

2019

DRAFT CONSTITUTION



Constitutional Review Commission

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PROPOSED DRAFT CONSTITUTION OF THE REPUBLIC OF THE GAMBIA

Arrangement of Clauses

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PREAMBLE

We the people of The Gambia,

As a sovereign independent State, having had the opportunity to express our views and aspirations on how we wish to be governed, affirm that this Constitution is the embodiment of our will and resolve for democracy, good governance, separation of powers, sustainable environment and equitable distribution and use of resources, rule of law, equality and observance of the principles of fundamental human rights and freedoms,

Being committed to freedom, justice, accountable government and overall respect for the rule of law, recognise and affirm the principle that all power vest in and emanate only from the sovereign will of the people which shall be respected at all times,

Recognising the value of the enshrined fundamental human rights and freedoms in this Constitution, undertake to ensure the observance of those rights and freedoms,

Recognising and appreciating our values as a people of diversity, collectively declare and affirm our duties and responsibilities as citizens of The Gambia and our love and commitment to each other to foster and promote national unity, cohesion and peace,

In this spirit and in the name of God the Almighty:

ADOPT, ENACT AND GIVE OURSELVES and to our future generations this Constitution as a beacon of hope, stability and national unity, progress, peace and prosperity.

CHAPTER I

THE REPUBLIC AND SOVEREIGNTY OF THE PEOPLE

The Republic

1. (1) The Gambia is a Sovereign Republic.
- (2) The Republic is a multi-party democratic State founded on respect for the rule of law and the national values and principles of governance enshrined in this Constitution.

Sovereignty of the people

2. (1) All sovereign power belongs to the people of The Gambia from whom all organs of government derive their authority and shall be exercised only in accordance with this Constitution.
- (2) The people of The Gambia may exercise their sovereign power either directly or through their democratically elected representatives.
- (3) Sovereign power under this Constitution is delegated by the people of The Gambia to the following State organs, which shall perform their functions in accordance with this Constitution –
 - (a) the National Assembly;
 - (b) the Executive; and
 - (c) the Judiciary.
- (4) The organs of government shall exercise their delegated powers and perform their functions in the name, and for the welfare and prosperity, of the people of The Gambia.
- (5) The Local Government Authorities are an important institution of the State and shall exercise their powers under the delegated authority of the people.

The territory of The Gambia

3. The Gambia consists of the territory of The Gambia and the territorial waters comprising The Gambia and any additional territory and territorial waters as defined by an Act of the National Assembly.

Devolution of government

4. (1) The Gambia is divided into seven administrative areas as outlined in Schedule 1.
- (2) A State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.

(3) A Local Government Authority shall ensure reasonable access to its services in all areas it has jurisdiction over, so far as it is appropriate to do so having regard to the nature of the service.

(4) The Government and the Local Government Authorities shall cooperate and work with each other to promote –

- (a) the interests of all Gambians;
- (b) the development of each administrative area or region;
- (c) unity, cohesion and peace between and amongst all Gambians;
- (d) the ethnic, cultural and language diversity of all Gambians as a source of national pride and unity; and
- (e) the development and use of local languages, including sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

National days

5. (1) The National days are-

- (a) Independence Day; and
- (b) Republic day.

(2) A national day shall be a public holiday.

(3) The National Assembly may enact legislation prescribing other public holidays, and providing for observance of public holidays.

CHAPTER II THE CONSTITUTION AND THE LAWS

Supremacy of the Constitution

6. (1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both the national and local levels of government.

(2) No person may claim or exercise State authority except as authorised under this Constitution.

(3) The validity or legality of this Constitution is not subject to challenge by or before any court or other organ of the State.

(4) Any law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

Defence of the Constitution

7. (1) Every person, including every organ of State, has an obligation to respect, uphold and defend this Constitution.

(2) Any attempt by any person to establish a government otherwise than in compliance with this Constitution is unlawful.

(3) No person shall—

(a) by himself or herself or in concert with others, by any violent or other unlawful means, suspend, overthrow or abrogate this Constitution or any part of it, or attempt to do any such act; or

(b) aid or abet in any manner any person referred to in paragraph (a).

(4) Any person who acts contrary to subsection (2) or (3) commits the offence of treason and shall, on conviction, be liable to the penalty prescribed by an Act of the National Assembly for that offence.

(5) All citizens of The Gambia have the right and duty at all times to defend this Constitution and, in particular, to resist, to the extent reasonably justifiable in the circumstances, any person or group of persons seeking or attempting by any violent or unlawful means to suspend, overthrow or abrogate this Constitution or any part of it.

(6) A person who resists the suspension, overthrow or abrogation of this Constitution as provided in subsection (5), commits no offence.

Enforcement of the Constitution

8. (1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under subsection (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member, or in the interest, of a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.

(3) The court may make orders and give directions as it may consider appropriate to ensure compliance with this Constitution and any person to whom any order or direction is addressed shall duly obey and carry out the terms of the order or direction.

(4) The failure to obey or carry out any order made or direction given under subsection (3) shall constitute the offence of violating the Constitution and—

- (a) shall, in the case of the President, Vice-President, Speaker, Deputy Speaker, a National Assembly Member, a Minister or any public officer, constitute a ground for his or her removal from office in accordance with this Constitution or an Act of the National Assembly; and
- (b) any other person who is convicted of that offence shall be liable to the penalty prescribed by an Act of the National Assembly.

Laws of The Gambia

9. (1) In addition to this Constitution, the laws of The Gambia consist of –

- (a) Acts of the National Assembly made under this Constitution and subsidiary legislation made under this Constitution and such Acts;
- (b) the existing laws;
- (c) the common law and principles of equity;
- (d) customary law so far as concerns members of the communities to which it applies; and
- (e) the Shari’ah as regards matters of marriage, divorce, burial, endowment (*waqf*) and inheritance among members of the communities to which it applies.

(2) Subject to subsection (3), a treaty to which The Gambia is a party shall not form part of the laws of The Gambia unless it is incorporated in an Act of the National Assembly.

(3) The courts may have due regard to international treaties on human rights to which The Gambia is a party where it considers it necessary to aid its interpretation or application of a provision of this Constitution with respect to any right or freedom.

CHAPTER III NATIONAL VALUES AND PRINCIPLES

National values and governance

10. (1) The national values and principles of governance in this section bind all State organs, Local Government Authorities, State officers, public officers and all other persons whenever any of them—

- (a) applies or interprets this Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

- (2) The national values and principles of governance include—
- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
 - (b) human dignity, equity, social justice, inclusiveness, equality, respect for human rights and freedoms, non-discrimination and protection of the marginalised;
 - (c) integrity, transparency and accountability; and
 - (d) sustainable development.

Culture

11. (1) This Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Gambian people and nation.

- (2) The State shall—
- (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
 - (b) recognise the role of science, research and indigenous technologies in the development of the nation; and
 - (c) promote the intellectual property rights of the people of The Gambia.
- (3) The National Assembly shall enact legislation to—
- (a) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and
 - (b) recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of The Gambia.

Duties of citizens

12. (1) The exercise and enjoyment of rights and freedoms provided for in this Constitution are inseparable from the performance of duties and obligations, and accordingly, every citizen shall -

- (a) promote and protect the prestige and good reputation of The Gambia;
- (b) respect the National symbols of The Gambia;
- (c) uphold and defend the Constitution;
- (d) foster national unity, cohesion and live harmoniously with others;
- (e) respect the rights, freedoms and legitimate interests of others and refrain from acting in a manner detrimental to the welfare of other persons;

- (f) serve The Gambia by working conscientiously in his or her chosen occupation;
- (g) protect and preserve public property, and expose or engage in any lawful act to prevent the misuse and waste of public funds and property;
- (h) contribute to the well-being of the community in which the citizen lives;
- (i) be loyal to The Gambia and contribute to its defence when necessary;
- (j) co-operate with the appropriate agencies in the maintenance of law and order; and
- (k) protect and conserve the environment of The Gambia.

(2) The Courts may have regard to the duties outlined in subsection (1) in interpreting any laws based on them.

(3) A person who exposes, or engages in any lawful act to prevent, the misuse and waste of public funds and property pursuant to subsection (1) (g) commits no offence under any law, including this Constitution.

CHAPTER IV CITIZENSHIP

Citizens on the commencement of the Constitution

13. Every person who, immediately before the coming into force of this Constitution, is a citizen of The Gambia, shall, subject to this Constitution, continue to be a citizen of The Gambia and retain the same status as a citizen –

- (a) by birth or, subject to section 14 (2), by descent; or
- (b) by registration or naturalisation.

Citizen by birth

14. (1) Every person born in or outside The Gambia after the coming into force of this Constitution shall become a citizen of The Gambia at the date of his or her birth if, at the time of his or her birth, one or both of his or her parents or grandparents is or was a citizen of The Gambia.

(2) A person who, prior to the coming into force of this Constitution, was a citizen by descent, is a citizen by birth.

(3) A child of not more than eight years of age found in The Gambia, whose parents are not known, shall be presumed to be a citizen of The Gambia by birth.

Citizenship by registration

15. (1) A person who is or has been married to a citizen of The Gambia and has, since the marriage, been ordinarily resident in The Gambia for a period of not less than five years is entitled, on application, to be registered as a citizen.

(2) A person who has been registered as a citizen of The Gambia under subsection (1) shall, unless he or she has renounced that citizenship, continue to be a citizen of The Gambia if the marriage by virtue of which he or she was registered —

- (a) is annulled or otherwise declared void by a court or tribunal of competent jurisdiction;
or
- (b) is dissolved.

(3) Subsection (2) (a) shall not apply if the court or tribunal, in annulling or declaring the marriage void, found that the parties, at the time of the marriage, knew that the marriage was unlawful or fraudulent.

(4) A non-Gambian child who is adopted by a Gambian parent is entitled, on application, to be registered as a citizen of The Gambia.

Citizenship by naturalisation

16. (1) Any person who has been ordinarily resident in The Gambia for a continuous period of not less than fifteen years and who satisfies the conditions set out in subsection (2) may apply, in such manner as may be prescribed by or under an Act of the National Assembly, to be naturalised as a citizen of The Gambia.

(2) The conditions referred to in subsection (1) are that the applicant—

- (a) is of full age and capacity;
- (b) is of good character;
- (c) has clearly shown that, if naturalised, he or she intends to continue permanently to reside in The Gambia; and
- (d) is capable of supporting himself or herself and, where applicable, his or her dependants.

(3) Subject to subsection (4), no person shall be naturalised until he or she has renounced any other citizenship he or she may have, and taken an oath of allegiance to The Gambia.

(4) A person shall not be required to renounce his or her citizenship if his or her country of origin does not require a citizen of The Gambia to renounce his or her citizenship upon application for naturalisation in that country.

Dual citizenship

17. A citizen of The Gambia by birth may hold the citizenship of any other country in addition to his or her citizenship of The Gambia.

Deprivation of citizenship

18. (1) The Minister may revoke the citizenship of a person who has been registered or naturalised as a citizen of The Gambia if the person —

- (a) has, since registration or naturalisation as a citizen of The Gambia, acquired by registration, naturalisation or any voluntary means, the citizenship of any other country;
- (b) has acquired the citizenship of The Gambia by means of fraud, false representation or the concealment of any material fact;
- (c) has, since renouncing his or her citizenship to acquire citizenship of The Gambia, voluntarily claimed and exercised in a country other than The Gambia any rights available to him or her under the laws of that country, being rights accorded exclusively to its citizens;
- (d) has during any war in which The Gambia has been engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was knowingly carried on in such a manner as to assist an enemy in that war;
- (e) has, within seven years after registration or naturalisation, been convicted in The Gambia or any other country of an offence which carries a sentence of imprisonment of seven or more years; or
- (f) has engaged in an activity that is inimical to the security of the State.

(2) Subsection (1) (e) shall not apply to a naturalized citizen who has renounced his or her foreign citizenship, if deprivation of citizenship of The Gambia will render the naturalised citizen stateless.

(3) The citizenship of a person who was presumed to be a citizen by birth, as contemplated in section 14 (3) may be revoked if -

- (a) the citizenship was acquired by fraud, false representation or concealment of any material fact by any person;
- (b) the nationality or parentage of the person becomes known, and reveals that the person was a citizen of another country; or
- (c) the age of the person becomes known, and reveals that the person was older than eight years when found in The Gambia.

(4) Nothing in this or any other provision of this Constitution or any other law shall be construed as depriving, or authorising any person or authority to deprive, any citizen of The Gambia by birth of his or her citizenship of The Gambia, whether on account of such citizen holding the citizenship or nationality of some other country or for any other cause.

Restoration of citizenship

19. A citizen of The Gambia who had lost his or her citizenship of The Gambia as a result of the acquisition or possession of the citizenship of some other country shall, on a written notification to the Minister, have his Gambian citizenship restored.

Act of the National Assembly on citizenship

20. An Act of the National Assembly may make provision for -

- (a) registration as a citizen of The Gambia of a person who, on or before 15th November, 2019, was born in The Gambia of non-Gambian parents, if the person had, since his or her birth, lived in The Gambia;
- (b) the acquisition of the citizenship of The Gambia by persons who are not eligible to become citizens under the provisions of this Chapter;
- (c) the renunciation by any person of his or her citizenship of The Gambia;
- (d) prescribing procedures for the acquisition and revocation of citizenship; and
- (e) generally giving effect to the provisions of this Chapter.

Interpretation of Chapter IV

21. (1) In this Chapter, "**Minister**" means the Minister responsible for citizenship matters.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft is registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the citizenship of a parent or grandparent of a person at the time of that person's birth, shall, in relation to a person born after the death of that parent or grandparent, be construed as a reference to that parent's or grandparent's citizenship at the time of death.

CHAPTER V LEADERSHIP AND INTEGRITY

Application of this Chapter and guiding principles

22. (1) This Chapter applies to every office and office holder and every authority, both public and private, including Civil Society Organisations, as the context requires, and to every citizen or other person who has or is given, whether on contract or otherwise, a functional role or responsibility in relation to a duty that is in the public interest.

(2) This Chapter is to be read as complementing the objects and guiding principles outlined in the various Chapters of this Constitution, and compliance with those objects and principles shall not, in any way, preclude the application of this Chapter to a public officer or authority or any other person who has a responsibility to the State, the citizens of The Gambia, or the Government, in a matter of public interest.

(3) For the purposes of this Chapter, a reference to a public office or public officer shall, as the context requires, be construed to include every office in the service of the State, the citizens of The Gambia and every person who is elected or appointed to such office, irrespective of how the office or election or appointment to the office is described or designated.

Responsibilities of leadership

23. (1) Cognisant of the fact that all sovereign authority emanates from the people, any authority, duty or responsibility conferred or assigned to a public officer, whether under this Constitution, an Act of the National Assembly, or any law, is—

(a) a privilege and public trust which must be exercised in a manner that –

- (i) is consistent with the purposes and objects of this Constitution;
- (ii) demonstrates respect for the people and the rule of law;
- (iii) brings honour to the nation and dignity to the office; and
- (iv) promotes public confidence and respect in the integrity of the office; and

(b) vested in the public officer holding the office the responsibility to serve the people of The Gambia, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include –

- (a) selection on the basis of personal integrity, competence, ability and suitability;
- (b) election to a public office in free, transparent and fair elections;
- (c) objectivity and impartiality in decision-making, and in ensuring that decisions are above board and not influenced by nepotism, favouritism or improper motive or corrupt practice;
- (d) selfless service based solely on what is in the public interest, demonstrated by
 - (i) honesty in the execution of public duties;
 - (ii) the declaration of any personal interest that may conflict with public duties and responsibilities;
 - (iii) respect for and upholding of the national values and principles of governance outlined in section 10; and
 - (iv) the duty to expose, or engage in any lawful act to prevent, the misuse and waste of public funds and property;
- (e) accountability to the public for decisions and actions; and
- (f) discipline and commitment in service to the people.

Conduct and oath of office of public officers

24. (1) A public officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids –

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest or the interest of another person; or
- (c) bringing the office he or she holds into disrepute.

(2) Unless otherwise specified in this Constitution, a person shall, before assuming an office established under this Constitution, subscribe to the prescribed oaths.

Financial probity of public officers

25. (1) A gift to a public officer on a public or official occasion or on account of the office he or she holds, is a gift or donation to the State or the institution he or she represents, and shall–

- (a) in the case of a public official in the service of the State, be delivered to the State, through the Anti-corruption Commission, unless otherwise exempted, whether conditionally or unconditionally;
- (b) in the case of a public official in the service of a Civil Society Organisation, be handed over to the organisation for the benefit, and in furtherance of the objectives, of the Organisation.

(2) A public officer shall neither seek nor accept a personal loan or benefit in circumstances that compromise his or her integrity.

Restrictions on the activities of public officers

26. (1) A full-time public officer in the service of the State shall not engage in any other gainful employment, unless exempted by –

- (a) an Act of the National Assembly; or
- (b) the express agreement of the Government, whether through service rules or otherwise.

(2) A public officer in the service of the State, other than a public officer who is appointed to public office by virtue of his or her political affiliation with a registered political party, shall not hold office in a registered political party.

(3) A retired public officer who is receiving a pension from public funds shall not hold more than two concurrent remunerative positions as chairperson, director or employee of –

- (a) a Statutory Body or State Owned Enterprise; or
- (b) an organ or agency of the State.

Obligations of persons dealing with public officers in the service of the State

27. A person who enters or proposes to enter into a relationship with an organ or agency of the State, including a Statutory Body or State Owned Enterprise, whether contractual or otherwise, has a duty –

- (a) to act honestly, transparently and fairly;
- (b) to respect the people and the rule of law;
- (c) to maintain and uphold confidence and respect in the integrity of the relationship;
- (d) not to enter into an agreement or arrangement that he or she knows will result in a loss, or will be injurious, to the organ or agency of the State, or the Statutory Body or State Owned Enterprise, as the case may be;
- (e) not to compromise or engage in any activity that will compromise a public office or bring such office into disrepute; and
- (f) not to engage in any conduct to –
 - (i) encourage a public officer to abuse his or her public office or to misuse or waste public funds and property; or
 - (ii) allow itself to be used to misuse or waste public funds and property.

Consequence for contravention of this Chapter

28. (1) A person who contravenes section 24, 25, 26 or 27, commits the offence of violating the Constitution.

(2) A person who commits the offence of violating the Constitution –

- (a) in the case of a public officer –
 - (i) shall be subject to such disciplinary process and procedure as is applicable in his or her case; and

- (ii) may, in accordance with the disciplinary process and procedure referred to in sub-paragraph (i), be dismissed or otherwise removed from office; and
 - (b) in the case of any other person, shall have his relationship with the organ or agency of the State, or the Statutory Body or State Owned Enterprise, as the case may be, terminated, without prejudice to the right of the State or the Statutory Body or State Owned Enterprise to recover any loss incurred.
- (3) A person who has been dismissed or otherwise removed from office, or whose relationship with the organ or agency of the State or the Statutory Body or State Owned Enterprise has been terminated, shall –
- (a) in the case of a public officer, be disqualified from holding any other public office for life, unless an Act of the National Assembly prescribes a shorter period; and
 - (b) in the case of any other person, be disqualified from having any further or other relationship with the organ or agency of State, or any Statutory Body or State Owned Enterprise.

Legislation on Leadership

- 29.** An Act of the National Assembly shall make provision –
- (a) establishing procedures and mechanisms for strengthening the administration of this Chapter;
 - (b) prescribing penalties, in addition to those specified in section 28, for contravention of this Chapter; and
 - (c) for any other matter that will ensure the promotion of the principles of leadership and integrity referred to in this Chapter, including the effective enforcement of this Chapter.

CHAPTER VI FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

PART I GENERAL PROVISIONS ON FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Fundamental rights and freedoms

- 30.** (1) Fundamental rights and freedoms are an integral part of The Gambia's democratic state and form the foundation for the development and promotion of social, economic and cultural policies.

(2) The objective of recognising and protecting fundamental rights and freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.

(3) The fundamental rights and freedoms enshrined in this Constitution –

(a) belong to each individual and are not granted by the State;

(b) do not exclude other rights and freedoms not in this Chapter, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and

(c) are subject only to the limitations provided in this Constitution.

(4) The National Assembly shall not have or exercise any power to enact legislation to indemnify any person of any abuse of another person's fundamental rights and freedoms enshrined in this Constitution.

Application of fundamental human rights and freedoms

31. (1) The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive and its agencies, the Legislature and, where applicable to them, by all natural and legal persons in The Gambia, and shall be enforceable by the courts in accordance with this Constitution.

(2) Every person in The Gambia, whatever his or her race, ethnicity, colour, creed, gender, language, religion, disability, political or other opinion, national or social origin, property, birth or other status, shall be entitled to the fundamental rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest.

(3) In applying a provision of this Chapter, a court shall-

(a) develop the law to the extent that it gives effect to a fundamental right or freedom; and

(b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

(4) In interpreting this Chapter, a court, tribunal or other authority shall promote-

(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of this Chapter.

(5) In applying any rights under sections 55 (2) (b), (c) and (d), 60 and 64, if the State claims that it does not have the resources to implement the rights, a court, tribunal or other authority shall be guided by the following principles-

(a) it is the responsibility of the State to show that the resources are not available and when they shall be available;

- (b) in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the fundamental right or freedom having regard to prevailing circumstances, including the vulnerability of particular groups, individuals, or communities; and
- (c) the court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

Implementation of fundamental human rights and freedoms

32. (1) The State and its organs shall observe, respect, protect, promote and fulfil the fundamental rights and freedoms enshrined in this Chapter.

(2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under sections 60 and 64.

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children and youths.

Enforcement of fundamental human rights and freedoms

33. (1) Every person has the right to institute court proceedings claiming that a fundamental right or freedom in this Chapter has been denied, violated or infringed, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under subsection (1) may be instituted by-

- (a) a person acting on behalf of another person who cannot act in their own name;
- (b) a person acting as a member of, or in the interest of, a group or class of persons;
- (c) a person acting in the public interest; or
- (d) an association acting in the interest of one or more of its members.

(3) The Chief Justice shall make rules providing for the court proceedings referred to in this section, which shall satisfy the criteria that-

- (a) the rights of standing provided for in subsection (2) are facilitated;
- (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
- (c) no fee may be charged for commencing the proceedings;

- (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
- (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

(4) The absence of rules to be prescribed in subsection (3) does not limit the right of any person to commence court proceedings under this section, and to have the matter heard and determined by a court.

Authority of courts to uphold and enforce this Chapter

34. (1) The High Court has jurisdiction, in accordance with section 183, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a fundamental right or freedom in this Chapter.

(2) In any proceedings brought under section 33, a court may grant appropriate relief, including-

- (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- (d) an order for compensation; and
- (e) an order of judicial review.

Limitation of fundamental rights and freedoms

35. (1) A fundamental right or freedom in this Chapter shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the fundamental right or freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of fundamental rights and freedoms by any individual does not prejudice the fundamental rights and freedoms of others; and
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

(2) Notwithstanding subsection (1), a provision in an Act of the National Assembly limiting a fundamental right or freedom -

- (a) in the case of a provision enacted or amended on or after the coming into force of this Constitution, is not valid unless the legislation specifically expresses the intention to limit that fundamental right or freedom, and the nature and extent of the limitation;
- (b) shall not be construed as limiting the fundamental right or freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and
- (c) shall not limit the fundamental right or freedom so far as to derogate from its core or essential content.

(3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this section have been satisfied.

(4) Notwithstanding subsections (1) and (2), a provision in legislation may limit the application of the fundamental rights or freedoms in the following provisions to persons serving in the disciplined forces -

- (a) section 38 – protection of liberty;
- (b) section 42 – privacy;
- (c) section 48 – freedom of assembly;
- (d) section 49 – freedom of association; and
- (e) section 58 – right to fair labour practices.

Fundamental rights and freedoms that may not be limited

36. Notwithstanding any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited-

- (a) section 39 - Protection from slavery and forced labour;
- (b) section 40 - Protection from cruel and inhuman treatment;
- (c) section 43 - Right to a fair trial; and
- (b) section 69 (3) (f) - right to an order of *habeas corpus*.

PART II SPECIFIC RIGHTS AND FREEDOMS

Right to life

37. (1) A person shall not be deprived of life intentionally.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are mentioned in this subsection, a person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say -

- (a) in compliance with an Act of the National Assembly;
- (b) for the defence of any person from unlawful violence or for the defence of property;
- (c) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (d) for the purpose of suppressing a riot, insurrection or mutiny;
- (e) in order to prevent the commission by that person of a criminal offence; or
- (f) if he or she dies as a result of a lawful act of war.

Protection of liberty

- 38.** (1) Every person has the right to liberty and security of person.
- (2) No person shall be subjected to arbitrary arrest or detention.
- (3) No person shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.
- (4) An arrested person has the right-
- (a) to be informed promptly, in a language that the person understands, of-
 - (i) the reason for the arrest;
 - (ii) the right to remain silent; and
 - (iii) the consequences of not remaining silent;
 - (b) to remain silent;
 - (c) to communicate with a legal practitioner of his or her own choice, and to consult his or her legal practitioner confidentially;
 - (d) not to be compelled to make any confession or admission that could be used in evidence against the person;
 - (e) to be held separately from persons who are serving a sentence;
 - (f) to be brought before a court as soon as reasonably possible, but not later than-
 - (i) forty-eight hours after being arrested; or

(ii) if the forty-eight hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;

(g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and

(h) to be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting.

Protection from slavery and forced labour

39. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(a) any labour required in consequence of a sentence or order of a court;

(b) any labour required of a member of the Armed Forces in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service as a member of any naval, military or air force, any labour which that person is required by law to perform in place of such service;

(c) any labour required during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purposes of dealing with that situation; and

(d) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from cruel and inhuman treatment

40. (1) Every person has inherent dignity and the right to have that dignity respected and protected.

(2) Every person has the right to freedom and security of the person, which includes the right not to be-

(a) subjected to any form of violence from either public or private sources;

(b) subjected to torture in any manner, whether physical or psychological;

- (c) subjected to corporal punishment; or
- (d) treated or punished in a cruel, inhuman or degrading manner.

Protection of right to property

41. (1) Subject to the provisions of this Constitution, a person has the right to acquire and own property.

(2) No property of any description or interest in or right over any property shall be compulsorily taken possession of or acquired by the State, unless the following conditions are satisfied—

- (a) the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any property in such manner as to promote the public benefit; and
- (b) the necessity for the possession or acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property.

(3) Compulsory acquisition of property by the State shall only be made under a law which makes provision for—

- (a) the prompt payment of fair and adequate compensation; and
- (b) a right of access to the High Court by any person who has an interest in or right over the property, whether direct or on appeal from any other authority, for the determination of his or her interest or right and the amount of compensation to which he or she is entitled.

(4) Nothing in this section shall be construed as affecting the making of any law in so far as it provides for the taking or acquisition of property -

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of law, whether under civil process or after conviction of a criminal offence;
- (c) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (d) by way of the vesting or administration of trust property, enemy property, *bona vacantia* or the property of persons adjudged or otherwise declared bankrupt or insolvent, or persons of unsound mind;
- (e) in the execution of judgments or orders of courts;
- (f) by reason of such property being in a dangerous state or liable to cause injury to the health of human beings, animals or plants;

- (g) in consequence of any law with respect to the limitation of actions; or
- (h) for so long as such taking of possession may be necessary for the purpose of any examination, investigation, trial or inquiry, or, in the cases of land, the carrying out on the land of –
 - (i) work of soil conservation or the conservation of other resources; or
 - (ii) agricultural development or improvement which the owner or occupier of the land has been required and has without reasonable or lawful excuse refused or failed, to carry out, except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property or interest is held by a body corporate which is established directly by any law and in which no monies are provided by an Act of the National Assembly.

(6) Where a compulsory acquisition of land by or on behalf of the State in accordance with subsection (2) involves the displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard to their economic well-being and social and cultural values.

(7) Any property compulsorily taken possession of, and any interest in or right over property compulsorily acquired in the public interest, or for a public purpose, shall be used only in the public interest or for the public purpose for which it is taken or acquired.

(8) Where the property is not used in the public interest or for the public purpose for which it was taken or acquired, the owner of the property immediately before the compulsory taking or acquisition, shall be given the first option of acquiring the property-

- (a) after refunding the whole or part of the compensation paid to him or her, as may be agreed between the parties; or
- (b) in the absence of any agreement under paragraph (a), pay such amount, which shall not be more than the amount of the compensation, as may be determined by the High Court.

(9) The rights under this section do not extend to any property that has been found to have been unlawfully acquired or settled on.

Privacy

42. (1) No person shall be subject to arbitrary or unlawful interference with the privacy of his or her person, home, family, correspondence or communications.

(2) The rights of a person under subsection (1) may be interfered with in accordance with law, and as necessary in an open and democratic society –

- (a) in the interests of national security, public safety or the economic well-being of the country;
 - (b) for the protection of health or morals;
 - (c) for the prevention of disorder or crime; or
 - (d) for the protection of the rights and freedoms of others.
- (3) Searches of the person or the home of individuals shall only be justified -
- (a) where these are authorised by a competent judicial authority; and
 - (b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest and such procedures as are prescribed by an Act of the National Assembly to preclude abuse are properly satisfied.

Right to fair trial

43. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

- (2) Every accused person has the right to a fair trial, which includes the right -
- (a) to be presumed innocent until the contrary is proven;
 - (b) to be informed of the charge, with sufficient detail to answer it;
 - (c) to have adequate time and facilities to prepare a defence;
 - (d) to a public trial before a court established under this Constitution;
 - (e) to have the trial begin and conclude without unreasonable delay;
 - (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
 - (g) to choose, and be represented by, a legal practitioner of his or her own choice, and to be informed of this right promptly;
 - (h) to remain silent, and not to testify during his or her trial;
 - (i) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
 - (j) to adduce and challenge evidence;
 - (k) to refuse to give self-incriminating evidence;

- (l) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
- (m) not to be convicted for an act or omission that at the time it was committed or omitted was not an offence in The Gambia;
- (n) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted, or pardoned; and
- (o) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.

(3) Nothing in subsection (2) (m) shall prejudice the trial and punishment of any person for an act or omission which, at the time it was committed, was criminal according to the general principles of customary international law.

(4) If this section requires information to be given to a person, the information shall be given in a language that the person understands.

(5) Evidence obtained in a manner that violates any right or fundamental freedom under this Chapter shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.

(6) An accused person –

- (a) charged with an offence, is entitled during the trial to a copy of the record of the proceedings of the trial on request; and
- (b) has the right to a copy of the record of the proceedings within a reasonable period after they are concluded.

(7) A person who is convicted of a criminal offence may petition the Supreme Court for a review of his or her case if –

- (a) the person's appeal had been dismissed by the Court; and
- (b) new and important facts or evidence have become available, which at the time of dismissal of his or her case, was not within the petitioner's knowledge or could not have been produced by him or her.

(8) Where the Supreme Court considers that a petition under subsection (7) has merit, it may make such order as it considers appropriate, including an order for retrial.

(9) In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court.

(10) This section does not prevent the exclusion of the press or other members of the public from any proceedings if the exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security.

(11) An Act of the National Assembly shall provide for the protection, rights and welfare of victims of offences.

Freedom of expression

- 44.** (1) Every person has the right to freedom of expression, which includes –
- (a) freedom to seek, receive or impart information or ideas;
 - (b) freedom of artistic creativity; and
 - (c) academic freedom and freedom of scientific research.
- (2) The right to freedom of expression does not extend to -
- (a) propaganda for war;
 - (b) incitement to violence or to break law and order;
 - (c) the uttering of abusive or threatening speech or writing that causes feelings of ill-will, disaffection or hostility; or
 - (d) advocacy of hatred that -
 - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm;
or
 - (ii) is based on any ground of discrimination specified or contemplated in section 67.
- (3) In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.
- (4) The rights and freedoms referred to in this section and sections 47, 48, 49 and 50 shall be subject to any law imposing proportionate and reasonable restrictions on the exercise of those rights and freedoms, which are necessary in an open and democratic society and are required in the interest of sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court.

Freedom of the media

- 45.** (1) There shall be a free and independent media.
- (2) The freedom referred to in subsection (1) shall include –
- (a) the right of natural or juristic persons to own and operate media;
 - (b) the freedom of the media to gather, process and transmit news and information without any interference, directly or indirectly;

- (c) protection from the supervision, control or censorship of news by any person or authority prior to publication; and
 - (d) protection from the disclosure of sources of information.
- (3) The freedoms provided in subsection (2) do not extend to any expression specified in section 44 (2).
- (4) All State-owned media shall-
- (a) be free to determine independently the editorial content of their broadcasts or other communications;
 - (b) be impartial; and
 - (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.
- (5) The State shall not penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.
- (6) There shall be an independent regulator with responsibility for –
- (a) regulating the provision of broadcasting and communications services in the public interest;
 - (b) ensuring fairness and diversity of opinion;
 - (c) awarding licences in a fair and transparent manner;
 - (d) the equitable allocation of frequencies and regulation of related matters between private and public broadcasters; and
 - (e) setting media standards, and regulating and monitoring compliance with those standards.
- (7) The freedoms provided in this section are guaranteed subject to laws that are proportionate and reasonably required in an open and democratic society, in the interest of national security, public order, public morality, and for the purpose of protecting the reputation, rights and freedoms of others.

Access to information

- 46.** (1) Every citizen has the right of access to information held by-
- (a) a public body;
 - (b) a relevant private body performing or having direct or indirect bearing in the execution of a public function; and
 - (c) another person and required for the exercise or protection of any fundamental right or freedom.

(2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

(3) The State shall publish and publicise any important information affecting the nation.

(4) The exercise of the rights provided in this section is subject to laws that are reasonably required in an open and democratic society in the interest of national security and defence of the State.

(5) An Act of the National Assembly may make further provision to withhold information where the harm to the interest protected under a relevant provision demonstrably outweighs the public interest in the disclosure of the information.

Freedom of conscience

47. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Every person has the right, either individually or in community with others, in public or in private, to manifest and practice any religion or belief.

(3) A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.

(4) A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion.

Freedom of assembly

48. Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities or private institutions.

Freedom of association

49. (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of any lawful association.

(2) A person shall not be compelled to join any lawful association.

(3) An Act of the National Assembly that requires registration of a lawful association shall provide that-

(a) registration may not be withheld or withdrawn unreasonably; and

(b) there shall be a right to have a fair hearing before a registration is cancelled.

Freedom of movement

50. (1) Every person lawfully within The Gambia has the right to move freely throughout The Gambia, to choose his or her own place of residence within The Gambia, and to leave The Gambia.

(2) Every citizen of The Gambia has the right to return to The Gambia.

Political rights

51. Every citizen of The Gambia of full age and capacity has the right, without unreasonable restrictions—

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and stand for elections at genuine periodic elections for public office, which elections shall be by universal and equal suffrage and be held by secret ballot; and

(c) to have access, on general terms of equality, to public service in The Gambia.

Right to marry

52. (1) Men and women of full age and capacity have the right to marry and found a family.

(2) Marriage shall be based on the free and full consent of the intended parties.

Rights of women

53. (1) Women are accorded full and equal dignity of the person with men.

(2) Women have the right to equal treatment with men, including equal opportunities in political, economic and social activities.

Rights of children

54. (1) Every child has the right -

(a) to a name and nationality from birth;

(b) to adequate nutrition;

(c) to be protected from abuse, neglect, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;

(d) to parental care and protection, which includes equal responsibility of the mother and father, to provide for the child;

- (e) to special protection against exposure to any physical or moral hazard; and
- (f) not to be detained, except as a measure of last resort, and then only for the shortest appropriate period.

(2) Children under the age of sixteen years are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or be harmful to their health or physical, mental, spiritual, moral or social development.

(3) A juvenile offender who is kept in lawful custody shall be kept separately from adult offenders.

Right to education

55. (1) Every person has a right to education.

(2) All persons have the right to equal educational opportunities and facilities, and with a view to achieving the full realisation of that right -

- (a) basic and secondary education shall be free, compulsory and available to all;
- (b) technical and vocational education shall be made generally available and accessible to all by every appropriate means and, in particular, by the progressive introduction of free technical and vocational education;
- (c) tertiary education shall be made equally accessible to all, on the basis of capacity, by every appropriate means and, in particular, by the progressive introduction of free tertiary education;
- (d) functional literacy shall be encouraged and intensified as far as possible; and
- (e) the development of a system of schools with adequate facilities at all levels shall be actively pursued.

Rights of persons with disabilities

56. A person with any disability is entitled –

- (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
- (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
- (c) to reasonable access to all places, public transport and information;
- (d) to use Sign Language, Braille or other appropriate means of communication;

- (e) to access materials and devices to overcome constraints arising from the person's disability; and
- (f) to protection against exploitation and discrimination, in particular as regards access to health and social services and employment.

Cultural rights

57. Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language or tradition subject to the terms of this Constitution and to the condition that the rights protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity.

Right to fair labour practices

58. Every person has the right to fair labour practices, including the right to form, join, participate, and organise a trade union.

Right to clean environment

- 59.** Every person has the right to a clean and healthy environment, which includes the right-
- (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Chapter XIV, and
 - (b) to have obligations relating to the environment fulfilled under Chapter XIV.

Economic and social rights

- 60.** (1) Every person has the right-
- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
 - (b) to accessible and adequate housing, and to reasonable standards of sanitation;
 - (c) to be free from hunger, and to have adequate food of acceptable quality;
 - (d) to clean and safe water in adequate quantities; and
 - (e) to social security.
- (2) A person shall not be denied emergency medical treatment.

Rights of the elderly

- 61.** The State shall take measures to ensure the rights of older persons -
- (a) to fully participate in the affairs of society;
 - (b) to pursue their personal development;
 - (c) to live in dignity and respect and be free from abuse; and
 - (d) to receive reasonable care and assistance from their family and the State.

Rights of the youth

- 62.** The State shall take measures, including affirmative action programmes, to ensure that the youth -
- (a) access relevant education and training;
 - (b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
 - (c) are protected from abuse and all forms of violence and exploitation, including protection against hazardous or exploitative labour; and
 - (d) access employment.

Consumer protection rights

- 63.** (1) Consumers have the right –
- (a) to goods and services of reasonable quality;
 - (b) to the information necessary for them to gain full benefit from goods and services;
 - (c) to the protection of their health, safety and economic interests; and
 - (d) to compensation for loss or injury arising from defects in goods or services.
- (2) This section applies to goods and services offered by public entities and private persons.

Right to development

- 64.** (1) All peoples have, and every person has, a right to development, and to the enjoyment of economic, social, cultural and political development.

(2) Women, children and persons with disabilities shall be given special consideration in the application of the rights referred to in subsection (1).

(3) The special consideration referred to in subsection (2) shall include equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.

(4) The State shall –

(a) take measures to introduce reforms aimed at eradicating social injustices and inequalities, and

(b) protect, respect, promote and fulfil the right to development and to justify its policies in accordance with this responsibility.

Right of the sick

65. A person who by reason of sickness or any other cause is unable to give his or her consent shall not be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

Gender balance and fair representation of marginalised groups

66. The State shall ensure gender balance and fair representation of women, youth and persons with disabilities –

(a) on bodies established under or pursuant to this Constitution and any Act of the National Assembly; and

(b) on all other public bodies, including Statutory Bodies and State Owned Enterprises.

Protection from discrimination

67. (1) All persons are equal before the law.

(2) Subject to the provisions of subsection (4) -

(a) no law shall make any provision which is discriminatory either of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any other person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) Subsection (2) (a) shall not apply to any law in so far as that law makes provision—

- (a) with respect to persons who are not citizens of The Gambia or to qualifications for citizenship;
- (b) with respect to the qualifications prescribed by this Constitution for any office;
- (c) with respect to adoption, marriage, divorce, burial, endowment (*waqf*), devolution of property on death or other matters of personal law; or
- (d) for the application, in the case of members of a particular race or ethnicity of customary law, with respect to any matter in the case of persons who, under that law, are subject to that law.

(4) Subsection (2) (b) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4).

(5) The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by the Constitution or any other law shall not be enquired into by any court on the grounds that it contravenes the provisions of subsection (2) (b).

(6) In this section, the expression "**discrimination**" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, ethnicity, creed, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

Declaration of state of public emergency

68. (1) The President may, at any time, by Proclamation published in the *Gazette*, declare a state of public emergency.

(2) A state of public emergency exists only when –

- (a) the State is threatened by war, invasion, general insurrection, civil disorder, natural disaster, or other form of serious emergency;
- (b) a situation exists which, if it is allowed to continue, may lead to an event identified in paragraph (a); and
- (c) it is necessary to meet the circumstances identified in paragraphs (a) and (b).

(3) A declaration made under subsection (1) shall –

- (a) if the National Assembly is in session, lapse at the expiration of a period of seven days from the date of the declaration of the public emergency; and
- (b) if the National Assembly is not in session, lapse at the end of twenty-one days from the date of the declaration of the public emergency.

(4) The National Assembly may, before the expiration of a period of public emergency specified in subsection (3), extend the period for up to sixty days at a time.

(5) The first extension of the declaration of a state of public emergency under subsection (4) requires a resolution supported by the votes of not less than two-thirds of all the members of the National Assembly, and any subsequent extension requires a resolution supported by the votes of not less than three-quarters of all the members of the National Assembly.

(6) A declaration made under subsection (1) may at any time be revoked by the President by Proclamation published in the *Gazette*.

(7) The Supreme Court may decide on the validity of-

(a) a declaration of a state of public emergency;

(b) any extension of a declaration of a state of public emergency; and

(c) any legislation enacted, or other action taken, in consequence of a declaration of a state of public emergency.

Derogations from fundamental rights under emergency powers

69. (1) An Act of the National Assembly may authorise the taking, during any period of public emergency, of measures that are reasonably justifiable for dealing with the situation that exists in The Gambia.

(2) An Act of the National Assembly enacted in consequence of a declaration of a state of public emergency may limit a fundamental right or freedom in this Chapter only to the extent that the limitation is strictly required by the public emergency and shall not take effect until it is published in the *Gazette*.

(3) Nothing contained in or done under this section or under the authority of an Act of the National Assembly shall derogate from –

(a) the right to life;

(b) the prohibition of torture and cruel, inhuman or degrading treatment or punishment,

(c) the prohibition against slavery or servitude;

(d) the prohibition on retrospective criminalisation and imposition of greater penalties for criminal acts;

(e) the right to equality and recognition before the law; and

(f) the right to *habeas corpus*.

Persons detained under emergency powers

70. (1) Where a person is detained under a state of public emergency, the detention shall be subject to the following provisions -

- (a) he or she shall, as soon as reasonably practicable, and in any case not later than twenty four hours after the commencement of the detention, be furnished with a statement in writing specifying in detail the grounds upon which he or she is detained, and the statement shall be read, and, if necessary, interpreted, to the person who is detained in a language which he or she understands;
- (b) the spouse, parent, child or other available next-of-kin of the person detained shall be informed by the authority effecting the detention and shall be permitted access to the person concerned at the earliest practicable opportunity, and in any case not later than twenty-four hours after the commencement of the detention;
- (c) where none of the persons mentioned in paragraph (b) can be traced or none of them is willing and able to see the person detained, the person who is detained shall be informed of this fact within twenty four hours of the commencement of the detention and he or she shall be informed of his or her right to name and give particulars of some other person who shall have the same right of access to the person who is detained as any of the persons mentioned in paragraph (b);
- (d) not more than seven days after the commencement of his or her detention, the authority which effected the same shall give notice in the *Gazette* and in the media stating that he or she has been detained and giving particulars of the provision of law under which the detention is authorised;
- (e) not more than fourteen days after the commencement of his or her detention, and after that at intervals of not more than thirty days during the continuance of his or her detention, the case of the person concerned shall be reviewed by the High Court;
- (f) the person detained shall be afforded every possible facility to consult a legal practitioner of his or her own choice who shall be permitted to make representation to the High Court ; and
- (g) at the hearing before the High Court, the person detained shall be entitled to appear in person or by a legal practitioner of his or her own choice and at his or her own expense.

(2) A person whose case has been reviewed under subsection (1) (e), is at liberty to apply for a further review after a period of five days following the first review.

(3) On a review by the High Court of the case of a person who has been detained, the Court may order the release of the person or it may uphold the detention, and the authority by which the detention was ordered shall act in accordance with the decision of the Court for the release of the person.

(4) No person may be detained under or by virtue of an Act of the National Assembly during any state of public emergency in excess of a total of six months, and on the expiry of that period, any person who has been so detained shall –

- (a) if the state of public emergency has not come to an end, be dealt with in accordance with section 38; and
- (b) if the state of public emergency has come to an end, be released immediately without any further order from the Court.

(5) In every month during the period in which a state of public emergency is in force and in which there is a sitting of the National Assembly, a Minister authorised by the President shall –

- (a) make a report to the National Assembly of the number of persons detained by virtue of this Constitution or under an Act of the National Assembly; and
- (b) the number of cases in which the authority which ordered the detention has acted in accordance with the decisions of the High Court as provided in subsection (3).

Interpretation of Chapter VI

71. (1) In this Chapter, save where the context otherwise requires—

"Armed Forces" means any naval, military or air force of The Gambia;

"member", in relation to the Armed Forces, includes persons who, under the law regulating the discipline of that Force, are subject to that discipline; and

"owner" includes any person deprived of any right or interest pursuant to section 41.

(2) In relation to any person who is a member of an armed force raised otherwise than under the law of The Gambia and lawfully present in The Gambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(3) The rights, duties, declarations and guarantees relating to the fundamental rights and freedoms specifically mentioned in this Chapter shall not be treated as excluding others not specifically mentioned.

CHAPTER VII REPRESENTATION OF THE PEOPLE

PART I FRANCHISE

General principles for the electoral system

72. The electoral system shall comply with the following principles—

- (a) freedom of citizens to exercise their political rights under section 51;
- (b) fair representation of all gender in the elective public bodies;

- (c) fair representation of the youth and persons with disabilities;
- (d) universal suffrage based on the aspiration for fair representation and equality of vote; and
- (e) free and fair elections which are -
 - (i) by secret ballot;
 - (ii) free from violence, intimidation, improper influence or corruption;
 - (iii) conducted by an independent body;
 - (iv) transparent; and
 - (v) administered in an impartial, neutral, efficient, accurate and accountable manner.

The right to be registered and to vote

- 73.** (1) A person is qualified to be registered as a voter at elections or referenda if the person -
- (a) is a citizen of The Gambia;
 - (b) is eighteen years old or older;
 - (c) is not declared to be of unsound mind; and
 - (d) has not been convicted of an election offence during the preceding five years.
- (2) Every citizen of the age of eighteen or above has a duty to register as a voter for public elections and referenda.
- (3) The Independent Boundaries and Electoral Commission shall provide for and make necessary arrangements for the continuous registration of voters and the conduct of elections which shall be designed to facilitate, and shall not deny, an eligible citizen the right to vote or contest an election.
- (4) The registration of voters shall cease six months before any public elections.

Candidates for election and compliance with code of conduct

- 74.** (1) The Independent Boundaries and Electoral Commission shall prescribe a code of conduct for all political parties and for all candidates in an election.
- (2) In every election, all candidates and all political parties shall comply with the code of conduct prescribed by the Independent Boundaries and Electoral Commission pursuant to subsection (1).

Eligibility to contest as an independent candidate

75. A person is eligible to contest as an independent candidate for election if the person -
- (a) is not a member of a registered political party; and
 - (b) satisfies the requirements, prescribed in this Constitution, for a candidate for any public election.

Secret ballot

76. All public elections and all referenda voting shall be by secret ballot.

Electoral laws

77. (1) Subject to the provisions of this Constitution, an Act of the National Assembly shall make provision for giving effect to the provisions of this Chapter.

(2) Without prejudice to the generality of subsection (1), an Act of the National Assembly shall provide for—

- (a) the delimitation by the Independent Boundaries and Electoral Commission of electoral boundaries for election of members of the National Assembly and Local Government Authorities;
- (b) the nomination of candidates;
- (c) matters relating to continuous registration of voters for the purposes of public elections;
- (d) voting at, and the conduct of, public elections and referenda;
- (e) the duties of public officers in connection with the registration of voters and the conduct of public elections and referenda;
- (f) the progressive registration of citizens outside The Gambia, and the progressive realisation of their right to vote;
- (g) equal access to public facilities and the media by candidates at public elections; and
- (h) any other matters necessary for boundaries delimitation and management of elections and political parties.

(3) Legislation required by subsection (2) (d) and (e) shall ensure that voting at every public election is -

- (a) simple;
- (b) transparent; and
- (c) takes into account the special needs of -

- (i) persons with disabilities; and
- (ii) other persons or groups with special needs.

(4) The National Assembly shall not amend, repeal or introduce any law in relation to elections within a period of nine months before elections are held.

Obligations of Independent Boundaries and Electoral Commission at every public election

78. At every public election, the Independent Boundaries and Electoral Commission shall ensure that

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- (a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent;
- (b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at the polling station at which the votes are cast;
- (c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and
- (d) appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials.

PART II

THE INDEPENDENT BOUNDARIES AND ELECTORAL COMMISSION

Establishment and membership of the Independent Boundaries and Electoral Commission

79. (1) There is established the Independent Boundaries and Electoral Commission (hereafter referred to as “the Commission”) for The Gambia.

(2) The members of the Commission shall be a Chairperson and four other members whose qualifications and disqualification are as set out in section 215.

(3) The members of the Commission shall be appointed by the President, subject to confirmation by the National Assembly with the votes of at least sixty per cent of all the members of the Assembly.

(4) Subject to the provisions of this section, the members of the Commission shall be appointed for a period of seven years and may be re-appointed for one further term.

Functions of the Commission

80. (1) Subject to the provisions of this Constitution, the Commission shall be responsible for -

- (a) the conduct and supervision of the continuous registration of voters for all public elections and referenda;
 - (b) the compilation and regular revision of the register of voters;
 - (c) the delimitation of constituencies, wards and districts;
 - (d) the conduct of the election of a Speaker and Deputy Speaker;
 - (e) the registration of political parties;
 - (f) the development of codes of conduct for candidates and political parties contesting elections;
 - (g) the facilitation of the observation, monitoring and evaluation of elections;
 - (h) voter education on boundary delimitation and electoral matters;
 - (i) ensuring that the times, places and dates (not specified in this Constitution) of public elections and referenda are determined in accordance with law and that they are publicised and elections held accordingly;
 - (j) ensuring that the period for campaigning for public elections is adequate and shall not, in any case, be less than four weeks prior to any election; and
 - (k) confirming that a candidate for public election has made a full declaration of his or her assets to the Anti-Corruption Commission.
- (2) The Commission shall announce the final results of all elections and referenda.

Electoral Boundaries

81. (1) Subject to this section, there shall be such number of constituencies for the purposes of the election of the members of the National Assembly as may be determined by the Commission and each constituency shall be represented by the number of members specified in Schedule 2.

(2) The Commission shall review the number, names and boundaries of constituencies, including the constituency representing persons with disabilities, at intervals of not less than ten years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of the National Assembly.

(3) The Commission shall review the number, names and boundaries of wards and districts at such intervals as may be prescribed in an Act of the National Assembly.

(4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

(5) The boundaries of each constituency and ward shall be such that the number of inhabitants in the constituency or ward is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency or ward may be greater or lesser than the population quota to take account of

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- (a) geographical features and population density;
- (b) community of interest, historical, economic and cultural ties;
- (c) boundaries of existing administrative areas; and
- (d) means of communication.

(6) In reviewing constituency and ward boundaries the Commission shall—

- (a) consult all interested parties; and
- (b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

(7) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards and districts and, where it makes such alteration, it shall, by an Order published in the *Gazette*, amend Schedule 2.

(8) Subject to subsections (1), (2), (3) and (4), the number, names and details of the boundaries of constituencies, wards and districts determined by the Commission shall come into effect on the dissolution of the National Assembly or a Local Government Council, as the case may be, first following their publication.

(9) A person may apply to the High Court for review of a decision of the Commission made under this section.

(10) An application for the review of a decision made under this section shall be filed within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.

(11) For the purposes of this section, “**population quota**” means the number obtained by dividing the number of inhabitants of The Gambia by the number of constituencies or wards, as applicable, into which The Gambia is divided under this section.

PART III POLITICAL PARTIES

Political Parties

82. (1) No association, other than a political party registered under or pursuant to an Act of the National assembly, shall sponsor candidates for public elections.

- (2) Every political party shall—
- (a) have a national character as prescribed by an Act of the National Assembly;
 - (b) have a democratically elected governing body;
 - (c) promote and uphold national unity;
 - (d) abide by the democratic principles of governance, and promote and practise democracy through regular, fair and free elections within the party;
 - (e) respect the right of all persons to participate in the political process, including women, youth, persons with disabilities, and other marginalised groups;
 - (f) promote gender equity in selecting candidates for election, having due regard to subsection (6);
 - (g) ensure that at least ten percent of candidates for election to the National Assembly are youth;
 - (h) respect and promote human rights and fundamental freedoms, and gender equality and equity;
 - (i) promote the objects and principles of this Constitution and the rule of law;
 - (j) declare to the public their revenues and assets, and the sources of those revenues and assets;
 - (k) publish to the public annually their audited accounts within six months of the end of the financial year, failing which the Independent Boundaries and Electoral Commission may deregister the party; and
 - (l) subscribe to and observe the code of conduct prescribed for political parties by the Independent Electoral and Boundaries Commission pursuant to section 80 (1) (f).

- (3) A political party shall not—

- (a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
- (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;
- (c) establish or maintain a paramilitary force, militia or similar organisation;
- (d) engage in bribery or other forms of corruption; or
- (e) except as is provided under this Chapter or by an Act of the National Assembly, accept or use public resources to promote its interests or its candidates in elections.

(4) Only a citizen of The Gambia may make a contribution or donation to a political party registered in The Gambia.

(5) A member of an organisation or interest group shall not be required to join a particular political party by virtue of his or her membership of the organisation or group.

(6) Nothing contained in Schedule 2 shall be construed to exclude a woman or a person with disabilities from contesting an election for a single member constituency, whether as an independent candidate or a member of a registered political party.

(7) For the purpose of subsection (2) (g), “youth” refers to a person who is not above the age of thirty-five years.

CHAPTER VIII EXECUTIVE

PART I

GUIDING PRINCIPLES OF EXECUTIVE AUTHORITY AND GENERAL DUTIES

Principles of executive authority

83. (1) The executive authority of The Gambia vests in the President, who shall exercise the authority in a manner that accords with respect for the rule of law and is compatible with the principles of service to the people of The Gambia.

(2) The executive authority vested in the President includes upholding the tenets, values and principles of this Constitution and all other laws validly enacted by the National Assembly.

The Executive

84. (1) The Executive comprises the President, Vice President and other members of the Cabinet.

(2) The composition of the Executive shall reflect the diversity of the Gambian people.

PART II

OFFICE OF PRESIDENT, POWERS AND DUTIES

Office of President

85. (1) There is established the Office of President of the Republic of The Gambia.

(2) The President shall be the Head of State and of Government and Commander-in-Chief of the Armed Forces of The Gambia.

(3) The President shall be the symbol and nucleus of national unity and shall provide executive leadership in a responsible manner in accordance with this Constitution and the laws of The Gambia.

(4) The President shall at all times –

- (a) respect, uphold and defend this Constitution as the supreme law of The Gambia;
- (b) safeguard the sovereignty of The Gambia;
- (c) uphold, promote and enhance the unity of Gambians;
- (d) uphold and promote respect for the diversity of the people and communities of The Gambia; and
- (e) take appropriate steps to promote and protect the rule of law and the fundamental human rights and freedoms enshrined in this Constitution.

Powers of President

86. (1) The President shall exercise or perform the following powers and duties –

- (a) to steer, direct and coordinate the affairs of the State in a manner not inconsistent with this Constitution or any Act of the National Assembly;
- (b) to assent to Acts enacted by the National Assembly and, where required, to bring the Acts into force;
- (c) to convene and preside over meetings of the Cabinet;
- (d) subject to this Constitution and any Act of the National Assembly so authorising, to constitute any public office for The Gambia;
- (e) subject to this Constitution, to make such appointments to public offices as may be necessary in accordance with powers conferred on him or her by this Constitution or an Act of the National Assembly;
- (f) to assign responsibility for the implementation and administration of any Act of the National Assembly to the Vice President or a Minister;
- (g) to confer national honours;
- (h) subject to this Constitution, on behalf of The Gambia, to negotiate, sign, enter into and accede to bilateral and multilateral agreements, including treaties, that are not against the public interest of The Gambia;
- (i) subject to this Constitution, to appoint, accredit, receive or recognise ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

- (j) to issue commissions of inquiry in accordance with this Constitution and an Act of the National Assembly;
- (k) subject to this Constitution, to grant a pardon to, or remit or reduce a sentence imposed by a court on, a convicted offender;
- (l) subject to this Constitution, to declare a state of public emergency in the interest of The Gambia;
- (m) subject to the prior approval of the National Assembly, to declare war and make peace;
- (n) where the National Assembly is in recess or is dissolved but before elections are due, to request the Speaker to summon the Assembly to hold an extraordinary sitting to conduct special business relating to or affecting the State; and
- (o) to exercise such other power or perform such other function as may be provided by this Constitution or an Act of the National Assembly.

(2) Subject to subsection (3), the powers and duties conferred or imposed on the President under subsection (1) may be exercised or performed by the President directly or through the Vice President or a Minister.

(3) The powers conferred on the President under subsection (1) (b), (d), (e), (f), (i), (j), (k), (l), (m) and (n) may not be exercised by any other person.

(4) Where, under this Constitution or an Act of the National Assembly, any appointment by the President requires confirmation or approval by the Assembly, such confirmation or approval shall, unless otherwise provided in this Constitution, be made if at least one half of the members of the Assembly present vote in favour of the appointment.

Duty to attend and address the National Assembly

87. (1) The President shall at the commencement of each year, but in any case not later than the end of March, attend and address the National Assembly.

(2) The address by the President shall relate to matters concerning the state of the nation and may include previous, current and future policies of the Government.

(3) The President shall at any time during the course of the year attend and address a special sitting of the National Assembly on a matter of national importance if so requested by the National Assembly on a resolution passed by not less than one half of all the Members of the National Assembly.

(4) A resolution passed by the National Assembly pursuant to subsection (3) shall specify the date and the subject matter of national importance on which the President shall address the National Assembly.

(5) The National Assembly may, after an address of the Assembly by the President, hold a debate on the address and, for that purpose, the President may or, if he or she so designates, the Vice President shall, attend and answer any matter or question relating to the President's address.

Decisions of the President

88. (1) Where the President takes a decision or issues a directive in the performance of any function under this Constitution or an Act of the National Assembly, the decision or directive shall be in writing, and shall bear the seal and signature of the President.

(2) Where the signature of the President is required on any instrument, the signature shall be confirmed by the Public Seal.

(3) Where a person acts or purports to act on a decision made or directive given by the President not in compliance with subsection (1), the person shall be personally liable if any loss or other harm results to the State as a consequence of his or her action.

Temporary succession to the Office of President

89. (1) Where an inquiry is initiated under section 105 into the mental or physical capacity of the President to discharge the functions of the Office of President -

(a) the President shall step down until such time as the inquiry is completed; and

(b) the Vice President shall assume and perform the functions of the Office of President.

(2) If the Vice President is for any reason unable to assume and perform the functions of the Office of President, the Speaker shall assume and perform the functions of President.

(3) Whoever assumes the Office of President under this section shall not take or subscribe to any oath for the due execution of that office.

PART III ELECTION TO THE OFFICE OF PRESIDENT

Election of President

90. (1) The President shall be elected by registered voters in a national election conducted in accordance with this Constitution and an Act of the National Assembly regulating the election of President.

(2) Election to the Office of President shall be held three weeks before the end of the term of the incumbent President.

Qualifications for election as President

91. (1) Subject to section 92, a person is qualified for election as President if he or she –
(a) is a citizen of The Gambia;

- (b) has, on the date of nomination for election of President, attained the age of thirty years;
- (c) has been ordinarily resident in The Gambia for the three years immediately preceding the date of nomination for election of President;
- (d) has, on the date of nomination for election of President, produced a certificate from a medical practitioner registered in The Gambia declaring him or her to be of sound mind;
- (e) is a registered voter; and
- (f) holds a minimum of an undergraduate degree plus five years' work experience after the date of attaining that degree; or
- (g) holds a minimum of a senior secondary school certificate or its equivalent plus twelve years' work experience after the date of attaining that certificate.

(2) The obligation is on the person who intends to be nominated for election as President to establish to the satisfaction of the Independent Boundaries and Electoral Commission that he or she possesses the qualifications mentioned in subsection (1).

Disqualifications for election as President

- 92.** (1) A person is disqualified for election as President if he or she –
- (a) holds the citizenship or nationality of, or in any other manner owes allegiance to, a country other than The Gambia;
 - (b) acquired citizenship of The Gambia by registration or naturalisation;
 - (c) has, during any period of service in a public or elected office or in the private sector been found liable for misconduct, misbehaviour, negligence or corruption by a commission of inquiry;
 - (d) subject to subsection (2) (a), has, during any period of service in a public office or in the private sector in The Gambia, been terminated or dismissed for dishonesty;
 - (e) subject to subsection (2) (b), has been convicted by a court or tribunal of competent jurisdiction of –
 - (i) an offence involving dishonesty or immoral conduct; or
 - (ii) any other offence for which the prescribed penalty exceeds twelve months;
 - (f) has, within ten years immediately preceding the date of nomination for election as President, uttered any statement to cause feelings of ill-will, disaffection or hostility between different classes or ethnic groups of The Gambia;

- (g) has been adjudged or otherwise declared bankrupt under any law and has not been discharged, or has entered into an arrangement with his or her creditors;
 - (h) is found to have made a false declaration of his or her assets by the Anti-Corruption Commission;
 - (i) has failed to submit to the Independent Boundaries and Electoral Commission on the date of nomination for election of President a certificate from the authority responsible for the collection of taxes that he or she has paid all taxes due from him or her; or
 - (j) after the date of nomination for election as President but before the date of election, has been declared to be of unsound mind.
- (2) The disqualification mentioned –
- (a) in subsection (1) (d) does not apply if the termination or dismissal, as the case may be, has been litigated before a court of competent jurisdiction and the person has been found not to have acted dishonestly; and
 - (b) in subsection (1) (e) does not apply if the conviction has been overturned on appeal or if the person has been granted a pardon in accordance with this Constitution.

Nomination of candidates for President

- 93.** (1) A candidate for election to the Office of President shall –
- (a) on or before the date for nomination –
 - (i) satisfy the Independent Boundaries and Electoral Commission that his or her nomination is supported by not less than five thousand registered voters consisting of at least two hundred from each administrative area, as signified by their signatures or otherwise; and
 - (ii) pay to the Independent Boundaries and Electoral Commission such sum as may be prescribed by an Act of the National Assembly; and
 - (b) subject to section 94, at least twenty-one days before the date for nomination, lodge a declaration of his or her assets with the Anti-Corruption Commission in such form as the Commission may determine.
- (2) The Anti-Corruption Commission shall, upon receipt of an assets declaration from a candidate under subsection (1) (b) or section 94 (5) (b), conduct necessary investigations and submit a report to the Independent Boundaries and Electoral Commission before the date of nomination confirming whether or not the candidate has made an accurate declaration.

Procedure on nomination of candidates for President

- 94.** (1) If on the date appointed for the nomination of candidates for President only one candidate is nominated, the Independent Boundaries and Electoral Commission shall declare that candidate duly elected.
- (2) If two or more candidates for President are nominated, an election shall be held to elect a President.
- (3) If on the date appointed for the nomination of candidates for President no candidate is nominated, the Independent Boundaries and Electoral Commission shall appoint a new date, being not more than seven days, for nomination of candidates for President.
- (4) If a person who has been nominated as a candidate for President dies between nomination day and polling day, the Independent Boundaries and Electoral Commission shall appoint a new nomination day, being not more than seven days of the death of the candidate for President.
- (5) For purposes of subsection (4) and notwithstanding sections 90 and 93 (1) (b) -
- (a) the date stipulated for the election of President shall be shifted by seven days; and
 - (b) a new candidate for election as President shall, within three days before the election, lodge with the Anti-Corruption Commission a declaration of his or her assets.

Procedure on election of President

- 95.** (1) The Independent Boundaries and Electoral Commission shall declare a candidate elected as President if the candidate has received more than half of all the votes validly cast in the election.
- (2) If, on the first election, no candidate is elected, the Independent Boundaries and Electoral Commission shall hold a fresh election within fourteen days of the date of declaration of the results of the first election.
- (3) In the fresh election, the only candidates shall be the two candidates who received the highest number of votes cast at the first election.
- (4) Where, at the first election, more than two candidates received equally the highest number or second highest number of votes, all the candidates shall participate in the fresh election, unless any of them withdraws his or her participation.

Declaring winner of presidential election

- 96.** The Independent Boundaries and Electoral Commission shall as soon as possible, but in any case not beyond seventy-two hours, after the polls are closed –
- (a) declare the result of the election and the winner; and

- (b) deliver a written notification of the result to the Chief Justice, the incumbent President and the person declared the winner if that person is not the incumbent President.

Death of President-elect before assumption of Office

97. (1) Where the person declared to be the winner of an election for President dies before assuming office (“the President-elect”) and before a Speaker is elected to assume office, the Chief Justice shall be sworn in as acting President until such date as the National Assembly elects a Speaker, in which case the Speaker shall be sworn in as acting President in place of the Chief Justice.

(2) The Independent Boundaries and Electoral Commission shall conduct a fresh election for President within ninety days after the death of the President-elect.

Assumption of Office of President

98. (1) Subject to subsection (2), the person declared to be the winner of an election for President shall assume office on the day after the date of expiry of the incumbent President’s term of office.

(2) The winner of an election for President assumes the Office of President by subscribing to the prescribed oaths.

(3) If for any reason the winner of an election for President has not been declared before the date of expiry of the incumbent President’s term of office or before the winner can assume office, the Chief Justice, in the absence of a Speaker, shall be sworn in as acting President until a Speaker is elected and sworn in.

(4) The winner of an election for President shall be sworn in publicly before the Chief Justice or, in the absence of the Chief Justice, the most senior Gambian judge of the Supreme Court.

Challenging validity of election of President

99. (1) A registered political party or an independent candidate, who has participated in an election for President may apply to the Supreme Court to determine the validity of the election of a President by filing a petition within ten days of the declaration of the results of the election.

(2) The Supreme Court shall, within fourteen days after the filing of a petition under subsection (1) or, if more than one petition has been filed, within fourteen days after the date of the last petition filed, hear and determine the petition or petitions, and the decision of the Supreme Court shall be final.

(3) Subject to subsection (4), the filing of a petition under subsection (1) shall not be a bar to the swearing in of a winner of an election for President.

(4) If the Supreme Court determines that the election for President is invalid, the Independent Boundaries and Electoral Commission shall conduct fresh elections for President within ninety days after the determination.

PART IV
TERMS AND CONDITIONS OF OFFICE OF PRESIDENT

Term of office of President

- 100.** (1) Subject to subsection (3), the President shall hold office for a term of five years.
- (2) No person shall hold office as President for more than two terms of five years each, whether or not the terms are consecutive.
- (3) Where the life of the National Assembly is extended for any period in accordance with section 138 (2), the term of office of the President shall be extended for the same period.
- (4) Where the term of office of the President is extended in accordance with subsection (3), the Independent Boundaries and Electoral Commission shall appoint a new date for holding election for the office of President within the period specified in section 90 (2).

Disclosure obligations of President

- 101.** (1) The President shall –
- (a) within three months of assuming office, disclose to the Anti-corruption Commission –
- (i) all liabilities and business interests he or she has or that is held on his or her behalf; and
- (ii) all the assets, liabilities and business interests of his or her spouse held by or on behalf of the spouse; and
- (b) within three months of leaving office, disclose to the Anti-corruption Commission –
- (i) all liabilities, assets and business interests he or she has incurred or acquired during his or her tenure as President or that is held on his or her behalf; and
- (ii) all liabilities, assets and business interests of his or her spouse held by or on behalf of the spouse.
- (2) Where upon assuming office the President has any business interest, he or she shall, unless he or she otherwise disposes of the business interest, transfer the business interest to be held on his or her behalf in a trust which shall be managed in a manner to ensure conformity with this section.

Restrictions regarding Office of President

- 102.** The President shall not, during his or her tenure of office –

- (a) hold any other public or private office and shall not perform remunerative work outside the duties of his or her office;
- (b) use his or her office, or use information entrusted to or received by him or her in his or her official capacity, for personal gain directly or indirectly or place himself or herself in a situation where his or her material interests conflict with the duties and responsibilities of his or her office; or
- (c) establish, or advocate for, participate in or promote the establishment, or in any other way engage in the establishment, directly or indirectly, of any organisation or institution of a civic, charitable or other nature.

Immunity of President from legal proceedings

103. (1) Subject to this section, the President shall not, during his or her tenure in office, be liable to civil or criminal proceedings, whether in his or her personal capacity or in relation to the performance of a function of his or her office.

(2) The Office of President shall not be immune to orders of the courts concerning rights and duties under this Constitution.

(3) A person shall not, after leaving the Office of President, be liable to be sued for any act or omission done or omitted in his or her official capacity during his or her tenure as President, but shall not otherwise be immune.

(4) The immunity granted to the President under this section shall not, after the President leaves office, extend to any offence the President committed during his or her tenure in office.

(5) Nothing contained in this section shall be construed as –

(a) preventing the National Assembly from impeaching the President for obstruction of justice under section 106 (1) (d); and

(b) extending to a crime for which the President may be prosecuted under any treaty to which The Gambia is a party and which prohibits such immunity and, for that purpose, section 9 (2) shall not apply.

(6) Where a person who has ceased to hold or perform the functions of the Office of President is a party to any legal proceedings, any period during which the person was immune from legal proceedings under this section shall not be counted for the purposes of applying any rule regarding the limitation of action.

Vacancy in the Office of President

104. (1) The Office of President shall become vacant if the holder of the Office –

(a) dies;

- (b) resigns in accordance with section 306; or
- (c) otherwise ceases to hold office under section 99, 100, 105 or 106.

(2) If the Office of President becomes vacant, the Vice President or, if the Vice President is unable to assume that Office, the Speaker, shall assume the Office as acting President.

(3) If for any reason the Speaker is unable to assume the Office of President in accordance with subsection (2), the Chief Justice shall assume the Office as acting President.

(4) Where the Office of President becomes vacant, the Independent Boundaries and Electoral Commission shall hold election to that Office within ninety days from the date the vacancy occurred.

(5) The Vice President, Speaker or Chief Justice, as the case may be, shall, before assuming office as acting President as provided in this section, take the prescribed oaths.

(6) Upon assuming office as acting President –

- (a) the Vice President shall, in his or her capacity as acting President, appoint a new Vice President in accordance with this Constitution;
- (b) the Speaker shall vacate the Office of Speaker; or
- (c) the Chief Justice shall temporarily cease to sit on the Supreme Court.

Removal of President by reason of mental or physical incapacity

105. (1) The National Assembly may, by a vote of not less than one half of all the members of the Assembly, pass a resolution alleging that the President is by reason of infirmity of body or mind incapable of performing the functions of his or her office.

(2) The resolution referred to in subsection (1) shall give particulars of the incapacity alleged against the President and request the Chief Justice to constitute and appoint a medical board.

(3) Where the National Assembly passes a resolution in accordance with subsection (1), the Speaker shall transmit the original of the resolution to the Chief Justice who shall, subject to subsections (3) and (4) and without any delay, constitute and appoint a medical board to inquire into and assess the allegation of mental or physical incapacity of the President.

(4) The medical board constituted and appointed under subsection (3) shall comprise –

- (a) the President's personal physician or such other physician as the President selects; and
- (b) four other medical practitioners who are specialized in the field of medicine relative to the nature of the area in which the President is to be examined.

(5) In constituting and appointing the medical board, the Chief Justice shall –

- (a) act on the advice of the head of the health services in The Gambia;
- (b) provide a time frame within which the medical board must complete its assignment; and
- (c) appoint the members of the medical board on such other terms and conditions as he or she deems fit.

(6) The medical board shall, after duly inquiring into and assessing the allegation of mental or physical incapacity of the President, prepare and submit a report to the Chief Justice stating the board's opinion on whether the President is, by reason of infirmity of body or mind, incapable of performing the functions of the Office of President.

(7) If for any reason the personal physician of the President refuses to be appointed on the medical board or is unavailable, or the President refuses to select a physician, the head of the health services shall advise the Chief Justice on the appointment of all the members of the medical board.

(8) If the report of the medical board finds that the President is incapable of performing the functions of Office of President, the Chief Justice shall, by a notice published in the *Gazette* and in the local media, declare the Office of President to be vacant.

(9) The report of the medical board shall be conclusive and final and shall not be inquired into by any court.

Removal of President by impeachment

106. (1) The President may be removed from office on any of the grounds mentioned in subsection (2).

(2) The grounds on which the President may be removed from office are –

- (a) abuse of office;
- (b) failure to adhere to the oath of office of President subscribed to;
- (c) violation of a provision of this Constitution;
- (d) obstruction of justice;
- (e) misconduct, in that he or she –
 - (i) has conducted himself or herself in a manner that has brought or is likely to bring the Office of President into contempt or disrepute; or
 - (ii) has dishonestly done any act which is prejudicial or inimical to the economy of The Gambia or has dishonestly omitted to act with similar consequences.

(3) The National Assembly may, by a vote of not less than one half of all the members of the Assembly, pass a resolution for the removal of the President on any of the grounds mentioned in subsection (2).

(4) The resolution passed in accordance with subsection (3) shall specify the ground for the removal of the President, supported by any necessary documentation, and request the Chief Justice to constitute and appoint a tribunal to investigate the President.

(5) Where the National Assembly passes a resolution in accordance with subsection (2), the Speaker shall transmit a copy of the resolution to the Chief Justice and the President.

(6) Where the Chief Justice receives a copy of the resolution under subsection (5), he or she shall, without any delay, constitute and appoint a tribunal to investigate the President.

(7) The tribunal shall comprise –

(a) a Justice of the Supreme Court, as Chairperson;

(b) three other persons who hold or have held high judicial office; and

(c) one other person, not being a judicial officer (or having served as one) or a legal practitioner, who is of high moral character and integrity.

(8) The President has the right to appear and be represented before the tribunal by a legal practitioner of his or her own choice.

(9) The tribunal shall investigate the matter contained in the resolution of the National Assembly and prepare and submit a report of its findings to the National Assembly through the Speaker stating whether the matter contained in the resolution has been substantiated.

(10) If the finding of the tribunal is that the matter contained in the resolution has not been substantiated, no further proceedings shall be taken against the President.

(11) If the finding of the tribunal is that the matter contained in the resolution has been substantiated, the National Assembly may, by a vote of not less than two-thirds of all the members of the Assembly, pass a resolution that the President is not fit to continue in office.

(12) Where the National Assembly passes a resolution in accordance with subsection (11), the Speaker shall notify the President of that fact and the President shall immediately cease to hold and perform the functions of Office of President.

Salary and allowances

107. (1) The President shall receive such salary and allowances as may be prescribed by an Act of the National Assembly and the salary and allowances shall not be altered to his or her disadvantage during his or her tenure of office.

(2) Subject to subsection (4), the President shall be entitled –

- (a) to retire on his or her salary; and
- (b) to such other retirement benefits as may be prescribed by an Act of the National Assembly.

(3) The salary and other retirement benefits received by the President under subsection (2) after leaving office shall be free of tax and shall not be taken away or altered to his or her disadvantage during his or her life time.

(4) The salary and other retirement benefits receivable under subsection (2) shall not apply to a President –

- (a) who ceased to hold office in accordance with section 106;
- (b) who, since leaving office, has been convicted of an offence relative to the period when he or she served as President;
- (c) against whom an adverse finding has been made by a commission of inquiry after leaving office.

(5) Subsections (4) (b) or (c) shall not apply if the conviction or adverse finding, as the case may be, has been overturned on appeal.

(6) Where a President who receives the salary and other retirement benefits referred to in subsection (2) after a single term in office is, after the next five year period of the Presidency since leaving office, elected as President, the benefits he or she was receiving prior to his or her election shall be suspended until he or she completes his or her second five year term in office.

(7) A President who has retired or is receiving the benefits provided in accordance with this section shall not hold or be eligible to hold any public office.

PART V OFFICES IN THE EXECUTIVE

(i) Vice President and Ministers

Office of Vice President

108. (1) There is established the Office of Vice President of the Republic of The Gambia.

(2) The President shall, within thirty days of assuming office, nominate and appoint the Vice President, subject to confirmation by the National Assembly.

Qualifications and disqualifications of Vice President

109. (1) A person is qualified to be appointed Vice President if he or she has the qualifications required for the election of President under section 91.

(2) The disqualifications outlined in respect of the nomination and election of President under section 92 (1) shall apply to the nomination and appointment of the Vice President with necessary modifications, but the person nominated for appointment as Vice President shall –

- (a) before any confirmation by the National Assembly, produce to the President and the National Assembly a certificate from the authority responsible for the collection of taxes that he or she has paid all taxes due from him or her; and
- (b) not be a member of the National Assembly.

Functions of the Vice President

110. (1) The Vice President shall –

- (a) be the principal assistant of the President in the discharge of the President's executive functions;
- (b) act as President during any period when the President is temporarily unable to perform his or her functions, or during any other period that the President appoints;
- (c) answer in the National Assembly questions or other matters affecting the Office of President, and shall read on the President's behalf any message sent to the National Assembly by the President; and
- (d) perform any other functions conferred on him or her by this Constitution or assigned by the President.

(2) The Vice President shall not hold any other remunerative office in the public service or the private sector.

Vacancy in the Office of Vice President

111. (1) The Office of Vice President shall become vacant –

- (a) on the death or resignation of the holder of that Office;
- (b) on the revocation of the appointment of the person holding that Office;
- (c) if the holder of that Office assumes the Office of President; or
- (d) if the holder of that Office, while serving as Vice President, ceases to satisfy any of the qualifications applicable to the Office of President.

(2) Where the Office of Vice President becomes vacant, the President shall appoint a new Vice President in accordance with this Constitution.

Revocation of appointment of Vice President

112. (1) The President may for any cause revoke the appointment of the Vice President.

(2) Without prejudice to subsection (1), the President shall revoke the appointment of the Vice President if the National Assembly adopts a vote of censure against the Vice President in accordance with section 120.

Appointment of Minister of Government

113. (1) Subject to subsection (2), the President shall nominate and appoint –

- (a) such number of Ministers, not exceeding fifteen, to assist with the running of the affairs of the State; and
- (b) an Attorney General who shall be a Minister and shall be a legal practitioner of not less than ten years standing.

(2) The President shall, within sixty days of assuming office, nominate and appoint the Ministers, subject to confirmation by the National Assembly.

(3) The President may, whenever he or she considers it fit, reassign a Minister.

(4) In determining the number of Ministers to appoint, the President shall take into account the economic circumstances of the country and the extent to which the economy can effectively sustain the Ministries to be headed by the Ministers.

Qualifications and disqualifications of Ministers

114. (1) A person is qualified to be appointed a Minister if he or she –

- (a) is a citizen of The Gambia;
- (b) has attained the age of twenty-one or more;
- (c) has attained a qualification at tertiary education level and can speak and write the English language well;
- (d) has proven experience of not less than eight years from the date of earning the qualification mentioned in paragraph (c); and
- (e) is of high moral character and proven integrity.

- (2) A person is not qualified to be appointed a Minister if he or she –
- (a) is a member of the National Assembly;
 - (b) has been declared to be of an unsound mind;
 - (c) is adjudged a bankrupt and has not been discharged, or has entered into an arrangement with creditors;
 - (d) has, during any period of service in a public office or in the private sector in The Gambia, been found liable for misconduct, misbehaviour, negligence or corruption by a commission of inquiry;
 - (e) has, during any period of service in a public office or in the private sector in The Gambia, been terminated or dismissed for dishonesty or immoral conduct;
 - (f) has been convicted by a court or tribunal of competent jurisdiction of –
 - (i) an offence involving dishonesty or immoral conduct; or
 - (ii) any other offence for which the penalty exceeds twelve months;
 - (g) has, within seven years immediately preceding the date of his or her appointment as Minister, been convicted by a court or tribunal of competent jurisdiction of an offence relating to elections;
 - (h) has, within ten years immediately preceding the date of appointment as Minister, uttered any statement to cause feelings of ill-will, disaffection or hostility between different classes or ethnic groups of the population of The Gambia;
 - (i) is found to have made a false declaration of his or her assets by the Anti-Corruption Commission;
 - (j) fails to produce a certificate from the authority responsible for the collection of taxes that he or she has paid all taxes due from him or her; or
 - (k) is a serving member of a disciplined force.

Vacancy in Office, and revocation of appointment, of Minister

- 115.** (1) The Office of a Minister shall become vacant –
- (a) on the death or resignation of the holder of that Office;
 - (b) on the revocation of appointment of the person holding that Office;
 - (c) if, during his or her tenure, any of the disqualifications outlined in section 114 applies or is discovered after his or her appointment.
- (2) The President may for any cause revoke the appointment of a Minister.

(3) Without prejudice to subsection (2), the President shall revoke the appointment of a Minister if the National Assembly adopts a vote of censure against the Minister in accordance with section 120.

Functions and incidents of Office

116. (1) The Vice President and Ministers shall –

- (a) be responsible for such Ministries, departments and other business of the Government as the President may assign to them; and
- (b) exercise general direction and control over their respective Ministries and departments of Government.

(2) The President shall, in assigning responsibilities in accordance with subsection (1), have due regard to the competence, expertise and experience of the Vice President or Minister concerned.

(3) The Vice President and each Minister is accountable to the President for the administration of the Ministry and Departments and other business of Government for which he or she has responsibility, and this accountability extends to the National Assembly.

(4) The Attorney General shall be the chief legal adviser to the Government and shall –

- (a) be the leader of the Bar;
- (b) promote, protect and uphold the rule of law and defend the public interest;
- (c) have the right of audience in all the courts of The Gambia in respect of civil matters;
- (d) have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party; and
- (e) in the performance of his or her functions, act in accordance with the dictates of the law.

Disclosure obligations of Vice President and Ministers

117. (1) The Vice President and each Minister shall –

- (a) within three months of assuming office, disclose to the Anti-Corruption Commission –
 - (i) all assets, liabilities and business interests he or she has or that is held on his or her behalf; and
 - (ii) all the assets, liabilities and business interests of his or her spouse held by or on behalf of the spouse; and
- (b) within three months of leaving office, disclose to the Anti-Corruption Commission –

- (i) all assets, liabilities and business interests he or she has incurred or acquired during his or her tenure as Vice President or Minister or that is held on his or her behalf; and
- (ii) all assets, liabilities and business interests of his or her spouse held by or on behalf of the spouse, during his or her tenure in office.

(2) Where upon assuming office the Vice President or a Minister has any business interest, he or she shall, unless he or she otherwise disposes of the business interest, transfer the business interest to be held on his or her behalf in a trust which shall be managed in a manner to ensure conformity with this section.

Restrictions regarding Office of Vice President and Minister

118. The Vice President and each Minister shall not, during his or her tenure of office –

- (a) hold any other public or private office and shall not perform remunerative work outside the duties of his or her Office;
- (b) use his or her Office, or use information entrusted to or received by him or her, for personal gain directly or indirectly or place himself or herself in a situation where his or her material interests conflict with the duties and responsibilities of his or her Office; or
- (c) establish, or advocate for, participate in or promote the establishment, or in any other way engage in the establishment, directly or indirectly, of any organisation or institution of a civic, charitable or other nature.

Responsibility of the Vice President and Ministers to the National Assembly

119. The Vice President and each Minister shall –

- (a) whenever required by the National Assembly, report to the Assembly any matter concerning a Ministry or department or other business of Government for which he or she has responsibility;
- (b) be entitled to attend and speak in the National Assembly whenever a Bill, motion or other matter concerning a Ministry or department or other business of Government for which he or she has responsibility is being introduced or debated; and
- (c) provide such other assistance as may be necessary to facilitate the National Assembly to discharge its functions and responsibilities.

Vote of Censure

120. (1) The National Assembly may, by a resolution supported by the votes of not less than two-thirds of all the members, pass a censure against the Vice President or a Minister on the ground of –

- (a) his or her inability to perform the functions of his or her Office;
- (b) abuse of office or violation of a provision of this Constitution;

- (c) his or her misconduct in office;
- (d) failure to adhere to the oaths he or she has subscribed to on assuming office; or
- (e) persistent failure to attend sittings of the National Assembly to answer questions or provide information requested by the National Assembly.

(2) A vote of censure shall be initiated by a petition, signed by not less than one third of all the members of the National Assembly to the President through the Speaker stating the ground or grounds on which the petition is initiated.

(3) The President shall cause a copy of the petition to be given to the Vice President or Minister, as the case may be, immediately.

(4) The motion for the resolution of censure shall not be debated until after the expiry of fourteen days from the day the petition is sent to the President.

(5) The Minister or Vice President concerned has the right to attend and be heard during the debate on the motion.

(6) In this section, "misconduct in office" means that the person concerned has—

- (a) conducted himself or herself in a manner which brings or is likely to bring his or her office into contempt or disrepute; or
- (b) dishonestly done any act which is prejudicial or inimical to the economy of The Gambia or dishonestly omitted to act with similar consequences.

(ii) The Cabinet

Establishment and composition of Cabinet

121. (1) There is established the Cabinet which shall comprise the President, the Vice President and the Ministers.

(2) The President, or in his or her absence the Vice President, shall chair Cabinet meetings.

(3) The Cabinet shall, for the purpose of conducting its meetings, regulate its own rules of procedure.

(4) The President may, for the conduct of any particular or general business, invite such public or other officers to attend Cabinet meetings to answer questions or provide necessary assistance to the Cabinet.

Functions of Cabinet

122. (1) The Cabinet shall be responsible for –

- (a) advising the President with respect to policies to be adopted and implemented by the Government;
- (b) advising on appropriate measures for implementing Acts of the National Assembly;
- (c) directing, coordinating and supervising the activities of Government Ministries and departments, including State Owned Enterprises;
- (d) initiating Bills for submission to the National Assembly and to explain those Bills;
- (e) considering and approving subsidiary legislation for which Cabinet has delegated responsibility;
- (f) preparing, explaining and formulating for the National Assembly the budget of the State and its economic programmes;
- (g) advising the President in determining what international agreements are to be signed, ratified or acceded to and advising the National Assembly accordingly; and
- (h) performing such other functions reasonably necessary for the performance of their duties in accordance with this Constitution, or as may be prescribed by an Act of the National Assembly or required by the President.

(2) Subject to subsection (3), the Cabinet shall, in relation to legislative proposals, make such proposals available in a timely manner to permit sufficient time for canvassing expert and public opinion.

(3) Where the exigencies of a legislative proposal do not permit for timely canvassing of expert and public opinion, the Cabinet may proceed with the legislative proposal without such opinion.

(4) All Cabinet decisions shall be communicated in writing.

Secretary to Cabinet

123. (1) There is established the Office of Secretary to Cabinet, which shall be an office in the public service.

(2) The President shall nominate and appoint the Secretary to Cabinet, subject to confirmation by the National Assembly.

(3) The Secretary to Cabinet shall have responsibility for –

- (a) the administration of the Cabinet Office;
- (b) recording and arranging the business, and keeping the minutes, of the Cabinet, subject to any direction given by the Cabinet;
- (c) conveying the decisions of the Cabinet to the relevant persons and authorities and, where necessary, to follow up to establish whether the decisions have been acted upon and report back to the Cabinet; and

- (d) performing such other functions as may be assigned or directed by the President or the Cabinet.

International Relations

124. (1) The President shall be responsible for the conduct of relations with other states and international organizations.

(2) The Gambia shall not –

- (a) enter into any agreement or engagement with any other country which causes it to lose its sovereignty without the matter first being put to a referendum and passed by a vote of at least two-thirds;
- (b) become a member of any international organization unless the National Assembly is satisfied, through a resolution passed by the Assembly, that it is in the interest of The Gambia and that membership does not derogate from the country's sovereignty.

(3) A treaty entered into by the President pursuant to the powers granted by section 86 (1) (h)

- (a) is subject to ratification by the National Assembly on a vote of not less than one half of all the members before it has any application to The Gambia; and
- (b) shall not become law unless section 9 (2) is complied with.

(4) The National Assembly may -

- (a) by resolution, establish procedures for the ratification of treaties and other bilateral and multilateral agreements; and
- (b) enact legislation to strengthen the foreign relations of The Gambia, including creating an enabling administrative and management framework through which the foreign service of The Gambia will be managed and regulated in a consolidated and coherent manner.

(5) The President or any person acting under his or her direction shall not suspend or withdraw The Gambia from any international treaty or organisation without the approval of the National Assembly on a vote of not less than two-thirds of all the members.

Establishment of Prerogative of Mercy Committee

- 125.** (1) There is established a Prerogative of Mercy Committee whose members shall comprise –
- (a) the Attorney General, as Chairperson;
 - (b) the Minister responsible for internal security; and

- (c) three other persons, not being public officers, of wide knowledge and experience and of high moral character and proven integrity, nominated by the President.
- (2) The members of the Prerogative of Mercy Committee shall be appointed by the President after confirmation by the National Assembly.
- (3) The heads responsible for the administration of prisons and social welfare shall serve as resource persons to the Prerogative of Mercy Committee.
- (4) The functions of the Prerogative of Mercy Committee are –
 - (a) to review cases of prisoners referred to the Committee by the President to determine whether recommendation should be made in respect of the President's exercise of his or her powers under section 126 in relation to such prisoners; and
 - (b) to advise the President on which cases, if any, referred to the Committee merits the President's exercise of his or her power of mercy.
- (5) The Prerogative of Mercy Committee may, in performing its functions, take into account the views of the victims, or in their absence the views of their families, in respect of the offence for which they are convicted and sentenced to imprisonment.
- (6) An Act of the National Assembly shall provide for the procedure of the Prerogative of Mercy Committee and the criteria it should apply in considering and formulating its advice to the President.

Exercise of the power of mercy

- 126.** (1) The President may, on the petition of any person or on his or her own prerogative, and after consulting with and considering the advice of the Prerogative of Mercy Committee –
- (a) grant to any person convicted of an offence a pardon either free or subject to lawful conditions;
 - (b) grant to any person a respite, either indefinite or for a specified period, in relation to a punishment imposed on that person for an offence;
 - (c) substitute a less severe form of punishment for the punishment imposed on a person for an offence; or
 - (d) remit the whole or any part of a punishment imposed on a person for an offence.
- (2) The exercise by the President of the power to grant a pardon under subsection (1) (a) shall not extend to a decision of the National Assembly in respect of a President who has been impeached.
- (3) Where, under subsection (1) (a), a person is granted –
- (a) a free pardon, he or she shall be treated as if he or she never committed the offence in respect of which he or she received the free pardon; or

(b) a conditional pardon, the pardon remains in effect subject to compliance with the conditions of the pardon.

(4) If a person is granted a conditional pardon, the fact of the conviction for which he or she is granted the conditional pardon remains, but that shall not be a bar to the person's full participation in public life.

Honours and awards

127. (1) There shall be a committee to advise the President on the exercise of his or her powers under this section.

(2) The Committee shall consist of not less than three, and not more than five, persons appointed by the President, subject to confirmation by the National Assembly.

(3) The President may, after consulting the Committee established under subsection (2), confer honours and awards, including honorary honours and awards to friends of The Gambia.

(iii) Other Public Offices

President's Chief of Staff

128. (1) There shall be a Chief of Staff to the President who shall be appointed by the President at his or her sole discretion and who may similarly be removed by the President.

(2) Subject to subsection (1), the term of office of the Chief of Staff appointed under subsection (1) shall come to an end at the time the President leaves office.

(3) The functions of the Chief of Staff to the President shall be –

(a) to act as the principal adviser to the President on the running of the affairs of the Presidency;

(b) to administer and manage the President's office, including the coordination of the administration and execution of the activities of that office;

(c) to protect the interests of the President, including the control of flow of people to the President's office;

(d) to assist the President in establishing and managing the President's agenda and vision; and

(e) to perform all other functions assigned to him or her from time to time by the President.

(4) The offices constituted under the Office of the Chief of Staff to the President shall be public offices.

Director of Public Prosecutions

129. (1) There is established the Office of Director of Public Prosecutions which shall be an office in the public service.

(2) The Director of Public Prosecutions shall be appointed by the President, on the recommendation of the Public Service Commission, subject to confirmation by the National Assembly.

(3) The qualifications for appointment as Director of Public Prosecutions are the same as those for the appointment of a judge of the High Court.

(4) Subject to this section, the Director of Public Prosecutions has the power in any criminal matter in which he or she considers it desirable –

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any criminal proceedings which have been instituted or undertaken by any other person or authority;
- (c) to discontinue at any stage before judgment is delivered by the court any criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(5) The Director of Public Prosecutions shall not take over and continue, or discontinue, any private prosecution or prosecution initiated by the Anti-Corruption Commission without the consent of the private prosecutor or the Anti-Corruption Commission, as the case may be, and the court.

(6) The Director of Public Prosecutions may direct the Inspector General of Police to investigate any suspicion or allegation of criminal conduct and the Inspector General of Police shall comply with such direction.

(7) The powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions given by him.

(8) The Director of Public Prosecutions shall not require the consent of any person or authority to initiate criminal proceedings against a person and, in the exercise of his or her powers, shall not be subject to the control or direction of any other person or authority.

(9) The Director of Public Prosecutions shall, in exercising his or her power of prosecution, have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

(10) The Director of Public Prosecutions may be removed from office on the same grounds and in accordance with the same process as exists in relation to the removal of a judge of the High Court.

(11) The Director of Public Prosecutions shall prepare and present an annual report to the National Assembly regarding the exercise of his or her powers and the report shall include statistics on the number of –

- (a) criminal cases received for purposes of prosecution;
- (b) prosecutions undertaken and completed;
- (c) prosecutions undertaken but not completed;
- (d) prosecutions yet to commence;
- (e) cases in respect of which prosecution was undertaken and discontinued;
- (f) prosecutions taken over by him or her; and
- (g) any other cases for which statistical data may be developed to assist the National Assembly in understanding and having a fuller picture on the trend of criminality in the country.

(12) The statistics required under subsection (11) shall each be aggregated according to type of offence.

(13) In reviewing and debating the report provided in accordance with subsection (11), the National Assembly shall not give any direction to the Director of Public Prosecutions, but may make recommendations of an administrative or policy nature.

Private Prosecutions

130. An Act of the National Assembly may make provision for private prosecutions within twelve months of the coming into force of this Constitution.

Solicitor General and Legal Secretary

131. (1) There is established the Office of Solicitor General and Legal Secretary which shall be an office in the public service, and the holder of the Office shall perform such functions and exercise such powers as may be provided in an Act of the National Assembly.

(2) The President shall appoint the Solicitor General and Legal Secretary, subject to confirmation by the National Assembly.

(3) A person is not qualified to be appointed Solicitor General and Legal Secretary or to act in that office unless he or she is qualified to be appointed as a judge of the High Court.

CHAPTER IX THE LEGISLATURE

PART I PRINCIPLES OF PARLIAMENTARY GOVERNANCE

Governing principles

132. (1) The National Assembly is a key organ of State that comprises persons who individually and collectively represent the entire population of The Gambia, irrespective of differences in ideology, belief or political party affiliation.

(2) The National Assembly co-exists with the other organs of the State and sets the stage for the governance of the country, while at the same time providing an invaluable oversight function on the workings of the Executive whose role is to enforce this Constitution and the laws enacted by the National Assembly.

(3) The National Assembly, as an institution, represents the diversity of the people of The Gambia to whom it has the distinct responsibility of providing good leadership and taking appropriate measures to foster national cohesion, unity and peace.

Duties generally

133. (1) The principal role of the National Assembly is to enact legislation for the governance of The Gambia and to review such legislation from time to time as the need arises.

(2) The National Assembly shall perform the functions outlined for it under this Constitution and an Act of the National Assembly, including—

- (a) ratifying all treaties, including bilateral and multilateral agreements entered into by the Government;
- (b) ensuring that legislative measures to be debated by the Assembly benefit, to the extent feasible, from expert and public opinions before such measures are considered for enactment; and
- (c) keeping the people informed of all other measures debated or to be debated in the Assembly that have or are likely to have an impact on the livelihood of the people and, where possible, advise the people on any options available to them.

PART II ESTABLISHMENT AND COMPOSITION OF THE NATIONAL ASSEMBLY

Establishment and composition of the National Assembly

134. (1) There is established the National Assembly of The Gambia.

(2) The National Assembly shall comprise the number of persons specified in Schedule 2, representing the constituencies therein specified.

(3) The Speaker shall be an *ex officio* member of the National Assembly, without a vote.

(4) A person elected to the National Assembly only becomes a member of the Assembly only upon subscribing to the prescribed oaths.

(5) For the purposes of the election of a Speaker and Deputy Speaker under sections 143 and 144, an elected person may participate in such election before subscribing to the prescribed oaths.

Qualifications for membership to the National Assembly

135. (1) A person is qualified to be nominated and to contest for election to the National Assembly if he or she –

- (a) is, subject to subsection (3), a citizen of The Gambia;
- (b) has attained the age of twenty-one years;
- (c) has attained a minimum of a senior secondary school certificate or equivalent and is able to speak the English language with a degree of proficiency sufficient to enable him or her to take part in the proceedings of the National Assembly; and
- (d) has, at least twenty-one days before the date for nomination, lodged a declaration of his or her assets with the Anti-Corruption Commission in such form as the Commission may determine.

(2) The Anti-Corruption Commission shall, upon receipt of an assets declaration from a candidate under subsection (1) (d), conduct necessary investigations and submit a report to the Independent Boundaries and Electoral Commission before the date of nomination confirming whether or not the candidate has made an accurate declaration.

(3) A person who is registered or naturalised as a citizen of The Gambia is eligible to be nominated and to contest election to the National Assembly if, by the date of nomination, he or she has been a registered or naturalised citizen for a period of at least ten years.

Disqualifications for membership of the National Assembly

136. (1) No person is qualified to be nominated for election as a member of the National Assembly if he or she –

- (a) as a registered or naturalised citizen, holds the citizenship or nationality of a country other than The Gambia;
- (b) is an honorary citizen;

- (c) is declared under any law of The Gambia to be of unsound mind;
- (d) has been convicted by a court or tribunal of competent jurisdiction of –
 - (i) an offence involving dishonesty or immoral conduct; or
 - (ii) any other offence for which the prescribed penalty exceeds twelve months;
- (e) has been convicted by a court for abuse of office, corruption or any offence connected with public elections;
- (f) has been found by the report of a commission of inquiry (the proceedings of which have been held and published in accordance with this Constitution and any Act of the National Assembly) to be incompetent to hold public office by reason of having acquired assets unlawfully or defrauded the State or misused or abused his or her office, or willfully acted in a manner prejudicial to the interests of the State;
- (g) has, at any time within five years immediately preceding the date of nomination for election, held office as a member or staff of the Independent Boundaries and Electoral Commission;
- (h) unless granted leave of absence in accordance with section 266, holds a public office or an office in the public service;
- (i) is a member of a disciplined force;
- (j) is an elected member of a Local Government Authority;
- (k) is a Seyfo or an Alkalo;
- (l) is adjudged or declared a bankrupt and has not been discharged, or has entered into an arrangement with creditors; or
- (m) is found to have made a false declaration of his or her assets by the Anti-Corruption Commission.

(2) A person is not disqualified under subsection (1) (d), (e), (f) or (g) unless all possibility of appeal or review of the relevant sentence, decision or finding has been exhausted in his or her favour.

Election of members of the National Assembly

137. (1) The general election of all the members of the National Assembly shall be held on the same day as an election to the Office of President, save where there is an alteration of the term of office of the President as a result of death, resignation, removal on the ground of mental or physical incapacity or impeachment of the President.

(2) Where the Independent Boundaries and Electoral Commission considers that an emergency situation has arisen which makes it impossible for a general election to be held on the appointed day, it shall make an application to the Supreme Court to postpone the general election.

- (3) The Supreme Court shall, upon receiving an application under subsection (2) –
- (a) determine whether the emergency situation contained in the application is of such a nature as to warrant postponement of the general election; and
 - (b) fix a new date for holding the general election, if it considers that the postponement of the general election is warranted.

(4) If the Supreme Court determines that the emergency situation contained in the application of the Independent Boundaries and Electoral Commission is not of a nature that warrants postponement of the general election, it shall make an order directing that the general election be held on the appointed day and the Commission shall comply.

(5) The process and procedures for the conduct of general election and other related matters shall be such as may be provided in an Act of the National Assembly.

(6) The provisions of this section are subject to section 138.

Term of the National Assembly

138. (1) Subject to subsection (2), the National Assembly shall have a term of five years and shall stand dissolved on the day immediately before a general election of members.

(2) At any time when The Gambia is at war or a state of public emergency is declared, the National Assembly may, by resolution supported by the votes of not less than two-thirds of all the members, extend the life of the National Assembly.

(3) The power of the National Assembly to extend the life of the Assembly under subsection (2) shall be for periods of not more than three months at a time, but the life of the Assembly shall not be extended for a total period of more than one year.

Vacancy in the office of member of the National Assembly

139. (1) The office of a member of the National Assembly becomes vacant if –

- (a) the member dies;
- (b) the member renounces his or her Gambian citizenship;
- (c) the member is declared to be of an unsound mind;
- (d) the member resigns his or her office addressed as provided in section 334;
- (e) the member accepts appointment in a private position, or in a regional or international body other than in the capacity as a member of the National Assembly and following the nomination or approval of the Assembly;

- (f) the National Assembly is dissolved;
- (g) any circumstances arise that, if he or she were not a member, would cause him or her to be disqualified to be nominated for election as a member;
- (h) having been elected as a member of a political party, he or she voluntarily resigns from that political party, joins another political party or opts to sit as an independent member;
- (i) having been elected a member as an independent candidate, he or she joins a political party;
- (j) being a member representing a single seat constituency, an administrative area or the group representing persons with disabilities, he or she is recalled by the electorate of that constituency or group in accordance with section 142; or
- (k) without the permission in writing of the Speaker or reasonable cause, he or she is absent from ten or more sittings of the National Assembly during any period that the Assembly is in session and continues to meet.

(2) The Speaker of the National Assembly shall immediately notify the Independent Boundaries and Electoral Commission of any vacancy among the members of the Assembly.

(3) Subject to subsection (4), where the Independent Boundaries and Electoral Commission receives a notification under subsection (2), it shall hold a by-election in respect of the position of the member in the National Assembly that is vacant, in accordance with this Constitution and any Act of the National Assembly relating to elections.

(4) A vacancy in the office of a member of the National Assembly shall not be filled within six months immediately before a general election.

Suspension of members of the National Assembly

140. (1) The National Assembly may, by a resolution supported by not less than three-quarters of all the members of the Assembly, suspend a member who is found to be in contempt of the Assembly.

(2) Where an act or omission which constitutes contempt of the National Assembly is an offence under the criminal law, the exercise by the Assembly of the power to suspend a member under subsection (1) for contempt shall not be a bar to the institution of proceedings under the criminal law.

Determining question of membership

141. (1) Whenever a question arises as to whether a person has been validly elected as a member of the National Assembly or whether a member's seat has become vacant, the question shall be determined on a petition to the Supreme Court.

(2) The Supreme Court shall hear and determine a petition filed under subsection (1) within three months from the date of filing of the petition.

Recall of members

142. (1) Subject to subsection (9), the registered voters of any single member constituency, administrative area or the national federation representing persons with disabilities, as the case may be, may recall their members in the National Assembly before the expiry of the term of the Assembly.

(2) A member of the National Assembly may be recalled on the ground of –

- (a) physical or mental incapacity rendering that member incapable of performing the functions of his or her office;
- (b) misconduct or misbehaviour likely to bring hatred, ridicule, contempt or disrepute to his or her office;
- (c) violation of a provision of this Constitution; or
- (d) persistent failure to keep his or her constituents informed of decisions taken by the National Assembly or persistent absence from his or her constituency.

(3) The registered voters of a constituency, administrative area or the national federation representing persons with disabilities, as the case may be, may initiate the recall of their member of the National Assembly by petition in writing –

- (a) setting out the grounds relied on;
- (b) signed by not less than one-third of the registered voters; and
- (c) delivered to the Speaker and the member who is the subject of the petition.

(4) Where the Speaker receives a petition under subsection (3), he or she shall transmit the petition to the Independent Boundaries and Electoral Commission to –

- (a) verify that the petitioners are registered voters of the constituency or administrative area concerned, or are entitled, as registered voters, to vote in the federation representing persons with disabilities;
- (b) confirm that the requirements of this section for recalling a member of the National Assembly have been satisfied or otherwise; and
- (c) provide a report to the Speaker within twenty days of the receipt of the petition with respect to the matters referred to in paragraphs (a) and (b).

(5) If the Independent Boundaries and Electoral Commission reports that the case for the recall of a member of the National Assembly has been made out, the Speaker shall immediately declare the member's seat vacant and notify the Chairperson of the Commission of that fact.

(6) Where the Commission receives notification under subsection (5), it shall hold a by-election in respect of the member's seat that has been declared vacant.

(7) If the case for the recall of a member of the National Assembly has not been made out, the Speaker shall decline the petition for recall of the member.

(8) Where the Speaker declares a member's seat vacant under subsection (5) or declines a petition to recall a member under subsection (7), he or she shall cause that fact to be published in the *Gazette*.

(9) A petition to recall a member of the National Assembly shall not be valid if it is made six months or less before the Assembly is due to be dissolved.

PART III LEADERS OF THE NATIONAL ASSEMBLY

The Speaker

- 143.** (1) There is established the Office of Speaker of the National Assembly.
- (2) The Speaker shall be elected from outside the National Assembly and shall be a person who –
- (a) is qualified to be elected as a member of the National Assembly;
 - (b) has proven experience in the public service, private sector or in academia; and
 - (c) is of high moral character with proven integrity and fair-mindedness.

Deputy Speaker

- 144.** (1) There is established the Office of Deputy Speaker who shall be elected from among the members of the National Assembly.
- (2) The Deputy Speaker shall, in addition to presiding in the National Assembly in the absence of the Speaker as provided in section 153, perform such other functions –
- (a) delegated or assigned by the Speaker; and
 - (b) as are incidental to the office of Deputy Speaker or as may be provided in an Act of the National Assembly.
- (3) The National Assembly may, where it considers it expedient, elect two Deputy Speakers as follows –
- (a) one from the majority party or coalition of majority parties; and

(b) one from the minority party or coalition of minority parties or an independent member.

(4) Where there are two Deputy Speakers of the National Assembly, their roles and responsibilities shall, subject to subsection (2), be such as may be determined in accordance with the Standing Orders of the Assembly.

Presiding for the election of Speaker and Deputy Speaker

145. The Chief Justice shall preside at the election of a Speaker and Deputy Speaker.

Taking oaths and vacating office

146. (1) The Speaker and a Deputy Speaker shall, before assuming office, subscribe to the prescribed oaths.

(2) The Speaker or a Deputy Speaker vacates office if he or she –

(a) dies;

(b) resigns in accordance with section 306;

(c) ceases to satisfy any of the qualifications for the election of a member of the National Assembly; or

(d) is removed from that Office by a resolution of the National Assembly supported by the votes of not less than two-thirds of all the members of the Assembly.

(3) The first order of business of the National Assembly after a general election is to elect a Speaker and Deputy Speaker and that shall be the only business of the Assembly for that day.

Majority and Minority Leader

147. (1) There shall be a Leader of the Majority Party and a Leader of the Minority Party in the National Assembly.

(2) The Leader of the Majority Party shall be the member who is the leader in the National Assembly of the largest political party or coalition of political parties.

(3) The Leader of the Minority Party shall be the member who is the leader in the National Assembly of the second largest political party or coalition of political parties.

(4) The Leader of the Majority Party and the Leader of the Minority Party shall be elected on the first sitting of the National Assembly after the sitting at which the Speaker and the Deputy Speaker were elected.

- (5) The order of precedence to be observed in the National Assembly shall be as follows –
- (a) Speaker;
 - (b) Deputy Speaker;
 - (c) Leader of the Majority Party or coalition of majority parties; and
 - (d) Leader of the Minority Party or coalition of minority parties.
- (6) An Act of the National Assembly may make provision for the roles and responsibilities of the Majority Leader and the Minority Leader.

Remuneration and allowances

148. The Speaker, Deputy Speaker, Majority Leader, Minority Leader and other members of the National Assembly shall receive such remuneration and benefits, including retirement benefits, as an Act of the National Assembly may prescribe.

PART IV SESSIONS AND SITTINGS OF THE NATIONAL ASSEMBLY

Sessions of the National Assembly

- 149.** (1) The Clerk shall, by Proclamation published in the *Gazette*, fix the first session of the National Assembly after a general election.
- (2) The first session of the National Assembly shall be held –
- (a) within seven days after the date of declaration of the results of the general elections; and
 - (b) in such place in The Gambia and at such time as the Clerk may appoint.
- (3) The President may request the Speaker to summon a session of the National Assembly, if it is not already in session, in the event of a declaration of war or of a state of public emergency.
- (4) Subject to subsections (1), (2) and (3), the National Assembly shall determine the times of its sessions, but there shall be a session of the National Assembly at least once in every year.

Sittings of the National Assembly

150. (1) Subject to this section and section 149, sittings of the National Assembly shall be at such times as the National Assembly shall appoint.

- (2) The Speaker shall summon a sitting of the National Assembly –
 - (a) when requested to do so by the President; and
 - (b) within seven days of a request for a meeting of the National Assembly made by not less than one quarter of all the members of the National Assembly.
- (3) Subject to subsection (2), the National Assembly shall, unless it resolves otherwise in accordance with its Standing Orders, sit quarterly.
- (4) The sittings of the National Assembly shall be open to the public, unless otherwise directed by the Assembly for good cause.

PART V LEGISLATION AND OTHER POWERS OF THE NATIONAL ASSEMBLY

The Legislative power

- 151.** (1) The legislative power of The Gambia shall be exercised by Bills passed by the National Assembly and assented to by the President.
- (2) The National Assembly shall not pass a Bill –
 - (a) to establish a one party state;
 - (b) to establish any religion as a state religion; or
 - (c) to alter the decision or judgment of a court in any proceedings to the prejudice of any party to the proceedings, or deprive any person retroactively of vested or acquired rights.
 - (3) Subject to subsection (2) (c), the National Assembly may pass Bills designed to have retroactive effect.
 - (4) Where a Bill passed by the National Assembly is presented to the President for his or her assent, the President shall, within thirty days, assent to the Bill or return it to the National Assembly with the request that the Assembly reconsider the Bill.
 - (5) Where the President requests the National Assembly to reconsider a Bill under subsection (4), he or she shall state the reasons for the request and any recommendations for amendment of the Bill.
 - (6) Where the National Assembly has reconsidered a Bill as requested by the President under subsection (4) and has resolved by a vote of not less than two-thirds of all the members of the National Assembly that the Bill, with or without the amendments recommended by the President, be presented again to the President for his or her assent, the President shall assent to the Bill within seven days of it being so presented.

(7) If the President fails to assent to the Bill within the period specified in subsection (6), the Bill shall be taken to have been assented to on the expiry of that period.

(8) A Bill which has been duly passed by the National Assembly and assented to by the President shall become law as an Act of the National Assembly and the words of enactment shall be: "Enacted by the National Assembly and the President".

(9) The President shall cause Acts of the National Assembly to be published in the *Gazette* within fourteen days of assent.

(10) An Act of the National Assembly shall not come into force until it has been published in the *Gazette*, but the Act may –

- (a) provide for the postponement of its coming into force; or
- (b) specify the date on which it comes into force.

(11) Nothing contained in this section shall prevent an Act of the National Assembly from conferring on any person or authority the power to make subsidiary legislation.

Introduction of Bills and Motions

152. (1) Subject to the other provisions of this section, a Bill or motion may be introduced in the National Assembly by a member of the Cabinet or by a member of the National Assembly, and the National Assembly shall give consideration to Bills and motions so introduced.

(2) No Bill, other than a Bill referred to in subsection (4), shall be introduced into the National Assembly unless –

- (a) it is accompanied by an explanatory memorandum setting out in detail the policy and principles of the Bill, the defects which it is intended to remedy and the necessity for its introduction; and
- (b) it has been published in the *Gazette* and expert and public opinions invited on the Bill.

(3) Subject to subsection (4), a Bill shall be published at least fourteen days before the date of its introduction in the National Assembly.

(4) Where the President certifies that the enactment of a Bill is required in the public interest as a matter of urgency, the Bill may be introduced in the National Assembly.

(5) Where a Bill is introduced pursuant to subsection (4), the Speaker shall cause a vote to be taken in the National Assembly without debate on a motion to give consideration to the Bill notwithstanding that the period of fourteen days has not expired.

(6) Without prejudice to the power of the National Assembly to make any amendment, a member of the National Assembly shall not, without the consent of the Minister responsible for finance, introduce or give consideration to a Bill or motion that in the opinion of the person presiding makes provision for any of the following purposes –

- (a) the imposition of taxation or the alteration of taxation;
 - (b) the imposition of any charges on the Consolidated Revenue Fund or any other public fund of The Gambia or the alteration of any such charge;
 - (c) the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of The Gambia of moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
 - (d) the composition or remission of any debt due to the Government, unless the Bill is introduced into the National Assembly by the Minister responsible for finance.
- (7) When a Bill is introduced into the National Assembly, it may be allocated to an appropriate committee for examination, and a report made to the National Assembly.

PART VI PROCEDURE IN THE NATIONAL ASSEMBLY

Presiding in the National Assembly

153. (1) The Speaker shall, at any sitting of the National Assembly, preside and shall perform such other function as is incidental to the Office of Speaker or as may be provided in an Act of the National Assembly.

(2) In the absence of the Speaker, a Deputy Speaker shall preside and, where a Deputy Speaker is absent, the National Assembly shall elect a member to preside.

Vacancy and quorum

154. (1) The National Assembly may act notwithstanding any vacancy in its membership, including any vacancy not filled when the National Assembly first meets after a general election.

(2) The quorum of the National Assembly at the commencement of any sitting is one half of all the members.

(3) If, subsequent to the quorum being attained, objection is taken by any member that there are present in the National Assembly (besides the person presiding) less than one quarter of all the members, and the person presiding is so satisfied, he or she shall immediately adjourn the sitting.

Language in the National Assembly

155. (1) The business of the National Assembly shall be conducted in the English language or in any other language indigenous to The Gambia.

(2) Where a member chooses to conduct a business of the National Assembly in a language indigenous to The Gambia, the translation of that language may only be made in the English language.

(3) The National Assembly shall encourage and facilitate the progressive realisation of the use of languages indigenous to The Gambia in the conduct of the business of the Assembly within five years of the coming into force of this Constitution.

Voting in the National Assembly

156. (1) Except as otherwise provided in this Constitution, any matter proposed for decision in the National Assembly shall be determined by a majority of votes of the members present and voting.

(2) The person presiding in the National Assembly shall have neither an original nor a casting vote and if, on any question before the National Assembly, the votes are equally divided, the motion shall be deemed to have been rejected.

(3) Any member of the National Assembly who has a direct pecuniary interest in any matter proposed for discussion in the National Assembly shall declare the same to the person presiding and the vote of any such member on such a matter shall be disallowed and he or she shall be deemed not to have voted.

Unqualified person sitting or voting

157. Any person who sits or votes in the National Assembly, knowing or having reasonable grounds for knowing that he or she is not entitled to do so, is liable to such penalty as may be prescribed by an Act of the National Assembly, which penalty may be recovered by suit by the Attorney-General.

Regulation of procedure in National Assembly

158. (1) Subject to the provisions of this Constitution, the National Assembly may regulate its own procedure and, in particular, may make Standing Orders for the conduct of its own proceedings.

(2) Notwithstanding anything to the contrary contained in this Constitution or in any other law, no decision, order or direction of the National Assembly or any of its Committees or the Speaker relating to the Standing Orders of the National Assembly, or to the application or interpretation of Standing Orders, or any act done by the National Assembly or the Speaker under any Standing Orders, shall be enquired into by any court.

Committees of the National Assembly

159. (1) The National Assembly shall appoint such Standing Committees as it considers appropriate.

- (2) The National Assembly may appoint Committees –
- (a) to investigate or inquire into the activities or administration of ministries or departments of the Government, including Statutory Bodies and State Owned Enterprises, and such investigation or inquiry may extend to making proposals for legislation; and
 - (b) to investigate any other matter of public importance.
- (3) For the purpose of effectively performing its functions, each of the committees established under or pursuant to this section shall have all of the powers, rights and privileges as are vested in the High Court at a trial in respect of—
- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (b) compelling the production of documents; and
 - (c) the issue of a commission or request to examine witnesses abroad.

Contempt of the National Assembly

- 160.** (1) A person commits a contempt of the National Assembly if he or she by any act or omission –
- (a) obstructs or impedes the National Assembly in the performance of its functions;
 - (b) obstructs or impedes any member or officer of the National Assembly in the discharge of his or her duties; or
 - (c) affronts the dignity of the National Assembly.
- (2) A person who commits a contempt of the National Assembly under subsection (1) shall, in addition to any liability he or she may suffer under the criminal law, be liable to reprimand or admonition by the National Assembly.

Public's right to petition the National Assembly

- 161.** (1) A member of the public has the right to petition the National Assembly on any matter within the authority of the Assembly, including a request to enact, amend, revise or repeal or revoke any legislation, or to debate a matter that is considered to be in the public interest or designed to ensure and promote governance, transparency and accountability.

(2) A petition made under subsection (1) shall be addressed to the Speaker who shall bring the petition to the attention of members of the National Assembly to decide on whether or not to accede to the request contained in the petition.

(3) If the members of the National Assembly decide to accede to a request contained in a petition, the Assembly shall deal with the request in accordance with its Standing Orders.

(4) An Act of the National Assembly may amplify the process and procedure relating to the public's right to petition the Assembly.

PART VII NATIONAL ASSEMBLY SERVICE COMMISSION

Establishment of National Assembly Service

162. There is established the National Assembly Service.

Establishment of National Assembly Service Commission

163. (1) There is established the National Assembly Service Commission.

(2) The National Assembly Service Commission shall comprise –

(a) the Speaker, as Chairperson;

(b) the Deputy Speaker and, if more than one, both Deputy Speakers;

(c) the Leader of the Majority Party;

(d) the Leader of the Minority Party;

(e) three persons (not being members of the National Assembly), at least two of whom shall be women, who have good experience in public service matters, appointed by the Assembly.

(3) The Clerk shall serve as the Secretary to the National Assembly Service Commission and shall facilitate all the meetings of the Commission.

(4) Unless a member of the National Assembly Service Commission dies, resigns or, in the case of an appointed member, is removed from office by the National Assembly, he or she shall, subject to subsection (5), serve in office for the period of the life of the National Assembly.

(5) The members of the National Assembly Service Commission appointed under subsection (2) (e) shall continue in office until replaced by the next National Assembly following a general election.

Functions of the National Assembly Service Commission

- 164.** The National Assembly Service Commission shall perform the following functions –
- (a) provide services and support to the National Assembly, including committees of the Assembly;
 - (b) provide facilities for the efficient and effective functioning of the National Assembly, including the drafting of Bills and the obtaining of such reasonable information from relevant Government departments as may be required for that purpose;
 - (c) constitute offices in the National Assembly service, and appoint and supervise office holders;
 - (d) prepare annual estimates of expenditure of the National Assembly Service and submit them to the National Assembly for approval;
 - (e) exercise necessary budgetary controls over the National Assembly Service;
 - (f) undertake, either alone or jointly with other relevant institutions and organisations, programmes to develop and promote the ideals of parliamentary democracy;
 - (g) perform other functions, consistent with the Commission's responsibilities, for the well-being of the members and staff of the National Assembly Service; and
 - (h) perform such other functions as may be prescribed in an Act of the National Assembly.

Clerk and staff of the National Assembly

- 165.** (1) There is established the Office of Clerk of the National Assembly who shall be appointed by the National Assembly.
- (2) The members of staff of the Office of the Clerk shall be appointed by the National Assembly Service Commission which shall provide their terms and conditions of service.
- (3) The Office of Clerk of the National Assembly and other offices under the Clerk shall be public offices in the National Assembly Service.
- (4) The National Assembly Service Commission may, by notice published in the *Gazette*, prepare and enact such rules and regulations as it considers fit for the efficient and effective functioning of the administration of the National Assembly Service, including the conditions of employment of the Clerk and his or her staff.

PART VIII
RESPONSIBILITIES, PRIVILEGES AND IMMUNITIES

Responsibilities of members

- 166.** The members of the National Assembly shall, at all times –
- (a) maintain the dignity of the National Assembly both during the sittings of the Assembly and in their acts and activities outside the Assembly;
 - (b) regard themselves as servants of the people of The Gambia and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people; and
 - (c) discharge their duties and functions in the interest of the nation as a whole and, in doing so, shall be influenced by the dictates of conscience and the national interest.

Freedom of speech, privileges and immunity of members

- 167.** (1) There shall be freedom of speech and debate in the National Assembly and that freedom shall not be impeached or questioned in any court or place outside the National Assembly.
- (2) No civil or criminal proceedings shall be instituted against a member of the National Assembly in any court or other place outside the National Assembly by reason of anything said by the member in the Assembly.
- (3) No civil or criminal process issuing from any court or other place outside the National Assembly shall be served on or executed in relation to a member of the National Assembly while the member is on his or her way to, attending or returning from any proceeding of, the National Assembly.
- (4) A member and the Clerk of the National Assembly shall not be compelled while attending the Assembly to appear as a witness in any court or place outside the Assembly.
- (5) Subject to subsection (6) and the provisions of this Constitution, no person shall be under any civil or criminal liability in respect of the publication of –
- (a) the text or a summary of any report, papers, minutes, votes or proceedings of the National Assembly; and
 - (b) a contemporaneous report of the proceedings of the National Assembly.
- (6) Subsection (5) shall not apply if the publication was effected maliciously or otherwise than in good faith.

Privileges of witnesses

168. (1) Every person summoned to give evidence or to produce any paper, book, record or other document before the National Assembly or any committee of the Assembly shall be entitled, in respect of his or her evidence or the production of such document, as the case may be, to the same privileges as if he or she were appearing before a court.

(2) Where the President or any member of the Cabinet certifies that the disclosure of the contents of any document sought by the National Assembly or a committee of the Assembly will be injurious to the public interest or prejudicial to the security of the State, the Assembly or the committee, as the case may be, shall –

- (a) only give consideration to such document in private and under such conditions as will prevent the disclosure of the contents of the document outside the Assembly or the committee; and
- (b) not publish the document or its contents.

(3) An answer by a person to a question put by the National Assembly shall not be admissible in evidence against him or her in any civil or criminal proceedings outside the National Assembly, other than in proceedings for perjury brought under the criminal law.

CHAPTER X JUDICIARY

PART I

PRINCIPLES GOVERNING THE ADMINISTRATION OF JUSTICE

Principles of justice

169. (1) The courts are the fountain of justice and the last bastion of hope in upholding, promoting and protecting the rule of law thereby ensuring adherence to law and order for an orderly and peaceful society.

(2) In administering justice, the courts shall be guided by and observe the following principles

- (a) justice is to be done to all, without regard to the social, economic or other status of any person;
- (b) the dispensing of justice must be carried out with efficiency and effectiveness without any undue delay;
- (c) reasonable compensation must be awarded to victims of wrong doing committed by other persons, and in accordance with this Constitution and other laws;
- (d) it is important to recognise, encourage, promote and strengthen other forms of dispute resolution, including mediation, reconciliation, arbitration and traditional and

community methods of settling disputes so long as they are not repugnant to justice or morality;

- (e) justice is to be administered without undue regard to procedural technicalities; and
- (f) the purpose and principles of this Constitution must be protected and promoted.

Judicial authority

170. (1) The judicial authority of The Gambia is vested in the Judiciary and shall be exercised by the courts established under this Constitution and any Act of the National Assembly.

(2) No person, including the President, National Assembly and any organ or agency of the State, shall have or in any way or method exercise any power to take or transfer the judicial authority of The Gambia from the courts.

Independence of the Judiciary

171. (1) The Judiciary is an independent organ of the State and every holder of judicial office is subject only to this Constitution and the law and, in the exercise of judicial power or the performance of judicial function, shall not be subject to the control or direction of any other person or authority.

(2) The Government and all departments and agencies of the Government shall accord such assistance to the courts as the courts may reasonably require to protect their independence, dignity and effectiveness.

(3) No organ of State shall, directly or indirectly, engage in any activity that has the effect of coercion on, hindering, frustrating or impeding, the judiciary in the discharge of its functions.

(4) The office of a judge of a superior court shall not be abolished while there is a substantive holder of the office.

(5) The remuneration and benefits payable to or in respect of the holder of a judicial office shall –

- (a) be a charge on the Consolidated Revenue Fund; and
- (b) not be varied to the disadvantage of the holder of the judicial office.

(6) The retirement benefits of a retired judge of the superior courts shall not be varied to his or her disadvantage during his or her lifetime.

(7) A member of the Judiciary shall not be liable to any action or suit in respect of anything done or omitted to be done in good faith in the lawful exercise of a judicial power or performance of a judicial function.

PART II
OFFICE OF CHIEF JUSTICE AND JUDICIAL SYSTEM

Establishment of Office of Chief Justice

- 172.** (1) There is established the Office of Chief Justice of The Gambia who shall be the head of the Judiciary.
- (2) The Chief Justice shall –
- (a) be a citizen of The Gambia; and
 - (b) be responsible for the administration and supervision of the courts.
- (3) An Act of the National Assembly may provide for the making of rules by the Chief Justice or such other authority as may be specified in the Act for regulating the practice and procedure of the courts.

The courts and judicial power

- 173.** (1) The Courts of The Gambia comprise –
- (a) the superior courts established in Part III;
 - (b) a Court Martial, established under an Act of the National Assembly; and
 - (c) the Magistrates' Court, the Shari'ah Court, the District Tribunals and such lower courts and tribunals as may be established by an Act of the National Assembly.
- (2) The superior courts shall, in addition to any other power conferred on them, each –
- (a) be a superior court of record with power to commit for contempt to itself and all such powers as are vested in a court of record; and
 - (b) have, in relation to any matter within its jurisdiction, power to issue such orders and directions as may be necessary to ensure the enforcement of any judgment, decree or order of the court.
- (3) The Chief Justice shall make rules in relation to the supervisory jurisdiction of the High Court and Shari'ah High Court.

PART III
THE SUPERIOR COURTS AND JURISDICTION

(i) The Supreme Court

Establishment, composition and general powers of the Supreme Court

- 174.** (1) There is established the Supreme Court which shall comprise –
- (a) the Chief Justice; and
 - (b) not less than four, and not more than twelve other judges, at least one of whom shall be qualified in Shari’ah, and who shall, subject to section 188 (3), be citizens of The Gambia.
- (2) The Chief Justice may in any particular case where it is expedient to do so, appoint in writing a judge of the Court of Appeal to sit in the Supreme Court for the determination of a particular cause or matter.
- (3) Where a cause or matter before the Supreme Court involves the application or interpretation of the Shari’ah and it is expedient to appoint a judge of the Court of Appeal with knowledge and experience in Shari’ah, the Chief Justice shall appoint in writing such judge to sit in the Supreme Court for the determination of that cause or matter.
- (4) Subject to subsection (5), the Supreme Court shall, for the purposes of its proceedings, be constituted by an uneven number of not less than five judges of the Court.
- (5) A single judge of the Supreme Court may exercise the powers of the Court in any interlocutory matter which may be subject to a fresh application to a bench of five judges of the Court.
- (6) The Chief Justice shall preside at sittings of the Supreme Court and, in his or her absence, the most senior of the other judges of the Court shall preside.
- (7) The Supreme Court may sit at any place in The Gambia appointed by the Chief Justice.

Jurisdiction of Supreme Court

- 175.** (1) The Supreme Court shall –
- (a) be the final court of appeal for The Gambia;
 - (b) have such appellate and other jurisdiction as may be conferred on it by this Constitution or any other law; and
 - (c) not have original jurisdiction in respect of any criminal matter.

(2) For the purpose of the hearing and determination of any cause or matter within its jurisdiction, the Supreme Court shall have all the powers conferred by law on any other court established by this Constitution or any other law.

Supervisory jurisdiction

176. (1) The Supreme Court has supervisory jurisdiction over all other superior courts and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers.

(2) The Chief Justice shall make rules in relation to the supervisory jurisdiction of the Supreme Court over other superior courts.

Original jurisdiction

177. (1) The Supreme Court has exclusive original jurisdiction –

- (a) for the interpretation or enforcement of any provision of this Constitution, other than any provision of sections 37 to 67 and 70 (4) (which relate to fundamental rights and freedoms);
- (b) on any question whether any law was made in excess of the powers conferred by this Constitution or any other law upon the National Assembly or any other person or authority;
- (c) on any question as to whether or not a person was validly elected to the office of President or was validly elected to, or vacated his or her seat in, the National Assembly.

(2) Where any question referred to in subsection (1) (a) or (b) arises in any proceedings in any other court, that court shall stay its proceedings and refer the matter to the Supreme Court for its determination, and such other court shall give effect to any decision of the Supreme Court in the matter.

Appellate jurisdiction

178. (1) An appeal shall lie to the Supreme Court as of right –

- (a) from any judgment of the Court of Appeal on an appeal in any civil or criminal cause or matter originating from a judgment of the High Court or Shari'ah High Court;
- (b) from any judgment of the Court of Appeal on an appeal in a matter originating from a judgment of a Court Martial;
- (c) from any judgment of the Court of Appeal on a petition as to whether or not a person was validly elected at a Local Government election.
- (d) from any judgment of the Court of Appeal on an appeal against an adverse finding of a commission of inquiry; and

(e) in such other case as may be prescribed by an Act of the National Assembly.

(2) An appeal shall lie to the Supreme Court with the leave of the Court of Appeal from a judgment of the Court of Appeal in any cause or matter commenced in a court other than the High Court or Shari'ah High Court if the Court of Appeal is satisfied that –

(a) the case involves a substantial question of law; or

(b) it is in the public interest that the cause or matter should be heard by the Supreme Court.

(3) The Supreme Court may entertain an application for special leave to appeal to the Court in any other judgment of the Court of Appeal.

(4) An appeal shall lie to the Supreme Court, in any case referred to in subsection (1), (2) or (3) –

(a) at the instance of a party to the proceedings in the Court of Appeal;

(b) with the leave of the Supreme Court or the Court of Appeal, at the instance of any other person having an interest in the matter; or

(c) in a criminal cause or matter, at the instance of the Director of Public Prosecutions acting in the interest of justice and for the avoidance of abuse of the legal process.

Power of Supreme Court to review its decision

179. (1) The Supreme Court may, on application made to it, review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court.

(2) The Supreme Court shall, when reviewing its decision under subsection (1), be constituted by not less than seven judges of the Court.

(3) All other courts shall be bound to follow the decisions of the Supreme Court on a matter of law.

(ii) The Court of Appeal

Establishment and composition of Court of Appeal

180. (1) There is established the Court of Appeal which shall comprise –

(a) the President of the Court of Appeal, who shall be a citizen of The Gambia; and

(b) not less than four other judges of Gambian citizenship, at least one of whom shall be qualified in Shari'ah, and who shall, subject to section 188 (3), be citizens of The Gambia.

(2) The Chief Justice may in any particular case where it is expedient to do so at the request of the President of the Court of Appeal, appoint in writing a judge of the High Court to sit in the Court of Appeal for the determination of a particular cause or matter.

(3) Subject to subsection (5), the Court of Appeal shall be constituted by three judges of the Court.

(4) In any cause or matter before the Court of Appeal involving the application or interpretation of Shari'ah, the President of the Court shall, to the extent feasible ensure that judges of the Court competent in Shari'ah constitute the Court to hear and determine the appeal.

(5) A single judge of the Court of Appeal may exercise the powers of the Court in any interlocutory matter which may be subject to a fresh application to a bench of three judges of the Court.

(6) The President of the Court of Appeal shall preside at sittings of the Court, and in his or her absence, the most senior of the other judges of the Court shall preside.

(7) The Chief Justice may, in consultation with the President of the Court of Appeal, establish such divisions of the Court of Appeal as he or she thinks fit to sit at such places in The Gambia as he or she may determine.

Jurisdiction of Court of Appeal

181. (1) The Court of Appeal has jurisdiction to hear and determine an appeal or a petition, as the case may be

- (a) from a judgment, decree and order of the High Court and the Shari'ah High Court and such other appellate jurisdiction as may be conferred on it by an Act of the National Assembly;
- (b) from a judgment of a Court Martial, which shall lie as of right to the Court of Appeal;
- (c) on any question as to whether or not a person was validly elected at a Local Government election; and
- (c) against an adverse finding of a commission of inquiry.

(2) For the purpose of hearing and determining any appeal within its jurisdiction, the Court of Appeal shall have all the powers vested in the court or tribunal from which the appeal is brought.

(iii) The High Court

Composition of High Court

182. (1) There is established the High Court which shall comprise –

- (a) not less than seven judges who, subject to section 188 (3), are citizens of The Gambia; and
- (b) any judge of a superior court whom the Chief Justice may, by writing, request to sit as a judge of the High Court.

(2) The High Court shall be constituted by a single judge.

(3) The High Court may sit at such places in The Gambia as the Chief Justice may determine, and he or she may establish permanent divisions of the Court to sit at various places throughout The Gambia and assign judges of the Court to any such division.

Jurisdiction of High Court

183. (1) Save as provided in section 177 (1) (a), the High Court has original jurisdiction –

- (a) to hear and determine all civil and criminal proceedings;
- (b) to interpret and enforce the fundamental rights and freedoms provided in sections 37 to 67 and 70 (4).

(2) The High Court shall, in the exercise of its original jurisdiction, have all the power and authority as may be conferred by this Constitution or any other law.

(3) The High Court has jurisdiction in appeals from courts subordinate to it, other than the Shari’ah Court, as may be prescribed by an Act of the National Assembly.

Supervisory jurisdiction

184. The High Court has supervisory jurisdiction over all lower courts and adjudicatory authorities in The Gambia, except the Shari’ah Court, and may, in the exercise of its supervisory jurisdiction, issue directions, orders or writs, including writs of *habeas corpus*, orders of *certiorari*, *mandamus* and prohibition as it may consider appropriate for the purposes of enforcing its supervisory powers.

(iv) Shari’ah High Court

Composition of Shari’ah High Court

185. (1) There is established the Shari’ah High Court which shall comprise –

- (a) not less than three judges who, subject to section 188 (3), are citizens of The Gambia; and

- (b) any judge of a superior court competent in Shari'ah whom the Chief Justice may, by writing, request to sit as a judge of the Shari'ah High Court.
- (2) The Shari'ah High Court shall be constituted by a single judge.
- (3) The Shari'ah High Court may sit at such places in The Gambia as the Chief Justice may determine.

Jurisdiction of Shari'ah High Court

186. (1) Save as provided in section 184, the Shari'ah High Court has original jurisdiction to hear and determine Shari'ah causes or matters relating to adoption, marriage, divorce, burial, inheritance, or endowment (*waqf*) amongst people who are subject to Shari'ah in that regard.

(2) The Shari'ah High Court shall, in the exercise of its original jurisdiction, have all the power and authority as may be conferred by this Constitution or any other law.

(3) The Shari'ah High Court has jurisdiction in appeals from the Shari'ah Court as may be prescribed by an Act of the National Assembly.

(4) A party to proceedings in the Shari'ah High Court is entitled to be represented, at his or her own expense, by a person qualified in the Shari'ah or by a legal practitioner.

Supervisory jurisdiction

187. The Shari'ah High Court has supervisory jurisdiction over the Shari'ah Courts and may, in the exercise of its supervisory jurisdiction, issue such directions and orders as it may consider appropriate for the purposes of enforcing its supervisory powers.

PART IV THE JUDGES

Appointment of Chief Justice and other judges

- 188.** (1) The President shall appoint –
- (a) the Chief Justice, other judges of the Supreme Court and judges of the Court of Appeal, acting on the advice of the Judicial Service Commission, after confirmation by the National Assembly; and
- (b) all other judges, acting on the advice of the Judicial Service Commission.
- (2) The appointment of judges of the superior courts shall be by warrant signed by the President and sealed with the Public Seal.

(3) If a superior court comprises less number of Gambian judges to constitute the full complement of the court, a judge who is not a citizen of The Gambia but is a judge in an equivalent court in another Commonwealth country, and meets the requirements for appointment under this Constitution, may be appointed to the court for such duration as may be considered necessary.

Qualification for appointment of judges

189. (1) A person is qualified for appointment as Chief Justice if he or she is qualified to be appointed a judge of the Supreme Court.

- (2) A person is qualified to be appointed a judge of the Supreme Court if he or she –
- (a) has at least fifteen years' experience as a superior court judge; or
 - (b) has at least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal or Shari'ah field; or
 - (c) has held the qualifications specified in paragraphs (a) and (b) for a period amounting, in aggregate, to fifteen years or more; and
 - (d) is a person of high moral character and proven integrity.
- (3) A person is qualified to be appointed a judge of the Court of Appeal if he or she –
- (a) has at least twelve years' experience as a superior court judge; or
 - (b) has at least twelve years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal or Shari'ah field; or
 - (c) has held the qualifications specified in paragraphs (a) and (b) for a period amounting, in aggregate, to twelve years or more; and
 - (d) is a person of high moral character and proven integrity.
- (4) A person is qualified to be appointed a judge of the High Court or Shari'ah High Court if–
- (a) in the case of the High Court, he or she is qualified as a distinguished academic, judicial officer or legal practitioner in The Gambia and has been so qualified for a period of not less than seven years; or
 - (b) in the case of the Shari'ah High Court, he or she is qualified as a distinguished academic, judicial officer or legal practitioner in Shari'ah and has been so qualified for a period of not less than seven years; or
 - (c) he or she has at least seven years' experience as a superior court judge in the common law or in Shari'ah, whether in The Gambia or –
 - (i) other Commonwealth country in which the common law is practised; or

(ii) any other country in which Shari'ah is practised; and

(d) is a person of high moral character and proven integrity.

(5) For purposes of this section, a reference to a “**distinguished academic**” relates to a person who is qualified to practise law in The Gambia, save in the case of the Shari'ah High Court.

Vacancy in Office of Chief Justice

190. (1) Where a vacancy occurs in the Office of Chief Justice, or if the Chief Justice is, for any reason unable to perform the functions of his or her office, the President may appoint the most senior judge of the Supreme Court to act in that Office until –

(a) a person has been substantively appointed to, and assumed the functions of, that Office in accordance with this Constitution; or

(b) the Chief Justice has resumed the functions of his or her Office.

(2) A vacancy in the Office of Chief Justice shall be filled by a substantive appointment within six months of the Office becoming vacant.

Tenure of office of judges

191. (1) Subject to the provisions of this section, a judge of a superior court –

(a) may retire from office after attaining the age of sixty-five years; and

(b) shall vacate the office of judge on attaining the age of seventy-five years.

(2) A judge who is required to vacate office under subsection (1) (b), may continue in office for a period of six months after attaining the specified age for vacating the office, to enable him or her to deliver judgment or do any other thing in relation to proceedings that were commenced before him or her prior to attaining that age.

(3) The Chief Justice and any other judge of a superior court may resign from office by addressing his or her resignation as provided in section 306.

(4) Where the President receives a resignation in accordance with subsection (3), he or she shall immediately notify the Judicial Service Commission of that fact and the Commission may advise the appointment of a replacement.

Removal from office

192. (1) A judge of a superior court may be removed from office only for –

(a) inability to perform the functions of his or her office arising from infirmity of body or mind;

- (b) misconduct;
- (c) misbehaviour;
- (d) serious breach of a code of conduct applicable to judges; or
- (e) bankruptcy or entering into an arrangement with creditors.

(2) The removal from office of a judge of a superior court may be initiated only –

- (a) by the Judicial Service Commission, acting on its own volition; or
- (b) on the petition of a person addressed to the Judicial Service Commission.

(3) A petition under subsection (2) (b) shall be in writing, setting out the alleged facts constituting the ground or grounds for the removal of the judge.

(4) If the Judicial Service Commission, after considering the petition, is satisfied that the petition discloses a ground for removal under subsection (1), it shall send the petition to the President.

(5) The President shall, within seven days after receiving the petition under subsection (4), suspend, in writing, the judge from office.

(6) Within fourteen days after suspending the judge, the President, acting on the advice of the Judicial Service Commission, shall –

(a) in the case of the Chief Justice, appoint a tribunal comprising –

- (i) a judge of a Supreme Court or its equivalent in a Commonwealth country, as chairperson;
- (ii) two other superior court judges from separate Commonwealth countries;
- (iii) a legal practitioner of not less than twenty years' experience with high moral character and proven integrity; and
- (iv) one person, not being a legal practitioner, with not less than twenty years' experience in public service affairs;

(b) in the case of a judge of the Supreme Court, other than the Chief Justice, appoint a tribunal comprising –

- (i) the President of the Court of Appeal, as chairperson;
- (ii) two other persons who hold or have held office as superior court judges;
- (iii) one legal practitioner of not less than fifteen years' experience with high moral character and proven integrity; and
- (iv) one person, not being a legal practitioner, with not less than twenty years' experience in public service affairs; or

- (c) in the case of any other judge of a superior court, appoint a tribunal comprising –
 - (i) a judge of the Supreme Court, as chairperson;
 - (ii) two other persons who hold or have held office as superior court judges;
 - (iii) one legal practitioner of not less than fifteen years' experience with high moral character and proven integrity; and
 - (iv) one person, not being a legal practitioner, with not less than fifteen years' experience in public service affairs.

(7) A person who is a member of the Judicial Service Commission, or has been such a member at any time within a period of five years after leaving office, shall not be eligible to be appointed on any tribunal established under subsection (6).

(8) Notwithstanding section 171 (5) (b), the remuneration and benefits payable to a judge who is suspended from office under subsection (5) shall be adjusted to one half until such time as the judge is removed from office, or reinstated.

(9) A tribunal that is appointed under subsection (6) shall –

- (a) regulate its own proceedings;
- (b) inquire into the matter concerning the judge in an expeditious manner;
- (c) afford the judge the opportunity to be heard and to be represented by a legal practitioner of his or her own choice; and
- (d) prepare a report setting out its findings and making a recommendation to the President on whether or not the judge should be removed from office.

(10) The proceedings of the tribunal under this section shall be held *in camera*.

(11) Where the tribunal recommends the removal of the judge, the President shall so notify the judge in writing and the judge may appeal against the recommendation to the Supreme Court within ten days after being notified.

(12) If the judge fails to appeal against the tribunal's recommendation within the specified period or the Supreme Court dismisses his or her appeal, the President shall act on the recommendation of the tribunal.

(13) If the tribunal recommends to the President that the judge should not be removed, the judge shall –

- (a) immediately be reinstated in office;
- (b) be treated as if he or she had never been suspended; and
- (c) be entitled to the payment of his or her remuneration and benefits that were adjusted under subsection (8).

Remuneration and retirement benefits of judges

193. (1) A judge of a superior court shall be entitled to such salary, allowances and other benefits as may be prescribed by an Act of the National Assembly.

(2) A judge of a superior court shall –

(a) retire on his or her salary if, on the date of his or her retirement he or she –

(i) has served as a judge of the superior court for a period of not less than ten years; or

(ii) has served more than five years but less than ten years as a superior court judge and the President, after considering a recommendation from the Judicial Service Commission, approves for the judge to retire on three quarters of his or her salary; and

(b) be entitled to such retirement benefits as may be prescribed in an Act of the National Assembly.

(3) A judge of a superior court who has not satisfied any of the conditions prescribed in subsection (2) shall, on retirement, be paid a pension and such gratuity as he or she is entitled to under the rules governing pension and gratuity.

(4) A judge of a superior court who ceases to hold office as a judge for any reason whatsoever shall not appear or act as a legal practitioner before any court or tribunal in The Gambia, but this prohibition shall not apply to a judge who is appointed on a temporary basis only.

PART V ADMINISTRATION OF THE COURTS

Establishment of Office of Judicial Secretary

194. (1) There is established the Office of Judicial Secretary which shall be a public office in the judicial service.

(2) The Judicial Secretary shall –

(a) be a person who is qualified to be appointed as a judge of the High Court or a person, though not of the qualification of a judge of the High Court, has extensive experience and is qualified to be appointed as Permanent Secretary;

(b) be a person of high moral character and proven integrity; and

(c) be appointed by the President on the recommendation of the Judicial Service Commission.

(3) The Judicial Secretary shall, subject to any policy direction, control or instruction of the Chief Justice, be responsible for assisting the Chief Justice in the administration of the judiciary, and shall –

- (a) be the accounting officer of the judiciary;
- (b) facilitate the holders of judicial office in the execution of their functions; and
- (c) be accountable to the Chief Justice for the performance of his or her duties.

Administrative provisions

195. (1) The Chief Justice may issue orders and directions in respect of any matter that relates to the administration of justice, and the Judicial Secretary and all other staff of the Judiciary shall comply accordingly.

(2) The offices of other staff of the judiciary shall be public offices in the judicial service.

Financial matters

196. (1) The Judicial Secretary shall, with the approval of the Chief Justice, submit the annual estimates of expenditure for the Judiciary directly to the National Assembly.

(2) The Chief Justice is entitled to appear in person or assign the Judicial Secretary and such other staff as he or she considers fit to appear before the National Assembly to defend the judiciary's annual estimates of expenditure and answer any questions in respect of those estimates.

(3) In considering the annual estimates of the judiciary, the National Assembly shall not reduce the budget of the judiciary below the amount that was approved for the immediately preceding year.

(4) The Judiciary shall be self-accounting, and the moneys charged on the Consolidated Revenue Fund or appropriated by an Act of the National Assembly for the judiciary, shall be paid quarterly into the account of the judiciary.

PART VI THE JUDICIAL SERVICE COMMISSION

The Judicial Service Commission

197. (1) There is established a Judicial Service Commission which shall comprise –

- (a) the Chief Justice, as Chairperson;
- (b) one judge of the Supreme Court, nominated by that Court;
- (c) two other judges of the superior courts, at least one of whom is qualified in Shari'ah, nominated by the judges of the superior courts other than of the Supreme Court.;

- (d) the Solicitor General and Legal Secretary;
- (e) two legal practitioners of not less than ten years standing at the Gambia Bar, at least one of whom shall be a woman, nominated by The Gambia Bar Association;
- (f) one person with extensive experience in public service affairs, nominated by the President.

(2) The members of the Judicial Service Commission, other than the members referred to in subsection (1) (a) (b), (c) and (d), shall be appointed by the President, subject to confirmation by the National Assembly.

(3) A member of the National Assembly shall not be qualified to be appointed a member of the Judicial Service Commission.

(4) Subject to subsection (5), a member of the Judicial Service Commission shall hold office for a term of three years and may be re-appointed only once.

(5) A member of the Judicial Service Commission shall vacate his or her office if he or she ceases to hold the office specified in subsection (1) by virtue of which he or she was appointed or if he or she becomes a member of the National Assembly.

(6) A member of the Judicial Service Commission, other than an *ex officio* member, may be removed from office in accordance with section 216.

(7) The Judicial Secretary shall serve as Secretary to the Judicial Service Commission.

Appointment of judicial officers and judiciary staff

198. (1) The power to appoint persons to hold or act in any office specified in subsection (2) shall vest in the Judicial Service Commission.

(2) Subsection (1) applies to the offices of –

- (a) Master, Sheriff, Registrar and Assistant Registrar of a superior court;
- (b) the office of Magistrate;
- (c) the office of Shari'ah judge;
- (d) the office of member of a District Tribunal, after consultation with the Chief of the District concerned;
- (e) the office of a member of any other subordinate court or tribunal within the judiciary;
- (f) such other offices of a member of any court as may be prescribed by an Act of the National Assembly; and
- (g) other officers and staff of the judiciary.

- (3) The Judicial Service Commission –
- (a) shall be guided by competitiveness and transparent processes of appointment of judicial officers and other staff of the judiciary; and
 - (b) may delegate the power of appointment to the Chief Justice in respect of junior staff positions.

Other functions of the Commission

199. The Judicial Service Commission shall, in addition to the functions conferred on it under section 198, have power –

- (a) to review and make recommendations on the terms and conditions of service of the holders of judicial office, other judicial officers and staff of the judiciary;
- (b) to receive complaints against, investigate and remove from office or otherwise discipline, judicial officers and staff of the judiciary;
- (c) to promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice;
- (d) to prepare and implement programmes for the education of, and for the dissemination of information to, judicial officers and the public about law and the administration of justice;
- (e) to advise the Government on improving the efficiency of the administration of justice; and
- (f) to exercise such other functions as may be conferred on it by an Act of the National Assembly.

Operation and procedure

200. (1) In the exercise of its functions under this Constitution, the Judicial Service Commission shall act independently and shall not be subject to the direction or control of any other person or authority.

(2) The Commission may make rules and regulations in relation to the efficient and effective performance of its functions, including the regulation of its procedures, conduct of judicial officers and the administration of the judiciary.

CHAPTER XI LOCAL GOVERNMENT AND DECENTRALISATION

PART I PRINCIPLES OF DECENTRALISED LOCAL GOVERNMENT

Principles of decentralised government

- 201.** The principles of decentralised government are –
- (a) to promote democratic and accountable exercise of power;
 - (b) to foster national unity by recognising diversity;
 - (c) to give powers of self-governance to the people to be exercised through their respective Local Government Authorities;
 - (d) to recognise the rights of communities to manage their own affairs and to further their development;
 - (e) to protect and promote the interests and rights of marginalised groups and communities;
 - (f) to promote social and economic development and the provision of proximate, easily accessible services throughout The Gambia;
 - (g) to ensure equitable sharing of national and local resources throughout The Gambia;
 - (h) to facilitate the decentralisation of State organs, their functions and services to the administrative areas of The Gambia; and
 - (i) to enhance checks and balances and the separation of powers.

System of local government

202. (1) A local government shall be based on a council which shall be the highest political authority, for local governance, within its area of jurisdiction and which shall have legislative and executive powers to be exercised in accordance with this Constitution and an Act of the National Assembly.

(2) Local Government Authorities established under this Constitution shall reflect the following features -

- (a) Local Governments shall be based on democratic principles and the separation of powers,;
- (b) Local Government Authorities shall have reliable sources of revenue to enable them to govern and deliver services effectively;

- (c) no more than two-thirds of the members of representative bodies in each Local Government Authority shall be of the same gender; and
 - (d) a minimum of ten percent of the members of representative bodies in the Local Government Area shall be youths.
- (3) A person shall not be a member of a Local Government Authority unless that person is a citizen of The Gambia.

PART II

ESTABLISHMENT AND COMPOSITION OF LOCAL GOVERNMENT AUTHORITIES

Establishment and composition of Local Government Authorities

- 203.** (1) An Act of the National Assembly shall provide for the establishment of city councils, municipalities and area councils (which are together referred to as “Local Government Authorities”), and the general districts in which each shall have jurisdiction.
- (2) The geographical boundaries of each Local Government Authority shall be determined by the Independent Boundaries and Electoral Commission.
- (3) Every Local Government Authority shall comprise such number of members as may be specified in an Act of the National Assembly.

Functions and powers of Local Government Authorities

- 204.** (1) An Act of the National Assembly shall make provision for the functions, powers and duties of Local Government Authorities, including provision for—
- (a) the infrastructure and development of the area within the Authority's jurisdiction;
 - (b) the encouragement of economic activities;
 - (c) the participation of the people in the development and administration of the area;
 - (d) the essential and other services to be provided by the Authority;
 - (e) the raising of revenue;
 - (f) the management, control and oversight of the Authority's finances and facilitate the auditing of its accounts by the Auditor-General;
 - (g) the making of by-laws in accordance with powers conferred by an Act of the National Assembly;
 - (h) the preservation of the environment;
 - (i) the promotion of Gambian traditions and culture; and

(j) the control of financial and other resources allocated by the Central Government.

(2) It shall be an object of the local government system that so far as possible, issues of local policy and administration shall be decided at a local level and that Local Government Authorities shall co-operate with the central Government in adopting a policy of decentralisation in accordance with this Constitution.

(3) No person or authority shall interfere with or compromise a Local Government Authority's exercise of its powers, or ability or right to perform its functions, under this Constitution or an Act of the National Assembly.

Loans and grants

205. (1) Subject to the provisions of this Constitution and with the approval of the Government, a Local Government Authority may, for the carrying out of its functions and services, borrow money or accept and use any grant or assistance as the National Assembly may prescribe.

(2) An Act of the National Assembly shall provide for the conditions under which a Local Government Authority may exercise the power to borrow for the purpose of carrying out its functions.

PART III ELECTION AND TERMS AND CONDITIONS OF APPOINTMENTS OF LOCAL GOVERNMENT AUTHORITIES

Election of members of Local Government Authorities

206. (1) A Mayor, Mayoress and Chairperson of a Local Government Authority shall be elected by universal adult suffrage of all eligible voters in the Local Government area.

(2) A Councilor shall be elected by universal adult suffrage of all eligible voters in a Ward.

(3) No person shall be eligible to be elected under subsections (1) and (2) unless he or she is of high moral character and proven integrity.

(4) Persons who are elected in accordance with subsections (1) and (2) shall –

(a) act in a manner that is consistent with their duties and responsibilities; and

(b) be collectively and individually accountable to the people in their wards and Local Government areas, for the performance of their functions.

(5) An Act of the National Assembly shall provide for the qualifications and disqualifications for the office of Councilor, Mayor, Mayoress and Chairperson of a Local Government Authority.

Term of Local Government Authorities

207. Local government elections shall be held every five years.

Financial autonomy and accountability

208. (1) Local Government Authorities shall have autonomy over their financial and development planning matters in relation to the areas they have jurisdiction over, and with respect to the discharge of their functions generally.

(2) Local Government Authorities shall, in their financial and development planning matters, and in the discharge of their functions as referred to in subsection (1), take into account the policies and priorities of the Government with regard to the development of the country.

(3) For purposes of development in any Local Government area, a Local Government Authority shall prepare comprehensive and integrated development plans which shall be published.

(4) An Act of the National Assembly shall make provision –

- (a) requiring Local Government Authorities to draw up a comprehensive list of all their revenue sources and to maintain data and total potential collectable revenues;
- (b) prescribing financial control and accountability measures for compliance by all Local Government Authorities; and
- (c) imposing regular audit requirements and procedures for Local Government Authorities.

PART IV

OTHER OFFICES OF LOCAL GOVERNMENT AUTHORITIES (SEYFOS AND ALKALOS)

Institution and election or appointment of Seyfo and Alkalo

209. (1) The institution of the office of Seyfo and Alkalo as recognised and established by customs and usages and the non-abolition of such offices is hereby guaranteed and preserved.

(2) A Seyfo shall be elected by universal adult suffrage of all registered voters in the District, on a non-partisan basis.

(3) An Alkalo shall be appointed by the Minister responsible for Local Government, in accordance with traditional lines of inheritance.

Prohibition from participation in partisan politics

210. Every Seyfo and Alkalo is responsible for maintaining social stability and cohesion in his or her community, and shall not participate in active party politics, or associate or affiliate with, any political party, or express any political views, in the performance of his or her duties.

Tenure, qualifications and disqualifications of Seyfos and Alkalos

211. (1) Subject to subsection (2), a Seyfo or an Alkalo who is elected or appointed shall hold office for life, unless he or she resigns.

(2) A Seyfo or an Alkalo may only be removed from office on any of the following grounds –

- (a) ill-health arising from infirmity of body or mind;
- (b) misconduct; or
- (c) misbehaviour.

(3) An Act of the National Assembly shall make provision for the qualifications, disqualifications, powers and functions of Seyfos and Alkalos.

CHAPTER XII INDEPENDENT INSTITUTIONS

PART I

ESTABLISHMENT OF INDEPENDENT INSTITUTIONS AND OFFICES

Establishment

212. (1) There is hereby established the following independent institutions and offices, which shall be institutions and offices in the public service -

- (a) National Human Rights Commission;
- (b) Anti-Corruption Commission;
- (c) Ombudsperson;
- (d) Auditor-General; and
- (e) Central Bank of The Gambia.

(2) The provisions of this Chapter apply to the Independent Boundaries and Electoral Commission established under Chapter VII, as the context requires, and in so far as the provisions of this Chapter are not provided for in Chapter VII.

(3) The reference in this Chapter to “**member**” refers to the persons constituted under the Independent Institutions and Offices mentioned in Parts II to VI including, as the context requires, the Independent Boundaries and Electoral Commission.

Objects and funding of Independent Institutions and Offices

213. (1) Every independent institution and office derives its authority from the sovereignty of the people and shall, in the performance of its duties be guided by integrity, transparency and accountability, including the following –

- (a) protecting the sovereignty of the people;
- (b) ensuring that all relevant institutions observe the values and principles enshrined in this Constitution;
- (c) ensuring strong governance standards and practices; and
- (d) promoting the objects and principles of this Constitution and any Act of the National Assembly applicable to it.

(2) The independent institutions and the holders of offices shall not, in the performance of their functions, be subject to the direction or control of any other person or authority.

(3) Save in relation to the Central Bank, the National Assembly shall allocate adequate funds to enable each independent institution and office to perform its functions, and the budget of each independent institution and office shall –

- (a) be a separate vote; and
- (b) be charged on the Consolidated Revenue Fund.

Appointments and term of office

214. (1) Each independent institution or office shall be constituted as prescribed in this Constitution.

(2) The Chairperson, each member of an independent institution, and the holder of an independent office, as provided in this Chapter, shall be appointed by the President, subject to confirmation by the National Assembly.

(3) To be appointed, a person shall have the specific qualifications required by this Constitution or an Act of the National Assembly, or both where applicable.

(4) Appointments to independent institutions and offices shall take into account the national values mentioned in Chapter II, and the principle that the composition of the independent institutions and offices, taken as a whole, shall reflect gender diversity.

(5) Save in relation to the Central Bank, the remuneration and benefits payable to or in respect of a member of an independent institution or the holder of an independent office shall be a charge on the Consolidated Revenue Fund.

(6) The remuneration and benefits payable to, or in respect of, a member of an independent institution or the holder of an independent office shall not be varied to the disadvantage of the member.

(7) A member of an independent institution, or the holder of an independent office, is not liable for anything done in good faith in the performance of a function of his or her office.

(8) The Chairperson, and Vice-Chairperson where applicable, of an independent institution or office shall not be of the same gender.

Qualifications and disqualifications

215. (1) A person qualifies to be appointed as a member of an independent institution or a holder of an independent office if he or she –

- (a) is a citizen of The Gambia;
- (b) has a minimum of a university degree or an equivalent qualification in a relevant field, and such other qualifications, as may be prescribed by an Act of the National Assembly;
- (c) declares his or her assets and liabilities;
- (d) has paid his or her taxes or has made arrangements satisfactory to the appropriate tax authority for the payment of the taxes; and
- (e) is of high moral character and proven integrity, and possesses considerable experience and demonstrated competence in the conduct of public affairs.

(2) A person shall not qualify to be appointed as a member of an independent institution or a holder of an independent office if he or she –

- (a) has been declared to be of unsound mind;
- (b) is a member of the National Assembly or any other elective office;
- (c) is, or has at any time during the five years immediately preceding his or her appointment, been nominated as a candidate for election as a member of the National Assembly or any other political office;
- (d) is, or has at any time during such period of five years been, the holder of any office in any organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of the National Assembly or of any Local Government Authority or he or she has actively identified himself or herself with any such organisation;
- (e) holds another office in the public service;

- (f) has, except in the case of the Central Bank and the Auditor General, held office as a staff of the Commission within a period of two years immediately preceding his or her appointment; or
- (g) has been convicted in any country of an offence for which he or she has been sentenced to a term of imprisonment of 6 months or more and has not received a pardon.

(3) In addition to the qualifications set out in subsection (1), the Chairperson of the Independent Boundaries and Electoral Commission, National Human Rights Commission and Anti-Corruption Commission shall be a person qualified to be appointed a judge of the Supreme Court, a retired judge, or a person with other relevant qualifications with proven integrity, experience and demonstrated competence.

Removal from office

216. (1) The President may remove from office a member of an independent institution or a holder of an independent office —

- (a) for inability to perform the functions of his or her office, whether arising from infirmity of body or mind or from any other cause;
- (b) if any circumstances arise which would have disqualified him or her from appointment to the office;
- (c) for misbehaviour;
- (d) for misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (e) on account of being suspended or disqualified from practicing his or her profession;
- (f) for violation of this Constitution or any other law;
- (g) for incompetence; or
- (h) for bankruptcy or entering into an arrangement with creditors.

(2) Before removing a member of an independent institution or a holder of an independent office, the President shall -

- (a) notify the member or holder of the complaint against him or her for which a tribunal is being established; and
- (b) acting on the recommendation of the Chief Justice, appoint a tribunal comprising –
 - (i) a judge of a superior court, as chairperson;
 - (ii) a legal practitioner of not less than fifteen years' standing; and
 - (iii) one person, not being a judge of a superior court or legal practitioner, with not less than fifteen years' experience in public service affairs.

- (3) A tribunal that is appointed under subsection (2) (b) shall –
 - (a) regulate its own proceedings;
 - (b) inquire into the matter concerning the member of an independent institution or holder of independent office in an expeditious manner;
 - (c) afford the member or holder the opportunity to be heard and to be represented by a legal practitioner of his or her own choice; and
 - (d) prepare a report setting out its findings and making a recommendation to the President on whether or not the member or holder should be removed from office.
- (4) The proceedings of the tribunal under this section shall be held *in camera*.
- (5) Where the tribunal recommends the removal of the member of an independent institution or holder of independent office, the President shall remove the member or holder from office.
- (6) If the tribunal recommends to the President that the member of an independent institution or holder of independent office should not be removed, the member or holder shall immediately be reinstated in office.

Finance

- 217.** (1) An independent institution or holder of an independent office shall submit the annual estimates of expenditure of the institution or office to the President for presentation to the National Assembly in accordance with this Constitution.
- (2) The President shall cause the estimates to be placed before the National Assembly without amendment, but may attach to them his or her own comments and observations.
- (3) Where the National Assembly fails to approve the annual estimates and expenditure of an independent institution or office, the budget for the previous year shall continue to apply until such time that the annual estimates and expenditure for the institution or office is approved.
- (4) The National Assembly shall not reduce the budget estimates and expenditure of an independent institution or office below what was approved for the immediately preceding year.
- (5) This section shall not apply to the Central Bank.

Reporting obligation

- 218.** (1) An Act of the National Assembly shall make provision for the submission by independent institutions and offices of annual reports to the Assembly.
- (2) At any time, the President or the National Assembly may require an independent institution to submit a report on a particular issue.
- (3) Every report required from an independent institution shall be published.

PART II NATIONAL HUMAN RIGHTS COMMISSION

Composition, functions and powers

219. (1) The National Human Rights Commission shall comprise five Commissioners, who shall be appointed for a term of three years, subject to renewal for one more term.

(2) An Act of the National Assembly shall provide for the functions and powers of the National Human Rights Commission, which shall include -

- (a) to promote respect for human rights and develop a culture of human rights in The Gambia;
- (b) to promote and protect the observance of human rights in public and private institutions;
- (c) to monitor, investigate and report on the observance of human rights in all spheres of life in The Gambia;
- (d) to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;
- (e) on its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;
- (f) to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights; and
- (g) to perform any other functions prescribed by an Act of the National Assembly.

(3) Every person has the right to complain to the Commission, alleging that a right or fundamental freedom in Chapter VI or in any other Act of the National Assembly has been denied, violated or infringed, or is threatened with contravention.

PART III ANTI-CORRUPTION COMMISSION

Composition, functions and powers

220. (1) The Anti-Corruption Commission shall comprise three Commissioners, and other staff members of the Commission.

(2) The Chairperson of the Anti-Corruption Commission shall be appointed for a term of five years, and the two other members shall be appointed for a term of four years each, subject to renewal for one more term.

(3) The functions and powers of the Commission shall be provided for in an Act of the National Assembly, which shall include the following -

- (a) to take all steps as may be necessary for the prevention, eradication or suppression of corruption and corrupt practices;
- (b) to carry out research on the prevention of corruption and to submit recommendations for improvement to relevant authorities regarding actions to be taken;
- (c) to promote the values of honesty and integrity in the operations of the State and Government, and to promote public awareness of the dangers of corruption;
- (d) to investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, whether by complaint or otherwise;
- (e) to receive and deal with declarations of assets as may be required under this Constitution or an Act of the National Assembly;
- (f) to investigate any matter that, in the opinion of the Commission, raises suspicion that any of the following has occurred or is about to occur –
 - (i) conduct constituting corruption or an economic or a related offence; and
 - (ii) conduct liable to allow, encourage or cause conduct constituting corruption or an economic or related offence;
- (g) to recommend further inquiries and investigations by other investigatory bodies;
- (h) to initiate and conduct prosecution for any act of corruption, including making referrals to the Director of Public Prosecutions for advice or prosecution; and
- (i) to perform any other functions prescribed by an Act of the National Assembly.

PART IV THE OMBUDSPERSON

Composition, functions and powers

- 221.** (1) The Ombudsperson shall comprise the Ombudsperson and two Deputy Ombudspersons.
- (2) The Ombudsperson shall be appointed for a term of five years, and the Deputy Ombudspersons shall be appointed for a term of four years each, subject to renewal for one more term.
- (3) An Act of the National Assembly shall define the functions and duties of the Ombudsperson, which shall include the investigation of any action taken or omitted to be taken in the exercise of an administrative function, by or on behalf of –

- (a) any department or Ministry of Government;
 - (b) any Statutory Body or State Owned Enterprise or institution of higher learning or education, set up entirely or partly out of public funds; and
 - (c) any member of the public service.
- (4) The Ombudsperson shall, in addition to any functions and duties outlined in an Act of the National Assembly under subsection (3), also investigate –
- (a) any conduct in State affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice; and
 - (b) complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.
- (5) Nothing contained in this Part or under any Act of the National Assembly shall be construed as giving power to the Ombudsperson to investigate any matter pending before, or relating to a decision of -
- (a) a court; or
 - (b) the National Human Rights Commission or Anti-Corruption Commission.

PART V

THE AUDITOR-GENERAL AND NATIONAL AUDIT OFFICE

The Auditor-General

222. There shall be an Auditor-General –

- (a) whose office shall be an office in the public service; and
- (b) who shall hold office for a term of nine years and shall not be eligible for re- appointment.

Functions of the Auditor-General

223. (1) Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on –

- (a) the public accounts of The Gambia;
- (b) the accounts of all offices and authorities of the Government of The Gambia, including Local Government Authorities;

- (c) the accounts of the National Assembly;
- (d) the accounts of the Judiciary;
- (e) the accounts of every commission and independent institution or office established by this Constitution;
- (f) the accounts of all Statutory Bodies and State Owned Enterprises;
- (g) the public debt; and
- (h) the accounts of any other body or institution as may be required by an Act of the National Assembly.

(2) The Auditor-General shall satisfy himself or herself that money charged on the Consolidated Revenue Fund or other public fund, appropriated by an Act of the National Assembly, and expended, has been applied for the purpose for which it was charged or appropriated, and that the expenditure conforms to the authority that governs it.

(3) The Auditor-General may exercise such other functions as may be conferred by an Act of the National Assembly.

Powers of the Auditor-General

224. (1) In the exercise of his or her functions under this Constitution or any other law, the Auditor-General—

- (a) shall at all times carry out economy, efficiency and effective examinations to satisfy himself or herself that public funds are spent in such manner as to reduce waste, eliminate inefficiency and maximise the benefits to be gained from the use of resources;
- (b) may disallow any item of expenditure which is contrary to law and to surcharge –
 - (i) the amount of any expenditure so disallowed upon the person responsible for incurring or authorising the expenditure;
 - (ii) any sum which has not been brought into account upon the person by whom that sum ought to have been brought into account; or
 - (iii) the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

(2) A person aggrieved by any disallowance or surcharge made by the Auditor-General may appeal to the High Court.

(3) The Auditor-General and any member of the National Audit Office authorised by him or her shall have power to call for and inspect all books, records, returns, reports and other documents in the exercise of the functions conferred upon him or her by this Constitution or an Act of the National Assembly

and to make such enquiries and call such witnesses who, in his or her opinion, have any responsibilities, in relation to the accounts referred to in section 223 (1).

(4) Wherever discrepancies of a criminal or fraudulent nature are discovered during the audit of accounts, the Auditor-General shall immediately cause a report of his or her findings to be submitted to the Inspector-General of Police and the Anti-Corruption Commission.

(5) Where the Government holds a minority interest in any company, the Auditor-General may exercise, on behalf of the Government, the power to inspect the books of account of the company and report to the Government.

(6) Nothing in this Constitution shall preclude the Auditor-General, at the request of the head or governing body of any public body, corporation or institution referred to in section 223 (1) or on his or her own initiative, from carrying out any special audit of such body, corporation or institution, and where he or she carries out such a special audit, it shall be reported to the Finance and Public Accounts Committee of the National Assembly.

Auditor-General's report

225. (1) The Auditor-General shall –

- (a) within six months of the end of the immediately preceding financial year to which each of the accounts referred to in section 223 (1) relates, report to the National Assembly on the accounts and draw attention to any irregularities in the accounts audited and to any other matter which, in his or her opinion, ought to be brought to the notice of the National Assembly; and
- (b) publish his or her annual reports on the accounts referred to in section 223 (1) after ninety days of submission of the report to the National Assembly, or after the report has been discussed in the National Assembly, whichever is earlier.

(2) The Finance and Public Accounts Committee of the National Assembly may extend the time within which the report referred to in subsection (1) shall be made to the Assembly.

National Audit Office

226. (1) The National Audit Office shall comprise the Auditor-General, two Deputy Auditors-General and the staff appointed by the Auditor-General.

(2) The two Deputy Auditors-General and the staff appointed by the Auditor-General shall assist the Auditor-General in the performance of his or her functions under this Constitution and any applicable Act of the National Assembly.

(3) The accounts of the National Audit Office shall be audited by an appropriately qualified auditor or firm of auditors appointed by the Finance and Public Accounts Committee of the National Assembly.

PART VI
CENTRAL BANK OF THE GAMBIA

Central Bank

227. (1) There is established the Central Bank of The Gambia and the authority of the Central Bank shall vest in a Board of Directors comprising –

- (a) a Chairperson;
- (b) the Governor of the Central Bank; and
- (c) three persons, not being members of the Central Bank, with extensive experience in the fields of economics, finance, banking or law.

(2) The members of the Board of Directors shall be appointed for a term not exceeding five years, subject to renewal for one more term, and their appointments shall be made in such a way that they all do not expire at the same time.

(3) The Central Bank shall be the only authority to issue the currency of The Gambia, which may bear images that depict or symbolise The Gambia or an aspect of The Gambia, but no currency shall bear the portrait of a person who is serving in public office, whether or not the office is elective.

(4) The Central Bank shall be the sole banker of the Government and it shall be the principal depository bank for all funds raised for, or on behalf of, the Government.

Functions

228. (1) The Central Bank shall—

- (a) promote and maintain the stability of the currency of The Gambia;
- (b) direct, regulate and supervise the banking, monetary policy and currency system in the interest of the economic development of The Gambia, and such other financial services as may be provided in an Act of the National Assembly;
- (c) encourage and promote sustainable economic development and the efficient utilisation of the resources of The Gambia through the effective and efficient operation of a banking and credit system; and
- (d) exercise such other functions as may be conferred on the Central Bank by an Act of the National Assembly.

(2) The Central Bank shall ensure that all moneys paid to or received for or on behalf of the Government is recorded in proper books of account in accordance with recognised accounting standards.

(3) The Central Bank shall ensure that all withdrawals from the various Government accounts with the Bank are properly authorised in accordance with this Constitution and any Act of the National Assembly, and that the overdrawn on any of the Government's accounts with the Bank is permitted only if so authorised by law.

PART VII
COMMISSIONS OF INQUIRY

Commissions of Inquiry

229. (1) Subject to subsection (3), the President may, whenever he or she deems it advisable, issue a Commission appointing one or more Commissioners.

(2) The President may, in making appointments under subsection (1), authorise such Commissioners to inquire into—

- (a) the conduct of any public officer;
- (b) the conduct of any District Chief or Alkalo;
- (c) the conduct or management of –
 - (i) any department or authority of the public service;
 - (ii) any Local Government Authority or Statutory Body or State Owned Enterprise; and
 - (iii) any person or entity with whom the Government has entered into a contract or arrangement for the delivery of a service or performance of a duty, or any other obligation whatsoever; and
- (d) any other matter arising in The Gambia in which an inquiry would, in the opinion of the President, be in the public interest.

(3) The National Assembly may, by a resolution supported by not less than two-thirds of the Assembly, request the President to establish a Commission of Inquiry for any of the purposes set out in subsection (1).

(4) Where the President receives a request accompanied by the resolution of the National Assembly under subsection (3), he or she shall issue a Commission of Inquiry in accordance with this section.

(5) Except as may be ordered by the presiding Commissioner in the interest of public morality, public safety or public order, the proceedings of a Commission of Inquiry shall be held in public.

(6) Notwithstanding subsection (5), the presiding Commissioner may exclude any person from the proceedings of a Commission of Inquiry for the preservation of order.

Presiding Commissioner

230. (1) A person shall not be appointed a sole Commissioner or the Chairperson of a Commission of Inquiry unless—

- (a) he or she is, or has been, a judge of a superior court, whether in The Gambia or outside The Gambia; or
- (b) he or she is qualified to be appointed a judge of a superior court.

(2) Where a Commission of Inquiry consists of more than two members, at least one Commissioner shall be a person who has special qualifications or knowledge in the field of the matter under investigation.

Function and powers of Commission

231. (1) A Commission of Inquiry shall—

- (a) make a full and impartial investigation into the matter in respect of which the Commission is established; and
- (b) furnish in writing a report on the results of the inquiry, including a statement of the reasons leading to the conclusions of the Commission.

(2) A Commission of Inquiry shall have all the powers, rights and privileges of a judge of the High Court at a trial in respect of—

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents;
- (c) issuing a commission or request for the examination of witnesses abroad, and
- (d) making interim orders.

(3) A Commissioner appointed under section 229 shall not be liable to any action or suit in respect of any matter or thing done in good faith or omitted to be done in the performance of his or her functions as a Commissioner.

Publication of report

232. On receipt of the report of a Commission of Inquiry—

- (a) the President shall, within six months, publish the report and his or her comments on the report, together with a statement of any action taken, or the reason for not taking any action, thereon; or
- (b) where the President refuses to publish the report for reasons of national security or otherwise in the public interest, he or she shall, within six months, publish a statement to that effect.

Adverse findings

233. (1) Where a Commission of Inquiry makes an adverse finding against a person, it shall, at the time of submitting its report to the President, inform the person, in writing, of the finding and the reasons for the finding.

(2) A person against whom any adverse finding has been made may appeal against the finding to the Court of Appeal as of right as if the finding were a judgment of the High Court.

(3) On the hearing of an appeal under subsection (2), the report of the Commission of Inquiry shall be treated as if it were a judgment of the High Court.

(4) An appeal under this section shall be made within three months of the appellant being informed of the adverse finding as provided by subsection (1) or such later time as the Court of Appeal may allow.

Immunities of witnesses

234. A witness before a Commission of Inquiry shall be entitled to the same immunities and privileges as if he or she were a witness in proceedings before the High Court.

National Assembly to make further provision

235. An Act of the National Assembly may make further provision for the purposes of this Part, and subject to any such Act, the power conferred by any law to make rules of court for the superior courts shall be deemed to include power to make rules regulating the procedure and practice of all Commissions of Inquiry.

CHAPTER XIII PUBLIC FINANCE

PART I PRINCIPLES OF PUBLIC FINANCE

Principles of public finance

236. (1) The following principles shall guide the Government and all public institutions, including persons dealing with the Government and such public institutions, in order to ensure the proper management of the public finance system in The Gambia –

- (a) all aspects of public financial management shall be based on transparency, accountability, and public participation;
- (b) the public finance system shall be directed towards the development of The Gambia, and in particular -
 - (i) the burden of taxation shall be applied fairly and equitably;
 - (ii) the revenue sources for the Government and the Local Government Authorities shall be clearly defined, and the revenues raised in accordance with law;
 - (iii) all expenditure shall be directed towards the development of The Gambia, and special provision shall be made for marginalised groups and disadvantaged areas;
- (c) the burdens and benefits of the use of resources shall be shared equitably between present and future generations;
- (d) public funds shall be expended transparently, prudently, economically, efficiently and effectively;
- (e) public financial management shall be conducted responsibly, and fiscal reporting shall be clear and transparent; and
- (f) public borrowing and all transactions involving the Public Debt shall be carried out transparently and in the best interests of The Gambia.

(2) No taxes shall be levied except-

- (a) under the specific authority of this Constitution or an Act of the National Assembly; and
- (b) after due consultation with the relevant stakeholders, including the general public.

Government financial support to Local Government Authorities

237. (1) Subject to this Constitution, the Government shall from revenues raised by it in each year, provide additional funding to Local Government Authorities in such percentage as may be provided in an Act of the National Assembly.

(2) The following criteria shall be taken into account in determining the additional funding to be made by the Government to Local Government Authorities –

- (a) the national interest;
- (b) any provision to be made in respect of the public debt and other national obligations;
- (c) the needs of the Government, determined by objective criteria;
- (d) the need to ensure that Local Government Authorities are able to perform their functions efficiently and effectively;
- (e) the fiscal capacity and efficiency of Local Government Authorities;
- (f) the developmental and other needs of Local Government areas;
- (g) the economic disparities within and among Local Government areas and the need to remedy them;
- (h) the need for affirmative action in respect of marginalised groups and disadvantaged areas ;
- (i) the need for Local Government Authorities to harness their potential and optimise their capacity to raise revenue;
- (j) the desirability of stable and predictable allocation of funding to Local Government Authorities; and
- (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

PART II TAXATION

Taxation

238. (1) No taxation shall be imposed, waived or varied except by or under the authority of this Constitution or an Act of the National Assembly.

(2) An Act of the National Assembly may make provision –

- (a) for the collection of taxes proposed to be imposed or altered in a Bill which has been presented to the National Assembly during a period of four months from the date of presentation or such longer period as may be specified in a resolution passed by the National Assembly after the Bill has been presented; or
- (b) for any Local Government Authority established by law to impose taxation within the area for which such authority is established, and to alter such taxation, but no provision shall include power to waive any tax due.

(3) Where any law confers power on any person or authority to waive or vary a tax imposed by any law, the exercise of that power in favour of any person or authority shall be subject to the approval of the National Assembly.

(4) Where an Act of the National Assembly permits the waiver or variation of any tax or other charges -

- (a) a public record of each waiver or variation shall be maintained together with the reason for the waiver or variation; and
- (b) each waiver or variation, and the reason for it, shall be reported to the National Assembly and the Auditor-General.

(5) Where any person or authority exercises the power to waive or vary a tax or other charges imposed under any law, the person or authority shall publish the waiver or variation in the *Gazette*.

(6) A public officer may not be exempted from payment of tax by reason of the office held or the nature of the work of the public officer.

PART III PUBLIC FUNDS

Consolidated Revenue Fund

239. (1) There shall be a Consolidated Revenue Fund into which shall be paid -

- (a) all revenues or other money raised or received for the purposes of, or on behalf of, the Government; and
- (b) any other money raised or received in trust for, or on behalf of, the Government.

(2) Notwithstanding subsection (1), an Act of the National Assembly may provide -

- (a) for the payment of particular revenue or other money into some other fund established for a specific purpose; and
- (b) for the retention of revenue or other money by the department of Government that received it for the purpose of defraying the expenses of that department.

Withdrawals from Consolidated Revenue Fund and other funds

- 240.** (1) No money shall be withdrawn from the Consolidated Revenue Fund except—
- (a) to meet expenditure charged on that Fund by this Constitution or an Act of the National Assembly; or
 - (b) where the issue of that money has been authorised by an Appropriation Act, a Supplementary Appropriation Act or in accordance with section 249 (1).
- (2) No money shall be withdrawn from any other public fund of The Gambia unless the issue of that money has been authorised by law.
- (3) Where money is charged on the Consolidated Revenue Fund or any other public fund by law, it shall be paid out of that fund to the person or authority to whom it is due.

Contingencies Fund

- 241.** (1) An Act of the National Assembly may make provision for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, subject to subsection (2), to make advances from that Fund if he or she is satisfied that there has arisen an unforeseen and urgent need for expenditure for which no other provision exists.
- (2) The Minister responsible for finance shall not authorise any expenditure from the Contingencies Fund in excess of one per cent of the estimates approved by the National Assembly for the current year before he or she has caused a supplementary estimate in respect of such excess expenditure to be presented to the Assembly.
- (3) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented, and a Supplementary Appropriation Bill shall be introduced for the purpose of replacing the amount so advanced, within ninety days of the advance being made.

Development Fund

- 242.** (1) There is established a Development Fund into which shall be paid five per cent of all the revenue collected by the Government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.
- (2) The Government shall use the Development Fund only to provide basic services including water, roads, health facilities and electricity to marginalised groups and disadvantaged areas to the extent necessary to bring the quality of services with respect to those groups and areas to the level generally enjoyed by the rest of the nation, so far as possible.
- (3) The Government may use the Development Fund-

- (a) only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by the National Assembly; and
- (b) either, directly or indirectly, through conditional grants to Local Government Authorities in which marginalised groups and disadvantaged areas exist.

(4) Any unexpended money in the Development Fund at the end of a particular financial year shall remain in that Fund for use in accordance with subsections (2) and (3) during any subsequent financial year.

Salaries charged on the Consolidated Revenue Fund

243. (1) The salaries and allowances, and the retirement benefits, of the holders of the offices to which this section applies shall be charged on the Consolidated Revenue Fund.

(2) This section applies to the offices of—

- (a) the President and the Vice-President;
- (b) the Speaker;
- (c) a judge of a superior court;
- (d) a member of the Independent Boundaries and Electoral Commission;
- (e) the Auditor-General;
- (f) the Ombudsperson;
- (g) the National Human Rights Commissioners;
- (h) the Anti-Corruption Commissioners; and
- (i) the Director of Public Prosecutions.

Accountability

244. (1) The accounting officer in charge of a Ministry or Department shall be accountable to the National Assembly for the funds in that Ministry or Department.

(2) Any person holding a political or public office who directs or concurs in the use of public funds contrary to any law or existing instructions shall be accountable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office.

(3) The National Assembly shall monitor all expenditure of public funds.

PART IV
LOANS, GRANTS, GOVERNMENT GUARANTEES AND PUBLIC DEBTS

Loans

245. (1) The National Assembly may, by resolution supported by the votes of not less than one half of all the members, authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account.

(2) An agreement to which subsection (1) refers shall be laid before the National Assembly and shall not come into effect until it is approved by not less than one half of all the members of the Assembly.

(3) No loan shall be raised by the Government on behalf of itself or any other person or authority otherwise than by or under the authority of an Act of the National Assembly.

(4) An Act of the National Assembly authorising the raising of a loan shall provide -

(a) that the terms and conditions of a loan shall be laid before the National Assembly and that the loan agreement shall not come into operation until it has been approved by the Assembly; and

(b) that any money received in respect of a loan shall be paid into the Consolidated Revenue Fund or some other public fund as may be authorised by an Act of the National Assembly.

(5) An Act of the National Assembly may provide for the application of this section, with any necessary modifications, to -

(a) any guarantee by the Government; or

(b) an international business or economic transaction to which the Government proposes to become a party.

(6) The Minister responsible for finance shall, at such times as the National Assembly may require, present to the National Assembly such information as he or she may have relating to -

(a) the granting of loans, their servicing and repayment; and

(b) the payment into the Consolidated Revenue Fund or other public fund, as may be authorised by an Act of the National Assembly, of money derived from loans raised from institutions outside The Gambia.

Limits of state borrowings, public debts and state guarantees

246. (1) An Act of the National Assembly shall set limits on –

(a) borrowings by the State;

(b) the public debt; and

(c) debts and obligations whose payment or repayment is guaranteed by the State.

(2) Any limits set by an Act of the National Assembly under subsection (1) shall not be exceeded without the authority of the Assembly.

(3) An Act of the National Assembly shall prescribe terms and conditions under which the Government may guarantee loans.

(4) Within sixty days after the Government has concluded a loan agreement or guarantee, the Minister responsible for finance shall cause its terms to be published in the *Gazette*.

(5) The Minister responsible for finance shall -

(a) at least twice a year, report to the National Assembly on the performance of loans raised or guaranteed by the Government; and

(b) at the same time as the estimates of revenue and expenditure are laid before the National Assembly under section 248 present to the Assembly a comprehensive statement of the public debt of The Gambia.

The public debt

247. (1) The public debt of The Gambia shall be a charge on the Consolidated Revenue Fund and such other public fund as may be authorised by an Act of the National Assembly.

(2) For the purposes of this section, the public debt includes interest on the debt, sinking fund payments and redemption money in respect of that debt, and all costs, charges and expenses incidental to the management and repayment of that debt.

PART V BUDGET

Annual estimates and appropriation bill

248. (1) The President shall cause the Minister responsible for finance to prepare and lay before the National Assembly at least sixty days before the end of the financial year, estimates of the revenue and expenditure of The Gambia for the following financial year.

(2) The estimates shall include any estimates which, under this Constitution, are to be submitted directly to the President by any person or authority for presentation by the President to the National Assembly.

(3) Any person or authority that is entitled to draw up its own estimates for presentation -

(a) by the President to the National Assembly, shall provide the President with such estimates at least ninety days before the end of the financial year; or

(b) directly to the National Assembly, such estimates shall be provided to the National Assembly at least ninety days before the end of the financial year.

(4) Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.

(5) In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.

(6) When the estimates of expenditure have been approved by the National Assembly, an Appropriation Bill shall be introduced into the Assembly to authorise the withdrawal from the Consolidated Revenue Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.

(7) The Appropriation Bill mentioned in subsection (6) shall not include expenditure that is charged on the Consolidated Revenue Fund by this Constitution or an Act of the National Assembly.

(8) In addition to presenting the estimates for the following financial year, the President may cause to be prepared and presented to the National Assembly -

(a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and

(b) estimates of revenue and expenditure in respect of such programmes and plans.

Expenditure before annual budget is passed

249. (1) If the Appropriation Bill in respect of any financial year has not been passed into law by the beginning of that financial year, the President may authorise the withdrawal of money from the Consolidated Revenue Fund for the purposes of meeting expenditure necessary to carry on the services of the Government for a period not exceeding four months from the beginning of the financial year.

(2) The withdrawal of funds in accordance with subsection (1) shall not exceed one third of the sums authorised for the relevant services by the Appropriation Act for the immediately preceding financial year.

Supplementary appropriation

250. (1) Subject to section 241, if in respect of any financial year it is found that the amount appropriated under the Appropriation Act is insufficient or that a need has arisen for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the National Assembly before the expenditure has been incurred.

(2) Where a supplementary estimate has been approved by the National Assembly, a Supplementary Appropriation Bill shall be introduced into the National Assembly for the appropriation of the sums so approved.

PART VI PUBLIC PROCUREMENT

Public procurement

251. (1) When a State organ, Statutory Body or State Owned Enterprise or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

(2) An Act of the National Assembly shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented, and may provide for all or any of the following-

- (a) categories of preference in the allocation of contracts;
- (b) the protection or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination;
- (c) sanctions against contractors that have not performed according to professionally regulated procedures, contractual agreements or laws; and
- (d) sanctions against persons who have defaulted on their tax obligations, or have been guilty of corrupt practices or serious violations of fair employment laws and practices.

CHAPTER XIV LAND, NATURAL RESOURCES AND THE ENVIRONMENT

PART I PRINCIPLES OF EQUITABLE USE OF LAND, ENVIRONMENT AND NATURAL RESOURCES

Principles of land, environment and natural resources policy

252. (1) Land, environment and natural resources in The Gambia shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles-

- (a) equitable access and security of land rights;
- (b) transparent and cost effective administration of land;
- (c) sustainable exploitation, utilisation, productive management and conservation of the environment, land and natural resources, and the equitable sharing of the accruing benefits;

- (d) protection, conservation, preservation and sustainable use of land, environment and natural resources for the benefit of present and future generations;
- (e) protection of genetic resources and biological diversity;
- (f) establishment of systems of environmental impact assessment, environmental audit and monitoring of the environment;
- (g) recognition of the adverse effects of climate change on the sustainable use of land, environment and natural resources and the need to build resilience and increase adaptation to these effects;
- (h) protection and enhancement of intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- (i) sound conservation and protection of ecologically sensitive areas;
- (j) public participation in the management, protection and conservation of land, environment, and natural resources;
- (k) elimination of discrimination in law, customs and practices related to land and property in land based on gender;
- (l) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution and other laws; and
- (m) utilization of the land, environment and natural resources for the benefit of the people of The Gambia.

(2) These principles shall be implemented through a national land, environment and natural resources policy developed and reviewed regularly by the Government and through Acts of the National Assembly.

(3) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

PART II LAND, ENVIRONMENT AND NATURAL RESOURCES COMMISSION

Establishment and composition of the Commission

253. (1) There is established the Land, Environment and Natural Resources Commission.

(2) The Commission shall comprise the following persons, who shall be appointed by the President, subject to confirmation by the National Assembly-

- (a) a Chairperson, who is, or is qualified to be appointed as, a judge of the Supreme Court (in addition to the qualifications set out in section 255);

- (b) a Legal Practitioner of not less than ten years standing;
- (c) a person with qualification in a field of study, and not less than ten years' experience, in land administration, planning and survey;
- (d) a person with qualification in a field of study, and not less than ten years' experience, in natural resources management; and
- (e) a person with qualification in a field of study, and not less than ten years' experience, in environmental management.

Powers and functions of the Commission

254. An Act of the National Assembly shall provide for the powers and functions of the Commission, which shall include the power to –

- (a) advise on the management of public land and natural resources;
- (b) recommend, and from time to time to review, a national land, environment and natural resources policy to the Government;
- (c) advise the Government on a comprehensive programme for the registration of title in land throughout The Gambia;
- (d) commission research related to land, environment and the use of natural resources, and make recommendations to appropriate authorities;
- (e) initiate investigations, on its own initiative or on a complaint, into land disputes, and issue such orders as it considers appropriate, including making recommendations for redress, where appropriate;
- (f) encourage the application of traditional dispute resolution mechanisms in land conflicts; and
- (g) monitor and have oversight responsibilities over land use planning throughout the country.

Qualifications, disqualifications and removal from office

255. (1) A person qualifies to be appointed as a member of the Commission if he or she satisfies the qualifications set out in section 215 (1).

(2) A person shall not qualify to be appointed as a member of the Commission if any of the disabilities mentioned in section 215 (2) applies in his or her case.

(3) In addition to the disqualifications under subsection (2), a person shall not be qualified to be appointed a member of the Commission if he or she has benefitted from, or facilitated, an unlawful or irregular allocation, acquisition, or use or change of use of land or other public property, or committed an environmental offence, or actively engaged in an act that degraded or otherwise compromised a natural resource of The Gambia.

(4) The provisions of section 216 shall apply with respect to the removal from office of a member of the Commission.

Independence of the Commission

256. Except as otherwise provided in this Constitution or in any other law which is not inconsistent with this Constitution, the Commission shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.

PART III GENERAL PROVISIONS

Land ownership

257. (1) All land in The Gambia belong to the people of The Gambia collectively as a nation, as communities, and as individuals.

(2) Land tenure in The Gambia is based on freehold, leasehold and customary land tenure, unless otherwise determined by an Act of the National Assembly.

Landholding by non-citizens

258. (1) No interest in or right over land in The Gambia shall be created which vests in a person who is not a citizen of The Gambia, a freehold interest in any land in The Gambia.

(2) If, whether before or after the coming into force of this Constitution, a person who is not a citizen of The Gambia holds a freehold title in any land in The Gambia, that freehold title shall be deemed to have been converted into a leasehold interest for a period of thirty years upon the date of the coming into force of this Constitution.

(3) A person who is not a citizen of The Gambia may acquire and hold land on the basis of leasehold tenure only, and any such leasehold, however granted, shall not exceed thirty years.

(4) If, whether before or after the coming into force of this Constitution, any agreement, deed, conveyance or document of whatever nature confers or purports to confer on a person who is not a citizen of The Gambia an interest in land greater than a thirty year lease, the provision shall be deemed as conferring on the person a thirty year leasehold interest.

(5) A person, not being a citizen of The Gambia, who holds a leasehold property shall not in any manner dispose of the property, unless the property is disposed to a person who –

(a) is a citizen of The Gambia; or

(b) is not a citizen of The Gambia, with the approval of the Cabinet, to acquire and hold the property for the remainder of the term of the leasehold.

(6) Where a person who is not a citizen of The Gambia holds a leasehold interest in land to be used for a specified project or specified purpose, the land shall –

(a) not be converted for use for another purpose; and

(b) revert to the State if it is no longer used for the specified project or purpose.

(7) The State may, on the basis of reciprocity, convey to a foreign government land to be used perpetually for its diplomatic activities and such land–

(a) shall not be transferred or otherwise conveyed to any other person or authority, or used for any other purpose, except with the express consent of the Government; and

(b) may revert to the State in the event of a cessation of diplomatic relations.

(8) Subject to subsection (7), where a leasehold held by a person who is not a citizen of The Gambia comes to an end, the leasehold property may be renewed for such further period of up to thirty years at a time, but not exceeding in aggregate ninety years.

(9) For purposes of this section-

(a) a body corporate shall be regarded as a citizen only if the body corporate is wholly owned by one or more citizens of The Gambia; and

(b) property held in trust shall be regarded as being held by a citizen of The Gambia only if all of the beneficial interest of the trust is held by persons who are citizens of The Gambia.

CHAPTER XV THE PUBLIC SERVICES

PART I THE PUBLIC SERVICES OF THE GAMBIA

The public services of The Gambia

259. (1) The Public Service of The Gambia includes the following –

(a) the Civil Service;

(b) the Judicial Service;

(c) the National Assembly Service;

(d) the Local Government Service;

- (e) the National Security Service;
- (f) the Education Service;
- (g) the Health Service;
- (h) the Statutory Bodies and State Owned Enterprises; and
- (i) such other public service as may be established by an Act of the National Assembly.

Offices in the public service

260 (1) An office in the public service includes all offices the emoluments of which are payable out of any public fund of The Gambia.

(2) Subject to section 22 (3), the reference in this Constitution to an office in the public service does not include —

- (a) the offices of President, Vice-President, Speaker or Deputy Speaker of the National Assembly, Minister or a member of the National Assembly;
- (b) the offices of a member of any commission (other than a commission the members of which are hereby or by an Act of the National Assembly declared to hold an office in the public service), or a member of the Advisory Committee on the exercise of the Prerogative of Mercy or the Advisory Committee on the conferment of honours.

Appointment to and removal from offices in the public services

261. (1) Subject to the provisions of this Constitution-

- (a) the President may, acting in accordance with the advice of the Public Service Commission, the Teachers Service Commission or the Health Service Commission, as the case may be, appoint persons to hold or act in any office in the public service of The Gambia of the rank of Permanent Secretary or head of an institution in the public service, including approval of appointments, the exercise of disciplinary control over such persons and their removal from office; and
- (b) the Public Service Commission, the Teachers Service Commission or the Health Service Commission, as the case may be, may appoint persons to hold or act in any office in the public service of The Gambia other than those referred to in paragraph (a), including the approval of their appointments and the exercise of disciplinary control over such persons and their removal from office.

(2) Except with the consent of the President or Vice President, no person shall be appointed under this section to act in any office on the personal staff of the President or Vice President.

(3) In this Constitution—

- (a) power to appoint any person to hold or to act in any office in the public service shall include the power to confirm appointments, to exercise disciplinary control over and, subject to section 265, to remove persons holding or acting in such offices and to re-appoint or reinstate any person appointed in exercise of the power in question unless such power is expressly or by necessary implication vested in some other person or authority;
- (b) power to remove an officer in the public service shall include power to require such officer to retire from the public service;
- (c) nothing in paragraph (b) shall be construed as conferring on any person or authority the power to require a judge of a superior court, the Director of Public Prosecutions, the Commissioners of the Independent Boundaries and Electoral Commission, National Human Rights Commission and the Anti-Corruption Commission, the Auditor-General, the Governor of the Central Bank of The Gambia, or the Ombudsperson or a Deputy Ombudsperson to retire from the public service; and
- (d) any provision which vests in any person or authority power to remove a person from any public office shall be without prejudice to the power of any person or authority to abolish any office or to any law for the compulsory retirement of public officers.

Secretary General and Head of the Civil Service

- 262.** (1) There shall be a Secretary General who shall –
- (a) be the Head of the Civil Service; and
 - (b) be appointed by the President acting on the advice of the Public Service Commission, and subject to confirmation by the National Assembly.
- (2) The functions of the Secretary General are as follows-
- (a) advising the President on matters relating to the public service;
 - (b) ensuring that the public service is efficient and effective;
 - (c) coordinating and supervising the activities and work of Permanent Secretaries;
 - (d) coordinating the policies and programmes of the public service;
 - (e) serving as a link between Cabinet and the public service;
 - (f) serving as a link between service commissions;
 - (g) ensuring the implementation of Cabinet and other Government decisions; and
 - (h) performing any other duties, relating to the public service, assigned to him or her from time to time by the President.

Qualifications, disqualifications and tenure of the Secretary General

- 263.** (1) A person is qualified to be appointed Secretary General if he or she –
- (a) has a university degree or equivalent professional qualification;
 - (b) has experience in public service affairs at a senior managerial level for a period of not less than fifteen years;
 - (c) is qualified to be appointed as Permanent Secretary; and
 - (d) is a person of high moral character and proven integrity.
- (2) A person shall not qualify to be appointed as Secretary General if he or she –
- (a) has been declared to be of unsound mind;
 - (b) is a member of the National Assembly or any other elective office;
 - (c) has, during any period of service in any public office or in the private sector, been terminated or dismissed for dishonesty or immoral conduct;
 - (d) is, or has at any time during the five years immediately preceding his or her appointment, been nominated as a candidate for election as a member of the National Assembly or any other political office;
 - (e) is, or has at any time during such period of five years been, the holder of any office in any organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of the National Assembly or of any local government authority or he or she has actively identified himself or herself with any such organisation; or
 - (f) has been convicted in any country of an offence for which he or she has been sentenced to a term of imprisonment of 6 months or more and has not received a pardon.
- (3) The Secretary General shall not, in the performance of his or her functions, be subject to the direction or control of any other person or authority but shall, in the performance of such functions, have due regard to the policies and programmes of the Government.

Permanent Secretaries

- 264.** (1) Subject to the provisions of this Constitution, a Ministry or Department of the Government of The Gambia shall be under the administrative supervision of a Permanent Secretary whose office shall be an office in the public service.
- (2) A Permanent Secretary shall be appointed by the President acting in accordance with the advice of the Public Service Commission, subject to confirmation by the National Assembly.
- (3) The functions of a Permanent Secretary shall include-

- (a) organisation and operation of the Ministry or Department ;
- (b) advising the responsible Minister in respect of the business of the Ministry, its Departments, and Agencies ;
- (c) implementation of the policies of the Government of The Gambia; and
- (d) responsibility for the proper expenditure of public funds by or in connection with the Ministry or Department.

Protection of public officers

265. No public officer shall—

- (a) be victimised or discriminated against either directly or indirectly for having discharged his or her duties faithfully and according to law; or
- (b) be removed from office or reduced in rank or otherwise punished without due process of law.

Restriction on political activities of public officers

266. (1) A person holding an office in the public service shall not –

- (a) hold office in any political party; or
- (b) openly participate in any political activity.

(2) Any person who holds an office in the public service who wishes to contest an election for political office shall, prior to nomination as a candidate, obtain one year's leave of absence without pay, which leave shall not unreasonably be refused.

(3) If a person who has obtained leave of absence in accordance with this section is elected to a political office, he or she shall immediately resign or, if applicable, retire from his or her office in the public service and, if he or she fails to do so, his or her services will be terminated.

Retirement age

267. Save as provided in this Constitution, a person holding an office in the public service—

- (a) shall retire from such office on attaining the age of sixty years or such other age as may be prescribed by an Act of the National Assembly (which age is referred to as “the compulsory retirement age”); and
- (b) may retire with an earned pension at any time after attaining the age of forty-five years or such other age as may be prescribed by an Act of the National Assembly.

Pensions

268. (1) A public officer shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service.

(2) The pension payable to any person shall be exempt from tax and shall be subject to periodic review to take account of changes in the value of money.

(3) The payment of pension shall be prompt and regular and easily accessible to pensioners.

Protection of pension rights

269. (1) The law applicable to any benefits to which this section applies shall, in relation to any person who has been granted, or who is eligible to be granted, such benefits, be that in force on the relevant date or any later law that is not less favourable to that person.

(2) Where any person is entitled to exercise an option as to which of two or more laws shall apply in his or her case, the law specified by him or her in exercising the option shall, for the purpose of this section, be deemed to be more favourable to him or her than the other law or laws.

(3) Any benefit to which this section applies (not being a benefit that is a charge on some other fund of The Gambia) shall be a charge on the Consolidated Revenue Fund or upon such other special fund, whether contributory or non-contributory, as may be prescribed by an Act of the National Assembly.

(4) This section applies to any benefits payable under any law providing for the grant of pensions, gratuities or compensation to persons who are or have been public officers in respect of their service in the public service or to the widows, children, dependants or personal representatives of such persons in respect of such service.

(5) Reference to the law applicable to any benefits to which this section applies includes references to any law relating to the time at, and the manner in, which any person may retire in order to become eligible for those benefits.

(6) In this section, “**the relevant date**” means —

(a) in relation to benefits granted before 18th February 1965, the date on which those benefits were granted;

(b) in relation to any benefits granted on or after 18th February 1965 to or in respect of any person who was a public officer before that date, the 18th February 1965;

(c) in relation to any benefits granted or to be granted to or in respect of any person who became, or becomes, a public officer on or after 18th February 1965, the date on which he or she became or becomes a public officer.

PART II
SERVICE COMMISSIONS

(i) General Provisions

Establishment, composition and general functions of service commissions

- 270.** (1) There is established the following service commissions under the Civil Service –
- (a) Public Service Commission;
 - (b) Teachers Service Commission; and
 - (c) Health Service Commission.
- (2) Each service commission established under subsection (1) shall –
- (a) comprise a Chairperson and four other members who shall be appointed by the President, subject to confirmation by the National Assembly; and
 - (b) have responsibility for the establishment of offices and appointment to such offices in the Civil Service, including exercising disciplinary control and removing persons holding those offices –
 - (i) in the case of the Public Service Commission, as it relates to offices other than those relating to the education and health services sectors;
 - (ii) in the case of the Teachers Service Commission, as it relates to offices in the education sector only; and
 - (iii) in the case of the Health Service Commission, as it relates to offices in the health service sector only.

Secretariat of the service commissions

- 271.** The office in the Civil Service with responsibility for personnel matters shall –
- (a) serve as the secretariat for each of the service commissions established under sections 270 (1) and 290 (1).
 - (b) designate personnel to attend and provide guidance to each service commission in order to ensure a proper streamlining of the work of the service commissions; and
 - (c) provide such other support as may be necessary to ensure that the service commissions function efficiently and effectively.

(ii) Public Service Commission

Powers and functions of the Public Service Commission

272. (1) The Public Service Commission shall-
- (a) promote the values and principles of public service mentioned in Part I and Chapter II;
 - (b) investigate, monitor and evaluate the organisation, administration and personnel practices of the public service;
 - (c) ensure that the public service is efficient and effective;
 - (d) develop human resources in the public service;
 - (e) afford adequate, equal and impartial opportunities for appointment, training and advancement, at all levels of the public service for which it has responsibility, without distinction as to ethnicity, gender or class;
 - (f) review and make recommendations to the Government in respect of conditions of service, codes of conduct and qualifications of officers in the public service;
 - (g) evaluate and report to the President and the National Assembly on the extent to which the values and principles mentioned in Part I and Chapter II are complied with in the public service; and
 - (h) perform any other functions and exercise any other powers conferred by an Act of the National Assembly.
- (2) The performance of functions or exercise of powers by the Public Service Commission under subsection (1) and section 270 (2) (b) (i) shall not apply to any of the following offices -
- (a) an office of high commissioner, ambassador or other diplomatic or consular representative of The Gambia;
 - (b) an office or position subject to -
 - (i) the National Assembly Service Commission;
 - (ii) the Judicial Service Commission;
 - (iii) the Security Services Commission;
 - (iv) the Armed Forces; and
 - (v) an office in the service of a Local Government.

(iii) Teachers Service Commission

Powers and functions of the Teachers Service Commission

273. (1) The Teachers Service Commission shall -
- (a) promote the values and principles of public service mentioned in Part I and Chapter II;
 - (b) investigate, monitor and evaluate the organisation, administration and personnel practices of the public service in the field of education;
 - (c) ensure that the public service is efficient and effective in relation to education;
 - (d) liaise with relevant institutions and authorities with respect to the development of education curricula;
 - (e) develop human resources in the education sector to ensure the delivery of quality education;
 - (f) afford adequate, equal and impartial opportunities for appointment, training and advancement, at all levels of the public service for which it has responsibility, without distinction as to ethnicity, gender or class;
 - (g) ensure the appropriate registration of teachers;
 - (h) assign teachers employed by the Commission for service in any public school or institution;
 - (i) review and make recommendations to the Government in respect of conditions of service, codes of conduct and qualifications of officers in the field of education;
 - (j) evaluate and report to the President and the National Assembly on the extent to which the values and principles mentioned in Part I and Chapter II are complied with in the education sector; and
 - (k) perform such other functions as may be prescribed by this Constitution or an Act of the National Assembly.
- (2) The Commission shall, in addition to the functions outlined in subsection (1) -
- (a) review the standards of education and training of persons entering the teaching service;
 - (b) review the demand for and the supply of teachers; and
 - (c) advise the Government on matters relating to the teaching profession.

(iii) Health Service Commission

Powers and functions of the Health Service Commission

274. The Health Service Commission shall -

- (a) promote the values and principles of public service mentioned in Part I and Chapter II;
- (b) investigate, monitor and evaluate the organisation, administration and personnel practices of the public service in the field of health and health care delivery;
- (c) ensure that the public service is efficient and effective in relation to the delivery of health care to all the communities in The Gambia;
- (d) develop human resources in the health sector to ensure the delivery of quality healthcare;
- (e) afford adequate, equal and impartial opportunities for appointment, training and advancement, at all levels of the public service for which it has responsibility, without distinction as to ethnicity, gender or class;
- (f) assign medical officers and health care personnel employed by the Commission for service in any public health facility or area in The Gambia;
- (g) review and make recommendations to the Government in respect of conditions of service, codes of conduct and qualifications of officers in the field of health and health care delivery;
- (h) evaluate and report to the President and the National Assembly on the extent to which the values and principles mentioned in Part I and Chapter II are complied with in the health sector; and
- (i) perform such other functions as may be prescribed by this Constitution or an Act of the National Assembly.

PART III GENERAL PROVISIONS ON SERVICE COMMISSIONS

Qualifications, disqualifications and tenure of members of service commissions

275. (1) A member of a service commission shall be a person who –

- (a) is a citizen of The Gambia;
- (b) is fit and proper with knowledge of, or experience in, administration, management or the provision of services in the respective areas of responsibility of the Commission; and
- (c) is of high moral character and proven integrity.

(2) A person shall not be qualified to be appointed a member of a service commission, if he or she -

- (a) is a member of the public service or a member of a disciplined force;
- (b) is a member of the National Assembly or any other elective office;
- (c) is a member of the governing body of a Statutory Body or State Owned Enterprise;
- (d) is an office holder in, or member of, the executive body of a political party;
- (e) has, within the two years preceding his or her appointment, been nominated as a candidate in an election to the National Assembly;
- (f) has been convicted in any country of an offence for which he or she has been sentenced to a term of imprisonment of 6 months or more and has not received a pardon; or
- (g) is otherwise disqualified from holding an office in the public service.

(3) A member of a service commission shall be disqualified for appointment to any office in the public service during a period of three years after he or she ceases to be a member of the service commission.

(4) Subject to subsection (5), the members of a service commission shall be appointed for a term of five years, subject to renewal for one more term.

(5) The provisions of section 216 shall apply with respect to the removal from office of a member of a service commission.

Additional powers and independence of service commissions

276. (1) A service commission may delegate, in writing and with or without conditions, any of its functions and powers under this section to any one or more of its members, or to any officer, body or authority in the public service.

(2) A service commission –

- (a) may make regulations for the performance of its functions;
- (b) shall prescribe a code of conduct for public officers within its jurisdiction; and
- (c) shall prepare and submit an annual report on the performance of its functions to the National Assembly.

(3) In the exercise of its powers and the performance of its functions, a service commission shall be independent, and shall not be subject to the direction or control of any other person or authority, except that it shall take into account Government policy relating to the public service, including the education and health sectors.

PART IV
STATE OWNED ENTERPRISES

Appointment, qualifications, disqualifications and removal of board members of State Owned Enterprises

277. (1) The members of the Board of Directors or other governing body of a State Owned Enterprise shall be appointed by the President after consultation with the Public Service Commission.

- (2) A member of a Board of Directors of a State Owned Enterprise shall be a person who –
- (a) is a citizen of The Gambia;
 - (b) is fit and proper with knowledge of, or experience in, corporate governance, administration, management, law or expertise in the subject matter under the responsibility of the State Owned Enterprise; and
 - (c) is of high moral character and proven integrity.

(3) A person shall not be qualified to be appointed a member of a Board of Directors or other governing body of a State Owned Enterprise, if he or she—

- (a) unless an *ex-officio* member, is a member of the public service or a member of a disciplined force;
- (b) is a member of the National Assembly or any other elective office;
- (c) is a member of the governing body of another Statutory Body or State Owned Enterprise;
- (d) is an office holder in or a member of the executive body of a political party;
- (e) has been convicted in any country of an offence for which he or she has been sentenced to a term of imprisonment of 6 months or more and has not received a pardon; or
- (f) is otherwise disqualified from holding an office in the public service.

(4) The provisions of section 216 shall apply with respect to the removal from office of a member of a service commission.

Chief Executive Officer

278. The Chief Executive Officer of a State Owned Enterprise shall be appointed by the Board of Directors, through an open and transparent competitive process, following advertisement of the position, and subject to the approval of the National Assembly.

Qualifications, disqualifications and removal of Chief Executive Officer

- 279.** (1) In addition to any qualification in the law or other governing instrument establishing a State Owned Enterprise, the Chief Executive Officer of a State Owned Enterprise shall –
- (a) be a citizen of The Gambia;
 - (b) be fit and proper with a minimum of a university degree or an equivalent professional qualification, and at least ten years' post-qualification experience in a relevant field of study; and
 - (c) be a person of high moral character and proven integrity.
- (2) The disqualifications for a member of a Board of Directors outlined in section 277 (3) apply in relation to the office of a Chief Executive Officer of a State Owned Enterprise.
- (3) A Chief Executive Officer shall not hold any other public office or other remunerative office.
- (4) The Board of Directors of a State Owned Enterprise may remove a Chief Executive Officer only -
- (a) for inability to perform the functions of his or her office, whether arising from infirmity of mind or body or from any other cause;
 - (b) for misbehaviour;
 - (c) for misconduct, whether in the performance of the member's functions or otherwise;
 - (d) for violation of this Constitution or any other law;
 - (e) for incompetence;
 - (f) for bankruptcy or entering into an arrangement with creditors; or
 - (g) if any circumstances arise which would have disqualified him or her from appointment to the office.

Monitoring body

- 280.** Within six months of the coming into force of this Constitution, an Act of the National Assembly shall establish a body to monitor the operations of State Owned Enterprises, and shall prescribe the manner in which such Enterprises shall –
- (a) be accountable to the National Assembly; and
 - (b) conduct their affairs in order to promote efficiency, transparency and probity in all their undertakings.

Reporting

281. (1) A State Owned Enterprise shall, within three months of the end of its financial year, submit an annual report to the National Assembly on its business and operations during the preceding year.

(2) The appropriate committee of the National Assembly may extend the time for the submission of a report required under subsection (1).

CHAPTER XVI NATIONAL SECURITY

PART I THE SECURITY SERVICES AND NATIONAL SECURITY COUNCIL

Security services

282. The Security Services of The Gambia shall include –

- (a) the Gambia Armed Forces;
- (b) the Gambia Police Force;
- (c) the Gambia Immigration Service;
- (d) the Gambia Fire and Rescue Service;
- (e) the Gambia Prison Service;
- (f) the State Intelligence Service;
- (g) the Gambia Revenue Authority;
- (h) the Drug Law Enforcement Agency; and
- (i) such other security service as may be established by an Act of the National Assembly.

National Security Council

283. (1) There is established the National Security Council which shall comprise —

- (a) the President, as Chairperson;
- (b) the Vice-President, who may deputise in the absence and on the direction of the President;
- (c) the Ministers responsible for defence, internal security, foreign affairs, and justice;
- (d) the Chief of Defence Staff;

- (e) the Inspector General of Police;
 - (f) the Director-General of the State Intelligence Service;
 - (g) the Director General of The Gambia Immigration Service;
 - (h) the Commissioner General of The Gambia Revenue Authority;
 - (i) the Director General of Prisons;
 - (j) the Chief Fire Officer;
 - (k) the Director General of the Drug Law Enforcement Agency; and
 - (l) the National Security Adviser to the President.
- (2) The National Security Council shall be responsible for advising the President –
- (a) on all matters relating to the security of The Gambia, including measures necessary to keep the peace and security of the nation;
 - (b) on the integration of domestic and foreign policies relating to the security of The Gambia;
 - (c) on reforms that may be necessary to ensure and maintain a harmonized national security service to strengthen law enforcement in The Gambia; and
 - (d) on measures that are necessary to ensure a well-trained and professional national security system that is effectively responsive to threats to, and the protection of, The Gambia.
- (3) Under the direction of the President, the National Security Council shall take appropriate measures to safeguard the internal and external security of The Gambia, and ensure the co-operation of the Departments and Agencies of the Government in that regard.

PART II ARMED FORCES

The Gambia Armed Forces

- 284.** (1) There is established the Armed Forces of The Gambia which shall be under the authority and direction of the President.
- (2) The Armed Forces shall consist of the Army, the Navy and the Air Force, and such other services for which provision is made by an Act of the National Assembly.
- (3) Subject to subsection (1), the Chief of Defence Staff shall be responsible for the operational control and administration of the Armed Forces.

(4) No person or authority shall raise an armed force except by or under the authority of an Act of the National Assembly.

(5) The President shall not deploy any troops outside The Gambia without the approval of the National Assembly.

(6) The Armed Forces shall be equipped and maintained to perform their role of defence of The Gambia as well as such other functions for the development of The Gambia as provided in this Constitution or any other law.

(7) An Act of the National Assembly shall make provision –

- (a) for the functions and duties of the Armed Forces;
- (b) outlining the internal structures and commands of the Armed Forces;
- (c) for the establishment of an Armed Forces Council, including its composition, functions and all other related matters;
- (d) subject to section 285, for the appointment, discipline and removal of members of the Armed Forces; and
- (e) for such other matters as may be considered necessary to maintain an efficient, effective and discipline Armed Forces.

Appointments in Armed Forces

285. (1) The President shall, after consulting the National Security Council, appoint -

- (a) the Chief of Defence Staff of the Armed Forces;
- (b) the Armed Forces Chief of Staff; and
- (c) the Commanders of the Army, the Navy and the Air Force.

(2) A person shall not be qualified for appointment in accordance with subsection (1) if he or she –

- (a) is not a citizen of The Gambia;
- (b) holds the citizenship or nationality of any other country; or
- (c) is not a person of high moral character and proven integrity.

(3) The President may, after consulting the National Security Council, remove from office the Chief of Defence Staff, the Armed Forces Chief of Staff, or the Commander of the Army, the Navy or the Air Force.

(4) An Act of the National Assembly shall make provision –

- (a) for appointment by the President of commanders of any formation or unit of the Armed Forces;
- (b) for the grant by the President of commissions in the Armed Forces; and
- (c) to otherwise give full effect to this Part.

PART III THE POLICE FORCE

The Gambia Police Force

- 286.** (1) There is established The Gambia Police Force.
- (2) The Gambia Police Force is a national service institution and shall function throughout The Gambia.

Objects and functions of the Gambia Police Force

- 287.** The Gambia Police Force shall –
- (a) strive for the highest standards of professionalism and discipline among its members;
 - (b) prevent corruption and promote and practice discipline, transparency and accountability;
 - (c) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities;
 - (d) comply with standards of human rights and fundamental freedoms and respect for human dignity;
 - (e) train staff to the highest possible standards of competence and integrity; and
 - (f) foster and promote harmonious relationships with the broader Gambian society.

Head of The Gambia Police Force

- 288.** (1) There is established the Office of Inspector-General of Police which shall be a public office in the security service.
- (2) The Inspector-General of Police shall be the head of The Gambia Police Force appointed by the President with the advice of the National Security Council, subject to confirmation by the National Assembly.
- (3) The Inspector General of Police shall exercise independent command over The Gambia Police Force, and perform any other functions prescribed by an Act of the National Assembly.

(4) The Minister responsible for internal security may only give direction to the Inspector-General of Police with respect to matters of policy for The Gambia Police Force, but no person may give any direction to the Inspector-General of Police with respect to –

- (a) the investigation of any particular offence or offences;
- (b) the enforcement of the law against any particular person or persons; or
- (c) the employment, assignment, promotion, suspension or dismissal of any member of The Gambia Police Force.

(5) Any direction given to the Inspector-General of Police by the Minister responsible for internal security under subsection (4) shall be in writing.

Removal from office

289. The Inspector-General of Police may be removed from office by the President on the advice of the National Security Council, subject to the approval of the National Assembly, only on the ground of –

- (a) serious violation of this Constitution or any other law, including a contravention of Chapter VI;
- (b) gross misconduct, whether in the performance of his or her functions or otherwise;
- (c) inability to perform the functions of his or her office, whether arising from infirmity of body or mind or from any other cause; or
- (d) bankruptcy or entering into an arrangement with creditors.

PART IV NATIONAL SECURITY SERVICE COMMISSION

Establishment of the National Security Service Commission

290. (1) There is established the National Security Service Commission.

(2) The National Security Service Commission shall comprise –

- (a) a person who is, or is qualified to be appointed as, a judge of the High Court, as Chairperson;
- (b) three persons with high moral character and proven integrity who have served the public with distinction;
- (c) the Inspector General of Police;
- (d) the Chief Fire and Rescue Officer;
- (e) the Director General of the Prison Service; and
- (f) the Director General of the Immigration Service.

(3) The members of the National Security Service Commission shall be appointed by the President after consultation with the National Security Council.

Functions and powers of the National Security Service Commission

291. The National Security Service Commission shall-

- (a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within –
 - (i) The Gambia Police Force;
 - (ii) The Gambia Immigration Service;
 - (iii) The Gambia Fire and Rescue Service; and
 - (iv) the Prison Service.
- (b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within its jurisdiction; and
- (c) perform any other functions prescribed by an Act of the National Assembly.

Qualifications and disqualifications

292. (1) A member of the National Security Service Commission shall be a person who -

- (a) is a citizen of The Gambia;
- (b) is a fit and proper person with knowledge of, or experience in, law enforcement, legal or judicial service, administration, management or the provision of security services; and
- (c) is of high moral character and proven integrity.

(2) A person shall not be qualified to be appointed a member of the National Security Service Commission, if he or she—

- (a) unless an *ex-officio* member, is a member of the public service or a member of a disciplined force;
- (b) is a member of the National Assembly or any other elective body;
- (c) is a member of the governing body of a Statutory Body or State Owned Enterprise;
- (d) is an office holder in or member of the executive body of a political party;

- (e) has, within the two years preceding his or her appointment, been nominated as a candidate in an election to the National Assembly; or
- (f) is otherwise disqualified from holding an office in the public service.

(3) A member of the National Security Service Commission is disqualified for appointment to any office in the security service of The Gambia during a period of three years after he or she ceases to be a member of the Commission.

Tenure, independence and removal of Security Service Commissioners

293. (1) Subject to subsection (3), the members of the National Security Service Commission shall be appointed for a term of three years, subject to renewal for one more term.

(2) In the exercise of its functions, the National Security Service Commission shall be independent and shall not be subject to the direction or control of any other person or authority, except that it shall take into account Government policy relating to the security service sector.

(3) The provisions of section 216 shall apply with respect to the removal from office of a non-*ex-officio* member of the Commission.

CHAPTER XVII NATIONAL YOUTH DEVELOPMENT

Principles of youth development

294. (1) The youth are an important asset in the national development of The Gambia and shall be factored in all affairs of State policy to ensure their development and effective participation in nation building.

(2) The following principles apply in relation to youth development and participation in nation building –

- (a) the State is, among other things, built on the strength, ability, competence, professionalism and capacity of its people of which the youth are an important constituency;
- (b) the youth shall be adequately trained for public life in order to engender in them the national values and principles set out in this Constitution and any Act of the National Assembly, and prepare them to conduct themselves professionally and ethically;
- (c) youth participation and inclusion is essential in building and fostering national unity, cohesion, peace, patriotism and service to the people;
- (d) the youth shall be afforded opportunities to serve their country on the principle of equality, commitment, service to State, non-discrimination (whether as to language, ethnicity, background, or otherwise) and love for nation; and

- (e) every support shall be provided to the youth to enable them to develop and realise their full potential.

(3) An Act of the National Assembly may provide further principles as it may consider necessary to strengthen the development of the youths of The Gambia.

Obligations of the State to the youth

- 295.** (1) The Government shall, within three years of the coming into force of this Constitution –
- (a) establish such schemes and institutions that will further the training and development of the youth;
 - (b) strengthen any existing scheme or institution related to the youth to facilitate the overall development of the youth; and
 - (c) provide adequate funding to realise the matters specified in paragraphs (a) and (b).
- (2) The matters specified under subsection (1) shall be provided on an ongoing basis.
- (3) The State shall promote and protect the rights of the youth, and shall take positive measures to eliminate policies and practices that may hinder the growth, development and advancement of the youth.

Consultation with the youth

296. The Government shall, in any matter concerning the development of policies and decision making relating to or affecting the youth specifically, consult the youth to receive their opinions on such policies and decisions.

CHAPTER XVIII THE NATIONAL COUNCIL FOR CIVIC EDUCATION

Establishment and composition of National Council for Civic Education

- 297.** (1) There is established the National Council for Civic Education.
- (2) The National Council for Civic Education shall comprise a Chairperson and four other members appointed by the President, subject to confirmation by the National Assembly.

Qualifications and disqualifications

298. The qualifications and disqualifications mentioned in section 275 (1) and (2) apply to the members of the Council.

Functions of the Council

299. (1) The functions of the National Council for Civic Education include -

- (a) to create and sustain within society an awareness of the principles and objectives of this Constitution as the fundamental law of The Gambia;
- (b) to educate and encourage the public to defend this Constitution against all forms of abuse and violence;
- (c) to sensitise the people of proposed legislative measures published for public and expert opinion to enable the public to understand the issues and provide meaningful contributions;
- (d) to educate and sensitise the public on key legislation that affect their lives and affairs as a mechanism for ensuring greater compliance with the laws;
- (e) to formulate, from time to time, for the consideration of the Government programmes at national, constituency and district levels aimed at realising the objects of this Constitution;
- (f) to formulate, implement and oversee programmes aimed at inculcating in the citizens of The Gambia awareness of their civic and fundamental rights, duties and responsibilities;
- (g) to raise awareness that service rendered by public officials and civil society are not in the nature of favours to the people but rather as constitutional, legal and civic responsibilities;
- (h) to educate the citizens of The Gambia about international, regional and sub-regional instruments and other matters relevant to The Gambia; and
- (i) to perform such powers and other functions as an Act of the National Assembly may provide.

(2) An Act of the National Assembly may provide for the establishment of district branches of the National Council for Civic Education.

(3) In the exercise of its functions, the National Council for Civic Education shall be non-partisan and, save as may be provided by an Act of the National Assembly, shall not be subject to the direction or control of any other person or authority.

CHAPTER XIX AMENDMENT OF THIS CONSTITUTION

Amendment of this Constitution

300. (1) Subject to the provisions of this section, an Act of the National Assembly may amend this Constitution.

(2) This Constitution shall not be amended by an Act of the National Assembly or altered, whether directly or indirectly, unless –

- (a) the sole purpose of the Act is to amend this Constitution;
- (b) the amendment or alteration is carried out transparently and openly and the people have been –
 - (i) duly informed about the proposed amendment or alteration and the objects and reasons for the amendment or alteration; and
 - (ii) given ample opportunity to express their opinions on the proposed amendment or alteration;
- (c) the amendment or alteration is necessary and in the best interest of the people of The Gambia; and
- (d) the Act is passed in accordance with this Chapter.

(3) An Act of the National Assembly shall not amend, add to, repeal or in any other way alter any of the provisions of this Constitution unless the title of the Act clearly indicates that intention and the Act does so in express terms.

(4) Subject to sections 100 (3) and 1387 (2) and (3), the National Assembly shall not have or exercise a power to amend the Constitution to extend the term of the President contrary to section 100 (2).

Amendment of entrenched provisions

301. (1) This section applies to the amendment of the following provisions of this Constitution, which are in this Constitution referred to as “entrenched provisions” –

- (a) this Chapter;
- (b) sections 1, 2, 3 and 124 (2) (which relate to the Republic, sovereignty of The Gambia and the territory of The Gambia);
- (c) sections 6, 7, 8, 9 and 10 (which relate to the Constitution, as the supreme law of The Gambia, national values and good governance);
- (d) sections 13, 14 and 18 (4) (which relate to citizenship);

- (e) Chapter VI (which relates to the protection of fundamental rights and freedoms);
- (f) sections 73 (1) and (3) 79 and 82 except subsections (2) (g) and (6) thereof (which relate to elections, the Independent Boundaries and Electoral Commission and political parties);
- (g) sections 85, 88, Part III of Chapter VIII, 100, 101, 102, 103, 105, 106, 108 (1), 109, 114, 117, 118, and 121 (1) (which relate to election of President, qualifications for election of President, disqualifications for election of President, nomination of candidates, the term of office of President, the qualifications of Ministers, and the establishment and composition of Cabinet);
- (h) sections 124 (2) and (5), 129 (8), (9) and (10) and 213 (2) (which relate to the Director of Public Prosecutions, the independence of independent institutions and offices, including the Auditor-General, and The Gambia's international relations);
- (i) sections 134 (1) and (2) , 135, 136, 137, 138, 142 and 151 (which relate to the National Assembly and the legislative power);
- (j) sections 170, 171, 172 (1) and (2), 173 (1) and (2), Part III of Chapter X except sections 180 (2) and (7), 182 (3), 185 (3) and sections 188 except subsection (3) and 192 (which relate to the Judiciary);
- (k) sections 202, 204 (3), 206, 207 and 209 (which relate to Local Government);
- (l) sections 222, 224 (1), 238 (1), 240 and 244 (which relate to the Office and powers of the Auditor General, taxation and the withdrawal of money from public funds);
- (m) sections 256, 257 and 258 (which relate to the Land, Environment and Natural Resources Commission and land holding by non-citizens);
- (n) section 263 (3) (which relates to the security of tenure of the Secretary General); and
- (o) Schedule 3 (which relates to transitional provisions).

(2) A Bill for the amendment of an entrenched provision shall not be introduced into the National Assembly unless the Bill –

- (a) is published in the *Gazette* for a period of six months; and
- (b) complies with the requirements of section 300 (2) and (3).

(3) After the Bill has been read the first time in the National Assembly, it shall not be proceeded with further unless –

- (a) the Bill is submitted by the Speaker to the Independent Boundaries and Electoral Commission for a referendum to be held throughout The Gambia;
- (b) at least fifty percent of the persons entitled to vote, voted at the referendum; and

(c) at least seventy-five percent of the persons who voted cast their votes in favour of the passing of the Bill.

(4) Where the Bill is approved at the referendum, the National Assembly shall pass it without any further amendment or other alteration.

(5) Where a Bill has been passed by the National Assembly in accordance with this section, the President shall assent to it.

Amendment of non-entrenched provisions

302. (1) A Bill to amend a provision of this Constitution which is not an entrenched provision shall not be introduced into the National Assembly unless -

(a) it has been published twice in the *Gazette*, with the second publication being made at least three months after the first;

(b) it complies with the requirements of section 300 (2) and (3); and

(c) at least fourteen days have passed after the second publication.

(2) Where the National Assembly approves the Bill, it may only be presented to the President for his assent if it was approved at the second and third readings in the National Assembly by the votes of not less than two-thirds of all the members of the National Assembly.

(3) Subject to section 303, where the Bill has been passed in accordance with this section, the President shall assent to it.

Certificate of compliance with the Constitution

303. A Bill for the amendment or other alteration of this Constitution which has been passed in accordance with this Constitution, shall not be assented to by the President unless -

(a) it is accompanied by a certificate from the Speaker that the provisions of this Constitution have been complied with; and

(b) in the case of a Bill to amend an entrenched provision, it is accompanied by a certificate from the Independent Boundaries and Electoral Commission, signed by the Chairperson of the Commission and bearing the seal of the Commission, that the Bill was approved at a referendum in accordance with this Chapter.

Interpretation

304. In this Chapter—

(a) references to this Constitution include references to any law that amends or replaces any of the provisions of this Constitution; and

(b) references to the alteration of this Constitution include references to the amendment, modification or re-enactment with or without amendment or modification, of the

Constitution or of any provision for the time being contained in this Constitution, the suspension or repeal or the making of different provision in lieu thereof, and the addition of new provisions to this Constitution.

CHAPTER XX MISCELLANEOUS

PART I APPOINTMENTS, RESIGNATIONS, ETC.

Acting appointments

- 305.** (1) In this Constitution, unless a contrary intention appears –
- (a) any reference to a power of appointment to an office shall be construed as including a reference to the power to appoint a person to act in or perform the functions of that office;
 - (b) any reference to the holder of an office by a term designating his or her office shall be construed as including a reference to any person for the time being lawfully acting in, or performing the functions of, that office.
- (2) Where in this Constitution power is vested in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself or herself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not able to perform those functions.

Resignations

- 306.** (1) Any person who is appointed or elected to, or otherwise selected for, any office established by or under this Constitution may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed, elected or selected.
- (2) For the purposes of subsection (1) –
- (a) in the case of the President, his or her resignation shall be addressed to the Speaker and the Chief Justice;
 - (b) in the case of the Vice-President or a Minister, his or her resignation shall be addressed to the President;
 - (c) in the case of the Speaker or a Deputy Speaker, his or her resignation shall be addressed to the Clerk of the National Assembly;
 - (d) in the case of the Chief Justice, a Supreme Court judge or Court of Appeal judge, his or her resignation shall be addressed to the President;

- (d) in the case of a member of the National Assembly, his or her resignation shall be addressed to the Speaker; and
 - (e) in any other case, his or her resignation shall be addressed to the person or authority that appointed him or her.
- (3) Any such resignation shall take effect, when no date is specified, when the writing is received -
- (a) in the case of the President, by the Speaker and the Chief Justice;
 - (b) in any other case, by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

Re-appointments and concurrent appointments

307. (1) Subject to the provisions of this Constitution, where a person has vacated any office established by or under the Constitution, he or she may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

(2) Where by this Constitution a power is conferred on any person or authority to make any appointment to any public office, a person may be appointed to that office notwithstanding that some other person may be holding that office when that other person is on leave of absence pending relinquishment of the office.

(3) Where two or more persons are holding the same office by reason of any appointment made in pursuance of this section, then, for the purposes of any function conferred on the holder of that office, the person last appointed shall be deemed to be the holder of the office.

Duty to provide reasons for adverse decisions

308. (1) Where an adverse decision is taken against a person in the public service, irrespective of the nature or form of the adverse decision, the person who takes the adverse decision has a duty to inform the person against whom the adverse decision is taken of the reason or reasons for the adverse decision.

(2) The reason or reasons for the adverse decision taken shall be in writing addressed to the person against whom the adverse decision is taken.

(3) Subsections (1) and (2) do not apply to any adverse decision taken by the President in respect of an appointment to the Cabinet, the Office of Chief of Staff and the Office of Chief of Defence Staff of the Armed Forces of The Gambia.

Duty not to act on an unlawful directive

309. No power exercised, or an order given, on the basis of an executive directive issued by any person or authority shall be inconsistent with this Constitution or any other law, and any directive issued in that regard shall not be acted upon by any person if the directive is so inconsistent.

Power to legislate for and publish matters in this Constitution

310. (1) Without prejudice to any provision in this Constitution empowering the National Assembly to enact legislation for specific purposes, the National Assembly may enact such other legislation as is necessary to give effect to the provisions of this Constitution.

(2) Where under this Constitution or an Act of the National Assembly any matter or action is required to be published in the *Gazette*, such matter or action may, in addition to publication in the *Gazette*, also be published in the print, online and broadcast media.

PART II General

Interpreting this Constitution

311. This Constitution shall be interpreted in a manner that –

- (a) promotes its purposes, values and guiding principles;
- (b) advances the rule of law, and the fundamental rights and freedoms enshrined in Chapter VI;
- (c) permits the development of the law;
- (d) contributes to governance;
- (e) promotes and protects the sovereignty of the people of The Gambia; and
- (f) is cognisant of the historical, social, cultural, political and spiritual context that necessitated the adoption of this Constitution.

Interpretation

312. (1) In this Constitution, unless a contrary intention appears—

"all the members", in relation to the National Assembly, means all the members for the time being of the National Assembly;

"an Act of the National Assembly" includes an Act of Parliament established under any previous Constitution of The Gambia;

"compulsory retirement age" has the meaning ascribed to it in section 267

"court" means any court mentioned or established under section 173;

"disciplined force" means the Police Force, the Prison Service, the Immigration Service, the Drug Law Enforcement Agency of The Gambia, the Fire and Rescue Service, the State Intelligence Service, the Customs wing of The Gambia Revenue Authority and the Armed Forces, and includes any other force established by an Act of the National Assembly;

"existing laws" means the laws in force in The Gambia immediately before the coming into force of this Constitution, other than any such laws which are repealed or revoked on, or immediately before, the coming into force of this Constitution;

"Gazette" means the official gazette of the Government;

"Government" means the executive Government of The Gambia;

"high judicial office" means the office of a judge of a court of unlimited jurisdiction in criminal, civil and Shari'ah matters, or of a court with jurisdiction on appeal from such a court, in some part of the Commonwealth or such other country as the National Assembly may prescribe;

"judge" includes the Chief justice and other judges of the Supreme Court, a judge of the Court of Appeal, a judge of the High Court and a judge of the Shari'ah High Court;

"legal practitioner" means a person entitled to practise as such in accordance with an Act of the National Assembly;

"Local Government Authority" means a city council, a municipality or an area council;

"Minister" includes the Attorney-General;

"oath" includes affirmation;

"ordinarily resident", unless the context indicates otherwise, means being resident in any part of The Gambia permanently or for a specified period or, being a citizen by birth, residing outside The Gambia for an extended period but occasionally (not more than one year apart) visiting The Gambia during the period of residence outside The Gambia;

"prescribed oaths" means such oaths as may be prescribed in this Constitution or by an Act of the National Assembly in respect of the relevant office, and if no such oath is prescribed, means an oath of allegiance to The Gambia;

"public elections" means the election for a President, National Assembly or a Local Government council;

"public office" includes an office the emoluments of which are paid directly from the Consolidated Revenue Fund or directly out of moneys provided by an Act of the National Assembly, and the office of a member of a Local Government Authority or the staff of a Statutory Body or State Owned Enterprise;

“public officer” means a person holding an office in the public service, a person in the service of a Local Government Authority, and a person in the service of a Statutory Body or State Owned Enterprise.

“the public service” means, subject to section 22 (3), a service declared to be, or established as, a public service by or under the section in which it is declared or established;

“session” means the sitting of the National Assembly of The Gambia commencing when it first meets after a general election or after the adjournment of a session and ending when the session is adjourned or the National Assembly stands dissolved;

“State Owned Enterprise” means a body corporate, wholly or partially owned or controlled by the Government, directly or indirectly, and includes any other body or institution specified as such in an Act of the National Assembly; and

“superior court”, in relation to the courts of The Gambia, means the Supreme Court, the Court of Appeal, the High Court and the Shari’ah High Court.

(2) In this Constitution, unless a contrary intention appears -

(a) words importing natural persons shall include corporations;

(b) words in the singular shall include the plural and words in the plural shall include the singular;

(c) where a word is defined, other parts of speech and tenses of that word shall have the corresponding meaning;

(d) words directing or empowering a public officer to do any act or thing, or otherwise applying to him or her by the designation of his or her office, shall include his or her other successors in office; and

(e) references to a subsection, paragraph, sub-paragraph or item shall be construed as a reference to a subsection, paragraph, sub-paragraph or item of the section in which the reference occurs.

(3) For the purposes of this Constitution, a person shall not be regarded as holding an office of emolument under the Government or in the service of The Gambia by reason only that he or she is in receipt of a pension or other like benefit in respect of service in an office under the Government, a Local Government Authority or a Statutory Body or State Owned Enterprise.

(4) For the avoidance of doubt, it is hereby declared that any reference in this Constitution to the functions of the President includes reference to his or her functions as Commander-in-Chief of the Armed Forces of The Gambia.

Construction of various powers

313. (1) Where any power is conferred by this Constitution to make any proclamation, order, regulation, rule, code of conduct or pass any resolution or give any direction or make any declaration or

designation, it shall be deemed to include the power, exercisable in like manner and subject to like conditions, if any, to amend or revoke the same.

(2) Where any power is conferred by this Constitution on any person or authority to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable that person or authority to do or enforce the doing of that act or thing.

(3) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether or not such person or authority has performed those functions in accordance with this Constitution or any other law.

(4) Where under any provision of this Constitution any person or authority is authorised or required to exercise any function after consultation with any other person or authority, the person or authority first referred to shall not be required to act in accordance with the advice of that person or authority.

(5) Without prejudice to the provisions of section 165, but subject to the other provisions of this Constitution, the power to make any appointment to a public office includes the power to dismiss any person so appointed.

Transitional and consequential provisions

315. Notwithstanding any other provision of this Constitution, the provisions of Schedule 3 shall have effect on the coming into force of this Constitution.

Repeal

316. (1) Subject to subsection (2), The Constitution of the Republic of The Gambia, 1997 is hereby repealed.

(2) This Constitution comes into force one day after its adoption at a referendum.

(3) The Supreme Court shall have jurisdiction to hear all matters that may pertain to the transition from the repealed Constitution to this Constitution.

SCHEDULE 1

[Section 4]

ADMINISTRATIVE AREAS OF THE GAMBIA

1. Banjul
2. Kanifing
3. Brikama
4. Kerewan
5. Mansakonko
6. Janjangbureh
7. Basse

CONSULTATION DRAFT

SCHEDULE 2

[Section 134]

CONSTITUENCIES FOR NATIONAL ASSEMBLY ELECTIONS

For purposes of election to the National Assembly, the members shall be elected from the following constituencies –

- (a) 53 persons elected from single member constituencies as demarcated by the Independent Boundaries and Electoral Commission;
- (b) 14 women, 2 elected from each administrative area; and
- (c) 2 persons, elected by persons with disabilities from amongst the members of the federation representing such persons.

CONSULTATION DRAFT

SCHEDULE 3

TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

Interpretation

1. In this Schedule –

"effective date" means the date of the coming into force of this Constitution, which shall be the date after the day this Constitution is adopted at a national referendum; and

"existing" means in being or current or, as the case may be, having the force of law or being in operation, immediately before the coming into force of this Constitution.

Existing laws

2. (1) Subject to the provisions of this Constitution, all laws that were in force immediately before the effective date shall, on the effective date, continue to be in force with such modifications, adaptations, qualifications and exceptions as may be necessary to bring such laws into conformity with this Constitution.

(2) Subject to subsection (3), where any matter that falls to be prescribed or provided for under this Constitution by an Act of the National Assembly or by any other person or authority, is prescribed or provided for by or under an existing law or is otherwise lawfully prescribed or provided for immediately before the effective date, that prescription or provision shall, as from the effective date, have effect with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.

(3) If, in respect of any particular matter, any existing law assigned responsibility for that particular matter to a specific person or authority, and this Constitution, upon the effective date, assigns that responsibility to a different person or authority, the assignment under this Constitution shall prevail.

(4) Where an existing law had not been brought into force before, or was to come into force on a date subsequent to, the coming into force of this Constitution, the law may be brought into force in accordance with its terms, or it shall come into force on such subsequent date, as the case may be, in so far as it is not inconsistent with this Constitution.

(5) The National Assembly shall, within three years of the coming into force of this Constitution, make such provision as may be necessary to repeal, amend or adapt any existing law not, partly or wholly, consistent with this Constitution, to bring the existing law into conformity with the provisions of this Constitution.

Rights, duties and obligations

3. Except where this Constitution provides otherwise, all rights, duties and obligations, however arising, of the Government or the State and subsisting immediately before the effective date, shall continue as rights, duties and obligations of the Government or the State under this Constitution.

The Executive

4. (1) The existing Executive shall, from the effective date, continue as the Executive of The Gambia for the purposes of this Constitution.

(2) The Office of Chief of Staff of the President's Office may, after the effective date, be filled in accordance with the provisions of this Constitution, but the person appointed to that Office shall serve only for the unexpired period of the term of the incumbent President.

(3) The existing Office of Secretary General as head of the Civil Service shall, from the effective date, continue as if it were established under this Constitution, and all the provisions of this Constitution relating to that Office shall apply.

(4) The existing Office of Secretary to Cabinet shall, from the effective date, continue as if it were established under this Constitution, and all the provisions of this Constitution relating to that Office shall apply.

Term of office of incumbent President

5. (1) The person duly elected President of The Gambia prior to the effective date and serving in office as at the effective date shall be the first President of the Third Republic of The Gambia and shall be deemed to hold the Office of President in accordance with the provisions of this Constitution.

(2) Notwithstanding anything contained in this Constitution or any other law or any rule of interpretation or rule of construction, the term of office of the person holding the Office of President as at the effective date shall be construed to include the existing term and the person may contest election for the Presidency for only one more term as provided in this Constitution after the expiry of the existing term.

Disclosure of assets, etc.

6. Where a person, by virtue of the office he or she holds, is required to make a disclosure of assets, liabilities or business interest, whether of himself or herself, and the person had not under any existing law made such disclosure before the effective date, the person shall make the disclosure required under this Constitution within three months after the effective date or, if the Anti-corruption Commission has not commenced its work by then, within three months after the commencement of work by the Commission.

The National Assembly

7. (1) The existing National Assembly shall, from the effective date, continue as the National Assembly of The Gambia for the purposes of this Constitution.

(2) The existing constituencies shall, from the effective date, continue to be single member constituencies for purposes of elections to the National Assembly, until such time as the number is altered by the Independent Boundaries and Electoral Commission in accordance with this Constitution.

(3) The expanded membership of the National Assembly shall take effect and the members thereof shall only be voted for at the next general elections after the expiry of the term of the existing National Assembly.

(4) The existing Offices of the Majority Leader and the Minority Leader of the National Assembly shall, from the effective date, continue as such in accordance with the provisions of this Constitution.

(5) The Office of a second Deputy Speaker of the National Assembly shall not, if established, be filled until after the next National Assembly has been elected and its members sworn into office.

(6) The authority of the National Assembly Service established under section 111 of the repealed Constitution shall, from the effective date, continue as such without alteration in the mode of appointment of its members until after the next National Assembly has been elected and its members sworn in as members of the National Assembly Service Commission.

Term and language of the National Assembly

8. (1) Notwithstanding section 138 relating to the term of the National Assembly and pursuant to section 137 (1), the term of the existing National Assembly shall come to an end at the same time as that of the existing President and, accordingly, the existing National Assembly shall stand dissolved on the day immediately before a general election of members of the Assembly following dissolution.

(2) The provision under section 155 (1) for the business of the National Assembly to be conducted in any other language apart from the English language, shall not take effect before the next general election following dissolution of the existing National Assembly.

Convening of next National Assembly and Standing Orders

9. (1) The power conferred on the Clerk of the National Assembly to convene the first sitting of the National Assembly shall apply with effect from the next National Assembly that is elected after general elections.

(2) The existing Standing Orders of the National Assembly shall, in so far as they are not inconsistent with this Constitution, constitute the Standing Orders of the National Assembly until revoked, amended or otherwise revised by the Assembly.

The Judiciary

10. (1) The existing Judiciary and the courts constituted thereunder, save the Special Criminal Court, shall, from the effective date, continue as such for the purposes of this Constitution.

(2) If, on the effective date, a matter on which legal proceedings were commenced before an existing court relates to an interpretation or application of a provision of the repealed Constitution, the matter shall be resolved in accordance with the provisions of the repealed Constitution.

Judges

11. (1) The judges of the existing superior courts shall be deemed to have the requisite qualification for appointment as prescribed in this Constitution and in that regard to have been properly appointed in accordance with this Constitution.

(2) Where, on the effective date, a non-Gambian is appointed to and holds the office of judge of a superior court, he or she shall be deemed to have been appointed in accordance with section 188 (3) of this Constitution and may therefore continue to hold office in accordance with the terms of his or her appointment.

Local Government Authorities

12. (1) The existing Local Government Authorities and their geographical boundaries shall, on the effective date, continue as such.

(2) The term of office for which existing members of the Local Government Authorities have been elected shall continue to be in force, and the term established under this Constitution shall only come into effect following the next Local Government elections after the effective date.

(3) Where, before the effective date, a person was elected or appointed as a Seyfo or an Alkalo, he or she shall, from the effective date, continue to serve in such office as prescribed in this Constitution.

Electoral boundaries

13. (1) The existing constituency boundaries shall continue to have effect after the effective date until otherwise determined by the Independent Boundaries and Electoral Commission pursuant to section 81.

(2) For purposes of section 81 (2), the period at which the Independent Boundaries and Electoral Commission may review the names and boundaries of constituencies after the effective date shall be reckoned from the date of publication of the last national census results before the effective date.

Existing offices

14. (1) Subject to this paragraph and other provisions of this Schedule, where any office has been established by or under an existing law and this Constitution establishes or provides for the establishment of the same, or a similar or corresponding office, any person who, immediately before the effective date, holds or is acting in the former office shall, in so far as it is consistent with this Constitution, be deemed as from the effective date to have been appointed, elected or otherwise selected to act in the latter office.

(2) For the purposes of sub-paragraph (1), where this Constitution prescribes a qualification for an existing office which the current holder of the office does not possess, the current holder of the office

shall, notwithstanding any qualification or disqualification attached to the office, continue in such office as if he or she satisfied the requirements to hold such office in accordance with the terms of his or her office.

(3) Any person who, under the existing law, would have been required to vacate his or her office at the expiration of any period or on the attainment of any age, shall vacate such office on the expiry of that period or on the attainment of that age.

(4) Nothing in this paragraph affects the power of any person or authority under this Constitution to make provision for the abolition of any office or the removal of any person from office or to require any person to retire from office.

(5) For the purposes of any law relating to pensions or other retirement benefits, the continuity of service of any person holding a public office shall not be affected by the coming into force of this Constitution.

Service Commissions

15. (1) Subject to sub-paragraph (2), the existing National Assembly Service, Judicial Service Commission and Public Service Commission shall, on the effective date, continue to function as such.

(2) Within a period of six months after the effective date, the Secretary General shall take all necessary steps to ensure the establishment of the Teachers Service Commission, Health Service Commission and Security Service Commission as provided in this Constitution, and the Public Service Commission shall, after that period, cease to perform the functions assigned to those service Commissions under this Constitution.

Independent institutions and offices

16. (1) Subject to sub-paragraph (2), the functions of the Director of Public Prosecutions shall be performed by the Attorney General until a Director of Public Prosecutions is appointed in accordance with this Constitution.

(2) The Attorney General shall not continue to perform the functions of the Director of Public Prosecutions for a period exceeding nine months after the effective date.

(3) Subject to sub-paragraph (4), the Ombudsperson may perform those functions of the Anti-corruption Commission as it has jurisdiction over prior to the effective date until the Anti-corruption Commission is appointed.

(4) The Ombudsperson shall not continue to perform the functions of the Anti-corruption Commission for a period exceeding nine months after the effective date.

(5) Where, prior to the effective date, the holder of an independent office was appointed on a fixed term, the holder of the office shall, from the effective date, continue to serve for the period remaining on the fixed term, and thereafter if he or she is entitled to a renewal of appointment, the renewal of appointment shall be made in accordance with this Constitution.

Commission for implementation of the Constitution

- 17.** (1) There is established the Constitution Implementation Commission (“the Commission”), which shall have responsibility for the implementation of the provisions of this Constitution.
- (2) The Commission shall comprise –
- (a) a Chairperson, appointed by the National Assembly by a vote of not less than sixty per cent of all the members of the Assembly; and
 - (b) four other members, at least two of whom shall be women.
- (3) The Chairperson and other members of the Commission shall be persons of high moral character and proven integrity who –
- (a) are qualified in public law, human rights, public administration and government, with post-qualification experience of not less than fifteen years; and
 - (b) shall not include any person who had served on the Constitutional Review Commission appointed pursuant to the Constitutional Review Commission Act, 2017.
- (4) The provisions of Part I of Chapter XII shall apply to the Commission to ensure its independence and effective functioning.
- (5) The Commission shall perform the following functions –
- (a) to monitor, facilitate and oversee the development of legislation and administrative procedures required for the implementation of this Constitution;
 - (b) to provide necessary assistance, including providing expert advice, to any person or authority which has responsibility for ensuring the efficient and effective establishment of any commission, independent institution or other office established under this Constitution;
 - (c) to co-ordinate with the Attorney General the preparation and introduction in the National Assembly legislation required to implement this Constitution;
 - (d) to report on a periodic basis to the National Assembly Constitutional Implementation Oversight Committee on progress in the implementation, and any impediments to the implementation, of this Constitution; and
 - (e) to work with each commission or other independent office established under this Constitution to ensure that the letter and spirit of this Constitution is respected.
- (6) The Commission’s mandate under this paragraph shall, unless otherwise extended by the National Assembly, come to an end after a period of three years following its establishment.
- (7) Any extension to the period in which the Commission may continue to perform its mandate shall not, in aggregate, exceed three years.

Establishment of National Assembly Select Committee

18. (1) The National Assembly shall, in accordance with its Standing Orders and within thirty days after the date of adoption of this Constitution at a referendum, establish a select committee on Constitution Implementation Oversight Committee (“the Committee”).

(2) The Committee’s function shall be to oversee the implementation of this Constitution and, in that regard, shall –

- (a) liaise regularly with the Constitution Implementation Commission established under paragraph 17 to ensure that the Commission is carrying out its mandate as prescribed in that paragraph;
- (b) receive periodic reports from the Commission on the implementation of the Constitution, including reports relating to –
 - (i) the preparation of the legislation required by this Constitution;
 - (ii) the process of establishing the commissions and independent institutions and offices required under this Constitution;
 - (iii) the process of establishing the infrastructure necessary for the proper management of the commissions and independent institutions and offices;
 - (iv) the decentralisation of powers and functions to the Local Government Authorities as provided in this Constitution and any Act of the National Assembly giving effect to this Constitution in that regard; and
 - (v) the challenges to the process of implementing this Constitution, providing recommendations on how those challenges may be properly addressed;
- (c) co-ordinate with the Attorney General, the Commission and relevant select committees of the National Assembly to ensure the timely introduction and enactment of legislation required by this Constitution; and
- (d) take necessary action on the reports received under paragraph (b), including addressing any problems in the implementation of this Constitution.

Financial support to the Commission

19. The National Assembly shall, upon the establishment of the Commission referred to in paragraph 17 and for each subsequent year thereafter while the Commission remains established, provide adequate funding to the Commission to enable the Commission to efficiently and effectively carry out its functions.

Commissions of Inquiry

20. (1) Where, prior to the effective date, a Commission of Inquiry was issued under the repealed Constitution or any other law –

- (a) the Commission of Inquiry shall continue to exist and shall exercise its powers and perform its functions in accordance with the repealed Constitution and the commission establishing it; and
- (b) any finding, order or recommendation by the Commission of Inquiry shall be dealt with in accordance with the repealed Constitution and the commission establishing it.

Enforcement of other provisions of this Constitution

21. Save as otherwise specified in this Schedule, all other provisions of this Constitution take effect from the day after the date of adoption of this Constitution at a referendum.

CONSULTATION DRAFT