

## Eritrea - Constitution

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*{ Adopted: July 1996 / Status: July 1996 }*

### **Preamble**

We the people of Eritrea, united in a common struggle for our rights and common destiny, standing on the solid ground of unity and justice bequeathed by our martyrs and combatants:

With Eternal Gratitude to the scores of thousands of our martyrs who sacrificed their lives for the causes of our rights and independence, during the long and heroic revolutionary struggle for liberation, and to the courage and steadfastness of our Eritrean patriots;

Aware that it is the sacred duty of all Eritreans to build a strong and developed Eritrea on the bases of freedom, unity, peace, stability and security achieved through the long struggle of all Eritreans, which tradition we must cherish, preserve and develop;

Realising that in order to build a developed country, it is necessary that the unity, equality, love for truth and justice, self-reliance, and hard work, which we nurtured during our revolutionary struggle for independence and which helped us to triumph, must become the core of our national values;

Appreciating the fact that for the development and health of our society, it is necessary that we inherit and improve upon the traditional community-based assistance and fraternity, love for family, respect for elders, mutual respect and consideration;

Convinced that the recognition, protection and securing of the rights and freedoms of citizens, human dignity, equality will guarantee a balanced development; lay down the groundwork for satisfying the material and spiritual needs of citizens; usher in a democratic order that is responsive to the needs and interests of citizens, guarantees their participation and brings about economic development, social progress and harmony;

Noting the fact that the Eritrean women's heroic participation in the struggle for independence and solidarity based on equality and mutual respect generated by such struggle will serve as an unshakable foundation for our commitment and struggle to create a society in which women and men shall interact on the bases of mutual respect, fraternity and equality;

Desirous that the Constitution we are adopting will be a covenant between us and the government we will be structuring by our free will and serve as a means for governing in harmony this and the future generation; and for bringing about justice and peace, founded on democracy, national unity and the rule of law;

today ..., on this historic date, after active popular participation, approve and solemnly ratify officially, through the Constituent Assembly, this Constitution as the fundamental law of our Sovereign and Independent State of Eritrea.

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## Chapter I General Provisions

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### **Article 1 The State of Eritrea and its Territory**

- (1) Eritrea is a sovereign and independent State founded on the principles of democracy, social justice and the rule of law.
- (2) The territory of Eritrea consists of all its territories, including the islands, territorial waters and airspace, delineated by internationally recognised boundaries.
- (3) In the State of Eritrea, sovereign power is vested in the people, who shall exercise such power through their representatives, duly elected pursuant to the procedures authorised by the provisions of this Constitution.
- (4) The State that is to be established by a democratic process to represent the people's sovereignty shall have strong institutions, capable of accommodating people's participation and of serving as foundation of a viable democratic and political order.
- (5) The State of Eritrea shall have a unitary government divided into units of local government. The powers and duties of these units shall be determined by law.

### **Article 2 Supremacy of the Constitution**

- (1) This Constitution is the legal expression of the sovereignty of the Eritrean people.
- (2) This Constitution enunciates the principles on which the State is to be based and guided by and determines the organisation and operation of government. It is the source of government legitimacy and the guarantor for the protection of the rights, freedoms and dignity of citizens and of just administration.
- (3) This Constitution is the supreme law of the country and the source of all laws of the State, and all laws, orders and acts contrary to its letter and spirit shall be null and void.
- (4) All organs of the State, all public and private associations and institutions and all citizens shall be bound by and remain loyal to the Constitution and shall ensure its observance.
- (5) Pursuant to the provisions of this Constitution and other laws, the conduct of the affairs of government and all organisations and institutions shall be accountable and transparent.
- (6) This Constitution shall serve as a basis for instilling constitutional culture and for enlightening and ensuring that organisations of the State and citizens respect fundamental human rights and duties.

### **Article 3 Citizenship**

- (1) Any person born of an Eritrean father or mother is an Eritrean by birth.
- (2) Any foreign citizen may acquire Eritrean citizenship pursuant to law.
- (3) The details concerning citizenship shall be regulated by law.

### **Article 4 National Symbols and Languages**

- (1) The Eritrean Flag shall have green, red and blue colours with golden olive leaves located at the centre. The exact description of the Flag shall be determined by law.
- (2) Eritrea shall have a National Anthem and a Coat of Arms appropriately reflecting the

history and the aspiration of its people. The details of the National Anthem and the Coat of Arms shall be determined by law.

(3) The equality of all Eritrean languages is guaranteed.

#### **Article 5 Gender Reference**

Without consideration to the gender wording of any provision in this Constitution, all of its articles shall apply equally to both genders.

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### **Chapter II National Objectives and Directive Principles**

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#### **Article 6 National Unity and Stability**

(1) As the people and government struggle to establish a united and developed Eritrea, within the context of the diversity of Eritrea, they shall be guided by the basic principle Ounity in diversity.

(2) The State shall strengthen the stability and development of the country by encouraging democratic dialogue and national consensus through participation of all citizens; by building strong political, cultural and moral foundation; and by promoting national unity and social harmony.

(3) The State shall ensure peace and stability by establishing appropriate institutions that encourage people's participation and by creating the necessary conditions capable of guaranteeing, hastening and engendering equitable economic and social progress.

#### **Article 7 Democratic Principles**

(1) It is a fundamental principle of the State to guarantee its citizens broad and active participation in all political, economic, social and cultural life of the country.

(2) Any act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited.

(3) There shall be established necessary institutions to encourage and develop people's participation and initiative in the areas where they reside.

(4) Pursuant to the provisions of this Constitution and laws enacted pursuant thereto, all Eritreans, without distinction, are guaranteed equal opportunity to participate in any positions of leadership in the country.

(5) The organisation and operation of all political and public associations and movements shall be guided by the principle of national unity and democracy.

(6) The State shall create the necessary conditions for establishing a democratic, political culture defined by the development of free and critical thinking, tolerance and national consensus.

#### **Article 8 Competent Justice System**

(1) The justice system of Eritrea shall be independent, competent and accountable

pursuant to the provisions of the Constitution and laws.

(2) Courts shall work under a judicial system that is capable of producing fast and equitable judgments and that can easily be understood by and is accessible to all the people.

(3) Judges shall be free from corruption or discrimination and, in rendering their judgment, they shall make no distinctions among persons.

(4) The State shall encourage out-of-court settlement of disputes through conciliation, mediation or arbitration.

### **Article 9 Competent Public Administration**

(1) Eritrea shall have an efficient, effective and accountable public service.

(2) All administrative institutions shall be free from corruption, discrimination and delay in the delivery of services.

### **Article 10 Economic and Social Development**

(1) The State shall endeavour to create opportunities to ensure the fulfillment of citizens' rights to social justice and the economic development and to fulfill their material and spiritual needs.

(2) The State shall work to bring about a balanced and sustainable development throughout the country, and shall use all available means to ensure all citizens to improve their livelihood in a sustainable manner, through their development.

(3) The State shall have the responsibility to regulate all land, water and natural resources and to ensure their management in a balanced and sustainable manner and in the interest of the present and future generations; and to create the right conditions for securing the participation of the people to safeguard the environment.

### **Article 11 National Culture**

(1) The State shall have the responsibility of creating and maintaining the necessary conditions for enriching national culture, which is the expression of national identity and unity and progress of the Eritrean people.

(2) The State shall encourage the values of community solidarity and the love and respect of family.

(3) The State shall promote the development of arts, sport and science and technology and shall create an enabling environment for individuals to work in an atmosphere of freedom and manifest their creativity and innovation.

### **Article 12 National Defence and Security**

(1) Defence and security forces of Eritrea shall owe allegiance to and defend the territorial integrity and sovereignty of the country, the Constitution and the government established pursuant thereto.

(2) Defence and security forces are an integral part of society, and shall be productive and respectful of the people.

(3) The defence and security of Eritrea are rooted on the people and on their active participation.

(4) The defence and security forces shall be subject and accountable to the law, shall be competent and pass these requirements for posterity.

### **Article 13 Foreign Policy**

The foreign policy of Eritrea is based on respect for the independence and sovereignty of countries and on promoting the interest of regional and international peace, cooperation, harmony and development.

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## **Chapter III Fundamental Rights, Freedoms, and Duties**

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### **Article 14 Equality under the Law**

- (1) All persons are equal before the law.
- (2) No person may be discriminated against on account of race, ethnic origin, language, colour, sex, religion, disability, political belief or opinion, or social or economic status or any other factors.
- (3) The National Assembly shall, pursuant to the provisions of this Article, enact laws that can assist in eliminating inequalities existing in the Eritrean society.

### **Article 15 Right to Life and Liberty**

- (1) No person shall be deprived of life without due process of law.
- (2) No person shall be deprived of liberty without due process of law.

### **Article 16 Right to Human Dignity**

- (1) The dignity of all persons shall be inviolable.
- (2) No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
- (3) No person shall be held in slavery or servitude or required to perform forced labour not authorised by law.

### **Article 17 Arrest, Detention and Fair Trial**

- (1) No person may be arrested or detained save pursuant to due process of law.
- (2) No person shall be tried or convicted for any act or omission which did not constitute a criminal offence at the time when it was committed.
- (3) Every person arrested or detained shall be informed of the grounds for his arrest or detention and the rights he has in connection with his arrest or detention in a language he understands.
- (4) Every person who is arrested and detained in custody shall be brought before the court within forty-eight (48) hours of his arrest, and if this is not reasonably possible, as soon as possible thereafter, and no such person shall be detained in custody beyond such period without the authority of the court.
- (5) Every person shall have the right to petition the court for a Writ of Habeas Corpus.

Where the arresting officer fails to bring him before the court of law and provide the reason for their arrest, the court shall accept the petition and order the release of the prisoner.

(6) Every person charged with an offence shall be entitled to a fair and public hearing by a court of law; provided, however, that such a court may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a just and democratic society.

(7) A person charged with an offence shall be presumed to be innocent, and shall not be punished, unless he is found guilty by a court.

(8) Where an accused is convicted, he shall have the right to appeal. No person shall be liable to be tried again for any criminal offence on which judgement has been rendered.

### **Article 18 Right to Privacy**

(1) Every person shall have the right to privacy.

(2) No person shall be subjected to unlawful search, including his home or other property; there shall be no unlawful entry of his premises and no unlawful seizure of his personal possessions; nor shall the privacy of his correspondence, communication or other property be violated.

### **Article 19 Freedom of Conscience, Religion, Expression of Opinion, Movement, Assembly and Organisation**

(1) Every person shall have the right to freedom of thought, conscience and belief.

(2) Every person shall have the freedom of speech and expression, which include freedom of the press and other media.

(3) Every citizen shall have the right of access to information.

(4) Every person shall have the freedom to practice any religion and to manifest such practice.

(5) All persons shall have the right to assemble and to demonstrate together with others peaceably.

(6) Every citizen shall have the right to form organisations for political, social, economic and cultural ends; and to practice any profession, or engage in any occupation or trade.

(7) Every citizen shall have the right to move freely throughout Eritrea or reside and settle in any part thereof.

(8) Every citizen shall have the right to leave and return to Eritrea and to be provided with passport or any other travel documents.

### **Article 20 Right to Vote and to be a Candidate to an Elective Office**

Every citizen who fulfills the requirements of the electoral law shall have the right to vote or to campaign to be elected to any office of leadership in government.

### **Article 21 Economic, Social and Cultural Rights and Responsibilities**

(1) Every citizen shall have the right of equal access to publicly funded social services.

The State shall endeavor, within the limit of its resources, to make available to all citizens health, education, cultural and other social services.

(2) The State shall secure, within available means, the social welfare of all citizens and particularly those disadvantaged.

(3) Every citizen shall have the right to engage freely in any economic activity and to pursue a livelihood.

(4) The State and society shall have the responsibility of identifying, preserving, developing, when necessary, and bequeathing to succeeding generation historical and cultural heritage; shall lay the necessary groundwork for the development of arts, sport, science and technology; and shall encourage citizens to participate in such endeavors.

(5) The National Assembly shall enact laws that guarantee and secure the social welfare of citizens and other rights and responsibilities listed in this Article.

### **Article 22 Family**

(1) The family is the natural and fundamental unit of society and is entitled to the protection and special care of the State and society.

(2) Men and women of full legal age shall have the right, upon their consent, to marry and to found a family freely, without any discrimination and they shall have equal rights and duties as to all family affairs.

(3) Parents have the right and duty to bring up their children with proper care and affection; and, in turn, children have the right and the duty to respect their parents and to sustain them in their old age.

### **Article 23 Right to Property**

(1) Subject to the provisions of Sub-Article 2 of this Article, any citizen shall have the right, any where in Eritrea, to acquire, own, and dispose of all property individually or in association with others and to bequeath to his heirs or legatees.

(2) All land, water and natural resources below and above the surface of the territory of Eritrea belongs to the State. Usufruct rights of citizens shall be determined by law.

(3) The State or any of its organs authorised by law may expropriate property in the national or public interest, subject to the payment of just compensation and in accordance with due process of law.

### **Article 24 Administrative Justice**

(1) Any person with a complaint shall have the right to be heard respectfully by administrative officials and to receive appropriate and quick answer from them.

(2) Any person whose rights or interests are interfered with or threatened shall have the right to seek due administrative redress.

### **Article 25 Duties of Citizens**

All citizens shall have the duty to:

1. owe allegiance to Eritrea, strive for its development and promote its prosperity;
2. be ready to defend the country;
3. complete one's duty in the National Service;

4. advance national unity and the well-being of the people;
5. know, respect and defend the Constitution;
6. respect the rights and freedoms of others;
7. respect the rule of law and comply with the requirements of the law.

### **Article 26 Limitation Upon Fundamental Rights and Freedoms**

(1) The fundamental rights and freedoms guaranteed under this Constitution may be limited only in so far as is necessary in a just and democratic society in the interests of national security, public safety or the economic well-being of the country, health or morals, for the prevention of public disorder or crime or for the protection of the rights and freedoms of others.

(2) Any law providing for the limitation of the fundamental rights and freedoms guaranteed in this Constitution must:

- a) be consistent with the principles of a just and democratic society;
- b) be of general application and not negate the essential content of the right or freedom in question; c) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

(3) Notwithstanding the provisions of Sub-Article 1 of this Article and other Articles of this Constitution to the contrary, the fundamental rights and freedoms guaranteed under Articles 14 (1) and (2), 17 (2), 19 (4) of this Constitution shall not be limited.

### **Article 27 State of Emergency**

(1) At a time when public safety or the security or stability of the State is threatened by external invasion, by civil disorder or by natural disaster, the President may by a proclamation published in the Gazette of Eritrean Laws declare that a state of emergency exists in Eritrea or any part thereof.

(2) A declaration under Sub-Article 1 hereof shall not become effective unless approved by a resolution passed by a two-thirds majority votes of all members of the National Assembly. In the case of a declaration made when the National Assembly is session, the declaration shall be presented within two days after its publication, or otherwise the National Assembly shall be summoned to meet and approve the publication within thirty days of its declaration.

(3) A declaration approved by the National Assembly pursuant to Sub-Article 2 hereof shall continue to be in force until the expiration of a period of six months after such approval. The National Assembly may, by a resolution of two-thirds majority votes of all its members, extend its approval of the declaration for periods of three months at a time.

(4) The National Assembly may by resolution at any time revoke a declaration approved by it pursuant to the provisions of this Article.

(5) Any measures undertaken or laws enacted pursuant to a declaration of a state of emergency shall not: a) suspend Article 26 (3) of the Constitution; b) grant pardon or amnesty to any person or persons who, acting under the authority of the State, have committed illegal acts; or

c) introduce martial law when no external invasion exists or civil disorder prevails.

### **Article 28 Enforcement of Fundamental Rights and Freedoms**

(1) Save in so far as it may be authorised to do so by this Constitution, the National Assembly or any subordinate legislative authority shall not make any law, and the Executive and the agencies of government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Constitution. Any law or action in violation thereof shall be null and void.

(2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been denied or violated shall be entitled to approach a competent court to enforce or protect such a right or freedom. Where the court ascertains that such fundamental right or freedom has been denied or violated, the court shall have the power to make all such orders as shall be necessary to secure such applicants the enjoyment of such fundamental right or freedom, and where such applicants suffer damage, to include an award of monetary compensation.

### **Article 29 Residual Rights**

The rights enumerated in this Chapter shall not preclude other rights which ensue from the spirit of this Constitution and the principles of a society based on social justice, democracy and the rule of law.

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## **Chapter IV The National Assembly**

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### **Article 30 Representation of the People**

(1) Any Eritrean citizen, of eighteen years of age or more, shall have the right to vote.

(2) The National Assembly shall enact an electoral law, which shall prescribe for and ensure the representation and participation of the Eritrean people.

### **Article 31 Establishment and Duration of the National Assembly**

(1) There shall be a National Assembly which shall be a supreme representative and legislative body.

(2) The National Assembly shall be composed of representatives elected by the people.

(3) Members of the National Assembly shall be elected by direct and secret ballot by all citizens who are qualified to vote. (4) Members of the National Assembly are representatives of the Eritrean peoples as a whole. In discharging their duties, they are governed by the objectives and principles of the Constitution, the interest of the people and the country and their conscience.

(5) The first session of the National Assembly shall be held within one month after a general election and its term shall be five years from the date of such first session. Where there exists a state of emergency which would prevent a normal general election from being held, the National Assembly may, by resolution supported by not less than two-

thirds vote of all its members, extend the life of the National Assembly for a period not exceeding six months.

(6) The qualifications and election of the members of the National Assembly and the conditions for vacating their seats shall be determined by law.

### **Article 32 Powers and Duties of the National Assembly**

(1) Pursuant to the provisions of this Constitution: a) The National Assembly shall have the power to enact laws and pass resolutions for the peace, stability, development and good governance of Eritrea;

b) Unless, pursuant to the provisions of this Constitution or authorised by law enacted by the National Assembly, no person or organisation shall have the power to make having the force of law.

(2) The National Assembly shall be bound by the objectives and principles of the Constitution, and shall strive to realise the objectives stated therein.

(3) The National Assembly shall approve the national budget and enact tax law.

(4) The National Assembly shall ratify international agreements by law.

(5) The National Assembly shall authorise government to borrow money pursuant to law.

(6) The National Assembly shall approve a state of peace, war or national emergency.

(7) The National Assembly shall have the power to oversee the execution of laws.

(8) The National Assembly shall have the power to elect, from among its members, by absolute majority vote of all its members, the President who shall serve for five years.

(9) Pursuant to the provisions of Sub-Article 6(a) and (b) of Article 41 hereof, the National Assembly, by a vote of two-thirds majority of all its members, shall have the power to impeach and charge the President before the end of his term of office.

(10) The National Assembly may approve the appointment of any person or persons pursuant to this Constitution.

(11) The National Assembly may pass such resolutions and undertake such measures as are necessary and establish such standing or ad hoc committees as it deems appropriate for discharging its constitutional responsibilities.

### **Article 33 Approval of Draft Legislation**

Any draft law approved by the National Assembly shall be transmitted to the President who, within thirty days, shall sign and have it published in the Gazette of Eritrean Laws.

### **Article 34 Chairman of the National Assembly**

(1) In its first meeting, the National Assembly shall elect, by an absolute majority vote of all its members, a Chairman for five years.

(2) The Chairman of the National Assembly shall convene sessions of the National Assembly and preside at its meetings, and shall, during the recess, coordinate and supervise the operations of standing and ad hoc committees of the National Assembly.

(3) The Chairman of the National Assembly may be replaced by an absolute majority vote of all the members of the National Assembly.

### **Article 35 Oath**

Every member of the National Assembly shall take the following oath: *"I, ..., swear in the name of the Eritrean martyrs that I will be faithful and worthy of the trust the Eritrean people placed on me; that I will uphold and defend the Constitution of Eritrea; and that I will endeavor to the best of my ability and conscience for the unity and development of my country without seeking or being enticed by private gain."*

### **Article 36 Rules of Procedure in the National Assembly**

- (1) The National Assembly shall have regular session and shall determine the timing and duration of its regular session.
- (2) At the request of the President, its Chairman or one-third of all its members, the National Assembly shall have emergency meeting.
- (3) The quorum of the National Assembly shall be fifty percent of all the members of the National Assembly.
- (4) Except as otherwise prescribed by this Constitution or other laws, any question proposed for decision of the National Assembly shall be determined by a majority vote of those present and voting, and in case of a tie of votes, the Chairman may exercise a casting vote.
- (5) The National Assembly shall issue rules and regulations concerning its organisation, tasks, operations and internal processes and those of the standing and ad hoc committees, including the rules governing the code of ethics of its members and transparency of its operations.

### **Article 37 Office and Committees of the National Assembly**

- (1) The National Assembly shall have a secretariat under the direction of its Chairman and committees for various fields of interest, as circumstance may dictate.
- (2) The various committees established pursuant to the provisions of Sub-Article 1 of this Article shall have the power to call any person to appear before them to give evidence or to submit documents.

### **Article 38 Duties, Immunities and Privileges of Members of the National Assembly**

- (1) All members of the National Assembly shall maintain the high image of the National Assembly. They shall regard themselves as humble servants of the people and maintain close contact with them.
- (2) No member of the National Assembly or of its committees may be arrested or charged for any crimes he commits during the session of the National Assembly, unless he be apprehended in flagrante delicto. Nevertheless, where the National Assembly, by a majority vote of those present and voting, revokes his immunity, the member may be charged.
- (3) No member of the National Assembly may be arrested or charged for words uttered or written statements submitted by him at any meeting of the National Assembly or any meeting of its committees or any utterance or statement made outside the National Assembly in connection with his duty as member thereof.

(4) The duties, responsibilities, immunities and compensation of the members of the National Assembly shall be determined by law; and all members shall be entitled to the protection of such immunities and shall perform the duties enumerated therein.

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## **Chapter V The Executive**

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### **Article 39 The President: Head of State and Government**

- (1) The President of Eritrea is Head of State and Government and Commander-in-Chief of the Armed Forces of Eritrea.
- (2) The executive authority is vested in the President, and shall be exercised, in consultation with the Cabinet, pursuant to the provisions of this Constitution.
- (3) The President shall ensure the respect of the Constitution; the integrity of the State; the efficiency and effectiveness of the public service; the interests and safety of all citizens, including the enjoyment of their fundamental rights and freedoms recognised under this Constitution.

### **Article 40 Qualifications to be a Candidate to the Office of the President**

Any member of the National Assembly to be elected President of Eritrea shall be a citizen of Eritrea by birth.

### **Article 41 Election and Term of Office of the President**

- (1) The President shall be elected from amongst the members of the National Assembly by a vote of the majority of its members. A candidate for the office of the President must be nominated by at least 20 percent vote of all the members of the National Assembly.
- (2) The term of office of the President shall be five years, equal to the term of office of the National Assembly that elects him.
- (3) No person shall be elected to hold office of the President for more than two terms.
- (4) When the office of the President becomes vacant due to death or resignation of the incumbent or due to the reasons enumerated in Sub-Article 6 of this Article, the Chairman of the National Assembly shall assume the office of the President. The Chairman shall serve as acting President for not more than thirty days, during which time, the National Assembly shall elect another President to serve the remaining term of his predecessor.
- (5) The term of office of the person elected to serve as President under Sub-Article 4 of this Article shall not be considered as a full term for purposes of Sub-Article 3 of this Article.
- (6) The President may be removed from office by two-thirds majority vote of all members of the National Assembly for the following reasons:
  - a) violation of the Constitution or grave violation of the law;

b) conducting himself in a manner which brings the authority or honour of the office of President into ridicule, contempt and disrepute;

c) being incapable of performing the functions of his office by reason of physical or mental incapacity.

(7) The procedures for the election and removal of the President from office shall be determined by law.

#### **Article 42 Powers and Duties of the President**

The President shall have the following powers and duties:

1. once every year, deliver a speech in the National Assembly on the state of the country and the policies of his government;
2. subject to the provisions of Article 27 hereof, declare state of emergency, and when the defence of the country requires, state of war;
3. summon the National Assembly to an emergency meeting and present his views to it;
4. sign and publish in the Gazette of Eritrean Laws draft laws approved by the National Assembly;
5. ensure the execution of laws and resolutions of the National Assembly;
6. negotiate and sign international agreements and delegate such power;
7. appoint with the approval of the National Assembly, ministers, commissioners, the Auditor-General, head of the National Bank, the Chief Justice of the Supreme Court and any other person or persons who are required by any other provisions of this Constitution or other laws to be appointed by the President;
8. appoint justices of the Supreme Court upon proposal of the Judicial Service Commission and approval of the National Assembly;
9. appoint judges of the lower courts upon proposal of the Judicial Service Commission;
10. appoint and receive ambassadors and diplomatic representatives;
11. appoint high ranking members of the Armed and the Security Forces;
12. pardon, grant amnesty or reprieve offenders;
13. establish and dissolve such government ministries and departments necessary or expedient for the good governance of Eritrea, in consultation with the Public Service Administration;
14. preside over meetings of the Cabinet and coordinate its activities;
15. present legislative proposals to the National Assembly;
16. confer medals or other honours on citizens, residents and friends of Eritrea in consultation with relevant persons and institutions;
17. pursuant to the provisions of this Constitution, remove any person appointed by him.

#### **Article 43 Immunity from Civil and Criminal Proceedings**

Any person holding the office of the President may not be sued in any civil proceedings or charged for a crime, save where such proceedings concern an act done in his official capacity as President or proceedings involving Sub-Article 6(a) and (b) of Article 41 hereof.

#### **Article 44 Privileges to be Given to Former Presidents**

Provisions shall be made by law for the privileges that shall be granted to former Presidents.

#### **Article 45 Oath**

Upon his election, the President shall take the following oath: *"I, ..., swear in the name of the Eritrean martyrs that I will uphold and defend the Constitution of Eritrea and that I will strive with the best of my ability and conscience to serve the people of Eritrea."*

#### **Article 46 The Cabinet**

- (1) There shall be a ministerial Cabinet, which shall be presided by the President.
- (2) The President may select ministers from among members of the National Assembly or from among persons who are not members of the National Assembly.
- (3) The Cabinet shall assist the President in:
  - a) directing, supervising and coordinating the affairs of government;
  - b) conducting study on and preparing the annual budget;
  - c) conducting study and preparing draft laws to be presented to the National Assembly;
  - d) conducting study on and preparing policies and plans of government.
- (4) The President may issue rules and regulations for the organisation, functions and operation of his office, the Cabinet or other government institutions, and for the code of ethics involving officials of the executive branch of government.

#### **Article 47 Ministerial Accountability**

- (1) All ministers shall be accountable:
  - a) individually to the President for the administration of their own ministries; and
  - b) collectively to the National Assembly, through the President, for the administration of the work of the Cabinet.
- (2) The National Assembly or its committees may, through the Office of the President, summon any minister to appear before them to question him concerning the policies or operation of his ministry.

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### **Chapter VI The Administration of Justice**

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#### **Article 48 The Judiciary**

- (1) The judicial power shall be vested in a Supreme Court and in such other lower courts as shall be established by law and shall be exercised in the name of the people pursuant to this Constitution and laws issued thereunder.
- (2) In exercising their judicial power, courts shall be free from direction, control and supervision of any person or authority. Judges shall be subject only to the law, to a

judicial code of ethics determined by law and to their conscience.

(3) A person exercising judicial power shall not be liable to any suit for any act or omission in the course of exercising that judicial power.

(4) All organs of the State shall accord to the courts such assistance as they may require to protect their independence and dignity so that they may exercise their judicial power appropriately and effectively pursuant to the provisions of this Constitution and laws issued thereunder.

#### **Article 49 The Supreme Court**

(1) The Supreme Court shall be the court of last resort; and shall be presided by the Chief Justice.

(2) The Supreme Court shall have the power of:

a) sole jurisdiction of interpreting this Constitution and the constitutionality of any law enacted or any measure undertaken by government;

b) sole jurisdiction of hearing and adjudicating upon charges against a President who has been impeached by the National Assembly pursuant to the provisions of Sub-Article 6 (a) and (b) of Article 41 hereof; and c) hearing and adjudicating cases appealed from lower courts pursuant to law.

(3) the organisation and operation of the Supreme Court shall be determined by law.

(4) The tenure of justices of the Supreme Court shall be determined by law.

#### **Article 50 Lower Courts**

The organisation, jurisdiction and the procedures of lower courts and the tenure of their judges shall be determined by law.

#### **Article 51 Oath**

Every judge shall take the following oath: *"I, ..., swear in the name of the Eritrean martyrs that I will adjudicate in accordance with the provisions of the Constitution and laws enacted thereunder and I will exercise the judicial authority vested in me, subject only to the law and my conscience, without seeking or being enticed by any private gain."*

#### **Article 52 Removal of Judges from Office**

(1) A judge may be removed from office before the expiry of his tenure of office by the President only, acting on the recommendation of the Judicial Service Commission, pursuant to the provisions of Sub-Article 2 of this Article for physical or mental incapacity, violation of the law or judicial code of ethics.

(2) The Judicial Service Commission shall investigate whether or not a judge should be removed from office on grounds of those enumerated in Sub-Article 1 of this Article. In case the Judicial Service Commission decides that a judge should be removed from office, it shall present its recommendation to the President.

(3) The President may, on the recommendation of the Judicial Service Commission, suspend from office a judge who is under investigation.

### **Article 53 The Judicial Service Commission**

- (1) There shall be established a Judicial Service Commission, which shall be responsible for submitting recommendations for the recruitment of judges and the terms and conditions of their services.
  - (2) The powers, organization and duties of the Judicial Service Commission shall be determined by law.
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## **Chapter VII Miscellaneous Provisions**

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### **Article 54 Auditor General**

- (1) There shall be an Auditor General who audits the revenues and expenditures and other financial operations of government and who reports annually his findings to the National Assembly.
- (2) The Auditor General shall be appointed for five years by the President with the approval of the National Assembly. He shall be accountable to the National Assembly.
- (3) The detailed powers, duties and organisation of the Auditor General shall be determined by law.

### **Article 55 National Bank**

- (1) There shall be a National Bank, which performs the functions of a central bank, controls the financial institutions and manages the national currency.
- (2) The National Bank shall have a Governor appointed by the President with the approval of the National Assembly. There shall be a Board of Directors presided by the Governor and whose members shall be appointed by the President.
- (3) The detailed powers, duties and organisation of the National Bank shall be determined by law.

### **Article 56 Public Service Administration**

- (1) There shall be established a Public Service Administration, which shall be responsible for recruitment and selection of civil servants as well as for determining the terms and conditions of their employment including their rights and duties.
- (2) The detailed powers, duties and organisation of the Public Service Administration shall be determined by law.

### **Article 57 Electoral Commission**

- (1) There shall be established an Electoral Commission, operating independently, without interference, which shall, on the basis of the electoral law, ensure that free and fair elections are held and manage their implementation; decide on issues raised in the course of the electoral process; and formulate and implement civic educational programmes relating to elections and other

democratic procedures.

(2) An Electoral Commissioner shall be appointed by the President with the approval of the National Assembly.

(3) The detailed powers, duties and organisation of the Electoral Commission shall be determined by law.

#### **Article 58 Amendment of the Constitution**

(1) A proposal for the amendment of any provision of this Constitution may be initiated and tabled by the President or 50 percent of all the members of the National Assembly.

(2) Any provision of this Constitution may be amended as follows:

a) where the National Assembly by a three-quarters majority vote of all its members proposes an amendment with reference to a specific Article of the Constitution tabled to be amended; and

b) where, one year after it has proposed such an amendment, the National Assembly, after deliberation, approves again the same amendment by four-fifths majority vote of all its members.