

2014-09-30

Explanatory Memorandum after page 7

OBJECTS AND REASONS

This Bill would alter the *Constitution of Barbados* in order to

- (a) remove the provision authorising a mandatory sentence of death in section 15;
- (b) amend section 26 to redefine the effect of existing law in relation to the fundamental rights provisions; and
- (c) refine the exercise, by the Governor-General, of the Prerogative of Mercy.

Arrangement of Sections

1. Short title
2. Repeal and replacement of section 15 of the *Constitution*
3. Repeal and replacement of section 26 of the *Constitution*
4. Repeal and replacement of section 78 of the *Constitution*

BARBADOS

A Bill entitled

An Act to alter the *Constitution of Barbados*.

ENACTED by the Parliament of Barbados in accordance with the provisions of section 49 of the *Constitution* as follows:

Short title

- 1.** This Act may be cited as the *Constitution (Amendment) Act, 2014*.

Repeal and replacement of section 15 of the *Constitution*

2. *Section 15 of the Constitution is deleted and the following is substituted:*

“Protection from inhuman treatment

15.(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises

- (a) the imposition of a sentence of death or the execution of that sentence; or
- (b) the holding of a person who is in prison or otherwise lawfully detained under conditions or arrangements prescribed by or under the *Prisons Act, Cap. 168*, or under any other law, pending the execution of a sentence of death or in accordance with any other sentence of the court.”.

Repeal and replacement of section 26 of the *Constitution*

3. *Section 26 of the Constitution is deleted and the following is substituted:*

“Existing law

26.(1) The existing law shall continue to be in force but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with sections 12 to 23 of this *Constitution*.

(2) The Attorney-General may, within 5 years of the date of the 1st day of December, 2014, make such amendments to any existing law as may be necessary or expedient to bring that law into conformity with sections 12 to 23 of this *Constitution* or otherwise for giving effect or enabling effect to be given to those sections.

(3) For the purpose of this section “existing law” means a law that was enacted or made before 30th November, 1966 and has continued to be part of the law of Barbados at all times since that day and includes a law

(a) that repeals and re-enacts law that was enacted or made before 30th November, 1966 without alteration; or

(b) that alters a law that was enacted or made before 30th November, 1966 and does not thereby render that law inconsistent with sections 12 to 23 of this *Constitution* in a manner in which, or to an extent to which, it was not previously so inconsistent.

(4) In subsection (3)(b), the reference to altering a law that was enacted or made before 30th November, 1966 includes references to repealing it and re-enacting it with modifications or making different provisions *in lieu* thereof, and to modifying it.”.

Repeal and replacement of section 78 of the *Constitution*

4.*Section 78 of the Constitution is deleted and the following is substituted:*

“Prerogative of Mercy

78.(1) The Governor-General may, in Her Majesty’s name and on Her Majesty’s behalf

- (a) grant to any person convicted of an offence against the law of Barbados a pardon, either free of or subject to lawful conditions;
- (b) grant to any person a respite, either indefinitely or for a specified period of time, from the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for that imposed on a person for any offence; or
- (d) remit the whole or part of any punishment imposed on a person for an offence, a penalty or forfeiture otherwise due to the Crown on account of such an offence.

(2) The Governor-General shall, in the exercise of the powers conferred on him by subsection (1), or of any power conferred on him by any other law to remit any penalty or forfeiture due to any person, other than the Crown, act in accordance with the advice of the Privy Council.

(3) Where a person makes a submission in accordance with subsection (5) in respect of an offence against the law of Barbados, the Governor-General shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the Governor-General may require, to be forwarded to the Privy Council so that the Privy Council may advise him on the exercise of the powers conferred on him by subsection (1) in relation to that person.

(4) The power of requiring information conferred upon the Governor-General by subsection (3) shall be exercised by him on the

recommendation of the Privy Council or, in any case in which in his judgment the matter is too urgent to admit of such recommendation being obtained by the time within which it may be necessary for him to act, in his discretion.

(5) A person has a right to submit directly or through a legal or other representative, written representation in relation to the exercise by the Governor-General or the Privy Council, of any of their respective functions under this section.

(6) A person may, in the appropriate circumstances as determined by the Governor-General or the Privy Council, be granted an oral hearing and may make oral submissions directly or through a legal or other representative, in relation to the exercise by the Governor-General or the Privy Council, of any of their respective functions under this section.”.

Read three times and passed the House of Assembly this
day of _____, 2014.

Speaker

Read three times and passed the Senate this _____ day of
, 2014.

President

CONSTITUTION (AMENDMENT) BILL, 2014

EXPLANATORY MEMORANDUM

In light of the decision of the Inter-American Court of Human Rights in Case 12645: Tyrone Dacosta Cadagon v. Barbados, the Cabinet¹ determined that

- (a) the mandatory imposition of death penalty in respect of the offence of murder should be abolished; and
- (b) section 2 of the *Offences Against the Person Act*, Cap. 141 be amended specifically to abolish the mandatory imposition of the sentence of death for offence of murder.

It is important to note that the Cabinet did not express any intention to abolish the death penalty.

The *Constitution (Amendment) Bill, 2014* would alter the *Constitution* of Barbados to

- (a) delete the provision authorising a mandatory imposition of death for the offence of murder in section 15; and
- (b) amend section 26 to redefine the effect of existing law in relation to the fundamental rights provisions;
- (c) refine the exercise by the Governor-General of the Prerogative of Mercy.

Clause 1: Clause 1 states that this Act may be cited as the *Constitution (Amendment) Act, 2014*.

Clause 2: Clause 2 repealed and replaced section 15 to remove the provision authorising a mandatory imposition of death for the offence of murder.

¹ Cabinet Note (2014) 73/AG.2, M.P. 2800/8/9/8 Vol. I, January 30, 2014

- Clause 3:*** Clause 3 redefine the effect of existing law in relation to the fundamental rights provisions.
- Clause 4:*** Clause 4 repealed and replaced section 78 to remove the Governor-General's capacity to direct that there should be time limits within which person may appeal to, or consult, any person or body of persons (other than Her Majesty in Council) outside Barbados in relation to an offence. This alteration was necessary since it is the policy of the Government to allow persons to appeal or consult with entities outside of Barbados in relation to offences particularly that of murder. The imposition of a time limit on this right to appeal or consult would operate as an unfair restriction of that right.