

# CONSTITUTION

—  
Date Enacted: January 01, 1970 | Date of Commencement: January 01, 0001

---

## CHAPTER IV

### HUMAN RIGHTS

#### **Section 42 - Arrest, detention and fair trial 11 of 2010**

**(1)** Every person who is detained, including every sentenced prisoner, shall have the right—

- (a)** to be informed of the reason for his or her detention promptly, and in a language which he or she understands;
- (b)** to be held under conditions consistent with human dignity, which shall include at least the provision of reading and writing materials, adequate nutrition and medical treatment at the expense of the State;
- (c)** to consult confidentially with a legal practitioner of his or her choice, to be informed of this right promptly and, where the interests of justice so require, to be provided with the services of a legal practitioner by the State;
- (d)** to be given the means and opportunity to communicate with, and to be visited by, his or her spouse, partner, next-of-kin, relative, religious counsellor and a medical practitioner of his or her choice;
- (e)** to challenge the lawfulness of his or her detention in person or through a legal practitioner before a court of law; and
- (f)** to be released if such detention is unlawful.

**(2)** Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person,

have the right—

- (a)** promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;
- (b)** as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released;
- (c)** not to be compelled to make a confession or admission which could be used in evidence against him or her;
- (d)** save in exceptional circumstances, to be segregated from convicted persons and to be subject to separate treatment appropriate to his or her status as an unconvicted person;
- (e)** to be released from detention, with or without bail unless the interests of justice require otherwise;
- (f)** as an accused person, to a fair trial, which shall include the right—
  - (i)** to public trial before an independent and impartial court of law within a reasonable time after having been charged;(ii) to be informed with sufficient particularity of the charge;(iii) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial;(iv) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;
  - (v)** to be represented by a legal practitioner of his or her choice or, where it is required in the interests of justice, to be provided with legal representation at the expense of the State, and to be informed of these rights;(vi) not to be convicted of an offence in respect of any act or omission which was not an offence at the time when the act was committed or omitted to be done, and

not to be sentenced to a more severe punishment than that which was applicable when the offence was committed;(vii) not to be prosecuted again for a criminal act or omission of which he or she has previously been convicted or acquitted, save upon the order of a superior court in the course of an appeal or review proceedings relating to that conviction or acquittal;(viii) to have recourse by way of appeal or review to a higher court than the court of first instance;(ix) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her, at the expense of the State, into a language which he or she understands; and(x) to be sentenced within a reasonable time after conviction;

**(g)** in addition, if that person is a person under the age of eighteen years, to treatment consistent with the special needs of children, which shall include the right—

**(i)** not to be sentenced to life imprisonment without possibility of release;(ii) to be imprisoned only as a last resort and for the shortest period of time consistent with justice and protection of the public;(iii) to be separated from adults when imprisoned, unless it is considered to be in his or her best interest not to do so, and to maintain contact with his or her family through correspondence and visits;(iv) to be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces respect for the rights and freedoms of others;

**(v)** to be treated in a manner which takes into account his or her age and the desirability of promoting his or her reintegration into society to assume a constructive role;(vi) to be dealt with in a form of legal proceedings that reflects the vulnerability of children while fully respecting human rights and legal safeguards; and(h) in addition, if that person is a person with a disability, in recognition of his or her particular vulnerability, to be held, wherever possible, in separate accommodation.