

National ordinance for the implementation
of article 1 of the Constitution of Curaçao
(National ordinance general transitional
regulation of legislation and administration)

Draft

No. 2

IN THE NAME OF HER MAJESTY THE QUEEN
THE GOVERNOR OF CURAÇAO

Considering that due to the additional article 1 of the Constitution measures need to be taken with regard to the continued validity as regulation of Curaçao of National ordinances valid in Curacao and other regulations and decisions valid in the Netherlands Antilles as well as Island ordinances and other regulations and decisions of the Island territory of Curacao and concerning the preservation of the at that time existing bodies of public administration at the time of entry into force of this Constitution;

In accordance with article 60b of the Kingdom act, amending Charter for the Kingdom of the Netherlands due to the discontinuance of the Netherlands Antilles

Article 1

1. All National ordinances, National decisions containing general measures and other decisions with a regulatory character of the Netherlands Antilles, as well as Island ordinances and Island decisions containing general measures of the Island territory of Curaçao in effect at the time of entry into force of the Constitution will remain applicable, until they are either amended or withdrawn in accordance with the Constitution.
2. That which is stipulated in paragraph 1 is not applicable to the National ordinances, National decisions containing general measures and other decisions with a regulatory character of the Netherlands Antilles, as well as Island ordinances and Island decisions containing general measures of the Island territory of Curaçao contained in the appendix to this National ordinance.

Article 2

Decisions of the Netherlands Antilles as well as those of the Island territory of Curaçao which do not have a regulatory character but which are applicable in Curaçao at the time of the introduction of the Constitution, will retain their legal effect, until they are either amended or withdrawn in accordance with the Constitution.

Article 3

The bodies for public administration existing at the time of entry into force of the Constitution of Curaçao will remain in effect until they are either replaced or dissolved in accordance with the Constitution.

Article 4

All rights and obligations of civil law of the Island territory of Curaçao existing at the time of entry into force of the Constitution of Curaçao, will pass to the newly formed country Curaçao.

Article 5

1. All National ordinances of the Netherlands Antilles and Island ordinances of the Island territory of Curaçao mentioned in article 1 acquire the status of National ordinances of Curaçao.
2. All Island ordinances and Island decisions containing general measures of the Island territory of Curaçao mentioned in article 1 acquire the status of National decisions of Curaçao containing general measures.
3. All other decisions with a regulatory character of the Netherlands Antilles mentioned in article 1 acquire the status of Ministerial regulations of Curaçao with general application.

Article 6

1. The text of the regulations, which as per article 5 have acquired the status of National ordinance, National decision containing general measures or Ministerial regulation shall undergo the necessary modifications, by applying the stipulations of the following paragraphs, as a result of acquiring their new status.
2. Where mention is made of the country of the Netherlands Antilles or of the Island territory of Curaçao, these words will be replaced by the country Curaçao.
3. All articles where mention is made of the Islands or Island territories of Curaçao, Bonaire, the Windward Islands, St. Martin, Saba, or St. Eustatius or where a provision is given for those cases related to the decentralized state structure of the Netherlands Antilles, will expire.
4. Where a differentiation is made between procedures on the island of Curaçao and the other islands of the Netherlands Antilles, the procedures for Curaçao will be followed.
5. Where mention is made of administrative positions, bodies, institutions, services or offices of the Netherlands Antilles or of the Island territory of Curaçao, these words will be replaced by administrative positions, bodies, institutions, services or offices of the country Curaçao in accordance with the Constitution.
6. Where mention is made of the Court of Justice for the Netherlands Antilles, these words will be replaced by the Joint Court of Justice of Curaçao, Aruba, St. Martin, and of

Bonaire, St. Eustatius and Saba, in accordance with the Kingdom act on the Joint Court of Justice.

7. With regard to articles which require the cooperation or interference of island bodies for the fulfillment of National duties or vice versa, these articles or parts thereof will expire in so far as there is no place for same in the newly constituted legal system.

8. Where mention is made of implementation or further regulations to be given by island ordinance, those words will be replaced by implementation or further regulation to be given by National decision containing general measures.

9. Where appeal of any decision is permitted to the Island council or any commission thereof, those words will be replaced by appeal in accordance with the stipulations of the National ordinance administrative justice: (*Landsverordening Administratieve Rechtspraak*)

10. Where mention is made of the Lieutenant Governor, said words will be replaced by the Minister under whose jurisdiction the particular case falls or a civil servant appointed by him.

11. Where mention is made of the Lieutenant Governor being charged with swearing in persons, those words will be replaced by the Governor.

12. Articles where mention is made of the Lieutenant Governor or the Chief of Police being the authorized instances for granting the exceptional powers to enter private residences will expire.

13. Where mention is made of the Chief of Police, those words will be replaced by the Minister of Justice or a civil servant appointed by him.

14. Where mention is made of a general ordinance, this term will be replaced by: statutory ordinance.

15. Where mention is made of monetary amounts in the currency of the Netherlands Antilles, these words will be replaced by the equivalent amounts in the as yet to be determined currency to be established by Curaçao and St. Martin in mutual agreement as meant in article 38 of the Charter for the Kingdom of the Netherlands.

16. All legal stipulations whose purpose is fully exhausted at the time of entry into force of the Constitution or contain amendments of other regulations will expire.

17. Reference to other articles, other regulations or other sections thereof will be modified as needed.

18. All instances not covered by the previous paragraphs of this article, concerning indications and wording which no longer are in accordance with the newly constituted legal system, will either be brought into accordance with same or will expire.

Article 7

1. The regulations amended in accordance with article 6, which acquire the status of National ordinances or of National decisions of Curaçao containing general measures, will be adopted in a National decision on proposal of the Minister of Justice,

2. Drafts of National decisions mentioned in paragraph 1 established in Island decisions at the time of entry into force of the Constitution will acquire the status of National decisions of Curaçao.

3. The regulations amended in accordance with article 6, which acquire the status of Ministerial regulations of Curaçao, will be adopted by a decision of the Minister of Justice.

4. For the adoption mentioned in paragraphs 1 and 3 the legally applicable spelling of the Dutch language will be used. Where necessary articles will be renumbered and paragraphs will be numbered or renumbered.

Article 8

When implementing article 6 all changes and amendments made after 31 December 2009 to the stipulations contained in that article will be respected.

Article 9

Rights derived from statutory regulations which lose their power at the time of entry into force of the Constitution, may be asserted and enforced if same is required to respect the general principles of reasonableness and fairness.

Article 10

This National ordinance can be referred to as “general transitional regulation of legislation and administration of the country Curaçao” and will take effect when the Kingdom act amending the Charter for the Kingdom of the Netherlands because of the dissolution of the Netherlands Antilles takes effect.

“The statutory regulations valid in the Netherlands Antilles are:

1. The Charter for the Kingdom of the Netherlands
2. Treaties with other States and with international organizations insofar as they are applicable in the Netherlands Antilles.
3. The general ordinances, defined as:
 - a. The Kingdom acts, which in accordance with the Charter for the Kingdom of the Netherlands, are in force in the Netherlands Antilles;
 - b. The general measures of Kingdom administration, which, in accordance with the Charter for the Kingdom of the Netherlands, are applicable in the Netherlands Antilles;
 - c. The Cooperation measures between the Netherlands Antilles and Aruba (SWR), which is a mutual measure for the implementation of article 38, first paragraph, of the Statute;
 - d. This Constitution;
 - e. Other National ordinances, being ordinances which have been established in mutual agreement by the national Parliament and the Governor;
 - f. The National decisions containing general measures, established by the Governor within the limits of his authority, the Advisory Council having been heard prior thereto;
 - g. The Ministerial decisions with general application, established by one or more of the Ministers within the limits of their authority;
4. The further regulations as mentioned in the second part of the first paragraph of article 14 of the Charter for the Kingdom of the Netherlands;
5. The ordinances established by independent administrative bodies as mentioned in articles 96a and 96b and articles 104a and 104b of the Constitutional Regulations for the Islands of the Netherlands Antilles (*Eilanden Regeling Nederlandse Antillen - ERNA*);
6. The Island ordinances and Island decisions containing general measures, mentioned in the sixth paragraph of article 91;
7. the certifications and rules constituted by the administrations mentioned in article 95, within the limits of their power.”

Of the above mentioned provision it can be noted that paragraphs 1, 2, 3 a through d, and paragraph 4 are not applicable with regard to this draft National ordinance.

The ordinances mentioned in paragraph 5 were never established while those in paragraph 7 no longer exist.

It may therefore be concluded that for the implementation of this Ordinance only the statutory ordinances mentioned in paragraphs 3 e through g, and paragraph 6 of the above mentioned provision of the Constitution of the Netherlands Antilles are relevant.

2.2 Objective of the regulation

In order to assure that Curaçao will possess a satisfactory and functioning legal system at the time of realization of the new status, the choice was made to implement an approach

which takes into account the political and administrative reality of Curaçao. Curaçao is not merely part of the Netherlands Antilles, but it is the place of residence of its government. The institutions and laws which developed or were established in the Netherlands Antilles over the years, and which therefore have validity in Curaçao, were formed and constituted largely by the social and political leaders of Curaçao. Therefore the current laws were born out of the ideas of the people of Curaçao. The undisturbed continuity of the legal system of Curaçao will benefit from an approach which assimilates the existing laws.

Besides the fact that this approach is efficient and effective, and in any case does not influence the implementation of the new status, there are a few other aspects which support choosing this approach. Those would be the legal certainty, the continuity of the administration, the quality of the current legislation, as well as the democratic legitimacy thereof.

The argument of the legal certainty follows from a few important aspects:

- a. Life in Curaçao must be able to continue unhindered after the implementation of the new status. Therefore it is of utmost importance to insure that all the rules which govern legal matters retain their validity as much as possible.
- b. Amendment or replacement of laws carries with it insecurity as to the validity of the known legal system.
- c. Amendment or replacement of laws can have a negative effect on the perceptions of the population. Too many changes in the period of transition to the new status would cause distrust among the population. Confidence is already under assault due to the generally careless and generalizing discussions which are taking place with regard to the change in our national status. The necessarily large number of new laws must under no circumstances make the population feel that it is being cheated.

With regard to the continuity of the administration, it should be noted that the administrative body of Curaçao has already undergone massive change as a result of the fusion of the administrative system of the Netherlands Antilles and that of the Island territory of Curaçao. These changes demand a lot of the employees of these administrative bodies. The focus of these bodies has therefore been on this integration, and not on the preparation involved with assimilating of new laws. The continuity of the administration is therefore not served by too many changes in the legal system. The existing set of laws of the Netherlands Antilles and the Island territory of Curaçao are sufficient. The benchmark here is the international standards, among others of the World Bank, according to which the current legislation of the Netherlands Antilles scores high. Our legislation also largely complies with the set of laws and rules which are established by the international human rights treaties, and by the principles which identify democratic states as stipulated in literature on administrative law published by the community of administrative bodies. The implementation of the existing laws therefore has the advantage of implementing a 'good' set of laws with which the population feels comfortable. No reasons not to implement the existing laws have so far been brought forward convincingly.

There is also the economic aspect of the changes. Dramatic changes in the laws could have a negative effect on the development of the local economy, which currently is improving.

Finally there is also the aspect of democratic legitimacy according to which there is no need to change our existing system of laws. The current system of Island regulations was constituted by or through mandate from the Island Council as the representatives of the people of Curaçao. With regard to the National ordinances it can be said that they are made by the population of Curaçao as we have a majority position in the Parliament. Fourteen of the twenty-one members are directly elected by the population of Curaçao. There is therefore undoubtedly democratic legitimacy, at least as far as the population of Curaçao is concerned.

3. Effect of the basic assumption

By taking over all the existing laws Curaçao will follow a different road, technically, than Aruba did when changing its political status. Curaçao has decided to incorporate all the existing laws of the Netherlands Antilles and the Island territory of Curaçao (see article 1, paragraph 1). Only the laws which will not be applicable will be identified and published in the appendix to this National ordinance (see article 1, paragraph 2).

Laws which will not be transferred to the new country include :

- the organic National ordinances, which were created and presented, in accordance with the Start Roundtable Conference, to the conference for its approval. These ordinances will have to be established separately by the Island Council of Curaçao;
- the National ordinances which treat topics which must be established via mutually agreed upon Kingdom act;
- the statutory law for which a mutual cooperation agreement with St. Martin and Aruba is being prepared;
- national ordinances which are only applicable to one Island territory;
- national ordinances which have already exhausted their purpose, due to the material which they treat.

There are three other types of provisions in this National ordinance which are related to the necessity to allow the legal system to continue unhindered, namely:

- a. Article 2, decisions of the Netherlands Antilles as well as those of the Island territory of Curaçao which do not possess a regulatory character but which are in force at the time of the introduction of the Constitution, retain their legal effect, until they are either amended or withdrawn in accordance with the Constitution.
- b. Article 3, the bodies for public administration, which, at the time of entry into force of the Constitution of Curaçao, exist, will remain so until they are either replaced or dissolved in accordance with the Constitution.

c. Article 4, all rights and obligations of civil law of the Island territory of Curaçao, existing at the time of entry into force of the Constitution of Curaçao, will pass to the newly formed country Curaçao.

Ad. a. This means that concessions, permits, tax holidays etc. based on a legal provision will retain their validity until such time that in accordance with the Constitution of Curaçao they are amended or withdrawn. The rights and obligations created by such decisions for the entitled parties should not be affected by the new status being implemented. After all, the legal system must continue unimpeded.

Ad. b. This article is self explanatory and does not require ulterior explanation.

Ad. c. This article should also be seen as a guarantee for the continuity of the legal system. The population may not become the victim of the change in status of Curaçao, while at the same time the civil law credits held by the Island territory of Curaçao may not be lost.

5. Commentary to the individual articles

Articles 1 and 2

See the general section of the explanation.

Article 3

For the sake of correctness it is pointed out that this article was derived from the Transitional provision to the Constitution of Curaçao.

Article 4

See the general section of the explanation.

Article 5

Needs no further explanation

Article 6

In the general section of the explanation it is claimed that the goal of article 1 is to maintain the existing laws. In spite of that the laws will have to be amended in minor aspects. These changes are made necessary by one of the following factors:

- a. the change of status of Curaçao;
- b. the dissolution of the Netherlands Antilles;

