

ACKNOWLEDGEMENTS

The Guyana Association of Women Lawyers (GAWL), in collaboration with the National Commission on Women has prepared the text of this booklet on The Revised Constitution of Guyana 2001.

This booklet was edited by Mr. B.T.I Pollard. SC. The Commission gratefully acknowledges his contribution.

FOREWORD

On attaining independence in 1966, Guyana adopted a Constitution, which was amended in 1970 when Guyana became a Republic.

The new CONSTITUTION OF GUYANA came into being in 1980. It was more detailed in its provisions and stated principles and ideals that, included a bias towards socialism.

In the main, the powers of the President were substantially extended to executive status.

As the years progressed since 1980, uncertainties in some of the provisions came to light. Therefore, in 1995, the constitutional reform process began with hearings being held all over Guyana, and submissions from persons and organisations being received by the Constitutional Reform Commission and later by a Parliamentary Select Committee. This process was, however, aborted due to impending elections in 1997.

After the December 1997 general and regional elections, disturbances erupted from dissatisfaction with the processes employed in the conduct of these elections. Consequently, CARICOM brokered the Hermanston Accord, which was signed on January 17, 1998, by the leaders of the PPP/C and the PNC. One of the main issues agreed to in this Accord, was that the Constitution be reviewed. The Constitution Reform Commission (CRC) was then established. It comprised twenty (20) persons, women, the political parties in Parliament, the main religious organizations, indigenous peoples, farmers, lawyers and youth. (These persons served on the Commission for approximately six (6) months in 1999.)

The CRC received written submissions from, and held hearings with, a wide cross-section of individuals and political, religious and non-governmental groups.

A Parliamentary Select Committee reviewed the recommendations for changes to the Constitution made by the CRC. Thereafter, the Oversight Committee (of the National Assembly), approved the drafts of the amendments, thereby adopting, to some extent, actual reforms recommended.

This booklet provides information and guidance on the main changes that have been made to the Constitution of Guyana up to, 31 March 2001. It also includes changes which have been recommended but not yet implemented.

Read this booklet as often as you need to, and share it with others.

Guyana Association of Women Lawyers.
March 31, 2003.

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** Denotes that the provision has not yet been enacted..*

The President

The President

The President is the Head of State of the Co-operative Republic of Guyana, and the Supreme Executive Authority. He is Commander-in-chief of the Armed Forces of the Republic. The President is the head of the Executive branch of the State and therefore presides over the **Cabinet** which comprises the **Ministers** of Government.

QUALIFICATIONS TO BE PRESIDENT

In order to be elected President, a person must:

- (a) be a GUYANESE CITIZEN (either by birth or parentage) who is eligible to be elected a member of the National Assembly (Parliament consists of the National Assembly and the President).
- (b) be residing in Guyana for a continuous period of seven years immediately before the date of nomination of candidates for election.

Absence from the Guyana due to:

- i) seeking medical help;
- ii) studying at a University or an institution of higher learning for not more than four years; or

iii) working abroad for the Government;

does not result in a person being considered as not residing in Guyana.

RE-ELECTION

A person who holds office as President, whether by election or accession, can only be re-elected once. The Prime Minister accedes to the office of President if the President is removed from office, resigns or dies.

POWERS OF THE PRESIDENT

The President is responsible for the following:

1. **Appointment of the Prime Minister (Article 101)** – The Prime Minister must be someone who is eligible to be elected President, since should the President vacate office because of removal from office, resignation or death, the Prime Minister becomes President. This would be impossible if the Prime Minister did not meet the requirements for election as President.
2. **Appointment of the Cabinet (Article 106)** which comprises the President, Prime Minister, Vice

President and all other Ministers as the President appoints.

3. **Allocation of responsibilities (Article 107)** for the business of the Government of Guyana, that is, the appointment of Ministers to various Ministries.
4. **Appointment of the Attorney General, Ambassadors or High Commissioners and Permanent Secretaries (Articles 112, 185,205).**
5. **The Prime Minister** – A person who is not eligible to be elected as President shall not be eligible for appointment as Prime Minister.
6. **The Executive** - Not more than four Ministers and two Parliamentary Secretaries may be appointed by the President from among persons who are qualified to be elected as members of the National Assembly.
7. **The Constitution and the creation of offices (Article 120)**, and the appointment of persons to those offices. This power has now been restricted and where the creation of and appointments to these offices involve expenditure chargeable on the Consolidated

Fund, such expenditure will now be subject to the approval of the National Assembly.

8. **The President may assent to or refuse to assent to a bill (Article 170).** When a bill is passed by the Members of Parliament (M.Ps.) in the National Assembly, it is sent to the President for assent. If the President is not in agreement with the bill it is sent back to the National Assembly with the President's reasons for the M.Ps. to reconsider it. If the M.Ps. pass the Bill a second time by a two-thirds majority vote of all the elected M.Ps., then the President must assent to the Bill within ninety days after receiving it for the second time.

9. **Removal from office of certain persons (Article 225(4))** e.g. senior public officers. The President shall appoint a tribunal comprising persons selected by the Judicial Service Commission, to determine if the officer should be removed by reason of infirmity of body or mind.

10. Previously, the President could have abolished any public office or remove any public officer in the public interest (**Article 232**). The President's power has now been restricted to officers who are not appointed by the Service Commissions.

11. **The Cabinet** – The Cabinet, including the President, must resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly on a vote of no confidence.

Notwithstanding its defeat, the Government remains in office and an election must be held within three months, or such longer period as the National Assembly by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine, and shall resign after the President takes the oath of office after the election.

REMOVAL OF THE PRESIDENT **(Articles 179 & 180)**

FOUNDATIONS:

The President may be removed from office on grounds of incapacity, gross misconduct or persistent violation of the Constitution. The latter two are known as impeachment.

PROCEDURE:

With respect to incapacity (Article 179), there must be a motion to investigate the incapacity of the President which must be supported by a majority of the government Members of Parliament in the National Assembly. The Prime Minister then informs the Chancellor who will set up a body of at least three medical practitioners, authorized by the Chancellor. If incapacity is established, the Chancellor must certify this and the President will immediately cease to be President.

With respect to gross misconduct or violation of the Constitution (Article 180), there must be a motion alleging violation or misconduct. Particulars or details of the allegations must be given. This motion must be supported by at least one half of all the elected members of the National Assembly or Members of Parliament (M.Ps.). If the motion

is supported, then a notice in writing must be given to the Speaker of the National Assembly, who then summons the MPs to a sitting of the Assembly. If at this sitting the motion is passed by a two-thirds majority, the Chancellor is then required to appoint a tribunal of at least three persons to investigate the allegations. The President has a right to be heard. If the report of the tribunal confirms the allegations of misconduct or violations then the President may be impeached by a vote of two-thirds of all the elected members of the National Assembly (M.Ps.). Upon such a vote the President ceases to hold office. Note that by the new amendments, the President no longer has the option of dissolving Parliament to avoid impeachment.

THE PRESIDENT CANNOT BE SUED OR CHARGED FOR ACTS DONE DURING the President's term of office (Article 182).

The Judiciary

THE JUDICIARY

The Judicature: The Supreme Court of Judicature in Guyana is made up of two courts: The Court of Appeal and the High Court. Appeals lie to the Caribbean Court of Justice.

There is also a Land Court.

The Judiciary: The Judiciary in Guyana is made up of the Judges of the Court of Appeal and the Judges of the High Court.

The Courts and the Judges are given their powers by the Constitution of Guyana and other laws of Guyana.

Under the new Constitution, the following provisions relate to the Judicature and the Judiciary.

Article 123: Establishes the Supreme Court of Judicature: - The Court of Appeal and the High Court.

Under this Article, Parliament may also confer on any other court the same powers conferred by the Constitution or any other law, e.g. The High Court Act, confers jurisdiction on the High Court.

Article 124: The Judges of the Court of Appeal are: The Chancellor of the Judiciary who is the President of the Court of Appeal, the Chief Justice and as many Justices of Appeal as authorized by Parliament. The full complement of Judges for the Court of Appeal is the Chancellor, the Chief Justice and the Justices of Appeal.

Article 125: The Judges of the High Court are the Chief Justice and as many High Court or what are referred to as Puisne Judges as authorised by Parliament. At present, there are eleven Judges of the High Court.

Article 126: The word ‘Judge’ is defined as including: The Chancellor, The Chief Justice, a Justice of Appeal, a Puisne Judge and a part-time judge.

Article 127: The Chancellor and the Chief Justice are each appointed by the President acting after obtaining the agreement of the Leader of the Opposition. If the office of Chancellor or Chief Justice is vacant or if the person holding either of these offices is for any other reason unable to perform the functions of the office, the President, acting after meaningful consultation with the Leader of the Opposition, may appoint one of the other Judges to perform those functions until

someone is appointed to the office or the office holder resumes duty.

Article 128: The President acts on the advice of the Judicial Service Commission to appoint all Judges other than the Chancellor and Chief Justice. The President who shall act on the advice of the Judicial Service Commission can appoint acting Court of Appeal Judges or acting Puisne Judges to act for a judge who is unable to act, or where that judge is acting as Chancellor or Chief justice or where the business of the Court requires it.

Article 128 (a): The President may appoint part time Judges on the advice of the Judicial Service Commission and Parliament may determine their terms and conditions of appointment.

Article 129: In order to become or to act as a judge a person must be or have been a judge of a court that has unlimited jurisdiction to deal with civil and criminal matters or

appeals in some part of the Commonwealth. Such person must be qualified for admission to the bar after such qualifying period as prescribed by the High Court Act.

Article 130: The Chancellor may request additional judges to sit in the Court of Appeal or the High Court and their powers and jurisdiction are authorised by Parliament.

Article 131: Judges have security of tenure. This means that as provided in Article 197 the office of a Justice of Appeal or a High Court Judge shall not be abolished whilst the Judge is holding office. Also, they can be removed from office only by special procedures provided by the constitution.

Article 132: Judges must take and subscribe the oath of office before they can perform their functions.

- (1) On attaining the following ages:
 - a. Sixty-five years in the case of a High Court judge
 - b. Sixty-eight years in the case of any other judge.

These provisions only apply in the case of judges appointed after the coming into force of the revised provisions of the Constitution. In the case of a High Court Judge appointed before the revision of the Constitution, the judge shall be entitled to remain in office up to the age of sixty-two years, while a Court of Appeal judge may remain in office until sixty-five years, and the Chancellor until sixty-eight years. In any case, no judge either in the High Court or the Court of Appeal, can continue in office after the age of sixty-five or sixty-eight years, respectively. A Judge may be granted a limited extension of tenure in order to complete unfinished work.

- (2) For inability to perform functions either through infirmity, misbehavior, for persistently not giving or writing decisions, or giving reasons for not doing so within a specified time, a judge may be removed from office.

- (3) If the President refers the matter to a tribunal, which recommends that the judge ought to be removed from office for the reasons stated in (2).
- (4) In the case of the Chancellor or Chief Justice, the Prime Minister may indicate that the issue of removing such judge be investigated, while the Judicial Service Commission may indicate that a High Court judge should be removed.
- (5) In the case of the Chancellor or Chief Justice, the President shall appoint a Tribunal consisting of a Chairperson and at least two other members chosen by the President to investigate the matter. In the case of any other Judge, the President shall appoint a tribunal from other judges in some parts of the Commonwealth acting in accordance with the advice of the Prime Minister.
- (6) Such Tribunals shall enquire into the matter and advise the President as to whether or not the Judge ought to be removed from office.
- (7) If the issue of removing the Judge has been referred to a tribunal, the President may suspend the Judge from office. The President may revoke such suspension at any time. The President may decide whether or not to suspend the Chancellor or Chief Justice.

Article 197: The conditions under which judges must vacate office are:

The President shall act on the advice of the Chancellor as to whether to suspend any other Judge.

- (8) The Constitution also provides that it is in the interest of the State to provide such conditions of service such as superannuation benefits for judges so that there would be no need for them to practise at the Bar upon their retirement.

Fundamental Rights

KNOW YOUR RIGHTS

Fundamental Rights

Fundamental rights are rights that are provided for in the Constitution and which the **State and its agents must not violate**. They protect us, the citizens of Guyana, from discrimination and unfair conduct by the Executive, Judicial and Administrative branches of the State so that we can live freely in a democracy. Fundamental rights cannot be enforced between private citizens. They are obligations of the State and therefore are enforceable against the State for violations by agents of the State.

The **Executive** branch of the State is made up of the President, and the Ministers of Government collectively called the Cabinet.

The **Judicial** branch of the State consists of the judges and magistrates and other court officials.

The **Administrative** branch is made up of the Public Service and other governmental agencies such as the Public Corporations.

The Fundamental rights that are guaranteed in our Constitution are:

1) Protection of the right to life – no person shall be hanged or otherwise deprived of his or her life unless sentenced to death by a court. Persons under 18 years old cannot be hanged.

2) Protection of the right to personal liberty – no person shall be imprisoned or locked up unless that person for example:

- (a) has been sentenced to imprisonment or ordered to be detained by a court; or
- (b) has been arrested on suspicion of having committed an offence; or
- (c) can cause the spread of an infectious or contagious disease; or
- (d) needs to be imprisoned to facilitate care or treatment or for the protection of the community.

3) Protection from slavery or forced labour.

4) Protection from torture, inhuman or degrading or other treatment – no person shall be treated cruelly.

5) Protection from deprivation of property – the State cannot take away the property of a person without making payment promptly and adequately for it.

6) Protection against arbitrary search or entry, e.g. the police should not search you or your property without a search warrant.

7) Protection of the law - every person who is arrested and charged for a criminal offence has the right to a fair hearing in a reasonable time by an independent and fair court. Everyone is innocent until proven guilty and is entitled to defend him or herself and be represented by a lawyer of his or her own choice.

8) Protection of freedom of conscience – freedom to practise your religion or belief, and freedom of thought.

9) Protection of freedom of expression – you have the right to speak freely on any issue; you are free to have opinions and free to receive and communicate ideas and

thoughts. However, you cannot promote racial hatred, ill-will or speak ill of another person's religion or belief or slander any person.

10) Protection of freedom of movement – the right to live anywhere in Guyana and to move freely in and out of Guyana unless the person is lawfully detained or prevented from so moving about.

11) Protection of freedom of assembly, association - the right to assemble in any gathering and to be a member of any group, organisation, trade union or political party.

12) Freedom to strike, to demonstrate peacefully and for trade unions and employers to enter into collective bargaining agreements.

13) The Right to work and free choice of employment.

14) Right to pension and gratuity – this applies to public officers as employees of the State.

15) Right to participate in the decision-making processes of the State – this can be done through trade unions and civic or non-governmental organisations.

16) Equality of persons – all persons are to have equal protection and benefits under the law.

17) All persons whether born in or out of wed-lock are equal and are entitled to equal rights.

18) Equality for women – women are to have equal rights and the same status and opportunities in all areas as men. All forms of discrimination against women on the basis of sex or gender are illegal.

19) Protection of the cultural heritage, language, and way of life of the indigenous peoples.

20) Right of every child to primary and secondary education in State schools, free of cost.

21) Right to establish private schools although they would be subject to regulation by the State.

22) Right to a healthy environment – the State shall take all reasonable measures to protect and preserve the environment.

23) Protection from discrimination on the grounds of race, place of origin, political opinion, colour, creed, age, disability, marital status (whether single or married), sex, gender, language, sexual orientation, birth, social class, pregnancy, religion, conscience, belief or culture – the State e.g. cannot refuse a citizen employment or refuse some other benefit (which you should get) attached to any of these grounds. But laws can discriminate where they are to provide for marriage, adoption, and inheritance of property or other matters of personal law and where it is reasonably justifiable to do so in the interest of the society.

If any government employee or agent of the State violates any of your rights then you can sue the State for damages. You can do so yourself or any other person, group or association can act on your behalf.



***STAND UP FOR
YOUR RIGHTS***

Human Rights

What are Human Rights?

Human rights are rights that we are all born with e.g.

- ❖ the right to a life free from violence
- ❖ the right to earn a livelihood
- ❖ the right to adequate food, water and housing
- ❖ the right to participate in decision-making at all levels in Guyana.

Guyana has signed seven human rights treaties, and these are now reaffirmed by the Constitution.

These are:

1) Convention on Civil and Political Rights

- Ensure the enjoyment of all civil and political rights, including the right to self-determination.
- Right to a fair trial by an impartial court in a reasonable time and to be legally represented by a person of the citizen's choice.
- Right to life unless deprived of this by a court
- Right to be treated humanely and with respect for the inherent dignity of the human person.

2) Convention on Economic, Social and Cultural Rights

- The right to work with technical and vocational guidance and training.
- Right to steady economic, social and cultural development and full and productive employment.
- Right to an adequate standard of living.
- Right to adequate food, clothing and housing and to continuous improvement of living conditions.

3) Convention on the Elimination of all Forms of Discrimination against Women

- Elimination of discrimination against women in all spheres whether economic, social, cultural, civil or political so that women can participate on equal terms with men in national development.

4) Convention on the Rights of the Child

- Right to protection from all forms of discrimination or punishment.
- Right to consideration of her/his best interests.

5) Convention on the Elimination of all Forms of Racial Discrimination

- Provision for measures that prevent and eliminate discrimination on the grounds of race, colour, and ethnic

origin since these are obstacles to friendly and peaceful relations.

6) Convention against Torture and other Inhuman or Degrading Treatment or Punishment

- provision for measures to prevent the torture of persons, including the training of law enforcement personnel, medical personnel, public officials and other persons who may be involved in the detention, interrogation or imprisonment of persons.

7) Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

- recognizes that violence against women is a violation of their human rights and fundamental freedoms and hinders or nullifies their observance, enjoyment and exercise of such rights and freedoms.

These Treaties and Conventions allow persons to enforce their human rights against the State, the Private Sector and civil society.

The following Commissions monitor and enforce the Treaties/Conventions:

1) The Human Rights Commission

- To investigate violations relating to equality of opportunity and treatment.

2) The Ethnic Relations Commission

- To eliminate discrimination on the basis of ethnicity and promote harmony and good relations among such persons.
- To provide for equality of opportunity among persons of different ethnic groups.

3) The Women and Gender Equality Commission

- To promote national recognition and acceptance that women's rights are human rights.
- To urge respect for gender equality and the protection, development and attainment of gender equality.

4) Indigenous Peoples Commission

- To establish mechanisms to enhance the status of indigenous peoples and to respond to their legitimate demands and needs.

5) Rights of the Child Commission

- To promote initiatives that reflect and enhance the well-being and the rights of the child.

You can make complaints about the violation of your human rights to any of these Commissions. They would investigate and seek a remedy whether through mediation, negotiation or by suing the person or entity, including the State, on your behalf.

The Human Rights Commission and the Ethnic Relations Commission will each have a tribunal attached to the Commission, which will conduct hearings into allegations of human rights abuses and complaints of ethnic and other forms of discrimination.

How will the Commissions Function?

A Secretariat will be established to facilitate the efficient functioning of all the Commissions since they are all related.

Complaints to any of the Commissions could be referred to the Human Rights commission for further attention.

Who will be the Members?

The members of the Commissions are to be appointed through a procedure involving the nomination by the National Assembly of bodies from which the members will be chosen. These bodies should represent women, youths, religious bodies, trade unions and indigenous groups.

Reporting Relationships

Each Commission must submit an annual report to the National Assembly on its work and the policies and mechanisms that have been established in order to comply with the above mentioned human rights treaties.

*Dictionary
of
Terms*

Dictionary of Terms

accede (accession)	- to take up an office position
assent	- agree to
a bill	- is a draft of a law to be passed in
the National	Assembly
incapacity	- illness either mental or physical
practitioner	- doctor