

## CHAPTER 1:12

### ELECTORAL AUDIT (CARICOM AGREEMENT) ACT 1

#### ARRANGEMENT OF SECTIONS

##### SECTION

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##### SCHEDULE

**AN ACT to provide for the conduct of the Independent Electoral Audit provided for in the Caricom Agreement dated 17th January, 1998.**

A.D. 1998

**Enacted by the Parliament of Guyana:-**

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|--------------------|--|
| Short title.       | 1. This Act may be cited as the Electoral Audit (Caricom Agreement) Act 1998.  |
| Interpretation.    | 2. In this Act - <ul style="list-style-type: none"> <li>(a) "Audit" means the independent inquiry provided for in paragraph 1 of the Caricom Agreement;</li> <li>(b) "Audit Commission" means the Commission referred to in section 4;</li> <li>(c) "Caricom" means the Caribbean Community established by the Treaty of Chaguaramas 1973;</li> <li>(d) "Caricom Agreement" means the Agreement in the Schedule entitled Caribbean Community Mission to Guyana dated 17th January, 1998 between of the People's Progressive Party/Civic and the People's National Congress and countersigned on behalf of the Chairman of Caricom;</li> <li>(e) "Elections" means the 15<sup>th</sup> December, 1997 General and Regional Elections;</li> <li>(f) "election petition" has the same meaning as in the National Assembly (Validity of Elections) Act;</li> <li>(g) "first stage" in relation to the Audit, means the first stage of the Audit as provided for in paragraph 1 (i) (a) of the Caricom Agreement;</li> <li>(h) references to members or staff of the Elections Commission include references to persons who were members or staff of the Elections Commission at the time of the Elections, whether or not they are members or staff of the Elections Commission at the time of the Audit.</li> </ul> |
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| Secrecy of ballot. | 3. Except to the extent necessary to conduct the Audit and provided the secrecy of the individual's vote is not violated, nothing in this Act shall authorise any infringement of the secrecy of the ballot as protected by the Representation of the People Act or by any other law.  |
| Cap. 1:03          | Representation of the People Act or by other law.  |
| Audit              | 4. (1) Pursuant to the terms of reference in the Caricom Agreement, an Audit shall be carried out by an independent Commission, proposed by the Chairman of Caricom in conformity with paragraph 1 (ii) of that Agreement, comprising - <ul style="list-style-type: none"> <li>(a) Honourable Justice Ulric Cross (Chairman), Trinidad and Tobago</li> <li>(b) Mr. Justin Daniel, Saint Lucia</li> </ul>   |

- (c) Ms. Carol Jerome-Horsford, Grenada
- (d) Dr. Dinanath Gajadhar, Trinidad and Tobago
- (e) Mr. Noel Lee, Jamaica
- (f) Mr. Frank Philips, Trinidad and Tobago
- (g) Mr. Denis Smith, Barbados.

(2) Where a member of the Audit Commission is for any reason unable to perform his functions under this Act another person may be appointed as such member in his stead in the same manner as provided for in paragraph 1(ii) of the Caricom Agreement for such time as may be necessary.

Commissioners to take oath of office.

5. Each Commissioner shall make and subscribe an oath or affirmation before the Chief Justice that he shall faithfully, fully, impartially, and to the best of his ability discharge the trust, and perform the duties devolving upon him by virtue of such appointment.

Secretary.

6. There shall be a Secretary to the Audit Commission appointed by the Commission who shall perform such functions relating to the work of the Commission as the Commission may determine.

Summoning and examining witnesses.

7. The Audit Commission shall have the powers of the High Court to summon witnesses, examine witnesses on oath and to call for the production of books, documents, papers and electronic material.

Duty of witnesses summoned.

8. All persons summoned to attend and give evidence, or to produce books, documents, papers or electronic material, at any sitting of the Audit Commission, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from the High Court.

Consequences of failure to obey summons.

9. If any person so summoned fails to obey the summons, the Chairman of the Audit Commission may certify under his hand to the High Court the failure of that person to obey such summons, whereupon that person shall be answerable to the High Court as if, and in the like manner, as for a contempt of court committed in the face of the High Court, and that Court shall deal with the matter accordingly.

Admissibility of findings.

10. The findings of the first stage of the Audit, as certified under the hand of the Chairman of the Audit Commission shall, in accordance with paragraph 1(iv) of the Caricom Agreement, be binding on the parties to that Agreement and shall be admissible in evidence for the purposes of any election petition relating to the elections.

Inspection and production of books, documents etc

11. Where the Chairman of the Audit Commission is satisfied that a book, document, paper or an electronic material relating to the elections is required for the Audit and the book, document, paper or electronic material is in the custody or control of the Chief Election Officer, whether or not in accordance with section 102 of the Representation of the People Act, or in the custody or control of any other person under any law, he may issue a directive under his hand to the Chief Election Officer or such person that such book, document, paper or electronic material shall be produced to the Audit Commission for inspection and the Chief Election Officer or such other person shall be bound to comply with the directive of the Chairman.

Cap. 1:03

Assistance in conduct of Audit.

12. The members and staff of the Elections Commission and any other person in a position to do so shall assist in the conduct of the Audit if requested to do so by the Chairman of the Audit Commission, and a person so assisting shall not, by virtue of such

		assistance, be deemed to be acting in contravention of any law.
Procedure	13.	The Audit Commission shall regulate its own procedure.
	14.	No person giving evidence before the Audit Commission, whether or not under summons of the Commission, shall be compellable to incriminate himself, and every such person giving such evidence shall be entitled to all the privileges to which a witness giving such evidence before the High Court is entitled.
Technical assistance.	15.	The Audit Commission may engage such technical expertise or other assistance, as it considers desirable for the due conduct of its work.
Immunity.	16.	A member of the Audit Commission, or a person engaged to assist it under section 15, shall not be liable to any prosecution, action or suit in respect of anything done by him in respect of the work of the Commission.
Evidence.		
Audit report.	17.	On the completion of each stage of the Audit, the Chairman of the Audit Commission shall cause a copy of the Audit report pertaining to that stage to be transmitted to each of the political parties contesting the elections as well as to the Secretary General of Caricom for transmission to the Chairman of Caricom and other Heads of Government of Caricom countries.

## SCHEDULE

### CARIBBEAN COMMUNITY MISSION TO GUYANA

#### Measures for Resolving Current Problems

The deliberations and consultations undertaken by the Caribbean Community (CARICOM) Mission have confirmed an urgent need for the de-escalation of conflict emphasized in the Mission's initial Statement. The Mission concluded that resolution of current problems in Guyana must begin; and that this can only happen through a political process to which all contribute. The Mission has recommended to the Leaders of the two parties a Menu of Measures set out below. It considers that, if agreed by the two main political parties as an integrated package, these measures can contribute significantly to the resolution of existing problems.

The Menu of Measures has taken into account the contributions of all political parties and civic groups. The Mission is of the view that these measures will commend themselves to the society as a whole and invites all members of the society to give their full support to them.

In this context, the Leaders of the PPP/C and the PNC have agreed as follows:

1. **An Audit**

- (i) Without prejudice to any judicial process arising from the 15 December 1997 elections, an independent inquiry (the audit) will be carried out in two stages, namely:
  - (a) in the first stage, an urgent review of the due process of the count on and after 15 December 1997 (including the role of the Elections Commission) to be completed within three months of 17 January 1998 with a view to ascertainment of the votes cast for the respective political parties; and
  - (b) in the second stage, an audit of systemic aspects of the electoral process, including the post-balloting phase.
- (ii) The audit will be carried out under CARICOM auspices by a team proposed by the Chairman of CARICOM after consultation with the Leaders of the political parties which participated in the 15 December 1997 elections, and agreed to by the Leaders of the PPP/Civic and the PNC. The Terms of Reference for the conduct of the audit are annexed hereto.
- (iii) The PPP/Civic and the PNC will cooperate in the enactment of any enabling legislation that may be required for the effective conduct of the audit.
- (iv) The parties to this Accord will accept the findings of the first-stage of the audit as binding upon them and the enabling legislation will provide for such findings to be admissible for the purposes of any Election Petition in respect of any matters of fact to which they relate.

2. **A Moratorium**

An immediate moratorium on public demonstrations and marches will be declared and implemented. The ban on these activities will be simultaneously lifted. These arrangements will subsist for a minimum period of three months from 17 January 1998.

3. **Dialogue**

The PPP/Civic and the PNC will activate arrangements for sustained dialogue between them with a view to fostering greater harmony and confidence and resolving issues on which agreement can be reached.

4. **Constitutional Reform**

- (i) A Constitution Reform Commission will be established by law, with a wide mandate and a broad-based membership drawn from representatives of political parties, the Labour Movement, religious organizations, the private sector, the youth and other social partners. The Terms of Reference of the Commission and its membership will be determined by the National Assembly after a process of consultation with the political parties. It will be mandated to consult with civil society at large.
- (ii) The Commission will also be mandated to conclude its deliberations and present its report to the National Assembly within eighteen months of 17 January 1998. The process for implementing the changes recommended by the Commission and approved by the National Assembly to be concluded in sufficient time to allow for post-reform general elections which will be held within eighteen months after the presentation of the report of the Commission to the National Assembly.
- (iii) Among the matters to be addressed by the Constitutional Reform Commission will be measures and

agreements for the improvement of race relations in Guyana, including the contribution which equal opportunities legislation and concepts drawn from the CARICOM Charter of Civil Society can contribute to the cause of justice, equality and progress in Guyana.

5. **Creating a New Environment**

The political Leaders of the PPP/Civic and the PNC will issue a joint statement confirming their commitment to the agreed process of dispute settlement and their resolve to avoid the use by or on behalf of their respective Parties of language which is accusatory and which have an inflammatory effect in the current political context.

6. **Implementation**

For the Purpose of the implementation of these measures, the PPP/C and the PNC will each appoint a senior representative with plenipotentiary powers for ensuring the smooth and uninterrupted translation of these agreed undertakings and arrangements into practice in a manner which supports the return of Guyana to normalcy.

7. **CARICOM's Continuing Role**

The Parties also accept that the Chairman and Bureau of CARICOM will retain a continuing interest in the implementation of measures, and remain at the disposal of both Parties in that regard.

The Menu of Measures set out in Paragraph 1 to 7 above is agreed this 17<sup>th</sup> day of January 1998 by

.....  
PEOPLES PROGRESSIVE PARTY/CIVIC

.....  
PEOPLES NATIONAL CONGRESS

.....  
On behalf of the Chairman of the  
CARIBBEAN COMMUNITY

**TERMS OF REFERENCE OF THE AUDIT PROVIDED FOR IN**  
**THE PARAGRAPH OF THE MENU OF MEASURES AGREED**  
**BY THE LEADERS OF THE PPP/CIVIC AND PNC**  
**DATED 17 JANUARY 1998**

As provided for in the agreed Menu of Measures an independent audit will be carried out in relation to the 1997 General Elections. The first stage of the audit will be an urgent review of the due process of the count on and after 15 December 1997, including a review of the role of the Elections Commission. It must be completed within three months of 17 January 1998. This first stage of the audit will have as its primary purpose an examination of the processes of the count from the close of poll to the declaration of the final results of the election by the Elections Commission, the validity and authenticity of all relevant documents, and the ascertainment of the votes duly cast for the respective parties.

Those conducting the independent audit will have the authority to enquire into all matters they consider pertinent to the conduct of their enquiry and will expect the facilitation of their efforts by the members and staff of the Elections Commission to the extent and in the manner they consider appropriate. The audit will encompass all electoral Regions but will give priority to Region 4 and 6.

The second stage of the audit will extend beyond matters enquired into in the first stage to include systemic aspects of the electoral process. It will include enquiry into the post-balloting phase of the elections but will not be confined to that phase. Notwithstanding anything in the first phase of the audit, the scope of the second phase will include both an enquiry into the electoral arrangements as planned and as actually carried out, as well as proposals for any modifications for future elections.

**EXPLANATORY**

This Bill seeks to establish the mechanism to audit the 1992 elections through the establishment of a Commission therefore and to provide for the findings of the Commission to be legally admissible.+