

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
HCCHRPET/E389/2023

IN THE MATTER OF: THE ENFORCEMENT OF THE BILL OF RIGHTS
UNDER ARTICLE 22(1) OF THE CONSTITUTION;

AND

IN THE MATTER OF: ARTICLES 1, 2, 3, 4, 5, 10, 19, 20, 21, 22, 23, 24, 25, 35, 47,
73, 75, 93, 94, 95, 96, 118, 129, 130, 131, 132, 152, 153, 159,
165, 232, 238, 239, 240, 241, 243, 244, 245, 246, 258 AND
259 OF THE CONSTITUTION OF KENYA 2010;

AND

IN THE MATTER OF: NATIONAL POLICE SERVICE ACT NO.11 (A) OF 2011;

AND

IN THE MATTER OF: UNLAWFUL/ILLEGAL/UNCONSTITUTIONAL
DEPLOYMENT OF KENYA POLICE OFFICERS TO THE
REPUBLIC OF HAITI.

BETWEEN

EKURU AUKOT.....1ST PETITIONER/ APPLICANT

MIRURU WAWERU.....2ND PETITIONER/APPLICANT

THIRDWAY ALLIANCE KENYA.....3RD PETITIONER/APPLICANT

AND

THE NATIONAL SECURITY COUNCIL.....1ST RESPONDENT

THE INSPECTOR-GENERAL

OF THE NATIONAL POLICE SERVICE.....2ND RESPONDENT

THE CABINET SECRETARY, MINISTRY OF INTERIOR

AND NATIONAL ADMINISTRATION.....3RD RESPONDENT

THE SPEAKER OF THE NATIONAL ASSEMBLY.....4TH RESPONDENT

THE HON. ATTORNEY GENERAL.....5TH RESPONDENT

WILLIAM SAMOEI RUTO.....6TH RESPONDENT/CONTEMNOR

ABRAHAM KITHURE KINDIKI.....7TH RESPONDENT/CONTEMNOR

WYCLIFFE MUSALIA MUDAVADI.....8TH RESPONDENT/CONTEMNOR

JAPHET N. KOOME.....9TH RESPONDENT/CONTEMNOR

CERTIFICATE OF URGENCY

I Charles Midenga, an Advocate of this Honourable Court practising as *Messrs* Midenga & Company Advocates do hereby certify that this matter is urgent and should be heard and determined instantly on the GROUNDS THAT:

1. On **26.1.2024** the Honourable court (Hon. Justice E. C. Mwita) delivered judgment in the matter and issued orders, *inter alia*, prohibiting deployment of police officers to Haiti or any other country, otherwise than in compliance with Part XIV - sections 107 and 108 of *the National Police Service Act*.
2. The Respondents/Contemnors herein have however blatantly disobeyed the orders issued by the Honourable court (Hon. Justice E. C. Mwita) aforesaid.

3. While so doing, the Respondents/Contemnors have purported to sign a *reciprocal instrument* for the deployment of police officers to Haiti in blatant disregard of the court orders aforesaid despite having knowledge of the existence of the orders.
4. **The Applicants are reliably informed that the impugned deployment may be done any time from now but not later than 23.5.2024 hence the urgency of this application.**
5. Haiti is not a reciprocating country within the meaning of Part XIV - sections 107 and 108 of *the National Police Service Act* and has not been gazetted as such; no formal request has been made by the Government of Haiti for deployment of police officers to Haiti; there is no Government in place in Haiti capable of giving such request or signing any bilateral agreement with Kenya for deployment of police officers to Haiti; and there is no Parliament in place in Haiti to ratify such agreement.
6. The Respondents/Contemnors have no regard for the rule of law and are continuing with their illegal activities despite the explicit orders of the Honourable court aforestated.
7. The Respondents have acted in bad faith to defeat the orders of the Honourable court and scuttle these proceedings hence it is necessary that they now be committed to civil jail.
8. The conducts of the Respondents/Contemnors is contemptuous of court and court process, and has put the authority and dignity of the Honourable court to ridicule.
9. The Applicants are reasonably apprehensive that unless the Honourable court urgently intervenes to assert its authority, the Respondents/Contemnors will proceed and deploy police officers to thereby rendering these proceedings and the resultant judgment merely academic.
10. It is only fair and just that the Honourable court intervenes by granting the orders sought to assert its judicial authority and protect its dignity and the sanctity of its processes, and to restore public confidence.

DATED at NAIROBI this 16th day of May, 2024


Midenga & Company
ADVOCATES FOR THE PETITIONERS/APPLICANTS
(Charles Midenga, Practice No. LSK/2024/10901)

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NOTICE OF MOTION

[Under Article 165 of the Constitution; Section 5 of the Judicature Act, Cap. 8 Laws of Kenya; PART 81 (Applications and Proceedings in Relation to Contempt of Court) of the Civil Procedure (Amendment No. 2) Rules, 2012 of England; Sections 3A and 63 Civil Procedure Act. Cap. 21 Laws of Kenya; and all other enabling provisions of the Law]

TAKE NOTICE that this Honourable Court shall be moved on the _____ day of _____, 2024 at 9 o'clock in the forenoon or soon thereafter as Counsel for the Petitioners/ Applicants may be heard on an application for ORDERS THAT:

- a) This application be certified urgent and be heard forthwith and *ex-parte* in the first instance.

- b) A declaration that the 6th to 9th Respondents/Contemnors who are public officers have violated the Constitution hence they are unfit to hold public office.
- c) Notice to Show Cause to issue to the 6th to 9th Respondents/Contemnors to state why they should not be committed to civil jail for disobedience of the orders of the Honourable court (Hon. Justice E. C. Mwita) issued on **26.1.2024**.
- d) The 6th to 9th Respondents/Contemnors be committed to civil jail and detained in prison for six (6) months or such period as the Honourable Court will deem fit, or both fine and imprisonment for contempt of the Honourable court's orders issued on **26.1.2024**.
- e) Pending hearing of prayers (b) and (c) above for committal herein, the 6th to 9th Respondents/Contemnors be ordered to purge the suit contempt and in so doing to stop any process that might lead to deployment of police officers to Haiti or any other country.
- f) Such further or other consequential orders as the Honourable court may deem just.
- g) Costs of this application be borne by the Respondents/Contemnors.

WHICH APPLICATION is supported by the affidavit of **Ekuru Aukot** filed herewith and the following grounds, THAT:

1. On **26.1.2024** the Honourable court (Hon. Justice E. C. Mwita) delivered judgment in the matter and issued orders, *inter alia*, prohibiting deployment of police officers to Haiti or any other country, otherwise than in compliance with Part XIV - sections 107 and 108 of *the National Police Service Act*.
2. The Respondents/Contemnors herein have however blatantly disobeyed the orders issued by the Honourable court (Hon. Justice E. C. Mwita) aforesaid.
3. While so doing, the Respondents/Contemnors have purported to sign *a reciprocal instrument* for the deployment of police officers to Haiti in blatant disregard of the court orders aforesaid despite having knowledge of the existence of the orders.
4. **The Applicants are reliably informed that the impugned deployment may be done any time from now but not later than 23.5.2024 hence the urgency of this application.**
5. Article 263 of the Haitian Constitution provides that The Public Force of Haiti is composed of two (2) distinct corps of the Armed Forces of Haiti and the National Police of Haiti; Article 263-1 further provides that no other armed corps may exist in the said national territory.

6. Haiti is not a reciprocating country within the meaning of Part XIV - sections 107 and 108 of *the National Police Service Act* and has not been gazetted as such; no formal request has been made by the Government of Haiti for deployment of police officers to Haiti; there is no Government in place in Haiti capable of giving such request or signing any bilateral agreement with Kenya for deployment of police officers to Haiti; and there is no Parliament in place in Haiti to ratify such agreement.
7. The Respondents/Contemnors have no regard for the rule of law and are continuing with their illegal activities despite the explicit orders of the Honourable court aforesaid.
8. The Respondents have acted in bad faith to defeat the orders of the Honourable court and scuttle these proceedings hence it is necessary that they now be committed to civil jail.
9. The conducts of the Respondents/Contemnors are contemptuous of court and court process, and have put the authority and dignity of the Honourable court to ridicule.
10. The Respondents have made a mockery of the Honourable court and the Honourable court's due process, decision/order as a result of the foregoing contemptuous acts.
11. The Respondents' contemptuous conducts aforesaid have and will continue to compromise the due implementation of the Judgment and undermine the authority of the Honourable court, unless the court urgently intervenes as sought herein.
12. The Applicants are reasonably apprehensive that unless the Honourable court urgently intervenes to assert its authority, the Respondents/Contemnors will proceed and deploy police officers to thereby rendering these proceedings and the resultant judgment merely academic.
13. It is only fair and just that the Honourable court intervenes by granting the orders sought to assert its judicial authority and protect its dignity and the sanctity of its processes, and to restore public confidence.

DATED at NAIROBI this 16th day of May, 2024


Midenga & Company
ADVOCATES FOR THE PETITIONERS/APPLICANTS
(Charles Midenga, Practice No. LSK/2024/10901)

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AFFIDAVIT IN SUPPORT

I, **Ekuru Aukot**, a citizen of Kenya and of P.O. Box 4781 - 00100, Nairobi, within the Republic of Kenya, do make oath and state as follows:

1. That I am the 1st Petitioner/Applicant in this matter well conversant with the facts giving rise to this case and duly authorised by my Co-Petitioners/Applicants herein hence competent to swear this affidavit.
2. That I am aware that on **26.1.2024** the Honourable court (Hon. Justice E. C. Mwita) delivered judgment in the matter and issued orders, *inter alia*, prohibiting deployment of police officers to Haiti or any other country, otherwise than in compliance with Part XIV - sections 107 and 108 of the *National Police Service Act*.

(Annexed hereto and marked "EA - 1a" and "EA - 1b" respectively is the Judgment and resultant Decree).

3. That the Respondents/Contemnors herein have however blatantly disobeyed the orders issued by the Honourable court (Hon. Justice E. C. Mwita) aforestated.
4. That while so doing, the Respondents/Contemnors have purported to sign a reciprocal instrument for the deployment of police officers to Haiti in blatant disregard of the court orders aforesaid despite having knowledge of the existence of the orders.

(Annexed hereto and marked "EA - 2" is the Statement by the 6th Respondent/Contemnor).

5. **That I am reliably informed that the impugned deployment may be done any time from now but not later than 23.5.2024 hence the urgency of this application.**
6. That however, Haiti is not a reciprocating country within the meaning of Part XIV - sections 107 and 108 of *the National Police Service Act* and has not been gazetted as such.
7. That if the 6th Respondent Contemnor pursuant to the provisions of PART XIV of the National Police Act, No. 11 of 2011, the 6th Respondent/Contemnor ought to have satisfied himself of the following, that:
 - i) the discretionary power of the 6th Respondent/contemnor is statutory, and therefore inferior to the Constitutional provisions in Chapter 14 relating to national Security;
 - ii) the discretionary power is conditional upon the President satisfying himself on a number of conditions that must obtain beforehand, to further wit, as follows:
 - a. there must be a request from a country;
 - b. the request must be made by a democratically elected president of the requesting country. In the instant case, the democratically elected president of Haiti ought to have made the request. To date and since the killing of President Jovenal Moïse, Haiti has had no president;
 - c. the Prime Minister of Haiti, and Ariel Henry at the time did not have those powers under the constitution of Haiti; thus making what is being touted as a reciprocal agreement, a nullity ab initio;
 - d. the request must be predicated on a reciprocal arrangement/agreement;
 - e. the reciprocal arrangement must then be published in the official Kenya gazette in order that the people of Kenya must know that their NPS is being deployed outside Kenya;

- f. in furtherance of the foregoing, the Constitution of Kenya at Article 35 guarantees the right to information that is being held by a state organ;
 - g. consequently, Article 10 of the Constitution relating to national values and principles of governance requires that there must be public participation. The Kenyan courts in a number of decisions have since ruled that public participation cannot be cosmetic; it must be meaningful public participation, especially on a matter of this magnitude.
8. That indeed Article 263 of the Haitian Constitution provides that The Public Force of Haiti is composed of two (2) distinct corps of the Armed Forces of Haiti and the National Police of Haiti; Article 263-1 further provides that no other armed corps may exist in the said national territory.

(Annexed hereto and marked "EA - 3" is the Haitian Constitution).

9. That moreover, no formal request has been made by the Government of Haiti for deployment of police officers to Haiti and there is no Government in place in Haiti capable of giving such request or signing any bilateral agreement with Kenya for deployment of police officers to Haiti.
10. That I invite the Honourable court to take judicial notice that under Article 137 of the Haitian Constitution, Ariel Henri who assumed office on **20.7.2021** as an acting Prime Minister of Haiti was only required to act as such at most 120 days, which lapsed on **17.11.2021** hence he has no legitimacy and cannot purport to sign any agreement with Kenya.
11. That also, any such agreement, which is by its very nature a treaty, would require ratification by the respective governments. However, as I have already stated Haiti has neither Government nor democratically elected Parliament capable of ratifying an agreement for purposes of deployment.
12. That the Respondents/Contemnors have no regard for the rule of law and are continuing with their illegal activities despite the explicit orders of the Honourable court aforestated.
13. That the Respondents have acted in bad faith to defeat the orders of the Honourable court and scuttle these proceedings hence it is necessary that they now be committed to civil jail.
14. That the conducts of the Respondents/Contemnors are contemptuous of court and court process, and have put the authority and dignity of the Honourable court to ridicule.
15. That the Respondents have made a mockery of the Honourable court and the Honourable court's due process, decision/order as a result of the foregoing contemptuous acts.

16. That section 8 (3) of the *Treaty-Making and Ratification Act, Cap. 4D of the Laws of Kenya* provides that the relevant parliamentary committee shall, during its consideration of a Treaty ensure public participation in the ratification process in accordance with laid down parliamentary procedures. However, the Respondents/Contemnors have rushed the impugned deployment without adherence to the rule of law and without the due process.
17. That the Respondents' contemptuous conducts aforesaid have and will continue to compromise the due implementation of the Judgment and undermine the authority of the Honourable court, unless the court urgently intervenes as sought herein.
18. That the Respondents have acted as if there was no Court order issued and have made a mockery of the Honourable court and the Honourable court's due process, decision/order as a result of the foregoing contemptuous acts.
19. That I am apprehensive that unless the Honourable court urgently intervenes to assert its authority, the Respondents/Contemnors will proceed and deploy police officers to thereby rendering these proceedings and the resultant judgment merely academic.
20. That it is only fair and just that the Honourable court intervenes by granting the orders sought to assert its authority and protect its dignity and the sanctity of its processes, and to restore public confidence.
21. That all that I have deposed to herein is well within my knowledge and belief save where the same is based on information sources and grounds whereof I have disclosed.

SWORN at NAIROBI

By Ekuru Aukot

This 16th day of May, 2024

Deponent

BEFORE ME: **MWANZA J. NYAMWEYA**
 Advocate & Commissioner for Oaths
 P. 105/14/02/18
 COMMISSIONER FOR OATHS
 NAIROBI 00505,

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PETITION NO. E389 OF 2023

EKURU AUKOT.....1ST PETITIONER
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THIRDWAY ALLIANCE KENYA.....3RD PETITIONER

VERSUS

THE NATIONAL SECURITY COUNCIL.....1ST RESPONDENT
INSPECTOR GENERAL OF THE NATIONAL POLICE
SERVICE.....2ND RESPONDENT
CABINET SECRETARY MINISTRY OF INTERIOR AND
NATIONAL ADMINISTRATION.....3RD RESPONDENT
SPEAKER OF THE NATIONAL ASSEMBLY....4TH
RESPONDENT
ATTORNEY GENERAL.....5TH RESPONDENT
WILLIAM SAMOEI RUTO.....6TH RESPONDENT

AND

This is the exhibit marked "EA-1A"
referred to in the annexed affidavit declaration
of: EKURU AUKOT
sworn declared before me this 16TH
day of MAY, 2023

1 | JUDGMENT PETITION NO. E389 OF 2023

**LAW SOCIETY OF KENYA.....INTERESTED
PARTY**

JUDGEMNT

Introduction

1. In July 2023, the Government announced that Kenya was ready to deploy 10000 police officers to Haiti to assist in curbing insecurity in that country. On 2nd October 2023, The UN Security Council passed Resolution 2699 (2023) approving deployment of a multinational security support to Haiti to be led by Kenya.
2. On 3rd October 2023, the President issued a statement hailing the passing of the Resolution for deployment of the Multinational Security Support (MSS) mission and Kenya's willingness to play its role. The Cabinet Secretary ministry of interior and national administration, (CS Interior), reiterated the fact that Kenya would deploy police officers to Haiti subject to parliamentary approval.

3. Following the announcement on the deployment, *Ekuru Aukot*, *Miruru Waweru*, and *Thirdway Alliance Kenya*, a political party, (Petitioners), filed a petition dated 6th October 2023 against the *National Security Council*; (the Council), *Inspector General of the National Police Service*, (IG); C S Interior); Speaker of the National Assembly (the Speaker); the Attorney General (Attorney General) and Dr. William Samoei Ruto, the President of the Republic of Kenya, (the respondents), challenging the decision to deploy police officers to Haiti as unconstitutional.
4. The Law Society of Kenya was joined in these proceedings as an interested party.

The Petitioners' case

5. The petitioners argue that the decision to deploy 1000 police officers to Haiti contravenes the Constitution and the law. The petitioners state that the President's statement hailing the UN Security Council's Resolution approving deployment of police officers, confirmed Kenya's decision to deploy police officers to Haiti.

6. The petitioners assert that police officers cannot be deployed outside the country and that the respondents are bound by national values and principles of good governance in articles 10 and 232(1) of the Constitution when discharging their mandate.
7. The petitioners state that the decision to deploy police officers is unconstitutional because it is only the Council that can deploy defence forces outside the country with approval of Parliament. The decision was also made without public participation, in breach of the constitution.
8. The petitioners rely on the decision in *Crown Berger Kenya Ltd v Kalpech Vasuder Devan and another* (Civil Case No. 246 of 2006 (UR) to argue that failure to file a replying affidavit to introvert facts, amounts to admission of those facts.
9. The petitioners again rely on *Daniel Kibet Mutai & 9 others v Attorney General* [2019] eKLR; *Raila Odinga v the Independent Electoral and Boundaries Commission and 3 others* [2013] eKLR and *Nicholas Kiptoo Arap Korir Salat v the Independent Electoral and*

Boundaries Commission and 6 others [2013] eKLR to support their position.

10. The petitioners further challenge the constitutionality of sections 107, 108 and 109 of the National Police Service Act. It is the petitioners' case, that the National Police Service is a national service that operates within Kenya and cannot be deployed outside the country. The petitioners take the view, that by allowing deployment of the service outside the country under reciprocal arrangements, the sections are inconsistent with articles 240(8) and 243(3) of the Constitution which only allow Kenya Defence Forces to be deployed outside Kenya.
11. The petitioners also contend that there is no reciprocal arrangement between Kenya and Haiti, thus the respondents' decision is unlawful since there was no request from the government of Haiti for the deployment to that country even on reciprocal arrangement.
12. The petitioners invite the Court to appreciate the distinction between "*Forces*" and "*Service*" in articles 241 and 243 of the

Constitution and that the fact that functions of the national forces and national police service are distinct. In the petitioner's view, article 240 (8) is clear that only the national forces can be deployed outside Kenya.

13. The petitioners assert that the decision to deploy the national police service to Haiti did not comply with the principles of national security under article 238 (2) (b) of the Constitution and public participation in article 10 of the Constitution.

14. The petitioners rely on the principles of constitutional interpretation in articles 2, 159(2) (e) and 259 of the Constitution and the decisions in *re the Matter of Kenya National Commission on Human Rights* [2014] eKLR; *Attorney General v Law Society of Kenya & 4 others* [2019] eKLR; *U.S v Butler*, 297 U.S. 1[1936]; *Geoffrey Andare v Attorney General & 2 others* [2016] eKLR to support their case.

15. The petitioners further rely on *Tinyefuza v Attorney General of Uganda*, (Constitutional Petition No. 1 of 1997 (1997 UGCC 3); *Ndyanabo v Attorney General of Tanzania* [2001] EA 495 and

Coalition for Reforms & Democracy & Others v Republic of Kenya & 10 others, (Petition No 628 of 2014 consolidated with Petition Nos 630 of 2014 & 12 of 2015), to argue that sections 107, 108 and 109 are constitutionally invalid.

16. On the respondents' contention that the petition offends the doctrine of ripeness and exhaustion, the petitioners argue that these doctrines are not applicable in this petition because the impugned decision is from the executive arm of the government and can only be challenged in court under Article 165 of the Constitution.

17. The petitioners therefore urge that the petition is well founded and meets the threshold in *Anarita Karimi Njeru v The Republic* [1979] eKLR and *Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR.

18. Regarding joining the President in this petition, the petitioners stress that the President has been sued in his official capacity and not in a personal capacity.

19. The petitioners contend that the respondents' actions have been made in disregard of the Constitution and the law. They seek the following reliefs:

- i. A declaration that the act of deploying police officers to Haiti is unconstitutional illegal and void.*
- ii. A declaration that police officers cannot be deployed outside Kenya.*
- iii. A Declaration that Sections 107,108 and 109 of the National Police Service Act, which provide for deployment of the service under reciprocal arrangements with reciprocating countries, are unconstitutional since they offend Articles 240(8) and 243(3) of the Constitution which provide respectively that only Kenya Defence Forces can be deployed out Kenya and that the National Police Service is a national service and shall function throughout Kenya.*

- iv. An Order prohibiting the Respondents from deploying police officers to Haiti or any other country other than within the boundaries of Kenya.*
- v. Costs of the Petition.*
- vi. Any other orders that the court may deem just and fit to grant as the justice of this case may permit.*

CS Interior's case

20. The CS Interior opposes the petition through a replying affidavit and written submissions. The CS Interior argues that the petitioners have misconceived the government's action because no determination had been made on the deployment of the police officers to Haiti, making the petition is premature, bad in law and an abuse of Court process.

21. The CS Interior states that the government of Haiti through Prime Minister, appealed to the UN Security Council for deployment of a

Multinational Security Support Mission to assist its national police in countering organized crime which had caused political impasse, deteriorating security and humanitarian situation.

22. Following a meeting of the Council of Ministers, a decision was made which adopted a resolution authorizing the call for assistance from international partners.
23. A letter dated 8th October 2022 was sent to UN Security Council which the UN Secretary-General passed on to the President, outlining options for enhancing security support for Haiti. Establishment of an international police task force and the multinational special force were deemed appropriate options. Some countries responded to the call, including Kenya, Jamaica, Barbados, Antigua and Barbuda.
24. The CS Interior states although the process had stalled due to absence of a country to lead a Multinational Security Support Mission, on 29th July 2023, Kenya's Foreign Affairs Minister announced the Government's acceptance to positively consider leading a

Multinational Force to Haiti and to deploy 1000 police officers to Haiti to assist Haitian police to restore normalcy.

25. The CS Interior further states that on 21st September 2023, the President addressed the 78th Un General Assembly and underscored the urgent need for global solidarity and collaborative action to address the suffering of the people of Haiti.

26. According to CS Interior, UN Security Council passed Resolution 2699 (2023) on 2nd October 2023 authorizing deployment of a Multinational Security Support (MSS) Mission, headed by Kenya, in close cooperation and coordination with the government of Haiti, for an initial period of 12 months, with a review after nine months.

27. O 8th October 2023, the CS Interior informed the public that the request to deploy police officers to Haiti would be subject to Parliamentary approval in accordance with the Constitution.

28. The Council then made a decision on 13th October 2023 to deploy police officers to Haiti and the decision was transmitted to

Parliament for consideration in accordance with Article 240(8) of the Constitution.

29. The CS Interior argues, therefore, that since the process of approval was pending before Parliament, the petition offends the principle of ripeness, and the doctrine of separation of powers which enjoin courts to show deference to the independence of Parliament.
30. The CS Interior urges the Court not to intervene at this stage and allow parliamentary process to conclude. The petitioners have an opportunity to raise their concerns before Parliament in accordance with the Parliamentary Standing Orders.
31. The CS Interior relies on the Supreme Court decision in *Communication Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 others* [2014] eKLR, to argue that the petitioners' concerns can be dealt with during the Parliamentary deliberations in accordance with article 119 of the Constitution and the Standing Orders.

32. On whether police officers can be deployed outside the country, the CS Interior answers in the affirmative, asserting that a holistic interpretation requires that article 240 (8) be read alongside article 239 of the Constitution. The CS Interior takes the position that national forces referred to in article 240 (8) means the Kenya Defence Forces, National Intelligence Service and the National Police Service, collectively.
33. The CS Interior maintains that the Council has power to deploy any of the three security organs outside the country under the circumstances enumerated in article 240 (8) (a).
34. On the constitutionality of sections 107,108 and 109, the CS Interior argues that the petitioners' interpretation is not in line with the principle that the Constitution be interpreted in a holistic manner as espoused in *Communications Commission of Kenya decision* (supra).
35. The CS Interior takes the view, that the National Police Service Act was enacted pursuant to article 239 (6) of the Constitution and for that reason, the object of the Act, (as stated in section 3), was to give

effect to articles 238, 239, 243, 244 and 247 of the Constitution, but not article 240 (8). The Council's mandate to deploy the National Police Service is guided by article 240 (8) and not the provisions of the Act.

36. The CS Interior takes the further view, that the relief sought against deployment invites the Court to interfere with the process before Parliament. The CS Interior relies on the Supreme Court decision in *Justus Kariuki Mate & another v Martin Nyanga Wambora & another* [2017] eKLR, that the doctrine of separation of powers requires that no arm of government should encumber another thereby causing a stall in the dispensation of a constitutional mandate.

37. Further reliance is placed on *Charity Kaluki Ngilu v County Assembly of Kitui & 2 others* [2020] eKLR for the same position.

Speaker's case

- 24 The Speaker also opposes the petition through grounds of opposition and the same position as CS Interior, that the petition is not justiciable and violates the doctrine of ripeness and exhaustion.
- 25 The Speaker argues that Parliament has to exercise its mandate under Article 240(8) of the Constitution with respect to approval of the deployment of police officers to Haiti. During that exercise, petitions may be presented over the issue during public participation. This petition, therefore, contravenes the doctrine of exhaustion and the Court ought to decline jurisdiction in deference to Parliament.
- 26 The Speaker relies on the decisions in *Wanjiru Gikonyo and 2 others v National Assembly of Kenya & 4 others* [2016] eKLR; *Justus Kariuki Mate*(supra) and *Law Society of Kenya v Attorney General & another; National Commission for Human Rights & another (Interested Parties)* [2020] eKLR to support its position.

27 Regarding the constitutional validity of the impugned sections, the Speaker maintains that the sections do not contravene article 240 (8) or any other article in the Constitution.

28 The Speaker again argues that the petition as pleaded does not comply with the principle that a petition should specifically plead the contraventions alleged as laid down in the *Anarita Karimi Njeru case* (supra). There is also no proof on how the impugned sections violate articles 238, 240(8), 118(1) (b) and 243(3).

29 The Speaker points out that according to article 239(1), national security organs are the Kenya Defence Forces, the National Intelligence Service and the National Police Service. The National Police Service Act permits deployment of Police officers outside Kenya on reciprocal arrangements to reciprocating countries.

Attorney General's case

30 The Attorney General also opposes the petition through grounds of opposition and written submissions. Just like the other respondents,

the Attorney General argues that the petition is premature and is non-justiciable on account of the legal principle of ripeness; the doctrines of exhaustion and constitutional avoidance. The Attorney General urges the Court to decline jurisdiction in deference to Parliament.

31 The Attorney General takes the view, that applicability of article 240 is not contingent upon any further legislation. The petition is, therefore, not ripe as parliament will have a say on the deployment.

32 The Attorney General places reliance on *Kiroti wa Nguni & 19 others v Attorney General & 2 others* (Nairobi Constitutional Petition No. 254 of 2019, [2020] eKLR that a dispute is not ripe if it has not passed the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made.

33 The Attorney General further relies on the decisions in *National Assembly of Kenya & another v Institute for Social Accountability & 6 others* (Nairobi Civil Appeal 92 of 2015); [2017] eKLR and *Wanjiru Gikonyo* (supra).

34 The Attorney General again relies on *Speaker of National Assembly v Karume* [1992] KLR 21, that where there is a clear procedure prescribed by the constitution or a law for redressing any particular grievance, that procedure should be strictly followed

35 On the constitutional validity of the impugned sections, the Attorney General's position is that they are constitutional since the sections do not in any way limit the authority of either the Council to deploy national security organs or Parliament to approve such deployment.

36 According to the Attorney General, the President has a responsibility to ensure that the country fulfills its international obligations which is reflected in Part XIV of the National Police Service Act. The impugned sections ought to be construed with regard to the provisions of Part 1 section 7 of the Fourth Schedule to the Constitution, that police services are a constitutional function of the National Government.

37 The Attorney General takes objection to joining the President in this petition, arguing that the President enjoys constitutional immunity from civil proceedings.

38 The Attorney General relies on the Supreme Court decision in *Attorney-General & 2 others v Ndii & 79 others; Prof. Rosalind Dixon & 7 others (Amicus Curiae)* (Petition 12, 11 & 13 of 2021 (Consolidated)) [2022] KESC 8 (KLR), (*Ndii case*); *Matindi & 3 others v National Assembly of Kenya & 4 others; Controller of Budget & 50 others (Interested Parties)* (Petition E080, E084 & E150 of 2023 (Consolidated)), [2023] KEHC 19534 (KLR) (Constitutional and Human Rights) (3 July 2023) (Judgment).

Law Society's case

39 The Law Society supports the petition to the extent that the Council has no mandate to deploy police officers outside the country. This is because National Police Service's mandate is to promote national

security in accordance with the principles under article 238(2) and the dictates in article 243(3).

40 The Law Society, however, agrees with the respondents that under article 240 (8), the Council may, with the approval of Parliament, deploy national forces outside Kenya for regional or international peace support operations or other support operations. The Law Society notes, however, that this mandate does not apply to National Police Service.

41 The Law Society takes the position that police officers can only be deployed under reciprocal arrangement to a country with a reciprocal agreement with Kenya under sections 107 and 108 of the National Police Service Act

42 The impugned sections, the Law Society argues, outline conditions precedent before deployed of members of the National Police Service outside Kenya. Any deployment without fulfilling those conditions is illegal and void.

43 It is the Law Society's case, that Kenya and Haiti do not have reciprocal agreement as required by sections 107 and 108. The Law Society argues, therefore, that the proposed deployment is unconstitutional, illegal and void.

44 According to the Law Society, the Council's belated decision to deploy police officers was intended to side step this petition. Similarly, the communication by the Speaker was made on 25th October 2023 when the petition was already before court, hence the petition was properly filed.

45 The Law Society further argues that UN Security Council Resolution 2699 (2023) could not be the basis for the deployment of police officers since the Resolution does not bind Kenya in terms of international law obligations, given the conditions precedent in section 108 which must be satisfied before deployment of police officers outside Kenya. The deployment must also be to a reciprocating country under section 107 of the Act.

46 In the circumstances of this petition, the Law Society argues, a bilateral treaty should have been in place in order to operationalize a reciprocal agreement and give effect to sections 107 and 108, thus pass the requirement under article 2(6) of the Constitution and the Treaty Making and Ratification Act.

47 The Law Society asserts that without complying with the law, the President did not satisfy the reciprocal provisions under Part XIV of the National Police Service Act and, therefore, Haiti is not a reciprocating country for purposes of deploying police officers to that country.

48 It is the Law Society's further assertion, that statements by the President and CS Foreign Affairs were seen to have created international obligations which was a threat to the Constitution within the meaning of articles 22(1) and 258(1) of the Constitution. This is because the statements were representations of Kenya's commitment to the Republic of Haiti whilst aware that police officers cannot be deployed without complying with sections 107 and 108.

49 The Law Society cites the decision of the Constitutional Court of South Africa in *Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another* (CCT 19/07) [2008] ZACC that:

Certain values in the Constitution have been designated as foundational to our democracy. This in turn means that as pillar-stones of democracy, they must be observed scrupulously. If these values are not observed and their precepts not carried out conscientiously, we have a recipe for a constitutional crisis of great magnitude.

50 The Law Society emphasizes that deployment of police officers must pass the test of the rule of law as required by the Constitution. The general rules of international law are subordinate to the Constitution and a decision made under international law should be in accord with the Constitution.

51 On the argument that UN Resolutions are not binding on Kenya, the Law Society cites the decision in *Legal Consequences for States of*

the continued Presence of South Africa (South West Africa) notwithstanding Security Council Resolution 276(1970) (The Namibia Advisory Opinion Case) (para 114) and The Rapertoire of the Practice of the Security Council.

Determination

52 I have considered the pleadings, arguments by parties as well as the decisions relied on. I have distilled three issues determination, namely: whether the petition is premature, whether the impugned sections are unconstitutional and whether police officers can be deployed outside the country.

53 Before delving into the main issues, let me dispose of the question raised by the Attorney General, that the President should not have been joined into these proceedings.

54 The Attorney General, though not appearing for the President, has raised this issue, drawing this Court's attention to the Supreme Court decision in the *Ndii* case.

55 The Attorney General takes the position that the President has a constitutional immunity and, therefore, civil proceedings cannot be brought against the President while in office.

56 The petitioners argue that the President has been sued in his official capacity and not in a personal capacity, thus the office is properly sued.

57 Whether the President can be sued or not was dealt with in the *Ndii* case at the High Court and the Court of Appeal where both Courts held that civil proceedings can be instituted against the President while in office if the President has acted outside the Constitution.

58 On further appeal to the Supreme Court, the Supreme Court reversed holding by the High Court and the Court of Appeal. The Supreme Court held that civil proceedings cannot be instituted in any court against the President or the person performing the functions of

the office of the President during their tenure of office in respect of anything done or not done under the Constitution.

59 The Supreme Court further held that article 143(2) of the Constitution grants immunity to the President by protecting the President from civil proceedings during his tenure in office for actions or omissions connected with the office and functions of that office.

60 Following the holding by the Supreme Court, it is settled law that the President cannot be sued while in office for anything done or not done while in that office. For that reason, the petitioners could not lawfully include the name of the President in these proceedings, whether in his personal or official capacity. The President's name is struck out from these proceedings.

Whether the petition is premature

61 The respondents argue that the petition is premature, thus offends the doctrine ripeness. The respondents further argue that the petition offends the doctrine of exhaustion. According to the respondents, the

petition was filed before Parliament determined the issue of deployment and, therefore, this Court should decline jurisdiction and allow Parliament to consider the issue in exercise of its constitutional mandate under article 118 of the constitution and the parliamentary Standing Orders.

62 The petitioners and the Law Society disagree and take the position that this Court has jurisdiction because the issues raised are on the constitutionality of the actions complained of and only the Court can determine those issues.

63 The petition was filed on 6th October 2023 following the statements by the President and CS Interior that Kenya would deploy police officers to Haiti after the UN Security Council passed a Resolution on deployment of a multinational security service mission to Haiti.

64 The statements from both the President and the CS Interior gave the impression that a decision to deploy police officers had already been made. This prompted the petitioners to file this petition to challenge that decision.

65 The petition, as filed, seeks declarations that the act of deploying police officers to Haiti is unconstitutional, illegal and void; that police officers cannot be deployed outside Kenya and that sections 107,108 and 109 of the National Police Service Act are constitutionally invalid, among other reliefs.

66 A reading of the petition and the reliefs shows that the petition seeks interpretation of the Constitution and the law to determine whether the position taken by the petitioners is correct or not. Whether police officers can be deployed outside Kenya and whether the impugned sections are unconstitutional, are issues that only the Court determination and not Parliament.

67 Even if the respondents argue that a decision to deploy police officers to Haiti had not been made when the petition was filed, that alone cannot make the petition premature or violate the doctrine of ripeness.

68 Regarding exhaustion, the position is that for the Court to defer jurisdiction because of the doctrine of exhaustion, the alternative

body, in this case Parliament, must be in a position to give an effective remedy to the petitioners' claim(s). Where the remedy would be inadequate or ineffective, the Court cannot defer jurisdiction.

69 In this petition, there is no doubt that Parliament cannot determine whether the impugned sections are unconstitutional. Parliament cannot also determine whether deployment of police officers outside Kenya is unconstitutional. Parliament's mandate is to approve or decline to approve deployment of police officers to Haiti. It cannot determine the constitutionality of the action.

70 Unlike Parliament, the Constitution has under article 165 (d) (i) and(ii) conferred on the Court jurisdiction to check governmental action and it is the solemn duty of the Court to keep the organs of state within the limits of the power and mandate conferred on them by the Constitution, determine whether any law is inconsistent with or in contravention of the Constitution and whether anything said to be done under the authority of the Constitution or of any law is inconsistent with or in contravention of the Constitution or the law.

71 It is, therefore, within the mandate of the Court to determine the issues raised in the petition in exercise of its jurisdiction. Even if it were possible for the Court to defer jurisdiction because Parliament had not made a decision to approve deployment, Parliament would still not determine the rest of the issues in the petition.

72 Furthermore, the issues in the petition cannot be split so that some are dealt with by the Court and others by Parliament. Where there is an allegation of violation or threat to violate the Constitution, it is within the Court's mandate to determine the issue and not any other body.

73 The petitioners have instituted this petition on the strength of article 2-supremacy of the Constitution and article 3 which obligates every person to respect, uphold and defend the Constitution, calling on the Court to respond to the issues in the petition in exercise of its jurisdiction in article 165(3).

74 It is the finding of the Court that the petition is not premature, does not offend the doctrines of ripeness, exhaustion or separation of

powers. The petitioners properly approached the Court, heeding the call in article 3 (1) on their obligation to defend the Constitution.

Sections 107, 108 and 109

75 The petitioners challenge constitutional validity of sections 107, 108 and 109 of the National Police Service Act. The petitioners argue that the sections fail constitutional test of validity because they allow deployment of police officers outside the country contrary to the Constitution.

76 In advancing their case, the petitioners take the view, that the impugned sections violate the purpose and intent of article 240 (8) which, according to the petitioners, only permits deployment of national forces outside Kenya. The petitioners take the position, that the National Police Service functions within Kenya and, therefore, police officers cannot be deployed outside the country.

77 In allowing deployment of police officers outside the country, the impugned sections fall afoul the constitution and in particular, article 240(8)(a).

78 The respondents take the opposite view, and contend that the sections are constitutional are not inconsistent with the Constitution. The Law Society partly agrees with the position taken by the respondents that the sections are constitutionally valid, but argues that deployment should only be done as permitted by the impugned sections.

79 To resolve this issue, one must bear in mind the import of article 2(4) of the Constitution that any law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid. A law enacted by Parliament must be consistent with the constitution short of which it will be declared unconstitutional.

80 Before embarking on the discourse to ascertain the constitutional validity or otherwise of the impugned provisions, it is important to

remind ourselves the principles that the court should bear in mind in determining constitutional validity of a statute or its provisions.

81 A statute or statutory provision is presumed to be constitutional and the burden is on the person alleging constitutional invalidity to prove that invalidity.

82 In *Ndynabo v Attorney General of Tanzania* [2001] EA 495, it was held that an Act of Parliament is constitutional, and the burden is on the person who contends otherwise to prove the contrary.

83 The Court should also examine the purpose or effect of the statute or provision. The purpose of enacting a legislation or the effect of implementing that legislation may lead to nullification of the statute or its provision if found to be inconsistent with the constitution.

84 In *Olum and another v Attorney General* [2002] EA, the court stated;

To determine the constitutionality of a section of a statute or Act of parliament, the Court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose

does not infringe a right guaranteed by the Constitution, the Court has to go further and examine the effect of the implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by the Constitution, the impugned statute or section thereof shall be declared unconstitutional.

85 In *The Queen v Big M. Drug mart Ltd*, 1986 LRC (Const.) 332, the Supreme Court of Canada stated that;

Both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. The object is realized through impact produced by the operation and applications of the legislation. Purpose and effect respectively, in the sense of the legislation's object and ultimate impact, are clearly limited, but indivisible. Intended and achieved effect have been looked to for guidance in ascertaining the legislation's object and thus validity.

86 In *Centre for Rights Education and Awareness & another v John Harun Mwau & 6 others* [2012] eKLR, the Court observed that in determining whether a statute is constitutional or not, the court must determine the object and purpose of the impugned Act which should be discerned from the intention expressed in the Act itself.

87 The National Police Service Act was enacted to give effect to articles 238, 239 243, 244 and 247 of the Constitution. Article 238 is on national security, that is; protection against internal and external threats to Kenya's territorial integrity, sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.

88 Article 239 identifies national security organs which are the Kenya Defence Forces; the National Intelligence Service and the National Police Service. The primary object of national security organs is to promote and guarantee national security in accordance with the principles in article 238 (2).

89 Article 243 establishes the National Police Service, consisting Kenya Police Service and Administration Police Service.

90 Article 244 then provides for the objects and functions of the National Police Service. These are: to strive for the highest standards of professionalism and discipline among its members; prevent corruption and promote and practice transparency and accountability; comply with constitutional standards of human rights and fundamental freedoms; train staff to the highest possible standards of competence and integrity and respect to human rights and fundamental freedoms and dignity and foster and promote relationships with the broader society.

91 Parliament may enact legislation establishing other police services under the supervision of the National Police Service and the command of the Inspector-General of the Service (article 247). In other words, National Police Service supervises officers of the service, while Inspector-General commands the service.

92 The impugned sections (Part XIV) are on reciprocal arrangement.

Section 107 defines reciprocating country as the country which the President may, on being satisfied that it has a law containing provisions reciprocal to those of Kenya, declare a reciprocal country for purposes of the Act. Notice on such declaration has to be published in the Kenya Gazette.

93 Section 108(1) authorizes the President, on application by the government of the reciprocating country, to order a number of police officers he considers necessary, to proceed to the reciprocating country for service in that country for purposes of assisting the police service of that country in a temporary emergency.

94 Under section 108 (2), a police officer who is punished in the reciprocating country under any provisions of the Act (our Act) applied by the reciprocating country to the police officer while in that country, for an offence committed while in that country under reciprocal arrangements, the officer will be deemed to have been punished in Kenya for a similar offence if committed in Kenya.

95 Section 109 is the opposite of section 108. It allows the President to apply to a reciprocating country for police officers to come to Kenya under reciprocal arrangements similar to those under section 108(1), when circumstances for requesting the officers exist.

96 The petitioners' case is that the impugned sections are constitutionally infirm because they allow deployment of police officers outside Kenya contrary to 243(3) of the Constitution.

97 I have read article 243 which establishes the National Police Service. Article 243(3) states that National Police Service is a national service and is to function throughout Kenya. Sub article (3) does not state that police officers serving within the National Police Service cannot be deployed outside Kenya but that the service shall function throughout the country.

98 My understanding of the import of article 243(3) is that National Police Service functions in all areas within Kenya. As a national service, National Police Service serves the whole country and not

specific areas, counties or regions., otherwise it would not be a national service.

99 I have also read articles 238, 239, 244, and 247 which the National Police Service Act gave effect to. None of these articles states in express terms or by implication, that police officers cannot be deployed outside Kenya.

100 The petitioners having not shown that these articles expressly or by necessary implication prohibit deployment of police officers outside Kenya, they cannot rely on article 243(3) to support their argument that police officers cannot be deployed outside the country, simply because the service functions throughout Kenya. The language used in article 243(3) does not support the petitioners' assertion.

101 The petitioners also cite Article 240(8) to support their argument that the sections are unconstitutional because they allow deployment of police officers outside the country. In their view, only national forces can be deployed outside Kenya.

102 I have again read article 240(8) and I find nothing that prohibits deployment of police officers outside Kenya. I will, however, say more on article 240(8) later in this judgment.

103 Article 243(4) mandated Parliament to enact legislation to give full effect to Article 243. Parliament then enacted the National Police Service Act in response to that mandate. Sections 107, 108 and 109 (Part XIV) of the Act provide for reciprocity and when and under what circumstances National Police Service officers may be deployed outside Kenya.

104 It is for that reason that the Law Society parts ways with the petitioners on deployment of police officers outside Kenya. The Law Society takes the position that the impugned sections are constitutional since they provide for a mechanism under which reciprocal arrangements may be undertaken. That is, any reciprocal arrangements must comply with procedures in sections 107, 108 and 109 for deployment out of the country or into the country. For instance, a notice must be published in the Kenya Gazette on the reciprocating countries for purposes of accountability.

105 Article 2(4) of the Constitution is unequivocal that a law will be void if it is inconsistent with the Constitution. Where a provision is said to be inconsistent with the Constitution, the inconsistency must be plain and clear when the provision is laid against the article of the Constitution it is said to be inconsistent with.

106 I have gone through the various articles of the Constitution the sections are said to be inconsistent with. I have not been able to find any inconsistency between the impugned sections and those articles.

107 Where it is alleged that a statutory provision is inconsistent with the constitution, the Court embarks on fact finding by laying the sections against the articles of the Constitution said to be offended and determine the infirmity, if any. Invalidity may be on the purpose for which the statutory provision was enacted or the effect of its implementation.

108 If the Court finds infirmity or inconsistency in the challenged section(s), it has no option but to declare the section(s) invalid as decreed by article 2(4).

109 The petitioners have not demonstrated any invalidity in the impugned sections. In any case, the import of the impugned sections is to allow mutual reciprocity between Kenya and other countries. Section 109 mandates the President to request a reciprocating country to send police officers to Kenya where circumstances similar to those under section 108 exist. The benefit would be to both reciprocating countries. I see no inconsistency with the Constitution.

Deployment of police officers under article 240(8)

110 The petitioners and Law Society argue that because National Police Service functions within the Kenya its officers cannot be deployed outside Kenya under article 240(8). Their position is that only “national forces” can be deployed outside Kenya but not National Police Service because it is not a “force”.

111 The petitioners and Law Society assert that article 240 (8) only allows the Council, with approval of Parliament, to deploy national forces

outside Kenya for regional or international peace or other support operations. The national forces referred to in article 240(8), they contend, does not include National Police Service.

112 The respondents maintain that a holistic reading and interpretation requires that article 240 (8) be read alongside article 239 of the Constitution. In their view, national forces referred to in article 240 (8) refers to the Kenya Defence Forces, National Intelligence Service and the National Police Service, collectively.

113 The respondents assert, therefore, that the Council has power to deploy any of the three security organs outside the country under the circumstances contemplated in article 240 (8) (a).

114 The decision on this issue turns on the interpretation of article 240(8) of the Constitution.

115 In determining this issue, the Court must be aware of its obligations under article 159(2)(e) when exercising its judicial authority, including that of interpreting the Constitution, to ever have present in mind

the obligation to protect and promote the purpose and principles of the Constitution.

116 Similarly, article 259 calls on the Court to adopt an interpretive approach that promotes the purposes, values and principles of the Constitution; advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights; permits the development of the law and contributes to good governance.

117 The Constitution should also be holistically and purposively interpreted in a manner that advances its purposes, gives effect to its intents and illuminates its contents (*Re the Speaker of the Senate & another v Attorney General & 4 others* – Supreme Court Advisory Opinion No. 2 of 2013 [2013] eKLR para 155-157).

(See also *Re the Matter of Kenya National Commission on Human Rights* – Supreme Court Advisory Opinion Reference No 1 of 2012 [2014] eKLR).

118 Constitutional provisions must be read and interpreted as an integrated whole, each provision supporting and not destroying the other. (*Tinyefuze v Attorney General of Uganda (supra)*).

119 In *Government of the Republic of Namibia and another v Cultura 2000 and another* 1994 (1) SA 407, the Court stated:

A constitution is an organic instrument...although it is enacted in the form of a statute, it is sui generis. It must be broadly, liberally and purposively interpreted so as to avoid the austerity of tabulated legalism and so as to enable it to play a creative and dynamic role in the expression and the achievement of the ideals and aspirations of the nation in the articulations of the values bonding its people and disciplining its government.

120 In *S P Gupta v Union of India & another* 1982 AIR 149; 1982(2) SCR 365, *P. N. Bhagwati, J.* writing for the Supreme Court of India, cautioned those on whom the duty to interpret a constitution falls, stating:

We can always find some reason for bending the language of the constitution to our will, if we want, but that would be rewriting the constitution in the guise of interpretation. We must also remember that the constitution is an organic instrument intended to endure and its provisions must be interpreted having regard to the constitutional objectives and goals and not in the light of how a particular Government may be acting at a given point of time. Judicial response to constitutional interpretation must not suffer from the fault of emotionalism or sentimentalism which is likely to cloud the vision when judges are confronted with issues of monumental importance.

121 This Court will, therefore, proceed on the basis of the above principles, determine the objectives and goals of article 240(8) and give true meaning to it.

122 Article 240 establishes the Council consisting of the President; the Deputy President; the Cabinet Secretary responsible for Defence; the Cabinet Secretary responsible for Foreign affairs; the Cabinet

Secretary responsible for Internal security; the Attorney-General; the Chief of Kenya Defence Forces; the Director-General of the National Intelligence Service and the Inspector-General of the National Police Service.

123 The Council exercises supervisory control over national security organs, (Kenya Defence Forces, National Intelligence Service and National Police Service), and performs any other functions prescribed by national legislation.

124 The objective and goal of article 240(8) was to provide for which security organ(s) can be deployed outside the country, by who and under what circumstances. In that spirit, the article identified “*national forces*” for deployment out of the country and assigned the mandate to deploy those “*forces*” to the Council, subject to approval by Parliament. The forces can only be deployed out of the country for regional or international peace or other support operations.

125 The petitioners and the Law Society argue that the mandate of the Council does not include deploying National Police Service outside

Kenya. They hold the view, that National Police Service is not a “force.” for purposes of article 240(8).

126 The respondents take a contrary position, arguing that the Council can deploy the three national security organs, (Kenya Defence Forces, National Intelligence Service and National Police Service), outside Kenya subject to parliamentary approval.

127 There is no debate that the mandate conferred on the Council is to deploy “national forces” outside Kenya with approval of Parliament. The words, national forces, used in the Constitution are not defined. The position taken by the petitioners and the Law Society is that National Police Service not being a force cannot be deployed by the Council under article 240(8).

128 When called upon to interpret words used in the constitution or statute, the general principle if the words used are clear and unambiguous, they should be given their ordinary meaning. In interpreting the statute, both text and context are important. They are the basis of interpretation because “*if the text is the texture, context is*

what gives the colour.” (Reserve Bank of India v Peerless General Finance and Investment Co. Ltd 1987 SCR (2) 1).

129 The court should also examine every word used in a constitution or statute in its context and use context in its widest sense. (*Commercial Tax Officer Rajasthan v M/s Binan Cement Ltd* [2014] SCR

130 Kenya has no forces other than the Defence Forces, comprising Kenya Army, Kenya Air force and Kenya Navy, otherwise called the military.

131 In the three national security organs mentioned in article 239(1), only Kenya Defence Forces are “forces.” The other two national security organs, (National Intelligence Service and National Police Service) are service. From the constitutional text, one cannot legitimately argue that national security organs are the national forces, even though heads of the three security organs are members of the Council. one cannot also argue that national forces include National Intelligence Service and National Police Service.

132 Given that the Constitution permits deployment “forces”, and applying a purposive and holistic interpretation of article 240(8), I find and hold that “national forces” as used in article 240(8) mean the Kenya Defence Forces, so that the Council may, with approval of Parliament, deploy Kenya army, Kenya Air force or Kenya Navy, (as national forces), outside the country for regional or international peace or other support operations, depending on the mission needs.

133 If the intention of the framers of the Constitution was that the Council should deploy Defence forces, National Intelligence Service and National Police Service, they could have easily stated so and mandated the Council to deploy *national forces and services*, or *national security organs*, to capture that intention.

134 In that respect, it is the holding of this Court the Council cannot deploy National Police Service outside the country under article 240(8) because the mandate of the Council is to deploy Forces, (Kenya Defence Forces) for regional or international support operations and not National Police Service.

135 That the Council can only deploy Kenya Defence forces under article 240(8) finds support in the Kenya Defence Forces Act, 2012. Section 18 of the Act reiterates the functions of the Council in relation to the Kenya Defence Forces, thus:

The National Security Council shall, with respect to the Defence Forces, and pursuant to Article 240(3),(6), and (8) of the Constitution and provisions of the National Security Council Act, exercise supervisory control and perform the following functions:

(a).....

(b).....

(c)deploy Defence Forces outside Kenya, with approval of Parliament for-

(i)regional or international peace support operations,

or

(ii) other support operations

(d) approve with the approval of Parliament, the deployment of foreign forces in Kenya.

136 The Kenya Defence Forces Act makes it clear, using the same words used in the Constitution, that the Council may deploy Defence Forces outside the country with the approval of Parliament. When enacting this Act, Parliament appreciated that article 240(8) permits the Council to deploy Defence forces outside the country and captured that intention in the Kenya Defence Forces Act.

137 Unlike the Kenya Defence Forces Act, section 6(2) of the National Police Service Act provides that the Council may deploy the service (National Police Service) or any part of the service in defence of Kenya during an emergency. That is the only time the National Police Serviced Act mandates the Council to deploy National Police Service.

138 Section 6(3) is also clear that for purposes of deploying the Service in case of emergency, *“the procedure under article 58 of the Constitution shall apply.”* Other than as provided under section 6(2),

(3), the Council has no mandate to deploy National Police Service even within the country.

139 It is important to note that Parliament did not import article 240(8) into the National Police Service Act or National Intelligence Service Act as it did with the Kenya Defence Forces Act. In not doing so, Parliament recognized that the Constitution did not contemplate deployment of those services outside the country.

140 The petitioners maintain that because of the way section 6(1) of National Police Service Act is worded, deployment of the service can only in Kenya and, therefore, sections 107, 108 and 109 are inconsistent with article 240(8).

141 As I have already stated earlier in this judgment, article 240(8) does not preclude deployment of National Police Service outside Kenya. Similarly, section 6(1) does not preclude deployment of the service outside the country. Sections 107 and 108, (Part XIV) of the Act, properly provide how the service may be deployed outside the country, when and by who.

142 To be clear, article 240(8) does not mandate the Council to deploy police officers outside Kenya. Deployment should be as provided for in Part XIV of the Act and only to a reciprocating country.

143 The respondents argue that no further legislation was contemplated to give effect to article 240(8) on the deployment of national forces. That may be so, but it cannot be said that Parliament was wrong when it enacted the Kenya Defence Forces Act, reiterating the words in article 240(8) that the Council may deploy Defence force outside Kenya, subject to parliamentary approval.

144 The petitioners and Law Society argue, which is not contested, that there is no reciprocal arrangement between Kenya and Haiti and, therefore, there can be no deployment of police officers to that country. There can be no legitimate deployment of police officers to Haiti either under the National Police Service Act without complying with sections 107 and 108 of the Act.

145 I have read the replying affidavit by the CS Interior and the text of Resolution 2699(2023). They confirm that Kenya's Foreign Affairs CS

pledged Kenya's willingness to contribute forces towards assisting Haiti restore security and prevent a looming humanitarian crisis. Kenya also offered to lead the Multinational Security Support (MSS) Mission to Haiti.

146 It is no doubt a great honour for Kenya to offer to lead the Multinational Security Support (MSS) mission for Haiti. Similarly, Kenya has an obligation to join the community of nations in assisting Haiti as part of its international obligations. However, any endeavor towards that end must be in accord with the Constitution and the law. The effort and, in particular, the attempt to deploy police officers to Haiti, must fail for lack of constitutional and legal foundation.

Conclusion

147 Having considered the petition, responses, argument by parties, the Constitution and the law, I come to the conclusion that: first; the

petition is not premature, does not offend the doctrine of ripeness, exhaustion or separation of powers. The petitioners properly moved the Court in defence of the Constitution as the acts complained of were a threat to violate the Constitution and the law.

148 Second, Sections 107,108 and 109 of the National Police Service are constitutional. There is no inconsistency between the sections and the Constitution.

149 Third, National Security Council has no constitutional or legal mandate to deploy National Police Service outside Kenya under article 240(8) or any other law.

150 Article 2(4) of the Constitution invalidates any act or omission that contravenes the Constitution. In that regard, any purported decision by National Security Council to deploy police officers outside Kenya and any other action taken by any other state organ or state officer in furtherance of that decision, is invalid null and void.

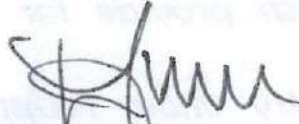
Disposal

- 1. A declaration is hereby issued that sections 107,108 and 109 of the National Police Act which provide for deployment of police officers outside the country under reciprocal arrangements to reciprocating countries, are constitutional and valid.*
- 2. A declaration is hereby issued that National Security Council has no mandate to deploy police officers outside Kenya under article 240(8) of the Constitution or any other law.*
- 3. A declaration is hereby issued that any decision by any state organ or state officer to deploy police officers to Haiti, and any further action or steps taken by a state organ or state officer in furtherance of such decision, contravenes the Constitution and the law and is therefore unconstitutional, illegal and invalid.*
- 4. An order is hereby issued prohibiting deployment of police officers to Haiti or any other country, otherwise than in compliance with Part XIV-sections 107 and 108 of the National Police Service Act.*

5. *This being a public interest litigation, I make no order on costs.*

Dated, Signed and Delivered at Nairobi this 26th Day of

January 2024



E C MWITA

JUDGE

I CERTIFY THIS IS TRUE
COPY OF THE ORIGINAL
DATED: 26/3/2024
DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E389 OF 2023**

=BETWEEN=

**EKURU AUKOT.....1ST PETITIONER/APPLICANT
MIRURU WAWERU.....2ND PETITIONER/APPLICANT
THIRDWAY ALLIANCE KENYA.....3RD PETITIONER/APPLICANT**

=AND=

**THE NATIONAL SECURITY COUNCIL.....1ST RESPONDENT
THE INSPECTOR-GENERAL OF THE NATIONAL POLICE SERVICE.....2ND RESPONDENT
THE CABINET SECRETARY MINISTRY OF
INTERIOR AND NATIONAL ADMINISTRATION.....3RD RESPONDENT
THE SPEAKER OF THE NATIONAL ASSEMBLY.....4TH RESPONDENT
THE HON. ATTORNEY GENERAL.....5TH RESPONDENT
WILLIAM SAMOEI RUTO.....6TH RESPONDENT**

=AND=

LAW SOCIETY OF KENYA..... INTERESTED PARTY

IN COURT ON 26TH JANUARY, 2024 is the exhibit marked "EA 1b"
BEFORE HON. JUSTICE E.C. MWITA referred to in the annexed affidavit declaration

of: Ekuru Aukot
sworn declared before me this 16TH
day of MAY 2024

DECREE

prayers sought:

- i.* A declaration that the act of deploying police officers to Haiti is unconstitutional and illegal and void.
- ii.* A declaration that police officers cannot be deployed outside Kenya.
- iii.* A ddeclaration that Sections 107, 108 and 109 of the National Police Service Act, which provide for deployment of the service under reciprocal arrangements with reciprocating countries, are unconstitutional since they offend Articles 240(8) and 243(3) of the Constitution which provide respectively that on Kenya defence forces can be deployed outside Kenya and that the National Police Service is a national service and shall function throughout Kenya.
- iv.* An Order prohibiting the Respondents from deploying police officers to Haiti or any other county other than within the boundaries of Kenya.
- v.* Costs of the Petition.
- vi.* Any other orders that the court may deem just and fit to grant as the justice of this case may permit.

UPON THIS MATTER coming up for judgment before Hon. Justice E.C. Mwangi on 26th January, 2024 in the presence of counsel for the Petitioners, counsel for the Interested Party, counsel for the counsel for the 1st & 3rd Respondents and counsel for the 2nd & 5th Respondents

AND UPON careful consideration of the pleadings, parties' submissions as well as the law;

IT IS HEREBY ORDERED AND DECREED THAT: -

- 1)** A declaration is hereby issued that sections 107,108 and 109 of the National Police Act which provide for deployment of police officers outside the county under reciprocal arrangements to reciprocating countries, are constitutional and valid.
- 2)** A declaration is hereby issued that National Security Council has no mandate to deploy police officers outside Kenya under article 240(8) of the Constitution or any other law.
- 3)** A declaration is hereby issued that any decision by any state organ or state officer to deploy police officers to Haiti, and any further action or steps taken by a state organ or state officer in furtherance of such decision, contravenes the Constitution and the law and is therefore unconstitutional, illegal and invalid.
- 4)** An order is hereby issued prohibiting deployment of police officers to Haiti or any other county, otherwise than in compliance with Part XIV-sections 107 and 108 of the National Police Service Act.
- 5)** This being a public interest litigation, the court makes no order on costs.

GIVEN under my Hand and Seal of this Honourable Court on this **26th** day of **January, 2024**.

ISSUED at Nairobi this ^{26th} day of ^{March} **2024**.

**DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI**

Pet. 5389/2023
DEPUTY REGISTRAR
HIGH COURT OF KENYA



REPUBLIC OF KENYA

STATEMENT BY HIS EXCELLENCY WILLIAM RUTO, C.G.H.; PhD; PRESIDENT AND COMMANDER-IN-CHIEF OF THE KENYA DEFENCE FORCES, DURING THE SIGNING OF A RECIPROCAL INSTRUMENT BETWEEN KENYA AND HAITI ON THE MULTI-NATIONAL SECURITY SUPPORT MISSION IN HAITI

MARCH 1ST, 2024

STATE HOUSE, NAIROBI

This is the exhibit marked "EA-2" referred to in the annexed affidavit declaration of William Ruto sworn declared before me this 16th day of MAY 2024

[Handwritten signature]



REPUBLIC OF KENYA

**STATEMENT BY HIS EXCELLENCY WILLIAM
RUTO, C.G.H.; PhD; PRESIDENT AND
COMMANDER-IN-CHIEF OF THE KENYA DEFENCE
FORCES, DURING THE SIGNING OF A
RECIPROCAL INSTRUMENT BETWEEN KENYA
AND HAITI ON THE MULTI-NATIONAL SECURITY
SUPPORT MISSION IN HAITI**

MARCH 1ST, 2024

STATE HOUSE, NAIROBI

1. On October 2, 2023, the United Nations Security Council adopted Resolution 2699 authorising a multinational security support mission to Haiti. Kenya, having been requested by member States, accepted to lead the coordination of this international mission.
2. Pursuant to this Resolution, preparations for the mission commenced, including the authorisation procedures, preparation of mission documents, including the concept of operations, conduct and discipline policy, status protection agreement and directive on detention, searches and use of force. There has also been extensive engagement with member States to translate the global solidarity into concrete support for the Multinational Security Support Mission (MSS).
3. On October 13, 2023, the National Security Council and Cabinet approved the deployment of 1,000 police officers. Further, on November 16, 2023, Parliament unanimously approved this deployment.
4. Subsequently, a petition was filed in court and the court determined the need for a reciprocal instrument between Kenya and Haiti to enable this deployment.
5. Today, March 1, 2024, I am pleased to inform that Prime Minister Ariel Henri and I have witnessed the signing of this instrument. We have also discussed the next steps to enable the fast-tracking of the deployment.
6. I take this opportunity to reiterate Kenya's commitment to contribute to the success of this multi-national mission. We believe this is a historic duty because peace in Haiti is good for the world as a whole.

Thank you.





constitutiveproject.org

Haiti's Constitution of 1987 with Amendments through 2012

This is the exhibit marked "EA-3"
 referred to in the annexed affidavit declaration
 of: Ernest ALCOT
 sworn declared before me this 16th
 day of May 2013
[Signature]

This complete constitution has been generated
 from excerpts of texts from the repository of the
 Comparative Constitutions Project, and distributed on
constitutiveproject.org.

preamble

☒The Haitian people proclaim this Constitution:

To guarantee their inalienable and imprescriptible rights to life, to liberty and to the pursuit of happiness; in accordance with their Act of Independence of 1804 and with the Universal Declaration of the Rights of Man of 1948.

To constitute a Haitian nation, socially just, economically free, and politically independent.

To establish a State stable and strong, capable of protecting the values, the traditions, the sovereignty, the independence and the national vision.

To implant democracy which implies ideological pluralism and political alternation and to affirm the inviolable rights of the Haitian People.

To fortify the national unity, eliminating all discrimination between the populations, of the towns and of the countryside, by the acceptance of the community of languages and of culture and by the recognition of the right to progress, to information, to education, to health, to work and to leisure for all citizens [masculine] and citizens [feminine].

To assure the separation, and the harmonious division of the powers of the State to the service of the fundamental interests and priorities of the Nation.

To establish a governmental regime based on the fundamental liberties and the respect for human rights, the social peace, economic equity, the equity of gender, the concerted action and the participation of all the population in the grand decisions engaging the national life, by an effective decentralization.

To assure to women a representation in the instances of power and of decision which must conform to the equality of the sexes and to equity of gender.

TITLE I

The Republic of Haiti; Its Emblem and Its Symbols

CHAPTER I The Republic of Haiti

First Article

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Haiti is an indivisible, sovereign, independent, free, democratic and unified Republic.

First Article 1

The city of Port-au-Prince is the capital and the seat of government. This seat may be moved elsewhere for reasons of force majeure.

Article 2

The national colors shall be blue and red.

Article 3

The emblem of the Haitian Nation shall be a flag with the following description:

- a two (2) equal sized horizontal bands: a blue one on top and a red one underneath;
- b the coat of arms of the Republic are: a Palette surmounted by the liberty cap, and under the palms a trophy with the legend: In Union there is Strength.

Article 4

The national motto is: Liberty; Equality, Fraternity.

Article 4-1

The national anthem shall be the "Dessalinienne."

Article 5

All Haitians are united by a common language: Creole. Creole and French are the official languages of the Republic.

Article 6

The monetary unit shall be the gourde, which is divided into centimes.

Article 7

The cult of the personality is categorically forbidden. Effigies and names of living personages may not appear on the currency, stamps, seals, public buildings, streets or works of art.

Article 7-1

Use of effigies of deceased persons must be approved by the Legislature.

CHAPTER II Territory of the Haitian Republic

Article 8

The territory of the Haitian Republic comprises:

- a the western part of the island of Haiti and the adjacent island of La Gonave, La Tortue, l'Île à Vache, les Cayemittes, La Navase, La Grande Caye and the other islands of the Territorial Sea;
- b it is bounded on the east by the Dominican Republic, on the north by the Atlantic Ocean, on the south and west by the Caribbean Sea or Sea of the Antilles;
- c the air space over the land sea of the Republic.

Article 8-1

The territory of the Haitian Republic is inviolable and may not be alienated either in whole or in part by any treaty or convention.

Article 9

The territory of the Republic is divided and subdivided into Departments, Arrondissements, Communes, Quartiers and Communal Sections.

Article 9-1

The law determines the number and boundaries of these divisions and subdivisions, and regulates their organization and operation.

TITLE II

Haitian Nationality

Article 10

The regulations governing Haitian nationality shall be determined by law.

Article 11

Any person born of a Haitian father or Haitian mother who are themselves native-born Haitians and have never renounced their nationality possesses Haitian nationality at the time of birth.

Article 11-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The law establishes the conditions in which an individual may acquire the Haitian nationality.

Article 12

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Any Haitian, except for the privileges reserved to Haitians of origin, is subject to all the rights, duties and obligations attached to their Haitian nationality.

No Haitian can make their foreign nationality prevail on the territory of the Republic.

Article 12-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 12-2

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 13

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 14

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 15

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

TITLE III

Basic Rights and Duties of the Citizen

CHAPTER I The Nature of the Citizenship

Article 16

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The enjoyment, and the exercise of the civil and political rights constitute the quality of the citizen. The suspension or the loss of these rights is regulated by the law.

Article 16-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 16-2

The age of majority is eighteen (18) years.

Article 17

All Haitians, regardless of sex or marital status, who have attained twenty-one years of age may exercise their political and civil rights if they meet the other conditions prescribed by the Constitution and by law.

Article 17-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The principle of the quota of at least thirty percent (30%) of women is recognized at all levels of national life, notably in the public services.

Article 18

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Haitians shall be equal before the law, subject to the special advantages conferred on native-born Haitians who have never renounced their nationality.

CHAPTER II Basic Rights

SECTION A Right to Life and Health

Article 19

The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man.

Article 20

The death penalty is abolished in all cases.

Article 21

The crime of high treason consists in bearing arms in a foreign army against the Republic, serving a foreign nation in a conflict with the Republic, in any official's stealing state property, entrusted to his management, or any violation of the Constitution by those responsible for enforcing it.

Article 21-1

The crime of high treason is punishable by forced labor for life without commutation of sentence.

Article 22

The State recognizes the right of every citizen to decent housing, education, food and social security.

Article 23

The State has the obligation to ensure for all citizens in all territorial divisions appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries.

SECTION B Individual Liberty**Article 24**

Individual liberty is guaranteed and protected by the State.

Article 24-1

No one may be prosecuted, arrested or detained except in the cases determined by law and in the manner it prescribes.

Article 24-2

Except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official.

Article 24-3

For such an order to be carried out, the following requirements must be met:

- a It must formally state the reason in Creole and in French for the arrest or detention and the provision of the law that provides for punishment of the act charged.
- b Legal notice must be given and a copy of the order must be left with the accused at the time of its execution;
- c The accused must be notified of his right to be assisted by counsel at all phases of the investigation of the case up to the final judgment;
- d Except where the perpetrator of a crime is caught in the act, no arrest by warrant and no search may take place between six (6) p.m. and six (6) a.m.
- e Responsibility for an offense is personal, and no one may be arrested in the place of another.

Article 25

Any unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is forbidden.

Article 25-1

No one may be interrogated without his attorney or a witness of his choice being present.

Article 26

No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.

Article 26-1

In the case of a petty violation, the accused shall be referred to a justice of the peace, who shall then hand down a final decision.

In the case for more serious offenses or crimes, an appeal may be filed, without prior permission, simply by addressing a petition to the presiding judge of the competent civil court, who, on the basis of the oral statement of the prosecutor, shall rule on the legality of the arrest and detention, in a special session of the court, without postponement or rotation of judges, all other cases being suspended.

Article 26-2

If the arrest is judged to be illegal, the judge shall order the immediate release of the arrested person and that order shall be enforceable immediately, regardless of any appeal to a higher court or the supreme court for an order forbidding enforcement of the judgment.

Article 27

Any violation of the provisions on individual liberty are arbitrary acts. Injured parties may, without prior authorization, appeal to the competent courts, to bring suit against the authors and perpetrators of these arbitrary acts, regardless of their rank or the body to which they belong.

Article 27-1

Government officials and employees are directly liable under civil and administrative criminal law for acts carried out in violation of rights. In such cases, civil liability extends to the State as well.

SECTION C Freedom of Expression**Article 28**

Every Haitian has the right to express his opinions freely on any matter by any means he chooses.

Article 28-1

Journalists shall freely exercise their profession within the framework of the law. Such exercise may not be subject to any authorization or censorship, except in the case of war.

Article 28-2

Journalists may not be compelled to reveal their sources. However, it is their duty to verify the authenticity and accuracy of information. It is also this obligation to respect the ethics of their profession.

Article 28-3

All offenses involving the press and abuses of the right of expression come under the code of criminal law.

Article 29

The right of petition is recognized. It is exercised personally by one or more citizens but never in the name of a body.

Article 29-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

SECTION D Freedom of Conscience**Article 30**

All religions and faiths shall be freely exercised. Everyone is entitled to profess his religion and practice his faith, provided the exercise of that right does not disturb law and order.

Article 30-1

No one may be compelled to belong to a religious organization or to follow a religious teaching contrary to his convictions.

Article 30-2

The law establishes the conditions for recognition and practice of religions and faiths.

SECTION E Freedom of Assembly and Association**Article 31**

Freedom of unarmed assembly and association for political, economic, social, cultural or any other peaceful purposes is guaranteed.

Article 31-1

Political parties and groups shall compete with each other in the exercise of suffrage. They may be established and may carry out their activities freely. They must respect the principles of national and democratic sovereignty. The law determines the conditions for their recognition and operation, and the advantages and privileges reserved to them.

Article 31-1-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

Any law concerning the Political Parties must reserve in its structures and in its mechanisms of functioning a treatment in conformity with the principle of the quota of at least thirty percent (30%) of women as expressed in Article 17-1.

Article 31-2

The police authorities must be notified in advance of assemblies outdoors in public places.

Article 31-3

No one may be compelled to join any association of any kind.

SECTION F Education and Teaching**Article 32**

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The State guarantees the right to education. Instruction is free to all the degrees. This freedom is exercised under the control of the State.

Article 32-1

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Education is a responsibility of the State and of the territorial collectivities. They must place school freely within the reach of all, and see to the level of training of the teachers of the public and non-public sectors.

Article 32-2

The first responsibility of the State and its territorial divisions is education of the masses, which is the only way the country can be developed. The State shall encourage and facilitate private enterprise in this field.

Article 32-3

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Fundamental education is obligatory. The classical necessities and didactic materials shall be placed freely by the State at the disposition of the students at the level of fundamental education.

Article 32-4

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Agricultural, vocational and technical education is a responsibility taken by the State and the territorial collectivities.

Article 32-5

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Preschool and maternal instruction will be a responsibility taken by the State and the territorial collectivities.

Article 32-6

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The access to superior studies is open, in full equality, to all.

Article 32-7

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The State must see to it that each territorial collectivity is endowed with establishments adapted to the needs of its development.

Article 32-8

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The State guarantees to persons with special needs the protection, the education and any other means necessary for their full enjoyment and for their integration or reintegration into society.

Article 32-9

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The State and the territorial collectivities have as a duty to make all the provisions necessary with a view to intensify the campaign of literacy of the masses. They encourage all private initiatives directed to this end.

Article 32-10

Teachers are entitled to a fair salary.

Article 33

There shall be freedom of education at all levels. This freedom shall be exercised under the control of the State.

Article 34

Except where perpetrators of crimes are caught in the act, the premises of educational establishments are inviolable. No police forces may enter them except with the permission of the supervisors of those establishments.

Article 34-1

This provision does not apply when an educational establishment is used for the purposes.

SECTION G Freedom to Work**Article 35**

Freedom to work is guaranteed; every citizen has the obligation to engage in work of his choice to meet his own and his family's needs, and to cooperate with the State in the establishment of a social security system.

Article 35-1

Every employee of a private or public institution is entitled to a fair wage, to rest, to a paid annual vacation and to a bonus.

Article 35-2

The State guarantees workers equal working conditions and wages regardless of their sex, beliefs, opinions and marital status.

Article 35-3

Trade union freedom is guaranteed. any worker in the public or private sector may join a union representing his particular occupation solely to protect his work interests.

Article 35-4

Unions are essentially nonpolitical, nonprofit, and nondenominational. No one may be forced to join a union.

Article 35-5

The right to strike is recognized under the limits set by law.

Article 35-6

The minimum age for gainful employment is set by law. Special laws govern the work of minors and servants.

SECTION H Property**Article 36**

Private property is recognized and guaranteed. The law specifies the manner of acquiring and enjoying it, and the limits placed upon it.

Article 36-1

Expropriation for a public purpose may be effected only by payment or deposit ordered by a court in favor of the person entitled thereto, of fair compensation established in advance by an expert evaluation.

If the initial project is abandoned, the expropriation is canceled. The property may not be subject to any speculation and must be restored to its original owner without any reimbursement for the small holder. The expropriation measure is effective upon the startup of the project.

Article 36-2

Nationalization and confiscation of goods, property and buildings for political reasons are forbidden.

No one may be deprived of his legitimate right of ownership other than by a final judgment by a court of ordinary law, except under an agrarian reform.

Article 36-3

Ownership also entails obligations. Uses of property cannot be contrary to the general interest.

Article 36-4

Landowners must cultivate, work, and protect their land, particularly against erosion. The penalty for failure to fulfill this obligation shall be prescribed by law.

Article 36-5

The right to own property does not extend to the coasts, springs, rivers, water courses, mines and quarries. They are part of the State's public domain.

Article 36-6

The law shall establish regulations governing freedom to prospect for and work mines, or bearing earths, and quarries, ensuring an equal share of the profits of such exploitation to the owner of the land and to the Haitian State or its concessionnaires.

Article 37

The law shall set conditions for land division and aggregation in terms of a territorial management plan and the well-being of the communities concerned, within the framework of agrarian reform.

Article 38

Scientific, literary and artistic property is protected by law.

Article 39

The inhabitants of the Communal Sections have the right of preemption for the exploitation of the State's land in the private domain located in their locality.

SECTION I Right to Information**Article 40**

The State has the obligation to publicize in the oral, written and televised press in the Creole and French languages all laws, orders, decrees, international agreements, treaties, and conventions on everything affecting the national life, except for information concerning national security.

SECTION J Right to Security**Article 41**

No person of Haitian nationality may be deported or forced to leave the national territory for any reason. No one may be deprived for political reasons of his legal capacity and his nationality.

Article 41-1

No Haitian needs a visa to leave or return to the country.

Article 42

No citizen, whether civilian or military, may be denied access to the courts open to him under the Constitution and the laws.

Article 42-1

Military personnel accused of the crime of high treason against the country shall be tried in a court of ordinary law.

Article 42-2

Military courts have jurisdiction only:

- a in the case of violation by military personnel of regulations in the Manual of Military Justice;
- b in the case of conflicts between members of the armed forces;
- c in the case of war.

Article 42-3

Cases of conflicts between civilians and military personnel, abuses, violence and crimes perpetrated against a civilian by a member of the military in the performance of his duties are under the jurisdiction of courts for ordinary law.

Article 43

No house search or seizure of papers may take place except under the terms of the law and in the manner prescribed by it.

Article 44

Persons detained temporarily awaiting trial must be held separately from those who are serving sentence.

Article 44-1

Prisons must be operated in accordance with standards reflecting respect for human dignity according to the law on this subject.

Article 45

No penalty may be established except by law nor applied except in cases that the law determines.

Article 46

No one may be compelled in cases of crimes, minor offenses, or petty violations to bear witness against himself or his relatives up to the fourth degree of consanguinity or the second degree of affinity.

Article 47

No one may be compelled to take an oath except in the cases and in the manner provided for by law.

Article 48

The State shall see to it that a Civil Pension Retirement Fund is established in the public and private sectors. The fund shall receive contributions from employers and employees, in accordance with the criteria and in the manner established by law. The granting of a pension is a right and not a privilege.

Article 49

Freedom and privacy of correspondence and any other forms of communication are inviolable. They may be limited only by a well-founded judicial ruling, according to the guarantees by law.

Article 50

Under the Constitution and the law, a jury is established in criminal cases for violent crimes and political offenses.

Article 51

The law may not be made retroactive except in criminal cases when it favors the accused.

CHAPTER III Duties of the Citizen

Article 52

Citizenship entails civic duties. Every right is counterbalanced by a corresponding duty.

Article 52-1

Civic duties are the citizen's moral, political, social and economic obligations as a whole to the State and the country. These obligations are:

- a to respect the Constitution and the national emblem;
- b to respect the laws;
- c to vote in elections without constraint;
- d to pay his taxes;
- e to serve on a jury;
- f to defend the country in the event of war;
- g to educate and improve himself;
- h to respect and protect the environment;
- i to respect scrupulously the revenues and properties of the State;
- j to respect the property of others;
- k to work to maintain peace;
- l to provide assistance to persons in danger;
- m to respect the rights and freedom of others.

Article 52-2

Failure to abide by these provisions shall be punishable by law.

Article 52-3

Compulsory civic service for both sexes is established. The terms thereof shall be set by law.

TITLE IV

Aliens

Article 53

The conditions under which aliens may be admitted to or remain in the country are established by law.

Article 54

Aliens in the territory of the Republic shall enjoy the same protection accorded to Haitians, under the law.

Article 54-1

Aliens enjoy civil, economic and social rights subject to legal provisions on the right to own real property, the practice of a profession, engaging in wholesale trade, serving as a commercial representative, and engaging in import and export operations.

Article 55

The right to own real property is accorded to aliens resident in Haiti for the needs of their sojourn in the country.

Article 55-1

However, aliens residing in Haiti may not own more than one dwelling in the name Arrondissement. They may in no case engage in the business of renting real estate. However, foreign companies engaged in real estate promotion shall receive the benefits of a special status regulated by law.

Article 55-2

The right to own real property shall be accorded also to aliens residing in Haiti and to foreign companies for the needs of their agricultural, commercial, industrial, religious, humanitarian or educational enterprises, within the limits and under the conditions prescribed by law.

Article 55-3

No alien may be the owner of a building bounded by the Haitian land order.

Article 55-4

The right terminates five(5) years after an alien ceases to reside in the country or the operation of this companies have terminates, pursuant to the law establishing regulations to be followed for the transmission and liquidation of property owned by aliens.

Article 55-5

Violators of the above provisions and their accomplices shall be punished as provided for in the law.

Article 56

An alien may be expelled from the territory of the Republic if he becomes involved in the political life of the country, or in cases determined by law.

Article 57

The right to asylum for political refugees is recognized.

TITLE V

National Sovereignty

Article 58

National sovereignty is vested in all citizens.

Citizens directly exercise the prerogatives of sovereignty by:

- a electing the President of the Republic;
- b electing members of the Legislature;
- c electing members of all other bodies or all assemblies provided for by the Constitution and by law.

Article 59

Citizens delegate the exercise of national sovereignty to three (3) powers of government:

- 1 the Legislative Power;
- 2 the Executive Power;
- 3 the Judicial Power.

The principle of separation of the three (3) powers is embodied in the Constitution.

Article 59-1

The three (3) powers constitute the essential foundation of the organization of the State, which is civil.

Article 60

Each power is independent of the other two (2) in the powers it exercises separately.

Article 60-1

None of them may, for any reason, delegate their powers in all or in part, nor go beyond the bounds set for them by the Constitution and by law.

Article 60-2

Each of the three (3) powers is entirely responsible for its own acts.

CHAPTER I Territorial Divisions and Decentralization

Article 61

The territorial divisions are the Communal Sections, the Communes and the Departments.

Article 61-1

The law may create any other territorial division.

SECTION A Communal Sections

Article 62

The Communal Section is the smallest administrative territorial entity of the Republic.

Article 63

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The administration of each communal section is assured by a council of three (3) members elected by universal suffrage for a term of four (4) years. They are indefinitely re-eligible. Its mode of organization and of functioning is regulated by the law.

Article 63-1

The Administrative Council of the Communal Section is assisted in its work by an Assembly of the Communal Section.

Article 64

The state is obligated to establish for each Communal Section the structures required for social, economic, civic and cultural training of its population.

Article 65

Members of the Administrative Council of the Communal Section must:

- a be Haitians and be at least twenty-five (25) years of age;
- b have resided in the Communal Section for two (2) years before the elections and continue to reside there;
- c enjoy civil and political rights and never been sentenced to death, personal restraint or penal servitude or the loss of civil rights.

SECTION B Communes

Article 66

Communes have administrative and financial autonomy. Each Commune of the Republic is administered by a Council, known as the Municipal Council, of three (3) members elected by universal suffrage.

Article 66-1

The President of the council is assisted in its work by a Municipal Assembly composed among others, of a representative of each of its Communal sections.

Article 67

The Municipal Council is assisted in its work by a Municipal Assembly composed, among others, of a representative of each of its Communal Sections.

Article 68

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The mandate of the Municipal Council is of four (4) years and its members are indefinitely re-eligible.

Article 69

The mode of organization and operation of the Commune and the Municipal Council are regulated by law.

Article 70

Members of a Municipal Council must:

- a be Haitians;
- b have attained twenty-five (25) years of age;
- c enjoy civil and political rights;
- d have never been sentenced to death, personal restraint or penal servitude or the loss of civil rights;
- e have resided at least three (3) years in the Commune and undertake to reside there for the duration of their term.

Article 71

Each Municipal Council is assisted at its request by a Technical Council furnished by the Central Government.

Article 72

The Municipal Council may be dissolved for negligence, embezzlement, or maladministration, legally determined by a court of competent jurisdiction.

If it is dissolved, the Departmental Council shall immediately fill the vacancy and call upon the Permanent Electoral Council to elect, in sixty (60) days starting from the date the Council is dissolved, a new Council and shall manage the affairs of the Commune for the remainder of the term. This procedure also applies to vacancies occurring for any other reason.

Article 73

The Municipal Council manages its resources for the exclusive benefit of the Municipality and renders its accounts to the Municipal Assembly which in turn reports to the Departmental Council.

Article 74

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Municipal Council has the privilege of seeing to the management of the land assets of private domain of the State situated within the limits of the Commune by the competent services conforming to the law.

SECTION C Arrondissements**Article 75**

The Arrondissement is an administrative division that may comprise several Communes. Its organization and operations are governed by law.

SECTION D Departments

Article 76

The Department is the largest territorial division. It comprises the Arrondissements.

Article 77

The Department has legal personality and is autonomous.

Article 78

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Each Department is administered by a council of three (3) members elected for four (4) years by the Departmental Assembly.

Article 79

Members of the Departmental Council are not necessarily drawn from the Assembly, but they must:

- a be Haitians and at least twenty-five (25) years of age;
- b have resided in the Department three (3) years before the elections and undertake to remain there during their term;
- c enjoy civil and political rights and have never been sentenced to death, personal restraint, or penal servitude or the loss of civil rights.

Article 80

The departmental Council is assisted in its work by a Departmental Assembly made up of: One (1) representative from each Municipal Assembly.

Article 80-1

The following may attend Assembly meetings in an advisory capacity:

- a deputies and Senators of the Department;
- b one (1) representative of each socio-professional association or union;
- c the Departmental Delegate;
- d the Director of Public Services of the Department.

Article 81

The Departmental Council draws up the Department's development plan in cooperation with the Central Government.

Article 82

The organization and operations of the Departmental Council and the Departmental Assembly are regulated by law.

Article 83

The Departmental Council manages its financial resources for the exclusive benefit of the Department and renders its accounts to the Departmental Assembly, which in turn reports to the Central Government.

Article 84

The Departmental Council may be dissolved in the event of embezzlement or maladministration legally determined by a court of competent jurisdiction.

If it is dissolved, the Central Government appoints a Provisional Commission and calls upon the Permanent Electoral Council to elect a new Council for the remainder of the term within sixty (60) days of the dissolution.

SECTION E Delegates and Vice Delegates**Article 85**

In each Departmental Capital, the Executive Power appoints a Representative, who bears the title of Delegate. A Vice Delegate placed under the authority of the Delegate is also appointed in each Arrondissement Capital.

Article 86

Delegates and Vice Delegates ensure coordination and control of public services and exercise no repressive police function.

Other duties of delegates and Vice Delegates are determined by law.

SECTION F Interdepartmental Council**Article 87**

The Executive is assisted by an Interdepartmental Council, the members of which are designated by the Departmental Assemblies on the basis of one (1) per Department.

Article 87-1

This Representative chosen from among the members of the Departmental Assemblies serves as liaison between the Department and the Executive Power.

Article 87-2

The interdepartmental Council, in concert with the executive, studies and plans projects for decentralization and development of the country from the social, economic, commercial, agricultural and industrial standpoint.

Article 87-3

It attends working meetings of the Council of Ministers, when they discuss subjects mentioned in the preceding paragraph and has the right to vote.

Article 87-4

Decentralization must be accompanied by deconcentration of public services with delegation of power and industrial decompartmentalization for the benefit of the departments.

Article 87-5

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The law determines the organization and the functioning of the Interdepartmental Council.

CHAPTER II The Legislative Power

Article 88

Legislative power shall be vested in two (2) representative Chambers. One (1) Chamber of Deputies and one (1) Senate, comprising the Legislature or Parliament.

SECTION A The Chamber of Deputies

Article 89

The Chamber of Deputies is a body composed of members elected by direct suffrage by the citizens and is responsible for exercising, on their behalf and in concert with the Senate, the functions of the legislative power.

Article 90

Each Municipal Authority comprises an electoral district and elects one (1) Deputy.

The law sets up to three (3) the number of Deputies at the level of large built-up areas.

Pending application of the above subparagraphs, the number of Deputies may not be fewer than seventy (70).

Article 90-1

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The election of the Deputy takes place on the last Sunday of October of the fourth year of his mandate. He is elected with the absolute majority of the suffrage expressed in the electoral assemblies through of the valid votes, in accordance with the electoral law.

Article 90-2

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

On the occasion of the elections, the candidate to the deputation who is the most favored at the first round not having obtained the absolute majority is declared the victor in the case where his total, in relation to his immediate pursuer, is equal or superior to twenty-five percent (25%).

Article 91

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

To be a member of the Chamber of Deputies, one must:

- 1 be Haitian of origin, never to have renounced his nationality and not holding any other nationality at the moment of his inscription;
- 2 be twenty-five (25) years of age;
- 3 enjoy ones civil and political rights and to never have been condemned to a afflictive and infamous penalty for a crime of common law;
- 4 have resided at least two (2) consecutive years preceding the date of the elections in the electoral circumscription to be represented;
- 5 be the owner of real assets in the circumscription or to exercise a profession or an industry there.
- 6 have received discharge, the case arising, from being a manager of public funds.

Article 92

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Deputies are elected for four (4) years and are indefinitely re-eligible.

Article 92-1

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

They enter into their functions the second Monday of January which follows their elections and sit in two (2) annual sessions. The duration of their mandate forms one legislature.

In the case where the elections cannot be determined before the second Monday of January, the deputies elected enter into their functions immediately after the validation of the ballot, and their mandate of four (4) years is considered to have commenced on the second Monday of January of the year of the entry into their functions.

Article 92-2

The first session runs from the second Monday of January to the second Monday of May; the second session, from the second Monday of June to the second Monday of September.

Article 92-3

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The renewal of the Chamber of Deputies is made completely every four (4) years.

Article 93

Beside the duties conferred upon it by the Constitution as a branch of the Legislature, the Chamber of Deputies has the duty of arraigning the Chief of State, the Prime Minister, the Ministers and the Secretaries of State before the High Court of Justice, by a majority of two-thirds (2/3) of this members. The other powers of the Chamber of Deputies are assigned by the Constitution and by law.

SECTION B The Senate**Article 94**

The Senate is a body composed of members elected by direct suffrage of the citizens and charged with exercising on their behalf, in concert with the Chamber of Deputies, the duties of the Legislative Power.

Article 94-1

The number of Senators is set at three (3) per Department.

Article 94-2

A Senator of Republic is elected by universal suffrage by an absolute majority of votes in the Primary Assemblies held in the geographic Departments, under the terms prescribed by the Electoral Law.

Article 94-3

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

On the occasion of the elections, the candidate to the Senate who is the most favored at the first round not having obtained the absolute majority is declared the victor in the case where his total, in relation to his immediate pursuer, is equal or superior to twenty-five percent (25%).

Article 95

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The senators are elected for six (6) years and are indefinitely re-eligible. They enter into their functions on the second Monday of January which follows their elections.

In the case where the elections cannot be determined before the second Monday of January, the senators elected enter into their functions immediately after the validation of the ballot, and their mandate of six (6) years is considered to have commenced on the second Monday of January of the year of the entry into their functions.

Article 95-1

The Senate is permanently session.

Article 95-2

The Senate may however adjourn, but not during the Legislative Session. When it adjourns, it leaves a permanent committee charged with handling current business. The committee may not make any decisions, except to convene the Senate.

In emergencies, the Executive may also convene the Senate before the end of the adjournment period.

Article 95-3

One-third (1/3) of the Senate is replaced every two (2) years.

Article 96

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

To be elected Senator, one must:

- 1 be Haitian of origin, never to have renounced his nationality and not holding any other nationality at the moment of his inscription;
- 2 be thirty (30) years of age;
- 3 enjoy ones civil and political rights and to never have been condemned to a afflictive and infamous penalty for a crime of common law;
- 4 have resided in the Department to be represented at least three (3) consecutive years preceding the date of the elections;
- 5 be the owner of real assets in the department or to exercise a profession or an industry there.
- 6 have received discharge, the case arising, from being a manager of public funds.

Article 97

In addition to the responsibilities incumbent upon it as a branch of the Legislature, the Senate shall have the following powers:

- 1 to propose to the Executive the list of Supreme Court (Cour de Cassation) justices according to the provisions of the Constitution;
- 2 constitute itself as a High Court of Justice;
- 3 exercise all other powers assigned to it by this Constitution and by law.

SECTION C The National Assembly**Article 98**

The meeting in a single Assembly of the two (2) branches of the Legislature constitutes the National Assembly.

Article 98-1

The National Assembly meets to open and close each session and in all cases provided for by the Constitution.

Article 98-2

The powers of the National Assembly are limited and may not be extended to matters other than those especially assigned to it by the Constitution.

Article 98-3

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The attributions of the National Assembly are:

- 1 to receive the constitutional oath of the President of the Republic;
- 2 to ratify any decision of declaration of war when all the attempts at conciliation have failed;
- 3 to approve or to reject the international treaties and conventions;
- 4 to amend the Constitution following the procedure which is indicated in it;
- 5 to ratify the decision of the Executive to change the seat of government in the case determined by Article 1-1 of this Constitution;
- 6 to decide on the opportuneness of the state of urgency and the state of siege, to order with the Executive the constitutional guarantees to be suspended and to decide on any demand for renewal of this measure;
- 7 to participate in the formation of the Permanent Electoral Council in accordance with Article 192 of the Constitution.
- 8 to participate in the appointment of a Provisional President, in accordance with Article 149 of the Constitution;
- 9 to participate in the formation of the Constitutional Council, in accordance with Article 190bis-1 of the Constitution;;
- 10 to receive, at the opening of each session, the assessment of the activities of the Government.

Article 99

The National Assembly is presided over by the President of the Senate, assisted by the President of the Chamber of Deputies acting as Vice President. The Secretaries of the Senate and the Chamber of Deputies are the Secretaries of the National Assembly.

Article 99-1

In the event the President of the Senate is unable to discharge his duties, the National Assembly shall be presided over by the President of the Chamber of Deputies, and the Vice President of the Senate shall then become Vice President of the National Assembly.

Article 99-2

In the event the two (2) Presidents are unable to discharge their duties, the two (2) Vice-Presidents shall replace them, respectively.

Article 100

Sessions of the National Assembly are public. However, they may be held in closed session at the request of five (5) members, and the resumption of public sessions shall then be decided by an absolute majority.

Article 101

In emergencies, when the Legislature is not in session, the Executive Power may call a special session of the National Assembly.

Article 102

The National Assembly may not meet or take decisions and pass resolutions without a majority of each of the two (2) Chambers being present.

Article 103

The Legislature has its seat in Port-au-Prince. However, depending on the circumstances, this seat may be transferred elsewhere to the same place and at the same time as that of the Executive Power.

SECTION D Exercise of Legislative Power**Article 104**

A session of the Legislature dates from the opening of the two (2) Chambers meeting as the National Assembly.

Article 105

In the interval between regular sessions and in emergencies, the President of the Republic may call a special session of the Legislature.

Article 106

The Chief of the Executive Power reports on that measure by a message.

Article 107

In the event the Legislature is convened in special session, it may not decide on any matter other than that for which it was called.

Article 107-1

However, any Senator or Deputy may introduce a matter of general interest in an Assembly of which he is a member.

Article 108

Each Chamber checks and validates the credentials of its members and is the final judge of any disputes that may arise in this regard.

Article 109

The members of each Chamber shall take the following oath:

“I swear to discharge my duties, to maintain and safeguard the rights of the people, and to be faithful to the Constitution”.

Article 110

Meetings of the two (2) Chambers are public. Each Chamber may meet in closed session at the request of five (5) members, and the decision to resume public meetings shall then be taken by a majority vote.

Article 111

The Legislature takes the laws on all matters of public interest.

Article 111-1

Laws may be initiated by each of the two (2) Chambers as well as by the Executive Power.

Article 111-2

However, only the Executive Power may initiate budget laws, laws concerning the assessment, percentage and manner of collecting taxes and contributions, and laws designed to generate revenues or to increase revenues and expenditures of the Government, Bills introduced on these matters must be voted on first by the Chamber of Deputies.

Article 111-3

In the event of disagreement between the two (2) Chambers regarding the laws mentioned in the preceding paragraph, each Chamber shall appoint, by voting on a list of an equal number of members, a parliamentary committee that will make a final decision on the disagreement.

Article 111-4

If a disagreement occurs with regard to any other law, a decision on it will be postponed until the following session. If, at that session, and even in the case of replacement of the Chambers no agreement is reached on the law when it is introduced again, each Chamber shall appoint, by taking a vote on a list of an equal number of members, a parliamentary committee to decide on the final text that will be submitted to the two (2) Assemblies, beginning with the one that originally voted on the law. If these additional deliberations produce no result, the Bill or proposed law will be withdrawn.

Article 111-5

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 111-6

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 111-7

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 111-8

In no case may the Chamber of Deputies or the Senate be dissolved or adjourned, nor shall the terms of their members be extended.

Article 112

Each Chamber shall, in accordance with its regulations appoint its staff, establish discipline for them and determine the manner in which they shall perform their duties.

Article 112-1

Each Chamber may impose on its members for reprehensible conduct, by a two thirds (2/3) majority vote, disciplinary penalties, except for expulsion.

Article 113

Any member of the Legislature shall be disqualified as a Deputy or Senator, if, during his term, he has received a final sentence by a court of regular law, which renders him ineligible to serve.

Article 114

Members of the Legislature are inviolable from the day they take oath up to the expiration of their term, subject to the provisions of Article 115 below.

Article 114-1

They may at no time be prosecuted or attacked for the opinions and votes cast by them in the discharge of their duties.

Article 114-2

No member of the Legislature shall be subject to civil imprisonment during his term of office.

Article 115

No member of the Legislature may during his term be arrested under ordinary law for a crime, a minor offense or a petty violation, except by authorization of the Chamber of which he is a member, unless he is apprehended in the act of committing an offense punishable by death, personal restraint or penal servitude or the loss of civil rights. In that case, the matter is referred to the Chamber of Deputies or the Senate without delay if the Legislature is in session, and if not, it shall be taken up the next regular or special session.

Article 116

Neither of the two (2) Chambers may sit nor take action without the presence of a majority of its members.

Article 117

All acts of the Legislature must be approved by a majority of the members present, unless otherwise stipulated in this Constitution.

Article 118

Each Chamber has the right to investigate matters brought before it.

Article 119

All bills must be voted on article by article.

Article 119-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Executive Power can solicit the benefit of urgency on the vote of a bill of law.

In the case where the solicited benefit of urgency is obtained, the bill of law is voted article by article, all other matters ceasing.

Article 120

Each Chamber has the right to amend and to divide articles and amendments proposed. Amendments voted on by one Chamber may be part of a bill only after it has been voted on by the other Chamber in the same form and in identical terms. No bill shall become a law until it has been voted on in the same form by the two (2) Chambers.

Article 120-1

Any bill may be withdrawn from discussion so long as it has not been finally voted upon.

Article 121

Any bill passed by the Legislature shall be immediately forwarded to the President of the Republic, who, before promulgation it, has the right to make objections to it in all or in part.

Article 121-1

In such cases, the President of the Republic send back the bill with his objections to the Chamber where it was originally passed, If the bill is amended by that house, it is sent to the other Chambers with the objections.

Article 121-2

If the bill thus amended is voted on by the second Chamber, it will be sent back to the President of the Republic for promulgation.

Article 121-3

If the objection are rejected by the Chamber that originally passed the bill, it shall be returned to the other Chamber with the objections.

Article 121-4

If the second Chamber also votes to reject it, the bill is sent back to the President of the Republic, who must then promulgate it.

Article 121-5

Rejection of the objection is voted on by either Chamber by the majority stipulated in Article 117. In such cases, the votes of each Chamber shall be taken by secret ballot.

Article 121-6

If in either Chamber the Majority stipulated in the preceding paragraph is not obtained for the rejection, the objections are accepted.

Article 122

The right of objection must be exercised within eight (8) full days starting with the date of the receipt of the bill by the President of the Republic.

Article 123

If within the prescribed deadline, the President of the Republic has made expiration, the bill must be promulgated unless the session of the Legislature has ended before expiration of the deadline, in which case, the bill is deferred. At the opening of the following session, the bill thus deferred is sent to the President of the Republic to exercise his right of objection.

Article 124

A bill rejected by one of the two (2) Chambers may not be introduced again in the same session.

Article 125

Bills and other acts of the Legislature and the National Assembly shall enter into force with their promulgation and their publication in the Official Gazette (Journal Officiel) of the Republic.

Article 125-1

Bills shall be numbered and included in the printed and numbered bulletin entitled BULLETIN OF LAWS AND ACTS.

Article 126

The bill is dated on the day of its final adoption by the two (2) Chambers.

Article 127

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

No one may present petitions in person to the tribune of the Legislative Power. Any petition addressed to the Legislative Power must give rise to a regulatory procedure that permits deciding on its object.

Article 128

Only the Legislature Power has the authority to interpret laws, which it does by passing a law.

Article 129

Each member of the Legislature receives a monthly stipend from the time he takes oath.

Article 129-1

Service as a member of the Legislature is incompatible with any other duty remunerated by the State, except that of teacher.

Article 129-2

Every member of the two (2) Chambers has the right to question and interpellate a member of the Government or the entire Government on events and acts of the Administration.

Article 129-3

As interpellation request must be seconded by five (5) members of the body concerned. It becomes a vote of confidence or of censure when passed by a majority of that body.

Article 129-4

When the interpellation request ends in a votes of censure on a question concerning a Government program or declaration of general policy, the Prime Minister must submit his Government's resignation to the President of the Republic.

Article 129-5

The president must accept that resignation and appoint new Prime Minister, pursuant to the provisions of this Constitution.

Article 129-6

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Legislative Power may not take, as it concerns the Prime Minister, more than one vote of censure per year.

Any Prime Minister having obtained a vote of confidence may only be interpellated in a time of six (6) months after this vote of confidence.

The defeat of a motion of censure, submitted to the vote of the two Chambers, as it concerns the Prime Minister, is equivalent to a vote of confidence.

Article 130

In the case of the death, resignation, disqualification, judicial interdiction, or acceptance of a duty incompatible with that of a member of the Legislature, the Deputy or Senator shall be replaced in his Electoral District for only the remainder of his term by a by-election called by the Primary Electoral Assembly to be conducted by the Permanent Electoral Council in the month he vacancy occurs.

Article 130-1

The election shall take place within thirty (30) days after convocation of the Primary Assembly, pursuant to the Constitution.

Article 130-2

The same procedure shall apply in the absence of an election or in the event that elections are declared null and void by the Permanent Electoral Council in one or more Electoral Districts.

Article 130-3

However, if the vacancy occurs during the last regular session of the Legislature or after that session, a by-election may not be held.

SECTION E Incompatibilities**Article 131**

The following may not be elected members of the Legislature:

- 1 government concessionnaires or contractors for the performance of public services;
- 2 representatives or agents of Government contractors or concessionnaires, or companies or corporations that have Government concessions or contracts;
- 3 Delegates, Vice Delegates, judges, and officers of the Public Prosecutor's Office whose duties have not terminated six (6) months before the date set for the elections;
- 4 any person who comes under the other cases of ineligibility stipulates by this Constitution and by law.

Article 132

Members of the Executive Power and the Director Generals of Government departments may not be elected members of the Legislature unless they resign at least one (1) year before the date of the elections.

CHAPTER III The Executive Power

Article 133

The Executive power is vested in:

- a the President of the Republic, who is the Head of State.
- b the Government, which is headed by a Prime Minister.

SECTION A The President of the Republic

Article 134

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The President of the Republic is elected by direct, universal suffrage by the absolute majority of voters, established from the valid votes in accordance with the electoral law. If this majority is not obtained at the first round, it proceeds to a second round. Only the two (2) candidates can be presented who, the case arising, after the withdrawal of more favored candidates, who are determined to have received the greatest number of votes in the first round.

Article 134bis

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

On the occasion of the elections, the candidate to the Presidency the most favored at the first round not having obtained the absolute majority is declared the victor in the case where his total, in relation to his immediate pursuer, is equal or superior to twenty-five percent (25%).

Article 134-1

The term of the President is five (5) years. This term begins and ends on the February 7 following the date of the elections.

Article 134-2

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The presidential election takes place on the last Sunday of October of the fifth year of the presidential mandate.

The president elected enters into his functions on 7 February following the date of his election. In the case where the ballot cannot take place before 7 February, the president elected enters into his functions immediately after the validation of the ballot and his mandate is considered to have commenced on 7 February of the year of the election.

Article 134-3

The President of the Republic may not be re-elected. He may serve an additional term only after an interval of five (5) years. He may in no case run for a third term.

Article 135

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

To be President of the Republic of Haiti, one must:

- 1 be Haitian of origin and never to have renounced his Haitian nationality and not holding any other nationality at the moment of his inscription;
- 2 be thirty-five (35) years of age on the day of the elections;
- 3 enjoy ones civil and political rights and to never have been condemned to a afflictive and infamous penalty for a crime of common law;
- 4 be the owner of real assets at the least and have a habitual residence in the country
- 5 have resided in the country for five (5) consecutive years at least before the date of the elections;
- 6 have received discharge from his management if one has been accountable for public monies.

Article 135-1

Before taking office, the President of the Republic shall take the following oath before the National Assembly: "I swear before God and the Nation faithfully to observe and enforce the Constitution and the laws of the Republic, to respect and cause to be respected the rights of the Haitian people, to work for the greatness of the country, and to maintain the nation's independence and the integrity of its territory".

SECTION B Duties of the President of the Republic**Article 136**

The President of the Republic, who is the Head of State, shall see to the respect for and enforcement of the Constitution and the stability of the institutions. He shall ensure the regular operations of the public authorities and the continuity of the State.

Article 137

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The President of the Republic chooses a Prime Minister from among the members of the Party having the absolute majority in the Parliament. The majority is established on the basis of the electoral results of those elected in each of the two Chambers. In default of this majority, the President of the Republic chooses the Prime Minister in consultation with the President of the Senate and that of the Chamber of Deputies.

Article 137-1

The President of the Republic shall terminate the duties of the Prime Minister upon the letter's submission of the Government's resignation.

Article 138

The President of the Republic is the guarantor of the nation's independence and the integrity of its territory.

Article 139

He shall negotiate and sign all international treaties, conventions and agreements and submit them to the National Assembly for ratification.

Article 139-1

He shall accredit ambassadors and special envoys to foreign powers, receive letters of accreditation from ambassadors of foreign powers and issued exequatur to consuls.

Article 140

He declares war, and negotiates and signs peace treaties with the approval of the National Assembly.

Article 141

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The President of the Republic, appoints, after deliberation in the Council of Ministers, following approval of the Senate, the commander-in-chief of the Armed Forces of Haiti, the commander-in-chief of the National Police, the Ambassadors and Consuls General and the councils of administration of the autonomous organs.

Article 142

By a decree issued in the Council of Ministers, the President of the Republic appoints the directors general of the civil service, and delegates and vice delegates of Departments and Arrondissements. He also appoints, with the approval of the Senate, Administrative Councils of Autonomous Agencies.

Article 143

The President of the Republic is the nominal head of the armed forces, but he never commands them in person.

Article 144

He has the seal of the Republic affixed to all laws and promulgates them within deadline stipulated by the Constitution. Before the expiration of that deadline, he may avail himself of his right of objection.

Article 145

He sees to the enforcement of judicial decisions, pursuant to the law.

Article 146

The President of the Republic has the right to perform and commute sentences in all res judicata cases, except for sentences handed down by the High Court of Justice as stipulated in this Constitution.

Article 147

He may grant amnesty only for political matters as stipulated by law.

Article 148

If the President finds it temporarily impossible to discharge his duties the Executive Authority shall be vested in the Council of Ministers under the Presidency of the Prime Minister, so long as the disability continues.

Article 149

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

In case of vacancy of the Presidency of the Republic either by resignation, dismissal, death or in case of physical or mental permanent incapacity duly declared, the Council of Ministers, under the presidency of the Prime Minister, exercises the Executive Power until the election of another President.

In this case, the ballot for the election of the new President of the Republic for the time that remains to complete the mandate takes place sixty (60) days at least and one hundred twenty (120) days at most after the beginning of the vacancy, in accordance with the Constitution and the electoral law.

In the case where the vacancy is produced from the fourth year of the presidential mandate, the National Assembly meets of office within the sixty (60) days which follow the vacancy to elect a new Provisional President of the Republic for the time that remains to complete the mandate.

Article 149-1

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

This President is reputed to have completed one presidential mandate.

Article 149-2

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

No procedure of interpellation of the Government may be initiated during the periods of temporary disability of the President of the Republic or of presidential vacancy. In the case where one such procedure has been initiated before the period, it is suspended.

Article 150

The President of the republic shall have no powers other than those accorded to him by the Constitution.

Article 151

At the opening of each annual session of the Legislature, the President of the Republic shall deliver a message to the Legislature on the State of the Nation. This message may not be debated.

Article 152

The President of the Republic shall receive a monthly salary from the Public Treasury upon taking the oath of office.

Article 153

The President of the Republic shall have his official residence in the National Palace, in the capital city, unless the seat of the Executive Power is moved.

Article 154

The President of the Republic presides over the Council of Ministers.

SECTION C The Government**Article 155**

The Government is composed of the Prime Minister, the Ministers and Secretaries of State. The Prime Minister is the head of the Government.

Article 156

The Government conducts the policy of the Nation. It is responsible before Parliament under the terms stipulated by the Constitution.

Article 157

To be appointed Prime Minister, a person must:

- 1 be a native-born Haitian, and never have renounced Haitian nationality;
- 2 have attained thirty (30) years of age;
- 3 enjoy civil and political rights and never have been sentenced to death, personal restraint or penal servitude or the loss of civil rights;
- 4 own real property in Haiti and practice a profession there;
- 5 have resided in the country for five (5) consecutive years;
- 6 have been relieved of his responsibilities if he has been handling public funds.

SECTION D Powers of The Prime Minister**Article 158**

With the approval of the President, the Prime Minister shall choose the members of his Cabinet of Ministers and shall go before Parliament to obtain a vote of confidence on his declaration of general policy. The vote shall be taken in open ballot, and an absolute majority of both Chambers is required.

In the event of a vote of no-confidence by one of the two (2) Chambers, the procedure shall be repeated.

Article 159

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Prime Minister executes the laws. In case of absence, the temporary disability of the President of the Republic or on his demand, the Prime minister presides over the Council of Ministers. He has the Regulatory Power, but he may never suspend, or interpret the laws, acts and decrees, or refrain from executing them.

His regulatory power is exercised by Order of the Prime Minister.

Article 159-1

In concert with the President of the Republic, he is responsible for national defense.

Article 160

The Prime Minister appoints and dismisses directly or by delegation Government officials, according to the provisions of the Constitution and the law on the general regulations for Government operations.

Article 161

The Prime Minister and the Ministers may appear before the two (2) Chambers to support bills and the objections of the President of the Republic and to reply to interpellation.

Article 162

Acts of the Prime Minister are countersigned, if need by the Ministers responsible for enforcing them. The Prime Ministers may be assigned a Ministerial portfolio.

Article 163

The Prime Minister and the Ministers are jointly responsible for the acts of the President of the Republic and of their ministers that they countersign. They are also responsible for enforcement of the laws in the areas of their competence.

Article 164

The duties of the Prime Minister and of a member of the Government are incompatible with membership in the Parliament. If such a case occurs, the member of Parliament must choose one duty or the other.

Article 165

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

In case of resignation of the Prime Minister, the Government remains in place to expedite current affairs until the assumption of the functions by his successor.

In case of permanent incapacity duly declared of the Prime Minister or of his resignation from the post for personal reasons, the President will choose an Interim Prime Minister from among the members of the ministerial cabinet while attending to the formation of a new Government within a time period not passing thirty (30) days.

SECTION E The Ministers and Secretaries of State**Article 166**

The President of the Republic presides over the Council of Ministers. The number of Ministers may be no fewer than ten (10).

When he deems it necessary, the Prime Minister may appoint Secretaries of State to the Ministers.

Article 167

The number of Ministers is set by law.

Article 168

Holding a ministerial post is incompatible with the exercise of all other public employment, except for higher education.

Article 169

Ministers are responsible for the acts of the Prime Minister that they countersign. They are jointly responsible for enforcement of the laws.

Article 169-1

In no case may an oral or written order of the President of the Republic or of the Prime Minister release Ministers from the responsibilities of their office.

Article 170

The Prime Minister, the Ministers and the Secretaries of State receive monthly salaries established by the Budgetary law.

Article 171

Ministers appoint certain categories of Government employees by delegation of the Prime Minister, according to the conditions set by the law on Government operations.

Article 172

When one of the two (2) Chambers during an interpellation calls into question the responsibility of a Minister by a vote of censure passed by an absolute majority of its members, the Executive shall recall the Minister.

Article 172-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

To be appointed Minister, one must:

- 1 be Haitian and to provide the evidence of having responded to all his obligations concerning a citizen fiscally domiciled in Haiti, and to possess real assets there, able to guarantee and protect the State and to not hold any other nationality at the moment of appointment;
- 2 be thirty (30) years old;
- 3 enjoy one's civil and political rights and to never have been condemned to a afflictive and infamous penalty;
- 4 have received discharge from his management if one has been accountable for public monies.

CHAPTER IV The Judicial Power

Article 173

The Judicial Power shall be vested in the Supreme Court (Cour de Cassation), the Courts of Appeal, Courts of First Instance, Courts of Peace and special courts, whose number, composition, organization, operation and jurisdiction are set by law.

Article 173-1

Civil rights cases are exclusively the competence of the courts.

Article 173-2

No court and no jurisdiction in disputed matters may be established except by law. No special court may be established under any name whatever.

Article 174

Judges of the Supreme Court and the Courts of Appeal are appointed for ten (10) years. Judges of the Courts of First Instance are appointed for seven (7) years. Their term begins at the time they take their oath of office.

Article 175

Supreme Court justices are appointed by the President of the Republic from a list submitted by the Senate of three (3) persons per court seat. Judges of the Courts of Appeal and Courts of First Instance are appointed from a list submitted by the Departmental Assembly concerned; Justices of the Peace are appointed from a list draw up by the Communal Assemblies.

Article 176

The law regulates the conditions required for serving as a judge at any level. A School of the Magistrature shall be established.

Article 177

Judges of the Supreme Court, the Courts of Appeal and the Courts of First Instance are appointed for life. They may be removed from office only because of a legally determined abuse of authority or be suspended following and indictment leveled against them. They may not be reassigned, without their consent, even in the case of a promotion. Their service may be terminated during their term of office only in the event of a duly determined permanent physical or mental incapacity.

Article 178

The Supreme Court does not try cases on their merits. Nevertheless, in all cases other than those submitted to a jury, when a case between the same parties is tried upon second appeal, even with an incidental plea of defense, the Supreme Court, accepting the appeal, shall not remand the case to a lower court but shall rule on the merits, sitting as a full court.

Article 178-1

However, in the case of appeals from temporary restraining orders or orders of examining magistrates, grants of appeal pronounced in connection with such orders or from final sentences of the Peace Courts or decisions of special courts, the Supreme Court, admitting the appeal, shall pronounce a decision without remanding the case.

Article 179

The duties of a judge are incompatible with any other salaried duties, except for education.

Article 180

Court proceedings are public. However, they may take place in closed session in the interest of public order and good morals, at the decision of the Court.

Article 180-1

Sentences may not be delivered in closed session in cases of political offenses or offenses involving the press.

Article 181

All order or judgments shall state the grounds for the decision and shall be handed down in a public hearing.

Article 181-1

Orders or judgments are delivered and executed in the name of the Republic, They shall include writs of execution to officers of the Public Prosecutor's Office and agents of the police and armed forces. Acts of notaries shall be put in the same form when their compulsory execution is involved.

Article 182

The Supreme court rules on conflicts of jurisdiction, in the manner regulated by law.

Article 182-1

The Supreme Court rules on both fact and law in all cases of decisions handed down by military courts.

Article 183

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 183-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 183-2

The Courts shall apply Government decrees and regulations only insofar as they are in conformity with the law.

Article 184

The law determines the jurisdiction of the courts and tribunals, and regulates the manner of proceedings before them.

Article 184-1

The law also provides for disciplinary penalties to be taken against judges and officers of the Public Prosecutor's Office, except for Supreme Court Justices, who are under the jurisdiction of the High Court of Justice for abuse of authority.

Article 184-2

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The administration and the control of the Judicial Power are entrusted to a Superior Council of the Judicial Power which exercises over the magistrates a right of surveillance and of discipline, and which has at its disposal a general power of information and of recommendation on the state of the magistrature.

The conditions of organization and of functioning of the Superior Council of the Judicial Power are established by the law.

CHAPTER V The High Court of Justice**Article 185**

The Senate may constitute itself as a High Court of Justice. the proceedings of this Court are presided over by the President of the Senate, assisted by the President and Vice President of the Supreme Court as Vice President and Secretary, respectively, except where the Justices of the Supreme Court and officers of the public Prosecutor's Office assigned to that court are involved in the accusation, in which case, the Senators, one of whom shall be designated by the accused, and the Senators so appointed shall not be entitled to vote.

Article 186

The Chamber of Deputies, by a majority of two-thirds (2/3) of its members, shall indict:

- a the President of the Republic for the crime of high treason or any other crime or offense committed in the discharge of his duties;
- b the Prime Minister, the Ministers and the Secretaries of State for Crimes of high treason and embezzlement or abuse of power or any other crimes or offenses committed in the discharge of their duties;
- c members of the Permanent Electoral Council and the Superior Court of Auditors and the Court of Administrative Disputes for serious offenses committed in the discharge of their duties;
- d Supreme Court justices and officer of the Public Prosecutor's Office before the Court for abuse of authority;
- e the Protector of Citizens (Protecteur du citoyen).

Article 187

Members of the High Court of Justice serve on an individual bases, and no opening proceedings, take the following oath;

"I swear before God and before the Nation to judge with the impartiality and the firmness appropriate to an honest and free man, according to my conscience and my deep-seated conviction".

Article 188

The High Court of Justice shall designate, by secret ballot and an absolute majority of votes, from among its members a Committee of Enquiry.

Article 188-1

The decision in the form of a decree shall be handed down on the report of the Committee of Enquiry by a two-thirds (2/3) majority of the members of the High Court of Justice.

Article 189

The High Court of Justice shall not sit unless a majority of two-thirds (2/3) of its members are present.

Article 189-1

The Court may not impose any other penalties than dismissal, disqualification or deprivation of the right or exercise any public office for no less than five (5) years and no more than fifteen (15) years.

Article 189-2

However, the convicted person may be brought before ordinary courts, in accordance with the law, if there is reason to impose other penalties or to rule on the institution of civil action.

Article 190

Once a case is brought before the High Court of Justice, the Court must sit until it renders its verdict, regardless of the length of the sessions of the Legislature.

TITLE VI

Independent Institutions

CHAPTER The Constitutional Council

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 190bis

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Constitutional Council is an organ charged to assure the constitutionality of the laws. It is the judge of the constitutionality of the law, of the regulations and of the administrative acts of the Executive Power. Its decisions are not susceptible to any recourse.

Article 190bis-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Constitutional Council is composed of nine (9) members, of which three (3) are designated by the Executive Power, three (3) by the National Assembly with the majority of two-thirds (2/3) of the members of each of the two Chambers, and three (3) by the Superior Council of the Judicial Power.

The Constitutional Council includes:

- a three magistrates having an experience of ten (10) years at least, of which one (1) is designated by the Executive Power, one (1) by the National Assembly with the majority of two-thirds (2/3) of the members of each of the two Chambers, and one (1) by the Superior Council of the Judicial Power.
- b three jurists of high level, professors or attorneys having an experience of ten (10) years at least, of which one (1) is designated by the Executive Power, one (1) by the National Assembly with the majority of two-thirds (2/3) of the members of each of the two Chambers, and one (1) by the Superior Council of the Judicial Power.
- c three notable persons of great professional reputation having an experience of ten (10) years at least, of which one (1) is designated by the Executive Power, one (1) by the National Assembly with the majority of two-thirds (2/3) of the members of each of the two Chambers, and one (1) by the Superior Council of the Judicial Power.

Article 190ter

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The President of the Republic proceeds to the appointment of the members of the Constitutional Council by Order taken in the Council of Ministers, in accordance with the previous Article.

Article 190ter-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

To be a member of the Constitutional Council one must:

- -be Haitian of origin and not to hold any other nationality at the moment of the appointment;
- -be already forty (40) years of age on the day of the appointment;
- -enjoy their civil and political rights and to never have been condemned to an afflictive and infamous penalty for crimes of common right;
- -be the owner of a real property in Haiti or to exercise an industry or a profession there;
- -reside in Haiti for (5) consecutive years prior to the date of the appointment;
- -have been discharged from ones administration if one has been accountable for public monies;
- #NAME?

Article 190ter-2

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The duration of the mandate of the members of the Constitutional Council is of nine (9) years and is not renewable. The Constitutional Council renews itself by thirds every three (3) years.

The President of the Constitutional Council is elected by his peers for a duration of three (3) years. He has preponderant voice in case of a tie.

Article 190ter-3

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

In the case of vacancy in the Constitutional Council, the authority of designation provides the replacement for the time remaining to run within a time period of three (3) months.

Article 190ter-4

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The members of the Constitutional Council are irremovable during the duration of their mandate. They may not be prosecuted or arrested without the authorization of the Constitutional Council except in the case of flagrante delicto.

In this case, the President of the Constitutional Council and the President of the Court of Cassation must be referred to the matter immediately, at the latest within forty-eight (48) hours.

Article 190ter-5

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Constitutional Council sees to and decides when it is referred to a matter:

- - on the constitutionality of the laws before their promulgation;
- #NAME?
- #NAME?

For the same purposes, the laws in general may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the President of the Senate, the President of the Chamber of Deputies, a group of fifteen (15) Deputies or of (10) Senators.

The law determines the modalities of organization and of functioning of the Constitutional Council as well as the other entities enabled to refer a matter to it.

Article 190ter-6

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Constitutional Council must decide within the time period of one month after being referred to the matter of a text of ordinary law. This time period is of fifteen days for every law or every text concerning the fundamental rights and the public freedoms. Nevertheless, if there is urgency, at the request of the Government, of one-third of the Senate or of one-third of the Chamber of Deputies, this time period is reduced to eight days.

In these same cases, the referral to a matter of the Constitutional Council suspends the time period for promulgation.

Article 190ter-7

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Constitutional Council is called to decide on the conflicts which oppose the Executive Power and the Legislative Power or the two branches of the Legislative Power.

In the same way, it decides on the conflicts of attribution between the administrative tribunals, the electoral tribunals and the judicial tribunals.

Article 190ter-8

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

When on the occasion of a pending legal proceeding before a jurisdiction, an exception of unconstitutionality is raised, the Constitutional Council may be referred to the matter on remand from the Court of Cassation.

If the provision is declared unconstitutional, the Constitutional Council returns it to the Parliament which decides sovereignly on the case. The new provision is promulgated.

Article 190ter-9

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

A provision declared unconstitutional may not be promulgated or implemented.

Article 190ter-10

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

An organic law determines the organization and the functioning of the Constitutional Council, the procedure followed before it, notably the time periods for the referral of the disputes as well as the immunities and the disciplinary regime of its members.

CHAPTER I The Permanent Electoral Council

Article 191

The Permanent Electoral Council is responsible for organizing and controlling with complete independence all electoral procedures throughout the territory of the Republic until the results of the election are announced.

Article 191-1

The Council also drafts the Electoral Bill that it submits to the Executive Power for the necessary purposes.

Article 191-2

The Council sees to it that the electoral lists are kept up-to-date.

Article 192

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Permanent Electoral Council includes nine (9) members chosen as follows:

- 1 three (3) by the Executive Power;
- 2 three (3) by the Superior Council of the Judicial Power;
- 3 three (3) by the National Assembly with a majority of 2/3 of each one of the two chambers.

Article 193

Members of the Permanent Electoral Council must:

- 1 be native-born Haitians;
- 2 have attained forty (40) years of age;
- 3 enjoy civil and political rights and never have been sentenced to death, personal constraint or penal servitude or the loss of civil rights;
- 4 have been relieved of their responsibilities if they have been handling public funds;
- 5 have resided in the country at least three (3) years before their nomination.

Article 194

Members of the Permanent Electoral Council are appointed for a nine (9) year nonrenewable period. They may not be removed from office.

Article 194-1

One-third of the members of the Permanent Electoral Council are replaced every three (3) years. The President is chosen from among its members.

Article 194-2

Before taking office, the members of the Permanent Electoral Council take the following oath before the Supreme Court;

"I swear to respect the Constitution and the provisions of the Electoral Law and to discharge my duties with dignity, independence, impartiality and patriotism."

Article 195

In the event of a serious offense committed in the discharge of their duties, the members of the Permanent Electoral Council are liable for prosecution before the High Court of Justice.

Article 195-1

The seat of the Permanent electoral Council is in the capital. Its jurisdiction extends throughout the territory of the Republic.

Article 196

Members of the Permanent electoral Council may not hold any other public post, nor may they be a candidate of an elective post during their term.

In the event of dismissal, a member of the Council must wait three (3) years before he may run for an elective post.

Article 197

The Permanent Electoral Council shall rule on all disputes arising either in elections or in the enforcement or the violation of the Electoral Law, subject to any legal prosecution undertaken against an offender or offenders before the courts of competent jurisdiction.

Article 198

In the event of a vacancy caused by a death, resignation or any other reason, the member shall be replaced following the procedure established in Article 192 for the remainder of his term, taking into account the power of government that had designated the member to be replaced.

Article 199

The law determines the rules for organization and operation of the Permanent Electoral Council

CHAPTER II The Superior Court of Auditors and Administrative Disputes

Article 200

The Superior Court of Auditors and Administrative Disputes is an independent and autonomous financial and administrative court. It is responsible for administrative and jurisdictional control of Government receipts and expenditures, verification of the accounts of the Government enterprises and of the territorial divisions.

Article 200-1

The Superior Court of Auditors and Administrative Disputes hears cases against the State and the territorial divisions, the Administration and Government officials, public services and citizens.

Article 200-2

Its decisions are not subject to appeal, except to the Supreme Court.

Article 200-3

The Supreme Court of Auditors and Administrative Disputes comprises two (2) sections:

- 1 the Financial Control Section;
- 2 the Administrative Disputes Section.

Article 200-4

The Superior Court of Auditors and Administrative Disputes participates in drawing up the budget and is consulted on all matters concerning legislation on public finances and on all draft financial or commercial contracts, agreements and conventions to which the State is a party. It has the right to conduct audits in all Government agencies.

Article 200-5

Members of the Superior Court of auditors and Administrative Disputes must:

- a be Haitians and never have renounced their nationality;
- b have attained thirty-five (35) years of age;
- c have been relieved of their responsibilities if they have been handling public funds;
- d have a Bachelor of Law degree, be a certified public accountant or hold an advanced degree in government administration, economics or public finance;
- e have five (5) years-experience in public or private administration;
- f enjoy civil and political rights.

Article 200-6

Candidates for membership on the Court shall submit their applications directly to the Office of the Senate of the Republic. The Senate elects the ten (10) members of the Court, who select the Court's President and Vice President from among them.

Article 201

Court members have a ten (10) year term and may not be removed

Article 202

Before taking office, the members of the Superior Court of Auditors and Administrative disputes shall take the following oath before a section of the Supreme Court:

“I swear to respect the Constitution and the laws of the Republic, to discharge my duties properly and loyally and to conduct myself at all times with dignity”.

Article 203

Members of the Superior Court of Auditors and Administrative Disputes are under the jurisdiction of the High Court of Justice for any serious offenses committed in the discharge of their duties.

Article 204

The Superior Court of Auditors and Administrative Disputes shall submit each year to the Legislature within thirty (30) days following the opening of the first legislative session a complete report on the country's financial situation and on the efficacy of Government expenditures.

Article 205

The organization of the above-mentioned court, its membership regulations and its mode of operation are established by law.

CHAPTER III The Conciliation Commission**Article 206**

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 206-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

CHAPTER IV Protection of Citizens**Article 207**

An office known as the OFFICE OF CITIZEN PROTECTION is established to protect all individuals against any form of abuse by the government.

Article 207-1

The office is directed by a citizen bearing the title of PROTECTOR OF CITIZENS. He is chosen by consensus of the President of the Republic, the President of the Senate and the President of the Chamber of Deputies. His term is seven (7) years and may not be renewed.

Article 207-2

His intervention on behalf of any complainant is without charge, whatever the court having jurisdiction might be.

Article 207-2bis

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

In the exercise of its functions, it will pay a special attention to the complaints presented by women, particularly in that relating to the discriminations and the aggressions of which they may be victims notably in their work.

Article 207-3

A law sets the conditions and regulations for the operation of the Office of Citizen Protection.

CHAPTER V The University - The Academy - Culture**Article 208**

Higher education is free. It is provided by the University of the Haitian State (Univertite d'Etat d'Haiti), which is autonomous and by the superior public schools and the superior private schools accredited by the State.

Article 209

The State must finance the operation and development of the Haitian State University and the public superior schools. Their organization and their location must be planned from the perspective of regional development.

Article 210

The Establishment of research centers must be encouraged.

Article 211

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

A public organ is created responsible for the regulation and the control of quality of the superior education and of the scientific research throughout the territory. This organ exercises its control over all the public and non-public institutions working in these two domains. Each year, it publishes a report on the quality of the training and establishes a list of the performing institutions. The law determines the denomination, and establishes the mode of organization and the functioning of this organ.

Article 211-1

The universities and the private and public superior schools provide academic and practical instruction adapted to the trends and requirements of national development.

Article 212

An organic law regulates the establishment, location and operation of university and public and private superior schools in the country.

Article 213

A Haitian Academy shall be established to standardize the Creole language and enable it to develop scientifically and harmoniously.

Article 213-1

Other academies may be established.

Article 214

The title Academy Member is purely honorific.

Article 214-1

The law shall determine the mode of organization and operation of academies.

Article 215

Archaeological, historical, cultural, folklore and architectural treasures in the country, which bear witness to the grandeur of our past are part of the national heritage. Consequently, monuments, ruins, sites of our ancestors' great feats of arms, famous centers of our African beliefs, and all vestiges of the past are placed under the protection of the State.

Article 216

The law determines special conditions for this protection in each sphere.

TITLE VII

PUBLIC FINANCE

Article 217

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The finances of the Republic include two components: the national finances and the local finances. Their respective management is assured by the organs and mechanisms specified to that effect.

The Executive Power is held to specify a mode of consultation of the territorial collectivities for any procedure of interest to the local finances.

Article 218

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

No tax in favor of the State may be established except by a law. No charge, no imposition, whether departmental, whether municipal, or whether of communal section, may be established without the consent of those territorial collectivities.

Article 219

No preferential tax treatment may be established.

No tax exemption, increase, decrease or elimination may be established except by law.

Article 220

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

No pension, no gratification, no allocation, no subvention, at the charge of the Public Treasury, may be granted but by virtue of a law. The indexing of the pensions paid by the State will be established following the rhythm of the augmentation of the emoluments of the functionaries of the State.

Article 221

Subject to special provisions thereon, the holding of two or more salaried public offices at the same time is strictly forbidden, except posts in education.

Article 222

Procedures for preparation of the budget and its execution are determined by law.

Article 223

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The execution of the Law of Finance is governed by the laws on the budget and public accounting and is assured by the services specified by the law.

The control of the execution of the Law of Finance is assured by the Parliament, the Superior Court of Accounts and any other institutions specified by the law.

Article 224

National monetary policy is set by the Central Bank jointly with the Minister of Economics and Finance.

Article 225

An autonomous public agency with legal personality and financial autonomy performs the functions of a Central Bank. Its regulations are determined by law.

Article 226

The Central Bank has exclusive authority to issue as legal tender throughout the territory of the Republic, paper money representing the monetary unit, and coins, according to the name, weight, description, amount and use set by law.

Article 227

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The budget is voted by administrative entity following the classification established by the law.

Article 227-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 227-2

General accounts of receipts and expenditures of the Republic shall be kept by the Minister of Finance according to an accounting method established by law.

Article 227-3

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The general accounts and the budgets prescribed by the preceding Article, accompanied by the report of the Superior Court of Accounts and of the Administrative Disputes must be submitted to the Legislative Chambers by the Minister in charge of finance within the time periods established by the law.

It is the same for the annual balance sheet and for the operations of the Central Bank, as well as for all other accounts of the State.

Article 227-4

The Government fiscal year begins on October 1 of each year and ends on September 30 of the following year.

Article 228

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Each year, the Legislative Power orders:

- 1 the account of the receipts and of the expenses of the State for the past year or the preceding years;
- 2 the general budget of the State.

Article 228-1

However, no proposal or amendment may be introduced into the Budget when it is being voted upon, without provision of the ways and means therefore.

Article 228-2

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 229

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 230

Examination and payment of the General Administration Accounts and all accounts of public funds are effected according to the method established by law.

Article 231

If for any reason whatever the Legislative Chambers do not act upon the budget for one or more Ministerial Departments before they adjourn, the budget or budgets of the Departments concerned shall remain in force until a new budget is voted on and adopted.

Article 231-1

In the event that, through fault of the Executive Power, the Budget of the Republic has not been voted upon, the President of the Republic shall immediately call a special session of the Legislative Chambers for the sole purpose of voting on the Government budget.

Article 232

Autonomous agencies and enterprises and entities subsidized wholly or in part by the Public Treasury shall be governed by special budgets and salary and wage systems approved by the Executive Power.

Article 233

For the purpose of maintaining constant and careful supervision over Government expenditures, a fifteen-member Parliamentary Committee with nine (9) Deputies and six (6) Senators shall be elected by secret ballot at the beginning of each regular session, to report on the management Ministers, in order to enable the two (2) Assemblies to give them discharge.

This Committee may engage the services of specialists to assist it with its monitoring functions.

TITLE VIII

The Civil Service

Article 234

The Haitian Civil Service is the instrument by which the State carries out its missions and achieves its objectives. To ensure its viability, it must be managed honestly and efficiently.

Article 234-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The National Public Administration is constituted by the Administration of the State and by the Administration of the Territorial Collectivities.

Article 235

Government employees and officials shall be exclusively in the service of the State. It is their duty to abide faithfully by the norms and ethics determined by law for civil servants.

Article 236

The law establishes the organization of the various Government structures and stipulates the conditions for their operation.

Article 236-1

The law shall regulate the civil service on the basis of aptitude, merit and conduct. It shall guarantee security of employment.

Article 236-2

The civil service is a career. No official may be hired except by competition or by meeting other conditions prescribed by the Constitution and by law, nor may he be dismissed except for causes specifically determined by law. Dismissals must in all cases be ruled upon by the Court of Administrative Disputes.

Article 237

Career service officials are not members of any particular Government agency but are members of the civil service, which makes them available to the various Government agencies.

Article 238

Officials indicated by law have the obligation to declare the status of their net worth to the Clerk of the Civil Court within thirty (30) days following their entry into service. The Government Auditor must take every step he deems necessary to verify the accuracy of the declaration.

Article 239

Government employees and officials may form associations to defend their rights under the conditions established by law.

Article 240

Holders of public office or positions, particularly Ministers and Secretaries of State, officers of the Public Prosecutor's Office, Delegates and Vice Delegates, ambassadors, private secretaries of the President of the Republic, members of the Cabinet of Ministers, the Director Generals of the Ministerial Department of autonomous agencies, and members of the Administrative Council are not eligible for the Government career service.

Article 241

The law punishes violations committed against the treasury and unjust gain. Officials who have knowledge of such actions have the duty to report them to the competent authorities.

Article 242

Unjust gain may be determined by all types of evidence, particularly presumption of a sharp disproportion between the official's means acquired after his entry into service and the accumulated amount of salaries and emoluments to which the post he has occupied entitles him.

Article 243

Officials guilty of the above offenses are entitled to only the twenty-year statute of limitation. This limitation period begins to run with the termination of their duties or the causes that would have prevented any prosecution.

Article 244

The State has the duty to avoid major salary disparities in the civil service.

TITLE IX

CHAPTER I Economics and Agriculture

Article 245

Economic freedom shall be guaranteed so long as it is not contrary to the public interest.

The State shall protect private enterprises and shall endeavor to see that it develops under the conditions necessary to increase the national wealth in such a way as to ensure the participation of the largest possible number of persons in the benefits of this wealth.

Article 246

The State encourages in rural and urban areas the formation of cooperatives for production, processing of raw materials and the entrepreneurial spirit to promote the accumulation of national capital to ensure continuous development.

Article 247

Agriculture, which is the main source of the Nation's wealth, is a guarantee of the well-being of the people and the socio-economic progress of the Nation.

Article 248

A special agency to be known as THE NATIONAL INSTITUTE OF AGRARIAN REFORM shall be established to organize the revision of real property structures and to implement an agrarian reform to benefit those who actually work the land. This Institute shall draw up an agrarian policy geared to optimizing productivity by constructing infrastructure aimed at the protection and management of the land.

Article 248-1

The law determines the minimum and maximum area of basic farm units.

Article 249

The State has the obligation to establish the structures necessary to ensure maximum productivity of the land and domestic marketing of foodstuffs. Technical and financial management units shall be established to assist farmers at the level of each Communal section.

Article 250

No monopoly may be established to benefit the State and the territorial divisions except in the exclusive interest of society as a whole. Such a monopoly may not be granted to any private individual.

Article 251

The import of foodstuffs and their byproducts that are produced in sufficient quantity in the national territory is forbidden, except in the event of force majeure.

Article 252

The State may take charge of the operation of enterprises for the production of goods and services essential to the community in order to ensure continuity in the event the existence of these establishments should be threatened. Such enterprises shall be grouped in a comprehensive management system.

CHAPTER II The Environment

Article 253

Since the environment is the natural framework of the life of the people, any practices that might disturb the ecological balance are strictly forbidden.

Article 253-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

As long as the forest coverage remains below 10% of the national territory, measures of exception must be taken with a view of working to the restoration of the ecological equilibrium.

Article 254

The State shall organize the enhancement of natural sites to ensure their protection and make them accessible to all.

Article 255

To protect forest reserves and expand the plant coverage, the State encourages the development of local sources of energy: solar, wind and others.

Article 256

Within the framework of protecting the environment and public education, the State has the obligation to proceed to establish and maintain botanical and zoological gardens at certain points in its territory.

Article 256-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

The State may, if the necessity for it is demonstrated, declare a zone of ecological utility.

Article 257

The law specifies the conditions for protecting flora and fauna, and punishes violations thereof.

Article 258

No one may introduce into the country wastes or residues of any kind from foreign sources.

TITLE X

The Family

Article 259

The State protects the family, which is the foundation of society.

Article 260

It must also protect all families regardless of whether they are constituted within the bonds of marriage. It must endeavor to aid and assist mothers, children and the aged.

Article 261

The law ensures protection for all children. Any child is entitled to love, affection, understanding and moral and physical care from its father and mother.

Article 262

A family Code must be drawn up to ensure protection and respect for the rights of the family and to define procedures of the search for affiliation. Courts and other Government agencies charged with the protection of these rights must be accessible free of charge at the level of the smallest territorial division.

TITLE XI

The Armed Forces and the Police Force

Article 263

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Public Force is composed of two (2) distinct corps:

- 1 the Armed Forces of Haiti;
- 2 the National Police of Haiti.

Article 263-1

No other armed corps may exist in the national territory.

Article 263-2

All members of the police and armed forces shall take an oath of allegiance and respect for the Constitution and the flag at the time of their enlistment.

CHAPTER I The Armed Forces

Article 264

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Armed Forces of Haiti include the Forces of the Land, of the Sea, of the Air and the technical services.

The Armed Forces of Haiti are constituted to guaranty the defense and the integrity of the territory of the Republic.

Article 264-1

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Armed Forces of Haiti are effectively commanded by an Officer General having as a title Commander-in-Chief.

Article 264-2

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Commander-in-Chief of the Armed Forces of Haiti, in accordance with the Constitution, is chosen from among the officers general on active service.

Article 264-3

His term is set at three (3) years and is renewable.

Article 265

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Armed Forces of Haiti are apolitical. Their members may not be part of a group or of a political party and they must observe the strictest neutrality.

Article 265-1

Members of the Armed Forces exercise their right to vote, under the Constitution.

Article 266

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The Armed Forces of Haiti have as their attributions:

- 1 to defend the country in case of war;
- 2 to protect the country against the menaces coming from abroad;
- 3 to assure the surveillance of the land, maritime and aerial frontiers;
- 4 to lend a strong hand on request motivated by the Executive Power, to the Police in the case that this latter cannot respond to it task;
- 5 to help the nation in the case of natural disaster;
- 6 in addition to the attributions that are particular to them, the Armed Forces of Haiti may be assigned to tasks of development.

Article 267

Military personnel on active duty may not be appointed to any Government post, except temporarily to perform a specialized service.

Article 267-1

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

All military personnel on active service, to stand as a candidate to an elective function, must obtain their retirement or their resignation two (2) years before the elections.

Article 267-2

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

The military career is a profession. It is hierarchical. The conditions of employment, the ranks, promotions, dismissals, retirements, are determined by the regulations of the Armed Forces of Haiti.

Article 267-3

[Amended by the Constitutional Law of 9 May 2011 / 19 June 2012]

Military personnel are only justiciable by a military court for the misdemeanors and crimes committed in time of war or for the infractions arising in the military discipline.

Article 267-4

Military personnel retain for life the last rank obtained in the Haitian Armed Forces. They may be deprived of their rank only by a final judgment by a court of competent jurisdiction.

Article 267-5

The State must award benefits to military personnel of all ranks, fully guaranteeing their physical security.

Article 268

Within the framework of compulsory civilian national services for both sexes, provided for by Article 52-3 of the Constitution, the Armed Forces participate in organizing and supervising that service.

Military service is compulsory for all Haitians who have attained eighteen (18) years of age.

The law sets the method of recruitment, and the length and regulations for the performance of these services.

Article 268-1

Every citizen has the right to armed self-defense, within the bounds of this domicile, but has no right to bear arms without express well-founded authorization from the Chief of Police.

Article 268-2

Possession of a firearm must be reported to the police.

Article 268-3

The Armed Forces have a monopoly on the manufacture, import, export, use and possession of weapon of war and their munitions, as well as war material.

CHAPTER II The Police Forces**Article 269**

The Police Force is an armed body.

It operates under the Ministry of Justice.

Article 269-1

It is established to ensure law and order and protect the life and property of citizens.

Its organization and mode of operation are regulated by law.

Article 270

The Commander in Chief of the Police Forces is appointed, in accordance with the Constitution, for a three (3) year term, which is renewable.

Article 271

An Academy and a Police School have been established, whose organization and operations are set by law.

Article 272

Specialized sections, particularly the Penitentiary Administration, the Firemen's Service, the Traffic Police, the Highway Police, Criminal Investigations, the Narcotics Service and the Anti-Smuggling Service, have been established by the law governing the organization, operation and location of the Police Forces.

Article 273

The police, as an auxiliary of the Justice System, investigate violations, offenses and crimes committed, in order to discover and arrest the perpetrators of them.

Article 274

In the exercise of their duties, members of the "Public Forces" are subject to civil and penal liability in the manner and under the conditions stipulated by the Constitution and by law.

TITLE XII

General Provisions

Article 275

National and legal holidays shall be celebrated by the Government and private and commercial enterprises.

Article 275-1

The national holidays are:

- 1 Independence Day, January 1;
- 2 Heroes' Day, January 2;
- 3 Agriculture and Labor Day, May 1;
- 4 Flag Day and University Day, May 18; and
- 5 The commemoration of the Battle of Vertieres, which is also ARMED FORCES DAY, November 18.

Article 275-2

Legal holidays shall be determined by law.

Article 276

The National Assembly may not ratify any international treaty, convention or agreement containing clauses contrary to this Constitution.

Article 276-1

International treaties, conventions and agreements are ratified in the form of a decree.

Article 276-2

Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them.

Article 277

The Haitian State may join an Economic Community of States insofar as the association agreement stimulates the social and economic development of the Haitian Republic and does not contain any clause contrary to this Constitution.

Article 278

No place or part of the territory may be declared in a state of siege except in the event of civil war or invasion by a foreign force.

Article 278-1

The act of the President of the Republic declaring a state of siege must be countersigned by the Prime Minister and by all of the Ministers and contain an immediate convocation of the National Assembly to decide on the desirability of the measure.

Article 278-2

The National Assembly decides with the Executive Power as to what constitutional guarantees may be suspended in the parts of the territory placed under a state of siege.

Article 278-3

The state of siege is lifted if it is not renewed by a vote of the National Assembly every fifteen (15) days after its entry into force.

Article 278-4

The National Assembly shall be in session for the entire duration of the state of siege.

Article 279

Thirty (30) days after his election, the President of the Republic must deposit with the Clerk of the Court of First Instance of his domicile a notarized inventory of all his movable and immovable goods, and he shall do the same at the end of his term.

Article 279-1

The Prime Minister, the Ministers and Secretaries of State are subject to the same obligation within thirty (30) days of their installation and of the termination of their duties.

Article 280

No general expenditures or compensation whatever shall be granted to members of the major organs of the State for any special duties that may be assigned to them.

Article 281

In national elections, the State assumes responsibility, in proportion to the number of votes cast, for a portion of the expenses incurred in the election campaigns.

Article 281-1

Only parties that obtain nationally ten percent (10%) of the votes cast, with a minimum of five percent (5%) of the votes cast in one Department, are eligible to receive these Government funds.

TITLE XIII

Amendments to the Constitution

Article 282

On the recommendation, with reason given to support it, of one of the two (2) Chambers or of the Executive Power, the Legislature may declare that the Constitution should be amended.

Article 282-1

This declaration must be supported by two-thirds (2/3) of each of the two (2) Chambers. It may be made only in the course of the last Regular Session of the Legislative period and shall be published immediately throughout the territory.

Article 283

At the first session of the following legislature period, the Chambers shall meet in a National Assembly and decide on the proposed amendment.

Article 284

The National Assembly may not sit or deliberate on the amendment unless at least two-thirds (2/3) of the members of each of the two (2) Chambers are present.

Article 284-1

No decision of the National Assembly may be taken without a majority of two-thirds (2/3) of the votes cast.

Article 284-2

The amendment passed may enter into effect only after installation of the next elected President. In no case may the President under the Government that approved the amendment benefit from any advantages deriving therefrom.

Article 284-3

General elections to amend the Constitution by referendum are strictly forbidden.

Article 284-4

No amendment to the Constitution may affect the democratic and republican nature of the State.

TITLE XIV

Temporary Provisions

Article 285

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 285-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 286

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 287

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 288

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 289

Awaiting the establishment of the Permanent Electoral Council provided for in this Constitution, the National Council of Government shall set up a Provisional Electoral Council of nine (9) members, charged with drawing up and enforcing the Electoral Law to govern the next elections, who shall be designated as follows:

- 1 one for the Executive Power, who is not an official;
- 2 one for the Episcopal Conference;
- 3 one for the Advisory Council;
- 4 one for the Supreme Court;
- 5 one for agencies defending human rights, who may not be a candidate in the elections;
- 6 one for the Council of the University;
- 7 one for the Journalists Association;
- 8 one for the Protestant religions;
- 9 one for the National Council of Cooperatives.

Article 289-1

Within two weeks following ratification of this Constitution, the bodies or organizations concerned shall inform the Executive of the name of their representative.

Article 289-2

If any of the above bodies or organizations does not appoint a member, the Executive shall fill the vacancy or vacancies.

Article 289-3

The mission of the Provisional Electoral Council shall end when the President- elect takes office.

Article 290

The members of the first Permanent Electoral Council shall divide among them by lot the terms of nine (9), six (6), and three (3) years, stipulated for replacement of the Council by thirds (1/3).

Article 291

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 292

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 293

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 293-1

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 294

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 295

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 295-1

[Inserted by the Constitutional Law of 9 May 2011 / 19 June 2012]

At the time of the first composition of the Constitutional Council, the first three members appointed from the list of the Executive Power, of the National Assembly, and of the Superior Council of the Judicial Power will be for nine (9) years, the second three members for six (6) years and the other three for three (3) years.

TITLE XV

Final Provisions

Article 296

All Codes of Law or Handbooks of Justice, all laws, all decree laws and all decrees and orders (Arretes) currently in force shall be maintained in all matters not contrary to this Constitution.

Article 297

[Abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012]

Article 298

This Constitution shall be published within two weeks of its ratification by referendum. It shall enter into force as soon as it is published in LE MONITEUR, the Official Gazette of the Republic.

Given at the Legislative Palace, in Port-au-Prince, the seat of the Constituent National Assembly, on March 10, 1987, in the One Hundred Eighty-Fourth Year of Independence.