

THE OFFICIAL GAZETTE 4TH JULY, 2003
LEGAL SUPPLEMENT — C

BILL No. 9 of 2003

Friday 4th July, 2003

PARLIAMENT OFFICE
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Georgetown
Guyana.

4th July, 2003.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 9 of 2003

CONSTITUTION (AMENDMENT) (No. 2) BILL 2003

ARRANGEMENT OF ARTICLES

ARTICLE

1. Short title.
2. Repeal of article 11 of the Constitution.
3. Repeal and re-enactment of article 22 of the Constitution.
4. Alteration of article 27 of the Constitution.
5. Repeal and re-enactment of article 29 of the Constitution.
6. Repeal of article 30 of the Constitution.

7. Repeal and re-enactment of article 36 of the Constitution.
8. Insertion of new articles 38A to 38G (inclusive) in the Constitution.
9. Repeal and re-enactment of article 39 of the Constitution.
10. Alteration of article 40 of the Constitution.
11. Alteration of article 138 of the Constitution.
12. Alteration of article 139 of the Constitution.
13. Alteration of article 142 of the Constitution.
14. Repeal and re-enactment of article 147 of the Constitution.
15. Alteration of article 149 of the Constitution.
16. Insertion of new articles 149A to 149J (inclusive) in the Constitution.
17. Insertion of new Title 1A in the Constitution.

**A Bill
Intituled**

A. D. 2003

AN ACT to alter the constitution in accordance with articles 66 and 164.

Enacted by the Parliament of Guyana:-

Short title.

1. This Act may be cited as the Constitution (Amendment) (No. 2) Act 2003.

Repeal of
article 11
of the
Constitution.

2. Article 11 of the Constitution is hereby repealed.

Repeal and
re-enactment
of article 22
of the
Constitution.

3. Article 22 of the Constitution is hereby repealed and the following article substituted therefore-

"The right
and duty
to work.

22.(1) Every citizen has the right to be rewarded according to the nature, quality and quantity of his or her work, to equal pay for equal work or work of equal value, and to just conditions of work.

(2) Every citizen who is able to work has a duty to work."

Alteration
of article 27
of the
Constitution.

4. Article 27 of the Constitution is hereby altered in the following respects -

- (a) by the re-numbering of article 27 as paragraph (1) thereof; and
- (b) by the insertion after paragraph (i), as so renumbered, of the following paragraph -

"(2) It is the duty of the State to provide education that would include curricula designed to reflect the cultural diversities of Guyana and disciplines that are necessary to prepare students to deal with social issues and to meet the challenges of the modern technological age."

5. Article 29 of the Constitution is hereby repealed and the following article substituted therefore —

Repeal and re-enactment of article 29 of the Constitution

"Women's participation in public decision-making.

29. Women's participation in the various management and decision-making processes, whether private, public or state, shall be encouraged and facilitated by laws enacted for that purpose or otherwise."

6. Article 30 of the Constitution is hereby repealed.

Repeal of article 30 of the Constitution

7. Article 36 of the Constitution is hereby repealed and the following article substituted therefore —

Repeal and re-enactment of article 36 of the Constitution

"Land and the environment.

36. The well-being for the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems."

8. The Constitution is hereby altered by the insertion immediately after article 38 of the following articles —

Insertion of new articles 38A to 38G (inclusive) in the Constitution

"Democratic state with a healthy economy

38A. To ensure that Guyana is a democratic State with a healthy economy, the State shall —

(a) facilitate the engagement of citizens in activities designed to achieve their sustainable livelihoods;

(b) progressively remove the barriers that prohibit or limit the realisation of the potential for self-sustaining activities in such fields as agriculture, pro-

cessing, manufacturing and artistic and information-based activities;

(c) encourage and support the self-mobilization of citizens; and

(d) provide appropriate support to any group which is, or is claiming to be, under threat of marginalisation.

The best interest of the child.

38B. The best interest of the child shall be the primary consideration in all judicial proceedings and decisions and in all matters concerning children, whether undertaken by public or private social welfare institutions, administrative authorities or legislative bodies.

Adoption in best interest of the child.

38C. The State shall ensure that the adoption of a child takes place only if that adoption would be in the best interest of the child.

Child's right to maintenance and accommodation.

38D. Every child has the right to maintenance and accommodation from his or her parents and guardians.

Formal education compulsory

38E. Formal education is compulsory up to the age of fifteen years.

Vilification of religion.

38F. No person's religion or religious belief shall be vilified

Public service to be free from political influence.

38G. (1) The integrity of the public service is guaranteed. No public officer shall be required to execute or condone irregular acts on the basis of higher orders.

(2) The freedom of every public officer to perform his or her duties and fulfil his or her responsibilities is protected.

(3) No public officer shall be the subject of sanctions of any kind without due process.

(4) In the discharge of his or her duties a public officer shall execute the lawful policies of the government.”

9. Article 39 of the Constitution is hereby repealed and the following article substituted therefore –

“Guiding principles and objectives”

39. (1) It is the duty of Parliament, the Government, the courts and all other public agencies to be guided in the discharge of their functions by the principles set out in this Chapter, and Parliament may provide for any of those principles to be enforceable in any court or tribunal.

Repeal and re-enactment of article 39 of the Constitution.

(2) In the interpretation of the fundamental rights provisions in this Constitution a court shall pay due regard to international law, international conventions, covenants and charters bearing on human rights.”

10. Article 40 of the Constitution is hereby altered by the substitution for paragraph (1) of the following paragraph –

“(1) Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, ignorance and want. That right includes the fundamental rights and freedoms of the individual.”

Alteration of article 40 of the Constitution.

11. Article 138 of the Constitution is hereby altered by the insertion immediately after paragraph (1), of the following paragraph –

“(1A) No person who was under the age of eighteen years at the time when he or she committed an offence, for which that person has pleaded or was found guilty, shall be subject to capital punishment for the commission of that offence;”

Alteration of article 138 of the constitution.

Alteration
of article 139
of the
Constitution.

12. Article 139(4) of the Constitution is hereby altered by the substitution for the words "as soon as is reasonably practicable", of the words "within seventy-two hours of arrest or detention, but the police may apply to the High Court for extensions of time".

Alteration
of article 142
of the
Constitution.

13. Article 142 of the Constitution is hereby altered by the substitution for paragraph (1), of the following paragraph –

"(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 taking of possession or acquisition is made by a written law requiring the prompt payment of adequate compensation."

Repeal
and
re-enactment
of article 147
of the
Constitution.

14. Article 147 of the Constitution is hereby repealed and the following article substituted therefore –

Protection
of freedom
of assembly,
association
and demon-
stration.

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

(2) Except with his or her own consent no person shall be hindered in the enjoyment of his or her freedom to strike.

(3) Neither an employer nor a trade union shall be deprived of the right to enter into collective agreements.

(4) 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) 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;

(c) that imposes restrictions upon public officers; or

(d) that imposes an obligation on workers to become contributors to any industrial scheme or workers' organization intended to operate or provide for the benefit or welfare of such workers or of their fellow workers or of any relative and dependant of any of them."

15. Article 149 of the Constitution is hereby amended in the following respects –

(a) by the substitution for paragraph (2), of the following paragraph –

"(2) In this article the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their or their parents' or guardians' respective descriptions by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth,

Alteration
of article 149
of the
Constitution.

social class, pregnancy, religion, conscience, belief or culture whereby persons of one such description are subjected to disabilities or restrictions to which other persons of the same or another such description are not made subject or are accorded privileges or advantages which are not afforded to other persons of the same or another such description.”; and

- (b) by the substitution for paragraph (4), of the following paragraph –

“(4) Nothing contained in any law shall be held to be inconsistent with or in contravention of paragraph (1) (a) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to a person’s or his or her parents’ or guardians’ respective description by race, place of origin, political opinions, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture) 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 democratic organ or of a body corporate established by any law for public purposes.

16. The Constitution is hereby altered by the insertion immediately after article 149 of the following articles –

"Right
to work.

149A. No person shall be hindered in the enjoyment of his or her right to work, that is to say, the right to free choice of employment.

Right to
pension
and
gratuity.

149B. Every public sector worker shall enjoy an absolute and enforceable right to any pension or gratuity granted to him or her under the provision of any law or collective agreement of any kind whatsoever.

Right to
participate
in decision-
making
processes
of the State.

149C. No person shall be hindered in the enjoyment of participating through co-operatives, trade unions, civic or socio-economic organizations of a national character, in the management and decision-making processes of the State.

Equality
of persons
before
the law.

149D. (1) The State shall not deny to any person equality before the law or equal protection and benefit of the law.

(2) The State shall, for the purpose of promoting equality, take legislative and other measures designed to protect disadvantaged persons and persons with disabilities.

(3) Equality includes the full and equal enjoyment of all rights and freedoms guaranteed by or under this Constitution or any other law.

Equality
of status.

149E. (1) All persons, whether born in or out of wedlock, and whether born prior to the enactment of this article or not, are born equal, have equal status and are entitled to equal rights.

(2) Nothing contained in paragraph (1) shall be taken to affect vested rights.

Equality
for women.

149F.(1) Every woman is entitled to equal rights and status with men in all spheres of political, economic and social life. All forms of discrimination against women on the basis of gender or sex are illegal.

(2) Every woman is entitled to equal access with men to academic, vocational and professional training, equal opportunities in employment, remuneration and promotion and in social, political and cultural activity.

Indigenous
peoples'
rights.

149G. Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life.

Right to
free
education.

149H.(1) Every child is entitled to free primary and secondary education in schools owned or funded by the State.

(2) The right conferred in paragraph (1) does not imply a right to free education at a specific school.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of paragraph (1) to the extent that the law in question makes provision for standards or qualifications, not being standards or qualifications which are discriminatory within the meaning of article 149(2), to be required for admission to a specific school.

Right to
establish
private
schools.

149I. No person shall be hindered in the enjoyment of the right to establish a private school which shall be under regulation by the State.

The
environment.

149J.(1) Everyone has the right to an environment that is not harmful to his or her health or well-being.

(2) The State shall protect the environment, for the benefit of present and future generations, through reasonable legislative and other measures designed to —

(a) prevent pollution and ecological degradation;

(b) promote conservation; and

(c) secure sustainable development and use of natural resources while promoting justifiable economic and social development.

(3) It shall not be an infringement of a person's rights under paragraph (1) if, by reason only of an allergic condition or other peculiarity the environment is harmful to that person's health or well-being."

17. The Constitution is hereby altered by the insertion immediately after article 154 of the following TITLE —

Insertion
of new Title
1A in the
Constitution.

TITLE 1A

PROTECTION OF HUMAN RIGHTS

Human
rights
of the
individual.

Fourth
Schedule.

154A. (1) Subject to paragraphs (3) and (6), every person, as contemplated by the respective international treaties set out in the Fourth Schedule to which Guyana has acceded is entitled to the human rights enshrined in the said international treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government and, where applicable to them, by all natural and legal persons and shall be enforceable in the manner hereinafter prescribed.

(2) The rights referred to in paragraph (1) do not include any fundamental right under this Constitution.

(3) The State shall, having regard to the socio-cultural level of development of the society, take reasonable legislative and other measures within its available resources to achieve the progressive realization of the rights provided for in paragraph (1).

(4) If any person alleges that any of the rights referred to in paragraph (1), has been, is being or is about to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Human Rights Commission in such manner as the Commission may prescribe, for redress.

(5) Nothing contained in this article shall be construed so as to abrogate any human right, not enumerated herein, which a person had at the time of the commencement of this Article.

Fourth
Schedule

(6) The State may divest itself or otherwise limit the extent of its obligation under any of the treaties listed in the Fourth Schedule, provided that two-thirds of the elected members of the National Assembly have voted in favour of such divestment or limitation.”.

FOURTH SECHEDULE

art. 154A

Convention on the Rights of the Child

Convention on the Elimination of All Forms of Discrimination against Women.

Convention on the Elimination of All Forms of Racial Discrimination.

Convention Against Torture and Other Inhuman or Degrading Treatment or punishment.

Covenant on Economic, Social and Cultural Rights

Covenant on Civil and Political Rights

Inter-American Convention on the Prevention, Punishment and Education of Violence against Women.

EXPLANATORY MEMORANDUM

This Bill which alters the Constitution, is one of a group of such Bills seeking to give effect to the recommendations of the Constitution Reform Committee, as approved by the Oversight Committee on Constitutional Reform.

This Bill elevates certain articles in Chapter II from principles to fundamental rights.

The Bill confers new fundamental rights and human rights.

Clause 2 repeals article 11 dealing with the role of the trade unions and co-operatives in decision making processes of the State. The subject matter of this article is now elevated to a fundamental right in article 149C (Clause 16).

Clause 3 repeals and re-enacts article 22 which now provides not only for equal pay for equal work but for just conditions of work and underscores the duty of a citizen to work.

Clause 4 inserts a new paragraph (2) to article 27 spelling out the duty of the State to provide education curricula to prepare students to meet the challenge before them.

Clause 5 repeals and re-enacts article 29 which now provides that the participation of women in decision making processes shall be encouraged and facilitated by legislation. It should be noted that equality for women is now a fundamental right in article 149F. (Clause 16).

Clause 6 repeals article 30 dealing with equality of children born out of wedlock. Equality of status of all persons is now a fundamental right in article 149E. (Clause 16).

Clause 7 repeals and re-enacts article 36 which now highlights the dependence of the nation on preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and the ecosystem.

Clause 8 inserts seven new articles, 38A to 38G, dealing with the following new principles –

- the need for Guyana to be a democratic state with a healthy economy.
- The best interest of the child being the primary consideration in all matters concerning children, including their maintenance and adoption
- Formal compulsory education
- Prohibition against vilification of religion
- The public service being free from political interference

Clause 9 repeals and re-enacts article 39 which provides that Parliament, the Government, the courts and all other public agencies are to be guided by the principles set out in Chapter 11 of the Constitution in the discharge of their functions. Parliament has also been vested with the power in providing for the enforceability of the principles. This clause also provides that courts shall pay due regard to international conventions, covenants and charters bearing on human rights, when interpreting fundamental rights provisions.

Clause 11, which alters article 138, is designed to ensure that no person who has a minor at the time when he committed an offence shall be subject to the death penalty for the commission of that offence.

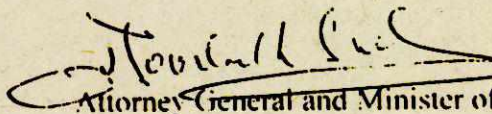
Clause 13 substitutes for article 142(1) a new paragraph which restores the provisions of this paragraph as set out in article 8(1) (a) in the 1996 Constitution as amended by Act No. 19 of 1973. This paragraph restores the right to prompt payment of adequate compensation for compulsory acquisition of property.

Clause 14 repeals and re-enacts article 147 which now adds to that article the freedom to demonstrate peacefully, freedom to strike and the right to enter into collective agreements.

Clause 15, which alters article 149, expands the meaning of discrimination thereby affording constitutional protection against discrimination on a number of bases, notably, marital status, disability and pregnancy.

By clause 16 ten new fundamental rights have been conferred, three of which have already been mentioned. The other new rights are the right to work, the right to pension and gratuity, equality before the law, the rights for indigenous peoples, right to free education, the environment and the right to establish private schools.

By clause 17 a new Title 1A is inserted. This Title addresses the protection of rights styled as Human Rights. These rights are those guaranteed by various conventions and treaties to which Guyana has acceded – the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Woman, the Convention on the Elimination of all Forms of Racial Discrimination and the Covenant on Civil and Political Rights, to name a few.


Attorney General and Minister of Legal Affairs