividades políticas, científicas, artísticas y literarias progresistas, por el socialismo y la paz.

**Artículo 14.** En la República de Cuba rige el sistema de economía basado en la propiedad socialista de todo el pueblo sobre los medios fundamentales de producción y en la supresión de la explotación del hombre por el hombre. También rige el principio de distribución socialista “de cada cual según su capacidad, a cada cual según su trabajo”. La ley establece las regulaciones que garantizan el efectivo cumplimiento de este principio.

**Artículo 15.** Son de propiedad estatal socialista de todo el pueblo:

a) las tierras que no pertenecen a los agricultores pequeños o a cooperativas integradas por estos, el subsuelo, las minas, los recursos naturales tanto vivos como no vivos dentro de la zona económica marítima de la República, los bosques, las aguas y las vías de comunicación;

b) los centrales azucareros, las fabricas, los medios fundamentales de transporte, y cuantas empresas, bancos e instalaciones han sido nacionalizados y expropiados a los imperialistas, latifundistas y burgueses, así como las fabricas, empresas e instalaciones económicas y centros científicos, sociales, culturales y deportivos construidos, fomentados o adquiridos por el Estado y los que en el futuro construya, fomenta o adquiera.

Estos bienes no pueden transmitirse en propiedad a personas naturales o jurídicas, salvo los casos excepcionales en que la transmisión parcial o total de algún objetivo económico se destine a los fines del desarrollo del país y no afecten los fundamentos políticos, sociales y económicos del Estado, previa aprobación del Consejo de Ministros o su Comité Ejecutivo.

En cuanto a la transmisión de otros derechos sobre estos bienes a empresas estatales y otras entidades autorizadas, para el cumplimiento de sus fines, se actuara conforme a lo previsto en la ley.

**Artículo 16.** El Estado organiza, dirige y controla la actividad económica nacional conforme a un plan que garantice el desarrollo programado del país, a fin de fortalecer el sistema socialista, satisfacer cada vez mejor las necesidades materiales y culturales de la sociedad y los ciudadanos, promover el desenvolvimiento de la persona humana y de su dignidad, el avance y la seguridad del país. En la elaboración y ejecución de los programas de producción y desarrollo participan activa y conscientemente los trabajadores de todas las ramas de la economía y de las demás esferas de la vida social.

**Artículo 17.** El Estado administra directamente los bienes que integran la propiedad socialista de todo el pueblo; o podrá crear y organizar empresas y entidades encargadas de su administración, cuya estructura, atribuciones, funciones y el régimen de sus relaciones son regulados por la ley.

Estas empresas y entidades responden de sus obligaciones solo con sus recursos financieros, dentro de las limitaciones establecidas por la ley. El Estado no responde de las obligaciones contraídas por las empresas, entidades u otras personas jurídicas y estas tampoco responden de las de aquel.

**Artículo 18.** El Estado dirige y controla el comercio exterior. La ley establece las instituciones y autoridades estatales facultadas para:

- crear empresas de comercio exterior;
- normar y regular las operaciones de exportación e importación; y
- determinar las personas naturales o jurídicas con capacidad legal para realizar dichas operaciones de exportación e importación y concertar convenios comerciales.

**Artículo 19.** El Estado reconoce la propiedad de los agricultores pequeños sobre las tierras que legalmente les pertenecen y los demás bienes inmuebles y muebles que les resulten necesarios para la explotación a que se dedican, conforme a lo que establece la ley. Los agricultores pequeños, previa autorización del organismo estatal competente y el cumplimiento de los demás requisitos legales, pueden incorporar sus tierras únicamente a cooperativas de producción agropecuaria. Además pueden venderlas, permutarlas o transmitir las por otro título al Estado y a cooperativas de producción agropecuaria o a agricultores pequeños en los casos, formas y condiciones que establece la ley, sin perjuicio del derecho preferente del Estado a su adquisición, mediante el pago de su justo precio.

Se prohíbe el arrendamiento, la aparcería, los préstamos hipotecarios y cualquier acto que implique gravamen o cesión a particulares de los derechos emanados de la propiedad de los agricultores pequeños sobre sus tierras.

El Estado apoya la producción individual de los agricultores pequeños que contribuyen a la economía nacional.

**Artículo 20.** Los agricultores pequeños tienen derecho a asociarse entre sí, en la forma y con los requisitos que establece la ley, tanto a los fines de la producción agropecuaria como a los de obtención de créditos y servicios estatales.

Se autoriza la organización de cooperativas de producción agropecuaria en los casos y en la forma que la ley establece. Esta propiedad cooperativa es reconocida por el Estado y constituye una forma avanzada y eficiente de producción socialista. Las cooperativas de producción agropecuaria administran, poseen, usan y disponen de los bienes de su propiedad, de acuerdo con lo establecido en la ley en sus reglamentos.

Las tierras de las cooperativas no pueden ser embargadas ni gravadas y su propiedad puede ser transferida a otras cooperativas o al Estado, por las causas y según el procedimiento establecido en la ley. El Estado brinda todo el apoyo posible a esta forma de producción agropecuaria.

**Artículo 21.** Se garantiza la propiedad personal sobre los ingresos y ahorros procedentes del trabajo propio, sobre la vivienda que se posea con justo título de dominio y los demás bienes y objetos que sirven para la satisfacción de las necesidades materiales y culturales de la persona.

Asimismo se garantiza la propiedad sobre los medios e instrumentos de trabajo personal o familiar, los que no pueden ser utilizados para la obtención de ingresos provenientes de la explotación del trabajo ajeno. La ley establece la cuantía en que son embargables los bienes de propiedad personal.

**Artículo 22.** El Estado reconoce la propiedad de las organizaciones políticas, de masas y sociales sobre los bienes destinados al cumplimiento de sus fines.

**Artículo 23.** El Estado reconoce la propiedad de las empresas mixtas, sociedades y asociaciones económicas que se constituyen conforme a la ley. El uso, disfrute y disposición de los bienes pertenecientes al patrimonio de las entidades anteriores se rigen por lo establecido en la ley y los tratados, así como por los estatutos y reglamentos propios por los que se gobiernan.

**Artículo 24.** El Estado reconoce el derecho de herencia sobre la vivienda de dominio propio y demás bienes de propiedad personal. La tierra y los demás bienes vinculados a la producción que integran la propiedad de los agricultores pequeños son heredables y solo se adjudican a aquellos herederos que trabajan la tierra, salvo las excepciones y según el procedimiento que establece la ley.

La ley fija los casos, las condiciones y la forma en que los bienes de propiedad cooperativa podrán ser heredables.

**Artículo 25.** Se autoriza la expropiación de bienes, por razones de utilidad pública o interés social y con la debida indemnización. La ley establece el procedimiento para la expropiación y las bases para la determinar su utilidad y necesidad, así como la forma de indemnización, considerando los intereses y las necesidades económicas y sociales del expropiado.

**Artículo 26.** Toda persona que sufre daño o perjuicio causado indebidamente por funcionarios o agentes del Estado con motivo del ejercicio de las funciones propias de sus cargos, tiene derecho a reclamar y

obtener la correspondiente reparación o indemnización en la forma que establece la ley.

**Artículo 27.** El Estado protege el medio ambiente y los recursos naturales del país. Reconoce su estrecha vinculación con el desarrollo económico y social sostenible para hacer más racional la vida humana y asegurar la supervivencia, el bienestar y la seguridad de las generaciones actuales y futuras. Corresponde a los órganos competentes aplicar esta política.

Es deber de los ciudadanos contribuir a la protección del agua, la atmósfera, la conservación del suelo, la flora, la fauna y todo el rico potencial de la naturaleza.

## **CAPÍTULO II CIUDADANÍA**

**Artículo 28.** La ciudadanía cubana se adquiere por nacimiento o por naturalización.

**Artículo 29.** Son ciudadanos cubanos por nacimiento:

- a) los nacidos en el territorio nacional, con excepción de los hijos de extranjeros que se encuentren al servicio de su gobierno o de organismos internacionales. La ley establece los requisitos y las formalidades para el caso de los hijos de los extranjeros residentes no permanentes en el país.
- b) los nacidos en el extranjero de padre o madre cubanos, que se hallen cumpliendo misión oficial;
- c) los nacidos en el extranjero de padre o madre cubanos, previo el cumplimiento de las formalidades que la ley señala; los nacidos fuera del territorio nacional, de padre o madre naturales de la República de Cuba que hayan perdido la ciudadanía cubana, siempre que la reclamen en la forma que señala la ley;
- d) los extranjeros que por méritos excepcionales alcanzados en las luchas por la liberación de Cuba fueron considerados ciudadanos cubanos por nacimiento.

**Artículo 30.** Son ciudadanos cubanos por naturalización:

- a) los extranjeros que adquieren la ciudadanía de acuerdo con lo establecido en la ley;
- b) los que hubiesen servido a la lucha armada contra la tiranía derrocada el primero de enero de 1959, siempre que acrediten esa condición en la forma legalmente establecida;
- c) los que habiendo sido privados arbitrariamente de su ciudadanía de origen obtengan la cubana por acuerdo expreso del Consejo de Estado.

**Artículo 31.** Ni el matrimonio ni su disolución afectan la ciudadanía de los cónyuges o de sus hijos.

**Artículo 32.** Los cubanos no podrán ser privados de su ciudadanía, salvo por causas legalmente establecidas. Tampoco podrán ser privados del derecho a cambiar de esta.

No se admitirá la doble ciudadanía. En consecuencia, cuando se adquiriera una ciudadanía extranjera, se perderá la cubana.

La ley establece el procedimiento a seguir para la formalización de la pérdida de la ciudadanía y las autoridades facultadas para decidirlo.

**Artículo 33.** La ciudadanía cubana podrá recobrase en los casos y en la forma que prescribe la ley.

### **CAPÍTULO III EXTRANJERIA**

**Artículo 34.** Los extranjeros residentes en el territorio de la República se equiparan a los cubanos:

- en la protección de sus personas y bienes;
- en el disfrute de los derechos y el cumplimiento de los deberes reconocidos en esta Constitución, bajo las condiciones y con las limitaciones que la ley fija;
- en la obligación de observar la Constitución y la ley;
- en la obligación de contribuir a los gastos públicos en la forma y la cuantía que la ley establece;



- en la sumisión a la jurisdicción y resoluciones de los tribunales de justicia y autoridades de la República.

La ley establece los casos y la forma en que los extranjeros pueden ser expulsados del territorio nacional y las autoridades facultadas para decidirlo.

## **CAPÍTULO IV FAMILIA**

**Artículo 35.** El Estado protege a la familia, la maternidad y el matrimonio. El Estado reconoce en la familia la célula fundamental de la sociedad y le atribuye responsabilidades y funciones esenciales en la educación y formación de las nuevas generaciones.

**Artículo 36.** El matrimonio es la unión voluntariamente concertada de un hombre y una mujer con aptitud legal para ello, a fin de hacer vida en común. Descansa en la igualdad absoluta de derechos y deberes de los cónyuges, los que deben atender al mantenimiento del hogar y a la formación integral de los hijos mediante el esfuerzo común, de modo que este resulte compatible con el desarrollo de las actividades sociales de ambos.

La ley regula la formalización, reconocimiento y disolución del matrimonio y los derechos y obligaciones que de dichos actos se derivan.

**Artículo 37.** Todos los hijos tienen iguales derechos, sean habidos dentro o fuera del matrimonio.

Esta abolida toda calificación sobre la naturaleza de la filiación. No se consignara declaración alguna diferenciando los nacimientos, ni sobre el estado civil de los padres en las actas de inscripción de los hijos, ni en ningún otro documento que haga referencia a la filiación.

El Estado garantiza mediante los procedimientos legales adecuados la determinación y el reconocimiento de la paternidad.

**Artículo 38.** Los padres tienen el deber de dar alimentos a sus hijos y asistirlos en la defensa de sus legítimos intereses y en la realización de sus justas

aspiraciones; así como el de contribuir activamente a su educación y formación integral como ciudadanos útiles y preparados para la vida en la sociedad socialista.

Los hijos, a su vez, están obligados a respetar y ayudar a sus padres.

## **CAPÍTULO V EDUCACIÓN Y CULTURA**

**Artículo 39.** El Estado orienta, fomenta y promueve la educación, la cultura y las ciencias en todas sus manifestaciones. En su política educativa y cultural se atiene a los postulados siguientes:

- a) fundamenta su política educacional y cultural en los avances de la ciencia y la técnica, el ideario marxista y martiano, la tradición pedagógica progresista cubana y la universal;
- b) la enseñanza es función del Estado y es gratuita. Se basa en las conclusiones y aportes de la ciencia y en la relación mas estrecha del estudio con la vida, el trabajo y la producción. El estado mantiene un amplio sistema de becas para los estudiantes y proporciona multiples facilidades de estudio a los trabajadores a fin de que puedan alcanzar los mas altos niveles posibles de conocimientos y habilidades. La ley precisa la integración y estructura del sistema nacional de enseñanza, así como el alcance de la obligatoriedad de estudiar y define la preparación general básica que, como mínimo, debe adquirir todo ciudadano;
- c) promover la educación patriótica y la formación comunista de las nuevas generaciones y la preparación de los niños, jóvenes y adultos para la vida social. Para realizar este principio se combinan la educación general y las especializadas de carácter científico, técnico o artístico, con el trabajo, la investigación para el desarrollo, la educación física, el deporte y la participación en actividades políticas, sociales y de preparación militar;
- ch) es libre la creación artística siempre que su contenido no sea contrario a la Revolución. Las formas de expresión en el arte son libres;
- d) el Estado, a fin de elevar la cultura del pueblo, se ocupa de fomentar y desarrollar la educación artística, la vocación para la creación y el cultivo del arte y la capacidad para apreciarlo;

- e) la actividad creadora e investigativa en la ciencia es libre. El Estado estimula y viabiliza la investigación y prioriza la dirigida a resolver los problemas que atañen al interés de la sociedad y al beneficio del pueblo;
- f) el Estado propicia que los trabajadores se incorporen a la labor científica y al desarrollo de la ciencia;
- g) el Estado orienta, fomenta y promueve la cultura física y el deporte en todas sus manifestaciones como medio de educación y contribución a la formación integral de los ciudadanos;
- h) el Estado defiende la identidad de la cultura cubana y vela por la conservación del patrimonio cultural y la riqueza artística e histórica de la nación. Protege los monumentos nacionales y los lugares notables por su belleza natural o por su reconocido valor artístico o histórico;
- i) el Estado promueve la participación de los ciudadanos a través de las organizaciones de masas y sociales del país en la realización de su política educacional y cultural.

**Artículo 40.** La niñez y la juventud disfrutan de particular protección por parte del Estado y la sociedad. La familia, la escuela, los órganos estatales y las organizaciones de masas y sociales tienen el deber de prestar especial atención a la formación integral de la niñez y la juventud.

## **CAPÍTULO VI IGUALDAD**

**Artículo 41.** Todos los ciudadanos gozan de iguales derechos y están sujetos a iguales deberes.

**Artículo 42.** La discriminación por motivo de raza, color de la piel, sexo, origen nacional, creencias religiosas y cualquiera otra lesiva a la dignidad humana esta proscrita y es sancionada por la ley. Las instituciones del Estado educan a todos, desde la mas temprana edad, en el principio de la igualdad de los seres humanos.

**Artículo 43.** El Estado consagra el derecho conquistado por la Revolución de que los ciudadanos, sin distinción de raza, color de la piel, sexo, creencias religiosas, origen nacional y cualquier otra lesiva a la dignidad humana:

- tienen acceso, según méritos y capacidades, a todos los cargos y empleos del Estado, de la Administración Pública y de la producción y prestación de servicios;
- ascienden a todas las jerarquías de las fuerzas armadas revolucionarias y de la seguridad y orden interior, según méritos y capacidades;
- perciben salario igual por trabajo igual;
- disfrutan de la enseñanza en todas las instituciones docentes del país, desde la escuela primaria hasta las universidades, que son las mismas para todos;
- reciben asistencia en todas las instituciones de salud;
- se domicilian en cualquier sector, zona o barrio de las ciudades y se alojan en cualquier hotel;
- son atendidos en todos los restaurantes y demás establecimientos de servicio público;
- usan, sin separaciones, los transportes marítimos, ferroviarios, aéreos y automotores;
- disfrutan de los mismos balnearios, playas, parques, círculos sociales y demás centros de cultura, deportes, recreación y descanso.

**Artículo 44.** La mujer y el hombre gozan de iguales derechos en lo económico, político, cultural, social y familiar.

El Estado garantiza que se ofrezcan a la mujer las mismas oportunidades y posibilidades que al hombre, a fin de lograr su plena participación en el desarrollo del país.

El Estado organiza instituciones tales como círculos infantiles, seminternados e internados escolares, casas de atención a ancianos y servicios que facilitan a la familia trabajadora el desempeño de sus responsabilidades.

Al velar por su salud y por una sana descendencia, el Estado concede a la mujer trabajadora licencia retribuida por maternidad, antes y después del parto, y opciones laborales temporales compatibles con su función materna.

El Estado se esfuerza por crear todas las condiciones que propicien la realización del principio de igualdad.

## **CAPÍTULO VII**

### **DERECHOS, DEBERES Y GARANTÍAS FUNDAMENTALES**

**Artículo 45.** El trabajo en la sociedad socialista es un derecho, un deber y un motivo de honor para cada ciudadano.

El trabajo es remunerado conforme a su calidad y cantidad; al proporcionarlo se atienden las exigencias de la economía y la sociedad, la elección del trabajador y su aptitud y calificación; lo garantiza el sistema económico socialista, que propicia el desarrollo económico y social, sin crisis, y que con ello ha eliminado el desempleo y borrado para siempre el paro estacional llamado “tiempo muerto”.

Se reconoce el trabajo voluntario, no remunerado, realizado en beneficio de toda la sociedad, en las actividades industriales, agrícolas, técnicas, artísticas y de servicio, como formador de la conciencia comunista de nuestro pueblo.

Cada trabajador esta en el deber de cumplir cabalmente las tareas que le corresponden en su empleo.

**Artículo 46.** Todo el que trabaja tiene derecho al descanso, que se garantiza por la jornada laboral de ocho horas, el descanso semanal y las vacaciones anuales pagadas.

El Estado fomenta el desarrollo de instalaciones y planes vacacionales.

**Artículo 47.** Mediante el sistema de seguridad social, el Estado garantiza la protección adecuada a otro trabajador impedido por su edad, invalidez o enfermedad.

En caso de muerte del trabajador garantiza similar protección a su familia.

**Artículo 48.** El Estado protege, mediante la asistencia social, a los ancianos sin recursos ni amparo y a cualquier personal no apta para trabajar que carezca de familiares en condiciones de prestarle ayuda.

**Artículo 49.** El Estado garantiza el derecho a la protección, seguridad e higiene del trabajo, mediante la adopción de medidas adecuadas para la prevención de accidentes y enfermedades profesionales.

El que sufre un accidente en el trabajo o contrae una enfermedad profesional tiene derecho a la atención médica y a subsidio o jubilación en los casos de incapacidad temporal o permanente para el trabajo.

**Artículo 50.** Todos tienen derecho a que se atienda y proteja su salud. El Estado garantiza este derecho:

- con la prestación de la asistencia médica y hospitalaria gratuita, mediante la red de instalaciones de servicio médico rural, de los policlínicas, hospitales, centros profilácticos y de tratamiento especializado;
- con la prestación de asistencia estomatología gratuita;
- con el desarrollo de los planes de divulgación sanitaria y de educación para la salud, exámenes médicos periódicos, vacunación general y otras medidas preventivas de las enfermedades. En estos planes y actividades coopera toda la población a través de las organizaciones de masas y sociales.

**Artículo 51.** Todos tienen derecho a la educación. Este derecho está garantizado por el amplio y gratuito sistema de escuelas, seminternados, internados y becas, en todos los tipos y niveles de enseñanza, y por la gratuidad del material escolar, lo que proporciona a cada niño y joven, cualquiera que sea la situación económica de su familia, la oportunidad de cursar estudios de acuerdo con sus aptitudes, las exigencias sociales y las necesidades del desarrollo económico- social.

Los hombres y mujeres adultos tienen asegurado este derecho, en las mismas condiciones de gratuidad y con facilidades específicas que la ley regula, mediante la educación de adultos, la enseñanza técnica y profesional, la capacitación laboral en empresas y organismos del Estado y los cursos de educación superior para los trabajadores.

**Artículo 52.** Todos tienen derecho a la educación física, al deporte y a la recreación.

El disfrute de este derecho está garantizado por la inclusión de la enseñanza y práctica de la educación física y el deporte en los planes de estudio del sistema nacional de educación; y por la amplitud de la instrucción y los medios puestos a disposición del pueblo, que facilitan la práctica masiva del deporte y la recreación.

**Artículo 53.** Se reconoce a los ciudadanos libertad de palabra y prensa conforme a los fines de la sociedad socialista. Las condiciones materiales para su ejercicio están dadas por el hecho de que la prensa, la radio, la televisión, el cine y otros medios de difusión masiva son de propiedad estatal o social y no pueden ser objeto, en ningún caso, de propiedad privada, lo que asegura su uso al servicio exclusivo del pueblo trabajador y del interés de la sociedad.

La ley regula el ejercicio de estas libertades.

**Artículo 54.** Los derechos de reunión, manifestación y asociación son ejercidos por los trabajadores, manuales e intelectuales, los campesinos, las mujeres, los estudiantes y demás sectores del pueblo trabajador, para lo cual disponen de los medios necesarios a tales fines. Las organizaciones de masas y sociales disponen de todas las facilidades para el desenvolvimiento de dichas actividades en las que sus miembros gozan de la mas amplia libertad de palabra y opinión, basadas en el derecho irrestricto a la iniciativa y a la critica.

**Artículo 55.** El Estado, que reconoce, respeta y garantiza la libertad de conciencia y de religión, reconoce, respeta y garantiza a la vez la libertad de cada ciudadano de cambiar de creencias religiosas o no tener ninguna, y a profesar, dentro del respeto a la ley, el culto religioso de su preferencia.

La ley regula las relaciones del Estado con las instituciones religiosas.

**Artículo 56.** El domicilio es inviolable. Nadie puede penetrar en el ajeno contra la voluntad del morador, salvo en los casos previstos por la ley.

**Artículo 57.** La correspondencia es inviolable. Solo puede ser ocupada, abierta y examinada en los casos previstos por la ley. Se guardara secreto de los asuntos ajenos al hecho que motivare el examen. El mismo principio se observara con respecto a las comunicaciones cablegráficas, telegráficas y telefónicas.

**Artículo 58.** La libertad e inviolabilidad de su persona están garantizadas a todos los que residen en el territorio nacional. Nadie puede ser detenido sino en los casos, en la forma y con las garantías que prescriben las leyes.

El detenido o preso es inviolable en su integridad personal.

**Artículo 59.** Nadie puede ser encausado ni condenado sino por tribunal competente en virtud de leyes anteriores al delito y con las formalidades y garantías que estas establecen.

Todo acusado tiene derecho a la defensa.

No se ejercerá violencia ni coacción de clase alguna sobre las personas para forzarlas a declarar.

Es nula toda declaración obtenida con infracción de este precepto y los responsables incurrirán en las sanciones que fija la ley.

**Artículo 60.** La confiscación de bienes se aplica solo como sanción por las autoridades, en los casos y por los procedimientos que determina la ley.

**Artículo 61.** Las leyes penales tienen efecto retroactivo cuando sean favorables al encausado o sancionado. Las demás leyes no tienen efecto retroactivo a menos que en las mismas se disponga lo contrario por razón de interés social o utilidad pública.

**Artículo 62.** Ninguna de las libertades reconocidas a los ciudadanos puede ser ejercida contra lo establecido en la Constitución y las leyes, ni contra la existencia y fines del Estado socialista, ni contra la decisión del pueblo cubano de construir el socialismo y el comunismo. La infracción de este principio es unible.

**Artículo 63.** Todo ciudadano tiene derecho a dirigir quejas y peticiones a las autoridades y a recibir la atención o respuestas pertinentes y en plazo adecuado, conforme a la ley.

**Artículo 64.** Es deber de cada uno cuidar la propiedad pública y social, acatar la disciplina del trabajo, respetar los derechos de los demás, observar las normas de convivencia socialista y cumplir los deberes cívicos y sociales.

**Artículo 65.** La defensa de la patria socialista es el mas grande honor y el deber supremo de cada cubano.



La ley regula el servicio militar que los cubanos deben prestar. La traición a la patria es el mas grave de los crímenes; quien la comete esta sujeto a las mas severas sanciones.

**Artículo 66.** El cumplimiento estricto de la Constitución y de las leyes es deber inexcusable de todos.

## **CAPÍTULO VIII ESTADO DE EMERGENCIA**

**Artículo 67.** En caso o ante la inminencia de desastres naturales o catástrofes u otras circunstancias que por su naturaleza, proporción o entidad afecten el orden interior, la seguridad del país o la estabilidad del Estado, el Presidente del Consejo de Estado puede declarar el estado de emergencia en todo el territorio nacional o en una parte de el, y durante su vigencia disponer la movilización de la población.

La ley regula la forma en que se declara el estado de emergencia, sus efectos y su terminación. Igualmente determina los derechos y deberes fundamentales reconocidos por la Constitución, cuyo ejercicio debe ser regulado de manera diferente durante la vigencia del estado de emergencia.

## **CAPÍTULO IX PRINCIPIOS DE ORGANIZACIÓN Y FUNCIONAMIENTO DE LOS ÓRGANOS ESTATALES**

**Artículo 68.** Los órganos del Estado se integran y desarrollan su actividad sobre la base de los principios de la democracia socialista, que se expresan en las reglas siguientes:

- a) todos los órganos representativos de poder del Estado son electivos y renovables;
- b) las masas populares controlan la actividad de los órganos estatales, de los diputados, de los delegados y de los funcionarios;
- c) los elegidos tienen el deber de rendir cuenta de su actuación y pueden ser revocados de sus cargos en cualquier momento;

- ch) cada órgano estatal desarrolla ampliamente, dentro del marco de su competencia, la iniciativa encaminada al aprovechamiento de los recursos y posibilidades locales y a la incorporación de las organizaciones de masas y sociales a su actividad,
- d) las disposiciones de los órganos estatales superiores son obligatorias para los inferiores;
- e) los órganos estatales inferiores responden ante los superiores y les rinden cuenta de su gestión;
- f) la libertad de discusión, el ejercicio de la crítica y autocrítica y la subordinación de la minoría a la mayoría rigen en todos los órganos estatales colegiados.

## **CAPÍTULO X**

### **ÓRGANOS SUPERIORES DEL PODER POPULAR**

**Artículo 69.** La Asamblea Nacional del Poder Popular es el órgano supremo del poder del Estado. Representa y expresa la voluntad soberana de todo el pueblo.

**Artículo 70.** La Asamblea Nacional del Poder Popular es el único órgano con potestad constituyente y legislativa en la República.

**Artículo 71.** La Asamblea Nacional del Poder Popular se compone de diputados elegidos por el voto libre, directo y secreto de los electores, en la proporción y según el procedimiento que determina la ley.

**Artículo 72.** La Asamblea Nacional del Poder Popular es elegida por un termino de cinco años.

Este termino solo podrá extenderse por acuerdo de la propia Asamblea en caso de guerra o a virtud de otras circunstancias excepcionales que impidan la celebración normal de las elecciones y mientras subsistan tales circunstancias.

**Artículo 73.** La Asamblea Nacional del Poder Popular, al constituirse para una nueva legislatura, elige de entre sus diputados a su Presidente, al Vicepresidente y al Secretario. La ley regula la forma y el procedimiento mediante el cual se constituye la Asamblea y realiza esa elección.

**Artículo 74.** La Asamblea Nacional del Poder Popular elige, de entre sus diputados, al Consejo de Estado, integrado por un Presidente, un Primer Vicepresidente, cinco Vicepresidentes, un Secretario y veintitrés miembros más.

El Presidente del Consejo de Estado es jefe de Estado y jefe de Gobierno.

El Consejo de Estado es responsable ante la Asamblea Nacional del Poder Popular y le rinde cuenta de todas sus actividades.

**Artículo 75.** Son atribuciones de la Asamblea Nacional del Poder Popular:

- a) acordar reformas de la Constitución conforme a lo establecido en el Artículo 137;
- b) aprobar, modificar o derogar las leyes y someterlas previamente a la consulta popular cuando lo estime procedente en atención a la índole de la legislación de que se trate;
- c) decidir acerca de la constitucionalidad de las leyes, decretos-leyes, decretos y demás disposiciones generales;
- ch) revocar en todo o en parte los decretos-leyes que haya dictado el Consejo de Estado;
- d) discutir y aprobar los planes nacionales de desarrollo económico y social;
- e) discutir y aprobar el presupuesto del Estado;
- f) aprobar los principios del sistema de planificación y de dirección de la economía nacional;
- g) acordar el sistema monetario y crediticio;
- h) aprobar los lineamientos generales de la política exterior e interior;
- i) declarar el estado de guerra en caso de agresión militar y aprobar los tratados de paz;
- j) establecer y modificar la división político-administrativa del país conforme a lo establecido en el Artículo 102;
- k) elegir al Presidente, al Vicepresidente y al Secretario de la Asamblea Nacional;
- l) elegir al Presidente, al Primer Vicepresidente, a los Vicepresidentes, al Secretario y a los demás miembros del Consejo de Estado;
- ll) designar, a propuesta del Presidente del Consejo de Estado, al Primer Vicepresidente, a los Vicepresidentes y demás miembros del Consejo de Ministros;

- m) elegir al Presidente, a los Vicepresidentes y a los demás Jueces del Tribunal Supremo Popular;
- n) elegir al Fiscal General y a los Vicefiscales generales de la República;
- ñ) nombrar comisiones permanentes y temporales;
- o) revocar la elección o designación de las personas elegidas o designadas por ella;
- p) ejercer la mas alta fiscalización sobre los órganos del Estado y del Gobierno;
- q) conocer, evaluar y adoptar las decisiones pertinentes sobre los informes de rendición de cuenta que le presenten el Consejo de Estado, el Consejo de Ministros, el Tribunal Supremo Popular, la Fiscalía General de la República y las Asambleas Provinciales;; del Poder Popular;
- r) revocar los decretos-leyes del Consejo de Estado y los decretos o disposiciones del Consejo de Ministros que contradigan la Constitución o las leyes;
- s) revocar o modificar los acuerdos o disposiciones de los órganos locales del Poder Popular que violen la Constitución, las leyes, los decretos-leyes, decretos y demás disposiciones dictadas por un órgano de superior jerarquía a los mismos; o los que afecten los intereses de otras localidades o los generales del país;
- t) conceder amnistías;
- u) disponer la convocatoria de referendos en los casos previstos en la Constitución y en otros que la propia Asamblea considere procedente;
- v) acordar su reglamento;
- w) las demás que le confiere esta Constitución.

**Artículo 76.** Las leyes y acuerdos de la Asamblea Nacional del Poder Popular, salvo cuando se refieran a la reforma de la Constitución, se adoptan por mayoría simple de votos.

**Artículo 77.** Las leyes aprobadas por la Asamblea Nacional del Poder Popular entran en vigor en la fecha que en cada caso determine la propia ley.

Las leyes, decretos-leyes, decretos y resoluciones, reglamentos y demás disposiciones generales de los órganos nacionales del Estado, se publican en la Gaceta Oficial de la República.

**Artículo 78.** La Asamblea Nacional del Poder Popular es reúne en dos periodos ordinarios de sesiones al año y en sesión extraordinaria cuando

lo solicite la tercera parte de sus miembros o la convoque el Consejo de Estado.

**Artículo 79.** Para que la Asamblea Nacional del Poder Popular pueda celebrar sesión se requiere la presencia de mas de la mitad del numero total de los diputados que la integran.

**Artículo 80.** Las sesiones de la Asamblea Nacional del Poder Popular son publicas, excepto en el caso en que la propia Asamblea acuerde celebrarlas a puertas cerradas por razón de interés de Estado.

**Artículo 81.** Son atribuciones del Presidente de la Asamblea Nacional del Poder Popular:

- a) presidir las sesiones de la Asamblea Nacional y velar por la aplicación de su reglamento;
- b) convocar las sesiones ordinarias de la Asamblea Nacional;
- c) proponer el proyecto de orden del día de las sesiones de la Asamblea Nacional;
- ch) firmar y disponer la publicación en la Gaceta Oficial de la República de las leyes y acuerdos adoptados por la Asamblea Nacional;
- d) organizar las relaciones internacionales de la Asamblea Nacional;
- e) dirigir y organizar la labor de las comisiones de trabajo permanentes y temporales que sean creadas por la Asamblea Nacional;
- f) asistir a las reuniones del Consejo de Estado;
- g) las demás que por esta Constitución o la Asamblea Nacional del Poder Popular se le atribuyan.

**Artículo 82.** La condición de diputado no entraña privilegios personales ni beneficios económicos.

Durante el tiempo que empleen en el desempeño efectivo de sus funciones, los diputados perciben el mismo salario o sueldo de su centro de trabajo y mantienen el vinculo con este a todos los efectos.

**Artículo 83.** Ningún diputado a la Asamblea Nacional del Poder Popular puede ser detenido ni sometido a proceso penal sin autorización de la

Asamblea, o del Consejo de Estado si no esta reunida aquella, salvo en caso de delito flagrante.

**Artículo 84.** Los diputados a la Asamblea Nacional del Poder Popular tienen el deber de desarrollar sus labores en beneficio de los intereses del pueblo, mantener contacto con sus electores, oír sus planteamientos, sugerencias y criticas, y explicarles la política del Estado. Asimismo, rendirán cuenta del cumplimiento de sus funciones, según lo establecido en la ley.

**Artículo 85.** A los diputados a la Asamblea Nacional del Poder Popular les puede ser revocado su mandato en cualquier momento, en la forma, por las causas y según los procedimientos establecidos en la ley.

**Artículo 86.** Los diputados a la Asamblea Nacional del Poder Popular tienen el derecho de hacer preguntas al Consejo de Estado, al Consejo de Ministros o a los miembros de uno y otro, y a que estas les sean respondidas en el curso de la misma sesión o en la próxima.

**Artículo 87.** Todos los órganos y empresas estatales están obligados a prestar a los diputados la colaboración necesaria para el cumplimiento de sus deberes.

**Artículo 88.** La iniciativa de las leyes compete:

- a) a los diputados de la Asamblea Nacional del Poder Popular;
- b) al Consejo de Estado;
- c) al Consejo de Ministros;
- ch) a las comisiones de la Asamblea Nacional del Poder Popular;
- d) al Comité Nacional de la Central de Trabajadores de Cuba y a las Direcciones Nacionales de las demás organizaciones de masas y sociales;
- e) al Tribunal Supremo Popular, en materia relativa a la administración de justicia;
- f) a la Fiscalía General de la República, en materia de su competencia;
- g) a los ciudadanos. En este caso será requisito indispensable que ejerciten la iniciativa diez mil ciudadanos, por lo menos que tengan la condición de electores.

**Artículo 89.** El Consejo de Estado es el órgano de la Asamblea Nacional del Poder Popular que la representa entre uno y otro periodo de sesiones, ejecuta

los acuerdos de esta y cumple las demás funciones que la Constitución le atribuye.

Tiene carácter colegiado y, a los fines nacionales e internacionales, ostenta la suprema representación del Estado cubano.

**Artículo 90.** Son atribuciones del Consejo de Estado:

- a) disponer la celebración de sesiones extraordinarias de la Asamblea Nacional del Poder Popular.
- b) acordar la fecha de las elecciones para la renovación periódica de la Asamblea Nacional del Poder Popular;
- c) dictar decretos-leyes, entre uno y otro periodo de sesiones de la Asamblea Nacional del Poder Popular;
- ch) dar a las leyes vigentes, en caso necesario, una interpretación general y obligatoria;
- d) ejercer la iniciativa legislativa;
- e) disponer lo pertinente para realizar los referendos que acuerde la Asamblea Nacional del Poder Popular;
- f) decretar la movilización general cuando la defensa del país lo exija y asumir las facultades de declarar la guerra en caso de agresión o concertar la paz que la Constitución asigna a la Asamblea Nacional del Poder Popular, cuando esta se halle en receso y no pueda ser convocada con la seguridad y urgencia necesarias;
- g) sustituir, a propuesta de su Presidente, a los miembros del Consejo de Ministros ente uno y otro periodo de sesiones de la Asamblea Nacional del Poder Popular;
- h) impartir instrucciones de carácter general a los tribunales a través del Consejo de Gobierno del Tribunal Supremo Popular;
- i) impartir instrucciones a la Fiscalía General de la República;
- j) designar y remover, a propuesta de su Presidente, a los representantes diplomáticos de Cuba ante otros Estados;
- k) otorgar condecoraciones y títulos honoríficos;
- l) nombrar comisiones;
- ll) conceder indultos;
- m) ratificar y denunciar tratados internacionales;
- n) otorgar o negar el beneplácito a los representantes diplomáticos de otros Estados;

ñ) suspender las disposiciones del Consejo de Ministros y los acuerdos y disposiciones de las Asambleas Locales del Poder Popular que no se ajusten a la Constitución o a las leyes, o cuando afecten los intereses de otras localidades o los generales del país, dando cuenta a la Asamblea Nacional del Poder Popular en la primera sesión que celebre después de acordada dicha suspensión;

o) revocar los acuerdos y disposiciones de las Administraciones Locales del Poder Popular que contravengan la Constitución, las leyes, los decretos-leyes, los decretos y demás disposiciones dictadas por un órgano de superior jerarquía, o cuando afecte n los intereses de otras localidades o los generales del país;

p) aprobar su reglamento;

q) las demás que le confieran la Constitución y las leyes o le encomiende la Asamblea Nacional del Poder Popular.

**Artículo 91.** Todas las decisiones del Consejo de Estado son adoptadas por el voto favorable de la mayoría simple de sus integrantes.

**Artículo 92.** El mandato confiado al Consejo de Estado por la Asamblea Nacional del Poder Popular expira al tomar posesión el nuevo Consejo de Estado elegido en virtud de las renovaciones periódicas de aquella.

**Artículo 93.** Las atribuciones del Presidente del Consejo de Estado y Jefe de Gobierno son las siguientes:

a) representar al Estado y al Gobierno y dirigir su política general;

b) organizar y dirigir las actividades y convocar y presidir las sesiones del Consejo de Estado y las del Consejo de Ministros;

c) controlar y atender el desenvolvimiento de las actividades de los ministerios y demás organismos centrales de la Administración;

ch) asumir la dirección de cualquier ministerio u organismo central de la Administración;

d) proponer a la Asamblea Nacional del Poder Popular, una vez elegido por esta los miembros del Consejo de Ministros;

e) aceptar las renunciaciones de los miembros del Consejo de Ministros, o bien proponer a la Asamblea Nacional del Poder Popular o al Consejo de Estado según proceda, la sustitución de cualquiera de ellos y, en ambos casos, los sustitutos correspondientes.



- f) recibir las cartas credenciales de los jefes de las misiones extranjeras. Esta función podrá ser delegada en cualquiera de los Vicepresidentes del Consejo de Estado.
- g) desempeñar la Jefatura Suprema de todas las instituciones armadas y determinar su organización general;
- h) presidir el Consejo de Defensa Nacional;
- i) declarar el Estado de Emergencia en los casos previstos por esta Constitución, dando cuenta de su decisión, tan pronto las circunstancias lo permitan, a la Asamblea Nacional del Poder Popular o al Consejo de Estado, de no poder reunirse aquella, a los efectos legales procedentes;
- j) firmar decretos-leyes y otros acuerdos del Consejo de Estado y las disposiciones legales adoptadas por el Consejo de Ministros o su Comité Ejecutivo y ordenar su publicación en la Gaceta Oficial de la República;
- k) las demás que por esta Constitución o las leyes se le atribuyan.

**Artículo 94.** En caso de ausencia, enfermedad o muerte del Presidente del Consejo de Estado lo sustituye en sus funciones el Primer Vicepresidente.

**Artículo 95.** El Consejo de Ministros es el máximo órgano ejecutivo y administrativo y constituye el Gobierno de la República. El número, denominación y funciones de los ministerios y organismos centrales que forman parte del Consejo de Ministros es determinado por la ley.

**Artículo 96.** El Consejo de Ministros está integrado por el Jefe de Estado y de Gobierno, que es su Presidente, el Primer Vicepresidente; los Vicepresidentes, los Ministros, el Secretario y los demás miembros que determine la ley.

**Artículo 97.** El Presidente, el Primer Vicepresidente, los Vicepresidentes y otros miembros del Consejo de Ministros que determine el Presidente, integran su Comité Ejecutivo.

El Comité Ejecutivo puede decidir sobre las cuestiones atribuidas al Consejo de Ministros, durante los periodos que median entre una y otra de sus reuniones.

**Artículo 98.** Son atribuciones del Consejo de Ministros:

- a) organizar y dirigir la ejecución de las actividades políticas, económicas, culturales, científicas, sociales y de defensa acordadas por la Asamblea Nacional del Poder Popular;
- b) proponer los proyectos de planes generales de desarrollo economico-social del Estado y, una vez aprobados por la Asamblea Nacional del Poder Popular, organizar, dirigir y controlar su ejecución;
- c) dirigir la política exterior de la República y las relaciones con otros gobiernos;
- ch) aprobar tratados internacionales y someterlos a la ratificación del Consejo de Estado;
- d) dirigir y controlar el comercio exterior;
- e) elaborar el proyecto de presupuesto del Estado y una vez aprobado por la Asamblea Nacional del Poder Popular, velar por su ejecución;
- f) adoptar medidas para fortalecer el sistema monetario y crediticio;
- g) elaborar proyectos legislativos y someterlos a la consideración de la Asamblea Nacional del Poder Popular o del Consejo de Estado, según proceda;
- h) proveer la defensa nacional, al mantenimiento del orden y la seguridad interiores, a la protección de los derechos ciudadanos, así como a la salvaguarda de vidas y bienes en caso de desastres naturales;
- i) dirigir la administración del Estado, y unificar, coordinar y fiscalizar la actividad de los organismos de la Administración Central y de las Administraciones Locales;
- j) ejecutar las leyes y acuerdos de la Asamblea Nacional del Poder Popular, así como los decretos-leyes y disposiciones del Consejo de Estado y, en caso necesario, dictar los reglamentos correspondientes;
- k) dictar decretos y disposiciones sobre la base y en cumplimiento de las leyes vigentes y controlar su ejecución.
- l) revocar las decisiones de las Administraciones subordinadas a las Asambleas Provinciales o Municipales del Poder Popular, adoptadas en función de las facultades delegadas por los organismos de la Administración Central del Estado, cuando contravengan; las normas superiores que les sean de obligatorio cumplimiento;
- ll) proponer a las Asambleas Provinciales y Municipales del Poder Popular revocar las disposiciones que sean adoptadas en su actividad específica, por las administraciones provinciales y municipales a ellas subordinadas, cuando contravengan las normas aprobadas por los organismos de la Administración Central del Estado, en el ejercicio de sus atribuciones;

- m) revocar las disposiciones de los Jefes de organismos de la Administración Central del Estado, cuando contravengan las normas superiores que les sean de obligatorio cumplimiento;
- n) proponer a la Asamblea Nacional del Poder Popular o al Consejo de Estado la suspensión de los acuerdos de las Asambleas Locales del Poder Popular que contravengan las leyes y demás disposiciones vigentes, o que afecten los intereses de otras comunidades;; o los generales del país;
- ñ) crear las comisiones que estimen necesarias para facilitar el cumplimiento de las tareas que le están asignadas;
- o) designar y remover funcionarios de acuerdo con las facultades que le confiere la ley;
- p) realizar cualquier otra función que le encomiende la Asamblea Nacional del Poder Popular o el Consejo de Estado.

La ley regula la organización y funcionamiento del Consejo de Ministros.

**Artículo 99.** El Consejo de Ministros es responsable y rinde cuenta, periódicamente, de todas sus actividades ante la Asamblea Nacional del Poder Popular.

**Artículo 100.** Son atribuciones de los miembros del Consejo de Ministros:

- a) dirigir los asuntos y tareas del Ministerio u organismo a su cargo, dictando las resoluciones y disposiciones necesarias a ese fin;
- b) dictar, cuando no sea atribución expresa de otro órgano estatal, los reglamentos que se requieran para la ejecución y aplicación de las leyes y decretos-leyes que les conciernen;
- c) asistir a las sesiones del Consejo de Ministros, con voz y voto, y presentar a este proyectos de leyes, decretos-leyes, decretos, resoluciones, acuerdos o cualquier otra proposición que estimen conveniente;
- ch) nombrar, conforme a la ley, los funcionarios que les corresponden;
- d) cualquier otra que le atribuyan la Constitución y las leyes.

**Artículo 101.** El Consejo de Defensa Nacional se constituye y prepara desde tiempo de paz para dirigir el país en las condiciones de estado de guerra, durante la guerra, la movilización general y el estado de emergencia. La ley regula su organización y funciones.

## **CAPÍTULO XI**

### **LA DIVISIÓN POLITICO-ADMINISTRATIVA**

**Artículo 102.** El territorio nacional, para los fines político- administrativos, se divide en provincias y municipios; el numero, los limites y la denominación de los cuales se establece en la ley. La ley puede establecer, ademas, otras divisiones. La provincia es la sociedad local, con personalidad jurídica a todos los efectos legales, organizada políticamente por la ley como eslabón intermedio entre el gobierno central y el municipal, en una extensión superficial equivalente a la del conjunto de municipios comprendidos en su demarcación territorial. Ejerce las atribuciones y cumple los deberes estatales y de administración de su competencia y tiene la obligación primordial de promover el desarrollo económico y social de su territorio, para lo cual coordina y controla la ejecución de la política, programas y planes aprobados por los órganos superiores del Estado, con el apoyo de sus municipios, conjugandolos con los intereses de estos.

El Municipio es la sociedad local, con personalidad jurídica a todos los efectos legales, organizada políticamente por la ley, en una extensión territorial determinada por necesarias relaciones económicas y sociales de su población, y con capacidad para satisfacer las necesidades mínimas locales.

Las provincias y los municipios, ademas de ejercer sus funciones propias, coadyuvan a la realización de los fines del Estado.

## **CAPÍTULO XII**

### **ÓRGANOS LOCALES DEL PODER POPULAR**

**Artículo 103.** Las Asambleas del Poder Popular, constituidas en las demarcaciones politico-administrativas en que se divide el territorio nacional, son los órganos superiores locales del poder del Estado, y, en consecuencia, están investidas de la mas alta autoridad para el ejercicio de las funciones estatales en sus demarcaciones respectivas y para ello, dentro del marco de su competencia, y ajustandose a la ley, ejercen gobierno.

Ademas, coadyuvan al desarrollo de las actividades y al cumplimiento de los planes de las unidades establecidas en su territorio que no les estén

subordinadas, conforme a lo dispuesto en la ley. Las Administraciones Locales que estas Asambleas constituyen, dirigen las entidades económicas, de producción y de servicios de subordinación local, con el propósito de satisfacer las necesidades económicas, de salud y otras de carácter asistencial, educacionales, culturales, deportivas y recreativas de la colectividad del territorio a que se extiende la jurisdicción de cada una.

Para el ejercicio de sus funciones, las Asambleas Locales del Poder Popular se apoyan en los Consejos Populares y en la iniciativa y amplia participación de la población y actúan en estrecha coordinación con las organizaciones de masas y sociales.

**Artículo 104.** Los Consejos Populares se constituyen en ciudades, pueblos, barrios, poblados y zonas rurales; están investidos de la mas alta autoridad para el desempeño de sus funciones; representan a la demarcación donde actúan y a la vez son representantes de los órganos del Poder Popular municipal, provincial y nacional. Trabajan activamente por la eficiencia en el desarrollo de las actividades de producción y de servicios y por la satisfacción de las necesidades asistenciales, económicas, educacionales, culturales y sociales de la población, promoviendo la mayor participación de esta y las iniciativas locales para la solución de sus problemas. Coordinan las acciones de las entidades existentes en su área de acción, promueven la cooperación entre ellas y ejercen el control y la fiscalización de sus actividades.

Los Consejos Populares se constituyen a partir de los delegados elegidos en las circunscripciones, los cuales deben elegir entre ellos quien los presida. A los mismos pueden pertenecer los representantes de las organizaciones de masas y de las instituciones mas importantes en la demarcación.

La ley regula la organización y atribuciones de los Consejos Populares.

**Artículo 105.** Dentro de los límites de su competencia las Asambleas Provinciales del Poder Popular tienen las atribuciones siguientes:

a) cumplir y hacer cumplir las leyes y demás disposiciones de carácter general adoptadas por los órganos superiores del Estado;

- b) aprobar y controlar, conforme a la política acordada por los organismos nacionales competentes, la ejecución del plan y del presupuesto ordinario de ingresos y gastos de la provincia;
- c) elegir y revocar al Presidente y Vicepresidente de la propia Asamblea;
- ch) designar y sustituir al Secretario de la Asamblea;
- d) participar en la elaboración y control de la ejecución del presupuesto y el plan técnico-económico del Estado, correspondiente a las entidades radicadas en su territorio y subordinadas a otras instancias, conforme a la ley;
- e) controlar y fiscalizar la actividad del órgano de administración de la provincia auxiliándose para ello de sus comisiones de trabajo;
- f) designar y sustituir a los miembros del órgano de Administración provincial, a propuesta de su Presidente;
- g) determinar, conforme a los principios establecidos por el Consejo de Ministros, la organización, funcionamiento y tareas de las entidades encargadas de realizar las actividades económicas, de producción y servicios, educacionales, de salud, culturales, deportivas, de protección del medio ambiente y recreativas, que están subordinadas al órgano de Administración provincial;
- h) adoptar acuerdos sobre los asuntos de administración concernientes a su demarcación territorial y que, según la ley, no correspondan a la competencia general de la Administración Central del Estado o a la de los órganos municipales de poder estatal;
- i) aprobar la creación y organización de los Consejos Populares a propuesta de las Asambleas Municipales del Poder Popular;
- j) revocar, en el marco de su competencia, las decisiones adoptadas por el órgano de administración de la provincia, o proponer su revocación al Consejo de Ministros, cuando hayan sido adoptadas en función de facultades delegadas por los organismos de la Administración Central del Estado;
- k) conocer y evaluar los informes de rendición de cuenta que les presenten su órgano de administración y las Asambleas del Poder Popular de nivel inferior, y adoptar las decisiones pertinentes sobre ellos;
- l) formar y disolver comisiones de trabajo;
- ll) atender todo lo relativo a la aplicación de la política de cuadros que tracen los órganos superiores del Estado;
- m) fortalecer la legalidad, el orden interior y la capacidad defensiva del país;
- n) cualquier otra que le atribuyan la Constitución y las leyes.

**Artículo 106.** Dentro de los límites de su competencia, las Asambleas Municipales del Poder Popular tienen las atribuciones siguientes:

- a) cumplir y hacer cumplir las leyes y demás disposiciones de carácter general adoptadas por los órganos superiores del Estado;
- b) elegir y revocar al Presidente y al Vicepresidente de la Asamblea;
- c) designar y sustituir al Secretario de la Asamblea;
- ch) ejercer la fiscalización y el control de las entidades de subordinación municipal, apoyándose en sus comisiones de trabajo;
- d) revocar o modificar los acuerdos y disposiciones de los órganos o autoridades subordinadas a ella, que infrinjan la Constitución, las leyes, los decretos-leyes, los decretos, resoluciones y otras disposiciones dictados por los órganos superiores del Estado o que afecten los intereses de la comunidad, de otros territorios, o los generales del país, o proponer su revocación al Consejo de Ministros, cuando hayan sido adoptados en función de facultades delegadas por los organismos de la Administración Central del Estado;
- e) adoptar acuerdos y dictar disposiciones dentro del marco de la Constitución y de las leyes vigentes, sobre asunto de interés municipal y controlar su aplicación;
- f) designar y sustituir a los miembros de su órgano de administración a propuesta de su Presidente;
- g) determinar, conforme a los principios establecidos por el Consejo de Ministros, la organización, funcionamiento y tareas de las entidades encargadas de realizar las actividades económicas, de producción y servicios, de salud y otras de carácter así stencial, educacionales, culturales, deportivas, de protección del medio ambiente y recreativas, que están subordinadas a su órgano de Administración;
- h) proponer la creación y organización de Consejos Populares, de acuerdo con lo establecido en la ley;
- i) constituir y disolver comisiones de trabajo;
- j) aprobar el plan económico-social y el presupuesto del municipio, ajustándose a las políticas trazadas para ello por los organismos competentes de la Administración Central del Estado, y controlar su ejecución;
- k) coadyuvar al desarrollo de las actividades y al cumplimiento de los planes de producción y de servicios de las entidades radicadas en su territorio que no les estén subordinadas, para lo cual podrán apoyarse en sus comisiones de trabajo y en su órgano de Administración;

- l) conocer y evaluar los informes de rendición de cuenta que le presente su órgano de administración y adoptar las decisiones pertinentes sobre ellos;
- ll) atender todo lo relativo a la aplicación de la política de cuadros que tracen los órganos superiores del Estado;
- m) fortalecer la legalidad, el orden interior y la capacidad defensiva del país;
- n) cualquier otra que le atribuyan la Constitución y las leyes.

**Artículo 107.** Las sesiones ordinarias y extraordinarias de las Asambleas Locales del Poder Popular son publicas, salvo en el caso que estas acuerden celebrarlas a puertas cerradas, por razón de interés de Estado o porque se trate en ellas asuntos referidos al decoro de las personas.

**Artículo 108.** En las sesiones de las Asambleas Locales del Poder Popular se requiere para su validez la presencia de mas de la mitad del numero total de sus integrantes. Sus acuerdos se adoptan por mayoría simple de votos.

**Artículo 109.** Las entidades que se organizan para la satisfacción de las necesidades locales a fin de cumplir sus objetivos específicos, se rigen por las leyes, decretos-leyes y decretos; por acuerdos del Consejo de Ministros; por disposiciones que dicten los jefes de los organismos de la Administración Central del Estado en asuntos de su competencia, que sean de interés general y que requieran ser regulados nacionalmente; y por los acuerdos de los órganos locales a los que se subordinan.

**Artículo 110.** Las comisiones permanentes de trabajo son constituidas por las Asambleas Provinciales y Municipales del Poder Popular atendiendo a los intereses específicos de su localidad, para que las auxilien en la realización de sus actividades y especialmente para ejercer el control y la fiscalización de las entidades de subordinación local y de las demás correspondientes a otros niveles de subordinación, que se encuentren radicadas en su demarcación territorial. Las comisiones de carácter temporal cumplen las tareas especificas que les son asignadas dentro del termino que se les señale.

**Artículo 111.** Las Asambleas Provinciales del Poder Popular se renovaran cada cinco años, que es el periodo de duración del mandato de sus delegados.



Las Asambleas Municipales del Poder Popular se renovaran cada dos años y medio, que es el periodo de duración del mandato de sus delegados.

Dichos mandatos solo podrán extenderse por decisión de la Asamblea Nacional del Poder Popular, en los casos señalados en el Artículo 72.

**Artículo 112.** El mandato de los delegados a las Asambleas Locales es revocable en todo momento. La ley determina la forma, las causas y los procedimientos para ser revocados.

**Artículo 113.** Los delegados cumplen el mandato que les han conferido sus electores, en interés de toda la comunidad, para lo cual deberán coordinar sus funciones como tales, con sus responsabilidades y tareas habituales. La ley regula la forma en que se desarrollan estas funciones.

**Artículo 114.** Los delegados a las Asambleas Municipales del Poder Popular tienen los derechos y las obligaciones que les atribuyan la Constitución y las leyes y en especial están obligados a:

- a) dar a conocer a la Asamblea y a la Administración de la localidad las opiniones, necesidades y dificultades que les transmitan sus electores;
- b) informar a sus electores sobre la política que sigue la Asamblea y las medidas adoptadas para la solución de necesidades planteadas por la población o las dificultades que se presentan para resolverlas;
- c) rendir cuenta periódicamente a sus electores de su gestión personal, e informar a la Asamblea o a la Comisión a la que pertenezcan, sobre el cumplimiento de las tareas que les hayan sido encomendadas, cuando estas lo reclamen.

**Artículo 115.** Los delegados a las Asambleas Provinciales del Poder Popular tienen el deber de desarrollar sus labores en beneficio de la colectividad y rendir cuenta de su gestión personal según el procedimiento que la ley establece.

**Artículo 116.** Las Asambleas Provinciales y Municipales del Poder Popular eligen de entre sus delegados a su Presidente y Vicepresidente. La elección se efectúa en virtud de candidaturas propuestas en la forma y según el procedimiento que la ley establece.

**Artículo 117.** Los Presidentes de las Asambleas Provinciales y Municipales del Poder Popular son a la vez presidentes de los respectivos Órganos de Administración y representan al Estado en sus demarcaciones territoriales. Sus atribuciones son establecidas por la ley.

**Artículo 118.** Los órganos de Administración que constituyen las Asambleas Provinciales y Municipales del Poder Popular funcionan de forma colegiada y su composición, integración, atribuciones y deberes se establecen en la ley.

**Artículo 119.** Los Consejos de Defensa Provinciales, Municipales y de las Zonas de Defensa se constituyen y preparan desde tiempo de paz para dirigir en los territorios respectivos, en las condiciones de estado de guerra, durante la guerra, la movilización general o el estado de emergencia, partiendo de un plan general de defensa y del papel y responsabilidad que corresponde a los consejos militares de los ejércitos. El Consejo de Defensa Nacional determina, conforme a la ley, la organización y atribuciones de estos Consejos.

### **CAPÍTULO XIII TRIBUNALES Y FISCALÍA**

**Artículo 120.** La función de impartir justicia dimana del pueblo y es ejercida a nombre de este por el Tribunal Supremo Popular y los demás Tribunales que la ley instituye.

La ley establece los principales objetivos de la actividad judicial y regula la organización de los Tribunales; la extensión de su jurisdicción y competencia; sus facultades y el modo de ejercerlas; los requisitos que deben reunir los jueces, la forma de elección de estos y las causas y procedimientos para su revocación o cese en el ejercicio de sus funciones.

**Artículo 121.** Los tribunales constituyen un sistema de órganos estatales, estructurado con independencia funcional de cualquier otro y subordinado jerárquicamente a la Asamblea Nacional del Poder Popular y al Consejo de Estado.

El Tribunal Supremo Popular ejerce la máxima autoridad judicial y sus decisiones, en este orden, son definitivas.

A través de su Consejo de Gobierno ejerce la iniciativa legislativa y la potestad reglamentaria; toma decisiones y dicta normas de obligado cumplimiento por todos los tribunales y, sobre la base de la experiencia de estos, imparte instrucciones de carácter obligatorio para establecer una practica judicial uniforme en la interpretación y aplicación de la ley.

**Artículo 122.** Los jueces, en su función de impartir justicia, son independientes y no deben obediencia mas que a la ley.

**Artículo 123.** Los fallos y demás resoluciones firmes de los tribunales, dictados dentro de los limites de su competencia, son de ineludible cumplimiento por los organismos estatales, las entidades económicas y sociales y los ciudadanos, tanto por los directamente afectados por ellos, como por los que no teniendo interés directo en su ejecución vengan obligados a intervenir en la misma.

**Artículo 124.** Para los actos de impartir justicia todos los tribunales funcionan de forma colegiada y en ellos participan, con iguales derechos y deberes, jueces profesionales y jueces legos. El desempeño de las funciones judiciales encomendadas al juez lego, dada su importancia social, tiene prioridad con respecto a su ocupación laboral habitual.

**Artículo 125.** Los tribunales rinden cuenta de los resultados de su trabajo en la forma y con la periodicidad que establece la ley.

**Artículo 126.** La facultad de revocación de los jueces corresponde al órgano que los elige.

**Artículo 127.** La Fiscalía General de la República es el órgano del Estado al que corresponde, como objetivos fundamentales, el control y la preservación de la legalidad, sobre la base de la vigilancia del estricto cumplimiento de la Constitución, las leyes y demás disposiciones legales, por los organismos del Estado, entidades económicas y sociales y por los ciudadanos; y la promoción y el ejercicio de la acción penal publica en representación del Estado.

La ley determina los demás objetivos y funciones, así como la forma, extensión y oportunidad en que la Fiscalía ejerce sus facultades al objeto expresado.

**Artículo 128.** La Fiscalía General de la República constituye una unidad orgánica subordinada únicamente a la Asamblea Nacional del Poder Popular y al Consejo de Estado.

El Fiscal General de la República recibe instrucciones directas del Consejo de Estado.

Al Fiscal General de la República corresponde la dirección y reglamentación de la actividad de la Fiscalía en todo el territorio nacional.

Los órganos de la Fiscalía están organizados verticalmente en toda la nación, están subordinados solo a la Fiscalía General de la República y son independientes de todo órgano local.

**Artículo 129.** El Fiscal General de la República y los vicefiscales generales son elegidos y pueden ser revocados por la Asamblea Nacional del Poder Popular.

**Artículo 130.** El Fiscal General de la República rinde cuenta de su gestión ante la Asamblea Nacional del Poder Popular en la forma y con la periodicidad que establece la ley.

## **CAPÍTULO XIV SISTEMA ELECTORAL**

**Artículo 131.** Todos los ciudadanos, con capacidad legal para ello, tienen derecho a intervenir en la dirección del Estado, bien directamente o por intermedio de sus representantes elegidos para integrar los órganos del Poder Popular, y a participar, con este propósito, en la forma prevista en la ley, en elecciones periódicas y referendos populares, que serán de voto libre, igual y secreto. Cada elector tiene derecho a un solo voto.

**Artículo 132.** Tienen derecho al voto todos los cubanos, hombres y mujeres, mayores de dieciséis años de edad, excepto:

- a) los incapacitados mentales, previa declaración judicial de su incapacidad;
- b) los inhabilitados judicialmente por causa de delito.

**Artículo 133.** Tienen derecho a ser elegidos los ciudadanos cubanos, hombres o mujeres, que se hallen en el pleno goce de sus derechos políticos.

Si la elección es para diputados a la Asamblea Nacional del Poder Popular, deben, además, ser mayores de dieciocho años de edad.

**Artículo 134.** Los miembros de las Fuerzas Armadas Revolucionarias y demás institutos armados tienen derecho a elegir y a ser elegidos, igual que los demás ciudadanos.

**Artículo 135.** La ley determina el número de delegados que integran cada una de las Asambleas Provinciales y Municipales, en proporción al número de habitantes de las respectivas demarcaciones en que, a los efectos electorales, se divide el territorio nacional. Los delegados a las Asambleas Provinciales y Municipales se eligen por el voto libre, directo y secreto de los electores. La ley regula, asimismo, el procedimiento para su elección.

**Artículo 136.** Para que se considere elegido un diputado o un delegado es necesario que haya obtenido más de la mitad del número de votos válidos emitidos en la demarcación electoral de que se trate. De no concurrir esta circunstancia, o en los demás casos de plazas vacantes, la ley regula la forma en que se procedera.

## **CAPÍTULO XV REFORMA CONSTITUCIONAL**

**Artículo 137.** Esta Constitución solo puede ser reformada por la Asamblea Nacional del Poder Popular mediante acuerdo adoptado, en votación nominal, por una mayoría no inferior a las dos terceras partes del número total de sus integrantes, excepto en lo que se refiere al sistema político, económico y social, cuyo carácter irrevocable lo establece el artículo 3 del Capítulo I, y la prohibición de negociar acuerdos bajo agresión, amenaza o coerción de una potencia extranjera.

Si la reforma se refiere a la integración y facultades de la Asamblea Nacional del Poder Popular o de su Consejo de Estado o a derechos y deberes consagrados en la Constitución, requiere, además, la ratificación por el voto

favorable de la mayoría de los ciudadanos con derecho electoral, en referendo convocado al efecto por la propia Asamblea.

**Disposición Especial.** El pueblo de Cuba, casi en su totalidad, expresó entre los días 15 y 18 del mes de junio del 2002, su más decidido apoyo al proyecto de reforma constitucional propuesto por las organizaciones de masas en asamblea extraordinaria de todas sus direcciones nacionales que había tenido lugar el día 10 del propio mes de junio, en el cual se ratifica en todas sus partes la Constitución de la República y se propone que el carácter socialista y el sistema político y social contenido en ella sean declarados irrevocables, como digna y categórica respuesta a las exigencias y amenazas del gobierno imperialista de Estados Unidos el 20 de mayo del 2002.

Todo lo cual fue aprobado por unanimidad, mediante el Acuerdo No.- adoptado en sesión extraordinaria de la V Legislatura, celebrada los días 24, 25 y 26 del mes de junio del 2002.

# **Dominica**

## **THE COMMONWEALTH OF DOMINICA CONSTITUTION ORDER (1978)**

### **SCHEDULE 1 TO THE ORDER THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA**

**WHEREAS** the People of Dominica -

(a) have affirmed that the Commonwealth of Dominica is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person, and the equal and inalienable rights with which all members of the human family are endowed by their Creator;

(b) respect the principles of social justice and therefore believe that the operation of the economic system should result in so distributing the material resources of the community as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

(c) have asserted their belief in a democratic society in which persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully-constituted authority;

(d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

(e) desire that their Constitution should make provision for ensuring the protection in the Commonwealth of Dominica of fundamental human rights and freedoms;

**NOW, THEREFORE,** the following provisions shall have effect as the Constitution of the Commonwealth of Dominica:

## **CHAPTER I PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**1. Fundamental rights and freedoms.** Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the rights whatever his race, place of origins, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely —

- a. life, liberty, security of the person and the protection of the law;
- b. freedom of conscience, of expression and of assembly and association; and
- c. protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others of the public interest.

### **2. Protection of right to life.**

1. A person shall not be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Dominica of which he has been convicted.



2. A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable –

- a. for the defence of any person from violence or for the defence of property;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. for the purpose of suppressing a riot, insurrection or mutiny; or
- d. in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

### **3. Protection of rights to personal liberty.**

1. A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:-

- a. in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether established for Dominica or some other country, in respect of a criminal offence of which he has been convicted;
- b. in execution of the order of the High Court or the Court of Appeal punishing him for contempt of the High Court or the Court of Appeal or of another court or tribunal;
- c. in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- d. for the purpose of bringing him before a court in execution of the order of a court;
- e. upon a reasonable suspicion of his having committed, to being about to commit, a criminal offence under the law of Dominica;
- f. under the order of a court or with the consent of his parent or guardian, for his education or welfare during an period ending not later than the date when he attains the age of eighteen years;
- g. for the purpose of preventing the spread of an infectious or contagious disease;
- h. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- i. for the purpose of preventing his unlawful entry into Dominica, or for purpose of effecting his expulsion, extradition or other lawful removal from

Dominica or for the purpose of restraining him while he is being conveyed through Dominica in the course of his extradition or removal as a convicted prisoner from one country to another; or

j. to such extent as may be necessary in the execution of a lawful order requiring him to remain in a specified area within Dominica, or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against him with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining him during any visit that he is permitted to make to any part of Dominica in which, in consequence of any such order, his presence would otherwise be unlawful.

2. Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case no later than twenty-four hours after such arrest or detention, in a language that he understands, of the reasons for his arrest or detention.

3. Any person who is arrested or detained –

a. for the purpose of bring him before a court in execution of the order of a court; or

b. upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Dominica,

and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after such arrest or detention.

4. Where any person is brought before a court in execution of the order of a court in any proceeding or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

5. If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

6. Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

7. For the purposes of subsection (1)(a) of this section a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution in execution of the order of a court.

#### **4. Protection from slavery and forced labour.**

1. No person shall be held in slavery or servitude.

2. No person shall be required to perform force labour.

3. For the purposes of this section, the expression “forced labour” does not include –

a. any labour required in consequence of the sentence or order of a court;

b. labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

c. any labour of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service;

d. any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

**5. Protection from inhuman treatment.** No person shall be subject to torture or to inhuman or degrading punishment or other treatment.

**6. Protection from deprivation of property.** 1. No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsory acquired, except where provisions is made by a law applicable to that taking of possession or acquisition for the payment, within a reasonable time, of adequate compensation.

2. Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for-

- a. determining the nature and extent of that interest or right;
- b. determining whether that taking of possession or acquisition was duly carried out in accordance with a law authorising the taking of possession or acquisition;
- c. determining what compensation he is entitled to under the law applicable to that taking of possession or acquisition;
- d. obtaining that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) or (c) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

3. The Chief Justice may make rules with respect to the practice and procedure of the High Court or, subject to such provision as may have been made in that behalf by Parliament, with respect to the practice and procedure of any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

4. No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation in the form of a sum of money or, as the case may be, has received any such amount in some other form and has converted any of that amount into a sum of money, the whole of that sum of money (free

from any education, charge or tax made or levied in respect of its remission) to any country of his choice outside Dominica.

5. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorises-

- a. the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgement of a court or pending the determination of civil proceedings to which he is a party; or
- b. the imposition of reasonable restrictions on the manner in which any sum of money is to be remitted.

6. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-

- a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest of right-
  - i. in satisfaction of any tax, rate or due;
  - ii. by way of penalty for breach of any law or forfeiture in consequence of breach of any law;
  - iii. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
  - iv. in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
  - v. in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
  - vi. in consequence of any law with respect to the limitation of actions; or
  - vii. for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed to carry out).

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

b. to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say-

- i. enemy property;
- ii. property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years for the purpose of its administration for the benefit of the persons entitled to the benefit of the persons entitled to the beneficial interest therein;
- iii. property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the beneficial interest in the property; or
- iv. property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

7. Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right over property where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been investigated other than monies provided by any legislature established for Dominica.

8. In this section-

“property” means any land or other thing capable of being owned or held in possession and includes any right relating thereto, whether under a contract, trust or law or otherwise and whether present or future absolute or conditional;

“acquisition” in relation to an interest in or right over property, means transferring that interest or right to another person or extinguishing or curtailing that interest or right.

### **7. Protection from arbitrary search or entry.**

1. Except with his own consent, a person shall not be subject to the search of his person or his property or the entry by others on his premises.

2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

a. that is reasonably required in the interest of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources or the development and utilisation of mineral resources or the development or utilisation of mineral resources or the development or utilisation of any property for a purpose beneficial to the community;

b. that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

c. that authorises an officer or agent of the Government of Dominica, a local government authority or a body corporate established by law for public purpose to enter on the premises thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

d. that authorises, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order.

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **8. Provision to secure protection of law**

1. If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

2. Every person who is charged with a criminal offence-

a. shall be presumed to be innocent until he is proved or has pleaded guilty;

b. shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

c. shall be given adequate time and facilities for the preparation of his defence;

d. shall be permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice;

e. shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

f. shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial.

and the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence:

Provided that the trial may take place in his absence in any case in which it is so provided by law under which, he is entitled to adequate notice of the charge on the date, time and place of the trial and to a reasonable opportunity of appearing before the court.

3. When a person is tried for any criminal offence the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

4. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

5. A person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

6. A person shall not be tried for a criminal offence if he has been pardoned for that offence.



7. A person who is tried for a criminal offence shall not be compelled to give evidence at the trial;

Provided that nothing in this subsection shall prevent the prosecution or the court from commenting on his failure to give evidence on his own behalf or prevent the court from drawing inferences from any such failure.

8. Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

9. Where the existence or extent of any civil right or obligation has been determined in proceedings in any court or before any other authority any party to those proceeding shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be entitled to obtain within a reasonable time after the judgement or other determination a copy of any record of the proceedings made by or on behalf of the court or other authority.

10. Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

11. Nothing in subsection (10) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and the legal practitioner representing them to such extent as the court or other authority-

a. may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

b. may by law be empowered or required to do in the interests of defence, public safety or public order.

12. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

a. subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

b. subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

c. subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

13. In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

14. In this section “criminal offence” means a criminal offence under the law of Dominica.

### **9. Protection of freedom of conscience.**

1. Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

2. Except with his own consent (or, if he is a person under the age or eighteen years, the consent of his guardian) a person attending any place of education, detained in any prison or corrective institution or serving in a naval, military or air force shall not be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction ceremony or observance relates to a religion which is not his own.

3. Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community whether or not it is in receipt of a government subsidy or other form of financial assistance designed to meet in whole or in part the cost of such course of education.

4. A person shall not be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

5. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provisions which is reasonably required-

a. in the interests of defence, public safety, public order, public morality or public health;

b. for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or

c. for the purpose of regulating educational institutions in the interests of the persons who received or may receive instructions in them,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

6. References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

### **10. Protection of freedom of expression.**

1. Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

a. that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

b. that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

c. that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **11. Protection of freedom of assembly and association.**

1. Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

a. that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

b. that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

c. that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

## **12. Protection of freedom of movement.**

1. A person shall not be deprived of his freedom of movement that is to say, the right to move freely throughout Dominica, the right to reside in any part of Dominica, the right to enter Dominica, the right to leave Dominica and immunity from expulsion from Dominica.

2. Any restriction on a person's freedom of movement that is involved in his lawful detention shall be held to be inconsistent with or in contravention of this section.

3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

a. for the imposition of restriction on the movement or residence within Dominica of any person or on any person's right to leave Dominica that are reasonably required in the interests of defence, public safety or public order;

b. for the imposition of restriction on the movement or residence within Dominica or on the right to leave Dominica of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health or in respect of the right to leave Dominica, of securing compliance with any international obligation of the Government particulars of which have been laid before the House of Assembly and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

c. for the imposition of restrictions, by order of a court, on the movement or residence within Dominica of any person or on any person's right to leave Dominica either in consequence of his having been found guilty of a criminal offence under the law of Dominica or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceeding preliminary to trial or for proceedings relating to his extradition or lawful removal from Dominica;

d. for the imposition of restriction on the freedom of movement of any person who is not a citizen of Dominica;

e. for the imposition of restrictions on the acquisition or use by any person of land or other property in Dominica;

f. for the imposition of restrictions upon the movement or residence within Dominica or on the right to leave Dominica of any public office that are reasonably required for the proper performance of his functions;

g. for the removal of a person from Dominica to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Dominica of which he has been convicted; or

h. for the imposition of restriction on the right of any person to leave Dominica that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or as the case may be the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

4. If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) of this section so requests at any time during the period of that restriction not earlier than twenty-one days after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are legal practitioners.

5. On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

### **13. Protection from discrimination on the grounds of race, etc.**

1. Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

2. Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person or authority.

3. In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subject to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

4. Subsection (1) of this section shall not apply to any law far as that law makes provision-

- a. for the appropriation of public revenues or other public funds;
- b. with respect to persons who are not citizens of Dominica;
- c. for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description;
- d. whereby persons of any such description as is mentioned in subsection (3) of this section may be subject to any disability or restriction or may be accorded any privilege or advantage that having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

5. Nothing contained in any law shall be held to be inconsistent with or in contraventions subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relation to sex, race, place of origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office or employment.

6. Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

7. Nothing contained in or Done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent

that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subject to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7(2) section 9(5), section 10(2), section 11(2) or paragraph (a), (b), or (h) of section (12(3), as the case may be.

8. Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

**14. Derogation from s.3 or s.13 under emergency powers.** Nothing contained in or done under the authority of a law enacted by Parliament shall be held to be inconsistent with or in contravention of section 3 or section 13 of this Constitution to the extent that the law authorised the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Dominica during that period.

**15. Protection of persons detained under emergency laws.**

1. When a person is detained by virtue of any such law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say:-

a. he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

b. not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

c. not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than three months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are legal practitioners;



d. he shall be afforded reasonable facilities to consult a legal practitioner of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

e. at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or to be represented by a legal practitioner of his own choice.

2. On any review by a tribunal in pursuance of this section for the case of a detained person, the tribunal may make recommendations concerning the necessity of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

3. Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense.

### **16. Enforcement of protective provisions.**

1. If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case for a person who is detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

2. The High Court shall have original jurisdiction-

a. to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

b. to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the

contravention alleged are or have been available to the person concerned under any other law.

3. If in any proceedings in any court (other than the Court of Appeal or the High Court or a court-martial) any question arises as to the contravention of the provisions of sections 2 to 15 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question if it is merely frivolous or vexatious.

4. Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or as the case may be, of the Judicial Committee.

5. The High Court shall have such powers in addition to those conferred by this section as may be conferred upon it by Parliament for the purpose of enabling it more effectively to exercise the jurisdiction conferred upon it by this section.

6. The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

### **17. Interpretation and savings.**

1. In this Chapter, unless the context otherwise requires-  
“contravention” in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in Dominica other than a court established by a disciplinary law, and includes the Judicial Committee and in section 2 and 4 of this Constitution a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means-

- a. a naval, military or air force;
- b. the Police Force;
- c. a prison service; or
- d. any such other force or service as may be prescribed by Parliament.

“legal practitioner” means a person entitled to be in or to enter Dominica and entitled to practice as a barrister in Dominica or, except in relation to proceedings before a court in which a solicitor has no right of audience, entitled to practise as a solicitor in Dominica;

“member” in relation to a discipline force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

2. In this Chapter “period of public emergency” means any period during which-

- a. Dominica is engaged in any war; or
- b. there is in force a proclamation by the president declaring that a state of public emergency exists; or
- c. there is in force a resolution of the House supported by the votes of not less than two thirds of all the members of the House declaring that democratic institutions in Dominica are threatened by subversion.

3. A proclamation made by the President shall not be effective for the purposes of subsection (2) of this section unless it is declared therein that the President is satisfied-

a. that a public emergency has arisen as a result of the imminence of a state of war between Dominica and a foreign state or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or

b. that action has been taken or is immediately threatened by any person of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

4. A proclamation made by the President for the purposes of this section-

a. shall, unless previously revoked, remain in force for twenty-one days or for such longer period, not exceeding six months, as the House may determine by a resolution supported by the votes of a majority of all the members of the House;

b. may be extended from time to time by a resolution of the House passed in like manner as is prescribed in paragraph (a) of this subsection for further periods, not exceeding in respect of each such extension a period of six months; and

c. may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House of Assembly.

5. A resolution passed by the House for the purposes of subsection (2) of this section may be revoked at any time by a resolution of the House supported by the votes of a majority of all the members thereof.

6. In relation to any person who is a member of a disciplined force of Dominica, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5 of this Constitution.

7. In relation to any person who is a member of a disciplined force of a country other than Dominica that is lawfully present in Dominica, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

## **CHAPTER II THE PRESIDENT**

### **18. Establishment of office.**

1. There shall be a President of Dominica who shall be elected by the House and shall hold office for a term of five years.

2. The President shall have such functions as are prescribed by this Constitution and such additional functions (if any) as may be prescribed by Parliament:

Provided that no such additional functions shall be conferred upon him without his consent signified by writing under his hand addressed to the Speaker.

### **19. Elections**

1. Whenever the office of President is vacant or the term of office of the President is due to expire within not more than ninety days, the Prime Minister shall consult with the Leader of the Opposition as to their joint nomination of a suitable candidate for election as President.

2. If the Prime Minister and the Leader of the Opposition submit to the Speaker by writing under their hands a joint nomination of a candidate for election as President to which that candidate has consented, the Speaker shall inform the House of the nomination, and declare that candidate to have been duly elected without putting the question to the vote.

3. If the Prime Minister is unable to agree with the Leader of the Opposition as to their joint nomination of a candidate for election as President, he shall notify the Speaker to that effect and the Speaker shall inform the House accordingly.

4. The Prime Minister or the Leader of the Opposition or any three member of the House may, during the period expiring fourteen days after the day on which the House has been so informed, submit to the Speaker by writing under their hands nominations of candidates for election as President and the Speaker shall at the first meeting of the House after the expiration of that period and before the House proceeds to any other business inform the House of the nominations he has received and to which the candidates concerned have consented.

5. An election of the President at which the candidates shall be those of whose nomination the House has been informed by the Speaker, shall thereafter be held at the meeting of the House referred to in subsection (4) of this section (or if proceedings under section 22 of this Constitution are pending before the Court of Appeal, at a meeting of the House held as soon as is practicable after those proceedings) and the Speaker shall declare the candidate who has at that election received the votes of a majority of all the members of the House to have been duly elected:

Provided that when the question of the election of the President is put to the vote, the votes shall be given by ballot in such manner as not to disclose how any particular member of the House votes.

5A. Where the only candidate for election under subsection (5) of this section does not receive the votes of a majority of all the members of the House, the Speaker shall inform the House accordingly and a new election shall be held to which the provisions of subsection (4) and (5), *mutatis mutandis*, apply.

6. Where a person consents to be nominated for election as President he shall do so by writing under his hand addressed to the Speaker.

7. A person who has been declared to have been duly elected as President under this section shall assume office as such on the day after the day on which his predecessor vacates the office of President or, if that office is already vacant, he shall assume office on the day after the day on which he was declared to have been duly elected.

## **20. Qualifications for office nomination.**

1. A person shall be qualified to be nominated for election as President if, and shall not be so qualified unless, he is a citizen of Dominica of the age of forty years or upwards who at the date of his nomination has been resident in Dominica for five years immediately preceding his nomination.

2. For the purposes of subsection (1) of this section a person shall be deemed to reside in Dominica if he holds an office in the service of the Government, or is employed with any intergovernmental organisation or institution of the Commonwealth Caribbean or any international organisation or institution of which Dominica is a member and lives outside Dominica because he is required to do so for the proper discharge of his functions.

3. Parliament may, by resolution supported by the votes of not less than three-fourths of all the elected members of the House waive the residence qualification laid down in subsection (1) of this section with respect to any particular person to be proposed for nomination.

**21. Disqualifications for elections and holding office.**

1. A person shall not be qualified to be elected as President if-

- a. he has already held the office of President for two terms; or
- b. he is disqualified to be elected or appointed as a Representative or Senator by virtue of subsection (1)(a), (b), (c), (d), (e) or (f) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection (2), (3) or (5) of that section.

2. A person shall not be qualified to hold the office of President if he holds any other office or emolument whether in the public service or otherwise nor engage in any other occupation for reward.

**22. Determination of questions as to qualifications.**

1. The Court of Appeal shall have jurisdiction to hear and determine any question whether any person is qualified to be nominated for election, or elected, as President.

2. An application to the Court of Appeal for the determination of any question under this section may be made by the Attorney General or by any other member of the House and, if it is made by a member other than the Attorney General, the Attorney General may intervene and may then appear or be represented in the proceedings.

3. The powers, practice and procedure of the Court of Appeal in respect of any application for the determination of any question under this section, including (without prejudice to the generality of the force going) the time in which and the conditions upon which an application may be made, shall be regulated by such provisions as may be made by Parliament.

4. No appeal shall lie from any decision of the Court of Appeal under this section.

5. A certificate under the hand of the Speaker stating that a person was declared to have been duly elected under section 19 of this Constitution shall be conclusive evidence of the fact so stated and shall not be questioned in any court of law.

6. In the exercise of his functions under this section, the Attorney General shall not be subject to the directions or control of any other person or authority.

### **23. Tenure of office.**

1. Subject to the provisions of this section and of section 25 of this Constitution, the President shall vacate his office at the expiration of a term of five years from the date on which he was declared to have been duly elected.

2. Where a person is elect to fill a vacancy in the office of President occurring before the expiration of the term of office of his predecessor he shall hold office only for the unexpired portion of that term.

3. Parliament may extend the term of office of the President under subsection (1) or (2) of this section for a period not exceeding six months in order to avoid the holding of an election to the office of President during a period while Parliament is dissolved or at a time within one month before the beginning or one month after the end of such a period.

### **24. Removal from office.**

1. The President may be removed from office under section 25 of this Constitution where-

- a. he wilfully violates any provision of the Constitution;
- b. he behaves in such a way as to bring his office into hatred, ridicule or contempt;
- c. he behaves in a way that endangers the security of Dominica;
- d. because of physical or mental incapacity, he is unable to perform the functions of his office;
- e. any circumstances arise that, if he were not President, would cause him to be disqualified to be elected as such by virtue of subsection (1)(b) of section 21 of this Constitution; or
- f. he is appointed to any such office, or engages in any such occupation, as is referred to in subsection (2) of that section.

### **25. Procedure for removal from office.**

1. The office of the President shall become vacant if-



a. the House (acting upon a motion signed by not less than one third of all the members of the House proposes the removal of the President from office on grounds of complaint specified with full particulars in the resolution;

b. a tribunal consisting of the Chief Justice and two other judges of the Supreme Court appointed by the Chief Justice, being as far as practicable the most senior judges, investigates the complaint and makes a report on the facts thereof to the House; and

c. the House, after considering the report, by resolution supported by the votes of not less than two-thirds of all the members of the House declares that the President shall be removed from office.

2. Parliament may make provision with respect to the powers, practice and procedure of tribunals established for the purpose of subsection 1(b) of this section and, subject as aforesaid, any such tribunal may by regulation or otherwise regulated its own procedure.

3. Where a resolution is passed in accordance with subsection (1)(a) of this section, the President shall forthwith cease to perform the functions of this office; but he may resume the performance of those functions if, after the House has considered a report made to it under subsection (1)(b) of this section, no such resolution as is referred to in subsection (1)(c) of this section is passed.

**26. Oath.** A person elected to hold the office of President or designated or elected to act as president shall before entering upon the duties of the office of President take and subscribe the oath of office, such oath being administered by the Chief Justice or such other judge of the Supreme Court as may be designated by the Chief Justice.

**27. Protection in respect of legal proceedings.**

1. Whilst any person hold office or is acting as President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him in respect of any thing done or omitted to be done in his private capacity.

2. Where provisions is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which any person has held office or acted as President shall not be taken into account in calculating any period of time described by that law which determines whether any such proceedings as are mentioned in subsection (1) of this section may be brought against that person.

### **28. Acting President.**

1. Whenever the holder of the office of President is unable to perform the functions of his office by reason of his absence from Dominica, by reason of illness or by reason that he is suspended from the exercise of those functions under section 25(3) of this Constitution, those functions shall be performed-

a. by such person as may with his consent have been designated in that behalf by the holder of the office of President, acting after consultation with the Prime Minister and the Leader of the Opposition, by writing under his hand; or

b. if there is no person so designated or if the person so designated is unable to act, by such person as may have been elected in that behalf by the House in accordance with the like procedure as is prescribed by section 19 of this Constitution for the election of the President.

2. A person shall not be qualified to act as President unless he is qualified to be elected as, and to hold the office of President:

Provided that the Speaker or the Deputy Speaker may act as President, in which case he shall cease to perform the functions of this office during any period during which he is so acting.

3. A person acting as President under this section shall cease to act when he is notified-

a. that another person has been designated or elected to act; or

b. that the holder of the office of President is about to resume the performance of the functions of his office.

## CHAPTER III PARLIAMENT

### Part 1 Establishment of Parliament

**29. Composition** There shall be a Parliament of Dominica which shall consist of the President and a House of Assembly.

#### **30. Composition of House of Assembly.**

1. The House shall consist of-
  - a. such number of Representatives as corresponds with the number of constituencies for the time being established in accordance with the provisions of section 57 of this Constitution, who shall be elected in accordance with the provisions of section 33 of this Constitution;
  - b. nine Senators appointed or elected in accordance with the provisions of section 34 of this Constitution.

2. If a person who is not a member of the House is elected to be Speaker he shall, by virtue of holding the office of Speaker, be a member of the House

3. At any time when the office of Attorney General is a public office, the Attorney General shall, by virtue of holding or acting in that office, be a member of the House.

#### **31. Qualifications for Representatives and Senators.**

1. Subject to the provisions of section 32 of this Constitution, a person shall be qualified to be elected as a Representative if, and shall not be so qualified unless, he-
  - a. is a citizen of Dominica of the age of twenty-one years or upwards;
  - b. has resided in Dominica for a period of twelve months immediately before the date of his nomination for election or is domiciled and resident in Dominica at that date; and
  - c. is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House.

2. Subject to the provisions of section 32 of this Constitution, a person shall be qualified unless, he-

- a. is a Commonwealth citizen of the age of twenty-one years or upwards;
- b. is Domiciled and resident in Dominica at the date of his appointment or nomination for election; and
- c. is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House.

### **32. Disqualifications for Representatives and Senators.**

1. A person shall not be qualified to be elected or appointed as a Representative or Senator (hereinafter in this section referred to as a member) if he-

- a. is by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- b. is a minister of religion;
- c. is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Dominica;
- d. is under sentence of death imposed on him by a court of law in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- e. subject to such exceptions and limitations as may be prescribed by Parliament, has an interest in any government contract and has not, within seven days of his nomination as a candidate for election or, as the case may be, at least seven days before the date of his prospective appointment, disclosed the nature of the contract and of his interest therein by means of a notice published in the Official Gazette and in a daily or weekly newspaper circulating in Dominica; or
- f. holds or is acting in the office of President.

2. If it is so provided by Parliament, a person shall not be qualified to be elected or appointed as a member if he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election of

members or the compilation of any register of votes for the purpose of electing Representatives.

3. If it is so provided by Parliament, a person who is convicted by any court of law of any offence that is prescribed by Parliament and that is connected with the election of member or who is reported guilty of such an offence by the court trying and election petition shall not be qualified, for such period (not exceeding seven years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be elected or appointed as a member.

4. A person shall not be qualified to be elected as a Representative if he is a Senator or is nominated for election as a Senator; and a person shall not be qualified to be appointed or elected as a Senator if he is a Representative or is nominated for election as a Representative.

5. If it is so provided by Parliament and subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be elected or appointed as a member if-

a. he holds or is acting in any office or appointment (whether specified individually or by reference to a class of office or appointment);

b. he belongs to any of the armed forces of Dominica or to any class of person that is comprised in any such force; or

c. he belongs to any police force or to any class of person that is comprised in any such force.

6. In subsection (1) of this section-

“government contract” means any contract made with the Government or with a department of the Government or with an officer of the Government contracting as such; “minister of religion” means any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship.

7. For the purposes of paragraph (e) of subsection (1) of this section-

a. two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of

those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and

b. no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

### **33. Election of Representatives.**

1. Each of the constituencies established in accordance with the provisions of section 57 of this Constitution shall return one Representative to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.

a. Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Dominica as Parliament may prescribe shall, unless he is disqualified by Parliament from registration as a voter for the purpose of electing Representative, be entitled to be registered as such a voter in accordance with the provisions of any law in that behalf, and no other person may be registered.

b. Every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of Representative, be entitled so to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

2. In any election of Representative the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

### **34. Appointment or election of Senators.**

1. Of the Senators-

a. five shall be appointed by the President, acting in accordance with the advice of the Prime Minister; and

b. four shall be appointed by the President, acting in accordance with the advice of the Leader of the Opposition;

Provided that, if it is so prescribed by Parliament, the Senators shall, instead of being appointed under the foregoing provisions of this section, be elected, in accordance with such provision as may be made by Parliament in that behalf.

2. Where Parliament makes provision for voting for the purpose of electing Senators, the persons entitled to vote shall be the person entitled to

vote for the purpose of electing Representatives and no other persons and the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

### **35. Tenure of office of Representatives and Senators**

1. A representative or a Senator (hereinafter in this section referred to as a member) shall vacate his seat in the House at the next dissolution of Parliament after his election or appointment.

2. A Senator appointed in accordance with the provisions of paragraph (a) of section 34 of this Constitution shall vacate his seat in the House if his appointment is revoked by the President, acting in accordance with the advice of the Prime Minister, and a Senator appointed in accordance with the provisions of paragraph (b) of that section shall vacate his seat in the House if his appointment is revoked by the President, acting in accordance with the advice of the Leader of the Opposition.

3. A member shall also vacate his seat in the House-

a. if he is absent from the sitting of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;

b. in the case of a Representative, if he ceases to be a citizen of Dominica or, in the case of a Senator if he ceases to be a Commonwealth citizen;

c. subject to the provisions of subsection (4) of this section, if any other circumstances arise that, if he were not a member, would cause him to be disqualified to be elected or appointed as such by virtue of subsection (1) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection (2), (3) or (5) of that section;

d. if he is elected to be President; or

e. if (not being the Speaker or the Deputy Speaker) he is elected to act as President.

f. If any circumstances such as are referred to in paragraph (c) of subsection (3) of this section arise because any member is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of a court of law or other authority or without such leave), he shall forthwith cease to perform his functions as a member but, subject to the provisions of this

section, he shall not vacate his seat until the expiration of a period of thirty days thereafter.

Provided that the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to ever, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

g. If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

h. If at any time before the member vacates his seat such circumstances aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a member.

### **36. Speaker.**

1. When the House first meets after any general election of Representatives and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the House; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as practicable, elect another person to that office.

2. The Speaker may be elected either from among the members of the House who are not members of the Cabinet or Parliamentary Secretaries or from among persons who are not members of the House:

Provided that a person who is not a member of the House shall not be elected as Speaker if-

- a. he is not a Commonwealth citizen; or
- b. he is a person disqualified to be elected or appointed as a Representative or Senator by virtue of subsection (1) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection 82), (3) or (5) of that section.

3. No business shall be transacted in the House (other than the election of a Speaker) at any time when the office of Speaker is vacant.



4. A person shall vacate the office of Speaker-
- a. in the case of a Speaker who was elected from among the members of the House-
    - i. if he ceases to be a member of the House;
    - ii. Provided that the Speaker shall not vacate his office by reason only that he has cease to be a member of the House on a dissolution of Parliament, until the House first meets after the dissolution; or
    - iii. if he becomes a member of the Cabinet or a Parliamentary Secretary;
  - b. in the case of a Speaker who was elected from among persons who were not members of the House-
    - i. when the House first meets after any dissolution of Parliament;
    - ii. if he ceases to be a Commonwealth citizen;
    - iii. if any circumstances arise that would a cause him to be disqualified to be elected or appointed as a Representative or Senator by virtue of subsection (1) of section 32 of this Constitution or by virtue of any law enacted in pursuance of subsection (2), (3) or 85) of that section; or
    - iv. if he is elected to be President.

5. If, by virtue of section 35(4) of this Constitution, the Speaker (being a Representative or a Senator) is required to cease to perform his functions as a member of the House he shall also cease to perform his functions as Speaker; and if the Speaker resumes the performance of his functions as a member of the House, in accordance with the provisions of that section, he shall also resume the performance of his functions as Speaker.

6. At any time when, by virtue of section 28(2) or section 35(4) of this Constitution, the Speaker is unable to perform the functions of his office, those functions shall, until he vacates his seat in the House or resumes the performance of the functions of his office, be performed by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House by virtue of section 28(2) or 35(4) of this Constitution, by such member of the House (not being a member of the Cabinet or a Parliamentary Secretary) as the House may elect for the purpose.

### **37. Deputy Speaker.**

1. When the House first meets after any general election of Representatives and before it proceeds to the despatch of any other business

except the election for the Speaker, the House shall elect a member of the House, who is not a member of the Cabinet or a Parliamentary Secretary, to be Deputy Speaker of the House, and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as convenient, elect another member of the House to that office.

2. A person shall vacate the office of Deputy Speaker-

a. if he ceases to be a member of the House;

b. if he becomes a member of the Cabinet or a Parliamentary Secretary;

or

c. if he is elected to be Speaker.

3. If, by virtue of section 35(4) of this Constitution, the Deputy Speaker is required to cease to perform his functions as a member of the House he shall also cease to perform his functions as Deputy Speaker resumes the performance with the provisions of the section, he shall also resume the performance of his functions as Deputy Speaker.

4. At any time when, by virtue of section 28(2) or section 35(4) of this Constitution, the Deputy Speaker is unable to perform the functions of this office, those functions shall, until he vacates his seat in the House or resumes the performance of the functions of this office, be performed by such member of the House (not being a member of the Cabinet or a Parliamentary Secretary) as the House may elect for the purpose.

### **38. Responsibility for elections.**

1. The Electoral Commission shall be responsible for the registration of voters for the purpose of electing representatives and for the conduct of elections of Representatives and Senators and shall have such powers and other functions relating to such registration and elections as may be prescribed by law.

2. In the discharge of its functions the Electoral Commission shall be assisted by a Chief Elections Officer, whose office shall be a public office, and the Commission may give such directions as it considers necessary or expedient to the Officer, who shall comply with such directions or cause them to be complied with.

3. For the purposes of the exercise of his functions under subsection (2) of this section, the Chief Elections Officer may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officers to whom directions are given under this subsection shall comply with those directions.

4. The Electoral Commission may make such reports to the President concerning the matters for which it is responsible under his section, or any draft bill or instrument that is referred to it under section 51 of this Constitution, as it may think fit and if the Commission so request in any such report other than a report on a draft bill or instrument that report shall be laid before the House.

5. Without prejudice to the provisions of subsection (2) of this section, in the exercise of his functions under this section the Chief Elections Officer shall not be subject to the directions or control of any other person or authority.

6. The Question whether the Chief Elections Officer has acted in accordance with the directions of the Electoral Commission shall not be enquired into in any court of law.

### **39. Clerk of House and his staff.**

1. There shall be a Clerk of the House

2. The office of the Clerk of the House and the offices of the members of his staff shall be public offices

### **40. Determination of questions of memberships**

1. The High Court shall have jurisdiction to hear and determine any question whether-

a. any person has been validly elected as a Representative or Senator;

b. any person has been validly appointed as a Senator;

c. any person who has been elected as Speaker from among persons who were not members of the House was qualified to be so elected or has vacated the office of Speaker; or

d. any member of the House has vacated his seat or is required, under the provisions of section 35(4) of this Constitution, to cease to perform any of this functions as a member of the House.

2. An application to the High Court for the determination of any question under subsection (1)(a) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

3. An application to the High Court for the determination of any question under subsection (1)(b) or subsection (1)(c) of this section may be made by any elected member of the House or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

4. An application to the High Court for the determination of any question under subsection (1)(d) of this section may be made-

- a. by any elected member of the House or by the Attorney-General; or
- b. in the case of the seat of an elected member of the House, by any person registered in some constituency as a voter for the purpose of selecting Representatives,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

5. The circumstances and matter in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section and the powers, practice and procedure of the High Court in relation to any such application shall be regulated by such provision as may be made by Parliament.

6. An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section,

7. No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) of this section and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

8. In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

## **Part 2**

### **Legislation and procedure of Parliament**

**41. Power to make laws.** Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Dominica.

#### **42. Alteration of Constitution and Supreme Court Order.**

1. Parliament may alter any of the provisions of this Constitution or of the Supreme Court Order in the manner specified in the following provisions of this section.

2. A bill to alter this section, Schedule 1 to this Constitution or any of the provisions of this Constitution specified in Part I of that Schedule or any of the provisions of the Supreme Court Order specified in Part II of that Schedule shall not be regarded as being passed by the House of Assembly unless on its final reading in the House the bill is supported by the votes of not less than three-quarters of all the elected members of the House; and a bill to alter any of the provisions of this Constitution or, as the case may be, of the Supreme Court Order not so specified shall not be regarded as being passed by the House unless on its final reading in that House the bill is supported by the votes of not less than two-thirds of all the elected members of the House.

3. A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the President for his assent-

a. unless there has been an interval of no less than ninety days between the introduction of the bill in the House of Assembly and the beginning of the proceedings in the House on the second reading of the bill; and

b. if the bill provides for the alteration of this section, Schedule 1 to this Constitution or any other provisions of this Constitution or the Supreme Court Order specified in that Schedule Court Order specified in that Schedule, unless after it has been passed by the House the bill has been approved on a referendum, held in accordance with such provision as may be made in that behalf by Parliament, by a majority of the votes validly cast on that referendum.

4. The provisions of paragraph (b) of subsection (3) of this section shall not apply in relation to any bill to alter-

a. section 106 of this Constitution in order to give effect to any agreement between Dominica and the United Kingdom concerning appeals from any court having jurisdiction in Dominica to the Judicial Committee;

b. any of the provisions of the Supreme Court Order in order to give effect to any international agreement to which Dominica is a party relating to the Supreme Court or any other court (or any office or authority having functions in respect of any such court) constituted in common for Dominica and for other countries also parties to the agreement.

5. Every person who, at the time when the referendum is held, would be entitled to vote for the purpose of electing Representatives shall be entitled to vote on a referendum held for the purposes of this section in accordance with such procedure as may be prescribed by Parliament for the purposes of the referendum and no other person shall be entitled so to vote.

6. In any referendum for the purposes of this section the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

7. The conduct of any referendum for the purposes of this section shall be the responsibility of the Electoral Commission and the provisions of sections 38 and 51 of this Constitution shall apply in relation to the referendum and legislation relating thereto as they apply in relation to the exercise of their functions with respect to elections of Representatives and legislation relating thereto.

8.

a. A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the President for his assent unless it is

accompanied by a certificate under the hand of the Speaker that the provisions of subsections (2) and (3) of this section have been complied with.

b. The certificate of the Speaker under this subsection shall be conclusive that the provisions of subsections (2) and (3) of this section have been complied with and shall not be enquired into in any court of law.

c. In this subsection references to the Speaker shall, if the person holding the office of Speaker is for any reason unable to perform the functions of his office and no other person is performing them, include references to the Deputy Speaker.

9. In this section and Schedule 1 to this Constitution references to any of the provisions of this Constitution or the Supreme Court Order include references to any law that alters that provision.

**43. Freedom of Speech.** Without prejudice to any provisions made by Parliament relating to the powers, privileges and immunities of the House and its committees, or the privileges and immunities of the members and officers of the House and of other persons concerned in the business of the House or its committees, no civil or criminal proceedings may be instituted against any member of the House for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bull, resolution, motion or otherwise.

**44. Oath by members.**

1. Every member of the House shall, before taking his seat in the house, take and subscribe before the House the oath of allegiance but a member may before taking that oath take part in the election of the Speaker.

2. Any person elected to the office of Speaker shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the House before entering upon the duties of his office.

**45. Presiding.** There shall preside at any sitting of the House-

- a. the Speaker;
- b. in the absence of the Speaker, the Deputy Speaker; or

c. in the absence of the Speaker and the Deputy Speaker, such member of the House (not being a member of the Cabinet or a Parliamentary Secretary) as the House may elect for that purpose.

**46. Voting.**

1. Save as otherwise provided in sections 17(2), 17(4), 19(5), 25(1) and 42(2) of this Constitution, any question proposed for decision in the House shall be determined by a majority of the votes of the members present and voting:

Provided that question of no confidence in the Government shall be determined by a majority of the votes of all the elected members of the House.

2. A question shall not be regarded as having been validly determined by a vote in the House unless at least twelve members, or such greater number of members as Parliament may prescribe, take part in the voting.

3. The references to all the members of the House in sections 17(2), 17(4), 19(5) and 25(1) of this Constitution shall not include the Speaker if he was elected from among persons who were not members of the House.

4. A Speaker who was elected from among the members of the House or another member presiding in the House shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote:

Provided that in the case of the question of the final reading of such a bill as is referred to in section 42(2) of this Constitution he shall, if he is an elected member of the House, have an original vote but no casting vote.

5. A Speaker who was elected from among persons who were not members of the House shall have neither an original nor a casting vote.

6. If, upon any question before the House, the votes of the members are equally divided and no casting vote may be exercised, the motion shall be lost.

**47. Effect of vacancies, etc.** The House may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House



first meets after any general election of Representatives or Senators) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

**48. Penalty for sitting if unqualified.**

1. Any person who sits or votes in the House knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding one hundred dollars, or such other sum as may be prescribed by Parliament, for each day on which he so sits or votes in the House.

2. Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

**49. Mode of exercise of legislative power.**

1. The power of Parliament to make laws shall be exercised by bills passed by the House and assented to by the President.

2. When a bill is submitted to the President for assent in accordance with the provisions of this Constitution he shall signify that he assents.

3. When the President assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the President shall thereupon cause it to be published in the Official Gazette as law.

4. No law made by Parliament shall come into operation until it has been published in the Official Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

**50. Restrictions with regard to certain financial measures.** Except on the recommendation of the President signified by a Minister, the House shall not-

a. proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provisions for any of the following purposes:-

- i. for the imposition of taxation or the alteration of taxation otherwise than by reduction;
  - ii. for the imposition of any charge upon the Consolidated Fund or any other public fund of Dominica or the alteration of any such charge otherwise than by reduction;
  - iii. for the payment, issue or withdrawal from the Consolidated Fund or any other public fund Dominica of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
  - iv. for the composition or remission of any debt due to the Government;
- or
- b. proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

**51. Scrutiny of electoral legislation:** Every proposed bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the purpose of electing Representatives or to the election of Representatives and Senators shall be referred to the Electoral Commission and to the Chief Elections Officer at such time as shall give them sufficient opportunity to make comments thereon before the bill is introduced in the House or, as the case may be, the regulation or other instrument is made.

**52. Regulation of Procedure in House.** Subject to the provisions of this Constitution, the House may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

### **Part 3**

#### **Summoning, prorogation and dissolution**

#### **53. Sessions.**

1. Each session of Parliament shall be held at such place within Dominica and shall commence at such time as the President may by Proclamation appoint.
2. There shall be a session of Parliament once at least in every year, so that a period of six months shall not intervene between the last sitting of the House in one session and the first sitting thereof in the next session.

**54. Prorogation and dissolution.**

1. The President may at any time prorogue or dissolve Parliament.
2. Subject to the provisions of subsection (3) of this section Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of the House after any dissolution and shall then stand dissolved.
3. At any time when Dominica is at war, Parliament may extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:  
provided that the life of Parliament shall not be extended under this subsection for more than five years.
4. In the exercise of his powers to dissolve Parliament, the president shall act in accordance with the advice of the Prime Minister:  
Provided that if the office of the Prime Minister is vacant and the President, acting in his own deliberate judgement, considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of the majority of the elected members of the House, the President shall dissolve parliament.
5. If, after a dissolution of Parliament and before the holding of the general election of Representatives, the Prime Minister advises the President that, owing to the existence of a state of war or of a state of emergency in Dominica, it is necessary to recall parliament, the President shall summon the Parliament that has been dissolved to meet, but, unless the life of Parliament is extended under the provisions of subsection (3) of this section, the general election of Representatives shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the date appointed for the nomination of candidates in that general election.

**55. Holding of elections.**

1. A general election of Representatives or, where provision has been made by Parliament for the election of the Senators, a general election of Senators shall be held at such time within three months after any dissolution of Parliament as the President may appoint for that election.

2. As soon as practicable after the holding of any general election of Representatives the President shall, unless provision has been made by Parliament for their election, proceed to the appointment of the Senators in accordance with the provisions of section 34 of this Constitution.

3. Where the seat of a Representative or Senator falls vacant otherwise than by reason of a dissolution of the House-

a. if the vacant seat is that of a Representative, a by-election shall be held;

b. if the vacant seat is that of a Senator who has been appointed, an appointment shall be made; or

c. if the vacant seat is that of a Senator who has been elected, such electoral proceedings as may be prescribed shall be taken,

to fill the vacancy within three months of the occurrence of the vacancy unless the House is sooner dissolved.

#### **Part 4**

### **Constituency Boundaries and Electoral Commissions**

#### **56. Constituency Boundaries Commission and Electoral Commission.**

1. There shall be a Constituency Boundaries Commission and an Electoral Commission for Dominica each of which is hereinafter in this section referred to as a Commission).

2. The Constituency Boundaries Commission shall consist of

a. the Speaker, as chairman;

b. two members appointed by the President, acting in accordance with the advice of the Prime Minister; and

c. two members appointed by the President, acting in accordance with the advice of the Leader of the Opposition.

3. The Electoral Commission shall consist of-

a. a chairman appointed by the President, acting in his own deliberate judgement;

b. two members appointed by the President, acting in accordance with the advice of the Prime Minister; and

c. Two members appointed by the President, acting in accordance with the advice of the leader of the opposition:

d. Provided that for the purpose of paragraph (b) or (c) of this subsection (and without prejudice to the provisions of section 63(2) of this Constitution), the President shall act in his own deliberate judgement and without the advice of the Prime Minister or, as the case may be, the advice of the Leader of the Opposition, if, having requested that advice, he does not receive it within thirty days.

4. A person shall to be qualified to be appointed as a member of a Commission if he is a member of the House or a public officer not, in the case of the chairman of the Electoral Commission, unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

5. Subject to the provisions of this section, a member of a Commission who has been appointed shall vacate his office-

a. When the House first meets after the next dissolution of Parliament after his appointment;

b. if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

6. A member of a Commission who has been appointed may be removed from office but only for inability to discharge the functions thereof (whether arising from inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

7. A member of a Commission who has been appointed shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

8. If the Prime Minister, in the case of a member of the Constituency Boundaries Commission appointed in accordance with paragraph (b) of subsection (2) of this section, to the Leader of the Opposition, in the case of

a member of that Commission appointed in accordance with paragraph (c) of that subsection, represents to the President or if, in the case of the chairman of the Electoral Commission, the President, acting in his own deliberate judgement, and, in the case of any other member of that Commission, the President, acting after consultation with the Prime Minister and the Leader of the Opposition, considers that the question of removal of a member of the Commission from office for inability as aforesaid or for misbehaviour ought to be investigated, then-

a. the President shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Chief Justice, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction appeals from any such court; and

b. the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether the member of the Commission ought to be removed from office for inability as aforesaid or for misbehaviour.

9. A Commission may regulate its own procedure, and, with the consent of the Prime Minister, confer powers and impose duties on any public officer or on any authority of the Government of Dominica for the purpose of the discharge of its functions.

10. A Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

11. In the exercise of its functions under this Constitution a Commission shall not be subject to the direction or control of any other person or authority.

## **Part 5**

### **Delimitation of constituencies**

#### **57. Review of constituency boundaries.**

1. The Electoral Boundaries Commission (hereinafter in this section referred to as the Commission) shall, in accordance with the provisions of this section, review the number and boundaries of the constituencies into which Dominica is divided and submit to the President reports either-

a. Showing the constituencies into which it recommends that Dominica should be divided in order to give effect to the rules set out in Schedule 2 to this Constitution; or

b. stating that, in his opinion, on alterations required to the existing number or boundaries of constituencies in order to give effect to those rules.

2. Reports under subsection (1) of this section shall be submitted by the Commission at intervals of not less than two nor more than five years.

3. As soon as may be after the Commission has submitted a report under subsection (1)(a) of this section, the Prime Minister shall lay before the House for its approval the draft of an order by the President for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft order may make provision for any matters that appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.

4. Where any such draft order gives effect of any such recommendations with modifications, the Prime Minister shall lay before the House together with the draft order a statement of the reasons for the modifications.

5. If the motion for the approval of any draft order laid before the House under this section is rejected by the House, or is withdrawn by leave of that House, the Prime Minister shall amend the draft order and lay the amended draft before the House.

6. If any draft order laid before the House under this section is approved by resolution of the House, the Prime Minister shall submit it to the President who shall make an order in terms of the draft; and that order shall come into force upon the next dissolution of Parliament after it is made.

7. The question of the validity of any order by the President purporting to be made under this section and reciting that a draft thereof has been approved by resolution of the House shall not be enquired into in any court of law.

8. Parliament may provide for an appeal to the High Court against a recommendation or statement made to the President by the Commission in pursuance or paragraph (a) or (b) of subsection (1) of this section.

## **CHAPTER IV THE EXECUTIVE**

### **58. Executive authority of Dominica.**

1. The executive authority of Dominica is vested in the President.

2. Subject to the provisions of this Constitution, the executive authority of Dominica may be exercised by the President either directly or through officers subordinate to him.

3. Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

### **59. Ministers of the Government.**

1. There shall be a Prime Minister of Dominica, who shall be appointed by the President.

2. Whenever the President has occasion to appoint a Prime Minister he shall appoint an elected member of the House who appears to him likely to command the support of the majority of the elected members of the House.

3. There shall be, in addition to the office of Prime Minister, such other office of Minister of the Government as may be established by Parliament or, subject to the provisions of any law enacted by Parliament, by the President, acting in accordance with the advice of the Prime Minister.

4. Appointments to the office of Ministers, other than the office of Prime Minister, shall be made by the President, acting in accordance with the advice of the Prime Minister, from among the members of the House:



Provided that not more than three Ministers shall be appointed from among Senators who have been appointed as such.

5. If occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, then, notwithstanding the provisions of subsections (2) and (4) of this section (but subject to the provision to subsection (4)), a person who was an elected member of the House immediately before the dissolution may be appointed as Prime Minister or any other Minister and a person who was a Senator immediately before the dissolution, having been appointed as such, may be appointed as any Minister other than Prime Minister.

6. The President shall remove the Prime Minister from office if a resolution of no confidence in the Government is passed by the House and the Prime Minister does not within three days either resign from his office or advise the President to dissolve Parliament.

7. If, at any time between the holding of a general election of Representatives and the first meeting of the House thereafter, the President considers that in consequence of changes in the membership of the house resulting from that election and of any general election of Senator the Prime Minister will not be able to command the support of the majority of the elected members of the House the President may remove the Prime Minister from office.

8. The office of any Minister shall become vacant-

a. if the holder of the office ceases to be a member of the House otherwise than by reason of the dissolution of Parliament;

b. in the case of the Prime Minister, if, when the House first meets after the dissolution of Parliament, he is not then an elected member of the House; or

c. in the case of any other Minister, if when the House first meets after the dissolution of Parliament, he is not then a member of the House.

d. if, by virtue of section 35(4) of this Constitution, he is required to cease to perform his functions as a member of the House.

9. The office of a Minister other than the Prime Minister shall become vacant-

a. if the President, acting in accordance with the advice of the Prime Minister, so directs;

b. if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government has been passed by the House or is removed from office under subsection (6) of this section; or

c. on the appointment of any person to the office of Prime Minister.

10. In the exercise of the power conferred upon him by subsections (2), (5) and (7) of this section the President shall act in his own deliberate judgement.

### **60. Cabinet of Ministers.**

1. There shall be a Cabinet of Ministers for Dominica which shall consist of the Prime Minister and the other Ministers.

2. At any time when the office of Attorney-General is a public office, the Attorney-General shall, by virtue of holding or acting in that office, be a member of the Cabinet in addition to the Ministers.

3. The functions of the Cabinet shall be to advise the President in the government of Dominica and the Cabinet shall be collectively responsible to Parliament for any advice given to the President by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

4. The provisions of subsection (3) of this section shall not apply in relation to-

a. the appointment and removal from office of ministers, temporary Ministers and Parliamentary Secretaries, the assignment of responsibility to any Minister under section 61 of this Constitution, or the authorisation of another minister to perform the functions of the Prime Minister during absence or illness;

b. the dissolution of Parliament; or

c. the matters referred to in section 73 of this Constitution (which relate to the prerogative of mercy).

**61. Allocation of portfolios to Ministers.** The President, acting in accordance with the advice of the Prime Minister, may, by directions in writing,

assign to the Prime Minister or any other Minister responsibility for any business of the Government, including the administration of any department of government:

Provided that responsibility for finance shall be assigned to a Minister who is an elected member of the House.

## **62. Performance of functions of Ministers during absence or illness.**

1. Whenever the Prime Minister is absent from Dominica or by reason of illness is unable to perform the functions conferred upon him by this Constitution, the President may authorise some other Minister to perform those functions (other than the functions conferred by this section) and the Minister may perform those functions until his authority is revoked by the President.

2. Whenever a Minister other than the Prime Minister is absent from Dominica but by leave of the President is not performing the functions of his office or by reason of illness is unable to perform those functions, the President may authorize some other Minister to perform those functions or may appoint a member of the House of Assembly to be a temporary Minister in order to perform those functions; and that Minister or temporary Minister may perform those functions until his authority or, as the case may be, his appointment is revoked by the President:

Provided that the office of a temporary Minister shall become vacant if any circumstances arise that, if he were a Minister, would cause him to vacate office as such.

3. The powers of the President under his section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the President, acting in his own deliberate judgement, considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice and in his own deliberate judgement.

## **63. Exercise of President's functions.**

1. In the exercise of his functions the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any

other law to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet:

Provided that the foregoing provisions of this subsection shall not apply where the President is authorised to act in his own deliberate judgement in accordance with the following provisions of this Constitution-

- a. section 56 (which relates to the Constituency Boundaries Commission and the Electoral Commission);
- b. sections 59 and 62 (which relate to Ministers);
- c. section 66 (which relates to the Leader of the Opposition);
- d. section 85 (which relates to the appointment, etc., of public officers);
- e. section 87 (which relates to the Chief Elections Officer);
- f. section 93 (which relates to the Public Service Board of Appeal); and
- g. section 108 (which relates to the Parliamentary Commissioner).

2. During any period in which there is a vacancy in the office of Leader of the Opposition by reason of the fact that no person is both qualified for appointment to that office in accordance with this Constitution and willing to accept appointment, or if the President, acting in his own deliberate judgement, considers that it is not practicable for him to obtain the advice of the Leader of the Opposition within the time within which it may be necessary for him to act, he may act without that advice and in his own deliberate judgement in the exercise of any power conferred upon him by this Constitution in respect of which it is provided that he shall act on the advice of, or after consultation with, the Leader of the Opposition.

3. Nothing in subsection (1) of this section shall require the President to act in accordance with the advice of the Cabinet or a Minister in exercise of the functions conferred upon him by the following provisions of this Constitution;

- a. the provision to section 54(4) (which requires the President to dissolve Parliament in certain circumstances);
- b. section 59(6) (which requires the President to remove the Prime Minister from office in certain circumstances);
- c. section 64 (which entitles the President to information);
- d. sections 56(5), 66(4), 84(6), 87(7), 88(8), 89(7), and 108(7) (which require the President to remove the holders of certain offices from office in certain circumstances).

**64. President to be informed concerning matters of government.**

The Prime Minister shall keep the President fully informed concerning the general conduct of the government of Dominica and shall furnish the President with such information as he may request with respect to any particular matter relating to the government of Dominica.

**65. Oaths to be taken by Ministers, etc.** A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance, the oath of office and the oath of secrecy.

**66. Leader of the Opposition.**

1. There shall be a Leader of the Opposition who shall be appointed by the President.

2. Whenever there is occasion for the appointment of a Leader of the Opposition the President shall appoint the elected member of the House who appears to him most likely to command the support of a majority of the elected members of the House who do not support the Government: or, if no elected member of the House appears to him to command such support, the elected member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government:

Provided that if a member of the House was elected at a general election in which he stood as a supporter of a political party and the majority of members of the House elected at that time (whether as Representatives or Senators) stood as supporters of that party, he shall, so long as he remains a member of the House by virtue of that election, not be eligible for appointment as Leader of the Opposition.

3. If occasion arises to appoint a Leader of the Opposition during the period between a dissolution of Parliament and the day on which the ensuing election of Representative is held, an appointment may be made as if Parliament had not been dissolved.

4. The office of Leader of the Opposition shall become vacant-

- a. if he ceases to be a member of the House otherwise than by reason of a dissolution of Parliament;

b. if, when the House first meets after a dissolution of Parliament, he is not then a member of the House;

c. if, under the provisions of section 35(4) of this Constitution, he is required to cease to perform his functions as a member of the House; or

d. if he is removed from office by the President under the provisions of subsection (4) of this section.

5. If it appears to the President that the Leader of the Opposition is no longer able to command the support of a majority of the elected members of the House who do not support the Government or (if no elected member of the House appears to him to be able to command such support) the support of the largest single group of members of the House who do not support the Government, he shall remove the Leader of the Opposition from office.

6. The powers of the President under this section shall be exercised by him in his own deliberate judgement.

### **67. Parliamentary Secretaries.**

1. The President, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the House to assist Ministers in the performance of their duties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved a person who was a member of the House immediately before the dissolution may be appointed as a Parliamentary Secretary.

2. The office of a Parliamentary Secretary shall become vacant-

a. if the President, acting in accordance with the advice of the Prime Minister, so directs;

b. if the Prime Minister resigns from office within three days or a resolution of no confidence in the Government has been passed by the House or is removed from office under section 59(6) of this Constitution;

c. upon the appointment of any person to the office of Prime Minister;

d. if the holder of the office ceases to be a member of the House otherwise than by reason of a dissolution of Parliament;

e. if, when the House first meets after the dissolution of Parliament, he is not then a member of the House; or

f. if, by virtue of section 35(4) of this Constitution, he is required to cease to perform his functions as a member of the House.

**68. Permanent secretaries.** Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department of government shall be under the supervision of a public officer whose office is referred to in this Constitution as the office of a permanent secretary;

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

**69. Secretary to the Cabinet.**

1. There shall be a Secretary to the Cabinet whose office shall be a public office.

2. The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.

**70. Constitution of offices, etc.** Subject to the provisions of this Constitution and of any other law, the President may constitute offices for Dominica, make appointments to any such office and terminate any such appointment.

**71. Attorney General.**

1. There shall be an Attorney-General who shall be the principal legal adviser to the Government:

2. The office of Attorney-General, shall be either a public officer of the office of a Minister.

3. At any time when the office of Attorney-General is a public office the same person may, if qualified, be appointed to hold or act in the office of Attorney-General and the office of Director of Public Prosecutions.

4. Where the offices of Attorney-General and Director of Public Prosecutions are held by the same person the following provisions of this Constitution shall have effect as if references therein to the Director included references to the Attorney-General, that is to say, sections 86, 88(5), (6), (7), (8), (9) and (109, 96(3) and 121(8)(a)); but the provisions of this subsection shall be without prejudice to the powers of Parliament or, subject to the provisions of any law enacted by Parliament, the President to determine that the office of Attorney-General shall be the office of a Minister.

## **72. Control of public prosecutions.**

1. There shall be a Director of Public Prosecutions whose office shall be a public office.

2. The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do-

a. to institute and undertake criminal proceedings against any person before any court of law (other than a court-martial) in respect of any offence alleged to have been committed by that person;

b. to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

c. to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

3. The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

4. The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings, to any other court (including the Judicial Committee) shall be deemed to be part of those proceedings:

Provided that the power conferred to the Director of Public Prosecutions by subsection (2)(c) of this section shall not be exercised in



relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

5. In the exercise of the powers vested in him by subsection (2) of this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that the powers vested in him by paragraph (c) of that subsection (2) shall be exercised by him in accordance with such general or special directions (if any) as the Attorney-general may give him.

### **73. Prerogative of mercy.**

1. The president may-

- a. grant a pardon, either free or subject to lawful conditions, to any person convicted of any offence;
- b. grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- c. substitute a less severe form of punishment for any punishment imposed on any person for any offence; or
- d. remit the whole or any part punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Government of Dominica on account of any offence.

2. The powers of the President under subsection (1) of this section shall be exercised by him in accordance with the advice of such Minister as may from time to time be designated by the President, acting in accordance with the advice of the Prime Minister.

### **74. Advisory Committee on Prerogative of Mercy.**

1. There shall be an Advisory Committee on the Prerogative of Mercy for Dominica (hereinafter in this section referred to as the Committee) which shall consist of-

- a. the Minister for the time being designated under section 73(2) of this Constitution, who shall be chairman;
- b. the Attorney-General; and
- c. not more than four other members appointed by the President by writing under his hand.

2. A member of the Committee appointed under subsection (1)(c) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:

Provided that his seat shall become vacant-

- a. in the case of a person who at the date of his appointment was a Minister, if he ceases to be a Minister; or
- b. if the President, by writing under his hand, so directs.

3. The Committee may act notwithstanding any vacancy in its members or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

4. The Committee may regulate its own procedure.

5. In the exercise of this functions under this section, the President shall act in accordance with the advice of the Prime Minister.

#### **75. Functions of Advisory Committee.**

1. Where any person has been sentenced to death (otherwise than by a court-martial) for an offence, the Minister for the time being designated under section 73(2) of this Constitution shall cause a written report of the case from the trial judge (or the Chief Justice, if a report from the trial judge cannot be obtained) together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Advisory Committee he shall decide in his own deliberate judgement whether to advise the President to exercise any of his powers under section 73(1) of this Constitution.

2. The Minister for the time being designated under section 73(2) of this Constitution may consult with the Advisory Committee on the understanding that he shall not be obliged to act in accordance with the recommendation of the Committee.

## CHAPTER V FINANCE

**76. Consolidated Fund.** All revenues or other moneys raised or received by Dominica (not being revenues or other moneys that are payable, by or under any law for the time being in force in Dominica, into some other fund established for a specific purpose) shall be paid into and form a Consolidated Fund.

**77. Withdrawals from Consolidated Fund or other public funds.**

1. No moneys shall be withdrawn from the Consolidated Fund except-

- a. to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or

- b. where the issue of those moneys has been authorised by an appropriation law or by a law made in pursuance of section 79 of this Constitution.

2. Where any moneys are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government to the person or authority to whom payment is due.

3. No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.

4. Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Fund or any other public fund.

**78. Authorisation of expenditure from Consolidated Fund by appropriation law.**

1. The Minister for the time being responsible for finance shall cause to be prepared and laid before the House of Assembly before, or not later than forty-five days after, the commencement of each financial year estimates of the revenues and expenditure of Dominica for the financial year.

2. When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any law enacted by

Parliament) have been approved by the House of Assembly, a bill, known as an appropriation bill, shall be introduced in the House, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

3. If in respect of any financial year it is found-

a. that the amount appropriated by the appropriation law to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or

b. that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the appropriation law or for a purpose to which no amount has been appropriated by that law.

a supplementary estimate showing the sums required or spent shall be laid before the House and, when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced in the House providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

### **79. Authorisation of expenditure in advance of appropriation.**

There shall be such provision as may be made by Parliament under which, if the appropriation law in respect of any financial year has not come into operation by the beginning of the financial year, the Minister for the time being responsible for finance may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government of Dominica until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier.

### **80. Contingencies Fund.**

1. There shall be such provision as may be made by Parliament for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exist, to make advances from that Fund to meet that need.

2. Where any advance is made from the Contingencies Fund, a supplementary estimate shall as soon as possible be laid before the House and when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced as soon as possible in the House for the purpose of replacing the amount so advanced.

### **81. Remuneration of certain officers.**

1. There shall be paid to the holders of the offices to which this section applies such allowances as may be prescribed by or under a law enacted by Parliament.

2. The salaries and allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

3. The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in the behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

4. When a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for purposes of subsection (3) of this section, be deemed to be more advantageous to him than any other for which he might have opted.

5. This section applies to the offices of the President, member of the Public Service Board of Appeal, the Director of Public Prosecutions, the Director of Audit, the Parliamentary Commissioner, the Deputy Parliamentary Commissioner and the Chief Elections Officer.

6. Nothing in this section shall be construed as prejudicing the provisions of section 95 of this Constitution (which protects pensions rights in respect of service as a public officer).

### **82. Public debt.**

1. All debt charges for which Dominica is liable shall be a charge on the Consolidated Fund.

2. For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt created thereby.

**83. Audit of public accounts, etc.**

1. There shall be a Director of Audit whose office shall be a public office.

2. The Director of Audit shall, at least once in every year, audit and report on the public accounts, of Dominica, the accounts of all officers and authorities of the Government, the accounts of all courts of law in Dominica (including any accounts of the Court of Appeal or the High Court maintained in Dominica), the accounts of every Commission established by this Constitution and the accounts of the Parliamentary Commissioner and the Clerk of the House.

(3) The Director of Audit and any officer authorised by him shall have access to all books, records, returns, reports and other Documents which in his opinion relate to any of the accounts referred to in subsection (2) of this section.

3. The Director of Audit shall submit every report made by him in pursuance of subsection (2) of this section to the Minister for the time being responsible for finance who shall, not later than seven days after the House of Assembly first meets after he has received the report, lay it before the House.

4. If the Minister fails to lay a report before the House of Assembly in accordance with the provisions of subsection (4) of this section the Director of Audit shall transmit copies of that report to the Speaker of the House who shall, as soon as practicable, present them to the House.

5. The Director of Audit shall exercise such other functions in relation to the accounts of the Government or the accounts of other authorities or bodies established by law for public purpose as may be prescribed by or under any law enacted by Parliament.

6. In the exercise of his functions under subsection (2), (3), (4) and (5) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

## CHAPTER VI THE PUBLIC SERVICE

### Part 1 The Public Service Commission

#### **84. Public Service Commission.**

1. There shall be a Public Service Commission for Dominica (hereinafter in this section referred to as the Commission) which shall consist of-

a. a chairman and deputy chairman appointed by the President, acting in accordance with the advice of the Prime Minister;

b. two members appointed by the President, acting in accordance with the advice of the Prime Minister, from amongst persons selected by the appropriate representative body; and

c. not more than three other members appointed by the President, acting in accordance with the advice of the Prime Minister;

provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the President for the purposes of paragraph (8b) or (c) of this subsection.

2. A person shall to be qualified to be appointed as a member of the Commission if-

a. he is, or has at any time during the five years immediately preceding his appointment been, a member of the House;

b. he is, or has at any time during the year preceding his appointment been a judge or the Supreme Court or a public officer.

3. A member of the Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.

4. Subject to the provisions of this section, the office of a member of the Commission shall become vacant-

a. at the expiration of three years from the date of his appointment; or

b. if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

5. A member of the Commission may be removed from office only for inability to exercise the function of this office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

6. A member of the Commission shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

7. If the Prime Minister represents to the President that the question of removing a member of the Commission under this section ought to be investigated, then-

a. the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court, and

b. the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed under this section.

8. If the question of removing a member of the Commission has been referred to a tribunal under this section, the President, acting in accordance with the advice of the Prime Minister, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that member should not be removed.

9. If the office of chairman of the Commission is vacant or if the holder of that office is for any reason unable to exercise the functions of this office,



then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by the deputy chairman or, if the office of deputy chairman is vacant or the holder of that office is for any reason unable to exercise the functions of his office, by such other member of the Commission as may for the time being be designated by the President, acting in accordance with the advice of the Prime Minister.

10. If at any time there are less than two members of the Commission besides the chairman or if any such member is acting as chairman or is for any reason unable to exercise the functions of this office, the President, acting in accordance with the advice of the Prime Minister may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his function or until his appointment to act has been revoked by the President, acting in accordance with the advice of the Prime Minister.

11. A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath of office.

12. The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

13. The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of Dominica for the purpose of the exercise of its functions.

14. The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in this membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

15. In this section “the appropriate representative body” means such body as is designated by the President, acting in accordance with the advice of the Prime Minister, as the principal body in Dominica representing the interests of public officers (other than police officers).

**85. Appointment, etc., of public officers.**

1. The power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and, subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

2. The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer.

3. The provisions of this section shall not apply in relation to the following offices, that is to say-

- a. any office to which section 86 of this Constitution applies;
- b. the office of Chief Elections Officer;
- c. the office of Director of Public Prosecutions;
- d. the office of Director of Audit;
- e. any office to which section 90 of this Constitution applies; or
- f. any office in the Police Force.

4. No person shall be appointed under this section to or to act in any office on the President’s personal staff except with the concurrence of the President, acting in his own deliberate judgement.

5. Before any of the powers conferred by this section are exercised by the Public Service Commission or any other person or authority in relation to the Clerk of the House or a member of his staff, the Commissioner or any other person or authority shall consult with the Speaker.

6. Before any of the powers conferred by this section are exercised by the Public Service Commission or any other person or authority in relation to member of the staff of the Parliamentary Commissioner of the Chief Elections Officer, the Commission or that person or authority shall consult the Commissioner or, as the case may be, the Officer.

7. A public officer shall not be removed from office or subject to any other punishment under this section on the grounds of any act done or committed by him in the exercise of a judicial functions conferred on him unless the Judicial and Legal Services Commission concurs therein.

## **Part 2**

### **Appointments, etc., to particular offices**

#### **86. Appointment, etc., of permanent secretaries and certain other officers.**

1. This section applies to the offices of Secretary to the Cabinet, permanent secretary, head of a department of government, deputy head of a department of government, clerk of the House, any office for the time being designated by the Public Service Commission as an office of a chief

professional adviser to a department of government and any office for the time being designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Dominica for the proper discharge of their functions or as an office in Dominica whose functions relate to external affairs.

2. The power to appoint persons to hold or to act in offices to which this section applies (including the power to confirm appointments), and subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the President, acting in accordance with the advice of the Public Service Commission:

Provided that-

a. the power to appoint a person to hold or act in an office of permanent secretary on transfer from another such office carrying the same salary shall vest in the President, acting in accordance with the advice of the Prime Minister;

b. before the Public Service Commission tenders advice to the President with respect to the appointment of any person to hold an office to which this section applies (other than an appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office, the Commission shall not advise the President to appoint that person.

3. References in this section to a department of government shall not include the department of the Attorney-General, the department of the Director of Public Prosecutions, the department of the Director of Audit, the department of the Parliamentary Commissioner, the department of the Chief Elections Officer or the Police Force.

### **87. Chief Elections Officer**

1. The Chief Elections Officer (hereinafter in this section referred to as the Officer) shall be appointed by the President, acting after consultation with the Electoral Commission.

2. If the office of the Officer is vacant or if the holder of that office is for any reason unable to exercise the functions of his office, the President, acting after consultation with the Electoral Commission, may appoint a person to act in that office.

3. A person shall not be qualified to be appointed to hold the office of the Officer unless he holds such qualifications (if any) as may be prescribed by Parliament.

4. A person appointed to act in the office of the Officer shall, subject to the provision of subsections (5), (7), and (8) of this section, cease so to act-

a. when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or

b. at such earlier time as may be prescribed by the terms of his appointment.

5. Subject to the provisions of subsection (6) of this section, the Officer shall vacate his office when he attains the prescribed age.

6. A person holding the office of the Officer may be removed from office only for inability to exercise the functions of this office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

7. The officer shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

8. If the President, acting in his own deliberate judgement, considers that the question of removing the Officer under this section ought to be investigated, then-

a. the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

b. the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Officer ought to be removed under this section.

9. If the question of removing the Officer has been referred to a tribunal under this section, the President, acting in his own deliberate judgement, may suspend the Officer from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Officer should not be removed.

10. The President's age for the purposes of subsection (5) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament;

Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Officer, shall not have effect in relation to that person unless he consents that it should have effect.

**88. Director of Public Prosecutions.**

1. The Director of Public Prosecutions shall be appointed by the President, acting in accordance with the advice of the Public Service Commission.

2. If the office of Director of Public Prosecutions is vacant or if the holder of that office is for any reason unable to exercise the functions of his office, the President, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Director.

3. Before tendering advice for the purposes of subsection (1) or (2) of this section the Public Service Commission shall consult the Prime Minister.

4. A person shall not be qualified to be appointed to hold the office of Director of Public Prosecutions unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

5. A person appointed to act in the office of Director of Public Prosecutions shall, subject to the provisions of subsections (6), (8), (9) and (10) of this section, cease so to act-

a. when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or

b. at such earlier time as may be prescribed by the terms of his appointment.

6. Subject to the provision of subsection (7) of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

7. A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

8. The Director of Public Prosecutions shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (9) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

9. If the Prime Minister of the chairman of the Public Service Commission represents to the President that the question of removing the Director of Public Prosecutions under this section ought to be investigated then-

a. the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

b. the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Director ought to be removed under this section.

10. If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the President, acting in accordance with the advice of the Public Service Commission, may and any such suspension may at any time be revoked by the President, acting in accordance with such advice as aforesaid and shall in any case cease to have effect if the tribunal recommends to the President that the Director should not be removed.

11. (\*) The Prescribed age for the purposes of subsection (6) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Public Prosecutions, shall not have effect in relation to that person unless he consents that it should have effect.

### **89. Director of Audit.**

1. The Director of Audit shall be appointed by the President, acting in accordance with the advice of the Public Service Commission.

2. If the office of Director of Audit is vacant or if the holder of that office is for any reason unable to exercise the function of his office, the President, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Director.

3. Before tendering advice for the purposes of subsection (1) or subsection (2) of this section, the Public Service Commission shall consult the Prime Minister.

4. A person appointed to act in the office of Director of Audit shall, subject to the provisions of subsections (5), (7), (8) and (9) of this section cease so to act-

a. when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or

b. at such earlier time as may be prescribed by the terms of his appointment.

5. Subject to the provisions of subsection (7) of this section the Director of Audit shall vacate his office when he attains the prescribed age.

6. A person holding the office of Director of Audit may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

7. The Director of Audit shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

8. If the Prime Minister or the chairman of the Public Service Commission represents to the President that the question of removing the Director of Audit under this section ought to be investigated-

a. the President shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the Chief Justice from among



persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeal from such a court; and

b. the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Director ought to be removed under this section.

9. If the question of removing the Director of Audit has been referred to a tribunal under this section the President, acting in accordance with the advice of the Public Service Commission, may suspended the Director of Audit from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Director should not be removed.

10. The Prescribed age for the purposed of subsection (5) of this sections the age of fifty-five or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Audit, shall to have effect in relation to that person unless he consents that it should have effect.

### **90. Appointment, etc., of magistrates, registrars and legal officers.**

1. This section applies to the offices of magistrate, registrar of the High Court and assistant registrar of the High Court and to any public office in the department of the Attorney-General (including the public office of Attorney-General) or in the department of the Parliamentary Commissioner, the department of the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to hold one or other of the specified qualifications.

2. The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) shall vest in the Public Service Commission:

Provided that before exercising the powers conferred by this section in any case the Public Service Commission shall consult the Judicial and Legal Services Commission.

3. Subject to the provisions of section 71(4) of this Constitution, the power to exercise disciplinary control over persons holding or acting in offices to which this section applies and the power to remove such persons from office shall vest in the Judicial and Legal Services Commission.

Provided that before exercising the powers conferred by this subsection in any case the Judicial and Legal Services Commission shall consult the Public Service Commission.

### **Part 3 The Police**

#### **91. Police Service Commission.**

1. There shall be a Police Service Commission for Dominica which shall consist of-

a. a chairman and a deputy chairman appointed by the President, acting in accordance with the advice of the Prime Minister;

b. two members appointed by the President, acting in accordance with the advice of the Prime Minister, from amongst persons selected by the appropriate representative body; and

c. not more than three other members appointed by the President, acting in accordance with the advice of the Prime Minister;

provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the President for the purposes of paragraph (b) or (c) of this subsection.

2. The provisions of section 84 of this Constitution (other than subsections (1) and (15)) shall apply in relation to the Police Service Commission as they apply in relation to the Public Service Commission.

3. In this section “the appropriate representative body” means such body as is designated by the President, acting in accordance with the advice of the Prime Minister, as the principal body in Dominica representing the interests of police officers.

#### **92. Appointment, etc., of police officers.**

1. The power to appoint a person to hold or act in the office of Chief of Police or Deputy Chief of Police and, subject to the provisions of section 93

of this Constitution, the power to remove the Chief of Police or Deputy Chief of Police from office shall vest in the President, acting in accordance with the advice of the Prime Minister, given after consultation with the Leader of the Opposition and the Police Service Commission.

2. The power to appoint persons to hold or act in offices in the Police Force below the rank of Deputy Chief of Police (including the power to Confirm appointments), and, subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Police Service Commission.

3. The Police Service Commissions may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (2) of this section in respect of officers below the rank of sergeant or of persons holding or acting in those offices to any one or more members of the Commission or, with the consent of the Prime Minister, to the Chief of Police or any other officer of the Police Force.

4. A police officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of any judicial function conferred on him unless the Judicial and Legal Services Commission concurs therein.

#### **Part 4**

### **The Public Service Board of Appeal**

#### **93. Public Service Board of Appeal.**

1. There shall be a Public Service Board of Appeal for Dominica (hereinafter in this section and in section 94 of this Constitution referred to as the Board) which shall consist of-

a. one member appointed by the President, acting in his own deliberate judgement, who shall be chairman;

b. one member appointed by the President, acting in accordance with the advice of the Prime Minister; and

c. one member appointed by the President, acting in accordance with the advice of the appropriate representative body.

2. A person shall not be qualified for appointment as a member of the Board if he is a member of the House and a person shall not be qualified for appointment under paragraph (c) of subsection (1) of this section unless he is or has been a public officer.

3. Subject to the provisions of this section, the office of a member of the Board shall become vacant-

- a. at the expiration of three years from the date of his appointment; or
- b. if any circumstances arise that, if he were not a member of the Board, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

4. A member of the Board may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

5. A member of the Board shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

6. If the President considers that the question of removing a member of the Board under this section ought to be investigated, then-

a. the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a court having jurisdiction in appeals from such a court; and

b. the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether that member ought to be removed under this section.

7. If the question of removing a member of the Board has been referred to a tribunal under this section, the President may suspend that member from

the exercise of the functions of his office and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal recommends to the President that member should not be removed.

8. If at any time any member of the Board is for any reason unable to exercise the functions of his office, the President may appoint a person who is qualified to be appointed as a member of the Board to act as a member and any person so appointed shall, subject to the provision of subsection (4) of this section, continue to act until the holder thereof has resumed his functions or until his appointment to act has been revoked by the President.

9. In the exercise of the Powers conferred upon him by subsections (6), (7) and (8) of this section the President shall, in the case of a member of the Board appointed under paragraph (b) of subsection (1) of this section, act in accordance with the advice of the Prime Minister and shall in any other case act in his own deliberate judgement.

10. The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

11. In this section “ the appropriate representative body” means the body designated under section 84

12. of this Constitution.

#### **94. Appeals in discipline cases.**

1. This section applies to -

a. any decision of the President, acting in accordance with the advice of the Public Service Commissioner the advice of the Police Service Commission, or any decision of the Public Service Commission or of the Police Service Commission, to remove a public officer from office or to exercise disciplinary control over a public officer (including a decision made on appeal from or confirming a decision of any person to whom powers are delegated under section 85(2) or 92(3) of this Constitution);

b. Any decision of any person to whom powers are delegated under section 85(2) or 92(3) of this Constitution to remove a public officer from office or to exercise disciplinary control over a public officer (not being a

decision which is subject to appeal to or confirmation by the Public Service Commission or the Police Service Commission);

c. such decisions with respect to the discipline of any military, naval or air force of Dominica as may be prescribed by Parliament.

2. Subject to the provision of this section, an appeal shall lie to the Board from any decision to which this section applies at the instance of the Public Officer or member of the naval, military or air force in respect of whom the decision is made.

3. Upon an appeal under this section the Board may affirm or set aside the decision appealed against or may make any other decision appealed against or may make any other decision which the authority or person from whom the appeal lies could have made.

4. Every decision of the Board shall require the concurrence of a majority of all its members.

5. Subject to the provisions of subsection (4) of this section, the Board may by regulation make provisions for

a. the procedure of the Board;

b. the procedure in appeals under this section; or

c. excepting from the provisions of subsection (2) of this section decisions in respect of public officers holding offices whose emoluments do not exceed such sums as may be prescribed by the regulations or such decisions to exercise disciplinary control, other than decisions to remove from office, as may be so prescribed.

6. Regulations made under this section may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government of Dominica for the purpose of the exercise of the functions of the Board.

7. The Board may, subject to the provisions of this section and to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

## **Part 5 Pensions**

### **95. Pensions laws and protection of pensions rights.**

1. The law to be applied with respect to any pensions benefits that were granted to any person before the commencement of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

2. The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall-

a. in so far as those benefits are wholly in respect of a period of service as a judge or officer of the Supreme Court or a public officer that commenced before the commencement of this Constitution, be the law that was in force at such commencement; and

b. in so far as those benefits are wholly or partly in respect of a period of service as a judge or officer of the Supreme Court or a public officer that commenced after the commencement of this Constitution, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

3. Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

4. All pensions benefits shall (except to the extent to the extent that they are by law charge upon and duly paid out of some other fund) be a charge on the Consolidated Fund.

5. In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

6. References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating

the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

**96. Power to withhold pensions, etc.**

1. Where under any law any person or authority has a discretion-  
a. to decide whether or not any pensions benefits shall be granted; or  
b. to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and any not be withheld, reduce in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

2. Where the amount of any pension benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in this being granted benefits of a smaller amount.

3. The Public Service Commission shall not concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of judge of the Supreme Court, Director of Public Prosecutions, Director of Audit or Chief Elections Officer has been guilty of misbehaviour in the office unless he has been removed from that office by reason of such misbehaviour.

4. Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any persons who holds or has held any office to which, at the time of such action, section 90 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial and Legal Services Commission.

5. In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as



judge or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

## **CHAPTER VII CITIZENSHIP**

### **97. Persons who become citizens on 3rd November 1978.**

1. Every person who, having been born in Dominica, is immediately before the commencement of this Constitution a citizen of the United Kingdom and Colonies shall become a citizen of Dominica at such commencement.

2. Every person who, immediately before the commencement of this Constitution, is a citizen of the United Kingdom and Colonies-

a. having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in Dominica as a British subject before that Act came into force; or

b. having become such a citizen by virtue of his having been naturalised or registered in Dominica under the British Nationality Acts 1948 to 1965.

shall become a citizen of Dominica at such commencement.

3. Every person who, having been born outside Dominica, is immediately before the commencement of this Constitution a citizen of the United Kingdom and Colonies shall, if his father or mother becomes, or would but for his death have become, a citizen of Dominica by virtue of subsection (1) or subsection (2) of this section, become a citizen of Dominica at such commencement.

### **98. Persons born in Dominica on or after 3rd November 1978.**

Every person born in Dominica after the commencement of this Constitution shall become a citizen of Dominica at the date of his birth:

Provided that a person shall not become a citizen of Dominica by virtue of this section if at the time of his birth-

a. his father or mother possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Dominica, and is not a citizen of Dominica; or

b. his father or mother is a citizen of a country with which Dominica is at war, and the birth occurs in a place then under occupation by the enemy.

**99. Persons born outside Dominica on or after 3rd November 1978.**

A person born outside Dominica after the commencement of this Constitution shall become a citizen of Dominica at the date of his birth if, at that date, his father or mother is a citizen of Dominica by virtue of the provisions of subsection (1) or (2) of section 97 or section 98 of this Constitution.

**100. Registration.**

1. The following persons shall be entitled, upon making application and, in the case of a British protected person or an alien who has attained the age of eighteen years, taking the oath of allegiance, to be registered as citizens of Dominica-

a. any person who, being a Commonwealth citizen, is and for the previous seven years has been ordinarily resident in Dominica;

b. any person who, having been a citizen of Dominica by virtue of the provisions of subsection (1) and (2) of section 97 or section 98 of the Constitution has renounced his citizenship in order to qualify for the acquisition or retention of the citizenship of another country;

c. any person under the age of eighteen years who is the child, stepchild or child-adopted in a manner recognised by law of person who is or was before his death or would but for his death become a citizen of Dominica by virtue of the provisions of subsection (1) or (2) of section 97 or section 98 of this Constitution.

2. An application under this section shall be made in such manner as may be prescribed, as respects that application, by or under a law enacted by Parliament and in the case of a person to whom subsection (1)(c) of this section applies, it shall be made on his behalf by his parent or guardian before he attains the age of eighteen years or such later age as may be so prescribed.

**101. Acquisition, deprivation and renunciation.** There shall be such provisions as may be made by parliament for-

a. the acquisition of citizenship of Dominica by person who are not eligible or who are no longer eligible to become citizens of Dominica under the provisions of this Chapter;

b. depriving of his citizenship of Dominica any person who is a citizen of Dominica otherwise than by virtue of section 97, 98 or 99 of this Constitution;

c. the renunciation by any person of his citizenship of Dominica.

**102. Interpretation**

1. In this Chapter-

“alien” means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

“British protected person” means a person who is a British protected person for the purpose of the British nationality Act 1948 or any Act of the Parliament of the United Kingdom altering that Act.

2. For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

3. Any reference in this Chapter to the national status of the father of a person at the time of that person’s birth shall in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father’s death; and where that death occurred before the commencement of this Constitution and the birth occurred after such commencement the national status that the father would have had if he had died immediately after such commencement shall be deemed to be his national status at the time of his death.

**CHAPTER VIII  
JUDICIAL PROVISIONS****103. Original Jurisdiction of High Court in Constitutional questions.**

1. Subject to the provisions of section 22(5), 38 (6), 42(8), 57(7), 115(8), 118(3) and 121(10) of this Constitution, any persons who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

2. The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened and to make a declaration accordingly.

3. Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the persons on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under the law of Dominica in proceedings in the High Court.

4. The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the Court by or under this section, including provisions with respect to the time within which any application under this section may be made.

5. A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.

6. The right conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other enactment or any rule of law.

7. Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 40 of this Constitution.

#### **104. Reference of constitutional questions to High Court.**

1. Where any question as to the interpretation of this Constitution arises in any court of law established for Dominica (other than the Court of Appeal, the High Court or a court martial) and the court is of opinion that the question involves a substantial question of law the court shall refer the question to the High Court.

2. Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an

appeal to the Court of Appeal of the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, the Judicial Committee.

### **105. Appeals to Court of Appeal.**

1. Subject to the provisions of section 40(7) of this Constitution, an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases-

- a. final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;
- b. final decisions given in exercise of the jurisdiction conferred on the High Court by section 16 of this Constitution (which relates to the enforcement of the fundamental rights and freedoms).

2. An appeal shall lie from final decisions of the Public Service Board of Appeal to the Court of Appeal.

3. The Chief Justice may make rules with respect to the practice and procedure of the Court of Appeal in relation to appeals from the Public Service Board of Appeal to the Court of Appeal.

### **106. Appeals to the Judicial Committee.**

1. An appeal shall lie from decision of the Court of Appeal to the Judicial Committee as of right in the following cases-

- a. final decisions in any civil proceedings where the matter in dispute on the appeal to the Judicial Committee is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;
- b. final decisions in proceedings for dissolution or nullity of marriage;
- c. final decision in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution; and
- d. such other cases as may be prescribed by Parliament.

2. An appeal shall lie from decisions of the Court of Appeal to the Judicial Committee with the leave of the Court of Appeal in the following cases-

- a. decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great

general or public importance or otherwise, ought to be submitted to the Judicial Committee; and

b. such other cases as may be prescribed by Parliament.

3. An appeal shall lie to the Judicial Committee with the special leave of the Committee from any decision of the Court of Appeal in any civil or criminal matter.

4. References in this section to decisions of the Court of Appeal in exercise of the jurisdiction conferred by this Constitution or any law for the time being in force in Dominica:

Provided that they do not include references to decisions in exercise of the jurisdiction conferred by section 105(2) of this Constitution,

5. In this section the prescribed value means the value of fifteen hundred dollars or such other value as may be prescribed by Parliament.

6. This section shall be subject to the provisions of section 22(4) and 40(7) of this Constitution.

**107. Interpretation.** In this Chapter references to the contravention of any provision of, or the interpretation of, this Constitution shall be construed as including references to the contravention of any provision of, or the interpretation of, the Supreme Court Order.

## CHAPTER IX PARLIAMENT COMMISSIONER

### **108. Appointment, etc., of Commissioner.**

1. There shall be a Parliamentary Commissioner for Dominica who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the public service or otherwise nor engage in any other occupation for reward.

2. The Parliamentary Commissioner shall be appointed by the President, acting after consultation with the Prime Minister and the Leader of the Opposition, for a term not exceeding five years.

3. Before entering upon the duties of his office, the Parliamentary Commissioner shall take and subscribe the oath of office before the Speaker.

4. Subject to the revisions subsection (7) of this section the Parliamentary Commissioner shall vacate his office at the expiration of the term for which he was appointed:

Provided that he shall vacate his office-

a. if with his consent he is nominated for election as a Representative or Senator; or

b. if he is appointed to any other office of emolument or engages in any other occupation for reward.

5. If the office of Parliamentary Commissioner becomes vacant, an appointment to fill the office shall be made within ninety days of the occurrence of the vacancy;

Provided that the House may by resolution extend that period for further periods not exceeding in the aggregate one hundred and fifty days.

6. A person holding the office of Parliamentary Commissioner may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

7. The Parliamentary Commissioner shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

8. If the President, acting after consultation with the Prime Minister and the Leader of the Opposition, considers that the question of removing the Parliamentary Commissioner under this section ought to be investigated-

a. the President shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited

jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeal from such a court; and

b. the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the Commissioner ought to be removed under this section.

9. If the question of removing the Parliamentary Commissioner has been referred to a tribunal this section, the President, acting after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Commissioner from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Commissioner should not be removed.

#### **109. Deputy Parliamentary Commissioner and staff.**

1. There shall be a Deputy Parliamentary Commissioner and the provisions of section 108 of this Constitution shall apply in relation to the Commissioner and his office as they apply in relation to the Parliamentary Commissioner and his office.

2. The Deputy Parliamentary Commissioner shall assist the Parliamentary Commissioner in the performance of the functions of his office and whenever that office is vacant or the holder of the office is for any reason unable to perform those functions, the Deputy Parliamentary Commissioner shall perform those functions.

#### **110. Functions of Commissioner.**

1. Subject to the provisions of this section and sections 111 and 112 of this Constitution, the principal function of the Parliamentary Commissioner shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of government or any other authority to which this section applies, or by officer or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.

2. The Parliamentary Commissioner shall be provided with a staff adequate for the efficient discharge of his functions and the offices of the members of his staff shall be public offices.



3. The Parliamentary Commissioner may investigate any such matter in any of the following circumstances-

a. where a complaint is duly made to the Commissioner by any person alleging that the complainant has sustained an injustice as a result of fault in administration;

b. where a member of the House request the Commissioner to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice; and

c. in any other circumstances in which the Commissioner considers that he ought to investigate the matter on the ground that some person or body of person has or may have sustained such injustice.

4. The authority other than departments of government to which this section applies are-

a. local authorities other bodies establishment for purposes of the public service or of political government;

b. authorities or bodies the majority of whose members are appointed by the President or be a Minister or whose revenues consist wholly or mainly of moneys provided out of public funds;

c. any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of the Government; and

d. such other authorities as may be prescribed by Parliament.

### **111. Restrictions on matters for investigation.**

1. In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Parliamentary Commissioner shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

2. The Parliamentary Commissioner shall have power to investigate complaints of administrative injustice under section 110 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage, corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.

3. Where in the course of an investigation it appears to the Parliamentary Commissioner that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.

4. The Parliamentary Commissioner shall not investigate-

- a. any action in respect of which the complainant has or had
  - i. a remedy by way of proceedings in a court of law; or
  - ii. a right of appeal, reference of review to or before an independent and impartial tribunal other than a court of law; or
- b. any such action, or action taken with respect to any matter, as is described in Schedule 3 to this Constitution.

5. Notwithstanding the provisions of subsection (4) of this section the Parliamentary Commissioner-

- a. May investigate a matter notwithstanding that the complainant has or had a remedy by way of proceedings in a court of law if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;
- b. Is not in any case precluded from investigating any matter by reason only that it is open to the complainant to apply to the High Court for redress under section 16 of this Constitution (which relates to the enforcement of the fundamental rights and freedoms).

**112. Discretion of Commissioner.** In the determining whether to initiate, continue or discontinue an investigation, the Parliamentary Commissioner shall, subject to the provision of sections 110 and 111 of this Constitution, act in his discretion, the Commissioner may refused to initiate or may discontinue an investigation where it appears to him that-

- a. a complaint relates to action of which the complainant has knowledge for more than twelve months before the complaint was received by the Commissioner;
- b. the subject matter of the complaint is trivial;
- c. the complaint is frivolous or vexatious or is not made in good faith; or
- d. the complainant has not sufficient interest in the subject matter of the complaint.

**113. Report on investigation.**

1. Where a complaint or request for an investigation is duly made and the Parliamentary Commissioner decides not to investigate the matter or where he decides to discontinue an investigation of the matter, he shall inform the persons who made the complaint or request of the reasons for his decision.

2. Upon the completion of an investigation the Parliamentary Commissioner shall inform the department of government of the authority concerned of the result of the investigation and if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform the department of government of the authority of the reasons for his opinion and make such recommendations as he thinks fit.

3. The Parliamentary Commissioner may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.

4. Where the investigation is undertaken as a result of a complaint or request, the Parliamentary Commissioner shall inform the person who made the complaint or request of his findings.

5. Where the matter is in the opinion of the Parliamentary Commissioner of sufficient public importance or where the Commissioner has made a recommendation under subsection (2) of this section and within the time specified by him no sufficient action has been taken to remedy the injustice, then the Commissioner shall make a special report to the House on the case.

6. The Parliamentary Commissioner shall make annual reports to the House on the performance of his functions which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigations.

**114. Power to obtain evidence.**

1. The Parliamentary Commissioner shall have the powers of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to procure documents relevant to the proceedings before him and all persons giving evidence at those proceedings

shall have the same duties and liabilities and enjoy the same privileges as in the High Court.

2. The Parliamentary Commissioner shall have power to enter and inspect the premises of any department of government or any authority to which section 110 applies, to call for, examine and where necessary retain any document kept on such premises and there to carry out any investigation in pursuance of his functions.

**115. Prescribed matters concerning Commissioner.**

1. There shall be such provision as may be made by Parliament-

a. for regulating the procedure for the making of complaints and request to the Parliamentary Commissioner and for the exercise of his functions;

b. for conferring such powers on the Commissioner and imposing duties on persons in connection with the due performance of his functions; and

c. generally for facilitating the performance by the Commissioner of his functions.

2. The Parliamentary Commissioner may not be empowered to summon a Minister or a Parliamentary Secretary to appear before him or to compel a Minister or a Parliamentary Secretary to answer any question relating to any matter under investigation by the Commissioner.

3. The Parliamentary Commissioner may not be empowered to summon any witness to procure any Cabinet papers or to give any confidential income tax information.

4. No complainant may be required to pay any fee in respect of his complaint or request or for any investigation to be made by the Parliamentary Commissioner.

5. No proceedings, civil or criminal, may lie against the Parliamentary Commissioner, or against any person holding an office of appointment under him, for anything he may do or report or say in the course of the exercise or intended exercise of the functions of the Commissioner under this Constitution, unless it is shown that he acted in bad faith.

6. The Parliamentary Commissioner, and any person holding office or appointment under his, may not be called to give evidence in any court of law, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

7. Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any enquiry by or proceedings before the Parliamentary Commissioner under this Constitution shall be privileged in the same manner as if the enquiry or proceedings were proceedings in a court of law.

8. No proceedings of the Parliamentary Commissioner may be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceedings or decision of the Commissioner shall be liable to be challenged, reviewed, quashed or called in question in any court of law.

## **CHAPTER X MISCELLANEOUS**

**116. Declaration of republic.** Dominica shall be a sovereign democratic republic.

**117. Supreme law.** This Constitution is the supreme law of Dominica and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall to the extent of the inconsistency, be void.

### **118. Functions of President.**

1. Any reference in this Constitution to the function of the President shall be construed as a reference to his powers and duties in the exercise of the executive authority of Dominica and to any other powers and duties conferred or imposed on him as President by or under this Constitution or any other law.

2. Where by this Constitution the President is required to perform any function after consultation with any person or authority he shall not be obliged to exercise that functions in accordance with the advice of that person or authority.

3. Where by this Constitution the president is required to perform any functions in accordance with the advice of or after consultation with, any person or authority, the question whether the President has so exercised that function shall not be enquired into in any court of law.

### **119. Resignations.**

1. The president may resign his office, and a representative or senator may resign his seat, by writing under his hand addresses to the Speaker and the resignation shall take effect, and the office or seat shall accordingly become vacant, when the writing is received by-

- a. the Speaker;
- b. if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office and no other person is performing them, the Deputy Speaker; or
- c. if the office of Deputy Speaker is vacant or the Deputy Speaker is for any reason unable to perform the functions of his office and no other person is performing them, the Clerk of the House.

2. The Speaker or the Deputy Speaker may resign his office by writing under his hand addressed to the house and the resignation shall take effect, and the office shall accordingly become vacant, when the writing is received by the Clerk of the House.

3. Any person who has been appointed to an office established by this Constitution (other than an office to which subsection (1) or (2) of this section applies) or any office of Minister or temporary Minister established in accordance with section 59(3) or 62(2) of this Constitution may resign that office by writing under his hand addressed to the person or authority by whom he was appointed and the resignation shall take effect, and the office shall accordingly become vacant-

- a. at such time or on such date (if any) as may be specified in the writing; or
- b. when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised to receive it, whichever is the later;

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

## **120. Reappointment and concurrent appointments.**

1. Subject to the provisions of section 21(1) of this Constitution, where any person has vacated any office established by this Constitution or any office of Minister or temporary Minister established under this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

2. Where this Constitution vest in any person or authority the power to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of any appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

## **121. Interpretation.**

1. In this Constitution, unless the context otherwise requires-  
“Commonwealth citizen” has such meaning as Parliament may by law prescribe;

“Dominica” means the Commonwealth of Dominica;

“Dollars” means Dollars in the currency of Dominica;

“financial year” means any period of twelve months beginning on 1st July in any year or such other date as may be prescribed by law;

“the Government” means the Government of Dominica;

“the House” means the House of Assembly;

“the Judicial Committee” means the Judicial Committee of the Privy Council;

“law” includes any instrument having the force of law and any unwritten rule of law and “lawful” and lawfully shall be construed accordingly;

“Minister” means a Minister of the Government and includes a temporary Minister;

“Parliament” means the Parliament of Dominica;

“oath” includes affirmation;

“oath of allegiance” means such oath of allegiance as may be prescribed by law;

“oath of office” means, in relation to any office, such oath for the due execution of that office as may be prescribed by law;

“oath of secrecy” means such oath of secrecy as may be prescribed by law;

“the Police Force” means the Dominica Police Force and includes any other police force established to succeed to the functions of the Dominica Police Force;

“public office” means any office of emolument in the public service;

“public officer” means a person holding or acting in any public office;

“the public service” means subject to the provisions of this section the service in a civil capacity of the Government;

“session” means the period beginning when the House first meets after Parliament has at any time been prorogued or dissolved and ending when Parliament is prorogued or when Parliament is dissolved without having been prorogued;

“sitting” means the period during which the House is sitting continuously without adjournment and includes any period during which it is in committee;

“Speaker” and “Deputy Speaker” means the respective persons holding office as Speaker and Deputy Speaker of the House.

2. In this Constitution, references to an office in the public service shall not be construed as including-

a. references to the office of the Speaker or Deputy Speaker of the House of Assembly, the Prime Minister or any other Minister, a temporary Minister; a Parliamentary Secretary or a member of the House, the Parliamentary Commissioner of the Deputy Parliamentary Commissioner;

b. references to the office of a member of any Commission established by this Constitution or a member of the Advisory Committee on the Prerogative of Mercy or a member of the Public Service Board of Appeal;

c. references to the office of judge or officer of the Supreme Court;

d. save in so far as may be provided by Parliament, references to the office of a member of any other council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

3. In this Constitution-

a. references to the Supreme Court Order include references to any law in force in Dominica altering that Order;



b. references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Service Commission are references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Supreme Court Order;

c. references to the Chief Justice have the same meaning as in the Supreme Court Order;

d. references to a judge of the Supreme Court are references to a judge of the High Court or the Court of Appeal and, unless the context, otherwise requires, include references to a judge of the former Supreme Court of the Windward Islands and Leeward Islands; and

e. references to officers of the Supreme Court are references to the Chief Registrar and other officers of the Supreme Court appointed under the Supreme Court Order.

4. In this Constitution “the specified qualifications” means the professional qualifications specified by or under any law in force in Dominica, one of which must be held by any person before he may apply under that law to be admitted to practice as a barrister or a solicitor in Dominica.

5. For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance.

6. In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.

7. Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

8. References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power

conferred by any law to require or permit that officer to retire from the public service:

Provided that-

a. nothing in this subsection shall be construed as conferring on any person or authority the power to require the Director of Public Prosecutions, the Director of Audit of the Chief Elections Officer to retire from the public service; and

b. any powers conferred by any law to permit a person to retire from the public service shall, in the case of any public office who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

9. Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public office on attaining an age specified by or under that law.

10. Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

11. No provisions of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

12. Without prejudice to the provisions of section 32(2) of the Interpretation Act 1889(a) (as applied by subsection (14) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule direction, or designation.

13. In this Constitution references to altering this Constitution or any other law, or any provision thereof, include references-

- a. to revoking it, with or without re-enactment thereof or the making of different provisions in lieu thereof;
- b. to modifying it whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
- c. to suspending its operation for any period or terminating any such suspension.

14. The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

## **SCHEDULE 1 TO THE CONSTITUTION ALTERATION OF CONSTITUTION AND SUPREME COURT ORDER**

### **PART I PROVISIONS OF CONSTITUTION REFERRED TO IN SECTION 42(2)**

- (i) Chapter I;
- (ii) sections 18, 28 and 58;
- (iii) sections 29, 30, 33, 38, 40, 41, 49, 52, 53, 54, 55, 56 and 57;
- (iv) Chapter V;
- (v) section 72, 84, 85, 86, 87, 88, 89, 90, 91, 92, 95 and 96;
- (vi) Chapter VIII;
- (vii) Chapter IX;
- (viii) section 121 in its application to any of the provisions mentioned in this Schedule; or
- (ix) Schedule 2.

### **PART II PROVISIONS OF THE SUPREME COURT ORDER REFERRED TO IN SECTION 42(2)**

Sections 4, 5, 6, 8, 11, 18 and 19.

## **SCHEDULE 2 TO THE CONSTITUTION RULES CONCERNING CONSTITUENCIES**

All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Constituency Boundaries Commission to be reasonably practicable but the Commission may depart from this principle to such extent as it considers expedient to take account of the following factors, that is to say: –

- a. the density of population, and in particular the need to ensure the adequate representation of sparsely populated rural areas;
- b. the means of communication;
- c. geographical features, and
- d. the boundaries of administrative areas.

## **SCHEDULE 3 TO THE CONSTITUTION MATTERS NOT SUBJECT TO INVESTIGATION BY PARLIAMENTARY COMMISSIONER**

**1.** Action taken in matters certified by the Attorney-General to affect relations or dealings between the Government and the government of any country or territory other than Dominica or any international organisation.

**2.** Action taken in any country or territory outside Dominica by or on behalf of any officer representing or acting under the authority of the Government.

**3.** Action taken under any law relating to extradition or fugitive offenders.

**4.** Action taken for the purposes of investigating crime or of protecting the security of Dominica.

**5.** The commencement or conduct of civil or criminal proceedings before any court of law having jurisdiction in Dominica or before any international court or tribunal.

**6.** Any exercise of the prerogative of mercy.

7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 110 applies but not being transactions for or relating to -

- a. the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
- b. the disposal as surplus of land acquired compulsorily or in circumstances in which it could have been acquired compulsorily.

8. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed by law.

9. Any matter relating to any person who is or was a member of the armed forces of Dominica in so far as the matter relates to -

- a. the terms and conditions of his service as such; or
- b. any order, command, penalty or punishment given to or affecting him in his capacity as such.

10. Any action which by virtue of any provision of this Constitution may be not be enquired into by any court of law.

## **SCHEDULE 2 TO THE ORDER TRANSITIONAL PROVISIONS**

### **1. Election of first President, etc.**

1. A President shall be elected under section 19 of the Constitution as soon as is practicable after the commencement of this Constitution and in any case not later than ninety days from such commencement; and accordingly consultations for the purposes of subsection (1) of that section may take place at any time between the making of this Order and such commencement between the persons respectively holding office under the former Constitution as Premier and as Leader of the Opposition.

2. Until such time as a person has assumed office as President, having been elected as such in accordance with section 19 of the Constitution, the person who immediately before the commencement of the Constitution held

office as Governor of Dominica (or, if there is no such person, the person who was then acting as Governor) shall discharge the functions of the office of President and the provisions of section 28 of the Constitution shall apply in relation to him as if he were the holder of the office of President.

## **2. Existing laws.**

1. The existing laws shall, as from the commencement of the Constitution, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order.

2. Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), that prescription or provision shall as from the commencement of the Constitution. have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution and the Supreme Court Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

3. The President may by order made at any time before 3 November 1979 make such alterations to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution and the Supreme Court Order or otherwise for giving effect or enabling effect to be given to those provisions.

4. The provisions of this paragraph shall be without prejudice to any powers conferred by the Constitution or by any other law upon any person or authority to make provision for any matter. including the alteration of any existing law.

5. For the purposes of this paragraph. the expression “existing law” means any Act, Ordinance, law, rule, regulation, order or other instrument made in pursuance of or continued in force by or under the former Constitution and having effect as part of the law of Dominica or of any part thereof immediately before the commencement of the constitution.

### **3. Parliament.**

1. Until other constituencies are established for Dominica by order in pursuance of section 57 of the Constitution and the order has come into effect there shall, for the purposes of the election of Representatives, be twenty-one constituencies having the same boundaries as the constituencies into which Dominica is divided immediately before the commencement of the Constitution for the purpose of the election of elected members of the House under the former Constitution and those constituencies shall be deemed to have been established under that section.

2. The persons who, immediately before the commencement of the Constitution, are elected members of the House under the former Constitution shall, as from the commencement of the Constitution, be deemed to have been elected as Representatives in pursuance of the provisions of section 33 of the Constitution in the respective constituencies corresponding to the constituencies by which they were returned to the House and shall hold their seats in the House in accordance with the provisions of the Constitution.

3. The persons who, immediately before the commencement of the Constitution, are nominated members of the House under the former Constitution shall vacate their seats in the House at the commencement of the Constitution but shall be eligible for appointment as Senators in pursuance of the provisions of section 34 of the Constitution.

4. The persons who, immediately before the commencement of the Constitution, are respectively the Speaker and Deputy Speaker of the House and the Leader of the Opposition shall be deemed as from the commencement of the Constitution to have been elected as Speaker and Deputy Speaker of the House or, as the case may be appointed as Leader of the Opposition in accordance with the provisions of the Constitution and shall hold office in accordance with those provisions

5. Until Parliament otherwise provides, any person who holds or acts in any office the holding of which would, immediately before the commencement of the Constitution, have disqualified him for membership of the House under the former Constitution shall be disqualified to be elected as a Representative

or appointed or elected as a Senator as though provisions in that behalf had been made in pursuance of section 32(5) of the Constitution.

6. The rules of procedure of the House under the former Constitution as in force immediately before the commencement of the Constitution shall, until it is otherwise provided by the House under section 52 of the Constitution, be the rules of procedure of the House but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

7. Subject to the provisions of section 54 of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on 28 April 1980 (that is to say, five years from the first sitting of the House after the last dissolution of Parliament under the former Constitution).

8. The report of the Constituency Boundaries Commission under section 49 of the former Constitution that was required to have been submitted to the Governor not later than 9 June 1978 may be so submitted at any time before 3 November 1978 and –

a. if the required report is so submitted before that date, the first report of the Commission under section 57 of the Constitution shall be submitted to the President not later than two years nor more than five years from the date on which the required report was submitted to the Governor; but

b. if the required report is not so submitted before that date, the first report of the Commission under section 57 of the Constitution shall be submitted to the President not later than 31 January 1979.

9. Any person who, by virtue of this paragraph, is deemed as from the commencement of the Constitution to have been elected or appointed as Speaker or any other member of the House of Assembly shall, before taking his seat in the House, take and subscribe the oath of allegiance in accordance with section 44 of the Constitution.

#### **4. Ministers and Parliamentary Secretaries.**

1. The person who, immediately before the commencement of the Constitution, holds the office of Premier under the former Constitution shall as from the commencement of the Constitution, hold office as Prime



Minister as if he had been appointed thereto under section 59 of the Constitution.

2. The persons who, immediately before the commencement of the Constitution, hold office as Ministers (other than the Premier) or as Parliamentary Secretaries under the former Constitution shall, as from the commencement of the Constitution hold the like offices as if they had been appointed thereto under section 59 or 67 of the Constitution.

3. Any person holding the office of Prime Minister or other Minister by virtue of the provisions of sub-paragraphs (1) and (2) of this paragraph who, immediately before the commencement of the Constitution was charged under the former Constitution with responsibility for any matter or any department of government, shall, as from the commencement of the Constitution, be deemed to have been assigned responsibility for that matter or department under section 61 of the Constitution.

**5. Office of Attorney-General.** Until Parliament or, subject to the provisions of any law enacted by Parliament, the President, acting in accordance with the advice of the Prime Minister, otherwise decides, the office of Attorney-General shall be a public office.

**6. Existing public officers.** Subject to the provisions of the Constitution, every person who immediately before the commencement of the Constitution holds or is acting in a public office under the former Constitution shall, as from the commencement of the Constitution, continue to hold or act in that office or the corresponding office established by the Constitution as if he had been appointed thereto in accordance with the provisions of the Constitution:

Provided that any person who under the former Constitution or any other law in force immediately before such commencement would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

**7. Oaths.** Until such time as the oath of allegiance, the oath of secrecy or, in relation to any office, the oath of office is prescribed by law, that in oath may be taken in the form prescribed immediately before the commencement of the Constitution, with the substitution, in the case of the oath of allegiance

of a reference to Dominica for the reference to Her Majesty Queen Elizabeth the Second. Her Heirs and Successors.

**8. Supreme Court Order.** The West Indies Associated States Supreme Court Order 1967, in so far as it has effect as part of the law of Dominica, may be cited as the Supreme Court Order and for the purposes of the law of Dominica—

a. the Supreme Court established by that Order shall, unless Parliament otherwise provides, be styled the Eastern Caribbean Supreme Court; and

b. references in that Order to the Premier of Dominica or to the Premier of any other independent state shall be construed as references to the Prime Minister of Dominica or, as the case may be, to the Prime Minister of that other state.

**9. Appeals Order.** The West Indies Associated States (Appeals to Privy Council) Order 1967 may, in its application to Dominica, be cited as the Dominica Appeals to Judicial Committee Order and shall, to the extent that it forms part of the law of Dominica, have effect as if—

a. the expression “appeal” meant an appeal under section 106 of the Constitution;

b. the expression “Courts Order” included any law in force in Dominica altering the Supreme Court Order;

c. section 3 were revoked; and

d. references to Her Majesty in Council were references to the Judicial Committee.

**10. Judicial Committee.**

1. The Judicial Committee shall have jurisdiction—

a. to dispose of any petition to Her Majesty under section 99 of the former Constitution for special leave to appeal to Her Majesty in Council that was filed in the Office of the Judicial Committee before the commencement of the Constitution as if it were a petition for special leave to appeal to the Committee under section 106 of the Constitution; and

b. to continue and dispose of any pending appeal to Her Majesty in Council under section 99 of the former Constitution where final leave to appeal has been granted by the Court of Appeal or special leave to appeal has been granted by Her Majesty before the commencement of the Constitution as if it were an appeal to the Committee under section 106 of the Constitution,

and to make such judgement and order thereon as they consider appropriate.

2. Section 106 of the Constitution shall have effect as if subparagraph (1) of this paragraph formed part of that section.

**11. Protection from inhuman treatment.** Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 5 of the Constitution to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Dominica immediately before 1 March 1967 (being the date on which Dominica became an associated state).

**12. Protection from deprivation of property.** Nothing in section 6 of the Constitution shall affect the operation of any law in force immediately before 1 March 1967 or any law made on or after that date that alters a law in force immediately before that date and that does not –

- a. add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
- b. make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or having an interest in the property; or
- c. deprive any person of such right as is mentioned in subsection (2) of that section.

**13. Commonwealth citizen.** Until such time as Parliament otherwise prescribes, the expression “Commonwealth citizen” shall have the meaning assigned to it by the British Nationality Act 1948 or any Act of the Parliament of the United Kingdom altering that Act.

#### **14. Interpretation.**

1. In this Schedule –

“the Constitution” means the Constitution set out in Schedule 1 of this Order;

“the former Constitution” means the Constitution in force immediately before the commencement of this Order.

2. The provisions of section 121 of the Constitution shall apply for the purposes of interpreting this Schedule and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.



# Granada

## THE GRENADA CONSTITUTION ORDER (1973)

### SCHEDULE 1 TO THE ORDER THE CONSTITUTION OF GRENADA

#### PREAMBLE

Whereas the people of Grenada –

(a) have affirmed that their nation is founded upon principles that acknowledge the fatherhood and supremacy of God and man's duties toward his fellow man;

(b) recognize that, inasmuch as spiritual development is of supreme importance to human existence, and the highest expression thereof, it is their aspiration to serve that end with all their strength and resources;

(c) firmly believe in the dignity of human values and that all men are endowed by the Creator with equal and inalienable rights, reason, and conscience; that rights and duties are correlatives in every social and political activity of man; and that while rights exalt individual freedom, duties express the dignity of that freedom;

(d) express their respect for the rule of law; and since moral conduct constitutes the noblest flowering of their culture and their plural heritage, regard it as the duty of every man always to hold it in high respect;

(e) reiterate that the ideal of free men enjoying freedom from fear and want can be best achieved if conditions are created whereby everyone may enjoy his economic, social and political, civil and cultural rights;

(f) desire that their constitution should reflect the above mentioned principles and beliefs which represent those high ideals upon which their nation is founded, and make provision for ensuring the protection in Grenada of fundamental rights and freedoms:

Now, therefore, the following provisions shall have effect as the Constitution of Grenada:

## **CHAPTER I PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

### **1. Fundamental rights and freedoms.**

Whereas every person in Grenada is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

(a) life, liberty, security of the person and the protection of the law;

(b) freedom of conscience, of expression and of assembly and association;

(c) protection for the privacy of his home and other property and from deprivation of property without compensation; and

(d) the right to work, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in these provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

### **2. Protection of right to life.**

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a Criminal offence under the law of Grenada of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent

and in such circumstances as are permitted by law, of force such as is reasonably justifiable –

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

### **3. Protection of right to personal liberty.**

(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:-

- (a) in execution of the sentence or order of a court, whether established for Grenada or some other country, in respect of a criminal offence of which he has been convicted;
  - (b) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;
  - (c) in execution of the order of a court made to secure the fulfillment of any obligation imposed on him by law;
  - (d) for the purpose of bringing him before a court in execution of the order of a court;
  - (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Grenada;
  - (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
  - (g) for the purpose of preventing the spread of an infectious or contagious disease;
  - (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
  - (i) for the purpose of preventing the unlawful entry of the person into Grenada, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Grenada or for the purpose of restricting that person while he is being conveyed through Grenada in the course of his extradition or removal as a convicted prisoner from one country to another;
- or

(j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Grenada, or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Grenada in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained –

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Grenada, and who is not released, shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.



(7) For the purposes of subsection (1)(a) of this section a person charged before a court with a criminal offence under the law of Grenada in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence, and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

#### **4. Protection from slavery and forced labour.**

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labor.

(3) For the purpose of this section, the expression “forced labour” does not include—

(a) any labour required in consequence of the sentence or order of a court;

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military, or air force, any labour that that person is required by law to perform in place of such service;

(d) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

#### **5. Protection from inhuman treatment.**

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the

law in question authorises the infliction of any description of punishment that was lawful in Grenada immediately before the coming into operation of this Constitution.

**6. Protection from deprivation of property.**

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for –

(a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled and

(b) the purpose of obtaining prompt payment of that compensation: Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practise and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection

(4) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(5) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction,

charge or tax made or levied in respect of its remission) to any country of his choice outside Grenada.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorises –

(a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section –

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right –

(i) in satisfaction of any tax, rate or due;

(ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say –

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property, or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(8) Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament or by any other legislature established for Grenada.

#### **7. Protection from arbitrary search or entry.**

(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources or the development or utilization of any property for a purpose beneficial to the community;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) that authorises an officer or agent of the Government of Grenada, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order, and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **8. Provisions to secure protection of law.**

(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence –

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the

proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence:

Provided that, in such circumstances as may be prescribed by law, the trial may take place in the absence of the person charged so long as no punishment of death or imprisonment (other than imprisonment in default of payment of a fine) is awarded in the event of his conviction.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority –

(a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

(a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) In this section “criminal offence” means a criminal offence under the law of Grenada.

**9. Protection of freedom of conscience.**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practise and observance.

(2) Except with his own consent (or, if he is a person under the age of eighteen years, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(4) No person shall be compelled to take any oath which is contrary to this religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required –

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,



and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

### **10. Protection of freedom of expression.**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent, that the law in question makes provision –

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **11. Protection of freedom of assembly and association.**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

## **12. Protection of freedom of movement.**

(1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Grenada, the right to reside in any part of Grenada, the right to enter Grenada, the right to leave Grenada and immunity from expulsion from Grenada.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) for the imposition of restrictions on the movement or residence within Grenada of any person or on any person's right to leave Grenada that are reasonably required in the interests of defence, public safety or public order;

(b) for the imposition of restrictions on the movement or residence within Grenada or on the right to leave Grenada of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) for the imposition of restrictions, by order of a court, on the movement or residence within Grenada of any person or on any person's right to leave Grenada either in consequence of his having been found guilty of a

criminal offence under the law of Grenada or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Grenada;

(*d*) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Grenada;

(*e*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Grenada;

(*f*) for the imposition of restrictions upon the movement or residence within Grenada or on the right to leave Grenada of any public officer;

(*g*) for the removal of a person from Grenada to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Grenada of which he has been convicted; or

(*h*) for the imposition of restrictions on the right of any person to leave Grenada that are reasonably required in order to secure the fulfillment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in Grenada.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

**13. Protection from discrimination on the grounds of race, etc.**

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision –

(a) for the appropriation of public revenues or other public funds;

(b) with respect to persons who are not citizens of Grenada; or

(c) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinions, colour, creed or sex) to be required of any person who is appointed to or to act in any office in the public service, any office in a disciplined force, any office in the service of a local government authority or in any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such

provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7(2), section 9(5), section 10(2), section 11(2) or paragraph (a), (b) or (h) of section 12(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

**14. Derogations from fundamental rights and freedoms under emergency powers.** Nothing contained in or done under the authority of a law enacted by Parliament shall be held to be inconsistent with or in contravention of section 3 or section 13 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Grenada during that period.

**15. Protection of persons detained under emergency laws.**

(1) When a person is detained by virtue of any such law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say:-

(a) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are entitled to practice as a barrister or a solicitor in Grenada;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense.

#### **16. Enforcement of protective provisions.**

(1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction –

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section and may make such declarations or orders, issue such writs and give such directions as it may

consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution: Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court (other than the Court of Appeal, the High Court or a court martial) any question arises as to the contravention of any of the provisions of sections 2 to 15 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

### **17. Declaration of emergency.**

(1) The Governor-General may, by Proclamation which shall be published in the Gazette, declare that a state of emergency exists for the purposes of this Chapter.

(2) Every declaration of emergency shall lapse –

(a) in the case of a declaration made when Parliament is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and

(b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration unless it has in the meantime been approved by a resolution of both Houses of Parliament.

(3) A declaration of emergency may at any time be revoked by the Governor-General by Proclamation which shall be published in the Gazette.

(4) A declaration of emergency that has been approved by a resolution of the Houses of Parliament in pursuance of subsection (2) of this section shall, subject to the provisions of subsection (3) of this section, remain in force so long as the resolution of both those Houses remains in force and no longer.

(5) A resolution of a House of Parliament passed for the purposes of this section shall remain in force for six months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, each extension not exceeding six months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution of that House.

(6) A resolution of a House of Parliament for the purposes of subsection (2) of this section and a resolution of a House extending any such resolution shall not be passed unless it is supported by the votes of a majority of all the members of the House.

(7) Any provision of this section that a declaration of emergency shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

(8) The Governor-General may summon the Houses of Parliament to meet for the purposes of subsection (2) of this section notwithstanding that Parliament then stands dissolved, and the persons who were members of the Senate and the House of Representatives immediately before the dissolution shall be deemed, for those purposes, still to be members of those Houses but,



subject to the provisions of sections 28(3) and 34(4) of this Constitution (which relate to the election of the President of the Senate and the Speaker of the House of Representatives), a House of Parliament shall not, when summoned by virtue of this subsection, transact any business other than debating and voting upon a resolution for the purposes of subsection (2) of this section.

### **18. Interpretation and savings.**

(1) In this Chapter, unless the context otherwise requires –

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in Grenada other than a court established by a disciplinary law, and includes Her Majesty in Council and in sections 2 and 4 of this Constitution a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means –

(a) a naval, military or air force;

(b) the Police Force; or

(c) a prison service;

“legal representative” means a person entitled to be in or to enter Grenada and entitled to practice as a barrister in Grenada or, except in relation to proceedings before a court in which a solicitor has no right of audience, entitled to practice as a solicitor in Grenada;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter “a period of public emergency” means any period during which –

(a) Her Majesty is at war; or

(b) a declaration of emergency is in force under section 17 of this Constitution.

(3) In relation to any person who is a member of a disciplined force raised under a law enacted by Parliament or by any other legislature established for Grenada, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5 of this Constitution.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid, and lawfully present in Grenada, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

## CHAPTER II GOVERNOR-GENERAL

**19. Establishment of office of Governor-General.** There shall be a Governor-General of Grenada who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Grenada.

**20. Oaths to be taken by Governor-General.** A person appointed to hold the office of Governor-General shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath of office.

### **21. Acting Governor-General.**

(1) During any period when the office of Governor-General is vacant or the holder of the office of Governor-General is absent from Grenada or is for any other reason unable to perform the functions of his office those functions shall be performed by such person as Her Majesty may appoint.

(2) Before assuming the functions of the office of Governor-General any such person as aforesaid shall make the oaths directed by section 20 of this Constitution to be made by the Governor-General.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor-General if the holder of the office of Governor-General or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions.

(4) The holder of the office of Governor-General shall not, for the purposes of this section, be regarded as absent from Grenada or as unable to perform the functions of his office –

(a) by reason that he is in passage from one part of Grenada to another; or

(b) at any time when there is a subsisting appointment of a deputy under section 22 of this Constitution.

## **22. Deputy to Governor-General.**

(1) Whenever the Governor-General –

(a) has occasion to be absent from the seat of Government but not from Grenada;

(b) has occasion to be absent from Grenada for a period which he considers, acting in his own deliberate judgment, will be of short duration; or

(c) is suffering from an illness which he considers, acting in his own deliberate judgment, will be of short duration, he may, acting in accordance with the advice of the Prime Minister, appoint any person in Grenada to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor-General as may be specified in the instrument by which he is appointed.

(2) The power and authority of the Governor-General shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and, subject to the provisions of this Constitution, a deputy shall conform to and observe all instructions that the Governor-General, acting in his own deliberate judgment, may from time to time address to him:

Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court of law.

(3) A person appointed as deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by the Governor-General, acting in accordance with the advice of the Prime Minister.

## **CHAPTER III PARLIAMENT**

### **PART 1 COMPOSITION OF PARLIAMENT**

**23. Establishment of Parliament.** There shall be a Parliament of Grenada which shall consist of Her Majesty, a Senate and a House of Representatives.

## THE SENATE

### **24. Composition of Senate.**

(1) The Senate shall consist of thirteen members (in this Constitution referred to as “Senators”) who shall be appointed by the Governor-General in accordance with this section.

(2) Of the Senators –

(a) seven shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister;

(b) three shall be appointed by the Governor-General, acting in accordance with the advice of the Leader of the Opposition; and

(c) three shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister after the Prime Minister has consulted the organizations or interests which the Prime Minister considers the Senators should be selected to represent.

**25. Qualifications for appointment as Senator.** Subject to the provisions of section 26 of this Constitution, a person shall be qualified to be appointed as a Senator if, and shall not be so qualified unless, he –

(a) is a Commonwealth citizen who has attained the age of eighteen years;

(b) has either resided in Grenada for a period of twelve months immediately before the date of his appointment or is domiciled and resident in Grenada at that date; and

(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take an active part in the proceedings of the Senate.

### **26. Disqualifications for appointment as Senator.**

(1) No person shall be qualified to be appointed as a Senator if he –

(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

(b) is an undercharged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Grenada;

(c) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Grenada;

(*d*) is under sentence of death imposed on him by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever named called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(*e*) subject to such exceptions and limitations as may be prescribed by Parliament, he has any such interest in any such government contract as may be prescribed.

(2) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the House of Representatives or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be appointed as a Senator.

(3) No person shall be qualified to be appointed as a Senator who is a member of the House of Representatives.

(4) Parliament may provide that, subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be appointed as a Senator if, –

(*a*) he holds or is acting in any office or appointment (either individually or by reference to a class of public office or appointment);

(*b*) he belongs to any of the armed forces of the Crown or to any class of person that is comprised in any such force; or

(*c*) he belongs to any police force or to any class of person that is comprised in any such force.

(5) For the purposes of paragraph (*d*) of subsection (1) of this section –

(*a*) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and

(*b*) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(6) In paragraph (e) of subsection (1) of this section “government contract” means any contract made with the Government of Grenada or with a department of that Government or with an officer of that Government contracting as such.

## **27. Tenure of office of Senators.**

(1) A Senator shall vacate his seat in the Senate at the next dissolution of Parliament after his appointment.

(2) A Senator shall also vacate his seat in the Senate –

(a) if he is absent from the sittings of the Senate for such period and in such circumstances as may be prescribed in the rules of procedure of the Senate;

(b) if he ceases to be a Commonwealth citizen;

(c) if, with his consent, he is nominated as a candidate for election to the House of Representatives or if he is elected to be a member of that House;

(d) subject to the provisions of subsection (3) of this section, if any other circumstances arise that, if he were not such a member, would cause him to be disqualified to be appointed as such by virtue of subsection (1) of section 26 of this Constitution or of any law enacted in pursuance of subsection (2) or (4) of that section; or

(e) if the Governor-General, acting in accordance with the advice of the Prime Minister in the case of a Senator appointed under paragraph (a) or (c) of subsection (2) of section 24 of this Constitution or in accordance with the advice of the Leader of the Opposition in the case of a Senator appointed under paragraph (b) of that subsection, declares the seat of that Senator to be vacant.

(3)

(a) If any circumstances such as are referred to in paragraph (d) of subsection (2) of this section arise because any Senator is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of an offence relating to elections and if it is open to the Senator to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a Senator but, subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the President of the Senate may, at the request of the Senator, from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall be given without the approval, signified by resolution, of the Senate.

(b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Senator to appeal, he shall forthwith vacate his seat.

(c) If at any time before the Senator vacates his seat such circumstances aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a Senator.

## **28. President and Deputy President of Senate.**

(1) When the Senate first meets after it has been dissolved and before it proceeds to the despatch of any other business, it shall elect a Senator, not being a Minister or a Parliamentary Secretary, to be President of the Senate; and whenever the office of President is vacant otherwise than by reason of a dissolution of the Senate, the Senate shall elect another Senator to fill that office.

(2) When the Senate first meets or after it has been dissolved, it shall, as soon as practicable, elect a Senator, not being a Minister or a Parliamentary Secretary, to be Deputy President; and whenever the office of Deputy President becomes vacant, the Senate shall, as soon as convenient, elect another Senator to fill that office.

(3) No business shall be transacted in the Senate (other than the election of a President) at any time when the office of President is vacant.

(4) A person shall vacate the office of President or Deputy President of the Senate –

(a) if he ceases to be a Senator:

Provided that the President shall not vacate his office by reason only that he has ceased to be a Senator on a dissolution of Parliament until the Senate first meets after that dissolution;

- (b) if he is appointed to be a Minister or a Parliamentary Secretary; or
- (c) in the case of the Deputy President, if he is elected to be President.

(5)

(a) If, by virtue of section 27(3) of this Constitution, the President or Deputy President of the Senate is required to cease to perform his functions as a Senator he shall also cease to perform his functions as President or Deputy President, as the case may be, and those functions shall, until he vacates his seat in the Senate or resumes the performance of the functions of his office, be performed –

(i) in the case of the President, by the Deputy President or, if the office of Deputy President is vacant or the Deputy President is required to cease to perform his functions as a Senator by virtue of section 27(3) of this Constitution, by such Senator (not being a Minister or a Parliamentary Secretary) as the Senate may elect for the purpose;

(ii) in the case of the Deputy President, by such Senator (not being a Minister or a Parliamentary Secretary) as the Senate may elect for the purpose;

(b) If the President or Deputy President resumes the performance of his functions as a Senator, in accordance with the provisions of section 27(3)(c) of this Constitution, he shall also resume the performance of his functions as President or Deputy President, as the case may be.

## THE HOUSE OF REPRESENTATIVES

### **29. House of Representatives.**

(1) The House of Representatives shall consist of such number of members as corresponds with the number of constituencies for the time being established for Grenada under section 56 of this Constitution, who shall be elected in accordance with the provisions of section 32 of this Constitution.

(2) If a person who is not a member of the House of Representatives is elected to be Speaker of the House he shall, by virtue of holding the office of Speaker, be a member of the House.

### **30. Qualifications for membership of House of Representatives.**

Subject to the provisions of section 31 of this Constitution, a person shall



be qualified to be elected as a member of the House of Representatives if, and shall not be so qualified unless, he –

- (a) is a Commonwealth citizen who has attained the age of eighteen years;
- (b) has resided in Grenada for a period of twelve months immediately before the date of his nomination for election or is domiciled and resident in Grenada at that date; and
- (c) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take an active part in the proceedings of the House.

### **31. Disqualifications for membership of House of Representatives.**

(1) No person shall be qualified to be elected as a member of the House of Representatives if he –

- (a) is by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Grenada;
- (c) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Grenada;
- (d) is under sentence of death imposed on him by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or
- (e) subject to such exceptions and limitations as may be prescribed by Parliament, he has any such interest in any such government contract as may be prescribed.

(2) Parliament may provide that a person shall not be qualified to be elected as a member of the House of Representatives if he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the House or the compilation of any register of voters for the purposes of such an election.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the

election of members of the House of Representatives or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be elected as a member of the House.

(4) Parliament may provide that, subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be elected as a member of the House of Representatives if,-

(a) he holds or is acting in any public office or appointment (either individually or by reference to a class of public office or appointment);

(b) he belongs to any of the armed forces of the Crown or to any class of person that is comprised in any such force; or

(c) he belongs to any police force or to any class of person that is comprised in any such force.

(5) For the purposes of paragraph (d) of subsection (1) of this section –

(a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(6) In paragraph (e) of subsection (1) of this section “government contract” means any contract made with the Government of Grenada or with a department of that Government or with an officer of that Government contracting as such.

### **32. Election of members of House of Representatives.**

(1) Each of the constituencies into which Grenada is divided in accordance with the provisions of section 56 of this Constitution shall return one member to the House of Representatives who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.

(2)

(a) Every Commonwealth citizen who has attained the prescribed age and who possesses such qualifications relating to residence or domicile in Grenada

as Parliament may prescribe shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections of members of the House of Representatives, be entitled to be registered as such a voter under any law in that behalf, and no other person may be so registered.

(b) Every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of members of the House of Representatives, be so entitled to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

(c) The prescribed age for the purposes of this subsection shall be the age of eighteen years.

(3) In any election of members of the House of Representatives the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

### **33. Tenure of office of members of House of Representatives.**

(1) A member of the House of Representatives shall vacate his seat in the House at the next dissolution of Parliament after his House of election.

(2) A member of the House of Representatives shall also vacate his seat in the House –

(a) if he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;

(b) if he ceases to be a Commonwealth citizen; or

(c) subject to the provisions of subsection (3) of this section, if any other circumstances arise that, if he were not such a member, would cause him to be disqualified to be elected as such by virtue of subsection (1) of section 31 of this Constitution or of any law enacted in pursuance of subsection (2), (3) or (4) of that section.

(3)

(a) If any circumstances such as are referred to in paragraph (c) of subsection (2) of this section arise because any member of the House of Representatives is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted or reported guilty of an offence relating to elections and if it is open to the member to appeal against the decision (either

with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the House but, subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

(b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(c) If at any time before the member of the House vacates his seat such circumstances aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a member of the House.

#### **34. Speaker and Deputy Speaker.**

(1) When the House of Representatives first meets after any general election and before it proceeds to the dispatch of any other business, it shall elect a person to be the Speaker of the House; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House shall elect another person to that office.

(2) The Speaker may be elected either from among the members of the House of Representatives who are not Ministers or Parliamentary Secretaries, or from among persons who are not members of the House of Representatives:

Provided that a person who is not a member of the House of Representatives shall not be elected as Speaker if –

(a) he is not a Commonwealth citizen; or

(b) he is a person disqualified for election as a member of the House of Representatives by virtue of section 31(1) of this Constitution or any law enacted in pursuance of subsection (2), (3) or (4) of that section.

(3) When the House of Representatives first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, the House shall elect a member of the House, who is not a Minister or a Parliamentary Secretary, to be Deputy Speaker of the House, and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as convenient, elect another such member to that office.

(4) No business shall be transacted in the House of Representatives (other than the election of a Speaker) at any time when the office of Speaker is vacant.

(5) A person shall vacate the office of Speaker –

(a) in the case of a Speaker elected from among persons who are not members of the House –

(i) when the House first meets after any dissolution of Parliament;

(ii) if he ceases to be a Commonwealth citizen; or

(iii) if any circumstances arise that would cause him to be disqualified for election as a member of the House of Representatives by virtue of section 31(1) of this Constitution or any law enacted in pursuance of subsection (2), (3) or (4) of that section; or

(b) in the case of a Speaker elected from among the members of the House –

(i) if he ceases to be a member of the House:

Provided that the Speaker shall not vacate his office by reason only that he has ceased to be a member of the House on a dissolution of Parliament, until the House first meets after the dissolution; or

(ii) if he is appointed to be a Minister or a Parliamentary Secretary.

(6) A person shall vacate the office of Deputy Speaker –

(a) if he ceases to be a member of the House;

(b) if he is appointed to be a Minister or a Parliamentary Secretary; or

(c) if he is elected to be Speaker.

(7)

(a) If, by virtue of section 33(3) of this Constitution, the Speaker or Deputy Speaker is required to cease to perform his functions as a member of the House of Representatives he shall also cease to perform his functions as Speaker or Deputy Speaker, as the case may be, and those functions shall,

until he vacates his seat in the House or resumes the performance of the functions of his office, be performed –

(i) in the case of the Speaker, by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House of Representatives by virtue of section 33(3) of this Constitution, by such member of the House (not being a Minister or a Parliamentary Secretary) as the House may elect for the purpose;

(ii) in the case of the Deputy Speaker, by such member of the House (not being a Minister or a Parliamentary Secretary) as the House may elect for the purpose.

(b) If the Speaker or Deputy Speaker resumes the performance of his functions as a member of the House, in accordance with the provisions of section 33(3) of this Constitution, he shall also resume the performance of his functions as Speaker or Deputy Speaker, as the case may be.

### **35. Supervisor of Elections.**

(1) There shall be a Supervisor of Elections whose duty it shall be to exercise general supervision over the registration of voters in elections of the members of the House of Representatives and over the conduct of such elections.

(2) The functions of the office of Supervisor of Elections shall be exercised by the person holding or acting in such public office as may for the time being be designated in that behalf by the Governor-General acting in his own deliberate judgment.

(3) A person shall not enter upon the duties of the office of Supervisor of Elections until he has taken and subscribed the oath of allegiance and the oath of office.

(4) For the purposes of the exercise of his functions under subsection (1) of this section, the Supervisor of Elections may give such directions as he considers necessary or expedient to any registering officer; presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.

(5) The Supervisor of Elections may, whenever he considers it necessary or expedient so to do, report to the House of Representatives on the exercise of his functions under the foregoing provisions of this section; he shall submit every such report to the Minister for the time being responsible for matters relating to the election of members of the House of Representatives and that Minister shall, not later than seven days after the House first meets after he has received the report, lay it before the House.

(6) In the exercise of his functions under the foregoing provisions of this section, the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

(7) The Supervisor of Elections shall exercise such other functions in relation to elections (whether to the House of Representatives or to local government authorities) as may be prescribed by or under any law enacted by Parliament.

## GENERAL PROVISIONS

### **36. Clerks to Houses of Parliament and their staff.**

(1) There shall be a Clerk to the Senate and a Clerk to the House of Representatives:

Provided that the offices of Clerk to the Senate and Clerk to the House of Representatives may be held by the same person.

(2) Subject to the provisions of any law enacted by Parliament, the office of Clerk of each House of Parliament and the members of his staff shall be offices in the public service.

### **37. Determination of questions as to membership of Parliament.**

(1) The High Court shall have jurisdiction to hear and determine any question whether –

(a) any person has been validly appointed as a Senator;

(b) any person has been validly elected as a member of the House of Representatives;

(c) any person who has been elected as Speaker of the House of Representatives from among persons who were not members thereof was qualified to be so elected or has vacated the office of Speaker;

(d) any Senator or member of the House of Representatives has vacated his seat or is required, under the provisions of section 27(3) or 33(3) of this Constitution, to cease to perform any of his functions as a Senator or member of the House of Representatives.

(2) An application to the High Court for the determination of any question under subsection (1)(a) of this section may be made by any person registered in a constituency as a voter in elections of members of the House of Representatives or by the Attorney-General, and an application to the High Court for the determination of any question under subsection (1)(b) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate in that election or by the Attorney-General and, if in either case it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the High Court for the determination of any question under subsection (1)(c) of this section may be made by any member of the House of Representatives or by the Attorney-General and if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the High Court for the determination of any question under subsection (1)(d) of this section may be made –  
(a) in the case of a Senator, by a member of the Senate, by any person registered in a constituency as a voter in elections of members of the House of Representatives or by the Attorney-General;  
(b) in the case of a member of the House of Representatives, by a member of that House or by any person registered in a constituency as a voter in elections of members of that House or by the Attorney-General,  
and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) Parliament may make provision with respect to –  
(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section; and



(b) the powers, practice and procedure of the High Court in relation to any such application.

(6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section.

(7) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) of this section and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

(8) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

## **PART 2**

### **LEGISLATION AND PROCEDURE OF PARLIAMENT**

**38. Power to make laws.** Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Grenada.

**39. Alteration of this Constitution and certain other laws.**

(1) Parliament may alter any of the provisions of this Constitution or of the Courts Order or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967(a) in the manner specified in the following provisions of this section.

(2) A bill to alter this Constitution or the Courts Order or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967 shall not be regarded as being passed by the House of Representatives unless on its final reading in that House the bill is supported by the votes of not less than two-thirds of all the members of the House.

(3) An amendment made by the Senate to such a bill that has been passed by the House of Representatives shall not be regarded as being agreed to by the House of Representatives for the purpose of section 48 of this Constitution

unless such agreement is signified by resolution supported by the votes of not less than two-thirds of all the members of the House of Representatives.

(4) For the purposes of section 48(4) of this Constitution, an amendment of a bill to alter this Constitution or the Courts Order or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967 shall not be suggested to the Senate by the House of Representatives unless a resolution so to suggest the amendment has been supported by the votes of not less than two-thirds of all the members of the House of Representatives.

(5) A bill to alter this section, Schedule 1 to this Constitution or any of the provisions of this Constitution specified in Part I of that Schedule or any of the provisions of the Courts Order specified in Part II of that Schedule or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967 shall not be submitted to the Governor for his assent unless –

(a) there has been an interval of not less than ninety days between the introduction of the bill in the House of Representatives and the beginning of the proceedings in the House on the second reading of the bill in that House;

(b) after it has been passed by both Houses of Parliament or, in the case of a bill to which section 48 of this Constitution applies, after its rejection by the Senate for the second time; and

(c) the bill has been approved on a referendum, held in accordance with such provision as may be made in that behalf by Parliament, by not less than two-thirds of all the votes validly cast on that referendum.

(6) Every person who, at the time when the referendum is held, would be entitled to vote in elections of members of the House of Representatives shall be entitled to vote on a referendum held for the purposes of this section in accordance with such procedures as may be prescribed by Parliament for the purposes of the referendum and no other person shall be entitled so to vote.

(7) The conduct of any referendum for the purposes of subsection (5) of this section shall be under the general supervision of the Supervisor of Elections and the provisions of subsections (4), (5) and (6) of section 35 of this Constitution shall apply in relation to the exercise by the Supervisor of Elections

or by any other officer of his functions with respect to a referendum as they apply in relation to the exercise of his functions with respect to elections of members of the House of Representatives.

(8)

(a) A bill to alter this Constitution or the Courts Order or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967 shall not be submitted to the Governor-General for his assent unless it is accompanied by a certificate under the hand of the Speaker of the House of Representatives (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsection (2), (3) or (4), as the case may be, of this section have been complied with and, where a referendum has been held, by a certificate of the Supervisor of Elections stating the results of the referendum.

(b) The certificate of the Speaker or, as the case may be, the Deputy Speaker under this subsection shall be conclusive that the provisions of subsection (2), (3) or (4) of this section have been complied with and shall not be enquired into in any court of law.

(9) In this section –

(a) references to this Constitution include references to any law that alters this Constitution;

(b) references to the Courts Order are references to the West Indies Associated States Supreme Court Order 1967(a) in so far as it has effect as part of the law of Grenada and include references to any law that alters that Order in so far as it has such effect;

(c) references to section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967 are references to that section in so far as it has effect as part of the law of Grenada and include references to any law that alters that section in so far as it has such effect;

(d) references to altering this Constitution or the Courts Order or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967, as the case may be, or to altering any provision include references –

(i) to revoking it, with or without re-enactment thereof or the making of different provision in lieu thereof;

(ii) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and

(iii) to suspending its operation for any period or terminating any such suspension.

#### **40. Oath by members of Parliament.**

(1) Every member of a House of Parliament shall, before taking his seat in the House, take and subscribe before the House the oath of allegiance but a member may before taking that oath take part in the election of the President or Speaker of the House.

(2) Any person elected to the office of President of the Senate or Speaker of the House of Representatives shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the House before entering upon the duties of his office.

#### **41. Presiding in Houses of the Parliament.**

(1) There shall preside at any sitting of the Senate –

(a) the President; or

(b) in the absence of the President, the Deputy President; or

(c) in the absence of the President and the Deputy President, such member of the Senate (not being a Minister or a Parliamentary Secretary) as the Senate may elect for that purpose.

(2) There shall preside at any sitting of the House of Representatives –

(a) the Speaker; or

(b) in the absence of the Speaker, the Deputy Speaker; or

(c) in the absence of the Speaker and the Deputy Speaker, such member of the House (not being a Minister or a Parliamentary Secretary) as the House may elect for that purpose.

#### **42. Quorum.**

(1) If at any sitting of either House of Parliament any member of the House who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the rules of procedure of the House, the person presiding at the sitting ascertains that a quorum of the House is not present, the House shall be adjourned.

(2) For the purposes of this section –

(a) a quorum of the House of Representatives shall consist of five members and the Senate shall consist of four members;

(b) a person presiding at the sitting of either House shall not be included in reckoning whether there is a quorum of the House present.

#### **43. Voting.**

(1) Save as otherwise provided in this Constitution, any question proposed for decision in a House of Parliament shall be determined by a majority of the votes of the members present and voting.

(2) The President or other member presiding in the Senate and the Speaker or other member presiding in the House of Representatives shall not vote unless on any question the votes are equally divided, in which case, except as otherwise provided in this section, he shall have and exercise a casting vote:

Provided that in the case of the question of the final reading of a bill such as is referred to in section 39(2) of this Constitution a Speaker or other member presiding in the House of Representatives who is an elected member of the House shall have an original vote but no casting vote.

(3) A Speaker elected from among persons who are not members of the House of Representatives shall have neither an original nor a casting vote and if, upon any question before the House when such Speaker is presiding, the votes of the members are equally divided, the motion shall be lost.

#### **44. Unqualified persons sitting or voting.**

(1) Any person who sits or votes in either House of Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding one hundred dollars, or such other sum as may be prescribed by Parliament, for each day on which he so sits or votes in the House.

(2) Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

#### **45. Mode of exercise of legislative power.**

(1) The power of Parliament to make laws shall be exercised by bills passed by the Senate and the House of Representatives (or in the cases mentioned in

sections 47 and 48 of this Constitution by the House of Representatives) and assented to by the Governor-General behalf of Her Majesty.

(2) When a bill is submitted to the Governor-General for assent in accordance with the provisions of this Constitution he shall signify that he assents or that he withholds assent.

(3) When the Governor-General assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the Governor-General shall thereupon cause it to be published in the Gazette as law.

(4) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

#### **46. Restrictions with regard to certain financial measures.**

(1) A bill other than a money bill may be introduced in either House of Parliament; a money bill shall not be introduced in the measures.

(2) Except on the recommendation of the Governor-General signified by a Minister, neither House of Parliament shall –

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes: –

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of Grenada or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Grenada of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government of Grenada; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

**47. Restrictions on powers of Senate as to money bills.**

(1) If a money bill, having been passed by the House of Representatives and sent to the Senate at least one month before the end of the session, is not passed by the Senate without amendment within one month after it is sent to the Senate, the bill shall, unless the House of Representatives otherwise resolves, be presented to the Governor-General for his assent notwithstanding that the Senate has not consented to the bill.

(2) There shall be endorsed on every money bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a money bill; and there shall be endorsed on any money bill that is submitted to the Governor-General for assent in pursuance of subsection (1) of this section the certificate of the Speaker signed by him that it is a money bill and the provisions of that subsection have been complied with.

**48. Restrictions on powers of Senate as to bills other than money bills.**

(1) This section applies to any bill other than a money bill that is passed by the House of Representatives in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions.

(2) A bill to which this section applies shall, on its rejection for the second time by the Senate, unless the House of Representatives otherwise resolves, be submitted to the Governor-General for assent notwithstanding that the Senate has not consented to the bill:

Provided that –

(a) the foregoing provisions of this subsection shall not have effect unless at least six months have elapsed between the date on which the bill is passed by the House of Representatives in the first session and the date on which it is passed by the House of Representatives in the second session;

(b) a bill such as is referred to in subsection (5) of section 39 of this Constitution shall not be submitted to the Governor-General for his assent unless the provisions of that subsection have been complied with and the power conferred on the House of Representatives by this subsection to resolve that a bill shall not be presented to the Governor-General for assent shall not be exercised in respect of such a bill.

(3) For the purposes of this section a bill that is sent to the Senate from the House of Representatives in any session shall be deemed to be the same bill as a former bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former bill or contains only such alterations as are certified by the Speaker of the House of Representatives to be necessary owing to the time that has elapsed since the date of the former bill or to represent any amendments which have been made by the Senate in the former bill in the preceding session.

(4) The House of Representatives may, if it thinks fit, on the passage through the House of a bill that is deemed to be the same bill as a former bill sent to the Senate in the preceding session, suggest any amendments without inserting the amendments in the bill, and any such amendments shall be considered by the Senate, and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House; but the exercise of this power by the House shall not affect the operation of this section in the event of the rejection of the bill in the Senate.

(5) There shall be inserted in any bill that is submitted to the Governor-General for assent in pursuance of this section any amendments that are certified by the Speaker to have been made in the bill by the Senate in the second session and agreed to by the House.

(6) There shall be endorsed on any bill that is presented to the Governor-General for assent in pursuance of this section the certificate of the Speaker signed by him that the provisions of this section have been complied with.

**49. Provisions relating to sections 46, 47 and 48.**

(1) In sections 46, 47 and 48 of this Constitution, “money bill” means a public bill which, in the opinion of the Speaker, contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt or other financial purposes, of charges on public money, or the variation or repeal of any such charges; the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant; the appropriation, receipt, custody, investment, issue or audit of accounts of public money; the raising or guarantee of any



loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or subordinate matters incidental to any of the matters aforesaid; and in this subsection the expressions “taxation”, “debt”, “public money” and “loan” do not include any taxation imposed, debt incurred or money provided or loan raised by any local authority or body for local purposes.

(2) For the purposes of section 48 of this Constitution, a bill shall be deemed to be rejected by the Senate if –

(a) it is not passed by the Senate without amendment; or

(b) it is passed by the Senate with any amendment which is not agreed to by the House of Representatives.

(3) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred on him by section 47 or 48 of this Constitution or subsection (1) of this section, that function may be performed by the Deputy Speaker.

(4) Any certificate of the Speaker or Deputy Speaker given under section 48 of this Constitution shall be conclusive for all purposes and shall not be questioned in any court of law.

(5) Before giving any certificate under section 47 or 48 of this Constitution the Speaker or Deputy Speaker, as the case may be, shall consult the Attorney-General.

### **50. Regulation of procedure in Houses of Parliament.**

(1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

(2) Each House of Parliament may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

(3) Parliament may, for the purpose of the orderly and effective discharge of the business of the Senate and the House of Representatives, make provision for the powers, privileges and immunities of those Houses and the committees and the members thereof.

### **PART 3**

#### **SUMMONING, PROROGATION AND DISSOLUTION**

##### **51. Sessions of Parliament.**

(1) Each session of Parliament shall be held at such place within Grenada and shall commence at such time as the Governor-General may by Proclamation appoint.

(2) There shall be a session of Parliament once at least in every year, so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.

##### **52. Prorogation and dissolution of Parliament.**

(1) The Governor-General may at any time prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of Parliament after any dissolution and shall then stand dissolved.

(3) At any time when Her Majesty is at war, Parliament may extend the period of five years specified in subsection (2) of the section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his powers to dissolve Parliament, the Governor-General shall act in accordance with the advice of the Prime Minister:

Provided that –

(a) if the majority of all the members of the House of Representatives pass a resolution that they have no confidence in the Government of Grenada and the Prime Minister does not within three days either resign or advise a

dissolution, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament; and

(b) if the office of the Prime Minister is vacant and the Governor-General, acting in his own deliberate judgment, considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of the majority of the members of the House of Representatives, the Governor-General shall dissolve Parliament.

**53. General elections.**

(1) A general election of members of the House of Representatives shall be held at such time within three months after any dissolution of Parliament as the Governor-General may appoint.

(2) As soon as practicable after every general election the Governor-General shall proceed under section 24 of this Constitution to the appointment of Senators.

**PART 4  
DELIMITATION OF CONSTITUENCIES**

**54. Constituencies.** For the purpose of the election of members of the House of Representatives, Grenada shall be divided into such number of constituencies, having such boundaries as may be provided for by an Order made by the Governor-General in accordance with the provisions of section 56 of this Constitution.

**55. Constituency Boundaries Commission.**

(1) There shall be a Constituency Boundaries Commission for Grenada which shall consist of—

(a) the Speaker, as Chairman;

(b) two members appointed by the Governor-General, acting in accordance with the advice of the Prime Minister; and

(c) two members appointed by the Governor-General, acting in accordance with the advice of the Leader of the Opposition.

(2) A person shall not be qualified to be appointed as a member of the Commission, other than the Chairman, if he is a Senator, a member of the House of Representatives or a public officer.

(3) Subject to the provisions of this section, a member of the Commission, other than the Chairman, shall vacate his office –

(a) at the next dissolution of Parliament after his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(4) A member of the Commission other than the Chairman may be removed from office but only for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and he shall not be so removed except in accordance with the provisions of this section.

(5) A member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister, in the case of a member appointed in accordance with paragraph (b) of subsection (1) of this section, or the Leader of the Opposition, in the case of a member appointed in accordance with paragraph (c) of that subsection, represents to the Governor-General that the question of removal of a member of the Commission from office for inability as aforesaid or for misbehaviour ought to be investigated, then –

(a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Chief Justice, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the member of the Commission ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) The Commission may regulate its own procedure, and, with the consent of the Prime Minister, confer powers and impose duties on any public officer

or on any authority of the Government of Grenada for the purpose of the discharge of its functions.

(8) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(9) In the exercise of its functions under this Constitution the Commission shall not be subject to the control or direction of any other person or authority.

#### **56. Review of constituency boundaries.**

(1) The Constituency Boundaries Commission shall, in accordance with the provisions of this section, review the number and boundaries of the constituencies into which Grenada is divided and submit to the Governor-General reports either –

(a) showing the constituencies into which it recommends that Grenada should be divided in order to give effect to the rules set out in Schedule 2 to this Constitution; or

(b) stating that, in the opinion of the Commission no alteration is required to the existing number or boundaries of constituencies in order to give effect to the said rules.

(2) Reports under subsection (1) of this section shall be submitted by the Commission –

(a) in the case of its first report after the day upon which this Constitution comes into operation, not more than five years from 25th August 1971; and

(b) of any subsequent report, not less than two nor more than five years from the date of the submission of its last report.

(3) As soon as may be after the Commission has submitted a report under subsection (1)(a) of this section, the Prime Minister shall lay before the House of Representatives for its approval the draft of an Order by the Governor-General for giving effect, whether with or without modifications, to the recommendations contained in the report, and that

draft Order may make provision for any matters which appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.

(4) Where any draft Order submitted to the House of Representatives under this section gives effect to any such recommendations with modifications, the Prime Minister shall lay before the House together with the draft Order a statement of the reasons for the modifications.

(5) If the motion for the approval of any draft Order laid before the House of Representatives under this section is rejected by the House, or is withdrawn by leave of the House, the Prime Minister shall amend the draft Order and lay the amended draft before the House.

(6) If any draft Order laid before the House of Representatives under this section is approved by resolution of the House, the Prime Minister shall submit it to the Governor-General who shall make an Order in terms of the draft; and that Order shall come into force upon the next dissolution of Parliament after it is made.

(7) The question of the validity of any Order by the Governor-General purporting to be made under this section and reciting that a draft thereof has been approved by resolution of the House of Representatives shall not be enquired into in any court of law.

## **CHAPTER IV THE EXECUTIVE**

### **57. Exercise of executive authority of Grenada.**

(1) The executive authority of Grenada is vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of Grenada may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.

**58. Ministers.**

(1) There shall be a Prime Minister of Grenada, who shall be appointed by the Governor-General.

(2) Whenever the Governor-General has occasion to appoint a Prime Minister he shall appoint a member of the House of Representatives who appears to him likely to command the support of the majority of the members of the House.

(3) There shall be, in addition to the office of Prime Minister, such other offices of Minister as may be established by Parliament or, subject to the provisions of any law enacted by Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister.

(4) Appointments to the office of Minister, other than the office of Prime Minister, shall be made by the Governor-General, acting in accordance with the advice of the Prime Minister, from among the Senators and the members of the House of Representatives.

(5) If occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, then, notwithstanding any other provision of this section, a person who was a member of the House of Representatives immediately before the dissolution may be appointed as Prime Minister or any other Minister and a person who was a Senator immediately before the dissolution may be appointed as any Minister other than Prime Minister.

(6) The Governor-General may remove the Prime Minister from office –  
(a) if a resolution of no confidence in the Government of Grenada is passed by the majority of all the members of the House of Representatives and the Prime Minister does not within three days either resign from his office or advise a dissolution of Parliament; or  
(b) if, at any time between the holding of a general election of the members of the House of Representatives and the date on which the House first meets thereafter, the Governor-General considers that in consequence of changes in the membership of the House resulting from that election the Prime Minister will not be able to command the support of the majority of the members of the House.

(7) The office of any Minister shall become vacant –  
(a) if the holder of the office ceases to be a member of either House of Parliament otherwise than by reason of the dissolution of Parliament;  
(b) in the case of the Prime Minister, if, when the House of Representatives first meets after the dissolution of Parliament, he is not then a member thereof;  
(c) in the case of any other Minister, if, when the House of Representatives first meets after the dissolution of Parliament, he is not then a member of either House of Parliament; or  
(d) if, by virtue of section 27(3) or 33(3) of this Constitution, he is required to cease to perform his functions as a member of a House of Parliament.

(8) The office of a Minister other than the Prime Minister shall become vacant –  
(a) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;  
(b) if the Prime Minister resigns from office within three days after the passage by the majority of all the members of the House of Representatives of a resolution of no confidence in the Government of Grenada or is removed from office under subsection (6) of this section; or  
(c) on the appointment of any person to the office of Prime Minister.

(9) In the exercise of the powers conferred upon him by subsections (2), (5) and (6) of this section the Governor-General shall act in his own deliberate judgment.

### **59. Cabinet of Ministers.**

(1) There shall be a Cabinet of Ministers for Grenada which shall consist of the Prime Minister and the other Ministers.

(2) At any time when the office of Attorney-General is a public office, the Attorney-General shall be an ex-officio member of the Cabinet in addition to the Ministers.

(3) The functions of the Cabinet shall be to advise the Governor-General in the government of Grenada and the Cabinet shall be collectively responsible to Parliament for any advice given to the Governor-General by or under the general authority of the Cabinet for all things done by or under the authority of any Minister in the execution of his office.



(4) The provisions of subsection (3) of this section shall not apply in relation to—  
(a) the appointment and removal from office of Ministers or Parliamentary Secretaries, the assignment of responsibility to any Minister under section 60 of this Constitution, or the authorisation of another Minister to perform the functions of the Prime Minister during absence or illness;  
(b) the dissolution of Parliament; or  
(c) the matters referred to in section 72 of this Constitution (which relate to the prerogative of mercy).

**60. Allocation of portfolios to Ministers.** The Governor-General, acting in accordance with the advice of allocation of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government of Grenada, including the administration of any department of government.

**61. Performance of functions of Prime Minister during absence or illness.**

(1) Whenever the Prime Minister is absent from Grenada or is by reason of illness unable to perform the functions conferred upon him by this Constitution, the Governor-General may authorise some other Prime Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor-General, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers in his own deliberate judgment.

**62. Exercise of Governor-General's functions.**

(1) In the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet or in his own deliberate judgment.

(2) During any period in which there is a vacancy in the office of Leader of the Opposition by reason of the fact that no person is both qualified for appointment to that office in accordance with this Constitution and willing to accept appointment, the Governor-General may act without the advice of the Leader of the Opposition and in his own deliberate judgment in the exercise of any power in respect of which it is provided in this Constitution he shall act on the advice of the Leader of the Opposition.

(3) Nothing in subsection (1) of this section shall apply to the functions conferred upon the Governor-General by the following provisions of this Constitution –

(a) paragraph (b) of the proviso to section 52(4) (which requires the Governor-General to dissolve Parliament in certain circumstances);

(b) section 63 (which entitles the Governor-General to information);

(c) sections 55(5), 66(4), 83(6), 86(7), 87(7) and 90(5) (which require the Governor-General to remove the holders of certain offices from office in certain circumstances).

**63. Governor-General to be informed concerning matters of government.** The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of Grenada and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the government of Grenada.

**64. Parliamentary Secretaries.**

(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the Senators and members of the House of Representatives to assist Ministers in the performance of their duties:

Provided that, if occasion arises for making appointments while Parliament is dissolved, a person who was a Senator or a member of the House of Representatives immediately before the dissolution may be appointed as a Parliamentary Secretary.

(2) The office of a Parliamentary Secretary shall become vacant –

(a) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;

(b) if the Prime Minister resigns from office within three days after the passage by the majority of all the members of the House of Representatives of a resolution of no confidence in the Government of Grenada or is removed from office under section 58(6) of this Constitution;

(c) upon the appointment of any person to the office of Prime Minister;

(d) if the holder of the office ceases to be a member of either House of Parliament otherwise than by reason of a dissolution of Parliament;

(e) if, when the House of Representatives first meets after any dissolution of Parliament, he is not then a member of either House of Parliament; or

(f) if, by virtue of section 27(3) or 33(3) of this Constitution, he is required to cease to perform his functions as a member of a House of Parliament.

**65. Oaths to be taken by Ministers, etc.** A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath of office.

**66. Leader of the Opposition.**

(1) There shall be a Leader of the Opposition who shall be Appointed by the Governor-General.

(2) Whenever there shall be occasion for the appointment of a Leader of the Opposition, the Governor-General, acting in his own deliberate judgment, shall appoint the member of the House of Representatives who appears to him to command the support of the largest number of members of the House in opposition to the Government.

(3) The Leader of the Opposition shall vacate his office –

(a) if for any reason other than a dissolution of Parliament he ceases to be a member of the House of Representatives;

(b) if when the House of Representatives first meets after any dissolution of Parliament he is not then a member of the House;

(c) if by virtue of the provisions of section 33(3) of this Constitution he is required to cease to perform his functions as a member of the House of Representatives; or

(d) if he is removed from office under the provisions of subsection (4) of this section.

(4) If it appears to the Governor-General, acting in his own deliberate judgment, that the Leader of the Opposition no longer commands the support of the largest number of members of the House in opposition to the Government, the Governor-General shall remove the Leader of the Opposition from office.

**67. Permanent secretaries.** Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, every department of government shall be under the supervision of a public officer whose office is referred to in this Constitution as the office of a permanent secretary:

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

**68. Secretary to the Cabinet.**

(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.

**69. Constitution of offices, etc.** Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for Grenada, make appointments to any such office and terminate any such appointment.

**70. Attorney-General.**

(1) There shall be an Attorney-General who shall be the principal legal adviser to the Government of Grenada.

(2) The office of Attorney-General shall be either a public office or the office of a Minister.

(3) At any time when the office of Attorney-General is a public office the same person may, if qualified, be appointed in accordance with the provisions of Chapter VI of this Constitution to hold or act in the office of Attorney-General and the office of Director of Public Prosecutions.

(4) Where the offices of Attorney-General and Director of Public Prosecutions are held by the same person, the following provisions of this Constitution shall have effect, in relation to that person, as if references therein to the Director of Public Prosecutions included references to the Attorney-General, that is to say, sections 80, 86(6), 86(7), 86(8), 86(9), 93 and 111(8) but the provisions of this subsection shall be without prejudice to the powers of Parliament or, subject to the provisions of any law, the Governor-General to determine that the office of Attorney-General shall cease to be a public office and become the office of a Minister.

#### **71. Director of Public Prosecutions.**

(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do –

(a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such criminal proceeding that have been instituted or undertaken by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purpose of this section, any appeal from a judgment in criminal proceedings before any court or any case stated or question of law reserved for the purpose of any such proceedings, to any other court (including Her Majesty in Council) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(c) of this section, shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In the exercise of the functions vested in him by subsection (2) of this section and by section 44 of this Constitution, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

## **72. Prerogative of mercy.**

(1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf,-

(a) grant a pardon, either free or subject to lawful conditions, to any person convicted of any offence;

(b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

(c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or

(d) remit the whole or any part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(2) The powers of the Governor-General under subsection (1) of this section shall be exercised by him in accordance with the advice of such Minister as may for the time being be designated by the Governor-General, acting in accordance with the advice of the Prime Minister.

**73. Advisory Committee on Prerogative of Mercy.** (1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of—

- (a) the Minister for the time being designated under section 72(2) of this Constitution who shall be Chairman;
- (b) the Attorney-General;
- (c) the chief medical officer of the Government of Grenada; and
- (d) three other members appointed by the Governor-General, by instrument in writing under his hand.

(2) A member of the Committee appointed under subsection (1)(d) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:

Provided that his seat shall become vacant—

- (a) in the case of a person who, at the date of his appointment was a Minister, if he ceases to be a Minister; or
- (b) if the Governor-General, by instrument in writing under his hand so directs.

(3) The Committee may act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(4) The Committee may regulate its own procedure.

(5) In the exercise of his functions under this section, the Governor-General shall act in accordance with the advice of the Prime Minister.

**74. Functions of Advisory Committee.**

(1) Where any person has been sentenced to death (otherwise than by a court-martial) for an offence, the Minister for the time being designated under section 72(2) of this Constitution shall cause a written report of the case from the trial judge (or, if a report cannot be obtained from that judge, a report on the case from the Chief Justice), together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide in his own deliberate judgment whether to

advise the Governor-General to exercise any of his powers under section 72(1) of this Constitution.

(2) The Minister for the time being designated under section 72(2) of this Constitution may consult with the Advisory Committee on the Prerogative of Mercy before tendering advice to the Governor-General under section 72(1) of this Constitution in any case not falling within subsection (1) of this section but he shall not be obliged to act in accordance with the recommendation of the Committee.

## CHAPTER V FINANCE

**75. Consolidated Fund.** All revenues or other moneys raised or received by Grenada (not being revenues or other moneys that are payable, by or under any law for the time being in force in Grenada, into some other fund established for any specific purpose) shall be paid into and form a Consolidated Fund.

**76. Withdrawals from Consolidated Fund or other public funds.**

(1) No moneys shall be withdrawn from the Consolidated Fund except –  
(a) to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or  
(b) where the issue of those moneys has been authorised by an Appropriation law or by a law made in pursuance of section 78 of this Constitution.

(2) Where any moneys are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government of Grenada to the person or authority to whom payment is due.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.

(4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Fund or any other public fund.



**77. Authorisation of expenditure from Consolidated Fund by Appropriation law.**

(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the House of Representatives in each financial year estimates of the revenues and expenditure of Grenada for the next following financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any law enacted by Parliament) have been approved by the House of Representatives, a bill, known as an Appropriation bill, shall be introduced in the House providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

(3) If in respect of any financial year it is found –

(a) that the amount appropriated by the Appropriation law to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or

(b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation law or for a purpose to which no amount has been appropriated by that law;

a supplementary estimate, showing the sums required or spent, shall be laid before the House of Representatives and, when the supplementary estimate has been approved by the House, a supplementary Appropriation bill shall be introduced in the House providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

**78. Authorisation of expenditure in advance of appropriation.** Parliament may make provision under which, if the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government of Grenada until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier.

**79. Contingencies Fund.**

(1) Parliament may make provision for the establishment of a Contingencies Fund and for authorizing the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall as soon as possible be laid before the House of Representatives and when the supplementary estimate has been approved by the House, a supplementary Appropriation bill shall be introduced as soon as possible in the House for the purpose of replacing the amount so advanced.

**80. Remuneration of certain officers.**

(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by or under a law enacted by Parliament.

(2) The salaries and allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) When a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(a) This section applies to the offices of the Governor-General, member of the Public Service Commission, member of the Public Service Board of Appeal, the Director of Public Prosecutions and the Director of Audit.

(b) Nothing in this section shall be construed as prejudicing the provisions of section 92 of this Constitution (which protects pensions rights in respect of service as a public officer).

**81. Public debt.**

(1) All debt charges for which Grenada is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest sinking fund charges, the repayment or amortization of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt created thereby.

**82. Director of Audit.**

(1) There shall be a Director of Audit whose office shall be a public office.

(2) It shall be the duty of the Director of Audit to audit and report on the public accounts of Grenada, the accounts of all officers and authorities of the Government of Grenada, the accounts of all courts in Grenada (including any accounts of the Court of Appeal or the High Court maintained in Grenada), the accounts of every Commission established by this Constitution and the accounts of the Clerk to the Senate and the Clerk to the House of Representatives.

(3) The Director of Audit and any officer authorised by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in subsection (2) of this section.

(4) The Director of Audit shall submit every report made by him in pursuance of subsection (2) of this section to the Minister for the time being responsible for finance who shall, not later than seven days after the House of Representatives first meets after he has received the report, lay it before the House.

(5) The Director of Audit shall exercise such other functions in relation to the accounts of the Government of Grenada or the accounts of other authorities or bodies established by law for public purposes as may be prescribed by or under any law enacted by Parliament.

(6) In the exercise of his functions under subsections (2), (3) and (4) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

## CHAPTER VI THE PUBLIC SERVICE

### PART I THE PUBLIC SERVICE COMMISSION

#### **83. Public Service Commission.**

(1) There shall be a Public Service Commission for Grenada which shall consist of a Chairman and four other members who shall be appointed as follows:-

(a) the Chairman and two members shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister;

(b) two members shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister after the Prime Minister has consulted the appropriate representative bodies:

Provided, however, that no appointment shall be made under this subsection unless the body consulted has been in agreement thereto.

(2) A person shall not be qualified to be appointed as a member of the Commission if –

(a) he is a Senator or a member of the House of Representatives; or

(b) he is a judge of the Court of Appeal or the High Court or a public officer.

(3) A member of the Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.

(4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant –

(a) at the expiration of three years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection

(2) of this section.

(5) A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and

shall not be so removed except in accordance with the provisions of this section.

(6) A member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Prime Minister represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated, then –

(a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court: and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.

(8) If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

(9) If the office of Chairman of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other members of the Commission as may for the time being be designated in that behalf by

the Governor-General, acting in accordance with the advice of the Prime Minister.

(10) If at any time any member of the Commission is acting as Chairman or is for any reason unable to exercise the functions of his office, the Governor-General acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (5) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

(11) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath of office.

(12) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(13) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of Grenada for the purpose of the exercise of its functions.

(14) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

(15) In this section “ the appropriate representative bodies “ means the Grenada Civil Service Association and the Grenada Union of Teachers.

**84. Appointment, etc., of public officers.**

(1) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office and the power to grant leave shall vest in the Public Service Commission.

(2) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the Prime Minister, to any public offices.

(3) The provisions of this section shall not apply in relation to the following offices, that is to say:-

- (a) any office to which section 85 of this Constitution applies;
- (b) the office of Director of Public Prosecutions;
- (c) the office of Director of Audit;
- (d) any office to which section 88 of this Constitution applies;
- (e) any office in the Police Force.

(4) No person shall be appointed under this section to or to act in any office of the Governor-General's personal staff except with the concurrence of the Governor-General.

(5) Before any of the powers conferred by this section are exercised by the Public Service Commission or any other person or authority in relation to the Clerk of the Senate or the Clerk of the House of Representatives or a member of the staff of either of those Houses, the Commission or that person or authority shall consult with the President of the Senate or the Speaker of the House, as the case may be.

(6) Before the Public Service Commission or any other person or authority exercises its powers under this section to appoint to or to act in any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the Judicial and Legal Services Commission, the Public Service Commission

or that person or authority shall consult with the Judicial and Legal Services Commission.

(7) A public officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of a judicial function conferred on him unless the Judicial and Legal Services Commission concurs therein.

(8) Every officer who is required to retire on abolition of his office or for the purpose of reorganization of his Ministry or Department shall be entitled to pension and retiring benefits as if he had attained the compulsory retiring age.

## **PART 2**

### **APPOINTMENTS, ETC., TO PARTICULAR OFFICES**

#### **85. Appointment etc. of permanent secretaries and certain other officers.**

(1) This section applies to the offices of Secretary to the Cabinet, permanent secretary, head of a department of government and deputy head of a department of government.

(2) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or to act in offices to which this section applies (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:

Provided that –

(a) the power to appoint a person to hold or act in an office of permanent secretary on transfer from another such office carrying the same salary shall vest in the Governor-General acting in accordance with the advice of the Prime Minister;

(b) before the Public Service Commission tenders advice to the Governor-General with respect to the appointment of any person to hold an office to which this section applies (other than an appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his



objection to the appointment of any person to the office, the Commission shall not advise the Governor-General to appoint that person.

(3) References in this section to a department of government do not include references to the department of the Attorney-General, the department of the Director of Public Prosecutions, the department of the Director of Audit or the Police Force.

#### **86. Director of Public Prosecutions.**

(1) The Director of Public Prosecutions shall be appointed by the Governor-General acting in accordance the advice of the Judicial and Legal Services Commission.

(2) If the office of Director of Public Prosecutions is vacant or if the Director of Public Prosecutions is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission, may appoint a person to act as Director of Public Prosecutions.

(3) A person appointed to act in the office of Director of Public Prosecutions shall, subject to subsections (5), (7), (8) and (9) of this section, cease so to act –

(a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or

(b) at such earlier time as may be prescribed by the terms of his appointment.

(4) A person shall not be qualified to be appointed to hold or act in the office of Director of Public Prosecutions unless –

(a) he is qualified to practice as an advocate in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth; and

(b) he has been qualified for not less than five years to practice as an advocate or solicitor in such a court.

(5) Subject to the provisions of subsection (7) of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

(6) A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(7) The Director of Public Prosecutions shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.

(8) If the Prime Minister or the Chairman of the Judicial and Legal Services Commission represents to the Governor-General that the question of removing the Director of Public Prosecutions under this section ought to be investigated then –

(a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Justice from among persons who hold or have held office as a judge of a court having limited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Director of Public Prosecutions ought to be removed under this section.

(9) If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the Governor-General acting in accordance with the advice of the Judicial and Legal Services Commission, may suspend the Director of Public Prosecutions from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director of Public Prosecutions should not be removed.

(10) The prescribed age for the purposes of subsection (5) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Public Prosecutions, shall not have effect in relation to the person unless he consents that it should have effect.

**87. Director of Audit.**

(1) The Director of Audit shall be appointed by the Governor-General acting in accordance with the advice of the Public Service Commission.

(2) If the office of Director of Audit is vacant or if the Director of Audit is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Director of Audit.

(3) Before tendering advice for the purposes of subsection (1) or subsection (2) of this section, the Public Service Commission shall consult the Prime Minister.

(4) A person appointed to act in the office of Director of Audit shall, subject to subsections (5), (7), (8) and (9) of this section, cease so to act –

(a) when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or

(b) at such earlier time as may be prescribed by the terms of his appointment.

(5) Subject to the provisions of subsection (7) of this section the Director of Audit shall vacate his office when he attains the prescribed age.

(6) A person holding the office of Director of Audit may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(7) The Director of Audit shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has

recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.

(8) If the Prime Minister or the Chairman of the Public Service Commission represents to the Governor-General that the question of removing the Director of Audit under this section ought to be investigated –

(a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Director of Audit ought to be removed under this section.

(9) If the question of removing the Director of Audit has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Director of Audit from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director of Audit should not be removed.

(10) The prescribed age for the purposes of subsection (5) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament: Provided that any law enacted by Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Audit, shall not have effect in relation to that person unless he consents that it should have effect.

### **88. Appointment, etc., of magistrates, registrars and legal officers.**

(1) This section applies to the offices of magistrate, registrar of the High Court and any public office in the department of the Attorney General (including the public office of Attorney-General) or the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which

persons are required to be qualified to practice as a barrister or a solicitor in Grenada.

(2) The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) and subject to the provisions of section 70(4) of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission.

### **89. Police Force.**

(1) Subject to the provisions of section 91 of this Constitution, the power to appoint a person to hold or act in the office of Chief of Police and the power to remove the Chief of Police from office shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:

Provided that before the Public Service Commission tenders advice to the Governor-General with respect to the appointment of any person to hold the office of Chief of Police the Commission shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office the Commission shall not advise the Governor-General to appoint that person.

(2) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the Police Force below the rank of Chief of Police but above the rank of Sergeant (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(3) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the Police Force of or below the rank of Sergeant (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Chief of Police.

(4) The Chief of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (3) of this section to any other member of the Police Force.

(5) If provision is made by or under any law –

(a) altering the ranks into which the Royal Grenada Police Force established by the Police Ordinance(a) is divided; or

(b) establishing a police force other than the Royal Grenada Police Force or altering the ranks into which any such other police force is divided, the Public Service Commission may, by order published in the Official Gazette, specify some rank (other than the rank of Sergeant) in the Police Force or, as the case may be, in that other police force as being equivalent to the rank of Sergeant as it exists in the Royal Grenada Police Force under the law in force immediately before the coming into operation of this Constitution and the references in subsections (2) and (3) of this section to the rank of Sergeant shall then be construed as if they were, in relation to the Royal Grenada Police Force or, as the case may be, in relation to that other police force, references to the rank for the time being so specified.

### **PART 3**

#### **THE PUBLIC SERVICE BOARD OF APPEAL**

##### **90. Public Service Board of Appeal.**

(1) There shall be a Public Service Board of Appeal for Grenada which shall consist of –

(a) one member appointed by the Governor-General, acting in his own deliberate judgment, who shall be Chairman;

(b) one member appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, and

(c) one member appointed by the Governor-General, acting in accordance with the advice of the appropriate representative bodies.

(2) A person shall not be qualified for appointment as a member of the Board if he is a Senator or a member of the House of Representatives.

(3) Subject to the provisions of this section, the office of a member of the Board shall become vacant –

(a) at the expiration of three years from the date of his appointment; or  
(b) if any circumstances arise that if he were not a member of the Board would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) A member of the Board may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) A member of the Board shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Governor-General, acting in his own deliberate judgment, considers that the question of removing a member of the Board under this section ought to be investigated, then –

(a) the Governor-General, acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or by a court having jurisdiction in appeals from such a court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.

(7) If the question of removing a member of the Board has been referred to a tribunal under this section, the Governor-General, acting in his own deliberate judgment, may suspend that member from the exercise of the functions of his office and any such suspension may be at any time revoked by the Governor-General, acting as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

(8)

(a) If at any time any member of the Board is for any reason unable to exercise the functions of his office, the Governor-General may appoint a person who is qualified to be appointed as a member of the Board to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General.

(b) In the exercise of the powers conferred by this subsection the Governor-General shall act in his own deliberate judgment in any case where the member unable to exercise the functions of his office was appointed under paragraph (a) of subsection (1) of this section and in any case where the member of the Board unable to exercise the function of his office was appointed under paragraph (b) or (c) of subsection (1) of this section, the Governor-General shall act in accordance with the advice of the Prime Minister or the appropriate representative body, as the case may be.

(9) The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(10) In this section “ the appropriate representative body “ has the meaning in section 83(15) of this Constitution.

**91. Appeals in discipline case.** (1) Subject to the provisions of this section, an appeal shall lie to the Public Service Board of Appeal from any of the following decisions at the instance of the person in respect of whom the decision is made –

(a) any decision of the Governor-General, acting in accordance with the advice of the Public Service Commission, or any decision of the Public Service Commission to remove a public officer from office or to exercise disciplinary control over a public officer (including a decision made on appeal from or confirming a decision of any person to whom powers are delegated under section 84(2) of this Constitution);

(b) any decision of any person to whom powers are delegated under section 84(2) of this Constitution to remove a public officer from office or to exercise disciplinary control over a public officer (not being a decision which is subject to appeal to or confirmation by the Public Service Commission); or



(c) any decision of the Public Service Commission to give such concurrence as is required by section 93(1) or 93(2) of this Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of an officer's service as a public officer.

(2) Parliament may provide that where the power to exercise disciplinary control over any member of the Police Force (including the power to remove him from office) has been exercised under subsection (3) or subsection (4) of section 89 of this Constitution by any member of the Police Force (hereinafter referred to as "the disciplinary authority"), an appeal shall lie to the Public Service Board of Appeal, at the instance of the member of the Police Force in respect of whom it was so exercised, from the decision of the disciplinary authority:

Provided that Parliament or (in the case of the exercise of a power under subsection (4) of section 89 of this Constitution) the Chief of Police may require appeals to the Chief of Police before they are made to the Public Service Board of Appeal.

(3) Upon an appeal under subsection (1) of this section or any law enacted in pursuance of subsection (7) of this section the Board may affirm or set aside the decision appealed against or may make any other decision which the authority or person from whom the appeal lies could have made.

(4) Every decision of the Board shall require the concurrence of a majority of all its members.

(5) Subject to the provisions of subsection (4) of this section, the Board may by regulation make provision for –

(a) the procedure of the Board;

(b) the procedure in appeals under this section;

(c) excepting from the provisions of subsection (1) of this section decisions in respect of holding offices whose emoluments do not exceed such sum as may be prescribed by the regulations or such decisions to exercise disciplinary control, other than decisions to remove from office, as may be so prescribed.

(6) Regulations made under this section may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority

of the Government of Grenada for the purpose of the exercise of the functions of the Board.

(7) The Board may, subject to the provisions of this section and to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

## **PART 4 PENSIONS**

### **92. Pensions laws and protection of pensions rights.**

(1) The law to be applied with respect to any pensions benefits that were granted to any person before this section comes into operation shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall –

(a) in so far as those benefits are wholly in respect of a period of service as a judge or public officer that commenced before the date upon which this section comes into operation, be the law that was in force on the date upon which this section comes into operation; and

(b) in so far as those benefits are wholly or partly in respect of a period of service as a judge or public officer that commenced after this section comes into operation, be the law in force on the date on which that period of service commenced,  
or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent that they are charged upon and duly paid out of some other fund) be a charge on the Consolidated Fund.

(5) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as judges or public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.

(6) In this section references to service as a judge are references to service as a judge of the Court of Appeal, a judge of the High Court or a judge of the Supreme Court established by the Windward Islands and Leeward Islands (Courts) Order in Council 1959 and references to service as a public officer include service in an office established under section 12 of the Courts Order.

(7) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

### **93. Power to withhold pensions, etc.**

(1) Where under any law any person or authority has a discretion –  
(a) to decide whether or not any pensions benefits shall be granted; or  
(b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.

(3) The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of judge of the Court of Appeal, judge of the High Court, Director of Public Prosecutions, or Director of Audit has been

guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.

(4) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held any office to which, at the time of such action, section 87 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial and Legal Services Commission.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Grenada may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Grenada:

Provided that nothing in this subsection shall be construed as preventing –  
(a) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of any civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person;  
or

(b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.

(6) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as judges or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(7) In this section references to service as a judge are references to service as a judge of the Court of Appeal, a judge of the High Court or a judge of the Supreme Court established by the Windward Islands and Leeward Islands (Courts) Order in Council 1959 and references to service as a public officer include service in an office established under section 12 of the Courts Order.

## CHAPTER VII

### Citizenship

#### **94. Persons who become citizens on 7th February 1974.**

(1) Every person who, having been born in Grenada is on 6th February 1974 a citizen of the United Kingdom and Colonies shall become a citizen of Grenada on 7th February 1974.

(2) Every person who, on 6th February 1974 is a citizen of the United Kingdom and Colonies –

(a) having become such a citizen under the British Nationality Act 1948(a) by virtue of his having been naturalized in Grenada as a British subject before that Act came into force; or

(b) having become such a citizen by virtue of his having been naturalised or registered in Grenada under that Act,  
shall become a citizen of Grenada on 7th February 1974.

(3) Every person who, having been born outside Grenada, is on 6th February 1974 a citizen of the United Kingdom and Colonies shall, if his father or mother becomes, or would but for his death have become, a citizen of Grenada by virtue of subsection (1) or subsection (2) of this section, become a citizen of Grenada on 7th February 1974.

#### **95. Persons entitled to be registered as citizens.**

(1) Any person who, before 7th February 1974, has been married to a person –

(a) who becomes a citizen of Grenada by virtue of section 94 of this registered Constitution; or

(b) who, having died before that date, would, but for his death, have become a citizen of Grenada by virtue of that section.

but whose marriage has been terminated by death or dissolution before that date shall be entitled, upon making application and if he is a British protected person or an alien taking the oath of allegiance, to be registered as a citizen of Grenada.

(2) Any person who, having been born outside Grenada, is on 6th February 1974 a citizen of the United Kingdom and Colonies and under the age of

eighteen years shall, if his father or his mother becomes a citizen of Grenada on 7th February 1974 by virtue of section 94(2) of this Constitution be entitled, upon application being made on his behalf by his parent or guardian before he attains the age of eighteen years or before such later date as may be prescribed by Parliament, to be registered as a citizen of Grenada.

(3) An application for registration under this section shall be made in such manner as may be prescribed, as respects that application, by Parliament.

**96. Persons born in Grenada on or after 7th February 1974.** Every person born in Grenada on or after 7th February 1974 shall become a citizen of Grenada at the date of his birth:

Provided that a person shall not become a citizen of Grenada by virtue of this section if at the time of his birth –

(a) neither of his parents is a citizen of Grenada and his father or mother possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Grenada; or

(b) his father or mother is a citizen of a country with which Grenada is at war and the birth occurs in a place then under occupation by that country.

**97. Persons born outside Grenada on or after 7th February 1974.** A person born outside Grenada on or after 7th February 1974 shall become a citizen of Grenada at the date of his birth if, at that date, his father or his mother is a citizen of Grenada otherwise than by virtue of this section or section 94(3) of this Constitution.

**98. Marriage to citizen of Grenada.** Any person who is married to a citizen of Grenada or who has been married to a person who was, during the subsistence of the marriage, a citizen of Grenada shall be entitled, upon making application in such manner as may be prescribed by or under a law enacted by Parliament, and if he is a British protected person or an alien taking the oath of allegiance, to be registered as a citizen of Grenada.

**99. Powers of Parliament.**

(1) Parliament may make provision for the acquisition of citizenship of Grenada by persons who are not eligible or who are no longer eligible to become citizens of Grenada under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Grenada any person who is a citizen of Grenada otherwise than by virtue of section 94, section 96 or section 97 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Grenada.

### **100. Interpretation.**

(1) In this Chapter –

“alien” means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

“British protected person” means a person who is a British protected person for the purpose of the British Nationality Act 1948 or any Act of the United Kingdom Parliament amending or replacing that Act.

(2) Any reference in this Chapter to the father of a person shall, in relation to a person born out of wedlock and not legitimated, be construed as a reference to the mother of that person.

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person’s birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father’s death, and where that death occurred before 7th February 1974 and the birth occurred on or after that date the national status that the father would have had if he had died on that date shall be deemed to be his national status at the time of his death.

## CHAPTER VIII JUDICIAL PROVISIONS

### **101. Original jurisdiction of High Court in constitutional questions.**

(1) Subject to the provisions of sections 22(2), 39(8), 49(4), 56 and 108 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter I) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter I) has been or is being contravened and to make a declaration accordingly.

(3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under the law of Grenada in proceedings in the High Court.

(4) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the Court by or under this section, including provision with respect to the time within which any application under this section may be made.

(5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.

(6) The right conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other enactment or any rule of law.



(7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 37 of this Constitution.

**102. Reference of constitutional questions to High Court.**

(1) Where any question as to the interpretation of this Constitution arises in any court of law established for Grenada (other than the Court of Appeal, the High Court or a court martial) and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, Her Majesty in Council.

**103. Appeals to Court of Appeal.** Subject to the provisions of section 37(7) of this Constitution, an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases –

(a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;

(b) final decisions given in exercise of the jurisdiction conferred on the High Court by section 16 of this Constitution (which relates to the enforcement of the fundamental rights and freedoms).

**104. Appeals to Her Majesty in Council.**

(1) Subject to the provisions of section 37(7) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases –

(a) where the matter in dispute on the appeal to Her Majesty in Council is of the value of fifteen hundred dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of fifteen hundred dollars or upwards, final decisions in any civil proceedings;

(b) final decisions in proceedings for dissolution or nullity of marriage;

- (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution; and
- (d) such other cases as may be prescribed by Parliament.

(2) Subject to the provisions of section 37(7) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases –

- (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; and
- (b) such other cases as may be prescribed by Parliament.

(3) An appeal shall lie to Her Majesty in Council with the special leave of Her Majesty from any decision of the Court of Appeal in any civil or criminal matter.

(4) References in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred by this Constitution or any law for the time being in force in Grenada.

**105. Courts Order.** In this Chapter references to this Constitution shall be construed as including references to the Courts Order, which, subject to any provision made by Parliament under section 39 of this Constitution, shall continue to have effect as part of the law of Grenada and for that purpose –

- (a) the Supreme Court established by the Courts Order shall be styled the Supreme Court of Grenada and the West Indies Associated States;
- (b) references in the Courts Order to the Premier of Grenada shall be construed as references to the Prime Minister of Grenada.

## CHAPTER IX MISCELLANEOUS

**106. Supreme law.** This Constitution is the supreme law of Grenada and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

**107. Local government.**

(1) There shall be a Council for Carriacou and Petit Martinique, which shall be the principal organ of local government in those islands.

(2) The Council shall have such membership and functions as Parliament may prescribe.

**108. Certain question not to be enquired into in any court.** Where by this Constitution is required to perform any function in accordance with the advice of the Cabinet, the Prime Minister or any other Minister or the Leader of the Opposition, the question whether the Governor-General has received or acted in accordance with such advice shall not be enquired into in any court of law.

**109. Resignations.** (1) Any person who is appointed or elected to any office established by this Constitution or any office of Minister established under this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected:

Provided that –

(a) the resignation of a person from the office of President or Deputy President of the Senate shall be addressed to the Senate;

(b) the resignation of a person from the office of Speaker or Deputy Speaker of the House of Representatives shall be addressed to the House; and

(c) the resignation of any person from the office of Senator or member of the House of Representatives shall be addressed to the President of the Senate or the Speaker of the House, as the case may be.

(2) The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it.

**110. Re-appointments and concurrent appointments.**

(1) Where any person has vacated any office established by this Constitution or any office of Minister established under this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office, and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

### **111. Interpretation.**

(1) In this Constitution, unless the context otherwise requires –  
“Commonwealth citizen” has such meaning as Parliament may by law prescribe;  
“dollars” means dollars in the currency of Grenada;  
“financial year” means any period of twelve months beginning on 1st January in any year or such other date as Parliament may prescribe;  
“Gazette” means any Gazette published by order of the Government of Grenada;  
“law” includes any instrument having the force of law and any unwritten rule of law and “lawful” and “lawfully” shall be construed accordingly;  
“Parliament” means the Parliament of Grenada;  
“oath” includes affirmation;  
“oath of allegiance” means the oath of allegiance set out in Schedule 3 to this Constitution;  
“oath of office” means, in relation to any office, the oath for the due execution of that office set out in Schedule 3 to this Constitution;  
“the Police Force” means the Royal Grenada Police Force established by the Police Ordinance and includes any other police force established by or under a law enacted by Parliament to succeed to the functions of the Royal Grenada Police Force;  
“public office” means any office of emolument in the public service;  
“public officer” means a person holding or acting in any public office;  
“the public service” means, subject to the provisions of this section, the service of the Crown in a civil capacity in respect of the government of Grenada;  
“session” means the period beginning when a House of Parliament first meets after the commencement of this Constitution or after Parliament has at any time been prorogued or dissolved and ending when Parliament is prorogued or when Parliament is dissolved without having been prorogued;

“sitting” means, in relation to a House of Parliament, the period during which the House is sitting continuously without adjournment and includes any period during which it is in committee.

(2) In this Constitution references to an office in the public service shall not be construed as including –

(a) references to the office of President or Deputy President of the Senate, the Speaker or Deputy Speaker of the House of Representatives, the Prime Minister or any other Minister, a Parliamentary Secretary, a Senator or a member of the House of Representatives;

(b) references to the office of a member of any Commission established by this Constitution, a member of the Advisory Committee on the Prerogative of Mercy or a member of the Public Service Board of Appeal;

(c) references to the office of judge of the Court of Appeal or judge of the High Court;

(d) save in so far as may be provided by Parliament, references to the office of a member of any other council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(3) In this Constitution references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission are references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Courts Order.

(4) In this Constitution references to the Courts Order have the meaning in section 39(9) of this Constitution.

(5) For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance.

(6) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.

(7) Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some specified person or authority, no person may, without his consent, be nominated for election to any office or be appointed to or to act therein.

(8) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that –

(a) nothing in this subsection shall be construed as conferring on any person or authority the power to require the Director of Public Prosecutions or the Director of Audit to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(9) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(10) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

(11) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(12) Without prejudice to the provisions of section 32(3) of the Interpretation Act 1889 (as applied by subsection (15) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, direction, or designation.

(13) Any reference in this Constitution to a law made before the coming into operation of this Constitution shall, unless the context otherwise requires, be construed as a reference to that law as it had effect immediately before the coming into operation of this Constitution.

(14) Any reference in this Constitution to a law that amends or replaces any other law or any provision of any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, suspends, repeals, adds new provisions to or makes different provision in lieu of that other law or that provision.

(15) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the United Kingdom Parliament.

## **SCHEDULE 1 TO THE CONSTITUTION**

### **PART I**

#### **PROVISIONS OF THE CONSTITUTION REFERRED TO IN SECTION 39(5)**

- (i) Chapter I;
- (ii) sections 19, 91 and 57;
- (iii) sections 23, 24, 29, 32, 35, 37, 38, 45, 47, 48, 49, 51, 52, 53, 54, 55 and 56;
- (iv) section 71 and Chapter V;
- (v) Chapter VI (except sections 90 and 91);
- (vi) Chapter VIII (except section 104);

(vii) section 111 in its application to any of the provisions mentioned in the foregoing items of this Schedule; or  
(viii) Schedule 2.

**PART II**  
**PROVISIONS OF THE COURTS ORDER REFERRED TO IN**  
**SECTION 39(5)**

(ix) sections 4, 5, 6, 8, 11, 18 or 19.

**SCHEDULE 2 TO THE CONSTITUTION**  
**RULES RELATING TO CONSTITUENCIES**

All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Constituency Boundaries Commission to be reasonably practicable, but the Commission may depart from this rule to such extent as it considers expedient to take account of the following factors, that is to say:-

- (a) the density of population, and in particular the need to ensure the adequate representation of sparsely-populated rural areas;
- (b) the means of communication;
- (c) geographical features;
- (d) the boundaries of administrative areas.

**SCHEDULE 3 TO THE CONSTITUTION**  
**FORMS OF OATH**

**OATH OF ALLEGIANCE**

I, \_\_\_\_\_ do swear [or solemnly affirm] that I will faithfully bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.  
So help me God. [To be omitted in affirmation.]

**OATH OF OFFICE**

I, \_\_\_\_\_ do swear for solemnly affirm] that I will faithfully execute the office of \_\_\_\_\_ without fear or favour, affection or ill-will and



that in the execution of the functions of that office I will honour, uphold and preserve the Constitution of Grenada.

So help me God. [To be omitted in affirmation.]

## **SCHEDULE 2 TO THE ORDER TRANSITIONAL PROVISIONS**

1. (1) The existing laws shall, as from the commencement of the Constitution, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Courts Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under paragraph), that prescription or provision shall as from the commencement of the Constitution, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution and the Courts Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The Governor-General may by Order made at any time before 1st October 1974 make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution and the Courts Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) The provisions of this paragraph shall be without prejudice to any powers conferred by this Constitution or by any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(5) For the purposes of this paragraph, the expression “existing law” means any Act, Ordinance, law, rule, regulation, order or other instrument made in pursuance of (or continuing in operation under) the existing Constitution or the West Indies (Dissolution and Interim Commissioner) Order in Council

1962(a) and having effect as part of the law of Grenada or of any part thereof immediately before the commencement of this Constitution.

2. (1) The persons who, immediately before the commencement of the Constitution, are members of the Senate established by the existing Constitution shall, as from the commencement of the Constitution, be deemed to have been appointed as Senators in pursuance of the provisions of section 24(2)(a) of the Constitution and shall hold their seats in the Senate in accordance with the provisions of the Constitution.

(2) The persons who, immediately before the commencement of this Constitution, are members of the House of Representatives established by the existing Constitution shall, as from the commencement of the Constitution, be deemed to have been elected as members of the House of Representatives in pursuance of the provisions of section 32 of this Constitution and shall hold their seats in the House of Representatives in accordance with the provisions of the Constitution.

(3) A person who immediately before the commencement of the Constitution was President or Deputy President of the Senate established by the existing Constitution, or Speaker or Deputy Speaker of the House of Representatives so established, shall be deemed to have been elected at the commencement of the Constitution to the like office established by the Constitution.

(4) Until Parliament otherwise provides, any person who holds or acts in any office the holding of which would, under the former Orders, have disqualified him for membership of the former Council shall be disqualified to be elected as a member of the House of Representatives as though provision in that behalf had been made in pursuance of section 31(4) of this Constitution.

(5) Subject to the provisions of section 52 of this Constitution, Parliament shall, unless sooner dissolved, stand dissolved on the date on which the Legislature established by the existing Constitution would have been required by the existing Orders to be dissolved.

(6) Any person who, by virtue of this paragraph, is deemed as from the commencement of the Constitution to hold any seat or office in the Senate or

the House of representatives shall be deemed to have taken and subscribed any necessary oath under the Constitution.

3. (1) The person who immediately before the commencement of this Constitution holds the office of Premier under the existing Orders shall, as from the commencement of the Constitution, hold office as Prime Minister as if he had been appointed thereto under section 58 of this Constitution.

(2) The persons who immediately before the commencement of the Constitution hold office as Ministers (other than the Premier and the Leader of the Opposition) under the existing Constitution shall, as from the commencement of this Constitution, hold the like offices as if they had been appointed thereto under sections 58 and 66 respectively of the Constitution.

(3) Any person holding the office of Prime Minister or other Minister by virtue of the foregoing provisions of this paragraph who, immediately before the commencement of the Constitution, was charged with responsibility for any matter or any department of government under the Constitution shall, as from the commencement of the Constitution, be deemed to have been assigned responsibility for such matter or department under section 60 of the Constitution.

4. (1) Subject to the provisions of the Constitution, every person who immediately before the commencement of the Constitution holds or is acting in a public office shall, as from the commencement of the Constitution, continue to hold or act in the like office as if he had been appointed thereto in accordance with the provisions of the Constitution:

Provided that any person who under the existing Constitution or any existing law would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

(2) In this section –

“existing law” has the meaning in paragraph 1 of this Schedule;

“public office” includes the office of a member of any Commission established by the existing Constitution, a member of the Advisory Committee on the Prerogative of Mercy so established or a member of the Public Service Board of Appeal so established.

**5. (1) In this Schedule –**

“the Constitution” means the Constitution set out in Schedule 2 to this Order;

“the existing Constitution” means the Constitution in force immediately before the commencement of this Order;

“the former Council” means the Legislative Council established by the former Orders;

“the former Orders” means the Orders mentioned in Schedule 1 to the Grenada Constitution Order 1967.

(2) The provisions of section 111 of the Constitution shall apply for the purposes of interpreting this Schedule and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.

# República Dominicana

## CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA (2010)

### PREÁMBULO

Nosotros, representantes del pueblo dominicano, libre y democráticamente elegidos, reunidos en Asamblea Nacional Revisora; invocando el nombre de Dios; guiados por el ideario de nuestros Padres de la Patria, Juan Pablo Duarte, Matías Ramón Mella y Francisco del Rosario Sánchez, y de los próceres de la Restauración de establecer una República libre, independiente, soberana y democrática; inspirados en los ejemplos de luchas y sacrificios de nuestros héroes y heroínas inmortales; estimulados por el trabajo abnegado de nuestros hombres y mujeres; regidos por los valores supremos y los principios fundamentales de la dignidad humana, la libertad, la igualdad, el imperio de la ley, la justicia, la solidaridad, la convivencia fraterna, el bienestar social, el equilibrio ecológico, el progreso y la paz, factores esenciales para la cohesión social; declaramos nuestra voluntad de promover la unidad de la Nación dominicana, por lo que en ejercicio de nuestra libre determinación adoptamos y proclamamos la siguiente

## CONSTITUCIÓN

### TÍTULO I DE LA NACIÓN, DEL ESTADO, DE SU GOBIERNO Y DE SUS PRINCIPIOS FUNDAMENTALES

#### CAPÍTULO I DE LA NACIÓN, DE SU SOBERANÍA Y DE SU GOBIERNO

**Artículo 1. Organización del Estado.** El pueblo dominicano constituye una Nación organizada en Estado libre e independiente, con el nombre de República Dominicana.

**Artículo 2. Soberanía popular.** La soberanía reside exclusivamente en el pueblo, de quien emanan todos los poderes, los cuales ejerce por medio de sus representantes o en forma directa, en los términos que establecen esta Constitución y las leyes.

**Artículo 3. Inviolabilidad de la soberanía y principio de no intervención.** La soberanía de la Nación dominicana, Estado libre e independiente de todo poder extranjero, es inviolable. Ninguno de los poderes públicos organizados por la presente Constitución puede realizar o permitir la realización de actos que constituyan una intervención directa o indirecta en los asuntos internos o externos de la República Dominicana o una injerencia que atente contra la personalidad e integridad del Estado y de los atributos que se le reconocen y consagran en esta Constitución. El principio de la no intervención constituye una norma invariable de la política internacional dominicana.

**Artículo 4. Gobierno de la Nación y separación de poderes.** El gobierno de la Nación es esencialmente civil, republicano, democrático y representativo. Se divide en Poder Legislativo, Poder Ejecutivo y Poder Judicial. Estos tres poderes son independientes en el ejercicio de sus respectivas funciones. Sus encargados son responsables y no pueden delegar sus atribuciones, las cuales son únicamente las determinadas por esta Constitución y las leyes.

**Artículo 5. Fundamento de la Constitución.** La Constitución se fundamenta en el respeto a la dignidad humana y en la indisoluble unidad de la Nación, patria común de todos los dominicanos y dominicanas.

**Artículo 6. Supremacía de la Constitución.** Todas las personas y los órganos que ejercen potestades públicas están sujetos a la Constitución, norma suprema y fundamento del ordenamiento jurídico del Estado. Son nulos de pleno derecho toda ley, decreto, resolución, reglamento o acto contrarios a esta Constitución.

## **CAPÍTULO II DEL ESTADO SOCIAL Y DEMOCRÁTICO DE DERECHO**

**Artículo 7. Estado Social y Democrático de Derecho.** La República Dominicana es un Estado Social y Democrático de Derecho, organizado en forma de República unitaria, fundado en el respeto de la dignidad humana, los derechos fundamentales, el trabajo, la soberanía popular y la separación e independencia de los poderes públicos.

**Artículo 8. Función esencial del Estado.** Es función esencial del Estado, la protección efectiva de los derechos de la persona, el respeto de su dignidad y la obtención de los medios que le permitan perfeccionarse de forma igualitaria, equitativa y progresiva, dentro de un marco de libertad individual y de justicia social, compatibles con el orden público, el bienestar general y los derechos de todos y todas.

## **CAPÍTULO III DEL TERRITORIO NACIONAL**

### **SECCIÓN I DE LA CONFORMACIÓN DEL TERRITORIO NACIONAL**

**Artículo 9. Territorio nacional.** El territorio de la República Dominicana es inalienable. Está conformado por:

1. La parte oriental de la isla de Santo Domingo, sus islas adyacentes y el conjunto de elementos naturales de su geomorfología marina. Sus

límites terrestres irreductibles están fijados por el Tratado Fronterizo de 1929 y su Protocolo de Revisión de 1936. Las autoridades nacionales velan por el cuidado, protección y mantenimiento de los bornes que identifican el trazado de la línea de demarcación fronteriza, de conformidad con lo dispuesto en el tratado fronterizo y en las normas de Derecho Internacional;

2. El mar territorial, el suelo y subsuelo marinos correspondientes. La extensión del mar territorial, sus líneas de base, zona contigua, zona económica exclusiva y la plataforma continental serán establecidas y reguladas por la ley orgánica o por acuerdos de delimitación de fronteras marinas, en los términos más favorables permitidos por el Derecho del Mar;
3. El espacio aéreo sobre el territorio nacional, el espectro electromagnético y el espacio donde éste actúa. La ley regulará el uso de estos espacios de conformidad con las normas del Derecho Internacional.

**Párrafo.** Los poderes públicos procurarán, en el marco de los acuerdos internacionales, la preservación de los derechos e intereses nacionales en el espacio ultraterrestre, con el objetivo de asegurar y mejorar la comunicación y el acceso de la población a los bienes y servicios desarrollados en el mismo.

## SECCIÓN II DEL RÉGIMEN DE SEGURIDAD Y DESARROLLO FRONTERIZO

**Artículo 10. Régimen fronterizo.** Se declara de supremo y permanente interés nacional la seguridad, el desarrollo económico, social y turístico de la Zona Fronteriza, su integración vial, comunicacional y productiva, así como la difusión de los valores patrios y culturales del pueblo dominicano. En consecuencia:

1. Los poderes públicos elaborarán, ejecutarán y priorizarán políticas y programas de inversión pública en obras sociales y de infraestructura para asegurar estos objetivos;
2. El régimen de adquisición y transferencia de la propiedad inmobiliaria en la Zona Fronteriza estará sometido a requisitos legales específicos



que privilegien la propiedad de los dominicanos y dominicanas y el interés nacional.

**Artículo 11. Tratados fronterizos.** El uso sostenible y la protección de los ríos fronterizos, el uso de la carretera internacional y la preservación de los bornes fronterizos utilizando puntos geodésicos, se regulan por los principios consagrados en el Protocolo de Revisión del año 1936 del Tratado de Frontera de 1929 y el Tratado de Paz, Amistad Perpetua y Arbitraje de 1929 suscrito con la República de Haití.

### **SECCIÓN III DE LA DIVISIÓN POLÍTICO ADMINISTRATIVA**

**Artículo 12. División político administrativa.** Para el gobierno y la administración del Estado, el territorio de la República se divide políticamente en un Distrito Nacional y en las regiones, provincias y municipios que las leyes determinen. Las regiones estarán conformadas por las provincias y municipios que establezca la ley.

**Artículo 13. Distrito Nacional.** La ciudad de Santo Domingo de Guzmán es el Distrito Nacional, capital de la República y asiento del gobierno nacional.

### **CAPÍTULO IV DE LOS RECURSOS NATURALES**

**Artículo 14. Recursos naturales.** Son patrimonio de la Nación los recursos naturales no renovables que se encuentren en el territorio y en los espacios marítimos bajo jurisdicción nacional, los recursos genéticos, la biodiversidad y el espectro radioeléctrico.

**Artículo 15. Recursos hídricos.** El agua constituye patrimonio nacional estratégico de uso público, inalienable, imprescriptible, inembargable y esencial para la vida. El consumo humano del agua tiene prioridad sobre cualquier otro uso. El Estado promoverá la elaboración e implementación de políticas efectivas para la protección de los recursos hídricos de la Nación.

**Párrafo.** Las cuencas altas de los ríos y las zonas de biodiversidad endémica, nativa y migratoria, son objeto de protección especial por parte de los poderes públicos para garantizar su gestión y preservación como bienes fundamentales de la Nación. Los ríos, lagos, lagunas, playas y costas nacionales pertenecen al dominio público y son de libre acceso, observándose siempre el respeto al derecho de propiedad privada. La ley regulará las condiciones, formas y servidumbres en que los particulares accederán al disfrute o gestión de dichas áreas.

**Artículo 16. Áreas protegidas.** La vida silvestre, las unidades de conservación que conforman el Sistema Nacional de Áreas Protegidas y los ecosistemas y especies que contiene, constituyen bienes patrimoniales de la Nación y son inalienables, inembargables e imprescriptibles. Los límites de las áreas protegidas sólo pueden ser reducidos por ley con la aprobación de las dos terceras partes de los votos de los miembros de las cámaras del Congreso Nacional.

**Artículo 17. Aprovechamiento de los recursos naturales.** Los yacimientos mineros y de hidrocarburos y, en general, los recursos naturales no renovables, sólo pueden ser explorados y explotados por particulares, bajo criterios ambientales sostenibles, en virtud de las concesiones, contratos, licencias, permisos o cuotas, en las condiciones que determine la ley. Los particulares pueden aprovechar los recursos naturales renovables de manera racional con las condiciones, obligaciones y limitaciones que disponga la ley. En consecuencia:

1. Se declara de alto interés público la exploración y explotación de hidrocarburos en el territorio nacional y en las áreas marítimas bajo jurisdicción nacional;
2. Se declara de prioridad nacional y de interés social la reforestación del país, la conservación de los bosques y la renovación de los recursos forestales;
3. Se declara de prioridad nacional la preservación y aprovechamiento racional de los recursos vivos y no vivos de las áreas marítimas nacionales, en especial el conjunto de bancos y emersiones dentro de la política nacional de desarrollo marítimo;
4. Los beneficios percibidos por el Estado por la explotación de los recursos naturales serán dedicados al desarrollo de la Nación y de

las provincias donde se encuentran, en la proporción y condiciones fijadas por ley.

## **CAPÍTULO V DE LA POBLACIÓN**

### **SECCIÓN I DE LA NACIONALIDAD**

**Artículo 18. Nacionalidad.** Son dominicanas y dominicanos:

1. Los hijos e hijas de madre o padre dominicanos;
2. Quienes gocen de la nacionalidad dominicana antes de la entrada en vigencia de esta Constitución;
3. Las personas nacidas en territorio nacional, con excepción de los hijos e hijas de extranjeros miembros de legaciones diplomáticas y consulares, de extranjeros que se hallen en tránsito o residan ilegalmente en territorio dominicano. Se considera persona en tránsito a toda extranjera o extranjero definido como tal en las leyes dominicanas;
4. Los nacidos en el extranjero, de padre o madre dominicanos, no obstante haber adquirido, por el lugar de nacimiento, una nacionalidad distinta a la de sus padres. Una vez alcanzada la edad de dieciocho años, podrán manifestar su voluntad, ante la autoridad competente, de asumir la doble nacionalidad o renunciar a una de ellas;
5. Quienes contraigan matrimonio con un dominicano o dominicana, siempre que opten por la nacionalidad de su cónyuge y cumplan con los requisitos establecidos por la ley;
6. Los descendientes directos de dominicanos residentes en el exterior;
7. Las personas naturalizadas, de conformidad con las condiciones y formalidades requeridas por la ley.

**Párrafo.** Los poderes públicos aplicarán políticas especiales para conservar y fortalecer los vínculos de la Nación Dominicana con sus nacionales en el exterior, con la meta esencial de lograr mayor integración.

**Artículo 19. Naturalización.** Las y los extranjeros pueden naturalizarse conforme a la ley, no pueden optar por la presidencia o vicepresidencia de los poderes del Estado, ni están obligados a tomar las armas contra su Estado de origen. La ley regulará otras limitaciones a las personas naturalizadas.

**Artículo 20. Doble nacionalidad.** Se reconoce a dominicanas y dominicanos la facultad de adquirir una nacionalidad extranjera. La adquisición de otra nacionalidad no implica la pérdida de la dominicana.

**Párrafo.** Las dominicanas y los dominicanos que adopten otra nacionalidad, por acto voluntario o por el lugar de nacimiento, podrán aspirar a la presidencia y vicepresidencia de la República, si renunciaren a la nacionalidad adquirida con diez años de anticipación a la elección y residieren en el país durante los diez años previos al cargo. Sin embargo, podrán ocupar otros cargos electivos, ministeriales o de representación diplomática del país en el exterior y en organismos internacionales, sin renunciar a la nacionalidad adquirida.

## SECCIÓN II DE LA CIUDADANÍA

**Artículo 21. Adquisición de la ciudadanía.** Todos los dominicanos y dominicanas que hayan cumplido 18 años de edad y quienes estén o hayan estado casados, aunque no hayan cumplido esa edad, gozan de ciudadanía.

**Artículo 22. Derechos de ciudadanía.** Son derechos de ciudadanas y ciudadanos:

1. Elegir y ser elegibles para los cargos que establece la presente Constitución;
2. Decidir sobre los asuntos que se les propongan mediante referendo;
3. Ejercer el derecho de iniciativa popular, legislativa y municipal, en las condiciones fijadas por esta Constitución y las leyes;
4. Formular peticiones a los poderes públicos para solicitar medidas de interés público y obtener respuesta de las autoridades en el término establecido por las leyes que se dicten al respecto;
5. Denunciar las faltas cometidas por los funcionarios públicos en el desempeño de su cargo.

**Artículo 23. Pérdida de los derechos de ciudadanía.** Los derechos de ciudadanía se pierden por condenación irrevocable en los casos de traición, espionaje, conspiración; así como por tomar las armas y por prestar ayuda o participar en atentados o daños deliberados contra los intereses de la República.

**Artículo 24. Suspensión de los derechos de ciudadanía.** Los derechos de ciudadanía se suspenden en los casos de:

1. Condenación irrevocable a pena criminal, hasta el término de la misma;
2. Interdicción judicial legalmente pronunciada, mientras ésta dure;
3. Aceptación en territorio dominicano de cargos o funciones públicas de un gobierno o Estado extranjero sin previa autorización del Poder Ejecutivo;
4. Violación a las condiciones en que la naturalización fue otorgada.

### **SECCIÓN III DEL RÉGIMEN DE EXTRANJERÍA**

**Artículo 25. Régimen de extranjería.** Extranjeros y extranjeras tienen en la República Dominicana los mismos derechos y deberes que los nacionales, con las excepciones y limitaciones que establecen esta Constitución y las leyes; en consecuencia:

1. No pueden participar en actividades políticas en el territorio nacional, salvo para el ejercicio del derecho al sufragio de su país de origen;
2. Tienen la obligación de registrarse en el Libro de Extranjería, de acuerdo con la ley;
3. Podrán recurrir a la protección diplomática después de haber agotado los recursos y procedimientos ante la jurisdicción nacional, salvo lo que dispongan los convenios internacionales.

## **CAPÍTULO VI DE LAS RELACIONES INTERNACIONALES Y DEL DERECHO INTERNACIONAL**

### **SECCIÓN I DE LA COMUNIDAD INTERNACIONAL**

**Artículo 26. Relaciones internacionales y derecho internacional.** La República Dominicana es un Estado miembro de la comunidad internacional, abierto a la cooperación y apegado a las normas del derecho internacional, en consecuencia:

1. Reconoce y aplica las normas del derecho internacional, general y americano, en la medida en que sus poderes públicos las hayan adoptado;
2. Las normas vigentes de convenios internacionales ratificados regirán en el ámbito interno, una vez publicados de manera oficial;
3. Las relaciones internacionales de la República Dominicana se fundamentan y rigen por la afirmación y promoción de sus valores e intereses nacionales, el respeto a los derechos humanos y al derecho internacional;
4. En igualdad de condiciones con otros Estados, la República Dominicana acepta un ordenamiento jurídico internacional que garantice el respeto de los derechos fundamentales, la paz, la justicia, y el desarrollo político, social, económico y cultural de las naciones. Se compromete a actuar en el plano internacional, regional y nacional de modo compatible con los intereses nacionales, la convivencia pacífica entre los pueblos y los deberes de solidaridad con todas las naciones;
5. La República Dominicana promoverá y favorecerá la integración con las naciones de América, a fin de fortalecer una comunidad de naciones que defienda los intereses de la región. El Estado podrá suscribir tratados internacionales para promover el desarrollo común de las naciones, que aseguren el bienestar de los pueblos y la seguridad colectiva de sus habitantes, y para atribuir a organizaciones supranacionales las competencias requeridas para participar en procesos de integración;

6. Se pronuncia en favor de la solidaridad económica entre los países de América y apoya toda iniciativa en defensa de sus productos básicos, materias primas y biodiversidad.

## SECCIÓN II

### REPRESENTANTES DE ELECCIÓN POPULAR ANTE PARLAMENTOS INTERNACIONALES

**Artículo 27. Representantes.** La República Dominicana tendrá representantes ante los parlamentos internacionales respecto a los cuales haya suscrito acuerdos que le reconozcan su participación y representación.

**Artículo 28. Requisitos.** Para ser representante ante los parlamentos internacionales se requiere ser dominicano o dominicana en pleno ejercicio de derechos y deberes civiles y políticos y haber cumplido 25 años de edad.

## CAPÍTULO VII

### DEL IDIOMA OFICIAL Y LOS SÍMBOLOS PATRIOS

**Artículo 29. Idioma oficial.** El idioma oficial de la República Dominicana es el español.

**Artículo 30. Símbolos patrios.** Los símbolos patrios son la Bandera Nacional, el Escudo Nacional y el Himno Nacional.

**Artículo 31. Bandera Nacional.** La Bandera Nacional se compone de los colores azul ultramar y rojo bermellón, en cuarteles alternados, colocados de tal modo que el azul quede hacia la parte superior del asta, separados por una cruz blanca del ancho de la mitad de la altura de un cuartel y que lleve en el centro el Escudo Nacional. La bandera mercante es la misma que la nacional sin escudo.

**Artículo 32. Escudo Nacional.** El Escudo Nacional tiene los mismos colores de la Bandera Nacional dispuestos en igual forma. Lleva en el centro la Biblia abierta en el Evangelio de San Juan, capítulo 8, versículo 32, y encima una cruz, los cuales surgen de un trofeo integrado por dos lanzas y cuatro banderas nacionales sin escudo, dispuestas a ambos lados; lleva un ramo de laurel del

lado izquierdo y uno de palma al lado derecho. Está coronado por una cinta azul ultramar en la cual se lee el lema “Dios, Patria y Libertad”. En la base hay otra cinta de color rojo bermellón cuyos extremos se orientan hacia arriba con las palabras “República Dominicana”. La forma del Escudo Nacional es de un cuadrilongo, con los ángulos superiores salientes y los inferiores redondeados, el centro de cuya base termina en punta, y está dispuesto en forma tal que resulte un cuadrado perfecto al trazar una línea horizontal que una las dos verticales del cuadrilongo desde donde comienzan los ángulos inferiores.

**Artículo 33. Himno Nacional.** El Himno Nacional es la composición musical de José Reyes con letras de Emilio Prud'Homme, y es único e invariable.

**Artículo 34. Lema Nacional.** El Lema Nacional es “Dios, Patria y Libertad”.

**Artículo 35. Días de fiesta nacional.** Los días 27 de Febrero y 16 de Agosto, aniversarios de la Independencia y la Restauración de la República, respectivamente, se declaran de fiesta nacional.

**Artículo 36. Reglamentación de los símbolos patrios.** La ley reglamentará el uso de los símbolos patrios y las dimensiones de la Bandera Nacional y del Escudo Nacional.

## TÍTULO II DE LOS DERECHOS, GARANTÍAS Y DEBERES FUNDAMENTALES

### CAPÍTULO I DE LOS DERECHOS FUNDAMENTALES

#### SECCIÓN I DE LOS DERECHOS CIVILES Y POLÍTICOS

**Artículo 37. Derecho a la vida.** El derecho a la vida es inviolable desde la concepción hasta la muerte. No podrá establecerse, pronunciarse ni aplicarse, en ningún caso, la pena de muerte.



**Artículo 38. Dignidad humana.** El Estado se fundamenta en el respeto a la dignidad de la persona y se organiza para la protección real y efectiva de los derechos fundamentales que le son inherentes. La dignidad del ser humano es sagrada, innata e inviolable; su respeto y protección constituyen una responsabilidad esencial de los poderes públicos.

**Artículo 39. Derecho a la igualdad.** Todas las personas nacen libres e iguales ante la ley, reciben la misma protección y trato de las instituciones, autoridades y demás personas y gozan de los mismos derechos, libertades y oportunidades, sin ninguna discriminación por razones de género, color, edad, discapacidad, nacionalidad, vínculos familiares, lengua, religión, opinión política o filosófica, condición social o personal. En consecuencia:

1. La República condena todo privilegio y situación que tienda a quebrantar la igualdad de las dominicanas y los dominicanos, entre quienes no deben existir otras diferencias que las que resulten de sus talentos o de sus virtudes;
2. Ninguna entidad de la República puede conceder títulos de nobleza ni distinciones hereditarias;
3. El Estado debe promover las condiciones jurídicas y administrativas para que la igualdad sea real y efectiva y adoptará medidas para prevenir y combatir la discriminación, la marginalidad, la vulnerabilidad y la exclusión;
4. La mujer y el hombre son iguales ante la ley. Se prohíbe cualquier acto que tenga como objetivo o resultado menoscabar o anular el reconocimiento, goce o ejercicio en condiciones de igualdad de los derechos fundamentales de mujeres y hombres. Se promoverán las medidas necesarias para garantizar la erradicación de las desigualdades y la discriminación de género;
5. El Estado debe promover y garantizar la participación equilibrada de mujeres y hombres en las candidaturas a los cargos de elección popular para las instancias de dirección y decisión en el ámbito público, en la administración de justicia y en los organismos de control del Estado.

**Artículo 40. Derecho a la libertad y seguridad personal.** Toda persona tiene derecho a la libertad y seguridad personal. Por lo tanto:

1. Nadie podrá ser reducido a prisión o cohibido de su libertad sin orden motivada y escrita de juez competente, salvo el caso de flagrante delito;
2. Toda autoridad que ejecute medidas privativas de libertad está obligada a identificarse;
3. Toda persona, al momento de su detención, será informada de sus derechos;
4. Toda persona detenida tiene derecho a comunicarse de inmediato con sus familiares, abogado o persona de su confianza, quienes tienen el derecho a ser informados del lugar donde se encuentra la persona detenida y de los motivos de la detención;
5. Toda persona privada de su libertad será sometida a la autoridad judicial competente dentro de las cuarenta y ocho horas de su detención o puesta en libertad. La autoridad judicial competente notificará al interesado, dentro del mismo plazo, la decisión que al efecto se dictare;
6. Toda persona privada de su libertad, sin causa o sin las formalidades legales o fuera de los casos previstos por las leyes, será puesta de inmediato en libertad a requerimiento suyo o de cualquier persona;
7. Toda persona debe ser liberada una vez cumplida la pena impuesta o dictada una orden de libertad por la autoridad competente;
8. Nadie puede ser sometido a medidas de coerción sino por su propio hecho;
9. Las medidas de coerción, restrictivas de la libertad personal, tienen carácter excepcional y su aplicación debe ser proporcional al peligro que tratan de resguardar;
10. No se establecerá el apremio corporal por deuda que no provenga de infracción a las leyes penales;
11. Toda persona que tenga bajo su guarda a un detenido está obligada a presentarlo tan pronto se lo requiera la autoridad competente;
12. Queda terminantemente prohibido el traslado de cualquier detenido de un establecimiento carcelario a otro lugar sin orden escrita y motivada de autoridad competente;
13. Nadie puede ser condenado o sancionado por acciones u omisiones que en el momento de producirse no constituyan infracción penal o administrativa;
14. Nadie es penalmente responsable por el hecho de otro;

15. A nadie se le puede obligar a hacer lo que la ley no manda ni impedírsele lo que la ley no prohíbe. La ley es igual para todos: sólo puede ordenar lo que es justo y útil para la comunidad y no puede prohibir más que lo que le perjudica;
16. Las penas privativas de libertad y las medidas de seguridad estarán orientadas hacia la reeducación y reinserción social de la persona condenada y no podrán consistir en trabajos forzados;
17. En el ejercicio de la potestad sancionadora establecida por las leyes, la Administración Pública no podrá imponer sanciones que de forma directa o subsidiaria impliquen privación de libertad.

**Artículo 41. Prohibición de la esclavitud.** Se prohíben en todas sus formas, la esclavitud, la servidumbre, la trata y el tráfico de personas.

**Artículo 42. Derecho a la integridad personal.** Toda persona tiene derecho a que se respete su integridad física, psíquica, moral y a vivir sin violencia. Tendrá la protección del Estado en casos de amenaza, riesgo o violación de las mismas. En consecuencia:

1. Ninguna persona puede ser sometida a penas, torturas o procedimientos vejatorios que impliquen la pérdida o disminución de su salud, o de su integridad física o psíquica;
2. Se condena la violencia intrafamiliar y de género en cualquiera de sus formas. El Estado garantizará mediante ley la adopción de medidas necesarias para prevenir, sancionar y erradicar la violencia contra la mujer;
3. Nadie puede ser sometido, sin consentimiento previo, a experimentos y procedimientos que no se ajusten a las normas científicas y bioéticas internacionalmente reconocidas. Tampoco a exámenes o procedimientos médicos, excepto cuando se encuentre en peligro su vida.

**Artículo 43. Derecho al libre desarrollo de la personalidad.** Toda persona tiene derecho al libre desarrollo de su personalidad, sin más limitaciones que las impuestas por el orden jurídico y los derechos de los demás.

**Artículo 44. Derecho a la intimidad y el honor personal.** Toda persona tiene derecho a la intimidad. Se garantiza el respeto y la no injerencia en la

vida privada, familiar, el domicilio y la correspondencia del individuo. Se reconoce el derecho al honor, al buen nombre y a la propia imagen. Toda autoridad o particular que los viole está obligado a resarcirlos o repararlos conforme a la ley. Por tanto:

1. El hogar, el domicilio y todo recinto privado de la persona son inviolables, salvo en los casos que sean ordenados, de conformidad con la ley, por autoridad judicial competente o en caso de flagrante delito;
2. Toda persona tiene el derecho a acceder a la información y a los datos que sobre ella o sus bienes reposen en los registros oficiales o privados, así como conocer el destino y el uso que se haga de los mismos, con las limitaciones fijadas por la ley. El tratamiento de los datos e informaciones personales o sus bienes deberá hacerse respetando los principios de calidad, licitud, lealtad, seguridad y finalidad. Podrá solicitar ante la autoridad judicial competente la actualización, oposición al tratamiento, rectificación o destrucción de aquellas informaciones que afecten ilegítimamente sus derechos;
3. Se reconoce la inviolabilidad de la correspondencia, documentos o mensajes privados en formatos físico, digital, electrónico o de todo otro tipo. Sólo podrán ser ocupados, interceptados o registrados, por orden de una autoridad judicial competente, mediante procedimientos legales en la sustanciación de asuntos que se ventilen en la justicia y preservando el secreto de lo privado, que no guarde relación con el correspondiente proceso. Es inviolable el secreto de la comunicación telegráfica, telefónica, cablegráfica, electrónica, telemática o la establecida en otro medio, salvo las autorizaciones otorgadas por juez o autoridad competente, de conformidad con la ley;
4. El manejo, uso o tratamiento de datos e informaciones de carácter oficial que recaben las autoridades encargadas de la prevención, persecución y castigo del crimen, sólo podrán ser tratados o comunicados a los registros públicos, a partir de que haya intervenido una apertura a juicio, de conformidad con la ley.

**Artículo 45. Libertad de conciencia y de cultos.** El Estado garantiza la libertad de conciencia y de cultos, con sujeción al orden público y respeto a las buenas costumbres.

**Artículo 46. Libertad de tránsito.** Toda persona que se encuentre en territorio nacional tiene derecho a transitar, residir y salir libremente del mismo, de conformidad con las disposiciones legales.

1. Ningún dominicano o dominicana puede ser privado del derecho a ingresar al territorio nacional. Tampoco puede ser expulsado o extrañado del mismo, salvo caso de extradición pronunciado por autoridad judicial competente, conforme la ley y los acuerdos internacionales vigentes sobre la materia;
2. Toda persona tiene derecho a solicitar asilo en el territorio nacional, en caso de persecución por razones políticas. Quienes se encuentren en condiciones de asilo gozarán de la protección que garantice el pleno ejercicio de sus derechos, de conformidad con los acuerdos, normas e instrumentos internacionales suscritos y ratificados por la República Dominicana. No se consideran delitos políticos, el terrorismo, los crímenes contra la humanidad, la corrupción administrativa y los delitos transnacionales.

**Artículo 47. Libertad de asociación.** Toda persona tiene derecho de asociarse con fines lícitos, de conformidad con la ley.

**Artículo 48. Libertad de reunión.** Toda persona tiene el derecho de reunirse, sin permiso previo, con fines lícitos y pacíficos, de conformidad con la ley.

**Artículo 49. Libertad de expresión e información.** Toda persona tiene derecho a expresar libremente sus pensamientos, ideas y opiniones, por cualquier medio, sin que pueda establecerse censura previa.

1. Toda persona tiene derecho a la información. Este derecho comprende buscar, investigar, recibir y difundir información de todo tipo, de carácter público, por cualquier medio, canal o vía, conforme determinan la Constitución y la ley;
2. Todos los medios de información tienen libre acceso a las fuentes noticiosas oficiales y privadas de interés público, de conformidad con la ley;
3. El secreto profesional y la cláusula de conciencia del periodista están protegidos por la Constitución y la ley;

4. Toda persona tiene derecho a la réplica y rectificación cuando se sienta lesionada por informaciones difundidas. Este derecho se ejercerá de conformidad con la ley;
5. La ley garantiza el acceso equitativo y plural de todos los sectores sociales y políticos a los medios de comunicación propiedad del Estado.

**Párrafo.** El disfrute de estas libertades se ejercerá respetando el derecho al honor, a la intimidad, así como a la dignidad y la moral de las personas, en especial la protección de la juventud y de la infancia, de conformidad con la ley y el orden público.

## SECCIÓN II DE LOS DERECHOS ECONÓMICOS Y SOCIALES

**Artículo 50. Libertad de empresa.** El Estado reconoce y garantiza la libre empresa, comercio e industria. Todas las personas tienen derecho a dedicarse libremente a la actividad económica de su preferencia, sin más limitaciones que las prescritas en esta Constitución y las que establezcan las leyes.

1. No se permitirán monopolios, salvo en provecho del Estado. La creación y organización de esos monopolios se hará por ley. El Estado favorece y vela por la competencia libre y leal y adoptará las medidas que fueren necesarias para evitar los efectos nocivos y restrictivos del monopolio y del abuso de posición dominante, estableciendo por ley excepciones para los casos de la seguridad nacional;
2. El Estado podrá dictar medidas para regular la economía y promover planes nacionales de competitividad e impulsar el desarrollo integral del país;
3. El Estado puede otorgar concesiones por el tiempo y la forma que determine la ley, cuando se trate de explotación de recursos naturales o de la prestación de servicios públicos, asegurando siempre la existencia de contraprestaciones o contrapartidas adecuadas al interés público y al equilibrio medioambiental.

**Artículo 51. Derecho de propiedad.** El Estado reconoce y garantiza el derecho de propiedad. La propiedad tiene una función social que implica

obligaciones. Toda persona tiene derecho al goce, disfrute y disposición de sus bienes.

1. Ninguna persona puede ser privada de su propiedad, sino por causa justificada de utilidad pública o de interés social, previo pago de su justo valor, determinado por acuerdo entre las partes o sentencia de tribunal competente, de conformidad con lo establecido en la ley. En caso de declaratoria de Estado de Emergencia o de Defensa, la indemnización podrá no ser previa;
2. El Estado promoverá, de acuerdo con la ley, el acceso a la propiedad, en especial a la propiedad inmobiliaria titulada;
3. Se declara de interés social la dedicación de la tierra a fines útiles y la eliminación gradual del latifundio. Es un objetivo principal de la política social del Estado, promover la reforma agraria y la integración de forma efectiva de la población campesina al proceso de desarrollo nacional, mediante el estímulo y la cooperación para la renovación de sus métodos de producción agrícola y su capacitación tecnológica;
4. No habrá confiscación por razones políticas de los bienes de las personas físicas o jurídicas;
5. Sólo podrán ser objeto de confiscación o decomiso, mediante sentencia definitiva, los bienes de personas físicas o jurídicas, nacionales o extranjeras, que tengan su origen en actos ilícitos cometidos contra el patrimonio público, así como los utilizados o provenientes de actividades de tráfico ilícito de estupefacientes y sustancias psicotrópicas o relativas a la delincuencia transnacional organizada y de toda infracción prevista en las leyes penales;
6. La ley establecerá el régimen de administración y disposición de bienes incautados y abandonados en los procesos penales y en los juicios de extinción de dominio, previstos en el ordenamiento jurídico.

**Artículo 52. Derecho a la propiedad intelectual.** Se reconoce y protege el derecho de la propiedad exclusiva de las obras científicas, literarias, artísticas, invenciones e innovaciones, denominaciones, marcas, signos distintivos y demás producciones del intelecto humano por el tiempo, en la forma y con las limitaciones que establezca la ley.

**Artículo 53. Derechos del consumidor.** Toda persona tiene derecho a disponer de bienes y servicios de calidad, a una información objetiva, veraz y oportuna sobre el contenido y las características de los productos y servicios que use o consuma, bajo las previsiones y normas establecidas por la ley. Las personas que resulten lesionadas o perjudicadas por bienes y servicios de mala calidad, tienen derecho a ser compensadas o indemnizadas conforme a la ley.

**Artículo 54. Seguridad alimentaria.** El Estado promoverá la investigación y la transferencia de tecnología para la producción de alimentos y materias primas de origen agropecuarios, con el propósito de incrementar la productividad y garantizar la seguridad alimentaria.

**Artículo 55. Derechos de la familia.** La familia es el fundamento de la sociedad y el espacio básico para el desarrollo integral de las personas. Se constituye por vínculos naturales o jurídicos, por la decisión libre de un hombre y una mujer de contraer matrimonio o por la voluntad responsable de conformarla.

1. Toda persona tiene derecho a constituir una familia, en cuya formación y desarrollo la mujer y el hombre gozan de iguales derechos y deberes y se deben comprensión mutua y respeto recíproco;
2. El Estado garantizará la protección de la familia. El bien de familia es inalienable e inembargable, de conformidad con la ley;
3. El Estado promoverá y protegerá la organización de la familia sobre la base de la institución del matrimonio entre un hombre y una mujer. La ley establecerá los requisitos para contraerlo, las formalidades para su celebración, sus efectos personales y patrimoniales, las causas de separación o de disolución, el régimen de bienes y los derechos y deberes entre los cónyuges;
4. Los matrimonios religiosos tendrán efectos civiles en los términos que establezca la ley, sin perjuicio de lo dispuesto en los tratados internacionales;
5. La unión singular y estable entre un hombre y una mujer, libres de impedimento matrimonial, que forman un hogar de hecho, genera derechos y deberes en sus relaciones personales y patrimoniales, de conformidad con ley;



6. La maternidad, sea cual fuere la condición social o el estado civil de la mujer, gozará de la protección de los poderes públicos y genera derecho a la asistencia oficial en caso de desamparo;
7. Toda persona tiene derecho al reconocimiento de su personalidad, a un nombre propio, al apellido del padre y de la madre y a conocer la identidad de los mismos;
8. Todas las personas tienen derecho desde su nacimiento a ser inscritas gratuitamente en el registro civil o en el libro de extranjería y a obtener los documentos públicos que comprueben su identidad, de conformidad con la ley;
9. Todos los hijos son iguales ante la ley, tienen iguales derechos y deberes y disfrutarán de las mismas oportunidades de desarrollo social, espiritual y físico. Se prohíbe toda mención sobre la naturaleza de la filiación en los registros civiles y en todo documento de identidad;
10. El Estado promueve la paternidad y maternidad responsables. El padre y la madre, aun después de la separación y el divorcio, tienen el deber compartido e irrenunciable de alimentar, criar, formar, educar, mantener, dar seguridad y asistir a sus hijos e hijas. La ley establecerá las medidas necesarias y adecuadas para garantizar la efectividad de estas obligaciones;
11. El Estado reconoce el trabajo del hogar como actividad económica que crea valor agregado y produce riqueza y bienestar social, por lo que se incorporará en la formulación y ejecución de las políticas públicas y sociales;
12. El Estado garantizará, mediante ley, políticas seguras y efectivas para la adopción;
13. Se reconoce el valor de los jóvenes como actores estratégicos en el desarrollo de la Nación. El Estado garantiza y promueve el ejercicio efectivo de sus derechos, a través de políticas y programas que aseguren de modo permanente su participación en todos los ámbitos de la vida nacional y, en particular, su capacitación y su acceso al primer empleo.

**Artículo 56. Protección de las personas menores de edad.** La familia, la sociedad y el Estado, harán primar el interés superior del niño, niña y adolescente; tendrán la obligación de asistirles y protegerles para garantizar su desarrollo armónico e integral y el ejercicio pleno de sus derechos fundamentales, conforme a esta Constitución y las leyes. En consecuencia:

1. Se declara del más alto interés nacional la erradicación del trabajo infantil y todo tipo de maltrato o violencia contra las personas menores de edad. Los niños, niñas y adolescentes serán protegidos por el Estado contra toda forma de abandono, secuestro, estado de vulnerabilidad, abuso o violencia física, psicológica, moral o sexual, explotación comercial, laboral, económica y trabajos riesgosos;
2. Se promoverá la participación activa y progresiva de los niños, niñas y adolescentes en la vida familiar, comunitaria y social;
3. Los adolescentes son sujetos activos del proceso de desarrollo. El Estado, con la participación solidaria de las familias y la sociedad, creará oportunidades para estimular su tránsito productivo hacia la vida adulta.

**Artículo 57. Protección de las personas de la tercera edad.** La familia, la sociedad y el Estado concurrirán para la protección y la asistencia de las personas de la tercera edad y promoverán su integración a la vida activa y comunitaria. El Estado garantizará los servicios de la seguridad social integral y el subsidio alimentario en caso de indigencia.

**Artículo 58. Protección de las personas con discapacidad.** El Estado promoverá, protegerá y asegurará el goce de todos los derechos humanos y libertades fundamentales de las personas con discapacidad, en condiciones de igualdad, así como el ejercicio pleno y autónomo de sus capacidades. El Estado adoptará las medidas positivas necesarias para propiciar su integración familiar, comunitaria, social, laboral, económica, cultural y política.

**Artículo 59. Derecho a la vivienda.** Toda persona tiene derecho a una vivienda digna con servicios básicos esenciales. El Estado debe fijar las condiciones necesarias para hacer efectivo este derecho y promover planes de viviendas y asentamientos humanos de interés social. El acceso legal a la propiedad inmobiliaria titulada es una prioridad fundamental de las políticas públicas de promoción de vivienda.

**Artículo 60. Derecho a la seguridad social.** Toda persona tiene derecho a la seguridad social. El Estado estimulará el desarrollo progresivo de la seguridad social para asegurar el acceso universal a una adecuada protección en la enfermedad, discapacidad, desocupación y la vejez.

**Artículo 61. Derecho a la salud.** Toda persona tiene derecho a la salud integral. En consecuencia:

1. El Estado debe velar por la protección de la salud de todas las personas, el acceso al agua potable, el mejoramiento de la alimentación, de los servicios sanitarios, las condiciones higiénicas, el saneamiento ambiental, así como procurar los medios para la prevención y tratamiento de todas las enfermedades, asegurando el acceso a medicamentos de calidad y dando asistencia médica y hospitalaria gratuita a quienes la requieran;
2. El Estado garantizará, mediante legislaciones y políticas públicas, el ejercicio de los derechos económicos y sociales de la población de menores ingresos y, en consecuencia, prestará su protección y asistencia a los grupos y sectores vulnerables; combatirá los vicios sociales con las medidas adecuadas y con el auxilio de las convenciones y las organizaciones internacionales.

**Artículo 62. Derecho al trabajo.** El trabajo es un derecho, un deber y una función social que se ejerce con la protección y asistencia del Estado. Es finalidad esencial del Estado fomentar el empleo digno y remunerado. Los poderes públicos promoverán el diálogo y concertación entre trabajadores, empleadores y el Estado. En consecuencia:

1. El Estado garantiza la igualdad y equidad de mujeres y hombres en el ejercicio del derecho al trabajo;
2. Nadie puede impedir el trabajo de los demás ni obligarles a trabajar contra su voluntad;
3. Son derechos básicos de trabajadores y trabajadoras, entre otros: la libertad sindical, la seguridad social, la negociación colectiva, la capacitación profesional, el respeto a su capacidad física e intelectual, a su intimidad y a su dignidad personal;
4. La organización sindical es libre y democrática, debe ajustarse a sus estatutos y ser compatible con los principios consagrados en esta Constitución y las leyes;
5. Se prohíbe toda clase de discriminación para acceder al empleo o durante la prestación del servicio, salvo las excepciones previstas por la ley con fines de proteger al trabajador o trabajadora;

6. Para resolver conflictos laborales y pacíficos se reconoce el derecho de trabajadores a la huelga y de empleadores al paro de las empresas privadas, siempre que se ejerzan con arreglo a la ley, la cual dispondrá las medidas para garantizar el mantenimiento de los servicios públicos o los de utilidad pública;
7. La ley dispondrá, según lo requiera el interés general, las jornadas de trabajo, los días de descanso y vacaciones, los salarios mínimos y sus formas de pago, la participación de los nacionales en todo trabajo, la participación de las y los trabajadores en los beneficios de la empresa y, en general, todas las medidas mínimas que se consideren necesarias a favor de los trabajadores, incluyendo regulaciones especiales para el trabajo informal, a domicilio y cualquier otra modalidad del trabajo humano. El Estado facilitará los medios a su alcance para que las y los trabajadores puedan adquirir los útiles e instrumentos indispensables a su labor;
8. Es obligación de todo empleador garantizar a sus trabajadores condiciones de seguridad, salubridad, higiene y ambiente de trabajo adecuados. El Estado adoptará medidas para promover la creación de instancias integradas por empleadores y trabajadores para la consecución de estos fines;
9. Todo trabajador tiene derecho a un salario justo y suficiente que le permita vivir con dignidad y cubrir para sí y su familia necesidades básicas materiales, sociales e intelectuales. Se garantiza el pago de igual salario por trabajo de igual valor, sin discriminación de género o de otra índole y en idénticas condiciones de capacidad, eficiencia y antigüedad;
10. Es de alto interés la aplicación de las normas laborales relativas a la nacionalización del trabajo. La ley determinará el porcentaje de extranjeros que pueden prestar sus servicios a una empresa como trabajadores asalariados.

**Artículo 63. Derecho a la educación.** Toda persona tiene derecho a una educación integral, de calidad, permanente, en igualdad de condiciones y oportunidades, sin más limitaciones que las derivadas de sus aptitudes, vocación y aspiraciones. En consecuencia:

1. La educación tiene por objeto la formación integral del ser humano a lo largo de toda su vida y debe orientarse hacia el desarrollo de su

potencial creativo y de sus valores éticos. Busca el acceso al conocimiento, a la ciencia, a la técnica y a los demás bienes y valores de la cultura;

2. La familia es responsable de la educación de sus integrantes y tiene derecho a escoger el tipo de educación de sus hijos menores;
3. El Estado garantiza la educación pública gratuita y la declara obligatoria en el nivel inicial, básico y medio. La oferta para el nivel inicial será definida en la ley. La educación superior en el sistema público será financiada por el Estado, garantizando una distribución de los recursos proporcional a la oferta educativa de las regiones, de conformidad con lo que establezca la ley;
4. El Estado velará por la gratuidad y la calidad de la educación general, el cumplimiento de sus fines y la formación moral, intelectual y física del educando. Tiene la obligación de ofertar el número de horas lectivas que aseguren el logro de los objetivos educacionales;
5. El Estado reconoce el ejercicio de la carrera docente como fundamental para el pleno desarrollo de la educación y de la Nación dominicana y, por consiguiente, es su obligación propender a la profesionalización, a la estabilidad y dignificación de los y las docentes;
6. Son obligaciones del Estado la erradicación del analfabetismo y la educación de personas con necesidades especiales y con capacidades excepcionales;
7. El Estado debe velar por la calidad de la educación superior y financiará los centros y universidades públicas, de conformidad con lo que establezca la ley. Garantizará la autonomía universitaria y la libertad de cátedra;
8. Las universidades escogerán sus directivas y se regirán por sus propios estatutos, de conformidad con la ley;
9. El Estado definirá políticas para promover e incentivar la investigación, la ciencia, la tecnología y la innovación que favorezcan el desarrollo sostenible, el bienestar humano, la competitividad, el fortalecimiento institucional y la preservación del medio ambiente. Se apoyará a las empresas e instituciones privadas que inviertan a esos fines;
10. La inversión del Estado en la educación, la ciencia y la tecnología deberá ser creciente y sostenida, en correspondencia con los niveles de desempeño macroeconómico del país. La ley consignará los montos mínimos y los porcentajes correspondientes a dicha inversión.

En ningún caso se podrá hacer transferencias de fondos consignados a financiar el desarrollo de estas áreas;

11. Los medios de comunicación social, públicos y privados, deben contribuir a la formación ciudadana. El Estado garantiza servicios públicos de radio, televisión y redes de bibliotecas y de informática, con el fin de permitir el acceso universal a la información. Los centros educativos incorporarán el conocimiento y aplicación de las nuevas tecnologías y de sus innovaciones, según los requisitos que establezca la ley;
12. El Estado garantiza la libertad de enseñanza, reconoce la iniciativa privada en la creación de instituciones y servicios de educación y estimula el desarrollo de la ciencia y la tecnología, de acuerdo con la ley;
13. Con la finalidad de formar ciudadanas y ciudadanos conscientes de sus derechos y deberes, en todas las instituciones de educación pública y privada, serán obligatorias la instrucción en la formación social y cívica, la enseñanza de la Constitución, de los derechos y garantías fundamentales, de los valores patrios y de los principios de convivencia pacífica.

### **SECCIÓN III DE LOS DERECHOS CULTURALES Y DEPORTIVOS**

**Artículo 64. Derecho a la cultura.** Toda persona tiene derecho a participar y actuar con libertad y sin censura en la vida cultural de la Nación, al pleno acceso y disfrute de los bienes y servicios culturales, de los avances científicos y de la producción artística y literaria. El Estado protegerá los intereses morales y materiales sobre las obras de autores e inventores. En consecuencia:

1. Establecerá políticas que promuevan y estimulen, en los ámbitos nacionales e internacionales, las diversas manifestaciones y expresiones científicas, artísticas y populares de la cultura dominicana e incentivará y apoyará los esfuerzos de personas, instituciones y comunidades que desarrollen o financien planes y actividades culturales;
2. Garantizará la libertad de expresión y la creación cultural, así como el acceso a la cultura en igualdad de oportunidades y promoverá la diversidad cultural, la cooperación y el intercambio entre naciones;

3. Reconocerá el valor de la identidad cultural, individual y colectiva, su importancia para el desarrollo integral y sostenible, el crecimiento económico, la innovación y el bienestar humano, mediante el apoyo y difusión de la investigación científica y la producción cultural. Protegerá la dignidad e integridad de los trabajadores de la cultura;
4. El patrimonio cultural de la Nación, material e inmaterial, está bajo la salvaguarda del Estado que garantizará su protección, enriquecimiento, conservación, restauración y puesta en valor. Los bienes del patrimonio cultural de la Nación, cuya propiedad sea estatal o hayan sido adquiridos por el Estado, son inalienables e inembargables y dicha titularidad, imprescriptible. Los bienes patrimoniales en manos privadas y los bienes del patrimonio cultural sub acuático serán igualmente protegidos ante la exportación ilícita y el expolio. La ley regulará la adquisición de los mismos.

**Artículo 65. Derecho al deporte.** Toda persona tiene derecho a la educación física, al deporte y la recreación. Corresponde al Estado, en colaboración con los centros de enseñanza y las organizaciones deportivas, fomentar, incentivar y apoyar la práctica y difusión de estas actividades. Por tanto:

1. El Estado asume el deporte y la recreación como política pública de educación y salud y garantiza la educación física y el deporte escolar en todos los niveles del sistema educativo, conforme a la ley;
2. La ley dispondrá los recursos, estímulos e incentivos para la promoción del deporte para todos y todas, la atención integral de los deportistas, el apoyo al deporte de alta competición, a los programas y actividades deportivas en el país y en el exterior.

#### **SECCIÓN IV**

#### **DE LOS DERECHOS COLECTIVOS Y DEL MEDIO AMBIENTE**

**Artículo 66. Derechos colectivos y difusos.** El Estado reconoce los derechos e intereses colectivos y difusos, los cuales se ejercen en las condiciones y limitaciones establecidas en la ley. En consecuencia protege:

1. La conservación del equilibrio ecológico, de la fauna y la flora;
2. La protección del medio ambiente;

3. La preservación del patrimonio cultural, histórico, urbanístico, artístico, arquitectónico y arqueológico.

**Artículo 67. Protección del medio ambiente.** Constituyen deberes del Estado prevenir la contaminación, proteger y mantener el medio ambiente en provecho de las presentes y futuras generaciones. En consecuencia:

1. Toda persona tiene derecho, tanto de modo individual como colectivo, al uso y goce sostenible de los recursos naturales; a habitar en un ambiente sano, ecológicamente equilibrado y adecuado para el desarrollo y preservación de las distintas formas de vida, del paisaje y de la naturaleza;
2. Se prohíbe la introducción, desarrollo, producción, tenencia, comercialización, transporte, almacenamiento y uso de armas químicas, biológicas y nucleares y de agroquímicos vedados internacionalmente, además de residuos nucleares, desechos tóxicos y peligrosos;
3. El Estado promoverá, en el sector público y privado, el uso de tecnologías y energías alternativas no contaminantes;
4. En los contratos que el Estado celebre o en los permisos que se otorguen que involucren el uso y explotación de los recursos naturales, se considerará incluida la obligación de conservar el equilibrio ecológico, el acceso a la tecnología y su transferencia, así como de restablecer el ambiente a su estado natural, si éste resulta alterado;
5. Los poderes públicos prevendrán y controlarán los factores de deterioro ambiental, impondrán las sanciones legales, la responsabilidad objetiva por daños causados al medio ambiente y a los recursos naturales y exigirán su reparación. Asimismo, cooperarán con otras naciones en la protección de los ecosistemas a lo largo de la frontera marítima y terrestre.

## **CAPÍTULO II**

### **DE LAS GARANTÍAS A LOS DERECHOS FUNDAMENTALES**

**Artículo 68. Garantías de los derechos fundamentales.** La Constitución garantiza la efectividad de los derechos fundamentales, a través de los mecanismos de tutela y protección, que ofrecen a la persona



la posibilidad de obtener la satisfacción de sus derechos, frente a los sujetos obligados o deudores de los mismos. Los derechos fundamentales vinculan a todos los poderes públicos, los cuales deben garantizar su efectividad en los términos establecidos por la presente Constitución y por la ley.

**Artículo 69. Tutela judicial efectiva y debido proceso.** Toda persona, en el ejercicio de sus derechos e intereses legítimos, tiene derecho a obtener la tutela judicial efectiva, con respeto del debido proceso que estará conformado por las garantías mínimas que se establecen a continuación:

1. El derecho a una justicia accesible, oportuna y gratuita;
2. El derecho a ser oída, dentro de un plazo razonable y por una jurisdicción competente, independiente e imparcial, establecida con anterioridad por la ley;
3. El derecho a que se presuma su inocencia y a ser tratada como tal, mientras no se haya declarado su culpabilidad por sentencia irrevocable;
4. El derecho a un juicio público, oral y contradictorio, en plena igualdad y con respeto al derecho de defensa;
5. Ninguna persona puede ser juzgada dos veces por una misma causa;
6. Nadie podrá ser obligado a declarar contra sí mismo;
7. Ninguna persona podrá ser juzgada sino conforme a leyes preexistentes al acto que se le imputa, ante juez o tribunal competente y con observancia de la plenitud de las formalidades propias de cada juicio;
8. Es nula toda prueba obtenida en violación a la ley;
9. Toda sentencia puede ser recurrida de conformidad con la ley. El tribunal superior no podrá agravar la sanción impuesta cuando sólo la persona condenada recurra la sentencia;
10. Las normas del debido proceso se aplicarán a toda clase de actuaciones judiciales y administrativas.

**Artículo 70. Hábeas data.** Toda persona tiene derecho a una acción judicial para conocer de la existencia y acceder a los datos que de ella consten en registros o bancos de datos públicos o privados y, en caso de falsedad o discriminación, exigir la suspensión, rectificación, actualización y

confidencialidad de aquéllos, conforme a la ley. No podrá afectarse el secreto de las fuentes de información periodística.

**Artículo 71. Acción de hábeas corpus.** Toda persona privada de su libertad o amenazada de serlo, de manera ilegal, arbitraria o irrazonable, tiene derecho a una acción de hábeas corpus ante un juez o tribunal competente, por sí misma o por quien actúe en su nombre, de conformidad con la ley, para que conozca y decida, de forma sencilla, efectiva, rápida y sumaria, la legalidad de la privación o amenaza de su libertad.

**Artículo 72. Acción de amparo.** Toda persona tiene derecho a una acción de amparo para reclamar ante los tribunales, por sí o por quien actúe en su nombre, la protección inmediata de sus derechos fundamentales, no protegidos por el hábeas corpus, cuando resulten vulnerados o amenazados por la acción o la omisión de toda autoridad pública o de particulares, para hacer efectivo el cumplimiento de una ley o acto administrativo, para garantizar los derechos e intereses colectivos y difusos. De conformidad con la ley, el procedimiento es preferente, sumario, oral, público, gratuito y no sujeto a formalidades.

**Párrafo.** Los actos adoptados durante los Estados de Excepción que vulneren derechos protegidos que afecten irrazonablemente derechos suspendidos están sujetos a la acción de amparo.

**Artículo 73. Nulidad de los actos que subviertan el orden constitucional.** Son nulos de pleno derecho los actos emanados de autoridad usurpada, las acciones o decisiones de los poderes públicos, instituciones o personas que alteren o subviertan el orden constitucional y toda decisión acordada por requisición de fuerza armada.

### **CAPÍTULO III**

#### **DE LOS PRINCIPIOS DE APLICACIÓN E INTERPRETACIÓN DE LOS DERECHOS Y GARANTÍAS FUNDAMENTALES**

**Artículo 74. Principios de reglamentación e interpretación.** La interpretación y reglamentación de los derechos y garantías fundamentales, reconocidos en la presente Constitución, se rigen por los principios siguientes:

1. No tienen carácter limitativo y, por consiguiente, no excluyen otros derechos y garantías de igual naturaleza;
2. Sólo por ley, en los casos permitidos por esta Constitución, podrá regularse el ejercicio de los derechos y garantías fundamentales, respetando su contenido esencial y el principio de razonabilidad;
3. Los tratados, pactos y convenciones relativos a derechos humanos, suscritos y ratificados por el Estado dominicano, tienen jerarquía constitucional y son de aplicación directa e inmediata por los tribunales y demás órganos del Estado;
4. Los poderes públicos interpretan y aplican las normas relativas a los derechos fundamentales y sus garantías, en el sentido más favorable a la persona titular de los mismos y, en caso de conflicto entre derechos fundamentales, procurarán armonizar los bienes e intereses protegidos por esta Constitución.

## **CAPÍTULO IV DE LOS DEBERES FUNDAMENTALES**

**Artículo 75. Deberes fundamentales.** Los derechos fundamentales reconocidos en esta Constitución determinan la existencia de un orden de responsabilidad jurídica y moral, que obliga la conducta del hombre y la mujer en sociedad. En consecuencia, se declaran como deberes fundamentales de las personas los siguientes:

1. Acatar y cumplir la Constitución y las leyes, respetar y obedecer las autoridades establecidas por ellas;
2. Votar, siempre que se esté en capacidad legal para hacerlo;
3. Prestar los servicios civiles y militares que la Patria requiera para su defensa y conservación, de conformidad con lo establecido por la ley;
4. Prestar servicios para el desarrollo, exigible a los dominicanos y dominicanas de edades comprendidas entre los dieciséis y veintiún años. Estos servicios podrán ser prestados voluntariamente por los mayores de veintiún años. La ley reglamentará estos servicios;
5. Abstenerse de realizar todo acto perjudicial a la estabilidad, independencia o soberanía de la República Dominicana;

6. Tributar, de acuerdo con la ley y en proporción a su capacidad contributiva, para financiar los gastos e inversiones públicas. Es deber fundamental del Estado garantizar la racionalidad del gasto público y la promoción de una administración pública eficiente;
7. Dedicarse a un trabajo digno, de su elección, a fin de proveer el sustento propio y el de su familia para alcanzar el perfeccionamiento de su personalidad y contribuir al bienestar y progreso de la sociedad;
8. Asistir a los establecimientos educativos de la Nación para recibir, conforme lo dispone esta Constitución, la educación obligatoria;
9. Cooperar con el Estado en cuanto a la asistencia y seguridad social, de acuerdo con sus posibilidades;
10. Actuar conforme al principio de solidaridad social, respondiendo con acciones humanitarias ante situaciones de calamidad pública o que pongan en peligro la vida o la salud de las personas;
11. Desarrollar y difundir la cultura dominicana y proteger los recursos naturales del país, garantizando la conservación de un ambiente limpio y sano;
12. Velar por el fortalecimiento y la calidad de la democracia, el respeto del patrimonio público y el ejercicio transparente de la función pública.

### **TÍTULO III DEL PODER LEGISLATIVO**

#### **CAPÍTULO I DE SU CONFORMACIÓN**

**Artículo 76. Composición del Congreso.** El Poder Legislativo se ejerce en nombre del pueblo por el Congreso Nacional, conformado por el Senado de la República y la Cámara de Diputados.

**Artículo 77. Elección de las y los legisladores.** La elección de senadores y diputados se hará por sufragio universal directo en los términos que establezca la ley.

1. Cuando por cualquier motivo ocurran vacantes de senadores o diputados, la cámara correspondiente escogerá su sustituto de la terna que le presente el organismo superior del partido que lo postuló;

2. La terna será sometida a la cámara donde se haya producido la vacante dentro de los treinta días siguientes a su ocurrencia, si estuviere reunido el Congreso y, en caso de no estarlo, dentro de los primeros treinta días de su reunión. Transcurrido el plazo señalado sin que el organismo competente del partido someta la terna, la cámara correspondiente hará la elección;
3. Los cargos de senador y diputado son incompatibles con otra función o empleo público, salvo la labor docente. La ley regula el régimen de otras incompatibilidades;
4. Las y los senadores y diputados no están ligados por mandato imperativo, actúan siempre con apego al sagrado deber de representación del pueblo que los eligió, ante el cual deben rendir cuentas.

## **SECCIÓN I DEL SENADO**

**Artículo 78. Composición del Senado.** El Senado se compone de miembros elegidos a razón de uno por cada provincia y uno por el Distrito Nacional, cuyo ejercicio durará cuatro años.

**Artículo 79. Requisitos para ser senador o senadora.** Para ser senadora o senador se requiere ser dominicana o dominicano en pleno ejercicio de los derechos civiles y políticos, haber cumplido veinticinco años de edad, ser nativo de la demarcación territorial que lo elija o haber residido en ella por lo menos cinco años consecutivos. En consecuencia:

1. Las senadoras y senadores electos por una demarcación residirán en la misma durante el período por el que sean electos;
2. Las personas naturalizadas sólo podrán ser elegidas al Senado diez años después de haber adquirido la nacionalidad dominicana, siempre que hayan residido en la jurisdicción que las elija durante los cinco años que precedan a su elección.

**Artículo 80. Atribuciones.** Son atribuciones exclusivas del Senado:

1. Conocer de las acusaciones formuladas por la Cámara de Diputados contra las y los funcionarios públicos señalados en el artículo 83,

- numeral 1. La declaración de culpabilidad deja a la persona destituida de su cargo, y no podrá desempeñar ninguna función pública, sea o no de elección popular, por el término de diez años. La persona destituida quedará sujeta, si hubiere lugar, a ser acusada y juzgada por ante los tribunales ordinarios, con arreglo a la ley. Esta decisión se adoptará con el voto de las dos terceras partes de la matrícula;
2. Aprobar o desaprobar los nombramientos de embajadores y jefes de misiones permanentes acreditados en el exterior que le someta el Presidente de la República;
  3. Elegir los miembros de la Cámara de Cuentas de las ternas presentadas por la Cámara de Diputados, con el voto de las dos terceras partes de los senadores presentes;
  4. Elegir los miembros de la Junta Central Electoral y sus suplentes, con el voto de las dos terceras partes de los presentes;
  5. Elegir al Defensor del Pueblo, sus suplentes y sus adjuntos, a partir de las ternas que le presente la Cámara de Diputados, con el voto de las dos terceras partes de los presentes;
  6. Autorizar, previa solicitud del Presidente de la República, en ausencia de convenio que lo permita, la presencia de tropas extranjeras en ejercicios militares en el territorio de la República, así como determinar el tiempo y las condiciones de su estadía;
  7. Aprobar o desaprobar el envío al extranjero de tropas en misiones de paz, autorizadas por organismos internacionales, fijando las condiciones y duración de dicha misión.

## SECCIÓN II DE LA CÁMARA DE DIPUTADOS

**Artículo 81. Representación y composición.** La Cámara de Diputados estará compuesta de la siguiente manera:

1. Ciento setenta y ocho diputadas o diputados elegidos por circunscripción territorial en representación del Distrito Nacional y las provincias, distribuidos en proporción a la densidad poblacional, sin que en ningún caso sean menos de dos los representantes por cada provincia;

2. Cinco diputadas o diputados elegidos a nivel nacional por acumulación de votos, preferentemente de partidos, alianzas o coaliciones que no hubiesen obtenido escaños y hayan alcanzado no menos de un uno por ciento (1%) de los votos válidos emitidos. La ley determinará su distribución;
3. Siete diputadas o diputados elegidos en representación de la comunidad dominicana en el exterior. La ley determinará su forma de elección y distribución.

**Artículo 82. Requisitos para ser diputada o diputado.** Para ser diputada o diputado se requieren las mismas condiciones que para ser senador.

**Artículo 83. Atribuciones.** Son atribuciones exclusivas de la Cámara de Diputados:

1. Acusar ante el Senado a las y los funcionarios públicos elegidos por voto popular, a los elegidos por el Senado y por el Consejo Nacional de la Magistratura, por la comisión de faltas graves en el ejercicio de sus funciones. La acusación sólo podrá formularse con el voto favorable de las dos terceras partes de la matrícula. Cuando se trate del Presidente y el Vicepresidente de la República, se requerirá el voto favorable de las tres cuartas partes de la matrícula. La persona acusada quedará suspendida en sus funciones desde el momento en que la Cámara declare que ha lugar la acusación;
2. Someter al Senado las ternas para la elección de los miembros de la Cámara de Cuentas con el voto favorable de las dos terceras partes de los presentes;
3. Someter al Senado las ternas del Defensor del Pueblo, sus suplentes, que no podrán ser más de dos, y los adjuntos, que no podrán ser más de cinco, con el voto favorable de las dos terceras partes de los presentes.

## **CAPÍTULO II**

### **DE LAS DISPOSICIONES COMUNES A AMBAS CÁMARAS**

**Artículo 84. Quórum de sesiones.** En cada cámara es necesaria la presencia de más de la mitad de sus miembros para la validez de las deliberaciones. Las

decisiones se adoptan por la mayoría absoluta de votos, salvo los asuntos declarados previamente de urgencia, los cuales, en su segunda discusión, se decidirán por las dos terceras partes de los presentes.

**Artículo 85. Inmunidad por opinión.** Los integrantes de ambas cámaras gozan de inmunidad por las opiniones que expresen en las sesiones.

**Artículo 86. Protección de la función legislativa.** Ningún senador o diputado podrá ser privado de su libertad durante la legislatura, sin la autorización de la cámara a que pertenezca, salvo el caso de que sea aprehendido en el momento de la comisión de un crimen.

Si un legislador o legisladora hubiere sido arrestado, detenido o privado en cualquier otra forma de su libertad, la cámara a que pertenece, esté en sesión o no, e incluso uno de sus integrantes, podrá exigir su puesta en libertad por el tiempo que dure la legislatura. A este efecto, el Presidente del Senado o el de la Cámara de Diputados, o un senador o diputado, según el caso, hará un requerimiento al Procurador General de la República y, si fuese necesario, dará la orden de libertad directamente, para lo cual podrá requerir y deberá serle prestado todo el apoyo de la fuerza pública.

**Artículo 87. Alcance y límites de la inmunidad.** La inmunidad parlamentaria consagrada en el artículo anterior no constituye un privilegio personal del legislador, sino una prerrogativa de la cámara a que pertenece y no impide que al cesar el mandato congresual puedan impulsarse las acciones que procedan en derecho. Cuando la cámara recibiere una solicitud de autoridad judicial competente, con el fin de que le fuere retirada la protección a uno de sus miembros, procederá de conformidad con lo establecido en su reglamento interno y decidirá al efecto en un plazo máximo de dos meses desde la remisión del requerimiento.

**Artículo 88. Pérdida de investidura.** Las y los legisladores deben asistir a las sesiones de las legislaturas y someterse al régimen de inhabilidades e incompatibilidades en la forma y términos que definan la presente Constitución y los reglamentos internos de la cámara legislativa correspondiente. Quienes incumplan lo anterior perderán su investidura, previo juicio político de acuerdo con las normas instituidas por esta Constitución y los reglamentos y no podrán



optar por una posición en el Congreso Nacional dentro de los diez años siguientes a su destitución.

**Artículo 89. Duración de las legislaturas.** Las cámaras se reunirán de forma ordinaria el 27 de febrero y el 16 de agosto de cada año. Cada legislatura durará ciento cincuenta días. El Poder Ejecutivo podrá convocarlas de forma extraordinaria.

**Artículo 90. Bufetes directivos de las cámaras.** El 16 de agosto de cada año el Senado y la Cámara de Diputados elegirán sus respectivos bufetes directivos, integrados por un presidente, un vicepresidente y dos secretarios.

1. El Presidente del Senado y el de la Cámara de Diputados tendrán, durante las sesiones, poderes disciplinarios y representarán a su respectiva cámara en todos los actos legales;
2. Cada cámara designará sus funcionarios, empleados administrativos y auxiliares de conformidad con la Ley de Carrera Administrativa del Congreso Nacional;
3. Cada cámara reglamentará lo concerniente a su servicio interior y al despacho de los asuntos que le son peculiares, y podrá, en el uso de sus facultades disciplinarias, establecer las sanciones que procedan.

**Artículo 91. Rendición de cuentas de los presidentes.** Los presidentes de ambas cámaras deberán convocar a sus respectivos plenos la primera semana del mes de agosto de cada año, para rendirles un informe sobre las actividades legislativas, administrativas y financieras realizadas durante el período precedente.

**Artículo 92. Rendición de cuentas de los legisladores.** Los legisladores deberán rendir cada año un informe de su gestión ante los electores que representan.

### **CAPÍTULO III DE LAS ATRIBUCIONES DEL CONGRESO NACIONAL**

**Artículo 93. Atribuciones.** El Congreso Nacional legisla y fiscaliza en representación del pueblo, le corresponden en consecuencia:

1. Atribuciones generales en materia legislativa:
  - a) Establecer los impuestos, tributos o contribuciones generales y determinar el modo de su recaudación e inversión;
  - b) Conocer de las observaciones que el Poder Ejecutivo haga a las leyes;
  - c) Disponer todo lo concerniente a la conservación de monumentos y al patrimonio histórico, cultural y artístico;
  - d) Crear, modificar o suprimir regiones, provincias, municipios, distritos municipales, secciones y parajes y determinar todo lo concerniente a sus límites y organización, por el procedimiento regulado en esta Constitución y previo estudio que demuestre la conveniencia política, social y económica justificativa de la modificación;
  - e) Autorizar al Presidente de la República a declarar los estados de excepción a que se refiere esta Constitución;
  - f) En caso de que la soberanía nacional se encuentre expuesta a un peligro grave e inminente, el Congreso podrá declarar que existe un estado de defensa nacional, suspendiendo el ejercicio de los derechos individuales, con excepción de los derechos establecidos en el artículo 263. Si no estuviera reunido el Congreso, el Presidente de la República podrá dictar la misma disposición, lo que conllevará una convocatoria inmediata del mismo para ser informado de los acontecimientos y de las disposiciones tomadas;
  - g) Establecer las normas relativas a la migración y el régimen de extranjería;
  - h) Aumentar o reducir el número de las cortes de apelación y crear o suprimir tribunales y disponer todo lo relativo a su organización y competencia, previa consulta a la Suprema Corte de Justicia;
  - i) Votar anualmente la Ley de Presupuesto General del Estado, así como aprobar o rechazar los gastos extraordinarios para los cuales solicite un crédito el Poder Ejecutivo;
  - j) Legislar cuanto concierne a la deuda pública y aprobar o desaprobar los créditos y préstamos firmados por el Poder Ejecutivo, de conformidad con esta Constitución y las leyes;

- k) Aprobar o desaprobado los contratos que le someta el Presidente de la República, de conformidad con lo que dispone el artículo 128, numeral 2), literal d), así como las enmiendas o modificaciones posteriores que alteren las condiciones originalmente establecidas en dichos contratos al momento de su sanción legislativa;
  - l) Aprobar o desaprobado los tratados y convenciones internacionales que suscriba el Poder Ejecutivo;
  - m) Declarar por ley la necesidad de la Reforma Constitucional;
  - n) Conceder honores a ciudadanas y ciudadanos distinguidos que hayan prestado reconocidos servicios a la patria o a la humanidad;
  - ñ) Conceder autorización al Presidente de la República para salir al extranjero cuando sea por más de quince días;
  - o) Decidir el traslado de la sede de las cámaras legislativas por causa de fuerza mayor o por otras circunstancias debidamente motivadas;
  - p) Conceder amnistía por causas políticas;
  - q) Legislar acerca de toda materia que no sea de la competencia de otro poder del Estado y que no sea contraria a la Constitución;
  - r) Pronunciarse a través de resoluciones acerca de los problemas o las situaciones de orden nacional o internacional que sean de interés para la República.
2. Atribuciones en materia de fiscalización y control:
- a) Aprobar o rechazar el estado de recaudación e inversión de las rentas que debe presentarle el Poder Ejecutivo durante la primera legislatura ordinaria de cada año, tomando como base el informe de la Cámara de Cuentas;
  - b) Velar por la conservación y fructificación de los bienes nacionales en beneficio de la sociedad y aprobar o rechazar la enajenación de los bienes de dominio privado de la Nación, excepto lo que dispone el artículo 128, numeral 2, literal d);
  - c) Citar a ministros, viceministros, directores o administradores de organismos autónomos y descentralizados del Estado ante las comisiones permanentes del Congreso, para edificarlas

- sobre la ejecución presupuestaria y los actos de su administración;
- d) Examinar anualmente todos los actos del Poder Ejecutivo y aprobarlos, si son ajustados a la Constitución y a las leyes;
  - e) Nombrar comisiones permanentes y especiales, a instancia de sus miembros, para que investiguen cualquier asunto que resulte de interés público, y rindan el informe correspondiente;
  - f) Supervisar todas las políticas públicas que implemente el gobierno y sus instituciones autónomas y descentralizadas, sin importar su naturaleza y alcance.

**Artículo 94. Invitaciones a las cámaras.** Las cámaras legislativas, así como las comisiones permanentes y especiales que éstas constituyan, podrán invitar a ministros, viceministros, directores y demás funcionarios y funcionarias de la Administración Pública, así como a cualquier persona física o jurídica, para ofrecer información pertinente sobre los asuntos de los cuales se encuentren apoderadas.

**Párrafo.** La renuencia de las personas citadas a comparecer o a rendir las declaraciones requeridas, será sancionada por los tribunales penales de la República con la pena que señalen las disposiciones legales vigentes para los casos de desacato a las autoridades públicas, a requerimiento de la cámara correspondiente.

**Artículo 95. Interpelaciones.** Interpelar a los ministros y viceministros, al Gobernador del Banco Central y a los directores o administradores de organismos autónomos y descentralizados del Estado, así como a los de entidades que administren fondos públicos sobre asuntos de su competencia, cuando así lo acordaren la mayoría de los miembros presentes, a requerimiento de al menos tres legisladores, así como recabar información de otros funcionarios públicos competentes en la materia y dependientes de los anteriores.

**Párrafo.** Si el funcionario o funcionaria citado no compareciese sin causa justificada o se consideraran insatisfactorias sus declaraciones, las cámaras, con el voto de las dos terceras partes de sus miembros presentes, podrán emitir un voto de censura en su contra y recomendar su destitución del cargo

al Presidente de la República o al superior jerárquico correspondiente por incumplimiento de responsabilidad.

## **CAPÍTULO IV**

### **DE LA FORMACIÓN Y EFECTO DE LAS LEYES**

**Artículo 96. Iniciativa de ley.** Tienen derecho a iniciativa en la formación de las leyes:

1. Los senadores o senadoras y los diputados o diputadas;
2. El Presidente de la República;
3. La Suprema Corte de Justicia en asuntos judiciales;
4. La Junta Central Electoral en asuntos electorales.

**Párrafo.** Las y los legisladores que ejerzan el derecho a iniciativa en la formación de las leyes, pueden sostener su moción en la otra cámara. De igual manera, los demás que tienen este derecho pueden hacerlo en ambas cámaras personalmente o mediante un representante.

**Artículo 97. Iniciativa legislativa popular.** Se establece la iniciativa legislativa popular mediante la cual un número de ciudadanos y ciudadanas no menor del dos por ciento (2%) de los inscritos en el registro de electores, podrá presentar proyectos de ley ante el Congreso Nacional. Una ley especial establecerá el procedimiento y las restricciones para el ejercicio de esta iniciativa.

**Artículo 98. Discusiones legislativas.** Todo proyecto de ley admitido en una de las cámaras se someterá a dos discusiones distintas, con un intervalo de un día por lo menos entre una y otra discusión. En caso de que fuere declarado previamente de urgencia deberá ser discutido en dos sesiones consecutivas.

**Artículo 99. Trámite entre las cámaras.** Aprobado un proyecto de ley en una de las cámaras, pasará a la otra para su oportuna discusión, observando las mismas formalidades constitucionales. Si esta cámara le hace modificaciones, devolverá dicho proyecto modificado a la cámara en que se inició, para ser conocidas de nuevo en única discusión y, en caso de ser

aceptadas dichas modificaciones, esta última cámara enviará la ley al Poder Ejecutivo. Si aquéllas son rechazadas, será devuelto el proyecto a la otra cámara y si ésta las aprueba, enviará la ley al Poder Ejecutivo. Si las modificaciones son rechazadas, se considerará desechado el proyecto.

**Artículo 100. Efectos de las convocatorias extraordinarias.** Las convocatorias extraordinarias realizadas por el Poder Ejecutivo a las cámaras legislativas no surtirán efectos para los fines de la perención de los proyectos de ley en trámite.

**Artículo 101. Promulgación y publicación.** Toda ley aprobada en ambas cámaras será enviada al Poder Ejecutivo para su promulgación u observación. Si éste no la observare, la promulgará dentro de los diez días de recibida, si el asunto no fue declarado de urgencia, en cuyo caso la promulgará dentro de los cinco días de recibida, y la hará publicar dentro de los diez días a partir de la fecha de la promulgación. Vencido el plazo constitucional para la promulgación y publicación de las leyes sancionadas por el Congreso Nacional, se reputarán promulgadas y el Presidente de la cámara que las haya remitido al Poder Ejecutivo las publicará.

**Artículo 102. Observación a la ley.** Si el Poder Ejecutivo observa la ley que le fuere remitida, la devolverá a la cámara de donde procede en el término de diez días, a contar de la fecha en que fue recibida. Si el asunto fue declarado de urgencia, hará sus observaciones en el término de cinco días a partir de ser recibida. El Poder Ejecutivo remitirá sus observaciones indicando los artículos sobre los cuales recaen y motivando las razones de la observación. La cámara que hubiere recibido las observaciones las hará consignar en el orden del día de la próxima sesión y discutirá de nuevo la ley en única lectura. Si después de esta discusión, las dos terceras partes de los miembros presentes de dicha cámara la aprobaren de nuevo, será remitida a la otra cámara; y si ésta la aprobare por igual mayoría, se considerará definitivamente ley y se promulgará y publicará en los plazos establecidos en el artículo 101.

**Artículo 103. Plazo para conocer las observaciones del Poder Ejecutivo.** Toda ley observada por el Poder Ejecutivo al Congreso Nacional tiene un plazo de dos legislaturas ordinarias para decidirla, de lo contrario se considerará aceptada la observación.

**Artículo 104. Vigencia de un proyecto de ley.** Los proyectos de ley que queden pendientes en una de las dos cámaras al cerrarse la legislatura ordinaria, sin perjuicio de lo establecido en el artículo 100, seguirán los trámites constitucionales en la legislatura siguiente, hasta ser convertidos en ley o rechazados. Cuando no ocurra así, se considerará el proyecto como no iniciado.

**Artículo 105. Inclusión en el orden del día.** Todo proyecto de ley recibido en una cámara, después de ser aprobado en la otra, será incluido en el orden del día de la primera sesión que se celebre.

**Artículo 106. Extensión de las legislaturas.** Cuando se envíe una ley al Presidente de la República para su promulgación y el tiempo que falte para el término de la legislatura sea inferior al que se establece en el artículo 102 para observarla, seguirá abierta la legislatura para conocer de las observaciones, o se continuará el trámite en la legislatura siguiente sin perjuicio de lo dispuesto en el artículo 103.

**Artículo 107. Proyecto de ley rechazado.** Los proyectos de ley rechazados en una cámara no pueden presentarse en ninguna de las dos cámaras hasta la legislatura siguiente.

**Artículo 108. Encabezados de las leyes.** Las leyes y resoluciones bicamerales se encabezarán así: El Congreso Nacional. En nombre de la República.

**Artículo 109. Entrada en vigencia de las leyes.** Las leyes, después de promulgadas, se publicarán en la forma que la ley determine y se les dará la más amplia difusión posible. Serán obligatorias una vez transcurridos los plazos para que se reputen conocidas en todo el territorio nacional.

**Artículo 110. Irretroactividad de la ley.** La ley sólo dispone y se aplica para lo porvenir. No tiene efecto retroactivo sino cuando sea favorable al que esté subjúdice o cumpliendo condena. En ningún caso los poderes públicos o la ley podrán afectar o alterar la seguridad jurídica derivada de situaciones establecidas conforme a una legislación anterior.

**Artículo 111. Leyes de orden público.** Las leyes relativas al orden público, policía y la seguridad, obligan a todos los habitantes del territorio y no pueden ser derogadas por convenciones particulares.

**Artículo 112. Leyes orgánicas.** Las leyes orgánicas son aquellas que por su naturaleza regulan los derechos fundamentales; la estructura y organización de los poderes públicos; la función pública; el régimen electoral; el régimen económico financiero; el presupuesto, planificación e inversión pública; la organización territorial; los procedimientos constitucionales; la seguridad y defensa; las materias expresamente referidas por la Constitución y otras de igual naturaleza. Para su aprobación o modificación requerirán del voto favorable de las dos terceras partes de los presentes en ambas cámaras.

**Artículo 113. Leyes ordinarias.** Las leyes ordinarias son aquellas que por su naturaleza requieren para su aprobación la mayoría absoluta de los votos de los presentes de cada cámara.

## **CAPÍTULO V DE LA RENDICIÓN DE CUENTAS AL CONGRESO**

**Artículo 114. Rendición de cuentas del Presidente de la República.** Es responsabilidad del Presidente de la República rendir cuentas anualmente, ante el Congreso Nacional, de la administración presupuestaria, financiera y de gestión ocurrida en el año anterior, según lo establece el artículo 128, numeral 2, literal f) de esta Constitución, acompañada de un mensaje explicativo de las proyecciones macroeconómicas y fiscales, los resultados económicos, financieros y sociales esperados y las principales prioridades que el gobierno se propone ejecutar dentro de la Ley de Presupuesto General del Estado aprobada para el año en curso.

**Artículo 115. Regulación de procedimientos de control y fiscalización.** La ley regulará los procedimientos requeridos por las cámaras legislativas para el examen de los informes de la Cámara de Cuentas, el examen de los actos del Poder Ejecutivo, las invitaciones, las interpelaciones, el juicio político y los demás mecanismos de control establecidos por esta Constitución.

**Artículo 116. Rendición de informe Defensor del Pueblo.** El Defensor del Pueblo rendirá al Congreso Nacional el informe anual de su gestión, a más tardar treinta días antes del cierre de la primera legislatura ordinaria.



## CAPÍTULO VI DE LA ASAMBLEA NACIONAL Y DE LA REUNIÓN CONJUNTA DE AMBAS CÁMARAS

**Artículo 117. Conformación de la Asamblea Nacional.** El Senado y la Cámara de Diputados celebrarán sus sesiones de forma separada, excepto cuando se reúnan en Asamblea Nacional.

**Artículo 118. Quórum de la Asamblea Nacional.** Las cámaras se reunirán en Asamblea Nacional en los casos indicados en esta Constitución, debiendo estar presentes más de la mitad de los miembros de cada cámara. Sus decisiones se tomarán por mayoría absoluta de votos, excepto cuando se convoque para reformar la Constitución.

**Artículo 119. Bufete Directivo de la Asamblea Nacional.** La Asamblea Nacional o la Reunión Conjunta de ambas cámaras se rigen por su reglamento de organización y funcionamiento. En ambos casos asumirá la presidencia, el Presidente del Senado; la vicepresidencia, el Presidente de la Cámara de Diputados y la secretaría, los secretarios de cada cámara.

En caso de falta temporal o definitiva de la Presidenta o Presidente del Senado y mientras no haya sido elegido su sustituto por dicha Cámara Legislativa, presidirá la Asamblea Nacional o la Reunión Conjunta, la Presidenta o Presidente de la Cámara de Diputados.

En caso de falta temporal o definitiva de la Presidenta o Presidente de ambas cámaras, presidirá la Asamblea Nacional o la Reunión Conjunta, la Vicepresidenta o Vicepresidente del Senado y, en su defecto, la Vicepresidenta o Vicepresidente de la Cámara de Diputados.

**Artículo 120. Atribuciones de la Asamblea Nacional.** Corresponde a la Asamblea Nacional:

1. Conocer y decidir sobre las reformas constitucionales, actuando en este caso, como Asamblea Nacional Revisora;
2. Examinar las actas de elección de la Presidenta o Presidente y de la Vicepresidenta o Vicepresidente de la República;

3. Proclamar a la o al Presidente y Vicepresidente de la República, recibirles su juramento y aceptar o rechazar sus renunciaciones;
4. Ejercer las facultades que le confiere la presente Constitución y el reglamento orgánico.

**Artículo 121. Reunión Conjunta de las cámaras.** Las cámaras se reunirán conjuntamente para los casos siguientes:

1. Recibir el mensaje y la rendición de cuentas de la o el Presidente de la República y las memorias de los ministerios;
2. Celebrar actos conmemorativos o de naturaleza protocolar.

## TÍTULO IV DEL PODER EJECUTIVO

### CAPÍTULO I DEL PRESIDENTE Y VICEPRESIDENTE DE LA REPÚBLICA

#### SECCIÓN I DISPOSICIONES GENERALES

**Artículo 122. Presidente de la República.** El Poder Ejecutivo es ejercido en nombre del pueblo por la Presidenta o el Presidente de la República, en su condición de jefe de Estado y de gobierno de conformidad con lo dispuesto por esta Constitución y las leyes.

**Artículo 123. Requisitos para ser Presidente de la República.** Para ser Presidente de la República se requiere:

1. Ser dominicana o dominicano de nacimiento u origen;
2. Haber cumplido treinta años de edad;
3. Estar en pleno ejercicio de los derechos civiles y políticos;
4. No estar en el servicio militar o policial activo por lo menos durante los tres años previos a las elecciones presidenciales.

**Artículo 124. Elección presidencial.** El Poder Ejecutivo se ejerce por el o la Presidente de la República, quien será elegido cada cuatro años

por voto directo y no podrá ser electo para el período constitucional siguiente.

**Artículo 125. Vicepresidente de la República.** Habrá un o una Vicepresidente de la República, elegido conjuntamente con el Presidente, en la misma forma y por igual período. Para ser Vicepresidente de la República se requieren las mismas condiciones que para ser Presidente.

**Artículo 126. Juramentación del Presidente y del Vicepresidente de la República.** El Presidente y el Vicepresidente de la República elegidos en los comicios generales, prestarán juramento a sus cargos el día 16 de agosto siguiente a su elección, fecha en que termina el período de las autoridades salientes. En consecuencia:

1. Cuando el Presidente de la República no pueda juramentarse, por encontrarse fuera del país, por enfermedad o por cualquier otra causa de fuerza mayor, será juramentado el Vicepresidente de la República, quien ejercerá de forma interina las funciones de Presidente de la República, y a falta de éste, el Presidente de la Suprema Corte de Justicia. Una vez cese la causa que haya impedido al Presidente o al Vicepresidente electos asumir sus cargos, éstos serán juramentados y entrarán en funciones de inmediato;
2. Si el Presidente de la República electo faltare de forma definitiva sin prestar juramento a su cargo, y esa falta fuese así reconocida por la Asamblea Nacional, lo sustituirá el Vicepresidente de la República electo y a falta de éste, se procederá en la forma indicada precedentemente.

**Artículo 127. Juramento.** El o la Presidente y el o la Vicepresidente de la República electos, antes de entrar en funciones, prestarán ante la Asamblea Nacional, el siguiente juramento: “Juro ante Dios y ante el pueblo, por la Patria y por mi honor, cumplir y hacer cumplir la Constitución y las leyes de la República, proteger y defender su independencia, respetar los derechos y las libertades de los ciudadanos y ciudadanas y cumplir fielmente los deberes de mi cargo”.

## SECCIÓN II DE LAS ATRIBUCIONES

**Artículo 128. Atribuciones del Presidente de la República.** La o el Presidente de la República dirige la política interior y exterior, la administración civil y militar, y es la autoridad suprema de las Fuerzas Armadas, la Policía Nacional y los demás cuerpos de seguridad del Estado.

1. En su condición de Jefe de Estado le corresponde:
  - a. Presidir los actos solemnes de la Nación;
  - b. Promulgar y hacer publicar las leyes y resoluciones del Congreso Nacional y cuidar de su fiel ejecución. Expedir decretos, reglamentos e instrucciones cuando fuere necesario;
  - c. Nombrar o destituir los integrantes de las jurisdicciones militar y policial;
  - d. Celebrar y firmar tratados o convenciones internacionales y someterlos a la aprobación del Congreso Nacional, sin la cual no tendrán validez ni obligarán a la República;
  - e. Disponer, con arreglo a la ley, cuanto concierna a las Fuerzas Armadas y a la Policía Nacional, mandarlas por sí mismo, o a través del ministerio correspondiente, conservando siempre su mando supremo. Fijar el contingente de las mismas y disponer de ellas para fines del servicio público;
  - f. Tomar las medidas necesarias para proveer y garantizar la legítima defensa de la Nación, en caso de ataque armado actual o inminente por parte de nación extranjera o poderes externos, debiendo informar al Congreso Nacional sobre las disposiciones adoptadas y solicitar la declaratoria de Estado de Defensa si fuere procedente;
  - g. Declarar, si no se encontrare reunido el Congreso Nacional, los estados de excepción de conformidad con las disposiciones previstas en los artículos 262 al 266 de esta Constitución;
  - h. Adoptar las medidas provisionales de policía y seguridad necesarias en caso de violación de las disposiciones del artículo 62, numeral 6 de esta Constitución que perturben o amenacen el orden público, la seguridad del Estado, el funcionamiento

- regular de los servicios públicos o de utilidad pública, o impidan el desenvolvimiento de las actividades económicas y que no constituyan los hechos previstos en los artículos 262 al 266 de esta Constitución;
- i. Disponer, con arreglo a la ley, todo lo relativo a las zonas aéreas, marítimas, fluviales, terrestres, militares, y policiales en materia de seguridad nacional, con los estudios previos realizados por los ministerios y sus dependencias administrativas;
  - j. Conceder indultos los días 27 de febrero, 16 de agosto y 23 de diciembre de cada año, de conformidad con la ley y las convenciones internacionales;
  - k. Hacer arrestar o expulsar, conforme a la ley, a los extranjeros cuyas actividades fueren o pudieren ser perjudiciales al orden público o la seguridad nacional;
  - l. Prohibir, cuando resulte conveniente al interés público, la entrada de extranjeros al territorio nacional.
2. En su condición de Jefe de Gobierno tiene la facultad de:
- a. Nombrar los ministros y viceministros y demás funcionarios públicos que ocupen cargos de libre nombramiento o cuya designación no se atribuya a ningún otro organismo del Estado reconocido por esta Constitución o por las leyes, así como aceptarles su renuncia y removerlos;
  - b. Designar los y las titulares de los órganos y organismos autónomos y descentralizados del Estado, así como aceptarles su renuncia y removerlos, de conformidad con la ley;
  - c. Cambiar el lugar de su residencia oficial cuando lo juzgue necesario;
  - d. Celebrar contratos, sometiéndolos a la aprobación del Congreso Nacional cuando contengan disposiciones relativas a la afectación de las rentas nacionales, a la enajenación de bienes del Estado, al levantamiento de empréstitos o cuando estipulen exenciones de impuestos en general, de acuerdo con la Constitución. El monto máximo para que dichos contratos y exenciones puedan ser suscritos por el Presidente de la República sin aprobación congresual, será de doscientos salarios mínimos del sector público;

- e. Velar por la buena recaudación y fiel inversión de las rentas nacionales;
  - f. Depositar ante el Congreso Nacional, al iniciarse la primera legislatura ordinaria el 27 de febrero de cada año, las memorias de los ministerios y rendir cuenta de su administración del año anterior;
  - g. Someter al Congreso Nacional, a más tardar el primero de octubre de cada año, el Proyecto de Ley de Presupuesto General del Estado para el año siguiente.
3. Como Jefe de Estado y de Gobierno le corresponde:
- a. Designar, con la aprobación del Senado de la República, los embajadores acreditados en el exterior y los jefes de misiones permanentes ante organismos internacionales, así como nombrar los demás miembros del cuerpo diplomático, de conformidad con la Ley de Servicio Exterior, aceptarles su renuncia y removerlos;
  - b. Dirigir las negociaciones diplomáticas y recibir a los Jefes de Estado extranjeros y a sus representantes;
  - c. Conceder o no autorización a los ciudadanos dominicanos para que puedan ejercer cargos o funciones públicas de un gobierno u organizaciones internacionales en territorio dominicano, y para que puedan aceptar y usar condecoraciones y títulos otorgados por gobiernos extranjeros;
  - d. Autorizar o no a los ayuntamientos a enajenar inmuebles y aprobar o no los contratos que hagan, cuando constituyan en garantía inmuebles o rentas municipales;
  - e. Las demás atribuciones previstas en la Constitución y las leyes.

### **SECCIÓN III DE LA SUCESIÓN PRESIDENCIAL**

**Artículo 129. Sucesión presidencial.** La sucesión presidencial se regirá por las siguientes normas:

- 1. En caso de falta temporal del Presidente de la República asumirá el Poder Ejecutivo el Vicepresidente de la República;

2. En caso de falta definitiva del Presidente de la República, el Vicepresidente asumirá la Presidencia de la República por el tiempo que falte para la terminación del período presidencial;
3. A falta definitiva de ambos, asumirá el Poder Ejecutivo interinamente el Presidente de la Suprema Corte de Justicia quien, dentro de los quince días que sigan a la fecha de haber asumido estas funciones, convocará a la Asamblea Nacional para que se reúna dentro de los quince días siguientes y elija a los nuevos Presidente y Vicepresidente de la República, en una sesión que no podrá clausurarse ni declararse en receso hasta haber realizado la elección;
4. En el caso de que, por cualquier circunstancia, no pudiese hacerse tal convocatoria, la Asamblea Nacional se reunirá de pleno derecho, inmediatamente, para llevar a cabo la elección en la forma indicada precedentemente;
5. La elección se hará mediante el voto favorable de más de la mitad de los asambleístas presentes;
6. Los sustitutos del Presidente y Vicepresidente de la República serán escogidos de las ternas que presente a la Asamblea Nacional el organismo superior del partido político que lo postuló, de conformidad con sus estatutos, en el plazo previsto en el numeral 3) de este artículo. Vencido el plazo sin que el partido haya presentado las ternas, la Asamblea Nacional realizará la elección.

**Artículo 130. Sucesión vicepresidencial.** En caso de falta definitiva del Vicepresidente de la República, antes o después de su juramentación, el Presidente de la República, en un plazo de treinta días, presentará una terna a la Asamblea Nacional para su elección. Vencido el plazo sin que el Presidente haya presentado la terna, la Asamblea Nacional realizará la elección.

#### SECCIÓN IV DISPOSICIONES ESPECIALES

**Artículo 131. Autorización para viajar al extranjero.** El o la Presidente de la República no puede viajar al extranjero por más de quince días sin autorización del Congreso Nacional.

**Artículo 132. Renuncia.** El o la Presidente y el Vicepresidente de la República sólo pueden renunciar ante la Asamblea Nacional.

**Artículo 133. Inmunidad a la privación de libertad.** Sin perjuicio de lo dispuesto por el artículo 80, numeral 1) de esta Constitución, el o la Presidente y el Vicepresidente de la República, electos o en funciones, no pueden ser privados de su libertad.

## **CAPÍTULO II DE LOS MINISTERIOS**

**Artículo 134. Ministerios de Estado.** Para el despacho de los asuntos de gobierno habrá los ministerios que sean creados por ley. Cada ministerio estará a cargo de un ministro y contará con los viceministros que se consideren necesarios para el despacho de sus asuntos.

**Artículo 135. Requisitos para ser ministro o viceministro.** Para ser ministro o viceministro se requiere ser dominicana o dominicano en pleno ejercicio de los derechos civiles y políticos y haber cumplido la edad de veinticinco años. Las personas naturalizadas sólo pueden ser ministros o viceministros diez años después de haber adquirido la nacionalidad dominicana. Los ministros y viceministros no pueden ejercer ninguna actividad profesional o mercantil que pudiese generar conflictos de intereses.

**Artículo 136. Atribuciones.** La ley determinará las atribuciones de los ministros y viceministros.

## **SECCIÓN I DEL CONSEJO DE MINISTROS**

**Artículo 137. Consejo de Ministros.** El Consejo de Ministros es el órgano de coordinación de los asuntos generales de gobierno y tiene como finalidad organizar y agilizar el despacho de los aspectos de la Administración Pública en beneficio de los intereses generales de la Nación y al servicio de la ciudadanía. Estará integrado por el Presidente de la República, quien lo presidirá; el Vicepresidente de la República y los ministros.



### **CAPÍTULO III DE LA ADMINISTRACIÓN PÚBLICA**

**Artículo 138. Principios de la Administración Pública.** La Administración Pública está sujeta en su actuación a los principios de eficacia, jerarquía, objetividad, igualdad, transparencia, economía, publicidad y coordinación, con sometimiento pleno al ordenamiento jurídico del Estado. La ley regulará:

1. El estatuto de los funcionarios públicos, el acceso a la función pública con arreglo al mérito y capacidad de los candidatos, la formación y capacitación especializada, el régimen de incompatibilidades de los funcionarios que aseguren su imparcialidad en el ejercicio de las funciones legalmente conferidas;
2. El procedimiento a través del cual deben producirse las resoluciones y actos administrativos, garantizando la audiencia de las personas interesadas, con las excepciones que establezca la ley.

**Artículo 139. Control de legalidad de la Administración Pública.** Los tribunales controlarán la legalidad de la actuación de la Administración Pública. La ciudadanía puede requerir ese control a través de los procedimientos establecidos por la ley.

**Artículo 140. Regulación incremento remuneraciones.** Ninguna institución pública o entidad autónoma que maneje fondos públicos establecerá normas o disposiciones tendentes a incrementar la remuneración o beneficios a sus incumbentes o directivos, sino para un período posterior al que fueron electos o designados. La inobservancia de esta disposición será sancionada de conformidad con la ley.

#### **SECCIÓN I DE LOS ORGANISMOS AUTÓNOMOS Y DESCENTRALIZADOS DEL ESTADO**

**Artículo 141. Organismos autónomos y descentralizados.** La ley creará organismos autónomos y descentralizados en el Estado, provistos de personalidad jurídica, con autonomía administrativa, financiera y técnica. Estos organismos estarán adscritos al sector de la administración compatible con

su actividad, bajo la vigilancia de la ministra o ministro titular del sector. La ley y el Poder Ejecutivo regularán las políticas de desconcentración de los servicios de la administración pública.

## SECCIÓN II DEL ESTATUTO DE LA FUNCIÓN PÚBLICA

**Artículo 142. Función Pública.** El Estatuto de la Función Pública es un régimen de derecho público basado en el mérito y la profesionalización para una gestión eficiente y el cumplimiento de las funciones esenciales del Estado. Dicho estatuto determinará la forma de ingreso, ascenso, evaluación del desempeño, permanencia y separación del servidor público de sus funciones.

**Artículo 143. Régimen estatutario.** La ley determinará el régimen estatutario requerido para la profesionalización de las diferentes instituciones de la Administración Pública.

**Artículo 144. Régimen de compensación.** Ningún funcionario o empleado del Estado puede desempeñar, de forma simultánea, más de un cargo remunerado, salvo la docencia. La ley establecerá las modalidades de compensación de las y los funcionarios y empleados del Estado, de acuerdo con los criterios de mérito y características de la prestación del servicio.

**Artículo 145. Protección de la Función Pública.** La separación de servidores públicos que pertenezcan a la Carrera Administrativa en violación al régimen de la Función Pública, será considerada como un acto contrario a la Constitución y a la ley.

**Artículo 146. Proscripción de la corrupción.** Se condena toda forma de corrupción en los órganos del Estado. En consecuencia:

1. Será sancionada con las penas que la ley determine, toda persona que sustraiga fondos públicos o que prevaliéndose de sus posiciones dentro de los órganos y organismos del Estado, sus dependencias o instituciones autónomas, obtenga para sí o para terceros provecho económico;

2. De igual forma será sancionada la persona que proporcione ventajas a sus asociados, familiares, allegados, amigos o relacionados;
3. Es obligatoria, de acuerdo con lo dispuesto por la ley, la declaración jurada de bienes de las y los funcionarios públicos, a quienes corresponde siempre probar el origen de sus bienes, antes y después de haber finalizado sus funciones o a requerimiento de autoridad competente;
4. A las personas condenadas por delitos de corrupción les será aplicada, sin perjuicio de otras sanciones previstas por las leyes, la pena de degradación cívica, y se les exigirá la restitución de lo apropiado de manera ilícita;
5. La ley podrá disponer plazos de prescripción de mayor duración que los ordinarios para los casos de crímenes de corrupción y un régimen de beneficios procesales restrictivo.

### **SECCIÓN III DE LOS SERVICIOS PÚBLICOS**

**Artículo 147. Finalidad de los servicios públicos.** Los servicios públicos están destinados a satisfacer las necesidades de interés colectivo. Serán declarados por ley. En consecuencia:

1. El Estado garantiza el acceso a servicios públicos de calidad, directamente o por delegación, mediante concesión, autorización, asociación en participación, transferencia de la propiedad accionaria u otra modalidad contractual, de conformidad con esta Constitución y la ley;
2. Los servicios públicos prestados por el Estado o por los particulares, en las modalidades legales o contractuales, deben responder a los principios de universalidad, accesibilidad, eficiencia, transparencia, responsabilidad, continuidad, calidad, razonabilidad y equidad tarifaria;
3. La regulación de los servicios públicos es facultad exclusiva del Estado. La ley podrá establecer que la regulación de estos servicios y de otras actividades económicas se encuentre a cargo de organismos creados para tales fines.

#### SECCIÓN IV

### DE LA RESPONSABILIDAD CIVIL DE LAS ENTIDADES PÚBLICAS, SUS FUNCIONARIOS O AGENTES

**Artículo 148. Responsabilidad civil.** Las personas jurídicas de derecho público y sus funcionarios o agentes serán responsables, conjunta y solidariamente, de conformidad con la ley, por los daños y perjuicios ocasionados a las personas físicas o jurídicas por una actuación u omisión administrativa antijurídica.

#### TÍTULO V

### DEL PODER JUDICIAL

**Artículo 149. Poder Judicial.** La justicia se administra gratuitamente, en nombre de la República, por el Poder Judicial. Este poder se ejerce por la Suprema Corte de Justicia y los demás tribunales creados por esta Constitución y por las leyes.

**Párrafo I.** La función judicial consiste en administrar justicia para decidir sobre los conflictos entre personas físicas o morales, en derecho privado o público, en todo tipo de procesos, juzgando y haciendo ejecutar lo juzgado. Su ejercicio corresponde a los tribunales y juzgados determinados por la ley. El Poder Judicial goza de autonomía funcional, administrativa y presupuestaria.

**Párrafo II.** Los tribunales no ejercerán más funciones que las que les atribuyan la Constitución y las leyes.

**Párrafo III.** Toda decisión emanada de un tribunal podrá ser recurrida ante un tribunal superior, sujeto a las condiciones y excepciones que establezcan las leyes.

**Artículo 150. Carrera judicial.** La ley regulará el estatuto jurídico de la carrera judicial, el ingreso, formación, ascenso, promoción, desvinculación y retiro del juez, con arreglo a los principios de mérito, capacidad y profesionalidad; así como el régimen de jubilaciones y pensiones de los jueces, funcionarios y empleados del orden judicial.

**Párrafo I.** La ley también regulará la Escuela Nacional de la Judicatura, que tendrá por función la formación inicial de los y las aspirantes a jueces, asegurando su capacitación técnica.

**Párrafo II.** Para ser designado juez del Poder Judicial, todo aspirante debe someterse a un concurso público de méritos mediante el sistema de ingreso a la Escuela Nacional de la Judicatura que al efecto establezca la ley y haber aprobado satisfactoriamente el programa de formación de dicha escuela. Sólo estarán exentos de estos requisitos los miembros de la Suprema Corte de Justicia que sean de libre elección.

**Artículo 151. Independencia del Poder Judicial.** Las y los jueces integrantes del Poder Judicial son independientes, imparciales, responsables e inamovibles y están sometidos a la Constitución y a las leyes. No podrán ser removidos, separados, suspendidos, trasladados o jubilados, sino por alguna de las causas establecidas y con las garantías previstas en la ley.

1. La ley establecerá el régimen de responsabilidad y rendición de cuentas de jueces y funcionarios del Poder Judicial. El servicio en el Poder Judicial es incompatible con cualquier otra función pública o privada, excepto la docente. Sus integrantes no podrán optar por ningún cargo electivo público, ni participar en actividad político partidista;
2. La edad de retiro obligatoria para los jueces de la Suprema Corte de Justicia es de setenta y cinco años. Para los demás jueces, funcionarios y empleados del Poder Judicial se establecerá de acuerdo con la ley que rige la materia.

## **CAPÍTULO I DE LA SUPREMA CORTE DE JUSTICIA**

**Artículo 152. Integración.** La Suprema Corte de Justicia es el órgano jurisdiccional superior de todos los organismos judiciales. Estará integrada por no menos de dieciséis jueces y podrá reunirse, deliberar y fallar válidamente con el quórum determinado por la ley que establece su organización. Estará dividida en salas, de conformidad con la ley.

**Artículo 153. Requisitos.** Para ser juez o jueza de la Suprema Corte e Justicia se requiere:

1. Ser dominicana o dominicano de nacimiento u origen y tener más de treinta y cinco años de edad;
2. Hallarse en pleno ejercicio de los derechos civiles y políticos;
3. Ser licenciado o doctor en Derecho;
4. Haber ejercido durante por lo menos doce años la profesión de abogado, la docencia universitaria del derecho o haber desempeñado, por igual tiempo, las funciones de juez dentro del Poder Judicial o de representante del Ministerio Público. Estos períodos podrán acumularse.

**Artículo 154. Atribuciones.** Corresponde exclusivamente a la Suprema Corte de Justicia, sin perjuicio de las demás atribuciones que le confiere la ley:

1. Conocer en única instancia de las causas penales seguidas al Presidente y al Vicepresidente de la República; a senadores, diputados; jueces de la Suprema Corte de Justicia, del Tribunal Constitucional; ministros y viceministros; Procurador General de la República, jueces y procuradores generales de las cortes de apelación o equivalentes; jueces de los tribunales superiores de tierras, de los tribunales superiores administrativos y del Tribunal Superior Electoral; al Defensor del Pueblo; a miembros del Cuerpo Diplomático y jefes de misiones acreditados en el exterior; miembros de la Junta Central Electoral, de la Cámara de Cuentas y de la Junta Monetaria;
2. Conocer de los recursos de casación de conformidad con la ley;
3. Conocer, en último recurso, de las causas cuyo conocimiento en primera instancia sea competencia de las cortes de apelación y sus equivalentes;
4. Designar, de conformidad con la Ley de Carrera Judicial, los jueces de las cortes de apelación o sus equivalentes, de los juzgados de primera instancia o sus equivalentes, los jueces de la instrucción, los jueces de paz y sus suplentes, los jueces de cualesquiera otros tribunales del Poder Judicial creados por la Constitución y las leyes.

## CAPÍTULO II DEL CONSEJO DEL PODER JUDICIAL

**Artículo 155. Integración.** El Consejo del Poder Judicial estará integrado de la forma siguiente:

1. El Presidente de la Suprema Corte de Justicia, quien lo presidirá;
2. Un Juez de la Suprema Corte de Justicia, elegido por el pleno de la misma;
3. Un Juez de Corte de Apelación o su equivalente, elegido por sus pares;
4. Un Juez de Primera Instancia o su equivalente, elegido por sus pares;
5. Un Juez de Paz o su equivalente, elegido por sus pares.

**Párrafo I.** Los integrantes de este consejo, con excepción del Presidente de la Suprema Corte de Justicia, permanecerán en estas funciones por cinco años, cesarán en el ejercicio de sus funciones jurisdiccionales mientras sean miembros de dicho consejo y no podrán optar por un nuevo período en el consejo.

**Párrafo II.** La ley definirá el funcionamiento y organización de este consejo.

**Artículo 156. Funciones.** El Consejo del Poder Judicial es el órgano permanente de administración y disciplina del Poder Judicial. Tendrá las siguientes funciones:

1. Presentar al pleno de la Suprema Corte de Justicia los candidatos o candidatas para nombramiento, determinación de jerarquía y ascenso de los jueces de los diferentes tribunales del Poder Judicial, de conformidad con la ley;
2. La administración financiera y presupuestaria del Poder Judicial;
3. El control disciplinario sobre jueces, funcionarios y empleados del Poder Judicial con excepción de los integrantes de la Suprema Corte de Justicia;
4. La aplicación y ejecución de los instrumentos de evaluación del desempeño de jueces y personal administrativo que integran el Poder Judicial;

5. El traslado de los jueces del Poder Judicial;
6. La creación de los cargos administrativos del Poder Judicial;
7. El nombramiento de todos los funcionarios y empleados que dependan del Poder Judicial;
8. Las demás funciones que le confiera la ley.

### **CAPÍTULO III DE LA ORGANIZACIÓN JUDICIAL**

#### **SECCIÓN I DE LAS CORTES DE APELACIÓN**

**Artículo 157. Cortes de apelación.** Habrá las cortes de apelación y sus equivalentes que determine la ley, así como el número de jueces que deban componerla y su competencia territorial.

**Artículo 158. Requisitos.** Para ser juez de una Corte de Apelación se requiere:

1. Ser dominicano o dominicana;
2. Hallarse en el pleno ejercicio de los derechos civiles y políticos;
3. Ser licenciado o doctor en Derecho;
4. Pertenecer a la carrera judicial y haberse desempeñado como juez de Primera Instancia durante el tiempo que determine la ley.

**Artículo 159. Atribuciones.** Son atribuciones de las cortes de apelación:

1. Conocer de las apelaciones a las sentencias, de conformidad con la ley;
2. Conocer en primera instancia de las causas penales seguidas a jueces de primera instancia o sus equivalentes; procuradores fiscales, titulares de órganos y organismos autónomos y descentralizados del Estado, gobernadores provinciales, alcaldes del Distrito Nacional y de los municipios;
3. Conocer de los demás asuntos que determinen las leyes.



## SECCIÓN II DE LOS JUZGADOS DE PRIMERA INSTANCIA

**Artículo 160. Juzgados de primera instancia.** Habrá los juzgados de primera instancia o sus equivalentes, con el número de jueces y la competencia territorial que determine la ley.

**Artículo 161. Requisitos.** Para ser juez de primera instancia se requiere:

1. Ser dominicano o dominicana;
2. Hallarse en el pleno ejercicio de los derechos civiles y políticos;
3. Ser licenciado o doctor en Derecho;
4. Pertener a la carrera judicial y haberse desempeñado como Juez de Paz durante el tiempo que determine la ley.

## SECCIÓN III DE LOS JUZGADOS DE PAZ

**Artículo 162. Juzgados de paz.** La ley determinará el número de juzgados de paz o sus equivalentes, sus atribuciones, competencia territorial y la forma como estarán organizados.

**Artículo 163. Requisitos.** Para ser juez de paz se requiere:

1. Ser dominicano o dominicana;
2. Hallarse en el pleno ejercicio de los derechos civiles y políticos;
3. Ser licenciado o doctor en Derecho.

## CAPÍTULO IV DE LAS JURISDICCIONES ESPECIALIZADAS

### SECCIÓN I DE LA JURISDICCIÓN CONTENCIOSO ADMINISTRATIVA

**Artículo 164. Integración.** La Jurisdicción Contencioso Administrativa estará integrada por tribunales superiores administrativos y tribunales contencioso administrativos de primera instancia. Sus atribuciones, integración, ubicación,

competencia territorial y procedimientos serán determinados por la ley. Los tribunales superiores podrán dividirse en salas y sus decisiones son susceptibles de ser recurribles en casación.

**Párrafo I.** Las y los jueces de los tribunales superiores administrativos deberán reunir los mismos requisitos exigidos a los jueces de cortes de apelación.

**Párrafo II.** Las y los jueces de los tribunales contencioso administrativos deberán reunir los mismos requisitos exigidos a los jueces de primera instancia.

**Artículo 165. Atribuciones.** Son atribuciones de los tribunales superiores administrativos, sin perjuicio de las demás dispuestas por la ley, las siguientes:

1. Conocer de los recursos contra las decisiones en asuntos administrativos, tributarios, financieros y municipales de cualquier tribunal contencioso administrativo de primera instancia, o que en esencia tenga ese carácter;
2. Conocer de los recursos contenciosos contra los actos, actuaciones y disposiciones de autoridades administrativas contrarias al Derecho como consecuencia de las relaciones entre la Administración del Estado y los particulares, si éstos no son conocidos por los tribunales contencioso administrativos de primera instancia;
3. Conocer y resolver en primera instancia o en apelación, de conformidad con la ley, las acciones contencioso administrativas que nazcan de los conflictos surgidos entre la Administración Pública y sus funcionarios y empleados civiles;
4. Las demás atribuciones conferidas por la ley.

**Artículo 166. Procurador General Administrativo.** La Administración Pública estará representada permanentemente ante la Jurisdicción Contencioso Administrativa por el Procurador General Administrativo y, si procede, por los abogados que ésta designe. El Procurador General Administrativo será designado por el Poder Ejecutivo. La ley regulará la representación de los demás órganos y organismos del Estado.

**Artículo 167. Requisitos.** El Procurador General Administrativo deberá reunir las mismas condiciones requeridas para ser Procurador General de Corte de Apelación.

## SECCIÓN II JURISDICCIONES ESPECIALIZADAS

**Artículo 168. Jurisdicciones especializadas.** La ley dispondrá de la creación de jurisdicciones especializadas cuando así lo requieran razones de interés público o de eficiencia del servicio para el tratamiento de otras materias.

## CAPÍTULO V DEL MINISTERIO PÚBLICO

**Artículo 169. Definición y funciones.** El Ministerio Público es el órgano del sistema de justicia responsable de la formulación e implementación de la política del Estado contra la criminalidad, dirige la investigación penal y ejerce la acción pública en representación de la sociedad.

**Párrafo I.** En el ejercicio de sus funciones, el Ministerio Público garantizará los derechos fundamentales que asisten a ciudadanos y ciudadanas, promoverá la resolución alternativa de disputas, dispondrá la protección de víctimas y testigos y defenderá el interés público tutelado por la ley.

**Párrafo II.** La ley regulará el funcionamiento del sistema penitenciario bajo la dirección del Ministerio Público u otro organismo que a tal efecto se constituya.

**Artículo 170. Autonomía y principios de actuación.** El Ministerio Público goza de autonomía funcional, administrativa y presupuestaria. Ejerce sus funciones conforme a los principios de legalidad, objetividad, unidad de actuaciones, jerarquía, indivisibilidad y responsabilidad.

## SECCIÓN I DE LA INTEGRACIÓN

**Artículo 171. Designación y requisitos.** El Presidente de la República designará al Procurador General de la República y la mitad de sus procuradores adjuntos. Para ser Procurador General de la República o adjunto se requieren los mismos requisitos que para ser juez de la Suprema Corte de Justicia. La ley dispondrá la forma de designación de los demás integrantes del Ministerio Público.

**Artículo 172. Integración e incompatibilidades.** El Ministerio Público está integrado por el Procurador General de la República, quien lo dirige, y por las y los demás representantes establecidos por la ley.

**Párrafo I.** El Ministerio Público estará representado ante la Suprema Corte de Justicia por el Procurador General de la República y por las y los procuradores adjuntos, de conformidad con la ley. Su representación ante las demás instancias judiciales será dispuesta por ley.

**Párrafo II.** La función de representante del Ministerio Público es incompatible con cualquier otra función pública o privada, excepto la docente y, mientras permanezcan en el ejercicio de sus funciones, no podrán optar por ningún cargo electivo público ni participar en actividad político partidista.

## SECCIÓN II DE LA CARRERA DEL MINISTERIO PÚBLICO

**Artículo 173. Sistema de carrera.** El Ministerio Público se organiza conforme a la ley, que regula su inamovilidad, régimen disciplinario y los demás preceptos que rigen su actuación, su escuela de formación y sus órganos de gobierno, garantizando la permanencia de sus miembros de carrera hasta los setenta y cinco años.

## SECCIÓN III DEL CONSEJO SUPERIOR DEL MINISTERIO PÚBLICO

**Artículo 174. Integración.** El órgano de gobierno interno del Ministerio Público es el Consejo Superior del Ministerio Público, el cual estará integrado de la manera siguiente:

1. El Procurador General de la República, quien lo presidirá;
2. Un Procurador Adjunto del Procurador General de la República elegido por sus pares;
3. Un Procurador General de Corte de Apelación elegido por sus pares;
4. Un Procurador Fiscal o su equivalente elegido por sus pares;
5. Un Fiscalizador elegido por sus pares.

**Párrafo.** La ley definirá el funcionamiento y organización de este consejo.

**Artículo 175. Funciones.** Las funciones del Consejo Superior del Ministerio Público son las siguientes:

1. Dirigir y administrar el sistema de la carrera del Ministerio Público;
2. La administración financiera y presupuestaria del Ministerio Público;
3. Ejercer el control disciplinario sobre representantes, funcionarios y empleados del Ministerio Público, con excepción del Procurador General de la República;
4. Formular y aplicar los instrumentos de evaluación de los representantes del Ministerio Público y del personal administrativo que lo integran;
5. Trasladar a representantes del Ministerio Público, provisional o definitivamente, de una jurisdicción a otra cuando sea necesario y útil al servicio, con las condiciones y garantías previstas en la ley, con excepción de las y los procuradores adjuntos del Procurador General de la República;
6. Crear los cargos administrativos que sean necesarios para que el Ministerio Público pueda cumplir las atribuciones que le confieren esta Constitución y las leyes;
7. Las demás funciones que le confiera la ley.

## CAPÍTULO VI DE LA DEFENSA PÚBLICA Y LA ASISTENCIA LEGAL GRATUITA

**Artículo 176. Defensa Pública.** El servicio de Defensa Pública es un órgano del sistema de justicia dotado de autonomía administrativa y funcional, que tiene por finalidad garantizar la tutela efectiva del derecho fundamental a la defensa en las distintas áreas de su competencia. El

servicio de Defensa Pública se ofrecerá en todo el territorio nacional atendiendo a los criterios de gratuidad, fácil acceso, igualdad, eficiencia y calidad, para las personas imputadas que por cualquier causa no estén asistidas por abogado. La Ley de Defensa Pública regirá el funcionamiento de esta institución.

**Artículo 177. Asistencia legal gratuita.** El Estado será responsable de organizar programas y servicios de asistencia legal gratuita a favor de las personas que carezcan de los recursos económicos para obtener una representación judicial de sus intereses, particularmente para la protección de los derechos de la víctima, sin perjuicio de las atribuciones que correspondan al Ministerio Público en el ámbito del proceso penal.

## **TÍTULO VI DEL CONSEJO NACIONAL DE LA MAGISTRATURA**

**Artículo 178. Integración.** El Consejo Nacional de la Magistratura estará integrado por:

1. El Presidente de la República, quien lo presidirá y, en su ausencia, por el Vicepresidente de la República;
2. El Presidente del Senado;
3. Un senador o senadora escogido por el Senado que pertenezca al partido o bloque de partidos diferente al del Presidente del Senado y que ostente la representación de la segunda mayoría;
4. El Presidente de la Cámara de Diputados;
5. Un diputado o diputada escogido por la Cámara de Diputados que pertenezca al partido o bloque de partidos diferente al del Presidente de la Cámara de Diputados y que ostente la representación de la segunda mayoría;
6. El Presidente de la Suprema Corte de Justicia;
7. Un magistrado o magistrada de la Suprema Corte de Justicia escogido por ella misma, quien fungirá de secretario;
8. El Procurador General de la República.

**Artículo 179. Funciones.** El Consejo Nacional de la Magistratura tendrá las siguientes funciones:

1. Designar los jueces de la Suprema Corte de Justicia;
2. Designar los jueces del Tribunal Constitucional;
3. Designar los jueces del Tribunal Superior Electoral y sus suplentes;
4. Evaluar el desempeño de los jueces de la Suprema Corte de Justicia.

**Artículo 180. Criterios para la escogencia.** El Consejo Nacional de la Magistratura al conformar la Suprema Corte de Justicia deberá seleccionar las tres cuartas partes de sus miembros de jueces que pertenezcan al sistema de carrera judicial, y la cuarta parte restante los escogerá de profesionales del derecho, académicos o miembros del Ministerio Público.

**Párrafo I.** El Consejo Nacional de la Magistratura, al designar las y los jueces de la Suprema Corte de Justicia, dispondrá cuál de ellos ocupará la presidencia y designará un primer y segundo sustitutos para reemplazar al Presidente en caso de falta o impedimento. El Presidente y sus sustitutos ejercerán esas funciones por un período de siete años, al término del cual, y previa evaluación de su desempeño realizada por el Consejo Nacional de la Magistratura, podrán ser elegidos por un nuevo período.

**Párrafo II.** En caso de vacante de un juez investido con una de las calidades arriba expresadas, el Consejo Nacional de la Magistratura designará a un nuevo juez con igual calidad o atribuirá ésta a otro de los jueces de la Suprema Corte de Justicia.

**Artículo 181. Evaluación de desempeño.** Los jueces de la Suprema Corte de Justicia estarán sujetos a la evaluación de su desempeño al término de siete años a partir de su elección, por el Consejo Nacional de la Magistratura. En los casos en que el Consejo Nacional de la Magistratura decidiera la pertinencia de separar un juez de su cargo, deberá sustentar su decisión en los motivos contenidos en la ley que rige la materia.

**Artículo 182. Escogencia jueces Tribunal Constitucional.** El Consejo Nacional de la Magistratura al conformar el Tribunal Constitucional dispondrá cuál de ellos ocupará la presidencia y designará un primer y segundo sustitutos para reemplazar al Presidente, en caso de falta o impedimento.

**Artículo 183. Escogencia jueces Tribunal Superior Electoral.** El Consejo Nacional de la Magistratura al designar los jueces y sus suplentes del Tribunal Superior Electoral dispondrá cuál de ellos ocupará la presidencia.

## **TÍTULO VII DEL CONTROL CONSTITUCIONAL**

**Artículo 184. Tribunal Constitucional.** Habrá un Tribunal Constitucional para garantizar la supremacía de la Constitución, la defensa del orden constitucional y la protección de los derechos fundamentales. Sus decisiones son definitivas e irrevocables y constituyen precedentes vinculantes para los poderes públicos y todos los órganos del Estado. Gozará de autonomía administrativa y presupuestaria.

**Artículo 185. Atribuciones.** El Tribunal Constitucional será competente para conocer en única instancia:

1. Las acciones directas de inconstitucionalidad contra las leyes, decretos, reglamentos, resoluciones y ordenanzas, a instancia del Presidente de la República, de una tercera parte de los miembros del Senado o de la Cámara de Diputados y de cualquier persona con interés legítimo y jurídicamente protegido;
2. El control preventivo de los tratados internacionales antes de su ratificación por el órgano legislativo;
3. Los conflictos de competencia entre los poderes públicos, a instancia de uno de sus titulares;
4. Cualquier otra materia que disponga la ley.

**Artículo 186. Integración y decisiones.** El Tribunal Constitucional estará integrado por trece miembros y sus decisiones se adoptarán con una mayoría calificada de nueve o más de sus miembros. Los jueces que hayan emitido un voto disidente podrán hacer valer sus motivaciones en la decisión adoptada.

**Artículo 187. Requisitos y renovación.** Para ser juez del Tribunal Constitucional se requieren las mismas condiciones exigidas para los jueces de la Suprema Corte de Justicia. Sus integrantes serán inamovibles durante el tiempo de su mandato. La condición de juez sólo se pierde por muerte,



renuncia o destitución por faltas graves en el ejercicio de sus funciones, en cuyo caso se podrá designar una persona para completar el período.

**Párrafo.** Los jueces de este tribunal serán designados por un único período de nueve años. No podrán ser reelegidos, salvo los que en calidad de reemplazantes hayan ocupado el cargo por un período menor de cinco años. La composición del Tribunal se renovará de manera gradual cada tres años.

**Artículo 188. Control difuso.** Los tribunales de la República conocerán la excepción de constitucionalidad en los asuntos sometidos a su conocimiento.

**Artículo 189. Regulación del Tribunal.** La ley regulará los procedimientos constitucionales y lo relativo a la organización y al funcionamiento del Tribunal Constitucional.

## TÍTULO VIII DEL DEFENSOR DEL PUEBLO

**Artículo 190. Autonomía del Defensor del Pueblo.** El Defensor del Pueblo es una autoridad independiente en sus funciones y con autonomía administrativa y presupuestaria. Se debe de manera exclusiva al mandato de esta Constitución y las leyes.

**Artículo 191. Funciones esenciales.** La función esencial del Defensor del Pueblo es contribuir a salvaguardar los derechos fundamentales de las personas y los intereses colectivos y difusos establecidos en esta Constitución y las leyes, en caso de que sean violados por funcionarios u órganos del Estado, por prestadores de servicios públicos o particulares que afecten intereses colectivos y difusos. La ley regulará lo relativo a su organización y funcionamiento.

**Artículo 192. Elección.** El Defensor del Pueblo y sus adjuntos serán nombrados por el Senado por un período de seis años, de ternas propuestas por la Cámara de Diputados y permanecerán en el cargo hasta que sean sustituidos. La Cámara de Diputados deberá escoger las ternas en la legislatura ordinaria previa al cumplimiento del término del mandato de los designados y las someterá ante el Senado en un plazo que no excederá los quince días

siguientes a su aprobación. El Senado de la República efectuará la elección antes de los treinta días siguientes.

**Párrafo.** Vencidos los plazos sin que la Cámara de Diputados hubiere escogido y presentado las ternas, las mismas serán escogidas y presentadas al Senado por el Pleno de la Suprema Corte de Justicia. Si es el Senado el que no efectua la elección en el plazo previsto, la Suprema Corte de Justicia elegirá de las ternas presentadas por la Cámara de Diputados.

## **TÍTULO IX DEL ORDENAMIENTO DEL TERRITORIO Y DE LA ADMINISTRACIÓN LOCAL**

### **CAPÍTULO I DE LA ORGANIZACIÓN DEL TERRITORIO**

**Artículo 193. Principios de organización territorial.** La República Dominicana es un Estado unitario cuya organización territorial tiene como finalidad propiciar su desarrollo integral y equilibrado y el de sus habitantes, compatible con sus necesidades y con la preservación de sus recursos naturales, de su identidad nacional y de sus valores culturales. La organización territorial se hará conforme a los principios de unidad, identidad, racionalidad política, administrativa, social y económica.

**Artículo 194. Plan de ordenamiento territorial.** Es prioridad del Estado la formulación y ejecución, mediante ley, de un plan de ordenamiento territorial que asegure el uso eficiente y sostenible de los recursos naturales de la Nación, acorde con la necesidad de adaptación al cambio climático.

**Artículo 195. Delimitación territorial.** Mediante ley orgánica se determinará el nombre y los límites de las regiones, así como de las provincias y de los municipios en que ellas se dividen.

## CAPÍTULO II DE LA ADMINISTRACIÓN LOCAL

### SECCIÓN I DE LAS REGIONES Y LAS PROVINCIAS

**Artículo 196. La región.** La región es la unidad básica para la articulación y formulación de las políticas públicas en el territorio nacional. La ley definirá todo lo relativo a sus competencias, composición, organización y funcionamiento y determinará el número de éstas.

**Párrafo.** Sin perjuicio del principio de solidaridad, el Estado procurará el equilibrio razonable de la inversión pública en las distintas demarcaciones geográficas de manera que sea proporcional a los aportes de aquéllas a la economía nacional.

**Artículo 197. La provincia.** La provincia es la demarcación política intermedia en el territorio. Se divide en municipios, distritos municipales, secciones y parajes. La ley definirá todo lo relativo a su composición, organización y funcionamiento y determinará el número de éstas.

**Artículo 198. Gobernador civil.** El Poder Ejecutivo designará en cada provincia un gobernador civil, quien será su representante en esa demarcación. Para ser gobernador civil se requiere ser dominicano o dominicana, mayor de veinticinco años de edad y estar en pleno ejercicio de los derechos civiles y políticos. Sus atribuciones y deberes serán determinados por la ley.

### SECCIÓN II DEL RÉGIMEN DE LOS MUNICIPIOS

**Artículo 199. Administración local.** El Distrito Nacional, los municipios y los distritos municipales constituyen la base del sistema político administrativo local. Son personas jurídicas de Derecho Público, responsables de sus actuaciones, gozan de patrimonio propio, de autonomía presupuestaria, con potestad normativa, administrativa y de uso de suelo, fijadas de manera expresa por la ley y sujetas al poder de fiscalización del Estado y al control social de la ciudadanía, en los términos establecidos por esta Constitución y las leyes.

**Artículo 200. Arbitrios municipales.** Los ayuntamientos podrán establecer arbitrios en el ámbito de su demarcación que de manera expresa establezca la ley, siempre que los mismos no colidan con los impuestos nacionales, con el comercio intermunicipal o de exportación ni con la Constitución o las leyes. Corresponde a los tribunales competentes conocer las controversias que surjan en esta materia.

**Artículo 201. Gobiernos locales.** El gobierno del Distrito Nacional y el de los municipios estarán cada uno a cargo del ayuntamiento, constituido por dos órganos complementarios entre sí, el Concejo de Regidores y la Alcaldía. El Concejo de Regidores es un órgano exclusivamente normativo, reglamentario y de fiscalización integrado por regidores y regidoras. Estos tendrán suplentes. La Alcaldía es el órgano ejecutivo encabezado por un alcalde o alcaldesa, cuyo suplente se denominará vicealcalde o vicealcaldesa.

**Párrafo I.** El gobierno de los distritos municipales estará a cargo de una Junta de Distrito, integrada por un director o directora que actuará como órgano ejecutivo y una Junta de Vocales con funciones normativas, reglamentarias y de fiscalización. El director o directora tendrá suplente.

**Párrafo II.** Los partidos o agrupaciones políticas, regionales, provinciales o municipales harán la presentación de candidaturas a las elecciones municipales y de distritos municipales para alcalde o alcaldesa, regidores o regidoras, directores o directoras y sus suplentes, así como los vocales, de conformidad con la Constitución y las leyes que rigen la materia. El número de regidores y sus suplentes >será determinado por la ley, en proporción al número de habitantes, sin que en ningún caso puedan ser menos de cinco para el Distrito Nacional y los municipios, y nunca menos de tres para los distritos municipales. Serán elegidos cada cuatro años por el pueblo de su jurisdicción en la forma que establezca la ley.

**Párrafo III.** Las personas naturalizadas con más de cinco años residiendo en una jurisdicción podrán desempeñar dichos cargos, en las condiciones que prescriba la ley.

**Artículo 202. Representantes locales.** Los alcaldes o alcaldesas del Distrito Nacional, de los municipios, así como las y los directores de los distritos

municipales son los representantes legales de los ayuntamientos y de las juntas municipales. Sus atribuciones y facultades serán determinadas por la ley.

### SECCIÓN III MECANISMOS DIRECTOS DE PARTICIPACIÓN LOCAL

**Artículo 203. Referendo, plebiscitos e iniciativa normativa municipal.** La Ley Orgánica de la Administración Local establecerá los ámbitos, requisitos y condiciones para el ejercicio del referendo, plebiscito y la iniciativa normativa municipales con el fin de fortalecer el desarrollo de la democracia y la gestión local.

### CAPÍTULO III DE LA GESTIÓN DESCENTRALIZADA

**Artículo 204. Transferencia de competencias a los municipios.** El Estado propiciará la transferencia de competencias y recursos hacia los gobiernos locales, de conformidad con esta Constitución y la ley. La implementación de estas transferencias conllevará políticas de desarrollo institucional, capacitación y profesionalización de los recursos humanos.

**Artículo 205. Ejecución presupuestaria municipal.** Los ayuntamientos del Distrito Nacional, de los municipios y las juntas de distritos municipales estarán obligados, tanto en la formulación como en la ejecución de sus presupuestos, a formular, aprobar y a mantener las apropiaciones y las erogaciones destinadas a cada clase de atenciones y servicios, de conformidad con la ley.

**Artículo 206. Presupuestos participativos.** La inversión de los recursos municipales se hará mediante el desarrollo progresivo de presupuestos participativos que propicien la integración y corresponsabilidad ciudadana en la definición, ejecución y control de las políticas de desarrollo local.

**Artículo 207. Obligación económica de los municipios.** Las obligaciones económicas contraídas por los municipios, incluyendo las que tengan el aval del Estado, son de su responsabilidad, de conformidad con los límites y condiciones que establezca la ley.

## TÍTULO X DEL SISTEMA ELECTORAL

### CAPÍTULO I DE LAS ASAMBLEAS ELECTORALES

**Artículo 208. Ejercicio del sufragio.** Es un derecho y un deber de ciudadanas y ciudadanos el ejercicio del sufragio para elegir a las autoridades de gobierno y para participar en referendos. El voto es personal, libre, directo y secreto. Nadie puede ser obligado o coaccionado, bajo ningún pretexto, en el ejercicio de su derecho al sufragio ni a revelar su voto.

**Párrafo.** No tienen derecho al sufragio los miembros de las Fuerzas Armadas y de la Policía Nacional, ni quienes hayan perdido los derechos de ciudadanía o se encuentren suspendidos en tales derechos.

**Artículo 209. Asambleas electorales.** Las asambleas electorales funcionarán en colegios electorales que serán organizados conforme a la ley. Los colegios electorales se abrirán cada cuatro años para elegir al Presidente y Vicepresidente de la República, a los representantes legislativos, a las autoridades municipales y a los demás funcionarios o representantes electivos. Estas elecciones se celebrarán de modo separado e independiente. Las de presidente, vicepresidente y representantes legislativos y parlamentarios de organismos internacionales, el tercer domingo del mes de mayo y las de las autoridades municipales, el tercer domingo del mes de febrero.

1. Cuando en las elecciones celebradas para elegir al Presidente de la República y al Vicepresidente ninguna de las candidaturas obtenga al menos más de la mitad de los votos válidos emitidos, se efectuará una segunda elección el último domingo del mes de junio del mismo año. En esta última elección sólo participarán las dos candidaturas que hayan alcanzado el mayor número de votos, y se considerará ganadora la candidatura que obtenga el mayor número de los votos válidos emitidos;
2. Las elecciones se celebrarán conforme a la ley y con representación de las minorías cuando haya de elegirse dos o más candidatos;

3. En los casos de convocatoria extraordinaria y referendo, las asambleas electorales se reunirán a más tardar setenta días después de la publicación de la ley de convocatoria. No podrán coincidir las elecciones de autoridades con la celebración de referendo.

**Artículo 210. Referendos.** Las consultas populares mediante referendo estarán reguladas por una ley que determinará todo lo relativo a su celebración, con arreglo a las siguientes condiciones:

1. No podrán tratar sobre aprobación ni revocación de mandato de ninguna autoridad electa o designada;
2. Requerirán de previa aprobación congresual con el voto de las dos terceras partes de los presentes en cada cámara.

## **CAPÍTULO II DE LOS ÓRGANOS ELECTORALES**

**Artículo 211. Organización de las elecciones.** Las elecciones serán organizadas, dirigidas y supervisadas por la Junta Central Electoral y las juntas electorales bajo su dependencia, las cuales tienen la responsabilidad de garantizar la libertad, transparencia, equidad y objetividad de las elecciones.

### **SECCIÓN I DE LA JUNTA CENTRAL ELECTORAL**

**Artículo 212. Junta Central Electoral.** La Junta Central Electoral es un órgano autónomo con personalidad jurídica e independencia técnica, administrativa, presupuestaria y financiera, cuya finalidad principal será organizar y dirigir las asambleas electorales para la celebración de elecciones y de mecanismos de participación popular establecidos por la presente Constitución y las leyes. Tiene facultad reglamentaria en los asuntos de su competencia.

**Párrafo I.** La Junta Central Electoral estará integrada por un presidente y cuatro miembros y sus suplentes, elegidos por un período de cuatro años por el Senado de la República, con el voto de las dos terceras partes de los senadores presentes.

**Párrafo II.** Serán dependientes de la Junta Central Electoral el Registro Civil y la Cédula de Identidad y Electoral.

**Párrafo III.** Durante las elecciones la Junta Central Electoral asumirá la dirección y el mando de la fuerza pública, de conformidad con la ley.

**Párrafo IV.** La Junta Central Electoral velará porque los procesos electorales se realicen con sujeción a los principios de libertad y equidad en el desarrollo de las campañas y transparencia en la utilización del financiamiento. En consecuencia, tendrá facultad para reglamentar los tiempos y límites en los gastos de campaña, así como el acceso equitativo a los medios de comunicación.

**Artículo 213. Juntas electorales.** En el Distrito Nacional y en cada municipio habrá una Junta Electoral con funciones administrativas y contenciosas. En materia administrativa estarán subordinadas a la Junta Central Electoral. En materia contenciosa sus decisiones son recurribles ante el Tribunal Superior Electoral, de conformidad con la ley.

## **SECCIÓN II DEL TRIBUNAL SUPERIOR ELECTORAL**

**Artículo 214. Tribunal Superior Electoral.** El Tribunal Superior Electoral es el órgano competente para juzgar y decidir con carácter definitivo sobre los asuntos contencioso electorales y estatuir sobre los diferendos que surjan a lo interno de los partidos, agrupaciones y movimientos políticos o entre éstos. Reglamentará, de conformidad con la ley, los procedimientos de su competencia y todo lo relativo a su organización y funcionamiento administrativo y financiero.

**Artículo 215. Integración.** El Tribunal estará integrado por no menos de tres y no más de cinco jueces electorales y sus suplentes, designados por un período de cuatro años por el Consejo Nacional de la Magistratura, quien indicará cuál de entre ellos ocupará la presidencia.



## CAPÍTULO III DE LOS PARTIDOS POLÍTICOS

**Artículo 216. Partidos políticos.** La organización de partidos, agrupaciones y movimientos políticos es libre, con sujeción a los principios establecidos en esta Constitución. Su conformación y funcionamiento deben sustentarse en el respeto a la democracia interna y a la transparencia, de conformidad con la ley. Sus fines esenciales son:

1. Garantizar la participación de ciudadanos y ciudadanas en los procesos políticos que contribuyan al fortalecimiento de la democracia;
2. Contribuir, en igualdad de condiciones, a la formación y manifestación de la voluntad ciudadana, respetando el pluralismo político mediante la propuesta de candidaturas a los cargos de elección popular;
3. Servir al interés nacional, al bienestar colectivo y al desarrollo integral de la sociedad dominicana.

## TÍTULO XI DEL RÉGIMEN ECONÓMICO Y FINANCIERO Y DE LA CÁMARA DE CUENTAS

### CAPÍTULO I DEL RÉGIMEN ECONÓMICO

#### SECCIÓN I PRINCIPIOS RECTORES

**Artículo 217. Orientación y fundamento.** El régimen económico, se orienta hacia la búsqueda del desarrollo humano. Se fundamenta en el crecimiento económico, la redistribución de la riqueza, la justicia social, la equidad, la cohesión social y territorial y la sostenibilidad ambiental, en un marco de libre competencia, igualdad de oportunidades, responsabilidad social, participación y solidaridad.

**Artículo 218. Crecimiento sostenible.** La iniciativa privada es libre. El Estado procurará, junto al sector privado, un crecimiento equilibrado y sostenido de la economía, con estabilidad de precios, tendente al pleno empleo

y al incremento del bienestar social, mediante utilización racional de los recursos disponibles, la formación permanente de los recursos humanos y el desarrollo científico y tecnológico.

**Artículo 219. Iniciativa privada.** El Estado fomenta la iniciativa económica privada, creando las políticas necesarias para promover el desarrollo del país. Bajo el principio de subsidiaridad el Estado, por cuenta propia o en asociación con el sector privado y solidario, puede ejercer la actividad empresarial con el fin de asegurar el acceso de la población a bienes y servicios básicos y promover la economía nacional.

**Párrafo.** Cuando el Estado enajene su participación en una empresa, podrá tomar las medidas conducentes a democratizar la titularidad de sus acciones y ofrecerá a sus trabajadores, a las organizaciones solidarias y de trabajadores, condiciones especiales para acceder a dicha propiedad accionaria. La ley reglamentará la materia.

**Artículo 220. Sujeción al ordenamiento jurídico.** En todo contrato del Estado y de las personas de Derecho Público con personas físicas o jurídicas extranjeras domiciliadas en el país, debe constar el sometimiento de éstas a las leyes y órganos jurisdiccionales de la República. Sin embargo, el Estado y las demás personas de Derecho Público pueden someter las controversias derivadas de la relación contractual a jurisdicciones constituidas en virtud de tratados internacionales vigentes. Pueden también someterlas a arbitraje nacional e internacional, de conformidad con la ley.

**Artículo 221. Igualdad de tratamiento.** La actividad empresarial, pública o privada, recibe el mismo trato legal. Se garantiza igualdad de condiciones a la inversión nacional y extranjera, con las limitaciones establecidas en esta Constitución y las leyes. La ley podrá conceder tratamientos especiales a las inversiones que se localicen en zonas de menor grado de desarrollo o en actividades de interés nacional, en particular las ubicadas en las provincias fronterizas.

**Artículo 222. Promoción de iniciativas económicas populares.** El Estado reconoce el aporte de las iniciativas económicas populares al desarrollo del país; fomenta las condiciones de integración del sector informal en la economía

nacional; incentiva y protege el desarrollo de la micro, pequeña y mediana empresa, las cooperativas, las empresas familiares y otras formas de asociación comunitaria para el trabajo, la producción, el ahorro y el consumo, que generen condiciones que les permitan acceder a financiamiento, asistencia técnica y capacitación oportunos.

## SECCIÓN II DEL RÉGIMEN MONETARIO Y FINANCIERO

**Artículo 223. Regulación del sistema monetario y financiero.** La regulación del sistema monetario y financiero de la Nación corresponde a la Junta Monetaria como órgano superior del Banco Central.

**Artículo 224. Integración de la Junta Monetaria.** La Junta Monetaria está integrada por no más de nueve miembros incluyendo el Gobernador del Banco Central, quien la preside, y los miembros ex officio, cuyo número no será mayor de tres.

**Artículo 225. Banco Central.** El Banco Central de la República es una entidad de Derecho Público con personalidad jurídica, patrimonio propio y autonomía funcional, presupuestaria y administrativa.

**Artículo 226. Designación de autoridades monetarias.** El Gobernador del Banco Central y los miembros de designación directa de la Junta Monetaria serán nombrados por el Poder Ejecutivo, de conformidad con la ley. Durante el tiempo de su designación sólo podrán ser removidos por las causales previstas en la misma.

**Artículo 227. Dirección de las políticas monetarias.** La Junta Monetaria, representada por el Gobernador del Banco Central, tendrá a su cargo la dirección y adecuada aplicación de las políticas monetarias, cambiarias y financieras de la Nación y la coordinación de los entes reguladores del sistema y del mercado financiero.

**Artículo 228. Emisión de billetes y monedas.** El Banco Central, cuyo capital es propiedad del Estado, es el único emisor de los billetes y monedas de circulación nacional y tiene por objeto velar por la estabilidad de precios.

**Artículo 229. Unidad monetaria nacional.** La unidad monetaria nacional es el Peso Dominicano.

**Artículo 230. Fuerza legal y liberatoria de la unidad monetaria.** Sólo tendrán circulación legal y fuerza liberatoria los billetes emitidos y las monedas acuñadas por el Banco Central, bajo la garantía ilimitada del Estado y en las proporciones y condiciones que señale la ley.

**Artículo 231. Prohibición de emisión de signos monetarios.** Queda prohibida la emisión de papel moneda u otro signo monetario no autorizado por esta Constitución.

**Artículo 232. Modificación del régimen de la moneda o de la banca.** Por excepción a lo dispuesto en el artículo 112 de esta Constitución, la modificación del régimen legal de la moneda o de la banca, requerirá el apoyo de las dos terceras partes de la totalidad de los miembros de una y otra cámara legislativa, a menos que haya sido iniciada por el Poder Ejecutivo, a propuesta de la Junta Monetaria o con el voto favorable de ésta, en cuyo caso se regirá por las disposiciones relativas a las leyes orgánicas.

## CAPÍTULO II DE LAS FINANZAS PÚBLICAS

### SECCIÓN I DEL PRESUPUESTO GENERAL DEL ESTADO

**Artículo 233. Elaboración del presupuesto.** Corresponde al Poder Ejecutivo la elaboración del proyecto de Ley de Presupuesto General del Estado, el cual contempla los ingresos probables, los gastos propuestos y el financiamiento requerido, realizado en un marco de sostenibilidad fiscal, asegurando que el endeudamiento público sea compatible con la capacidad de pago del Estado.

**Párrafo.** En este proyecto se consignarán de manera individualizada las asignaciones que correspondan a las diferentes instituciones del Estado.

**Artículo 234. Modificación del presupuesto.** El Congreso podrá incluir nuevas partidas y modificar las que figuren en el proyecto de Ley de Presupuesto General del Estado o en los proyectos de ley que eroguen fondos sometidos por el Poder Ejecutivo, con el voto de las dos terceras partes de los presentes de cada cámara legislativa.

**Párrafo.** Una vez votada la Ley de Presupuesto General del Estado, no podrán trasladarse recursos presupuestarios de una institución a otra sino en virtud de una ley que, cuando no sea iniciada por el Poder Ejecutivo, deberá tener el voto de las dos terceras partes de los presentes en cada cámara legislativa.

**Artículo 235. Mayoría de excepción.** El Congreso Nacional podrá modificar el proyecto de Ley de Presupuesto General del Estado, cuando sea sometido con posterioridad a la fecha a que se refiere el artículo 128, numeral 2), literal g), con la mayoría absoluta de los miembros de la matrícula de cada cámara.

**Artículo 236. Validez erogación.** Ninguna erogación de fondos públicos será válida, si no estuviere autorizada por la ley y ordenada por funcionario competente.

**Artículo 237. Obligación de identificar fuentes.** No tendrá efecto ni validez la ley que ordene, autorice un pago o engendre una obligación pecuniaria a cargo del Estado, sino cuando esa misma ley identifique o establezca los recursos necesarios para su ejecución.

**Artículo 238. Criterios para asignación del gasto público.** Corresponde al Estado realizar una asignación equitativa del gasto público en el territorio. Su planificación, programación, ejecución y evaluación responderán a los principios de subsidiaridad y transparencia, así como a los criterios de eficiencia, prioridad y economía.

**Artículo 239. Vigencia Ley de Presupuesto.** Cuando el Congreso no haya aprobado el proyecto de Ley de Presupuesto General del Estado a más tardar al 31 de diciembre, regirá la Ley de Presupuesto General del Estado del año anterior, con los ajustes previstos en la Ley Orgánica de Presupuesto, hasta tanto se produzca su aprobación.

**Artículo 240. Publicación cuenta general.** Anualmente, en el mes de abril, se publicará la cuenta general de los ingresos y egresos de la República hechos en el año.

## SECCIÓN II DE LA PLANIFICACIÓN

**Artículo 241. Estrategia de desarrollo.** El Poder Ejecutivo, previa consulta al Consejo Económico y Social y a los partidos políticos, elaborará y someterá al Congreso Nacional una estrategia de desarrollo, que definirá la visión de la Nación para el largo plazo. El proceso de planificación e inversión pública se regirá por la ley correspondiente.

**Artículo 242. Plan Nacional Plurianual.** El Plan Nacional Plurianual del Sector Público y sus correspondientes actualizaciones será remitido al Congreso Nacional por el Poder Ejecutivo, durante la segunda legislatura del año en que se inicia el período de gobierno, previa consulta al Consejo de Ministros, para conocimiento de los programas y proyectos a ejecutarse durante su vigencia. Los resultados e impactos de su ejecución se realizarán en un marco de sostenibilidad fiscal.

## SECCIÓN III DE LA TRIBUTACIÓN

**Artículo 243. Principios del régimen tributario.** El régimen tributario está basado en los principios de legalidad, justicia, igualdad y equidad para que cada ciudadano y ciudadana pueda cumplir con el mantenimiento de las cargas públicas.

**Artículo 244. Exenciones de impuestos y transferencias de derechos.** Los particulares sólo pueden adquirir, mediante concesiones que autorice la ley o contratos que apruebe el Congreso Nacional, el derecho de beneficiarse, por todo el tiempo que estipule la concesión o el contrato y cumpliendo con las obligaciones que la una y el otro les impongan, de exenciones, exoneraciones, reducciones o limitaciones de impuestos, contribuciones o derechos fiscales o municipales que inciden en determinadas obras o empresas hacia las que convenga atraer la inversión de nuevos capitales para el fomento

de la economía nacional o para cualquier otro objeto de interés social. La transferencia de los derechos otorgados mediante contratos estará sujeta a la ratificación por parte del Congreso Nacional.

### **CAPÍTULO III DEL CONTROL DE LOS FONDOS PÚBLICOS**

**Artículo 245. Sistema de contabilidad.** El Estado dominicano y todas sus instituciones, sean autónomas, descentralizadas o no, estarán regidos por un sistema único, uniforme, integrado y armonizado de contabilidad, cuyos criterios fijará la ley.

**Artículo 246. Control y fiscalización de fondos públicos.** El control y fiscalización sobre el patrimonio, los ingresos, gastos y uso de los fondos públicos se llevará a cabo por el Congreso Nacional, la Cámara de Cuentas, la Contraloría General de la República, en el marco de sus respectivas competencias, y por la sociedad a través de los mecanismos establecidos en las leyes.

#### **SECCIÓN I DE LA CONTRALORÍA GENERAL DE LA REPÚBLICA**

**Artículo 247. Control interno.** La Contraloría General de la República es el órgano del Poder Ejecutivo rector del control interno, ejerce la fiscalización interna y la evaluación del debido recaudo, manejo, uso e inversión de los recursos públicos y autoriza las órdenes de pago, previa comprobación del cumplimiento de los trámites legales y administrativos, de las instituciones bajo su ámbito, de conformidad con la ley.

#### **SECCIÓN II DE LA CÁMARA DE CUENTAS**

**Artículo 248. Control externo.** La Cámara de Cuentas es el órgano superior externo de control fiscal de los recursos públicos, de los procesos administrativos y del patrimonio del Estado. Tiene personalidad jurídica, carácter técnico y goza de autonomía administrativa, operativa y presupuestaria. Estará compuesta de cinco miembros, elegidos por el Senado

de la República de las ternas que le presente la Cámara de Diputados, por un período de cuatro años y permanecerán en sus funciones hasta que sean designados sus sustitutos.

**Artículo 249. Requisitos.** Para ser miembro de la Cámara de Cuentas se requiere ser dominicano o dominicana en el pleno ejercicio de los derechos civiles y políticos, ser de reconocida solvencia ética y moral, haber cumplido la edad de treinta años, acreditar título universitario y estar habilitado para el ejercicio profesional, preferiblemente en las áreas de contabilidad, finanzas, economía, derecho o afines, y las demás condiciones que determine la ley.

**Artículo 250. Atribuciones.** Sus atribuciones serán, además de las que le confiere la ley:

1. Examinar las cuentas generales y particulares de la República;
2. Presentar al Congreso Nacional los informes sobre la fiscalización del patrimonio del Estado;
3. Auditar y analizar la ejecución del Presupuesto General del Estado que cada año apruebe el Congreso Nacional, tomando como base el estado de recaudación e inversión de las rentas presentado por el Poder Ejecutivo, de conformidad con la Constitución y las leyes, y someter el informe correspondiente a éste a más tardar el 30 de abril del año siguiente, para su conocimiento y decisión;
4. Emitir normas con carácter obligatorio para la coordinación interinstitucional de los órganos y organismos responsables del control y auditoría de los recursos públicos;
5. Realizar investigaciones especiales a requerimiento de una o ambas cámaras legislativas.

## **CAPÍTULO IV DE LA CONCERTACIÓN SOCIAL**

**Artículo 251. Consejo Económico y Social.** La concertación social es un instrumento esencial para asegurar la participación organizada de empleadores, trabajadores y otras organizaciones de la sociedad en la construcción y fortalecimiento permanente de la paz social. Para promoverla habrá un Consejo Económico y Social, órgano consultivo del Poder Ejecutivo en



materia económica, social y laboral, cuya conformación y funcionamiento serán establecidos por la ley.

## **TÍTULO XII DE LAS FUERZAS ARMADAS, DE LA POLICÍA NACIONAL Y DE LA SEGURIDAD Y DEFENSA**

### **CAPÍTULO I DE LAS FUERZAS ARMADAS**

**Artículo 252. Misión y carácter.** La defensa de la Nación está a cargo de las Fuerzas Armadas. Por lo tanto:

1. Su misión es defender la independencia y soberanía de la Nación, la integridad de sus espacios geográficos, la Constitución y las instituciones de la República;
2. Podrán, asimismo, intervenir cuando lo disponga el Presidente de la República en programas destinados a promover el desarrollo social y económico del país, mitigar situaciones de desastres y calamidad pública, concurrir en auxilio de la Policía Nacional para mantener o restablecer el orden público en casos excepcionales;
3. Son esencialmente obedientes al poder civil, apartidistas y no tienen facultad, en ningún caso, para deliberar.

**Párrafo.** Corresponde a las Fuerzas Armadas la custodia, supervisión y control de todas las armas, municiones y demás pertrechos militares, material y equipos de guerra que ingresen al país o que sean producidos por la industria nacional, con las restricciones establecidas en la ley.

**Artículo 253. Carrera militar.** El ingreso, nombramiento, ascenso, retiro y demás aspectos del régimen de carrera militar de los miembros de las Fuerzas Armadas se efectuará sin discriminación alguna, conforme a su ley orgánica y leyes complementarias. Se prohíbe el reintegro de sus miembros, con excepción de los casos en los cuales la separación o retiro haya sido realizada en violación a la Ley Orgánica de las Fuerzas Armadas, previa investigación y recomendación por el ministerio correspondiente, de conformidad con la ley.

**Artículo 254. Competencia de la jurisdicción militar y régimen disciplinario.** La jurisdicción militar sólo tiene competencia para conocer de las infracciones militares previstas en las leyes sobre la materia. Las Fuerzas Armadas tendrán un régimen disciplinario militar aplicable a aquellas faltas que no constituyan infracciones del régimen penal militar.

## **CAPÍTULO II DE LA POLICÍA NACIONAL**

**Artículo 255. Misión.** La Policía Nacional es un cuerpo armado, técnico, profesional, de naturaleza policial, bajo la autoridad del Presidente de la República, obediente al poder civil, apartidista y sin facultad, en ningún caso, para deliberar. La Policía Nacional tiene por misión:

1. Salvaguardar la seguridad ciudadana;
2. Prevenir y controlar los delitos;
3. Perseguir e investigar las infracciones penales, bajo la dirección legal de la autoridad competente;
4. Mantener el orden público para proteger el libre ejercicio de los derechos de las personas y la convivencia pacífica de conformidad con la Constitución y las leyes.

**Artículo 256. Carrera policial.** El ingreso, nombramiento, ascenso, retiro y demás aspectos del régimen de carrera policial de los miembros de la Policía Nacional se efectuará sin discriminación alguna, conforme a su ley orgánica y leyes complementarias. Se prohíbe el reintegro de sus miembros, con excepción de los casos en los cuales el retiro o separación haya sido realizado en violación a la ley orgánica de la Policía Nacional, previa investigación y recomendación del ministerio correspondiente, de conformidad con la ley.

**Artículo 257. Competencia y régimen disciplinario.** La jurisdicción policial sólo tiene competencia para conocer de las infracciones policiales previstas en las leyes sobre la materia. La Policía Nacional tendrá un régimen disciplinario policial aplicable a aquellas faltas que no constituyan infracciones del régimen penal policial.

### **CAPÍTULO III DE LA SEGURIDAD Y DEFENSA**

**Artículo 258. Consejo de Seguridad y Defensa Nacional.** El Consejo de Seguridad y Defensa Nacional es un órgano consultivo que asesora al Presidente de la República en la formulación de las políticas y estrategias en esta materia y en cualquier asunto que el Poder Ejecutivo someta a su consideración. El Poder Ejecutivo reglamentará su composición y funcionamiento.

**Artículo 259. Carácter defensivo.** Las Fuerzas Armadas de la República, en el desarrollo de su misión, tendrán un carácter esencialmente defensivo, sin perjuicio de lo dispuesto en el artículo 260.

**Artículo 260. Objetivos de alta prioridad.** Constituyen objetivos de alta prioridad nacional:

1. Combatir actividades criminales transnacionales que pongan en peligro los intereses de la República y de sus habitantes;
2. Organizar y sostener sistemas eficaces que prevengan o mitiguen daños ocasionados por desastres naturales y tecnológicos.

**Artículo 261. Cuerpos de seguridad pública o de defensa.** El Congreso Nacional, a solicitud del Presidente de la República, podrá disponer, cuando así lo requiera el interés nacional, la formación de cuerpos de seguridad pública o de defensa permanentes con integrantes de las Fuerzas Armadas y la Policía Nacional que estarán subordinados al ministerio o institución del ámbito de sus respectivas competencias en virtud de la ley. El sistema de inteligencia del Estado será regulado mediante ley.

### **TÍTULO XIII DE LOS ESTADOS DE EXCEPCIÓN**

**Artículo 262. Definición.** Se consideran estados de excepción aquellas situaciones extraordinarias que afecten gravemente la seguridad de la Nación, de las instituciones y de las personas frente a las cuales resultan insuficientes las facultades ordinarias. El Presidente de la República, con la autorización

del Congreso Nacional, podrá declarar los estados de excepción en sus tres modalidades: Estado de Defensa, Estado de Conmoción Interior y Estado de Emergencia.

**Artículo 263. Estado de Defensa.** En caso de que la soberanía nacional o la integridad territorial se vean en peligro grave e inminente por agresiones armadas externas, el Poder Ejecutivo, sin perjuicio de las facultades inherentes a su cargo, podrá solicitar al Congreso Nacional la declaratoria del Estado de Defensa. En este estado no podrán suspenderse:

1. El derecho a la vida, según las disposiciones del artículo 37;
2. El derecho a la integridad personal, según las disposiciones del artículo 42;
3. La libertad de conciencia y de cultos, según las disposiciones del artículo 45;
4. La protección a la familia, según las disposiciones del artículo 55;
5. El derecho al nombre, según las disposiciones del artículo 55, numeral 7;
6. Los derechos del niño, según las disposiciones del artículo 56;
7. El derecho a la nacionalidad, según las disposiciones del artículo 18;
8. Los derechos de ciudadanía, según las disposiciones del artículo 22;
9. La prohibición de esclavitud y servidumbre, según las disposiciones del artículo 41;
10. El principio de legalidad y de irretroactividad, según se establece en el artículo 40, numerales 13) y 15);
11. El derecho al reconocimiento de la personalidad jurídica, según las disposiciones de los artículos 43 y 55, numeral 7);
12. Las garantías judiciales, procesales e institucionales indispensables para la protección de estos derechos, según las disposiciones de los artículos 69, 71 y 72.

**Artículo 264. Estado de Conmoción Interior.** El Estado de Conmoción Interior podrá declararse en todo o parte del territorio nacional, en caso de grave perturbación del orden público que atente de manera inminente contra la estabilidad institucional, la seguridad del Estado o la convivencia ciudadana, y que no pueda ser conjurada mediante el uso de las atribuciones ordinarias de las autoridades.

**Artículo 265. Estado de Emergencia.** El Estado de Emergencia podrá declararse cuando ocurran hechos distintos a los previstos en los artículos 263 y 264 que perturben o amenacen perturbar en forma grave e inminente el orden económico, social, medioambiental del país, o que constituyan calamidad pública.

**Artículo 266. Disposiciones regulatorias.** Los estados de excepción se someterán a las siguientes disposiciones:

1. El Presidente deberá obtener la autorización del Congreso para declarar el estado de excepción correspondiente. Si no estuviese reunido el Congreso, el Presidente podrá declararlo, lo que conllevará convocatoria inmediata del mismo para que éste decida al respecto;
2. Mientras permanezca el estado de excepción, el Congreso se reunirá con la plenitud de sus atribuciones y el Presidente de la República le informará de forma continua sobre las disposiciones que haya tomado y la evolución de los acontecimientos;
3. Todas las autoridades de carácter electivo mantienen sus atribuciones durante la vigencia de los estados de excepción;
4. Los estados de excepción no eximen del cumplimiento de la ley y de sus responsabilidades a las autoridades y demás servidores del Estado;
5. La declaratoria de los estados de excepción y los actos adoptados durante los mismos estarán sometidos al control constitucional;
6. En los Estados de Comoción Interior y de Emergencia, sólo podrán suspenderse los siguientes derechos reconocidos por esta Constitución:
  - a. Reducción a prisión, según las disposiciones del artículo 40, numeral 1);
  - b. Privación de libertad sin causa o sin las formalidades legales, según lo dispone el artículo 40, numeral 6);
  - c. Plazos de sometimiento a la autoridad judicial o para la puesta en libertad, establecidos en el artículo 40, numeral 5);
  - d. El traslado desde establecimientos carcelarios u otros lugares, dispuesto en el artículo 40, numeral 12);
  - e. La presentación de detenidos, establecida en el artículo 40, numeral 11);
  - f. Lo relativo al hábeas corpus, regulado en el artículo 71;

- g. La inviolabilidad del domicilio y de recintos privados, dispuesta en el artículo 44, numeral 1);
  - h. La libertad de tránsito, dispuesta en el artículo 46;
  - i. La libertad de expresión, en los términos dispuestos por el artículo 49;
  - j. Las libertades de asociación y de reunión, establecidas en los artículos 47 y 48;
  - k. La inviolabilidad de la correspondencia, establecida en el artículo 44, numeral 3).
7. Tan pronto como hayan cesado las causas que dieron lugar al estado de excepción, el Poder Ejecutivo declarará su levantamiento. El Congreso Nacional, habiendo cesado las causas que dieron lugar al estado de excepción, dispondrá su levantamiento si el Poder Ejecutivo se negare a ello.

## TÍTULO XIV DE LAS REFORMAS CONSTITUCIONALES

### CAPÍTULO I DE LAS NORMAS GENERALES

**Artículo 267. Reforma constitucional.** La reforma de la Constitución sólo podrá hacerse en la forma que indica ella misma y no podrá jamás ser suspendida ni anulada por ningún poder o autoridad, ni tampoco por aclamaciones populares.

**Artículo 268. Forma de gobierno.** Ninguna modificación a la Constitución podrá versar sobre la forma de gobierno que deberá ser siempre civil, republicano, democrático y representativo.

**Artículo 269. Iniciativa de reforma constitucional.** Esta Constitución podrá ser reformada si la proposición de reforma se presenta en el Congreso Nacional con el apoyo de la tercera parte de los miembros de una u otra cámara, o si es sometida por el Poder Ejecutivo.

## **CAPÍTULO II**

### **DE LA ASAMBLEA NACIONAL REVISORA**

**Artículo 270. Convocatoria Asamblea Nacional Revisora.** La necesidad de la reforma constitucional se declarará por una ley de convocatoria. Esta ley, que no podrá ser observada por el Poder Ejecutivo, ordenará la reunión de la Asamblea Nacional Revisora, contendrá el objeto de la reforma e indicará el o los artículos de la Constitución sobre los cuales versará.

**Artículo 271. Quórum de la Asamblea Nacional Revisora.** Para resolver acerca de la reforma propuesta, la Asamblea Nacional Revisora se reunirá dentro de los quince días siguientes a la publicación de la ley que declara la necesidad de la reforma, con la presencia de más de la mitad de los miembros de cada una de las cámaras. Sus decisiones se tomarán por la mayoría de las dos terceras partes de los votos. No podrá iniciarse la reforma constitucional en caso de vigencia de alguno de los estados de excepción previstos en el artículo 262. Una vez votada y proclamada la reforma por la Asamblea Nacional Revisora, la Constitución será publicada íntegramente con los textos reformados.

**Artículo 272. Referendo aprobatorio.** Cuando la reforma verse sobre derechos, garantías fundamentales y deberes, el ordenamiento territorial y municipal, el régimen de nacionalidad, ciudadanía y extranjería, el régimen de la moneda, y sobre los procedimientos de reforma instituidos en esta Constitución, requerirá de la ratificación de la mayoría de los ciudadanos y ciudadanas con derecho electoral, en referendo aprobatorio convocado al efecto por la Junta Central Electoral, una vez votada y aprobada por la Asamblea Nacional Revisora.

**Párrafo I.** La Junta Central Electoral someterá a referendo las reformas dentro de los sesenta días siguientes a su recepción formal.

**Párrafo II.** La aprobación de las reformas a la Constitución por vía de referendo requiere de más de la mitad de los votos de los sufragantes y que el número de éstos exceda del treinta por ciento (30%) del total de ciudadanos y ciudadanas que integren el Registro Electoral, sumados los votantes que se expresen por “SÍ” o por “NO”.

**Párrafo III.** Si el resultado del referendo fuere afirmativo, la reforma será proclamada y publicada íntegramente con los textos reformados por la Asamblea Nacional Revisora.

## **TÍTULO XV DISPOSICIONES GENERALES Y TRANSITORIAS**

### **CAPÍTULO I DISPOSICIONES GENERALES**

**Artículo 273. Géneros gramaticales.** Los géneros gramaticales que se adoptan en la redacción del texto de esta Constitución no significan, en modo alguno, restricción al principio de la igualdad de derechos de la mujer y del hombre.

**Artículo 274. Período constitucional de funcionarios electivos.** El ejercicio electivo del Presidente y el Vicepresidente de la República, así como de los representantes legislativos y parlamentarios de organismos internacionales, terminarán uniformemente el día 16 de agosto de cada cuatro años, fecha en que se inicia el correspondiente período constitucional, con las excepciones previstas en esta Constitución.

**Párrafo I.** Las autoridades municipales electas el tercer domingo de febrero de cada cuatro años tomarán posesión el 24 de abril del mismo año.

**Párrafo II.** Cuando un funcionario electivo cese en el ejercicio del cargo por muerte, renuncia, inhabilitación u otra causa, quien lo sustituya permanecerá en el ejercicio del cargo hasta completar el período.

**Artículo 275. Período funcionarios de órganos constitucionales.** Los miembros de los órganos constitucionales, vencido el período de mandato para el que fueron designados, permanecerán en sus cargos hasta la toma de posesión de quienes les sustituyan.

**Artículo 276. Juramento de funcionarios designados.** La persona designada para ejercer una función pública deberá prestar juramento de respetar la Constitución y las leyes, y de desempeñar fielmente los deberes



de su cargo. Este juramento se prestará ante funcionario u oficial público competente.

**Artículo 277. Decisiones con autoridad de la cosa irrevocablemente juzgada.** Todas las decisiones judiciales que hayan adquirido la autoridad de la cosa irrevocablemente juzgada, especialmente las dictadas en ejercicio del control directo de la constitucionalidad por la Suprema Corte de Justicia, hasta el momento de la proclamación de la presente Constitución, no podrán ser examinadas por el Tribunal Constitucional y las posteriores estarán sujetas al procedimiento que determine la ley que rija la materia.

## CAPÍTULO II DE LAS DISPOSICIONES TRANSITORIAS

**Primera.** El Consejo del Poder Judicial deberá crearse dentro de los seis meses posteriores a la entrada en vigencia de la presente Constitución.

**Segunda.** El Tribunal Constitucional, establecido en la presente Constitución, deberá integrarse dentro de los doce meses siguientes a la entrada en vigencia de la misma.

**Tercera.** La Suprema Corte de Justicia mantendrá las funciones atribuidas por esta Constitución al Tribunal Constitucional y al Consejo del Poder Judicial hasta tanto se integren estas instancias.

**Cuarta.** Los actuales jueces de la Suprema Corte de Justicia que no queden en retiro por haber cumplido los setenta y cinco años de edad serán sometidos a una evaluación de desempeño por el Consejo Nacional de la Magistratura, el cual determinará sobre su confirmación.

**Quinta.** El Consejo Superior del Ministerio Público desempeñará las funciones establecidas en la presente Constitución dentro de los seis meses siguientes a la entrada en vigencia de la misma.

**Sexta.** El Tribunal Contencioso Administrativo y Tributario existente pasará a ser el Tribunal Superior Administrativo creado por esta Constitución. La

Suprema Corte de Justicia dispondrá las medidas administrativas necesarias para su adecuación, hasta tanto sea integrado el Consejo del Poder Judicial.

**Séptima.** Los actuales integrantes de la Junta Central Electoral permanecerán en sus funciones hasta la conformación de los nuevos órganos creados por la presente Constitución y la designación de sus incumbentes.

**Octava.** Las disposiciones relativas a la Junta Central Electoral y al Tribunal Superior Electoral establecidas en esta Constitución entrarán en vigencia a partir de la nueva integración que se produzca en el período que inicia el 16 de agosto de 2010. Excepcionalmente, los integrantes de estos órganos electorales ejercerán su mandato hasta el 16 de agosto de 2016.

**Novena.** El procedimiento de designación que se establece en la presente Constitución para los integrantes de la Cámara de Cuentas regirá a partir del 16 de agosto del año 2010. Excepcionalmente, los miembros de este órgano permanecerán en sus cargos hasta el 2016.

**Décima.** Las disposiciones contenidas en el artículo 272 relativas al referendo aprobatorio, por excepción, no son aplicables a la presente reforma constitucional.

**Decimoprimera.** Las leyes observadas por el Poder Ejecutivo, que no hayan sido decididas por el Congreso Nacional al momento de la entrada en vigencia de esta Constitución, deberán ser sancionadas en las dos legislaturas ordinarias siguientes a la proclamación de la presente Constitución. Vencido este plazo, las mismas se considerarán como no iniciadas.

**Decimosegunda.** Todas las autoridades electas mediante voto directo en las elecciones congresuales y municipales del año 2010, excepcionalmente, durarán en sus funciones hasta el 16 de agosto de 2016.

**Decimotercera.** Los diputados y diputadas a ser electos en representación de las comunidades dominicanas en el exterior serán electos, excepcionalmente, el tercer domingo de mayo del año 2012 por un período de cuatro años.

**Decimocuarta.** Por excepción, las asambleas electorales para elegir las autoridades municipales se celebrarán en el año 2010 y 2016 el tercer domingo de mayo.

**Decimoquinta.** Los contratos pendientes de decisión depositados en el Congreso Nacional al momento de la aprobación de las disposiciones contenidas en el artículo 128, numeral 2), literal d), de esta Constitución agotarán los trámites legislativos dispuestos en la Constitución del año 2002.

**Decimosexta.** La ley que regulará la organización y administración general del Estado dispondrá lo relativo a los ministerios a los que se refiere el artículo 134 de esta Constitución. Esta ley deberá entrar en vigencia a más tardar en octubre de 2011, con el objetivo de que las nuevas disposiciones sean incorporadas en el Presupuesto General del Estado para el siguiente año.

**Decimoséptima.** Lo dispuesto en esta Constitución para la elaboración y aprobación de la Ley de Presupuesto General del Estado entrará en plena vigencia a partir del primero de enero de 2010, de tal forma que para el año 2011 el país cuente con un presupuesto acorde con lo establecido en esta Constitución.

**Decimoctava.** Las previsiones presupuestarias para la implementación de los órganos que se crean en la presente Constitución deberán estar contenidas en el presupuesto de 2010, de manera que se asegure su plena entrada en vigencia en el año 2011.

**Decimonovena.** Para garantizar la renovación gradual de la matrícula del Tribunal Constitucional, por excepción de lo dispuesto en el artículo 187, sus primeros trece integrantes se sustituirán en tres grupos, dos de cuatro y uno de cinco, a los seis, nueve y doce años de ejercicio, respectivamente, mediante un procedimiento aleatorio. Los primeros cuatro jueces salientes, por excepción, podrán ser considerados para un único nuevo período.

## DISPOSICIÓN FINAL

**Disposición final.** Esta Constitución entrará en vigencia a partir de su proclamación por la Asamblea Nacional y se dispone su publicación íntegra e inmediata.

**DADA Y PROCLAMADA** en la ciudad de Santo Domingo de Guzmán, Distrito Nacional, capital de la República Dominicana, en el Palacio del Congreso Nacional, sito en el Centro de los Héroes de Constanza, Maimón y Estero Hondo, hoy día veintiséis (26) del mes de enero del año dos mil diez (2010); años 166 de la Independencia y 147 de la Restauración.







<i>Formato</i>	<i>15,5 x 22,5 cm</i>
<i>Mancha gráfica</i>	<i>12 x 18,3cm</i>
<i>Papel</i>	<i>pólen soft 80g (miolo), duo design 250g (capa)</i>
<i>Fontes</i>	<i>Times New Roman 17/20,4 (títulos), 12/14 (textos)</i>