

# Colombia 1991 (rev. 2013)

---

© Oxford University Press, Inc.

Translated by Max Planck Institute, with updates by the Comparative Constitutions Project.

## PREAMBLE

The people of Colombia,

In the exercise of their sovereign power, represented by their delegates to the National Constituent Assembly, invoking the protection of God, and in order to strengthen the unity of the nation and ensure to its members life, peaceful coexistence, work, justice, equality, understanding, freedom, and peace within a legal, democratic, and participatory framework that may guarantee a just political, economic, and social order and committed to promote the integration of the Latin American community, decree, authorize, and promulgate the following:

## TITLE I. ON FUNDAMENTAL PRINCIPLES

### ARTICLE 1

Colombia is a social state under the rule of law, organized in the form of a unitary republic, decentralized, with autonomy of its territorial units, democratic, participatory, and pluralistic, based on the respect of human dignity, the work and solidarity of the individuals who belong to it, and the prevalence of the general interest.

### ARTICLE 2

The essential goals of the State are to serve the community, promote the general prosperity, and guarantee the effectiveness of the principles, rights, and duties stipulated by the Constitution; to facilitate participation by everyone in the decisions that affect them and in the economic, political, administrative, and cultural life of the nation; to defend national independence, maintain territorial integrity, and ensure peaceful coexistence and enforcement of a just order.

The authorities of the Republic are established in order to protect all individuals residing in Colombia, in their life, honor, property, beliefs, and other rights and freedoms, and in order to ensure the fulfillment of the social duties of the State and individuals.

### ARTICLE 3

Sovereignty resides exclusively in the people from whom public power emanates. The people exercise it in direct form or through their representatives, within the limits established by the Constitution.

## ARTICLE 4

The Constitution provides the norm of regulations. In all cases of incompatibility between the Constitution and the statute or other legal regulations, the constitutional provisions shall apply.

It is the duty of citizens and of aliens in Colombia to obey the Constitution and the laws, and to respect and obey the authorities.

## ARTICLE 5

The State recognizes, without any discrimination whatsoever, the primacy of the inalienable rights of the individual and protects the family as the basic institution of society.

## ARTICLE 6

Individuals are solely responsible before the authorities for violations of the Constitution and the laws. Public servants are responsible for the same violations and the omissions or ultra vires acts committed in the exercise of their functions.

## ARTICLE 7

The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation.

## ARTICLE 8

It is the obligation of the State and of individuals to protect the cultural and natural assets of the nation.

## ARTICLE 9

The external relations of the state are based on national sovereignty, on respect for the self-determination of peoples, and on the recognition of the principles of international law approved by Colombia.

In the same manner, the foreign policy of Colombia shall be oriented toward the integration of Latin America and the Caribbean.

## ARTICLE 10

Spanish is the official language of Colombia. The languages and dialects of ethnic groups are also official in their territories. The education provided in communities with their own linguistic traditions shall be bilingual.

# TITLE II. ON RIGHTS, GUARANTEES, AND DUTIES

## CHAPTER I. ON FUNDAMENTAL RIGHTS

### ARTICLE 11

The right to life is inviolate. There shall be no death penalty.

## ARTICLE 12

No one shall be subjected to forced sequestration, torture, cruel, inhuman, or degrading treatment or punishment.

## ARTICLE 13

All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination on account of gender, race, national or family origin, language, religion, political opinion, or philosophy.

The State shall promote the conditions so that equality may be real and effective and shall adopt measures in favor of groups that are discriminated against or marginalized.

The State shall especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and shall sanction the abuses or ill-treatment perpetrated against them.

## ARTICLE 14

Every individual has the right to have his/her legal identity recognized.

## ARTICLE 15

All individuals have the right to personal and family privacy and to their good reputation, and the State has to respect them and to make others respect them. Similarly, individuals have the right to know, update, and rectify information collected about them in data banks and in the records of public and private entities.

Freedom and the other guarantees approved in the Constitution shall be respected in the collection, processing, and circulation of data.

Correspondence and other forms of private communication may not be violated. They may only be intercepted or recorded on the basis of a court order in cases and following the formalities established by statute.

For tax or legal purposes and for cases of inspection, the oversight and intervention of the State may demand making available accounting records and other private documents within the limits provided by statute.

## ARTICLE 16

All individuals are entitled to the unrestricted development of their identity without limitations other than those imposed by the rights of others and the legal order.

## ARTICLE 17

Slavery, servitude, and the slave trade in all forms are prohibited.

## ARTICLE 18

Freedom of conscience is guaranteed. No one shall be importuned on account of his/her convictions or beliefs or compelled to reveal them or obliged to act against his/her conscience.

## ARTICLE 19

Freedom of religion is guaranteed. Every individual has the right to freely profess his/her religion and to disseminate it individually or collectively. All religious faiths and churches are equally free before the law.

## ARTICLE 20

Every individual is guaranteed the freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass communications media.

The latter are free and have social responsibility. The right to make corrections under conditions of equity is guaranteed. There shall be no censorship.

## ARTICLE 21

The right to dignity is guaranteed. An Act shall provide the manner in which it shall be upheld.

## ARTICLE 22

Peace is a right and a duty of which compliance is mandatory.

## ARTICLE 23

Every individual has the right to present respectful petitions to the authorities on account of general or private interest and to secure prompt resolution of same. The legislative body shall be able to regulate its exercise by private organizations in order to guarantee fundamental rights.

## ARTICLE 24

Any Colombian citizen, except for the limitations established by statute, has the right to move about freely across the national territory, to enter and exit the country, and to remain and reside in Colombia.

## ARTICLE 25

Work is a right and a social obligation and enjoys, in all its forms, the special protection of the State. Every individual is entitled to a job under dignified and equitable conditions.

## ARTICLE 26

Every individual is free to choose a profession or occupation. An Act may mandate certificates of competence. The competent authorities shall inspect and oversee the exercise of the professions. Occupations, the arts, and work that does not require academic training are to be freely exercised, except for those which involve social risk.

Legally recognized professions may be organized into professional associations. The internal structure and operation of the latter shall be democratic. An Act may assign public functions to them and establish

appropriate controls.

## ARTICLE 27

The State guarantees freedom of teaching at the primary and secondary level, apprenticeship, research, and professorship.

## ARTICLE 28

Every individual is free. No one may be importuned in his/her person or family, sent to jail or arrested, nor may his/her home be searched except on the basis of a written order from a competent judicial authority, subject to the legal procedures and for reasons previously defined by statute.

A person in preventive detention shall be placed at the disposition of a competent judge within the subsequent 36 hours so that the latter may make an appropriate determination within the limits established by statute.

In no case may there be detention, a prison term, or arrest for debts, nor sanctions or security measures that are not prescribed.

## ARTICLE 29

Due process shall be applied in all cases of legal and administrative measures.

No one may be judged except in accordance with previously written laws which shall provide the basis of each decision before a competent judge or tribunal following all appropriate forms.

In criminal law, permissive or favorable law, even when ex post facto, shall be applied in preference to restrictive or unfavorable alternatives.

Every individual is presumed innocent until he/she is proved to be legally guilty. Whoever is accused is entitled to defense and the assistance of counsel picked by the accused or assigned automatically during the investigation and trial; to an appropriate public trial without unreasonable delay; to present evidence and to refute evidence alleged against the accused; to challenge the condemnatory sentence; and not to be placed in double jeopardy for the same act.

Evidence obtained in violation of due process is null and void by right.

## ARTICLE 30

Whoever is deprived of his/her freedom and believes to be so illegally is entitled to invoke habeas corpus before any legal authority, at any time, on his/her own or through a third party. Habeas corpus must be complied with within 36 hours.

## ARTICLE 31

Any judicial sentence may be appealed or adjudicated, but for exceptions provided by statute.

When the accused is the sole appellant, the higher court may not impose a heavier penalty.

## ARTICLE 32

The accused who is caught in the act of committing and offense (flagrante delicto) may be apprehended and taken before a judge by any individual. Should he/she be subject to hot pursuit by the agents of law and order and take refuge in his/her own home, the law-enforcement agents may enter the domicile to apprehend the accused. Should the accused be caught in someone else's home, a request from the resident shall be sought beforehand.

## ARTICLE 33

No one may be forced to testify against himself/herself or his/her spouse, permanent companion, or kin to the fourth level of consanguinity, the second level of affinity [by marriage] or the first civil level.

## ARTICLE 34

Punishments of exile, life imprisonment, and confiscation are prohibited.

However, a judicial sentence may nullify ownership of property when same is injurious to the public treasury or seriously harmful to social morality.

## ARTICLE 35

Extradition may be requested, granted or offered in accordance with public international treaties and, in their absence, with the relevant statute.

The extradition of Colombians by birth shall also be granted for crimes committed abroad which are considered as such by the Colombian penal legislation. An Act shall regulate the matter.

Extradition shall not be granted for political crimes.

Extradition shall not be granted for acts committed prior to the promulgation of the present provision.

## ARTICLE 36

The right of asylum is recognized within the limits provided by statute.

## ARTICLE 37

Any group of individuals may gather and demonstrate publicly and peacefully. An Act alone may establish in specific manner those cases in which the exercise of this right may be limited.

## ARTICLE 38

The right of free association for the promotion of various activities that individuals pursue in society is guaranteed.

## ARTICLE 39

Workers and employers have the right to form trade unions or associations without interference by the State. Their legal recognition shall occur by the simple registration of their constituent act.

The internal structure and functioning of trade unions and social or labor organizations shall be subject to the legal order and to democratic principles.

The cancellation or suspension of legal identity may only occur through legal means.

Trade union representatives are provided jurisdiction and other guarantees necessary for the performance of their administration.

Members of the police force do not have the right to form associations.

## ARTICLE 40

Any citizen has the right to participate in the establishment, exercise, and control of political power. To make this decree effective the citizen may:

1. Vote and be elected.
2. Participate in elections, plebiscites, referendums, popular consultations, and other forms of democratic participation.
3. Constitute parties, political movements, or groups without any limit whatsoever; freely participate in them and diffuse their ideas and programs.
4. Revoke the mandate of those elected in cases where it applies and in the form provided for by the Constitution and the statute.
5. Take initiatives in public bodies.
6. Undertake public measures in defense of the Constitution and the law.
7. Agree to undertake public functions and responsibilities, except for those Colombian citizens, native-born or naturalized, who hold dual citizenship. An Act shall spell out this exception and shall determine the cases where they apply.

The authorities shall guarantee the adequate and effective participation of women in the decision-making ranks of the public administration.

## ARTICLE 41

In all educational institutions, public or private, the study of the Constitution and civics shall be mandatory. In this way, democratic practices for the teaching of principles and values of citizen participation shall be promoted. The State shall publicize the Constitution.

# CHAPTER II. ON SOCIAL, ECONOMIC, AND CULTURAL RIGHTS

## ARTICLE 42

The family is the basic nucleus of society. It is formed on the basis of natural or legal ties, through the free decision of a man and woman to contract matrimony or through the responsible resolve to comply with it.

The state and society guarantee the integral protection of the family. An Act shall determine the inalienable and unseizable family patrimony. The family's honor, dignity, and intimacy are inviolable.

Family relations are based on the equality of rights and duties of the couple and on the reciprocal respect of all its members. Any form of violence in the family is considered destructive of its harmony and unity, and shall be sanctioned according to law.

The children born of matrimony or outside it, adopted or conceived naturally or with scientific assistance, have equal rights and duties. An Act shall regulate responsibility to the offspring.

The couple has the right to decide freely and responsibly the number of their children and shall support them and educate them while they are minors or non-self-supporting.

The forms of marriage, the age and qualifications to contract it, the duties and rights of the spouses, their separation and the dissolution of the marriage ties are determined by statute.

Religious marriages shall have civil effects within the limits established by statute.

The civil effects of all marriages may be terminated by divorce in accordance with civil law.

Also having civil effects are decrees of annulment of religious marriages issued by the authorities of the respective faiths within the limits established by statute.

An Act shall determine matters relating to the civil status of individuals and consequent rights and duties.

## ARTICLE 43

Women and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination. During their periods of pregnancy and following delivery, women shall benefit from the special assistance and protection of the State and shall receive from the latter food subsidies if they should thereafter find themselves unemployed or abandoned.

The State shall support the female head of household in a special way.

## ARTICLE 44

The following are basic rights of children: life, physical integrity, health and social security, a balanced diet, their name and citizenship, to have a family and not be separated from it, care and love, instruction and culture, recreation, and the free expression of their opinions. They shall be protected against all forms of abandonment, physical or moral violence, sequestration, sale, sexual abuse, work or economic exploitation, and dangerous work. They shall also enjoy other rights upheld in the Constitution, the laws, and international treaties ratified by Colombia.

The family, society, and the State have the obligation to assist and protect children in order to guarantee their harmonious and integral development and the full exercise of their rights. Any individual may request from the competent authority the enforcement of these rights and the sanctioning of those who violate them.

The rights of children take precedence over the rights of others.

## ARTICLE 45

The adolescent is entitled to protection and integral development.

The State and society guarantee the active participation of adolescents in public and private organs that are responsible for the protection, education, and progress of the youth.

## **ARTICLE 46**

The State, society, and the family shall all participate in protecting and assisting individuals in the third age bracket and shall promote their integration into active and community life.

The State shall guarantee to them services of integral social security and food subsidies in cases of indigence.

## **ARTICLE 47**

The State shall promote a policy of planning, rehabilitation, and social integration for those who are physically, emotionally, or psychologically handicapped and who shall receive the specialized attention that they need.

## **ARTICLE 48**

Social Security is a mandatory public service which shall be delivered under the administration, coordination, and control of the State, subject to the principles of efficiency, universality, and solidarity within the limits established by statute.

All inhabitants are guaranteed the irrevocable right to Social Security.

With the participation of individuals, the state shall gradually extend the coverage of Social Security which shall include the provision of services in the form determined by statute.

Social Security may be provided by public or private entities, in accordance with the relevant statute.

It shall not be possible to assign or use the resources of the Social Security organs for different purposes.

An Act shall define the means whereby the resources earmarked for retirement benefits may retain their constant purchasing power.

The State shall guarantee the rights resulting from the Pensions Systems, its financial sustainability, it shall respect vested rights in accordance with the law and assume the payment of the pension debt for which it is responsible according to the law. The statutes which are enacted on pension matters subsequent to the entry into force of this Legislative Act have to ensure the financial sustainability of the arrangements made by them.

The discounts, reductions and seizures of pensions decreed by the applicable statute notwithstanding, for no reason may the payment of the monthly pensions recognized by statute be suspended or their value be frozen or reduced.

The provisions on infirmity and widower's pensions notwithstanding, it is necessary to comply with the requirements concerning age, time of service, length of contribution payments or required capital and other

conditions defined by an Act in order to obtain the right to a pension. The requirements for and the benefits resulting from obtaining the right to an infirmity or widower's pension shall be established by the Acts of the General Pensions System.

In pension matters all vested rights are respected.

Pension requirements and benefits for all persons, including those related to old age pensions for high risk activities, shall be established by the Acts on the General Pensions System. No provision may be issued and no contract invoked that would run contrary to the rules thereby enacted.

For the payment of the pensions only those factors are taken into account to which the contributions made by every person are related. No pension may be lower than the existing monthly legal minimum wage. However, an Act may determine the cases in which periodical economic benefits which are lower than the minimum wage are paid to people with limited resources who do not fulfill the conditions required for the right to a pension.

After the entry into force of the present Legislative Act, there shall be no special or excepted regimes, those applicable to the public force and the President of the Republic and those defined by the paragraphs of the present article notwithstanding.

The persons whose right to a pension comes into existence after the entry into force of the present Legislative Act may not receive more than thirteen (13) monthly pension payments per year. It is understood that the pension comes into existence at the time when all requirements for obtaining it are met, even if it has not yet been [formally] recognized.

An Act shall establish speedy proceedings for the revision of pensions which have been awarded by an abuse of law or without fulfilling the requirements established by statute or by valid agreements or arbitral awards.

## **PARAGRAPH 1**

After July 31, 2010 no pensions may come into existence at the expense of public resources that are higher than twenty-five (25) monthly legal minimum wages.

## **PARAGRAPH 2**

After the entry into force of the present Legislative Act, no pension requirements that differ from those established by the Acts of the General Pensions System may be created by agreements, collective bargaining, arbitral awards or any other legal act.

## **TRANSITIONAL PARAGRAPH 1**

The pension regime of the national, nationalized and territorial teaching staff linked to the official public education service is that which has been established for the teaching profession by the legal provisions which were in force prior to the entry into force of the Act 812 of 2003, and by Article 81 of the latter. Teachers who have joined or join the service after the entry into force of the aforementioned law shall have the right to a medium bonus (*prima media*) established by the Acts of the General Pensions System, in the terms of Article 81 of the Act 812 of 2003.

## TRANSITIONAL PARAGRAPH 2

Vested rights, the regime applicable to the members of the public force and the President of the Republic and the provisions of the present Article notwithstanding, the special and excepted pension regimes as well as any other [pension regime] that is different from the one established in a permanent manner by the Acts on the General Pensions System shall cease to have effect on July 31 of the year 2010.

## TRANSITIONAL PARAGRAPH 3

The rules concerning pension matters contained in pacts, collective bargains, arbitral awards or validly concluded agreements that are in force on the date of entry into force of this Legislative Act shall remain valid for the period initially established. In the pacts, agreements or awards that are made between the entry into force of this Legislative Act and July 31, 2010 no pension rules that are more favorable than those currently in force may be stipulated. In any case they shall cease to have effect on July 31, 2010.

## TRANSITIONAL PARAGRAPH 4

The transitional regime established by Act 100 of 1993 and the other rules which develop said regime may not extend beyond July 31, 2010, except for the workers who are subject to that regime and have paid contributions for at least 750 weeks or its equivalent in times of service on the entry into force of the present Legislative Act, to whom it shall continue to apply until the year 2014.

The pension requirements and benefits for the persons covered by this regime shall be those established by Article 36 of the Act 100 of 1993 and the other rules which develop said regime.

## TRANSITIONAL PARAGRAPH 5

In accordance with the provisions of Article 140 of law 100 of 1993 and of Decree 2090 of 2003, the high risk regime contemplated by said decree shall apply to the members of the National Prison and Penitentiary Guards Association, starting with the entry into force of the latter. To those who join at a later date the regime that had been in force previously for these people in view of the risks connected to their work shall apply, i.e. the provisions contained to this effect in law 32 of 1986, under which the corresponding contributions must have been paid.

## TRANSITIONAL PARAGRAPH 6

Persons who receive a pension equal to or lower than three (3) monthly legal minimum wages or, if the pension comes into existence before July 31, 2011, who obtain fourteen (14) monthly pension payments per year are excepted from the provisions of section 8 of the present Article.

## ARTICLE 49

Public health and environmental protection are public services for which the State is responsible. All individuals are guaranteed access to services that promote, protect, and restore health.

It is the responsibility of the State to organize, direct, and regulate the provision of health services to the inhabitants and of environment protection in accordance with the principles of efficiency, universality, and solidarity; in addition, to establish policies for the provision of health services by private entities and to

exercise oversight and control over them; and to establish the competences of the nation, territorial entities, and individuals, and to determine the subsidies to their tasks in the terms and conditions established by statute.

Health services shall be organized in a decentralized manner, according to care levels and with the participation of the community.

An Act shall define the terms under which basic care for all inhabitants shall be free of charge and mandatory.

Every individual has the right to have access to the integral care of his/her health and that of his/her community.

The possession and the consumption of narcotic and psychoactive drugs is prohibited, except for medical prescription. For the goals of prevention and rehabilitation an Act shall establish administrative measures and treatments of a pedagogic, prophylactic and therapeutical character for persons consuming these substances. The application of these measures and treatments requires the informed consent of the addict.

In addition, the State shall give special attention to the dependent sick or addict individual and his/her family in order to strengthen it in respect of values and principles which contribute to the prevention of behaviour affecting the comprehensive care for the health of the persons concerned and, by extension, of the community, and shall develop in a permanent manner campaigns for the prevention of consumption of drugs and narcotic substances and in favor of the rehabilitation of addicts.

## **ARTICLE 50**

Any child under a year old who may not be covered by any type of protection or Social Security shall be entitled to receive free care in all health entities that receive state subsidies. An Act shall regulate the matter.

## **ARTICLE 51**

All Colombian citizens are entitled to live in dignity. The State shall determine the conditions necessary to give effect to this right and shall promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs.

## **ARTICLE 52**

The practice of sports, its recreational, competitive and autochthonous manifestations have the function of fully developing the human personality, and to preserve and promote better health in human beings.

Sports and recreation are part of education and constitute public social expenditure.

The right of all persons to recreation, the practice of sports and the enjoyment of their free time are recognized.

The State shall foster these activities and shall inspect, look after and control sports and recreational organizations, whose structure and property must be democratic.

## ARTICLE 53

The Congress shall issue a labor statute. The appropriate law shall take into account at least the following minimal fundamental principles:

Equality of opportunity for workers; minimum essential and flexible remuneration proportional to the amount and quality of work; stability in employment; irrevocability of minimum benefits established in labor regulations; options to negotiate about and reconcile uncertain and arguable rights; a situation more favorable to the worker in case of doubt in the application and interpretation of the formal bases of the law; the primacy of facts over established formalities in issues of labor relations; guarantees to social security, training, instruction, and necessary rest; special protection of women, mothers, and minor-age workers.

The State guarantees the right of suitable payment and the periodic adjustment of legal retirement benefits.

International labor agreements duly ratified are part of domestic legislation.

Statute, contracts, agreements, and labor settlements may not infringe on the freedom, human dignity, or rights of workers.

## ARTICLE 54

It is the obligation of the State and employers to offer training and professional and technical skills to whoever needs them. The state must promote the employment of individuals of working age and guarantee to the handicapped the right to employment appropriate to their physical condition.

## ARTICLE 55

The right of collective bargaining to regulate labor relations, with the exceptions provided for by statute, is guaranteed.

It is the duty of the State to promote agreement and other measures for the peaceful solution of collective labor conflicts.

## ARTICLE 56

The right to strike is guaranteed, except in the case of essential public services defined by the legislature.

An Act shall regulate this right.

A permanent commission composed of the government, the representatives of employers, and of workers shall promote sound labor relations, contribute to the settlement of collective labor disputes, and coordinate wage and labor policies. An Act shall regulate their makeup and functioning.

## ARTICLE 57

An Act may establish the incentives and means so that workers may participate in the management of enterprises.

## ARTICLE 58

Private property and the other rights acquired in accordance with civil laws are guaranteed and may neither be disregarded nor infringed by subsequent laws. When in the application of a law enacted for reasons of public utility or social interest a conflict between the rights of individuals and the interests recognized by the law arises, the private interest shall yield to the public or social interest.

Property has a social dimension which implies obligations. As such, an ecological dimension is inherent to it.

The State shall protect and promote associative and joint forms of property.

Expropriation may be carried out for reasons of public utility or social interest defined by the legislature, subject to a judicial decision and prior compensation. The compensation shall be determined by taking into account the interests of the community and of the individual concerned. In the cases determined by the legislator, the expropriation may take place by administrative action, subject to subsequent litigation before the administrative law courts, including with regard to the price.

## **ARTICLE 59**

In case of war and exclusively to meet its requirements, the need for expropriation may be decreed by the national government without prior indemnification.

In the said case, real estate alone may be occupied temporarily to meet the requirements of war or to assign facilities to it.

The state shall always be responsible for expropriations effected by the government on its own or through its agents.

## **ARTICLE 60**

The state shall promote access to property in accordance with the law.

When the State sells its interest in an enterprise, it shall take measures promoting the democratization of the ownership of its shares and shall offer its workers or the collective and workers' organizations special terms to make it possible for them to accede to the said proprietary shares. An Act shall regulate the matter.

## **ARTICLE 61**

The State shall protect intellectual property for the period and using the means established by statute.

## **ARTICLE 62**

The fate of "intervivos" or testamentary donations, done in accordance with the Act on general interest purposes, may not be altered or modified by the legislature, unless the purpose of the donation should no longer be applicable. In this case, the Act shall assign the property in question to a similar purpose.

The government shall oversee the management and investment of such donations.

## **ARTICLE 63**

Property in public use, natural parks, communal lands of ethnic groups, security zones, the archaeological resources of the nation, and other property determined by statute are inalienable, imprescriptible, and not

subject to seizure.

## ARTICLE 64

It is the duty of the State to promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and management assistance with the purpose of improving the incomes and quality of life of the peasants.

## ARTICLE 65

The production of food crops shall benefit from the special protection of the State. For that purpose, priority shall be given to the integral development of agricultural, animal husbandry, fishing, forestry, and agroindustrial activities as well as to the building of physical infrastructural projects and to land improvement.

Similarly, the state shall promote research and the transfer of technology for the production of food crops and primary resources of agricultural origin with the purpose of increasing productivity.

## ARTICLE 66

The provisions enacted in the field of private or public credit may regulate the special conditions of agricultural credit, taking into account the cycles of harvests and prices as well as the risks inherent in farming activities and environmental disasters.

## ARTICLE 67

Education is an individual right and a public service that has a social function. Through education individuals seek access to knowledge, science, technology, and the other benefits and values of knowledge.

Education shall train the Colombian when it comes to respect for human rights, peace, and democracy, and in the practice of work and recreation for cultural, scientific, and technological improvement and for the protection of the environment. The state, society, and the family are responsible for education, which shall be mandatory between the ages of five and fifteen years and which shall minimally include one year of preschool instruction and nine years of basic instruction.

Education shall be free of charge in the State institutions, without prejudice to those who can afford to defray the costs.

It is the responsibility of the State to perform the final inspection and supervision of education in order to oversee its quality, for fulfilling its purposes, and for the improved moral, intellectual, and physical training of those being educated; to guarantee an adequate supply of the service, and to guarantee for minors the conditions necessary for their access to and retention in the educational system.

The nation and the territorial entities shall participate in the management, financing, and administration of state educational services within the limits provided for in the Constitution and statute.

## ARTICLE 68

Individuals may create educational institutions. An Act shall establish the conditions for their creation and management.

The educational community shall participate in managing educational institutions.

Education shall be in the care of individuals of recognized ethical and pedagogical fitness. An Act guarantees the professionalization and dignity of the teaching profession.

Parents have the right to select the type of education for their minor children. In state institutions, no individual may be obliged to receive religious instruction.

The members of ethnic groups shall have the right to education that respects and develops their cultural identity.

The eradication of illiteracy and the education of individuals with physical or mental limitations or with exceptional capabilities are special obligations of the State.

## **ARTICLE 69**

The autonomy of universities is guaranteed. The universities shall be able to administer and govern themselves through their own by-laws, in accordance with the applicable statute.

An Act shall establish a special regime for state universities.

The state shall strengthen scientific research in the public and private universities and shall offer special conditions for their development.

The state shall assist those financial arrangements that make possible the access of all individuals qualified for advanced education.

## **ARTICLE 70**

The State has the obligation to promote and foster access to the culture of all Colombians equally by means of permanent education and scientific, technical, artistic, and professional instruction at all stages of the process of creating the national identity.

Culture in its diverse manifestations is the basis of nationality. The State recognizes the equality and dignity of all those who live together in the country. The state shall promote research, science, development, and the diffusion of the nation's cultural values.

## **ARTICLE 71**

The search for knowledge and artistic expression are free to be pursued. Plans of economic and social development shall include the promotion of the sciences and of culture in general. The state shall create incentives for individuals and institutions who develop and foster science and technology and other cultural manifestations and shall offer special incentives to individuals and institutions who pursue these activities.

## **ARTICLE 72**

The nation's cultural heritage is under the protection of the State. The archaeological heritage and other

cultural resources that shaped the national identity belong to the nation and are inalienable, not subject to seizure, and are imprescriptible. An Act shall establish the mechanisms to restore control over them when they are in the hands of individuals and shall regulate the special rights that ethnic groups may enjoy when they occupy territories of archaeological wealth.

## ARTICLE 73

Journalistic activity is protected to guarantee its freedom and professional independence.

## ARTICLE 74

Every person has the right of access to public documents except in cases established by statute.

Professional secrets are inviolable.

## ARTICLE 75

The electromagnetic spectrum is an inalienable and imprescriptible public resource subject to the management and control of the State. Equality of opportunity is guaranteed in the access to its use within the limits determined by statute.

To guarantee genuine pluralism and competence, the state shall intervene through the mandate of an Act to avoid monopolistic practices in the use of the electromagnetic spectrum.

## ARTICLE 76

[Abolished by Legislative Act No. 2 of 2011]

## ARTICLE 77

The Congress of the Republic shall adopt an Act which determines the policy on matters of television.

## CHAPTER III. ON COLLECTIVE RIGHTS AND THE ENVIRONMENT

### ARTICLE 78

An Act shall regulate the control of the quality of goods and services offered and provided to the community as well as the information that must be made available to the public in their marketing.

Those who in the production and marketing of goods and services may jeopardize the health, safety, and adequate supply to consumers and users shall be held responsible in accordance with the relevant statute.

The state shall guarantee the participation of the organizations of consumers and users in the study of the provisions that concern them. In order to enjoy this right the organizations must be of a representative nature and observe internal democratic procedures.

### ARTICLE 79

Every individual has the right to enjoy a healthy environment. An Act shall guarantee the community's participation in the decisions that may affect it.

It is the duty of the State to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance, and to foster education for the achievement of these ends.

## ARTICLE 80

The state shall plan the handling and use of natural resources in order to guarantee their sustainable development, conservation, restoration, or replacement.

Additionally, it shall caution and control the factors of environmental deterioration, impose legal sanctions, and demand the repair of any damage caused.

In the same way, it shall cooperate with other nations in the protection of the ecosystems located in the border areas.

## ARTICLE 81

The manufacture, importation, possession, and use of chemical, biological, or nuclear weapons are prohibited as is the introduction into the national territory of nuclear and toxic wastes.

The state shall regulate the entry into the country and the exit from it of genetic resources and their use, in accordance with the national interest.

## ARTICLE 82

It is the duty of the State to watch over the protection of the integrity of public space and for its assignment to common use, which has priority over the individual interest.

Public entities shall participate in the profits generated by their urban planning activities and shall regulate the use of the soil and the urban air space in order to protect the common interest.

# CHAPTER IV. ON THE PROTECTION AND APPLICATION OF RIGHTS

## ARTICLE 83

The activities of individuals and of the public authorities shall conform to the postulates of good faith which shall be presumed in all the measures that the former promote vis-à-vis the latter.

## ARTICLE 84

When a right or an activity has been regulated in a general way, the public authorities may not establish or demand permits, licenses, or impose additional conditions for their exercise.

## ARTICLE 85

The rights mentioned in Articles 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 33, 34, 37 and 40 are applicable immediately.

## ARTICLE 86

Every individual may claim legal protection before the judge, at any time or place, through a preferential and

summary proceeding, for himself/herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears the latter may be jeopardized or threatened by the action or omission of any public authority.

The protection shall consist of an order so that whoever solicits such protection may receive it by a judge enjoining others to act or refrain from acting. The order, which shall be implemented immediately, may be challenged before the competent judge, and in any case the latter may send it to the Constitutional Court for possible revision.

This action shall be followed only when the affected party does not have access to other means of judicial defense, except when the former is used as a temporary device to avoid irreversible harm. In no case can more than 10 days elapse between the request for protection and its resolution.

An Act shall establish the cases in which the order of protection should apply to individuals entrusted with providing a public service or whose conduct may seriously and directly affect the collective interest or in respect of whom the applicant may find himself/herself in a state of subordination or vulnerability.

## **ARTICLE 87**

Any individual may appear before the legal authority to effect the application of a law or administrative act. In case of a successful action, the sentence shall order the delinquent authority to perform its mandated duty.

## **ARTICLE 88**

An Act shall regulate popular actions for the protection of collective rights and interests related to the homeland, space, public safety and health, administrative morality, the environment, free economic competition, and other areas of similar nature defined in it.

It shall also regulate the actions stemming from the harm caused to a large number of individuals, without barring appropriate individual action.

In the same way, it shall define cases of responsibility of a civil nature for the damage caused to collective rights and interests.

## **ARTICLE 89**

In addition to what is mentioned in the previous articles, an Act shall determine the other resources, actions, and procedures necessary to protect, through the integrity of the legal order, the individual rights of groups or collectives against the acts or omissions of public authorities.

## **ARTICLE 90**

The state shall answer materially for the extralegal damages for which it is responsible, caused by the acts or omissions of public authorities.

In the event that the State is ordered to make compensation for some damage or another, which may have been the consequence of the fraudulent or seriously criminal behavior of one of its agents, the former shall claim restitution from the latter.

## ARTICLE 91

In the case of a manifest violation of a constitutional precept which causes harm to another person, the fact that he/she acted on the order of a superior does not absolve the executing state agent from responsibility.

The military in active service are exempt from this provision. As far as they are concerned, responsibility shall fall exclusively on the superior officer who gives the order.

## ARTICLE 92

Every person or legal entity may solicit from the competent authority the application of penal or disciplinary sanctions stemming from the behavior of public authorities.

## ARTICLE 93

International treaties and agreements ratified by Congress that recognize human rights and prohibit their limitation in states of emergency have domestic priority.

The rights and duties mentioned in this Charter shall be interpreted in accordance with international treaties on human rights ratified by Colombia.

The Colombian State may recognize the jurisdiction of the International Criminal Court in terms of the Rome Statute adopted on July 17, 1998 by the United Nations Plenipotentiary's Conference and, consequently, ratify said treaty in accordance with the procedure established by this Constitution.

The admission of a different treatment on substantial matters by the Rome Statute with respect to the guarantees contained in this Constitution shall produce effects only within the scope of application of the latter.

## ARTICLE 94

The enunciation of the rights and guarantees contained in the Constitution and in international agreements in effect should not be understood as a negation of others which, being inherent to the human being, are not expressly mentioned in them.

## CHAPTER V. ON DUTIES AND OBLIGATIONS

### ARTICLE 95

The quality of being Colombian enhances all members of the national community. Everyone has the duty to exalt and dignify it. The exercise of the rights and liberties recognized in this Constitution implies responsibilities.

Every individual is obliged to obey the Constitution and the laws.

The following are duties of the individual and of the citizen:

1. To respect others' rights and not to abuse one's own;
2. To strive in accordance with the principle of social solidarity, responding with humanitarian

actions in the face of situations that endanger the life or the health of individuals;

3. To respect and support the democratic authorities legitimately constituted to maintain national independence and integrity;
4. To defend and propagate human rights as the foundation of peaceful coexistence;
5. To participate in the country's political, civic, and community life;
6. To strive toward achieving and maintaining peace;
7. To collaborate toward the good functioning of the administration of justice;
8. To protect the country's cultural and natural resources and to keep watch that a healthy environment is being preserved;
9. To contribute to the financing of the State's expenditures and investments within the principles of justice and equity.

## **TITLE III. ON THE POPULATION AND THE TERRITORY**

### **CHAPTER I. ON NATIONALITY**

#### **ARTICLE 96**

The following are Colombian nationals:

1. By birth:
  - a. Colombian natives, upon one of two conditions: that the father or the mother have been Colombian natives or nationals or that, being children of aliens, either parent was domiciled in the Republic at the time of birth; and,
  - b. The children of a Colombian father or mother born abroad who have later established their domicile in the Colombian territory or registered in a consular office of the Republic.
2. By adoption:
  - a. Aliens who solicit and obtain a naturalization card, in accordance with the applicable statute, which shall establish the cases in which Colombian nationality is lost through adoption;
  - b. People born in Latin America or the Caribbean who are domiciled in Colombia and who, with the government's authorization and in accordance with the relevant statute and the principle of reciprocity, request that they be registered as Colombians in the municipality where they reside; and,
  - c. Members of the indigenous peoples straddling border areas, in application of the principle of reciprocity according to public international treaties.

No Colombian by birth may be stripped of his/her nationality. Colombian nationality is not lost by virtue of

acquiring another nationality. Nationals by adoption shall not be obligated to renounce their nationality of origin or adoption.

Whoever has renounced his/her Colombian nationality may recover it in accordance with the applicable statute.

## ARTICLE 97

Even a Colombian who has renounced his/her nationality shall be tried and sentenced as a traitor if he/she acts in opposition to the country's interests when Colombia is involved in a foreign war.

Colombian nationals by adoption and aliens domiciled in Colombia cannot be obligated to take up arms against their country of origin; neither may Colombians who have been naturalized abroad take up arms against the country of their new nationality.

## CHAPTER II. ON CITIZENSHIP

### ARTICLE 98

Citizenship is effectively lost by the renunciation of nationality, and its exercise may be suspended by virtue of a judicial decision in the cases determined by statute.

Those whose citizenship has been suspended may request its restoration.

### PARAGRAPH

Unless an Act fixes another age, the exercise of citizenship starts at the age of 18.

### ARTICLE 99

To be a citizen and to exercise this citizenship is a prior and indispensable condition for the exercise of the right to vote, to be elected, and to hold public office involving authority or jurisdiction.

## CHAPTER III. ON ALIENS

### ARTICLE 100

Aliens in Colombia shall enjoy the same civil rights as Colombian citizens. Nevertheless, for reasons of public order, an Act may impose special conditions on or nullify the exercise of specific civil rights by aliens.

Similarly, aliens shall enjoy, in the territory of the Republic, guarantees granted to citizens, except for the limitations established by the Constitution or statute.

Political rights are reserved to citizens, but an Act may grant to aliens resident in Colombia the right to vote in elections and in popular consultations at the municipal or district level.

## CHAPTER IV. ON TERRITORY

### ARTICLE 101

The borders of Colombia are those established in international treaties approved by Congress, duly ratified

by the President of the Republic, and those defined by arbitration awards in which Colombia takes part.

The borders identified in the form provided for by this Constitution may be modified only by treaties approved by Congress and duly ratified by the President of the Republic.

Besides the continental territory, the archipelago of San Andrés, Providencia, Santa Catalina, and Malpelo are part of Colombia in addition to the islands, islets, keys, headlands, and sand banks that belong to it.

Also part of Colombia is the subsoil, the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the airspace, the segment of the geostationary orbit, the electromagnetic spectrum and the space where it applies, in accordance with international law or the laws of Colombia in the absence of international regulations.

## **ARTICLE 102**

The territory, together with the public resources that are part of it, belong to the nation.

# **TITLE IV. ON DEMOCRATIC PARTICIPATION AND POLITICAL PARTIES**

## **CHAPTER I. ON THE FORMS OF DEMOCRATIC PARTICIPATION**

### **ARTICLE 103**

The following are the people's means of participating in the exercise of their sovereignty: the vote, the plebiscite, the referendum, the popular consultation, the open town council meeting, the legislative initiative, and the recall of officials. An Act shall regulate these matters. The State shall contribute to the organization, promotion, and guidance of professional, civic, trade union, community, youth, charitable, or nongovernmental public-purpose associations, without prejudicing their authority so that they may constitute democratic means of representation in the various organs of participation, agreement, control, and oversight of the public actions that they undertake.

### **ARTICLE 104**

The President of the Republic, with the approval of the ministers and the prior approval of the Senate of the Republic, may consult the people on matters of great national importance. The people's decision shall be binding. Such consultation may not coincide with another election.

### **ARTICLE 105**

Upon the fulfillment of the requirements and formalities prescribed by the general statute of the territorial organization and in the cases determined by the latter, the governors and mayors as the case may be shall be entitled to hold popular consultations to decide issues falling under the jurisdiction of their respective department or municipality.

### **ARTICLE 106**

Upon the fulfillment of the requirements that an Act prescribes, the people of the territorial entities may present bills concerning issues falling under the jurisdiction of the respective public entity, which is obliged to implement them; decide on questions/issues (disposiciones) of interest to the community on the initiative

of the authority or corresponding entity or by not less of ten percent (10%) of the citizens enrolled in the respective electoral roll; and elect representatives to meetings of the public service entities within the respective territorial entity.

## CHAPTER II. ON POLITICAL PARTIES AND POLITICAL MOVEMENTS

### ARTICLE 107

All citizens are guaranteed the right to establish, organize, and promote political parties and movements and the freedom to join them or to withdraw from them.

In no case shall citizens be allowed to belong simultaneously to more than one political party or movement with legal personality.

The political parties and movements shall organize themselves democratically and shall have as their guiding principles transparency, objectivity, morality, the equality of sexes, and the duty to present and disseminate their political programs.

In order to take decisions or to select their own candidates or coalition candidates they may hold popular, internal or inter-party ballots which may or may not coincide with elections to public bodies, in accordance with the provisions of their by-laws and the statute.

In the case of popular ballots the rules relating to campaign financing and advertising and access to the State media which govern the ordinary elections shall apply. Those who participate in the ballot of a party or political movement or in inter-party elections may not register for another one in the same electoral process. The result of the ballots shall be binding.

The leadership of political parties and movements must promote processes of internal democratization and the strengthening of the principle of formation of factions in public bodies (*régimen de bancadas*).

The political parties or movements must assume responsibility for any violation or contravention of the rules which govern their organization, functioning and funding and also for promoting candidates elected to posts or Public Bodies by popular election who have been or were sentenced during the exercise of the functions for which they have been promoted for crimes concerning links to illegal armed groups and drug trafficking activities, crimes against the system of democratic participation or crimes against humanity by a sentence which is enforceable in Colombia or abroad.

The political parties and movements must also assume responsibility for promoting candidates for non-elective offices or Public Bodies if they have been or were sentenced during the exercise of the functions for which they were a candidate for crimes concerning links to illegal armed groups and drug-trafficking activities committed prior to the backlog of the party or movement by a sentence which is enforceable in Colombia or abroad.

The sanctions may include fines, the repayment of the public funds obtained based on the share of the votes received and even the loss of legal personality. When the sentence concerns persons who have been elected to posts with a single office-holder (cargo uninominal) the party or movement which has promoted the sentenced person shall not present candidates for the subsequent elections in that constituency. If the elections are less than 18 months away, they may not present a list of (three) candidates, so that the

nominating body is free to choose the replacement.

The party leadership which is shown to have acted without the necessary care and diligence in the exercise of the rights and duties which are conferred upon them by virtue of the legal personality of the party shall also be subject to sanctions determined by statute.

Social organizations are also guaranteed the right to demonstrate and to participate in political events.

A member of a Public Body who decides to stand for another party in the next election must renounce his/her seat at least twelve (12) months prior to the opening day of the registration period.

## **TRANSITIONAL PARAGRAPH 1**

Without prejudice to the provisions of Article 34, the members of popularly elected Collegiate Bodies shall exceptionally be authorized to register with a party different from that which has promoted them within a period of two months following the entry into force of this Legislative Act, without having to renounce their seat or infringing the ban on double membership.

## **TRANSITIONAL PARAGRAPH 2**

The National Government or the members of Congress shall present a draft status Act which implements this Article before August 10, 2009.

The bill shall be accompanied by a declaration of urgency and shall be discussed in a joint session of Congress, and may be the object of a declaration insisting on the urgency of its adoption if necessary. The delays for the prior review of enforceability of the draft status Act by the Constitutional Court shall be reduced by half.

## **ARTICLE 108**

The National Election Commission shall grant legal personality to political parties and movements and relevant groups of citizens. They may acquire it by obtaining no less than three percent (3%) of the votes validly cast in the national territory in the elections of the House of Representatives or Senate. They shall lose it if they do not obtain this percentage in the elections to the same Public Bodies. This does not apply to the special regime enacted by statute for the minority constituencies, in which it shall suffice to have obtained representation in Congress.

Political parties and movements shall also lose their legal personality if they do hold at least every two (2) years a party congress which allows their members to influence the most important decisions on their political organization.

The political parties and movements with recognized legal personality may register their candidates in the elections. To this effect, the said registration must be guaranteed by the party's or political movement's respective legal representative or by the person delegated by the latter.

Social movements and relevant groups of citizens may also register candidates.

Each registration of a disqualified candidate shall be cancelled by the National Election Commission in accordance with the requirements of due process.

The by-laws of political parties and movements shall regulate the issues pertaining to their internal disciplinary regime. The members of the Public Bodies elected for the same party or political movement or citizen movement shall act within these bodies as a faction (bancada) in the terms defined by statute and in accordance with the decisions democratically adopted by them.

The internal by-laws of the political parties and movements shall determine the matters of conscience to which this regime does not apply and may establish sanctions for the disregard of their guidelines by members of the parliamentary groups which shall comprise various levels up to the expulsion from the party and may include the loss of voting rights as member of Congress, Deputy, Councillor or alderman/alderwoman (edil) for the remainder of the term for which the person concerned was elected.

## TRANSITIONAL PARAGRAPH 1

For the elections to Congress which take place in 2010, the percentage to which the first section of this Article refers shall be two percent (2%); the requirement of party membership one year prior to registration mentioned in section 8 shall not apply.

## ARTICLE 109

The State shall contribute to the financing of political parties and movements with legal personality, in accordance with the relevant statute.

The election campaigns conducted by candidates put forward by parties and movements with legal personality and by relevant citizen groups which put candidates on the ballot shall partly be funded with state resources.

An Act shall determine the percentage of votes necessary to qualify for the right to such funding.

The expenses which parties, movements, relevant citizen groups or candidates may incur in election campaigns, as well as the maximum amount of private contributions may also be limited in accordance with the applicable statute.

A percentage of this funding shall be directed to parties and movements with effective legal personality and relevant citizen groups which put forward candidates prior to the election or ballot in accordance with the conditions and guarantees determined by statute and with the authorization of the National Election Commission.

Campaigns for the election of the President of the Republic shall have access to a maximum of advertising space and institutional space on radio and television paid for by the State, for candidates of those parties, movements and relevant citizen groups whose electoral bids comply with the requirements of seriousness determined by the relevant Act for such purposes.

In the elections following the entry into force of this Legislative Act, violations of the campaign spending limits shall, if duly proved, be sanctioned with the loss of the mandate or public office. An Act shall determine the other effects resulting from the violation of this provision.

Parties, movements and candidates shall publicly account for the amount, the sources and the use of their

funds.

It is prohibited for political parties and movements and relevant citizen groups to receive funding for electoral campaigns from foreign individuals or corporations. No type of private funding may have objectives affecting the democratic or public order.

## PARAGRAPH

The annual funding of political parties and movements with legal personality shall rise, at a minimum, to two point seven times of the amount contributed in the year 2003, maintaining its value over time.

The amount of campaign funding of political parties and movements with legal personality shall be, at the least, three times that contributed in the 1999-2002 period in constant pesos of 2003. This includes the transportation costs on election day and the cost of postal franchises currently funded.

Ballots of parties and movements which opt for this mechanism shall receive funding on the basis of the shares of the votes obtained, maintaining for such purpose the value in constant pesos in force at the time of approval of the present Legislative Act.

## TRANSITIONAL PARAGRAPH

The National Government or the members of Congress shall present a draft status Act which implements this Article before August 10, 2009.

The bill shall be accompanied by a declaration of urgency and shall be discussed in a joint session of Congress, and may be the object of a declaration insisting on the urgency of its adoption if necessary. The delays for the prior review of enforceability of the draft status Act by the Constitutional Court shall be reduced by half.

## ARTICLE 110

Those fulfilling public functions are prohibited from making any contribution whatsoever to the parties, movements, or candidates or to induce others to do so, with the exceptions established by statute.

Noncompliance with any of these prohibitions shall be cause for dismissal from office or loss of mandate.

## ARTICLE 111

The political parties and movements having legal capacity have the right to use media of communication making use of the electromagnetic spectrum at all times in accordance with the relevant statute. The latter shall also determine the conditions and the form in which the duly registered parties, political movements and candidates have access to said media.

## CHAPTER III. ON THE STATUS OF THE OPPOSITION

### ARTICLE 112

The political parties and movements with legal personality which declare themselves to be in opposition to the government may freely formulate their critical stance towards the latter and plan and develop alternative policies. For these purposes, they enjoy the following rights: access to official information and

documentation, with the constitutional and legal restrictions; the use of the means of social communication of the State or of those that use the electromagnetic spectrum, in accordance with the representation obtained in the immediately preceding Congressional elections; and the right to reply in the same media.

Minority parties and movements with legal personality shall have the right to participate in the executive committees of the collegiate bodies, in accordance with their representation in them.

A statutory law shall regulate the matter in its entirety.

## **TITLE V. ON THE ORGANIZATION OF THE STATE**

### **CHAPTER I. ON THE STRUCTURE OF THE STATE**

#### **ARTICLE 113**

The branches of government are the legislative, the executive, and the judiciary.

In addition to the organs that constitute them, there are others, autonomous and independent, for the execution of other functions of the State. The various organs of the State have separate functions, but cooperate harmoniously for the realization of their goals.

#### **ARTICLE 114**

It is the responsibility of the Congress of the Republic to amend the Constitution, pass laws, and exercise political control over the government and the public administration.

The Congress of the Republic shall be composed of the Senate and the House of Representatives.

#### **ARTICLE 115**

The President of the Republic is the Chief of State, head of government, and supreme administrative authority.

The national government is composed of the President of the Republic, the Cabinet ministers, and the directors of administrative departments. The President and the minister or director of the appropriate department represent the government in any particular issue.

No act of the President, except the appointment and dismissal of ministers and directors of administrative departments and those decreed in his/her capacity as Head of State and supreme administrative authority, shall have any value or force whatsoever if it is not countersigned and communicated by the minister of the respective office or by the director of the appropriate administrative department who, by virtue thereof, become responsible for same.

The governorates and mayoralties as well as the superintendencies [superintendencias], public establishments, and industrial or commercial enterprises of the State are part of the executive branch.

#### **ARTICLE 116**

The Constitutional Court, the Supreme Court of Justice, the Council of State, the Supreme Council of the

Judiciary, the Office of Attorney General of the Nation, the tribunals and the judges administer justice. So does the Military Criminal Justice System.

Congress shall exercise specific judicial functions.

Exceptionally, an Act may assign jurisdictional functions in specific subject areas to specified administrative authorities. However, they shall not be allowed to hold summary proceedings or to judge crimes.

Individuals may be entrusted temporarily with the function of administering justice as jurors in criminal proceedings, as mediators or as arbitrators authorized by the parties to issue verdicts in law or in equity in the terms defined by an Act.

A Court of Criminal Guarantees with national and criminal jurisdiction shall be created. It shall have the following powers:

1. To preferably, serve as judge by guaranteeing the legal control of any investigation or criminal proceedings against the armed forces members.
2. To preferably, control criminal indictment against the armed forces members, to ensure the fulfillment of the material and formal conditions to start the oral trial.
3. To permanently settle jurisdiction conflicts between ordinary courts and the Military Criminal Jurisdiction.
4. Other functions assigned by statute.

The Court of Criminal Guarantees shall be composed of eight (8) judges, four (4) of whom shall be members of the security forces in retreat. Its members shall be elected by the Government Chamber of the Supreme Court of Justice, the Government Chamber of the Council of State, and the Constitutional Court in plenary. Retired members of the armed forces shall be elected from four (4) lists of three nominations sent by the President.

A statute shall establish the requirements to be a magistrate, the ineligibility and incompatibility regime, the candidate's nomination mechanism, the selection procedure and any other issue concerning organization and functions of the Court of Criminal Guarantees.

## TRANSITIONAL PARAGRAPH

The Court of Criminal Guarantees shall begin to perform the functions assigned in this article once enacted the required statute.

## ARTICLE 117

The Public Ministry and the Office of the Controller General of the Republic are control organs.

## ARTICLE 118

The Public Ministry shall be made up of the General Prosecutor of the Nation, the Ombudsman, the assigned public prosecutors, and the agents of the Public Ministry before the legal authorities, as well as by municipal representatives and other official determined by an Act. It is the responsibility of the Public

Ministry to defend and promote human rights, to protect the public interest, and to oversee the official conduct of those who perform public functions.

## ARTICLE 119

The Office of the Controller General of the Republic has the duty to oversee fiscal management and to control administrative performance.

## ARTICLE 120

The electoral organization consists of the National Election Commission, the Office of the National Registrar of Civil Status, and of the other organs established by statute. It is responsible for the organization of elections, their direction and oversight, as well as matters relating to personal identification.

## ARTICLE 121

No authority of the State may exercise functions different from those assigned to it by the Constitution and statute.

# CHAPTER II. ON THE PUBLIC SERVICE

## ARTICLE 122

Every public occupation shall have its functions detailed by statute or regulation; in order to fill the posts with remuneration it is necessary that they figure in the respective employment plan and that the salaries are provided in the corresponding budget.

No public servant shall accede to his/her post without swearing an oath to defend and to abide by the Constitution and to fulfil the duties incumbent on him or her.

Before taking office, on resigning from it or when the competent authority requests it, the public servant shall declare, under oath, the amount of his/her income and earnings.

This declaration may only be used for the purposes of applying the rules on civil servants.

The other sanctions established by statute notwithstanding, persons who have been sentenced at any time for having committed crimes involving the State treasure or who have been sentenced for crimes related to membership in or promotion or funding of illegal armed groups, crimes against humanity or drug-trafficking in Colombia or abroad may not be registered as candidates for popularly elected office, nor be elected, nor be designated as civil servants; nor may they, neither personally nor through intermediary, conclude contracts with the State.

The same applies to anybody who, as a civil servant, by his/her intentional or gravely negligent conduct which has been qualified as such by enforceable judicial sentence, has caused the State to be sentenced to monetary compensation, unless he/she compensates for the amount of the damage by using his/her personal property.

## ARTICLE 123

The members of public entities, employees, and workers of the State and their territorially decentralized branches and services are civil servants.

Civil servants are at the service of the State and of the community; they shall perform their function in the form prescribed by the Constitution, statutes, and regulations.

An Act shall determine the regime applicable to individuals who fulfill public functions temporarily and shall regulate their exercise.

## ARTICLE 124

An Act shall determine the responsibility of civil servants and the manner to make it effective.

## ARTICLE 125

The employments in the State institutions and bodies are career positions. Excepted are those subject to popular election, to free appointment and dismissal, those of official workers and others determined by statute.

The officials whose system of appointment has not been determined by the Constitution or statute shall be appointed on the basis of a public competitive examination.

Entry to career positions and promotion in same shall be made after fulfilling the requirements and conditions determined by an Act to ascertain the merits and qualifications of the applicants.

Dismissal shall occur for unsatisfactory performance on the job, for violation of the disciplinary code, and for other causes prescribed in the Constitution or statute.

In no case may the political affiliation of citizens determine their appointment to a career position, their promotion, or their termination.

## PARAGRAPH

The terms of office established in the Political Constitution or in an Act for positions obtained pursuant to elections have an institutional character. Those appointed or elected to fill such positions in replacement of the office holder who is permanently prevented from performing the duties of office shall do so for the remaining period for which the latter was elected.

## ARTICLE 126

Civil servants may not appoint as employees individuals to whom they are kin to the fourth level of consanguinity, second level of affinity [by marriage] or first civil level, or with whom they are bound through marriage or permanent union. Neither may they designate individuals involved through the same ties with competent civil servants to intervene in their designation.

Excepted from what is prescribed in this article are those appointments that are made in application of existing regulations relating to entry or promotion through merit.

## ARTICLE 127

Civil servants may not, personally or through an intermediary, or in representation of another person, conclude any contract with public entities or private individuals who manage or administer public funds, save when legal exceptions apply.

State employees working in judicial, electoral and control organs or security organisms are prohibited to take part in the activities of parties and movements and in political controversies, without prejudice to the free exercise of the right to vote. The members of the public force are subject to the limitations provided by Article 219 of the Constitution.

Employees not covered by this prohibition may participate in said activities and controversies under the conditions defined by an Act. Using employment to put pressure on citizens to back a cause or political campaign constitutes a misdemeanor.

When the President and the Vice President announce their candidacies, they may only take part in the election campaign from the moment of their registration. In any case such participation may not occur earlier than four months before the date of the first round of the presidential election, and extends until the date of the second round in case a second round takes place. The status Act (ley estatutaria) shall establish the terms and conditions in which, before this period, the President and the Vice President may take part in the democratic selection procedures of the candidates of the parties or political movements.

During the campaign, the President and the Vice President may not use property of the State or funds of the Public Treasury, other than those that are offered in equal conditions to all candidates. Excepted are those funds that are designed for the fulfillment of their official functions and their personal protection, in the terms provided for by statutory law.

## **ARTICLE 128**

No one may hold more than one public position simultaneously or receive more than one salary originating from the Public Treasury, or from enterprises or institutions in which the State is a majority owner, except in cases expressly determined by an Act.

By Public Treasury is meant that of the nation, that of the territorial entities, and that of the decentralized entities.

## **ARTICLE 129**

Civil servants shall not be entitled to accept positions, honors, or compensations from foreign governments or international organizations or enter into contracts with them without prior authorization from the government.

## **ARTICLE 130**

There shall be a National Public Service Commission responsible for the administration and oversight of the careers of civil servants, except for those in a special category.

## **ARTICLE 131**

An Act shall regulate the public service performed by notary publics and registrars, the definition of the

labor regime for their employees, and matters regarding levies as special taxes of notary publics, to be used for the administration of justice.

The appointment of notaries shall be effected by means of competitive examinations.

It is the responsibility of the Government to create, eliminate, and merge groups of notaries and registrars and to determine the number of notaries and registry offices.

## **TITLE VI. ON THE LEGISLATIVE BRANCH**

### **CHAPTER I. ON ITS COMPOSITION AND FUNCTIONS**

#### **ARTICLE 132**

Senators and representatives shall be elected for a period of four years beginning on July 20 following the election.

#### **ARTICLE 133**

Members of collegiate bodies which are directly elected represent the people and shall act in a manner consonant with justice and the common good. The vote of the members shall be by name and public, except in the cases determined by statute.

The elected member is politically responsible to society and to his/her voters for the execution of the obligations resulting from his/her mandate.

#### **ARTICLE 134**

The members of the popularly elected Public Bodies shall have no substitutes. They may only be replaced in the case of death, absolute physical incapacity of discharging their functions, annulment of their election, a motivated resignation which is accepted by the respective Body, disciplinary sanction consisting in the removal from office, criminal sentence or detention for crimes other than those related to membership in, promotion or funding of illegal armed groups, drug-trafficking, crimes against the system of democratic participation or against humanity, or when the member of a Public Body decides to stand for another party according to the provision in Transitional Paragraph 1 of Article 107 of the Political Constitution.

In these cases the office-holder shall be replaced by the non-elected candidate who, in the order of registration or received votes, follows him or her in descending order on the same electoral list.

As a consequence of the general rules established in the present Article, a member of a popularly elected public body shall not be replaced from the moment in which the arrest warrant is delivered to him or her within the framework of criminal proceedings for crimes related to membership in, promotion or funding of illegal armed groups, drug-trafficking or crimes against humanity in which he or she is formally involved. The judgment by which he/she is sentenced shall produce the effect of definitive loss of his/her seat for the party to which the member of the Public Body belongs.

There shall be no temporary absence, with the exception of women who stay away from due to maternity leave. The resignation of a member of a popularly elected body once he or she has been formally involved in

criminal proceedings for crimes committed in Colombia or abroad in relation to membership in, promotion or funding of illegal armed groups, drug-trafficking, or crimes against the system of democratic participation or against humanity, shall entail the loss of his/her status as member of Congress, deputy, councillor or alderman/alderwoman and shall not result in his/her replacement by the next candidate on the list. Temporary absence does not give rise to replacement.

When a situation occurs which implies that an elected member of a public body may not be replaced, the calculation of the quorum in that body shall be based on the total number of members of the body with the exception of those seats which are not subject to replacement.

If due to permanent absence which does not give rise to substitution the members of elected collegiate bodies for the same constituency are reduced to one half or less, the Government shall call elections to fill the vacancies, provided that the end of the electoral term is more than eighteen (18) months away.

## TRANSITIONAL PARAGRAPH

The replacement system established in the present Article shall apply to the judicial investigations which are initiated following the entry into force of this Legislative Act.

## ARTICLE 135

Each House shall have the following powers:

1. To elect its executive committees.
2. To elect its General Secretary for periods of two years starting from July 20 and who shall have the same qualifications as those required to be a member of the respective House.
3. To request from the government the information that the House may need, except for what is provided in section 2 of the Article that follows.
4. To determine the holding of sessions reserved on a priority basis to [address] the oral questions formulated by the congressmen addressed to the ministries and the answers of the latter. Regulations shall determine the subject matter.
5. To fill the positions established by statute for the execution of its functions.
6. To strive to obtain from the government the cooperation of the organs of the public administration for the best execution of its responsibilities.
7. To organize the internal maintenance of order.
8. To summon and require the ministers, permanent secretaries and heads of administrative departments to attend the sessions. The summons must be made not less than five days prior to a session and be formulated in the form of a written questionnaire. In case the ministers, permanent secretaries or heads of administrative departments do not attend, without an excuse accepted by the respective House, the latter may table a motion of censure. The ministers, permanent secretaries and heads of administrative departments must be heard at the session for which they were summoned, without prejudice to the possibility that the debate is continued at subsequent sessions following a decision of the respective House. The

discussion may not extend to other issues than those in the questionnaire and shall be placed at the top of the session's agenda.

9. To table a motion of censure with respect to ministers, permanent secretaries and heads of administrative departments for matters related to their official functions, or for ignoring the requests or summons of the Congress of the Republic. Should it come to a motion of censure, it must be tabled by at least one tenth of the members who make up the respective House. The vote shall take place between the third and 10th day following the end of the discussion, with a public hearing of the respective official. Approval of the motion shall require the affirmative vote of one half of the members plus one of the House which has tabled it. Once the motion is approved, the official shall be relieved of his/her functions. If it is voted down, no new motion of censure may be proposed on the same matter unless it is supported by new facts. The resignation of the official against which the censure motion has been tabled does not prevent the latter from being approved in accordance with the provisions of this Article. Once a decision has been taken on the censure motion by one House it bars a decision by the other House on the same matter.

## **ARTICLE 136**

It is prohibited to Congress and each of its Houses:

1. To intervene by means of resolutions or laws in matters which fall under the exclusive jurisdiction of other authorities.
2. To demand from the government information regarding instructions in diplomatic matters or negotiations of a classified nature.
3. To take votes of approval of official acts.
4. To decree on behalf of individuals or entities contributions, bonuses, subsidies, indemnifications, pensions, or other levies that are not made to satisfy credits or recognized claims in accordance with prior law.
5. To decree proscriptive or persecutory measures against individuals or legal entities.
6. Authorize trips abroad with funds from the Public Treasury, except in the execution of special missions approved by at least three-quarters of the membership of the respective House.

## **ARTICLE 137**

Any permanent committee may summon any individual or legal entity so that the latter may provide at a special session oral or written statements that may be mandated under oath on matters directly related to investigations pursued by the committee.

If anyone summoned should give an excuse for not attending and should the committee insist in summoning the said individual or others, the issue must be definitively resolved within 10 days.

The reluctance of those summoned to appear or to make the required statements shall be sanctioned by the committee with the penalty provided by the regulations in effect for cases of contempt of the authorities.

If in the course of the investigation there should be required for its conclusion, or for the prosecution of possible criminal infractions, the assistance of other authorities, the latter shall be requested to provide what is necessary.

## CHAPTER II. ON ITS SESSIONS AND ACTIVITIES

### ARTICLE 138

Of its own right, Congress shall meet in ordinary sessions during two periods a year, which shall constitute one legislative term. The first period of sessions shall begin on July 20 and conclude on December 16; the second session shall begin on March 16 and conclude on June 20.

If, for any reason, no meetings are possible on the dates indicated, they shall be convened as soon as possible within the respective periods.

The Congress shall also meet in special sessions by convocation of and for the period of time stipulated by the government.

During these special sessions, Congress shall only be entitled to discuss the issues submitted for its consideration by the government, without prejudice to the function of political control that it enjoys and which it may exercise at all times.

### ARTICLE 139

The sessions of Congress may be initiated and closed jointly and publicly by the President of the Republic, which ceremony at the first meeting being essential for Congress to exercise its functions legally.

### ARTICLE 140

The Congress shall have its seat in the capital of the Republic.

Following an agreement between them, the Houses may transfer their seat to some other location and, in the case of disruption of the public order, they may meet at the site designated by the President of the Senate.

### ARTICLE 141

The Congress shall meet as a single body exclusively for the initiation and closing of its sessions; to install the President of the Republic; to receive heads of state or government of other countries; to elect the Controller General of the Republic and the Vice President, should the people find it necessary to replace the elected official; as well as decide on a motion of censure in accordance with Article 135.

In such cases the President of the Senate and of the House of Representatives shall be the President and Vice President of Congress, respectively.

### ARTICLE 142

Each House shall elect, for the respective constitutional period, permanent committees that shall take action at the first reading of proposed legislative acts or laws.

An Act shall determine the number of permanent committees and members as well as the subject areas which each of them shall deal with.

When the permanent constitutional committees hold joint sessions, the decisive quorum shall be that which is required by each of the committees considered individually.

## **ARTICLE 143**

The Senate of the Republic and the House of Representatives may decide that any of the permanent committees should hold meetings during the recess with the purpose of debating the issues that may have remained pending in the previous period, undertaking studies that the respective body may determine, and preparing the bills with which the Houses may entrust them.

## **ARTICLE 144**

The sessions of the Houses and their permanent committees shall be public, within the limits determined by their rules of procedure.

The chairmanship shall be regulated by statute.

## **ARTICLE 145**

The Congress as a whole, the Houses, or their committees may not open sessions or deliberate with fewer than a quarter of their members present. Decisions may only be made by the majority of members of the respective body, unless the Constitution should determine a different quorum.

## **ARTICLE 146**

In Congress as a whole, in the Houses and in their permanent committees, decisions shall be taken by the majority of votes of those attending, unless the Constitution should expressly prescribe a special majority.

## **ARTICLE 147**

The executive committees of the Houses and of their permanent committees shall be rotated each year for the legislative session that commences on July 20, and none of its members may be reelected within the same constitutional four-year period.

## **ARTICLE 148**

The provisions regarding the quorum and decisive majorities shall also apply to the other popularly-elected public bodies.

## **ARTICLE 149**

Any meeting of members of Congress which, with the purpose of exercising the functions proper to the legislative branch of government, is held outside the constitutional prescriptions shall be invalid. Any decisions it may take shall have no effect whatsoever, and whoever participates in such deliberations shall be sanctioned according to the relevant statute.

## **CHAPTER III. ON STATUTES**

## ARTICLE 150

It is the responsibility of Congress to enact laws. Through them, it exercises the following functions:

- 1.** To interpret, amend, and repeal laws.
- 2.** To draw up codes in all areas of legislation and to amend their provisions.
- 3.** To approve the national development plan and public investments that must be undertaken or continued, with the determination of the resources and appropriations which are authorized for their execution and the measures necessary to promote their implementation.
- 4.** To define the general division of the territory in accordance with what is prescribed in this Constitution; setting the bases and conditions for creating, eliminating, modifying, or merging territorial entities and for establishing their jurisdictions.
- 5.** To confer special powers on the departmental assemblies.
- 6.** To move the present seats of the higher national authorities, under extraordinary circumstances and for important reasons of public convenience.
- 7.** To determine the structure of the national administration and create, eliminate, or merge ministries, administrative departments, superintendencies, public establishments, and other entities at a national level, as well as to specify their objectives and organic structure; to regulate the creation and operation of regional autonomous corporations within a system of autonomy; and, similarly, to create or authorize the creation of industrial and commercial enterprises of the State and mixed economic societies.
- 8.** To issue regulations to which the Government shall be subject in exercising the functions of inspection and oversight assigned to it by the Constitution.
- 9.** To grant authorizations to the Government to enter into contracts, to negotiate loans, and to sell national assets. The Government shall periodically inform Congress on the exercise of these authorizations.
- 10.** To vest, up to six months, in the President of the Republic, precise extraordinary powers to issue rules with the force of law when public necessity or advantage so advises. Such powers must be requested expressly by the Government and approval requires the vote of an absolute majority of the members of both Houses.

At any time and at its own initiative, Congress may amend decree laws enacted by the Government for the use of its extraordinary powers.

These powers may not be conferred for issuing codes, legal statutes, Institutional Acts, or anything referred to in numeral 20 of this article, or for decreeing taxes.

- 11.** To establish national revenues and to determine the expenditures of the administration.
- 12.** To establish fiscal contributions and, exceptionally, para-fiscal contributions as determined by statute.
- 13.** To determine the legal tender, its convertibility and the extent of its discretionary power

pertaining thereto, and to regulate the system of weights and measures.

- 14.** To approve or reject contracts or agreements which, for reasons of evident national necessity, the President of the Republic has entered with individuals, companies, or public entities without prior authorization.
- 15.** To decree honors to citizens who have rendered services to the fatherland.
- 16.** To approve or reject treaties that the Government makes with other states or entities in international law. By means of these treaties and on the bases of equity, reciprocity and national convenience, the State may partially transfer specified powers to international organizations, with the intent to promote or consolidate economic integration with other states.
- 17.** To grant, by a two-thirds majority of the members of both Houses or for grave reasons of public convenience, amnesties or general commutations for political crimes. In cases where the grantees are exempted from civil liability with respect to private individuals, the State must be obligated to make the proper compensations.
- 18.** To enact the regulations regarding the appropriation or adjudication and reclamation of uncultivated land.
- 19.** To enact general rules that specify the objectives and criteria to which the Government must be subjected for the following purposes:
  - a.** To organize public credit;
  - b.** To regulate foreign trade and specify the international exchange system, in agreement with the functions which the Constitution assigns to the Board of Directors of the Bank of the Republic;
  - c.** To modify, for purposes of commercial policy, duties and other provisions concerning the customs system;
  - d.** To regulate activities concerning finance, the stock market and insurance and any other activity connected with the management, use, and investment of resources received from the public;
  - e.** To establish the system of wage and benefits concerning civil servants, members of the National Congress, and the Police Force;
  - f.** To regulate the system of minimum social benefits for official workers.

These functions pertaining to social security services are not to be delegated to public territorial bodies and may not be claimed by them.

- 20.** To create the administrative and technical services of the Houses.
- 21.** To issue laws concerning economic intervention provided for in Article 334, which must specify their purposes and scopes and the limits to economic freedom.
- 22.** To issue laws concerning the Bank of the Republic and the functions that must be performed by its Board of Directors.

- 23.** To issue laws which shall regulate the exercise of public functions and the provision of public services.
- 24.** To regulate the system of industrial property, patents and trademarks, and the other forms of intellectual property.
- 25.** To unify regulations concerning traffic police throughout the entire territory of the Republic.

It is the responsibility of Congress to enact an organic statute on contracts concluded by the public administration and especially by the national administration.

## ARTICLE 151

The Congress shall issue Institutional Acts regulating the exercise of legislative activity. Through them, the rules of procedure of Congress and of each House, regulations concerning the preparation, approval, and execution of the Budgetary Revenues and Appropriations Law, and the execution of the general development plan and those relative to the assignment of regulatory responsibilities to the territorial entities shall be established. The Institutional Acts shall require, for their approval, an absolute majority of the votes of the members of both Houses.

## ARTICLE 152

By way of status Acts (leyes estatutarias) the Congress of the Republic shall regulate the following subject areas:

- a.** Fundamental rights and duties of individuals and the proceedings and resources for their protection;
- b.** Administration of justice;
- c.** Organization and regulations of parties and political movements; the formal statute of the opposition and electoral functions;
- d.** Institutions and machinery of citizen participation;
- e.** States of exception.
- f.** The equal electoral treatment of candidates for the Presidency of the Republic who comply with the requirements established by statute.
- g.** The subject areas expressly established in Articles 116 and 221 of the Constitution, pursuant to the provisions of this legislative act.

## TRANSITIONAL PARAGRAPH

The National Government or the members of Congress shall present before March 1, 2005 the draft of a statutory law which implements letter f) of Article 152 of the Constitution and regulates, in addition, the following matters: guarantees for the opposition, the participation of civil servants in politics, the right of equal access to communications media which make use of the electromagnetic spectrum, the predominantly state financing of presidential election campaigns, the right to reply in conditions of equality when the President of the Republic is a candidate, and rules about disabilities of presidential candidates.

The draft law shall be accompanied by a declaration of urgency and may be subject to a declaration of insistence [by Congress with regard to its referral to the Constitutional Court]. The Congress of the Republic enacts the status Act before June 20, 2005. The period for the exercise of the preventive control of constitutionality of the draft statutory law by the Constitutional Court is reduced by half.

## ARTICLE 153

The approval, amendment or repeal of status Acts shall require an absolute majority of the votes of the members of Congress and shall be completed within a single legislative term. Said procedure shall include the prior review by the Constitutional Court to make the proposal attainable. Any citizen may intervene to defend it or to oppose it.

## ARTICLE 154

Statutes may originate in either of the Houses at the proposal of their respective members, the national government, the entities stipulated in Article 156, or through popular initiative in the cases provided for by the Constitution.

However, the government may dictate or amend only those laws covered by paragraphs 3, 7, 9, 11, and 22 and by subparagraphs (a), (b), and (e) of numeral 19 of Article 150; those which decree contributions to national revenues or transfers of same; those which authorize contributions or grants by the State to industrial or commercial enterprises; and those which decree exemptions from taxes, contributions, or national levies.

The Houses may introduce amendments to the bills presented by the government.

Legislative bills concerning taxes shall be initiated in the House of Representatives while those involving international relations shall be initiated in the Senate.

## ARTICLE 155

Legislative bills or those involving constitutional amendments may be introduced by a number of citizens equal to or greater than five percent of the existing electoral rolls at the respective date or by thirty percent of the councils or deputies of the country. The popular initiative shall be executed by the Congress, in accordance with the provisions in Article 163 with respect to bills that have been the subject of a declaration of urgency.

The proposing citizens shall have the right to designate a spokesman who shall be heard by the Houses at all stages of the proceedings.

## ARTICLE 156

The Constitutional Court, the Supreme Council of the Judiciary, the Supreme Court of Justice, the Council of State, the National Election Commission, the General Prosecutor of the Nation, or the Controller General of the Republic have the right to introduce bills in subject areas related to their functions.

## ARTICLE 157

No bill shall become law without meeting the following requirements:

1. Being published officially by Congress before being sent to the respective committee.
2. Being approved at the first reading in the appropriate permanent committee of each House.  
The rules of procedure of Congress shall determine the cases in which the first reading shall be held in a joint session of the permanent committees of both Houses.
3. Being approved in each House at the second reading.
4. Securing the approval of the government.

## ARTICLE 158

Every legislative bill shall refer to a single issue and any provisions or amendments not germane to it shall be inadmissible. The chairman of the appropriate committee shall reject the initiatives that are not in harmony with this principle, though his/her decisions shall be subject to appeal before the same committee. An Act which is subject to partial modification shall be published as a single text incorporating the approved amendments.

## ARTICLE 159

The legislative bill rejected at the initial reading may be considered by the respective House at the request of its author, a member of the House, the government, or the spokesman of its proponents in the case of a popular initiative.

## ARTICLE 160

Between the first and second readings, a period of no less than eight days must have elapsed, and between the approval of the bill in either House and the initiation of the debate in the other, at least 15 days must have elapsed.

During the second reading, each House may introduce amendments, additions, and omissions that it deems necessary.

In the report to the plenary House for the second reading, the committee chairman shall present all the proposals that were considered by the committee and the reasons why they were rejected.

Every draft law or draft legislative act must contain information on how it is to be dealt with by the respective committee competent to discuss it, and must proceed accordingly.

No bill shall be put to a vote in a session different from the one that had been previously announced. The announcement that a bill shall be put to a vote shall be made by the President of each House or committee in a session different from the one in which the vote takes place.

## ARTICLE 161

When differences occur in the Houses with respect to a bill, they form conciliation committees composed of an equal number of Senators and Representatives which try in joint sessions to produce a compromise text and, failing that, decide by majority.

After having been published at least one day in advance, the adopted text is submitted for discussion and approval by each House in plenary session. If following the repetition of the second reading the differences persist, the bill shall be considered as having been defeated.

## ARTICLE 162

Legislative bills which failed to be passed in one legislative term and which shall have been debated once in either House shall continue their course in the subsequent term in whatever state they may be. No bill may be considered in more than two legislative terms.

## ARTICLE 163

The President of the Republic may solicit the urgent passage of any legislative bill. In such a case, the respective House shall take a decision on the matter within a 30-day limit. Even within this deadline, a declaration of urgency may be reiterated at all constitutional stages of the bill. Should the President insist on the urgency, the bill shall have priority in the day's agenda excluding the consideration of any other matter until the appropriate House or committee reaches a decision about it.

If the legislative bill to which the message of urgency refers is under study by a permanent committee, the committee, at the request of the government, shall deliberate jointly with the corresponding committee of the other House in order to complete the first reading.

## ARTICLE 164

The Congress shall give priority to the passage of legislative bills that approve treaties involving human rights and which may be submitted for consideration by the government.

## ARTICLE 165

Once a legislative bill is approved by both Houses, it shall be transmitted to the government for its approval. Should the government see no objections, it shall approve the bill's promulgation as law; if it objects to it, the bill shall be returned to the House in which it originated.

## ARTICLE 166

The government has a six-day deadline to return with its objections any bill that does not include more than 20 articles; 10 days should the bill include 21 to 50 articles; and up to 20 days should there be over 50 articles.

If the prescribed delay expires without the government having returned the bill with its objections, the President shall approve and promulgate it. If the Houses should begin a recess within the stated deadlines, the President shall be obliged to publish the approved or disapproved bills within the above-mentioned deadlines.

## ARTICLE 167

The bill to which the government objects totally or in part shall be returned to the Houses for a second debate.

The President shall sign without being able to present objections the bill which, after reconsideration, is approved by the absolute majority of both Houses.

Excepted is the case in which the bill has been opposed as unconstitutional. In such an event, should the Houses insist, the bill shall be sent to the Constitutional Court so that the latter, within the six (6) following days, may decide about its constitutionality. The decision of the Court obliges the President to approve the statute. If the Court declares the bill unconstitutional, it shall be filed away.

If the Court decides that the bill is unconstitutional in part, it shall so indicate to the House where the bill originated so that, once the minister in charge has been heard, the House may redraft the bill and integrate the provisions concerned in terms consonant with the ruling of the Court. Once this is done, the House shall transmit the bill to the Court for its definitive ruling.

## **ARTICLE 168**

If the President fails to fulfill his/her duty to approve the bills within the deadlines and according to the conditions established by the Constitution, the President of Congress shall approve and promulgate them.

## **ARTICLE 169**

The title of an Act shall faithfully reflect its contents, and the following formula shall precede the text: "The Congress of Colombia decrees."

## **ARTICLE 170**

A group of citizens corresponding to one-tenth of the electoral rolls may request from the electoral organization the holding of a referendum for the repeal of a law.

This law shall be repealed if half plus one of the voters who participate in the referendum so decide as long as a quarter of the citizens making up the electoral rolls participate in said referendum.

There can be no referendum with respect to laws approving international treaties or the budget or laws relating to fiscal or tax matters.

## **CHAPTER IV. ON THE SENATE**

### **ARTICLE 171**

The Senate of the Republic shall be composed of one hundred members elected in one nationwide constituency.

There shall be an additional two senators elected in a special national constituency for indigenous communities.

Colombian citizens who happen to be or reside abroad may vote in elections for the Senate of the Republic.

The system of electoral quotient shall apply to the special constituency for the election of senators by indigenous communities.

The representatives of the indigenous communities who aspire to become members of the Senate of the

Republic must have exercised a position of traditional authority in their respective community or have been leaders of an indigenous organization, which qualification shall be verified by a certificate from the respective organization, endorsed by the Minister of the Government.

## ARTICLE 172

In order to be elected senator, the candidate must be a Colombian citizen at birth, a citizen in good standing, and be over 30 years of age on the date of the election.

## ARTICLE 173

The following are the powers of the Senate:

1. To approve or reject the resignation from office by the President of the Republic or the Vice President.
2. To approve or disapprove military promotions granted by the government from general officers and flag officers of the public force up to the highest rank.
3. To grant permission to the President of the Republic to take temporary leave from his/her office outside of sickness and to decide about the qualifications of the Vice President to serve as President of the Republic.
4. To allow the transiting of foreign troops across the territory of the Republic.
5. To authorize the government to declare war on another state.
6. To elect the judges of the Constitutional Court.
7. To elect the General Prosecutor of the Nation.

## ARTICLE 174

It is the responsibility of the Senate to take cognizance of the charges brought by the House of Representatives against the President of the Republic or whoever replaces him/her; against the judges of the Supreme Court of Justice, of the Council of State and the Constitutional Court; against the members of the Supreme Council of the Judiciary, and against the Attorney General of the Nation, even though they may have ceased to exercise their functions. In this case, the Senate shall determine the validity of the charges concerning actions or omissions that have occurred in the discharge of their duties.

## ARTICLE 175

The following rules shall be observed in the decisions made by the Senate:

1. The accused is automatically suspended from his/her office whenever he/she admits publicly to a charge.
2. If the charge refers to crimes committed in the exercise of his/her functions or that he/she becomes unworthy to serve because of a misdemeanor, the Senate may only impose the sanction of discharge from office or the temporary or absolute suspension of political rights. But the accused shall be brought to trial before the Supreme Court of Justice if the evidence

demonstrates that the individual to be responsible for an infraction deserves other penalties.

3. If the charge refers to common crimes, the Senate shall confine itself to declare if there are grounds or not for further measures, and in the affirmative case it shall place the accused at the disposal of the Supreme Court.
4. The Senate may commission a task force from among its own ranks for investigation, reserving for itself the decision and definitive sanction to be pronounced in a public session by at least two-thirds of the votes of the Senators present.

## CHAPTER V. ON THE HOUSE OF REPRESENTATIVES

### ARTICLE 176

The House of Representatives shall be elected in territorial and special constituencies.

There shall be two representatives for each territorial constituency and one more for every 365,000 inhabitants or fraction larger than 182,000 over and above the initial 365,000.

For the election of representatives to the House, each department and the Capital District of Bogotá shall constitute a territorial constituency.

Special territorial constituencies shall ensure the participation to ethnic groups and to Colombians residing abroad in the House of Representatives. Through such constituencies, five (5) representatives shall be elected, as follows: two (2) by the constituency of Afro-descendant communities, one (1) by the constituency of indigenous communities, and two (2) by the international constituency. In the latter constituency only the votes, which have been cast outside the national territory by citizens residing abroad, shall be counted.

#### PARAGRAPH 1

Beginning in 2014, the assignment of additional seats shall be based on the corresponding proportional increase of the national population, in accordance with the results of the census. It shall be the task of the electoral commission to adjust the number for the assignment of seats.

#### PARAGRAPH 2

If as a result of the application of the formula contained in the present Article a territorial constituency should lose one or more seats, it shall keep the number of seats to which it was entitled on July 20, 2002.

#### TRANSITIONAL PARAGRAPH

The Congress of the Republic shall issue regulations for the international constituency until December 16, 2013 at the latest; otherwise the National Government shall do so within thirty (30) days following that date. The regulations shall cover, among other things, the following matters: the registration of candidates, the registration of citizens entitled to vote abroad, mechanisms to promote the participation in the vote and the holding of the ballot in the Consulates and State funding for visits abroad by the elected Representative.

### ARTICLE 177

To be elected representative, it is necessary to be a citizen in good standing and be older than 25 years of age on the date of the election.

## ARTICLE 178

The House of Representatives shall have the following special powers:

1. To elect the Ombudsman.
2. To examine and finalize the general budgetary and treasury account presented to it by the Controller General of the Republic.
3. To charge before the Senate, when constitutional reasons may exist, the President of the Republic or whoever replaces him/her, the judges of the Constitutional Court, the judges of the Supreme Court, the members of the Council of State and the Attorney General of the Nation.
4. To take cognizance of denunciations and complaints presented before it by the Attorney General of the Nation or by individuals against specific officials and, if valid, to bring charges on that basis before the Senate.
5. To request the assistance of other authorities for the conduct of investigations for which the House is competent, and to commission the collection of evidence when the House considers it appropriate.

## CHAPTER VI. ON MEMBERS OF CONGRESS

### ARTICLE 179

The following are not qualified to be members of Congress:

1. Those who have been sentenced at any time by judicial decision to a prison term, with the exception of political or similar crimes.
2. Those who have exercised, as public employees, jurisdiction or political, civil, administrative, or military authority within the 12 months prior to the date of the election.
3. Those who have participated in business transactions of public entities, or have concluded contracts with them in their own interest or that of third parties, or have been the legal representatives of entities which administer taxes or quasi-fiscal levies within six months prior to the date of the election.
4. Those who have lost their mandate as a member of Congress.
5. Those who are connected through marriage or permanent union or by kinship to the third level of consanguinity, first level of affinity, or by merely civil ties with officials who exercise civil or political authority.
6. Those who are connected among themselves through marriage or permanent union or by kinship to the third level of consanguinity, second level of affinity, or first civil level, and register for the same party, movement or political group for elections to public office or of members of public bodies that must be held on the same date.

7. Those who hold dual nationality, excepting Colombians by birth.
8. No one may be elected to more than one public body or office, nor to one public body and one public office, if the respective terms of office overlap, even partially.

The disqualifications provided for in the numerals 2, 3, 5, and 6 refer to situations occurring in the constituency where the respective election must take place. Statute shall regulate the other cases of disqualification on the ground of kinship with officials not contemplated by those provisions.

For the purposes of this Article the national constituency shall be deemed to coincide with each of the regional constituencies, except for the disqualification mentioned in numeral 5.

## **ARTICLE 180**

Members of Congress are prohibited from engaging in the following activities:

1. Holding public or private office or employment.
2. Managing in their own name or that of somebody else of public authorities or individuals that administer taxes, being invested with powers with them or to conclude contracts, on their own or through an intermediary, with them. An Act shall establish the exceptions to this provision.
3. Being a member of boards or executive committees of decentralized official entities of whatever level or institutions that administer taxes.
4. Concluding contracts or making arrangements with individuals or private legal entities that administer, manage, or invest public funds or are contractors of the state or receive subsidies from the latter. Excepted is the acquisition of goods or services that are offered to citizens in conditions of equality.

### **PARAGRAPH 1**

The profession of university teacher is excepted from the regime of incompatibilities.

### **PARAGRAPH 2**

The official who, in violation of the present article, appoints a member of Congress to a post or office or concludes a contract with him/her or accepts that he/she should act as business representative in his/her own name or that of a third party, shall be guilty of a misdemeanor.

## **ARTICLE 181**

The incompatibilities of the congressmen shall be in effect during the applicable constitutional period. In case of resignation, they shall continue to apply during the year subsequent to their acceptance if the time that remains before the expiration of the term is greater than the time elapsed.

Whoever is to be called to occupy the position shall be subject to the same system of disqualifications and incompatibilities beginning with their taking office.

## **ARTICLE 182**

Members of Congress shall inform their respective House of the moral or economic situation that prevents them from participating in the discussion of the matters submitted for their consideration. An Act shall determine the rules governing conflicts of interest and objections.

## ARTICLE 183

Members of Congress lose their seat for the following causes:

1. For violating the rules on disqualifications and incompatibilities or the rules on conflict of interest.
2. For their absence, in the same term of sessions, from six plenary meetings at which legislative acts, bills, or motions of censure are voted upon.
3. For not taking their seat within eight (8) days following the constitution of the respective body or the date on which they were summoned to take their seat.
4. For the improper payment of public funds.
5. For duly proven influence trafficking.

## PARAGRAPH

Cause 1 concerning the rules on conflict of interests shall not apply when the members of Congress participate in the discussion and vote on statutory acts.

Subparagraphs 2 and 3 shall not apply when "force majeure" is involved.

## ARTICLE 184

The loss of the seat shall be decided by the Council of State in accordance with the relevant statute and within no more than twenty working days, beginning with the date of the request made by the executive committee of the appropriate House or by any citizen.

## ARTICLE 185

Members of Congress enjoy immunity for their opinions and the votes that they cast in the exercise of their office, without prejudice to the disciplinary rules included in the respective rules of procedure.

## ARTICLE 186

For the offenses that members of Congress may commit, the Supreme Court of Justice is the sole authority that may order their detention. In case of "flagrante delicto," members of Congress shall be apprehended and placed immediately at the disposal of the same body.

## ARTICLE 187

The remuneration of the members of Congress shall be adjusted each year in proportion equal to the weighted average of the adjustments made in the remuneration of the civil servants of the central administration on the basis of a certification that the Controller General of the Republic shall issue for that purpose.

## TITLE VII. ON THE EXECUTIVE BRANCH

### CHAPTER I. ON THE PRESIDENT OF THE REPUBLIC

#### ARTICLE 188

The President of the Republic symbolizes the national unity and, on taking the oath of office to abide by the Constitution and the laws, he/she pledges to guarantee the rights and freedoms of all Colombians.

#### ARTICLE 189

It is the responsibility of the President of the Republic, as the chief of state, head of the government, and supreme administrative authority to do the following:

1. Appoint and dismiss freely Cabinet ministers and directors of administrative departments.
2. Direct international relations; appoint the members of the diplomatic and consular corps; receive the corresponding foreign officials; and make international treaties or agreements with other states and international bodies to be submitted to the approval of Congress.
3. Direct the public force and its disposition as supreme commander of the armed forces of the Republic.
4. Conserve the public order throughout the territory and restore it where it has been disturbed.
5. Direct military operations when he/she deems it appropriate.
6. Provide for the external security of the Republic; defend the independence and honor of the nation and the inviolability of its territory; declare war with the approval of the Senate or without such authorization to repel foreign aggression; and agree to and ratify peace treaties, regarding all of which matters the President shall give an immediate account to Congress.
7. Authorize, during a recess of the Senate and with the prior opinion of the Council of State, the transit of foreign troops across the territory of the Republic.
8. Install and close the sessions of Congress in each legislative term.
9. Approve the statutes.
10. Promulgate the statutes, obey them, and oversee their strict execution.
11. Exercise the power to regulate through the issuing of decrees, resolutions, and orders necessary for the execution of the statutes.
12. Present a report to Congress at the beginning of each legislative term regarding the measures of the administration, regarding the execution of the plans and programs of economic and social development, and regarding the bills which the government proposes to move forward during the new legislative term.
13. Appoint the presidents, directors, or managers of national public institutions and individuals who must occupy national office, positions not to be filled through competitive examinations or which are not covered by other officials or bodies, according to the Constitution or the statute.

In any case, the Government retains the ability (tiene la facultad) to freely name and remove its agents.

- 14.** Create, merge, or dissolve, according to an Act, positions required by the central administration, define their special functions, and determine their benefits and emoluments. The government may not create, at Treasury expense, obligations that exceed the total amount allocated for the respective service in the initial appropriations law.
- 15.** Eliminate or merge national administrative entities or organs in accordance with the applicable statute.
- 16.** Modify the structure of the ministries, administrative departments, and other national administrative entities or organs, according to the principles and general regulations defined by an Act.
- 17.** Assign work according to its nature among ministries, administrative departments, and public institutions.
- 18.** Grant permission to national public employees who may request it to accept, on a temporary basis, responsibilities or benefits from foreign governments.
- 19.** Confer ranks to the members of the public force and submit for the approval of the Senate those that fall under Article 173.
- 20.** Oversee the strict collection and administration of public revenues and credits and decree their investment in accordance with the relevant statutes.
- 21.** Effect the inspection and oversight of education in accordance with the relevant statute.
- 22.** Effect the inspection and oversight of the provision of public services.
- 23.** Make contracts falling under his/her jurisdiction in accordance with the Constitution and statute.
- 24.** Effect, in accordance with the relevant statute, the inspection, oversight, and control of individuals who undertake financial, stock market, insurance, and any other activities connected with the management, use, or investment of resources collected from the public. Similarly, those involving cooperative entities and commercial companies.
- 25.** Organize the public credit; determine the national debt and arrange for its servicing; amend the customs duties, tariffs, and other provisions concerning customs; regulate foreign trade; and effect intervention in financial, stock exchange, insurance, and any other activities connected with the management, use, and investment of resources originating from the saving of third parties in accordance with the relevant statute.
- 26.** Effect the inspection and oversight of institutions of public necessity so that their revenues may be protected and be properly applied and so that everything that is essential should be implemented according to the wishes of the founders.
- 27.** Grant temporary patents to inventors of useful improvements in accordance with the applicable statute.

**28.** Issue naturalization certificates, in accordance with the relevant statute.

## ARTICLE 190

The President of the Republic shall be elected for a period of four years by one-half plus one of the ballots which, in secret and direct manner, the citizens shall cast on the date and following the procedures determined by an Act. If no candidate should secure the said majority, a runoff election shall be held three weeks later when only those two candidates who received the most votes in the first round of balloting shall participate. The candidate with the larger number of votes shall be declared President.

In the case of the death or permanent physical incapacity of either of the two candidates receiving the majority of votes, his/her party or political movement may enter a new candidate for the runoff election. If the party or movement fails to do so or if the vacancy stems from another reason, that candidate shall be replaced by whoever won third place in the first round and so on in successive and descending order.

Should the vacancy occur less than two weeks before the second round of balloting, the latter shall be postponed by 15 days.

## ARTICLE 191

In order to be President of the Republic, an individual must be Colombian by birth, a citizen in good standing, and over 30 years of age.

## ARTICLE 192

The President of the Republic shall assume his/her office before Congress and shall take the following oath: "I swear to God and promise to the people to faithfully execute the Constitution and the laws of Colombia."

If, for any reason, the President should be unable to assume his/her office before Congress, he/she shall do so before the Supreme Court of Justice or, failing that, before two witnesses.

## ARTICLE 193

It is the responsibility of the Senate to grant its approval to the President of the Republic to be temporarily relieved of his/her duties.

On account of sickness, the President of the Republic may be relieved of his/her duties, for the necessary period, following the advice of the Senate or, if it is in recess, the Supreme Court of Justice.

## ARTICLE 194

A permanent vacancy in the office of the President of the Republic occurs at his/her death; his/her accepted resignation; his/her removal from office decreed as a judgment; and finally, permanent physical incapacity and relinquishment of duties, these last two being declared by the Senate. A temporary vacancy in the office occurs following permission for leave of absence and sickness, in accordance with the previous article, and suspension in the President's exercise of responsibility decreed by the Senate or a prior public admission by the President of a charge in cases anticipated in numeral 1, Article 175.

## ARTICLE 195

The acting chief executive shall have the same privileges and the same powers as the President whom he/she replaces.

## ARTICLE 196

The President of the Republic, or whoever replaces him/her, may not move abroad during the exercises of his/her office without prior notification sent to the Senate or, if it is in recess, the Supreme Court of Justice.

A violation of this provision implies relinquishment of his/her office.

The President of the Republic, or whichever official has occupied the presidency, shall not be entitled to leave the country during the year following the date when he/she stopped exercising his/her functions without the prior permission of the Senate.

When the President of the Republic travels abroad as part of his/her duties, the appropriate minister, according to the order of legal precedence, shall exercise under his/her own responsibility the constitutional functions that the President should delegate to him/her, both those which pertain to the minister as well as those that he/she exercises in the capacity of head of government. The delegated minister shall belong to the same party or political movement as the President.

## ARTICLE 197

No one may be elected to occupy the post of President of the Republic for more than two terms of office.

Nobody may be elected President or Vice President of the Republic who has fulfilled any of the causes of disability provided in nos. 1, 4, and 7 of Article 179, nor may any citizen be elected who has held one of the following posts in the year preceding the election:

Minister, Director of Administrative Department, Judge of the Supreme Court of Justice, of the Constitutional Court, of the Council of State, of the Superior Council of Judicature, of the National Election Commission, General Prosecutor of the Nation, Ombudsman, Controller General of the Republic, Attorney General of the Nation, National Registrar of Civil Status, Commanders of the Armed Forces, Director General of the Police, Departmental Governor, or mayor.

## TRANSITIONAL PARAGRAPH

A person who exercises or has exercised the Presidency of the Republic before the entry into force of the present Legislative Act may only be elected for one further presidential term.

## ARTICLE 198

The President of the Republic or whoever replaces him/her shall be responsible for his/her acts of commission or omission that violate the Constitution or the laws.

## ARTICLE 199

The President of the Republic, during the period for which he/she is elected or whoever is entrusted with the presidency, may not be prosecuted or tried for crimes except following an indictment by the House of Representatives and when the Senate shall have declared that there are grounds for a bill of particulars.

## CHAPTER II. ON THE GOVERNMENT

### ARTICLE 200

In its relations with Congress, the Government has the following duties:

1. Help draft the statutes, present bills through ministers, exercise the right of objecting to them, and approve them in accordance with the Constitution.
2. Convoke Congress to special sessions.
3. Present the national development and public investment plan, in accordance with the provisions in Article 150.
4. Send to the House of Representatives the budget bill of revenues and expenditures.
5. Provide the Houses reports that they solicited on issues that do not call for secrecy.
6. Lend effective support the Houses when the latter request it, placing at their disposal the public force if necessary.

### ARTICLE 201

It is the duty of the government to do the following in relation with the judiciary branch:

1. Lend to the judicial officials the necessary assistance to make their decisions effective, in accordance with the applicable statutes.
2. Grant pardons, reprieves, or amnesties for political crimes, in accordance with an Act, and inform Congress about the exercise of this power. In no case may these exonerations involve the responsibility which the grantees of the exonerations may have vis-à-vis private individuals.

## CHAPTER III. ON THE VICE PRESIDENT

### ARTICLE 202

The Vice President of the Republic shall be elected by popular vote on the same day and in the same manner as the President of the Republic.

The candidates for the runoff election, if there should be one, shall in each case be those who participated in the general election.

The Vice President shall hold office for the same period as the President and shall replace the President in case of temporary or permanent presidential vacancy, even if such a vacancy should occur before the assumption by the President of his/her office.

In case of a temporary vacancy in the position of President of the Republic, it shall be sufficient that the Vice President should take possession of the President's position as soon as possible so that he/she may exercise it whenever necessary. In case of a permanent vacancy in the position of the President of the Republic, the Vice President shall assume the office until the end of the term.

The President of the Republic shall be able to entrust to the Vice President missions or special duties and to assign to him/her any responsibility of the executive branch. The Vice President may not assume the functions of Minister-Delegate.

## ARTICLE 203

When there is a vacancy in the position of Vice President because the latter is assuming the presidency, the former office shall be assumed by a minister in the order of precedence established by statute. The individual who, in accordance with this Article, replaces the President shall belong to the same party or movement and shall exercise the presidency until such time as Congress, in its own right and within the 30 days following the date when the presidential vacancy occurs, elects the Vice President who shall assume the presidency of the Republic.

## ARTICLE 204

In order to be elected Vice President the same qualifications are required which are needed to be President of the Republic.

The Vice President may be reelected for the following term if he/she joins the ticket of the incumbent President.

The Vice President may be elected President of the Republic for the following term if the incumbent President does not present himself/herself as candidate.

## ARTICLE 205

In case of a permanent vacancy in the position of Vice President, Congress shall meet in its own right or on convocation by the President of the Republic in order to elect whoever has to fill the office for the rest of the term. A permanent vacancy in the position of Vice President is created by his/her death, his/her accepted resignation, or permanent physical disability recognized by Congress.

# CHAPTER IV. ON THE MINISTERS AND DIRECTORS OF ADMINISTRATIVE DEPARTMENTS

## ARTICLE 206

The number, designation, and order of precedence of the ministries and administrative departments shall be determined by statute.

## ARTICLE 207

In order to be a minister or director of an administrative department, the same qualifications are mandated as for representative in the House.

## ARTICLE 208

The Ministers and directors of administrative departments are the heads of public administration within their respective remit. Under the direction of the President of the Republic, it is their responsibility to formulate policies pertaining to their portfolio, direct the administrative operations, and execute the

relevant statutes.

The ministers, in relation with the Congress, are spokesmen of the government, present government bills to the Houses, respond to the requests that the Houses make to them, and take part in debates directly or through deputy ministers.

The ministers and directors of administrative departments shall present to the Congress, within the first 15 days of each legislative term, a report on the state of affairs assigned to their ministry or administrative department and on the reforms that they consider appropriate.

The Houses may request the assistance of the ministers, the permanent committees, the deputy ministers, directors of administrative departments, the manager of the Bank of the Republic, the presidents, directors, or managers of the decentralized entities at the national level, and that of other functionaries of the executive branch of government.

## CHAPTER V. ON THE ADMINISTRATIVE FUNCTION

### ARTICLE 209

The administrative function is at the service of the general interest and is developed on the basis of the principles of equality, morality, efficiency, economy, speed, impartiality, and publicity through the decentralization, delegation, and deconcentration of functions.

The administrative authorities must coordinate their actions for the appropriate fulfillment of the purposes of the State. The public administration, at all levels, shall have an internal control that shall be exercised within the limits stipulated by an Act.

### ARTICLE 210

The entities of the decentralized national services may only be created by statute or through its authorization, based on the principles that guide administrative activity. Individuals may carry out administrative functions under the conditions stipulated by an Act.

An Act shall establish the juridical regime of the decentralized entities and the responsibilities of their chairmen, directors, or managers.

### ARTICLE 211

An Act shall stipulate the functions that the President of the Republic may delegate to the ministers, directors of administrative departments, legal representatives of decentralized entities, superintendents, governors, mayors, and agencies of the State which the same law determines. Similarly, it shall determine the conditions under which the administrative authorities may delegate responsibilities to their subsidiaries or other authorities.

The delegation exempts the delegator from responsibility, which shall fall exclusively on the one being delegated with authority and whose actions or resolutions may always be amended or revoked by the delegator, who would then reassume the consequent responsibility.

An Act shall establish what recourse is available against the actions of those holding delegated authority.

## CHAPTER VI. ON THE STATES OF EXCEPTION

### ARTICLE 212

The President of the Republic, with the signature of all the ministers, may declare a state of foreign war. On the basis of such a declaration, the government shall have the strictly essential options to repel the aggression, defend the country's sovereignty, meet the requirements of the war, and bring about the restoration to normal conditions.

The declaration of a state of foreign war may be made only when the Senate shall have approved the declaration of war, except when in the judgment of the President, it was necessary to repel the aggression [forthwith].

While the state of war continues, Congress shall use all its constitutional and legal powers and the government shall report to it, giving reasons periodically for the decrees that it has issued and the evolution of events.

The legislative decrees issued by the Government that suspend laws incompatible with the state of war are in force during the time as stipulated by the decrees, and shall no longer be in effect as soon as normal conditions are declared to have been restored. At any time, Congress may amend or repeal the decrees through a favorable vote of two-thirds of the members of each House.

### ARTICLE 213

In the case of a serious disruption of the public order imminently threatening the institutional stability, the security of the state, or the peaceful coexistence of the citizenry, and which cannot be met by the use of ordinary powers of the police authorities, the President of the Republic, with the approval of all the ministers, may declare a state of internal disturbance throughout the Republic or part of it for a period no longer than 90 days, extendable for two similar periods, the second of which requires the prior and favorable vote of the Senate of the Republic.

By means of such a declaration, the government shall have the strictly essential options to deal with the causes of the disruption and prevent the spread of its effects.

The legislative decrees that the government may issue can suspend the laws incompatible with the state of disturbance and shall no longer be in effect as soon as public order is declared to have been restored. The government may extend its application up to 90 more days.

Within the three days following the declaration or extension of the state of disturbance, Congress shall meet in its own right, with all its constitutional and legal powers. The President shall transmit to it an immediate report concerning the reasons motivating the said declaration.

In no case may civilians be questioned or tried by the penal military system.

### ARTICLE 214

The states of exception referred to in the previous articles shall be subject to the following provisions:

1. The legislative decrees shall have the signature of the President of the Republic and all his/her ministers and may refer only to matters that have direct and specific connection with the situation which the declaration of the state of exception may have determined.
2. Neither human rights nor fundamental freedoms may be suspended. In all cases, the rules of international humanitarian law shall be observed. A statutory law shall regulate the powers of the Government during the states of exception and shall establish the legal controls and guaranties to protect rights, in accordance with international treaties. The measures that are adopted must be proportionate to the gravity of the events.
3. The normal functioning of the branches of government or state organs shall not be interrupted.
4. As soon as the foreign war or the causes that gave rise to the state of internal disturbance shall have come to an end, the government shall declare the public order to have been restored and shall lift the state of exception.
5. The President and the ministers shall be responsible when they declare states of exception without the occurrence of a foreign war or internal disturbance, and they shall also be responsible, as shall other officials, for any abuse that they commit in the exercise of the powers referred to in the earlier articles.
6. The government shall send to the Constitutional Court on the day following their promulgation the legislative decrees issued under the powers mentioned in the above articles so that the Court may decide definitively on their constitutionality. Should the government not comply with the duty of transmitting the decrees, the Constitutional Court shall automatically and immediately take cognizance of the same.

## ARTICLE 215

When events different from those provided for in Articles 212 and 213 occur that disrupt or threaten to disrupt in serious or imminent manner the economic, social, or ecological order of the country or which constitute a grave public calamity, the President, with the signature of all the ministers, may declare a state of emergency for periods up to 30 days in each case which, in all, may not exceed 90 days in a calendar year.

By means of such a declaration which shall be justified, the President may, with the signature of all the ministers, issue decrees with the force of law, slated exclusively to check the crisis and halt the extension of its effects.

These decrees may refer to matters that have direct and specific connection with the state of emergency and may, in a provisional manner, establish new taxes or amend existing ones. In these latter cases, the measures shall stop being in effect at the end of the subsequent fiscal year, except when Congress, during the subsequent year, should grant them permanent character.

In the decree declaring the state of emergency, the government shall stipulate the deadline within which it would use its extraordinary powers in situations referred to in this Article and shall convene Congress if the latter should not be met within the 10 days following the expiration of the said deadline.

The Congress shall examine for a period of up to 30 days, extendable by agreement of the two Houses, the

report with explanations presented to it by the government on the causes justifying the state of emergency and the measures adopted and shall make an express pronouncement on the convenience and appropriateness of same.

During the year subsequent to the declaration of emergency, Congress may repeal, amend, or add to the decrees to which this article refers in areas that ordinarily fall under the Government's jurisdiction. In connection with those that fall under the jurisdiction of its members, Congress may exercise said powers at all times.

If it is not convened, Congress shall meet in its own right under the conditions and for the purposes provided for in this article.

The President of the Republic and the ministers shall be responsible when they declare a state of emergency without there being present any of the circumstances provided for in the first clause and shall also be responsible for any abuse committed in the exercise of the powers which the Constitution assigns to the Government during an emergency.

The government may not infringe on the social rights of workers through the decrees mentioned in this article.

## PARAGRAPH

The government shall send to the Constitutional Court on the day following their promulgation the legislative decrees issued under the powers mentioned in this article so that the Court may determine their constitutionality. Should the Government fail to fulfill its obligation to transmit them, the Constitutional Court shall automatically and immediately take cognizance of the same.

## CHAPTER VII. ON THE PUBLIC FORCE

### ARTICLE 216

The public force shall consist of the Armed Forces and the National Police, exclusively.

All Colombian citizens are obliged to take up arms when the public need mandates it in order to defend national independence and the public institutions.

An Act shall determine the conditions which at all times qualify an individual for exemption from military service and the benefits for service in them.

### ARTICLE 217

The nation shall maintain for its defense the permanent Armed Forces made up of the army, navy, and air force.

The armed forces shall have as their primary purpose the defense of the sovereignty, independence, and integrity of the national territory and of the constitutional order.

An Act shall determine the system of replacements in the Armed Forces as well as the promotions, rights, and obligations of its members and the special career, benefits, and disciplinary regime that pertain to them.

## ARTICLE 218

An Act shall determine the organization of the Police corps.

The National Police is a permanent armed body of a civilian nature responsible to the national community and whose primary purpose is the maintenance of the conditions necessary for the exercise of public rights and freedoms and to insure that the inhabitants of Colombia may live together in peace.

An Act shall determine the career, benefits, and disciplinary regime that pertain to it.

## ARTICLE 219

The public force is not deliberative: it shall not be able to assemble except by order of the legitimate authority nor direct petitions except on matters connected with the service and morale of the respective corps and in accordance with an Act.

The members of the public force may not exercise their right to vote while they are on active service nor take part in activities or debates of parties or political movements.

## ARTICLE 220

The members of the public force may not be deprived of their ranks, awards, or pensions except in the cases and in the manner determined by an Act.

## ARTICLE 221

The Martial or Military Tribunals will have jurisdiction over offenses committed by the members of the public force on active service and in relation to their service, in accordance to the prescriptions of the Military Penal Code. These courts and tribunals will be composed of members of the public force on active duty or retired.

The military or police criminal justice system shall not have jurisdiction over crimes against humanity, and crimes of genocide, forced disappearances, extrajudicial executions, sexual violence, torture, or forced displacement. Police, Martial or Military Tribunals shall have jurisdiction only over violations of international humanitarian law committed by members of the public force, except in the offenses mentioned above.

If the security forces action is related to an armed conflict, such action shall be investigated and tried by the judicial authorities, and international humanitarian law shall always be applied to these cases. A statute shall specify the norms of interpretation and application of this statute, and determine how to harmonize criminal law with international humanitarian law.

If an action, operation, or procedure performed by the public force derives in any punishable conduct, and there is doubt about whether the case falls under de jurisdiction of the Military Criminal Justice, a Technical Commission for Coordination may exceptionally intervene. The commission will be composed of representatives of the military criminal jurisdiction and the ordinary criminal tribunals, supported by their respective judicial police bodies. The statutory law shall regulate the composition and functioning of this commission, the way in which the judicial police bodies from the ordinary and military criminal jurisdictions

shall support it, and determine the deadlines that the commission must comply with.

The statutory law can create ordinary courts and police criminal tribunals, and adopt a Police Criminal Code.

The statutory law shall further develop the military criminal justice system guarantees of autonomy and impartiality. Furthermore, an ordinary law shall regulate a structure and a career system independent from the institutional authority.

A fund, specifically aimed to finance a Technical and Specialized Defense System for the public force members, shall be created according to the law. The fund shall be under the authority, direction, and coordination of the Ministry of National Defense.

Public force members shall comply with pre-trial detention in the detention centers established for them, and in the absence of these centers, they shall comply with it on the premises of the unit to which they belong. Public force members shall serve time in prisons and detention centers established for members of the security forces.

## **ARTICLE 222**

An Act shall determine the system of professional, cultural, and social development of the members of the public force. During their training, the members shall be taught the fundamentals of democracy and human rights.

## **ARTICLE 223**

The government alone may make available and manufacture weapons, ammunitions, and explosives. No one may possess them or carry them without permission from the competent authority. This permit may not apply to cases of contests at political rallies, elections, or sessions of public groups or assemblies, whether individuals are active there or attend them.

The members of the national security organs and other official armed bodies of a permanent character created or authorized by an Act, may carry arms under the control of the Government, in accordance with the principles and procedures that the former stipulates.

## **CHAPTER VIII. ON INTERNATIONAL RELATIONS**

### **ARTICLE 224**

In order to be valid, treaties shall be approved by Congress. However, the President of the Republic may give temporary effect to treaties of an economic or commercial nature agreed upon in the context of international organizations which so provide. In such a case, as soon as a treaty enters into force provisionally, it shall be sent to Congress for its approval. If Congress does not approve the treaty, its application shall be suspended.

### **ARTICLE 225**

The Advisory Committee on Foreign Relations, whose makeup shall be determined by statute, is a consultative body of the President of the Republic.

## ARTICLE 226

The state shall promote the internationalization of political, economic, social, and ecological relations on the basis of fairness, reciprocity, and the national interest.

## ARTICLE 227

The state shall promote economic, social, and political integration with other nations and especially with the countries of Latin America and the Caribbean by means of treaties which, on the basis of fairness, equality, and reciprocity, create supranational organizations even to the point of constituting a Latin American community of nations. An Act may call for direct elections for the formation of the Andean Parliament and the Latin American Parliament.

# TITLE VIII. ON THE JUDICIAL BRANCH

## CHAPTER I. GENERAL PROVISIONS

### ARTICLE 228

The administration of justice is a public function. Its decisions are independent. Its proceedings shall be public and permanent with the exceptions established by statute, and substantive law shall prevail in them. Legal limits shall be diligently observed and failure to apply them shall be sanctioned. The functioning of the judiciary shall be decentralized and autonomous.

### ARTICLE 229

The right of any individual to have access to the administration of justice is guaranteed. An Act shall stipulate in which cases this may be done without the representation of counsel.

### ARTICLE 230

In their decisions, the judges are bound exclusively by the rule of law.

Fairness, jurisprudence, and the general principles of law and doctrine are the auxiliary criteria of judicial proceedings.

### ARTICLE 231

The judges of the Supreme Court of Justice and the Council of State shall be appointed by the appropriate body from lists drawn up by the Supreme Council of the Judiciary.

### ARTICLE 232

In order to be a judge of the Constitutional Court, the Supreme Court of Justice, or the Council of State, the following requirements must be met:

- 1.** To be Colombian by birth and a citizen in good standing.
- 2.** To be a lawyer.

3. Not to have been charged by a court sentence to imprisonment, except for political or similar crimes.
4. To have filled, for 10 years, positions in the judicial branch or the Public Ministry, or to have exercised honorably for a like period the profession of lawyer or university teaching faculty in the juridical disciplines in officially recognized institutions.

## PARAGRAPH

In order to be a judge of these courts it shall not be necessary to be engaged in a legal career.

## ARTICLE 233

The judges of the Constitutional Court, the Supreme Court of Justice, and of the Council of State shall be elected for a period of eight years. They cannot be re-elected and shall remain in office as long as they display good behavior, perform satisfactorily and have not reached the age of mandatory retirement.

## CHAPTER II. ON ORDINARY JURISDICTION

### ARTICLE 234

The Supreme Court of Justice is the highest court of ordinary jurisdiction and shall comprise an uneven number of judges determined by an Act. The latter shall divide the Court into Houses, shall assign to each of them the matters that it has to take cognizance of separately, and determine those matters that must be heard by the entire bench.

### ARTICLE 235

The Supreme Court of Justice has the following powers:

1. To act as a court of cassation.
2. To judge the President of the Republic or whoever replaces him/her and the senior officials covered by Article 174 for any punishable deed imputed to them, in accordance with Article 175, paragraphs 2 and 3.
3. To investigate and try members of the Congress.
4. To try, upon the charges brought by the Attorney General of the Nation, the Deputy Attorney General of the Nation or his/her representatives from the investigation unit at the Supreme Court of Justice, ministers or the Cabinet, the Public Prosecutor, the Ombudsman, the agents of the Public Ministry before the Court, before the Council of State, and before the tribunals; the directors of the administrative departments, the Controller General of the Republic, the ambassadors and chiefs of diplomatic or consular mission, the governors, the judges of tribunals, and the generals and admirals of the public force for punishable deeds with which they are charged.
5. To take cognizance of all contentious issues of diplomatic personnel accredited before the national government in cases provided by international law.
6. To draft its own rules of procedure.

7. To exercise other powers stipulated by an Act.

## PARAGRAPH

When the officials mentioned above have ceased holding office, these provisions shall apply only for punishable offenses related to the functions that they used to exercise.

## CHAPTER III. ON CONTENTIOUS ADMINISTRATIVE JURISDICTION

### ARTICLE 236

The Council of State shall be composed of an uneven number of judges determined by statute. The Council shall be broken down into Houses and sections to separate its jurisdictional functions from the others assigned to it by the Constitution and the statute.

An Act shall stipulate the functions of each of the Houses and sections, the number of judges that comprises them, and their internal organization.

### ARTICLE 237

The powers of the Council of State are as follows:

1. To exercise the functions of supreme contentious administrative court in accordance with the rules stipulated by an Act.
2. To take cognizance of invalid decrees issued by the national government and held unconstitutional by the Constitutional Court.
3. To act as the supreme consultative body of the government in matters of administration, whose opinion must mandatorily be heard in all cases determined by the Constitution and the statutes.

In cases of the transit of foreign troops across Colombia's national territory, the stationing or transit of foreign warships or aircraft in the waters or territory or airspace of the nation, the government must first seek the opinion of the Council of State.

4. To prepare and present proposals amending the Constitution and other bills.
5. To take cognizance of cases regarding the loss of the investiture of congressmen in accordance with the Constitution and statute.
6. To draft its own rules of procedure and exercise other functions determined by an Act.
7. To rule on petitions for the annulment of elections subject to the rules of competence established by statute.

## TRANSITIONAL PARAGRAPH

It is a condition for the admissibility of electoral disputes directed against the act of popular election which are based on causes for annulment due to irregularities in the voting process and the counting of the votes before the administrative jurisdiction that they are submitted to the review of the competent

administrative authority headed by the National Election Commission before the proclamation of the election results

## ARTICLE 238

The jurisdiction of the contentious administrative apparatus may temporarily be suspended for the causes, and following the requirements, established by statute because of the effects of administrative measures that may be subject to challenge by the judiciary.

## CHAPTER IV. ON CONSTITUTIONAL JURISDICTION

### ARTICLE 239

The Constitutional Court shall be composed of an uneven number of members determined by statute. The makeup of the court shall take into account the need to select judges belonging to various specialised jurisdictions.

The judges of the Constitutional Court shall be elected by the Senate of the Republic for single terms of eight years from lists presented to it by the President of the Republic, the Supreme Court of Justice, and the Council of State.

The judges of the Constitutional Court are not eligible for reelection.

### ARTICLE 240

Those who, during the year previous to the election, had exercised the functions of Cabinet minister or judges of the Supreme Court of Justice or of the Council of State are not eligible for election.

### ARTICLE 241

The safeguarding of the integrity and supremacy of the Constitution is entrusted to the Constitutional Court in the strict and precise terms of this article. For such a purpose, it shall fulfill the following functions:

1. Decide on the petitions of unconstitutionality brought by citizens against measures amending the Constitution, no matter what their origin, exclusively for errors of procedure in their formation.
2. Decide, prior to a popular expression of opinion, on the constitutionality of the call for a referendum or a constituent assembly to amend the Constitution, exclusively for errors of procedure in their formation.
3. Decide on the constitutionality of referendums about laws and popular consultations and plebiscites of a national scope, in case of these last ones exclusively for errors of procedure in their convocation and implementation.
4. Decide on the petitions of unconstitutionality brought by citizens against statutes, both for their substantive content as well as for errors of procedure in their formation.
5. Decide on the petitions of unconstitutionality brought by citizens against decrees with the force of law issued by the government on the basis of Article 150, numeral 10, and Article 341

of the Constitution for their substantive content as well as for errors of procedure in their formation.

- 6.** Decide on the exceptions provided for in Article 137 of the Constitution.
- 7.** Decide definitively on the constitutionality of the legislative decrees issued by the government on the basis of Articles 212, 213, and 215 of the Constitution.
- 8.** Decide definitively on the constitutionality of the bills opposed by the government as unconstitutional and of proposed statutory bills, both on account of their substantive content as well as for errors of procedure in their formation.
- 9.** Revise, in the form determined by statute, the judicial decisions connected with the protection of constitutional rights.
- 10.** To take a final decision on the execution of international treaties and the statutes approving them. To this end, the government shall submit them to the Court within six days following the adoption of the ratifying statute. Any citizen may intervene to defend or challenge their constitutionality. Should the Court declare them constitutional, the government may proceed to the exchange of notes; in the contrary case they shall not be ratified. When one or several provisions of a multilateral treaty are declared unenforceable by the Constitutional Court, the President of the Republic may declare consent, formulating the pertinent reservation.
- 11.** Draft its own rules of procedure.

## PARAGRAPH

When the Court finds an amendable error in the procedures of formation subject to its control, it shall order their return to the authority which issued them so that, if possible, that authority should correct the observed flaw. Once the error is corrected, it shall proceed to decide on the validity of the measure.

## ARTICLE 242

The processes promoted before the Constitutional Court in the matters referred to on this score shall be regulated by an Act in accordance with the following provisions:

- 1.** Any citizen may implement the public actions provided in the preceding Article and intervene as challenger or defender of the provisions submitted to control in processes promoted by others as well as in those cases where no public action has occurred.
- 2.** The General Prosecutor of the Nation shall intervene in all the processes.
- 3.** Actions to correct errors in form lapse within a year starting from the publication of the said act.
- 4.** Ordinarily, the Court shall have 60 days to decide, and the General Prosecutor of the Nation 30 days within which to give his/her opinion.
- 5.** In the processes referred to in numeral 7 of the previous Article, the ordinary deadlines shall be reduced to a third and the missing of the deadline shall constitute cause for a misdemeanor to be sanctioned according to statute.

## ARTICLE 243

The decisions of the Court while exercising legal checks bars double jeopardy.

No authority may reproduce the substance of a juridical measure declared invalid for fundamental reasons while the provisions that served to challenge the ordinary provision and the Constitution remain.

## ARTICLE 244

The Constitutional Court shall notify the President of the Republic or the President of Congress, depending on the case, of the initiation of any process seeking to examine the constitutionality of provisions stipulated by them, respectively. Such notification shall not delay the deadlines of the process.

## ARTICLE 245

The government may not provide employment to the judges of the Constitutional Court during the period that they exercise their function or in the year following their retirement.

# CHAPTER V. ON SPECIAL JURISDICTIONS

## ARTICLE 246

The authorities of the indigenous [Indian] peoples may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures as long as these are not contrary to the Constitution and the laws of the Republic. An Act shall establish the forms of coordination of this special jurisdiction with the national judicial system.

## ARTICLE 247

An Act may create justices of the peace entrusted with the equitable resolution of individual and community conflicts. It may also order that they be popularly elected.

## ARTICLE 248

Only sentences handed down definitively in judicial trials qualify as a criminal record or a violation in all legal matters.

# CHAPTER VI. ON THE OFFICE OF ATTORNEY GENERAL OF THE NATION

## ARTICLE 249

The Office of the Attorney General of the Nation shall consist of the Attorney General, his/her assistant attorneys, and other officials as determined by an Act.

The Attorney General of the Nation shall be elected for a period of four years by the Supreme Court of Justice from a list originating with the President of the Republic and is not eligible for re-election. The candidate shall have the same qualities required for a judge of the Supreme Court of Justice.

The Office of the Attorney General of the Nation is part of the judicial branch and shall have administrative and budgetary autonomy.

## ARTICLE 250

It is the responsibility of the Office of the Attorney General of the Nation, in the discharge of its duties or following a denunciation, special petition or dispute, to bring criminal charges and to conduct the investigation of the facts which may constitute offenses, if there are sufficient reasons to assume the commission of an offense. Excepted are the crimes committed by members of the public force in active service and related to the same service. For such a purpose, the Office of the Attorney General of the Nation shall do the following:

1. To request the judge responsible for the control of [the constitutional] guarantees to take the measures which ensure the appearance of the presumptive offenders of the penal law at the trial, the conservation of evidence and the protection of the community, and in particular of the victims.

The judge responsible for the guarantees may be in no case the judge competent to try the matter.

Exceptionally, an Act may authorize the Office of Attorney General of the Nation to carry out administrative detentions. In these cases, the judge responsible for respect of the guarantees exercises his/her control within thirty-six (36) hours following the detention at the latest.

2. To conduct searches, house visits, seizures and interceptions of communications. In such cases, the judge responsible for the control of guarantees carries out his/her subsequent control within thirty-six (36) hours at the latest.
3. To take possession of the material elements of evidence, keeping them in custody while they are being refuted [by the accused]. When additional measures that imply the infringement of fundamental rights are required, the corresponding authorization must be obtained from the judge responsible for the control of guarantees in order to proceed.
4. To present the indictment before the judge competent to try the matter with a view of initiating a public, oral, adversarial trial with immediacy of the evidence and all the other guarantees.
5. To request the preclusion of investigations before the judge competent to try the case when there are no merits to the case.
6. To request before the judge competent to try the case the necessary judicial measures to assist the victims, and order the restoration of the law and the integral redress of those affected with the crime.
7. To oversee the protection of victims, juries, witnesses, and all other intervening parties in the criminal procedure. An Act shall determine the manner in which the victims may intervene in the criminal procedure and mechanisms of restorative justice.
8. To manage and coordinate the functions of the Judicial Police which are permanently carried out by the National Police and other organs that an Act establishes.
9. To comply with all other functions determined by an Act.

The Attorney General and his/her deputies have competence in all the national territory.

In the event an indictment is brought, the Attorney General or his/her deputies shall provide, through the judge competent to try the matter, all the elements of proof and information he/she is aware of, including those favorable to the defendant.

## PARAGRAPH

The Office of the General Prosecutor of the Nation shall continue to perform, in the new system of inquiry, investigation and criminal judgment, the functions of Article 277 of the National Constitution.

## PARAGRAPH 2

Depending on the character of the protected interest and the minor gravity of the punishable conduct, the legislature may authorize the victim or other authorities to bring criminal charges. In any case the action by the Office of Attorney General shall have priority.

## ARTICLE 251

The following are special functions of the Attorney General of the Nation:

1. To investigate and, if there are sufficient grounds, to bring charges, directly or through the Deputy Attorney General of the Nation or his/her representatives from the investigation unit at the Supreme Court of Justice, against senior officials who are subject to a trial determined by the Constitution, with the exceptions provided in the Constitution.
2. To appoint and remove from office, in accordance with an Act, employees under his/her control.
3. To take charge directly of the investigations and procedures, whatever their stage may be, and freely assign and move his/her officials in the investigations and trials. Likewise, by virtue of the principles of unitary management and of hierarchy, to determine the position and views that the Office of Attorney General should adopt, without prejudice to the position of the deputy prosecutors in the terms and conditions defined by an Act.
4. To participate in the planning of state policy in criminal matters and to present draft laws in that respect.
5. To grant temporary powers to public entities that may accomplish functions of the judicial police under the responsibility and functional dependence of the Office of the Attorney General of the Nation.
6. To provide the Government with information about the investigations that are being conducted when these are necessary for the preservation of the public order.

## ARTICLE 252

Even during states of exception pursuant to Article 212 and 213 of the Constitution, the Government is barred from eliminating or modifying either the organizations or the basic functions of indictment and trial.

## ARTICLE 253

An Act shall determine matters relative to the structure and functioning of the Office of the Attorney General of the Nation at entry and retirement from the service for those who are unqualified or have incompatibilities with respect to appointment, qualifications, compensation, social benefits, and discipline of the officials and workers under his/her authority.

## **CHAPTER VII. ON THE SUPREME COUNCIL OF THE JUDICATURE**

### **ARTICLE 254**

The Supreme Council of the Judiciary shall be divided into two sections:

- 1.** The administrative section made up of six judges elected for a period of eight years as follows: two by the Supreme Court of Justice, one by the Constitutional Court, and three by the Council of State.
- 2.** The disciplinary jurisdictional section made up of seven judges elected for a period of eight years by the National Congress from lists originating with the government. Sectional councils of the judicature may also be established as stipulated by statute.

### **ARTICLE 255**

In order to be a member of the Supreme Council of the Judiciary the candidate must be Colombian by birth, a citizen in good standing, and over 35 years of age; he/she must hold the title of lawyer and have exercised this profession creditably for 10 years. The members of the Council may not be selected from among the judges of the same petitioning bodies.

### **ARTICLE 256**

The Supreme Council of the Judiciary or the sectional councils, depending on the case and according to law, shall have the powers to do the following:

- 1.** Administer the legal career.
- 2.** Draw up lists of candidates for the appointment of judicial officials and send them to the corresponding responsible entity. Excepted is the penal military jurisdiction, which is to be guided by special regulations.
- 3.** Examine the behavior and sanction the errors of officials of the judicial branch as well as those of lawyers practicing their profession in those cases stipulated by statute.
- 4.** Oversee the productivity of judicial bodies and offices.
- 5.** Draft the budgetary bill of the judicial branch to be transmitted to the Government and implemented in accordance with the approval of Congress.
- 6.** Settle jurisdictional conflicts between different organs.
- 7.** Other matters stipulated by statute.

### **ARTICLE 257**

In accordance with the relevant Act, the Supreme Council of the Judiciary shall exercise the following

functions:

1. Determine the division of the territory for judicial purposes and locate or relocate judicial offices.
2. Establish, eliminate, merge, or transfer responsibilities in the administration of justice. In the exercise of this power, the Supreme Council of the Judiciary may not commit itself to obligations payable by the Treasury that exceed the total amount allocated for the respective service in the Act on initial appropriations.
3. Dictate the necessary regulations for the effective functioning of the administration of justice, matters connected with the organization, and internal functions assigned to the various offices, and the regulations of judicial and administrative measures taken in the judicial offices in aspects not provided by the legislative.
4. Propose bills concerning the administration of justice and substantive and procedural codes.
5. Other matters stipulated by statute.

## TITLE IX. ON ELECTIONS AND THE ELECTORAL SYSTEM

### CHAPTER I. ON THE SUFFRAGE AND ELECTIONS

#### ARTICLE 258

Voting is both a right and a duty of citizens. The State shall make sure that it is exercised without any type of coercion and in a secret manner in individual booths installed in every polling station, the use of electronic and computerized means of voting notwithstanding. In the elections of candidates ballot cards which are numbered and printed on a paper offering sufficient security guarantees may be used, and shall be distributed officially. The Election Commission shall also provide the voters with ballot papers on which the political movements and parties with legal personality and the candidates shall appear clearly identified and in equal conditions. An Act may establish voting mechanisms which provide additional and better guarantees for the free exercise of this right of the citizens.

#### PARAGRAPH 1

The voting process for the election of members of a public body, governor, mayor or the first round of the presidential election must be repeated one single time when the blank votes constitute the majority of the total number of valid votes. In elections in which a single candidate is to be elected, the candidates of the first ballot may not run again, whereas in elections to public bodies the lists which have not attained the threshold may not be submitted.

#### PARAGRAPH 2

The electronic vote may be introduced in order to achieve flexibility and transparency in all voting processes.

#### ARTICLE 259

Those who elect governors and mayors mandate on the elected official the program that he/she presented on registering as a candidate. An Act shall regulate the exercise of the programmatic vote.

## ARTICLE 260

The citizens elect in a direct manner the President and Vice President of the Republic, senators, representatives, governors, deputies, mayors, municipal and district councilors, members of the local administrative boards and, when necessary, the members of the Constituent Assembly and the other authorities or officials stipulated by statute.

## ARTICLE 261

Vacancies caused by absolute incapacity shall be filled, in accordance with their rank on the electoral list or the number of votes they have received, by the candidates who, in successive and descending order, form part of the same electoral list, depending on whether the closed-list system or the preferential voting system applies.

## ARTICLE 262

The election of the President and Vice President may not overlap other elections. That of Congress shall be carried out on a date separate from the election of departmental and municipal officials.

## ARTICLE 263

For every popular election process the political parties and movements shall submit single lists and candidates, whose number may not exceed the number of seats or offices to be filled in the respective election.

In order to guarantee the equitable representation of the political parties and movements and of the relevant citizen groups, the seats in public bodies shall be distributed in accordance with the system of the distributing number between the lists of candidates which have crossed a minimum threshold of votes which may not be inferior to three percent (3%) of the votes cast in the case of the Senate of the Republic or to fifty percent (50%) of the electoral quotient in the case of the other public bodies, in accordance with the provisions of the Constitution and the applicable statute.

If no lists of candidates crosses the threshold, the seats shall be distributed in accordance with the system of the distributing number.

An Act shall determine the other aspects of this matter.

The lists for public bodies in constituencies in which up to two (2) members of the respective body are elected may include up to three (3) candidates. In constituencies in which one member is elected the seat shall be assigned to the majority list. In the constituencies in which two members are elected the system of the electoral quota among the lists which receive votes equivalent to more than 30% of the quota.

## TRANSITIONAL PARAGRAPH

For the elections to Congress which take place in 2010, the percentage to which section 2 of this Article refers shall be two percent (2%).

## ARTICLE 263-A

The distribution of seats between the members of the respective public body shall be made by application of the system of the distributing number. This number is obtained by dividing successively by one, two, three, or more the number of votes received by each list and placing the results in a descending order until the total number of results obtained corresponds to the number of seats to be filled.

The lowest resulting number is called the distributing number (cifra repartidora). Each list shall obtain the number of seats that corresponds to the number of times the distributing number is contained in the total number of its votes.

Each political party or movement may choose the system of preferential vote. In this case the voter may mark the candidate of his/her preference from the list of names shown on the ballot card. The list shall be reorganized according to the number of votes obtained by each candidate. The distribution of seats shall take place in descending order, beginning with the candidate who obtained the highest number of preferential votes.

In the case of the political parties and movements that have chosen the system of preferential vote, the votes for the party or movement that have not been given by the voter to any candidate in particular shall be counted for the respective list for the purpose of the application of the laws concerning the threshold and the distributing number, but they shall not be counted for the reorganization of the list. When the voter votes simultaneously for the political party or movement and for the candidate of his/her preference within the respective list, the vote shall be valid and shall be counted in favor of the candidate.

## CHAPTER II. ON THE ELECTORAL AUTHORITIES

### ARTICLE 264

The National Election Commission shall be composed of nine (9) members elected by the Congress of the Republic in plenary session for an institutional period of four (4) years, in accordance with the system of the distributing number and on the basis of proposals submitted by the political parties or movements with legal personality or by coalitions formed between them. Its members shall be civil servants exclusively dedicated to the duties of their office, shall have the same qualifications, disabilities, incompatibilities, and rights as the magistrates of the Supreme Court of Justice; and may be re-elected one time.

### PARAGRAPH

The contentious administrative jurisdiction shall decide the electoral nullity action within the maximum period of one (1) year.

If in accordance with an Act there is only one court instance, the period for the decision may not exceed six (6) months.

### ARTICLE 265

The National Election Commission shall regulate, inspect, supervise and control any electoral activity of the political parties and movements, the relevant citizen groups, their legal representatives, leadership and candidates, ensuring compliance with the principles and obligations which apply to them. It shall have the

following special powers:

1. To exercise the supreme inspection, oversight and control of the electoral organization.
2. To introduce the National Registrar of the Civil Status into his/her office.
3. To examine and take the final decision on applications brought against the decisions of its delegates concerning general ballots and to declare the results of the elections and issue the corresponding certifications in these cases.
4. In addition, to review, of its own initiative or upon application, ballots and the electoral documents pertaining to them in each of the different stage of the administrative procedure of the election with the goal of guaranteeing the truthfulness of the election results.
5. To serve as consultative body of the government on matters within its competence, to propose constitutional reform and ordinary bills, and to recommend draft decrees.
6. To oversee compliance with the rules concerning political parties and movements and with the provisions regarding publicity and political opinion polls; the rights of the opposition and minorities; and the development of the electoral processes in the conditions of comprehensive guarantees.
7. To distribute the subsidies which an Act establishes for the funding of electoral campaigns and the safeguarding of the right of political participation of the citizens.
8. To count the votes in all national elections, to declare the results of the election, and to issue the certifications as appropriate.
9. To grant and to revoke the legal personality of the political parties and movements.
10. To regulate the participation of the political parties and movements in the social communications media of the State.
11. To cooperate in the realization of internal polls of the parties and movements for the taking of decisions and the selection of their candidates.
12. To decide on the removal of candidates to Public Bodies or popularly elected office from the electoral list where full evidence exists that they are disqualified from public office for one of the causes recognized by the Constitution or statute.
13. To draft its own rules of procedure.
14. Other powers that an Act may confer upon it.

## ARTICLE 266

The National Registrar of the Civil Status shall be chosen by the Presidents of the Constitutional Court, the Supreme Court of Justice, and the Council of State in a merits-based contest organized in accordance with the relevant statute. The term of office shall be four (4) years. The Registrar must possess the same qualities that the Political Constitution requires in the case of the magistrates of the Supreme Court of Justice, and must not have exercised functions in the executive committees of political parties or movements in the year immediately preceding his/her election.

He/She may be re-elected one time and shall exercise the functions determined by an Act, including the direction and organization of the elections, the civil registry and the identification of persons, and shall conclude contracts in the name of the Nation in the cases provided by statute.

The National Registry Office shall be staffed by civil servants pursuing a special administrative career which may be entered only by means of a merits-based contest and which provides for a flexible retirement in accordance with service needs. In all cases, positions involving administrative or electoral responsibilities are subject to the principle of free removal, in accordance with the relevant statute.

## TRANSITIONAL PARAGRAPH

The term of the current members of the National Election Commission and the National Registrar of Civil Status shall continue until the year 2006. The following election for any of these positions shall take place in accordance with the provisions of the present Legislative Act.

## TITLE X. ON THE CONTROL ORGANISMS

### CHAPTER I. ON THE OFFICE OF CONTROLLER GENERAL OF THE REPUBLIC

#### ARTICLE 267

Fiscal control is a public function to be exercised by the Office of the Controller General of the Republic, which oversees the fiscal management of the administration and of individuals or entities that manage funds or assets of the Nation.

Control shall be exercised in subsequent and selective form according to the procedures, systems, and principles established by statute. However, an Act may authorize, in special cases, oversight be performed by Colombian private enterprises selected on the basis of public competition according to merit and contracted in accordance with the opinion of the Council of State.

Oversight of the fiscal management of the State includes exercising financial control, management, and performance, based on efficiency, economy, equality, and appraising the environmental costs. In exceptional cases as specified by statute, the Office of the Controller General may exercise subsequent control over the accounts of any territorial entity.

The Office of the Controller is an entity of a technical nature with administrative and budgetary autonomy. It does not have administrative functions other than those inherent in its own organization.

The Controller shall be elected by the plenum of the Congress in the first month of its sessions for a term equal to that of the President of the Republic, from a list of three consisting of one candidate each presented by the Constitutional Court, the Supreme Court of Justice, and the Council of State, and he/she may not be re-elected for the following period or continue to exercise his/her functions upon the expiration of said term. Any person who has held this office may not fill any public office at a national level, except for teaching, nor try to win a popularly-elected position without one year having lapsed since he left office.

Only Congress can accept resignations of the Controller and fill permanent vacancies in the position; temporary absences shall be provided for by the Council of State.

To be elected Controller General of the Republic, it is required that one be Colombian by birth and hold active citizenship, be more than 35 years of age; and have a university degree or have been a university professor for at least 5 years; and to demonstrate additional qualities required by statute.

A person may not be elected Controller General if he/she is or has been a member of Congress or has occupied any public office at a national level, except for teaching, during the year immediately preceding the election. Neither may he/she be elected if he/she has been sentenced to imprisonment for common offenses.

In no case may anyone intervene in the vetting of candidates or the election of Controller General who is kin to the candidates to the fourth level of consanguinity, the second level of affinity or the first civil or legal level.

## ARTICLE 268

The Controller General of the Republic has the following powers:

1. To prescribe the methods and form for those responsible for managing funds or assets of the nation to render accounts; to establish criteria for financial and operational evaluation and the evaluation of the results which have to be followed.
2. To review and close the accounts that must be kept by those responsible for public funds and to determine how efficiently, effectively, and economically they have worked.
3. To keep a record of the public debt of the Nation and of its territorial entities.
4. To require reports on their fiscal management from official employees at any level and from any person or public or private entity that administers the funds or assets of the Nation.
5. To establish responsibility derived from fiscal management, to impose financial sanctions as the case may be, to collect their sum, and to exercise coercive jurisdiction over the balances deducted therefrom.
6. To establish the quality and efficiency of internal fiscal control of the entities and organs of the State.
7. To present to the Congress of the Republic an annual report on the state of natural resources and of the environment.
8. To initiate before the competent authorities, providing respective evidence, penal or disciplinary investigations against anyone who has harmed the patrimonial interests of the State. Under its responsibility, the Office of the Controller may demand, having learned the truth and acted in good faith, the immediate suspension of officials while investigations or appropriate penal or disciplinary proceedings are being completed.
9. To present government bills concerning the system of fiscal control and the organization and functioning of the Office of the Controller General.
10. To fill jobs on his/her staff that have been created by an Act, through public competition. An Act shall establish a special system of administrative careers through the selection, promotion and retirement of officials of the Office of the Controller. Those who form part of the bodies that

are involved in the application and election of the Controller are prohibited from providing personal and political recommendations for jobs in his/her office.

- 11.** To present information to Congress and to the President of the Republic concerning the carrying out of his/her functions and certification concerning the situation of the finances of the State, in accordance with an Act.
- 12.** To issue general rules for harmonizing the systems of fiscal control of all public entities at national and territorial levels.
- 13.** Other matters as specified by statute.

To present to the House of Representatives the General Audit of the Budget and of the Treasury and to certify the balance in the public Exchequer presented to Congress by the Controller General.

## **ARTICLE 269**

In the public entities, the appropriate authorities are obliged to plan and implement projects, depending on the nature of their functions, methods, and procedures of internal control, in accordance with the provisions of the relevant statute which may stipulate exceptions and authorize the contracting for said services with private Colombian enterprises.

## **ARTICLE 270**

An Act shall organize the forms and systems of citizen participation making it possible to oversee the public management completed at the various administrative levels and their results.

## **ARTICLE 271**

The results of the preliminary inquiries undertaken by the Office of the Controller shall count as evidence before the Office of the Attorney General of the Nation and the competent judge.

## **ARTICLE 272**

The oversight of the fiscal administration of the departments, districts, and municipalities where there exist controller's offices are the jurisdiction thereof and shall be exercised in subsequent and selective form. The oversight of municipalities is incumbent on the departmental controller's offices, except for what an Act stipulates concerning the municipal controller's offices.

It is the responsibility of the assemblies and of the district and municipal councils to organize the respective controller's offices as technical entities endowed with administrative and budgetary autonomy.

Similarly, they are responsible for electing a controller for a period overlapping that of the governor or mayor, depending on the case, from lists made up of two candidates as presented by the Superior Court of Judicial District and by the appropriate Tribunal of Contentious and Administrative Matters.

No controller may be reelected for the period immediately following his/her term.

Departmental, district, and municipal controllers shall exercise, within the scope of their jurisdiction, the functions assigned to the Controller General of the Republic in Article 268 and may, based on authorization

by statute, contract with private Colombian enterprises for the exercise of fiscal oversight.

In order to be elected departmental, district, or municipal controller, the candidate must be Colombian by birth, a citizen in good standing, be over 25 years old, hold a university degree, and have the other qualifications stipulated by statute.

An individual, who in the previous year was a member of the assembly or council responsible for electing the controller, is not eligible for election, nor is an individual who has held public office at the departmental, district, or municipal level, except for teaching faculty.

Whoever has occupied the position of departmental, district, or municipal controller may not hold any official position in the same department, district, or municipality, nor be registered as a candidate for popularly-elected office except a year after termination of his/her previous functions.

## **ARTICLE 273**

At the request of any of the proponents, the Controller General of the Republic and other competent authorities of fiscal control shall order that any award of a bid be conferred in public.

The cases in which the mechanism of public awards are made and the manner in which the proposals and the conditions under which they are realized shall be stipulated by statute.

## **ARTICLE 274**

The oversight of the fiscal management of the Office of the Controller of the Republic shall be exercised by an auditor elected for terms of two years by the Council of State from a list originating from the Supreme Court of Justice.

An Act shall determine the manner of exercising said oversight at the departmental, district, and municipal level.

# **CHAPTER II. ON THE PUBLIC MINISTRY**

## **ARTICLE 275**

The General Prosecutor of the Nation is the supreme director of the Public Ministry.

## **ARTICLE 276**

The General Prosecutor of the Republic shall be elected by the Senate for a period of four years from a list made up of candidates selected by the President of the Republic, the Supreme Court of Justice, and the Council of State.

## **ARTICLE 277**

The General Prosecutor of the Nation, by himself/herself or through his/her delegates and agents, shall have the following functions:

- 1.** To oversee the execution of the Constitution, the statutes, judicial decisions, and administrative decrees.

2. To protect human rights and insure their effectiveness, with the assistance of the Ombudsman.
3. To defend the interests of society.
4. To defend the collective interests, especially the environment.
5. To oversee the diligent and efficient exercise of administrative functions.
6. To oversee at the highest level the official conduct of those who hold public office, including those popularly elected; exercise on a preferential basis the disciplinary authority; initiate the appropriate investigations and impose the appropriate sanctions in accordance with the relevant statute.
7. To intervene in the processes and before the judicial or administrative authorities when it becomes necessary to defend the legal order, the public domain, or fundamental rights and guaranties.
8. To provide an annual report of his/her administration to Congress.
9. To demand from public officials and individuals the information that he/she considers necessary.
10. Other matters stipulated by statute.

For the exercise of its functions, the Office of the Public Prosecutor shall have powers of judicial policy and shall be authorized to take the measures that it considers necessary.

## ARTICLE 278

The General Prosecutor of the Nation shall exercise the following functions directly:

1. Discharge from office, following a hearing and on the basis of justified reasons, any public officials who are guilty of any of the following deficiencies: violating the Constitution or the laws in an obvious manner; deriving obvious and profitable material advantage from the exercise of their duties or functions; impeding in serious manner investigations carried out by the Office of the Public Prosecutor or by an administrative or juridical authority; performing with obvious carelessness the investigation and sanctioning of the disciplinary deficiencies of employees under their authority or in the denunciation of punishable occurrences that they have cognizance of by virtue of exercising their office.
2. Issue proposals in the disciplinary processes pressed against officials subject to special statutes.
3. Present government bills relating to matters under his/her jurisdiction.
4. Exhort Congress to pass laws that insure the promotion, exercise, and protection of human rights and demand their execution from the competent authorities.
5. Make proposals concerning the processes of constitutional control.
6. Appoint and remove, in accordance with an Act, officials and employees under his/her jurisdiction.

## ARTICLE 279

An Act shall determine matters relative to the structure and functioning of the Office of the General Prosecutor of the Nation, shall regulate matters relating to the employment and competitive examinations and to retirement from the service, to disqualifications and incompatibilities, designation, qualifications, compensation, and the disciplinary regime of all the officials and employees of said organization.

## ARTICLE 280

The agents of the Public Ministry shall have the same qualifications, classification, compensation, rights, and benefits as the magistrates and judges of the hierarchy before whom they exercise their responsibility.

## ARTICLE 281

The Ombudsman shall be part of the Public Ministry and shall exercise his/her functions under the supreme direction of the General Prosecutor of the Nation. He/She shall be elected for a term of four years on a proposal drawn up by the President of the Republic.

## ARTICLE 282

The Ombudsman shall oversee the promotion, exercise, and publicizing of human rights for which purpose he/she shall exercise the following functions:

1. Guiding and instructing the inhabitants of the national territory and Colombians abroad in the exercise and defense of their rights before the competent authorities or private entities.
2. Publicizing human rights and recommending policies for making them known.
3. Invoking the right of habeas corpus and engaging in protective action without prejudice to the right of interested parties.
4. Organizing and directing the public defense counsel in the conditions stipulated by statute.
5. Mediating popular measures in matters falling under his/her jurisdiction.
6. Presenting proposed bills on matters falling under his/her jurisdiction.
7. Making reports to Congress on the exercise of his/her functions.
8. Other matters stipulated by statute.

## ARTICLE 283

An Act shall determine matters relating to the organization and functioning of the Office of the Ombudsman.

## ARTICLE 284

Except in the cases provided in the Constitution and the statute, the General Prosecutor of the Nation and Ombudsman shall be able to request from the authorities the information necessary for the exercise of their functions without any objection possible on any grounds.

## TITLE XI. ON THE TERRITORIAL ORGANIZATION

### CHAPTER I. GENERAL PROVISIONS

#### ARTICLE 285

Outside of the general division of the territory, there shall be divisions determined by statute for the exercise of the functions and services for which the State is responsible.

#### ARTICLE 286

Departments, districts, municipalities, and indigenous reservations are territorial entities.

An Act may grant the status of territorial entities to the regions and provinces that are formed under the terms of the Constitution and the relevant statute.

#### ARTICLE 287

Territorial entities enjoy autonomy for the management of their interests within the limits of the Constitution and the relevant statute. By virtue of this they shall have the following rights:

1. To govern themselves under their own authorities.
2. To exercise the jurisdictions appropriate to them.
3. To administer their resources and establish the taxes necessary for the exercise of their functions.
4. To participate in national revenues.

#### ARTICLE 288

The Institutional Act on Territorial Organization shall establish the distribution of powers between the Nation and the territorial entities.

The powers assigned to the various territorial levels shall be exercised in accordance with the principles of coordination, competition, and subsidiarity under the terms stipulated by statute.

#### ARTICLE 289

Under the authority of an Act, the departments and municipalities located in border areas may promote directly with the territorial entity bordering on the neighboring country on a level of equality, cooperation, and integration, programs whose purpose is to promote community development, the lending of public services, and the protection of the environment.

#### ARTICLE 290

With the execution of the requirements and formalities stipulated by statute, and in the cases determined therefrom, the periodic review of the borders of territorial entities shall be effected and the official map of the Republic shall be published.

#### ARTICLE 291

The members of the public associations of territorial entities may not accept any position in the public administration if doing so would make them lose their investiture.

The controllers and agents may be involved in the joint administrative boards and councils within which they operate in the respective territorial entities only when they are expressly invited for specific purposes.

## **ARTICLE 292**

The deputies and councilors and their kin up to the degree stipulated by statute are prohibited from participating in executive boards of the decentralized entities of the respective department, district, or municipality.

Spouses or permanent companions of the deputies and councilors may not be designated officials of corresponding territorial entity if they are kin to the second level of consanguinity, first of affinity or merely civil.

## **ARTICLE 293**

Without prejudice to what is established in the Constitution, an Act shall determine the qualifications, disabilities, incompatibilities, date of possession, durations of sessions, absolute or temporary disqualifications, causes of expulsion, and forms of filling the vacancies of the citizens who may be elected by popular vote for the implementation of the public functions in the territorial entities. An Act shall also stipulate the other necessary provisions for their election and performance of their functions.

## **ARTICLE 294**

An Act may not concede exemptions nor preferential treatment in relation to the property taxes of the territorial entities. Nor may it impose surtaxes on top of taxes except as stipulated in Article 317.

## **ARTICLE 295**

The territorial entities may issue public notes and bonds of public debt, subject to the conditions of the financial market, and also to contract foreign credit, all of this in accordance with the Act regulating the matter.

## **ARTICLE 296**

For the preservation of the public order or for its restoration where it has been disturbed, the decrees and orders of the President of the Republic shall be applied forthwith and preferentially over measures decreed by the governors; the decrees and orders of governors shall be applied in similar manner and with the same effects in relation to the measures of mayors.

## **CHAPTER II. ON THE DEPARTMENTAL REGIME**

### **ARTICLE 297**

The National Congress may decree the formation of new departments as long as the requirements mandated in the Institutional Act of Territorial Planning are completed and once the procedures, studies, and popular consultation are verified.

## ARTICLE 298

The departments enjoy autonomy for the administration of sectional matters as well as the planning and promotion of economic and social development within their territory and within the limits established by the Constitution.

The departments exercise administrative functions of coordination, dovetailing with municipal action, intermediation between the nation and the municipalities, and the lending of the services determined by the Constitution and the relevant statutes.

An Act shall regulate matters connected with the exercise of the powers which the Constitution grants the departments.

## ARTICLE 299

In each department there shall be a popularly elected political-administrative body known as departmental assembly, which shall be composed of no fewer than eleven (11) nor more than thirty-one (31) members. This body shall enjoy administrative autonomy and have its own budget, and may exercise political control over the departmental administration.

The regime of disqualifications and incompatibilities of the deputies shall be determined by statute. It may not be less strict than the one provided for with regard to members of Congress for the corresponding matters. The term of the deputies shall be four years, and they shall have the status of civil servants.

In order to be elected deputy a person has to be a citizen of full capacity, must not have been sentenced to imprisonment, except for political offenses or misdemeanors, and must have resided in the respective constituency in the year immediately prior to the election.

The members of the Departmental Assembly shall have the right to allowances during the relevant sessions, and shall be provided with a regime of benefits and social security, in the terms established by statute.

## ARTICLE 300

The departmental assemblies, by means of ordinances, exercise the following powers:

1. To regulate the exercise of the functions and the provision of services for which the department is responsible.
2. To enact the regulations connected with the planning, economic and social development, financial support of and borrowing to the municipalities, tourism, transportation, the environment, public works, means of communication, and development of their border areas.
3. To adopt, in accordance with an Act, the plans and programs of economic and social development and public works, with the determination of investments and means that are considered necessary to promote their execution and to secure their completion.
4. To decree, in accordance with an Act, the taxes and levies necessary for the execution of the departmental functions.

5. To enact the organic rules on the departmental budget and the annual budget of revenues and expenditures.
6. To create and eliminate, subject to the requirements stipulated by statute, municipalities, segregate or aggregate municipal territories, and organize provinces.
7. To determine the structure of the departmental administration, the functions of their dependencies, the scales of remuneration appropriate to the various categories of employment; create the public institutions and industrial or commercial enterprises of the department, and authorize the formation of mixed [public-private] companies.
8. To issue policy directives on any matter that is not regulated by statute.
9. To authorize the Governor of the Department to make contracts, negotiate loans, transfer goods and exercise, temporarily, specific functions of those which correspond to the Departmental Assemblies.
10. To regulate, concurrently with the municipality, the areas of sports, education, and public health within the limits determined by statute.
11. To request reports on the exercise of their respective functions from the Controller General of the Department, the Cabinet Secretary, the chiefs of the administrative departments and the directors of the decentralized entities at the departmental level.
12. To fulfill the other functions assigned to them by the Constitution and the statute.

The plans and programs of development and public works shall be coordinated and integrated with the municipal, regional, and national plans and programs.

The ordinances referred to in subparagraphs 3, 5, and 7 of this article, those which decree investments, shares, or the transfer of departmental revenues and property, and those that create services for which the department is responsible or from whom the responsibility is transferred to may be enacted or amended only upon the initiative of the Governor.

13. To summon and invite the secretaries of the office of the Governor to attend the sessions of the assembly. The summons must be made not less than five days prior to a session and be formulated in the form of a written questionnaire. In case the secretaries do not attend, without an excuse accepted by the assembly, the latter may table a motion of censure. The secretaries must be heard at the session for which they were summoned, without prejudice to the possibility that the discussion is continued at subsequent sessions following a decision of the assembly. The discussion may not extend to other issues than those in the questionnaire and shall be placed at the top of the session's agenda.
14. To table a motion of censure with respect to the secretaries of the office of the Governor for matters related to their official functions, or for ignoring the requests or summons of the assembly. The motion of censure must be tabled by one third of the members who make up the assembly. The vote shall take place between the third and 10th day following the end of the discussion, with a public hearing of the respective official. Approval of the motion shall require the affirmative vote of two-thirds of the members of the relevant body. Once the motion is approved, the official shall be relieved of his/her functions. If it is voted down, no new motion of

censure may be proposed on the same matter unless it is supported by new facts. The resignation of the official against which the censure motion has been tabled does not prevent the latter from being approved in accordance with the provisions of this Article.

## ARTICLE 301

An Act shall stipulate the cases and the specific functions which the assemblies may delegate in the municipal councils. At any moment, the assemblies may reassume the exercise of the delegated functions.

## ARTICLE 302

An Act may establish for one or several departments various qualifications and jurisdictions of administrative and fiscal management different from those stipulated for them in the Constitution, with attention to the need of improving the administration or lending of public services in accordance with their population, economic and natural resources, and social, cultural, and ecological circumstances.

In order to elaborate on the above, an Act may delegate to one or several departments the powers pertaining to national public organs or entities.

## ARTICLE 303

In each of the departments there shall be a governor who shall be the head of the sectional administration and legal representative of the department; the governor shall be the agent of the President of the Republic for the maintenance of the public order and for the execution of the general economic policy as well as for those matters which, through agreements, the nation agrees to delegate to the department. The governors shall be elected for periods of four years and may not be reelected for the subsequent term.

An Act shall determine the qualifications, requirements, disabilities, and incompatibilities of the governors; shall regulate their election; shall determine the cases in which they are permanently or temporarily prevented from discharge of their official duties, and regulate the manner in which the vacancy resulting in these cases is filled; and shall stipulate the other provisions necessary for the normal execution of their responsibilities.

Provided that the governor is permanently prevented from discharging the duties of his/her office for more than eighteen (18) months before the end of his/her term, a Governor shall be elected for the remaining period. In case the end of the term is less than eighteen (18) months away, the President of the Republic shall appoint a governor for the rest of the term, who must belong to the party, political group or coalition for which the elected governor had been registered.

## ARTICLE 304

The President of the Republic, in the restricted cases stipulated by an Act, may suspend or remove governors from office.

The regime of disabilities and incompatibilities applying to them shall be no less strict than that established for the President of the Republic.

## ARTICLE 305

The Governor exercises the following powers:

- 1.** To execute the Constitution and enforce it as well as the statutes, government decrees, and ordinances of the departmental assemblies.
- 2.** To direct and coordinate the department's administrative actions and to act in its name as manager and promoter of the complete development of its territory, in accordance with the Constitution and laws.
- 3.** To direct and coordinate national services as delegated to the governor by the President of the Republic.
- 4.** To present to the departmental assembly in a timely manner proposals for ordinances regarding plans and programs of economic and social development, public works, and the annual budget of revenues and expenditures.
- 5.** To appoint and to remove freely managers or directors of public institutions and of industrial or commercial enterprises of the department. The representatives of the department on the executive boards of such entities and the directors or managers of same are agents of the Governor.
- 6.** In accordance with general plans and programs, to encourage enterprises, industries, and activities which correspond to the cultural, social and economic development of the department and do not fall under the responsibility of the Nation or the municipalities.
- 7.** To create, eliminate, and merge positions in the department's dependencies, to define their special functions and to fix their remuneration subject to statute and the respective ordinances. He/she may not create obligations at the expense of the departmental treasury that exceed the global amount specified for the respective service in the budget as initially approved.
- 8.** To eliminate or merge departmental entities in accordance with ordinances.
- 9.** To veto on grounds of unconstitutionality, illegality, or unsuitability proposed ordinances, or to approve and promulgate them.
- 10.** To examine the acts of municipal councils and mayors and, on grounds of unconstitutionality or illegality, submit them to the competent Tribunal so that it may decide on their validity.
- 11.** To see to the accurate collection of departmental revenues, revenues of the decentralized entities, and of those which may be the object of transfers by the nation.
- 12.** To convene the departmental assembly for special sessions in which it shall only consider the issues and matters for which it was summoned.
- 13.** To select from the lists submitted by the respective national head of administration the managers or sectional heads of public institutions at the national level which operate in the department, in accordance with the relevant statute.
- 14.** To exercise administrative functions that the President of the Republic may delegate.
- 15.** Other powers specified by the Constitution, laws, and ordinances.

## ARTICLE 306

Two or more departments may organize themselves as administrative and planning regions with legal personality, autonomy, and their own resources. Their principal purpose shall be the economic and social development of the respective territory.

## ARTICLE 307

The respective Institutional Act, subject to the prior plan of the Committee of Territorial Planning, shall establish the conditions to solicit the conversion of the region into a territorial entity. The decision taken by Congress shall be submitted in each case to a referendum by the citizens of the departments concerned.

The same law shall establish the powers, organs of administration, and resources of the regions and their participation in the handling of revenues originating from the National Endowment Fund. It shall also define the principles for the adoption of the special statute of each region.

## ARTICLE 308

An Act may limit the departmental appropriations earmarked for the honoraria of deputies and the operating expenses of the assemblies and departmental controllers' offices.

## ARTICLE 309

It shall be necessary to transform into a department the districts of Arauca, Casanare, Putumayo, the Archipelago of San Andrés, Providencia, and Santa Catalina and the police districts (comisarías) of Amazonas, Guaviare, Guainía, Vaupés, and Vichada. The assets and rights which used to belong to the intendencies (intendencias) and police stations on any account shall continue being the property of the respective departments.

## ARTICLE 310

The department of San Andrés Archipelago, Providencia, and Santa Catalina shall be regulated, in addition to the provision in the Constitution and the statutes for the other departments, by special provisions which in administrative, immigration, fiscal, foreign trade, exchange, financial, and economic development matters shall be established by the legislative.

By means of a law approved by the majority of the members of each House, it shall be possible to limit the exercise of the rights of movement and residence, establish controls on the density of population, regulate the use of the land, and submit to special conditions the transfer of immovable property in order to protect the cultural identity of the native [Indian] communities and preserve the environment and natural resources of the archipelago.

Through the creation of the municipalities that may occur, the departmental assembly shall guarantee the institutional expression of the original communities of San Andrés. The municipality of Providencia shall have a share of no less than twenty percent of the total value of said departmental revenues.

## CHAPTER III. ON THE MUNICIPAL REGIME

### ARTICLE 311

As the fundamental entity of the political-administrative division of the State, it is the responsibility of the municipality to lend those public services determined by statute, to build the projects required for local progress, to arrange for the development of its territory, to promote community participation, the social and cultural betterment of its inhabitants, and to execute the other functions assigned to it by the Constitution and the statutes.

## ARTICLE 312

In each municipality there shall be a political-administrative body popularly elected for periods of four years which shall be known as the municipal council, composed by no fewer than 7 and no more than 21 members, in accordance with the determination made by an Act based on the respective population. This body may exercise political control over the municipal administration.

An Act shall determine the qualifications, disabilities, and incompatibilities of the councilors and the schedule of the ordinary sessions of the councils. The councilors shall not have the status of public employees.

An Act may determine the cases in which the councilors shall be entitled to allowances for their attendance at sessions.

The acceptance of any public employment means that the respective councilor is prevented permanently from the discharge of his/her duties.

## ARTICLE 313

The councils have the following competences:

1. To regulate the functions and efficient delivery of the services for which the municipality is responsible.
2. To adopt the appropriate plans and programs of economic and social development and of public works.
3. To authorize the mayor to make contracts and exercise temporarily specific functions among those for which the council is responsible.
4. To vote for taxes and local expenditures in accordance with the Constitution and the relevant statute.
5. To dictate the organic budgetary regulations and issue annually the budget of revenues and expenditures.
6. To determine the structure of the municipal administration and the functions of their dependencies; the scales of remuneration appropriate to the various categories of employees; create at the initiative of the mayor public institutions and industrial or commercial enterprises and authorize the formation of mixed [public-private] companies.
7. To regulate the uses of the land and, within the limits determined by statute, oversee and control the activities connected with the construction and sale of housing slated for

residences.

8. To elect a representative for the period determined by statute and the other functionaries that the latter stipulates.
9. To dictate the regulations necessary for the control, preservation, and defense of the ecological and cultural patrimony of the municipality.
10. Other competences which the Constitution or statutes assign them.
11. To summon and invite the secretaries of the office of the mayor to attend the sessions of the council in the capitals of the departments and the municipalities with more than twenty-five thousand inhabitants. The summons must be made not less than five days prior to a session and be formulated in the form of a written questionnaire. In case the secretaries do not attend, without an excuse accepted by the district or municipal council, the latter may table a motion of censure. The secretaries must be heard at the session for which they were summoned, without prejudice to the possibility that the discussion continues at subsequent sessions following a decision of the council. The discussion may not extend to other issues than those in the questionnaire and shall be placed at the top of the session's agenda.

The councils of the other municipalities may summon and invite the secretaries of the office of the mayor to attend the sessions of the council. The summons must be made not less than five days prior to a session and be formulated in the form of a written questionnaire. In case the secretaries do not attend, without an excuse accepted by the district or municipal council, any of its members may table a motion with observations which may not lead to the resignation of the respective official. Its approval shall require the affirmative vote of two-thirds of the members of the body.

12. To table a motion of censure with respect to the secretaries of the office of the mayor for matters related to their official functions, or for ignoring the requests or summons of the district or municipal council. The motion of censure must be tabled by one half of the members of the district or municipal council plus one. The vote shall take place between the third and 10th day following the end of the discussion, with a public hearing of the respective official. Approval of the motion shall require the affirmative vote of two-thirds of the members of the relevant body. Once the motion is approved, the official shall be relieved of his/her functions. If it is voted down, no new motion of censure may be proposed on the same matter unless it is supported by new facts. The resignation of the official against which the censure motion has been tabled does not prevent the latter from being approved in accordance with the provisions of this Article.

## ARTICLE 314

In each municipality there shall be a mayor, head of the local administration and legal representative of the municipality, who shall be popularly-elected for institutional periods of four (4) years and may not be reelected for the subsequent period.

When the mayor is permanently prevented from discharging the duties of his/her office for more than eighteen (18) months before the end of his/her term, a mayor shall be elected for the remaining period. In

case the end of the term is less than eighteen (18) months away, the Governor shall appoint a mayor for the rest of the term, who must belong to the party, political group or coalition for which the elected mayor had been registered.

The President [of the Republic] and the governors in the cases restrictively stipulated by an Act may suspend mayors or remove them from office.

An Act shall establish the sanctions that apply for the improper exercise of that power.

## ARTICLE 315

The following are powers of the mayor:

1. To execute and to ensure the execution of the Constitution, the statutes, the decrees of the government, the ordinances, and the resolutions of the council.
2. To protect the public order in the municipality, in accordance with the law and the instructions and orders that the mayor may receive from the President of the Republic and the respective governor. The mayor is the highest police authority of the municipality. The National Police shall promptly and diligently execute the orders given to it by the mayor through the channel of the respective commander.
3. To direct the administration of the municipality; secure the execution of the functions and the delivery of services for which the mayor is responsible; represent it in a judicial and extrajudicial capacity; and appoint and remove the officials under his/her jurisdiction as well as the managers or directors of the public institutions and the industrial or commercial enterprises of a local character, in accordance with the pertinent provisions.
4. To eliminate or merge municipal entities and dependencies, in accordance with the respective resolutions.
5. To present in timely manner to the Council proposals concerning the plans and programs of economic and social development, public works, the annual budget of revenues and expenditures, and other measures that the mayor may find appropriate for the effective operation of the municipality.
6. To sanction and promulgate the resolutions which the Council may have approved and to veto those that he/she considers inappropriate or contrary to the legal regulations.
7. To create, eliminate, or merge positions under the mayor's jurisdiction, to stipulate the special functions and determine their emoluments in accordance with the relevant resolutions. The mayor may not create obligations that exceed the total amount allocated for personnel expenditures in the initially approved budget.
8. To cooperate with the Council for the effective execution of its functions, present to it general reports on his/her administration, and convoke it to special sessions in which only those issues and matters for which it was summoned may be examined.
9. To manage municipal expenditures in accordance with the investment plan and the budget.
10. Other matters which the Constitution and the statute provide for.

## ARTICLE 316

In the balloting held for the election of local authorities and for the decision of matters of like nature, only citizens residing in the respective municipality may participate.

## ARTICLE 317

Only municipalities may tax real estate. This does not bar other entities from imposing appraisal levies.

An Act shall allocate a percentage of these taxes, which may not exceed the average of existing tax surcharges, to the entities entrusted with the protection and conservation of the environment and the renewable natural resources, in accordance with the development plans of the municipalities of the area under their jurisdiction.

## ARTICLE 318

With the purpose of improving the provision of services and securing the participation of the citizenry in the handling of public affairs of a local character, the councils may divide their municipalities into communes when urban areas are involved, and into jurisdictions in the case of rural zones.

In each of the communes or jurisdictions, there shall be a popularly elected local administrative board made up of a number of members determined by statute and which shall have the following functions:

1. To participate in the elaboration of municipal plans and programs of economic and social development and public works.
2. To oversee and control the provision of municipal services in its commune or jurisdiction and the investments realized with public funds.
3. To formulate investment proposals before the national, departmental, and municipal authorities entrusted with the elaboration of the respective investment plans.
4. To distribute the overall share allocated to it by the municipal budget.
5. To exercise the functions delegated to it by the council and other local authorities.

The departmental assemblies may organize administrative boards for the execution of the functions stipulated for them by the act of their establishment in the territory which the latter itself determines.

## ARTICLE 319

When two or more municipalities have economic, social, and fiscal relations which give to the whole characteristics of a metropolitan area, they may organize themselves as an administrative entity entrusted with programming and coordinating the harmonious and integrated development of the territory placed under their authority; rationalize the provision of public services for those who are responsible for it, and, if such is the case, jointly provide some of them; and execute projects of metropolitan interest.

The Act on territorial planning shall adopt for the metropolitan areas an administrative and fiscal regime of special character; shall guarantee that in their organs of administration the respective municipal authorities may enjoy adequate participation; and shall stipulate the form of convoking and holding the popular

consultations which the municipalities involved may decide upon.

Once the popular consultation is held, the respective mayors and municipal councilors shall record in a protocol the configuration of the area and shall define its powers, financing, and authorities, in accordance with the relevant statute.

The metropolitan areas may convert themselves into districts in accordance with the relevant statute.

## **ARTICLE 320**

An Act may establish categories of municipalities in accordance with their population, fiscal resources, economic importance, and geographic situation, and stipulate a specific regime for their organization, government, and administration.

## **ARTICLE 321**

The provinces are made up of municipalities or adjacent indigenous territories belonging to the same department.

An Act shall stipulate the basic statute and determine the administrative regime of the provinces that may be organized for the execution of the functions delegated to them by national or departmental entities and which an Act assigns to them and to the municipalities that make them up.

The provinces shall be created by ordinance, at the initiative of the governor, the mayors of the respective municipalities, or the number of citizens determined by statute.

For admission to an already constituted province, a popular consultation must be held in the municipalities involved.

The department and municipalities shall bring to the provinces the percentage of their current revenues that the assembly and respective councils shall determine.

## **CHAPTER IV. ON THE SPECIAL REGIME**

### **ARTICLE 322**

Bogotá, Capital of the Republic and of the Department of Cundinamarca, is organized as District Capital.

Its political, fiscal, and administrative regime are determined by the Constitution, the special laws that are enacted for this purpose, and the provisions applicable to the municipalities.

Based on the general rules established by an Act, the council shall, at the initiative of the mayor, divide the territory of the district into localities, in accordance with the social characteristics of its inhabitants, and shall make the corresponding allocation of powers and administrative functions.

It shall be the responsibility of the district authorities to guarantee the harmonious and integrated development of the city and the efficient provision of the services for which the district is responsible; the management of matters proper to their territory shall be the responsibility of the local authorities.

### **ARTICLE 323**

The district council shall consist of forty-five (45) councilors.

In each of the localities there shall be an administrative board, popularly elected for periods of four (4) years, which shall be composed of no fewer than seven aldermen/alderwomen, in accordance with the determination of the District Council made on the basis of the respective population.

The election of the senior mayor, the district councilors, and the aldermen/alderwomen shall be held on the same day for periods of four (4) years; the mayor may not be reelected for the following term.

When the senior mayor is permanently prevented from discharging the duties of his/her office more than eighteen (18) months before the end of his/her term, a senior mayor shall be elected for the remaining period. In case the end of the term is less than eighteen (18) months away, the President of the Republic shall appoint a senior mayor for the rest of the term, who must belong to the party, political group or coalition for which the elected mayor had been registered.

The local mayors shall be designated by the senior mayor from a list submitted by the competent administrative board.

In the cases restrictively stipulated by an Act, the President of the Republic may suspend or remove the senior mayor from office.

The councilors and aldermen/alderwomen may not form part of the executive boards of the decentralized entities.

## **ARTICLE 324**

The local administrative boards shall apportion and appropriate the aggregates which are allocated to the localities in the annual budget of the district, taking into account the basic unsatisfied needs of their population.

Concerning the departmental revenues that are produced in Santa Fe de Bogotá, an Act shall determine the share appropriate to the capital of the Republic. Such share may not be superior to that established at the date this Constitution goes into effect.

## **ARTICLE 325**

With the purpose of guaranteeing the execution of the plans and programs of integral development and the timely and efficient provision of the services for which it is responsible, within the terms set by the Constitution and the relevant statute, the Capital District may form a metropolitan area with the adjacent municipalities and a region with other territorial entities of departmental character.

## **ARTICLE 326**

The adjacent municipalities may become incorporated into the Capital District if this is what the citizens who reside in them determine by means of a vote that shall be held when the District Council has expressed its approval of such incorporation. If the latter occurs, the constitutional and legal provisions in force shall be applied to the old municipality for the other localities that make up the Capital District.

## ARTICLE 327

In the elections of governor and deputies to the Departmental Assembly of Cundinamarca, the citizens registered in the electoral rolls of the Capital District shall not participate.

## ARTICLE 328

The Tourist and Cultural District of Cartagena de Indias and the Touristic, Cultural, and Historic District of Santa Marta shall retain their regime and character, and Buenaventura y Tumaco shall be organized as Special, Industrial, Port, Biodiversity and Biotourism District.

## ARTICLE 329

The configuration of the indigenous [Indian] territorial entities shall be drawn subject to the provisions of the Institutional Act of Territorial Planning, and their delimitation shall be effected by the national government with the participation of the representatives of the indigenous communities following the plan of the Commission of Territorial Planning.

The safeguards that apply relate to collective property which may not be sold.

An Act shall define the relations and coordination of these entities with those of which they form a part.

## PARAGRAPH

In the case of an indigenous [Indian] territory that may include the territory of two or more departments, its administration shall be implemented by indigenous councils in coordination with the governors of the respective departments. In case that such territory should decide to constitute itself as a territorial entity, this shall be done in compliance with the requirements established by the first clause of this article.

## ARTICLE 330

In accordance with the Constitution and the statutes, the indigenous territories shall be governed by the councils formed and regulated according to the uses and customs of their communities and shall exercise the following functions:

1. Oversee the application of the legal regulations concerning the uses of the land and settlement of their territories.
2. Design the policies, plans and programs of economic and social development within their territory, in accordance with the National Development Plan.
3. Promote public investments in their territories and oversee their appropriate implementation.
4. Collect and distribute their funds.
5. Oversee the conservation of natural resources.
6. Coordinate the programs and projects promoted by the different communities in their territory.
7. Cooperate with the maintenance of the public order within their territory in accordance with

the instructions and provisions of the national government.

8. Represent the territories before the national government and the other entities in which they are integrated; and
9. Other matters stipulated by the Constitution and statute.

## **PARAGRAPH**

The exploitation of the natural resources in the indigenous territories shall be done without impairing the cultural, social, and economic integrity of the indigenous communities. In the decisions adopted with respect to said exploitation, the government shall encourage the participation of the representatives of the respective communities.

## **ARTICLE 331**

The Autonomous Regional Corporation of the Río Grande de la Magdalena entrusted with the improvement of navigation, port activity, the improvement and conservation of land, the generation and distribution of energy, and the use and conservation of the environment, fishing resources, and other renewable natural resources shall be established.

An Act shall determine its organization and sources of financing and shall define in favor of the riparian municipalities special treatment in the assignment of benefits and in their share of current national revenues.

## **TITLE XII. ON THE ECONOMIC AND PUBLIC FINANCE REGIME**

### **CHAPTER I. GENERAL PROVISIONS**

#### **ARTICLE 332**

The State is the owner of the subsoil and of the natural, non-renewable resources without prejudice to the rights acquired and fulfilled in accordance with prior laws.

#### **ARTICLE 333**

Economic activity and private initiative must not be impeded within the limits of the public good. For their exercise, no one may demand prior permission or licenses without authorization of an Act.

Free economic competition is a right of everyone, entailing responsibilities.

The enterprise, as a basis of development, has a social function that implies obligations. The state shall strengthen the joint organizations and stimulate enterprise development.

The State, mandated by an Act, shall check the impediments to or restrictions of economic freedom and shall avoid or control any abuse that individuals or enterprises may create thanks to their dominant position in the national marketplace.

An Act shall delimit the scope of economic freedom when the social interest, the environment, and the cultural patrimony of the nation demand it.

## ARTICLE 334

The general management of the economy is the responsibility of the state. By mandate of an Act, the state shall intervene in the exploitation of natural resources, land use, the production, distribution, use, and consumption of goods, and in the public and private services in order to rationalize the economy with the purpose of achieving, at the national and regional level and within the framework of fiscal sustainability, the improvement of the quality of life of the inhabitants, the equitable distribution of opportunities, and the benefits of development and conservation of a healthy environment. The aforementioned framework of fiscal sustainability must function as an instrument for achieving in a progressive manner the objectives of a social State based on the rule of law. In all cases public spending for social purposes shall have priority.

In a special manner, the state shall intervene for the sake of the full employment of the human resources and to ascertain that all individuals, especially those with a low income, may have effective access to all basic goods and services. [It shall] also [intervene] to promote productivity and competitiveness and the harmonious development of the regions.

Fiscal sustainability shall provide guidance to the branches and organs of government, within their competences, in a framework of harmonious collaboration.

When a judgment has been handed down by any of the supreme judicial bodies, the General Prosecutor of the Nation or one of the government ministries may request the initiation of a Financial Impact Assessment, the holding of which shall be obligatory. The explanations of the supporters on the consequences of the judgment on the public finances shall be heard, as well as the concrete plan for its execution, and a decision shall be taken whether to modulate, modify or postpone the effects of the judgment with the objective of preventing serious disturbances to fiscal sustainability. In no case shall the essential core of a fundamental right be affected.

## PARAGRAPH

In interpreting the present Article, an authority of an administrative, legislative or judicial character may under no circumstances invoke fiscal sustainability to diminish fundamental rights, reduce their scope of application or eliminate their effective protection.

## ARTICLE 335

The financial, stock exchange, insurance, and any other activities related to the handling, exploitation, and investment of the resources referred to in letter (d) of numeral 19 of Article 150 are of public interest and may only be exercised following the prior authorization of the State, in accordance with the applicable statute, which shall regulate the government's form of intervention in these areas and promote the equitable generalization of credit.

## ARTICLE 336

No monopoly may be established except through the free play of the marketplace and to promote the public or social interest and in accordance with applicable statute.

An Act which establishes a monopoly may not be applied before those individuals, who by virtue of it must

relinquish the pursuit of a legal economic activity, are fully indemnified.

The organization, administration, control, and exploitation of financial monopolies shall be subjected to a specific regime, determined by an Act of government initiative.

Revenues obtained in the exercise of the monopolies of games of chance shall be earmarked exclusively to the public health services.

Revenues obtained in the exercise of the liquor monopoly shall be earmarked on a preferential basis to the health and educational services.

Tax evasion with respect to revenues originating from financial monopolies shall be sanctioned as a crime within the limits established by statute.

The government shall sell or liquidate the monopolistic enterprises of the State and transfer to third parties the exploitation of their operation when the requirements of efficiency are not met within the limits established by statute.

In all cases the rights acquired by the workers shall be respected.

## **ARTICLE 337**

An Act may establish for the border regions, whether on land or sea, special regulations in economic and social matters tending to promote their development.

## **ARTICLE 338**

In peacetime, only Congress, departmental assemblies, and district and municipal councils may levy fiscal or fiscal-like dues. Statutes, ordinances, and resolutions must determine directly active and passive earnings, the events and bases that are taxable, and the rates of the levies.

Statute, ordinances, and resolutions may permit that the authorities determine the rate of taxes and levies that are collected from taxpayers to offset the costs of the services which the authorities provide or participation in the benefits that pertain to them; but the system and the method to define such costs and benefits and the manner of allocating them must be determined by statute, ordinances, or resolutions.

The statutes, ordinances, or resolutions that regulate levies based on the result of taxable events occurring during a specific period may not be reapplied except from the date following the entering into effect of the respective law, ordinance, or resolution.

## **CHAPTER II. ON DEVELOPMENT PLANS**

### **ARTICLE 339**

There shall be a National Development Plan consisting of a general part and a plan of investments of the national public entities. In the general part the long-term national purposes and objectives, the parameters and priorities for State action in the medium term, and the strategies and general orientations of economic, environmental and social policy to be adopted by the government shall be laid down. The public investment plan shall contain the multi-year budgets of the principal programs and national public investment projects,

and the specification of the financial resources required for their execution, within a framework which ensures fiscal sustainability.

The territorial entities shall elaborate and adopt in a concerted manner between them and the National Government development plans with the purpose of ensuring the efficient use of their resources, the development of strategies in the fight against poverty and the adequate execution of the functions assigned to them by the Constitution and statute. The plans of the territorial entities shall consist of a strategic plan and a plan for short and long term investments.

## **ARTICLE 340**

There shall be a National Planning Council made up of the representatives of the territorial entities and of the economic, social, ecological, community, and cultural sectors. The Council shall have a consultative character and shall serve as a forum for the discussion of the National Development Plan.

The members of the National Council shall be designated by the President of the Republic from lists presented to him/her by the authorities and organizations of the entities and sectors referred to in the previous clause which are or have been involved in said activities. Their term shall be of eight years, and every four years the Council shall be renovated in part in the form established by statute.

In the territorial entities there shall also be planning councils, in accordance with the relevant statute.

The National Council and the territorial planning councils constitute the National Planning System.

## **ARTICLE 341**

The government shall elaborate the National Development Plan with the active participation of the planning authorities, of the territorial entities and the Superior Council of Judicature and shall submit the draft plan to the National Planning Council for its views. After receiving the opinion of the Council, it shall proceed to effect those amendments that it considers appropriate and shall present the plan to the consideration of Congress within six months following the initiation of the respective presidential term.

Based on the report that the joint committees of economic affairs draw up, each House shall discuss and evaluate the plan in plenary session. Disagreements about the content of the general part, if there were any, shall not prevent the government from executing the proposed policies in matters falling under its jurisdiction. However, should the government decide to amend the general part of the plan, it shall follow the procedure indicated in the Article that follows.

The National Investment Plan shall be enacted by means of a law which shall have priority over the other laws; consequently, its mandates shall constitute suitable means for its execution and shall supplement existing ones without the need for issuing subsequent laws. Nevertheless, in the annual budgetary laws it shall be possible to increase or decrease the shares and resources approved in the planning law. If Congress does not approve the National Public Investment Plan within three months following its presentation, the Government may put it into effect through a decree having the force of law.

Congress may modify the Public Investment Plan as long as the financial balance is maintained. Any increase of borrowing authorizations requested in the governmental draft plan or the inclusion of investment plans not considered by the latter shall require the approval of the national Government.

## ARTICLE 342

The appropriate Institutional Act shall regulate everything concerned with the procedures of the drafting, approval, and execution of the development plans and shall use the assigned mechanisms for their harmonization and for the alignment of the official budgets with them. It shall also determine the organization and functions of the National Planning Council and of the territorial councils as well as the procedures in accordance with which citizens' participation shall be effective in the discussion of the development plans and the appropriate modifications, in accordance with what is established in the Constitution.

## ARTICLE 343

The national planning entity indicated by the relevant statute shall be responsible for the planning and organization of the systems of evaluation of the management and performance of the public administration, both with regard to investment policies and investment plans under the terms that it defines.

## ARTICLE 344

The departmental planning organs shall make the evaluation of management and performance concerning the planning, development, and investment programs of the departments and municipalities and shall participate in the preparation of the budgets of the latter in the limits stipulated by the relevant Act.

In each case, the national planning organ may, in selective manner, carry out said evaluation of any territorial entity.

## CHAPTER III. ON THE BUDGET

### ARTICLE 345

In peacetime, it is not permitted to collect levies or taxes that are not included in the revenues of the budget or to make payments from Treasury funds which are not included in the budgetary expenditures.

Nor may any public expenditure be incurred that has not been decreed by Congress, the departmental assemblies, or the district or municipal councils, or any credit transferred which is not projected in the respective budget.

### ARTICLE 346

The Government shall formulate annually the Revenues Budget and Appropriations Law which shall be presented to Congress within the first 10 days of each legislature. The Revenues Budget and Appropriations Law must be drafted, presented and approved within a framework of fiscal sustainability and be in conformity with the National Development Plan.

In the Appropriations Law, no part whatsoever may be included that does not correspond to a legally recognized credit or an expenditure decreed in accordance with an earlier law or a budget for the Government to duly serve the functioning of the branches of government, the servicing of the debt, or earmarked to implement the National Development Plan.

The economic committees of the two Houses shall deliberate jointly to give the first reading to the proposed Revenues Budget and Appropriations Law.

## ARTICLE 347

The appropriations bill shall include the totality of the expenditure which the State plans to implement during the respective fiscal period. If the legally authorized revenues are not sufficient to cover the projected expenditure, the Government shall propose separately, before the same committees that are considering the budget bill, the creation of new revenues or the modification of existing ones to finance the amount of contemplated expenditure.

The budget may be approved without the completion of the bill raising additional revenues which progress may continue in the subsequent legislative term.

## TRANSITIONAL PARAGRAPH

During the years 2002, 2003, 2004, 2005, 2006, 2007, and 2008 the total amount of the appropriations authorized by the annual budget law for general expenditures, other than those earmarked for the payment of pensions, health [costs], defense expenditure, personal services, of the General System of Shares and for other transfers determined by the relevant Act, may not be increased from one year to another by a percentage superior to the inflation rate resulting for each of them, plus one point five percent (1.5%).

The limitation of the amount of appropriations shall not apply to those [appropriations] necessary to meet the expenditure decreed by using the powers under a State of Exception.

## ARTICLE 348

If Congress does not issue the budget, the one presented by the government shall apply within the limits of the preceding article; should the budget not be presented by the same deadline, that of the previous year shall apply, but the government may reduce expenditures and consequently eliminate or reshuffle jobs when the computations of the revenues of the new fiscal year so mandate.

## ARTICLE 349

During the first three months of each legislature and strictly in accordance with the rules of the Institutional Act, Congress shall discuss and issue the General Revenues Budget and Appropriations Law.

Estimates of the revenues, credit resources, and proceeds of the Treasury balance may not be increased by Congress except following the prior opinion and favorable endorsement of the appropriate minister.

## ARTICLE 350

The Appropriations Law shall have a component entitled public social expenditure that shall consolidate the parts of such a nature according to a definition made by the respective Institutional Act. Except in case of foreign war or for reasons of national security, public social expenditure shall have priority over any other allocation.

In the territorial distribution of the public social expenditures, account shall be taken of the number of individuals with unsatisfied basic needs, the population, and fiscal administrative efficiency, according to the

regulations mandated by an Act.

The investment budget may not be reduced percentagewise compared to the earlier year with respect to the total expenditure of the corresponding Appropriations Law.

## ARTICLE 351

The Congress may not increase any of the sections of the estimated budgetary expenditures proposed by the Government or include a new section except with the written consent of the appropriate minister.

The Congress may eliminate or reduce parts of the expenditures proposed by the government with the exception of those needed for the servicing of the public debt, the other contractual obligations of the State, integral funding of the ordinary services of the administration, and the investments authorized in the plans and programs referred to in Article 341.

Should the computation of revenues increase or should some of the parts of the respective estimate be eliminated, the amounts made available in this manner, without exceeding their aggregate, may be applied to other investments or authorized outlays in accordance with what is prescribed in the final clause of Article 349 of the Constitution.

## ARTICLE 352

In addition to what is mentioned in this Constitution, the Institutional Act of the Budget shall regulate matters corresponding to the programming, approval, modification, and execution of the budgets of the nation, of the territorial entities, and those decentralized entities of any administrative level and their coordination with the National Development Plan as well as the capacity of the organs and state entities to enter into contracts.

## ARTICLE 353

The principles and provisions established in this title shall apply, as far as they are pertinent, to the territorial entities for the elaboration, approval, and execution of their budget.

## ARTICLE 354

There shall be a General Accountant, an official of the executive branch, who shall be responsible for the general accounting of the nation and shall consolidate the territories or services of the nation with that of its decentralized entities, no matter what the level to which they may belong, except for the execution of the budget, over which the Office of the Controller has jurisdiction.

The functions of streamlining, centralizing, and consolidating the public accounting system, elaborating on the general balance, and determining the accounting principles that must apply in the country, in accordance with the relevant statute, are the responsibility of the General Accountant.

## PARAGRAPH

Six months following the close of the fiscal year, the national government shall send to Congress the budgetary balance, audited by the Office of the Controller General of the Republic, for its information and analysis.

## ARTICLE 355

None of the branches or organs of government may decree subsidies or donations in favor of individuals or legal entities in the private sector.

At the national, departmental, district, and municipal levels, the government may, with the resources of the respective budgets, sign contracts with non-profit private entities and of recognized capability in order to promote programs and activities of public interest, in accordance with the National Plan and the sectional development plans. The National Government shall regulate the matter.

## CHAPTER IV. ON THE DISTRIBUTION OF RESOURCES AND JURISDICTIONS

### ARTICLE 356

Except for what the Constitution provides, an Act shall determine, at the initiative of the Government, the services for which the Nation and the Departments, Districts, and Municipalities are responsible. In order to take care of the services for which they are responsible and to supply the resources for their adequate provision, the General System of Shares of the Departments, Districts, and Municipalities is hereby established.

The Districts shall have the same competences as the municipalities and departments for the purposes of distribution of the General System of Shares that the Act establishes.

For these purposes, the indigenous territorial entities, shall be beneficiaries, once they are constituted. Likewise, the Act shall designate the indigenous reservations as beneficiaries, provided that they have not constituted themselves as indigenous territorial entities.

The resources of the General System of Shares of the departments, districts and municipalities shall be earmarked for the financing of the services for which they are responsible, according priority to the health service, the services of pre-school, primary, secondary and intermediate education, and public services concerning drinking water and basic sanitation in the home, ensuring the provision of the services and the extension of coverage with an emphasis on the poor.

Taking into account the principles of solidarity, complementarity and subsidiarity, the Act shall establish the cases in which the Nation may contribute to the financing of the expenditure of those services which, in accordance with the determination made by statute fall within the competence of the departments, districts and municipalities.

The Act shall regulate the criteria of distribution of the General System of Shares of the Departments, Districts and Municipalities, in accordance with the competences which it assigns to each of these entities; it shall contain the provisions necessary for the implementation of the General System of Shares, incorporating principles of distribution which take into account the following criteria:

- a. In the sectors of education, health, drinking water and basic sanitation: the population that has been taken care of and the population that shall be taken care of, the distribution of the urban and rural population, administrative and fiscal efficiency, and equity. In the distribution per territorial unit of each of the constituent entities of the General System of Shares, priority shall

be given to factors which favor the poor, in the terms established by statute;

- b.** In other sectors: population, the distribution of the urban and rural population, administrative and fiscal efficiency, and relative poverty.

Competences may not be decentralized without the previous allocation of sufficient fiscal resources for their discharge.

The distribution of the resources of the General System of Shares of the Departments, Districts and Municipalities shall take place by sectors defined by statute.

The amount of the resources that are assigned to the sectors of health and education may not be lower than the amount transferred to each of these sectors on the enactment of the present Legislative Act.

The city of Buenaventura is organized as Special, Industrial, Port, Biodiversity and Biotourism Districts. Its political, fiscal and administrative system shall be determined by the Constitution and special statutes enacted to this end and, insofar as the latter do not contain the required regulations, by the rules which apply to the municipalities.

The National Government shall define a strategy for monitoring, follow-up and comprehensive control with regard to the expenditure of the territorial entities with resources from the General System of Shares in order to ensure the fulfillment of the criteria for coverage and quality [of services]. This strategy must extend the space for citizen participation in respect of social control and accounting procedures.

In order to apply and fulfill the provisions of the preceding section the National Government shall, within a period not exceeding six months following the signing of this Legislative Act, adopt, among other things, the pertinent rules defining the situations in which the adequate provision of services incumbent on the territorial entities is at risk, the measures which may be taken to avoid such situations and the effective determination of the required corrective action.

## TRANSITIONAL PARAGRAPH

The Government must present a bill regulating the organization and functioning of the General System of Shares of the Departments, Districts and Municipalities, on the first month of sessions of the forthcoming legislative period, at the latest.

## ARTICLE 357

The amount of the General System of Shares of the Departments, Districts and Municipalities shall be increased annually by a percentage equal to the average percentage variation that the current revenues of the Nation have experienced during the four (4) preceding years, including the one corresponding to the estimate for the budget in execution.

For the purpose of calculating the variation of the current revenues of the Nation referred to in the preceding subparagraph, the taxes resulting from State of Exception measures shall be excluded, unless Congress makes them permanent in the following year.

Seventeen percent (17%) of the resources of the General System of Shares for spending purposes shall be distributed among the municipalities with a population inferior to 25.000 inhabitants. These resources shall

be spent exclusively on investment, in accordance with the competences assigned by statute. The distribution of these resources shall be based on the same criteria of population size and poverty as defined by the Act on the Shares for General Purposes.

The municipalities classified in the fourth, fifth and sixth categories in accordance with the rules in force may freely spend up to forty-two percent (42%) of the resources they receive from the General System of Shares for General Purposes for investment and other expenses inherent in the functioning of the municipal administration, with the exception of the resources distributed in accordance with the preceding section.

When a territorial entity achieves universal coverage and meets the quality standards established by the competent authorities in the sectors of education, health, and/or public services concerning drinking water and basic sanitation in the home, according to certification by the competent national entity, it may spend the surplus resources on investment in other sectors within its competence. The National Government shall regulate the matter.

## **TRANSITIONAL PARAGRAPH 1**

The amount of the General System of Shares, GSS, of the Departments, Districts and Municipalities shall increase by taking as its base the amount dished out during its previous period of application. During the years 2008 and 2009 the GSS shall increase at a rate equal to the inflation rate, with an additional increase in real terms of 4%. During the year 2010, the increase shall equal the inflation rate, with an additional increase in real terms of 3.5%. Between the year 2011 and the year 2016 the increase shall equal the inflation rate, with an additional increase in real terms of 3%.

## **TRANSITIONAL PARAGRAPH 2**

If the rate of real growth of the economy (Gross Domestic Product, GDP) certified by DANE for the respective year is superior to 4%, the increase of the GSS shall equal the inflation rate, with an additional increase in real terms as indicated in the Transitional Paragraph 1 of the present Article, plus the difference in percentage points which results from a comparison of the real growth of the economy certified by DANE and the 4%. These additional resources shall be spent on comprehensive care for small children. The increase of the GSS resulting from higher economic growth which is the object of the present section shall not constitute the basis for the funding of the GSS in subsequent years.

## **TRANSITIONAL PARAGRAPH 3**

The General System of Shares, GSS, shall receive an increase in funding in addition to the increases referred to in the preceding transitional paragraphs with regard to the education sector. This additional increase shall take place in the following stages: in the years 2008 and 2009, it shall equal one point three percent (1.3%), in the year 2010 one point six percent (1.6%), and during the years 2011 to 2016 one point eight percent (1.8%). In each of these years, the additional increase shall not constitute the basis for the funding of the System in the subsequent period of application. The resources shall be spent on coverage and quality.

## **TRANSITIONAL PARAGRAPH 4**

The National Government shall define a number of criteria and transitional arrangements in the application

of the results of the last census with the objective of avoiding negative effects resulting from the variations in the census data on the distribution in the General System of Shares. The System shall direct the necessary resources in such a way as to avoid under all circumstances a reduction in the level of funding which the territorial entities currently receive for reason of diminishing population size.

## ARTICLE 358

For the consequences contemplated in the two above articles, current revenues are to be understood as those constituted by tax and nontax revenues with the exception of capital revenues.

## ARTICLE 359

No national revenues shall be specifically earmarked. Excepted are the following:

1. The shares provided in the Constitution for the benefit of Departments, Districts, and Municipalities.
2. Those earmarked for social investment.
3. Those which, based on the earlier laws, the nation assigns to social forecasting entities and the former intendencies and police districts.

## ARTICLE 360

The exploitation of a non-renewable natural resource shall give rise to an economic offset in the form of concession fees (regalía) for the benefit of the State, without prejudice to any other right or compensation which might be agreed upon. An Act shall determine the conditions for the exploitation of non-renewable natural resources.

Upon the initiative of the Government, a separate Act shall determine the distribution, objectives, purposes, administration, collection, control, efficient use and destination of the revenues resulting from the exploitation of non-renewable natural resources, laying down the conditions for participation of their beneficiaries. The totality of revenues, assignments, organs, procedures and regulations shall constitute the General System of Concession Fees (Sistema General de Regalías).

## ARTICLE 361

The revenues from the General System of Concession Fees shall be used for the financing of projects for the social, economic and ecological development of the territorial entities; for savings to meet their pension obligations; for material investments in education and investments in science, technology and innovation; for generating public savings; for the control of the exploration and exploitation of deposits and the study and geological mapping of the subsoil; and for increasing the general competitiveness of the economy in the attempt to improve the social conditions of the population.

The departments, municipalities and districts in whose territory the exploitation of non-renewable natural resources takes place, as well as the municipalities and districts with sea and river ports through which these resources, or products derived from them, are transported, shall have the right to receive a share of the concession fees and compensations, as well as the right to directly use these resources.

For the purpose of fulfilling the objectives and ends of the General System of Concession Fees, a Science, Technology and Innovation Fund, a Development Fund, a Regional Compensation Fund and a Savings and Stabilization Fund shall be created.

The revenues from the General System of Concession Fees shall be distributed as follows: a percentage equivalent to 10% [of the total revenue] [shall go] to the Science, Technology and Innovation Fund; 10% [shall go] to the regional pension savings [funds], and up to 30% to the Savings and Stabilization Fund. The remaining resources shall be distributed in a percentage of 20% to the direct transfers referred to in section 2 of this Article, and in a percentage of 80% to the Regional Compensation and Regional Development Funds. Of the total resources assigned to the two latter Funds, a percentage equivalent to 60% shall be assigned to the Regional Compensation Fund and a percentage of 40% to the Regional Development Fund.

Of the revenues from the General System of Concession Fees, a percentage of 2% shall be assigned to the control of the exploration and exploitation of deposits and the study and geological mapping of the subsoil. This percentage shall be deducted in a proportional manner from the total revenue of the General System of Concession Fees distributed in the preceding section. The functions established here shall be carried out by the Ministry of Mining and Energy or the entity to which the latter delegates them.

The sum of the resources corresponding to the direct transfers referred to in section 2 of this Article, and the resources of the Regional Development Fund and the Regional Compensation Fund shall increase annually by a rate corresponding to half of the growth rate of the total revenue of the General System of Concession Fees. The Act which shall regulate the system shall define a mechanism for mitigating the decrease of the aforementioned resources resulting from a drastic reduction of the revenues of the General System of Concession Fees.

The difference between the total revenue from the General System of Concession Fees and the resources assigned to the regional pensions savings, the Science, Technology and Innovation Fund, the Regional Development Fund, the Regional Compensation Fund and those referred to in section 2 of this Article shall be assigned to the Savings and Stabilization Fund.

The Science, Technology and Innovation Fund and the Regional Development Fund shall have the purpose of financing regional projects which have been agreed between the territorial entities and the National Government.

The resources of the Regional Compensation Fund shall be assigned to the financing of development projects of regional or local impact in the poorest territorial entities, in accordance with the criteria for Basic Unsatisfied Needs (Necesidades Básicas Insatisfechas—NBI), population and unemployment, and with priority for coastal and border zones and the regions on the periphery. The lifetime of the Regional Compensation Fund shall be thirty (30) years, starting with the entry into force of the Act referred to in section 2 of the preceding Article. After this period has ended, the resources shall be assigned to the Regional Development Fund.

The resources of the Savings and Stabilization Fund, as well as its earnings, shall be managed by the Bank of the Republic in the terms established by the National Government. In periods of negative savings, the distribution of these resources among the other components of the System shall be governed by the

criteria defined by the Act to which section 2 of the preceding Article refers.

In case the resources assigned annually to the Savings and Stabilization Fund exceed thirty percent (30%) of the annual revenue from the General System of Concession Fees, the surplus shall be distributed among the other components of the System, in conformity with the terms and conditions defined by the Act to which section 2 of the preceding Article refers.

## **PARAGRAPH 1**

The resources of the General System of Concession Fees shall not form part of the General Budget of the Nation, nor of the General System of Shares. The General System of Concession Fees shall have its own budgetary system which shall be governed by the provisions contained in the Act to which section 2 of the preceding Article refers. In any case the Congress of the Republic shall adopt the budget of the General System of Concession Fees every two years.

## **PARAGRAPH 2**

The use of the resources corresponding to the direct transfers referred to by section 2 of this Article, as well as of the resources of the Science, Technology and Innovation Fund, the Regional Development Fund, and the Regional Compensation Fund, shall take place in accordance with the National Development Plan and the development plans of the territorial entities.

The priority projects which are funded with these resources shall be defined by collegiate administrative and decision-making organs, in conformity with the provisions of the Act which regulates the General System of Concession Fees. In the case of the departments referred to in section 2 of this Article, the collegiate administrative and decision-making organs shall be composed of two (2) ministers or their representatives, the respective governor or his/her representative, and a representative number of mayors. The Act which regulates the General System of Concession Fees may establish committees of a consultative character for the collegiate administrative and decision-making bodies, with participation of the civil society. With regard to the municipalities and districts referred to in section 2 of this Article, the collegiate administrative and decision-making organs shall be composed by a representative of the National Government, the governor or his/her representative, and the mayor.

The programs and/or projects in technological science and innovation of the departments, municipalities and districts which are funded with the resources of the Science, Technology and Innovation Fund shall be defined by a collegiate administrative and decision-making organ on which the National Government, represented by three (3) ministers or their representatives, one representative of the National Planning Body and a representative of the national body charged with the management of public policies in science, technology and innovation, which in addition shall discharge the functions of the technical secretariat, a governor for each of the regional planning authorities to which the following section of this article refers, four (4) representatives of the public universities and two (2) representatives of the private universities shall have seats. Moreover, the resources of the Science, Technology and Innovation Fund shall be distributed in the same proportional manner as the resources of the Regional Compensation Fund and the Regional Development Fund are distributed to the departments. In no case may resources of this Fund finance current expenditure.

The projects of regional impact of the departments, municipalities and districts which are funded with the

resources from the Regional Development and Compensation Funds shall be defined through regional planning processes by collegiate administrative and decision-making organs on which four (4) ministers or their representatives, one representative of the National Planning Body, the respective governors or their representatives and a representative number of mayors shall have seats.

The Act which regulates the General System of Concession Fees may establish committees of a consultative character for the collegiate administrative and decision-making bodies, with participation of the civil society.

In any case the territorial entities shall enjoy majority representation in relation to the National Government in the collegiate organs.

### **PARAGRAPH 3**

A System of Monitoring, Follow-Up, Control and Evaluation shall be created for the General System of Concession Fees, which shall have as its object the supervision of the efficient and effective use of the resources of the General System of Concession Fees, thereby strengthening transparency, citizen participation and good government.

The Act referred to in section 2 of the preceding Article shall define its functioning and the procedure for the imposition of preventive and corrective measures and sanctions for the improper use of the resources of the General System of Concession Fees. These measures which may be applied to the departments, municipalities and/or districts and other executing agencies may include the suspension of transfers, the cancelation of projects and/or the restitution of resources.

The Act referred to in section 2 of the preceding Article shall also define the annual percentage of the resources of the General System of Concession Fees which is assigned to the functioning of the System of Monitoring, Follow-Up, Control and Evaluation of the Concession Fees. This percentage shall be deducted in a proportional form from the total revenues of the General System of Concession Fees distributed in the fourth section of this Article.

### **TRANSITIONAL PARAGRAPH 1**

The National Concession Fees Fund shall be abolished from the date determined by the Act referred to in section 2 of the preceding Article. The National Government shall appoint the liquidator and shall determine the procedure and time limit for the liquidation. The resources of the National Endowment Fund which have not been used on the date of entry into force of this Legislative Act shall be assigned as a matter of priority to the reconstruction of the road infrastructure of the country and to the ecological recovery of the regions affected by the winter emergency of 2010-2011.

### **TRANSITIONAL PARAGRAPH 2**

With regard to the resources which shall be assigned to the direct transfers referred to in section 2 of this Article and to the Regional Compensation and Regional Development Funds, their distribution shall be as follows during the first three years: during the first year a percentage of 50% shall accrue to the direct transfers referred to in section 2 of this Article and 50% to the funds referred to in this paragraph; in the same way, a percentage of 35% and of 65%, respectively, shall be assigned to these ends in the second year;

and during the third year, a percentage of 25% and 75%, respectively.

If during the period between 2012 and 2014 the direct transfers referred to in section 2 of this Article are inferior to 50% of the annual average, in constant pesos of 2010, of the direct transfers which have been made, minus deductions imposed by statute, between 2007 and 2010; and during the period between 2015 and 2020 are inferior to 40% of the direct transfers which have been made, minus deductions imposed by statute, between 2007 and 2010, the department, municipality or district may use the resources assigned to the respective department in the Regional Development Fund up to the previously mentioned percentage or until the resources of the department in the said Fund are exhausted, whichever occurs first.

### **TRANSITIONAL PARAGRAPH 3**

In the first year of the operation of the General System of Concession Fees twenty-five percent (25%) of its resources shall be assigned to the Savings and Stabilization Fund.

During the period 2012-2014, one-fifth of the annual resources of the Savings and Stabilization Fund shall be assigned to the direct transfers referred to in section 2 of this Article.

### **TRANSITIONAL PARAGRAPH 4**

The National Government shall have a period of three (3) months following the promulgation of this legislative act for initiating before the Congress of the Republic the bill referred to in section 2 of the preceding Article, which adjusts the regime of concession fees to the new constitutional framework.

Once the bill referred to in the previous section has been presented, the Congress of the Republic shall have a period not exceeding nine (9) months for its approval. If the Act has not been adopted by Congress at the end of this period, the President of the Republic shall be authorized to regulate the matter by decrees having the force of law during one (1) month.

### **TRANSITIONAL PARAGRAPH 5**

The General System of Concession Fees shall apply from January 10, 2012. If on this date the Act referred to in section 2 of the preceding Article has not entered into force, the National Government shall guarantee the operation of the System by transition decrees with the force of law, which it shall adopt on December 31, 2011 at the latest.

### **TRANSITIONAL PARAGRAPH 6**

In order to ensure the effective distribution of the resources in the fiscal year 2012, the National Government shall adopt the budget of the General System of Concession Fees for the aforementioned fiscal year by way of a decree with the force of law.

## **ARTICLE 362**

The assets and revenues originating from taxes or other sources relating to the exploitation of monopolies of the territorial entities are their exclusive property and enjoy the same guaranties as the property and income of individuals.

Departmental and municipal taxes enjoy constitutional protection and, consequently, an Act may not transfer them to the nation, except temporarily in the case of a foreign war.

## ARTICLE 363

The tax system is based on the principles of equity, efficiency, and progressivity.

The tax laws shall not be applied retroactively.

## ARTICLE 364

The domestic and foreign indebtedness of the nation and the territorial entities may not exceed their capacity for repayment. An Act shall regulate this matter.

# CHAPTER V. ON THE SOCIAL PURPOSE OF THE STATE AND OF THE PUBLIC SERVICES

## ARTICLE 365

The public services are inherent in the social purpose of the State. It is the duty of the State to insure the efficient provision thereof to all the inhabitants of the national territory.

The public services shall be subjected to the juridical regime determined by an Act, may be provided by the State directly or indirectly, by organized communities, or by individuals. In any case, the state shall maintain the regulation, control, and application of said services. If, for reasons of sovereignty or social interest, the State, by means of an Act approved by the majority of the members of both Houses upon the initiative of the Government, should decide to earmark for itself specific strategic or public service activities, it must indemnify, beforehand and fully, those individuals who by virtue of the said law are deprived of the exercise of a lawful activity.

## ARTICLE 366

The general well-being and improvement of the population's quality of life are social purposes of the State. A basic objective of their activity shall be to address the unfulfilled public health, educational, environmental, and drinking water needs of those affected.

For such an outcome, in the plans and budgets of the nation and of the territorial entities, public social expenditures shall have priority over any other allocation.

## ARTICLE 367

An Act shall determine the relative jurisdictions and responsibilities for the provision of domestic public services, their coverage, quality, and financing, and the schedule of rates taken into account in addition to the cost criteria, those of solidarity, and of redistribution of revenues.

Home public services shall be provided directly by each municipality when the technical and economic characteristics of the service and the general benefits permit them and make them advisable, and the departments shall execute functions of support and coordination.

An Act shall determine the competent entities that shall determine rates.

## ARTICLE 368

The nation, departments, districts, municipalities, and decentralized entities may grant subsidies in their respective budgets so that individuals with lower incomes may pay the rates of home public services that cover their basic necessities.

## ARTICLE 369

An Act shall determine the duties and rights of users, the regime of their protection, and their forms of participation in the management and funding of the State enterprises that provide the service. Similarly, an Act shall define the participation of the municipalities or their representatives in the entities and enterprises that provide the home public services.

## ARTICLE 370

It is the responsibility of the President of the Republic to stipulate, subject to the relevant statute, the general policies of administration and efficiency control of the home public services and to exercise through the Office of the Superintendent of Home Public Services the control, inspection, and oversight of the entities that provide them.

# CHAPTER VI. ON THE CENTRAL BANK

## ARTICLE 371

The Bank of the Republic shall exercise the functions of a central bank. It shall be organized as a legal public entity with administrative, patrimonial, and technical autonomy, subject to its own legal regime.

The following shall be the basic functions of the Bank of the Republic: to regulate the money supply, international exchanges, and credit; to issue legal tender; to administer the international reserves; to be the lender of last resort and banker of the credit institutions; and to serve as the government's fiscal agent. All these functions shall be exercised in coordination with the general economic policy.

The Bank shall give a report to Congress on the execution of the policies for which it is responsible and on other matters requested from it.

## ARTICLE 372

The executive board of the Bank of the Republic shall be the monetary, exchange, and credit authority, in accordance with the functions assigned to it by statute. It shall be responsible for managing and executing the functions of the Bank and shall be made up of seven members, among them the Minister of Finance, who shall chair it. The Director of the Bank shall be elected by the executive board and shall be one of its members. The five other members, who can hold no other employment, shall be appointed by the President of the Republic for renewable terms of four years, replacing two of the members every four years. The members of the executive board shall represent the interest of the nation exclusively.

The Congress shall adopt an Act which shall regulate the Bank of the Republic for the exercise of its functions and the regulations under which the government shall issue the statutes of the Bank. These shall determine, among other things, the form of its organization, its legal regime, the functioning of its executive

board and its board of directors, the term of the director, the rules for the constitution of its reserves, among them, those of exchange and monetary stabilization, and the future application of its earnings.

The President of the Republic shall perform the inspection, oversight, and control of the Bank within the terms stipulated by statute.

## **ARTICLE 373**

The State, through the intermediary of the Bank of the Republic, shall oversee the maintenance of the purchasing power of the currency. The Bank may not establish credit quotas or give guaranties for the benefit of individuals except when the intermediation of foreign credit is involved for its distribution through the credit institutions or of temporary support of said liquidity. Financing operations for the benefit of the state shall mandate the unanimous approval of the executive board unless open market operations are involved. In no case may the legislature mandate credit quotas for the benefit of the State or individuals.

# **TITLE XIII. ON CONSTITUTIONAL REFORM**

## **ARTICLE 374**

The Political Constitution may be reformed by Congress, a Constituent Assembly, or by the people through a referendum.

## **ARTICLE 375**

The Government, 10 members of the Congress, 20 percent of councilors or deputies, or citizens totaling at least five percent of the electoral rolls in force may introduce legislative bills.

The bill shall be discussed in two ordinary and consecutive session periods. After having been approved in the first period by a majority of those present, the bill shall be published by the Government. In the second period, the approval shall require the vote of the majority of the members of each House.

In this second period only initiatives presented in the first period may be discussed.

## **ARTICLE 376**

By means of an Act approved by the members of both Houses, Congress may direct that the voters participating in the popular balloting decide if a Constituent Assembly should be called with the jurisdiction, term, and makeup that the same law shall determine.

It is understood that the people shall convoke the Assembly, if they approve it by at least one-third of the electoral rolls.

The Assembly must be elected by the direct vote of the citizens through a balloting that may not overlap another. Beginning with the election, the ordinary powers of Congress shall remain suspended while the Constitution is being amended during the term stipulated so that the Assembly may fulfill its functions. The Assembly shall adopt its own rules of procedure.

## **ARTICLE 377**

The constitutional reforms must be submitted to a referendum approved by Congress when referring to the rights recognized in Chapter I of Title II and to their guaranties, to the procedures of popular participation, or to Congress, if so requested, within the six months following the promulgation of the legislative act, by five percent of the citizens who make up the electoral rolls. The reform shall be understood to be defeated by a negative vote of the majority of the voters as long as at least one-fourth of those on the electoral rolls participate in the balloting.

## ARTICLE 378

Upon the initiative of the government or the citizens under the terms of Article 155, Congress, through an Act which requires the approval of the majority of the members of both Houses, may submit to a referendum a bill of constitutional reform which the Congress shall incorporate into the Act. The referendum shall be presented in such a manner as to allow the voters to freely choose from the agenda or the various items that which they approve or disapprove.

The approval of constitutional reforms by means of a referendum mandates the affirmative vote of over half of the voters and that the number of these should exceed one-fourth of the total number of citizens included in the electoral rolls.

## ARTICLE 379

The legislative acts, the convocation to the referendum, the popular consultation, or the act of convocation of the Constituent Assembly may be declared unconstitutional only when the requirements established in this title are violated.

Public measures against these acts may be taken only within one year following their promulgation with due regard to the provisions in Article 241, numeral 2.

## ARTICLE 380

The Constitution, as amended and in force until this time, is hereby repealed.

This present Constitution is effective from the day of its promulgation.

## TRANSITIONAL PROVISIONS

### CHAPTER I

#### TRANSITIONAL ARTICLE 1

General elections for the Congress of the Republic must be called for October 27, 1991.

The Congress thus elected shall have a term that concludes on July 19, 1994. The Registry Office of Civil Status shall open a registration period of citizen rolls.

#### TRANSITIONAL ARTICLE 2

Full-fledged delegates of the Constituent Assembly or present Cabinet ministers may not be candidates in said election.

Neither may officials of the executive branch who did not resign their position before June 14, 1991.

## TRANSITIONAL ARTICLE 3

Pending the installation on December 1, 1991, of the new Congress, the present Congress and its committees shall take a recess and may not exercise any of their powers either through their own initiative or through convocation by the President of the Republic.

## TRANSITIONAL ARTICLE 4

The Congress elected on October 27, 1991, shall hold ordinary sessions as follows:

From December 1 to 20, 1991, and from January 14 to June 26, 1992. Beginning on July 20, 1992, its schedule of sessions shall be the one prescribed in this Constitution.

## TRANSITIONAL ARTICLE 5

The President of the Republic is endowed with specific extraordinary powers in order to do the following:

- a. Issue the regulations that organize the office of the Attorney General and the regulations of criminal procedures;
- b. Uphold the right of citizens to protection;
- c. Take the necessary administrative measures for the functioning of the Constitutional Court and the Supreme Council of the Judiciary;
- d. Issue the general national budget to be in effect in 1992;
- e. Issue temporary regulations to relieve the judicial agencies.

## TRANSITIONAL ARTICLE 6

A Special Commission of 36 members elected using the electoral quotient of the National Constituent Assembly, half of whom may be delegates, that shall meet between July 15 and October 4, 1991, and between November 18, 1991, and the day of the installation of the new Congress. The election is to be held at a session convoked to this effect on July 4, 1991.

This Special Commission shall have the following powers:

- a. Veto by the majority of its members, totally or in part, the proposed bills which the national government, in exercising its extraordinary powers conferred on the President of the Republic by the above Article and other provisions of the present Constitutional Act, with the exception of those relating to appointments, may request.

The vetoed articles may not be decreed by the Government.

- b. Prepare proposed bills which it considers appropriate to be implemented in the Constitution. The Special Commission may present said bills so that they may be debated and approved by the Congress of the Republic.
- c. Regulate its functioning.

## PARAGRAPH

Should the Special Committee not approve, prior to December 15, 1991, the proposed budget for fiscal year 1992, that of the previous year shall apply, but the Government may reduce expenditures and consequently eliminate or merge positions when the computations of revenues of the new fiscal year make this desirable.

## TRANSITIONAL ARTICLE 7

The President of the Republic shall designate a representative of the Government before the Special Commission. This representative shall express opinions and take initiatives.

## TRANSITIONAL ARTICLE 8

The decrees issued in exercise of the powers of martial law up to the time of the promulgation of the present Constitutional Act shall continue to be in effect for a maximum period of 90 days during which the national government may convert them into permanent legislation by means of a decree if the Special Commission does not veto them.

## TRANSITIONAL ARTICLE 9

Those extraordinary powers for whose exercise no special period is specified shall expire fifteen days after the Special Commission finally ceases to function.

## TRANSITIONAL ARTICLE 10

The decrees which the government may issue in the exercise of the powers granted by the articles above shall have the force of law and their check for constitutionality shall be the responsibility of the Constitutional Court.

## TRANSITIONAL ARTICLE 11

The extraordinary powers referred to in Transitional Article 5 shall terminate on the day when the Congress, elected on October 27, 1991, is installed.

On the same date, the Special Commission created by Transitional Article 6 shall also terminate its functions.

## TRANSITIONAL ARTICLE 12

With the purpose of facilitating the reintegration into civilian life of the guerrilla groups that are definitely involved in the peace process under the government's aegis, the latter may establish, for one time only, special peace districts for elections to public bodies that shall take place on October 27, 1991, or appoint directly for one time only a number of congressmen in each House to represent the said groups in a process of peace and demobilization.

The number shall be established by the national government on the basis of the evaluation that it makes of the circumstances and progress of the process. The names of the senators and representatives to whom

this Article refers shall be agreed upon by the government and the guerrilla groups, and their appointment shall be the responsibility of the President of the Republic.

For the effects contemplated in this Article, the government may disregard specific disabilities and requirements necessary for one to qualify as a congressman.

## **TRANSITIONAL ARTICLE 13**

Within the three years following the entering into effect of this Constitution, the government may issue the provisions that may be necessary to facilitate the reintegration of demobilized guerrilla groups who may be involved in a peace process under government aegis; to improve the economic and social conditions of the regions where the guerrilla groups were present; and to provide to the territorial entity the organization and municipal capability, public services, and the functioning and integration of the collective municipal bodies in said regions.

The national government shall present periodic reports to the Congress of the Republic concerning the implementation and development of this article.

## **TRANSITIONAL ARTICLE 14**

Within the legislature that opens on December 1, 1991, the National Congress, the Senate of the Republic and the House of Representatives, shall issue their respective rules of procedure. Should they not do so, the Council of State shall issue them within the subsequent three months.

## **TRANSITIONAL ARTICLE 15**

The first election of the Vice President of the Republic shall be held in the year 1994. In the meantime, to fill the absolute or temporary absence of the President of the Republic, the previous system of Designate shall be retained. For that purpose, once the term of the incumbent elected in 1990 expires, Congress in plenary session shall elect a new Designate for the period from 1992 to 1994.

## **TRANSITIONAL ARTICLE 16**

Except in the cases stipulated in the Constitution, the first popular election of governors shall be held on October 27, 1991.

The governors elected on that date shall take possession of their office on January 2, 1992.

## **TRANSITIONAL ARTICLE 17**

The first popular election of governors in the departments of Amazonas, Guaviare, Guainia, Vaupés, and Vichada shall be held, at the latest, in 1997.

An Act may set an earlier date. In the meantime, the governors and the aforementioned departments shall be appointed and may be removed by the President of the Republic.

## **TRANSITIONAL ARTICLE 18**

While an Act establishes the regime of disabilities for governors, in the elections of October 27, 1991, the

following may not be elected as such:

1. Those who, at any time, were condemned by judicial sentence to imprisonment, except for political or similar crimes.
2. Those who, within the six months prior to the election, exercised as public employees political, civil, administrative, or military jurisdiction or authority at the national level or in the respective department.
3. Those who are involved through marriage or kinship to the third level of consanguinity, second of affinity, or first civil with anyone registered as candidate or the Congress of the Republic in the same election.
4. Those who, within the six months prior to the election, were involved in the management of affairs or in the signing of contracts with public entities in their own interest or the interest of third parties.

The prohibition established in numeral 2 of this article does not apply to members of the National Constituent Assembly.

## **TRANSITIONAL ARTICLE 19**

The mayors, councilors, and deputies elected in 1992 shall exercise their functions until December 31, 1994.

## **CHAPTER II**

### **TRANSITIONAL ARTICLE 20**

For a period of 18 months counting from the entry into effect of this Constitution and taking into account the evaluation and recommendations of a commission made up of three experts in public administration or administrative law appointed by the Council of State, three members appointed by the national government, and one member representing the Colombian Federation of Municipalities, the national government shall eliminate, merge, or restructure the entities of the executive branch, the public institutions, the industrial and commercial enterprises, and the mixed [public-private] companies of national scope with the purpose of harmonizing them with the mandates of the present constitutional reform, especially the redistribution of the jurisdictions and resources that it establishes.

### **TRANSITIONAL ARTICLE 21**

The legal regulations flowing from the principles stated in Article 125 of the Constitution shall be issued by Congress in the year subsequent to its entering into effect. If in this period Congress does not stipulate them, the President of the Republic has the option to issue them within three months.

Beginning with the issuing of the legal regulations that bear on professional matters, the appointers of civil servants shall apply them within six months.

Noncompliance with the terms stipulated in the clause above shall be the cause of a misdemeanor.

While the regulations referred to in this article are issued, those which presently apply to the subject

matter shall continue to be in effect as long as they do not violate the Constitution.

## CHAPTER III

### TRANSITIONAL ARTICLE 22

As long as an Act does not set another number, the first Constitutional Court shall be made up of seven judges who shall be elected for a period of one year as follows: Two by the President of the Republic; one by the Supreme Court of Justice; one by the Council of State; and one by the General Prosecutor of the Nation.

The judges so elected shall designate the remaining two from lists presented by the President of the Republic.

The election of the judges by the Supreme Court of Justice, the Council of State, the President of the Republic, and the General Prosecutor of the Nation shall be done within five days following the entry of this Constitution into effect. Non-compliance with this duty shall be the cause of a misdemeanor. Should the election not be held by any of the organs mentioned within the stated deadline, same shall be done by the remaining duly elected judges.

#### PARAGRAPH 1

The members of the Constituent Assembly are not eligible to be designated as judges of the Constitutional Court by virtue of this extraordinary procedure.

#### PARAGRAPH 2

The disability established in Article 240 for the ministers and judges of the Supreme Court of Justice and the Council of State is not applicable for the immediate formation of the Constitutional Court prescribed by this article.

### TRANSITIONAL ARTICLE 23

The President of the Republic is vested with extraordinary powers so that within the two months following the promulgation of the Constitution by means of a decree, he/she should stipulate the procedures of the judges and the actions that they must take before the Constitutional Court.

At any time, Congress may repeal or modify the regulations established in this manner.

Pending the issuing of the decree mentioned in the first clause, the functioning of the Constitutional Court and the procedure and expediting of the matters under its responsibility shall be subject to the regulations in Decree 432 of 1969.

### TRANSITIONAL ARTICLE 24

Public actions for unconstitutionality before June 1, 1991 shall continue to be heard and must be adjudicated by the Supreme Court of Justice within the deadlines stipulated in Decree 432 of 1969.

Actions which initiated after said date shall be transferred to the Constitutional Court in its current state.

Once all the cases are decided by the Supreme Court of Justice in accordance with the first clause of this article, its Constitutional Division shall cease exercising its functions.

## TRANSITIONAL ARTICLE 25

The President of the Republic shall appoint for the first and only time the members of the Disciplinary Chamber of the Superior Council of the Judiciary.

The Administrative Chamber shall be formed in accordance with the provision in numeral 1 of Article 254 of the Constitution.

## TRANSITIONAL ARTICLE 26

The cases that are presently under way in the Disciplinary Chamber shall continue to be heard without any interruption by the judges of the said body, and the Disciplinary Chamber of the Supreme Council of the Judicature shall take cognizance of them beginning with the installation of same.

## TRANSITIONAL ARTICLE 27

The Office of the Attorney General of the Nation shall begin functioning when the special decrees organizing it and those that establish the new criminal procedures, elaborating on the powers granted by the National Constituent Assembly to the President of the Republic, are issued.

The respective decrees may, however, provide that the jurisdiction of the various judicial organs should be assigned gradually as specific conditions allow, without going beyond June 30, 1992, except for the municipal criminal judges whose installation may be extended up to four years beginning with the issuing of this reform, according to the determination of the Supreme Council of the Judiciary and the Attorney General of the Nation.

The current district attorneys' offices of the higher courts, criminal circuit, higher customs courts, and of the public order shall be transferred to the Office of the Attorney General of the Nation. The other district attorneys' offices shall be integrated into the organic structure and the personnel of the Office of the Public Prosecutor. The Public Prosecutor shall stipulate the designation, functions, and seats of these civil servants and may designate whoever came to fill said offices, retaining their system of compensation and benefits.

The Office of the Criminal Public Prosecutor Delegate shall continue within the structure of the Office of the Public Prosecutor.

Also to fall under the jurisdiction of the Office of the Attorney General of the Nation is the national directorate and sectional directorates of criminal investigation, the technical branch of the criminal police, and the criminal investigative magistrates of the ordinary courts of the public and criminal customs divisions.

The National Directorate of Forensic Medicine of the Ministry of Justice, with its sectional subdivisions, shall be integrated into the Office of the Attorney General as a public institution attached to same.

Those jurisdictions that are integrated into the Office of the Attorney General shall be transferred to it with

all their human and material resources within the limits stipulated by the Act that organizes the latter.

## TRANSITIONAL ARTICLE 28

Pending the issuance of the Act which assigns to the judicial authorities instructions on the actions presently punishable by arrest by the police authorities, the latter shall continue to take cognizance of same.

## TRANSITIONAL ARTICLE 29

The application at any time of the regulations that prohibit the reelection of the judges of the Constitutional Court, the Supreme Court of Justice, and of the Council of State shall relate only to those elections that take place after the promulgation of the present reform.

## TRANSITIONAL ARTICLE 30

The national government is authorized to grant pardons, commutations, or amnesties for political and similar crimes committed prior to the promulgation of the present Constitutional Act to members of guerrilla groups who return to civilian life within the context of the policy of reconciliation. To this effect, the national government shall issue the appropriate regulations. This benefit may not be extended to heinous crimes or to homicides committed outside of combat or to those who prey on defenseless victims.

## CHAPTER IV

### TRANSITIONAL ARTICLE 31

One month following the installation of the Congress elected on October 27, 1991, the Council of State shall elect the members of the National Election Commission in proportion to the representation obtained by the parties and political movements in the Congress of the Republic.

Said Council shall remain in office and exercise its functions until September 1, 1994.

### TRANSITIONAL ARTICLE 32

Pending the formation of the National Election Commission within the limits established by the Constitution, the actual composition of this organ shall be expanded by four members designated by the Council of State from lists presented by the parties and political movements which are not represented in it in the proportion of the results of the elections held on December 9, 1990, granting two to the majority list and one to each of the lists not represented in descending order of the voting results. Such appointments shall be made before July 15, 1991.

### TRANSITIONAL ARTICLE 33

The term of the present National Registrar of Civil Status shall terminate on September 30, 1994.

The term of the National Registrar of Civil Status to whom this Constitution refers shall run from October 1, 1994.

### TRANSITIONAL ARTICLE 34

The President of the Republic, within no more than eight days from the promulgation of this Constitution, shall designate, for a period of three years, a citizen whose function shall be to prevent routinely or upon the petition of another the use of resources originating from the public treasury or from outside in the electoral campaigns held within the deadline indicated, except when the financing of the electoral campaigns is done in accordance with the Constitution and statute. To this effect, the said citizen shall have the right to request and obtain the cooperation of the Office of the General Prosecutor of the Nation, of the Office of the General Controller of the Republic, of all the public entities which exercise control and oversight powers, and of those organs which exercise criminal police functions.

The President of the Republic shall regulate this arrangement and shall lend to the designated citizen all the administrative and financial support that are indispensable to him/her.

## **TRANSITIONAL ARTICLE 35**

The National Election Commission shall automatically recognize the legal identity of the parties and political movements represented in the National Constituent Assembly which so request.

## **CHAPTER V**

### **TRANSITIONAL ARTICLE 36**

The present Controller General of the Republic and General Prosecutor of the Nation shall continue to exercise their responsibilities until such time as Congress, elected for the constitutional period 1994–1998, arranges for the new election that must be held within the first 30 days following its installation.

### **TRANSITIONAL ARTICLE 37**

The first Ombudsman shall be selected by the General Prosecutor of the Nation from a short list originating from the President of the Republic within 30 days at the most.

## **CHAPTER VI**

### **TRANSITIONAL ARTICLE 38**

The government shall organize and make up, within six months, a Commission of Territorial Planning entrusted with realizing the studies and formulating before the competent authorities the recommendations that it considers in order to adjust the country's territorial divisions to the provisions of the Constitution. The Commission shall perform its functions during a period of three years, though an Act may assign it a permanent character. In such a case, the same law shall determine the periodicity according to which the Commission is to present its proposals.

### **TRANSITIONAL ARTICLE 39**

The President of the Republic shall be vested with specific extraordinary powers for a period of three months in order to issue decrees with the force of law through which the organization and functioning of the new departments created by this Constitution are assured.

In the exercise of these powers, the Government may abolish the national institutions entrusted with the administration of the former intendancies and police districts and assign to the territorial entities the

national resources that belong to them, in the Government's opinion.

## TRANSITIONAL ARTICLE 40

The establishment of municipalities by the departmental assemblies prior to December 31, 1990 remains valid.

## TRANSITIONAL ARTICLE 41

If, during the two years following the date of promulgation of this Constitution Congress does not adopt an Act to which Articles 322, 323, and 324 refer on a special regime for the Capital District of Santa Fe de Bogotá, the government, on one occasion exclusively, may issue the appropriate regulations.

## TRANSITIONAL ARTICLE 42

Pending the issuance by Congress of the Acts referred to in Article 310 of the Constitution, the government shall adopt by decree the regulations necessary to control the density of population of the archipelago Department of San Andrés, Providencia, and Santa Catalina, empowered for the purposes expressed in the same Article.

# CHAPTER VII

## TRANSITIONAL ARTICLE 43

In order to finance the operation of the new institutions and to attend to the obligations derived from constitutional reform that have not been offset by a reduction in expenditures or transfers of responsibilities, Congress may, on one occasion only, prescribe tax adjustments whose yield is to be designated exclusively for the Nation.

If, within a period of 18 months from the installation of Congress, it has not passed such fiscal adjustments and it is evident that the efforts of the administration to make the collection more efficient and to reduce public expenditures at a national level have been insufficient to cover these new expenditures, the National Government may, on one occasion only, make these adjustments through a decree with the force of law.

## TRANSITIONAL ARTICLE 44

The fiscal situation for the year 1992 should not be worse, expressed in constant pesos, than that of 1991.

## TRANSITIONAL ARTICLE 45

The districts and municipalities shall collect as a minimum during the fiscal year of 1992 the shares of the IVA (Value Added Tax) established by Act No. 12 of 1986. Beginning in 1993, the provisions in Article 357 of the Constitution shall enter into effect concerning the share of the municipalities in the nation's current revenues.

However, an Act shall establish a gradual and progressive transition schedule beginning in 1993 and for a period of three years at the end of which the new criteria of distribution stipulated in the said Article shall enter into effect. During the transition period, the value received by the districts and municipalities in terms of revenue sharing shall in no case be less than the amount collected in 1992, in constant pesos.

## TRANSITIONAL ARTICLE 46

The national government shall place into operation, for a period of five years, a solidarity and social emergency fund under the jurisdiction of the Office of the President of the Republic. This fund shall finance assistance projects for the more vulnerable sectors of the Colombian population.

The fund must seek, additionally, resources from states and international cooperation.

## TRANSITIONAL ARTICLE 47

An Act shall organize a social emergency security plan for a period of three years for the regions affected by extreme violence.

## TRANSITIONAL ARTICLE 48

Within the three months following the installation of the Congress of the Republic, the government shall present bills relative to the juridical regime of the public services; the determination of jurisdictions and general criteria that shall regulate the lending of public home services as well as their financing and rate schedule; also, the schedule of participation of representatives of municipalities involved and of users in the management and funding of the State enterprises that provide the services, as well as matters relating to the protection, duties, and rights of the said users and to the stipulation of the general policies of administration and efficiency control of the public home services.

If, at the conclusion of the two subsequent legislatures, the appropriate laws are not issued, the President of the Republic shall put the bills into effect through decrees with the force of law.

## TRANSITIONAL ARTICLE 49

In the first legislature following the entry into effect of this Constitution, the government shall present to Congress the bills referred to in Article 150, numeral 19, letter (d), Article 189, numeral 24, and Article 335 relating to the financial, stock exchange, insurance, and any other activities connected with the management, application, and investment of resources collected from the public.

If at the end of the two subsequent ordinary legislatures, the latter does not issue them, the President of the Republic shall put the bills into effect through decrees with the force of law.

## TRANSITIONAL ARTICLE 50

Pending the prescription of the general provisions which the government must follow to regulate the financial, stock exchange, insurance, and any other activities connected with the management, application, and investment of resources collected from the public, the President of the Republic shall exercise, under his/her own constitutional authority, initiative in these activities.

## TRANSITIONAL ARTICLE 51

While the corresponding laws are being dictated, the new executive board of the Bank of the Republic to be provisionally appointed by the President within the month following the entry into force of this Constitution, shall assume the functions which presently correspond to the Monetary Board, which he/she shall execute in accordance with that which is provided in the Constitution.

An Act shall determine the entities to which development funds administered by the Bank are transferred. In the meantime, the Bank shall continue exercising this function.

The government shall present to Congress, in the month following its installation, the bill relating to the exercise of the functions of the Bank and the regulations on whose basis the government shall issue its ordinances in accordance with Article 372 of the Constitution.

If after one year following the presentation of the bill the corresponding Act has not been adopted, the President of the Republic shall bring it into effect by way of a decree having the force of law.

## **TRANSITIONAL ARTICLE 52**

Beginning with the entry into force of this Constitution, the National Evaluation Committee shall have the character of a superintendent. The national government shall prescribe what is necessary for the outfitting of the said institution appropriate to its new character, without prejudice to what the government may prescribe in implementing that which is established in Transitional Article 20.

## **TRANSITIONAL ARTICLE 53**

The government shall make the administrative decisions and shall effect the budgetary transfers that may be necessary to insure the normal functioning of the Constitutional Court.

## **CHAPTER VIII**

### **TRANSITIONAL ARTICLE 54**

For the purpose of all constitutional and legal applications, the results of the National Population and Housing Census of October 15, 1985, shall be used.

### **TRANSITIONAL ARTICLE 55**

Within the two years following the entry into effect of the present Constitution, Congress shall issue, following a study by a special commission that the government shall create for that purpose, a law which shall take cognizance of the Black communities which have come to occupy uncultivated lands in the rural zones adjoining the rivers of the Pacific Basin, in accordance with their traditional cultivation practices and the right to collective property over the areas which the same law shall demarcate.

In the special commission referred to in the previous clause, representatives elected by the communities involved shall participate in each case.

The property thus recognized shall only be transferable within the limits stipulated by an Act.

The same law shall establish mechanisms for the protection of the cultural identity and the rights of these communities and for the progress of their economic and social development.

## **PARAGRAPH 1**

Provisions in the present article may be applied to other zones of the country that have similar conditions through the same procedure, following a study and the favorable opinion of the special commission

prescribed here.

## PARAGRAPH 2

If at the conclusion of the deadline stipulated in this Article Congress shall not have issued the Act to which it refers, the government shall proceed to do so through a decree having the force of law.

## TRANSITIONAL ARTICLE 56

Pending the issuance of the Act referred to in Article 329, the Government may prescribe the necessary fiscal regulations and other matters relating to the functioning of the indigenous [Indian] territories and their coordination with the other territorial entities.

## TRANSITIONAL ARTICLE 57

The government shall form a commission made up of representatives of the Government, labor unions, economic associations, political and social movements, and regular farmers and workers so that, within a period of 180 days from the entry into force of this Constitution, the commission may draft a proposal that would elaborate regulations on social security.

This proposal shall serve as a basis to the Government for the preparation of bills that it shall present on the issue for the consideration of Congress.

## TRANSITIONAL ARTICLE 58

The national government is authorized to ratify the negotiated treaties or agreements that may have been approved by at least one of the Houses of the Congress of the Republic.

## TRANSITIONAL ARTICLE 59

The present Constitution and the other acts promulgated by this Constituent Assembly are not subject to any kind of legal review whatsoever.

## TRANSITIONAL ARTICLE 60

For the purposes of the application of constitutional Articles 346 and 355 and the rules pertaining thereto, the National Development Plan for the years 1993 and 1994, and until it enters into force the one approved by the Congress of the Republic, in the terms and conditions established in the present Political Constitution, shall be that which corresponds to the annual laws on the National Budget of Revenues and Appropriations. The respective bill presented by the Government shall develop the programs, projects, and plans approved by the National Council of Economic and Social Policy (CONPES).

In discussing Departmental, District, and Municipal Plans of Development, those approved by the respective Territorial Public Body shall be considered.

If the Draft Development Plan has been presented by the respective Head of Administration of the territorial entity, [and] it has not been enacted by the Public Body before the expiration of the ordinary sessions period following the entry into force of this Legislative Act, he/she shall impart to it its legal validity. This Plan shall apply for the time period established by an Act.

## TRANSITIONAL ARTICLE 61

The Special Commission created by Transitional Article 38 shall also meet between November 1 and November 30, 1991, date on which it shall cease to function.

Clarifying Note: The reference is to Transitional Article 38 of the Codification Commission 6 of the Constitution.

## TRANSITIONAL ARTICLE 62

All mayors and Governors who begin their term between the entry into force of the present Legislative Act and December 31, 2003, shall exercise their functions or a period equivalent to half of the time necessary to reach December 31, 2007. Their successors shall be elected for a period which shall end on the December 31 of the year 2007.

All Governors and mayors who have been elected later than October 29, 2000 and prior to the entry into force of the present Legislative Act shall exercise their functions for a period of three years. Their successors shall be elected for a period ending on December 31, 2007.

In any case, mayors and Governors for all municipalities, districts and departments shall be elected on the last Sunday of the month of October of the year 2007 for official terms of four years, which shall start on January 1, 2008.

The term of four years of the members of the departmental assemblies, the district and municipal councillors and the aldermen/alderwomen shall start on January 1, 2004.

## TRANSITIONAL ARTICLE 63

In the year following the entry into force of the present constitutional reform Congress, after the study of a special commission created by the Government for this end, shall issue an act which deals with a "Special Economic, Political, Social and Administrative System for the territories which comprise the ecoregions of Sierra Nevada de Santa Marta, Ciénaga de Zapata, Serranía del Perijá, Llanos Orientales, Amazonía, Catatumbo Region, Orinoquia, Chocó Biogeográfico, Montes de María, Mojana, and the multi-plant villages (pueblos polífitos) of Magdalena and the Pacific, with the objective of reducing the disparities which exist with respect to their development in relation to the rest of the country.

## TRANSITIONAL ARTICLE 64

Within six months following the entry into force of the present Legislative Act Congress shall issue the rules which define the distribution of competences among the State entities which are charged with the formulation of plans, the regulation, direction, management and control of the television services. While the relevant statutes are enacted, the National Television Commission shall continue to exercise the functions which have been assigned to it by the legislation in force.

## TRANSITIONAL ARTICLE 65

[Declared unconstitutional]

## TRANSITIONAL ARTICLE 66

Transitional justice instruments shall be exceptional. Their principal objective will be the end of the internal armed conflict facilitation and the achievement of a stable and lasting peace, with the guarantees of non-repetition and security for all Colombians. Such instruments shall ensure at the highest possible level, victims' rights to truth, justice and reparation. A statute may authorize, within the framework of a peace agreement, a different treatment for illegal armed groups who have participated in the armed conflict and for related state agents.

A statute to guarantee the state duties of investigation and punishment will establish transitional justice instruments of a judicial or extrajudicial nature. In any case mechanisms of extrajudicial nature will be applied to clarify the truth and reparations to victims.

A Truth Commission shall be created by statute. Such statute shall establish its purpose, composition, powers and functions. The Commission powers shall include recommendations for the implementation of transitional justice instruments, including the application of selection criteria.

Prioritization and selection criteria shall be inherent to transitional justice instruments. The Attorney General of the Nation will determine the prioritization criteria for the initiation of criminal proceedings. Notwithstanding the general obligation of the State to investigate and punish serious human rights' violations and international humanitarian law crimes, in the context of transitional justice, the Congress, at the initiative of the Government, may determine by statute the selection criteria to investigate crimes against humanity, genocide, or war crimes committed in a systematic manner. Congress may also establish cases, requirements and conditions to suspend executions of a sentence; establish the cases in which the application of extrajudicial sanctions, alternative sanctions, or special modalities for the implementation and enforcement of the sentence may be used; and authorize the conditional waiver of criminal prosecution of unselected cases. The statutory law will take into account the severity and representativeness of cases to determine the selection criteria.

In any case, the above mentioned special criminal constitutional instruments application shall be subject to conditions such as the abandonment of weapons, recognition of responsibility, contribution to discovering the truth and reparation for victims, the release of hostages, and the decoupling of minors who are illegally recruited and held by illegal armed groups.

## **PARAGRAPH 1**

The application of transitional justice instruments to illegal armed groups who took part in hostilities will be limited to those who demobilize collectively under a peace agreement or individually in accordance with established procedures and with the authorization of the National Government.

## **PARAGRAPH 2**

Under no circumstances transitional justice instruments may benefit illegal armed groups that have not been part of the internal armed conflict, or any member of an armed group that once demobilized continues committing crimes.

## **TRANSITIONAL ARTICLE 67**

For the purpose of participating in politics, a statute shall establish which crimes will be considered related

to political crimes. Crimes against humanity and genocide committed in a systematic manner may not be considered related to political crimes. Therefore, those who have been convicted and sanctioned for such crimes cannot participate in politics or be elected.

[About Constitute](#) | [Acknowledgements](#) | [Privacy Policy](#) | [Terms & Conditions](#)