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**CONSTITUTION OF GRENADA (RIGHTS AND FREEDOMS)****(AMENDMENT) BILL, 2016****EXPLANATORY MEMORANDUM**

The various **clauses** of the Bill for the *Constitution of Grenada (Rights and Freedoms) (Amendment) Act*, its short title by its **clause 1(1)**, would amend the Constitution for three objects and reasons. One is to refine the provisions of the Chapter of the Constitution protecting fundamental rights and freedoms (“Bill of Rights”). Another is to insert in the Constitution a new Chapter 1A on Directive Principles of State Policy. The other is to insert in the Constitution a new Chapter 1B on Gender Equality **Clause 1(2)** says the Act shall be read and construed as altering the Constitution. The supreme law clause would be moved from the back in section 106 to the front in section 1(2), by **clauses 3 and 23**.

The Bill would increase the kinds of conduct which would constitute discrimination prohibited by the Constitution. New grounds would be conduct related to disability, ethnicity, language, religion and social class; **clause 3(a)** on section 1; **clause 9** on section 13. This is in line with the CARICOM Charter of Civil Society 1997 (“CARICOM Charter”) article II (1).

It would be spelt out that freedom of expression includes “freedom of the press” and other media, **clause 4(b)** on section 1; **clause 8** on section 10. This accords with the CARICOM Charter article VIII (2).

The “due process of law” would be guaranteed, **clause 4(c)** on section 1; **clause 7** on section 8; **clause 12**. This is in line with the CARICOM Charter article IV (2).

The right to communicate with a lawyer without delay after being arrested or detained would be specified, **clause 5**.

There would be specific protection of intellectual property rights, **clause 6**.

Equality as to birth in or out of wedlock would be assured, **clause 11** for new section 13A.

There would be the right of the child to education, **clause 11** for new section 13B.

Freedom of association would be related to “political parties”, **clause 9**.

The right to vote would be made a human right, **clause 11** for new section 13C. A new Chapter 1A on Directive Principles of State Policy would set out principles for the protection of children, **Clause 14** in section 18F. This comes from the CARICOM Charter art XIII.

They protect the physically challenged, the disabled, **Clause 14** in section 18G. These come from the CARICOM Charter art XIV.

They protect rights of the family, **Clause 14** in section 18H. These come from the CARICOM Charter art XVI.

They protect the environment, **Clause 14** in section 18B, 18C. These reflect the CARICOM Charter art XXIII.

They call for protection against climate change and natural disasters, **clause 14** in and 18D, 18E.

They require the State to aim at enhancing the supply of food, water and health facilities, **clause 14** in section 18I. These reflect the CARICOM Charter art XXI.

They would call upon the **Government to exercise fiscal responsibility**, **clause 14** in sections 18L, 18M. Compare the CARICOM Charter art XVII (5) (A).

The State would be called upon to domesticate relevant treaties, **clause 14** in section 18N.

Authorities would be required to be guided in the discharge of their functions by these principles **clause 14** in section 18O.

Gender Equality is addressed from 18O to 18T, by **Clause 14**. There would be protection for women, in section 18P, coming from the CARICOM Charter art XII. The State would be called upon to consider domesticating relevant treaties, on section 18Q. Parliament would be called upon to correct inequalities, in section 18R. Political parties would be obliged to promote gender equality, in section 18S.

It would be clarified that citizenship of the Commonwealth is citizenship of Grenada, **clauses 15 to 20**.

The Constitution would be made more gender sensitive; there would be more gender inclusion. References to the masculine, “he”, would be replaced by references to the masculine and the feminine, “he and she”; **clause 21**.

**Clause 2** defines the expressions “Constitutions”, “constitutional instruments” and Constitution Order”.

The date of commencement of the Act would be appointed by the Governor-General by proclamation published in the Gazette, **clause 1(3)**.

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**A. K. Cajeton Hood**  
**HON. ATTORNEY-GENERAL**

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**CONSTITUTION OF GRENADA (RIGHTS AND FREEDOMS)****(AMENDMENT) BILL, 2016****ARRANGEMENT OF CLAUSES****PART I  
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17. Alteration of section 27 of the Constitution

18.    Alteration of section 30 of the Constitution
19.    Alteration of section 31 of the Constitution
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22.    Alteration of section 101 of the Constitution
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**CONSTITUTION OF GRENADA (RIGHTS AND FREEDOMS)****(AMENDMENT) BILL, 2016****GRENADA****ACT NO. 2016**

**AN ACT** to alter the Constitution of Grenada to make better provision for the rights and freedoms of the individual.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Grenada, and by the authority of the same as follows—

**PART I  
PRELIMINARY****Short title, commencement and alteration of the Constitution**

1. (1) This Act may be cited as the

**CONSTITUTION OF GRENADA (RIGHTS AND FREEDOMS)  
(AMENDMENT) ACT, 2016.**

- (2) This Act shall come into effect on such date as may be appointed by Proclamation issued by the Governor-General by Proclamation published in the *Gazette*; and different dates may be appointed for the various provisions of this Act.

- (3) This Act shall be read and construed as altering the Constitution.

**Interpretation**

2. In this Act—

“**Constitution**” means the Constitution of Grenada which is set out in Schedule 1 to the Grenada Constitution Order 1973;

“**Constitutional instruments**” includes the—

- (a) Grenada Constitution Order 1973;
- (b) Constitution of Grenada;
- (c) West Indies Associated States Supreme Court Order 1967;
- (d) West Indies Associated States (Appeals to Privy Council) Order 1967; and

- (e)      West Indies Associated States (Appeals to Privy Council) (Grenada) Order.

“**Constitution Order**” means the Grenada Constitution Order 1973;

## **PART II**

### **ALTERATIONS OF THE CONSTITUTION**

#### **Alteration of Chapter 1 of the Constitution**

3.      Chapter 1 of the Constitution is altered as follows—
- (a)      by deleting the heading “PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS” where it appears and substituting therefor the heading—“FOUNDATIONAL”;
- (b)      by inserting after the heading “FOUNDATIONAL” the following—

#### **“PART 1**

#### *The State and its Supreme Law*

##### **The State**

1.      Grenada shall be a sovereign democratic State founded on the principles of parliamentary democracy enshrined in this Constitution in which the basis of government is the will of the people.

##### **This Constitution is supreme law**

1A.    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.”;

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**PART 2***Protection of Fundamental Rights and Freedoms*"; and

- (c) by renumbering section 1 as section "1B".

**Alteration of section 1 of the Constitution**

4. Section 1 of the Constitution is altered—

- (a) by deleting the words "race, place of origin, political opinions, colour, creed or sex" where they appear and substituting the words "colour, creed, disability, ethnicity, language, place of birth, national or social origin, political opinions, race, religion, sex or social class";
- (b) in paragraph (b), by deleting the word "expression" where it appears and substituting the words "expression (including freedom of the press and other media)"; and
- (c) by deleting the words "public interest" where they appear and substituting the words "public interest and being limitations which are in accordance with the due process of law".

**Alteration of section 3 of the Constitution**

5. Section 3 of the Constitution is altered by repealing subsection (2) and substituting the following—

"(2) Any person who is arrested or detained shall have—

- (a) the right to be informed, without delay, promptly, at the time of his arrest or detention, of the reason or reasons for his arrest or detention in a language that he understands; and
- (b) the right, without delay, promptly, after being arrested or detained, to retain, instruct and hold communication with a legal representative of his own choice and to be informed of that right."

**Insertion of section in the Constitution**

6. The Constitution is altered by inserting after section 6 the following section—

**"Protection of intellectual property rights**

6A. (1) Every person shall have the right to enjoy intellectual property rights.

(2) The State shall support, promote and protect the intellectual property rights of the people of Grenada.

- (3) In this section ‘intellectual property’ includes works of creation of an intellectual, artistic or cultural nature whether in word, in picture, in drawing or in any other form of presentation.”.

**Alteration of section 8 of the Constitution**

7. Section 8 of the Constitution is altered—

- (a) in subsection (1) by deleting the words “established by law” where they appear and substituting the words “established by law and in accordance with the due process of law”; and
- (b) in subsection (2) by inserting after paragraph (b) the following—
- “(ba) shall be informed, immediately after being charged, that he has a right to remain silent, and that if he makes any statement it may be used in a court as evidence against him; ” and
- (c) in subsection (8), by deleting the words “within a reasonable time” where they appear and substituting the words “within a reasonable time and in accordance with the due process of law”.

**Alteration of section 10 of the Constitution**

8. Section 10 of the Constitution is altered by inserting after subsection (1) the following—

“(1A) The freedom protected by subsection (1) of this section shall include freedom of the press and other media”.

**Alteration of section 11 of the Constitution**

9. Section 11 of the Constitution is altered in subsection (1) by deleting the words “trade unions” where they appear and substituting the words “political parties, trade unions”.

**Alteration of section 13 of the Constitution**

10. Section 13 of the Constitution is amended—

- (a) by deleting subsection (1) and substituting the following—
- “(1) Subject to the provisions of subsections (4), (5) and (7) of this section and in the public interest—
- (a) no law shall make any provision that is discriminatory either of itself or in its effect; and
- (b) all persons shall be equal before the law, and shall be entitled to the equal protection of the law.”;

- (b) in subsection (2) by deleting the words “public authority.” where they appear and substituting the words “public authority; all persons shall be treated equally and humanely by every public authority.”; and
- (c) in subsection (3) by deleting the words “race, place of origin, political opinions, colour, creed or sex” where they appear and substituting the words “colour, creed, disability, ethnicity, language, place of birth, place of origin, political opinions, race, religion, sex or social class”.

### **Insertion of sections in the Constitution**

11. The Constitution is altered by inserting after section 13 the following—

#### **“Equality as to birth in or out of wedlock**

13A. (1) All persons, whether born in or out of wedlock, and whether born prior to the enactment of this section or not, are born equal, have equal status and are entitled to equal rights; so that in terms of status at birth a child is a child.

(2) Nothing contained in subsection (1) of this section shall be taken to affect rights vested at the commencement of this section.

#### **Right of child to public funded education**

13B. (1) Every child up to sixteen years of age who is a citizen of Grenada shall have the right to public funded education in educational institutions owned or funded by the State.

(2) The right conferred by subsection (1) of this section shall not imply a right to public funded education at a specified educational institution.

(3) 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 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 subsection (3) of section 13 of this Constitution.

(4) Every child with a disability shall have the right to public funded education in accordance with his special needs up to eighteen years of age.

(5) In this section, the right to public funded education requires the State to pay tuition fees and other such school fees for every child referred to in this section.

**Right of Vote**

13C. There shall be guaranteed the right of every citizen of Grenada—

- (a) who is qualified to be registered as an elector for elections to the House of Representatives, to be so registered; and
- (b) who is so registered, to vote in such elections which shall be free and fair.”.

**Insertion of section in the Constitution**

12. The Constitution is altered the inserting after section 15 the following new section—

**“Right to due process of law**

15A. Subject to sections 14 and 15 of this Constitution, no person shall be deprived of, or otherwise subject to limitations of, the rights and freedoms guaranteed by sections 2 to 15 (inclusive) of this Constitution without the protection of the law and except by due process of law.”.

**Alteration of section 16 of the Constitution**

13. Section 16 of the Constitution is altered by deleting the words “sections 2 to 15 (inclusive)” where they appear and substituting the words “sections 2 to 15A (inclusive)”.

**Insertion of sections in the Constitution**

14. The Constitution is altered by inserting after section 18 the following—

**“CHAPTER 1A****DIRECTIVE PRINCIPLES OF STATE POLICY****Duty of the State to protect the natural resources**

18A. The State has a duty to protect the natural resources of the country for the benefit of the people.

**Duty of the State to protect the environment**

18B. The State has a duty to protect and preserve the environment; and not let it suffer degradation.

**Right of the people to healthy environment**

18C. (1) Everyone has the right to an environment that is not harmful to his health or well-being.

(2) It shall not be an infringement of a person’s right under subsection (1) of this section if, by reason only of an allergic condition or other peculiarity on his part the environment is harmful to his health or well-being.

**Protection against climate change**

18D. The State has a duty to protect the country against adverse effects of climate change.

**Duty to promote preparedness for natural disasters**

18E. The State has a duty to promote awareness of, and preparedness for, natural disasters.

**Protection of children**

18F. Every child has the right—

- (a) not to be compelled to perform or render service harmful to his physical or mental health, upbringing, education or social development;
- (b) to be protected against economic or other exploitation, physical or mental violence, injury, neglect or abuse including sexual abuse;
- (c) where appropriate, having regard to relevant factors including his age, and mental and physical development, to be consulted and to have his views represented personally or by an independent person before the courts and other agencies or bodies which deal with the welfare of the child.

**Right of persons who are challenged physically, visually, aurally or mentally**

18G. (1) Persons who are duly certified as being challenged physically, visually, aurally and or mentally have a right to an enabling environment to develop their talents so that they may contribute to national development.

(2) Every person so challenged has the right—

- (a) not to be discriminated against on the basis of his disability;
- (b) to be afforded equal opportunities in all fields of endeavour and to be allowed to develop his full potential; in accordance with the principle of reasonable accommodation; and
- (c) to be accorded respect for his human dignity so as to enjoy a life as normal and full as possible.

**Rights of the family**

18H. (1) The right to have a family, and to engage in family life, shall be respected.

(2) The State, recognising the family as the fundamental unit of society, shall endeavour to ensure—

- (a) the fulfilment of the necessary conditions for the promotion of family life and effective parenting skills, bearing in mind the importance of the role of each parent;

- (b) the full development and protection of the family, including the extended family.

**Aiming at enhancing food, water and health facilities**

18I. Subject to the resources in and available to the State, the State should aim at enhancing the supply of food, potable water and health facilities.

**Right to expressions of culture**

18J. Every person has a right to expressions of culture that are free of interference by the State; subject only to such regulation as is necessary for protecting the rights and freedoms of others and the public interest.

**Right to access information**

18K. There shall be freedom of access to information regarding the State; subject only to overriding public interests such as the protection of national security.

**Government to strive to exercise fiscal responsibility**

18L. The Government should strive to exercise fiscal responsibility so as not to unduly burden the people financially.

**Relevant international human rights treaties should be incorporated into domestic law where appropriate**

18M. (1) Grenada having acceded to certain international human rights treaties and conventions which protect and reinforce the inalienable equal and developmental rights of citizens, Parliament should consider taking appropriate steps to have such treaties and conventions incorporated into the domestic law of Grenada; taking into account any reservations Grenada may have made to such treaties and conventions.

**Directive principles to guide organs of the State and other public entities**

18N. (1) Subject to subsection (2) of this section, and subject to the availability of resources, and to protection of the public interest, it is the duty of the organs of the State, namely, Parliament, the Executive and the Courts, other institutions of the State, other public authorities or public bodies functionaries and entities to be guided in the discharge of their functions by the principles set out in this Chapter; for these are directive principles of state policy.

(2) Parliament may provide for any of the principles set out in this Chapter to be enforceable in any court or tribunal; and, unless Parliament so provides in respect of any such principle, no principle set out in this Chapter shall be enforceable in any court or tribunal.

(3) The expression “public interest” in subsection (1) of this section refers to defence, public safety, public order, public morality and public health, as well as the protection of the rights and freedoms of other persons.

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**CHAPTER 1B****GENDER EQUALITY****Gender and sex discrimination**

18O. (1) There shall be gender equality—

- (a) both men and women shall be entitled to equal rights and status in all spheres of life, especially in economic, educational, political, civic and social activities;
- (b) both men and women shall be entitled to equal access to academic, vocational and professional training; to equal opportunities in employment and promotion; to equal remuneration for work of equal value; and to equal access to justice;
- (c) both men and women shall have equal opportunities to be elected or appointed to public office and to be eligible for appointment to positions of decision-making bodies at all levels of the society; and
- (d) both men and women shall have the right to legal protection, including just and effective remedies, against domestic violence, sexual abuse and sexual harassment.

**Protection of women**

18P. Women shall have the right not to be discriminated against by reason of marital status, pregnancy or such other characteristic feminine attribute.

**State to domesticate treaties promoting gender equality**

18Q. Grenada having acceded to certain international treaties and conventions which promote gender equality, Parliament should consider whether such treaties and conventions should be incorporated into the domestic law of Grenada; taking into account any reservations Grenada may have made to such treaties and conventions.

**Parliament to correct gender inequalities**

18R. Parliament may enact laws suitable to correct disparities and inequalities between men and women.

**Political parties to promote gender equality**

18S. Political parties shall strive to promote and pursue gender equality in—

- (a) nominating candidates for elections of persons as members of democratic institutions including the House of Representatives; and

- (b) influencing the appointment of persons as members of the Senate.

### **Definition of gender and “gender equality”**

18T. In this Chapter—

- (a) “**gender**” is the range of characteristics pertaining to, and differentiating between, male and female; and
- (b) “**gender equality**” reflects the view that men and women should receive equal treatment and should not be discriminated against based on gender.”.

### **Alteration of section 25 of the Constitution**

15. Section 25 of the Constitution is altered in paragraph (a) by inserting before the word “Commonwealth” where it appears the words “citizen of Grenada or otherwise a”.

### **Alteration of section 26 of the Constitution**

16. Section 26 of the Constitution is altered in subsection (1) (a) by deleting the words “or state” where they appear and substituting the words “or state, that is, a power or state other than Grenada or another Commonwealth country”.

### **Alteration of section 27 of the Constitution**

17. Section 27 of the Constitution is altered in subsection (2) (b) by inserting before the word “Commonwealth” where it appears the words “citizen of Grenada and ceases also to be otherwise a”.

### **Alteration of section 30 of the Constitution**

18. Section 30 of the Constitution is altered in paragraph (a) by inserting before the word “Commonwealth” where it appears the words “citizen of Grenada or otherwise a”.

### **Alteration of section 31 of the Constitution**

19. Section 31 of the Constitution is altered in subsection (1) (a) by deleting the words “or state” and substituting the words “or state, that is, a power or state other than Grenada or another Commonwealth country”.

### **Alteration of section 34 of the Constitution**

20. Section 34 of the Constitution is altered in subsection (5) paragraph (a) (ii) by inserting before the word “Commonwealth” where it appears the words “citizen of Grenada or otherwise a”.

### **Gender inclusion**

21. Wherever in the Constitution or any other constitutional instrument there appears any of the words “he”, “him” and “his” each of those words shall be deleted and there shall be substituted respectively the words “he or she”, “him or her” and “his or her”.

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**Alteration of section 101 of the Constitution**

22. Section 101 of the Constitution is altered in subsection (1) by inserting the words “18N,” after the word “sections” where it appears.

**Fundamental essentials of the Constitution**

23. The Constitution is altered by repealing section 106 and replacing it as follows—

**“Rule of Law, Separation of Powers, and Independence of the Judiciary**

106. There shall be recognised, respected and adhered to by all organs of the State, namely, Parliament, the Executive and the Courts, institutions of the state, other public authorities or public bodies functionaries and entities: the rule of law; the separation of powers as provided for by this Constitution; and in particular the independence of the Judiciary which must always be protected from Parliament and the Executive; as fundamental essentials of freedom under the law.”.

Passed by the House of Representatives this 21st day of June, 2016.

WILLAN THOMPSON  
**Clerk to the House of Representatives**

Passed by the Senate this 13th day of July, 2016.

WILLAN THOMPSON  
**Clerk to the Senate**