

SCHEDULE

THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

CHAPTER 3

TRISTAN DA CUNHA

PART 2

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Provisions to secure a fair trial

192.—(1) If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair and public hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved or has pleaded guilty;
- (b) shall be informed promptly, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice or, if unable to retain a legal representative at his or her own expense and the interests of justice so require, by a legal representative at the public expense;
- (e) shall be given facilities to examine in person or by his or her legal representative the witnesses called before the court by the prosecution, and to obtain the attendance before the court and carry out the examination of witnesses to testify on his or her behalf on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at his or her trial,

and, except with his or her own free consent, the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

(3) When a person is tried for any criminal offence, he or she or any person authorised by him or her in that behalf shall, if he or she (the accused person) so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a higher court in the course of appeal or review proceedings relating to the conviction or acquittal.

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(6) No person shall be tried for a criminal offence if he or she shows that he or she has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at his or her trial.

(8) Every person who has been convicted by a court of a criminal offence shall have the right to appeal to a higher court against his or her conviction or his or her sentence or both; but—

(a) nothing contained in any law shall be held to breach this subsection—

(i) to the extent that it precludes an appeal by a person against his or her conviction of an offence if he or she pleaded guilty to that offence at trial; or

(ii) to the extent that it makes reasonable provision with respect to the grounds on which any such appeal may be made or with respect to the practice and procedure to be observed in relation to the making, hearing and disposal of any such appeal; and

(b) this subsection shall not apply in relation to the conviction of a person by a higher court, or in relation to his or her sentence upon such conviction, if he or she was convicted by that court on an appeal against his or her acquittal by a lower court.

(9) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, his or her conviction has been quashed, or he or she has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(10) For the determination of the existence or extent of his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court, tribunal or other authority established by law.

(11) All proceedings for the determination of the existence or extent of any person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(12) Nothing in subsection (1) or (11) shall prevent a court or other authority from excluding from criminal or civil proceedings persons other than the parties thereto and their legal representatives, or forbidding the publication of the names of the parties or other details of the evidence or of the decision to such an extent as the court or other authority—

(a) is empowered by law to do and considers necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interim proceedings, or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or

(b) is empowered or required by law to do in the interests of defence, public safety, public order or public morality.

(13) Nothing contained in or done under the authority of any law shall be held to breach—

(a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying

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such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment awarded him or her under that disciplinary law.