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# PARTICIPATORY DEMOCRACY AND RESPECT FOR HUMAN RIGHTS

## COLOMBIA'S NEW CONSTITUTION

Texts and Materials

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Presidency of the Republic of Colombia  
Office of the Advisor for the Development of the Constitution

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# PARTICIPATORY DEMOCRACY AND RESPECT FOR HUMAN RIGHTS

COLOMBIA'S  
NEW CONSTITUTION

Texts and Materials

*Martha Lucía Moreno f.*

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## Address by the President of the Republic of Colombia, César Gaviria Trujillo, on the Occasion of Adjourning the Sessions of the National Constituent Assembly\*

Honorable delegates, fellow citizens:

*I want to share with you the happiness that warms the hearts of Colombians. This is the satisfaction of all of us who have struggled to build a new country where all may participate, in which no one is excluded, which offers a place under the sun to all in Colombia, a place for both the poor and the rich, the strong and the weak, and for those who were the heroes of our past and those who will be the heroes of our future.*

Today this important step comes to an end, a new political era for Colombia has begun. The 1991 Constitution does not mark the end of a process of reforms but rather the beginning of a new chapter in our history. We have started -but not concluded- what President Alfonso López Pumarejo referred to as "the past being laid to rest", "the friendly settlement of the overwhelming weight of resentment and prejudice" that the nation needed to be prosperous and peaceful.

Just as the Constitution of 1886 reflected the ideas of Rafael Núñez in securing the required authority to unify the Colombian nation, the 1991 Constitution will foster the process of change and renewal to which we are committed and will yield the fruit of a new democracy. We are facing a peaceful revolution; this is a watershed in the history of our Republic.

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\* Speech given at Santafé de Bogotá on July 4th, 1991.

This Assembly is an example of the new democracy which I promised to deliver to Colombians at the beginning of my term. It is also proof that it can work and that it is not a utopian dream.

This new democracy has room for tolerance and respect of differing ideas.

This new democracy takes seriously the ideas of others, with humility and with an awareness that the truth emerges from debate and controversy and that the existence of different points of view, parties, and convictions, can give birth to a harmonious pluralism which we hope will improve our ideas by allowing us to acquire other, better ones.

The new democracy will no doubt have the strength to embrace different opinions, because each opinion will be respected in the open debate of ideas and this debate will be free from the forces of intimidation and dogmatic arrogance.

Therefore, when there are different opinions on the same subject, it cannot be said that there is disorder but rather, that pluralism is being expressed. Frank debates shall not be criticized for generating conflict. On the contrary, it will be rightly said, "we welcome open dialogue without taboo subjects, where we all have something to say, where all of us are entitled to be heard!"

In this new democracy no one can claim to be better than another person. This Constitution has been drafted so that all of us may live together in a civilized way, treating each other with mutual respect and fair treatment. The fact that tolerance prevails and that we listen to other ideas does not mean that we will abandon our own; it means that we all will be able to express our ideas freely and fully, and that we have adopted new rules so that we may cease fighting as enemies and engage instead in a healthy dialogue.

Yes. We will have great differences, but we all share one fundamental commitment: Colombia, the great and glorious struggle to achieve welfare for the people and peace among our brothers.

In this new democracy, consensus is not synonymous with unanimity. On the contrary, it is the basis for the spirit of participation that has awakened among Colombians, who, tired of living their lives according to orders from above,

have taken their destiny into their own hands to forge it according to their own aspirations and adapt it to their own needs.

For this reason, in the new political order we have given each individual, like each delegate, a power that counts and which cannot be ignored. This is why we have turned from abstract theories on justice to a real sensitivity for those in need of support, or as stated by the Constitution in so many articles, for those who deserve special protection. This concern for minorities does not reflect a paternalistic attitude. It is the result of our being gathered here together for the first time in our history, in the same house, face to face, as equals.

This Assembly could have been very different. But it was chosen by the people, not appointed by the elite. Instead of old style Politics, it was the fruit of a new national electoral district, inclusive of electoral registration rules, and state financing for the election campaigns of delegates. It was born of the rule of law based on the historical judgments of the Supreme Court of Justice that affirmed the innovative legal concepts from the decrees issued by the Executive. And yet it did not disregard the institutional order. This Assembly has been public in its deliberations and open to public opinion. It has been pluralist, free, and independent. In sum, the Constitutional Assembly has been an Assembly of all Colombians and not only of experts and technicians.

I prefer it that way, as it was conceived in the public document that, as President elect, I sent on July 22, 1990, to the leaders of the political groups with whom we later concluded the agreements that made this process possible. I prefer it that way, because the new Constitution was born, in its essence, of course, in a democratic event on December 9th. On that date, Colombia made a choice for fundamental change. For 150 days they placed their confidence in you, to develop and give life to popular aspirations for institutional change and political renewal.

I would like to underscore the determination, the devotion, and the seriousness of all the delegates. On behalf of all Colombians, I congratulate you for having fulfilled with such outstanding dedication such a great responsibility. Likewise, let me express my appreciation for the work of Minister of Government, Humberto de la Calle, whose tact, intelligence, honesty and discipline are well known throughout the whole country. I also wish to thank the Presidents of the Assembly -Alvaro Gómez Hurtado, Antonio Navarro

Wolff and Horacio Serpa Uribe- who during the past months clearly understood this historic moment for the nation and had the good judgment to preserve the spirit of consensus that led to this process, to give full guarantees to all groups, and maintain a fair balance in the debates. I should also applaud the role played by them and by the former President, Alfonso López Michélsen, in his position as National Head of the Liberal Party, in the negotiation and subsequent signing of the Political Agreement which made possible a harmonious transition for the election of Congress under the new electoral rules October 27th, 1991.

Honorable delegates:

The new Constitution will provide the government and the country, with the proper tools to continue with vigor and speed along the road of peaceful revolution. This Constitution has been my main focus and will serve as my guide as I continue to defend and promote the revolutionary process. This will be the clear goal of the government when developing legislation, and when making other decisions to strengthen the new country we have built. We will astonish both the pessimists and the "persistent prophets of doom" as López Pumarejo used to say, as well as future generations.

This new country before us, rooted in a Constitution quite different from the one of 1886, will express itself through a participatory democracy, will be governed by solid and efficient institutions, and will be inhabited by active citizens, interested in deciding their own future. Let me refer briefly to each one of these subjects.

One of the main characteristics of the new Constitution is that it was not born of a few solitary pens, but rather from a great democratic debate in which the whole country participated: from the proposal of the 1988 plebiscite, in the streets, when students demonstrated on behalf of the "seventh ballot", in citizens' forums, in the electoral debate, the media and naturally, within this Assembly. The 1991 Constitution does not belong to any one group in particular and that is why, as few have been in history, it belongs to everyone and was made for the benefit of everybody. It is a collective creation which from now on, and for many decades to come, belongs equally to each Colombian.

The 1991 Constitution is also a reflection of the new Colombia, a reflection of a Nation to which we all belong: children, youth, adults and the elderly; a country in which women have a predominant position in national life, in which indigenous peoples and all other minority ethnic groups truly matter; a country which is predominantly urban but which recognizes the importance of promoting the development of the countryside; a country of regions which rightly demand powers to abandon a smothering centralism and to promote real regional progress and the rebirth of local activity.

That is why the 1991 Constitution is as it is. It's as broad as it is democratic. It is detailed to capture over diversity and provide guarantees to all of our political and social groups. It was drawn up by many hands and in many styles because it was prepared in a pluralist forum in which there were representatives from all sectors of society. It is generous on the subject of rights; broad, participatory, and democratic concerning politics; strong and solid regarding justice; sane and responsible in the economic field; and revolutionary in terms of the society. Such is the Constitution we inaugurate today.

The new Constitution is not an academic exercise nor a laboratory invention. It expresses reality as it is, full of different forms, complex, brimming with a variety of needs and stirred by the dreams of millions of our fellow countrymen. To quote Bolívar: "appropriate to the nature and the character of the nation."

Above all, in establishing a new political order, the 1991 Constitution was designed to salute all the players in the newborn Republic.

Millions of Colombians who had never been interested in constitutional theories, can today identify with the 1991 Constitution and demand its implementation, demand that it does not remain a mere piece of paper, but that it becomes an instrument to transform reality.

From this revolutionary process a political Constitution has been born. But we must keep in mind that a participatory democracy has also been created. Now we are constantly hearing that expression. We no longer talk about mere democracy, but about participatory democracy or of a democracy of popular participation. This is not some semantic debate, nor a redundant statement, nor the use of vague words. We are dealing with a new conception of

democracy, perhaps the most advanced ever, and so recent, that the Colombian Constitution is one of the few in the world that contains this concept. Just as 200 years ago Montesquieu was a revolutionary for his time, today the promoters of participatory democracy have challenged the traditional institutions, not to destroy them, but to use them as pillars of a new political order, more legitimate, more respectful of the autonomy, rights and freedom of each person, less arbitrary, fairer, and open to the peaceful coexistence of all the groups that make up a community.

By creating a participatory democracy, we have fulfilled the mandate of the voters who, on May 27th of last year, rushed to the ballot boxes to deposit their votes to begin this process. The old order was powerless before the uncontrollable forces of transformation, before the decision of millions of Colombians who resolved to face crisis, violence and despair with an avalanche of votes that announced the advent of a new era. Colombians grew stronger in the face of adversity; they responded to bombs with their votes, with millions of votes for the new nation that mourns so many fallen countrymen: Luis Carlos Galán, Guillermo Cano, Jaime Pardo Leal, Bernardo Jaramillo, Carlos Pizarro, Carlos Mauro Hoyos, Rodrigo Lara Bonilla, Enrique Low, Diana Turbay de Uribe and dozens of journalists, judges, magistrates and ordinary people.

In this participatory democracy, groups of citizens may directly through initiatives submit bills to Congress and ordinances to the Departmental Assemblies and the Municipal Councils. They may designate a spokesman to represent them in the debate of their proposals, which will follow a fast-track procedure. Just as they may propose changes they consider necessary without any intermediary, they may also veto the decisions they consider to be prejudicial. If a large number of citizens request that a law approved by Congress be submitted to an abrogative referendum, it must be called in order for the people to decide whether to ratify or vote down the law. They may also take decisions on their own on important subjects when convoked to what we call an issue referendum at the national, departmental, or municipal level. Even if a specific aspect of the 1991 Constitution was to be amended, it would be possible to submit to the people a given text in a referendum so that the amendments approved by Congress obtain popular ratification.

Apart from voting in the elections, in this participatory democracy, citizens may enforce their right to participate in other forums so that their opinions

are considered when decisions affecting them are to be adopted: students in the universities, workers in their companies, union members in labor and trade unions, professionals in their associations, peasants in their organizations, consumers and civic associations in the State's entities, the youth in the public bodies which interest them, and women in the high echelons of decision-making bodies, to mention only a few.

In this participatory democracy the most important aspect is the power of each citizen. Consequently, the Bill of Rights clearly states what legal means exist for an individual who feels he has been discriminated against, or for a person who has been arbitrarily treated or has suffered an assault to his or her dignity, intimacy or autonomy.

No more injustice. No more privileges. No more abuses. Let us respect everybody's dignity. Let us live together in peace. This is what, in the final analysis, is said in the Bill of Rights. But besides proclaiming human rights, it offers to each and every person the means to protect those rights, such as the writ of protection and the Ombudsman, in order to guarantee that the State respects these rights and that youth does not have to rise in rebellion against the institutions to defend their rights.

There, honorable delegates, are the weapons that Colombians will use to fight peacefully for their rights.

I invite Colombians to use these weapons whenever necessary. I invite them to a battle in which not a drop of blood will be shed, to promote respect for the Constitution and their rights.

A new Constitution. A new democracy. And also, new solid and efficient institutions. The Constitutional Court will make of the 1991 Constitution a living document, relevant to everyone, in tune with the reality of the country, a promoter of change and a protector of the basic values of democracy. It is to be a strong, agile and independent judicial power that guarantee that justice does not get lost among piles of dossiers, but is within the reach of all Colombians so that they may resort to it and obtain prompt relief.

The institution of the General Prosecutor's Office will serve to coordinate and promote the action of the State against crime and will be the standard-



bearer of the struggle against impunity, capable of confronting powerful criminal organizations. The General Prosecutor's Office has been created with a foothold in the Executive branch, which prepares the three person roster from which the General Prosecutor shall be chosen, and a foothold in the Judiciary branch, since it belongs to it and has powers similar to those of a judge to carry out judicial investigations and take preventative measures. One of the government's top priorities will be to promote the development of the new criminal justice system that flows from this Office, while continually seeking a fair balance between efficiency and the respect for rights. I cherish the hope that a new era will begin for Colombian justice, more in line with the predominant ideas today in other democratic countries, in order that crimes not go unpunished and that all manner of private justice will be eliminated.

I should also refer to the new institutions of the Public Prosecutor's and Comptroller General's Office which, with efficient tools to protect the patrimony of the State, will scrutinize public entities and sanction corruption in an exemplary manner.

Moreover, a different Congress of the Republic is anticipated. A Congress in which all Colombians will feel represented. A Congress with room for the various political and social forces, with a Senate elected from a national electoral district, purged of vices like pork-barrel grants and parliamentary tourism that tarnished its achievements in the public eye. A Congress protected from improper practices by a strict code of conduct and broader rules of disabilities and incompatibilities. It will be a forum for democracy, just as this Assembly was. It will be qualified to debate how the state's resources should be invested through a deliberative, democratic and open process for the approval of the budget and of development programs. A Congress which has been provided with mechanisms to make public officials more responsive and more sensitive to great national problems. A Congress that will have the historic mission to promote the development of the new Constitution, approving the laws that it shall deem necessary.

With regard to the Executive branch, I do not see it weakened, despite the new functions which have been given to Congress and the vote of non-confidence, as López Pumarejo had originally proposed in the Reform of 1936. I think a healthy balance has been re-established among the branches of government. The President is still the only representative of the whole Nation, the symbol

of national unity, the leader of democracy, the permanent spokesman of the people and the political forces, the head of State, the head of government and the Supreme Administrative Authority.

It is too early to determine whether certain changes will stand the test of time, but I have no doubt that the political concepts and the institutions on which the new state is based, are destined for permanence.

We Colombians have given a lesson to the world: when the greatest threats hovered over us, when violence interwove the skein of various simultaneous wars, when many other countries under similar circumstances may have fallen to the temptation of totalitarianism, we chose the road of reform, of a true and civilized revolution.

So many changes! How great and profound this transformation has been!

We left behind the stage of siege, which served both to confront violence and to build the roads of peace, but was also a source of discredit to our democracy.

We also left behind any pretext for guerrilla warfare as an instrument of political action.

I address the FARC and the ELN who persist in using violence, in spite of generous offers of full political participation, in the hope that they will listen to me and listen to the whole nation: no more ambushes, no more assaults, no more kidnappings, no more violence, no more bombing of oil exploration derricks and pipelines, no more attacks against the people of Colombia. After this peaceful revolution, the preaching and practice of violence represent the most outdated modes of action of the largest reactionary force.

Next July 15th, 1991 peace-talks in Caracas will resumed. Colombians and observers of many other countries will be watching the actions of the guerrilla leaders. In every corner of Colombia and in the rest of the world it will soon be clear whether they are determined to continue postponing a solution, because they prefer to come to the negotiating table looking for antagonism or propaganda instead of firm, realistic and verifiable agreements. Without wavering, the government I preside shall take whatever

measures are necessary to defend the new legitimacy, with the conviction that all over the world, voices of support shall be heard for the defenders of a fresh and renewed democracy. If, on the contrary, those groups definitely and sincerely choose reconciliation and wish to defend their ideas by peaceful means, the government will give them full guarantees and society will respond to that choice with the magnanimity they deserve.

The October 27th elections will provide them with an exceptional opportunity to replace the rattling of machine guns with the sound of their voices, so that the strength of their ideas may replace forever the deafening thud of dynamite. I invite them to take that other great historic step that Colombians are waiting for and that national and international public opinion would see as a great contribution to this democratic transformation.

On few occasions has it been so clear that we are making reforms to achieve peace. We oppose violence, hatred, and impunity. We seek peaceful transformation, reconciliation, and justice. This task has barely begun. Now we will have to demonstrate that what we dreamed about, what we have struggled so much for, is possible not only in a constitutional text, but also in reality.

We have poured the foundation of this great structure. Now all of us, joined together, shoulder to shoulder, must finish the rest of the building. New and great efforts, new and great challenges await us. The problems will not magically disappear. Much work and much imagination will be needed to use justly the new instruments we have in our hands so that we can fight against violence and battle misery.

For the time being, it is very clear that under the new Constitution there is no room for political violence, nor is there room for any other type of authoritarianism, intolerance, privilege or abuse. How could it be, now that society has been liberated from the ties that prevented free expression of opinions and now that the once revolutionary slogans are part of the Constitution, at the behest of the government, the Liberal Party, the Social Conservative Party, the M-19 Democratic Alliance, the National Salvation Movement, the leftist Patriotic Union, the indigenous groups, the Evangelists, the "Hope, Peace and Freedom" Movement, the Quintín Lame Group, and the PRT (Revolutionary Working Party).

No. Let's not deceive ourselves. A new legitimacy has been built, based on a pluralist consensus, to continue the democratic struggle, not the armed confrontation. The 1991 Constitution is a peace treaty, a new instrument for reconciliation.

Let us look toward the future. The 1991 Constitution has thrown us into a new situation. A breath of fresh air is blowing in. We are now ready for a flexible, fair, and vigorous political game. And there is a long, broad avenue open for citizens who identify with their Constitution, are proud of their democracy, and are determined to keep on building this new Colombia. Traditional politics, corrupted by patronage, has been replaced by a new way to mobilize public opinion and a new political style purged of the practices which we all rejected.

When I think about the future I remember with emotion Luis Carlos Galán, who put dignity back into politics, who demonstrated the strength of ideas to transform reality, who began the process and will be forever an omnipresent part of that future. "Democracy survives", Galán said, "if a nation manages to identify a collective purpose that belongs to all of us and not only to the privileged sectors". Now, this collective purpose has been identified and is represented in this process in which, undoubtedly, Galán would have been the outstanding player.

Today we begin the most important journey of our lives; with confidence, because tenacity has defeated skepticism; holding in our hands a heritage enriched by more than one hundred years of experience and aspirations; with the satisfaction that everything has turned out well; with fists raised, celebrating a success that belongs to all Colombians. And, therefore, with the duty to see that this bold experiment of imagination and pragmatism will transform reality, be fully effective, consolidate peace and secure a just order.

Honorable delegates, fellow citizens:

My commitment as President of the Colombian people is to continue promoting this new faith, this democratic and peaceful revolution that I have promised, without respite for a single moment.

Sometimes I look back with nostalgia at the 150 days when the whole country was following the creation of its new Constitution. The sessions of the 1991

Constituent Assembly are over. You will now have some time to rest from so much pressure and exhausting work. You will return for a time to your families and regions that will receive as you deserve, as the soldiers who have just won this great battle for peace.

Hope has been reborn. We are confident that we have fulfilled the words of Liberator Simón Bolívar; we have "preserved intact the Law of Laws: equality".

Confidence in our limitless capacity to absorb this change in all its magnitude has been reborn. We will advance with vigor in this new stage of our history and begin from today, with this new chart to guide us on the journey toward the twenty-first century. We shall set the correct course on the clear horizon we have ahead. We have no fear other than hesitating before the risk, because the future is right there, for those who dare to devote their life to the construction of a new Colombia.

The old order is behind us, and with the help of God, we will make of our country a prosperous and peaceful nation.

Colombians:

Welcome to the future!

## TWO

### Text of the Constitution of Colombia (1991)

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## Text of the Constitution of Colombia (1991)\*

### 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 its members life, peaceful coexistence, work, justice, equality, knowledge, 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, sanction, and promulgate the following:*

### POLITICAL CONSTITUTION OF COLOMBIA

#### TITLE I

#### CONCERNING FUNDAMENTAL PRINCIPLES

**Article 1.** Colombia is a legal social state organized in the form of a unitary republic, decentralized, with the autonomy of its territorial units, democratic, participatory and pluralistic, based on respect of human dignity, on the work and solidarity of the individuals who belong to it, and the predominance of the general interest.

\* It is not an official translation.

**Article 2.** The essential goals of the state are to serve the community, promote general prosperity, and guarantee the effectiveness of the principles, rights, and duties stipulated by the Constitution; to facilitate the participation of all 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 the enforcement of a just order.

The authorities of the Republic are established in order to protect all persons residing in Colombia, their life, dignity, 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 is the supreme law. In all cases of incompatibility between the Constitution and the law or any other legislation or regulation, the constitutional provisions will apply.

It is the duty of citizens and of aliens in Colombia to abide by 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.** Each person is individually responsible before the authorities for violations of the Constitution and the laws. Civil servants are responsible for the same reason, and likewise for omission or acting "ultra vires" 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 will 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 will be bilingual.

## TITLE II

### CONCERNING RIGHTS, GUARANTEES, AND DUTIES

#### CHAPTER I

##### CONCERNING FUNDAMENTAL RIGHTS

**Article 11.** The right to life is inviolable. There will be no death penalty.

**Article 12.** No one will be subjected to forced imprisonment, nor submitted to torture or cruel, inhuman, or degrading treatment or punishment.

**Article 13.** All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy.

The state will promote the conditions necessary in order that equality may be real and effective and will adopt measures in favor of groups which are discriminated against or marginalized.

The state will especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and will sanction any abuse or ill-treatment perpetrated against them.

**Article 14.** Every individual has the right to be legally recognized as a person.

**Article 15.** Every individual has the right to personal and family privacy and to his/her good reputation, and the state will respect them and have these rights and ensure they are respected. Similarly, individuals have the right to know, update, and rectify information gathered about them in data banks and in the records of public and private entities.

Freedom and the other guarantees approved in the Constitution will be respected in the gathering, handling, and circulation of data.

Correspondence and other forms of private communication are inviolable. They may only be intercepted or recorded pursuant to a court order, following the formalities established by law.

For tax or legal purposes and for cases of inspection, supervision, and intervention of the state, the submission of accounting records and other private documents may be required within the limits provided by law.

**Article 16.** All persons are entitled to their free personal development without limitations other than those imposed by the rights of others and those which are prescribed by the legal system.

**Article 17.** Slavery, servitude, and the slave trade in all forms are prohibited.

**Article 18.** Freedom of conscience is guaranteed. No one will 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 mass media are free and have a social responsibility. The right of rectification under equitable conditions is guaranteed. There will be no censorship.

**Article 21.** The right to dignity is guaranteed. The law will provide the manner in which it will be upheld.

**Article 22.** Peace is a right and a duty whose compliance is mandatory.

**Article 23.** Every person has the right to present petitions to the authorities for the general or private interest and to secure their prompt resolution. The legislative body may regulate the presentation of petitions to private organizations in order to guarantee fundamental rights.

**Article 24.** Any Colombian citizen, except for the limitations established by law, 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 in all its forms enjoys the special protection of the state. Every person is entitled to a job under dignified and equitable conditions.

**Article 26.** Every person is free to choose a profession or occupation. The law may require certificates of competence. The competent authorities will inspect and supervise the exercise of the professions. Occupations, the arts, and work that do not require academic training are to be freely exercised, except for those which involve a risk to society.

Legally recognized professions may be organized into professional associations. The internal structure and operation of the latter must be democratic. The law may assign public functions to them and establish the appropriate controls.

**Article 27.** The state guarantees freedom of teaching at the primary and secondary level, training, research, and professorship.

**Article 28.** Every person 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 pursuant to a written order from a competent legal authority, subject to legal process and for reasons previously established by law.



A person in preventive detention will 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 law.

In no case may there be detention, a prison term, arrest for debts nor application of sanctions or security measures that are not subject to limitations of time.

**Article 29.** Due process will apply to all legal and administrative measures.

No one may be judged except in accordance with the relevant previously written laws before a competent judge or tribunal following all appropriate formalities in each trial.

In penal cases, a permissive or favorable law, even when *ex post facto*, will be applied in preference to restrictive or unfavorable alternatives.

Every person is presumed innocent until proven guilty according to the law. Everyone criminally charged is entitled to a defense and the assistance of counsel chosen by the accused or assigned during the investigation and trial; to a fair and public hearing without undue delay; to present evidence and to examine witnesses for the prosecution; to challenge the conviction; and not to be subject to double jeopardy for the same act.

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

**Article 30.** Whoever is deprived of his/her freedom and believes it to be unlawful is entitled to invoke habeas corpus before any judicial authority, at any time, on his/her own or through a third party, and that judicial authority must decide within 36 hours the lawfulness of the detention.

**Article 31.** Any lawful conviction may be appealed or reviewed, but for exceptions provided by law.

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

**Article 32.** The criminal who is caught in *flagrante delicto* may be apprehended and taken before a judge by any individual. Should he/she be pursued 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 criminal. Should he/she be caught in somebody else's home, a request to the resident will have to be made before entering.

**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, affinity two ranks removed, or one rank removed in civil law.

**Article 34.** Deportation, life imprisonment, or confiscation of property are prohibited.

However, a judicial sentence may nullify ownership of property acquired by unjust enrichment, when it is injurious to the public treasury or seriously harmful to social morality.

**Article 35.** Native-born Colombians may not be extradited.

Aliens will not be extradited for political crimes or for their opinions.

Colombians who have committed crimes abroad, considered as such under national legislation, will be tried and sentenced in Colombia.

**Article 36.** The right of asylum is recognized within the limits provided by law.

**Article 37.** Any group of individuals may gather and demonstrate publicly and peacefully. The law 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 status will be recognized by the simple registration of their constituent act.

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

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

Jurisdiction and other guarantees necessary for the performance of their functions is recognized to trade union representatives.

Members of the public force (national police and armed forces) 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 by the Constitution and the law.
5. Act in public bodies.
6. File public actions in defense of the Constitution and the law.
7. Hold public office, except for those Colombian citizens, native-born or naturalized, who hold dual citizenship. The law will regulate this exception and will determine the cases where it applies.

The authorities will 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 will be mandatory. In this way, democratic practices will be promoted through the teaching of principles and the value of the citizens' participation will be promoted. The state will publicize the Constitution.

## CHAPTER 2 CONCERNING 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, by the free decision of a man and woman to contract matrimony or by their responsible resolve to comply with it.

The state and society guarantee the integral protection of the family. The law may 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 mutual respect of all its members. Any form of violence in the family is considered destructive of its harmony and unity, and will be sanctioned according to law.

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

The couple has the right to decide freely and responsibly the number of their children and will have to 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 civil law.

Religious marriages will have civil effects within the limits established by law.

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

Also, decrees of annulment of religious marriages issued by the authorities of the respective faiths shall have civil effects within the limits established by law.

The law will determine matters relating to the civil status of individuals and the 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 will benefit from the special assistance and protection of the state and will receive from the latter food subsidies if they should thereafter find themselves unemployed or abandoned.

The state will 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 will be protected against all forms of abandonment, physical or moral violence, imprisonment, sale, sexual abuse, work or economic exploitation, and dangerous work. They will 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 complete development and the full exercise of their rights. Any person may request the competent authority to enforce these rights and to sanction those who violate them.

The rights of children have priority 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 organizations that are responsible for the protection, education, and progress of youth.

**Article 46.** The state, the society, and the family will all participate in protecting and assisting senior citizens and will promote their integration into active and community life.

The state will guarantee them services of social security and food subsidies in cases of indigence.

**Article 47.** The state will promote a policy of planning, rehabilitation, and social integration for those who are physically, emotionally, or psychologically handicapped and will provide the specialized attention that they need.

**Article 48.** Social Security is a mandatory public service which will be delivered under the administration, coordination, and control of the state, subject to the principles of efficiency, universality, and cooperation within the limits established by law.

All the population is guaranteed the irrevocable right to Social Security.

With the participation of individuals, the state will gradually extend the coverage of Social Security to include the provision of services in the form determined by law.

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

It will not be possible to assign or use the resources of the Social Security institutions for other purposes.

The law will define the means whereby the resources assigned to retirement benefits may retain their constant purchasing power.

**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 rehabilitate public health.

It is the responsibility of the state to organize, direct, and regulate the delivery of health services and of environmental protection to the population in

accordance with the principles of efficiency, universality, and cooperation, and to establish policies for the provision of health services by private entities and to exercise supervision and control over them. In the area of public health, the state will establish the jurisdiction of the nation, territorial entities, and individuals, and determine the shares of their responsibilities within the limits and under the conditions determined by law. Public health services will be organized in a decentralized manner, in accordance with levels of responsibility and with the participation of the community.

The law will determine the limits within which basic care for all the people will be free of charge and mandatory.

Every person has the obligation to attend to the integral care of his/her health and that of his/her community.

**Article 50.** Any child under a year old who may not be covered by any type of protection or social security will be entitled to receive free care in all health institutions that receive state subsidies. The law will regulate the matter.

**Article 51.** All Colombian citizens are entitled to live in dignity. The state will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs.

**Article 52.** The right of all individuals to recreation, sports, and leisure time is recognized. The state will promote these activities and will inspect sports organizations, whose structure and attributions should be democratic.

**Article 53.** The Congress will issue a labor statute. The appropriate law will take into account at least the following minimal fundamental principles:

Equality of opportunity for workers; minimum basic remuneration, flexible and proportional to the amount and quality of work; stability in employment; irrevocability of minimum benefits established in labor regulations; provision of a means to arbitrate conflicting 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 of social security, training, instruction, and

adequate rest time; special protection of women, mothers, and minor-age workers.

The state guarantees the right of appropriate payment and the periodic adjustment of legal retirement benefits.

International labor agreements duly ratified are part of domestic legislation.

The law, 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 by law, is guaranteed.

It is the duty of the state to promote negotiation and other measures necessary for the peaceful resolution of collective labor conflicts.

**Article 56.** The right to strike is guaranteed, except in the case of essential public services defined by the legislature.

The law will regulate this right.

A permanent commission composed of the government, the representatives of employers and of workers, will promote sound labor relations, contribute to the settlement of collective labor disputes, and coordinate wage and labor policies. The law will regulate its membership and functioning.

**Article 57.** The law may establish 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 may not be ignored or infringed upon by subsequent laws. When,

in the application of a law passed on account of public necessity or social interest and recognized as essential, a conflict should occur about the rights of individuals, the private interest will yield to the public or social interest.

Property is a social function that implies obligations. As such, an ecological function is inherent to it.

The state will protect and promote associational and collective forms of property. Due to public necessity or social interest as defined by the legislator, expropriation will be possible pursuant to a judicial determination and prior indemnification. The latter will be determined in consultation with the interests of the community and of the affected party. In cases determined by the legislator, such expropriation may occur by administrative means, subject to a subsequent administrative legal challenge, including with respect to price.

In any case, the legislator, for reasons of equity, may make a determination that there are no grounds for indemnification through an affirmative vote of the absolute majority of the members of both chambers.

Reasons of equity, as well as motives of public necessity or social interest invoked by the legislative body, will not be subject to judicial scrutiny.

**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 above case, immovable property alone may be occupied temporarily to meet the requirements of war or to assign facilities to it.

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

**Article 60.** The state will promote access to property in accordance with the law.

When the state sells its interest in an enterprise, it will take measures to promote the democratization of the ownership of its shares and will offer its

workers and the workers' organizations special terms to make it possible for them to accede to the said proprietary shares. The law will regulate the matter.

**Article 61.** The state will protect intellectual property for the relevant period using the means established by law.

**Article 62.** The fate of intervivos or testamentary donations, effected according to the law for social purposes, may not be altered or modified by the legislative body, unless the purpose of the donation should no longer be applicable. In this case, the law will assign the property in question to a similar purpose.

The government will 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 law are inalienable, imprescriptible, and unseizable.

**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 will benefit from the special protection of the state. For that purpose, priority will be given to the integrated development of agriculture, animal husbandry, fishing, forestry, and agroindustrial activities as well as to the building of physical infrastructural projects and to land improvement.

Similarly, the state will promote research and the transfer of technology relating to the production of food crops and primary resources of agricultural origin in order to increase 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 culture.

The Colombian citizen will be educated in the respect for human rights, peace, and democracy, and in the use 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 will be mandatory between the ages of five and 15 years and which will minimally include one year of preschool instruction and nine years of basic instruction.

Education will 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 control its quality, to ensure it fulfills 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 to minors the conditions necessary for their access to and retention in the educational system.

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

**Article 68.** Individuals may create educational institutions. The law will establish the conditions for their creation and management.

The educational community will participate in the management of the educational institutions.

Education will be in the care of individuals of recognized ethical and pedagogical principles. The law guarantees the professionalism and dignity of the teaching profession.

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

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

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

**Article 69.** The autonomy of universities is guaranteed. The universities will be able to administer and govern themselves through their own bylaws, in accordance with the law.

The law will establish a special regime for state universities.

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

The state will 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 the equal access of all Colombians to their culture by means of permanent education and scientific, technical, artistic, and professional instruction at all stages in 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 will promote research, science, development, and the diffusion of the nation's cultural values.

**Article 71.** Freedom in the search for knowledge and artistic expression is recognized. Plans of economic and social development will include the promotion of the sciences and of culture in general. The state will create incentives for individuals and institutions which develop and foster science

and technology and other cultural manifestations and will offer special incentives to individuals and institutions which pursue these activities.

**Article 72.** The nation's cultural heritage is under the protection of the state. The nation's archaeological heritage and other cultural resources that shape the national identity belong to the nation and are inalienable, unseizable, and imprescriptible. The law will establish the mechanisms to restore control over those that are in the hands of individuals and will regulate the special rights that ethnic groups may enjoy when they occupy territories of archaeological wealth.

**Article 73.** Journalism will enjoy such protection as necessary to guarantee its freedom and professional independence.

**Article 74.** Every person has a right to access to public documents except in cases established by law.

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 law.

To guarantee genuine pluralism and competence, the legislature will dictate the modalities of state intervention to avoid monopolistic practices in the use of the electromagnetic spectrum.

**Article 76.** State intervention in the electromagnetic spectrum used by the television services will be under the control of a public agency with a legal and administrative identity, ownership rights and technical autonomy, subject to its own legal regime.

This agency will develop and execute the state's plans and programs in the services referred to in the previous clause.

**Article 77.** The aforementioned agency will be responsible for the development of the policy regarding the use of television, as determined by the law, however without diminishing the freedoms guaranteed in the Constitution.

Television will be regulated by an autonomous entity at the national level, subject to its own legal regime. The management and operation of the entity will be the responsibility of an executive board which will appoint its director. The members of the executive board will serve for a fixed period. The national government will appoint two of the Board members. Another member will be designated by the regional television stations. The law will stipulate how the other members of the board are to be appointed.

A law will regulate the organization and operation of the entity.

### CHAPTER 3

#### CONCERNING COLLECTIVE RIGHTS AND THE ENVIRONMENT

**Article 78.** The law will 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 will be held liable in accordance with the law.

The state will guarantee the participation of the consumer organizations 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 person has the right to enjoy a healthy environment. The law will 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 areas of special ecological importance, and to foster education for the achievement of these ends.

**Article 80.** The state will plan the handling and use of natural resources in order to guarantee their sustainable development, conservation, restoration, or replacement.

Additionally, it will have to prevent and control the factors of environmental deterioration, impose legal sanctions, and demand the repair of any damage caused.

In the same way, it will 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 will regulate the importation and exportation of genetic resources and their use, in accordance with the national interest.

**Article 82.** It is the duty of the state to protect the integrity of public space and its assignment to common use, which has priority over the individual interest.

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

#### CHAPTER 4

##### CONCERNING THE PROTECTION AND APPLICATION OF RIGHTS

**Article 83.** The activities of individuals and public authorities must conform to the postulates of good faith, which will be presumed in all dealings that the former engage in with 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 its 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 person has the right to file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding.

for himself/herself or by whomever acts in his/her name, for the immediate protection of his/her fundamental constitutional rights when that person fears the latter may be violated by the action or omission of any public authority.

The protection will consist of an order issued by a judge enjoining others to act or refrain from acting. The order, which must be complied with immediately, may be challenged before a superior court judge, and in any case the latter may send it to the Constitutional Court for possible revision.

This action will be available only when the affected party does not dispose of another means of judicial defense, except when it is used as a temporary device to avoid irreversible harm. In no case can more than 10 days elapse between filing the writ of protection and its resolution.

The law will establish the cases in which the writ of protection may be filed against private individuals entrusted with providing a public service or whose conduct may affect seriously and directly the collective interest or in respect of whom the applicant may find himself/herself in a state of subordination or vulnerability.

**Article 87.** Any person may appear before the legal authority to demand the application of a law or fulfillment of an administrative act. In case of a successful action, the sentence will order the DELINQUENT authority to perform its mandated duty.

**Article 88.** The law will 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 others of a similar nature.

It will also regulate the actions arising out of harm caused to a large number of individuals, without barring appropriate individual action.

In the same way, it will define cases of CIVIL LIABILITY for damage caused to collective rights and interests.



**Article 89.** In addition to what is mentioned in the previous articles, the law will determine the other resources, actions, and procedures necessary so that the individual rights of groups or collectivities may be legally protected against deeds of commission or omission by the public authorities.

**Article 90.** The state will answer materially for any type of damages that can be attributed to an illegal action, or caused by deeds of commission or omission by the public authorities.

In the event that the state is ordered to compensate damage which may have been the consequence of the fraudulent or seriously criminal behavior of one of its agents, the former will have to claim restitution from the latter.

**Article 91.** In the case of a manifest infraction of a constitutional precept to the disadvantage of any person, an order from a superior does not absolve the executing agent from responsibility.

The military in the service are exempted from this provision. As far as they are concerned, responsibility will 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 by reason of the behavior of the public authorities.

**Article 93.** International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority domestically.

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

**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 5 CONCERNING DUTIES AND OBLIGATIONS

**Article 95.** To be Colombian is an honor for every member of the national community of Colombia. Everyone has the duty to respect and dignify this honor.

The exercise of liberties and rights recognized in this Constitution implies responsibilities. Every person has the duty to respect and obey the Constitution and the laws.

The following are duties of each person and each citizen:

1. To respect others' rights and not abuse one's own.
2. To strive in accordance with the principle of social solidarity, to respond with humanitarian actions when faced with situations that endanger the life or health of individuals.
3. To respect and support the legitimately constituted democratic authorities in their efforts to maintain national independence and integrity.
4. To defend and foster human rights as a basis of peaceful coexistence.
5. To participate in the country's political, civic, and community life.
6. To strive toward the achievement and maintenance of peace.
7. To cooperate for the sound operation of the administration of justice.
8. To protect the country's cultural and natural resources and watch over the conservation of a healthy environment.
9. To contribute to the financing of state expenditures and investments in accordance with the principles of justice and equity.

**TITLE III**  
**CONCERNING THE POPULATION AND THE TERRITORY**

**CHAPTER I**  
**CONCERNING NATIONALITY**

**Article 96.** The following hold Colombian citizenship:

1. Citizens by birth:
  - a. Native-born Colombians, according to one of these two conditions: that the father or mother should have been natives or Colombian citizens or that, being the offspring of aliens, either of the parents was domiciled in the Republic at the time of birth;
  - b. The children of a Colombian father or mother who were born abroad and then became domiciled in the Republic.
2. Citizens by naturalization:
  - a. Aliens who apply for and obtain their naturalization card, in accordance with the law, which will establish those cases where Colombian citizenship is lost through naturalization;
  - b. Citizens by birth from Latin America and the Caribbean who are domiciled in Colombia and who, with the government's authorization and in accordance with the law and the principle of reciprocity, request that they be registered as Colombians in the municipality where they reside;
  - c. Members of the indigenous [Indian] peoples who share border areas, with application of the principle of reciprocity according to public treaties.

No Colombian by birth may be stripped of his/her citizenship. The status of Colombian citizenship cannot be lost by virtue of the fact of acquiring another citizenship. Citizens by naturalization will not be obligated to renounce their citizenship of origin or naturalization.

Whoever has renounced his or her Colombian citizenship may recover it in accordance with the law.

**Article 97.** Even when he/she has renounced citizenship status, the Colombian who acts in opposition to the country's interests when Colombia is involved in a foreign war will be tried and sentenced as a traitor.

Colombian citizens by naturalization and aliens domiciled in Colombia cannot be obligated to take up arms against their country of origin; neither may Colombians who have acquired citizenship abroad against the country of their new citizenship.

**CHAPTER 2**  
**CONCERNING CITIZENSHIP**

**Article 98.** Citizenship is lost de facto when an individual has renounced it, and its exercise may be suspended by virtue of a legal decision in the cases determined by law.

Those persons whose citizenship has been suspended may request its restoration.

Paragraph. Unless the law states otherwise, citizenship status will be exercised beginning at age 18.

**Article 99.** Being a citizen in good standing is a prior and indispensable condition for exercising one's right of suffrage, to be elected, and to hold public office involving authority or jurisdiction.

**CHAPTER 3**  
**CONCERNING ALIENS**

**Article 100.** Aliens in Colombia will enjoy the same civil rights as Colombian citizens. Notwithstanding, for reasons of public order, the law may

impose special conditions on or nullify the exercise of specific civil rights by aliens.

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

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

#### CHAPTER 4 CONCERNING THE TERRITORY

**Article 101.** The borders of Colombia are those established in international treaties approved by the 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 the 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 in which it operates, 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 CONCERNING DEMOCRATIC PARTICIPATION AND POLITICAL PARTIES

##### CHAPTER 1 CONCERNING 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. The law will regulate these matters. The state will contribute to the organization, promotion, and guidance of professional, civic, trade union, community, youth and charitable or nongovernmental public-purpose associations, without prejudicing their authority so that they may constitute democratic means of representation in the various functions of participation, agreement, control, and supervision of the public activities 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 will be binding. Such consultation may not be concurrent with an 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 or mayors, as the case may be, will 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 the law prescribes, the people of the territorial entities may present bills concerning issues that fall under the jurisdiction of the respective public entity, which is obligated to implement them.

##### CHAPTER 2 CONCERNING PARTIES AND POLITICAL MOVEMENTS

**Article 107.** All citizens are guaranteed the right to establish, organize, and promote parties and political movements and the freedom to become affiliated with them or to withdraw from them.

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

**Article 108.** The National Electoral Council will recognize as a legal entity parties and political movements that may be organized to participate in the country's democratic life when they substantiate their existence with no fewer than 50,000 signatures or when in the previous election they obtained at least the same number of votes or achieved representation in the Congress.

In no case may the law impose rules of internal organization on parties and political movements or demand affiliation with them to participate in elections.

The parties and political movements with a legal status may register candidates without any additional requirements whatever.

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

The law may establish requirements to guarantee the seriousness of the registrations.

A registered candidate will cease to be such if he/she fails to obtain the requisite number of votes or fails to be elected as a member of Congress.

A registered candidate will also lose this status if in the relevant election, his/her party or political movement fails to garner at least 50,000 votes or fails to elect a member to Congress.

**Article 109.** The state will contribute to the financing of election campaigns of parties and political movements with a legal status.

The other parties, movements, and significant groups of citizens which run candidates will enjoy this privilege as soon as they secure the percentage of votes established by the law.

The law may limit the amount of expenses that the parties, movements, or candidates may incur in election campaigns as well as the maximum amount of individual contributions. The parties, movements, and candidates will have to render public account of the total, sources, and location of their revenues.

**Article 110.** Public employees are prohibited from making any contribution whatever to the parties, movements, or candidates or to induce others to do so, with the exceptions established by law. Noncompliance with any of these prohibitions will be cause for dismissal from office or loss of investiture.

**Article 111.** The parties and political movements with a legal status have the right to use public mass communications media at all times in accordance with the law. The latter will likewise establish the cases and the form in which the duly registered candidates will have access to the said media.

### CHAPTER 3

#### CONCERNING THE STATUS AND GUARANTEES OF THE OPPOSITION

**Article 112.** The parties and political movements that do not participate in the government may exercise freely the opposition function vis-à-vis the latter and plan and develop alternative policies. For these purposes, except for legal restrictions, they are guaranteed the following rights: access to official information and documentation; use of the public mass communications media in accordance with the representation obtained in the elections for Congress immediately beforehand; response in the public mass communications media to grave and obvious distortions of fact or public attacks leveled by senior officials; and participation in the electoral organs.

The parties and political movements will have the right to participate in the executive bodies of the various associations according to their representation in them.

A statute will regulate the subject matter in its entirety.

### TITLE V

#### CONCERNING THE ORGANIZATION OF THE STATE

### CHAPTER I

#### CONCERNING THE STRUCTURE OF THE STATE

**Article 113.** The branches of government are the legislative, the executive, and the judiciary.

In addition to the organs which 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 will be composed of the Senate and the Chamber 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 on any particular issue.

No act of the President, except the appointment and dismissal of ministers and directors of administrative departments and those acts decreed in his capacity as head of state and supreme administrative authority, will have any value or force whatever as long as 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 mayoralities as well as the superintendencias (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 Superior Council of the Judicature, the Office of the General Prosecutor (Fiscalía General de la Nación), the courts, and judges all administer justice. The military criminal justice system also administers justice.

The Congress will exercise specific judicial functions.

Exceptionally, the law may assign jurisdiction of specific subject areas to specified administrative authorities. However, they will not be allowed to hold hearings of civil law proceedings nor penal proceedings.

Individuals may be invested on a temporary basis with the function of administering justice as mediators or as qualified arbitrators by the parties involved to hand down verdicts whether at law or in equity, within the limits determined by law.

**Article 117.** The Public Ministry and the Office of the Comptroller General of the Republic are supervisory agencies.

**Article 118.** The Public Ministry will be made up of the National Attorney General, 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 officials determined by the law. 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 Comptroller 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 Electoral Council, the Office of the National Registrar of Civil Status, and of the other organs established by law. It is responsible for the organization of elections, their direction and supervision, 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 the law.

CHAPTER 2  
CONCERNING THE CIVIL SERVICE

**Article 122.** Every public position will have its duties determined by law or regulation. Remunerated positions must be included in the respective work plan and their payment provided for in the corresponding budget.

**Omitted article.** No public servant will occupy his position without swearing to comply with and defend the Constitution and fulfill his duties.

Before occupying his position, upon retirement from it, or when requested to vacate it by a competent authority, he will declare the total of his goods and income under oath.

Such declaration may only be used for the purposes stated under the rules governing public employees.

Without prejudice to any other sanctions established by law, every public servant who is criminally charged with an offence against the public treasury is disqualified from occupying public office.

**Article 123.** The members of public entities, employees and workers of the state and of their territorially decentralized branches and service branches are public servants.

Public servants are in the service of the state and of the community; they will perform their functions in the form prescribed by the Constitution, laws, and regulations.

The law will determine the regime applicable to individuals who fulfill public functions temporarily and will regulate the exercise of their functions.

**Article 124.** The law will determine the responsibility of public servants and the manner to make it effective.

**Article 125.** Employees in the organs and entities of the state are career civil servants. Those popularly elected, those who are freely appointed and

dismissed, those of official workers, and others determined by law are excepted.

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

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

Termination will occur for unsatisfactory performance on the job, for violation of the disciplinary code, and for other causes prescribed in the Constitution or the laws.

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

**Article 126.** Public servants may not appoint as employees individuals to whom they are related up to the fourth level of consanguinity, affinity two ranks removed, or one rank removed in civil law, or with whom they are bound through marriage or permanent union. Neither may they designate individuals related in like manner to public servants who are in a position 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.** Public servants may not enter into, on their own or through intermediating individuals or in representation of another, any contract with public entities or private individuals who handle or administer public funds, except when legal exceptions apply.

All state employees and employees of decentralized institutions which exercise civil or political authority, employees which exercise administrative positions or which hold judicial, electoral, or control positions, are prohibited

from participating in partisan activities or in political debates, without prejudice to their right to freely exercise their right to vote.

All public employees not included in this prohibition may participate in such activities in accordance with the conditions established by law.

Use of employment in a position to pressure any citizen to support a political cause or campaign constitutes misconduct.

**Article 128.** No one may hold simultaneously more than one public position nor 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 the law.

Public treasury means that of the nation, that of the territorial entities, or that of the decentralized entities.

**Article 129.** Public servants are not entitled to accept positions, honors, or compensation from foreign governments or international organizations or enter into contracts with them without prior authorization from the government.

**Article 130.** There will be a National Civil Service Commission responsible for the administration and supervision of the careers of public servants, except for those in a special category.

**Article 131.** It is incumbent on the law to regulate the duties performed by the Notary Public and Registrars, the definition of the labor regime for their employees, and the system of levies of the Notaries Public for the purpose of the administration of justice. Appointment to the status of Notary Public will be effected on the basis of a competitive examination. It is the responsibility of the government to create, eliminate, and merge the offices of Notary Public and Registrar and to determine the number of notaries and registry offices.

## **TITLE VI**

### **CONCERNING THE LEGISLATIVE BRANCH**

#### **CHAPTER I**

##### **CONCERNING ITS STRUCTURE AND FUNCTIONS**

**Article 132.** Senators and Representatives will be elected for a term of four years beginning on July 20 following the election.

**Article 133.** Members of collective bodies directly elected represent the people and will act in a manner consonant with justice and the common good.

The elected official is responsible before society and vis-à-vis his/her voters for the execution of the obligations of his/her investiture.

**Article 134.** Vacancies due to an absolute deficiency of congressmen will be made up by nonelected candidates, according to the order of registration on the corresponding list.

**Article 135.** Each chamber will have the following powers:

1. To elect its executive committees.
2. To elect its Secretary General for periods of two years starting from July 20. The Secretary General will have the same qualifications as those required to be a member of the respective chamber.
3. To solicit from the government the information that the chamber may need, except for what is provided in paragraph No. 2 of the article that follows.
4. To determine the holding of sessions reserved on a priority basis in order to deal with oral questions by the congressmen addressed to the ministries and the answers of the latter. By-laws will establish the modalities of these sessions.
5. To fill the positions established by law 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 its internal police force.
8. To summon the ministers to attend the sessions. The summons will be made not less than five days prior to a session and will take the form of a written notice. In the case that the ministers do not attend, without an excuse accepted by the respective chamber, the latter may propose a motion of non-confidence. The ministers will be heard at the session for which they were summoned, without barring the discussion from continuing at subsequent sessions, following a decision of the respective chamber. The discussion may not extend to items outside the notice and will head the session's agenda.
9. To propose a motion of non-confidence with respect to ministers for matters related to functions that pertain to their responsibility. If proposed, the motion of non-confidence must be moved by at least one-tenth of the members who make up the respective chamber. The vote will be taken between the third and 10th day following the termination of the discussion, in plenary session, with the respective ministers attending. Approval of the motion will require an absolute majority of the members of each house. Once the motion is approved, the minister is relieved of his position. If it is voted down, no other motion of non-confidence may be proposed concerning the same issue unless new facts justify it.

**Article 136.** The Congress and each of its chambers are barred from doing the following:

1. Intervening by means of resolutions or laws in matters that fall under the exclusive jurisdiction of other authorities.
2. Demanding from the government information regarding instructions in diplomatic matters or negotiations of a classified nature.
3. Taking votes of approval on official acts.

4. Decreeing 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. Decreeing proscriptive or persecutory measures against individuals or legal entities.
6. Authorizing trips abroad with funds from the public treasury, except for special missions approved by at least three-quarters of the membership of the respective chamber.

**Article 137.** Any permanent committee may summon any person or legal entity so that the latter may provide at a special session oral or written statements that may be required under oath on matters directly related to the investigations pursued by the committee.

If anyone summoned should give an excuse for not attending and should the committee insist in summoning that person, the issue must be definitively resolved by the Constitutional Court within 10 days.

The reluctance of those summoned to appear or to make the required statements will be sanctioned by the committee in accordance with the penalty provided by the regulations 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 will be requested to intervene accordingly.

## CHAPTER 2 CONCERNING SESSIONS AND OPERATIONS

**Article 138.** As of right, the Congress will meet in ordinary sessions during two periods a year, which will constitute one legislative term. The first period of sessions will begin on July 20 and conclude on December 16 while the second session will begin on March 16 and conclude on June 20.

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



The Congress will also meet in special sessions by convocation of the government and for the period that the latter stipulates.

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

**Article 139.** The sessions of Congress may be convened and adjourned jointly and publicly by the President of the Republic, without such ceremony being essential for the Congress to exercise its functions legally.

**Article 140.** The Congress will have its seat in the capital of the Republic.

*By mutual agreement, the chambers may transfer their seat to some other location and, in case of disruption of the public order, they may meet at a site designated by the President of the Senate.*

**Article 141.** The Congress will meet as a single body solely for the convocation and adjourning of its sessions, to install the President of the Republic, to receive heads of state or government of other countries, or to elect the Comptroller General of the Republic and the Vice President, should it be necessary to replace the elected official and decide on a vote of non-confidence in accordance with Article 135.

In such cases the Presidents of the Senate and of the Chamber of Representatives will be the President and Vice President of the Congress, respectively.

**Article 142.** Each chamber will elect, for the respective constitutional period, permanent committees that will effect the first reading of proposed legislative bills.

The law will determine the number of permanent committees and the number of members as well as the subject areas in which each of them will engage.

When the permanent constitutional committees hold joint sessions, the decisive quorum will be that required for each of the committees considered individually.

**Article 143.** The Senate of the Republic and the Chamber of Representatives may decide that any of the permanent committees should hold meetings during the recess in order to debate issues pending from the previous period, to undertake studies that the respective body may determine, and to prepare bills with which the chambers may entrust them.

**Article 144.** The sessions of the chambers and their permanent committees will be public, within the limits determined by their bylaws.

**Article 145.** The Congress as a whole, the chambers, or their committees may not open sessions or deliberate with fewer than a quarter of their membership present. Decisions may only be made by the majority of members of the respective body, unless the Constitution determines a different quorum.

**Article 146.** In the Congress as a whole, in the chambers and in their permanent committees, decisions will be made by the majority of votes of those attending, unless the Constitution expressly determines a special majority.

**Article 147.** The executive committees of the chambers and of their permanent committees will be replaced each year for the legislative session beginning 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 will 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, will be invalid. Any decisions it may take will have no effect whatsoever, and whoever participates in such deliberations will be sanctioned according to the law.

### CHAPTER 3 CONCERNING THE LAWS

**Article 150.** It is the responsibility of Congress to enact laws. Through them it exercises the following functions:

1. Interpreting, amending, and repealing laws.
2. Issuing codes in all areas of legislation and amending their provisions.
3. Approving the national development plan and public investments that must be undertaken or continued, with the determination of resources and appropriations authorized for their execution and the measures necessary to promote their implementation.
4. Defining the general division of the territory in accordance with what is prescribed in the Constitution, setting the bases and conditions to create, eliminate, modify, or merge territorial entities and determining their jurisdictions.
5. Granting special powers to the departmental assemblies.
6. Moving the present seat of the higher national authorities under extraordinary circumstances and for grave reasons of public convenience.
7. Determining the structure of the national administration and creating, eliminating, or merging ministries, administrative departments, superintendencies, public establishments, and other national entities, stipulating their goals and organic structure; regulating the creation and functioning of the Regional Autonomous Bodies within a regime of autonomy; similarly, creating or authorizing the bylaws of industrial and commercial enterprises of the state and joint (private-public) companies.
8. Issuing the regulations to which the government will be subjected for the exercise of its functions of inspection and supervision as established in the Constitution.
9. Granting authorization to the government to enter into contracts, to negotiate loans, and to sell national resources. The government will periodically make reports to the Congress on the exercise of these activities.
10. Vesting for a period of up to six months, in the President of the Republic, specific extraordinary powers to issue decrees with the force of law when

public necessity or convenience advises it. Such powers must be requested expressly by the government and their approval requires the vote of an absolute majority of the membership of both chambers.

At all times and on its own initiative, the Congress may amend the decrees issued by the government while using its extraordinary powers.

These powers may not be conferred to issue codes, statutes, organic laws, those prescribed in paragraph No. 20 of the present article, nor to levy taxes.

11. Establishing national revenues and determining the expenditures of administration.
12. Establishing fiscal contributions and, exceptionally, para-fiscal contributions in cases and under the conditions established by law.
13. Determining the legal tender, convertibility, and the scope of exemptions, and determining the system of weights and measurements.
14. Approving or disapproving contracts or agreements which, for reasons of evident national necessity, the President of the Republic may have entered into with individuals, companies, or public entities without prior authorization.
15. Decreeing honors to citizens who have rendered services to the nation.
16. Approving or disapproving treaties which the government makes with other states or international organizations. By means of said treaties, the state, on the basis of equality, reciprocity, and national convenience, may transfer specific powers to international organizations whose object it is to promote or consolidate economic integration with other states.
17. Granting by a two-thirds majority of the votes of the members of one or the other chamber and for serious reasons of public convenience, amnesties or general commutations of sentences for political crimes. In the case that those favored may be exempted from civil responsibility regarding

third parties, the state will be obliged to make the appropriate compensation.

18. Dictating the regulations regarding the appropriation or adjudication and recovery of uncultivated land.

19. Dictating general regulations and stipulating in them the goals and criteria to which the government must be subjected for the following purposes:

- a. Organizing public credit;
- b. Regulating foreign trade and determining the international exchange schedule, in accordance with the functions which the Constitution assigns to the board of directors of the Bank of the Republic;
- c. Modifying, for reasons of commercial policy, tariffs, duties, and other provisions related to customs regulations;
- d. Regulating financial activities, the stock exchange, insurance, and any other activities connected with the management, use, and investment of resources involving the public;
- e. Determining the wage level and social benefits of public servants, members of the National Congress and of the police forces and the army;
- f. Regulating the minimum social benefits of official workers.

The powers relating to social benefits may not be delegated to public territorial entities nor may these offices appropriate such powers.

20. Creating the administrative and technical services of the chambers.

21. Issuing the laws of economic assistance provided for in Article 334, which must specify their purposes, ranges and limits to economic freedom.

22. Issuing the laws connected with the Bank of the Republic and with the functions that its board of directors must perform.

23. Issuing the laws that regulate the exercise of the public functions and the provision of public services.

24. Regulating industrial property, patents and trademarks, and other forms of intellectual property.

25. Streamlining and making uniform the regulations concerning traffic police in the entire territory of the Republic.

It is the responsibility of Congress to establish general rules for the contracting with the public administration and especially with the national administration.

**Article 151.** The Congress will issue organic laws regulating the exercise of legislative activity. They will establish the bylaws of Congress and of each chamber, regulations concerning the preparation, approval, and execution of the Budgetary Revenues and Appropriations Law, the execution of the general development plan and the regulations relative to the assignment of regulatory responsibilities to the territorial entities. The organic laws will require, for their approval, an absolute majority of the votes of the members of both chambers.

**Article 152.** By means of statutory laws, the Congress of the Republic will regulate the following subject areas:

- a. Fundamental rights and duties of individuals and the procedures and actions for their protection;
- b. Administration of justice;
- c. Organization and regulations of parties and political movements; the guarantees of the opposition and the electoral functions;
- d. Institutions and machinery of citizens' participation;
- e. States of exception.

**Article 153.** The approval, amendment, or repeal of the statutory laws requires an absolute majority of the votes of the members of Congress and must be completed within a single legislative term. Such procedure will include the prior review by the Constitutional Court to of the viability of the proposal. Any citizen may intervene to defend it or to oppose it.

**Article 154.** Laws may originate in either of the chambers by the proposal of their respective members, the national government, the entities stipulated in Article 156, or through popular initiative in the cases provided by the Constitution.

However, the government may dictate or amend only those laws covered by paragraphs Nos. 3, 7, 9, 11, and 22 and by subparagraphs (a), (b), and (c) of paragraph No. 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 chambers may introduce amendments to the bills presented by the government.

Legislative bills concerning taxes will be initiated in the Chamber of Representatives while those involving international relations will 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 on the relevant date or by 30 percent of the councillors or deputies of the country. The popular initiative will 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 will have the right to designate a spokesman who will be heard by the chambers at all stages of the proceedings.

**Article 156.** The Constitutional Court, the Superior Council of the Judicature, the Supreme Court of Justice, the Council of State, the National Electoral Council, the National Attorney General, and the Comptroller

General of the Republic have the right to introduce bills in subject areas related to their functions.

**Article 157.** No bill will become law without meeting the following requirements:

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

**Article 158.** Every legislative bill will have to refer to a single issue and any provisions or amendments not germane to it will be inadmissible. The chairman of the appropriate committee will reject the initiatives that are not in harmony with this principle, though his/her decisions will be subject to appeal before the same committee. The law which has been the subject of partial modification will be published as a single text incorporating the approved amendments.

**Article 159.** The legislative bill that may have been rejected at the initial reading may be considered by the respective chamber at the request of its author, a member of the chamber, 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 of the chambers and the initiation of the debate in the other, at least 15 days must have elapsed.

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

In the report to the chamber as a whole for the second reading, the committee spokesman will have to present all the proposals that were considered by the committee and the reasons why they were rejected.

Every legislative bill or legislative act must include a report from the committee spokesman in the respective committee charged with passing it and must complete all necessary steps.

**Article 161.** When differences occur in the chambers with respect to a bill, each will form a special committee which, meeting jointly, will draft the text which will be submitted for a final decision in the plenary session of each chamber. If following the repetition of the second reading the differences should persist, the bill will be considered as defeated.

**Article 162.** Legislative bills which failed to pass in one legislative term and which have been debated once in either chamber will 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 chamber must decide about same 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 will have priority in the day's agenda such as to exclude the consideration of any other matter until the respective chamber or committee reaches a decision on it.

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

**Article 164.** The Congress will give priority to the passage of legislative bills that approve treaties involving human rights which are submitted to its consideration by the government.

**Article 165.** Once a legislative bill is approved by both chambers, it will be transmitted to the government for its approval. Should the latter have no

objections, it will approve the bills promulgation as law; if it objects to it, the bill will be returned to the chamber in which it originated.

**Article 166.** The government has a six-day deadline to return with its objections any bill which does not include over 20 articles; a 10 day deadline for a bill including 21 to 50 articles; and up to 20 days for a bill of over 50 articles.

Once the stipulated deadlines are reached and the government has not returned a bill with objections, the President must approve it and promulgate it. If the chambers should begin a recess within the stated deadlines, the President will be obligated to publish the approved or disapproved bills within the above-mentioned deadlines.

**Article 167.** The legislative bill to which the government objects totally or in part will be returned to the chambers for a second debate.

The President will sign without being able to present objections to the bill which, when once reconsidered, is approved by half plus one of the members of both Chambers.

An exception to this rule is the case where the bill may raise objections on the grounds that it is unconstitutional. In such a case, should the chambers insist, the bill will be sent to the Constitutional Court so that the latter, within the six subsequent days, may decide on its constitutionality. The affirmative decision of the Court obligates the President to approve the law. If the Court declares the bill unconstitutional, it will be tabled.

If the Court decides that the bill is unconstitutional in part, it will so indicate to the chamber where the bill originated so that, once the responsible minister is heard, the chamber may redraft and integrate the affected provisions in terms consonant with the dictates of the Court. Once this is done, the chamber will transmit the bill to the Court for its definitive ruling.

**Article 168.** If the President should not fulfill his duty to approve the bills within the deadlines and according to the conditions established by the Constitution, the President of the Congress will approve and promulgate them.

**Article 169.** The title of the laws will have to correspond precisely with their content, and the following caption will precede the text: "The Congress of Colombia decrees".

**Article 170.** A group of citizens corresponding to one-tenth of the electoral rolls may solicit from the electoral organization the holding of a referendum for the repeal of a law.

This law will be repealed if half plus one of the voters who participate in the referendum so decide as long as and whenever a quarter of the citizens making up the electoral rolls participate in the 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 4 CONCERNING THE SENATE

**Article 171.** The Senate of the Republic will be made up of 100 members elected in one national electoral district.

There will be an additional two senators elected in a special national electoral district for indigenous (Indian) communities.

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

The special national electoral district for the election of Senators by the indigenous communities will proceed according to the electoral quotient system.

The representatives of the indigenous communities who wish to present themselves as members of the Senate of the Republic will have occupied a traditional post of authority in their respective communities or will have been leaders of an indigenous organization, as recognized by means of a certificate from such organization and authenticated by the government Ministry.

**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 their office by the President of the Republic or the Vice President.
2. To approve or disapprove military promotions granted by the government, from the rank of 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 office where it is not due to sickness, and to consider the qualifications of the Vice President to serve as President of the Republic.
4. To allow the transit 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 National Attorney General.

**Article 174.** It is the responsibility of the Senate to take cognizance of charges brought by the Chamber 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 Superior Council of the Judicature, and against the Attorney General of the Nation, even though they may have ceased exercising their duties. In this case, the Senate will be informed of actions or omissions that occurred in the performance of the duties of the accused.

**Article 175.** The following rules will be observed in legal proceedings before the Senate:

1. The accused is automatically suspended from his/her office whenever the charge is made public.
2. If the charge refers to crimes committed in the exercise of his/her functions or 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 will be brought to trial before the Supreme Court of Justice if the evidence should show the individual to be responsible for an infraction deserving of another penalty.
3. If the charge refers to common crimes, the Senate will confine itself to declare whether or not there are grounds for further measures, and in the affirmative, it will 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 5 CONCERNING THE CHAMBER OF REPRESENTATIVES

**Article 176.** The Chamber of Representatives will be elected in territorial electoral districts and special electoral districts.

There will be two representatives for each territorial electoral district and one more for every 250,000 inhabitants or for each fraction greater than 125,000, over and above the initial 250,000.

For the election of representatives to the chamber, each department and the Capital District of Bogotá will represent one territorial electoral district.

The law may establish a special electoral district to ensure the participation in the Chamber of Representatives of ethnic groups and political minorities and Colombians resident abroad. Up to five representatives may be elected for this district.

**Article 177.** To be elected a 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 Chamber of Representatives will 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 Comptroller General of the Republic.
3. To bring charges before the Senate, when constitutional reasons may exist, against the President of the Republic or whoever replaces him/her, the judges of the Constitutional Court, the judges of the Supreme Court of Justice, the members of the Superior Council of the Judicature, the judges of the Council of State, or the General Prosecutor.
4. To take cognizance of denunciations and complaints that may be presented before it by the General Prosecutor or by individuals against specific officials and, if necessary, to bring charges on that basis before the Senate.
5. To request the assistance of other authorities in the investigations over which the chamber has jurisdiction and to authorize the collection of evidence when the chamber considers it appropriate.

#### CHAPTER 6 CONCERNING THE CONGRESSMEN

**Article 179.** The following are not qualified to be congressmen:

1. Those who were sentenced at any time on the basis of a judicial verdict to a prison term, with the exception of political crimes or crimes of strict liability.
2. Public employees who exercised political, civil, administrative, or military authority or jurisdiction within the 12 months prior to the date of the election.

3. Those who participated in business dealings with public entities or contracted with them in their own interest or that of third parties, or have been legal representatives of entities that administer taxes or fiscal-type levies within six months prior to the date of the election.
4. Those who have lost their investiture as congressmen.
5. Those who are connected through marriage or permanent union or kinship to the third degree of consanguinity, affinity one rank removed, or merely civil with officials who exercise civil or political authority.
6. Those who are connected among themselves through marriage or permanent union or kinship to the third degree of consanguinity, affinity two ranks removed, or one rank removed in civil law, and belong to the same party, movement, or group for election to office or as members of public entities for an election to be held on the same date.
7. Those who hold dual citizenship, excepting Colombians by birth.
8. No one may be elected for more than one office or public position, nor for an office or position if the respective periods overlap in time, even partially.

The disqualifications provided in paragraphs No. 2, 3, 5, and 6 refer to situations that may apply in the district in which the respective election is slated to be held. The law will regulate the other cases of disqualifications on account of kinship, with the authorities not stipulated in these provisions.

For the purposes of this article, it is considered that the national electoral district overlaps each of the territorial districts, except for the disqualification identified in paragraph No. 5.

**Article 180.** Congressmen are prohibited from doing the following:

1. Holding public or private office or employment.
2. Managing in their own name or someone else's name, affairs before the public authorities or before individuals that administer taxes, or from

being empowered to contract with these officials on their own or through a third party. The law will establish the exceptions to this provision.

3. Being members of boards or executive councils of decentralized entities of whatever level or of institutions that administer taxes.
4. Making contracts or making arrangements with individuals or private legal entities that may administer, handle, or invest public funds or that may be contractors of the state or receive subsidies from the latter. Excepted is the acquisition of goods or services that are equally offered to all citizens.

Paragraph 1. The profession of university professor is excepted from the regime of incompatibilities.

Paragraph 2. The official who, in violation of the present article, should appoint a congressman to a job or office or who should make a contract with him/her or accept that he/she should act as business representative in his/her own name or that of a third party will be guilty of a misdemeanor.

**Article 181.** The incompatibilities of the congressmen will be in effect during the applicable constitutional period. In case of resignation, they will continue to apply during the year subsequent to the resignation or for the time remaining in the constitutional term, whichever is greater.

Whoever is called to occupy the position will be subject to the same rules of disabilities and incompatibilities as of the date of taking office.

**Article 182.** Congressmen must inform their respective chamber of any moral or economic situation that prevents them from participating in the matters submitted for their consideration. The law will determine the basis for recusal on the grounds of conflicts of interest and incompatibilities.

**Article 183.** Congressmen will lose their investiture for the following reasons:

1. For violating the rules of disabilities and incompatibilities or the rules of conflict of interest.



2. For their absence, in the same legislative session, from six plenary meetings at which legislative acts, bills, or motions of non-confidence are voted upon.
3. For not assuming their position within eight days following the date of convening the chambers or the date when they were summoned to be convened.
4. For the improper payment of public funds.
5. For trafficking in influence, duly proven.

Paragraph. Reasons 2 and 3 will not be applicable when "force majeure" is involved.

**Article 184.** The loss of investiture will be decreed by the Council of State in accordance with the law within no more than 20 working days, beginning from the date of the request made by the executive committee of the appropriate chamber or by any citizen.

**Article 185.** Congressmen will enjoy immunity for their opinions and the votes which they cast in the exercise of their office, without prejudice to the disciplinary rules included in the relevant bylaws.

**Article 186.** Regarding crimes committed by congressmen, the Supreme Court of Justice is the sole authority that may order their detention and should be informed privately of such accusations. In case of flagrante delicto, the congressman must be apprehended and placed immediately at the disposal of this Court.

**Article 187.** The remuneration of the members of Congress will be adjusted each year in proportion equal to the weighted average of the adjustments made in the remuneration of the public servants of the central administration, on the basis of a certificate which the Comptroller General of the Republic will issue for that purpose.

## TITLE VII CONCERNING THE EXECUTIVE BRANCH

### CHAPTER I CONCERNING THE PRESIDENT OF THE REPUBLIC

**Article 188.** The President of the Republic symbolizes 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. Manage international relations; appoint the members of the diplomatic and consular corps; receive the corresponding foreign officials; and negotiate international treaties or agreements with other states and international bodies to be submitted for the approval of the Congress.
3. Direct the public force and its disposition in his/her quality of supreme commander of the armed forces of the Republic.
4. Preserve 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 will give an immediate account to the 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. Convene and adjourn the sessions of the Congress in each legislative term.
9. Approve the laws.
10. Promulgate the laws, obey them, and see to their strict compliance.
11. Exercise the power to regulate through the issuing of decrees, resolutions, and orders necessary for the execution of the laws.
12. Present a report to the Congress at the beginning of each legislative term regarding the activities 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 occupy national office, where such positions are not to be filled through competitive examinations or are not the responsibility of other officials or bodies, according to the Constitution or the law.
14. Create, merge, or dissolve, according to the law, 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 which would exceed the total amount allocated for the respective service in the initial appropriations.
15. Eliminate or merge national administrative entities or organs in accordance with the law.
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 the law.

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. Supervise the strict collection and administration of public revenues and credits and decree their investment in accordance with the laws.
21. Inspect and supervise education in accordance with the law.
22. Inspect and supervise the provision of public services.
23. Make contracts falling under his/her jurisdiction in accordance with the Constitution and the law.
24. Effect, in accordance with the law, the inspection, supervision 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 and similarly, to supervise such investment by cooperative entities and commercial companies.
25. Organize 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 to intervene 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 law.
26. Inspect and supervise institutions of public utility so that their revenues may be protected and be properly applied and so that they function fundamentally in accordance with the wishes of the founders.

27. Grant temporary patents to inventors of useful improvements in accordance with the law.

28. Issue naturalization certificates, in accordance with the law.

**Article 190.** The President of the Republic will be elected for a period of four years by one-half plus one of the ballots which, by secret and direct ballot, the citizens will cast on the date and following the procedures determined by the law. If no candidate should secure the said majority, a runoff election will be held three weeks later when only those two candidates who received the most votes in the first round of balloting will participate. The candidate with the larger number of votes will 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 will be replaced by the third place winner 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 will 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 will assume his office before the Congress and will 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 the Congress, he/she will do so before the Supreme Court of Justice or, failing that, before two witnesses.

**Article 193.** The Senate will have the power to grant 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, after giving notice to the Senate or, should the latter be in recess, to 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 abandonment of duties, these last two being declared by the Senate. A temporary vacancy in the office occurs following permission for leave of absence or sickness, in accordance with the previous article, or suspension in the President's exercise of responsibility as decreed by the Senate upon public admission by the President of a charge against the President in the cases anticipated in paragraph No. 1, Article 175.

**Article 195.** The acting chief executive will 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 travel abroad during the exercise of his/her office without prior notification to the Senate or, should the latter be in recess, the Supreme Court of Justice.

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

The President of the Republic, or whichever official has occupied the presidency, is not be entitled to leave the country during the year following the date when he/she ceased 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, will exercise under his/her own responsibility the constitutional functions that the President should delegate to him/her, as well as those which pertain to the minister. The delegated minister will belong to the same party or political movement as the President.

**Article 197.** The citizen who under any title whatever may have held the presidency at an earlier time may not be elected President of the Republic.

This prohibition does not cover the Vice President when the latter has exercised the presidential functions for less than three months, in continuous or discontinuous form, during the four-year term.

Nor can the individual who may be subject to any of the reasons of disqualification listed in paragraphs Nos. 1, 4, and 7 of Article 179 be elected President of the Republic; neither can the citizen who, a year before the election, may have held any of the following positions:

Judge of the Supreme Court of Justice or of the Constitutional Court, Councillor of State, or member of the National Electoral Council or the Superior Council of the Judicature, Cabinet ministers, National Attorney General, Ombudsman, Comptroller General of the Republic, General Prosecutor, National Registrar of Civil Status, Director of an Administrative Department, Departmental Governor, or Senior Mayor of Santa Fe de Bogotá.

**Article 198.** The President of the Republic or whoever replaces him/her is 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 Chamber of Representatives and when the Senate has declared that there are grounds for a case.

## CHAPTER 2 CONCERNING THE GOVERNMENT

**Article 200.** It is the duty of the government to do the following in conjunction with the Congress:

1. Help draft the laws, present bills through ministers, exercise the right of objecting to them, and approve them in accordance with the Constitution.
2. Convoke the Congress to special sessions.

3. Present the national development and public investment plan, in accordance with the provisions in Article 150.
4. Send the budget bill of revenues and expenditures to the Chamber of Representatives.
5. Make reports to the chambers as requested on unclassified matters.
6. Effectively support the chambers 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 conjunction with the judiciary branch:

1. Lend the necessary assistance to the judicial officials to make their decisions effective, in accordance with the laws.
2. Grant pardons, reprieves, or amnesties for political crimes, in accordance with the law, 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 parties.

## CHAPTER 3 CONCERNING THE VICE PRESIDENT

**Article 202.** The Vice President of the Republic will 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, will in each case be those who participated in the general election.

The Vice President will hold office for the same period as the President and will replace the latter in case of temporary or permanent presidential vacancy, even if such a vacancy should occur before the President assumes office.

In case of a temporary vacancy in the position of President of the Republic, it will be sufficient that the Vice President should take possession of his/her

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 will assume office until the end of the term.

The President of the Republic may entrust the Vice President with missions or special duties and 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 at a time when the latter must assume the Presidency, the former office will be assumed by a minister in the order of precedence established by law. The individual who, in accordance with this article, replaces the President will belong to the same party or movement and will exercise the Presidency until such time as the Congress, in its own right and within the 30 days following the date when the presidential vacancy occurs, elects the Vice President who will assume the Presidency of the Republic.

**Article 204.** In order to be elected Vice President, the latter must possess the same qualifications required for President of the Republic.

The Vice President may not be elected President of the Republic or Vice President for the immediately subsequent term.

**Article 205.** In case of a permanent vacancy in the position of Vice President, the Congress will meet at its own behest or on convocation by the President of the Republic, in order to elect the person who will 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 as recognized by the Congress.

#### CHAPTER 4 CONCERNING THE MINISTERS AND DIRECTORS OF ADMINISTRATIVE DEPARTMENTS

**Article 206.** The number, designation, and order of precedence of the Ministries and administrative departments will be determined by law.

**Article 207.** In order to be a minister or director of an administrative department, the same qualifications are required as for a representative in the chamber.

**Article 208.** The ministers and directors of administrative departments are the heads of public administration in their respective offices. Under the direction of the President of the Republic, it is their responsibility to formulate policies pertaining to their office, direct the administrative operations, and execute the law. The ministers, in conjunction with the Congress, are spokesmen of the government, present government bills to the chambers, respond to the requests that the chambers make to them, and take part in debates directly or through deputy ministers.

The ministers and directors of administrative departments will 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 chambers may request the attendance 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 officials of the executive branch of government.

#### CHAPTER 5 CONCERNING THE ADMINISTRATIVE FUNCTION

**Article 209.** The administrative function must serve the general interest and has as its basis 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, will have an internal control that will be exercised within the limits stipulated by the law.

**Article 210.** The entities of the decentralized national services may only be created by law or through the latter's authorization, based on the principles

that guide administrative activity. Individuals may carry out administrative functions under the conditions stipulated by the law.

The law will establish the legal regime of the decentralized entities and the responsibilities of their chairmen, directors, or managers.

**Article 211.** The law will stipulate the functions which 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 will determine the conditions under which the administrative authorities may delegate responsibility to their subsidiaries or other authorities.

The delegation exempts the delegator from responsibility, which falls exclusively on the one to whom the authority is delegated and whose actions or decisions may always be amended or revoked by the delegator, who would then reassume the consequent responsibility.

The law will establish what recourse is available against the actions of those holding delegated authority.

## CHAPTER 6 CONCERNING 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. Upon such a declaration, the government will have the powers strictly necessary to repel the aggression, defend the country's sovereignty, meet the requirements of the war, and bring about the restoration of normal conditions.

The declaration of a state of foreign war may be made only when the Senate has 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, the Congress continues to enjoy all its constitutional and legal powers and the government will 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 suspend laws incompatible with the state of war, remain in force during the time which the decrees themselves stipulate, and are no longer in effect as soon as normal conditions are declared to have been restored. At any time, the Congress may amend or repeal the decrees through a favorable vote of two-thirds of the members of each chamber.

**Article 213.** In the case of a serious disruption of public order imminently threatening institutional stability, the security of the state, or the peaceful coexistence of the citizenry, and which cannot be resolved by the use of the 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.

Upon such a declaration, the government will have the powers strictly necessary to deal with the causes of the disruption and check the spread of its effects.

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

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

In no case may civilians be questioned or tried by martial law.

**Article 214.** The states of exception referred to in the previous articles will be subject to the following provisions:

1. The legislative decrees must carry the signature of the President of the Republic and all his/her ministers and may refer only to matters that have a direct and specific connection with the situation which the declaration of the state of exception has set out.
2. Neither human rights nor fundamental freedoms may be suspended. In all cases, the rules of international humanitarian law will be observed. A statutory law will regulate the powers of the government during the states of exception and will establish the legal controls and guarantees to protect rights, in accordance with international treaties. The measures which are adopted must be proportionate to the gravity of the events.
3. The normal functioning of the branches of government or state organs will not be interrupted.
4. As soon as the foreign war or the causes that gave rise to the state of internal disturbance have ceased, the government will declare public order to be restored and will lift the state of exception.
5. The President and the ministers are responsible when they declare states of exception without the occurrence of a foreign war or internal disturbance, and they are also responsible, as are other officials, for any abuse that they may commit in the exercise of the powers to which the earlier articles refer.
6. The government will 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 to transmit the decrees, the Constitutional Court will automatically and immediately take cognizance of them.

**Article 215.** When events different from those provided 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 of 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 must be justified, the President may, with the signature of all the ministers, issue decrees having the force of law, directed exclusively to checking the crisis and halting the extension of its effects.

These decrees may refer to matters that have a direct and specific connection to the state of emergency and may, in a provisional manner, establish new taxes or amend existing ones. In these last cases, the measures will cease to be effective at the end of the subsequent fiscal year, except when the Congress, during the subsequent year, gives them a permanent character.

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

The Congress will examine for a period of up to 30 days, extendable by agreement of the two chambers, the report with the explanations presented to it by the government on the causes justifying the state of emergency and the measures adopted and will issue a statement on the necessity and appropriateness of it.

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

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

The President of the Republic and the ministers are responsible when they declare a state of emergency without there being present any of the circumstances provided in the first clause and are also 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 will 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 will automatically and immediately take cognizance of same.

## CHAPTER 7 CONCERNING THE PUBLIC FORCE

**Article 216.** The public force will consist of the armed forces and the national police exclusively.

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

The law will 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 will maintain for its defense permanent military forces made up of the army, navy, and air force.

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

The law will 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.** The law will determine the organization of the police corps.

The national police is a permanent armed body of a civilian nature, upheld by the Nation, and whose primary purpose is the maintenance of the conditions necessary for the exercise of public rights and freedoms and to ensure that the inhabitants of Colombia may live together in peace.

The law will determine the career benefits and disciplinary regime that pertain to it.

**Article 219.** The public force is not deliberative. It may not 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 the law.

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 the law.

**Article 221.** Regarding the crimes committed by the members of the public force while in active service, and in connection with their service, they will appear before martial courts or military tribunals, in accordance with the provisions of the Penal Military Code.

**Article 222.** The law will determine the system of professional, cultural, and social development of the members of the public force. During their training, the members will be taught the fundamentals of democracy and human rights.

**Article 223.** The government alone may make available and manufacture weapons, war munitions, and explosives. No one may own them nor bear arms without permission from the competent authority. Notwithstanding, a permit will not avail to allow a person to bear arms at political rallies, elections or public sessions or assemblies, whether that person is attending or directing such a meeting.

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



CHAPTER 8  
CONCERNING INTERNATIONAL RELATIONS

**Article 224.** In order to be valid, treaties must be approved by the Congress. However, the President of the Republic may give temporary effect to provisional treaties of an economic or commercial nature negotiated through international organizations. In such a case, as soon as a treaty enters into force provisionally, it must be sent to the Congress for approval. If the Congress does not approve the treaty, its application will be suspended.

**Article 225.** The Advisory Committee on Foreign Relations, whose membership will be determined by law, is a consultative body of the President of the Republic.

**Article 226.** The state will promote the internationalization of political, economic, social and ecological relations on the basis of fairness, reciprocity, and the national interest.

**Article 227.** The state will 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, which ultimately can create a Latin American community of nations. The law may establish direct elections for the formation of the Andean Parliament and the Latin American Parliament.

TITLE VIII  
CONCERNING THE JUDICIARY BRANCH

CHAPTER I  
CONCERNING GENERAL PROVISIONS

**Article 228.** The administration of justice is a public function. Its decisions are independent. Its proceedings will be public and permanent with the exceptions established by law, and substantive law will prevail in them. Legal limits will be diligently observed and failure to apply them will be sanctioned. The functioning of the judiciary will be decentralized and autonomous.

**Article 229.** The right of any person to have access to the administration of justice is guaranteed. The law will 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 auxiliary criteria of judicial proceedings.

**Article 231.** The judges of the Supreme Court of Justice and of the Council of State will be appointed by the appropriate body from lists drawn up by the Superior Council of the Judicature.

**Article 232.** In order to be a judge of the Constitutional Court, of the Supreme Court of Justice, or of 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 condemned by a court sentence to imprisonment, except for political crimes or crimes of strict liability.
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 professor in the legal disciplines in officially recognized institutions.

**Paragraph.** In order to be a judge of these courts it is not necessary to be a public employee of the judicial ranking system.

**Article 233.** The judges of the Constitutional Court, the Supreme Court of Justice, and of the Council of State will be elected for a period of eight years. They cannot be reelected and will remain in office as long as they display good behavior, perform satisfactorily and have not reached the age of mandatory retirement.

CHAPTER 2  
CONCERNING ORDINARY JURISDICTION

**Article 234.** The Supreme Court of Justice is the highest court of ordinary jurisdiction and will be composed of an uneven number of judges determined by law. The law will divide the Court into chambers, will stipulate to each of them the matters that it has to take cognizance of separately, and determine those matters which must be heard by the entire bench.

**Article 235.** The following are powers of the Supreme Court of Justice:

1. To adjudicate as a court of appeal.
2. To try the President of the Republic or whoever replaces him and the senior officials covered by Article 174 for any punishable deed imputed to them, in accordance with Article 175, paragraphs Nos. 2 and 3.
3. To investigate and try members of Congress.
4. To try, following charges brought by the General Prosecutor, ministers of the Cabinet, the National Attorney General, the Ombudsman, or agents of the Public Ministry before the Court, before the Council of State, and before the tribunals; the directors of the administrative departments, the Comptroller General of the Republic, the ambassadors and chiefs of diplomatic or consular missions, 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 by the national government in cases involving international law.
6. To draft its own bylaws.
7. To enjoy other powers stipulated by law.

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

CHAPTER 3  
CONCERNING THE CONTENTIOUS  
ADMINISTRATIVE JURISDICTION

**Article 236.** The Council of State will be composed of an uneven number of judges determined by law. The Council will be broken down into chambers and sections to separate its jurisdictional functions from the others assigned to it by the Constitution and the law.

The law will stipulate the functions of each of the chambers and sections, the number of judges included in each, and their internal organization.

**Article 237.** The powers of the Council of State are as follows:

1. To exercise the functions of a supreme contentious administrative court in accordance with the rules stipulated by the law.
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 laws.

In cases of the transit of foreign troops across Colombia's national territory, or of 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 the law.
6. To make its own bylaws and exercise the other functions determined by the law.

**Article 238.** The jurisdiction of the contentious administrative apparatus may temporarily be suspended for the causes and following the requirements established by law because of the effects of administrative measures that may be subject to challenge by the judiciary.

#### CHAPTER 4 CONCERNING THE CONSTITUTIONAL JURISDICTION

**Article 239.** The Constitutional Court will be composed of an uneven number of members determined by law. The makeup of the court will take into account the need to select judges belonging to the various specialties of the law.

The judges of the Constitutional Court will 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 according to the strict and precise terms of this article. For this purpose, it will fulfill the following functions:

1. Decide on the petitions of unconstitutionality brought by citizens against acts amending the Constitution, no matter what their origin, exclusively for errors of procedure in their form.
2. Decide, prior to a popular vote, on the constitutionality of the call for a referendum or a constituent assembly to amend the Constitution, exclusively for errors of procedure in their form.
3. Decide on the constitutionality of referendums about laws and popular consultations and plebiscites of a national scope, in the case of the latter,

exclusively for errors of procedure in their convocation and implementation.

4. Decide on the petitions of unconstitutionality brought by citizens against the laws, both for their substantive content as well as for errors of procedure in their form.
5. Decide on the petitions of unconstitutionality brought by citizens against decrees with the force of law issued by the government on the strength of Article 150, paragraph No. 10, and Article 341 of the Constitution for their substantive content as well as for errors of procedure in their form.
6. Decide on the exceptions provided for in Article 137 of the Constitution.
7. Decide in definitive manner on the constitutionality of the legislative decrees issued by the government on the strength of Articles 212, 213, and 215 of the Constitution.
8. Decide in definitive manner on the constitutionality of bills objected to by the government on the grounds of unconstitutionality, and on the constitutionality of proposed statutory bills, both on account of their substantive content as well as for errors of procedure in their form.
9. Revise, in the form determined by law, the judicial decisions connected with the protection of constitutional rights.
10. Decide in definitive manner on the constitutionality of international treaties and the laws approving them. For this purpose, the government will submit them to the Court within the six days subsequent to their sanction by law. Any citizen may intervene to defend or challenge their constitutionality. Should the Court declare them constitutional, the government may engage in a diplomatic exchange of notes; in the contrary case the laws will not be ratified. When one or several provisions of a multilateral treaty are declared invalid by the Constitutional Court, the President of the Republic alone may ratify it, under reserve of the offending provision.
11. Draft its own bylaws.

**Paragraph.** When the Court finds a remediable error in the drafting of acts subject to its control, it will order their return to the authority which issued them so that, if possible, that authority may correct the defect. Once the error is corrected, it will proceed to decide on the validity of the measure.

**Article 242.** The procedures instituted before the Constitutional Court in the matters referred to under this heading will be regulated by the law in accordance with the following provisions:

1. Any citizen may institute the public actions provided in the preceding article and intervene as challenger or defender of the provisions submitted for adjudication in procedures instituted by others as well as in those cases where no public action has been filed.
2. The National Attorney General must intervene in all procedures.
3. Actions to correct errors of form lapse after a year starting from the filing of the action.
4. Ordinarily, the Court will have 60 days to decide, and the National Attorney General, 30 days to give his/her opinion.
5. In the procedures referred to in paragraph No. 7 of the previous article, the ordinary deadlines will be reduced to a third and their noncompliance will be the cause of a misdemeanor to be sanctioned according to law.

**Article 243.** The decisions made by the Court in exercise of its powers of judicial review are constitutional *res judicata*.

The authorities may not reenact a substantively similar legal act to one previously declared invalid for substantive reasons, while the constitutional provisions that served to challenge the impugned legal act remain in force.

**Article 244.** The Constitutional Court will notify the President of the Republic or the President of the Congress, depending on the case, of the filing of any action that has as its object an examination of the constitutionality of provisions adopted by them. Such notification will not alter the deadlines applicable to the action.

**Article 245.** The government may not provide employment to the judges of the Constitutional Court during the period that they exercise their functions nor in the year following their retirement from the Court.

#### CHAPTER 5 CONCERNING 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 provided these are not contrary to the Constitution and the laws of the Republic. The law will establish the forms of coordination of this special jurisdiction with the national judicial system.

**Article 247.** The law may create justices of the peace entrusted with equitably resolving individual and community conflicts. It may also order that they be popularly elected.

**Article 248.** Only final sentences handed down in judicial trials qualify as a criminal record or criminal violation.

#### CHAPTER 6 CONCERNING THE OFFICE OF THE GENERAL PROSECUTOR

**Article 249.** The Office of the General Prosecutor will consist of the General Prosecutor, his/her assistant attorneys, and the other officials determined by the law.

The General Prosecutor will 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 reelection. The candidate must possess the same qualifications required for a judge of the Supreme Court of Justice.

The Office of the General Prosecutor is part of the judicial branch and enjoys administrative and budgetary autonomy.

**Article 250.** It is the responsibility of the Office of the General Prosecutor, automatically or following an accusation or conflict, to investigate the crimes

and to press charges against the suspects before the competent courts and tribunals. Excepted are the crimes committed by members of the public force in active service and related to their service. For such a purpose, the Office of the General Prosecutor must do the following:

1. Guarantee the appearance of the criminally accused, and take appropriate measures to this effect. Additionally, should it be necessary, to take the appropriate measures to restore the law and make indemnification for the damage caused by the crime.
2. Weigh the evidence and decide on the investigations undertaken and declare them completed.
3. Direct and coordinate the functions of the criminal judicial police to be exercised by the national police and other organizations stipulated by law.
4. Supervise the protection of victims, witnesses, and participants in a trial.
5. Exercise the other functions established by law.

The General Prosecutor and his/her assistants have jurisdiction throughout the national territory. The Office of the General Prosecutor is obligated to investigate both what is beneficial and what is disadvantageous to the accused and to respect his/her fundamental rights and the procedural guarantees in his/her favor.

**Article 251.** The following are special functions of the General Prosecutor:

1. Investigate and press charges, if there are grounds, against senior officials who enjoy constitutional authority, with the exceptions provided in the Constitution.
2. Appoint and remove from office, in accordance with the law, workers under his/her jurisdiction.
3. Participate in the planning of state policy in criminal matters and present government bills on criminal matters.

4. Grant temporary powers to public entities to carry out functions of a judicial police under the responsibility and aegis of the Office of the General Prosecutor.

5. Provide information to the government about the investigations that are underway when it is necessary for the preservation of public order.

**Article 252.** Even during states of exception covered by the Constitution in Articles 212 and 213, the government is prohibited from eliminating or modifying either the form or the basic function of indictment and trial.

**Article 253.** The law will determine matters relative to the structure and operation of the Office of the General Prosecutor regarding entry and retirement from the service, disqualification or incompatibilities with respect to appointment, qualifications, compensation, social benefits, and discipline of the officials and workers under his/her authority.

## CHAPTER 7

### CONCERNING THE SUPERIOR COUNCIL OF THE JUDICATURE

**Article 254.** The Superior Council of the Judicature will be divided into two chambers:

1. The administrative chamber, 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 chamber, 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 law.

**Article 255.** In order to be a member of the Superior Council of the Judicature the candidate has to 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 honorably for 10 years. The members of the Council may not be selected from among the judges of the same petitioning bodies.

**Article 256.** The Superior Council of the Judicature or the sectional councils, depending on the case and according to law, will have the power to do the following:

1. Administer the judicial ranking system.
2. Draw up lists of candidates for the appointment of judicial officials and send them to the responsible body. 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 law.
4. Supervise the productivity of judicial bodies and offices.
5. Draft the budgetary bill of the judicial branch to be transmitted to the government and implement it in accordance with the approval of Congress.
6. Settle jurisdictional conflicts between different organs.
7. Other matters stipulated by law.

**Article 257.** In accordance with the law, the Superior Council of the Judicature will exercise the following functions:

1. Determine the division of the territory for judicial purposes and locate or redistribute judicial offices.
2. Establish, eliminate, merge, or transfer responsibilities in the administration of justice. In the exercise of this power, the Superior Council of the Judicature may not commit itself to obligations payable by the Treasury that exceed the total amount allocated for that service in the appropriations law.
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 for judicial and administrative measures taken by judicial bodies where not provided by the legislature.

4. Propose bills concerning the administration of justice and substantive and procedural codes.
5. Other matters stipulated by law.

## TITLE IX CONCERNING ELECTIONS AND THE ELECTORAL ORGANIZATION

### CHAPTER I CONCERNING VOTING AND ELECTIONS

**Article 258.** Voting is a right and a civic duty. In all elections, the citizens will vote secretly in individual booths installed in every electoral district using numbered voting ballots printed on paper distributed officially and providing secrecy. The electoral organization will provide ballots equally to all voters on which they must clearly indicate the names of all the candidates in an impartial manner. The law may establish voting mechanisms that provide more and better guarantees for the free exercise of this right of the citizens.

**Article 259.** Those who elect governors and mayors entrust the elected official with the mandate to fulfill the political platform that he/she presented on registering as a candidate. The law will regulate the system of rules pertaining to compliance by the candidate with their platform.

**Article 260.** The citizens elect in direct manner the President and Vice President of the Republic, Senators, representatives, governors, deputies, mayors, municipal and district councillors, members of the local administrative boards and, when necessary, the members of the Constituent Assembly and the other authorities or officials stipulated by law.

**Article 261.** No popularly elected position to a public body may have a replacement. Permanent vacancies will be filled by unelected candidates on the same list, in successive and descending order of registration.

**Article 262.** The election of the President and Vice President may not overlap other elections. The election of Congress will be carried out on a date separate from the election of departmental and municipal officials.

**Article 263.** To assure the proportional representation of the parties, when citizens vote for two or more individuals in a popular election or in a public body, the system of electoral quotients will be used. The quotient will be the number that results by dividing the total of valid votes by the number of positions to be filled. The assignment of positions to each list will be done according to the number of times that the quotient divides into the respective number of valid votes. If positions remain to be filled, they will be assigned to those who have the largest remaining numbers, in descending order.

## CHAPTER 2 CONCERNING THE ELECTORAL AUTHORITIES

**Article 264.** The National Electoral Council will consist of the number of members stipulated by law but must not be less than seven, elected for a period of four years, from lists drawn up by the parties and political movements with a legal status and reflecting the political makeup of the Congress. Its members must possess the qualifications mandated by the Constitution for judges of the Supreme Court of Justice and are not subject to reelection.

**Article 265.** The National Electoral Council will have the following special powers in accordance with the law:

1. To perform the final investigation and supervision of the electoral organization.
2. To elect and remove the National Registrar of Civil Status.
3. To study and decide upon the recourses proposed against the decisions of its delegates on the general ballot of electoral votes and in such cases to declare the results of the elections and issue the corresponding certificates.
4. To serve the consultative body of the government in the areas of its competence, to propose government and legislative bills, and to propose decrees in draft form.

5. To supervise the compliance with the laws concerning parties and political movements and with provisions regarding publicity and political opinion polls; the rights of the opposition and minorities; and the development of the electoral processes under conditions of full guarantees.
6. To apportion the subsidies which the law provides for the financing of electoral campaigns and to ensure the right of political participation of the citizens.
7. To effect the general ballot for all national elections, to declare the results of the election, and to issue the certificates as appropriate.
8. To take cognizance of the legal status of the parties and political movements.
9. To regulate the participation of the parties and political movements in the public mass communications media.
10. To cooperate in the production of internal polls of the parties and movements for the selection of their candidates.
11. To draft its own bylaws.
12. Other matters that the law may confer on it.

**Article 266.** The National Registrar of Civil Status will be elected by the National Electoral Council for a period of five years and must have the same qualifications stipulated by the Constitution for judges of the Supreme Court of Justice.

The National Registrar may not be reelected and will exercise the functions established by law, including the management and organization of the elections, the management of the civil register and responsibility for the identification of individuals, as well as the signing of contracts in the name of the Nation in the relevant cases.

**TITLE X**  
**CONCERNING THE SUPERVISORY BODIES**

**CHAPTER I**  
**CONCERNING THE OFFICE OF THE**  
**COMPTROLLER GENERAL OF THE REPUBLIC**

**Article 267.** Fiscal control is a public function to be exercised by the Office of the Comptroller General of the Republic, which oversees the fiscal management of the administration and of individuals or entities which handle funds or assets belonging to the nation.

Said control will be exercised selectively *ex post facto* in accordance with the procedures, systems, and principles established by law. However, the law may authorize that in special cases, Colombian private enterprises, selected on the basis of a public performance contest and contracted according to the plan of the Council of State, may conduct the supervision. The supervision of the state's fiscal management includes the exercise of financial control, management, and performance, based on the efficiency, economy, equity, and estimate of environmental costs. In exceptional cases stipulated by law, the Office of the Comptroller General may exercise subsequent control over the accounts of any territorial entity.

The Office of the Comptroller General is an entity of a technical character with administrative and budgetary authority. It will not have administrative functions distinct from those inherent in its own organization.

The Comptroller General will be elected by the whole Congress during the first months of the legislative session for a period equal to that of the President of the Republic, from a list of three candidates, consisting of one nominated by the Constitutional Court, one by the Supreme Court of Justice, and one by the State Council, and may not be reelected for the term immediately following nor continue in the exercise of his/her functions once the term has expired.

Anyone who has held the office of Comptroller General may not hold any other public office at the national level, nor present him/herself as a candidate in a popular election until one year following retirement from this office.

Only the Congress may accept the resignation of a Comptroller General and elect a successor; temporary vacancies will be filled by the State Council.

In order to be elected Comptroller General, the candidate must be a Colombian citizen by birth, over 35 years of age, hold a university degree or have been a university professor during no less than 5 years and possess any additional qualifications required by law.

No one who has been a congressman or held a public office at the national level, except for a teaching position, in the year immediately preceding the election, may be elected to the office of Comptroller General. Neither may anyone who has been sentenced to prison for common crimes.

In no case may anyone who is related by the fourth degree of consanguinity, affinity two ranks removed, or one rank removed in civil law, intervene in the candidacy or election of the Comptroller General.

**Article 268.** The Comptroller General of the Republic will have the following powers:

1. To prescribe the methods and form for rendering account by those responsible for the handling of funds or assets of the nation and to stipulate the financial and operational criteria that must be followed for the purpose of evaluation.
2. To review and close the accounts kept by those responsible for public funds and to determine the level of efficiency, effectiveness, and economy with which they performed.
3. To keep a record of the public debt of the nation and its territorial entities.
4. To request reports on fiscal management from the official employees of any order and from any individual or public or private entity that administers the funds or assets of the nation.
5. To establish where responsibility lies in fiscal management, impose financial sanctions as necessary, collect these amounts, and exercise compelling jurisdiction on the amounts deducted.



6. To plan for quality and efficiency in internal fiscal control of the entities and organs of the state.
7. To present an annual report to the Congress of the Republic on the state of the natural resources and of the environment.
8. To initiate before the competent authorities, providing the relevant evidence, penal or disciplinary investigations regarding damage caused to the patrimonial interests of the state. The Office of the Auditor General has the power to demand, on the strength of the facts and in good faith, the immediate suspension of officials until the investigations or appropriate legal procedures are completed.
9. To present government bills concerning the system of fiscal control and the organization and functioning of the Office of the Comptroller General.
10. To provide through public competitive examinations employment under his/her authority established by law. The law will determine a special system of rules for the selection, promotion, and retirement of the employees of the Office of the Comptroller General. Anyone who is a member of the bodies involved in the candidacy and election of the Comptroller General is prohibited from giving personal or political recommendations for positions in the Office of the Comptroller General.
11. To present reports to the Congress and the President of the Republic on the exercise of his/her functions and certification of the finances of the state in accordance with the law.
12. To dictate general regulations to harmonize the systems of fiscal control of all the public entities at the national and territorial levels.
13. Other matters stipulated by law.

**Article 269.** The authorities of public bodies must design and implement methods and procedures of internal control in accordance with the provisions of the law, which may stipulate certain exceptions and authorize the contracting for said services with private Colombian enterprises.

**Article 270.** The law will organize the forms and rules of citizen participation which allow their participation in the supervision of public management which occurs at the various administrative levels.

**Article 271.** The results of the preliminary inquiries undertaken by the Office of the Comptroller General will have probatory value before the Office of the Attorney General of the Nation and the competent judge.

**Article 272.** The supervision of the fiscal administration of the departments, districts, and municipalities where there may be controller's offices is the responsibility of the latter and will be exercised in a subsequent and selective manner. The supervision of municipalities is incumbent on the departmental controller's offices, except for what the law 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 presented by the Superior Court of the Judicial District and 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 will exercise, within the scope of their jurisdiction, the functions assigned to the Comptroller General of the Republic in Article 268 and may, based on authorization by law, contract with private Colombian enterprises for the exercise of fiscal supervision.

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 law.

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 a teaching position.

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 Comptroller General of the Republic and other competent authorities of fiscal control will 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 will be stipulated by law.

**Article 274.** The supervision of the fiscal management of the Office of the Comptroller General of the Republic will be exercised by an auditor elected for a term of two years by the Council of State from a list prepared by the Supreme Court of Justice.

The law will determine the manner of exercising said supervision at the departmental, district, and municipal level.

## CHAPTER 2 CONCERNING THE PUBLIC MINISTRY

**Article 275.** The National Attorney General is the supreme director of the Public Ministry.

**Article 276.** The National Attorney General will 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 National Attorney General, by himself/herself or through his/her delegates and agents, will have the following functions:

1. To supervise compliance with the Constitution, the laws, judicial decisions, and administrative decrees.
2. To protect human rights and ensure their effectiveness, with the assistance of the Ombudsman.
3. To defend the interests of society.
4. To defend the collective interests, especially the protection of the environment.
5. To supervise the diligent and efficient exercise of administrative functions.
6. To supervise 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 law.
7. To intervene in legal proceedings before the judicial or administrative authorities when it becomes necessary to defend the legal order, the public domain, or fundamental rights and guarantees.
8. To provide an annual report of his/her administration to the Congress.
9. To demand from public functionaries and individuals the information that he/she considers necessary.
10. Other matters stipulated by law.

For the exercise of its functions, the Office of the National Attorney General will have powers of the criminal judicial police and will be authorized to take the measures that it considers necessary.

**Article 278.** The National Attorney General will exercise the following functions directly:

1. Discharging from office, following a hearing and on the basis of justified reasons, any public officials who are guilty of any of the following offences: an evident violation of the Constitution or the laws; deriving evident and profitable material advantage from the exercise of their duties or functions; impeding in a serious manner investigations carried out by the Office of the National Attorney General or by an administrative or legal authority; performing with gross negligence the investigation and sanctioning of the disciplinary offences of employees under their authority or in the denunciation of punishable occurrences that they have cognizance of by virtue of their office.
2. Issuing statements in disciplinary proceedings instituted against officials subject to special statutes.
3. Presenting government bills relating to matters under his/her jurisdiction.
4. Lobbying the Congress to pass laws that ensure the promotion, exercise, and protection of human rights and demanding their compliance by the competent authorities.
5. Making proposals concerning the processes of constitutional control.
6. Appointing and removing, in accordance with the law, officials and employees under his/her jurisdiction.

**Article 279.** The law will determine matters relative to the structure and functioning of the Office of the National Attorney General, will regulate matters relating to employment and competitive examinations and to retirement from the service, to disabilities and incompatibilities, designation, qualifications, compensation, and the disciplinary regime of all officials and employees of said organization.

**Article 280.** The agents of the Public Ministry will have the same qualifications, classification, compensation, rights, and benefits as the magistrates and judges of the higher ranks before whom they exercise their office.

**Article 281.** The Ombudsman will be part of the Public Ministry and will exercise his/her functions under the authority of the National Attorney

General. He/she will be elected by the Chamber of Representatives for a period of four years from a list prepared by the President of the Republic.

**Article 282.** The Ombudsman will supervise the promotion, exercise, and publicizing of human rights for which purpose he/she will 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 legal action without prejudice to the right of interested parties.
4. Organizing and directing the public defense counsel according to the conditions stipulated by law.
5. Presenting popular measures in matters falling under his/her jurisdiction.
6. Presenting draft bills on matters falling under his/her jurisdiction.
7. Making reports to the Congress on the exercise of his/her functions.
8. Other matters stipulated by law.

**Article 283.** The law will 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 law, the National Attorney General and Ombudsman may request from the authorities any information necessary for the exercise of their functions without any objection possible on any grounds.

**TITLE XI**  
**CONCERNING THE TERRITORIAL ORGANIZATION**

**CHAPTER I**  
**CONCERNING THE GENERAL PROVISIONS**

**Article 285.** Outside of the general division of the territory, there will be divisions determined by law for the exercise of the functions and services for which the state is responsible.

**Article 286.** Departments, districts, municipalities, and indigenous (Indian) territories are territorial entities.

The law may grant the status of territorial entities to the regions and provinces that are formed under the terms of the Constitution and the law.

**Article 287.** Territorial entities enjoy autonomy for the management of their interests within the limits of the Constitution and the law. By virtue of this they will have the following rights:

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

**Article 288.** The Organic Law of Territorial Organization will establish the division of jurisdictions among the nation and the territorial entities.

The jurisdictions assigned to the various territorial levels will be exercised in accordance with the principles of coordination, competition, and subsidiary relationships under the terms stipulated by law.

**Article 289.** Under the authority of the law, the departments and municipalities located in border areas may promote directly with the territorial entity on

the border of the neighboring country, on a basis of equality, cooperation, and integration, programs whose purpose it is to promote community development, the provision of public services, and the protection of the environment.

**Article 290.** Subject to the performance of the requirements and formalities stipulated by law, and in the cases where the law determines it, the periodic review of the borders of territorial entities will be effected and the official map of the Republic will be published.

**Article 291.** The members of the public associations of territorial entities may not accept any position in the public administration if such would make them lose their investiture.

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

**Article 292.** The deputies and councillors and their kin up to the degree stipulated by law are prohibited from participating in executive boards of the decentralized entities of the respective department, district, or municipality.

Officials of the corresponding territorial entity may not be designated if they are spouses or common-law spouses of the deputies and councillors, nor if they are kin to the second degree of consanguinity, affinity one rank removed, or merely by civil status.

**Article 293.** Without prejudice to what is established in the Constitution, the law will determine the qualifications, disabilities, incompatibilities, date of entry, duration of sessions, absolute or temporary disqualifications, causes of removal, 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. The law will also stipulate the other necessary provisions for their election and performance of their functions.

**Article 294.** The law may not concede exemptions nor preferential treatment in relation to the property taxes of the territorial entities. Nor may it impose surtaxes 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 may contract foreign credit, all of this in accordance with the law regulating the matter.

**Article 296.** For the preservation of public order or for its restoration where it has been disturbed, the decrees and orders of the President of the Republic will be applied forthwith and preferentially over measures decreed by the governors; the decrees and orders of governors will be applied in similar manner and with the same effect in relation to the measures decreed by mayors.

## CHAPTER 2 CONCERNING THE DEPARTMENTAL REGIME

**Article 297.** The National Congress may decree the formation of new departments as long as the requirements mandated in the Organic Law of Territorial Planning are met and once the procedures, studies, and popular consultation stipulated in the Constitution are undertaken and completed.

**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, coordination with the municipalities, intermediation between the nation and the municipalities, and the lending of the services determined by the Constitution and the laws.

The law will regulate matters connected with the exercise of the powers which the Constitution grants the departments.

**Article 299.** In each department there will be a popularly elected administrative board the Departmental Assembly, which will be made up of no fewer than 11 members and no more than 31.

The National Electoral Council may form within the borders of each department, based on its population, entities for the election of deputies following the plan of the Committee of Territorial Organization.

The regime of disabilities and incompatibilities of the deputies will be determined by law. It may not be less strict than that stipulated for congressmen. The deputies will not have the status of public servants. The term for deputies will be three years.

Within the limits established by law, the deputies will be entitled to honoraria for their attendance at the appropriate sessions.

To be elected deputy, candidates must be citizens in good standing, be over 21 years of age, not have been sentenced to imprisonment except for political crimes or crimes of strict liability, and to have resided in their respective electoral district during the year immediately preceding the date of election.

**Article 300.** It is the responsibility of the departmental assemblies, by means of ordinances, to do the following:

1. Regulate the exercise of the functions and provide the services for which the department is responsible.
2. Issue the regulations connected with planning, economic and social development, financial support, and credit to the municipalities, tourism, transportation, the environment, public works, means of communication, and development in their border areas.
3. Adopt, in accordance with the law, 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 performance and to secure their completion.
4. Decree, in accordance with the law, the taxes and levies necessary for the performance of departmental functions.
5. Issue the organic laws of the departmental budget and the annual budget of revenues and expenditures.
6. Subject to the requirements stipulated by law, create or eliminate municipalities, divide or merge municipal territories, and organize provinces.

7. Determine the structure of the departmental administration, the functions of their branches, 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 joint (public-private) companies.
8. Dictate policy norms in everything that is subject to legal dispositions.
9. Authorize the governor to sign contracts, negotiate loans, sell property, and exercise, pro tempore, specific functions that pertain to departmental assemblies.
10. Regulate, in cooperation with the municipality, the areas of sports, education, and public health within the limits determined by law.
11. Fulfill the other functions assigned to them by the Constitution and the law.

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

The ordinances referred to in paragraphs Nos. 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 transfer the responsibility to them may be dictated or amended only upon the initiative of the governor.

**Article 301.** The law will stipulate the cases where the assemblies may delegate to the municipal councils certain functions that the law determines. At any time, the assemblies may resume the exercise of the delegated functions.

**Article 302.** The law 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 a view to improving the administration or provision of public services in accordance

with their population, economic and natural resources, and social, cultural, and ecological circumstances.

In order to accomplish the preceding, the law may delegate to one or several departments powers pertaining to national public organs or entities.

**Article 303.** In each of the departments there will be a governor who will be the head of the sectional administration and legal representative of the department. The governor will be the agent of the President of the Republic for the maintenance of public order and for the execution of general economic policy as well as for those matters which, through agreements, the nation agrees to delegate to the department. The governors will be elected for a periods of three years and are not eligible for reelection in the subsequent term.

The law will determine the qualifications, requirements, disabilities, and incompatibilities of the governors; will regulate their election; will determine their absolute or temporary incapacities and means to correct them; and will stipulate the other provisions necessary for the normal performance of their duties.

**Article 304.** The President of the Republic, in cases restrictively stipulated by the law, may suspend or remove governors from office.

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

**Article 305.** The following are the powers of the governor:

1. To respect the Constitution and ensure its compliance as well as the laws, government decrees, and ordinances of the departmental assemblies.
2. To direct and coordinate the administrative action of the department and act in its name to manage and promote the coordinated development of its territory, in accordance with the Constitution and the laws.
3. To direct and coordinate national services which have been delegated to the governor by the President of the Republic.

4. To present to the departmental assembly in a timely manner proposals of ordinances regarding plans and programs of economic and social development, public works, and the annual budget of revenues and expenditures.
5. To appoint and remove freely managers or directors of public institutions and industrial or commercial enterprises of the department. The representative of the department in the executive boards of such organs as well as the directors or managers of them are agents of the governor.
6. To encourage, in accordance with general plans and programs, the enterprises, industries, and activities appropriate to the cultural, social, and economic development of the department as distinct from that of the nation or municipalities.
7. To create, eliminate, and merge positions under their jurisdiction, stipulate their special functions, and determine their emoluments subject to the law and appropriate ordinances. The governor may not commit the departmental treasury to obligations that exceed the total amount allocated for the respective service in the initial budget allocation.
8. To eliminate or merge departmental entities in accordance with the ordinances.
9. To veto on the grounds of unconstitutionality, illegality, or unsuitability, proposed ordinances or to approve and promulgate them.
10. To review acts of the municipal councils and the mayors and if necessary for grounds of unconstitutionality or illegality, submit them to the competent tribunal so that it may decide on their validity.
11. To supervise the appropriate collection of departmental revenues, of decentralized entities, and those that are transferred by the nation.
12. To convoke the departmental assembly to special sessions in which it may only consider the issues and matters for which it was summoned.

13. To select from the lists originating from the respective national head the managers or sectional heads of the public institutions at the national level in accordance with the law under which the department operates.

14. To exercise the administrative functions that the President of the Republic may delegate to the governor.

15. Other matters stipulated by the Constitution, the laws, and the ordinances.

**Article 306.** Two or more departments may organize themselves into administrative or planning regions with a legal status, autonomy, and their own patrimony. Their principal purpose will be the economic and social development of the respective territory.

**Article 307.** The respective organic law, subject to the plan of the Committee of Territorial Organization, will establish the conditions necessary to solicit the conversion of the region into a territorial entity. The decision taken by the Congress will be submitted in each case to a referendum by the citizens of the departments concerned.

The same law will 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 will also define the principles for the adoption of the special statute of each region.

**Article 308.** The law may limit the departmental appropriations assigned for the honoraria of deputies and the operating expenses of the assemblies and departmental controllers' offices.

**Article 309.** The following will be transformed into departments: the districts of Arauca, Casanare, Putumayo, the Archipelago of San Andrés, Providencia, and Santa Catalina and the police districts [comisarias] of Amazonas, Guaviare, Guainía, Vaupés, and Vichada. The assets and rights which belonged to the intendancies [intendencias] and police districts, from any source, will continue to be the property of the respective departments.

**Article 310.** The department of San Andrés Archipelago, Providencia, and Santa Catalina will be regulated, in addition to the provision in the Consti-

tution and the laws for the other departments, by special provisions which in administrative, immigration, fiscal, foreign trade, exchange, financial, and economic development matters will be established by the legislature.

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

Through the creation of the municipalities that may occur, the departmental assembly will guarantee the institutional expression of the original communities of San Andrés. The municipality of Providencia will have a share of no less than 20 percent of the total value of said departmental revenues.

### CHAPTER 3 CONCERNING THE MUNICIPAL REGIME

**Article 311.** As the basic entity of the political-administrative branch of the state, it is the responsibility of the municipality to provide those public services determined by law, to build the projects required for local progress, to arrange for the development of its territory, to promote community participation, the social and cultural development of its inhabitants, and to perform the other functions assigned to it by the Constitution and the laws.

**Article 312.** In each municipality there will be an administrative entity popularly elected for a period of three years, the Municipal Council, made up of no fewer than seven and no more than 21 members, determined by law and based on the respective population.

The law will determine the qualifications, disabilities, and incompatibilities of the councillors and the schedule of the ordinary sessions of the councils. The councillors will not have the status of public servants.

The law may determine the cases in which the councillors will be entitled to honoraria for their attendance at sessions. Their acceptance of any public employment will constitute an absolute incompatibility.

**Article 313.** It is the responsibility of the councils to do the following:

1. Regulate the functioning and efficient delivery of services for which the municipality is responsible.
2. Adopt the appropriate plans and programs of economic and social development and of public works.
3. Authorize the mayor to make contracts and exercise temporarily specific functions for which the council is responsible.
4. Vote for taxes and local expenditures in accordance with the Constitution and the law.
5. Dictate the organic budgetary regulations and issue the annual budget of revenues and expenditures.
6. Determine the structure of the municipal administration and the functions of its branches; 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 joint (public-private) companies.
7. Regulate the uses of land and, within the limits determined by law, supervise and control the activities connected with the construction and sale of housing slated for residential use.
8. Elect a representative for the period determined by law and the other officials that the law stipulates.
9. Dictate the regulations necessary for the control, preservation, and defense of the ecological and cultural patrimony of the municipality.
10. Other matters which the Constitution and the law assign to the councils.

**Article 314.** In each municipality there will be a mayor, a head of the local administration, and a legal representative of the municipality who will be



popularly elected for a period of three years and will not be eligible for reelection in the subsequent period.

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

The law will establish the sanctions that apply for the improper exercise of that power.

**Article 315.** The following are powers of the mayor:

1. To respect and ensure compliance with the Constitution, the law, the decrees of the government, the ordinances, and the resolutions of the council.
2. To protect 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 will 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; ensure the performance 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 functionaries 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 relevant provisions.
4. To eliminate or merge municipal entities and dependencies, in accordance with the respective resolutions.
5. To present in a 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 their 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 approved budget allocations.

8. To cooperate with the Council for the effective performance 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 law stipulate.

**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.

The law will 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 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 in the case of urban areas and into district jurisdictions in the case of rural zones.

In each of the communes or district jurisdictions, there will be a popularly elected local administrative board made up of the number of members determined by law and which will 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 supervise and control the provision of municipal services in its commune or district jurisdiction and the investments undertaken with public funds.
3. To formulate investment proposals for 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 performance of functions stipulated by the act of their establishment in the territory which the law 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; streamline the provision of public services and if such is the case, jointly provide some of them; and carry out urban projects.

The Law of Territorial Organization will adopt an administrative and fiscal regime of special character for the metropolitan areas; will guarantee that the respective municipal authorities enjoy adequate participation in the administrative bodies; and will stipulate the form of convoking and holding the popular consultations which the municipalities involved may deem necessary.

Once the popular consultation is held, the respective mayors and municipal councillors will record the configuration of the area and will define its powers, financing, and authority in a protocol, in accordance with the law.

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

**Article 320.** The law may establish categories of municipalities according to 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 (Indian) territories belonging to the same department.

The law will decree the basic statute of the province and determine the administrative regime of the provinces that may be organized to execute the functions delegated to them by national or departmental entities and those which the law assigns to them and to the municipalities that make them up.

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

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

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

#### CHAPTER 4 CONCERNING THE SPECIAL REGIME

**Article 322.** Santafé de Bogotá, capital of the Republic and of the Department of Cundinamarca, is organized as the District Capital.

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

Based on the general regulations established by the law, at the initiative of the mayor, the council will divide the territory of the district into localities, in accordance with the social characteristics of its inhabitants, and will make the corresponding allocation of jurisdictions and administrative functions.

It will 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 will be the responsibility of the local authorities.

**Article 323.** The District Council will consist of one councillor for every 150,000 inhabitants or fraction larger than 75,000 in its territory.

In each of the localities there will be an administrative board, popularly elected for a period of three years, which will be made up of no fewer than seven aldermen, in accordance with the determination of the District Council, taking the respective population into account.

The election of the senior mayor, of district councillors, and of aldermen will be held on the same day for a period of three years. The local mayors will be designated by the senior mayor from a list originating from the corresponding administrative board.

In the cases restrictively stipulated by the law, the President of the Republic may suspend or remove the senior mayor from office. The councillors and aldermen may not form part of the executive boards of the decentralized entities.

**Article 324.** The local administrative boards will apportion and appropriate the sums which are allocated to the localities in the annual budget of the district, taking into account the basic needs of their population.

Concerning the departmental revenues that are produced in Santafé de Bogotá, the law will 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 performance 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 law, 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 will be held when the District Council has expressed its approval of such incorporation. If the latter occurs, the former municipality will apply the constitutional and legal provisions applicable to the other localities that make up the Capital District.

**Article 327.** The citizens registered in the electoral rolls of the District Capital will not participate in the elections of governor and deputies to the Departmental Assembly of Cundinamarca.

**Article 328.** The Touristic and Cultural District of Cartagena de Indias and the Touristic, Cultural, and Historic District of Santa Marta will retain their regime and character.

**Article 329.** The configuration of the indigenous (Indian) territorial entities will be developed subject to the provisions of the Organic Law of Territorial Planning, and their delimitation will 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 reservations constitute collective property and are inalienable.

The law will 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 includes the territory of two or more departments, its administration will 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 will be done in compliance with the requirements established in the first clause of this article.

**Article 330.** In accordance with the Constitution and the laws, the indigenous (Indian) territories will be governed by councils formed and regulated according to the customs of their communities and will exercise the following functions:

1. Supervise the application of the legal regulations concerning the uses of 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 supervise their appropriate implementation.
4. Collect and distribute their funds.
5. Supervise the conservation of natural resources.
6. Coordinate the programs and projects promoted by the different communities in their territory.
7. Cooperate with to maintain 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 within which they are integrated; and
9. Other matters stipulated by the Constitution and the law.

Paragraph. Exploitation of natural resources in the indigenous (Indian) territories will be done without impairing the cultural, social, and economic

integrity of the indigenous communities. In the decisions adopted with respect to the said exploitation, the government will 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 will be established.

The law will determine its organization and sources of financing and will define in favor of the riparian municipalities special treatment in the assignment of benefits and in their share of current national revenues.

## TITLE XII

### CONCERNING THE ECONOMIC AND FINANCIAL REGIME

#### CHAPTER I

##### CONCERNING GENERAL PROVISIONS

**Article 332.** The state is the owner of the subsoil and of the natural, nonrenewable resources, without prejudice to the rights acquired and established in accordance with prior laws.

**Article 333.** Economic activity and private initiative must not be impeded within the limits of the public good. No one may require permits or licenses to exercise economic activity except when authorized by law.

Free economic competition is a right of every person which entails responsibilities.

The enterprise, as a basis of development, has a social function that implies obligations. The state will strengthen cooperative organizations and stimulate business development.

The state, by means of the law, will prevent impediments to or restrictions of economic freedom and will curb or control any abuses caused by individuals or enterprises due to their dominant position in the national marketplace.

The law will limit the scope of economic freedom when the social interest, the environment, and the cultural patrimony of the nation require it.

**Article 334.** The general management of the economy is the responsibility of the state. By means of the law, the state will intervene in the exploitation of natural resources, land use, the production, distribution, use, and consumption of goods, and in public and private services in order to streamline the economy with the purpose of achieving an improved quality of life for the inhabitants, the equitable distribution of opportunities, and the benefits of development and conservation of a healthy environment.

The state will make a special effort to ensure full employment and to ascertain that all individuals, especially those of low income, may have effective access to basic goods and services, and to promote productivity and competitiveness and the harmonious development of the regions.

**Article 335.** Financial activities, the stock exchange, insurance, and any other activities related to the handling, exploitation, and investment of the resources referred to in letter (d) of paragraph No. 19 of Article 150 are of public interest and may only be exercised following the prior authorization of the state, in accordance with the law, which will regulate the government's form of intervention in these areas and promote the equitable distribution of credit.

**Article 336.** No monopoly may be established except through the free reign of the forces of the marketplace, with the object of public or social interest, and in accordance with the law.

The law which establishes a monopoly may not be applied to those individuals who by virtue of it must relinquish the pursuit of a legal economic activity, without their full indemnification.

The organization, administration, control, and exploitation of financial monopolies will be subject to a specific regime, as determined by a law presented by the government.

Revenues obtained from monopolies of games of chance will be assigned exclusively to public health services.

Revenues obtained from the liquor monopoly will be assigned on a preferential basis to health services and education.

Tax evasion with respect to revenues originating from financial monopolies will be sanctioned as a crime within the limits established by law.

The government will sell or liquidate the monopolistic enterprises of the state and transfer their operation to third parties when the requirements of efficiency are not met within the limits established by law.

In all cases the rights acquired by the workers will be respected.

**Article 337.** The law 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 the Congress, departmental assemblies, and district and municipal councils may levy fiscal or fiscal-type dues. The law, ordinances, and resolutions must directly determine active and passive earnings, the events and bases that are taxable, and the rates of the levies.

The law, ordinances, and resolutions may permit the authorities to determine the rate of taxes and levies that are collected from taxpayers as a recovery of the cost of the services which the authorities provide, or as participation in the benefits that the taxpayers receive; but the system and the method to define such costs and benefits and the manner of allocating them must be determined by law, ordinances, or resolutions.

The laws, ordinances, or resolutions that regulate levies based on taxable events occurring during a specific period may not be applied except following the date when the respective law, ordinance, or resolution entered into effect.

## CHAPTER 2 CONCERNING DEVELOPMENT PLANS

**Article 339.** There will be a National Development Plan consisting of a general plan and a plan of investments of the national public entities. The

general plan will include long-term national purposes and objectives, the goals and priorities of intermediate-term state activities, and the strategies and general orientation of economic, social, and environmental policy to be adopted by the government. The public investment plan will deal with the multi-year budgets of the main programs and plans of national public investment and specify the financial resources required for their execution.

The territorial entities will elaborate and adopt in a coordinated manner development plans with the national government with the purpose of securing the efficient use of their resources and the adequate execution of the functions assigned to them by the Constitution and the law. The plans of the territorial entities will consist of a general plan and an intermediate- and short-term plan of investments.

**Article 340.** There will 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 will have a consultative character and will serve as a forum for the discussion of the National Development Plan.

The members of the National Council will 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, and who will have to be or will have been involved in the above-noted activities. Their term will be of eight years, and each four years the Council will be replaced in part in the form established by law.

In the territorial entities there will also be planning councils, in accordance with the law.

The National Council and the territorial planning councils constitute the National Planning System.

**Article 341.** The government will elaborate the National Development Plan with the active participation of the planning authorities, the territorial entities, and the Superior Council of the Judicature and will submit the corresponding plan to review by the National Planning Council; after

listening to the opinion of the Council it will proceed to effect those amendments that it considers appropriate and will present the plan to 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 group will discuss and evaluate the plan in plenary session. Disagreements about the content of the general part, if there are any, will 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 must follow the procedure indicated in the article that follows.

The National Investment Plan will be issued by means of a law which will take precedence over other laws; consequently, its dictates will constitute mechanisms sufficient for its execution and will supplant existing ones without the need for issuing further laws. Nevertheless, in the annual budgetary laws it will 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 pass it by a decree having the force of law.

The Congress may modify the National Public Investment Plan provided the financial balance is maintained. Any increment in authorizations of indebtedness requested in the governmental plan or the inclusion of investment plans not contemplated in it require the approval of the national government.

**Article 342.** The corresponding organic law will regulate the drafting, approval, and execution of the development plans and will provide the appropriate mechanisms for the harmonization and alignment of the official budgets with them. It will also determine the organization and functions of the National Planning Council and of the territorial councils, as well as procedures to allow citizens' participation in the discussion of the development plans and the subsequent modifications, in accordance with what is established in the Constitution.

**Article 343.** The national planning entity stipulated in the law will be responsible for the planning and organization of the systems for the evalua-

general plan will include long-term national purposes and objectives, the goals and priorities of intermediate-term state activities, and the strategies and general orientation of economic, social, and environmental policy to be adopted by the government. The public investment plan will deal with the multi-year budgets of the main programs and plans of national public investment and specify the financial resources required for their execution.

The territorial entities will elaborate and adopt in a coordinated manner development plans with the national government with the purpose of securing the efficient use of their resources and the adequate execution of the functions assigned to them by the Constitution and the law. The plans of the territorial entities will consist of a strategic plan and an intermediate- and short-term plan of investments.

**Article 340.** There will 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 will have a consultative character and will serve as a forum for the discussion of the National Development Plan.

The members of the National Council will 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, and who will have to be or will have been involved in the above-noted activities. Their term will be of eight years, and each four years the Council will be replaced in part in the form established by law.

In the territorial entities there will also be planning councils, in accordance with the law.

The National Council and the territorial planning councils constitute the National Planning System.

**Article 341.** The government will elaborate the National Development Plan with the active participation of the planning authorities, the territorial entities, and the Superior Council of the Judicature and will submit the corresponding plan to review by the National Planning Council; after

listening to the opinion of the Council it will proceed to effect those amendments that it considers appropriate and will present the plan to 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 group will discuss and evaluate the plan in plenary session. Disagreements about the content of the general part, if there are any, will 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 must follow the procedure indicated in the article that follows.

The National Investment Plan will be issued by means of a law which will take precedence over other laws; consequently, its dictates will constitute mechanisms sufficient for its execution and will supplant existing ones without the need for issuing further laws. Nevertheless, in the annual budgetary laws it will 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 pass it by a decree having the force of law.

The Congress may modify the National Public Investment Plan provided the financial balance is maintained. Any increment in authorizations of indebtedness requested in the governmental plan or the inclusion of investment plans not contemplated in it require the approval of the national government.

**Article 342.** The corresponding organic law will regulate the drafting, approval, and execution of the development plans and will provide the appropriate mechanisms for the harmonization and alignment of the official budgets with them. It will also determine the organization and functions of the National Planning Council and of the territorial councils, as well as procedures to allow citizens' participation in the discussion of the development plans and the subsequent modifications, in accordance with what is established in the Constitution.

**Article 343.** The national planning entity stipulated in the law will be responsible for the planning and organization of the systems for the evalua-

tion of the management and performance of the public administration, regarding both policy and investment plans, under the terms that it dictates.

**Article 344.** The departmental planning organs will evaluate the management and performance of the planning, development, and investment programs of the departments and municipalities and will participate in the preparation of the budgets of the latter within the limits stipulated by the law.

In each case, the national planning organ may, in a selective manner, carry out the evaluation of any territorial entity.

### CHAPTER 3 CONCERNING THE BUDGET

**Article 345.** In peacetime, the collection of levies or taxes that are not included in the revenues budget and payments from Treasury funds which are not included in the expenditures budget are prohibited.

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 will formulate annually the Revenues Budget and Appropriations Law, which must harmonize with the National Development Plan, and will present it to Congress within the first 10 days of each legislature.

The Appropriations Law may not make any stipulation whatsoever that does not correspond to a legally recognized credit, an expenditure decreed in accordance with an earlier law, or a government budget which provides for the operation of the branches of government, the servicing of the debt, or the implementation of the National Development Plan.

The economic committees of the two chambers will deliberate jointly for the first reading of the proposed Revenues Budget and Appropriations Law.

**Article 347.** The appropriations bill must include all the expenditures which the state plans to implement during the relevant fiscal period. If the legally

authorized revenues are not sufficient to cover the projected expenditures, the government will 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 contemplated aggregate expenditures.

The budget may be approved without debate having been closed regarding additional revenues, and discussion of this may continue in the subsequent legislative term.

**Article 348.** If Congress does not approve the budget, the one presented by the government will apply according to the preceding article; should the budget not be presented within the deadline, that of the previous year will apply, but the government may reduce expenditures and consequently eliminate or reduce jobs when the calculations of the revenues of the new fiscal year require it.

**Article 349.** During the first three months of each legislature and strictly in accordance with the rules of the Organic Law, the Congress will debate and issue the General Revenues Budget and Appropriations Law.

Estimates of revenues, credit resources, and proceeds of the Treasury balance may not be increased by Congress except following consideration and favorable endorsement by the appropriate minister.

**Article 350.** The Appropriations Law must include a component entitled public social expenditure that will consolidate the parts dealing with public social expenditure according to the definition made by the respective organic law. Except in case of foreign war or for reasons of national security, public social expenditure will have priority over any other allocation.

In the territorial distribution of the public social expenditures, these factors will be taken into account: the number of individuals with unsatisfied basic needs, the population, and fiscal administrative efficiency, according to the regulations mandated by the law.

The investment budget may not be reduced proportionately 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 Organic Law of the Budget will 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 will apply, where they are pertinent, to the territorial entities for the elaboration, approval, and execution of their budget.

**Article 354.** There will be a General Accountant, an official of the executive branch, who will be responsible for the general accounting of the nation and for consolidating the general accounting with that of its decentralized territorial or service entities at various levels, except for the execution of the budget, over which the Office of the Comptroller General has jurisdiction.

The functions of streamlining, centralizing, and consolidating the public accounting system, calculating the general balance, and determining the accounting principles that must apply in the country, in accordance with the law, are the responsibility of the General Accountant.

Paragraph. Six months following the close of the fiscal year, the national government will send Congress the budgetary balance, audited by the Office of the Comptroller General of the Republic, for its information and analysis.

**Article 355.** None of the branches or organs of government may decree subsidies or grants to 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 nonprofit private entities and with the recognized capacity to promote programs and activities of public interest, in accordance with the National Plan and the sectional development plans. The national government will regulate the matter.

#### CHAPTER 4

##### CONCERNING THE DISTRIBUTION OF RESOURCES AND JURISDICTIONS

**Article 356.** Except for what the Constitution and the law provide, the government will determine the services for which the nation and territorial entities are responsible. Similarly, it will determine the fiscal revenues, that is, the percentage of the nation's current revenues to be transferred to the departments, the capital district, and the special districts of Cartagena and Santa Marta directly or through the municipalities, for the services that are assigned to them. The fiscal revenues will be assigned to finance the preschool, primary, secondary, and intermediate education and public health services at the levels that the law mandates, with special attention to children.

The fiscal revenues will increase yearly until they reach a percentage of the current revenues of the nation that make it possible to adequately cover the services for which they are designated. With this purpose, retention of the sales tax and all the other resources which the nation transfers directly to cover expenditures at the above-mentioned levels of education will be included in them.

The law will determine the deadlines for the transfer of these revenues and the redistribution of the corresponding obligations, will establish the conditions under which each department will assume responsibility for the stated services, and may authorize the municipalities to provide such services

directly in individual or collective form. It will not be possible to decentralize responsibilities without the prior allocation of fiscal resources adequate to cover them.

Some 15 percent of the fiscal revenues will be distributed in equal shares among the departments, the capital district, and the districts of Cartagena and Santa Marta. The balance will be allocated in proportion to the number of actual and potential users of the services mentioned, taking into account, additionally, the fiscal contribution involved and the administrative efficiency of the respective territorial entity.

Every five years the law, at the initiative of the members of Congress, may revise these percentages of distribution.

**Article 357.** The municipalities will have a share in the current revenues of the nation. The law, at the initiative of the government, will determine the minimal percentage of such shares and will define the priority areas of social investment that will be funded out of said resources. For the purposes of this revenue sharing, the law will consider the indigenous (Indian) reservations as municipalities.

The resources represented by such revenue sharing will be distributed by the law in accordance with the following criteria: 60 percent in direct proportion to the number of inhabitants below the poverty level or with unsatisfied basic needs, and the rest as a function of the total population, fiscal and administrative efficiency, and the progress demonstrated in the citizens' quality of life. The law will specify the scope, the criteria of distribution anticipated here, and will provide that a percentage of these revenues be invested in the rural areas. Every five years the law, at the initiative of Congress, may revise these percentages of distribution.

**Paragraph.** The share of the municipalities in the current revenues of the nation will be increased, year by year, from 14 percent in 1993 to a minimum of 22 percent in 2002. The law will determine the gradual increase of these transfers and will define the new responsibilities which the municipalities will assume in the field of social investment and the conditions for their implementation. Their authorities will have to demonstrate to the organs of performance evaluation and control the efficient and proper use of these

resources and, in the case of poor management, the sanctions established by the law will be applied.

Excluded from the revenue sharing mentioned above will be new taxes when Congress so determines and, for the first year in force, adjustments to existing taxes and savings made through emergency cutbacks.

**Article 358.** For the purposes of the two preceding 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 will be specifically assigned. Excepted are the following:

1. The shares provided in the Constitution for the benefit of the departments, districts, and municipalities.
2. Those assigned to social investment.
3. Those which, based on the earlier laws, the nation assigns to social service entities and to former intendancies and police districts.

**Article 360.** The law will determine the conditions for the exploitation of nonrenewable natural resources as well as the rights of the territorial entities over them.

The exploitation of a nonrenewable natural resource will produce in favor of the state an economic revenue privilege without prejudice to any other right or compensation that may be contracted.

The departments and municipalities in whose territory nonrenewable natural resources are exploited as well as maritime and river ports through which said resources or derivative products are shipped will be entitled to participate in the grants and compensations.

**Article 361.** With revenues originating from grants that are not allocated to departments and municipalities, a National Endowment Fund will be created

whose resources will be assigned to the territorial entities within the limits stipulated by the law. These funds will be applied to the promotion of mining, the preservation of the environment, and to financing regional projects of investment identified as having priority in the development plans of the respective territorial entities.

**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 guarantees as the property and income of individuals.

Departmental and municipal taxes enjoy constitutional protection and consequently the law 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 progressiveness.

The tax laws will not be applied retroactively.

**Article 364.** The domestic and foreign indebtedness of the nation and the territorial entities may not exceed their capacity of repayment. The law will regulate this matter.

#### CHAPTER 5 CONCERNING THE SOCIAL PURPOSE OF THE STATE AND OF THE PUBLIC SERVICES

**Article 365.** Public services are inherent to the social purpose of the state. It is the duty of the state to ensure their efficient provision to all the inhabitants of the national territory.

Public services will be subject to the juridical regime determined by the law, may be provided by the state directly or indirectly, by organized communities, or by individuals. In any case, the state is responsible for the regulation, control, and application of such services. If for reasons of sovereignty or social interest, the state, by means of a law approved by the majority of the

members of both chambers upon the initiative of the government, should decide to assign to itself specific strategic or public service activities, it must first indemnify fully those individuals who by virtue of the said law are deprived of the exercise of a lawful activity.

**Article 366.** The general welfare and improvement of the population's quality of life are social purposes of the state. A basic objective of the state's activity will be to address unsatisfied public health, educational, environmental, and potable water needs.

For this purpose, public social expenditures will have priority over any other allocation in the plans and budgets of the nation and of the territorial entities.

**Article 367.** The law will determine the relative jurisdictions and responsibilities for domestic public services, their provision, quality, and financing, and the schedule of rates, which will take into account the following criteria: cost, cooperation, and the redistribution of revenues.

Domestic public services will be provided directly by each municipality when the technical and economic characteristics of the service and the general benefits of the services indicate it to be possible and advisable, and the departments provide support and coordination.

The law will determine the entities competent to 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 rates of domestic public services that cover their basic needs.

**Article 369.** The law will determine the duties and rights of users, the regime of their protection, and their form of participation in the management and funding of the state enterprises that provide the service. Similarly, the law will define the participation of the municipalities or their representatives in the entities and enterprises that provide domestic public services.

**Article 370.** It is the responsibility of the President of the Republic to stipulate, subject to the law, the general policies of administration and

efficiency control of domestic public services and to exercise through the Office of the Superintendent of Domestic Public Services the control, inspection, and supervision of the entities that provide them.

## CHAPTER 6 CONCERNING THE CENTRAL BANK

**Article 371.** The Bank of the Republic will exercise the functions of a central bank. It will be organized as a legal public entity with administrative, patrimonial, and technical autonomy, subject to its own legal regime.

The following will 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 will be exercised in coordination with the general economic policy.

The Bank will 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 will be the monetary, exchange, and credit authority, in accordance with the functions assigned to it by law. It will be responsible for managing and executing the functions of the Bank and will be made up of seven members, among them the Minister of Finance, who will chair it. The Director of the Bank will be elected by the executive board and will be one of its members. The five other members, who may hold no other employment, will 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 will represent the interests of the nation exclusively.

The Congress will stipulate the law which will regulate the Bank of the Republic for the exercise of its functions and the regulations under which the government will issue the statutes of the Bank. These will 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, including rules for exchange and monetary stabilization, and the future application of its earnings.

The President of the Republic will perform the inspection, supervision, and control of the Bank within the terms stipulated by law.

**Article 373.** The state, through the intermediary of the Bank of the Republic, will supervise the maintenance of the purchasing power of the currency. The Bank may not establish credit quotas nor give guarantees for the benefit of individuals except when it involves foreign credit to be distributed through credit institutions for temporary support for the liquidity of credit institutions. Financing operations for the benefit of the state require 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 CONCERNING CONSTITUTIONAL AMENDMENT

**Article 374.** The Political Constitution of Colombia may be amended by Congress, a Constituent Assembly, or by the people through a referendum.

**Article 375.** The government, 10 members of the Congress, 20 percent of councillors or deputies, or citizens totaling at least five percent of the electoral rolls in force, may introduce legislative Acts.

The legislative act must be approved in two ordinary and consecutive periods. Following approval in the first period by the majority of those present, the proposal will be published by the government.

In the second period, approval will require the vote of the majority of the members of each chamber.

In this second period only measures presented in the first period may be discussed.

**Article 376.** By means of a law approved by the members of both chambers, Congress may stipulate that the people decide by popular vote if a Constituent Assembly should be called with the jurisdiction, term, and members determined by that same law.

An affirmative vote of the people will convoke the Assembly, when they represent at least one-third of the electoral rolls.

The Assembly must be elected by a direct vote of the citizens, which may not occur concurrently with another election. During the election, the ordinary powers of Congress to amend the Constitution are suspended during the term stipulated so that the Assembly may perform its functions. The Assembly will adopt its own bylaws.

**Article 377.** Constitutional amendments approved by Congress must be submitted to a referendum when they involve the rights recognized in Chapter 1 of Title II and their guarantees, the procedures of popular participation, or Congress, if such referendum is requested within the six months subsequent to the promulgation of the legislative act, by five percent of the citizens who make up the electoral rolls. The amendment is 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, the Congress, through a law which requires the approval of the majority of the members of both chambers, may call a referendum on a bill of constitutional reform which Congress would also include in the law. The referendum will be presented in such a manner that the voters may freely select from the agenda of the various items those on which they wish to vote favourably and those which they wish to defeat.

The approval of constitutional reforms by means of a referendum requires the affirmative vote of over half the voters and the number of these must exceed one-fourth of the total number of citizens included in the electoral rolls.

**Article 379.** Legislative acts, the referendum, the popular consultation, or the act of convocation of the Constituent Assembly may be declared unconstitutional only when the requirements established under this title have been 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, paragraph No. 2.

**Article 380.** The previous Constitution in force, as amended, is hereby repealed.

*This present Constitution is effective from the day of its promulgation.*

## : Temporary Provisions

### CHAPTER I

**Provisional Article 1.** General elections of the Congress of the Republic must be called for October 27, 1991.

The Congress thus elected will have a term that concludes on July 19, 1994. The Registry Office of Civil Status will open a registration period of citizen rolls for citizenship identification cards.

**Provisional Article 2.** Full-fledged delegates of the Constituent Assembly or present Cabinet ministers may not be candidates in said election.

Neither may functionaries of the executive branch who did not resign their position before June 14, 1991.

**Provisional Article 3.** Pending the installation on December 1, 1991, of the new Congress, the present Congress and its committees will take a recess and may not exercise any of their powers through their own initiative nor through convocation by the President of the Republic.

**Provisional Article 4.** The Congress elected on October 27, 1991, will 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 will be the one prescribed in this Constitution.

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From December 1 to 20, 1991, and from January 14 to June 26, 1992. Beginning on July 20, 1992, its schedule of sessions will be the one prescribed in this Constitution.

**Provisional 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 General Prosecutor and the regulations of criminal procedures;
- b. Regulate the right of citizens to exercise protective legal action;
- c. Take the necessary administrative measures for the functioning of the Constitutional Court and the Superior Council of the Judicature;
- d. Issue the general national budget to be in effect in 1992;
- e. Issue temporary regulations to relieve congestion in judicial agencies.

**Provisional Article 6.** A Special Commission of 36 members elected using electoral quotient by the National Constituent Assembly, half of whom may be delegates, that will meet between July 15 and October 4, 1991, and between November 18, 1991, and the day of the installation of the new Congress, will be established. The election is to be held at a session convened for this purpose on July 4, 1991.

This Special Commission will have the following powers:

- a. Total or partial veto power over proposed bills which the national government, in exercise of the extraordinary powers conferred on the President of the Republic by the above article and other provisions of the present Constituent Act, with the exception of those relating to appointments, may request, to be exercised by a majority of its members.

The vetoed articles may not be decreed by the government;

- b. Prepare proposed bills which it considers appropriate to implement 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 operations.

Paragraph. Should the Special Committee not approve prior to December 15, 1991, the proposed budget for fiscal year 1992, that of the previous year will apply, but the government may reduce expenditures and consequently eliminate or merge positions when the calculations of revenues of the new fiscal year make this desirable.

**Provisional Article 7.** The President of the Republic will designate a representative of the government before the Special Commission, who will take part in discussion and initiate actions.

**Provisional Article 8.** The decrees issued in exercise of the powers of martial law up to the time of the promulgation of the present Constituent Act will 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.

**Provisional Article 9.** The extraordinary powers for which no determinate period of exercise is stipulated, will expire 15 days following the definitive termination of the Special Commission's functions.

**Provisional Article 10.** The decrees which the government may issue in the exercise of the powers granted by the articles above will have the force of the law and verification of their constitutional validity will be the responsibility of the Constitutional Court.

**Provisional Article 11.** The extraordinary powers referred to in Provisional Article 6 will terminate on the day when the Congress elected on October 27, 1991, is installed.

On the same date, the Special Commission created by Provisional Article 6 will also terminate its functions.

**Provisional 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 direction, the latter may establish, for one time only, special peace districts for elections to public bodies that will take place on October 27, 1991, or appoint directly for one time only, a number of congressmen in each chamber to represent the said groups in a process of peace and demobilization.



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The number will be established by the national government on the basis of the evaluation that it makes of the circumstances and the progress of the process. The individual senators and representatives to whom this article refers will be identified by the government and the guerrilla groups, and their appointment will be the responsibility of the President of the Republic.

For the effects contemplated in this article, the government may disregard the specific disabilities and requirements necessary for one to qualify as a congressman.

**Provisional Article 13.** Within the three years following the entering into effect of this Constitution, the government may issue the provisions necessary to facilitate the reintegration of demobilized guerrilla groups who may be involved in a peace process under government direction; to improve the economic and social conditions of the regions where the guerrilla groups were present; and to provide organization and municipal jurisdiction to the territorial entity, including public services and the operation and integration of the collective municipal bodies in said regions.

The national government will present periodic reports to the Congress of the Republic concerning the implementation and development of this article.

**Provisional Article 14.** Through the legislature that is convened on December 1, 1991, the National Congress, the Senate of the Republic and the Chamber of Representatives will issue their respective bylaws. Should they not do so, the Council of State will issue them within the subsequent three months.

**Provisional Article 15.** The first election of the Vice President of the Republic will 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 a designate will be retained. For that purpose, once the term of the incumbent elected in 1990 expires, the Congress in plenary session will elect a new designate for the period from 1992 to 1994.

**Provisional Article 16.** Except in the cases stipulated in the Constitution, the first popular election of governors will be held on October 27, 1991.

The governors elected on that date will take possession of their office on January 2, 1992.

**Provisional Article 17.** The first popular election of governors in the departments of Amazonas, Guaviare, Guainía, Vaupés and Vichada will be held in 1997 at the latest.

The law may set an earlier date. In the meantime, the governors of the aforementioned departments will be appointed and may be removed by the President of the Republic.

**Provisional Article 18.** Until the law establishes the regime of disabilities for governors, in the elections of October 27, 1991, the following may not be elected as governor:

1. Those who at any time may have been condemned by judicial sentence to imprisonment, except for political crimes or crimes of strict liability.
2. Those who within the six months prior to the election may have 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 within the third level of consanguinity, affinity two ranks removed, or civil one rank removed, with anyone registered as a candidate for 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 on their own behalf or on behalf of third parties.

The prohibition established in paragraph No. 2 of this article does not apply to members of the National Constituent Assembly.

**Provisional Article 19.** The mayors, councillors, and deputies elected in 1992 will exercise their functions until December 31, 1994.

The number will be established by the national government on the basis of the evaluation that it makes of the circumstances and the progress of the process. The individual senators and representatives to whom this article refers will be identified by the government and the guerrilla groups, and their appointment will be the responsibility of the President of the Republic.

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3. Those who are involved through marriage or kinship within the third level of consanguinity, affinity two ranks removed, or civil one rank removed, with anyone registered as a candidate for 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 on their own behalf or on behalf of third parties.

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**Provisional Article 20.** For a period of 18 months beginning as of 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 will eliminate, merge, or restructure the entities of the executive branch, public institutions, industrial and commercial enterprises, and joint (public/private) companies of national scope with the purpose of harmonizing them with the mandates of the present constitutional reform, especially regarding the redistribution of the jurisdictions and resources that it establishes.

**Provisional Article 21.** The legal regulations flowing from the principles stated in Article 125 of the Constitution will be issued by Congress in the year subsequent to its entering into effect. If in this period Congress does not issue them, the President of the Republic has the power to issue them within three months.

Once the legal regulations that bear on professional matters are issued, the appointers of public servants will apply them within six months.

Noncompliance with the terms stipulated in the clause above will constitute a misdemeanor.

Pending the issue of the regulations to which this article refers, those which currently apply to the subject matter will continue to be in effect provided they do not violate the Constitution.

**Provisional Article 22.** Provided the law does not set another number, the first Constitutional Court will be made up of seven judges who will 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 National Attorney General.

The judges so elected will designate the other 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 National Attorney General must be done within five days following the entry of this Constitution into effect. Nonfulfillment of this duty will constitute a misdemeanor. Should the election not be held by any of the organs mentioned within the stated deadline, it will be held 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 means of this extraordinary procedure.

**Paragraph 2.** The disability established in Article 240 for 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.

**Provisional Article 23.** The President of the Republic is vested with extraordinary powers so that within the two months following the promulgation of the Constitution, he/she will decree the court procedures and formalities for the Constitutional Court.

At any time the 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 will be subject to the regulations stipulated in Decree 432 of 1969.

**Provisional Article 24.** Public actions of unconstitutionality filed before June 1, 1991, will 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 may have been filed after the above-cited date must be referred to the Constitutional Court in the state in which they happen to be.

## CHAPTER 2

**Provisional Article 20.** For a period of 18 months beginning as of 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 will eliminate, merge, or restructure the entities of the executive branch, public institutions, industrial and commercial enterprises, and joint (public/private) companies of national scope with the purpose of harmonizing them with the mandates of the present constitutional reform, especially regarding the redistribution of the jurisdictions and resources that it establishes.

**Provisional Article 21.** The legal regulations flowing from the principles stated in Article 125 of the Constitution will be issued by Congress in the year subsequent to its entering into effect. If in this period Congress does not issue them, the President of the Republic has the power to issue them within three months.

Once the legal regulations that bear on professional matters are issued, the appointers of public servants will apply them within six months.

Noncompliance with the terms stipulated in the clause above will constitute a misdemeanor.

Pending the issue of the regulations to which this article refers, those which currently apply to the subject matter will continue to be in effect provided they do not violate the Constitution.

## CHAPTER 3

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The judges so elected will designate the other 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 National Attorney General must be done within five days following the entry of this Constitution into effect. Nonfulfillment of this duty will constitute a misdemeanor. Should the election not be held by any of the organs mentioned within the stated deadline, it will be held by the remaining duly elected judges.

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Once all the cases are decided by the Supreme Court of Justice in accordance with the first clause of the present article, its Constitutional Chamber will cease exercising its functions.

**Provisional Article 25.** The President of the Republic will appoint for the first and only time the members of the Disciplinary Chamber of the Superior Council of the Judicature.

The Administrative Chamber will be formed in accordance with the provisions of paragraph No. 2, Article 254, of the Constitution.

**Provisional Article 26.** The cases that are currently underway in the Disciplinary Tribunal will continue to be heard without interruption by the judges of that body, and the Disciplinary Chamber of the Superior Council of the Judicature will take cognizance of them once it is convened.

**Provisional Article 27.** The Office of the General Prosecutor will begin functioning when the special decrees organizing it and those that establish the new criminal procedures are issued, by virtue of the powers granted by the National Constituent Assembly to the President of the Republic.

The respective decrees may, however, provide that jurisdiction over the various judicial instances should be assigned gradually as conditions allow, without going beyond June 30, 1992, except for the municipal criminal judges, whose introduction may be postponed for up to four years beginning with the issuing of this reform, according to the determination of the Superior Council of the Judicature and the General Prosecutor.

The current district attorneys' offices of the higher courts, criminal circuit, higher customs courts, and those of public order will be transferred to the Office of the Attorney General of the Nation. The other district attorneys' offices will be integrated into the organic structure and the personnel of the Office of the National Attorney General. The National Attorney General will stipulate the designation, functions, and seats of these public servants and may designate those already occupying said offices, retaining their system of compensation and benefits.

The Office of the Criminal Attorney General Delegate will continue within the structure of the Office of the National Attorney General.

The following will also be under the jurisdiction of the Office of the Attorney General of the Nation: 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, will be integrated into the Office of the Attorney General as a public institution.

Those jurisdictions that are integrated into the Office of the General Prosecutor will be transferred to it with all their human and material resources within the limits stipulated by the relevant law.

**Provisional Article 28.** Pending the issuing of the law which will assign jurisdiction to the judicial authorities over the actions punishable by arrest by the police authorities, the police authorities will continue to exercise their jurisdiction over these activities.

**Provisional Article 29.** The regulations that prohibit the reelection of the judges of the Constitutional Court, the Supreme Court of Justice, and the Council of State will apply only to those elections that take place after the promulgation of the present reform.

**Provisional 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 Constituent Act to members of guerrilla groups that return to civilian life within the context of the policy of reconciliation. To this effect, the national government will issue the appropriate regulations. This benefit may not apply to heinous crimes or to homicides committed outside of combat or to those exploiting the vulnerable state of the victims.

#### CHAPTER 4

**Provisional Article 31.** One month following the installation of the Congress elected on October 27, 1991, the Council of State will elect the

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#### CHAPTER 4

**Provisional Article 31.** One month following the installation of the Congress elected on October 27, 1991, the Council of State will elect the

members of the National Electoral Council in proportion to the representation obtained by the parties and political movements in the Congress of the Republic.

The National Electoral Council will remain in office and exercise its functions until September 1, 1994.

**Provisional Article 32.** Pending the formation of the National Electoral Council according to the Constitution, the composition of this organ will 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 proportionate to 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 must be made before July 15, 1991.

**Provisional Article 33.** The term of the present National Registrar of Civil Status will terminate on September 30, 1994.

The term of the National Registrar of Civil Status to whom this Constitution refers will run from October 1, 1994.

**Provisional Article 34.** The President of the Republic, within no more than eight days from the promulgation of this Constitution, will designate, for a period of three years, a citizen whose function will 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 or the law. To this effect, the said citizen will have the right to request and obtain the cooperation of the Office of the National Attorney General, of the Office of the Comptroller General of the Republic, of all the public entities which exercise control and supervisory powers, and of those organs which exercise criminal judicial police functions.

The President of the Republic will regulate this arrangement and will provide the designated citizen all the necessary administrative and financial support.

**Provisional Article 35.** The National Electoral Council will automatically recognize the legal status of those parties and political movements represented in the National Constituent Assembly which request it from the Council.

## CHAPTER 5

**Provisional Article 36.** The present Comptroller General of the Republic and National Attorney General will continue to exercise their responsibilities until such time as the Congress, elected for the constitutional period 1994-1998, arranges the new election that must be held within the first 30 days following its installation.

**Provisional Article 37.** The first Ombudsman will be selected by the National Attorney General from a list originating from the President of the Republic within 30 days at the most.

## CHAPTER 6

**Provisional Article 38.** The government will organize and create, within six months, a Commission of Territorial Planning entrusted with carrying out studies and formulating before the competent authorities the recommendations that it considers appropriate to modify the country's territorial divisions in accordance with the provisions of the Constitution. The Commission will perform its functions during a period of three years, though the law may assign to it a permanent character. In such a case, the same law will determine the deadlines within which the Commission is to present its proposals.

**Provisional Article 39.** The President of the Republic will be vested with specific extraordinary powers for a period of three months in order to issue decrees with the force of law which will ensure the organization and the functioning of new departments created in the Constitution.

In exercise of these powers the government may abolish the national institutions entrusted with the administration of former intendancies and police districts and assign to the territorial entities the national resources with the government deems appropriate.



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In exercise of these powers the government may abolish the national institutions entrusted with the administration of former intendancies and police districts and assign to the territorial entities the national resources with the government deems appropriate.

**Provisional Article 40.** Municipalities created by the departmental assemblies prior to December 31, 1990 are valid.

**Provisional Article 41.** If during the two years following the date of promulgation of this Constitution, Congress does not issue the law with which articles 322, 323 and 324 refer concerning a special regime for the Capital District of Santafé de Bogotá, the government, on one occasion only, may issue the appropriate regulations.

**Provisional Article 42.** Pending the issuing by Congress of the laws referred to in Article 310 of the Constitution, the government will adopt by decree the regulations necessary to control population density of the archipelago Department of San Andrés, Providencia, and Santa Catalina, for the purposes expressed in the same article.

## CHAPTER 7

**Provisional Article 43.** In order to finance the functioning of new institutions and to attend to the obligations flowing from the constitutional reform that have not been offset by the reduction of expenditures or transfer of responsibilities, Congress may on one occasion only prescribe tax adjustments whose revenue is to be assigned exclusively to the nation.

If within a period of 18 months, starting from the beginning of the installation of Congress, the latter has not passed such tax adjustments and it is evident that the administration's efforts to make tax collection more efficient and to reduce public expenditure at the national level have been insufficient to cover the new outlays, the national government may, on one occasion only, through a decree having the force of law, make said adjustments.

**Provisional Article 44.** The fiscal situation for the year 1992 will not be worse, as expressed in constant pesos, than that of 1991.

**Provisional Article 45.** The districts and municipalities will collect as a minimum during the fiscal year of 1992 the shares of the IVA (Value Added Tax) established by Law No. 12 of 1986. Beginning in 1993, the provisions in Article 357 of the Constitution will enter into effect concerning the share of the municipalities in the nations current revenues.

However, the law will establish a gradual and progressive transition schedule beginning in 1993 for a period of three years, at the end of which the new criteria of distribution stipulated in Article 357 of the Constitution will enter into effect. During the transition period the value received by the districts and municipalities in terms of revenue sharing will in no case be inferior to the amount collected in 1992, as expressed in constant pesos.

**Provisional Article 46.** The national government will 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 will finance assistance projects for the most vulnerable sectors of the Colombian population.

The fund must additionally seek resources from national and international sources.

**Provisional Article 47.** The law will organize for the regions affected by extreme violence a social emergency security plan for a period of three years.

**Provisional Article 48.** Within the three months following the installation of the Congress of the Republic, the government will present bills relative to the legal regime of public services; the determination of jurisdictions and general criteria that will regulate the provision of public domestic 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 former and to the general policies of administration and efficiency control of the public domestic services.

If at the conclusion of the two subsequent legislatures the appropriate laws have not been issued, the President of the Republic will put the bills into effect through decrees with the force of law.

**Provisional Article 49.** In the first legislature following the entry into effect of this Constitution, the government will present to Congress the bills referred to in Articles 150, paragraph No. 19, letter (d), Article 189, paragraph No. 24, and Article 335, relating to financial activities, the stock

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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 legislative sessions, Congress has not promulgated them, the President of the Republic will promulgate the bills through decrees having the force of law.

**Provisional Article 50.** Pending the issuance of the general provisions which the government must follow to regulate financial activities, the 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 will intervene in these activities, under his own constitutional authority.

**Provisional Article 51.** Pending the issuance of the appropriate laws, the new executive board of the Bank of the Republic to be provisionally appointed by the President of the Republic within the month following the entry into force of this Constitution, will assume the functions which are currently performed by the Monetary Board and which will be executed as provided in the Constitution.

The law will determine the entities to which development funds administered by the Bank are transferred. In the meantime, the Bank will continue exercising this function.

The government will 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 the basis of which the government will issue its ordinances in accordance with Article 372 of the Constitution.

**Provisional Article 52.** As of the entry into force of this Constitution, the National Evaluation Committee will have the status of a superintendency. The national government will 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 implementation of what is established in Provisional Article 20.

**Provisional Article 53.** The government will make the administrative decisions and will effect the budgetary transfers necessary to ensure the normal functioning of the Constitutional Court.

**Provisional Article 54.** For all constitutional and legal applications, the results of the National Population and Housing Census of October 15, 1985, will be applicable.

**Provisional Article 55.** Within the two years following the entry into effect of the present Constitution, Congress will issue, following a study by a special commission that the government will create for that purpose, a law which will recognize the right to collective property of the Black communities which occupy uncultivated lands in the rural zones adjoining the rivers of the Pacific Basin, in accordance with their traditional cultivation practices. This law will apply to the area stipulated therein.

In the special commission referred to in the previous clause, representatives elected by the communities involved will participate in each case.

The property thus recognized will only be transferable within the limits stipulated by the law.

The same law will establish mechanisms to protect the cultural identity and the rights of these communities and to foster their economic and social development.

Paragraph 1. The provisions in the present article may be applied to other zones of the country that have similar conditions through the same procedure and following a study and the favorable decision of the special commission prescribed here.

Paragraph 2. If at the conclusion of the deadline stipulated in this article the Congress has not issued the law stipulated above, the government will proceed to do so through a decree having the force of law.

**Provisional Article 56.** Pending the issuing of the law 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.

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**Provisional Article 57.** The government will form a commission made up of representatives of the government, labor unions, economic associations, and casual workers so that within a period of 180 days from the entry into force of this Constitution, the commission may draft a proposal elaborating regulations on social security.

This proposal will serve as a basis for the preparation of bills by the government that it presents on the issue to Congress.

**Provisional Article 58.** The national government will be authorized to ratify negotiated treaties or agreements that have been approved by at least one of the chambers of the Congress of the Republic.

**Provisional Article 59.** The present Constitution and the other acts promulgated by this Constituent Assembly are not subject to any kind of legal review whatever.

**Provisional Article** The Special Commission created by Provisional Article 38 will also sit between November 1 and 30, 1991, at which date it will cease functioning.

**Note:** Reference here is made to Provisional Article 38 of the Codification Commission or to number 6 of the Constitution.

## THREE

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### The Creation of the Constituent Assembly and Institutional Change\*

I am very pleased to be with you at this university where I studied constitutional law six years ago. At the time, the study of the Constitution in my country was more akin to theology than to Colombian everyday life. Today, the Constitution enacted last year by a Constituent Assembly, has become the marrow of Colombia's future. The Constitution is not seen as an abstract set of legal concepts, but as a powerful tool for both social change and political modernization and renewal.

During the process itself, Colombia underwent amazing transformations. We Colombians believe that we not only have a new Constitution, but also that, despite our problems, ours is now a different country.

In these brief remarks, I will try to highlight the main aspects of what we may call Colombia's peaceful revolution.

I shall begin by underlining the context in which the constituent adventure arose. Then, I will summarize the main steps of the constitutional process, and the obstacles we had to overcome. Thirdly, without going into constitutional details, I will underscore the basic conceptions which guide our new constitutional charter. Finally, I will assess the practical results and the political significance of the new Constitution.

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\* CEPEDA, Manuel José (Presidential Advisor for the Development of the Constitution), speech delivered at Harvard University on May 6, 1992.

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**Provisional Article 59.** The present Constitution and the other acts promulgated by this Constituent Assembly are not subject to any kind of legal review whatever.

**Provisional Article** The Special Commission created by Provisional Article 38 will also sit between November 1 and 30, 1991, at which date it will cease functioning.

**Note:** Reference here is made to Provisional Article 38 of the Codification Commission or to number 6 of the Constitution.

## THREE

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### The Creation of the Constituent Assembly and Institutional Change\*

I am very pleased to be with you at this university where I studied constitutional law six years ago. At the time, the study of the Constitution in my country was more akin to theology than to Colombian everyday life. Today, the Constitution enacted last year by a Constituent Assembly, has become the marrow of Colombia's future. The Constitution is not seen as an abstract set of legal concepts, but as a powerful tool for both social change and political modernization and renewal.

During the process itself, Colombia underwent amazing transformations. We Colombians believe that we not only have a new Constitution, but also that, despite our problems, ours is now a different country.

In these brief remarks, I will try to highlight the main aspects of what we may call Colombia's peaceful revolution.

I shall begin by underlining the context in which the constituent adventure arose. Then, I will summarize the main steps of the constitutional process, and the obstacles we had to overcome. Thirdly, without going into constitutional details, I will underscore the basic conceptions which guide our new constitutional charter. Finally, I will assess the practical results and the political significance of the new Constitution.

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\* CEPEDA, Manuel José (Presidential Advisor for the Development of the Constitution), speech delivered at Harvard University on May 6, 1992.

## A. The Context

### 1. Change since 1958

In July 1982, in a kind of academic diary, Professor Abraham Lowenthal, an acute observer of Latin America, and President of the Inter-American dialogue, recorded nine general impressions after a one week visit to Bogota. His main conclusion was that Colombia had undergone dramatic economic, social and cultural change during the previous 25 years.

His impressions are summarized as follows:

- 1) Unprecedented demographic changes.
- 2) Prominent role of women.
- 3) Transformation of the Colombian economy.
- 4) Rapid process of political mobilization.
- 5) Opening to international currents.
- 6) New regional balance.
- 7) Drastic changes in Colombia's attitudes, values and life style.
- 8) The political system was in need of more legitimacy.
- 9) Colombia had become a society deeply torn by criminal violence.

### 2. The Barriers Ahead, in 1986

The diagnosis made by Professor Lowenthal was, no doubt, very positive. The negative side was related to the general impact of the change process. The institutional and the political system needed more legitimacy and Colombian society was indeed overwhelmed by criminal violence. Aside from that, the drug problem was present as an "arising question".

## 3. Barco and Competitive Democracy

Very soon Colombians proved Lowenthal's diary right in the hardest way possible. They witnessed the assassination of the Minister of Justice just two years later and the assault by the M-19 guerrillas on the Court-house that led to the killing of half the members of the Supreme Court.

Thus, President Barco was elected in a critical moment, in 1986. He promoted tolerance, dialogue, the strengthening of civil authority, and more democracy. He was convinced that a democracy's problems could only be overcome through more democracy. It is possible to trace this policy through many decisions of Barco's government. Allow me to mention three of them:

1) The Government-Opposition scheme which ended more than thirty years (1953-1986) of coalition governments and promoted competition in our political system.

2) Political parties and political campaigning underwent important innovations, mainly to combat patronage and promote open debate among equal contenders.

3) In the most difficult area of public order, President Barco made enormous efforts both in promoting peace with the guerrillas, and in combatting terrorism linked to drug-trafficking. The peace process was ruled by clear guidelines. The peace agreement with the M-19 is a good example of the impact of this policy.

By January 1988, narcoterrorism had become the main threat to Colombia's democracy. Andrés Pastrana, who is fortunately with us today, had been kidnapped by the drug lords while he was running as candidate for Mayor of Bogotá. Although he was successfully liberated, Colombia's Attorney General, Carlos Mauro Hoyos, was murdered by narcoterrorists.

The efforts to push through political reform and reconciliation were therefore put at great risk by narcoterrorism. In this way the crisis of institutional legitimacy was deepened, and Colombians were plunged into a mood of pessimism and despair.



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At this moment, the predicament facing Colombia was either to sacrifice political reforms and reconciliation in order to initiate a national campaign of repressive policies, or to appeal to democratic procedures in order to face the legitimacy crisis which weakened the institutions threatened by narcoterrorism.

The judicial system, already in serious trouble because of an oppressive backlog, obsolescence and people's distrust, was now the main target of the selective terrorism tactics of drug traffickers. Apart from that, for decades there had been a strong aspiration for a new power relationship between the capital, or the center of the country, and the outlying regions. Finally, political alienation in the form of apathy, cynism and the proliferation of illegal behavior - ranging from tax evasion to private justice squads and paramilitary groups - was further eroding the political system and the respect for human rights.

#### B. The Origins of the Constitutional Reform: the Idea of the Plebiscite

At this crossroads, the idea of promoting a major constitutional reform through a process of massive popular participation was launched. In February 1988, President Barco announced his intention to use the local elections, to be held in March, in order to call a plebiscite to legitimize the amendment of the Constitution. There was immediate and overwhelming support for the idea. Indeed, previous administrations had promoted Constitutional reform in Congress, but their efforts had been fruitless. Both President López Michelsen (1974-1978) and President Turbay (1978-1982) addressed the issue of institutional decentralization and the strengthening of the judicial system. Due to technicalities, the Supreme Court declared unconstitutional their enormous efforts to introduce substantial reforms to our Constitution. During the Belisario Betancur administration (1982-1986), the Constitutional Reform failed at the last minute in Congress.

Considering these frustrating experiences, and facing the pressing need to adopt constitutional amendments through an expedient mechanism, the calling of a plebiscite was seen as the light at the end of the tunnel. However, to avoid partisan confrontation, an agreement was signed with the second largest political force, the Social Conservative Party, in order to agree on the draft of the text of the constitutional reform which would then be submitted to the people in a national referendum to be held in October of 1988. Several

Supreme Court decisions concerning national sovereignty were invoked to support the referendum. Nevertheless, the agreement signed by President Barco and Misael Pastrana Borrero was declared invalid by the State Council, on the grounds that the text of the amendment gave to Congress alone the power to reform the Constitution and therefore, to call a referendum would be unconstitutional.

#### C. The Revival of the Idea: the Seventh Ballot and the Constituent Assembly

At the beginning of 1990, the idea of a constitutional reform with the massive participation of the people reemerged. A constitutional reform bill had failed in Congress. Narcoterrorism reached its peak with the assassinations of Luis Carlos Galán, the Liberal presidential candidate (replaced by César Gaviria), Carlos Pizarro, the M-19 presidential candidate, and Bernardo Jaramillo, the Union Patriótica presidential candidate. The campaign was dominated by voices which called for structural change and national salvation.

Reforming the Constitution was linked to all these purposes. Thirty thousand students signed a petition supporting the idea of the plebiscite, this time to call a Constituent Assembly.

César Gaviria assumed this idea as his main program, both in the presidential campaign and once he was elected. He personally devoted a great amount of time and energy to negotiation with different political factions in order to build a consensus on the procedure of the reform and the content of the new Constitution. He was involved in the elaboration of the draft constitution that was submitted to the Constituent Assembly by the Government. This draft was based on a very broad process of democratic hearings in which hundreds of thousands of Colombians participated. It was participatory democracy at work, but still there were formidable obstacles to be overcome.

#### Transcending the Obstacles to Change

The first major impediment was the clause in the Constitution itself which gave Congress the amending power. To resolve this, Barco's and Gaviria's administrations endorsed the theory that since sovereignty lay with the people, an initiative coming from the people would be legitimate. The administration then provided sufficient political space for student demon-

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strators to demand a Constituent Assembly, so that the call would come from the people rather than from the government. This initiative was named the seventh ballot, since it was informally introduced in the general elections of March 1990, where six other ballots were used. As journalists, workers, intellectuals and young politicians joined the initiative, the Government's juridical role was to authorize the formal counting of the votes in the subsequent Presidential elections of May 1991, and to draft the text of the ballot wherein the main characteristics of the Assembly were defined. To provide a stronger legal basis for their position, the President invoked the state of siege. This was a matter of public order, it was argued, because several guerrillas had publicly stated that if a Constituent Assembly was convened, they would lay down their arms and join the reform process. The Supreme Court upheld both arguments.

Allow me a brief digression on the use of the state of siege. A crucial factor that, ironically, was key to finding a judicial and political solution to this constitutional puzzle, was the non-conventional use of the state of siege powers. Traditionally criticized as an antidemocratic instrument, they became the constitutional tool which opened the door to the democratic transformation of Colombia. Both President Barco and President Gaviria used this power, but with differing philosophies, in order to protect leftist groups, promote and guarantee dissenting opinions, further political participation and strengthen the Judiciary. Paradoxically, the state of siege became the means that enabled the Colombian government to modernize the political process, and to remove legal obstacles that restricted the transformation of the M-19 guerrilla group into a political party.

The second main obstacle to be overcome was apathy. In order to convince the people that changing the Constitution would change their lives as well, Gaviria's government: (1) initiated a television campaign to publicize the importance of the Assembly and to get the voters into the streets; (2) promoted "working groups" in municipalities across the country, in which people were invited to voice their problems and propose solutions; (3) negotiated with political parties to win their support for the process, so that they, in turn, would encourage their own members to become involved.

A third obstacle was the fear of putting Colombia's Constitution into the hands of a Constituent Assembly of seventy people. Eminent personalities, including former Presidents, spoke out against taking such a risk. President

Gaviria addressed this fear by striking a political agreement with the four main political parties. The agreement's purpose was to restrict the reasons for limiting the agenda, in other words, the items to be addressed by the Assembly, and to call for the election of the delegates on December 9, 1990. The Supreme Court, which had become less fearful, overturned these limitations, freeing the Assembly to consider any topic.

A fourth obstacle was the resistance of old-line politicians in the legislature, who did not want to surrender their amending powers to the people. Gaviria's government made three proposals to counter this forceful resistance: (1) It proposed that the Assembly could neither dissolve Congress nor convene after a fixed date on which its mandate was to end; (2) it proposed that members of the Constituent Assembly could not run for Congress for the following eight years, thus easing incumbents' fears of a new political elite rising to challenge them; (3) it stressed that the Assembly would be popularly elected, thus reassuring traditional politicians that this race would be run in an arena in which they were highly experienced. These three rules were included in the political agreement signed by the four main parties.

Nevertheless, the process of constitutional change was fraught with risks from the President's point of view. The primary one was that, in spite of the government's attempt to promote broad change, those who had exercised control in the past would find a way to continue to do so in the Assembly. However, by including in the agreement that the election of the delegates to the Assembly would be carried out in one common national district, rather than in several regional ones, the Government succeeded in opening the political process, and breaking the territorial lock which the old parties had held in most areas.

The election of the delegates to the Constituent Assembly was held in December of 1990. The Liberals won 30% of the total votes, giving them 24 seats. To everyone's surprise, the M-19, which had only recently demobilized, won 27%, which translated into 19 seats, and the Conservative Party split into two factions: The National Salvation Movement, which won 11 seats and the Social Conservatives, which won 9 seats. The few remaining seats were scattered among indigenous groups (2), evangelists (2), the student movement (1), and the Patriotic Union of the extreme left (2). In order to reflect the pluralistic composition of the Assembly, the delegates elected a plural presidency shared by Horacio Serpa, a liberal; Alvaro Gómez, the

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leader of the National Salvation Movement, and Antonio Navarro Wolff, the head of the M-19 Democratic Alliance.

#### D. Participatory Democracy and the New Constitution

With the leadership of President Gaviria, the new Constitution introduced radical changes to our political life. The main objective was to promote participatory democracy, that is, transferring powers to the citizens to enable them to be directly involved in those fundamental decisions in which they have an interest. The other aim was to strengthen the judicial power. In the end, the whole Constitution was changed.

The idea of participatory democracy was promoted with the argument that traditional representative democracy was insufficient to sustain the legitimacy of our institutions, and that the citizens wanted to be more involved in decision-making processes but lacked the channels necessary to present their views effectively. For the middle class, participatory democracy interpreted their feeling of mistrust of congressmen and political bosses, and their rejection of privilege and corruption. The process that led to the creation of the Constituent Assembly was seen as an example both of the virtues of participatory democracy and of its practical viability.

The entire Constitution is best understood as an instrument to promote this principal idea. First, every conceivable institution of direct democracy was introduced. These may operate not only at the local or regional level, but also at the national level. A referendum can be used to veto legislation already adopted or to approve bills that have been neglected by the representatives of the people. It can be applied also to constitutional amendments. The President, with the advice and consent of the Senate, may call national advisory referendums on any subject of public interest. A citizens' initiative is allowed for almost any issue. Recall of popularly elected mayors and governors is defined as a political right of citizens. As for congressmen, any citizen can demand his or her removal by a national judicial body on the grounds of the specific legal reasons stated in the Constitution.

Second, several constitutional clauses provide for the democratization of political parties, labor unions, professional colleges, universities, public administrators and other power holders which previously did not have to respond to democratic principles of participation and accountability.

Third, in order to transfer power to each individual, a generous Bill of Rights was adopted. It includes civil, political, social, economic, cultural and collective rights. Special emphasis was given to ecological issues and the right to a healthy environment. Institutions, like the Ombudsman or Public Defensor, and a special Constitutional Court, were created to assure the effectiveness of these rights. Expedient and special procedures to protect rights were created. The state of siege was abolished. Although temporary emergency powers may be used, Congress may regulate the powers of the Executive and its accountability to both Houses. All emergency decrees must be automatically reviewed by the Constitutional Court through a fast-track procedure.

Fourth, minorities received special protection and were guaranteed the tools necessary to foster their development. Affirmative action to further equality is clearly allowed. The articles regarding indigenous populations are a good example. Bilingual education was made mandatory in their territories; the state has a duty to preserve ethnic and cultural diversity; all religions are equally free under the law; their territorial collective rights were recognized; the autonomy of their governmental institutions is respected; and a special jurisdiction was created within their territories. In addition, they have the right to elect at least two senators and a number of representatives fixed by law.

Fifth, in a broad move towards federalization, the autonomy of the political territorial divisions of the state was guaranteed, local democracy was promoted and national functions and resources were decentralized.

Sixth, to promote pluralism, assure electoral fairness and provide equal political resources to the power contenders, several electoral and media reforms were introduced:

1. The so called "tarjetón" for all elections, which assures the total independence of the voter and works in favor of politicians without a national organization.
2. Direct popular election of governors.
3. A national district for the election of all the Senators.

4. Reduction of the membership of the Senate (102).
5. Reduction of the membership of the House (167).
6. Elimination of the alternate system and the mandatory coalition governments.
7. Free television and radio time for political candidates and parties, including those not represented in the Congress.
8. State subsidies for political parties.
9. Regulation of private financing of campaigns, which includes ceilings on the contributions to candidates and expenditures by candidates.
10. Absolute majority system for the election of the President, following the French model.
11. Popular election of the Vice-President.
12. Administration of the elections by an independent and autonomous organization with specific powers to preserve integrity and fairness in the campaign.

The other major reform was the complete revision of the system of separation of powers. The two fundamental concerns were, first, to reestablish an equilibrium among the three branches in a regime traditionally dominated by the Presidential figure and, second, to further a more responsible Government, with the hope that accountability would promote both efficient and clean public administration.

The judicial system was significantly strengthened. We moved towards an accusatory system which gives the State a greater capacity to investigate and prosecute criminals; especially where organized crime is concerned.

A national judicial body was created to handle the administrative, financial and disciplinary aspects of the judicial system. The final power of judicial

review, which had been in the hands of the Supreme Court for almost one hundred years, was entrusted to a Constitutional Court with the mission of giving life to the new constitutional philosophy. The new procedures to protect constitutional rights, foremost among them the protective action ("tutela"), enhanced the power of every judge in the country.

The legislative branch also received more powers to control excesses in delegated legislation, make appointments, take initiative in economic measures and discuss the budget. But with the strengthening of Congress, there also came a change in the electoral rules to increase its representativeness, as well as strict rules of conflict of interest and accountability for congressmen.

More importantly, Congress now has the power of voting a non-confidence motion over individual ministers, without censuring the whole government. To be effective, the motion must be approved by both Houses in joint session, by an absolute majority of the members, three days after its introduction by at least ten percent of the members of one House. These safeguards are aimed at preventing abuses.

This instrument, as well as others adapted from the Westminster parliamentary system to our needs, altered the system of separation of powers. The purpose is to make executive-legislative relations more fluid, to free them from the rigidities of separation of powers and to make them more open to the dynamic realities of political life.

#### E. The Results: their Significance and Impact

The new Constitution entered in force as soon as it was officially published, on July 6, 1991. The result is amazing. More than 80% of Colombians polled say they like their new Constitution. The Constitution has become a bestseller. But most importantly, the problem of legitimacy mentioned by Professor Lowenthal has been addressed at its root. There is more trust in the Government, and more confidence in the renewed institutional framework.

The new political and electoral framework began to be applied last October 27. An election was held in order to substitute the Congress that had been elected in 1990. On this same date, the first popular election of governors was held. The main political bosses lost ground in their zone of influence or were defeated.

The composition of the newly elected Congress shows the impact of the "peaceful revolution". The Liberals have an absolute majority, but popular support of the new political movements was enhanced, in comparison with the previous Congress.

The judicial system is working more effectively. A dramatic example of this renewed confidence of the judges is that the Mayor of Bogotá is now being detained without bail. The accusatory system has already been implemented by a new code of criminal procedure and the appointment of the National Prosecutor.

Although the new Congress is still trying to adapt itself to its new role, the Senate had enough confidence to expel one of its members for violating the strict rules of conduct.

Civilian control over the military and political accountability of the public forces were enhanced by President Gaviria's decision to appoint the first civilian Minister of Defense since 1957.

Minorities have been able to promote their interests more effectively. The indigenous populations now have five congressmen, fifty-two representatives in local councils and ten mayors, without counting their political power in the Amazon and other similar regions. As for women in a male-dominated culture, they now have 6.9% of the Senate, 7.4% of the House of Representatives and 5.6% of the total number of mayoralties.

Although human rights violations are still a very serious problem, public authorities are more concerned with this issue, and the people are more conscious of their new powers and clearly determined to use them. More than 2,500 protective actions or tutelas have been heard already by judges all over the country, to the surprise of those who opposed the Bill of Rights on the grounds that it was mere rhetoric. A massive television campaign to promote a culture of tolerance and equal respect is taking place at the moment. The Constitutional Court and the Public Defender have taken office.

The Presidency has twice used its special powers over social issues to address labor unrest and public utilities difficulties. Its control over the pluralistic

cabinet has not been threatened by a vote of non-confidence. Those motions that were promoted did not even receive enough support to be formally introduced to one of the Houses.

The Constituent process illustrates the strengths and very special features of our political system. The main characteristic of our political system is its "dynamic stability", to use an oxymoron. Indeed, Colombia has the most ancient and solid democracy in Latin America, but it has undergone fundamental political changes in the last few years. Colombia has a more than a one hundred year old constitutional tradition, and now, the most modern and advanced Constitution in Latin America. Colombia's party system has its origins in the mid-nineteenth century, but new political movements have arisen and have room to take root in our land. The preeminence of the Catholic church is notorious, but so is the deep and rapid spread of secular values in our culture. "Change with stability" is not an apt phrase to define our political system. I would prefer "stability because of change": stability because of the capacity of our political system to adapt to new situations and new challenges. And, on the other hand, "change because of our stability": change because we have a solid basis to dare to explore new institutional frameworks and open new political frontiers.

The second characteristic element of our political system is related to the first one. It is the surprising strength of our democracy to confront challenges, and even violent menaces, through democratic means. In the second half of the nineteenth century, the struggle between federated states was ended by a political process which culminated in the approval of the 1886 Constitution. In the 1930's the leftist groups influenced by communist ideas, were coopted by a reform movement promoted by the Liberal Party. In the middle of this century, the violent confrontation between liberals and conservatives was ended by a political agreement between their leaders and has subsequently disappeared. The agreement, called the National Front, was to share power for sixteen years and to alternate their candidates to the Presidency of the Republic. And three years ago, four leftist guerrilla movements entered a peace process, gave up their arms, organized themselves as political movements and two of them are now represented in Congress. Among them is the M-19, which had been the most aggressive one. Its leader has acknowledged several times in public that in order to make changes in Colombia, arms of democracy are more effective than those of violence.



The composition of the newly elected Congress shows the impact of the "peaceful revolution". The Liberals have an absolute majority, but popular support of the new political movements was enhanced, in comparison with the previous Congress.

The judicial system is working more effectively. A dramatic example of this renewed confidence of the judges is that the Mayor of Bogotá is now being detained without bail. The accusatory system has already been implemented by a new code of criminal procedure and the appointment of the National Prosecutor.

Although the new Congress is still trying to adapt itself to its new role, the Senate had enough confidence to expel one of its members for violating the strict rules of conduct.

Civilian control over the military and political accountability of the public forces were enhanced by President Gaviria's decision to appoint the first civilian Minister of Defense since 1957.

Minorities have been able to promote their interests more effectively. The indigenous populations now have five congressmen, fifty-two representatives in local councils and ten mayors, without counting their political power in the Amazon and other similar regions. As for women in a male-dominated culture, they now have 6.9% of the Senate, 7.4% of the House of Representatives and 5.6% of the total number of mayoralties.

Although human rights violations are still a very serious problem, public authorities are more concerned with this issue, and the people are more conscious of their new powers and clearly determined to use them. More than 2,500 protective actions or tutelas have been heard already by judges all over the country, to the surprise of those who opposed the Bill of Rights on the grounds that it was mere rhetoric. A massive television campaign to promote a culture of tolerance and equal respect is taking place at the moment. The Constitutional Court and the Public Defender have taken office.

The Presidency has twice used its special powers over social issues to address labor unrest and public utilities difficulties. Its control over the pluralistic

cabinet has not been threatened by a vote of non-confidence. Those motions that were promoted did not even receive enough support to be formally introduced to one of the Houses.

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A third characteristic element of our political system is its resilience. If Colombia had been invented in an industrial laboratory, one would say that it was previously tested to support anything. Poverty, as such, has not been the main source of instability and we are coping with it in spite of enormous difficulties. Violent situations that seemed unsolvable have been solved. Narcoterrorism has not only disappeared, but has been an incentive for people to defend democracy and justice. The Constituent Assembly dissolved an angry Congress, its decision was obeyed, new elections were peacefully held and the new Congress was installed last December 1st. Even earthquakes, like the one in Popayán, lead after sorrow to the enthusiastic rebuilding of the city affected. President Gaviria has said that Colombia becomes greater in the face of adversity. It is part of our culture: to build even in the middle of destruction; to adapt, not to suppress; to go ahead, instead of looking back.

The last main characteristic of the Colombian political system I want to underscore is its legalistic culture. We take the idea of the rule of law very seriously. As Alexis de Tocqueville once said of the United States, in Colombia sooner or later any political question becomes a judicial question. One may say that in Colombia everybody is presumed to be a lawyer, until proven innocent. Even the guerrilla groups sometimes argue in legal terms. For example, the main reason invoked by the last active guerrilla movement for not following the path of the others towards holding seats in the Constituent Assembly, was that the Assembly was not originally created as a sovereign body but was limited in its amending powers.

These four characteristics evidence a strong democracy coping successfully with difficult problems, and doing it by introducing change through institutional mechanisms and without risking its stability.

#### F. Conclusion

The message I want to convey to all of you is that Colombia is focused on the future.

It is ready to make more changes if necessary to preserve its stability. It is prepared to endure the challenges that lie ahead. It is determined to construct a workable participatory democracy. It hopes the new Constitution will promote pluralism, equality, participation and respect for human rights.

Those are very difficult objectives, indeed. As it was said in Colombia when the idea of changing a hundred-year-old Constitution faced so many and such great obstacles, it was like dreaming the impossible dream. But the creation of the Constituent Assembly proved something unbelievable: in Colombia, Gabriel García Márquez's magical realism is part of our lives, even in the legal and political realm.

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### An Overall View of the Constitutional Changes\*

*It is a pleasure for me to have the opportunity to address this prestigious community in order to express a few thoughts regarding the 1991 Political Constitution. I sincerely thank The Lawyers' College for their cordial invitation and you for having spared some of your valuable time to hear me on a subject that is summed up in the title of this talk: From the New Constitution to a New Constitutionalism.*

*What does this new constitutionalism consist of? What are the challenges it faces? These are the two questions I intend to answer.*

*On July 4th, 1991, the Constituent Assembly promulgated a new Constitution. A tremendous change took place in the Republic's basic law. Its structure is different, as well as the subjects it encompasses, its wording and its level of generality. New institutions were born. Others were reformed or abolished. The Constitution promulgated is more modern, but nonetheless preserves the great contributions by the jurists of whom this country of laws is proud.*

*The fact that the Assembly carried out its work on the firm ground of over one hundred years of a constitutional tradition was precisely what made it*

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possible to achieve in such a short time this ambitious step in the building of a new constitutional democracy.

I could, at this point, present a detailed analysis of the institutional transformations that were effected by the new Constitution. However, I just want to point out that the change has been so enormous, that reforms which no one had hoped for four years ago have received scant attention, perhaps because their importance has been overshadowed by all the changes that represent what President César Gaviria has termed "a peaceful revolution".

Allow me to mention some of the subjects that already appear to belong to a distant past. Just a few years ago, one could speak of the unalterable bipartisanship, the prolongation of the National Front, the Concordat as the leitmotiv in Church/State relations, the impossibility of calling a plebiscite, and the assertion that Colombia would be unable to survive without a state of siege. All this has changed. And the reforms which no one imagined would pass in such a short time, were enacted with surprisingly little fanfare in the new Constitution. The reference to traditional political parties has been deleted in the preamble and a special chapter has been devoted to the multipartisan regime currently being developed. The paragraph of Article 120 has been deleted, as well as parity in the high courts of justice, without anyone noticing the dismantling of the last vestiges of the National Front. There is no longer a chapter in the Constitution devoted to Church/State relations, but an article in the Bill of Rights provides that all churches and religions are equally free before the law. The state of siege was revoked by President César Gaviria, and has been abolished as a legal institution. Now, plebiscites are allowed, as are referendums, popular initiatives, the recall of elected representatives, and many other constitutional instruments that will allow people to take in their hands the reins of their own destiny.

Although the reforms are numerous, I think that drawing up a comparative chart to set out the differences between the Constitution of 1886 and the Constitution of 1991 might, paradoxically, dim what may be the greatest change of all. Although the constitutional text changed radically, the change in how we conceive the Constitution is deeper still. It is this different conception that compels us to talk about a new constitutionalism.

The Constitution of 1991 is inspired by the desire to promote values different from the values of freedom and order, which predominated in the Constitu-

tion of 1886. In addition, the conception of the basic institutions is different in the Constitution of 1991, even those like judicial review, which was maintained under the aegis of a special body. All of this is framed in a Constitution that was born in a pluralist forum, vigorously breaking new ground in Colombia in setting out norms that had been germinating for the past fifty years.

These elements of the new constitutionalism raise interesting challenges for those of us who, in one way or another, participated in the drafting and development of the 1991 Constitution.

It is of the utmost importance, in order to understand the development of our constitutional tradition, to realize that the values which predominate in the 1991 Constitution are different from those of freedom and order. Allow me to draw a comparison between the experience of Eastern Europe and our experience in Colombia to illustrate this point.

While Colombia was beginning to emerge from a deep crisis that threatened the survival of our democracy, in Eastern Europe the walls, that for many years had divided neighboring countries, were being torn down and young activists used slogans of freedom to defend themselves against the tanks that tried unsuccessfully to block this democratic change. In China, at Tienanmen Square, lamentably the flame of freedom was extinguished with a heavy toll in human lives.

In Colombia, the situation was quite different. The government joined the civilian movements demanding a major change, to channel them through a peaceful process of institutional and political renewal. There were no tanks, bullets or clubs. There was no active opposition to this civil revolution. Except for a few voices of caution, everyone was convinced that it was imperative to turn the crisis into a unique and singular opportunity.

Forces were united in the desire for change and by an ethics of participation. All of it was interwoven with a strong feeling of openness and peace.

In that year of revolutions, Colombia was an example to the world. The country achieved through the ballotbox what others could only do by force. Without violating the rule of law, a new constitutional order was created.

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If we continue the comparison between our experience and that of Europe, it is clear that the spirit that stirred the national masses here encompassed more than the ideal of freedom. In this too, Colombia went much farther. The French Revolution of 1789 was based on liberty, equality, and fraternity. In Eastern Europe, the battle was waged to conquer only the first of those ideals. Via mass media throughout the world, the sentence of a young girl activist resounded: "Since I'll die only once, I want to die for freedom". On the other hand, the Colombian revolution of 1991 was based on equality, participation, and peace, if it is possible to reduce to only three words the values that guided the constituent process. Ours was, perhaps, a more ambitious undertaking, although clearly less dramatic.

I refer to the origin of the 1991 Constitution, not to suggest that the words, "liberty and order" in the national emblem should be replaced by the words "equality, participation and peace" - although this contrast does reflect the current concerns of Colombians - but to try to highlight the values that, in the final analysis, framed the new Constitution and which are the essence of the philosophy of participatory democracy that prevails in the Constitutional Charter.

Peace, the result of a new social contract and maintained by the new rules of the political game, has been a persistent goal in our constitutional history: in 1886, to put an end to the wars of the nineteenth century; in 1957, to end the armed confrontation between the parties; and now in 1991, to create mechanisms to incorporate the guerrilla groups into civilian life and to promote tolerance for different ideas and for the political differences on which pluralism is based.

Equality also prevails in the Constitution. Not only because the right to equality is established in very broad and progressive terms - a right that took a civil war to inscribe it in the United States Constitution - but also because the whole chapter covering social and economic rights captures the ideal of social justice, the essence of which is equality. In addition, regarding the new rules of the political game, one sees evidence of a concern to make room for minorities, in order to repair a situation that perhaps excluded from the political community sections of the population who should have always had what they are beginning to have now. One also sees a concern to establish a balance in the electoral debate through the creation of new institutions which have already demonstrated their efficiency in this area. The 1991 Constitu-

tion wants to progress from political freedom to equality in the political arena and for this reason, gives special attention to state financing of campaigns and parties, access to the mass media, the voting procedures, and the institutionalization of political movements and parties.

As far as participation is concerned, it is clear that the 1991 Constitution is perhaps the most generous in the world regarding the citizens. The idea of participation gained strength, not only due to the former exclusion of the people, by closed-door discussions and privileges, which generated so much resentment from those who were not beneficiaries of that past, but mostly because representative democracy as it existed in the 1886 Constitution did not recognize that citizens wanted more open forums in which they could effectively express their opinions on decisions which affected or interested them. Congress was formerly the body which required a popular origin in order to establish democratic legitimacy for its decisions and laws. Now many other centers of power may be, for the common citizen, even more relevant and more influential in his everyday life. For this reason, it was necessary to create mechanisms of participation which would operate outside the electoral scheme, so that the exercise of democracy could take place in public administration, labor unions, trade associations and other non-electoral arenas.

Apart from the foregoing predominant values, there is a second fundamental element in the new constitutionalism to which I would like to refer, that is, the transformation of concepts, as opposed to the regulation of institutions. As an example, I will analyze how the concept of rights, separation of powers, presidential power and judicial review changed in the new Constitution. Through the analysis of these four basic topics, we will see that, indeed, a profound change has occurred.

Regarding rights, it is well known that individual rights, civil rights and political rights, which were already included in the former Constitution, were broadened. Social, economic and cultural rights were set out in a special chapter and under this heading, the rights of the elderly were specifically recognized. This alone would have represented a significant development. However, what is more important is that the concept of having a constitutional right has completely changed. To have a right, according to the 1991 Constitution, does not mean one has an expectation or an aspiration. Neither does it mean to be beneficiary of a declaration of ideals or laudable goals. To



have a right, according to the 1991 Constitution, is to have power. Simply that, power.

The well-known maxim, "the interest of an individual should give place to the public good", aptly serves to demonstrate the extent to which rights will now exist as powers in the Constitution. I quoted this phrase to point out that after the 1991 Constitution, it will no longer be possible to employ it as a general principle of interpretation. It will still apply to property. But it will no longer serve as a basis to establish limitations that would affect the rights recognized in the new Charter.

When the Constitution selected some of the many aspirations of the community to give them the character of rights, it established a relationship between authority and individuals which is quite different from that in the 1886 Constitution. In fact, it is no longer possible to treat private interests and the rights of individuals similarly. There is a difference between an interest which needs to be politically promoted, and a right already guaranteed by the Constitution. It is clear that when a private interest that has been protected by a constitutional right is in conflict with a public interest, we must adopt different criteria from those to be applied when there is no constitutional protection.

The strength of rights is now greater. The effort to defend human dignity is wasted if rights are not taken seriously. And to do this, one must turn on its head the maxim to which I referred earlier. Therefore, between the public interest and individual rights, the latter must prevail.

Is there no middle road? I have asked myself that question many times. In fact, it is difficult to find one. One could imagine striking a balance between the public interest and the right that is in conflict with it. However, this approach may be used only to determine what limitations to the rights are permissible, not to justify overriding the fundamental values protected by the Constitution.

It is important to take this approach as a general principle of interpretation. One wants to avoid a situation whereby the state would invoke a plethora of reasons against an individual's claim that the public interest ends where his right begins. The claim of the individual would then appear negligible before

the magnitude of the state's arguments. As philosopher Ronald Dworkin, a leading thinker on the philosophy of rights, warns: "The value of liberty cannot be measured piecemeal, in iotas of information sacrificed or imagination stifled or creativity impaired or innocent people convicted. Measured case-by-case against the immediate aims of ordinary politics, the value of liberty will always seem speculative and marginal; it will always seem academic, abstract, and dispensable. Liberty is already lost, whatever the outcome, as soon as old freedoms are put at risk in cost-benefit politics. A decent nation is committed to freedom in a different way. It knows that liberty's value lies on a different scale, that invading freedom is not a useful technique of government but a compromise of the nation's dignity and civilization."

The primacy of rights is not exclusively derived from Article 5 of the new Constitution which expressly recognizes the "primacy of the individual's inalienable rights", but also from the importance attributed to them during the whole process of constitutional reform. It is inferred from the proposal of the Bill of Rights, and from the creation of a special chapter in the Constitution on rights.

On the subject of rights, there is another change that complements the preceding. Frequently throughout the Constitution we find the word "effectiveness" attached to "rights". The 1991 Constitution was not satisfied with mere formal acknowledgment of rights, but wished to see them fulfilled in everyday life. The intention is that freedom should not be the privilege of those who have the resources to enjoy it. On this point, the constituents preferred to disagree with Montesquieu.

The Baron of Montesquieu ended his famous chapter on the "Constitution of England" in the *Spirit of Laws* with the following comment on whether his task should be to study to what extent Englishmen actually enjoyed liberties: "It is sufficient for my purpose to observe that they are established by their laws, and I am not going to enquire further." However, if we review English history, it would have been worth further inquiry, because in 1746, when the *Spirit of Laws* was published, the right to vote in England was extremely restricted and even that tiny electorate was not consulted when, in 1776, the Parliament decided by means of a law to extend their own legislative session for four additional years, thus disregarding the right to vote, so cherished by the English tradition.

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The Colombian Constitution shows such a concern about the effective fulfillment of the above mentioned right that it even regulates matters relating to voting procedures. It is an excess of detail which, however, has a purpose. It has the aim of ensuring that constitutional rights are not merely a piece of paper but that they truly constitute a conquest which benefits all Colombians.

The writ of protection, the writ of mandamus, the popular actions and the other instruments created to ensure the protection of rights by the judges, the creation of the Ombudsman and the Constitutional Court, and the principles of application and interpretation of the Bill of Rights, are all designed to build a framework to guarantee the true enjoyment of the powers which the Constitution grants to private individuals.

Additionally, the conception of the principle of separation of powers has also changed.

Certainly, the main reason for dividing government into different branches, and establishing checks and balances so that one branch controls the other, was to protect the freedom of the individual from the abuses and excesses of the authorities. This protection was effected by making it difficult for the state to intervene in the private domain of individuals. Nonetheless, our Bill of Rights, since it is so broad and generous, includes a number of individual guarantees which weaken the historical justification for the principle of separation of powers. The fear that the Executive and Legislative branches, acting jointly for a common purpose, could endanger freedom, is dispelled to the extent that even if such should occur, the person who feels threatened may invoke his rights to prevent abuses or excesses.

The Bill of Rights thus allows the branches of government to have a more fluid relationship and be more interwoven to work jointly for national goals. This is stipulated in the 1991 Constitution. A good example of the way in which the branches of government act jointly in the adoption of decisions, is the election of magistrates to the Constitutional Court. The Senate elects them from three person rosters submitted by the President of the Republic; the Supreme Court of Justice, and the Council of State. The three branches work together to elect the highest authority entrusted with interpreting the Constitution. I have used this example because it shows how, even concerning subjects in which the natural trend - due to the fear of affecting the

independence of the Judiciary - is to draw clear lines between each branch, the 1991 Constitution sets up a system of cooperation among them. Nevertheless, as it must be, it maintains the general and basic principle of judicial independence.

The controversial institution of the vote of non-confidence is an example of the fluidity in the new relationship between the Executive and Legislative branches. With the vote of non-confidence, the President of the Republic relinquishes the absolute control he used to have on his cabinet, since Congress may order the removal of a Minister. However, the members of Congress may not be ministers, by express prohibition of the Constitution, to discourage congressmen hoping to become ministers from supporting motions of non-confidence. Where will this constitutional scheme lead? The experience of other countries which have a similar regime suggests that the Cabinets will be increasingly more technical although its members may have close ties with the main political groups in both the House of Representatives and the Senate. But it may well happen that in order to give sufficient political clout to his Cabinet, the President will prefer to choose leaders with great prestige in national life. In any case, the stability of the Cabinet shall depend more than ever, on political realities: on the future of the newly created political movements, on the composition of Congress, on the strength of the party or movement to which the President belongs, on whether the President succeeds in creating a climate of understanding between the Executive and Legislative branches, on the character of the President of the Republic, in short, on so many factors that no one would dare to speculate on the future of relations between the Executive branch and Congress based only on the text of the new Constitution. Those political realities will vary in accordance with the circumstances, and therefore the relations are fluid, and not overly delineated in the Constitution.

The main concern regarding this scheme is that it may lead to unresolvable confrontations between these two branches of government. If there is no auxiliary mechanism, the country could then be faced with a paralysis in the decision-making process required to undertake a government program or to deal with important problems affecting the people. In the face of this danger, the issue-referendum acquires a paramount importance. Usually this institution is regarded as one of so many instruments of democratic participation established in the new Constitution. However, its main value perhaps lies in

The Colombian Constitution shows such a concern about the effective fulfillment of the above mentioned right that it even regulates matters relating to voting procedures. It is an excess of detail which, however, has a purpose. It has the aim of ensuring that constitutional rights are not merely a piece of paper but that they truly constitute a conquest which benefits all Colombians.

The writ of protection, the writ of mandamus, the popular actions and the other instruments created to ensure the protection of rights by the judges, the creation of the Ombudsman and the Constitutional Court, and the principles of application and interpretation of the Bill of Rights, are all designed to build a framework to guarantee the true enjoyment of the powers which the Constitution grants to private individuals.

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being the procedure which can place decision-making power in the hands of the people in the eventuality of a confrontation between Congress and the President. Viewed from this standpoint, the issue-referendum becomes key in the new relationship between the branches of government.

To sum up, the 1991 Constitution does not draw clear lines to delimit the scope of each one of the branches of government. On the contrary, it seeks to interweave them and create institutions that promote a fluid relationship between them. And to reduce the risks implicit in this new model of separation of powers, it creates institutions like the issue-referendum.

Given this scheme, it is not inconceivable to ask if we can continue talking about the existence of a separation of powers. In my opinion, the change in direction did not go so far as to eliminate this principle. Congress continues to make the laws. The Judicial branch is still the final arbiter of conflict. The Executive branch continues to be responsible for ensuring the execution of the laws. However, the new conception of the separation of powers, on a reading of the Constitution as a whole, is very different from the former one.

In the third place, the 1991 Constitution also changed the conception of presidential power. The decrease in the powers of the president has been a subject of much comment in the newspapers. It is rather curious that after so much criticism of excessive "presidentialism", or of the "elected monarchy" as some people called it, so many voices are raised now to deplore the reduction of presidential power. But, as you may remember, President César Gaviria, upon closing the sessions of the Constituent Assembly, clearly stated that he did not see the Executive branch as weakened.

It makes sense to take a closer look at the institution of the President in the new Constitution. For this analysis, we may choose either one of two methods. The first one is to carry out a sort of mathematical exercise and calculate what the Executive branch lost, what it gained, and what remained the same. From this approach, after adding and subtracting, the conclusion will be that it was weakened because it lost the faculty of appointing governors, because it no longer has exclusive control over the duration of ministers or because the state of siege was abolished. However, there is another approach which does not view the new Constitution as a mere amendment.

The second method is to analyze the Constitution as a whole, always taking into account the interrelationships. From this second standpoint, it may be seen that presidential power has changed. Has the Executive branch really been weakened if one considers that it has the faculty to consult the people by calling an issue-referendum on matters of national importance? How is the new presidential power affected in a system where plebiscites are allowed but the rules for calling them are not well defined? How is the President strengthened with regard to public administration now that he has the power to eliminate or merge national administrative entities or bodies and to modify their structure? If one does not adopt an overall vision, one could be in the contradictory position of asserting that presidential power has been increased to the point of reaching the administration of justice because the National Public Prosecutor has its origin in the Executive, and at the same time, saying that the Executive has been weakened.

Within an overall framework, the 1991 Constitution has created a new Executive branch, with different powers and responsibilities, with a different way of relating to the other branches of government and with a special link to the people who elect the President. Whether it will be stronger or weaker; whether it will have more or less capacity to maneuver in its dealings with Congress; whether it infringes on the judicial branch or not; whether it will employ the issue-referendum and all the other instruments of participation at the national level to promote its programs outside the bodies of political representation; are all questions that remain to be answered. We must wait for the Constitution to work and leave its mark on our tradition and our culture and the latter, in turn, to give shape to the Constitution.

In our juridical tradition, presidential power is as typical as the institution of judicial review exerted by independent judges. The 1991 Constitution respects the main achievements of the Colombian system of judicial review but changes its conception. A Constitutional Court was created. It will not be composed exclusively of specialists in public law. Their specialization will develop from the everyday performance of their duty to defend the Constitution. The decentralized system that allows each judge to become a guardian of the Constitution remains. The public declaratory action of unconstitutionality, doubtlessly one of the main contributions of our country to the world of law, is enriched and broadened in its scope. Judicial review is still exercised by the judiciary, not dependent on politics, and exerted by independent magistrates.

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All of the above is preserved but, as I already stated, judicial review, which is essential for the preservation of the rule of law, is conceived in a different way. In the first place, since an abstract review which compares principles of different hierarchies is complemented by a concrete review wherein the primary task is to appreciate what is happening in a concrete case with the fundamental rights. That is why in the article on the writ of protection, reference is made to the acts or omissions of the authorities as a question of fact and not to their juridical dimension. Thus, what really matters is the reality, the facts, the circumstances in which an individual is involved. To disregard the context of a situation and the special conditions of an individual, in order to impose the law above the rights, may lead us to a situation in which the law is perceived by the citizens as a "blind and obstinate tyrant", as one of the great Greek philosophers warned. These were the words used by President César Gaviria when he emphasized this far-reaching change in his address to the Constituent Assembly on April 17, 1991.

Allow me to give an example to illustrate the implications of this change. As it is well known, the law establishes that in order to be recognized as an institution with legal capacity by the National Electoral Council, a political party had to submit a list of ten thousand supporters or have an equivalent number of votes in the immediately preceding election. In an abstract sense, this requirement does not present problems of constitutionality and in fact, the Supreme Court of Justice stated this in its decision regarding the constitutionality of Law 58 of 1985. Nevertheless, in practice, for extreme left parties or political movements to publish a list of sympathizers or activists could seriously endanger the lives of the members or their families when the situation of public order deteriorates, as happened several years ago when terrorists attacked leftist leaders. In these circumstances, to demand a public list of supporters in order to obtain legal status could seriously threaten basic rights. This was, in fact, recognized by the National Registrar at the time. It has also been accepted by constitutional judges of other countries when they had to adjudicate cases where the right to privacy in political association was at stake.

But the change in the conception of judicial review is not only the result of it being complemented by the writ of protection or by the other instruments available to defend rights in specific situations invoking judicial protection. Even with regard to abstract review, the Constitution seeks to set up procedures so that the reality underlying a challenged statute is evident at the

time of reviewing its constitutionality. For example, the Constitution orders that the President of the Republic or the President of the Congress be informed when any decree or statute issued by them is being reviewed by the Constitutional Court, in order that the Executive and Legislative branches may submit their reasons for upholding the constitutionality of the relevant provisions.

In the decree issued on September 4th, 1991, in the exercise of the extraordinary powers granted by the Constituent Assembly to the President of the Republic to regulate the Constitutional Court procedures, this new conception of abstract review is fully accepted, although perhaps we should no longer call it abstract, since now the concrete context that justifies a regulation will appear at the time of reviewing its constitutionality. This decree even refers to conflict of interests, which might appear strange viewed from the traditional standpoint that the public declaratory action of unconstitutionality is filed in the public interest and not to promote the interests of a private person or group. However, it would be illusory, after the Colombian experience, to maintain the myth that no interests are involved in the constitutional process other than the preservation of the supremacy of the Constitution.

I could have continued giving examples of key institutions in the new constitutional order to emphasize how they not only are organized in a different way but also that they reflect a different conception from the one prevailing in our constitutional tradition. And this change, in my opinion, is the most significant one in the development of a new constitutionalism.

This leads us to a fundamental aspect of the 1991 Constitution. Due to the nature of its texts and its recent and pluralist origin, the new Constitution is open to being shaped by the real world. We have a Constitution that will continue developing following the path of the new Colombia now being built. To state that it is a living Constitution is not just a metaphor. And although it might seem paradoxical, the 1991 Constitution, despite being detailed, offers ample room for interpretation.

The Constitution is a masterpiece of permanent creation to which political leaders, common citizens, and experts have all contributed.

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The great challenge, then, that the new constitutionalism presents for the legal community is to develop theories and doctrine and to establish criteria compatible with Colombia's new Constitution. Perhaps the expression, "compatible", is somewhat limited. In the face of such a dynamic situation as ours and with a Constitution whose main purpose is to promote change, the challenge is to ensure that this Constitution becomes part of the lives of Colombians and contributes to transform the social, economic and political relations which are not in harmony with the values of equality, participation and peace.

For the judge and the scholar, to approach a Constitution that is one hundred years old is quite different from approaching a Constitution born a few months ago; finding the meaning in texts open to be enriched by reality, is quite different from finding it in rules which seek to frame that reality within a rigid framework; harmonizing freedom and order, a weighty task in itself, is less difficult than harmonizing these values after equality, participation and peace become predominant.

The journey that lies ahead for the legal community is even more interesting if we take into account the fact that the new Constitution represents such a considerable development that it cannot be analyzed using old models and concepts. What for an expert on the 1886 Constitution may appear incoherent, for an adept of the 1991 Constitution is an example of balance, of synthesis, of reconciliation. What for a person from the past is a shapeless work, for the citizen of the future is an innovation that opens doors, creates opportunities, and clears the path towards hope.

And if we look at the new role of the Constitution in the context of society, we realize that the task of interpreting it must be carried out in the midst of a paradox. The 1991 Constitution has the function of legitimizing a political system, *although the present one is in the process of creation and maturing*. But at the same time, the 1991 Constitution, by its mere existence, embodies a critique of many practices of our everyday life. Since the past that our Constitution pretends to replace, is still part of the present, the 1991 Constitution is an implicit criticism of the current existing order.

What a great task lies ahead! What imagination and care will be required to undertake it! A full measure of good judgment will be needed, to enrich this creative journey with the bounty of the Colombian legal heritage!

Fortunately for Colombians, our country, like few in the world, can rely on a jurisprudential tradition and a legal community that are innovative. But above all, to begin the journey to develop a new constitutionalism, Colombia has to its credit a broad legal community which has been shaped with a high regard for the principles of the rule of law and which has received direction from influential jurists that we all know and admire.

I therefore wish you success in the task that lies ahead.

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### The Writ of Protection: a Human Rights Revolution

The writ of protection, as set out in chapter 4 of the Constitution, is the most visible symbol of the effectiveness of Colombia's new Constitution and perhaps, the most important instrument therein to guarantee the respect of fundamental rights and freedoms. It is an innovative and, indeed, revolutionary procedure, designed to allow the common citizen to demand quickly and easily, that justice be done in a given case. Although the procedure resembles that of injunction, it goes much further and is much broader than a simple injunction. It is a *sui generis* legal procedure that provides a fast-track, emergency measure for the protection of fundamental rights and freedoms, can be invoked without the need for lawyers nor formal legal petitions and is specifically designed to deal with particular cases of injustice and arbitrariness when constitutionally guaranteed rights have been violated.

The characteristics of the writ of protection are that it must be filed by the affected party, or if that is not possible, then by an intermediary at his request. In some cases, the Ombudsman may be involved to assist in the procedure. The writ may be filed at any time, including on weekends, before any judge or tribunal having jurisdiction over the place where the events occurred.

The affected party need only describe the facts and events upon which the petition is based, and include his name and address. There are no prescribed formalities or legal briefs, and in fact, the writ of protection may take the form of a written or verbal presentation. If any necessary information is missing from the petition, the judge may request that the party provide it within three days of filing the writ of protection. The opposing party then has three days in which to present his defense.

## ADDENDUM

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The trial judge must deliver his judgment within ten days and an appeal may be filed within three days following the judgment. Judgment on the appeal must be delivered within twenty days. The Constitutional Court appeal must automatically be filed within ten days following the judgment of the appellate court. The Constitutional Court then has one month to select, at its own discretion, the judgments it will review, and three months to hand down the final judgment. This procedure is an extraordinarily rapid one in a country where the average trial may last for years.

The writ of protection has proven to be as popular and accessible as was intended by the framers of the Constitution. In the first year, 7,000 actions were filed. Although more than 60% of writs of protection filed have been denied, almost all enumerated constitutional rights have been protected in particular cases. The most commonly invoked rights in the initial stages were the right to due process and the right to work. Later, this was overtaken by actions demanding protection for the right to education, equality, autonomy, and privacy. The Constitutional Court receives an average of fifty to one hundred requests daily for review of writs of protection, and has reviewed approximately 8% of all judgments. This is a very respectable average, when one considers that the Constitutional Court in Germany only agrees to hear 1.9% of similar petitions.

The writ of protection is a fundamental mechanism which gives effect to the supremacy of the Constitution. It covers at least twenty-three constitutionally guaranteed rights, among them the right to life, the right to equality, the right not to be subject to cruel and inhuman punishment, the right to a legal identity, dignity and personal intimacy, the right to freedom of expression, conscience and belief, freedom of speech and the right to peaceful assembly. Due to the broad ambit of the writ of protection, it is effecting a reform in all areas of the law, which must conform to the Constitution pursuant to judgments on these actions.

The writ of protection is only available for the protection of fundamental rights guaranteed in the Constitution where no other legal means exist to assert these rights. However, it is interesting to note that the Constitutional Court has given a very broad interpretation to this principle in order to ensure that fundamental rights are protected in practice and not only in theory.

For example, in the case of a pensioner claiming the right to receive his pension, the Court decided that although an administrative procedure existed to make his claim, due to his advanced age the delays involved in this procedure nullified his right and therefore, the Court recognized his claim by way of writ of protection.<sup>(1)</sup> Another example of this openness is the case of a patient with AIDS claiming the right to free medical care in a public hospital. The Constitutional Court affirmed the decision of the Council of State ordering the director of the hospital to immediately provide the necessary medical services and explicitly stated that the State must not discriminate against those suffering from AIDS, whether in the provision of services, employment, or freedom of mobility.<sup>(2)</sup> A case which demonstrates the broad interpretation given by the Court to fundamental rights is that involving a prisoner in a penitentiary who was denied the right to immediate medical attention for his glaucoma and risked losing his eyesight.<sup>(3)</sup> The Court recognized his claim, stating that the right to health, if it involves a question of life and death or the integrity of the person, becomes a constitutionally protected fundamental human right.

In the case of a neighborhood which wished to prevent children from playing soccer on Sunday mornings at a local park due to complaints about the noise, the Court stated that the children's right to recreation, as protected under articles 44 and 52 of the Constitution, was included in the fundamental right to free development of personality and prevailed over the rights of the neighbors.<sup>(4)</sup> The Court has also recognized the right of indigenous communities to preserve their traditional cultural habitat against a proposed highway expansion<sup>(5)</sup>, the right of a member of an ultra-leftist political group to protection of himself and his family from persecution by individual members of the armed forces<sup>(6)</sup>, and the obligation of a news broadcast to clearly distinguish between fact and opinion to guarantee that the television audience receives the information necessary to form its own opinion<sup>(7)</sup>.

<sup>(1)</sup> #T-011-93, Marco Tulio Villarreal Escobar

<sup>(2)</sup> #T-505, August 1992, Diego Serna

<sup>(3)</sup> #T-522, September 1992, Baldoyno Asprilla Rivas

<sup>(4)</sup> #T-466, March 1992, Diego José García Molina et. al.

<sup>(5)</sup> #T-428, June 1992, Amado de Jesús Carupia Yagari

<sup>(6)</sup> #T-439, July 1992, Luis Humberto Rolón Maldonado

<sup>(7)</sup> #T-080-93, Gustavo Dájer Chadid vs. QAP

The trial judge must deliver his judgment within ten days and an appeal may be filed within three days following the judgment. Judgment on the appeal must be delivered within twenty days. The Constitutional Court appeal must automatically be filed within ten days following the judgment of the appellate court. The Constitutional Court then has one month to select, at its own discretion, the judgments it will review, and three months to hand down the final judgment. This procedure is an extraordinarily rapid one in a country where the average trial may last for years.

The writ of protection has proven to be as popular and accessible as was intended by the framers of the Constitution. In the first year, 7,000 actions were filed. Although more than 60% of writs of protection filed have been denied, almost all enumerated constitutional rights have been protected in particular cases. The most commonly invoked rights in the initial stages were the right to due process and the right to work. Later, this was overtaken by actions demanding protection for the right to education, equality, autonomy, and privacy. The Constitutional Court receives an average of fifty to one hundred requests daily for review of writs of protection, and has reviewed approximately 8% of all judgments. This is a very respectable average, when one considers that the Constitutional Court in Germany only agrees to hear 1.9% of similar petitions.

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<sup>(7)</sup> #T-080-93, Gustavo Dájer Chadid vs. QAP

A second element circumscribing the writ of protection is that it may not be invoked to obtain a declaration of unconstitutionality of a general or abstract legal rule, but rather applies to concrete cases where fundamental rights have been violated or threatened. Nonetheless, any legal norm may be challenged on the grounds of unconstitutionality by an individual using another procedure, the popular action. Mandamus or nullity may be invoked before the Council of State against an allegedly unconstitutional administrative act, and a declaratory action of unconstitutionality may be filed to challenge a law before the Constitutional Court. Finally, the writ of protection does not avail against final judgments or sentences which constitute *res judicata*, but it can be invoked against grossly arbitrary conduct by judges which constitutes a violation of due process.<sup>(6)</sup>

Based on the experience of the courts to date and the enthusiasm with which the people of Colombia have embraced this new means to demand their fundamental rights and freedoms, the protective action seems destined for a starring role in the evolution of the new Constitution and the development of a society based on the respect of basic human rights.

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<sup>(6)</sup> #T-079-93, February 1993, Claudia Patricia Rojas

## RECOGNITION

Lorianne Weston de Peckel (Lawyer from the Quebec Bar Association)  
translated the documents registered in this edition.

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**Cuadro No. 1**  
**ACTIVIDAD DE LA PRIMERA CORTE CONSTITUCIONAL\***  
**(MARZO 1992- MARZO 1993)**

<b>TUTELAS (writ of protection)</b>	
Concedidas	103
Negadas	144
<b>TOTAL</b>	<b>247</b>
<b>CONSTITUCIONALIDAD</b>	
Ordinarios (demanda)	
Exequibles	37
Inexequibles	11
Inexequibilidad parcial	22
Inhibitorios	5
<b>Total</b>	<b>75</b>
Tratados (automático)	
Exequibles	7
Inexequibles	5*
<b>Total</b>	<b>12</b>
Decretos de excepción (automático)	
Exequibles	27
Inexequibilidad parcial	1
<b>Total</b>	<b>28</b>
Objeciones Presidenciales	
Exequibles	1
Inexequibles	0
<b>Total</b>	<b>1</b>
<b>TOTAL</b>	<b>116</b>
Total exequibles	72
Total inexequibles	16
Total inhibitorios	5
Total inexequibilidad parcial	23
<b>TOTAL SENTENCIAS</b>	<b>363</b>

\*Por vicios de forma (el Congreso aprobó tratados que ya habían sido ratificados).  
Fuente: Corte Constitucional

## ANNEX

**Cuadro No. 1**  
**ACTIVIDAD DE LA PRIMERA CORTE CONSTITUCIONAL**  
**(MARZO 1992- MARZO 1993)**

<b>TUTELAS (writ of protection)</b>	
Concedidas	103
Negadas	144
<b>TOTAL</b>	<b>247</b>
<b>CONSTITUCIONALIDAD</b>	
Ordinarios (demanda)	
Exequibles	37
Inexequibles	11
Inexequibilidad parcial	22
Inhibitorios	5
Total	75
Tratados (automático)	
Exequibles	7
Inexequibles	5*
Total	12
Decretos de excepción (automático)	
Exequibles	27
Inexequibilidad parcial	1
Total	28
Objeciones Presidenciales	
Exequibles	1
Inexequibles	0
Total	1
<b>TOTAL</b>	<b>116</b>
Total exequibles	72
Total inexequibles	16
Total inhibitorios	5
Total inexequibilidad parcial	23
<b>TOTAL SENTENCIAS</b>	<b>363</b>

\*Por vicios de forma (el Congreso aprobó tratados que ya habían sido ratificados).  
Fuente: Corte Constitucional

**Cuadro No. 2**  
**ACTIVIDAD DE LA SEGUNDA CORTE CONSTITUCIONAL**  
**(1 MARZO - 30 ABRIL 1993)**

**TUTELAS**

Negadas	21
Concedidas	16
Nulidades	3
<b>TOTAL</b>	<b>40</b>

**CONSTITUCIONALIDAD**

Ordinarios (demanda)	
Exequibles	26
Inexequibles	4
Inexequibilidad parcial	5
<b>Total</b>	<b>26</b>

Decretos de excepción (automático)	
Exequibles	5
Inexequibilidad parcial	1
<b>Total</b>	<b>6</b>

**TOTAL** **32**

Total exequibles	22
Total inexequibles	4
Total inexequibilidad parcial	6

**TOTAL SENTENCIAS** **72**

Fuente: Corte Constitucional

LA IMPRENTA NACIONAL DE COLOMBIA  
REALIZÓ EL DISEÑO GRÁFICO DE ESTA OBRA  
« COLOMBIA'S NEW CONSTITUTION »  
Y TERMINÓ SU IMPRESIÓN EN EL MES DE JUNIO DE 1993.

IUSTITIA ET LITTERAE