



**The Constitution
Of
The Second Republic of
the Gambia**

REPUBLIC OF THE GAMBIA
A DRAFT
OF
A CONSTITUTION FOR THE SECOND REPUBLIC
OF
THE GAMBIA

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In the name of God, the Almighty,

we the people of The Gambia have accomplished a great and historic task. We have had our say on how we should be governed. For this Constitution contains our will and resolve for good governance and a just, secure and prosperous society.

Our hopes and aspirations as a people were reflected in the enthusiasm and zeal with which we embarked on the task of nation building on the attainment of independence. The self-perpetuating rule of the recent past, however, soon gave rise to the abuse of office and related vices which negated the total welfare of the Gambian people. The sovereign people of The Gambia therefore endorsed the change of government on 22nd July 1994 to rectify such evils.

This Constitution provides for us a fundamental law, which affirms our commitment to freedom, justice, probity and accountability. It also affirms the principle that all power emanate from the sovereign will of the people.

The fundamental rights and freedoms enshrined in this Constitution, will ensure for all time respect for and observance of human rights and fundamental freedoms for all, without distinction as to ethnic considerations, gender, language or religion. In acknowledging our fundamental rights we also affirm our duties and responsibilities as citizens of this Country.

This Constitution guarantees participatory democracy that reflects the undiluted choice of the people. The functions of the arms of government have been clearly defined, their independence amply secured with adequate checks and balances to ensure that they all work harmoniously together toward our common good.

As we usher in the second Republic and beyond we give ourselves and generations of Gambians yet unborn this Constitution as a beacon of hope for peace and stability in our society and the good governance of The Gambia for all time.

In this spirit, we continue to pledge our firm allegiance to our beloved Country and pray that the Great God of Nations will keep us all ever true to The Gambia.

CHAPTER I THE REPUBLIC

1. The Republic

(1) The Gambia is a Sovereign Republic.

(2) The Sovereignty of The Gambia resides in the people of The Gambia from whom all organs of government derive their authority and in whose name and for whose welfare and prosperity the powers of government are to be exercised in accordance with this Constitution.

2. Public Seal

(1) The Public Seal shall be the seal in existence immediately before this Constitution comes into force or such other seal as may be prescribed by an Act of the National Assembly.

(2) The Public Seal shall be used exclusively for authenticating matters of state and no person or organisation, other than the Government of The Gambia and those persons who may be authorised in accordance with an Act of the National Assembly, may use the design of the seal or any design resembling it as such person's or organisation's emblem.

3. National flag and anthem

(1) The National Flag shall be a flag of the design set out in schedule 1.

(2) The National Anthem shall be the anthem in use immediately before this Constitution comes into force.

CHAPTER II THE CONSTITUTION AND THE LAWS

4. Supremacy of the Constitution

This Constitution is the supreme law of The Gambia and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void.

5. Enforcement of the Constitution

(1) A person who alleges that—

(a) any Act of the National Assembly or anything done under the authority of an Act of the National Assembly; or

(b) any act or omission of any person or authority,

is inconsistent with or is in contravention of a provision of this Constitution, may bring an action in a court of competent jurisdiction for a declaration to that effect.

(2) The court may make orders and give directions as it may consider appropriate for giving effect, or enabling effect to be given, to such a declaration and any person to whom any order or direction is addressed shall duly obey and carry out the terms of the order or direction.

(3) The failure to obey or carry out any order made or direction given under subsection (2) shall constitute the offence of violating the Constitution and—

(a) shall, in the case of the President or Vice-President, constitute a ground for his or her removal from office in accordance with *section 67*; 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.

6. Defence of the Constitution

(1) Any person who—

(a) by himself or herself or in concert with others, by any violent or other unlawful means, suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act; or

(b) aids and abets in any manner any person referred to in paragraph (a), 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.

(2) All citizens of The Gambia have the right and the 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.

(3) A person who resists the suspension, overthrow or abrogation of this Constitution as provided in subsection (2), commits no offence.

7. The laws of The Gambia

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 such Acts;

(b) any orders, rules, regulations or other subsidiary legislation made by a person or authority under a power conferred by this Constitution or any other law;

- (c) the existing laws including all decrees passed by the Armed Forces Provisional Ruling Council;
- (d) the common law and principles of equity;
- (e) customary law so far as concerns members of the communities to which it applies;
- (f) the Sharia as regards matters of marriage, divorce and inheritance among members of the communities to which it applies.

CHAPTER III CITIZENSHIP

8. Citizens on the commencement of the Constitution

Every person who, immediately before the coming into force of this Constitution, is a citizen of The Gambia, shall, subject to this Constitution—

- (a) continue to be a citizen of The Gambia;
- (b) retain the same status as a citizen by birth, by descent, by registration or by naturalisation, as the case may be, as he or she enjoyed immediately before the coming into force of this Constitution.

9. Citizen by birth

- (1) Every person born in 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 is a citizen of The Gambia.
- (2) A child of not more than seven years of age found in The Gambia whose parents are not known shall be presumed to be a citizen of The Gambia by birth.

10. Citizens by descent

A person born outside The Gambia after the coming into force of this Constitution shall be a citizen of The Gambia by descent if at the time of his or her birth either of his or her parents is a citizen of The Gambia otherwise than by virtue of this section or any comparable provision of any earlier Constitution.

11. Marriage to a citizen

- (1) Any person who—
 - (a) is married to a citizen of The Gambia and, since the marriage, has been ordinarily resident in The Gambia for a period of not less than seven years; or
 - (b) has been married to another who was, during the subsistence of the marriage, a citizen of The Gambia and, since the end of the marriage (whether by annulment, divorce or death), has been ordinarily resident in The Gambia for a period of not less than seven years, shall be entitled, upon making application in such manner as may be prescribed by or under an Act of the National Assembly, to be registered as a citizen of The Gambia.
- (2) The annulment of a marriage of a person who has been registered as a citizen of The Gambia under this section, or under the provisions of any earlier law for the registration as a citizen of The Gambia of a person on account of marriage, shall not affect that person's status as a citizen of The Gambia.

12. Naturalisation as a citizen

(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;

(d) is capable of supporting himself or herself and his or her dependants.

(3) The Secretary of State shall give reasons for any refusal of an application made under this section.

(4) No person shall be naturalized until he or she has renounced any other citizenship he or she may have and taken an oath of allegiance to The Gambia.

13. Deprivation of citizenship

(1) The Secretary of State may apply to the High Court for an order depriving a person who has been registered or naturalised as a citizen of The Gambia of his or her citizenship on the grounds that he or she—

(a) has acquired by registration, naturalisation or any voluntary and formal act (other than marriage) the citizenship of any other country;

(b) has acquired the citizenship of Gambia by means of fraud, false representation or the concealment of any material fact;

(c) has, at any time since acquiring 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 within seven years after being registered or naturalised been convicted in any country of an offence involving fraud, dishonesty or moral turpitude.

and, in the cases referred to in paragraphs (c) and (d), it is not conducive to the public good that he or she should continue to be a citizen of The Gambia.

(2) Before making any application for an order under this section, the Secretary of State shall give notice in writing to the person concerned of the grounds for the application and of his or her right to be heard and to be legally represented at the hearing of the application before the Court.

(3) If the High Court is satisfied that the Secretary of State has established that the person concerned has acted in a manner described in subsection (2) and notified to that person, and, in a case referred to in paragraph (c) or (d) that it is not conducive to the public good that the person concerned should continue to be a citizen of The Gambia, it shall make an order depriving that person of his or her citizenship of 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 or descent of his or her citizenship of The Gambia whether on account of such citizen's holding the citizenship or nationality of some other country or for any other cause.

14. Restoration of citizenship

A citizen of The Gambia who loses his or her citizenship of The Gambia as a result of the acquisition or possession of the citizenship of some other country shall, on the renunciation of the citizenship of that other country, be entitled to be registered, or if he or she was formerly a citizen by birth or descent, to be officially recognised, as a citizen of The Gambia.

15. Acts of the National Assembly

An Act of the National Assembly may make provision for—

- (a) the acquisition of the citizenship of The Gambia by persons who are not eligible to become citizens under the provisions of this Chapter;
- (b) the renunciation by any person of his or her citizenship of The Gambia; and
- (c) generally to give effect to the provisions of this Chapter.

16. Interpretation of chapter III

(1) In this Chapter, "Secretary of State" means the Secretary of State for the time being 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 of a person at the time of that person's birth, shall, in relation to a person born after the death of that parent, be construed as a reference to that parent's citizenship at the time of death.

CHAPTER IV PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

17. Fundamental rights freedoms

(1) The fundamental human rights and freedoms enshrined and in this Chapter shall be respected and upheld by all organs of 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, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, shall be entitled to the fundamental human 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.

18. Protection of right to life

(1) No person shall be deprived of his or her life intentionally except in the execution of a sentence of death imposed by a court of competent jurisdiction in respect of a criminal offence for which the penalty is death under the laws of The Gambia as they have effect in accordance with subsection (2) and of which he or she has been lawfully convicted.

(2) As from the coming into force of this Constitution, no court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.

(3) The National Assembly shall within ten years from the date of the coming into force of this Constitution review the desirability or otherwise of the total abolition of the death penalty in The Gambia.

(4) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, 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) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny;
- (d) in order to prevent the commission by that person of a criminal offence, or
- (e) if he or she dies as a result of a lawful act of war.

19. Protection of right to personal liberty

(1) Every person shall have the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language that he or she understands, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner.

(3) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the law of The Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within seventy-two hours.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not thereafter be further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3) (b) is not tried within a reasonable time, then without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including, in particular, such

conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or proceedings preliminary to trial.

(6) 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.

20. Protection from slavery and forced labour

(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) labour required of any person while he or she is lawfully detained that, though not required in consequence of the sentence or order of the court, is reasonably necessary in the interests of hygiene for the maintenance of the place in which he or she is detained;

(c) any labour required of a member of a defence force 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;

(d) 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; or

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

21. Protection from inhuman treatment

No person shall be subject to torture or inhuman or degrading punishment or other treatment.

22. protection from deprivation of property

(1) No property of any description shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia, except where the following conditions are satisfied—

(a) the taking 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 therefor is such as to afford reasonable justification of the causing of any hardship that may result to any person having any interest in or right over the property; and

(c) provision is made by law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property, a right of access to a court or other impartial and independent authority for the determination of his or her interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any

(2) Nothing in this section shall be construed as

(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 adjudges or otherwise declared bankrupt or insolvent, persons of unsound mind;

(e) in the execution of judgements or orders of courts;

(6) Where any such property as is referred to in subsection (5) is not used in the public interest or for the public purpose for which it was taken or acquired, the person who was the owner immediately before the compulsory taking or acquisition, as the case may be, shall be given the first option of acquiring that property, in which event he or she shall be required to refund the whole or such part of the compensation as may be agreed upon between the parties thereto; and in the absence of any such agreement such amount as shall be determined by the High Court.

23. (1) No person shall be subject to interference with the privacy of his or her home, correspondence or communications save as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety of the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights and freedoms of others.

(2) Searches of the person or the home of individuals shall only be justified

(a) where these are authorised by a competent judicial authority;

(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.

24. Provision to secure protection of the law and fair trial

(1) Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or for the determination of the existence or extent of any civil right or obligation, shall be independent and impartial; and

(a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or

(b) where proceedings are commenced for the determination or the existence of any civil right or obligation, the case shall be afforded a fair hearing within a reasonable time.

(2) All proceedings of every court and proceedings relating to the determination of the existence or extent of civil rights or obligations before any other authority, including the announcement of the decision of the court or other authority, shall be held in public:

Provided that the court or other authority may, to such extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or interlocutory civil proceedings, or to such extent as it may be empowered or required by law to do so in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings persons other than the parties thereto and their legal representatives.

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

(a) shall be presumed innocent until he or she is proved, or has pleaded, guilty;

(b) shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his or her defence;

(d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice;

Provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the expense of the State.

(e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial of the charge;
and, except with his or her own consent, the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impractical and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

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

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

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

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial or conviction of the member under service law; but any court so trying such a member and convicting him or her shall, in sentencing him or her to any punishment, take into account any punishment awarded him or her under service law.

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

(8) No person charged with a criminal offence shall be compelled to give evidence at the trial.

(9) A person charged with a criminal offence in the High Court shall have the right to elect to be tried by a jury.

(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(a) subsection (3) (a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (3) (e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds.

25. Freedom of speech, conscience, assembly, association and movement

(1) Every person shall have the right to—

(a) freedom of speech and expression, which shall include freedom of the press and other media;

(b) freedom of thought, conscience and belief, which shall include academic freedom;

(c) freedom to practise any religion and to manifest such practice;

(d) freedom to assemble and demonstrate peaceably and without arms;

(e) freedom of association, which shall include freedom to form and join associations and unions, including political parties and trade unions;

(f) freedom to petition the Executive for redress of grievances and to resort to the Courts for the protection of his or her rights.

(2) Every person lawfully within The Gambia shall have 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.

(3) Every citizen of The Gambia shall have the right to return to The Gambia.

(4) The freedoms referred to in subsections (1) and (2) shall be exercised subject to the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedoms thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court.

26. Political rights

Every citizen of The Gambia of full age and capacity shall have 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;
- (c) to have access, on general terms of equality, to public service in The Gambia.

27. Right to marry

- (1) Men and women of full age and capacity shall have the right to marry and found a family.
- (2) Marriage shall be based on the free and full consent of the intended parties.

28. Rights of women

- (1) Women shall be accorded full and equal dignity of the person with men.
- (2) Women shall have the right to equal treatment with men, including equal opportunities in political, economic and social activities.

29. Rights of children

- (1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interest of children, to know and be cared for by their parents.
- (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.

30. Right to Education

All persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realisation of that right—

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

31. Rights of the Disabled

- (1) The right of the disabled and handicapped to respect and human dignity shall be recognised by the State and society.
- (2) Disabled persons shall be entitled to protection against exploitation and to protection against discrimination, in particular as regards access to health services, education and employment.
- (3) In any judicial proceedings in which a disabled person is a party, the procedure shall take his or her condition into account.

32. Culture

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion 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.

33. Protection from discrimination

- (1) All persons shall be equal before the law.
- (2) Subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.
- (3) Subject to the provisions of subsection (5), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.
- (4) In this section, the expression “discrimination” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, 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.
- (5) Subsection (2) 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, devolution of property on death or other matters of personal law;
 - (d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.
- (6) Subsection (3) 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 (5).
- (7) 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 (3).

34. Declaration of state of public emergency

- (1) The President may, at any time, by Proclamation published in the Gazette, declare that—
- (a) a state of public emergency exists in the whole or any part of The Gambia;
 - (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.
- (2) A declaration made under this section shall lapse at the expiration of a period of seven days, or if the National Assembly is not then in session twenty-one days, beginning on the day on which the Proclamation is published in the Gazette unless, before the expiration of that period, it has been approved by a resolution of the National Assembly supported by the votes of not less than two-thirds of all the members thereof.
- (3) A declaration made under subsection (1) may at any time be revoked by the President by Proclamation which shall be published in the Gazette.
- (4) A declaration made under subsection (1) that has been approved by a resolution of the National Assembly shall, subject to subsection (3), remain in force so long as that resolution remains in force and no longer.
- (5) A resolution of the National Assembly passed for the purpose of this section shall remain in force for ninety days or such shorter period as may be specified therein:

Provided that—

- (a) any such resolution may be extended from time to time by a further resolution supported—
 - (i) in the case of a first extension, by the votes of not less than two thirds of all the members of the National Assembly;
 - (ii) in the case of a subsequent extension, by the votes of not less than three quarters of all the members of the National Assembly,

but no extension shall exceed ninety days from the date of the resolution effecting the extension; and

- (b) any such resolution may be revoked at any time by a resolution supported by the votes of the majority of all the members of the National Assembly.
- (6) Any provision of this section that a declaration shall lapse or cease to be in force at any particular time shall be without prejudice to the making of a further declaration under this section whether before or after that time.

35. Derogations from fundamental rights under emergency powers

- (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) Nothing contained in or done under the authority of such an Act shall be held to be inconsistent with or in contravention of *sections 19, 23, 24 (other than subsections (5) to (8) thereof) or 25* of this Constitution to the extent that it is reasonably justifiable in the circumstances arising or existing during a period of public emergency for the purpose for dealing with the situation.

36. Persons detained under emergency powers

(1) Where a person is detained by virtue of or under any Act of the National Assembly referred to in *section 35*, the following provisions shall apply—

(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 fourteen days after the commencement of his or her detention, the authority which effected the same shall give notice in the Gazette 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 thirty days after the commencement of his or her detention, and after that at intervals of not more than ninety days during the continuance of his or her detention, the case of the person concerned shall be reviewed by a tribunal as provided in subsection (2);

(f) the person who is detained shall be afforded every possible facility to consult a legal practitioner of his or her choice who shall be permitted to make representation to the tribunal appointed to review the case;

(g) at the hearing before the tribunal appointed for the review of his or her case, the person detained shall be entitled to appear in person or by a legal practitioner of his or her choice and at his or her own expense.

(2) A tribunal appointed to review the cases of persons who have been detained shall be composed of three persons being, or qualified to be appointed as, judges of the High Court.

(3) A tribunal composed of the same members shall not review more than once the case of a particular person who has been detained.

(4) On a review by a tribunal of the case of a person who has been detained, the tribunal 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 tribunal for the release of any person.

(5) No person may be detained under or by virtue of an Act of the National Assembly referred to in *section 35* during any state of emergency in excess of a total of one hundred and eighty two days (whether such days are consecutive or not) and, on the expiry of that period, any person who has been so detained shall be entitled to invoke the provisions of *section 19* (right to personal liberty).

(6) 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 Secretary of State authorised by the President shall make a report to the National Assembly of the number of persons detained by virtue of or under an Act of the National Assembly to which *section 35* refers and the number of cases in which the authority which ordered the detention has acted in accordance with the decisions of the tribunal as provided in subsection (4).

(7) For the avoidance of doubt it is hereby declared that where the declaration of a state of public emergency is revoked or otherwise ceases to be in force, any person who is in detention or in custody by virtue of or under an Act of the National Assembly to which *section 35* refers, other than a person sentenced to imprisonment by a court for an offence against such a law for a term which has not then expired, shall be released immediately without further order.

37. Enforcement of protective provisions

(1) If any person alleges that any of the provisions of *sections 18 to 33* or *section 36(5)* of this Chapter has been, is being, or is likely to be contravened in relation to himself or herself by any person he or she may apply to the High Court for redress.

(2) An application may be made under this section in the case of a person who is detained by some other person acting on the detained person's behalf.

(3) An application under this section shall be without prejudice to any other action with respect to the same matter which is lawfully available.

(4) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of the said *sections 18 to 33* or *section 36(5)*, that court may, and shall if any party so requests, refer the question to the High Court, unless, in the opinion of the subordinate court, the raising of the question is merely frivolous or vexatious.

(5) The High Court shall—

(a) hear and determine any application made by any person pursuant to subsection (1) or (2);

(b) determine any question arising in the case of any person which is referred to it in pursuance of subsection (4);

and may, in addition to the powers conferred on it by *section 5* (which relates to defence of the Constitution) make such order, issue such writ, and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions of the said *sections 18 to 33* or *section 36(5)* to the protection of which the person concerned is entitled:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(6) The High Court shall consider every application and reference referred to it in pursuance of this section and, having heard arguments by or on behalf of the parties, shall pronounce its decision on the question in open court as soon as may be, and in the case of a reference under subsection (4), not later than thirty days after the conclusion of the final addresses of the parties.

(7) An Act of the National Assembly may confer on the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

(8) The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding other rights which may be prescribed by Act of the National Assembly as inherent in a democracy and intended to secure the freedom and dignity of man.

38. Interpretation of Chapter IV

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

“a period of public emergency” means any period during which The Gambia is at war or a declaration is in force under *section 34*;

“contravention” in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law in The Gambia other than a district tribunal or, save as provided in subsection (2), a court constituted under service law;

“defence force” means any naval, military or air force of The Gambia;

“member” in relation to a defence force, includes persons who, under the law regulating the discipline of that force, are subject to that discipline;

“owner” includes any person deprived of any right or interest pursuant to *section 22*;

“service law” means the law regarding the discipline of a defence force or of the Police Force or the Prison Service or any disciplined volunteer force.

(2) In relation to an offence against service law, a reference to “court”—

(a) in *sections 18 to 20, subsections (2), (3), (4), (6) (but not the proviso thereto) of section 24, subsection (3) of section 25, subsection (8) of section 33 and subsection (2) of section 37* includes a reference to a court constituted by or under service law;

(b) in *sections 19 and 20 and subsection (8) of section 33*, includes an officer of a defence force and of the Police Force.

(3) References in *sections 18, 19 and 22* to a “criminal offence” shall be construed as including references to an offence against service law and such references in *subsections (4) to (9) of section 24* shall, in relation to proceedings before a court constituted by or under service law, be similarly construed.

(4) 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.

CHAPTER V REPRESENTATION OF THE PEOPLE

PART 1 THE FRANCHISE

39. The right to vote and registered

(1) Every citizen of The Gambia being of eighteen years or older and of sound mind shall have the be right to vote for the purpose of elections of a President and members of the National Assembly, and shall be entitled to be registered as a voter in a National Assembly constituency for that purpose.

(2) Every citizen of The Gambia who is a registered voter shall be entitled to vote in a referendum held in accordance with this Constitution or any other law.

(3) Every citizen of The Gambia being of the age of eighteen years or older and of sound mind shall be entitled, in accordance with the provisions of this Chapter and any Act of the National Assembly providing for such elections, to vote in elections for local government authorities and traditional rulers in the area in which he or she is ordinarily resident.

40. Secret ballot

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

41. Electoral laws

Subject to the provisions of this Constitution, an Act of the National Assembly may make provision for giving effect to the provisions of this Chapter and, without prejudice to the generality of the foregoing, may provide for—

- (a) the registration of voters for the purposes of public elections;
- (b) voting at, and the conduct of, public elections and referenda;
- (c) the duties of public officers in connection with the registration of voters and the conduct of public elections and referenda;
- (d) equal access to public facilities and the media by candidates at public elections.

PART 2 ***THE INDEPENDENT ELECTORAL COMMISSION***

42. The Commission

(1) There shall be an Independent Electoral Commission for The Gambia which shall be part of the public service.

(2) The members of the Commission shall be a Chairman and four other members.

(3) The members of the Commission shall be appointed by the President in consultation with the Judicial Service Commission and the Public Service Commission.

(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:

Provided that three of the first members (who shall be chosen by lot) shall be appointed for lesser periods than seven years in order to provide continuity within the Commission.

(5) A person shall not be qualified for appointment as a member of the Commission if—

- (a) he or she is a member of the National Assembly;

- (b) he or she is, or has at any time during the two years immediately preceding his or her appointment, been nominated as a candidate for election as a member of the National Assembly;
 - (c) he or she is, or has at any time during such period of two years been, the holder of any office in any organization 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 if he or she has actively identified himself or herself with any such organization;
 - (d) if he or she holds an office in the public service other than as a member of the Commission or the staff of the Commission;
 - (e) if he or she has been convicted in any country of an offence involving dishonesty or moral turpitude.
- (6) The President may remove a member of the Commission from office—
- (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) if any circumstance arises which would have disqualified him or her from appointment to the Commission; or
 - (c) for misconduct, but, before removing a member, the President shall appoint a tribunal of three judges of a superior court to enquire into the matter and report on the facts. A member of the Commission shall be entitled to appear and be legally represented before the tribunal.
- (7) Three members of the Commission including the Chairman shall form a quorum:
- Provided that any decision of the Commission shall require the concurrence of a majority of the members.
- (8) The Commission may by regulation or otherwise regulate its own procedure.
- (9) The Commission shall make an annual report on its activities to the National Assembly.
- (10) Before assuming the functions of his or her office, a member of the Commission shall take and subscribe the prescribed oaths.

43. Functions of the Commission

- (1) Subject to the provisions of this Constitution the Independent Electoral Commission shall be responsible for
- (a) the conduct and supervision of the registration of voters for all public elections and the conduct and supervision of all public elections and referenda;
 - (b) the conduct of the election of a Speaker and a Deputy Speaker;
 - (c) the registration of political parties;
 - (d) ensuring that the dates, times and places of public elections and referenda are determined in accordance with law and that they are publicised and elections held accordingly;

(e) ensuring that candidates in elections make a full declaration of their assets at the time of nomination.

(2) The Commission shall announce the results of all elections and referenda for which it is responsible.

(3) In the exercise of its functions under this Constitution or any other law, the Commission shall not be subject to the direction or control of any other person or authority.

44. Financial

The Independent Electoral Commission shall submit its annual estimates of expenditure to the President for presentation to the National Assembly in accordance with this Constitution. 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.

45. Electoral Laws

An Act of the National Assembly may make further provisions for the purposes of this part.

PART 3 PRESIDENTIAL ELECTIONS

46. Election of a President

There shall be an election for the office of President in the three months before the expiration of the term of the incumbent President. The dates for the nomination of candidates and for holding the election shall be determined by the Independent Electoral Commission.

47. Nomination of Candidates

A candidate for election to the office of President shall, on or before nomination day—

(a) satisfy the Commission that his or her nomination is supported by not less than five thousand registered voters consisting of not less than two hundred from each administrative area, as signified by their signatures or otherwise;

(b) deposit with the Commission such sum as may be prescribed by the Elections Decree or any Act of the National Assembly replacing or amending that Decree, which shall be returned if he or she receives not less than forty percent of the valid votes cast at the election.

48. The Poll on an election

(1) Subject to subsection (4), a poll shall be taken on the day, or days, appointed for the election of a President notwithstanding that there may be only one candidate nominated for election.

(2) Where a nominated candidate dies between nomination day and polling day, the Independent Electoral Commission shall appoint a new nomination day and, if necessary, a new day or days for the election.

(3) No person shall be elected as President on a first ballot unless the votes cast in his or her favour at the election are more than fifty per cent of the total number of votes validly cast at that election.

(4) If, on a first ballot, there was only one candidate and he or she fails to obtain the percentage of the votes validly cast as specified in subsection (3), new nomination and election days shall be appointed. If, at the close of nominations for a second ballot,

(a) there is only one candidate nominated, he or she shall be declared to have been duly elected President;

(b) there are more than one candidate nominated, a second ballot shall be held.

(5) If, on the first ballot, there were two or more candidates, a second ballot shall be held within fourteen days between the two candidates who received the highest number of votes validly cast at the first ballot. In the event that more than two candidates received equally the highest number or second highest number of votes, all of them shall participate in the second ballot.

(6) On a second ballot, the candidate who receives the highest number of votes shall be declared to have been duly elected President.

49. Challenge to election of a President

Any registered political party which has participated in the Presidential election or an independent candidate who has participated in such an election 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 result of the election.

PART 4 ***NATIONAL ASSEMBLY CONSTITUENCIES***

50. Delimitation of constituencies

(1) The Independent Electoral Commission shall demarcate the constituencies for the purpose of elections to the National Assembly. The number of constituencies shall correspond to the number of elected members of the National Assembly.

(2) All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practical, but the Commission may depart from this principle to such extent as it considers expedient in order to take account of the following factors, namely—

(a) the density of population and, in particular, the need to ensure the adequate representation of sparsely populated areas;

(b) the means of communication;

(c) geographical features; and

(d) the boundaries of existing administrative areas.

(3) The Commission shall review the constituencies and their respective boundaries—

(a) whenever a census has been taken of the population;

(b) whenever an Act of the National Assembly alters the numbers of members who are to represent constituencies;

(c) not less than eight years or more than ten years after the boundaries of the constituencies were last reviewed.

(4) Where as a result of its review, the Commission considers it necessary to revise the constituencies or alter their respective boundaries, it shall make an order to that effect; and if the order is approved by resolution of the National Assembly, it shall be immediately published in the Gazette and shall come into force on the date the Commission gives notice of nomination day for the next general election.

PART 5 NATIONAL ASSEMBLY ELECTIONS

51. National Assembly elections

(1) The Independent Electoral Commission shall, by the same Proclamation, appoint the nomination day and the election day for an election and shall give not less than thirty days notice of nomination day.

(2) Except where the vacancy occurs within nine months of the anticipated dissolution of the National Assembly, the Commission shall appoint an election day for a by-election for a member to represent a single member constituency not later than ninety days after the seat became vacant.

52. Nomination of candidates

A candidate for an election shall on or before nomination day—

(a) deliver to the Independent Electoral Commission:

(i) a nomination paper signed by himself or herself;

(ii) a sworn declaration of his or her assets and a certificate that he or she has paid all taxes due from him or her;

(b) satisfy the Commission that his or her nomination is supported by not less than three hundred voters registered in the constituency, as signified by their signatures or otherwise;

(c) deposit with the Commission such sum as may be prescribed by an Act of the National Assembly which shall be returned if he or she receives not less than twenty per cent of the valid votes cast in that constituency at that election.

53. Voting at National Assembly Elections

A registered voter shall only cast one vote in the constituency in which he or she is registered

54. Constituency voting

In elections for a member to represent a constituency, the candidate who obtains the greatest number of valid votes cast shall be the elected member of the National Assembly or that constituency at that election.

55. Questions as to membership

An Act of the National Assembly may make provision for the registered political parties and candidates to apply to the Supreme Court to determine any question whether any person was validly elected to the National Assembly or has vacated his or her seat in the National Assembly, and such provision may prescribe the circumstances, conditions and manner in which such applications may be made.

PART 6
LOCAL GOVERNMENT AND TRADITIONAL RULERS ELECTIONS

56. Local government boundaries

In determining the boundaries of any local government authority, the Independent Electoral Commission shall disregard any consideration of the ethnic origin of the inhabitants.

57. Elections to local government authorities

(1) The Independent Electoral Commission shall be responsible for superintending the registration of voters for elections to local government authorities and for the conduct of such elections in accordance with the provisions of an Act of the National Assembly for such purposes.

(2) The Act of the National Assembly shall provide that a candidate for local government elections shall—

(a) make a declaration of his or her assets to the Commission; and

(b) be required to produce a certificate, certifying that he or she has paid all taxes due from him or her.

58. Elections for district Chiefs

(1) Subject to the provisions of this Constitution and any Act of the National Assembly, the Independent Electoral Commission shall be responsible for the conduct and supervision of elections to the office of District Chief.

(2) All persons who are ordinarily resident within the chieftaincy district in which an election is to be held for the office of District Chief and who are registered as voters for National Assembly elections within the constituency in which such chieftaincy district or any part of it is situated shall be entitled to vote in an election of the District Chief.

(3) The election of the District Chief shall be by secret ballot.

(4) A candidate for election as District Chief shall be nominated by not less than one hundred and fifty registered voters.

(5) An election to fill a vacancy in the office of District Chief shall be held within one hundred and twenty days of the date the vacancy occurred.

59. Elections for an Alkalo

(1) Where the office of Alkalo is to be filled by election, the election shall be conducted by or under the supervision of the Independent Electoral Commission in accordance with this Constitution and any Act of the National Assembly for the regulation of such election.

(2) All persons who are ordinarily resident within the village in which an election is to be held for the office of Alkalo and who are registered as voters for National Assembly elections within the constituency in which such village or any part of it is situated shall be entitled to vote in an election of an Alkalo.

(3) The election of an Alkalo shall be by secret ballot.

(4) A candidate for election as an Alkalo shall require to be nominated in such manner as the Commission may prescribe.

PART 7
POLITICAL PARTIES

60. Political parties

(1) Subject to the provisions of this section, political parties may be established to participate in the shaping of the political will of the people, to disseminate information of political ideas and on political, economic and social programmes of a national character, and to sponsor candidates for public elections.

(2) Subject to the provisions of this section, an Act of the National Assembly may make provision for the registration and cancelling of registration by the Independent Electoral Commission, and the functioning and the operation, of political parties, including the prescription of penalties for the failure to register by associations which carry out the functions of political parties or the carrying out of such functions by associations which have been refused registration or the registration of which has been cancelled.

(3) The number of political parties shall not be limited by law and every citizen of The Gambia shall have the right freely to chose whether or not he or she will become a member of a political party and which party he or she will support.

(4) No association shall be registered, or remain registered, as a political party if—

- (a) it is formed or organized on an ethnic, sectional, religious or regional basis;
- (b) its internal organization does not conform to democratic principles; or
- (c) its purpose is to subvert this Constitution or the rule of law.

(5) Every association seeking to be registered as a political party shall submit to the Independent Electoral Commission—

- (a) a copy of the association's constitution;
- (b) the association's name and full address and the names and addresses of all its officers;
- (c) the full address of its secretariat; and
- (d) the party's emblem, colour, motto or symbol.

(6) A registered political party shall be required—

- (a) at the time of its application for registration, to deliver to the Commission a written commitment to encourage the spirit of tolerance and multiculturalism amongst the inhabitants of The Gambia and to provide its members with opportunities to benefit from any government programme of civic education;
- (b) as occasion may require, to declare to the Commission and the public its revenues and assets and the source of its revenue and assets;
- (c) to publish annually its audited accounts and to lodge a copy with the Commission.

(7) A registered political party shall not receive any contribution or donation to its expenses or otherwise from any person who is not a citizen of The Gambia, or from any corporate or unincorporated body.

(8) Any registered political party that intends to contest any election shall deliver to the Commission on or before nomination day a copy of its manifesto containing, among other matters, a clear explanation of the party's programme for national development.

CHAPTER VI THE EXECUTIVE

PART 1 THE PRESIDENT

61. Office of President

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

(2) The President shall uphold and defend this Constitution as the supreme law of The Gambia.

62. Qualifications for election as President

(1) A person shall be qualified for election as President if—

- (a) he or she is a citizen of The Gambia by birth or descent;
- (b) he or she has attained the minimum age of thirty years but not more than sixty-five years;
- (c) he or she has been ordinarily resident in The Gambia for at least the five years immediately preceding the election;
- (d) he or she has completed senior secondary school education; and
- (e) he or she is qualified to be elected as a member of the National Assembly.

(2) A person who holds the citizenship or nationality of a country other than The Gambia, shall not be qualified for election as President.

(3) A person who, while holding public office in The Gambia has been—

- (a) compulsorily retired, terminated or dismissed from such office; or
- (b) has been found guilty of any criminal offence by any court or tribunal established by law; or
- (c) has been found liable for misconduct, negligence, corruption or improper behaviour by any commission or committee of inquiry established by law shall not be qualified for election as President.

63. Tenure of office of President

(1) The term of office of an elected President shall, subject to subsection (3) and (6), be for a term of five years; and the person elected President shall before assuming office take the prescribed oaths.

(2) The person elected President shall assume office on the day following his election, and in any case where the candidature of a person contesting the election is unopposed, such candidate shall be declared unopposed and elected to the office of the President on the day following the making of such declaration.

(3) A person elected as President may at any time during his term of office be removed from office if, a no confidence motion is passed in the National Assembly supported by two thirds of the members of the National Assembly.

(4) Where a no confidence motion is passed in accordance with subsection (3), the Speaker shall request *the Independent Electoral Commission* to call for a referendum within thirty days of the passing of such motion to endorse or reject the decision of the National Assembly; and where such decision is endorsed the President shall vacate the office.

(5) The procedure for the conduct of such referendum shall be prescribed by an Act of the National Assembly.

(6) Where the life of the National Assembly is extended for any period in accordance with *section 99(2)*, the term of office of the President shall be extended for the same period.

64. Temporary exercise of President's functions

Whenever the Speaker has requested the Chief Justice to appoint a Medical Board in accordance with *section 66*, to enquire into the alleged mental or physical incapacity of the President to discharge the functions of his or her office, those functions shall be performed by the Vice-President or, if he or she is for any reason unable to perform those functions, by the Speaker, until the Medical Board has submitted its report:

Provided that the Vice-President or the Speaker shall not take or subscribe any oath for the due execution of the office of President.

65. Vacancy in the office of President

(1) The office of President shall become vacant during the term of a presidency—

(a) on the death or resignation of the President;

(b) on the President ceasing to hold office under *section 63, 66* or *section 67*.

(2) Whenever the office of President becomes vacant in the circumstance set out in subsection (1), the Vice-President, or if there is no Vice-President in office at the time, the Speaker shall assume the office of President for the residue of the term of the former President.

(3) Before assuming office under this section, the Vice-President or, as the case may be, the Speaker shall take the prescribed oaths for the office of President.

(4) On assuming the office of President, the Speaker shall vacate his or her office as Speaker and his or her seat in the National Assembly.

66. Mental or physical incapacity

(1) Where the Speaker receives a notice in writing signed by not less than one half of all the members of the National Assembly alleging that the President is, by reason of infirmity of mind or body, incapable of discharging the functions of his office, and giving particulars of the alleged incapacity, the Speaker shall request the Chief Justice to constitute, on the recommendation of the head of the medical services of The Gambia, a Medical Board comprising at least five independent medical practitioners of appropriate standing.

(2) The Board shall enquire into the matter and make a report to the Chief Justice stating the opinion of the Board whether or not the President is, by reason of infirmity of mind or body, incapable of discharging the functions of the office of President. The President, and if he or she so wishes, his or her own medical adviser may appear, and shall have the right to be heard, before the Board.

(3) Where the Board reports that the President is incapable of discharging the functions of his or her office by reason of infirmity of mind or body, the Chief Justice shall submit the report to the Speaker, who shall, if the National Assembly is not sitting, summon the National Assembly to meet within seven days.

(4) The members of the National Assembly shall deliberate on the report and vote on it and the President shall only be removed where two thirds of the members present and voting, vote for his removal.

(5) The report of the Board shall be final and conclusive and shall not be enquired into by any court.

67. Misconduct by the President

(1) The President may be removed from office in accordance with this section on any of the following grounds—

(a) abuse of office, wilful violation of the oath of allegiance or the President's oath of office, or wilful violation of any provision of this Constitution, or

(b) misconduct in that—

(i) he or she has conducted himself in a manner which brings or is likely to bring the office of President into contempt or disrepute; or

(ii) he or she has dishonestly done any act which is prejudicial or inimical to the economy of The Gambia or dishonestly omitted to act with similar consequences.

(2) Where the Speaker receives a notice in writing signed by not less than one half of all the members of the National Assembly of a motion for the removal of the President on any of the grounds set out in subsection (1), specifying particulars of the allegations (with any necessary documentation), and requesting that a tribunal be appointed to investigate the allegations, the Speaker shall—

(a) inform the President of the notice;

(b) request the Chief Justice to appoint a tribunal consisting of a Justice of the Supreme Court, as Chairman, and not less than four other persons selected by the Chief Justice, at least two of whom shall be persons who hold or have held high judicial office.

(3) The tribunal shall investigate the matter and shall report to the National Assembly through the Speaker whether or not it finds the allegations specified in the motion to have been substantiated. The President shall have the right to appear and be legally represented before the tribunal.

(4) If the tribunal reports to the National Assembly that it finds that the particulars of any allegation against the President contained in the motion have not been substantiated, no further proceedings shall be taken under this section in respect of that allegation.

(5) Where the tribunal reports to the National Assembly that it finds that the particulars of any such allegation have been substantiated, the National Assembly may, on a motion supported by the votes of not less than two thirds of all the members, resolve that the President has been guilty of such abuse of office, violation of oath, violation of the Constitution, or misconduct or misbehaviour as to render him or

her unfit to continue to hold the office of President; and where the National Assembly so resolves, the President shall immediately cease to hold office.

68. Salary and allowances

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

(2) The President shall be entitled to such pension and retirement benefits as may be prescribed by an Act of the National Assembly and such pension and other benefits shall not be altered to his or her disadvantage after he or she has relinquished office:

Provided that no such pension or other retirement benefits shall be granted to a President who ceases to hold office in accordance with *section 67*.

(3) The salary and allowances, and pension and retirement benefits, as prescribed by an Act of the National Assembly, shall be exempted from taxation, but the President shall be subject to taxation on all other chargeable income.

(4) The President shall not—

(a) while he or she continues in office as President, hold any other office of profit or emolument whether public or private, occupy any other position carrying the right to remuneration for the rendering of services, or directly or indirectly carry on any trade, business or other undertaking;

Provided that the President may undertake and carry on any agricultural business including farming, horticulture, livestock rearing and artisanal fishing;

(b) undertake any activity inconsistent with his or her official position or expose himself or herself to any situation which carries with it the risk of a conflict developing between his or her official concerns and his or her private interests;

(c) use his or her position as such or use information entrusted to or received by him or her in an official position directly or indirectly to enrich himself or herself or any other person.

(5) Where the President was engaged in any trade, business or other undertaking before assuming the office of President, he or she shall, if he or she wishes to continue such trade, business or other undertaking, do so under a trusteeship.

69. Immunity from civil and criminal proceedings

(1) Except as provided in subsection (2), no civil or criminal proceedings shall be instituted or continued against any person while holding or performing the functions of the office of President in respect of anything done or omitted to be done by him or her whether in an official or a private capacity.

(2) Nothing in subsection (1) applies to an action for a declaration under *section 5* (enforcement of the Constitution), and any proceedings under that section against the President or a person performing the functions of that office shall be brought against him or her by his or her official title or style, and he or she shall appear, and be represented by, the Attorney-General.

(3) After a President has vacated the office of President—

(a) no court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President;

(b) a criminal court shall only have jurisdiction to entertain proceedings against him or her in respect of acts or omissions alleged to have been perpetrated by him or her while holding office as President if the National Assembly has resolved on a motion supported by not less than two-thirds of all the members that such proceedings are justified in the public interest.

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

PART 2
THE VICE-PRESIDENT, SECRETARIES OF
STATE AND THE CABINET

70. The Vice-President

(1) There shall be a Vice-President of The Gambia who shall be the principal assistant of the President in the discharge of his or her executive functions and shall exercise such other functions as may be conferred on him or her by this Constitution or assigned to him or her by the President.

(2) A person shall be qualified to be appointed as Vice-President if he or she has the qualifications required for the election of the President under Section 62. Provided that the Vice President shall not be a member of the National Assembly.

(3) The Vice-President shall be appointed by the President.

(4) The provisions of *sections 66 and 67* (which relate to removal for incapacity or misconduct) shall apply with the necessary variations to the office of Vice-President as they apply to the office of President.

(5) The office of Vice-President shall become vacant:

- (a) on the termination of his appointment by the President;
- (b) on the Vice-President assuming the office of President for the unexpired term of his predecessor;
- (c) on the Vice-President's death or resignation;
- (d) on his or her ceasing to hold office under the provisions of *section 66 or 67*.

(6) Whenever there is a vacancy in the office of Vice-President in the circumstances mentioned in paragraph (b), (c) or (d) of subsection (5), the President shall, appoint as Vice-President a person qualified to be appointed to that office.

(7) A person appointed as Vice-President shall, before assuming the functions of his or her office, take and subscribe to the prescribed oaths.

(8) Without prejudice to the right to revoke an appointment for any cause, the President shall revoke the appointment of the Vice-President if the National Assembly adopts a vote of censure against the Vice-President under Section 75.

71. Secretaries of State

(1) Unless an Act of the National Assembly otherwise provides, there shall not be more than fifteen Secretaries of State, including the Attorney-General.

(2) A person shall not be qualified to be appointed, or hold the office of a Secretary of State if, he or she is a member of the National Assembly or if he holds the citizenship or nationality of any country other than The Gambia. In addition, a person shall not be qualified to be appointed Attorney General unless he or she is a legal practitioner of at least five years standing at the Gambia bar.

(3) Secretaries of State shall be appointed by the President and shall, before assuming the functions of their office, take and subscribe the prescribed oaths.

(4) The office of a Secretary of State shall become vacant—

- (a) on the assumption by a person of the office of President;
- (b) on his or her appointment being revoked by the President;
- (c) on his or her death or resignation.

(5) Without prejudice to the right to revoke an appointment for any cause, the President shall revoke the appointment of a Secretary of State if the National Assembly adopts a vote of censure against the Secretary of State.

72. Functions and incidents of office

(1) The Vice-President and Secretaries of State shall be responsible for such departments of state or other business of the Government as the President may assign to them. In making such assignments, the President shall have regard to the desirability of ensuring that such responsibilities are entrusted to competent persons with relevant qualifications or experience.

(2) The Attorney General shall be the principal legal adviser to the Government and shall have the right of audience in all courts in The Gambia.

(3) The Vice-President and Secretaries of State shall be entitled to such remuneration, allowances and other incidents of office as may be prescribed by an Act of the National Assembly.

(4) The Vice-President and Secretaries of State shall not—

- (a) while they continue in office, hold any other office of profit or emolument whether public or private, occupy any other position carrying the right to remuneration for the rendering of services, or directly or indirectly carry on any trade, business or other undertaking;

Provided that the Vice-President and the Secretaries of State may undertake and carry on agricultural business including farming, horticulture, livestock rearing and artisanal fishing;

- (b) undertake any activity inconsistent with their official position or expose themselves to any situation which carries with it the risk of a conflict developing between their official interests and their private interests;

- (c) use their position as such or use information entrusted to or received by them in their official position directly or indirectly to enrich themselves or any other person.

(5) Where the Vice-President or Secretaries of State were engaged in any trade, business or other undertaking before assuming their offices, they shall, if they wish to continue such trade, business or other undertaking, do so under a trusteeship.

73. (1) There shall be a Cabinet which shall consist of the President, the Vice-President and the Secretaries of State.

(2) Cabinet shall regulate the procedure of its meetings.

(3) The Cabinet shall be responsible for advising the President with respect to the policies of the Government and shall have such other functions as may be conferred by any other law.

74. Responsibility of Cabinet and Secretaries of State

The Vice-President and Secretaries of State shall be collectively responsible to the National Assembly for any advice given to the President in Cabinet, and the Vice-President and each Secretary of State shall be accountable to the President and the National Assembly for the administration of the departments and other business of Government committed to his or her charge.

75. Vote of censure

(1) The National Assembly may, by resolution supported by the votes of two-thirds of all the members, pass a vote of censure against a Secretary of State or Vice President on the grounds of—

- (a) his or her inability, arising from any cause, to perform the functions of his or her office;
- (b) abuse of office or violation of any provision of this Constitution;
- (c) his or her misconduct in office.

(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 grounds on which they are dissatisfied with the conduct or performance of the Secretary of State or Vice President.

(3) The President shall cause a copy of the petition to be given to the Secretary of State or Vice President immediately he or she receives it.

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

(5) The Secretary of State 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;
- (b) dishonestly done any act which is prejudicial or inimical to the economy of The Gambia or dishonestly omitted to act with similar consequences.

PART 3 EXECUTIVE POWERS

76. The Executive power

(1) The executive power of The Gambia is vested in the President and, subject to this Constitution, shall be exercised by him or her either directly or through the Vice-President, Secretaries of State or officers responsible to him or her.

(2) In addition to the powers conferred on him or her by this Constitution, the President shall have such powers and responsibilities as may be conferred on him or her by or under an Act of the National Assembly.

(3) The President shall be responsible for making due provision for the execution of Acts of the National Assembly.

77. The Executive power and The National assembly

(1) The President shall at least once in each year attend a sitting of the National Assembly and address a session on the condition of The Gambia, the policies of the Government and the administration of the State.

(2) The National Assembly may request the President to attend a sitting of the National Assembly for the discussion of a matter of national importance.

(3) The Vice-President shall answer in the National Assembly for matters affecting the President, and the President shall be entitled to send a message to the National Assembly to be read on his or her behalf by the Vice-President.

(4) The Vice-President or a Secretary of State shall, when requested by the National Assembly, report to the National Assembly on any matter concerning a department or other business of Government committed to his or her charge, and shall be entitled to attend and speak in the National Assembly whenever any Bill or other matter concerning such department or business is being debated.

78. National Security Council

(1) There shall be a National Security Council which shall consist of—

(a) the President;

(b) the Vice-President;

(c) the Secretaries of State responsible for defence and internal affairs;

(d) the Chief of Defence Staff and two other members of the Armed Forces appointed by the President;

(e) the Inspector General of Police;

(f) the Director-General of the National Intelligence Agency; and

(g) the intelligence adviser to the President.

(2) The National Security Council shall be responsible for advising the President on all matters relating to the security of The Gambia and the integration of domestic and foreign policies relating to its security; and, under the direction of the President, shall take appropriate measures to safeguard the internal and

external security of The Gambia and to provide for the co-operation of the departments and agencies of the Government in that regard.

79. Foreign Affairs

(1) The President shall be responsible for—

- (a) the conduct of relations with other states and international organizations;
- (b) the reception of envoys accredited to The Gambia and the appointment of the principal representatives of The Gambia abroad;
- (c) the negotiation and, subject to ratification by the National Assembly, the conclusion of treaties and other international agreements;
- (d) subject to the prior approval of the National Assembly, the declaration of war and the making of peace.

(2) The Gambia shall not—

- (a) enter into any engagement with any other country which causes it to lose its sovereignty without the matter first being put to a referendum and passed by such majority as may be prescribed by an Act of the National Assembly;
- (b) become a member of any international organization unless the National Assembly is satisfied that it is in the interest of The Gambia and that membership does not derogate from its sovereignty.

(3) The National Assembly may, by resolution, establish procedures for the ratification of treaties and other international agreements.

80. Constitution of Public Offices

Subject to this Constitution and any Act of the National Assembly, the President may constitute any public office for The Gambia and make appointments to such office and terminate such appointments.

81. Administration of Departments of State

(1) Where the Vice-President or a Secretary of State has been charged with responsibility for any department of the Government, he or she shall exercise general direction and control over that department; and subject to such direction and control, the department shall be under the supervision of a permanent secretary whose office shall be an office in the public service.

(2) The principle advisers on professional and technical matters in all the departments of the Government shall be professionally qualified persons.

82. Prerogative of Mercy

(1) The President may, after consulting the Committee established by subsection (2)—

- (a) grant to any person convicted of any offence a pardon either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

(c) substitute a less severe form of punishment for any punishment imposed on any person for any offence;

(d) remit the whole or any part of any punishment imposed on any person for such an offence or any penalty otherwise due to the Republic on account of any offence.

(2) There shall be a Committee on the exercise of the prerogative of mercy consisting of the Attorney General and three other persons appointed by the President subject to confirmation by the National Assembly.

83. Honours and awards

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

(2) There shall be a Committee to advise the President on the exercise of his or her powers under this section which shall consist of not more than five, and not less than three, persons appointed by the National Assembly.

PART 4 ***PROSECUTIONS***

84. Director of Public Prosecutions

(1) There shall be a Director of Public Prosecutions whose office shall be an office in the public service.

(2) The Director of Public Prosecutions shall be appointed by the President.

(3) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he or she is qualified for appointment as a judge of the High Court.

(4) Subject to the other provisions of this section, a person holding the office of the Director of Public Prosecutions shall vacate his or her office when he or she attains the compulsory retirement age.

(5) A person holding the office of Director of Public Prosecutions may be removed from office only for inability (whether by reason of infirmity of mind or body or any other cause) to perform the functions of his or her office, or for misbehaviour or incompetence.

85. Control of prosecutions

(1) The Director of Public Prosecutions shall have power in any case in which he or she considers it desirable to do so, and subject to the approval of the Attorney General—

(a) to initiate and undertake criminal proceedings against any person before any court for an offence against the law of The Gambia;

(b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority;

(c) to discontinue at any stage before judgement is delivered any criminal proceedings instituted or undertaken by himself or herself or any other person or authority: provided that the Director of Public

Prosecutions shall not—

(i) take over and continue any private prosecution without the consent of the private prosecutor and the court; or

(ii) discontinue any private prosecution without the consent of the private prosecutor.

(2) For the purpose of this section, any appeal from a determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of such proceedings to any other court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (1) (c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or any case stated at the instance of such a person.

(3) The powers conferred on the Director of Public Prosecutions under this section may be exercised by him or her in person or by persons under his or her direction and control.

(4) In the exercise of his or her functions under this section, the Director of Public Prosecutions shall be subject to the direction or control of the Attorney General.

(5) In this section, “private prosecutions” means a prosecution instituted by any person or authority other than—

(i) the Director of Public Prosecutions or any person acting under his or her direction or control;

(ii) a police officer in the exercise of the functions of his or her office, or

(iii) an officer in the public service in the exercise of the functions of his or her office

86. Private prosecutions

An Act of the National Assembly may make provision for private prosecutions.

CHAPTER VII NATIONAL ASSEMBLY AND LEGISLATION

PART 1 ESTABLISHMENT OF THE NATIONAL ASSEMBLY AND MEMBERS

87. Establishment of National Assembly

There shall be a National Assembly of The Gambia.

88. Members of The National Assembly

(1) Members of the National Assembly shall comprise the following—

(a) thirty-nine members elected from the Chieftaincy Districts, each of which district shall constitute a constituency;

(b) three members elected from the constituencies in Banjul, namely, Banjul North, Banjul South and Banjul Central;

(c) three members elected from the constituencies in the Kanifing Municipality, namely, Serrekunda West, Serrekunda East and Bakau; and

(d) four members nominated by the President.

(2) Before taking his or her seat in the National Assembly, a member shall take the prescribed oaths before the Speaker:

Provided that a member may take part in the election of a Speaker and Deputy Speaker before taking such oaths.

89. Qualifications for membership to the National Assembly

(1) A person shall be qualified for election to the national Assembly if he or she—

(a) is a citizen of The Gambia;

(b) has attained the age of twenty-one years;

(c) has been ordinarily resident in the constituency for a period of at least one year prior to nomination day;

(d) 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;

(e) has made such declaration of his or her assets to the Independent Electoral Commission as is required in accordance with *section 43*.

(2) The provisions of paragraphs (a), (b) and (d) of Subsection (1) shall apply to a nominated candidate who shall also be required to make a declaration of his assets to the Independent Electoral Commission.

90. Disqualifications for membership of the National Assembly

(1) No person shall be qualified for election as a member of The National Assembly if he or she—

(a) holds the citizenship or nationality of a country other than The Gambia;

(b) is adjudged under any law of The Gambia to be of unsound mind;

(c) is under sentence of death imposed on him or her by any court, or is serving, or within five years of his or her nomination for election completed serving, a sentence of imprisonment for a term exceeding six months imposed on him or her by a court or substituted by competent authority for some other sentence imposed on him or her by a court, and has not received a free pardon;

(d) has been found guilty of any abuse of office, corruption or any offence connected with public elections by a court;

(e) has been found by the report of a commission or committee of inquiry (the proceedings of which have been held and published in accordance with the relevant law) 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 wilfully acted in a manner prejudicial to the interests of the State, and the findings have not been set aside on appeal or judicial review;

(f) within the three years preceding nomination day, holds or acts in any office prescribed by an Act of the National Assembly the functions of which involve responsibility for, or in connection with the conduct of elections to the National Assembly or the compilation of any register of voters for the purpose of such an election;

(g) unless granted leave of absence in accordance with *section 170*, holds a public office or an office in the public service;

(h) holds or acts in any office or appointment that may be prescribed by an Act of the National Assembly;

(i) is a member of a disciplined force;

(j) is an elected member of a local government authority;

(k) is a District Chief or Alkalo;

(l) is adjudged or otherwise declared a bankrupt under any law of The Gambia and has not been discharged.

(2) For the purposes of this section—

(a) a sentence of imprisonment imposed by a court outside The Gambia for an offence in respect of an act or omission which, if committed within The Gambia would constitute a comparable offence, shall be deemed to be a sentence of imprisonment within the meaning of paragraph (c) of subsection (1);

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine;

(c) the period of disqualification under paragraph (d) or (e) of subsection (1) shall not exceed five years after—

(i) the completion of any sentence of imprisonment passed for such offence; or

(ii) the expiry of any period during which the person concerned has been debarred from holding public office.

(3) This section shall apply to nominated members with such modifications relating to time limits for elections.

91. Tenure of seats of members of the National Assembly

(1) A member of the National Assembly shall vacate his or of her seat in the National Assembly—

(a) on the dissolution of the National Assembly;

(b) subject to subsection (2), if any circumstances arise that, if he or she were not a member, would cause him or her to be disqualified for election as a member or nomination as a member;

(c) if he or she resigns his or her office as a member;

(d) if he or she ceases to be a member of the political party of which he or she was a member at the time of his or her election Provided that nothing in this paragraph shall apply on a merger of

political parties at the national level where such merger is authorised by the constitution of the parties concerned;

(e) if, having been elected a member as an independent candidate, he or she joins a political party;

(f) if, being a member representing a single seat constituency, he or she is recalled by the electorate of that constituency in accordance with an Act of the National Assembly to give effect to *section 92*;

(g) if, 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 National Assembly is in session and continues to meet;

(h) if he or she is found in contempt of the National Assembly and is expelled on a resolution supported by not less than three quarters of all the members of the National Assembly.

(2) An Act of the National Assembly may, in order to permit any member who—

(a) has been sentenced to death;

(b) has been convicted or found guilty of any offence or subject to any finding to which subsection (1) of *section 90* refers,

(c) adjudged to be of unsound mind; or

(d) adjudged or otherwise declared to be bankrupt, to appeal against any such decision in accordance with any law, provided that, subject to such conditions as may be specified, the decision shall not have effect for the purposes of this section until such time as may be so prescribed.

(3) The Clerk of the National Assembly shall immediately inform the Independent Electoral Commission of any vacancy among the members of the National Assembly.

92. Recall of Members

An Act of National Assembly may make provision for the recall of an elected member of the National Assembly.

Such an Act shall—

(a) require that a petition for recall shall be supported by at least one-third of the registered voters in the constituency; and

(b) prescribe the grounds for recall and the powers of, and procedures to be adopted by, the Independent Electoral Commission on receipt of such a petition.

93. The Speaker and the Deputy Speaker

(1) The Speaker of the National Assembly and the Deputy Speaker shall be elected by the members of the Assembly from among the nominated members.

(2) The Chief Justice shall preside at the election of a Speaker.

(3) Unless he or she sooner dies or resigns, the Speaker and the Deputy Speaker shall vacate their respective offices—

- (a) if he or she ceases to be a member of the National Assembly;
- (b) if he or she 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 National Assembly.

(4) Persons elected to the office of Speaker or Deputy Speaker shall, before assuming the duties of their respective offices take the prescribed oaths.

(5) No business shall be transacted in the National Assembly other than the election of the Speaker or Deputy Speaker when either of those offices is vacant.

94. Clerk of the National Assembly

(1) There shall be a Clerk of the National Assembly who shall be appointed by the National Assembly.

(2) The office of the Clerk of the National Assembly and the offices of members of his or her staff shall be offices in the public service.

95. Remuneration and allowances

The Speaker, the Deputy Speaker and the 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 2 THE MEETING AND DISSOLUTION OF THE NATIONAL ASSEMBLY

96. General election

There shall be a general election of all the members of the National Assembly which shall be held three months after the date of election to *the office* of the President.

97. Sessions of the National Assembly

(1) The first session of the National Assembly after a general election shall be held in such place in The Gambia as the President may, by Proclamation, appoint.

(2) The President may request the Speaker to summon a session of the National Assembly in the event of a declaration of a public emergency under *section 34*.

(3) Subject to subsections (1) and (2), the National Assembly shall determine the times of its sessions:

Provided that there shall be a session of the National Assembly at least once in every year.

98. Sittings of National Assembly

(1) Subject to *section 97*, sittings of the the National Assembly shall be at such times as the National Assembly shall appoint:

Provided that—

- (a) the Speaker shall summon a sitting of the National Assembly—

(i) when requested to do so by the President;

(ii) within seven days of a request for a meeting of the National Assembly by not less than one quarter of all the members of the National Assembly;

(b) The National Assembly shall sit for a period of not less than one hundred and fifty days a year.

(2) Unless the National Assembly otherwise directs for good cause, the sittings of the National Assembly shall be open to the public.

99. Term of the National Assembly

(1) Subject to the other provisions of this section, the National Assembly shall stand dissolved on the day immediately preceding the day appointed in accordance with *section 97* for the first session of the next following National Assembly.

(2) At any time when The Gambia is at war or a state of 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 for not more than three months at a time, but the life of the National Assembly shall not be extended under this subsection for more than a total period of one year.

PART 3 LEGISLATION AND OTHER POWERS OF THE NATIONAL ASSEMBLY

100. The legislative power

(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 have no power to pass a Bill—

(a) to establish a one party state;

(b) to establish any religion as a state religion;

(c) to alter the decision or judgement of a court in any proceedings to the prejudice of any party to those proceedings, or deprive any person retroactively of vested or acquired rights, but subject thereto, the National Assembly may pass Bills designed to have retroactive effect.

(3) 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 National Assembly reconsider the Bill; and if he or she requests the National Assembly to reconsider the Bill, the President shall state the reasons for the request and any recommendations for amendment of the Bill.

(4) Where the National Assembly has reconsidered a Bill as so requested in accordance with subsection (3) and has resolved by a vote supported by 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.

(5) 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 President and the National Assembly”.

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

(7) No Act of the National Assembly shall come into operation until it has been published in the Gazette, but the Act or some other Act of the National Assembly may provide for the postponement of its coming into force.

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

101. Introduction of bills and motions

(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 (5), shall be introduced into the National Assembly unless 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.

(3) No Bill, other than a Bill referred to in subsection (5), shall be introduced into the National Assembly unless it has been published in the Gazette, and such publication has been made at least fourteen days before the date of its introduction:

Provided that where the President certifies that the enactment of the Bill is required in the public interest as a matter of urgency, the Bill may be introduced notwithstanding it has not been published fourteen days beforehand, but the Speaker shall, on the introduction of the Bill, cause a vote to be taken in the National Assembly without debate on a motion to give consideration to the Bill notwithstanding that the said period of fourteen days has not expired.

(4) Without prejudice to the power of the National Assembly to make any amendment (whether by the increase or reduction of any tax or charges, or the amount of any payment or withdrawal, or otherwise), the National Assembly shall not give consideration to a Bill that in the opinion of the person presiding makes provision for any of the following purposes—

(i) for the imposition of taxation or the alteration of taxation;

(ii) for 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;

(iii) for 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

(iv) for the composition or remission of any debt due to the Government, unless the Bill is introduced into the National Assembly by the President.

(5) When a Bill is introduced into the National Assembly, it may be allocated to an appropriate committee for examination, and a report made thereon to the National Assembly.

102. Additional functions of the National Assembly

In addition to the other powers conferred on the National Assembly this Constitution or any other law the National Assembly have power to—

- (a) receive and review reports on the activities of the Government and such other reports as are required to be made in accordance with this Constitution;
- (b) review and approve proposals for the raising of revenue by the Government;
- (c) examine the accounts and expenditure of the Government and other public bodies funded by public moneys and the reports of the Auditor General thereon;
- (d) include in a Bill a proposal for a referendum on an issue of national concern defined in the Bill;
- (e) advise the President on any matter which lies within his or her responsibility.

PART 4 **PROCEDURE IN THE NATIONAL ASSEMBLY**

103. Presiding in the National Assembly

There shall preside at any sitting of the National Assembly—

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker;
- (c) in the absence of both the Speaker and the Deputy Speaker, such member of the National Assembly as the National Assembly may elect for the purpose.

104. Vacancy and quorum

- (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. If, subsequently thereto, 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.

105. Language in the national Assembly

The business of the National Assembly shall be conducted in the English language or any other language prescribed by an Act of the National Assembly.

106. Voting in the National Assembly

- (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 Speaker 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.

107. Unqualified person sitting or voting

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 shall be 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.

108. Regulation of procedure in National Assembly

(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 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.

109. Committees of National Assembly

(1) The National Assembly shall appoint—

- (a) a Public Appointments Standing Committee;
- (b) a Finance and Public Accounts Standing Committee;
- (c) a Standing Committee of Privileges;
- (d) a Standing Committee on Defence and Security, and such other standing or other committees as it considers necessary for the exercise of its functions.

(2) Committees may be appointed—

- (a) to investigate or inquire into the activities or administration of ministries or departments of the Government, and such investigation or inquiry may extend to making proposals for legislation;
- (b) to investigate any matter of public importance.

(3) For the purpose of effectively performing, its functions, each of the committees 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;
- (c) the issue of a commission or request to examine witnesses abroad.

110. Contempt of National assembly

Any act or omission which obstructs or impedes the National Assembly in the performance of its functions or which obstructs or impedes any member or officer of the National Assembly in the discharge of his or her duties or affronts the dignity of the National Assembly shall be a contempt of the National Assembly in

addition to any liability in respect thereof under the criminal law, the offender shall be liable to reprimand or admonition by the National Assembly, and if the offender is a member of the National Assembly, suspension or expulsion from the National Assembly.

111. The National Assembly Service

(1) There shall be a National Assembly Service to provide services and support for the National Assembly.

The National Assembly Service shall form part of the public service and its members shall be appointed by the National Assembly after consultation with the Public Service Commission.

(2) The National Assembly shall establish an authority to supervise the National Assembly Service. The authority shall consist of—

- (a) the Speaker as Chairman;
- (b) four other members of the National Assembly who shall be appointed by the Speaker acting in accordance with the advice of a committee of the National Assembly;

(c) the Clerk of the National Assembly who shall be secretary of the authority.

(3) The Clerk of the National Assembly shall be the administrative head of the National Assembly Service.

(4) In addition to its other functions, the National Assembly Service shall provide members of the National Assembly with facilities for the drafting of Bills and the obtaining of such reasonable information from the relevant Government department as may be required for that purpose.

PART 5 RESPONSIBILITIES, PRIVILEGES AND IMMUNITIES

112. Responsibilities of members

The responsibilities of the members of the National Assembly shall include the following—

(a) all members shall maintain the dignity of the National Assembly both during the sittings of the National Assembly and in their acts and activities outside the National Assembly;

(b) all members shall regard themselves as servants of the people of The Gambia, desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people, and shall 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.

113. Freedom of speech and debate

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.

114. Privilege of the National Assembly

Without prejudice to the generality of *section 113*, 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 him.

115. Immunity from service of process and arrest

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 he or she is on his or her way to, attending or returning from any proceeding of the National Assembly.

116. Immunity from witness summons

Neither any member of the National Assembly nor the Clerk of the National Assembly shall be compelled while attending the National Assembly to appear as a witness in any court or place outside the National Assembly.

117. Immunity from jury service

Neither any member of the National Assembly nor the Clerk of the National Assembly shall be required to serve on a jury in any court.

118. Immunity for Publication of proceedings

Subject to 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;

(b) a contemporaneous report of the proceedings of the National Assembly; unless it is shown that the publication was effected maliciously or otherwise in want of good faith.

119. Privileges of witnesses

(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 National Assembly shall be entitled, in respect of his 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 National Assembly will be injurious to the public interest or prejudicial to the security of the State, the National Assembly or such committee shall only give consideration to such document in private and under such conditions as will prevent the disclosure of the contents of such document outside the National Assembly or the committee as the case may be, and shall 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 evidence against him or her in any civil or criminal proceedings outside the National Assembly other than proceedings for perjury brought under the criminal law.

CHAPTER VIII THE JUDICATURE

PART 1 THE COURTS OF THE GAMBIA

120. The courts and the judicial power

(1) The Courts of The Gambia are:

(a) the Superior Courts comprising:

- (i) the Supreme Court;
- (ii) the Court of Appeal; and
- (iii) the High Court and the Special Criminal Court;

(b) the Magistrates Court, the Cadi Court, District Tribunals and such lower courts and tribunals as may be established by an Act of the National Assembly.

(2) The judicial power of The Gambia is vested in the courts and shall be exercised by them according to the respective jurisdiction conferred on them by law.

(3) In the exercise of their judicial functions, the courts, the judges and other holders of judicial office shall be independent and shall be subject only to this Constitution and the law, and, save as provided in this Chapter, shall not be subject to the control or direction of any other person or authority.

(4) 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.

121. The Chief Justice

(1) The Chief Justice shall be the head of the Judiciary and, subject to the provisions of this Constitution, shall be responsible for the administration and supervision of the courts.

(2) 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 therein for regulating the practice and procedure of the courts.

122. The Superior Courts

In addition to any other power conferred on the court, each of the superior courts shall—

(a) be a superior court of record and shall have power to commit for contempt to itself and all such powers as are vested in a court of record;

(b) in relation to any matter within its jurisdiction, have power to issue such orders and directions as may be necessary to ensure the enforcement of any judgement, decree or order of the court.

123. Immunity from suit

A judge or other person exercising judicial power shall not be liable to any action or suit for any act or omission by him or her in good faith in the exercise of his or her judicial function.

124. Courts to give timely decisions

(1) It shall be the object of every court to deliver its decision expeditiously and—

(a) in the case of a reference to the Supreme Court as to the interpretation of this Constitution or as to whether or not any person was validly elected to the office of President or was validly elected to, or vacated his or her seat in, the National Assembly, not later than thirty days; or

(b) in any other case, not later than three months, after the conclusion of the evidence, or arguments on appeal, and final addresses. Provided that vacations shall be excluded from any prescribed period.

(2) It shall be the duty of the Chief Justice to require compliance with the provisions of subsection (1).

(3) For the avoidance of doubt, it is hereby declared that the validity of any decision shall not be called in question on the grounds that it was not delivered in accordance with the provisions of subsection (1).

PART 2 THE SUPERIOR COURTS

A: The Supreme Court

125. Composition of Supreme Court

(1) Within eighteen months of the coming into force of this Constitution, there shall be established a Supreme Court of The Gambia which shall consist of—

(a) the Chief Justice;

(b) not less than four other Justices of the Supreme Court;

(c) any judge of the Court of Appeal who is appointed to act as a Justice of the Supreme Court;

(2) The Supreme Court shall be constituted by an uneven number of not less than five judges of the Court;

Provided that a single judge of the 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;

(3) The Chief Justice shall preside at sittings of the Court. In his or her absence, the most senior of the other judges of the Court shall preside.

(4) The Supreme Court may sit at any place in The Gambia appointed by the Chief Justice.

126. Jurisdiction of Supreme Court

(1) The Supreme Court shall be the final court of appeal for The Gambia and shall have such appellate and other jurisdiction as may be conferred on it by this Constitution or any other law:

Provided that the Supreme Court shall not have original jurisdiction in respect of any criminal matter.

(2) The Supreme Court may depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on a matter of law.

(3) For the purpose of the hearing and determination of any 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.

127. Original jurisdiction

(1) The Supreme Court shall have an exclusive original jurisdiction—

(a) for the interpretation or enforcement of any provision of this Constitution other than any provision of *sections 18 to 33 or section 36(5)* (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 any person was validly elected to the office of President or was validly elected to, or vacated his or her seat in, the National Assembly;

(d) on any question whether any official document should be produced, or its contents disclosed, in proceedings before a court where such production is resisted on the grounds that its production or the disclosure of its contents would be prejudicial to the security of the State or be injurious to the public interest.

(2) Where any question referred to in paragraphs (a), (b) or (d) of subsection (1) 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.

(3) The proceedings in the Supreme Court on any question referred to in paragraph (d) of subsection (1) shall be held *in camera*.

128. Appellate jurisdiction

(1) An appeal shall lie to the Supreme Court as of right—

(a) from any judgement of the Court of Appeal on an appeal in any civil or criminal cause or matter from a judgement of the High Court in the exercise of its original jurisdiction;

(b) from any judgement of the Court of Appeal dismissing an appeal from a sentence of death imposed by any other court;

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

(2) An appeal shall lie to the Supreme Court with the leave of the Court of Appeal from a judgement of the Court of Appeal in any cause or matter commenced in a court other than the High Court where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest that the cause or matter should be heard by the Supreme Court.

(3) An appeal shall lie to the Supreme Court with the leave of that Court from any other judgement 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) at the instance of a party to the proceedings in the Court of Appeal or, 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, in a criminal cause or matter, at the instance of the Attorney General acting in the interest of justice and for the avoidance of abuse of the legal process:

Provided that in any appeal at the instance of the Attorney General, the Supreme Court shall have no power to reverse any acquittal at a court of first instance or reverse a judgement allowing an appeal against conviction of a criminal offence.

B: The Court of Appeal

129. Composition of Court of Appeal

(1) There shall be a Court of Appeal of The Gambia which shall consist of—

- (a) the President of the Court of Appeal;
- (b) not less than three Justices of the Court of Appeal;
- (c) any judge of the High Court who is appointed to act as a Justice of the Court of Appeal.

(2) The Court of Appeal shall be constituted by three judges of the Court:

Provided that a single judge of the Court may exercise the powers of the Court in any interlocutory matter, subject to an appeal from his or her decision to a bench of three judges of the Court;

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

(4) The President of the Court of Appeal may, in consultation with the Chief Justice, 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.

130. Jurisdiction of Court of Appeal

(1) The Court of Appeal shall have jurisdiction to hear and determine appeals from judgements, decrees and orders of the High Court, and such other appellate jurisdiction as may be conferred on it by an Act of the National Assembly.

(2) The Court of Appeal shall have jurisdiction in appeals from Court Martial in the manner provided by law.

(3) An appeal shall lie as of right to the Court of Appeal from any judgement, decree or order of the High Court.

(4) 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 from which the appeal is brought.

C: The High Court

131. Composition of High Court

(1) There shall be a High Court of The Gambia which shall consist of—

- (a) the Chief Justice;
- (b) not less than seven other Justices of the High Court;
- (c) 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—

- (a) by a single judge;
- (b) by a single judge and a jury;
- (c) by a single judge with assessors; or

(d) for the trial for the offence of treason, three judges or, where the accused so elects, a single judge and a jury.

(4) 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 appoint judges of the Court to any such division.

132. Jurisdiction of High Court

(1) Save as provided in *section 127*, the High Court shall have original jurisdiction—

(a) to hear and determine all civil and criminal proceedings;

(b) to interpret and enforce the fundamental rights and freedoms as provided in *sections 18 to 33 and section 36(5)*, and in the exercise of such jurisdiction, the Court shall have all such power and authority as may be conferred by this Constitution or any other law.

(2) The High Court shall have such jurisdiction in appeals from courts subordinate to it (other than the Cadi Court) as may be prescribed by an Act of the National Assembly.

133. Supervisory jurisdiction

The High Court shall have supervisory jurisdiction over all lower courts and adjudicatory authorities in The Gambia, and, in the exercise of its supervisory jurisdiction, shall have power to 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.

D: Special Criminal Court

134. Special Criminal Court

(1) There shall be a Special Criminal Court which shall be constituted by a panel consisting of a Chairman and not less than two other panel members.

(2) A person shall not be appointed to be a Chairman of the Court unless he or she is qualified to be appointed a Judge of the High Court.

(3) The members of the Court shall be appointed by the Judicial Service Commission subject to the approval of the National Assembly.

135. Jurisdiction

The Court shall have jurisdiction to hear and determine all criminal offences relating to theft, misappropriation and other similar offences in which public funds and public property are affected.

136. National Assembly to make further provision

An Act of the National Assembly shall make further provisions for the purposes of this sub-part.

PART 3 THE CADI COURT

137. The Cadi Court

(1) A Cadi Court shall be established in such places in The Gambia as the Chief Justice shall determine.

(2) The Cadi Court shall be composed—

(a) for hearings at first instance, by a panel consisting of the Cadi and two other scholars of the Sharia qualified to be a Cadi or Ulama;

(b) for hearings on review, by a panel consisting of the Cadi and four Ulama.

(3) The decision of the majority of a panel of a Cadi Court shall constitute the decision of the Court.

(4) The Cadi Court shall only have jurisdiction to apply the Sharia in matters of marriage, divorce and inheritance where the parties or other persons interested are Muslims.

(5) Any party to a proceeding in the Cadi court who is dissatisfied with a decision at first instance may, within three months of the date of the decision, apply to the same court for a review of the decision and the Cadi court shall review the decision.

(6) A person shall be required to be of high moral standing and professionally qualified in the Sharia in order to be appointed a Cadi or Ulama.

(7) A party to proceedings in the Cadi court shall be entitled to be represented, at his or her own expense, by a person qualified in the Sharia.

PART 4 THE JUDGES

138. (1) The Chief Justice shall be appointed by the President after consultation with the Judicial Service Commission.

(2) All other judges of the superior courts except the judges of the Special Criminal Court shall be appointed by the President on the recommendation of the Judicial Service Commission.

(3) Appointments of judges of the Superior Courts shall be by warrant signed by the President and sealed with the Public Seal.

(4) Before assuming the functions of his or her office, a judge of the superior courts shall take the prescribed oaths.

139. (1) A person shall be qualified for appointment as Chief Justice if he or she is qualified to be appointed a judge of the Supreme Court and has been a judge of a superior court in a common law country for not less than ten years.

(2) A person shall be qualified to be appointed a judge of the Supreme Court if he or she holds or has held office as a judge of the Court of Appeal, or as a judge of a court having similar jurisdiction in a common law country, in each case for not less than five years, or if he or she has practised as a legal practitioner before a court having unlimited jurisdiction in civil and criminal matters in a common law country for not less than twelve years.

(3) A person shall be qualified to be appointed as a judge of the Court of Appeal if he or she holds or has held office as a judge of the High Court, or as a judge of a court having similar jurisdiction in a common law country, in each case for not less than five years, or if he or she has practised as a legal practitioner before a court having unlimited jurisdiction in civil and criminal matters in a common law country for not less than eight years.

(4) A person shall be qualified to be appointed as a judge of the High Court if he or she holds or has held office as a Principal Magistrate or Master in The Gambia, or an office, which in the opinion of the Judicial Service Commission, enjoys a comparable jurisdiction in a common law country, in each case for not less than five years, or if he or she has practised as a legal practitioner before a court having unlimited jurisdiction in civil and criminal matters in a common law country for not less than five years.

(5) In this section, “common law country” means—

(a) a country within the Commonwealth;

(b) a country outside the Commonwealth prescribed by an Act of the National Assembly for the purposes of this section the courts of which exercise a common law jurisdiction.

140. Vacancy in office of Chief Justice

In the event of there being a vacancy in the office of the Chief Justice, or if he or she 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—

(a) until a person has been substantively appointed to, and assumed the functions of that office;

(b) until the Chief Justice has resumed the functions of his or her office, as the case may be. A vacancy in the office of Chief Justice shall be filled by a substantive appointment within six months.

141. Tenure of office of judges

(1) No office of judge shall be abolished while there is a substantive holder thereof.

(2) Subject to the provisions of this section, a judge of a Superior Court—

(a) may retire on pension at any time after attaining the age of sixty five years;

(b) shall vacate the office of judge on attaining the age of seventy years;

(c) may have his or her appointment terminated by the President in consultation with the Judicial Service Commission.

(3) Notwithstanding that he or she has attained the age at which he or she is required to vacate his or her office as provided in this section, a person holding the office of judge may continue in office for a period of six months after attaining that age to enable him or her to deliver judgement or do any other thing in relation to proceedings that were commenced before him or her previously thereto.

(4) A judge of a Superior Court shall only be removed from office only for inability to perform the functions of his or her office, whether arising from infirmity of body or mind, or for misconduct.

(5) A judge may be removed from his office if notice in writing is given to the Speaker, signed by not less than one-half of all the voting members of the National Assembly, of a motion that a judge is unable to exercise the functions of his or her office on any of the grounds stated in subsection (4) and proposing that the matter should be investigated under this section.

(6) Where a notice of a motion is received by the Speaker under Subsection (5), the Speaker shall forthwith cause a vote to be taken on the motion without debate.

(7) If such motion is adopted by the votes of not less than two-thirds of all the members of the National Assembly—

- (a) The National Assembly shall, by resolution, appoint a tribunal consisting of three persons, at least one of whom shall hold or shall have held high judicial office who shall be the chairman of the tribunal;
- (b) the tribunal shall investigate the matter and shall report to the National Assembly through the Speaker whether or not it finds the allegations specified in the motion have been substantiated;
- (c) if the tribunal reports to the National Assembly that it finds the particulars of any such allegation have not been substantiated, no further proceedings shall be taken under this section in respect of that allegation;
- (d) if the tribunal reports to the National Assembly that it finds that the particulars of any such allegation have been substantiated, the National Assembly shall consider the report at the first convenient sitting and if, on a motion supported by the votes of not less than two-thirds of all the members, the National Assembly resolves that the judge be removed from office, the judge shall immediately cease to hold office.

(8) Where a tribunal is established under this section in respect of any judge, the judge shall stand suspended from office. The suspension shall cease to have effect if the tribunal reports that none of the allegations against the judge has been substantiated or if a motion for his or her removal from office is not supported as provided in paragraph (d) of subsection (7).

(9) All proceedings in a tribunal under this section shall be held *in camera* and the judge concerned shall have the right to appear and be legally represented before the tribunal.

142. Remuneration of judges

(1) A judge of a Superior Court shall be entitled to such salary, allowances, and on retirement such gratuity and pension, as may be prescribed by an Act of the National Assembly.

(2) The salary, allowances, retirement gratuity and pension of a judge, as so prescribed at the time of his or her appointment, shall not be varied to his or her disadvantage

PART 5 ADMINISTRATION OF THE COURTS

143. Administrative provisions

(1) In the exercise of his or her responsibilities for the administration of the courts, the Chief Justice may issue orders and directions for the proper and efficient operation of the courts.

(2) There shall be a Judicial Secretary to assist the Chief Justice in the exercise of his or her responsibilities for the administration of the courts and financial matters. The Judicial Secretary shall be responsible to the Chief Justice for the performance of his or her duties.

(3) The Judicial Secretary shall be appointed by the Judicial Service Commission.

144. Financial

(1) The Chief Justice shall submit the annual estimates of expenditure for the Judicature to the President for presentation to the National Assembly in accordance with this Constitution. 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.

(2) The Judicature shall be self-accounting, and the moneys charged on the Consolidated Fund or appropriated by an Act of the National Assembly for the Judicature, shall be paid by the Accountant General to the accounting officer for the Judicature as required by the Chief Justice.

PART 6 THE JUDICIAL SERVICE COMMISSION

145. The Judicial Service Commission

(1) There shall be a Judicial Service Commission which shall consist of—

- (a) the Chief Justice, who shall be Chairman;
- (b) a judge of a superior court;
- (c) a legal practitioner of at least ten years standing at the Gambia bar;
- (d) two persons exercising jurisdiction in a subordinate court;
- (e) the Chairman of the Public Service Commission;
- (f) one other member of the judiciary who shall not be a judge or a legal practitioner;
- (g) one person nominated by the National Assembly;
- (h) one person nominated by the President.

(2) The members of the Commission (other than the members referred to in paragraphs (a) (e) and (g) of subsection (1)) shall be appointed by the President in consultation with the Chief Justice and 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 Commission.

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

(5) A member of the 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 becomes a member of the National Assembly.

(6) A member of the Commission (other than an ex officio member) may be removed from office by the President with the approval of the National Assembly, but may only be removed for inability to exercise the functions of his or her office (whether arising from infirmity of mind or body or for any other cause) or for misbehaviour. A member shall be entitled to be heard in person or by a legal representative against any proposal to remove him or her.

(7) If a member of the Commission is, for any reason, unable to exercise the functions of his or her office for a limited period, the President, acting in accordance with the advice of the Chief Justice, may appoint a person similarly qualified to act in his or her place.

(8) A member of the Commission shall not enter upon the duties of his or her office until he or she has taken and subscribed the prescribed oaths.

146. Appointment of Judicial Officers and court staff

(1) The power to appoint persons to hold or act in any office to which this subsection applies shall vest in the Judicial Service Commission:

Provided that the Commission may, with the approval of the Chief Justice and subject to any conditions as it may think fit, delegate the powers referred to in this subsection to any judge or to the holder of any office to which this subsection applies.

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

- (a) Master, Registrar and Assistant Registrar of a superior court;
- (b) the office of magistrate;
- (c) the office of a member of any subordinate court;
- (d) such other offices of a member of any court as may be prescribed by an Act of the National Assembly.

(3) The appointment of other officers and staff of the courts shall be made by the Chief Justice or such other judge or officer of the court as the Chief Justice after consultation with the Judicial Service Commission may direct.

147. Other functions of Commission

In addition to the other functions conferred the Judicial Service Commission by this on Constitution, the Commission shall have power—

- (a) to advise the President in the exercise of their powers relating to the appointment of judges;
- (b) to make recommendations as to the terms and conditions of service of judges and other judicial officers and officers and staff of the courts;
- (c) to make proposals to improve the administration and efficiency of the courts;
- (d) to prepare and implement programmes for the education of the public about the administration of justice;
- (e) to exercise such other functions as may be conferred on it by an Act of the National Assembly.

148. Operation and procedure

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

(2) The Commission may by rules or otherwise regulate its own procedure.

(3) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of a member:

Provided that any decision of the Commission shall require the concurrence of a majority of its members.

**CHAPTER IX
FINANCE**

**PART 1
PUBLIC FINANCE**

149. Taxation

(1) No taxation shall be imposed except by or under the authority of 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;

(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.

150. Consolidated Fund

(1) There shall be a Consolidated 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;

(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.

151. Withdrawals from Consolidated and other Funds

(1) No money shall be withdrawn from the Consolidated 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 subsection (4) of this section.

(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) No money shall be withdrawn from the Consolidated Fund or any other public fund of The Gambia (including a withdrawal under subsection (4)) unless the withdrawal has been approved by the Auditor-General or a member of the National Audit Office designated by him or her for the purpose and it is made in the manner prescribed by an Act of the National Assembly.

(4) 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 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.

(5) The withdrawal of funds in accordance with subsection (4) shall not exceed one third of the sums authorised for the relevant services by the Appropriation Act for the immediately preceding financial year.

(6) Where money is charged on the Consolidated 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.

152. Annual estimates and Appropriation

(1) The President shall cause to be prepared and laid before the National Assembly at least thirty days before the end of the financial year, estimates of the revenue and expenditure of The Gambia for the following financial year. The estimates shall include any estimates which, under this Constitution, are to be submitted directly to the President by the Chief Justice or any other authority for presentation by the President to the National Assembly.

(2) The appropriate committee of the National Assembly, shall review the estimates of revenue and expenditure and report on them to the National Assembly.

(3) When estimates of expenditure have been approved by the National Assembly, an Appropriation Bill shall be introduced in the National Assembly for the issue from the Consolidated Fund of the sums necessary to meet that expenditure (other than expenditure charged on the Consolidated Fund), under separate votes for the several services required and for the purposes specified therein.

(4) 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.

(5) The Chief Justice and any other authority which is entitled to draw up its own estimates for presentation by the President to the National Assembly shall provide the President with such estimates at least ninety days before the end of the previous financial year.

(6) An Act of the National Assembly may make provision to give effect to this section.

153. Supplementary appropriation

(1) Subject to *section 154*, 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 or estimates have 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.

154. Contingencies Fund

(1) An Act of the National Assembly may make provision for the establishment of a Contingencies Fund and for authorising the President 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:

Provided that the President 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 National Assembly.

(2) 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.

155. (1) The National Assembly may, by resolution supported by the votes of a majority of all the members, authorize 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 the National 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 they have been approved by the National Assembly; and

(b) that any money received in respect of a loan shall be paid into the Consolidated Fund or some other public fund of The Gambia.

(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 President 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;

(b) the payment into the Consolidated Fund or other public fund of money derived from loans raised on institutions outside The Gambia.

156. Salaries, etc., charged on Consolidated Fund

(1) The salaries and allowances, and the retirement benefits, of the holder of the offices to which this section applies shall be a charge on the Consolidated 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 Electoral Commission;
- (e) the Auditor-General;
- (f) the Ombudsman; and
- (g) the Director of Public Prosecutions.

157. The Public Debt

(1) The public debt of The Gambia shall be a charge on the Consolidated Fund and such other public fund as an Act of the National Assembly may prescribe.

(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 2 ***THE AUDITOR-GENERAL AND THE NATIONAL AUDIT OFFICE***

158. The Auditor-General

(1) There shall be an Auditor-General whose office shall be an office in the public service.

(2) The Auditor-General shall be appointed by the President after consultation with the Public Service Commission.

(3) Before assuming the functions of his or her office, the Auditor-General shall take and subscribe the prescribed oaths.

(4) Subject to the other provisions of this section, a person holding the office of Auditor-General shall vacate his or her office when he or she attains the compulsory retirement age, or upon the termination of his or her appointment by the President.

(5) A person holding the office of Auditor-General may be removed from office only for inability to perform the functions of his or her office (whether from infirmity of mind or body or from any other cause) or for misbehaviour or incompetence.

159. National Audit Office

(1) There shall be a National Audit Office in the public services of which the Auditor General shall

be the head, and the other members of which shall assist the Auditor-General in the performance of the functions conferred on him or her by this Constitution or any Act of the National Assembly.

(2) Subject to any Act of the National Assembly, the staff of the National Audit Office shall be appointed by the Auditor-General after consultation with the Public Service Commission, and, in the case of such senior or professional staff as may be prescribed by regulations of the Public Service Commission.

(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.

(4) The Auditor-General shall submit the annual estimates of expenditure for the National Audit Office for the following year to the President for presentation to the National Assembly in accordance with this Constitution. 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.

160. Functions of Auditor-General

(1) The Auditor-General shall—

(a) before any money is withdrawn from the Consolidated Fund or any other public fund, ensure that the withdrawal is in accordance with the provision charging the same on that fund or the relevant Appropriation Act or other Act of the National Assembly and that it complies with the procedures prescribed by an Act of the National Assembly;

(b) satisfy himself or herself that money charged on the Consolidated Fund or other public fund, or appropriated by an Act of the National Assembly, and expended, has been applied for the purpose for which it was so charged or appropriated, and that expenditure conforms to the authority that governs it;

(c) at least once in every year audit and report on the public accounts of The Gambia, the accounts of all offices and authorities of the Government of The Gambia, the accounts of the courts, the accounts of the National Assembly and the accounts of all Public Enterprises;

(d) within six months of the end of the immediately preceding financial year to which each of the accounts referred to in paragraph (c) 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;

(e) after his or her annual reports on the accounts of the Government of The Gambia, of all offices and authorities of the Government, of the courts and of the National Assembly have been discussed in the National Assembly, cause the same to be published for public information:

Provided that where there is any undue delay in the discussion of any such accounts in the National Assembly, the Auditor-General may publish his or her report in advance of such discussion;

(f) exercise such other functions as may be conferred on him or her by an Act of the National Assembly.

(2) In the exercise of his or her functions under this Constitution or any other law, the Auditor General shall—

(a) at all times carry out economy, efficiency and effectiveness 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) have power to 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; or

(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.

(3) A person aggrieved by any disallowance or surcharge made by the Auditor-General may appeal to the High Court.

(4) 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 to call such witnesses who, in his or her opinion, have any responsibilities, in relation to the accounts referred to in subsection (1).

(5) Wherever discrepancies of a criminal or fraudulent nature are discovered during the audit of accounts by the Auditor-General, he or she shall immediately cause a report of his or her findings to be submitted to the Inspector-General of Police.

(6) 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.

(7) In the exercise of his or her functions under this Constitution or any other law, the Auditor-General shall not be subject to the direction or control of any other person or authority.

(8) 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 subsection (1) (c), 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.

(9) The Finance and Public Accounts Committee of the National Assembly may extend the time within which any such report as is referred to in subsection (1) (d) shall be made to the National Assembly.

PART 3 **THE CENTRAL BANK**

161. Establishment of Central Bank

(1) There shall be a Central Bank of The Gambia

(2) The Central Bank shall be the only authority to issue the currency of The Gambia.

(3) 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.

(4) The Central Bank shall—

- (a) promote and maintain the stability of the currency of The Gambia;
- (b) direct and regulate the financial, insurance, banking and currency system in the interest of the economic development of The Gambia;
- (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;
- (d) exercise such other functions as may be conferred on the Central Bank by an Act of the National Assembly.

(5) It shall be the duty of the Central Bank to ensure that all money paid to or received for or on behalf of the Government is recorded in proper books of account in accordance with recognised accounting standards. It shall ensure that all withdrawals from the various Government accounts with itself 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 itself is permitted only if so authorised.

162. The Board of the Central Bank

(1) The authority of the Central Bank shall vest in the Board of Directors of the Bank which shall comprise—

- (a) a Chairman, who shall be the Governor and Chief Executive of the Bank; and
- (b) four other Directors.

(2) The members of the Board of Directors shall be appointed from among persons of standing and experience in financial matters by the President, in consultation with the Public Service Commission.

(3) Subject to the provisions of this section the Directors, other than the Chairman, shall be appointed for a term of two years and the appointments shall be made with a view to ensuring that no more than two such Directors' terms of office expire in any one year. Such Directors may be re-appointed for a further term.

(4) Any Director may be removed from office by the President if—

- (a) he or she is convicted of an offence involving dishonesty or fraud;
- (b) he or she is declared bankrupt or makes a composition with his or her creditors;
- (c) he or she is unable to perform the functions of his or her office due to infirmity of mind or body or for any other cause;
- (d) he or she knowingly engages in any activity detrimental to the interests of the Central Bank.

(5) A Director shall have the right to be heard in person or by his or her legal representative against any proposal to remove him or her.

(6) Where a Director is, by reason of illness which is believed to be of limited duration, unable to perform the functions of his or her office, the President may appoint a suitably qualified person to act for such Director.

(7) Except with the approval of the National Assembly, neither the Governor nor any General Manager of the Central Bank shall hold any other office of profit or emolument or occupy any other position carrying the right to remuneration for the rendering of services.

(8) Nothing in this section shall be construed as prohibiting any Director, other than the Governor, from conducting business with the Central Bank or any other person or authority, provided he or she declares his or her interest in writing to the Board of Directors and abstains from participating in any meeting of the Board at which a matter in which he or she has such an interest is a subject for discussion.

(9) The Board of Directors shall regulate its own procedures and may make rules and give directions to regulate the administration of the Central Bank and the conduct of its business.

(10) Within three months following the end of its financial year, the Central Bank shall submit to the National Assembly a report of its activities and business for the previous year.

(11) In the performance of its functions, the Central Bank shall be subject to the direction and control of the Ministry of Finance, in accordance with the Central Bank Act, or any Act of the National Assembly amending or replacing the said Act.

(12) The Central Bank shall have regular consultations with the President and any other relevant authorities or agencies.

CHAPTER X THE OMBUDSMAN

163. National Assembly to establish office of Ombudsman

(1) Subject to the provisions of this Constitution, an Act of the National Assembly shall within six months of the coming into force of this Constitution establish the office of Ombudsman and provision for his or her functions and duties—

(a) in the investigation of any action taken by a government department or other authority, or other public body, to which the Act applies, being action taken in the exercise of the administrative functions of that department or authority, on a complaint by a member of the public who claims he or she has suffered injustice in consequence of maladministration or mismanagement, or discrimination on any ground set out in Chapter IV, in connection with such action;

(b) in the investigation, on his or her own initiative, of allegations of maladministration, mismanagement or discriminatory practices in any government department, authority, or other public body, to which the Act applies;

(c) in the investigation of complaints of any failure to observe the Code prescribed in Chapter (XXI) for the conduct of public officers.

(2) Without prejudice to the generality of subsection (1), an Act of the National Assembly may;

(a) determine the departments, authorities and other public bodies to which the Act shall apply;

(b) determine the actions or classes of action which may be subject to such investigations;

(c) determine the departments, authorities, public bodies and actions which shall be excluded from such investigations;

(d) determine the procedure to be adopted in any investigation and the powers which may be exercised in the course of such investigation, including the power of the Ombudsman to require persons to furnish documents and other information and to provide evidence, and provide for the right of any department, authority, other public body or person to be heard when its, or his or her, actions are the subject of an investigation;

(e) provide for sanctions for the obstruction of the Ombudsman in the exercise of his or her functions or a failure to comply with his or her lawful requirements;

(f) provide for the making of reports by the Ombudsman, including an annual report to the National Assembly, and reports to the Inspector-General of Police in the event of his or her investigations disclosing the commission of a criminal offence or to the Attorney-General in the event of their disclosing any other failure to comply with a provision of law;

(g) provide for the appointment of one or more deputy ombudsman, to exercise, under the directions of the Ombudsman, the functions of that office;

(h) make such administrative and financial provisions as may be necessary or desirable for the efficient functioning of the office of Ombudsman.

164. Appointment and tenure of office of Ombudsman

(1) The power to appoint an Ombudsman and any deputy ombudsman shall vest in the President after consultation with the Public Service Commission.

(2) In making an appointment under this section, the President shall have regard to the need for persons exercising the functions of Ombudsman to have substantial administrative or professional experience.

(3) The office of Ombudsman and deputy ombudsman shall be offices in the public service.

(4) A person shall not be qualified to hold office as Ombudsman or deputy Ombudsman if he or she is a Member of the National Assembly, a Secretary of State or holds any other public office.

(5) Subject to this Constitution, an Act of the National Assembly shall prescribe the tenure and terms of service of the Ombudsman and any deputy Ombudsman.

(6) An Ombudsman or deputy Ombudsman may only be removed from office by the President for inability to discharge the functions of his or her office (whether arising from infirmity of mind or body or from any other cause) or for misconduct, and shall not be removed unless the National Assembly has appointed a tribunal to investigate the case and his or her removal has been approved by resolution of the National Assembly supported by the votes of not less than two-thirds of all the Members of the National Assembly. The Ombudsman or a deputy Ombudsman shall have the right to be heard and to be legally represented before the tribunal.

165. Independence of Ombudsman

(1) Subject to the provisions of this Chapter, in the exercise of his or her functions, the Ombudsman and a deputy Ombudsman shall not be subject to the direction or control of any other person or authority but subject only to the Constitution and the law.

(2) All departments, authorities and other public bodies which are subject to investigation by the Ombudsman shall accord such assistance as he or she may require for the protection of the independence, dignity and effectiveness of the Ombudsman in the performance of his or her functions.

CHAPTER XI

THE PUBLIC SERVICES

PART 1 **OFFICES IN THE PUBLIC SERVICE**

166. The Public Service

(1) Subject to an Act of the National Assembly, the public service of the Gambia shall comprise the civil service as established immediately before this Constitution comes into force and the offices declared elsewhere in this Constitution to be offices in the public service.

(2) Subject to this Constitution, Acts of the National Assembly may provide for the establishment and regulation of separate public services of The Gambia (which may include common services for the staff of local government authorities or the staff of Public Enterprises). Any such Act shall include provision for—

(a) the appointment or election of a competent authority for the administration of the particular public service;

(b) the functions and membership of the service, and may provide for an appointing authority other than the Public Service Commission for the service. Any such particular public service shall form part of the public service of The Gambia.

(3) For the avoidance of doubt, it is hereby declared that an office in the public service includes the office of judge of a superior court, and of any other court the emoluments of which are payable out of any public fund of The Gambia, and the office of a principal representative of The Gambia abroad.

(4) In this Constitution, an office in the public service does not include—

(a) the offices of President, Vice-President, Speaker or Deputy Speaker of the National Assembly, Secretary of State 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 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.

167. Appointment to and removal from offices in the public service

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 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:

Provided that nothing in this paragraph 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 Auditor-General or the Ombudsman or a deputy ombudsman to retire from the public service;

(c) 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.

168. Head of the Civil Service

(1) The President, acting in accordance with the advice of the Public Service Commission, shall appoint a person holding an office in the public service on permanent terms to be the Head of the Civil Service. The Head of the Civil Service shall be the competent authority for the Civil Service.

(2) The Head of the Civil Service shall not hold any other office of profit or emolument in the service of The Gambia.

169. Protection of public servants

(1) No public servant shall be—

(a) victimised or discriminated against either directly or indirectly for having discharged his other duties faithfully and according to law;

(b) be removed from office or reduced in rank or otherwise punished without just cause.

(2) In this section, “public servant” means a person holding an office in the public service, a person in the service of local government authority, and a person in the service of a Public Enterprise.

170. Restriction on political activities of public servants

(1) A person holding an office in the public service shall not hold office in any political party.

(2) Any person who holds an office in a 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 from his or her office in the public service and, if he or she fails to do so, he or she shall be removed from such office.

171. Retiring age

Save as provided in this Constitution, a person holding an office in a public service—

(a) shall retire from such office on attaining the age of fifty-five 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.

PART 2 ***THE PUBLIC SERVICE COMMISSION***

172. Establishment of Commission

(1) There shall be a Public Service Commission for The Gambia.

(2) The Public Service Commission shall comprise a Chairman and not less than two nor more than four other members.

The members shall be persons of high integrity and good character and shall be appointed by the President. All the members of the Commission shall be full time members.

(3) A person shall not be qualified to be appointed a member of the Public Service Commission if he or she—

(a) is a member of a public service or a member of a disciplined force;

(b) is a member of the National Assembly or of a local government authority;

(c) is a member of the governing body of a Public Enterprise;

(d) is a 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 not qualified to be elected as a member of the National Assembly or is disqualified from holding an office in the public service.

(4) A member of the Public Service Commission shall not hold any other public office and 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 Commission.

(5) Subject to the provisions of this section, the members of the Public Service Commission shall be appointed for a term of two years, which term shall be renewable:

Provided that half of the members first appointed after the coming into force of this Constitution shall be appointed for shorter terms in order to provide continuity in the Commission

(6) A member of the Public Service Commission may be removed from office by the President only for inability to perform the functions of his or her office by reason of infirmity of mind or body or any other cause, or for misconduct or incompetence.

(7) Before assuming the functions of his or her office, a member of the Public Service Commission shall take the prescribed oaths.

(8) Except as provided in this Constitution or any other law not inconsistent with this Constitution, in the exercise of its functions under this Constitution, the Public Service Commission shall not be subject to the direction or control of any other person or authority.

173. Powers of appointment

(1) Save as otherwise provided in this Constitution or any Act of the National Assembly for the establishment of a particular public service, the power to make appointments to offices in the public service shall vest in the Public Service Commission.

(2) Subsection (1) does not apply in relation to—

(a) any office in the service of a local government authority;

(b) any office as a member, or in the service, of a Public Enterprise;

(c) any office as a member of the disciplined forces.

(3) The power to make an appointment to the office of permanent secretary of a department of the Government shall be exercised by the Public Service Commission in consultation with the Head of the Civil Service.

(4) No person shall be appointed to the personal staff of the President or the Vice-President except with the agreement of the President or Vice-President, as the case may be.

(5) The power to appoint persons to hold or act in any office in an institution of higher education, research or professional training established within the public service, shall vest in the governing body of that institution.

(6) The Commission shall, in any case in which this Constitution requires an appointment to be made after or in consultation with, or on the recommendation of, the Commission, exercise its powers in that regard, and may, at the request of the President or the competent authority concerned, render advice on appointments within their respective powers.

174. Other powers of Commission

(1) The Public Service Commission shall have power—

(a) to make provision for the overall management and efficiency of the public service;

(b) to review the terms and conditions of service of persons holding office in the public service;

(c) to review the General Orders and Regulations of the public service and the requirements of the public service as respects training and qualifications and to advise the Government thereon;

(d) to prescribe the terms and standards for entrance and promotion examinations and establish standards and guidelines for the public service.

(2) The Public Service Commission shall have such supervisory and regulatory powers to give effect to their functions under subsection (1) as may be prescribed by an Act of the National Assembly.

(3) Subject to this Constitution and any Act of the National Assembly establishing a particular public service, the functions of the Commission under subsection (1) may be exercised in respect of offices in the public service notwithstanding that the power to make appointments to such offices is vested in some person or authority other than the Commission.

(4) The President may delegate such of his or her powers relating to the public service as he or she thinks fit to the Public Service Commission or to the competent authority for any particular service of the public service, subject to such conditions as may be included in the instrument of delegation or any subsequent instrument.

(5) The Public Service Commission may with the approval of the President and subject to confirmation by the National Assembly make regulations for the performance of its functions.

(6) The Public Service Commission shall submit an annual report on the performance of its functions to the National Assembly.

PART 3
PUBLIC ENTERPRISES

175. Public Enterprises

- (1) In this Constitution, Public Enterprise means any body corporate or other body or institution, wholly owned or controlled by the Government.
- (2) The members of the Board of Directors or other governing body of a Public Enterprise shall be appointed by the President after consultation with the Public Service Commission and shall be selected from amongst persons of integrity, competence and maturity of judgement. A member of the National Assembly, the holder of a political office or an officer of a political party shall not be qualified to be appointed to the Board of Directors or other governing body of a Public Enterprise.
- (3) The Chief Executive of a Public Enterprise shall be appointed by the President after consultation with the Board of Directors or other governing body of the Public Enterprise and the Public Service Commission. All other appointments to the staff of a Public Enterprise shall be made by the Board of Directors or governing body, or by some member of the staff of the Public Enterprise appointed by the Board or governing body.
- (4) Within six months of the coming into force of this Constitution, an Act of the National Assembly shall establish a committee to monitor the operations of Public Enterprises, and shall prescribe the manner in which such enterprises shall be accountable to the National Assembly and shall conduct their affairs in order to promote efficiency, transparency and probity in all their undertakings.
- (5) A Public 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:
- Provided that the appropriate committee of the National Assembly may extend the time for the submission of any report.
- (6) On the coming into force of this Constitution, the Public Service Commission shall provide existing Public Enterprises with guidelines on personnel matters and shall provide such guidelines to any Public Enterprise established thereafter.

PART 4
PENSIONS

176. Protection of pension rights

- (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) In this section, “the relevant date” means—
- (a) in relation to benefits granted before the 18th February 1965, the date on which those benefits were granted;
 - (b) in relation to any benefits granted on or after the 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 the 18th February 1965, the date on which he or she became or becomes a public officer.

(3) 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.

(4) 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 Fund or upon such other special fund, whether contributory or non-contributory, as may be prescribed by Act of the National Assembly.

(5) 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.

(6) Reference to the law applicable to any benefits to which this section applies includes references to any law relating to the time at which and the manner in which any person may retire in order to become eligible for those benefits.

177. Public service pensions to be free of tax

A pension payable to any person who is or has been a public officer in respect of his or her service in the public service or to the widow, children or dependants of such persons in respect of such service shall—

- (a) be free of all tax;
- (b) be subject to review to take account of relevant salary increases.

CHAPTER XII THE POLICE FORCE AND PRISON SERVICE

PART 1 THE POLICE FORCE

178. The Gambia Police Force

(1) There shall be a Police Force of The Gambia of which the Inspector-General of Police shall be the Head.

(2) The functions of The Gambia Police Force shall be—

- (a) to preserve law and order;
- (b) to prevent and detect crime;
- (c) to co-operate with the authorities established by this Constitution and any other law and with the population generally;
- (d) to perform such other functions as may be prescribed by an Act of the National Assembly.

(3) No person or authority shall raise any other police force or service except by or under the authority of an Act of the National Assembly.

(4) All members of The Gambia Police Force shall be Gambian citizens of good character, shall in all official matters and at all times be disciplined and competent, and shall display a high degree of honesty, fairness and impartiality in their dealings with members of the public.

179. Control of Police Force

(1) Subject to the general authority and direction of the President, the Inspector-General of Police shall be responsible for the operation, control and administration of the Police Force.

(2) A Deputy Inspector-General of Police shall assist the Inspector General in the performance of his or her functions.

180. Police Council

(1) There shall be a Police Council which shall consist of—

- (a) the Secretary of State responsible for the Police who shall be Chairman;
- (b) the Attorney-General or his or her representative;
- (c) the Inspector-General of Police;
- (d) the administrative head of the Department responsible for the Police; and
- (e) one other member appointed by the President.

(2) The Police Council shall—

- (a) advise the President on all matters of policy relating to internal security, including the role of the Police Force, police budgeting and finance, administration, and any other matter which the Secretary of State may refer to the Council; and
- (b) with the prior approval of the President, make regulations for the performance of its functions under this Constitution and any other law, and, subject to any Act of the National Assembly in that regard, for the effective and efficient administration of the Police Force.

(3) Regulations made under subsection (2) shall include regulations in respect of—

- (a) the control and administration of the Police Force;
- (b) the ranks of the officers and men of each unit of the Police Force, the members in each rank and the use of uniforms by the members;
- (c) the conditions of service, enrolment, pay, pensions, gratuities and other allowances of officers and men, and deductions therefrom;
- (d) the authority and powers of command of officers and men; and
- (e) the delegation to the Inspector-General and other officers of powers of discipline and the conditions subject to which such delegation may be made;

181. Appointments in Police Force

(1) The Inspector-General and the Deputy Inspector-General shall be appointed by the President after consultation with the National Security Council.

(2) A person shall not be qualified to be appointed in accordance with subsection (1) if he or she is not a citizen of The Gambia or if he or she holds the citizenship or nationality of any other country.

(3) The President may remove the Inspector-General and the Deputy Inspector-General from office for good cause or in the public interest.

(4) Subject to this section, the power to appoint persons in the rank of Assistant Superintendent and above in the Police Force shall be vested in the President on the advice of the Inspector-General of Police through the Secretary of State.

(5) The power to appoint persons to a rank in the Police Force below that of Assistant Superintendent shall vest in the Inspector-General.

PART 2 **THE PRISON SERVICE**

182. The Gambia Prison Service

(1) There shall be a Prison Service of The Gambia of which the Commissioner of Prisons shall be the Head.

(2) The duties of the Prison Service shall be to do all things necessary for, and incidental to, the administration of prisons and the safeguarding of persons admitted to prison according to law and the regulations of the Prison Service.

(3) All members of The Gambia Prison Service shall be Gambian citizens of good character and shall in all official matters and at all times be disciplined and competent and display a high degree of honesty, fairness and impartiality.

183. Control of Prison Service

Subject to the general authority and direction of the President and the control of the Prison Service Council, the Commissioner of Prisons shall be responsible for the operational control and administration of the Prison Service and prisons in The Gambia.

184. Prison Service Council

(1) There shall be a Prison Services Council which shall consist of—

(a) the Secretary of State responsible for the Prison Service who shall be Chairman;

(b) the Attorney-General or his or her representative;

(c) the Commissioner of Prisons;

(d) the Director of Social Welfare;

(e) a judge of a superior court nominated by the Chief Justice;

(f) a religious leader;

(g) a registered medical practitioner;

- (h) a legal practitioner;
- (i) one other member.

The members referred to in paragraphs (f) to (i) shall be appointed by the President.

(2) The Prison Service Council shall—

- (a) advise the President on all matters of policy relating to the organization and maintenance of the prison system, including the role of the Prison Service, prisons budgeting and finance, administration, and any other matter which the President may refer to the Council;
- (b) give such directions to the Commissioner of Prisons as it considers necessary or expedient for the administration of prisons and the Prison Service;
- (c) oversee the welfare of prisoners;
- (d) draw up programmes for the training and rehabilitation of prisoners;
- (e) monitor the rehabilitation of prisoners;
- (f) keep and maintain full statistics of all prisoners in the charge of the Prison Service;
- (g) with the prior approval of the President, make regulations for the performance of its functions under this Constitution and any other law and, subject to any Act of the National Assembly in that regard, for the effective and efficient administration of prisons and the Prison Service;
- (h) exercise such other functions as may be conferred on it by an Act of the National Assembly for the regulation of prisons.

(3) Regulations made under subsection (2) shall include regulations in respect of—

- (a) the control and administration of prisons and the Prison Service;
- (b) the ranks of the officers and men of the Prison Service, the members in each rank and the use of uniforms by the members;
- (c) the conditions of service, enrolment, pay, pensions, gratuities and other allowances of officers and men, and deductions therefrom;
- (d) the authority and powers of command of officers and men of the Prison Service;
- (e) the delegation to officers of the Prison Service of powers of discipline over members of the Prison Service and the conditions subject to which such delegation may be made;
- (f) the exercise of functions exercisable by the Public Service Commission in relation to the public service generally;
- (g) the conditions under which prisoners may be held in prison;
- (h) the parole system;

- (i) the making of reports of unjustified treatment of, and cruelty to, prisoners and other persons in custody;
- (j) the appointment of welfare committees for prisoners and discharged prisoners;
- (k) access to legal practitioners;
- (l) the making of reports on conditions of the prison and prisoners and other persons in custody.

185. Appointments in Prison Service

- (1) The Commissioner of Prisons shall be appointed by the President after consultation with the National Security Council.
- (2) Subject to this section, the power to appoint persons in the rank of Assistant Commissioner and above in the Prison Service shall be vested in the President on the advice of the Commissioner of Prisons through the Secretary of State.
- (3) Subject to any regulations made by the Prison Service Council, the power to appoint persons to a rank in the Prison Service below that of Assistant Commissioner shall vest in the Commissioner.

CHAPTER XIII THE ARMED FORCES AND THE NATIONAL INTELLIGENCE AGENCY

PART I THE ARMED FORCES

186. Armed Forces

- (1) There shall be the Armed Forces of The Gambia which 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.
- (2) No person shall raise an armed force except by or under the authority of an Act of the National Assembly.
- (3) 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.

187. Functions

- (1) The principal functions of the Armed Forces are—
 - (a) to preserve and defend the sovereignty and territorial integrity of The Gambia;
 - (b) to aid the civil authorities, at their request, in emergencies and in cases of natural disasters;
 - (c) to engage, at the request of the civil authorities, in productive activities, such as agriculture, engineering, health and education for the development of The Gambia.
- (2) It shall be the aim of the Government and the Armed Forces to maintain harmony and to foster understanding between the Armed Forces and the civilian population, and to that end—
 - (a) the National Youth Service shall be organised with the co-operation and assistance of the Armed Forces;

(b) the Armed Forces shall establish training programmes for their members at all levels to equip them with skills and trades, and a programme of secondment to civilian occupations, so as to enable members of the Forces to return, after their service to a full and productive civilian life,

(c) there shall be established an army reserve.

(3) It shall be the duty of the members of The Gambia Armed Forces to respect the fundamental rights and freedoms of other persons.

188. Control of the Armed Forces

(1) Subject to the authority and directions of the President and of the Armed Forces Council, the Chief of Defence Staff shall be responsible for the operational control and administration of the Armed Forces.

(2) Without prejudice to his or her general power and authority as commander-in-chief, the President may give a Force Commander directions with respect to the operational use of the Commander's forces in The Gambia for the purposes of maintaining and securing public safety and public order, and the Force Commander shall comply with those directions.

(3) In the exercise of his or her powers as commander-in-chief, the President shall, whenever practicable, consult the National Security Council.

(4) The President shall not deploy any troops outside The Gambia without the approval of the National Assembly.

189. Armed Forces Council

(1) There shall be an Armed Forces Council which shall consist of—

(a) the Vice-President as Chairman;

(b) the Secretary of State for the time being responsible for defence;

(c) the Chief of Defence Staff;

(d) the Armed Forces Chief of Staff;

(e) the commanders of the Army, the Navy and the Air Force;

(f) the Permanent Secretary of the Ministry responsible for Defence;

(g) two other persons appointed by the President subject to confirmation by the National Assembly.

(2) The Armed Forces Council shall—

(a) advise the President on all matters of policy relating to defence and strategy, including the role of the Armed Forces, defence budgeting and finance, administration, and any other matter which the President may refer to the Council;

(b) advise the President on the promotion of officers to the rank of Lieutenant Colonel or its equivalent and above;

(c) with the prior approval of the President, make regulations for the performance of its functions under this Constitution and any other law and, subject to any Act of the National Assembly in that regard, for the effective and efficient administration of the Armed Forces.

(3) Regulations made under subsection (2) shall include regulations in respect of—

- (a) the control and administration of the Armed Forces;
- (b) the ranks of the officers and men of each service, the members in each rank and the use of uniforms by the members;
- (c) the conditions of service, enrolment, pay, pensions, gratuities and other allowances of officers and men, and deductions therefrom;
- (d) the authority and powers of command of officers and men;
- (e) the powers of commanding officers to try members of the Armed Forces;
- (f) the establishment of research and development units in each service.

190. Appointments in Armed Forces

(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;
- (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 is not a citizen of The Gambia or if he or she holds the citizenship or nationality of any other country.

(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) The President may, after consulting the Armed Forces Council, appoint the commanders of any formation or unit of the Armed Forces.

(5) The President shall, in accordance with the advice of the Armed Forces Council, grant commissions in the Armed Forces.

PART II NATIONAL INTELLIGENCE AGENCY

191. (1) There shall be a National Intelligence Agency which shall be under the command of the President.

(2) Subject to any Act of the National Assembly and the provisions of this Constitution, the National Intelligence Agency shall be governed by the National Intelligence Agency Decree, 1995.

CHAPTER XIV LAND COMMISSION

192. Land Commission

(1) There shall be established a Land Commission which shall in co-ordination with the relevant public agencies and governmental bodies, perform the following functions—

- (a) on behalf of the Government, manage all lands vested in the State;
- (b) process applications for grants of State land and make recommendations thereon to the Secretary of State;
- (c) process applications for title deeds from deemed lessees and make recommendations thereon to the Secretary of State for approval;
- (d) investigate disputes on land ownership and occupation in any area designated by an Act of the National Assembly;
- (e) assess land tax and premium for properties within any area designated by an Act of the National Assembly;
- (f) monitor the registration of properties and inspect land registers and records; and
- (g) perform such other functions as the Secretary of State responsible for land may assign to the Commission.

(2) The members of the Land Commission shall be appointed by the President after consultation with the Attorney- General.

(3) The Land Commission shall submit a quarterly report on the performance of its functions to the National Assembly.

(4) An Act of the National Assembly may make further provisions for the purposes of this chapter.

CHAPTER XV LOCAL GOVERNMENT AND TRADITIONAL RULERS

193. System of local government

(1) Local government administration in The Gambia shall be based on a system of democratically elected councils with a high degree of local autonomy.

(2) 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 district in which each shall have jurisdiction. The geographical boundaries of each local government authority shall be determined by the Independent Electoral Commission.

(3) 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 commercial enterprises;
- (c) the participation of the inhabitants in the development and administration of the area;

- (d) the essential and other services to be provided by the authority;
- (e) the raising of local revenue;
- (f) the management, control and oversight of the authority's finances and the audit of its accounts by the Auditor- General;
- (g) the making of by-laws;
- (h) the preservation of the environment;
- (i) the promotion of Gambian traditions and culture;
- (j) the control of financial and other resources allocated by the Central Government.

(4) 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.

194. Local government authorities

An Act of the National Assembly by or under which a local government authority is established shall include provision for—

- (a) the election of members of the authority from among residents of the area within the authority's jurisdiction at intervals of four years, and the qualifications for election;
- (b) the additional representation on the authority of District Chiefs and representatives of local commercial, occupational or social interests or groups, whether by election or otherwise;
- (c) the direct election of the mayor or chairman of the authority;
- (d) the tenure of office of members of the authority;
- (e) the recall by their wards of members of the authority;
- (f) the appointment of committees from amongst the members of the authority, including finance, establishment and appointment, and development committees;
- (g) the appointment of a chief executive for the authority to be responsible to the authority for the administration of its services and the implementation of its policy and programmes; and for the terms and conditions of his or her appointment.

CHAPTER XVI THE NATIONAL YOUTH SERVICE

195. National Assembly to establish National Youth Service

(1) Subject to the provisions of this Constitution, an Act of the National Assembly shall within two years of the coming into force of this Constitution establish and make provision for—

- (a) a National Youth Service; and
- (b) a National Youth Service Board.

(2) An Act of the National Assembly made for the purposes of this section shall provide—

(a) for the establishment of a youth training scheme designed to provide—

(i) training in good citizenship and civic responsibility;

(ii) work experience;

(iii) experience of various aspects of national life and development with a view to the development of leadership qualities;

(b) for the various activities which may be undertaken or made available within the youth training scheme;

196. Participation in the service

(1) Citizens of The Gambia who have attained the age of eighteen years shall, subject to any exemptions and deferments prescribed by an Act of the National Assembly, be required to join the National Youth Service.

(2) An Act of the National Assembly may provide that any person who seeks an appointment in the public service shall provide evidence of his or her having participated in, or been exempted from joining, the National Youth Service.

197. National Youth Service Board

(1) The National Youth Service Board shall be responsible for the operation of the National Youth Service.

(2) The Board shall be composed of a Chairman and four other members who shall be appointed by the President, in consultation with the Secretary of State.

(3) Subject to this Constitution and any Act of the National Assembly, the Board may, with the prior approval of the President, make regulations for the performance of its functions under this Constitution or any other law and for the effective and efficient administration of the National Youth Service.

CHAPTER XVII THE NATIONAL COUNCIL FOR CIVIC EDUCATION

198. National Assembly to establish National Council for Civic Education

(1) Subject to the provisions of this Constitution, an Act of the National Assembly shall within six months of the coming into force of this Constitution, establish and make provision for a National Council for Civic Education.

(2) The Council shall consist of a Chairman and four other members appointed by the President subject to confirmation by the National Assembly. Members of the Council shall be persons of high moral standing and no person who holds office in any political party shall be qualified to be appointed or to hold office as a member of the Council.

(3) Subject to this Constitution, an Act of the National Assembly shall prescribe the tenure and terms of service of members of the Council.

(4) A member of the Council may only be removed from office by the President for inability to discharge the functions of his or her office (whether arising from infirmity of mind or body or from any other cause) or for misconduct.

(5) The staff of the Council shall be appointed by the Council after consultation with the Public Service Commission.

199. Functions of the Council

(1) The functions of the National Council for Civic Education shall be—

(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 formulate, from time to time, for the consideration of the Government programmes at national and district levels aimed at realising the objects of this Constitution;

(d) 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;

(e) to educate the citizens of The Gambia about international, regional and subregional matters relevant to The Gambia, and

(f) such other functions as an Act of the National Assembly may prescribe.

(2) An Act of the National Assembly may provide for the establishment of district branches of the Council.

(3) In the exercise of its functions, the Council shall be a-political 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 XVIII COMMISSIONS OF INQUIRY

200. Commissions of Inquiry

(1) The President may, whenever he or she deems it advisable, issue a Commission appointing one or more Commissioners and authorising 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 any department or authority of the public service or any local government authority or Public Enterprise;

(d) any matter whatever arising in The Gambia in which an inquiry would, in the opinion of the President, be for the public good.

(2) The National Assembly may request the President to establish a Commission of Inquiry for any of the purposes set out in subsection (1).

(3) 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:

Provided that the presiding Commissioner shall be entitled to exclude any particular person or persons for the preservation of order.

201. Presiding Commissioner

(1) A person shall not be appointed a sole Commissioner or the Chairman 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 it;
- (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.

202. Function and powers of Commission

(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 200* shall not be liable to any action or suit in respect of any matter or thing *bona fide* done or omitted to be done in the performance of his or her functions as a Commissioner.

203. Publication of report

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.

204. Adverse findings

(1) Where a Commission of Inquiry makes an adverse finding against any person, it shall, at the time of submitting its report to the President, inform such person of the finding and the reasons therefor.

(2) A person against whom any such adverse finding has been made may appeal against such finding to the Court of Appeal as of right as if the finding were a judgement of the High court; and on the hearing of the appeal the report shall be treated as if it were such a judgment.

(3) 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.

205. Immunities of witnesses

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.

206. National Assembly to make further provision

An Act of the National Assembly may make further provision for the purposes of this Chapter, 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.

207. Freedom and responsibility of the Media

(1) The freedom and independence of the Press and other information media are hereby guaranteed.

(2) An Act of the National Assembly may make provisions for the establishment and operation of the Press and other information media.

(3) The Press and other information media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the Government to the people of The Gambia.

Constitution, and the responsibility and accountability of the Government to the people of The Gambia.

208. Responsibility of State owned media

All state owned newspapers, journals, radio and television shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinion.

209. Limitations on rights and freedoms

The provisions of sections 207 and 208 are subject to laws which are reasonably required in a democratic society in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of others.

210. National media Commission

An Act of the National Assembly shall within one year of the coming into force of this Constitution make provision for the establishment of a National Media Commission to establish a code of conduct for the media of mass communication and information and to ensure the impartiality, independence and professionalism of the media which is necessary in a democratic society.

CHAPTER XX DIRECTIVE PRINCIPLES OF STATE POLICY

211. Application of the Directive Principles of State Policy

The principles of state policy in this Chapter shall form part of the public policy of The Gambia for the establishment of a just, free and democratic state. These principles shall not confer legal rights or be enforceable in any court but—

(a) subject to the limits of the economic capacity and development of The Gambia, the Executive, the Legislature and all other organs of the State in taking policy decisions, making laws and in the administration of The Gambia, shall according to their respective functions be guided by and observe them with a view to

212. National Integration and Unity

- (1) All organs of the State shall strive towards the realisation of national unity, peace and stability.
- (2) Every effort shall be made to integrate the people of The Gambia and foster loyalty to The Gambia without discrimination.
- (3) All the people of The Gambia shall be entitled to their ethnic, religious and cultural values which do not disturb the unity or cohesion of the State.

213. National Sovereignty and Independence

- (1) The State and all Citizens of The Gambia shall endeavour to protect and enhance national sovereignty including social, political, and economic independence and territorial integrity.
- (2) The State shall pursue policies which avoid undue dependence on other nations and institutions.

214. Political objectives

- (1) The Gambia shall be a democratic state dedicated to freedom, peace, progress, prosperity and justice.
- (2) The people shall express their will and consent as to who shall govern them and how they shall be governed, through regular, free and fair elections of their representatives.
- (3) The State shall be guided by the principles of decentralisation and devolution of governmental functions and powers to the people at appropriate levels of control to facilitate democratic governance.
- (4) In the composition of the Government, women shall be fairly represented.
- (5) The Government, with due regard to the principles of an open and democratic society, shall foster accountability and transparency at all levels of government.

215. Economic Objectives

- (1) The State shall endeavour to create an economic environment that maximises the rate of economic growth and employment and secures the maximum welfare and prosperity for all persons in The Gambia.
- (2) The State shall endeavour to keep inflation under control.

(3) Recognising that the most secure democracy is one that assures the basic necessities of life for its people, the State shall endeavour to establish an efficient, dynamic and self-reliant economy whose underlying principles shall include ensuring:

(a) ample and equal economic opportunity for all citizens and a pronounced role for the private sector, and the encouragement of private initiative;

(b) that persons bear their fair share of social and national responsibilities including their responsibility to contribute to the development of the country; and

(c) a balanced development of all parts of The Gambia, improvement in the quality of life in rural communities and redressing economic imbalances between rural and urban communities.

(3) The State shall pursue a policy of:

(a) giving adequate priority to those sectors of the economy which promote national prosperity;

(b) promoting the development of agriculture and related industry;

(c) encouraging and protecting beneficial foreign investment;

(d) protecting the environment of the nation for posterity; and

(e) co-operation with other nations and bodies to protect the global environment.

(4) The State shall endeavour to ensure equal opportunity and full participation for women in the economic development of the country.

216. Social Objectives

(1) The State shall endeavour to secure and promote a society founded on the principles of freedom, equality, justice, tolerance, probity and accountability.

(2) The State shall pursue policies to protect the rights and freedoms of the disabled, the aged, children and other vulnerable members of society and to ensure that such persons are provided just and equitable social opportunities.

(3) The State, in pursuing policies under subsection (2), shall be bound by the fundamental rights and freedoms in the Constitution and shall be guided by international human rights instruments to which The Gambia is a signatory and which recognise and apply particular categories of basic human rights to development processes.

(4) The State shall endeavour to facilitate equal access to clean and safe water, adequate health and medical services, habitable shelter, sufficient food and security to all persons.

(5) The State shall encourage and promote the establishment and maintenance of contributory schemes that shall provide economic security for all citizens.

(6) The State shall endeavour to ensure safe systems of working for persons who are employed and to provide that such persons are entitled to adequate rest, leave and leisure.

(7) The State shall endeavour to ensure that adequate sports facilities are established throughout The Gambia and that sports are promoted as a means of fostering national integration, health and self-discipline and international friendship and understanding.

217. Educational objectives

- (1) The State shall endeavour to provide adequate educational opportunities at all levels of study for all citizens.
- (2) The State shall pursue policies to ensure basic education for all citizens and shall endeavour to provide adequate resources so that such tuition for basic education shall be free for all citizens.
- (3) The State shall endeavour to provide skills training centres.
- (4) The State shall take measures to create an adult literacy programme, rehabilitative vocational training for the disabled, and continuing education programmes.

218. Cultural objectives

The State and all the people of The Gambia shall strive to protect, preserve and foster the languages, historic sites, cultural, natural and artistic heritage of The Gambia.

219. Foreign relations

The State shall endeavour to ensure that in international relations it:

- (a) promotes and protects the interest of The Gambia;
- (b) seeks the establishment of a just and equitable international economic and social order;
- (c) fosters respect for international law, treaty obligations and the settlement of international disputes by peaceful means; and
- (d) is guided by the principles and goals of international and regional organisations of which The Gambia is a signatory.

220. Duties of a Citizen

- (1) The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations, and accordingly, every citizen shall:
 - (a) promote the prestige and good reputation of The Gambia and respect the symbols of The Gambia;
 - (b) uphold and defend the Constitution;
 - (c) foster national unity and live harmoniously with others;
 - (d) respect the rights, freedoms and legitimate interests of others and refrain from acting in a manner detrimental to the welfare of other persons;
 - (e) serve The Gambia by working conscientiously in his or her chosen occupation;
 - (f) protect and preserve public property and expose and combat the misuse and waste of public funds and property;
 - (g) contribute to the well being of the community in which the citizen lives;

- (h) be loyal to The Gambia and contribute to its defence when necessary;
- (i) cooperate with the appropriate agencies in the maintenance of law and order; and
- (j) protect and conserve the environment of The Gambia.

(2) It shall be the duty of every citizen to abide by and conform with the provisions set out in subsection(1), but such duties shall not, of themselves, render any person liable to proceedings of any kind in any court.

CHAPTER XXI CODE OF CONDUCT FOR PUBLIC OFFICERS

221. Application of Code of Conduct

(1) The provisions of the Code of Conduct set out in section 222 shall apply to persons who hold public office or hold office in a public service, members and the staff of local government authorities and Public Enterprises, and members of a disciplined force (each of whom is in this Chapter referred to as a “public officer”).

(2) The failure on the part of a public officer to observe a provision of this Code shall not, of itself, render that officer liable to any civil or criminal proceedings in any court, but any such failure may—

(a) in any proceedings in the National Assembly under this Constitution, or any disciplinary proceeding against a person, be taken into account in determining any question at issue in those proceedings;

(b) in any proceedings before a court, be admissible in evidence and, if the provisions of the Code appear to the court to be relevant to any question arising in the proceedings, it may be taken into account in determining that question.

(3) An Act of the National Assembly may make provision—

(a) for the modification of the Code of Conduct;

(b) the adoption of supplementary codes of conduct by the Judicial Service Commission, the Public Service Commission, the competent authority of any public service or the disciplinary authorities of any disciplined force.

222. The Code of Conduct

The Code of Conduct is as follows:

The Code of Conduct

In the performance of his or her duties, a public officer shall observe the following rules:

Duties of Public Officers

1. A public officer shall respect and comply with the law and shall conduct himself or herself at all times in a manner which promotes confidence in the integrity of public office.

2. A public officer shall acquire such professional competence to enable him or her to perform the functions of his or her office with efficiency. He or she shall dispose promptly of the business of his or her office, shall devote adequate time to his or her duties, be punctual in attending work and expeditious in

bringing to a conclusion any matter under his or her attention. A public officer shall require his or her staff to observe the same standards.

3. A public officer shall not, in the course of his or her official functions and without lawful excuse, do or cause to be done any action which is prejudicial to the rights of any other person.

4. In the exercise of his or her duties, a public officer shall avoid nepotism and favouritism.

5. A public officer shall not encourage others to convey the impression that they are in a special position to influence him or her.

6. A public officer shall take appropriate action with regard to contravention of this Code by members of his or her staff or others subject to his or her control.

7. A public officer who does any act prohibited by this Code through an agent shall himself or herself be deemed to have done such act.

8. A public officer who exercises judicial functions shall:

(a) maintain order and decorum in judicial proceedings before him or her;

(b) be patient, dignified and courteous to all litigants, witnesses, legal practitioners and others in the exercise of such functions, and shall require similar conduct from his or her staff and others subject to his or her control;

(c) abstain from comment about the outcome of any pending or anticipated legal proceedings in any court in The Gambia and require a similar abstention from his or her staff and others subject to his or her control; Financial

9. A public officer shall not hold more than one full-time public office in respect of which he or she is paid a salary.

10. A public officer shall not put himself or herself in a position where his or her personal interest conflicts with his or her duties or responsibilities.

11. A public officer shall not ask for or accept any property or benefits of any kind for himself or herself or any other person on account of anything done or omitted to be done by him or her in the course of his or her duties. The receipt of any gift or benefit from or on behalf of a commercial firm, business enterprise or a person having or negotiating a contract with the Government shall be deemed to be in contravention of this paragraph unless the contrary is established.

12. A public officer shall only accept gifts or benefits from relatives and friends to such extent and on such occasions as are customary. However the receipt of any gift or donation by a public officer on any public or official occasion shall, if surrendered to the office, department or agency represented by the public officer, not be treated as a contravention of this Code.

Association

13. A person holding an office in a public service or any disciplined force shall not—

(a) allow his or her political inclinations to interfere with the discharge of his or her official duties;

(b) be a member of, or take part in any association of persons which might prevent him or her from impartially discharging his or her duties;

(c) take part in any activities which cast doubt on his or her capacity to deal impartially with matters or issues which are the concern of his or her public office or which interfere with the performance of his or her public duties.

Additional provisions relating to the President

14. *The President shall in person address the nation as and when necessary.*

15. *The President shall undertake a nation-wide tour at least twice a year in order to familiarise himself or herself with current conditions and the effects of government policies.*

223. Declaration of assets

(1) A public officer to whom this section applies shall submit to the Ombudsman a written declaration of all property and assets owned by him or her, and of liabilities owed by him or her, whether directly or indirectly

- (a) within six months of the coming into force of this Constitution;
- (b) at the end of every two years;
- (c) on ceasing to hold public office.

(2) A false statement in any such declaration shall be deemed to be a contravention of the Code of Conduct set out in this Chapter.

(3) A declaration made under subsection (1) shall be produced if required—

- (a) in proceedings before a court of competent jurisdiction, other than a district tribunal;
- (b) in proceedings before a Commission of Inquiry appointed in accordance with this Constitution;
- (c) in disciplinary proceedings or proceedings against any person in accordance with this Constitution.

(4) Any property or assets acquired by a public officer after an initial declaration of assets required by subsection (1) which is not attributed to his income from his public office or other permitted employment, personal gifts as permitted by the Code of Conduct, inheritance or a loan or investment (including any savings scheme) on ordinary commercial terms shall be prima facie evidence of having been acquired, and in the absence of a credible explanation by the public officer concerned may be deemed to have been acquired, in contravention of the Code of Conduct and shall render the public officer liable—

- (a) in the case of a public officer in a public service or who is subject to other disciplinary procedures, to disciplinary action by the appropriate person or authority; or
- (b) in any other case, to removal from office or, as the case may be proceedings for removal, as provided by this Constitution or any other law.

(5) The Ombudsman shall submit his or her declaration of assets to the Finance and Public Accounts Committee of the National Assembly.

(6) This section applies to all public officers other than members of the public service, the staff of a local government authority or Public Enterprise or members of a disciplined force, below such position or rank as may be prescribed by or under an Act of the National Assembly.

224. Ombudsman to report contravention of Code of Conduct

Where, in the course of any investigation, it appears to the Ombudsman that there has been a contravention of the Code of Conduct set out in this Chapter, he or she may—

- (a) in the case of a public officer in a public service or who is subject to other disciplinary procedures, refer the matter to the appropriate disciplinary authority; or
- (b) in any other case, refer the matter to the authority having power to remove the public officer from office or, as the case may be, to the National Assembly.

225. Payment of taxes

The holder of a public office shall promptly pay all taxes due from him or her, and he or she shall, when required, provide evidence of such payment.

CHAPTER XXII AMENDMENT OF THE CONSTITUTION

226. Alteration of this Constitution

(1) Subject to the provisions of this section, an Act of the National Assembly may alter this Constitution.

(2) Subject to subsection (4), a bill for an Act of the National Assembly under this section shall not be passed by the National Assembly or presented to the President for assent unless—

(a) before the first reading of the Bill in the National Assembly, the Bill is published in at least two issues of the Gazette, the latest publication being not less than three months after the first, and the Bill is introduced into the National Assembly not earlier than ten days after the latest publication;

(b) the Bill is supported on the second and third readings by the votes of not less than three quarters of all the members of the National Assembly.

(3) If the President fails to assent within thirty days to a Bill passed by the National Assembly in accordance with subsection (2), the Bill shall be returned to the Speaker who shall refer it to the Independent Electoral Commission. The Independent Electoral Commission shall cause a referendum to be held on the Bill in accordance with subsection (4) and, if the Bill is supported on such a referendum by the majority provided for in that subsection, it shall again be presented to the President for his assent.

(4) A Bill for an Act of the National Assembly altering any of the provisions referred to in subsection (7) shall not be passed by the National Assembly or presented to the President for assent unless—

(a) the Bill is published and introduced in the manner required by paragraph (a) of subsection (2);

(b) the Bill is supported on the second and third readings by the votes of not less than three quarters of all the members of the National Assembly;

(c) the Bill has been referred by the Speaker to the Independent Electoral Commission and the Commission has, within six months of such reference, held a referendum on the Bill;

(d) at least fifty per cent of the persons entitled to vote in the referendum have taken part in the referendum and the Bill is supported in the referendum by at least seventy five per cent of those who voted.

(5) The Speaker and, in the case of a Bill to which subsection (3) or (4) applies, the Independent Electoral Commission shall certify that the relevant provisions of this section have been complied with and such certificates shall be delivered to the President when the Bill is presented for assent.

(6) Where a Bill which has been supported in a referendum by the majority provided for in subsection (4) is presented to the President for assent, the President shall assent to the Bill within seven days.

(7) Subsection (4) applies to—

(a) this section;

(b) sections 1 and 79(2) (which relate to the sovereignty of The Gambia);

(c) sections 4, 5(1) and 6(2) (which relate to the Constitution, as the supreme law of The Gambia);

(d) sections 8 and 13(4) (which relate to citizenship);

(e) Chapter IV (which provides for the protection of fundamental rights and freedoms);

(f) sections 39(1), 42(1), 47(3) (which relate to elections and the Independent Electoral Commission);

(g) section 63(1) and the first sentence of section 71(2) (which relate to the term of the President and the qualifications for Secretaries of State);

(h) sections 85(4) and 160(7) (which relate to the Director of Public Prosecutions and the independence of the Auditor-General);

(i) sections 87 and 100 (which relate to the National Assembly and the legislative power);

(j) sections 120(1)(a), (2) and (3), 121(1), 123, 126 to 128, 130, 132, 133, 135 and (2), 136 and 138(1), (4), (5) and (6) (which relate to the judicature);

(k) sections 149(1) and 151(1) which relate to taxation and the withdrawal of money from public funds);

(l) section 193(1) (which relates to local government).

(8) No Act of the National Assembly shall be deemed to amend, add to, repeal or in any 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.

(9) In this section—

(a) references to this Constitution include references to any law that amends or replaces any of the provisions of this Constitution;

(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 XXIII MISCELLANEOUS

PART 1 APPOINTMENTS AND RESIGNATIONS

227. Acting appointments

(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 unable to perform those functions.

228. Resignations

(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. In the case of:

(a) the President, his or her resignation shall be addressed to the Speaker and to the Chief Justice;

(b) the Vice-President, his or her resignation shall be addressed to the President;

(c) the Speaker or the Deputy Speaker, his or her resignation from that office shall be addressed to the Clerk of the National Assembly; and

(d) a member of the National Assembly, his or her resignation shall be addressed to the Speaker.

(2) 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;

(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.

229. Re-appointments

(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; and where two or more persons are holding the same office by reason of any appointment made in pursuance of this subsection, 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.

PART 2 GENERAL

230. Interpretation

(1) In this Constitution, unless a contrary intention appears—

“**Act of the National Assembly**” includes an Act of Parliament established under any previous Constitution of The Gambia and a Decree of any former government;

“**all the members**” in relation to the National Assembly, means all the members for the time being of the National Assembly;

“**the Commonwealth**” means the Commonwealth of Nations;

“**compulsory retirement age**” has the meaning ascribed to it in *section 171*

“**court**” means any court of law in The Gambia, including a court martial;

“**disciplined force**” means the Police Force, the Prison Service and the Armed Forces;

“**district tribunal**” means a court established by the District Tribunals Act or any Act of the National Assembly replacing that Act;

“**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 abrogated on, or immediately before, the coming into force of this Constitution;

“**the Gazette**” means the official gazette of the Government;

“**the 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 and civil and civil matters, or of a court with jurisdiction on appeal from such a court, in some part of the Commonwealth or such paragraph or item of the section, subsection, paragraph or sub-paragraph, as the case may be, 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.

(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 Republic.

231. Construction of various powers

(1) Where any power is conferred by this Constitution to make any proclamation, order, regulation, rule 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 167*, 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.

232. Transitional and consequential

Notwithstanding any other provision of this Constitution, the provisions of Schedule 2 shall have effect on the coming into force of this Constitution.

SCHEDULE 1 DIMENSIONS OF THE NATIONAL FLAG

The National Flag shall be a flag of the following Design:

The flag shall measure twenty-seven units across and eighteen units down.

It shall be divided into horizontal stripes which shall have the following colours and dimensions from the top to the bottom:

Red six units *one third*

White one unit

Blue four unit *one third*

White one unit

Green six units *one third*.

SCHEDULE 2 TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

1. Interpretation

In this Schedule, “existing” means in being, or as the case may be, having the force of law, immediately before the coming into force of this Constitution.

2. Election of first President

Notwithstanding any other provision of this Constitution, the person duly elected President of The Gambia in accordance with the Electoral Decree 1996 shall be the first President of the Second Republic of The Gambia and shall assume office as President on the date he or she is sworn in. The first President shall hold the office of President in accordance with the provisions of this Constitution. This Constitution shall come into effect upon swearing-in of the first President.

3. Elections to the National Assembly

(1) The register of voters established by the Electoral Decree 1996 shall be deemed to have been compiled in accordance with an Act of the National Assembly made for the purposes of *section 41* until it is replaced by a register of voters so compiled.

(2) The Provisional Independent Electoral Commission established by the Provisional Independent Electoral Commission Decree 1996 shall, until the members of the Independent Electoral Commission are appointed in accordance with *section 42*, exercise the functions and powers of the Independent Electoral Commission.

4. First constituency members of the National Assembly

Notwithstanding any other provision of this Constitution, the National Assembly constituencies established by the Electoral Decree 1996 shall, until other provision is made in accordance with Chapter V of this Constitution, be deemed to be constituencies for the purposes of the Constitution and the persons duly elected as members of the National Assembly for those constituencies in accordance with the said Electoral Decree 1996 shall be deemed to have been elected as such members for their respective single member constituencies. Such members shall hold their seats in accordance with the provisions of this Constitution.

5. First meeting of the National Assembly

(1) The President shall appoint a person to be the acting Clerk of the National Assembly until an appointment to that office is made in accordance with the provisions of this Constitution.

(2) The Standing Orders of the House of Representatives established under the Constitution of The Gambia 1970 shall, in so far as they are not inconsistent with this Constitution, constitute the Standing Orders of the National Assembly until the National Assembly makes other provision in accordance with *section 108* of this Constitution.

6. Existing law

(1) 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 authority or person, is prescribed or provided for by or under any existing law (including any Decree) or is otherwise lawfully prescribed or provided for immediately before the coming into force of this Constitution, that prescription or provision shall, as from the coming into force of this Constitution, have effect with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it were made under this Constitution by an Act of the National Assembly or, as the case may be, by the other authority or person.

(2) Where, immediately before the coming into force of this Constitution, any existing law had not been brought into force 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.

(3) Subject to subparagraph (4) and to it being consistent with this Constitution, in any existing law—

(a) a reference to the exercise of a legislative function (other than a power to make subsidiary legislation) by the Government or the Armed Forces Provisional Ruling Council shall, after the coming into force of this Constitution, be read as a reference to the exercise of that function by an Act of the National Assembly;

(b) a reference to a power to make subsidiary legislation by the Government or the Armed Forces Provisional Ruling Council shall, after the coming into force of this Constitution, be read as a reference to the President or to such Secretary of State or other authority as the President may by Order, published in the Gazette, direct;

(c) a reference to the exercise of an executive function by the Government, or any function (other than a legislative function) or power by the Armed Forces Provisional Ruling Council or the Chairman thereof, shall, after the coming into force of this Constitution, be read as a reference to the exercise of that function or power by the President.

(4) The President may, by Order published in the Gazette and made with the approval of the National Assembly, at any time within twelve months of the coming into force of this Constitution make such provision as may appear necessary for repealing, modifying, adding to or adapting any existing law for bringing it into accord with the provisions of this Constitution.

7. The courts

(1) The High Court established by this Constitution shall be the successor of the existing Supreme Court and—

(a) proceedings commenced in the existing Supreme Court may be continued before the same judge in the High Court without any break;

(b) after the coming into force of this Constitution, the judgements, decrees and orders of the existing Supreme Court shall continue in force and shall be given effect as if they were the judgements, decrees or orders of the High Court.

(2) The existing Court of Appeal shall be deemed to have been established by this Constitution.

(3) Until the Supreme Court is established in accordance with this Constitution—

(a) the jurisdiction and powers of the Supreme Court under *section 127* shall be exercised by the Court of Appeal; and

(b) appeals shall continue to lie to the Judicial Committee of the Privy Council according to the existing law, and where any appeal, or petition for special leave to appeal, is entered with the Privy Council before the establishment of the Supreme Court, the proceedings may continue, and effect shall be given to any judgement or order of the Judicial Committee in such proceedings, according to the existing law.

(4) Subject to the foregoing provisions of this paragraph, where any proceedings have been commenced

before the coming into force of this Constitution in any existing court, they may be continued and concluded before the corresponding court as established or recognised by this Constitution, and judgements, decrees and orders of any existing court shall be given effect as the judgement, decrees and orders of such corresponding court.

8. Judges

(1) The Justices of the existing Court of Appeal shall be deemed to have been appointed as Justices of the Court of Appeal as established by this Constitution.

(2) The Justices of the existing Supreme Court shall be deemed to have been appointed as Justices of the High Court as established by this Constitution.

9. Existing offices

(1) Subject to the 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 a similar or corresponding office, any person who, immediately before the coming into force of this Constitution holds or is acting in the former office shall, in so far as it is consistent with this Constitution, be deemed as from the coming into force of this Constitution to have been appointed, elected or otherwise selected to or to act in the latter office:

Provided that—

(a) any person who, under the existing law, would have been required to vacate his or her office at the expiration of any period or the attainment of any age shall vacate his or her office on the expiry of that period or on the attainment of that age;

(b) 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;

(c) nothing in this paragraph shall apply to the office of Minister or Secretary General.

(2) 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.

(3) Any person who, by virtue of this paragraph, is deemed as from the coming into force of this Constitution to have been appointed, elected or selected to hold or act in any office shall, as soon as may be, take and subscribe the prescribed oaths.

10. Financial provision

(1) The Consolidated Revenue Fund and the Contingency Fund in existence immediately before the coming into force of this Constitution, shall, until otherwise provided by law, continue in existence as the Consolidated Fund and the Contingency Fund referred to in *sections 150 and 154* of this Constitution.

(2) Subject to this Constitution, every payment required or authorised to be made into a public fund or out of a public fund under any law in force immediately before the coming into force of this Constitution shall continue to be made into or out of that fund.

(3) The financial estimates for the financial year in being at the coming into force of this Constitution shall, until provision is otherwise made by an Act of the National Assembly, continue and shall have full effect.

11. Savings of Commissions of Inquiry Established During the Period Commencing the 22nd July 1994 Up To The Coming Into Force of This Constitution.

(1) Where any order, penalty or investigation has been made or commenced before the coming into force of this Constitution by any person or authority that has power for that purpose under any Decree establishing any Commission of Inquiry, that penalty, order or investigation may be carried on and be completed by the person or authority having power for the purpose after the coming into force of this Constitution, and it shall not be necessary for the person or authority to commence the investigation or make the Order or Penalty afresh.

(2) For avoidance of doubt, any Commission of Inquiry established in accordance with a Decree of the Armed Forces Provisional Ruling Council before the coming into force of this Constitution shall continue to exist and shall exercise their functions in accordance with the Orders establishing them.

(3) Any Order, Ruling, finding of fact, seizure, sale or alienation of property or penalty imposed or thing done by or carried out under the authority of any Commission of Inquiry established in accordance with a Decree of the Armed Forces Provisional Ruling Council shall not be questioned or reversed by any Court or other authority under this Constitution or any other law.

12. Succession to property

As regards any property, assets or obligations—

(a) the President shall be the universal successor as respects the office of a former President of The Gambia as established under any previous Constitution; and

(b) the Government shall be the universal successor to a former Government of The Gambia as so established and to the Armed Forces Provisional Ruling Council.

13. Legal Proceedings

(1) No member of the Armed Forces Provisional Ruling Council, any person appointed Minister by the Armed Forces Provisional Ruling Council, or other appointees of the Armed Forces Provisional Ruling Council shall be held liable either jointly or severally for any act or omission in the performance of their official duties during the administration of the Armed Forces Provisional Ruling Council.

(2) After the coming into force of this Constitution, it shall not be lawful for any court or tribunal to entertain any action or take any decision or make any order or grant any remedy or relief in any proceedings instituted against the Government of The Gambia or any person acting under the authority of the Government of The Gambia, or against any person or persons acting in concert or individually to assist or bring about the change in Government which took place on the twenty second day of July 1994, in respect of any act or omission relating to, or consequent upon:

(a) the overthrow of the government in power before the formation of the Armed Forces Provisional Ruling Council; or

(b) the suspension or abrogation of the Constitution of The Gambia 1970; or

(c) the establishment of the Armed Forces Provisional Ruling Council; or

(d) the establishment of this Constitution.

(3) For the avoidance of doubt, it is declared that no action taken purported to have been taken in the exercise of the executive, legislative or judicial power by the Armed Forces Provisional Ruling Council or

a member thereof, or by any person appointed by the Armed Forces Provisional Ruling Council in the name of the Armed Forces Provisional Ruling Council except judges of the Supreme Court or the Court of Appeal, shall be questioned in any proceedings whatsoever and, accordingly, it shall not be lawful for any court or tribunal to make any order or grant any remedy or relief in respect of any such act.

The provisions of subparagraph (3) shall have effect notwithstanding that any such action as is referred to in that subparagraph was not taken in accordance with any procedure prescribed by law.

(5) It shall not be lawful for any court or tribunal to entertain an action instituted in respect of an act or omission against a person acting or omitting to act on the instructions or authority of the Armed Forces Provisional Ruling Council, or a member thereof, and alleged to be in contravention of any law, whether substantive or procedural, in existence before or during the administration of the Armed Forces Provisional Ruling Council.

14. Preservation of Confiscation and Penalties imposed by the Armed Forces Provisional Ruling Council

Any confiscation of any property or any other penalties imposed by the Armed Forces Provisional Ruling Council or the Chairman thereof shall not be questioned or reversed by any Court or other authority under this Constitution or any other law.

15. Abrogation of 1970 Constitution

The Constitution of The Gambia 1970 (Act No. 1 of 1970) is hereby abrogated

16. Substitution of life imprisonment for death penalty

Where any law makes provision for a sentence of death in any case other than that provided for in section 18(2), the law shall have effect as if imprisonment for life were substituted for that penalty.

17. Paragraphs not to be amended

The National Assembly shall have no power to pass a Bill to amend or repeal this paragraph or paragraph 11, 12, 13 or 14 of this Schedule.