



EXPLANATORY PAPER ON THE CONSTITUTION OF ANTIGUA AND BARBUDA (AMENDMENT) BILL, 2018

PREPARED BY THE ATTORNEY GENERAL IN ACCORDANCE WITH SECTION 5(5) OF THE CONSTITUTIONAL REFERENDUM ACT, 2016 NO. 15 OF 2016

The recital introducing the Constitution of Antigua and Barbuda opens with a statement of principle which proclaimed the sovereign status of Antigua and Barbuda as a nation founded upon the 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.

2. Additionally, the recital recognises 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. The recital closes with a recognition of the desire of the people to establish a framework of supreme law within which to guarantee their inalienable human rights and freedoms; among them, are the right to liberty, prosperity, security and legal redress of grievances, as well as freedom of speech, of the press and of assembly, subject only to the public interest.

3. For the past several years since the attainment of a fully responsible status of nationhood within the Commonwealth in 1981, the status of Her Majesty in Council or the Judicial Committee of the Privy Council, as the final court of appeal for Antigua and Barbuda, remains unchanged. The Constitution continues to recognise Her Majesty in Council as the final appeal Court for Antigua and Barbuda. Her Majesty in Council as the final court of appeal for Antigua and Barbuda has been a constant subject of debate for those who consider that the independence of Antigua and Barbuda is incomplete without a homemade final court of appeal established and constituted by the people it is established to serve. After almost 37 years of Independence, the debate still continues unabated. It is in the light of this debate and the desire of the people of Antigua and Barbuda to assume full control over its affairs, that the Senate and the House of Representatives passed **“the Constitution of Antigua and Barbuda (Amendment) Bill 2018”** with the required majority of two thirds of both the Senate and the House of Representatives to terminate the use of Her Majesty in Council or the Judicial Committee of the Privy Council as the final Court of Appeal and establish a homemade institution rooted in the culture and practice of the people the court is established to serve.

4. The Bill to amend the Constitution of Antigua and Barbuda and to replace Her Majesty in council as the final appellate jurisdiction with the Caribbean Court of Justice is considered a solemn duty to complete the status of Antigua and Barbuda as a fully responsible independent country which the founding fathers of Antigua and Barbuda fought so hard to achieve.

5. The Caribbean Court of Justice was established by a multilateral Agreement between a number of Caribbean States in St. Michael, Barbados on 14th February, 2001. Antigua and Barbuda was among the first signatories to the Agreement which was signed by Lester Bird, then Prime Minister, for and on behalf of the Government of Antigua and Barbuda.

6. Antigua and Barbuda subsequently ratified the Agreement establishing the CCJ. When a country ratifies the CCJ Agreement, that country automatically submits to the CCJ's Original Jurisdiction, which has exclusive jurisdiction to interpret and apply the Revised Treaty of Chaguaramas. No constitutional change is needed for this, as it does not alter the Constitution. When Antigua and Barbuda ratified the Agreement it automatically submitted to its Original Jurisdiction as of that date.

7. Accession by a country to the CCJ Appellate Jurisdiction (öCCJ AJö) requires a special agreement between that country and the CCJ. Constitutional change is needed for this as it alters the provisions in the Constitution and the other constitutional instruments which establish and regulate the Courts; it substitutes a new final appellate court for that provided for by the Constitution. So, **clause 1 (3)** of the Constitution of Antigua and Barbuda (Amendment) Bill 2018 makes it clear that the Act shall be read and construed as altering the Constitution.

8. Section 122, in Chapter IX, of the Constitution of Antigua and Barbuda provides for appeals from the Court of Appeal of the Eastern Caribbean Supreme Court to öHer Majesty in Councilö, UKPC, which may be called the öUKPC Appeals Clauseö.

9. The CCJ Agreement has very admirable provisions on the appointment of the CCJ Judges, their tenure, their protection against arbitrary removal from office, their being assured substantial jurisdiction, the financing of the CCJ. The CCJ Agreement fully safeguards the CCJ against political interference. **The UKPC has certified that the CCJ Agreement represents a serious and conscientious endeavour to create a regional court of high quality and “complete independence, enjoying all the advantages which a regional court could hope to enjoy”.**

10. Mainly, the substituting of the CCJ AJ for the UKPC would take place in section 122, transforming the UKPC Appeals Clause into what may be called the “CCJ Appeals Clause”. The Bill would repeal section 122 of the Constitution and replace it, deleting the words “Her Majesty in Council” wherever they appear in section 122, and in each case substituting the words “the Caribbean Court of Justice”; that would be done by **clause 8**.

11. The substituting of the CCJ for the UKPC would be done also by **clauses 3, 4 and 6** regarding provisions of the Constitution other than section 122.

12. To emphasise that the CCJ AJ would be the final appellate court, **clause 9** would insert in the Constitution a new provision, section 122A, which would state that the CCJ decisions “shall be final and not subject to any appeal”; reference **clause 17** of the Bill.

13. It should be stated that no appeal shall lie from any court in Antigua and Barbuda to any court except only to the CCJ; **clause 9** would insert in the Constitution a new provision, section 122B, stating such.

14. It would be necessary to provide that alterations of the CCJ Agreement shall require the votes of not less than two-thirds of all the members of the House of Representatives.

This would be done by **clauses 5(a)(i), (b)(i), (c)(i), (d), 11 and 16.**

15. There is a sweeping-up clause in the Bill to substitute the CCJ AJ for the UKPC in provisions not specified by the Bill; **Clause 12** would address this provision .

16 The decisions of the Court of Appeal that would have been final, and not subject to appeal, when the Bill would have passed, would, by virtue of **clause 13**, remain final.

17. Matters before, or on application to the UKPC at the time the Bill would have been passed shall, in accordance with **clauses 14 and 15** proceed to be dealt with by the UKPC. However, such a matter may as provided by **clause 15(1)** and, with the consent of the parties, be transferred to the CCJ to be dealt with.

18. It is appropriate to facilitate raising the age of retirement of Judges of the Eastern Caribbean Supreme Court. So too with providing machinery for their removal from office not involving the UK Lord Chancellor and the Privy Council but instead involving the CCJ. It is also proposed to replace the expression "Puisne Judge" with the expression "High Court Judge". These matters will require agreement on the part of Eastern Caribbean States; these changes cannot be made unilaterally by Antigua and Barbuda. The Bill proposes to make provision for the necessary changes to be made without reference to a referendum. These are matters referred to in Part II of the Schedule to the Constitution, the alteration of which is addressed in clause 16 of the Bill.

19. Clause 1(2) of the Bill would authorise the Governor General to appoint, by production published in the Gazette, the date on which the Act comes into force, provided that the date so appointed shall not have a retroactive effect.

Dated the 1 1 1 1 1 .day of October, 2018

1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Hon. Steadroy Benjamin
Attorney General of
Antigua and Barbuda