

2020

# EXPLANATORY MEMORANDUM TO THE DRAFT CONSTITUTION



**Constitutional Review Commission**

CONSTITUTIONAL REVIEW

COMMISSION

30 MARCH 2020

## **INTRODUCTION**

This Explanatory Memorandum is designed to provide the reader with a summary of the essential issues covered under the Draft Constitution. It does not provide a full account of all the provisions contained in the Draft Constitution. In this respect, readers are advised to refer to the text of the Draft Constitution to obtain details of the provisions of the Chapters mentioned in this Explanatory Memorandum.

### **CHAPTER 1 – THE REPUBLIC AND SOVEREIGNTY OF THE PEOPLE**

1.1 This Chapter in sections 1 to 6 recognises that The Gambia is a Sovereign Republic and a multi-party Democratic State and comprises of people of different faiths, and each faith is to be respected and treated fairly, without any discrimination. All sovereign power belongs to the people of The Gambia and is exercised in accordance with the Constitution. This Chapter, unlike the 1997 Constitution, provides a framework for the definition of the territory of The Gambia, its national days and further establishes the organs of State and recognises the Local Government Authorities to whom powers are being delegated. Decentralisation of government through Local Government Authorities is provided to give autonomy to local governments for the development of their communities, which is important because it ensures that decisions are made closer to the local people and the communities they affect. The recognition of the need for decentralisation of Government in the first Chapter is a key development.

1.2 The Chapter retains section 1 of both the 1970 and 1997 Constitutions by simply declaring The Gambia as a Sovereign Republic.<sup>1</sup> It also retains section 100 (2) (b) of the 1997 Constitution which prohibits the National Assembly, amongst other things, from enacting any law establishing any religion in The Gambia as a State religion. Furthermore, section 49 (under Chapter VI) of the Draft Constitution guarantees freedom of conscience, religion, thought, belief and opinion. Under section 88 (5) (b) (Chapter VIII), the President does not have any power to establish any religion as a State religion.

### **CHAPTER II – THE CONSTITUTION AND THE LAWS**

2.1 This Chapter in sections 7 to 10 installs the Constitution as the supreme law of The Gambia and stipulates the other laws of The Gambia. It further contains provisions on how to

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<sup>1</sup> In 2001, the National Assembly acting on the recommendation of the then Attorney General and Minister of Justice, passed an amendment to the Constitution which, amongst other things, sought to amend section 1 to declare The Gambia as a “secular Sovereign Republic”. That section, being an entrenched clause in the 1997 Constitution, was never advanced to a referendum for approval by the people. Consequently, Kemesseng Jammeh initiated legal action before the Supreme Court which declared the proposed amendment to be unconstitutional. This effectively restored section 1 to its original language declaring The Gambia as a “Sovereign Republic”. Unfortunately, the Revised Edition of the Laws of The Gambia of 2009 instead of clearly restoring section 1 to its original position in accordance with the decision of the Supreme Court (as it should have done), left the word “secular” in the section and provided an asterisk referring to the case brought by Kemesseng Jammeh. The constitutional position, therefore, is that section 1 of the 1997 Constitution remains as it was originally approved at the referendum adopting the 1997 Constitution.

enforce provisions of the Constitution. This Chapter introduces broader rules on *locus standi* (standing) in enforcing the provisions of the Constitution. These rules effectively enable a person to initiate legal action by virtue of being a member, or in the interest, of a group of persons, or to act in the public interest, or an association to act in the interest of one or more of its members. This Chapter for the first time makes it clear that treaties to which The Gambia becomes a party form part of the laws of The Gambia after they have been ratified and domesticated. It further gives the courts discretion to use international treaties on human rights to which The Gambia is a party as an aid in its interpretation or application of any provision of the Constitution's fundamental human rights and freedoms.

2.2 This Chapter imposes an obligation on every citizen of this country to respect, uphold and defend the Constitution.

2.3 It also prohibits any attempt to subvert constitutional order by any unlawful means. This includes suspending, overthrowing or abrogating the Constitution or any part of it. In that regard a person does not commit an offence by resisting any attempt to suspend, overthrow or abrogate the Constitution.

### **CHAPTER III – NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE**

3.1 This Chapter is in sections 11 to 13 and is new. It provides for national values and principles of governance which are meant to bind all State organs, Local Government Authorities, public officers and all other persons. It is essentially designed to engender national pride, patriotism, individual and collective responsibility to the State. It is considered to be an important emerging trend in modern constitutional development.

3.2 It recognizes culture, respect for ethnic and religious diversity as the foundation of the nation and as the cumulative civilization of the Gambian people and nation. It further outlines the duties of all Gambian citizens, which include the duty to prevent and expose the misuse and waste of public funds and property, duty to promote and protect the prestige and good reputation of The Gambia, the duty to foster national unity, cohesion and live harmoniously with others, the duty to protect and conserve the environment, and the duty to be loyal to The Gambia and contribute to its defence when necessary. These values and duties are important for nation-building in that they encourage orderliness, credibility, tolerance, hard work, patriotism and the equitable distribution of resources.

### **CHAPTER IV – CITIZENSHIP**

4.1 This Chapter contains sections 14 to 22 and defines who a citizen of The Gambia is and how to acquire Gambian citizenship.

4.2 The Chapter preserves the citizenship of persons who were citizens of The Gambia before the coming into force of the draft Constitution. A distinction is no longer made between citizens by birth or citizens by descent. The Chapter expanded the acquisition of citizenship through a grandparent and restates the position in the 1970 Constitution. Children of 8 years or

under who are found in The Gambia and whose parents are unknown are presumed to be Gambian citizens.

4.3 It also provides for citizenship by registration to persons who marry Gambian citizens and continue to be ordinarily resident in The Gambia for a period of 5 years (reduced from 7 years). Citizenship by naturalization is also provided for but naturalized persons are no longer required to renounce their original nationality if their country of origin does not require Gambians who wish to naturalise in that country to renounce their Gambian nationality.

4.4 Non-Gambian children adopted by Gambian parents can apply to register as Gambian citizens. Dual citizenship, restoration of citizenship and deprivation of citizenship are also provided for. The National Assembly is further empowered to make a provision for registration of persons born in The Gambia to non-Gambian parents on or before 31st December, 2019 and for registration of other persons who are not eligible for Gambian citizenship under this Chapter.

## **CHAPTER V – LEADERSHIP AND INTEGRITY**

5.1 This new Chapter is in sections 23 to 30 and deals with leadership and integrity, which are significant attributes in a genuine democracy. The Chapter has been necessitated by the overwhelming public demand to establish characteristics of leadership to ensure integrity in government (an emerging phenomenon of modern constitutional development). It covers areas such as responsibilities of citizenship, conduct and oath of office of public officers, financial probity of public officers, restrictions on the activities of public officers and obligations of persons dealing with public officers in the service of the State.

5.2 The Chapter further provides that persons contravening its provisions commit the offence of violating the Constitution and may be subject to disciplinary process or termination of contractual relationships and mandates the State, a Statutory Body or State Owned Enterprises to recover any loss incurred on account of any breach of the provisions of the Chapter.

## **CHAPTER VI – FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS**

6.1 The protection of fundamental rights and freedoms is a key feature of any democracy. This Chapter provides for fundamental human rights and freedoms in sections 31 to 73 with notable new provisions (listed below). The Chapter provides for the enforcement of civil and political rights as well as economic, social and cultural rights. It is divided into two Parts.

### **Part I – General provisions on fundamental human rights and freedoms**

6.2 This Part provides for the objectives of human rights, the enforcement and implementation of rights guaranteed in the Chapter and the authority of the courts in dealing with rights and limitation of rights. Unlike the 1997 Constitution, this Chapter introduces a new provision imposing a positive obligation on the State to respect and uphold the rights guaranteed in the Constitution. A new provision is also introduced creating the right to fair administrative

action that is expeditious, efficient, lawful and procedurally fair, as well as legal aid under specified circumstances.

## **Part II – Specific Rights and Freedoms**

6.3 This Part provides for specific rights and freedoms which include civil and political rights, economic, social and cultural rights and group rights. In particular, economic, social and cultural rights that are currently provided for in the 1997 Constitution as directive principles of state policy are now made justiciable in this Chapter.

6.4 The right to access to information is also introduced. Instead of maintaining the current Chapter in the 1997 Constitution on the media, this Part makes rights relating to the media and media freedom enforceable as fundamental rights.

6.5 Rights of the youth, the elderly, persons with disabilities and the sick, consumer protection rights and right to fair labour practices are also introduced for the first time. The right to a clean environment and the right to development are also provided for the first time in this Chapter.

6.6 In applying economic, social and cultural rights, this Chapter imposes an obligation on the State to show, where it claims that resources are not available, that it has given priority to ensuring the widest possible enjoyment of these rights having regard to the prevailing circumstances.

6.7 A general clause on limitation of rights is also introduced. The Chapter further provides for non-derogable rights (that is, rights that must continue to be respected and cannot in any way be suspended or infringed by any person or State authority during a period of national public emergency). It also contains more progressive rules on *locus standi* (standing) in enforcing human rights provisions in the Constitution.

## **CHAPTER VII – REPRESENTATION OF THE PEOPLE**

7.1 This Chapter contains sections 74 to 84 and provides in three Parts for the Franchise (registration to vote and voting), establishment of the Independent Boundaries and Electoral Commission (renamed from Independent Electoral Commission) and Political Parties. The processes for the conduct of elections, the number and qualifications and disqualifications of members of the Commission, and the obligations and prohibitions related to political parties are clearly outlined in the Chapter.

### **Part I – Franchise**

7.2 This Part contains a novel provision on general principles for the electoral system, guarantees the right to register and to vote in public elections and referenda, enjoins the Independent Boundaries and Electoral Commission to prescribe a code of conduct for political parties and candidates in an election and to ensure that voting in all elections and referenda are by secret ballot. General provisions on the franchise are also provided for in the Chapter.

## **Part II – The Independent Boundaries and Electoral Commission**

7.3 This Part establishes the Independent Boundaries and Electoral Commission (IBEC), its composition and functions. Some of its functions are to conduct and supervise all public elections and referenda, register political parties, compile and regularly revise the register of voters, ensure continuous voter registration, delimit the constituencies and wards for purposes of public elections, confirm that a candidate for public election has made a full declaration of his or her assets to the Anti-Corruption Commission and to announce the final results of all elections and referenda. The name change from the Independent Electoral Commission has been necessitated by the fact that the IBEC is now constitutionally mandated to demarcate electoral boundaries.

## **Part III – Political Parties**

7.4 This Part deals with political parties and unlike the 1997 Constitution, it requires political parties to respect the rights of all persons to participate in the political process, particularly women, youth, persons with disabilities, and other marginalised groups. Each political party is required to ensure that at least ten percent of candidates for election to the National Assembly are youth and promote gender equity in selecting candidates for election, notwithstanding the existence of single member constituencies for women and persons with disabilities.

7.5 In addition, this Part prohibits the establishment of a political party on religious, linguistic, racial, ethnic, gender, or regional basis; it also prohibits a political party from engaging in advocacy of hatred and forbids political parties from engaging in, or encouraging, violence of any kind against any persons whether they are opponents or not.

## **CHAPTER VIII – EXECUTIVE**

8.1 This Chapter provides for the Executive in sections 85 to 133. It has 5 Parts.

### **Part I – Guiding Principles of Executive Authority**

8.2 This Part reinforces that Executive authority vested in the President is derived from the people of The Gambia. The authority includes upholding the tenets, values and principles of this Constitution and all other laws validly enacted by the National Assembly. The authority is to be exercised in a manner that accords with the rule of law.

8.3 It further provides that the Executive comprises the President, Vice President and members of the Cabinet and that the Executive shall reflect the diversity of the Gambian people.

### **Part II – Office of President, Powers and Duties**

8.4 This Part establishes the Office of President. The President shall be the Head of State and of Government and the Commander in Chief of The Gambia Armed Forces.

8.5 The Part further requires the President to uphold the law at all times, to safeguard the sovereignty of The Gambia, to uphold, promote and enhance the unity of Gambians and to uphold and promote respect for the diversity of the people of The Gambia.

8.6 The powers of the President are also defined and he or she is required to address the National Assembly on matters concerning the state of the nation at least once a year.

8.7 Decisions or directives issued by the President are required to be in writing, a novel provision, and must also bear the seal and signature of the President and whoever acts contrary to these requirements resulting in loss or injury to the State shall be personally liable.

8.8 Where an inquiry into the President's mental or physical capacity is initiated, he or she is required to step down temporarily until the inquiry is completed and when this happens, the Vice President shall assume and perform the functions of the Office of President. This is a new provision.

8.9 Where the Vice President is unable to assume office, the Speaker shall assume and perform the functions of President.

### **Part III – Election to the Office of President**

8.10 This Part provides that the election of the President in a national election is to be held six weeks before the end of the term of the incumbent President.

8.11 It outlines the qualifications and disqualifications for election as President, some of which are that the candidate must be a citizen of The Gambia and should not hold a dual nationality, must meet the academic requirements and must not have been convicted for an offence involving dishonesty or immoral conduct. The nomination of candidates for election to the Office of President is also provided for and candidates are required to satisfy the conditions and procedures laid down in this Part.

8.12 This Part further requires the Independent Boundaries and Electoral Commission to declare a candidate elected as President if the candidate has received more than half of the votes cast at the election. If no candidate is elected at the first election, the Commission shall hold a second election within fourteen days where the two candidates who received the most votes would be the only contestants. This is a departure from the simple majority rule in the 1997 Constitution.

8.13 The Independent Boundaries and Electoral Commission is required to declare the results and the winner of the election within seventy-two hours and to deliver a written notification of the result to the Chief Justice. Where this is not possible, the Independent Boundaries and Electoral Commission shall apply to the Supreme Court for an extension. This is also a novel provision.

8.14 Where the President-elect dies before assumption of office and before a Speaker is elected to assume office, the Chief Justice shall be sworn as acting President until a Speaker is

elected. The Independent Boundaries and Electoral Commission is then required to conduct a fresh presidential election within ninety days. This is also a new provision.

8.15 This Part further provides that a person declared as winner of a presidential election shall assume office on the day after the expiry of the incumbent President's tenure. The winner of the election shall then subscribe to the prescribed oaths to be publicly administered by the Chief Justice and if the Chief Justice is not available, the most senior judge of the Supreme Court. These are new provisions.

8.16 A registered political party or an independent candidate who has participated in a presidential election may apply to the Supreme Court challenging the validity of the election. If the presidential election is declared invalid, the Independent Boundaries and Electoral Commission shall conduct a fresh election within ninety days.

#### **Part IV – Terms and Conditions of Office of President**

8.17. This Part provides that the term of office of President is five years. It bars any person from holding office as President for more than two terms of five years each, whether consecutive or not. This is a novel provision meant to prevent self-perpetuation in office.

8.18 The President is required, within three months of assuming office, to disclose all his or her liabilities, business interests and assets to the Anti-Corruption Commission. The President is further required to disclose all his or her liabilities, business interests and assets to the Anti-Corruption Commission within three months after leaving office. These requirements are similarly applicable to the spouse of the President.

8.19 A sitting President is barred from holding any other public or private office or to engage in the establishment of any organization or charitable institution.

8.20 Provision is made for the immunity of the President from civil and criminal proceedings, while in office. The immunity does not extend to acts, omissions or offences committed while in office. Both provisions are new.

8.21 This Part further provides that where the Office of President for any reason becomes vacant, the Vice President or, if the Vice President is unable to assume office, the Speaker, shall assume office as acting President. If the Speaker is unable to assume office, the Chief Justice shall assume office as acting President.

8.22 The procedure to be followed where the President is found incapable of performing the functions of Office of President by reason of his or her mental and physical capacity is provided. The procedure to be followed where the President is to be removed by impeachment is prescribed. The grounds for impeachment are abuse of office, failure to adhere to the oath of office of President, violations of provisions of the Constitution, obstruction of justice and misconduct.



## **Part V – Offices in the Executive**

8.23 Apart from the establishment of the Office of President, this Chapter also provides other key offices in the Executive. These are considered necessary and important to ensure the efficient and effective operation of the Executive. These offices are provided below.

### **(i) Vice President and Ministers**

8.24 This sub-Part establishes the Office of Vice President and the holder of the office is to be appointed by the President within fourteen days of the President assuming office.

8.25 It prescribes the qualifications and disqualifications for the Office of Vice President and the functions and vacancy in that Office. The Office of Vice President shall become vacant on the death or resignation of the holder of that Office, on the revocation of the appointment of that person or if the holder of that Office assumes the Office of President.

8.26 The appointment of Ministers, including the Attorney General, is provided for in this sub-Part as well as their qualifications and disqualifications. It also specifies when and how the Office of Minister becomes vacant.

8.27 The Vice President and Ministers shall be responsible for such ministries and departments the President may assign to them.

8.28 The Vice President and Ministers are required to declare their assets, liabilities and business interests within three months of assuming office and within three months after they leave office.

8.29 The holder of the position of Vice President or Minister is barred from holding any other public or private office during his or her tenure, use his or her office for personal gain, establish or advocate for or participate in or promote the establishment of a charitable organization or institution. These are new provisions.

8.30 An obligation is further imposed on the Vice President and Ministers to report to the National Assembly whenever required to do so. The National Assembly, by a resolution supported by not less than two-thirds of all members, can pass a vote of censure against the Vice President or a Minister and when a vote of censure is passed, the President must remove the person concerned.

### **(ii) The Cabinet**

8.31 This sub-Part establishes the Cabinet and further prescribes its composition and functions. The office of Secretary to the Cabinet is provided for in the Constitution for the first time.

### **(iii) Other Powers of the President**

8.32 Under this sub-Part, The Gambia Government is forbidden to enter into any agreement which would make The Gambia lose its sovereignty. It is further provided that treaties signed by the President shall be ratified by the National Assembly.

8.33 Provision is made for the establishment of the Prerogative of Mercy Committee whose main function is to review cases of persons convicted which are referred to them. They are to make recommendations to the President for the exercise of his or her prerogative to either grant a pardon or remit the whole or any part of a punishment or substitute a less severe form of punishment imposed on a person.

8.34 An Honours and Awards Committee is also established to advise the President on the conferment of honours and awards to deserving citizens of The Gambia as well as honorary honours and awards to friends of The Gambia.

#### **(iv) Other Public Offices**

8.35 This sub-Part establishes the Office of Chief of Staff to the President whose main function is to act as principal adviser to the President and to assist in managing the Office of the President. This is new.

8.36 The Office of the Director of Public Prosecutions (DPP) is established as an office independent of the Office of Attorney General. The DPP is responsible for undertaking criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person. The DPP is also required to prepare and present an annual report to the National Assembly regarding the exercise of the powers given to him or her under the Constitution. This is a new provision. Additional provision is made for an Act of the National Assembly to make provision for private prosecutions within twelve months of the coming into force of this Constitution.

8.37 The Office of Solicitor General and Legal Secretary is provided for, to be appointed by the President. This is a new provision.

## **CHAPTER IX – LEGISLATURE**

9.1 Chapter IX is divided into eight Parts and deals with the Legislature which is an organ of State and is responsible for enacting laws, providing oversight on the Executive and approving financial expenditures of the Government, among other functions. The principles that guide its functions and members are necessary for the effective performance by members of their roles.

### **Part I – Principles of Parliamentary Governance**

9.2 This Part deals with the principles of parliamentary governance and the relationship between members of the National Assembly and the citizens. It is important that to pursue and promote democratic governance both the citizens and the National Assembly are able to hold the Executive accountable and ensure good leadership that fosters national cohesion, unity, peace and security. This Part is new and considered fundamental to democratic governance. It reinforces the National Assembly's accountability to the people of The Gambia.

9.3 Provision is made for the duties and functions of the National Assembly, which includes amongst others, the ratification of all treaties including bilateral and multilateral agreements entered into by the Government, ensuring that legislative measures to be debated by the Assembly benefit from expert and public opinions where feasible, keeping the public informed of the execution of their mandate and to confirm appointments to some public offices. The latter is a new provision.

## **Part II – Establishment and Composition of the National Assembly**

9.4 Under this Part, the Constitutional Review Commission (CRC) in its deliberations and consultations with the citizens recognized, and took on board the views expressed by the citizenry on the vulnerable status of the youth, women, and persons with disabilities and the need to encourage them to actively participate in politics. The strong opinion that cannot be ignored was to prescribe a procedure that would enable this group to be adequately represented in the National Assembly. Thus the provision of the present composition of the National Assembly to include a number of women and persons with disabilities, in addition to those who may be elected from single member constituencies.

9.5 The Part as proposed also establishes the National Assembly as an organ of State, prescribes the qualification and disqualification of its membership, election of members and gives opportunity to citizens to be able to recall their members. The qualifications for a person to be nominated to contest for election to the National Assembly includes amongst others citizenship by birth, registration or naturalisation for a period of at least ten years before the date of nomination, satisfaction of the academic qualifications prescribed by the Constitution and a person who is not convicted of an offence involving dishonesty or immoral conduct.

9.6 Provision is also made under this Part for vacancy in the office of a member of the National Assembly and for suspension of its members.

## **Part III – Leaders of the National Assembly**

9.7 This Part establishes the offices of the leaders of the National Assembly, their order of precedence, their roles and functions as well as providing for their remuneration. This is important for the orderly execution of the mandate of members of the Assembly. The leaders are the Speaker, Deputy Speaker, Leader of the Majority Party and Leader of the Minority Party. The Part further provides for their election.

9.8 This Part provides novel provisions in the sense that the Speaker of the National Assembly is to be elected from outside the general membership of the National Assembly; the Deputy Speaker is to be elected from amongst the members of the National Assembly. Furthermore, the positions of Leader of the Majority Party and Leader of the Minority Party are given constitutional recognition and their mode of election prescribed.

## **Part IV – Sessions and Sittings of the National Assembly**

9.9 The National Assembly is to sit in sessions and requires a quorum before it can sit. There is an obligation for members to attend sittings, unless they are otherwise excused, in order to effectively represent their constituents.

9.10 The Part makes provision for the first session of the National Assembly after every general election to be fixed by the Clerk and announced in the *Gazette* by way of a Proclamation. The time for other sessions is to be determined by members of the National Assembly, although the President may request the Speaker to summon a session in the event of a declaration of war or a state of emergency.

## **Part V – Legislative and Other Powers of the National Assembly**

9.11 This Part makes provision for the exercise of legislative power by the Assembly. It prescribes how Bills and motions are to be introduced and passed. This is an important regulation of a fundamental procedure to be followed by the Assembly. A further provision is made for the President to assent to all Bills passed by the National Assembly and where the President declines to assent with reasons, he or she will have to send the Bill back to the National Assembly with his or her reasons for further consideration. Where the National Assembly sends back the Bill to the President he or she must assent to it and where the President fails or refuses to assent to the Bill, the Bill shall be deemed to have been assented to.

9.12 The same Part prohibits the National Assembly from passing a law that would establish a one party state, establish a state religion or alter the decision or judgment of a court in any proceedings or retroactively deprive a person of a vested or acquired right.

## **Part VI – Procedure in the National Assembly**

9.13 This Part sets out the procedure to be followed when the National Assembly is sitting. It also provides for the language to be used in the Assembly, which includes facilitating the use of local languages, Braille and Gambian sign language. Further provision is made on how decisions are to be made within the context of the Standing Orders and the Constitution, and the required quorum for each sitting.

9.14 Provision is also made for the public's right to petition the National Assembly on any matter within the authority of the National Assembly including, but not limited to, a request to enact, amend, revise, or repeal or revoke any legislation or debate a matter that is considered to be in the public interest, among other things.

9.15 Under this Part, it is an offence for anyone who is not a member of the National Assembly to sit and vote in the Assembly. It is also contemptuous to obstruct or impede the National Assembly in the performance of its functions or a member or officer of the National Assembly in the discharge of his or her duties or to affront the dignity of the National Assembly.

## **Part VII – Responsibilities, Privileges and Immunities**

9.16 In the performance of their functions, members of the Assembly are to be responsible to their constituents and above all act in the best interest of the country. This Part recognizes and makes provision for immunity to be given to members for whatever they may say during deliberations at the Assembly and offers privileges to witnesses who appear before the Assembly.

## **Part VIII – National Assembly Service Commission**

9.17 This Part establishes a National Assembly Service, and a National Assembly Service Commission, for the National Assembly to deal with administrative, managerial and staff matters of the Assembly. It establishes the Office of the Clerk of the National Assembly and makes provision for appointment of members of staff of the Office of the Clerk.

# **CHAPTER X – JUDICIARY**

10.1 This Chapter is divided into six Parts and deals with the Judiciary as an organ of State, and provides for matters relating to the administration of Justice. The Chapter commences by outlining important principles of justice.

## **Part I – Principles Governing the Administration of Justice**

10.2 The Part lays down the governing principles for the administration of justice. It seeks to promote the rule of law and to ensure that the law is administered fairly without regard to the status of anyone. It also makes provision for reasonable compensation to be paid to a victim. It ensures and reinforces judicial independence by providing that no organ of State shall, directly or indirectly engage in any activity that has the effect of coercing, hindering, frustrating or impeding the Judiciary in the discharge of its functions. Judicial authority is vested in the courts, which cannot be taken away. This Part is new.

## **Part II – Office of the Chief Justice and Judicial System**

10.3 This Part establishes the Office of the Chief Justice. It also addresses the overwhelming views of Gambians that the Chief Justice must be a Citizen of The Gambia. It establishes the different courts of The Gambia and recognises superior courts as courts of record and with power to commit for contempt.

## **Part III – Superior Courts and Jurisdiction**

10.4 This Part establishes the superior courts, prescribes their respective jurisdictions and composition. It provides for the very first time the establishment of the Shari’ah High Court, to hear appeals from the Shari’ah Court (renamed from Cadi Court). This is essentially a reorganisation of the existing Cadi Court structure to afford persons subject to the jurisdiction of

that Court to have rights of appeal. In that context, therefore, the Part provides for appeals from the Shari'ah High Court to the Court of Appeal and onwards to the Supreme Court. This is new.

10.5 A new provision is made vesting original jurisdiction on the Court of Appeal on matters relating to whether or not a person was validly elected at a local government election.

#### **Part IV – The Judges**

10.6 This Part deals with the appointment of judges, the qualification for appointment, tenure of office and their remuneration and retirement benefits.

10.7 The Chief Justice and justices of the Supreme Court are to be appointed by the President acting on the advice of the Judicial Service Commission after confirmation by the National Assembly. This is a departure from the 1997 Constitution which only required the President to consult with the Judicial Service Commission.

10.8 The qualification for appointment of a judge to the Supreme Court is now increased from 12 years to 15 years post call experience; for the Court of Appeal, from 8 years to 12 years, and for the High Court, from 5 years to 7 years.

10.9 The Constitution provides security of tenure for judges, guarantees their independence and provides for very clear and transparent procedures for the removal of a judge. The President no longer has the power to summarily dismiss a judge without resorting to the procedure outlined in the Constitution.

#### **Part V – Administration of the Courts**

10.10 Under this Part, the Office of Judicial Secretary (the equivalent of the Office of Permanent Secretary) is established, and provisions are made for administrative and financial matters of the Judiciary. There are more elaborate provisions on the Office of Judicial Secretary in the Constitution.

#### **Part VI – The Judicial Service Commission**

10.11 The appointment of judicial officers and judiciary staff is regulated under this Part. The Judicial Service Commission is established to be responsible for matters of appointment and other related staff matters and to assist in the general administration of the judiciary.

### **CHAPTER XI – LOCAL GOVERNMENT AND DECENTRALISATION**

11.1 This Chapter recognizes the importance and relevance of local government and effective decentralisation of power for the overall development of The Gambia. It reinforces the participation of people at grass root level in the development of their communities. It also seeks to empower Local Government Authorities to enable them carry out their functions effectively. The Chapter is divided into six Parts with new and innovative provisions.

## **Part I – Principles of Decentralised Local Government**

11.2 This Part deals with local government administration and decentralisation of power. It lays down the principles of decentralisation to be observed by the Government and Local Government Authorities. These principles include the duty to promote democratic and accountable exercise of power, to foster national unity by recognising diversity, to promote social and economic development and the provision of proximate, easily accessible service in The Gambia and to ensure equitable sharing of national and local resources throughout The Gambia.

11.3 The system of local government is also provided for in this Part. This includes that local government shall be based on democratic principles of separation of powers; that Local Government Authorities shall have reliable sources of revenue to enable them to govern and deliver service effectively; that not more than two-thirds of representatives bodies in each Local Government Authority shall be of the same gender; and that a minimum of ten percent of the members of representative bodies in the Local Government area shall be youths. The representation of women and youth in Local Government Authorities is provided for, for the first time in the Constitution.

## **Part III – Establishment and Composition of Local Government Authorities**

11.4 Local Government Authorities are established under this Part, with their powers and functions defined to ensure their autonomy and independence in the dispensation of their duties. The participation of people in grassroots politics and development of their communities, raising of revenue, infrastructure and development of areas within the Authority's jurisdiction, preservation of the natural resources, the environment and cultural values of each local government area are provided for in this Part.

## **Part III – Election and Terms and Conditions of Appointments of Local Government Authorities**

11.5 This Part provides for election of members of Local Government Authorities and their term of office. The term of office of Local Government Authorities is now increased from 4 years to 5 years. Provision is also made for the financial autonomy and accountability of Local Government Authorities.

## **Part IV – Other Offices of Local Government Authorities (Seyfos and Alkalos)**

11.6 In this Part, the institution of Seyfo and Alkalo as traditional rulers is recognized. Provision is made for the election of a Seyfo on a non-partisan basis and appointment of an Alkalo by the Minister for Local Government in accordance with traditional lines of inheritance. This is in accordance with the strong views and submissions received from the people. The tenure of office, qualifications and disqualification of holders of these two offices are prescribed under this Part. Once they assume office, the Seyfo and Alkalo serve for life unless their offices become vacant in accordance with the terms of the Constitution.

11.7 It is recognized that the traditional role of a Seyfo and Alkalo is to foster harmony within their communities and to that extent they are prohibited from participation in partisan politics when executing the functions of their office.

## **CHAPTER XII – INDEPENDENT INSTITUTIONS**

12.1 This Chapter, which is divided into seven Parts, is novel. It recognises and caters for certain institutions that are vital to public administration and the economic development of The Gambia. The rationale is to build strong institutions for an enduring democracy. The Chapter seeks to ensure independence and security of tenure of the governing bodies of these institutions. This ensures effectiveness and prevents undue interference in the performance of their duties. The National Human Rights Commission and the Anti-Corruption Commission are provided for in the Constitution, for the first time.

### **Part I – Establishment of Independent Institutions and Offices**

12.2 Under this Part independent institutions are established and their objects, funding, finances and reporting obligations clearly stated. Provision is made for appointment and qualification of officers of these institutions.

### **Part II – National Human Rights Commission**

12.3 This Part provides for the composition, functions and powers of the Commission.

12.4 The Part empowers aggrieved persons to file complaints to the Commission alleging violation of their fundamental rights and freedoms as enshrined in Chapter VI of the Constitution.

### **Part III – Anti-Corruption Commission**

12.5 This Part provides for the Anti-Corruption Commission, its composition, functions and powers.

12.6 The Commission is empowered to investigate instances of alleged corruption referred to it by any person or authority.

12.7 The Commission also has the power to initiate and conduct prosecution for any act of corruption and also to make referrals to the Director of Public Prosecutions for advice or prosecution.

### **Part IV – The Ombudsperson**

12.8 This Part provides for the composition, functions and powers of the Office of Ombudsperson.



12.9 The Ombudsperson has responsibility to deal with complaints relating to maladministration in Government, including complaints relating to abuse of power by Government authorities, unfair treatment, manifest injustice or any unlawful, oppressive, unfair or unresponsive official conduct.

### **Part V – The Auditor - General and National Audit Office**

12.10 The Office of Auditor-General is provided for in this Part. The procedure for his or her appointment, powers and functions are prescribed. The Auditor –General is mandated to audit the accounts of the Government, State organs as well as the Local Government Authorities, among others and submit a report to the National Assembly within 6 months of auditing the accounts referred to him or her, drawing attention to any irregularities in the accounts referred to him or her and to any other matter which his or her opinion ought to be brought to the attention of the National Assembly.

12.11 The Auditor-General is to publish his or her annual reports on the accounts audited after 90 days of submission of his or her report to the National Assembly or after the report has been discussed in the National Assembly, whichever is earlier.

### **Part VI – Central Bank of The Gambia**

12.12 This Part establishes the Central Bank as banker to the Government and makes provision for its functions which includes supervising, regulating and directing monetary policy and the currency system. The Central Bank also supervises and regulates the banking sector.

12.13 Unlike the 1997 Constitution, the Governor of the Central Bank is no longer the Chairperson of the Board of Directors. This is in accordance with principles of transparency and good governance.

### **Part VII – Commission of Inquiry**

12.14 This Part provides for the establishment, powers and functions of a commission of inquiry.

## **CHAPTER XIII – PUBLIC FINANCE**

13.1 This Chapter is divided into six Parts and deals with Public finance which is important for proper management of public funds, good financial governance, which are vital for peace, stability, development and good democratic governance. The Chapter deals with taxation, public funds, loans, grants, the budget and public procurement. The Chapter provides for a 5% Development Fund for marginalised communities, the duty to consult before the imposition of tax and the duty to consult stakeholders on the national budget. These are new provisions. There are also more progressive and stricter rules on public finance management, transparency and compliance with laid down public finance laws and regulations.

## **Part I – Principles of Public Finance**

13.2 This Part makes provision for the principles that would direct public finance in the country. They include the requirement that all aspects of public finance management shall be based on transparency, accountability and public participation and that the burden and benefits for the use of resources shall be shared equitably between present and future generations.

## **Part II – Taxation**

13.3 This Part provides for the raising of taxes and how taxation is to be administered in the country. It controls waiver and variation of taxes and prescribes the procedure to be followed for imposition, waiver or variation of taxes.

## **Part III – Public Funds**

13.4 This Part provides for public funds and their administration. It provides that the administration of public funds shall satisfy the principles of transparency and accountability. Stricter and more appropriate protective mechanisms have been put in place to prevent misuse of public funds.

13.5 The Part creates a Development Fund into which 5% of all the revenues collected annually shall be paid. It also spells out how the Development Fund should be used.

## **Part IV – Loans, Grants, Government Guarantees and Public Debt**

13.6 This Part regulates how loans are to be contracted and the management of the public debt, among others. It recognizes the oversight role of the National Assembly regarding the public debt.

## **Part V – Budget**

13.7 This Part provides for the Annual Estimates of Government which are to be laid before the National Assembly for approval. The procedure to be followed for passing an Appropriation Bill or a Supplementary Appropriation Bill is prescribed. The period for laying the budget before the National Assembly has been increased from 30 days to 60 days.

## **Part VI – Public Procurement**

13.8 This Part provides a framework for the regulation of public procurement and requires transparency in all procurements to prevent corruption. This is new.

## **CHAPTER XIV – LAND, NATURAL RESOURCES AND THE ENVIRONMENT**

14.1 This Chapter has three Parts and recognises and reinforces the importance of land, natural resources and the environment. It is being provided for the first time in the Constitution. It incorporates the views expressed during the public consultations relating to ownership of land by citizens and non-citizens, dwindling of natural resources and emerging environmental challenges.

### **Part I – Principles of Equitable Use of Land, Natural Resources and the Environment**

14.2 The principles governing the equitable use, management and protection of land, natural resources and the environment are set out in this Part. They include the equitable access and security of land rights, transparent and cost-effective administration of land and the protection of genetic resources and biological diversity.

### **Part II – Land, Environment and Natural Resources Commission**

14.3 This Part establishes an independent Commission responsible for the administration of land, natural resources and the environment. The powers and functions of the Commission are provided for. .

14.4 The Part further recognises the need for intergenerational equity in the use of the land and natural resources of the country and for the protection of the environment, genetic resources and biodiversity.

### **Part III – General Provisions**

14.6 This Part regulates land ownership by citizens and non-citizens. It limits the land ownership rights of non-citizens and recognises the different types of land tenure. This is in response to the concerns expressed by members of the public during the CRC's public consultations.

## **CHAPTER XV – THE PUBLIC SERVICE**

15.1 This Chapter has four Parts and deals with the Public Services of The Gambia. It is in response to the demands from the public to create separate service commissions for teachers, health service providers and the Civil Service. Thus, the Teachers Service Commission and the Health Service Commission are created for the first time in the Constitution.

15.2 The Chapter also makes provisions for State Owned Enterprises which are entrusted with the responsibility of managing vital sectors of the economy of The Gambia. The Chapter further

provides for the security of tenure of the Chief Executive Officers and members of their Governing Boards, so as to protect them from any interference.

## **Part I – The Public Services of The Gambia**

15.3 This Part provides for creation, appointment, removal and retirement of office holders of the public services of The Gambia. Their qualification is also provided for and they are further restricted from holding office in any political party or openly participating in any political activity..

15.4 The Part also establishes the Office of Secretary General and Head of the Civil Service and the Office of Permanent Secretary. Their qualifications and functions are also provided for. The Secretary General is to be appointed by the President acting on the advice of the Public Service Commission subject to confirmation by the National Assembly. In the performance of his or her functions, the Secretary General shall not be subject to the direct or control of any person or authority but shall have due regard to the policies and programmes of the Government. These are new provisions.

## **Part II – Service Commissions**

### **(i) General provisions**

15.4 This sub-Part establishes three service commissions for the Civil Service. These are the Public Service Commission, Teachers Service Commission and the Health Service Commission. They are responsible for the appointment, discipline and removal of officers under their control. A Secretariat is established to provide support, guidance and proper streamlining of the work of the Service Commissions.

### **(ii) Public Service Commission**

15.5 This Commission is to ensure that the public service is efficient and effective. It is responsible for the development of human resources and should ensure that adequate and equal opportunities are afforded to every qualified person. The jurisdiction of the Public Service Commission does not extend to the National Assembly, the Judiciary, the security sector and Local Government Authorities.

### **(iii) Teachers Service Commission**

15.6 This Commission is responsible for appointment of teachers, assigning them to schools and reviewing the standard of education and training needs of those entering the teaching service, among others.

**(iv) Health Service Commission**

15.7 This Commission is responsible for appointments into the health care delivery system and for the development of human resources within the health care delivery system. It is to ensure that there is an efficient and effective health care delivery system.

**Part III – General Provisions on Service Commissions**

15.8 This Part provides for the qualifications, tenure of office and the independence of the service commissions.

**Part IV – State Owned Enterprises**

15.9 This Part regulates the appointment, qualification and disqualification of board members and the Chief Executive Officers of State Owned Enterprises. It provides for a body to monitor the operations of State Owned Enterprises. The said Enterprises are to submit their annual reports to the National Assembly.

**CHAPTER XVI – NATIONAL SECURITY**

16.1 This Chapter has four Parts and deals with national security. It expands the membership of the National Security Council and provides for the establishment of the Internal Security Service Commission, a novel provision.

**Part I – The Security Services and National Security Council**

16.2 The Security Services and National Security Council are created under this Part with their functions clearly defined.

**Part II – The Gambia Armed Forces**

16.3 The Gambia Armed Forces is established and provision is made for appointments of the Chief of Defence Staff and recruitment to The Gambia Armed Forces.

**Part III – The Gambia Police Service**

16.4 The name of The Gambia Police Force is changed to The Gambia Police Service. The Constitution provides that 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 Service and that any direction given by the Minister to the Inspector General of Police must be in writing.

16.5 The Part further provides that no person may give any direction to the Inspector General of Police with respect to investigation of offences, enforcement of the law and the employment,

assignment, promotion, suspension or dismissal of any member of The Gambia Police Service. The Constitution therefore, makes the Office of the Inspector General of Police more independent.

#### **Part IV – Internal Security Service Commission**

16.6 This Part establishes the Internal Security Service Commission. It provides for the appointment of members of the Commission and other matters relating to the employment of persons within the security services. The security services covered under this Part are the Gambia Police Service, Gambia Immigration Service, Drug Law Enforcement Agency The Gambia, Gambia Fire and Rescue Service and Gambia Prison Service.

### **CHAPTER XVII – NATIONAL YOUTH DEVELOPMENT**

17. This Chapter lays down the principles which should guide the State in matters relating to youth development. These principles include the requirement to consult the youth in the development of policies affecting them and youth participation and inclusion in building and fostering national unity, cohesion, peace and service to the public.

### **CHAPTER XVIII – NATIONAL COMMISSION FOR CIVIC EDUCATION**

18. This Chapter establishes the National Commission for Civic Education. It provides for its functions and the qualification and disqualification of its members. The mandate of the Commission has been expanded to include education and dissemination of information on other laws apart from the Constitution. It also guarantees adequate funding to enable the Commission perform its functions. It provides for the budget of the Commission to be a separate vote to be charged on the Consolidated Revenue Fund.

### **CHAPTER XIX – AMENDMENT OF THE CONSTITUTION**

19. This Chapter provides for the amendment of provisions of the Constitution. These include the procedures, requirements and processes for amendment of entrenched and non-entrenched clauses. It also specifically prohibits the National Assembly from amending the Constitution to increase the term of the President contrary to the prescribed term. This is new.

### **CHAPTER XX – MISCELLANEOUS**

20.1 This Chapter has two Parts providing for miscellaneous matters.

## **Part I – Appointment, Resignations, etc.**

20.2 This Part regulates appointments and resignations of public officers and prescribes other duties and powers such as the duty not to act on an unlawful directive. It also provides for the duty on the person who takes the adverse decision to inform the person against whom the adverse decision is taken of the reason or reasons for the decision. The reason or reasons shall be in writing, addressed to the person against whom the adverse decision is taken.

## **Part II – General**

20.3 This Part provides for the Interpretation of the Constitution, construction of various powers and makes transitional and consequential provisions. It also repeals the existing Constitution.

## **SCHEDULES**

21.1 The draft Constitution provides four Schedules. The first relates to the administrative areas of The Gambia; the second provides for the oaths of office of the President, Vice President, Speaker and Deputy Speaker of the National Assembly and the Chief Justice; the third specifies the constituencies for National Assembly elections; and the fourth provides for transitional and consequential provisions.

21.2 In the fourth Schedule, the Constitution Implementation Commission is established, with responsibility for the implementation of the Constitution. In addition, the Schedule specifies that the current term of office of the incumbent President shall count in computing the maximum term that can be served in office.