

REPORT OF THE CONSTITUTIONAL REVIEW COMMISSION ON THE DRAFT CONSTITUTION FOR THE THIRD REPUBLIC OF THE GAMBIA

*Pursuant to sections 6 (1) and 21 (1) of the
Constitutional Review Commission Act, 2017*



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ACRONYMS

ACC	-	Anti-Corruption Commission
AFPRC	-	Armed Forces Provisional Ruling Council
APRC	-	Alliance for Patriotic Reorientation and Construction
CBG	-	Central Bank of The Gambia
CEO	-	Chief Executive Officer
CRC	-	Constitutional Review Commission
CRC Act	-	Constitutional Review Commission Act, 2017
DLEAG	-	Drug Law Enforcement Agency, The Gambia
DPP	-	Director of Public Prosecutions
ECOWAS	-	Economic Community of West African States
FGD	-	Focus Group Discussion
GAF	-	The Gambia Armed Forces
GDP	-	Gross Domestic Product
GPF	-	Gambia Police Force
HS	-	Household Survey
NHRC	-	National Human Rights Commission
HSC	-	Health Service Commission
IBEC	-	Independent Boundaries and Electoral Commission
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
International IDEA	-	International Institute for Democracy and Electoral Assistance
IEC	-	Independent Electoral Commission
IGP	-	Inspector General of Police
IPC	-	In-country Public Consultations
JSC	-	Judicial Service Commission
LENRC	-	Land, Environment and Natural Resources Commission
LGA	-	Local Government Authority
NAM	-	National Assembly Member
NCCE	-	National Commission for Civic Education/National Council for Civic Education (as the context requires)
NSC	-	National Security Council
PPP	-	Public Participation Platform/People's Progressive Party (as the context requires)
PSC	-	Public Service Commission
SOE	-	State-Owned Enterprise
TSC	-	Teachers Service Commission
UNDP	-	United Nations Development Programme
USA	-	United States of America

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The CRC conveys gratitude and appreciation to His Excellency Adama Barrow, President of the Republic of The Gambia, who from the date that the Chairperson and the Commissioners were sworn into office on 4th June, 2018 to date, expressed confidence in the CRC to deliver to the Gambian people a new Constitution. He made it clear to the Commissioners and others that the development of the Draft Constitution was about what the people of The Gambia wanted. The CRC is also grateful for the professional manner in which the President treated the CRC by assuring its total independence.

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- All other local and international institutions that might have assisted the CRC process directly or indirectly, the CRC recognises and appreciates their interest during the long journey of constitutional development.

Finally, the CRC is grateful to the people of The Gambia for participating in this journey of constitutional design and development. We worked together as citizens and together we can proudly say we have achieved. Thank you for according the Commissioners the honour and the privilege of preparing the Draft Constitution for ourselves, as a country, as one people and for the future generations of Gambians.

CRC

FOREWORD BY CRC CHAIRPERSON

On January 19, 2017, His Excellency Adama Barrow was sworn in as President of the Republic of The Gambia, following the successful conclusion of Presidential elections in December 2016. The new Government pledged to revitalize the economy, strengthen social cohesion and transform the economy for the well-being of Gambians. In addition, the Government committed to promoting national reconciliation, and re-building the foundations for good governance and democracy in the country.

A key part of that effort was the formulation of a National Transitional Justice Programme to help restore democratic governance in the country. In this regard, the Government resolved to review the 1997 Constitution and draft a new Constitution to address the wishes and aspirations of Gambians. In May 2017, a National Stakeholders Conference on Justice and Human Rights called for the preparation of a new Constitution to replace the 1997 Constitution.

Against this background, the National Assembly enacted the CRC Act in December 2017. In January 2018, President Barrow assented to the CRC Act. The objective of the CRC Act, as evident in its Long Title, was *“to provide for the establishment of a Constitutional Review Commission to draft and guide the process of promulgating a new Constitution for The Gambia”*. This was essentially aimed at enabling, amongst other things, a review of the 1997 Constitution to provide The Gambia with a new Constitution that upholds respect for the rule of law and fundamental human rights, ensures full democratic participation in national affairs, provides a solid foundation for good governance and establishes strong governance institutions.

In this regard, the CRC was established in June 2018 and its Members were sworn in by the President of the Republic on 4th June 2018. The CRC comprised a Chairperson, a Vice Chairperson and nine other Commissioners. Its mandate was two-fold: first, to review the 1997 Constitution and draft a new one; and second, to prepare a report in relation to the draft Constitution.

Following the swearing-in of the CRC Commissioners, the CRC commenced work the following day. The Commissioners prepared key policy and strategic documents to guide the constitutional development process, including the establishment of the CRC Secretariat and recruitment of a Secretary and other staff to facilitate the work of the CRC. One of the key documents to guide the work of the CRC was its Action Plan, which was designed to ensure a smooth process in the initiation and completion of the constitutional review assignment to culminate in the preparation of a draft Constitution and a report.

In carrying out its assignment, the CRC was guided by the key principles outlined in section 6 (2) of the CRC Act. These included the need to seek public opinion, ensure adherence to The Gambia's national values and ethos, and safeguard and promote (i) The Gambia's existence as a sovereign independent State; (ii) the republican system of governance of The Gambia, including the country's democratic values and respect for the rule of law and human rights; (iii) the separation of powers; (iv) national values, cohesion and peace; (v) the importance of ensuring periodic democratic elections which includes establishing term limits for the Office of President; and (vi) the continued existence of The Gambia as a secular State in which all faiths are treated equally and encouraged to foster national unity and cohesion. In this context, the CRC kicked-off the review of the 1997 Constitution by preparing a comprehensive list of questions and issues contained in its Issues Document; the questions and issues totalled 369 on which public opinion was sought.

On 5th November, 2018, following a pre-consultation visit to all the seven Administrative Areas of The Gambia holding preparatory dialogue with the Regional Governors, Seyfos and other LGAs, including the Mayoress of Banjul and the Mayor of the Kanifing Municipality and regional women and youth representatives, the CRC embarked on direct face-to-face public consultations with Gambians both within and outside the country to seek their input in the preparation of the draft Constitution. The public consultations focused mainly on the questions and issues identified in the Issues Document. In addition to engaging this formula for securing public opinion, the CRC held focused group discussions with women, youth, persons with disabilities and community elders, to identify their specific wishes and aspirations for inclusion in the Draft Constitution. The CRC also conducted household and online surveys to gather additional information about what Gambians wanted in the draft Constitution. It also received many position papers from various sources regarding constitutional law issues. In addition to all these public consultation processes, the CRC conducted in-depth research into specific subject matters that were either canvassed by the public or identified by the CRC as requiring such research to assist with making informed decisions. All these efforts were complemented by the work of expert technical committees, comprising Gambians in their relevant fields of study.

Following these processes and the collation and analyses of the public opinions received, the CRC embarked on the process of drafting a new Constitution. The proposed Draft Constitution was published on 15th November, 2019 in both print and electronic form and widely distributed in The Gambia and online. The CRC then embarked on a second and final public consultation around the country, this time to inform and solicit feedback on the Draft Constitution, in addition to receiving written contributions. The CRC took feedback on the proposed Draft Constitution and

prepared the final draft. The CRC also prepared this Report on the Draft Constitution as mandated by the CRC Act for submission to the President of the Republic.

The Draft Constitution draws inspiration from the provisions of the CRC Act and, in the main, represents the wishes and aspirations of the Gambian people for a just and democratic society with established rules on respect for the rule of law and fundamental rights and freedoms, good governance and strong governance institutions, accountability, appropriate checks and balances and recognition and tolerance for diversity. The Draft Constitution also benefits from comparative studies to establish international best practices and takes account of international treaties to which The Gambia is a party. Finally, the Draft Constitution takes into account the national values and ethos of The Gambia.

The Draft Constitution comprises some provisions of the 1997 Constitution that the CRC considered appropriate to be retained, while modifying others. It has introduced some innovations in response to the wishes and aspirations of the Gambian people. New Chapters have been created on National Values and Principles, Leadership and Integrity, Independent Institutions and Offices, and Land, Environment and Natural Resources. In particular, the establishment of the National Human Rights Commission and the Anti-Corruption Commission are aimed at ensuring respect for the rule of law and human rights, and integrity and accountability in government; these are emerging phenomena of modern constitutional development.

In addition, the Draft Constitution provides for the devolution of government and strengthens local government authorities as a mechanism to ensure bottom-up development, while at the same time ensuring due regard for overall central Government policies and programmes. Appropriate provisions are made to give due regard to the principle of separation of powers between the Executive, Legislature and Judiciary. The functions of the Executive are balanced against the oversight role of the National Assembly, while assuring the independence of the Judiciary. The Draft Constitution also provides for an increase in the size of the National Assembly from 58 to 69 members. The existing provision in the 1997 Constitution permitting nominated membership of the National Assembly has been dispensed with in accordance with the wishes and aspirations of the Gambian people. Provision is made for the election of fourteen female National Assembly Members, with two elected by universal adult suffrage from each of the seven Administrative Areas; such election may be on political party basis and/or on the basis of independent candidature. Persons with disabilities have also been empowered to elect two of their members to represent them in the National Assembly. Each registered political party is obligated to ensure

that at every National Assembly elections, at least ten percent of its candidates are of the youth group.

After engaging in a robust and full participatory and inclusive process to canvass public opinion, it is my strong belief and indeed that of my fellow Commissioners of the CRC that the Draft Constitution generally embodies the wishes and aspirations of the Gambian people in a fair and balanced manner, and that it will help buttress democratic rule and good governance in The Gambia for generations to come. While the Draft Constitution, as with any other Constitution, cannot incorporate every view and opinion, it is our belief that it truly reflects the best interests of The Gambia and Gambians.

The CRC commends this Report and the Draft Constitution to His Excellency the President of the Republic and to all Gambians to receive, adopt and own.

Hon. Justice Cherno Sulayman Jallow, QC (JSC)

Chairperson, CRC

EXECUTIVE SUMMARY

1. In December 2016, The Gambia had a historic, democratic and peaceful change of government. The coalition candidate, Adama Barrow, was elected President of The Gambia, and was sworn into office on 19th January, 2017. President Barrow's Government pledged to revitalize the economy, strengthen social cohesion and transform the economy, promote national reconciliation, and re-build the foundations for good governance and democracy in the country. Toward this end, the Government formulated a National Transitional Justice Programme as part of the process of restoring democratic governance. Furthermore, the Executive and the National Assembly resolved to review the 1997 Constitution; this was given additional impetus following a National Stakeholders Conference on Justice and Human Rights held in May 2017, which called for the preparation of a new Constitution to replace the 1997 Constitution.
2. In December 2017, the National Assembly passed the CRC Act to enable a review of the 1997 Constitution to provide The Gambia with a new Constitution founded on respect for the rule of law and human rights, full democratic governance, and establish strong governance institutions. In addition, the CRC Act provided for the preparation of a report on the review of the 1997 Constitution. President Barrow assented to the CRC Act in January 2018, and in June 2018, appointed and swore into office the 11 CRC members, including its Chairperson.
3. Following its establishment, the CRC prepared key policy documents¹ to guide the constitutional development process, followed by a CRC retreat organised by the International IDEA and the UNDP to build their capacities in constitutional review. The CRC also organized a capacity-building workshop for the CRC staff, the media and other partners on the constitutional review process.
4. The CRC also held consultations with Gambians, both at home and abroad, to seek their wishes and aspirations with respect to the preparation of the new Constitution. In addition, the CRC gathered additional perspectives of Gambians on the new Constitution they would want by conducting research on various topics, holding focus group discussions, as well as conducting household and online surveys. Individuals, organizations and Government agencies, as well as international development organizations, also sent position papers to the CRC about various constitutional issues they felt should be considered in the drafting of the new Constitution.
5. Following these consultations and research, the CRC prepared a draft new Constitution which it published on 15th November, 2019. The proposed Draft Constitution was published in both print and electronic form, and widely distributed in The Gambia and online. The CRC then held consultations in 13 locations around

¹ See paragraph 74.

the country to inform and solicit feedback on the proposed Draft Constitution, and used the feedback received from these consultations and other channels to prepare the final draft for submission to the President, along with this Report, as mandated by the CRC Act.

6. The Draft Constitution is guided by the provisions of the CRC Act, and takes into account the wishes and aspirations of the Gambian people for a just and democratic society. In addition, the Draft Constitution is inspired by best practices in countries with similar legal systems as The Gambia. Last, but not the least, the Draft Constitution is aimed at redressing the short-comings of the 1997 Constitution which, over the years, had been subjected to many amendments that were considered detrimental to democracy and good governance in The Gambia.
7. This Report presents the various parts of the Constitution under four headings:
 - a) Dimensions of the Issue;
 - b) Current State of the Law on the Issue;
 - c) Submissions Received, Analyses and Decisions; and
 - d) Provisions of the Draft Constitution.
8. The **Dimensions of the Issue** lists the issues identified in the CRC Issues Document about the particular subject or other issues considered relevant in properly considering the provisions of the Draft Constitution, while the **Current State of the Law** on the Issue discusses the provisions of the 1997 Constitution on the issue being considered. The section on **Submissions Received, Analyses and Decisions** summarises the substance of findings from the public consultations, CRC research, and position papers received on the various issues raised in the CRC Issues Document or pertinent to the sections of the Draft Constitution. Finally, the **Provisions of the Draft Constitution** section summarises the provisions of each Chapter of the Draft Constitution, and provides the rationale and justifications for such provisions.
9. The Draft Constitution is organized in a **Preamble**, 20 Chapters, and 4 Schedules. The Preamble of the Draft Constitution, 2020 is shorter and more progressive than that of the 1997 Constitution, and includes the will of the people of The Gambia for democracy, good governance, separation of powers, the values of national unity, cohesion, peace, as well as respect for the rule of law and fundamental rights and freedoms.
10. **Chapter I** deals with The Republic and Sovereignty of the People in sections 1 - 6. It recognizes that The Gambia is a Sovereign Republic and a multi-party democratic State and comprises people of different faiths, and each faith is to be respected and treated fairly, without any discrimination. Sovereign power belongs to the people of The Gambia from whom the organs of government derive their authority and is to be

exercised in accordance with the Constitution. Unlike the 1997 Constitution, this Chapter defines the territory of The Gambia and declares its national days. It recognises the decentralisation of government and the delegation of power to LGAs. These provisions will help to ensure that decisions are made closer to the local people and the communities they affect. This recognition of the need for devolution of government in the first Chapter is a key development in the constitutional history of The Gambia.

11. **Chapter II** provides for The Constitution and the Laws in sections 7-10. It declares the Constitution as the supreme law of The Gambia, and specifies the other laws of The Gambia. This Chapter also provides for the enforcement of the provisions of the Constitution, and introduces broader rules on enforcing these provisions. In addition, the Chapter provides specifically that treaties to which The Gambia is a party become part of the laws of The Gambia after they have been ratified and domesticated. The Chapter also obliges every citizen of The Gambia to respect, uphold and defend the Constitution, and prohibits any attempt to subvert constitutional order. Accordingly, any person who in any way resists the suspension, overthrow or abrogation of the Constitution does not commit any offence.
12. **Chapter III** on National Values and Principles of Governance is a new Chapter and comprises sections 11 - 13. The Chapter binds all State organs, Local Government Authorities, public officers and all other persons to adhere to the values and principles provided for in the Chapter. It is essentially designed to engender national pride, patriotism and individual and collective responsibility to the State, which is an emerging trend in modern constitutional development.
13. **Chapter IV** provides for citizenship of The Gambia in sections 14 - 22. In particular, the Chapter preserves the citizenship of persons who were citizens of The Gambia before the coming into force of the Constitution, and removes the distinction between citizenship by birth and citizenship by descent such that every person born of a Gambian parent simply qualifies as a citizen by birth. In addition, it provides for the citizenship of children eight years old or younger who are found in The Gambia and whose parents are unknown, to be presumed to be Gambian citizens. The Chapter also provides for citizenship by registration and naturalisation. It introduces the principle of reciprocity which allows a naturalised Gambian to retain his or her original nationality, if his or her country of origin offers the same status to Gambians wishing to take the nationality of that country. Other provisions of the Chapter are citizenship of non-Gambian children adopted by Gambian parents, dual citizenship, deprivation of citizenship and restoration of citizenship. The Chapter also empowers the National Assembly to enact legislation to make provision for registration as citizens of persons born in The Gambia to non-Gambian parents on or before 31st

December, 2019, and registration of other persons not eligible for Gambian citizenship under this Chapter.

14. **Chapter V** deals with Leadership and Integrity, under sections 23 - 30, which is necessitated by demand from an overwhelming voice of the Gambian public, for the inclusion of provisions on leadership and integrity in the Constitution. The Chapter deals with new issues such as the responsibilities of citizens, conduct of public officers, financial probity of public officers, restrictions on the activities of public officers and obligations of persons dealing with public officers in the service of the State. The Chapter also provides that it is an offence of violating the Constitution to contravene the provisions of the Chapter, and that such an offence may attract specified disqualifications.
15. The protection of fundamental human rights and freedoms is a key feature of any democracy. For this reason, **Chapter VI** provides for these rights and freedoms in 2 Parts in sections 31 - 73. Part I deals with general human rights and freedoms, and Part II deals with specific rights and freedoms. Part I provides for the objectives of human rights, the enforcement and implementation of rights guaranteed in the Chapter and the authority of the courts in dealing with rights. The Chapter further deals with the limitation of specified rights. In contrast to the 1997 Constitution, the Chapter introduces a new provision that imposes a positive obligation on the State to respect and uphold the rights guaranteed under the Constitution. Part II of the Chapter provides for specific rights and freedoms, including civil and political rights, economic, social and cultural rights and group rights. Part II also introduces the right of access to information. It further defines fundamental rights and freedoms related to the media.
16. **Chapter VII** provides for the Representation of the People in 3 Parts, in sections 74 - 84. Part I deals with the franchise and specifically outlines the general principles for the electoral system and provides for the right to be registered and to vote at elections and referenda. In addition, it makes provision for eligibility to contest elections as an independent candidate and declares all voting to be by secret ballot. Part II establishes the IBEC (the IEC under the 1997 Constitution) and provides for its functions, which includes the delimitation of electoral boundaries. Part III deals with political parties and outlines obligations and prohibitions relating to them.
17. **Chapter VIII** provides for the Executive arm of Government in 5 Parts, from sections 85 - 133. Part I provides for the guiding principles of Executive Authority and declares that Executive Authority is derived from the people of The Gambia, and is vested in the President who shall exercise it in a manner that accords with respect for the rule of law and is compatible with principles of service to the people of The Gambia. The Part also provides that the Executive comprises the President, Vice President and members of the Cabinet, and that the Cabinet shall reflect the diversity

of the Gambian people. Part II provides for the establishment of the Office of President, as well as the powers and duties of the President. The election of President is outlined in Part III, which provides the qualifications and disqualifications for election as President, as well as the process for election of President. The terms and conditions attached to the Office of President are provided in Part IV. Part V makes provision for the other offices in the Executive, including those of Vice President and Ministers, the Cabinet, and other public offices, namely, the Office of Chief of Staff to the President, Office of Secretary to Cabinet, Office of the DPP and the Solicitor General and Legal Secretary. All these public offices (save that of DPP) are proposed to be established for the first time in the Constitution.

18. The provisions in relation to the Legislature are outlined in eight Parts, in sections 134 - 170, under **Chapter IX** of the Constitution. Part I is a new addition to the Constitution, and provides the principles of parliamentary governance, as well as the relationship between members of the National Assembly and the citizens. This Part is considered fundamental to democratic governance, and is aimed at reinforcing the accountability of the National Assembly to the people of The Gambia. Part II of Chapter IX provides for the establishment and composition of the National Assembly, and takes on board the feedback received by the CRC from the Gambian public about the need for better representation of youth, women, and persons with disabilities in the National Assembly. This Part also prescribes the qualifications and disqualifications of National Assembly Members, and empowers citizens to recall their NAMs in specified circumstances.
19. Part III of Chapter IX provides for the leaders of the National Assembly, namely, the Speaker, Deputy Speaker, as well as the Leader of the Majority Party and the Leader of the Minority Party. Most importantly, this Part introduces the new provision that the Speaker of the National Assembly shall be elected from outside the Members of the National Assembly, and gives the Leader of the Majority Party and the Leader of the Minority Party constitutional recognition. In addition, the National Assembly is empowered to elect a Deputy Speaker and, where it considers it expedient, to elect 2 Deputy Speakers from amongst the elected members. Part IV of Chapter IX provides for the sessions and sittings of the National Assembly, while Part V provides for the legislative and other powers of the National Assembly. The procedure to be followed in proceedings of the National Assembly is provided for in Part VI. The responsibilities, privileges and immunities of National Assembly members are outlined in Part VII. Provisions are made in Part VIII for the establishment of a National Assembly Service, and a National Assembly Service Commission to deal with administrative, managerial and staff matters of the National Assembly.
20. **Chapter X** provides for the Judiciary in 6 Parts, in sections 171 - 202, starting with Part I on the principles governing the administration of justice. Part I, which is new

in the Constitution, seeks to promote the rule of law, and is aimed at ensuring that the law is administered fairly, and toward this end, provides for and reinforces judicial independence. Part II provides for the Office of the Chief Justice and the different courts in The Gambia. The Superior Courts as well as their jurisdiction and composition are outlined in Part III. The Part provides for the Shari'ah High Court to replace the Cadi Appeal Panel, and to hear appeals from the Shari'ah Court, formerly called the Cadi Court. The Part also affords right of appeal to persons subject to the jurisdiction of the former Cadi Court all the way to the Supreme Court. The jurisdictions of the Shari'ah Court and Shari'ah High Court remain the same as those of the Cadi Court and Cadi Appeals Panel respectively under the 1997 Constitution. In addition, Part III expands the jurisdiction of the Court of Appeal to include the power to hear and determine petitions on the validity of local government elections.

21. Part IV of Chapter X provides for the appointment of judges, including their qualifications and tenure, as well as remuneration and retirement benefits. The Office of Judicial Secretary (equivalent to the Office of Permanent Secretary) is established, and the qualifications for the office holder prescribed, in Part V, which also provides for administrative and financial matters of the Judiciary. Part VI establishes the Judicial Service Commission to handle appointments and other staff related matters of the Judiciary, including other functions to facilitate the efficient administration of the Judiciary.
22. **Chapter XI** outlines the importance of local government to the overall development of The Gambia, and its aim is to reinforce grass roots participation in national development. The Chapter has 4 Parts contained in sections 203 - 213, starting with Part I which provides the principles of decentralised local government. Part II deals with the establishment and composition of Local Government Authorities, and defines their powers and functions in response to their delegated authority. Part III provides for elections and terms of office of members of Local Government Authorities, as well as their financial autonomy and accountability. In Part IV, provision is made for other offices of LGAs, namely, Seyfos and Alkalos and recognises them as traditional rulers. Seyfos are to be elected on a non-partisan basis while Alkalos are to be appointed in accordance with traditional lines of inheritance. This is in accordance with the wishes and aspirations of the majority of the Gambian people regarding these two traditional institutions. The Part also prescribes the tenure of office of these office holders and stipulates the conditions of their removal from office. It also prohibits them from participating in partisan politics when executing the functions of their office.
23. **Chapter XII** is contained in sections 214 - 237. The Chapter is new, and has 7 Parts, and recognizes and caters for independent institutions and offices that are vital to public administration and the economic development of The Gambia. It aims at

ensuring the independence and security of tenure of the governing bodies of these institutions to ensure their effectiveness, and to prevent interference with their work. The Chapter further provides for the establishment of the Independent Institutions in Part I, including their objectives, funding, finances and reporting obligations. The Part also establishes the criteria for the appointment of office holders of all the independent institutions. Parts II and III provide for the composition, functions and powers of the NHRC and the ACC, respectively. Part IV provides for the composition, functions and powers of the Ombudsperson (called Ombudsman in the 1997 Constitution); Part V provides for the appointment and powers of the Auditor General; Part VI establishes the Central Bank of The Gambia as the banker to the Government and provides for its functions and the structure of its management; and Part VII gives the President the power to establish Commissions of Inquiry, and provides the powers and functions of such Commissions.

24. **Chapter XIII** deals with public finance in 6 Parts, in sections 238 - 253, and is aimed at ensuring the proper management of public funds and good financial governance; issues which are vital for peace, stability, development and good democratic governance. Part I of the Chapter provides the principles on which public finance management in The Gambia should be based. Part II provides for taxation (specifically issues relating to the raising of taxes), the administration of taxation, and procedures for waivers and variation of taxes. Part III creates public funds such as a Consolidated Revenue Fund, Contingencies Fund and a Development Fund, and provides for their administration in a transparent manner. Part IV provides for the regulation of loans and grants, as well as Government guarantees and management of the public debt, and recognises the oversight role of the National Assembly with regards to the public debt. Part V provides for the Budget of the Government to be presented to the National Assembly for approval, and prescribes the procedure for the consideration and passing of an Appropriation Bill or Supplementary Appropriation Bill. Part VI provides the framework for the regulation of public procurement and requires that all public procurements be conducted in a transparent manner to prevent corruption.
25. **Chapter XIV**, which is contained in sections 254 - 261, deals with land, environment and natural resources issues and is divided into 3 Parts. It recognises the importance of these resources in ensuring sustainable national development. The Chapter is new and incorporates views on land ownership, agriculture and management of natural resources, as well as addressing emerging environmental challenges expressed during public consultations. Part I provides for the principles governing the equitable use, management and protection of land, environment and natural resources, while Part II establishes an independent Land, Environment and Natural Resources Commission, and provides its powers and functions to ensure the

proper administration of land, and the responsible and equitable use of natural resources and the environment. Part II also recognises the need for intergenerational equity in the use of land and natural resources of the country, and the need for the protection of the environment, genetic resources and biodiversity. Part III consists of general provisions for regulating land ownership in response to the public concern about the need for the preservation of land for the present and future generations.

26. **Chapter XV** is outlined in sections 262 - 282 and consists of 4 Parts, which relate to the public services of The Gambia. Part I establishes the public services of The Gambia and Part II specifically establishes the TSC and the HSC, for the first time in the constitutional history of The Gambia. This is in response to the overwhelming public demand to streamline the public service to ensure speed, efficiency and effectiveness. Part III consists of general provisions on Service Commissions, including qualifications, tenure of office and independence of the office holders. Part IV makes provision for SOEs, which are entrusted with the management of vital sectors of the Gambian economy, as well as the security of tenure of their CEOs and their Governing Board members, to protect them from interference in the discharge of their duties.
27. **Chapter XVI** consists of 4 Parts in sections 283 - 295, and deals with national security matters. Part I identifies the Security Services and specifically establishes the NSC, and defines their functions. Part II establishes The GAF, and provides for appointments in the GAF, while Part III establishes the Gambia Police Service, and makes provision for its objects and functions as well as the appointment of the Inspector General of Police. Part IV establishes the Internal Security Service Commission to regulate appointments and other matters relating to employment of persons within the Security Services, namely, The Gambia Police Service, The Gambia Immigration Service, The Gambia Fire and Rescue Service, The Gambia Prison Service and the DLEAG.
28. **Chapter XVII** provides for matters relating to national youth development, in sections 296 - 298. It lays down the principles of youth development to guide the State in matters relating to the youth, including the requirement that youths should be consulted in the development of policies affecting them. Provision is also made requiring the Government, within 3 years of the coming into force of the Constitution, to establish necessary schemes and institutions to further the training and development of the youth, while at the same time strengthening existing schemes and institutions to facilitate the overall development of the youth of the country.
29. **Chapter XVIII** establishes the National Commission for Civic Education (formerly National Council for Civic Education), and sets out its functions, as well as the qualifications and disqualifications of its members, in sections 299 - 301. The Chapter expands the mandate of the Commission from what it was in the 1997

Constitution to include educating and encouraging the public to defend the Constitution against all forms of abuse and violence, sensitising people on proposed legislative measures and on key legislation that affect their lives and affairs, educating the public on other laws of The Gambia and the treaties and conventions that apply to the country.

30. **Chapter XIX**, contained in sections 302 - 306, provides the mechanism on how the Constitution may be amended, identifies entrenched and non-entrenched sections, and the requirements for amending these sections. This Chapter also prohibits the National Assembly from amending the Constitution to increase the term of the President beyond the term prescribed in the Constitution.
31. **Chapter XX** deals with miscellaneous matters in sections 307 - 318. It is divided into 2 Parts. Part I regulates appointments and resignations of public officers, and prescribes other duties and powers, such as the duty not to act on an unlawful directive. Part II provides for the interpretation of the Constitution, the construction of various powers, and includes transitional and consequential provisions. The Part also repeals the Constitution of the Republic of The Gambia, 1997, which repeal becomes effective upon the coming into force of the Draft Constitution.
32. The Draft Constitution has 4 Schedules. Schedule I identifies the Administrative Areas of The Gambia. Schedule II consists of the prescribed oaths for the President, Vice President, the Speaker and Deputy Speaker and the Chief Justice. Schedule III outlines the constituencies for National Assembly elections. Schedule IV creates transitional and consequential provisions. This latter Schedule establishes the Constitution Implementation Commission which will be responsible for the implementation of the Constitution. In addition, Schedule IV provides that the current term of office of the incumbent President shall count in computing the maximum term that can be served in office. This is based on the overall public opinion that no President should serve in the Office of President for more than 2 terms of 5 years each (making a total of 10 years).
33. Section 7 of this Report provides a list of issues raised during the public consultations but are not included in the Draft Constitution, and the reasons they were not included. Among these are the retention of the death penalty, establishment of an Agricultural Service Commission, creating a diaspora constituency, marble system of voting versus use of ballot papers, salary payments and other benefits for traditional leaders and the treatment of Gambians employed in the private sector.
34. Section 8 of this Report discusses the challenges and lessons learned during the constitutional review process and the preparation of the Draft Constitution. Among the major challenges were the initial lack of a Secretariat to facilitate the work of the CRC upon its establishment, the time-consuming efforts of the CRC to develop job

descriptions for and recruit CRC staff, the timely acquisition of facilities and equipment to help the CRC deliver on its mandate, and delays in disbursement of funds for the initial public consultations.

35. On the other hand, the CRC learnt a number of lessons in the constitutional review process, including the importance of having a team of translators to facilitate communicating with many Gambians who are not literate in the formal education sector, the use of Gambian sign language to communicate with the hard-of-hearing, and the importance of having an effective social media campaign. Perhaps the biggest value arising from the constitutional review process was that gained from the public consultations; the public engagement in the CRC process was active throughout and the opinions canvassed had helped tremendously in enabling the CRC to take a much broader look at its assignment to make informed decisions that translated into appropriate drafting instructions for the preparation of the Draft Constitution.
36. Section 9 of this Report provides the conclusions and recommendations, with the latter being organised in various sub-sections on general recommendations, follow-up actions, non-constitutional issues, statutes to be reviewed, amended, or enacted.
37. The Report ends with Annexes, consisting of a list of the CRC staff, The terms of reference of the CRC Technical Committees and their members, list of research papers and reports submitted to and reviewed by the CRC, list of statutes to be reviewed, amended, or enacted and references relied upon.

1.INTRODUCTION

- 38.The Gambia lies on the West Coast of Africa, situated on 2 sides of River Gambia. The country is bordered on the West by the Atlantic Ocean and by Senegal on all other sides. The Gambia's economy comprises mainly of the service and agriculture sectors, and has limited known natural resources. Despite these challenges, the country's gross domestic product (GDP) rose by 52% from \$0.78 billion in 2000 to \$1.62 billion in 2018.²
- 39.The population of The Gambia was estimated at 2.3 million in 2018, with 41% of the population being under 15 years of age.³ The Gambia is one of the most densely populated countries in Africa, and population density increased from 130 persons per sq. km of land area in 2000 to 225 persons per sq. km of land area in 2018. Poverty is an important development challenge for the country, with 48.6% of the population being below the national poverty line in 2018. The Gambia is classified as a Low Human Development country, and was ranked 174 out of 189 countries in terms of its human development index in 2017.⁴
- 40.The Gambia is a former colony of Britain, from which it gained its independence in February, 1965. The Independence Constitution Order, 1965 essentially prepared the country for self-rule, and was replaced by the Constitution of the Republic of The Gambia, 1970, following the transformation of the country into a Republic in that year. From 1965 to 1994, the country was a multi-party democracy, with the People's Progressive Party (PPP), under the leadership of the late Sir Dawda Kairaba Jawara (Sir D.K. Jawara), as the ruling party. Although the country held periodic general elections during the PPP administration, it never experienced a change in Government. In spite of this, The Gambia became a beacon of democracy, peace, respect for the rule of law and human rights in the sub-region, spanning a period of nearly 30 years. As such, the country was selected to host the African Commission on Human and Peoples Rights; the African Charter on Human and Peoples Rights is also known as the Banjul Charter.⁵
41. However, in July 1994 the constitutionally established Government was overthrown by the military. The Military Junta, headed by Lieutenant Yahya A.J.J. Jammeh, established the Armed Forces Provisional Ruling Council (AFPRC) which ruled for a transitional period of 2 years before members of the Military Junta transformed

² World Bank November 2019 Gambia Country Profile <https://tinyurl.com/sey8elw> last accessed 11th January 2020

³ UNDP Human Development Data 2018 Statistical Annex - http://hdr.undp.org/sites/default/files/2018_statistical_annex_all.xlsx last accessed 11th January 2020

⁴ Ibid footnote 3

⁵ African Charter on Human Rights <http://en.african-court.org/images/Basic%20Documents/charteang.pdf> last accessed 11th January 2020

themselves into civilians to contest elections. The same administration remained in office over periodic elections until January 2017 when a new administration took over office following elections in December 2016.

2. CONSTITUTIONAL HISTORY OF THE GAMBIA

2.1. Colonial Period

42. The history of constitutional development in The Gambia began in 1765, with an attempt by Britain, the then coloniser of The Gambia, to grant military personnel, churchmen and merchants a forum for the expression of their opinions on how the colony was administered.⁶ The reforms provided for a Governor as head of the Executive (assisted by 4 ex-officio members and 1 person appointed by His Majesty), a Council responsible for the legislative and administrative affairs of the Colony⁷, and a Chief Justice who was in charge of the judicial system.
43. In 1821, a new Constitution came into force, and was especially significant because it separated the Colony from the rest of the country called the Protectorate. The country was then placed under the jurisdiction of the Governor of Sierra Leone, and this arrangement lasted for 22 years until 1843. Following The Gambia's separation from Sierra Leone, a Legislative Council consisting of a Governor and not less than two public officials was established. There were more constitutional changes to come in 1883, 1893, 1915, and 1921, but they were not as significant as the changes in 1821.
44. The end of World War II brought about significant changes, through an Order in Council, with the Legislature comprised of a majority of Official Members, and a minority of Nominated Unofficial Members. By 1947, The Gambia was given Parliamentary status by the Backworth-Wright Constitution which also established an unofficial (non-governmental) majority in the Legislative Council, and an unofficial minority in the Executive.
45. In 1951, the Constitution was revised, resulting in the introduction of the Ministerial system of Government with the appointment of 2 elected members as Ministers without portfolios in the Government.⁸ The Office of Vice President of the Council was also created and occupied by a Gambian who would preside over the meetings of the Council. Furthermore, the unofficial majority was increased from the level provided by the 1947 Constitution.

⁶ Report of the Constitutional Review Commission and Memorandum to the Proposals for a Draft Constitution for The Second Republic of The Gambia (October 1995)

⁷ The Colony consisted of Bathurst, Kombo Saint Mary, Georgetown and the ceded mile of Upper Niumi in the North Bank of the country

⁸ Her Majesty's Stationery Office, London. 1961. Gambia: Report for the Years 1958 and 1959. pp. 83
<https://archive.org/details/b31829399/page/82> last accessed 11th January 2020

46. The winds of change continued to blow in The Gambia, and brought about further changes in 1953. A Consultative Committee of 34 prominent citizens of the Colony as well as existing and available members of the Legislative Council met under the leadership of the Governor to deliberate on the formulation of a new Constitution for The Gambia. The conclusions of these consultations formed the basis of the proposals to the Secretary of State for the Colonies. The proposals were approved in July 1953 with minor amendments, and a Constitution based on these proposals came into force toward the end of 1954, following elections.⁹
47. The Gambia (Constitution) Order in Council of 1954 resulted in profound changes in the Legislative and Executive Councils. Both Councils had an unofficial majority, Gambians were for the first time appointed Ministers, and the position of Vice President of the Legislative Council was changed to Speaker, a position occupied by a Gambian and for the first time at that.
48. In June 1959, the then Secretary of State for the Colonies, Julian Amery (1958 – 1960) visited The Gambia and held talks with leaders of political parties and representatives of the Protectorate on the question of a new Constitution, resulting in constitutional proposals which were approved toward the end of September.¹⁰ The proposals called for increasing the Legislature from 21 to 34 representatives, 12 of them to be elected from the Protectorate on the basis of (universal) adult suffrage; the first time this would happen in the Protectorate. The new Constitution came into force in April 1960 and replaced the Legislative Council with a House of Representatives.
49. A series of consultations were again held in 1961, which resulted in a number of proposals for further constitutional reform.¹¹ These proposals were discussed in July 1961 at a constitutional conference which ended in an agreement to hold general elections no later than May 1962. The proposed new Constitution envisaged the granting of internal self-government to The Gambia, with a Premier, and not less than eight Ministers. In May 1962, the elections were held, and were decisively won by the PPP, led by Mr. D. K. Jawara¹² who was appointed Premier in June 1962.¹³ A month later, the new House of Representatives met for the first time.
50. Additional constitutional talks were held in London in 1962 and early 1963, resulting in an agreement to have further changes to the Constitution. In October 1963, The

⁹ Her Majesty's Stationery Office, London (1961) Gambia: Report for the Years 1958 and 1959. pp. 84 <https://archive.org/details/b31829399/page/84> last accessed 11th January 2020

¹⁰ Her Majesty's Stationery Office, London (1961) Gambia: Report for the Years 1958 and 1959. pp. 85 <https://archive.org/details/b31829399/page/84> last accessed 11th January 2020

¹¹ Her Majesty's Stationery Office, London (1963) Gambia: Report for the Years 1960 and 1961. pp. 4 <https://archive.org/details/b31829405/page/4> last accessed 11th January 2020

¹² D.K. Jawara was knighted in 1966 and from then on carried the title "Sir"

¹³ Her Majesty's Stationery Office, London (1964) Gambia: Report for the Years 1962 and 1963. pp. 5 <https://archive.org/details/b31829417/page/4> last accessed 11th January 2020

Gambia attained full internal self-government and the then Premier assumed the title of Prime Minister. By the same token, the Executive Council, which was presided over by the Governor, was replaced by a Cabinet, presided over by the Prime Minister.

51. In June 1964, the British and Gambian delegations at a constitutional conference in London, England, agreed that The Gambia would be granted independence on 18th February, 1965,¹⁴ and toward this end, The Gambia Independence Act 1964 was passed by the UK Parliament. However, the Gambian leaders wanted The Gambia to be part of Her Majesty's dominions, and for this reason, The Gambia Independence Act 1964 had to provide for bringing both the Protectorate and the Colony under the dominion of the Queen of England.¹⁵ In addition, The Gambia Independence Order 1965 was passed in January 1965 to provide for a new Constitution for The Gambia from the date of its independence.¹⁶

2.2. Post-Independence

52. On 18th February, 1965, The Gambia gained independence from Britain, with a new Constitution, the Independence Constitution Order, 1965 providing for Queen Elizabeth II to remain as the Head of State, with a Governor-General exercising powers on her behalf. The Gambia thus became the 21st member of the Commonwealth, and its new Constitution was described as a "sophisticated version of the Westminster export models".

53. In April 1970, The Gambia became a republic within the Commonwealth, following the adoption of a new republican Constitution in a second referendum. Prime Minister, Sir D.K. Jawara, became the Head of State, and went on to rule The Gambia for another 24 years through periodic elections.

54. In July 1994, the democratically-elected civilian Government of Sir D.K. Jawara was overthrown by the military, led by then Lieutenant Yahya A.J.J. Jammeh. One of the first actions of the Military Junta was the promulgation of Decree No. 1, which suspended a significant part of the 1970 Constitution, including the Chapters on Fundamental Rights and Freedoms and the Legislature. The AFPRC ruled by Decree, which could not be challenged in any court of law.

55. Following internal opposition and protests by the international community against continued military rule, a two-year transition programme was prepared by the AFPRC to return the country to civilian rule. A key step in the transition programme was the

¹⁴ Gambia Independence Act 1964; M Jobarteh 'Constitutional Developments in The Gambia: Ready for a New Constitution' (2018) <https://www.lawhubgambia.com/lawhug-net/2018/2/18/constitutional-developments-in-the-gambia-readying-for-a-new-constitution> last accessed 11th January 2020

¹⁵ Darboe, A. N. M. 1979. Gambia's Long Journey to Republicanism: A study in the Development of the Constitution and Government of The Gambia

¹⁶ The Gambia Independence Order Act (1965) <https://www.legislation.gov.uk/uksi/1965/135/made> last accessed 11th January 2020

drafting of a new Constitution to prepare for a return of the country to civilian rule. In the same vein, Captain Yahya A.J.J. Jammeh, (who had since promoted himself and members of his Military Junta from Lieutenant to Captain), retired from the Army in August 1996, and formed the Alliance for Patriotic Reorientation and Construction (APRC) to contest the 1996 Presidential elections.

2.3. The 1997 Constitution

56. In April 1995, the Military Junta established a Constitutional Review Commission through the Constitutional Review Commission Decree, 1995 (promulgated on 31st March, 1995). The members of that Commission were appointed on 10th April, 1995 and comprised mostly of Gambians headed by a Ghanaian national with the assistance of an external draftsman. The mandate of that Commission was to review the 1970 Constitution of the Republic of The Gambia and prepare a new Constitution. This exercise culminated in the drafting and presentation of the 1997 Constitution.

57. The original 1997 draft Constitution that was presented to the Military Junta was motivated to some extent by a keen desire to ensure good governance and avoid the pitfalls of the past. It had some good provisions, including setting a term limit for the Presidency.

58. It must, however, be acknowledged that the 1997 Constitution was prepared during a period of military rule, and had to make provisions to cater to some extent to the needs or glory of the Military Junta.¹⁷ For this reason, the 1997 Constitution had a number of provisions which later proved unsuitable to full democratic governance in The Gambia.

59. Furthermore, many of the provisions of the original draft of the 1997 Constitution were either ignored or unduly interfered with by the Military Junta. Examples of such undue interference included the termination of appointment of judges without due process, the summary dismissal of public officials without reason, and the use of Executive Orders to circumvent constitutional obligations.

60. The process leading to the referendum on the new Constitution was criticized by many because the 1996 draft was viewed as having been compromised to serve the interests of the military regime.¹⁸ Nevertheless, the 1996 Draft Constitution was subject to a referendum in August 1996, and was overwhelmingly approved by 70% of voters.

¹⁷ For instance, the Constitution, in its Preamble is critical of the PPP administration and effectively presented the Military Junta as somewhat of a saviour; it also created in the Second Schedule paragraph 13 which effectively protected members of the Military Junta and Ministers appointed by the Junta from being legally liable "for an act or omission in the performance of ... official duties"; furthermore, the same paragraph put in protective measures against any future prosecution of persons involved in the overthrow of the civilian Government.

¹⁸ For example, the Military Junta removed the Presidential term limit before the 1996 Draft Constitution was subjected to a referendum.

Following the presidential elections in September 1996, the new Constitution came into force in 1997 with Yahya A.J.J. Jammeh, who won the 1996 Presidential elections, as the first President of the Second Republic.

61. After 22 years of AFPRC and APRC rule, the Gambian public under the leadership of a coalition of political parties and an independent candidate voted in a new President, Adama Barrow. After initially accepting defeat with the promise to hand power over to President-elect Adama Barrow, President Jammeh reneged on this and vowed to stay in office until another election was held. With the help of the ECOWAS, President Jammeh was forced to leave office, and he subsequently left the country on 21st January, 2017.

3. THE CONSTITUTIONAL REVIEW COMMISSION

62. Following the inauguration of H.E. Adama Barrow as the President of the Republic of The Gambia in January 2017, the Government embarked on a reform programme to re-build the foundations of the democratic system and good governance of the country. The new Government of The Gambia committed to delivering “good governance and accountability, social cohesion, and national reconciliation and a revitalized and transformed economy for the wellbeing of all Gambians”¹⁹. The constitutional review process formed part of comprehensive legal reform efforts pursued by the Government of The Gambia within the context of its National Transitional Justice Programme. In this regard, the National Assembly and the Executive resolved to review the 1997 Constitution, which had undergone more than 50 amendments over a 20 year period, with the view to developing a new Constitution that met the wishes and aspirations of Gambians.

63. Although some debated the necessity of preparing a new Constitution, a National Stakeholders Conference on Justice and Human Rights held in May 2017, recommended that a new Constitution should be drafted to replace the 1997 Constitution.²⁰ Among the issues that were raised at that Conference were that the 1997 Constitution had a number of flaws, including provisions that lacked clarity, and those that created conflicts of interest, or granted broad immunity to the President. It was also suggested at the Conference that there was need for a new Constitution as it would take too many amendments to reform the 1997 Constitution.

64. It is against this backdrop that the CRC Act was passed in December 2017 by the National Assembly, and assented to by the President in January 2018. The CRC Act was designed to enable a review of the 1997 Constitution with a view to providing The Gambia with a new Constitution that would usher in full democratic governance,

¹⁹ National Development Plan 2018 - 2021

²⁰ B Asemota ‘Gambia needs new Constitution’ (June 2017) The Point Newspaper <http://thepoint.gm/africa/gambia/article/gambia-needs-new-constitution> last accessed 11th January 2020

respect for human rights and the establishment of strong governance institutions. The CRC members were therefore appointed and sworn into office by the President on 4th June 2018.

65. The CRC started work in earnest on 5th June, 2018 immediately following the swearing-in of its Commissioners; the Secretary of the CRC was appointed in July 2018. The CRC then engaged in various tasks, including the setting up of its Secretariat, reviewing the past and present Constitutions of The Gambia and those of other Commonwealth and non-Commonwealth countries, holding public consultations with Gambians both at home and abroad, as well as with government agencies, the private sector, civil society and other stakeholders.

66. The CRC also commissioned various studies, including research on selected subjects as listed in Annex 3. Various platforms were used to secure public opinion and these included conducting household surveys using established enumeration areas of the country, holding focus group discussions, encouraging written contributions, creating online platforms for public participation and entertaining one-on-one meetings at the CRC Secretariat with members of the public. These processes culminated in the preparation of the Draft Constitution on which the Gambian public had been extensively consulted. This Report outlines the processes used leading to the preparation of the Draft Constitution.

3.1. Composition and Mandate of the CRC

67. The CRC consisted of 11 members appointed by the President as follows:

- (a) Hon. Justice Cherno Sulayman Jallow QC, JSC (Chairperson)
- (b) Hawa Kuru Sisay-Sabally (Vice Chairperson)
- (c) Amie Joof-Cole (Member)
- (d) Dr. Melville O. George (Member)
- (e) Fatoumata Jallow (Member)
- (f) Gaye Sowe (Member)
- (g) Janet Ramatoulie Sallah-Njie (Member)
- (h) Lamin S. Camara (Member)
- (i) Salimatta E. T. Touray (Member)
- (j) Yankuba Dibba (Member)
- (k) Yankuba Manjang (Member)

68. The mandate of the CRC was to review the 1997 Constitution, and draft a new Constitution for The Gambia, and prepare a report in relation to the new Constitution. The Report outlines the processes engaged in reviewing and drafting the new Constitution and provides the rationale for the provisions contained in the Draft

Constitution. The Report also outlines some issues that were raised during the public consultations but not incorporated in the Draft Constitution for various reasons.

69. The CRC Act guaranteed the independence of the CRC, by expressly providing that it shall not be subject to the direction or control of any person or authority. Furthermore, in reviewing the 1997 Constitution, the CRC is expressly tasked, in section 6 (2) of the CRC Act, to seek public opinion and have regard to national values and ethos. In addition, the CRC was required to safeguard and promote:

- (a) the existence of The Gambia as a sovereign independent State;
- (b) The Gambia's republican system of governance, including its democratic values and respect for the rule of law and fundamental human rights and freedoms;
- (c) national unity, cohesion and peace;
- (d) separation of powers;
- (e) the importance of ensuring periodic democratic elections based on universal adult suffrage, including the introduction of term limit for the Office of President; and
- (f) the continued existence of The Gambia as a secular State in which all faiths are treated fairly and encouraged to foster national cohesion and unity.

70. In fulfilling its mandate under section 6 of the CRC Act, the CRC was guided in its work by 4 core values, namely:

- (a) Participation – encouraging open and full public participation in the design and development of the Draft Constitution;
- (b) Transparency – ensuring that the CRC processes were open and transparent, including the provision of periodic updates on its work and other activities;
- (c) Inclusiveness – providing appropriate platforms to afford all Gambians the opportunity to be included in the review and drafting processes leading to the preparation of the Draft Constitution;
- (d) Ownership – the ultimate goal is that Gambians, having been given the opportunity and thus participating in the design and development of the Draft Constitution, will take ownership of the Draft Constitution and welcome its adoption at a national referendum.

3.2. Formation of the CRC Secretariat

71. Following the swearing in of the CRC Commissioners and the appointment of the Secretary in July, 2018, the CRC focused on 3 main tasks:

- (a) setting up the Secretariat;
- (b) appointment of the CRC staff (the full compendium of the staff is provided in Annex 1); and

(c) developing key policy and strategy documents.

72. The Secretariat was led by the Secretary, under whose supervision, were 4 separate departments each with a Department Head, as follows:

- (a) Human Resources and Administration;
- (b) Finance;
- (c) Programmes; and
- (d) Communications.

73. The CRC also established an Oversight Committee of 4 Commissioners to guide the work of the Secretariat, and ensure the proper, efficient and effective management of the Commission, its finances and other resources. In addition, Service Rules and a Finance Policy were developed, as well as confidentiality and disclosure policies, and Codes of Conduct for Commissioners and staff.

3.3. Mobilisation and Inception

74. In tandem with the establishment of the CRC Secretariat, the CRC embarked on preparing key policy documents to guide the constitutional development process. In addition to these, the CRC developed an Issues Document, a Talking Points Document, as well as two volumes of Frequently Asked Questions (FAQs).

75. The CRC also developed a Plan of Action to facilitate the implementation of activities to help it achieve its mandate. The Plan of Action was a useful and important part of the monitoring and evaluation (M&E) system used by the CRC. Pursuant to the Plan of Action, the CRC successfully developed the following documents to guide its work:

- (a) A guide to design communication and media strategy;
- (b) Communication and Media Strategy;
- (c) Research and Documentation Strategy;
- (d) Public Consultation Strategy;
- (e) Guide for Public Consultation;
- (f) Monitoring and Evaluation Strategy; and
- (g) Issues Document.

76. During the first 3 months of the commencement of its work, the CRC reviewed the 1965, 1970, and 1997 Constitutions and their amendments with a view to identify key issues for consideration for consultations with the public and in developing the new Constitution. These were compiled in an Issues Document which consisted of a catalogue of questions on the various constitutional thematic issues aimed at different stakeholder groups, and ensuring a meaningful dialogue and engagement with the Gambian public. In this respect, the Issues Document was circulated widely in both hard and soft copies and through various outlets and channels of communication, including social media and the Web.

77. Following the publication of the Issues Document, the CRC embarked on pre-consultation visits to all the Regions and Administrative Areas of The Gambia. During these visits, the CRC met with the Mayor(ress), Chairpersons and Councillors of LGAs, Regional Governors, Seyfos, Alkalos and women and youth representatives. The essence of the pre-consultation meetings was to raise awareness on the work and mandate of the CRC and to prepare the ground for the direct face-to-face public consultations by the CRC. The LGAs and traditional leaders were tasked with mobilising their communities to ensure their full participation at these public consultations.
78. The 12 Regional Coordinators (RCs) of the CRC around the country helped prepare the ground for the civic education and public consultations. The RCs worked with Regional Governors, Mayor(ress), Seyfos and Alkalos around the country to ensure a smooth consultation process. The RCs also served as the interface between the CRC Secretariat and the Regional Authorities and the communities. They also distributed the Issues Document, copies of the 1997 Constitution and other materials in the Regions and Administrative Areas, helped familiarise communities with the CRC's mandate, facilitated the identification of meeting venues, received submissions and proposals for inclusion in the Draft Constitution from the communities and, following the publication of the initial Draft Constitution, received feedback from the communities on the Draft Constitution.
79. In addition, the CRC teamed up with the NCCE, following the signing of a Memorandum of Understanding (MOU), whereby the CRC and NCCE undertook an advance interface with communities around the country to sensitise them on the CRC process. This effectively helped to mobilise the general public to attend the CRC face-to-face public consultations.
80. As a result of CRC's outreach efforts, many Gambians participated in the Constitution building process, as evidenced by the numerous position papers submitted to the CRC and the level of participation in various consultative fora held by the CRC in The Gambia and abroad. In addition, there were many discussion groups and networks that emerged following the publication of the Issues Document, to dialogue on the various issues raised in it. The Issues Document also formed the basis for the preparation of the Talking Points document which was aimed at providing a guide to the face-to-face consultations with Gambians at the community level, and tailored to suit the audience of the "Bantaba" ("village square," in Mandinka) meetings.
81. In July 2018, the International IDEA and UNDP organised a retreat for the Commissioners and the Secretary at The Hague, the Netherlands, to provide them with the opportunity to discuss matters relevant to the Constitution building process. The CRC benefitted from the expertise and knowledge of high-level experts from

International IDEA and the UNDP, and enabled the CRC to discuss and identify areas where its strategy documents could be enhanced.

82. Following the retreat at The Hague, the CRC organised a 4-day training programme in The Gambia in October 2018 for its newly-recruited staff, along with the NCCE staff and journalists from various local media houses. The training programme enhanced the skills of the over 90 participants on the CRC Act, the CRC policies and strategies, Code of Conduct and Plan of Action, as well as other Constitution building issues and processes.

83. The CRC also built strong relationships with a number of agencies and development partners, including the UNDP, International IDEA, NCCE, as well as local media, artists, and the GPF. These relationships immensely facilitated the work of the CRC.

CRC

4. METHODOLOGY

4.1. Introduction

84. The CRC carried out its work in accordance with the requirements and guidelines of the CRC Act. In particular, the CRC held consultations with various stakeholders using different techniques and tools ranging from focus group discussions (FGD), face-to-face interviews, household surveys (HS) and online surveys. The CRC also solicited, and received, written inputs from individuals and other stakeholders, and held meetings with government agencies and other stakeholder institutions. International IDEA provided training for the Commissioners and staff, and further provided support to the CRC throughout its constitutional review and drafting process. The CRC's work was supported by 2 international Consultants²¹ who provided guidance and reviewed all the drafts in relation to the Draft Constitution and this Report. The final draft of the Constitution and Report were also subjected to thorough proof reading by two prominent Gambians.²²

85. The CRC used a highly participatory and consultative approach to solicit the views and opinions of Gambians about the constitutional issues they wished to see addressed in the proposed new Constitution of The Gambia. Toward this end, it developed a Strategic Action Plan (SAP) for the preparation of the new Constitution. The SAP also included a monitoring and evaluation (M&E) plan to help the CRC keep track of its implementation of the SAP, and progress towards the achievement of the SAP targets.

86. The CRC then embarked on public consultations in The Gambia and abroad to meet Gambians of all walks of life to discuss the issues of concern to them with regards to the development of the proposed new Constitution. Technical Committees were established, and researchers assigned, to conduct research in specific areas, including best practices, to inform the decisions of the CRC in drafting the new Constitution.

87. An outreach plan was developed by the CRC to sensitise the Gambian public at home and abroad about its mandate, preparations for drafting the new Constitution, and the role of the public in that regard.

4.2 Public Consultations

88. Section 6 (2) of the CRC Act mandates the CRC to “seek public opinion and take into account such proposals as it considers appropriate” in drafting a new Constitution, and in preparing a report on the process. In fulfilling this mandate, the CRC conducted 106 in-country public consultations from November 2018 to January 2019, as well as external consultations with Gambians in Africa (Senegal and Mauritania), the Middle

²¹ Professor Albert Fiadjoe of Ghana, Professor (Emeritus) of Public Law and Justice Willy Mutunga, former Chief Justice of Kenya

²² Dr. Mariama Sarr Ceesay and Hon. Justice Basiru V.P. Mahoney (JCA).

East (Saudi Arabia), Europe (United Kingdom, France, Sweden, Germany and Spain), and the United States of America (Seattle (Washington), Minneapolis (Minnesota), Silver Spring (Maryland), Raleigh (North Carolina), Atlanta (Georgia) and New York City (New York)). The external consultations were designed to ensure that diaspora Gambians had the same opportunity as Gambians at home to participate in the development of the new Constitution.

4.2.1. Consultations in The Gambia

89. Public consultations were an important tool used by the CRC to obtain feedback and opinions on matters relevant to the development of the new Constitution. In this regard, the CRC spared no effort in reaching as many Gambians as possible. Furthermore, the CRC used various tools, such as FGDs, face-to-face interviews, and HS. The CRC also developed an online Public Participation Platform (PPP) to enable even more people to provide their feedback and opinions on various constitutional issues.

90. In the same vein, many organisations (including non-governmental organisations), government agencies and individuals presented position papers to the CRC. The following sections discuss in greater detail the methodologies used in gathering information and views on the development of the new Constitution.

4.2.1.1. Face-to-Face Stakeholder Consultations

91. As part of the public consultations, the CRC facilitated face-to-face dialogue with the 3 organs of State (Executive, Legislature and Judiciary) and other Government Ministries, Departments and Agencies. This was in addition to submissions received from these institutions. In addition, similar dialogue took place between the CRC and civil society organisations, international organisations, interest group associations and faith-based organisations. Furthermore, some individuals requested and were granted audience to discuss matters pertaining to the development of the new Constitution.

4.2.1.2. Focus Group Discussions

92. During the IPCs, the CRC conducted many FGDs around the country to ensure maximum participation of Gambians from all walks of life in the Constitution building process. For this reason, the FGDs deliberately collected information specific to youths, women, persons with disabilities, and the elderly. Each of these groups was provided unique opportunities to freely and openly express their views on constitutional issues which affect their lives, including how they wished to be governed. The FGDs also enabled people of these specific groups to discuss the Constitution in a conducive environment that otherwise was not possible during most of the plenary sessions held by the CRC during its public consultation meetings.

93. The FGDs were held in the settlements in which the public consultations were organised. At least 2 public consultations, which took the form of a plenary meeting of the CRC Commissioners and staff with people in a given settlement, were held in all the constituencies around the country. The FGDs were held on the margins of the public consultations, and an FGD matrix of questions developed from the CRC Issues Document was used to guide the discussions.
94. Alongside the plenary meetings and FGDs, the CRC assigned Commissioners and staff to visit select senior secondary schools to gather opinions from students on matters they considered relevant for inclusion in the new Constitution. A total of 30 senior secondary schools were visited and participation was active.
95. A total of 263 FGDs with women, the youth, persons with disabilities, and the elderly were conducted alongside the 106 public consultations held by the CRC around the country. A total of 7,890 people took part in the FGDs.

4.2.1.3. Face-to-face Interviews

96. The CRC also conducted face-to-face interviews to give people within and around settlements in which the public consultations took place the opportunity to express their views as individuals. The face-to-face interviews also gave people who were not able to attend the public consultations the opportunity to provide their comments and opinions on the constitution development process.
97. A total of 874 people took part in the face-to-face interviews held around the country. Of these, 818 were individuals who participated in the face-to-face interviews in the field, while 56 individuals voluntarily came to the CRC offices and completed the face-to-face interview questionnaires on their own. The face-to-face interviews targeted people aged 18 years and above, and used a questionnaire developed by the CRC Statistics Unit, based on the CRC Issues Document.
98. The data entry in relation to the information collected lasted from June to August 2019. CPro and SPSS software packages were used for the data entry, and data analysis, respectively. Furthermore, quality assurance procedures were used both in the field and during data entry and analysis stages to ensure that the results obtained were accurate, precise, and reliable. In this regard, the CRC team of statisticians trained data entry clerks on data entry and the use of the data entry manual that was developed for that purpose.
99. Despite these precautions, the face-to-face interviews approach to collecting people's opinions about the constitution development process proved a bit challenging. These challenges included the minimal field-level supervision and the failure of some respondents to answer all questions. The selection of respondents could have been more statistically rigorous. Nonetheless, the overall data collected in the entire public

consultations process provided a strong basis for analysis and gauging public opinion on the issues identified in the Issues Document.

4.2.1.4. Household Surveys

100. The CRC also conducted an extensive survey from households to solicit opinions on the constitution building process. Although the Plenary Meetings and FGDs were more elaborate and as a result provided valuable information on how people felt about various constitutional issues, this information was mainly qualitative, and the exercises did not have a solid scientific basis. For this reason, the information derived from these exercises could not be used to arrive at a conclusion on the views of the larger general population. In contrast, the HS did not provide reasons for the views expressed by respondents, as the Plenary Meetings and the FGDs provide. For this reason, the 2 approaches complement each other, and hence strengthen the utility of information and data collected from both of them.
101. Against this background, the HS was conducted to provide a statistically sound survey of eligible Gambian voters to seek their opinions on the matters they wished to be included in the new Constitution. Furthermore, the HS was aimed at providing quantitative information about the opinions of the electorate on the new Constitution, and providing the required accuracy and precision levels to allow a scientific evaluation of the survey results.
102. The HS was implemented by the Statistics Unit of the CRC, which used a statistical sampling method to select 9,263 registered voters from 1.06 million eligible voters in 6 Local Government areas and 2 municipalities. The sample size was calculated using a 1.5% margin of error, and a 95% level of confidence.
103. The nationwide HS was conducted in 33 days in March and April 2019, followed by a data entry phase which lasted from June to August 2019. In addition to using CSPro for data entry and SPSS for data analysis, the HS used quality assurance procedures both in the field, and in the data entry and processing stages, to ensure the proper levels of reliability, precision and accuracy of the survey results. For this purpose, enumerators were trained and the questionnaire developed for the HS was pre-tested before the field work commenced.
104. Although the HS was well-designed, the exercise faced a number of challenges, including shortage of vehicles, non-responses to some of the questions in the questionnaires, and the late start of data entry, as well as the delay in the completion of data entry and analysis. This, however, did not compromise the quality of the data collected.

4.2.1.5. Public Participation Platforms

105. Although all Gambians were entitled to participate in the CRC consultation processes, many of them at home and abroad could not participate in the in-country and external face-to-face public consultations. For this reason, the CRC Statistics Unit, in partnership with International IDEA, developed an online Google survey form, which was later renamed the Public Participation Platform (PPP). Officials of International IDEA trained CRC staff on the use of the PPP online form. The primary aim of the PPP was to enable Gambians, especially the youth who were more attuned to the internet and social media, to provide their opinions on the Constitution development process. The PPP was based on questions developed from the CRC Issues Document.

106. The online forms were shared by email with potential respondents, and a total of 1,379 persons completed the online survey forms. Analysis of the submitted forms showed that survey respondents had a very high level of literacy, with 75.9% of them having had tertiary education. Moreover, the majority of them were between 18 and 40 years of age.

4.2.1.6. Position Papers

107. The CRC also received many position papers from various sources; these were submitted in response to the CRC Issues Document. A total of 177 position papers were received from various stakeholders (including institutions, organisations, and individuals), aggregated as shown in Table 1:

Table 1: Number of position papers submitted to CRC by various stakeholders

Stakeholder	Number of Position Papers Submitted
Non-governmental organisations	31
Government Ministries, Departments, and Agencies (MDAs)	23
Religious organisations	8
Inter-governmental organisations	10
Educational Institutions	4
Individuals	98
Political Parties	3

108. Position papers and other written submissions were catalogued on the basis of the following criteria:

- (a) Issues Raised;
- (b) Linkages of the Issues to the *CRC Issues Document*;
- (c) Linkages of the Issues to the 1997 Constitution;
- (d) Recommendations; and
- (e) Justifications for Recommendations and Remarks (if any).

109. A qualitative and quantitative analysis of all issues received in the submitted position papers was organized and grouped in line with constitutional issues in the *CRC Issues Document*. Individuals were assigned a weight of one unit, and organizations a weight of 5 units to allow a comparative analysis of the submissions per issue in the *CRC Issues Document*.

4.2.2. External Consultations

110. Section 6 (3) of the CRC Act tasked the CRC to afford Gambians both within and outside The Gambia “the opportunity to freely express their opinions and make suggestions on matters they feel should be considered in the Constitution”. Therefore, following the successful face-to-face consultations with Gambians in 106 communities across the country, the CRC embarked on an External Consultations process with diaspora Gambians in various parts of the world. The purpose of the external consultations was for the Commission to afford Gambians living in the diaspora the opportunity to participate in the Constitution building process by expressing their opinions on matters they wished to have considered in the Draft Constitution. This provided them an equal platform with the ones afforded to Gambians within the country.

111. Gambians who attended and participated in these events discussed several thematic areas raised in the *CRC Issues Document*. Among these issues were citizenship and fundamental human rights, the election processes and the IEC, diaspora voting, the Executive and the Presidency, National Assembly matters, Local Government, governance matters and issues related to Public Finance. The countries visited as part of the CRC’s external consultations process were Senegal, Mauritania, Saudi Arabia, United Kingdom, France, Sweden, Germany, Spain and United States of America.

4.3 Data Processing and Analyses

112. Tools for capturing data or information were developed for each of the 6 different sources. Close-ended questionnaires were developed for the quantitative data and open-ended questionnaires were used for capturing qualitative data.

4.3.1 Quality Assurance (QA)

113. Quality assurance procedures were employed both before and during the data collection in the field as well as at the data entry and processing levels to ensure accuracy, precision and reliability of the survey results. QA procedures before data collection included development of simple unambiguous questionnaires and checklists; development of field workers manual and training of seasoned field workers on the data collection tools and interview procedures for the field work. The data collectors were trained and the field work was supervised, monitored and evaluated throughout the process.
114. Several QA steps were also taken at the data processing (entry, double entry, cleaning and analyses) and report writing stages. As already noted above, CSPro software was used for data entry and cleaning and SPSS software was used for the data analyses. The CSPro has in-built data quality control which was used to minimize data entry errors, and double entry verification was also done to clean the data further.

4.3.2 Data Coding

115. Pre-coded close-ended questionnaires were used for the quantitative data. For the qualitative open-ended questionnaires, a post data collection coding system was developed for each qualitative data capturing tool or questionnaire. The post coding of the qualitative data was done manually. The coding sheet indicated all different ways the same ideas were expressed. This approach grouped all the different ways the same things were said.

4.3.3 Data Analysis (Quantitative and Qualitative)

116. Both quantitative and qualitative methods were used in the data analysis. The analysed data sets from the 2 sources complement each other. Quantitative data indicates what the situation is while qualitative data analysis gives the reasons why the situation is the way it is
117. The qualitative data analysis was done through manual tallying on the coding sheet which was developed for the purpose. Results of the qualitative data analyses were provided to support the quantitative results.

4.4 Research Programme

118. The CRC conducted extensive and exhaustive research on a number of themes and subjects of constitutional importance. The recommendations and findings of these research papers (see Annex 3) took on board best practices, comparative analysis of different constitutions, and international obligations of The Gambia on various matters

of constitutional significance. These, together with the statistical data and analysis of feedback from the various consultative processes, guided the CRC in making informed decisions on the provisions of the Draft Constitution and the conclusions and recommendations contained in this Report.

4.5 Technical Committees

119. Section 11 of the CRC Act mandated the CRC to establish such technical committees as it considers fit to facilitate its work. In compliance with this mandate, the CRC established the following Technical Committees to conduct research on various topics, and support its work in the preparation of the new Constitution:

- (a) Media, Public Education and Communications;
- (b) Land, Environment and Natural Resources;
- (c) Public Finance Management ;
- (d) Constitutional Law; and
- (e) Constitution Drafting and Report Writing.

120. Each of the Technical Committees was chaired by Commissioners of the CRC and was constituted by eminent persons with vast expertise and experience in the subject area and theme of the Committee. The membership and Terms of Reference of each of the Technical Committees are detailed in Annex 2.

4.6 Media and Outreach

121. To facilitate its work, and increase public participation in the Constitution drafting process, the CRC partnered with the media and other stakeholders to increase public awareness about the Commission and its work. The CRC also established a website (<http://www.crc220.org>) to provide the public with information about its work, and to serve as a portal for them to provide their input and suggestions to the CRC.

122. In addition, the CRC regularly published a monthly newsletter of its work and activities, and engaged the media in regular press conferences, granting interviews to TV and radio stations, as well as newspapers and website owners and bloggers about its work. The CRC also maintained a presence on social media where an increasing number of Gambians, especially young Gambians, were getting their news from.

123. The CRC also partnered with the NCCE to sensitize the public about the Constitution review process and, in this respect, the CRC provided the NCCE with content to disseminate in the public education campaign, as well as providing funding and logistical support. Another important group of CRC partners were artists who composed the CRC theme song, and helped increase public awareness about the constitutional review process.

4.7 Monitoring and Evaluation

124. The CRC also had an active M&E programme based on the SAP developed early in the course of its work. For this reason, the CRC prepared monthly and quarterly reports on its work and progress towards the realisation of the new Constitution in accordance with its mandate.

5.DRAFTING OF THE CONSTITUTION AND REPORT

5.1.Introduction

125. The CRC commenced work on drafting the new Constitution, following consultations it had with citizens and other stakeholders in The Gambia and abroad, and after thoroughly reviewing and analysing several research papers carried out by the CRC's team of Researchers, including reports on the public consultations, and the reports of the Technical Committees. All the issues and recommendations contained in the research papers and the reports were extensively considered by the CRC, which carried out comparative studies to establish international best practices in order to guide its decisions. In addition, the CRC took into account The Gambia's treaty obligations, including matters under general principles of international law. The CRC also benefited from the expertise of International IDEA and 2 renowned consultants with vast experience in Constitution building processes who supported the Committee of Experts on Constitutional Law and the Constitution Drafting and Report Writing Committee. However, it should be noted that whilst reliance was placed on the different consultation platforms, independent research, technical committee reports, and international best practice, the CRC was also guided by its mandate in the CRC Act to promote and preserve national unity, cohesion and peace, for the best interest of the country. Therefore, in instances where the CRC departs from statistical data, cogent reasons and justifications are provided in line with the CRC's mandate.

126. All of these processes essentially formed the basis for the drafting instructions which the Technical Committee on Constitution Drafting and Report Writing relied on to prepare the Draft Constitution. This was further informed by the results of the statistics developed out of the public consultation reports, household surveys, online surveys and the position papers received by the CRC.

127. In preparing the Draft Constitution, the CRC was very much aware of the enormous trust placed in the CRC by the Gambian people, and the need to provide them with a Constitution that reflects their wishes and aspirations. It was equally mindful of the bold and giant initiatives undertaken by the Government and the National Assembly in enacting the CRC Act and formally establishing the CRC to develop a new Constitution that will truly serve the interest of The Gambia, including future generations of Gambians.

128. The CRC was also very much aware of huge governance concerns expressed by Gambians, and the need to ensure that the provisions of the 1997 Constitution can be improved upon to build a better foundation for democracy, good governance, peace, security and stability, as well as sustainable and equitable development in the country.
129. This Report on the Draft Constitution is mandated by the CRC Act, and has benefitted from the Report of the Constitutional Review Commission and Memorandum on the 1997 Draft Constitution. One other important goal of this Report is to provide context to the provisions of the Draft Constitution to help Gambians, legal practitioners, scholars and the generality of the Gambian population to have an appreciation of their import. For the same reason, it is the belief of the CRC that this Report will be invaluable to future (hopefully few and far between) efforts to effect reforms to the Draft Constitution once it is adopted and becomes law.
130. The CRC that prepared the 1997 Constitution bemoaned the fact that it could not trace any accompanying report or memorandum of the 1970 Constitution. This made it difficult, if not impossible, to appreciate the rationale behind the provisions of the 1970 Constitution. The Draft Constitution, along with this Report will, hopefully, serve as useful tools for historians of constitutional law who may find it necessary to place The Gambia's constitutional history in its proper perspective.

5.2.Preparation of the Draft Constitution and the Report

131. The preparation of the Draft Constitution commenced with the development of an outline and design for the Constitution which was thoroughly considered by the CRC. A similar method was adopted in relation to the preparation of this Report. Once the outline of the Draft Constitution was agreed upon, the policies developed on the basis of the reports, research papers, consultations and other processes were formulated into the relevant Chapters of the Draft Constitution.
132. The Draft Constitution is, as much as possible and to the extent feasible, written in simple and plain English. In addition, emphasis has been placed on the need for clarity (which requires placing different ideas in different sections or subsections) as opposed to leaving too much to legal interpretation. The Draft Constitution has particularly dispensed with the use of provisos (replete in the previous Constitutions of The Gambia) which, to the lay reader, may provide challenges in understanding or appreciating their effect in relation to other provisions.
133. A proposed Draft Constitution was published by the CRC on 15th November 2019, in both print and electronic form, and widely disseminated in The Gambia, abroad, and online through the CRC website (www.crc220.org) The CRC also prepared and published at the same time an Explanatory Memorandum to explain the provisions of

the Draft Constitution.²³ In publishing the proposed Draft Constitution, the CRC invited the general public and all other stakeholders to review it and submit comments to assist with its finalisation. This was effectively the purpose of publishing the proposed Draft Constitution – to establish from Gambians and other stakeholders whether the proposed Draft Constitution was reflective of the general wishes and aspirations of the Gambian people.

5.3. Public Consultations on the Proposed Draft Constitution

134. A period of one month from the date of publication was provided to receive public feedback on the proposed Draft Constitution. The last 2 weeks of that month were dedicated by the CRC to engaging the public through face-to-face countrywide consultations to inform the public on the provisions of the proposed Draft Constitution and receive opinions. The period for consultations was extended by the CRC, at the request of some members of the public, for an additional 2 weeks (ending on 31st December, 2019). In addition to the face-to-face consultations, the public was invited to submit their observations on the Draft Constitution. Submissions were received via online platforms, and some submitted directly to the Secretariat. Face-to-face meetings were also held with the Executive, Legislature, Judiciary, Independent Electoral Commission, The Gambia Supreme Islamic Council and The Gambia Christian Council. Such face-to-face discussions were held to elicit further clarifications on the submissions received. The Financial Intelligence Unit sought and received an audience from the CRC to bring the CRC up-to-date on matters concerning the Unit and to establish whether those matters can properly be featured in the Draft Constitution.

5.4. Preparation of the draft Report

135. The Report was essentially prepared on the basis of the provisions of the Draft Constitution. However, it takes into account the historical dimensions of constitutional reform in The Gambia and outlines the processes, including the methodology, used in arriving at the point of preparing and finalising the Draft Constitution. In that context, it relies on the various reports prepared in relation to the Draft Constitution and maps out the issues contained herein. This includes the reasons for certain views not being taken into account in the Draft Constitution and the suggested ways forward in relation to those views.

5.5. Finalisation of the Draft Constitution and the Report

136. The final version of the Draft Constitution was prepared by the CRC following consultations with the Gambian public in 13 meetings held around the country during the second round of public consultations. In addition, the CRC received many comments on the proposed Draft Constitution from various sources and people from all walks of

²³ This Explanatory Memorandum was subsequently amended and expanded and published in both print and electronic form and published.

life. The CRC reflected on the feedback it got on the proposed Draft Constitution and, where it was considered necessary, conducted further research work and consulted with its consultants and then prepared the final version of the Draft Constitution. The final draft of the Draft Constitution and this Report were thoroughly proof read by 2 local consultants who brought fresh eyes and an independent perspective unto the finished product.

6. PROVISIONS OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF THE GAMBIA

6.1.PREAMBLE

6.1.1.Dimensions of the Issue

137. The dimensions of the issue are as follows:
- (a) What are the values and principles considered sufficiently fundamental to motivate and guide the Constitution and its provisions?
 - (b) What are the key issues that represent The Gambia's national values and ethos?
 - (c) What are the unifying elements that should form the core of national unity, cohesion and peaceful co-existence?

6.1.2.Current State of the Law on the Issue

138. The Preamble of the 1997 Constitution of The Gambia is the preface to the Constitution, and opens with a declaration that it is in the name of God, the Almighty that the people of The Gambia "accomplished a great and historic task" in preparing the Constitution.
139. The Preamble of the 1997 Constitution notes that the government during the first Republic was "self-perpetuating" and resulted in the "abuse of office" and similar vices that were detrimental to the welfare of the Gambian people. As such, it made the statement that Gambians endorsed the coup d'etat it called the "change of government" of 22nd July 1994 which it said was meant to "rectify such evils."
140. The Preamble further states that the 1997 Constitution provides a fundamental law which affirms the commitment of the Gambian people to freedom, justice, probity and accountability. It also affirmed that the fundamental rights and freedoms enshrined in the Constitution were to ensure that human rights and fundamental freedoms would for all times be respected and observed. The Preamble also states that citizens of The Gambia also affirmed their duties and responsibilities as citizens of the country.
141. In addition, the Preamble states that the 1997 Constitution guarantees participatory democracy, and the various arms of government have had their functions clearly defined, and their independence adequately secured by checks and balances to ensure

they all work together for the common good of the Gambian people. In conclusion, the Preamble provides that the Constitution was given to Gambians, living and yet to be born, to serve for all time as a beacon of hope for peace and stability, and good governance of The Gambia.

6.1.3.Submissions Received, Analyses and Decisions

142. Although the position papers received by the CRC covered many issues, no submissions made any specific reference on the issue of the Preamble of the Constitution, save one that was received after publication of the proposed Draft Constitution essentially suggesting a further shortening of the Preamble.

6.1.4.Provisions of the Draft Constitution

143. The Preamble of the Draft Constitution is shorter than that of the 1997 Constitution. The Draft Constitution, like its 1997 counterpart, declares that the people of The Gambia, as a sovereign independent State, having freely expressed how they wish to be governed, affirm that the Draft Constitution is the embodiment of their will and resolve for democracy, good governance, separation of powers, as well as the rule of law and the observance of the principles of human rights and freedoms.

144. The Preamble of the Draft Constitution focuses on the values of national unity, cohesion, peace, good governance and the rule of law. It seeks to be forward-looking, with the aim of ensuring that it would be relevant for the common destiny and aspirations of the people of The Gambia, irrespective of the context. The new distinguishing features of the Preamble are as follows:

- (a) an affirmation that the Constitution embodies the will of the people of The Gambia to achieve sustainable environment and equitable use of resources, in view of the emerging global development challenges of achieving sustainable environmental management and the equitable use of resources;
- (b) the commitment of the Gambian people to freedom, justice, accountable government and overall respect for the rule of law;
- (c) the recognition and affirmation that all power is vested in and emanates from the sovereign will of the people, and that this principle must be respected at all times;
- (d) the people of The Gambia recognize the value of the enshrined fundamental human rights and freedoms in the Draft Constitution and will ensure that those rights and freedoms are observed;
- (e) the recognition and appreciation of the values as a nation of diverse peoples, and affirmation of the duties and responsibilities of citizens of The Gambia, as well as their love and commitment to each other in a bid to promote national unity, cohesion and peace; and

- (f) that it is in the spirit of the above-mentioned aspirations and values that the Draft Constitution is adopted, enacted, and given to the people of The Gambia, and future generations as a “beacon of hope, stability and national unity, progress, peace and prosperity.”

6.2.CHAPTER I - THE REPUBLIC AND SOVEREIGNTY OF THE PEOPLE

6.2.1.Dimensions of the Issue

145. The dimensions of the issue are as follows:
- (a) What form of government will The Gambia have?
 - (b) Where does sovereign power lie in the country?
 - (c) What is the geographic extent of the territory of The Gambia?
 - (d) What are the things that constitute the national symbols of which all Gambians should be proud?
 - (e) What is the administrative structure of the country, and what are the various levels of government?
 - (f) What National days should be observed in the country?

6.2.2.Current State of the Law on the Issue

146. The 1997 Constitution has three sections in Chapter I: the Republic, the Public Seal and the National flag and anthem. Section 1 states that The Gambia is a Sovereign Republic, and that its sovereignty resides in the people of The Gambia. Section 2 indicates that the Public Seal of the country shall be that which was in existence immediately before the Constitution came into force, or any other seal prescribed by an Act of the National Assembly. It also states that the Public Seal shall be used exclusively by the Government of The Gambia and appropriately authorized persons to authenticate matters of State. Finally, section 3 maintains the design of the National flag, and the National anthem, as was in use immediately before the Constitution came into force.

6.2.3.Submissions Received, Analyses and Decisions

147. During the preparation, and prior to the publication of the Draft Constitution, the CRC received only 2 submissions on sovereignty, one from an institution, and another from an individual. Both submissions stated that the declaration that The Gambia is a sovereign Republic/State should be maintained in the Draft Constitution. In addition, the CRC received submissions from 5 individuals and 3 institutions in relation to the issue of secularism. Of these, 5 advocated against the inclusion of the word “secular” in the Draft Constitution and 3 were in favour (translating into 63% against and 37% for).

148. The CRC commissioned a research paper on the history and modern understanding and approaches in relation to the use of the word “secular”. The result showed that the word “secular”, including the words “secularism” and “secularisation” evolved over time in history and scholars were not unanimous on any single definition. After careful study and consideration of the research paper in the context of the 1970 Constitution and the 1997 Constitution, both of which did not use the word “secular”, the CRC considered it best to maintain the status quo and therefore retain section 1 (1) of the 1997 Constitution, which was an offspring from section 1 (1) of the 1970 Republican Constitution.
149. The decision was arrived at after considering the attempt in 2001 to insert the word “secular” in section 1 (1) of the 1997 Constitution. The National Assembly at the time passed a series of amendments to that Constitution which (amongst others) affected section 1 (1). That section was an entrenched section and therefore required confirmation through a national referendum. That referendum was never carried out. As a consequence, the Supreme Court of The Gambia, following a challenge²⁴ on the constitutionality of the amendment to section 1 (1), declared the purported amendment of section 1 (1) unconstitutional. Instead of omitting the word as required by the said decision of the Supreme Court, the 2009 Revised Edition of The Laws of The Gambia retained it. The Revised Edition contained a footnote referencing the said decision of the Supreme Court. The CRC, after further careful review, concluded that the word “secular” did not form part of the 1997 Constitution considering the fact that the purported insertion of the word had been declared to be unconstitutional.
150. Following the publication of the proposed Draft Constitution and the second round of public consultations, the CRC received 65 submissions expressing views for or against the inclusion of the word “secular” in the Draft Constitution. Unfortunately, the submissions to the CRC, like the debate on the issue of secularism, took a religious dimension. Considering that the CRC had previously researched and deliberated on this subject thoroughly, it sought independent opinion from its consultants and other external experts. The common thread of the responses received were that the Draft Constitution adequately provides the characteristics of a secular State without the use of the word “secular” and it was therefore appropriate that the word is not used.

6.2.4. Provisions of the Draft Constitution

151. This Chapter in sections 1 to 6 recognizes that The Gambia is a Sovereign Republic and a multi-party democratic State and comprises people of different faiths, and specifically declares that each faith is to be respected and treated fairly, without any discrimination. All sovereign power belongs to the people of The Gambia and is exercised in accordance with the Constitution. This Chapter, unlike the 1997

²⁴ As in the case of *Kemesseng Jammeh v. Attorney General* [1997–2001] GR 839

Constitution, provides a framework for the definition of the territory of The Gambia, its national days and further establishes the organs of State and recognises the Local Government Authorities to whom powers is delegated. Decentralisation of government through Local Government Authorities is provided to give autonomy to local governments for the development of their communities, which is important as it ensures that decisions are made closer to the local people and the communities they affect. The recognition of the need for decentralisation of government in the first Chapter is a key development.

152. The Chapter retains section 1 of both the 1970 and 1997 Constitutions by simply declaring The Gambia as a Sovereign Republic. It also retains section 100 (2) (b) of the 1997 Constitution which prohibits the National Assembly, amongst other things, from enacting any law establishing any religion in The Gambia as a State religion (section 153 (2) (b) in the Draft Constitution). Furthermore, section 49 (under Chapter VI) of the Draft Constitution guarantees freedom of conscience, religion, thought, belief and opinion and declares the individual right to manifest and practice any religion or faith without any interference from the State. Under section 88 (5) (b) (Chapter VIII), the President is specifically prohibited from exercising any power to establish any religion as a State religion. Furthermore, the Draft Constitution generally recognises that The Gambia, is a nation of religions in which religious and cultural diversity are recognised and accepted as the hallmark of peaceful co-existence between its people; these qualities bind its people to stand as one family in unity, cohesion and peace. This is reflected in sections 1 (3), 12 (1) and (2) (b), 49, 88 (5) and 153 (2) (b) of the Draft Constitution.

6.3.CHAPTER II - THE CONSTITUTION AND THE LAWS

6.3.1.Dimensions of the Issue

153. The dimensions of the Issue are as follows:
- (a) Is there a need to declare the Constitution as the higher law that is supreme to all other laws in The Gambia?
 - (b) Can the validity or legality of the Constitution be challenged in court or by other organs of the State?
 - (c) What obligations do Gambians have to the Constitution?
 - (d) What actions by individuals, acting alone or in concert, are unlawful under the Constitution?
 - (e) What right and duty do citizens of The Gambia have in defence of the Constitution?
 - (f) What are the other laws, in addition to the Constitution?

6.3.2. Current State of the Law on the Issue

154. Chapter II (The Constitution and the Laws) of the 1997 Constitution has 4 sections, which provide for the supremacy of the Constitution, its enforcement and defence, as well as the laws of The Gambia. Section 4 declares the Constitution as the supreme law of The Gambia, while section 5 provides for the right of a person to take action against any person who acts in a manner inconsistent with the Constitution. Section 6 provides that any person who attempts to, or abrogates, suspends or overthrows the Constitution or any part of it by violent or unlawful means commits treason, while section 7 defines what constitutes the laws of The Gambia.

6.3.3. Submissions Received, Analyses and Decisions

155. There were no submissions on this issue. The CRC took the decision to maintain the provisions of the 1970 and 1997 Constitutions on this Chapter. However, the CRC considered it necessary to make provisions relating to the application of international treaties in The Gambia, which were not mentioned in the other Constitutions. Following the publication of the proposed Draft Constitution and the second round of public consultations, the CRC received a recommendation in relation to this Chapter that every treaty ratified by The Gambia should be directly applicable to the country without any requirement for domestication by the National Assembly; the alternative was suggested that a timeline be provided for the domestication of such treaties.

156. The CRC considered that treaties entered into by The Gambia may have obligations which, in some instances, have serious legal, resource and other implications. In that context, it is considered prudent that the Legislature should have the ability to properly scrutinise the provisions of a treaty to determine whether it is in the national interest to adopt wholesale the treaty concerned or adapt it to the context of The Gambia. The process of domesticating treaties therefore, allows for this mechanism to operate effectively.

6.3.4. Provisions of the Draft Constitution

157. This Chapter in sections 7 to 10 declares the Constitution as the supreme law of The Gambia and stipulates the other laws of The Gambia. It further contains provisions on how to enforce provisions of the Constitution. The Chapter introduces broader rules on locus standi (standing) in enforcing the provisions of the Constitution. These rules effectively enable a person to initiate legal action as a member, or in the interest, of a group of persons, or in the public interest. It also allows an association to act in the interest of one or more of its members.

158. This Chapter, for the first time, makes it clear that treaties to which The Gambia becomes a party form part of the laws of The Gambia after they have been ratified and domesticated. It further gives the courts discretion to use international treaties on human

rights to which The Gambia is a party as an aid to interpretation or application of any provision of the Constitution's fundamental human rights and freedoms.

159. Furthermore, the Chapter imposes an obligation on every citizen of The Gambia to respect, uphold and defend the Constitution.

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

6.4.CHAPTER III - NATIONAL VALUES AND PRINCIPLES

6.4.1.Dimensions of the Issue

161. The dimensions of the issue are as follows:

- (a) What are the national values and principles of governance in The Gambia?
- (b) What is the obligation of the State, State organs and the people in upholding the national values and principles of governance?
- (c) What is the role of culture in national development?
- (d) What are the duties of citizens of The Gambia with regards to defence of the Constitution and national development in general?

6.4.2.Current State of the Law on the Issue

162. The 1997 Constitution does not have a Chapter on National Values and Principles, as provided in the Draft Constitution. The 1970 Constitution did not make any such provision either. However, Chapter XX (Directive Principles of State Policy) of the 1997 Constitution provides principles similar to the national values and principles outlined in Chapter III of the Draft Constitution.

6.4.3.Submissions Received, Analyses and Decisions

163. No specific submissions were received on this subject, but a participant at the CRC consultations in the USA was of the view that the Draft Constitution should have a provision to protect Gambian culture. The CRC gave due consideration to the relevance of culture in national development, especially as it relates to the intellectual property rights of the people of The Gambia.

164. The CRC further considered the need to formulate fundamental principles of national values and governance to foster unity, cohesion, tolerance and accountability for State organs, public officials and the people of The Gambia.

165. To build a culture of patriotism and harmonious relationship between and among citizens of The Gambia, and a sense of responsibility and duty to country, the CRC gave due consideration to the role and duties of citizens.
166. Following the publication of the proposed Draft Constitution and the second round of public consultations, there were no submissions received on this Chapter.

6.4.4. Provisions of the Draft Constitution

167. This Chapter is in sections 11 to 13 and is new. It provides for national values and principles of governance which are meant to bind all State organs, LGAs, public officers and all other persons. It is essentially designed to engender national pride, patriotism, individual and collective responsibility to the State. It is considered to be an important emerging trend in modern constitutional development.
168. The Chapter recognises culture, and respect for ethnic and religious diversity, as the foundation of the nation and as the cumulative civilization of the Gambian people and nation. It further outlines the duties of all Gambian citizens, which include the duty to prevent and expose the misuse and waste of public funds and property, duty to promote and protect the prestige and good reputation of The Gambia, the duty to foster national unity, cohesion and live harmoniously with others, the duty to protect and conserve the environment, and the duty to be loyal to The Gambia and contribute to its defence when necessary. These values and duties are important for nation-building in that they encourage orderliness, credibility, tolerance, hard work, patriotism and the equitable distribution of resources.

6.5. CHAPTER IV - CITIZENSHIP

6.5.1. Dimensions of the Issue

169. The dimensions of the issue of citizenship are as follows:
- (a) What is the status of the existing rights and entitlements to Gambian citizenship?
 - (b) Should the grandchildren of people born in The Gambia be entitled to citizenship as a right?
 - (c) Should naturalised citizens renounce citizenship of their countries of origin?
 - (d) Should the length of residency for citizenship by naturalisation or registration be maintained?
 - (e) Should children born in The Gambia to non-Gambian parents be entitled to birth right citizenship?

- (f) Should children of less than eight years found within the country whose parents are unknown be presumed to be citizens of The Gambia?
- (g) Should the Constitution make provision for citizenship of non-Gambian children adopted by Gambian parents?
- (h) Should children of less than eighteen years of naturalised or registered parents be entitled to be registered as citizens of The Gambia?

6.5.2. Current State of the Law on the Issue

170. The law on citizenship is found in Chapter III of the 1997 Constitution. The Chapter consists of 10 sections, starting with section 8 (Citizenship on the commencement of the Constitution), which provides that any person who before the coming into force of the 1997 Constitution was a citizen of The Gambia, shall continue to be a citizen of The Gambia, and will retain the same status as a citizen as he or she did before the Constitution came into force. Other provisions of the Chapter are citizen by birth, descent, and registration (by marriage). The Chapter also provides for citizenship by naturalisation, and the issues of dual citizenship, deprivation and restoration of citizenship, as well as the country of birth of a person born on a ship or aircraft.

6.5.3. Submissions Received, Analyses and Decisions

171. The CRC received many submissions on various citizenship issues, ranging from citizenship by birth, to citizenship by registration, naturalisation, and dual citizenship.

6.5.3.1. Citizenship by birth

172. With regards to citizenship by birth, 25 (or 64%) out of the 39 submitted position papers (PP) were of the view that children born in The Gambia of non-Gambian parents should be granted automatic citizenship.

173. In the same vein, 86.7% of participants in the IPCs, 71.3% of FGDs participants in The Gambia, 63.2% of respondents on the online PPP, and 96% of respondents in the HS agreed with the suggestion that children born in The Gambia of non-Gambian parents should be granted automatic citizenship. Similar results were found in consultations with Diaspora Gambians in the USA, Senegal, Mauritania, and Saudi Arabia. However, a slightly lower percentage (48%) of Diaspora Gambians in Europe agreed with the suggestion that children born in The Gambia of non-Gambians should be granted automatic citizenship.

174. The PPP participants also generally agreed that children born in The Gambia of unknown parents and adopted children should be allowed to obtain Gambian citizenship upon application.

175. The reasons for supporting the granting of automatic citizenship to children born in The Gambia to non-Gambian parents included the assertion that it would be in the best

interest of the children, and that not granting them citizenship would render them stateless upon birth. Furthermore, PPP, IPC and FGD participants, and many Diaspora Gambians who participated in the consultations, said that citizenship is a fundamental right that should not be denied children born in The Gambia, even if their parents are non-Gambian at the time of their birth.

176. On the other hand, some Gambians felt that children born in The Gambia to non-Gambian parents should not be granted automatic citizenship. Thus, 13.3% of IPC participants, 15.4% of FGD participants and 22.9% of PPP respondents did not want children born in The Gambia of non-Gambian parents being granted automatic citizenship. Interestingly, a high proportion, 52% of participants during the consultations in Europe supported this position; 39% of consultation participants in the USA supported the same position. The reasons for the opposition to granting automatic citizenship to children born of non-Gambian parents include the need to judiciously manage the nation's resources (FGD participants), and the need to reduce competition for the meagre resources of the country (Europe consultation participants).
177. The CRC carefully considered all the submissions relative to citizenship by birth. Without a doubt, citizenship by birth is one of the most complex issues to resolve in any constitutional reform process. Birth right citizenship is generally well guarded and requires careful balancing. Persons who, prior to the coming into force of the new Constitution, were citizens of The Gambia have their Gambian citizenship guaranteed under the new Constitution; that is only considered fair and it is the right thing to do.
178. The CRC considered the public opinion to grant automatic citizenship to children born in The Gambia to non-Gambian parents. It recognised, however, that this opinion required further consideration. It was considered important that persons granted automatic citizenship at birth could have huge consequences on national resources which, if not properly managed, could lead to potential socio-economic imbalances. This took into account the fact that The Gambia is currently one of the most densely populated countries in Africa with limited resources, considering the population density increase from 130 persons per sq. km of land area in 2000 to 225 persons per sq. km of land area in 2018.²⁵ Accordingly, the CRC came to the conclusion that this is a subject that requires further study (which the CRC could not properly do having regard to the timeframe within which it had to carry out its assignment) and therefore recommends that the subject be taken up and considered further by the Government and the National Assembly.
179. However, the CRC considered it important that the issue of children born in The Gambia and currently living in the country should be given special consideration in the granting of citizenship. This, like the issue on automatic citizenship, requires further

²⁵ See paragraph 39

study as well. The study must take into account the number of such persons born and living within the country as at 31st December, 2019 and a determination of resource capabilities and distribution. The cut-off period of 31st December, 2019 has been provided specifically for 2 reasons: first, to recognise this category of children born in The Gambia of non-Gambian parents and living in the country; and second, to prevent an undesirable rush to the acquisition of citizenship for children in an uncontrolled atmosphere before a proper determination is made on the issue of automatic citizenship (that is, whether or not the country can handle such an arrangement).

180. It is in this context that the CRC considered it prudent for the National Assembly to consider this category of children born in The Gambia of non-Gambian parents for purposes of according them Gambian citizenship. This would have taken into account the results of the study recommended. In a similar vein, the National Assembly is empowered to consider enacting legislation for the registration of other persons who are not eligible for Gambian citizenship under Chapter IV of the Draft Constitution.

6.5.3.2. Citizenship by registration

181. With regards to citizenship by marriage, most of the position papers called for reducing the requirement for residency in The Gambia, following marriage with a citizen, from the 7 years stipulated in section 11 (1) (a) of the 1997 Constitution, to 5 years or even 3 years. In contrast, 78.9% of participants in the IPCs, 63.5% of FGD participants, 70.1% of PPP respondents, and 73.6% of HS respondents all agreed that 7 years was an adequate length of time to allow to elapse before granting people citizenship on the basis of marriage. In the same vein, many IPC and FGD participants, as well as survey respondents said that a requirement of less than 7 years would be too short, and a requirement of over 7 years would be too long.

182. A relatively low percentage of participants in the public consultations in Europe and the USA agreed that 7 years is an adequate residency period for granting citizenship on the basis of marriage. In particular, only 40% of participants in the Europe consultations, and none of the participants in the USA consultations, agreed that a 7 year waiting period was adequate for granting citizenship to non-citizens married to Gambian citizens.

183. As was the case with the IPCs, FGDs, and HSs, many of the people in the consultations in Europe who supported the 7 year waiting period before a non-citizen married to a Gambian can be eligible for citizenship also said that this period was adequate, while extending the waiting period to over 7 years would be counterproductive.

184. The CRC also deliberated on the issue of citizenship by marriage, and reviewed the provisions of the Constitutions of Ghana, Malawi and Uganda²⁶ on the issue and decided that the residency requirement for citizenship by marriage should be reduced from the current 7 years to 5 years. Non-citizens who are married to citizens may be considered to have planted root in The Gambia and the State should be facilitating the relationship by providing a shorter residency period to enable such non-citizens to acquire Gambian citizenship.

185. The CRC also noted that the 1997 Constitution does not provide for the citizenship of children of non-Gambian biological parents who are adopted by Gambian parents. Generally, the laws governing adoption recognise the relationship between an adoptive parent and the adopted child as a relationship between father/mother and child. Accordingly, the Draft Constitution gives consideration to such children being able to be registered as citizens of The Gambia.

6.5.3.3. Citizenship by naturalisation

186. Almost all the position papers that addressed the issue of citizenship by naturalisation stated that the 15 years of residency in The Gambia required by section 12 (1) of the 1997 Constitution was too long. Many of the position papers also added that the residency requirement should instead be reduced to 10 years, or even 5 years.

187. In addition, some papers proposed that citizens of member States of the ECOWAS should be eligible to apply for citizenship by naturalisation after 2 years of residency, in conformity with the ECOWAS protocol to promote the free movement of people and goods in the ECOWAS sub-region. The CRC, however, reviewed the ECOWAS protocol referred to and confirmed that no provision is made in relation to eligibility for naturalisation after 2 years of residency in an ECOWAS State.

188. One position paper called for adding an “exceptional clause” to the Constitution, to enable descendants of former slaves to be eligible to apply for citizenship by naturalisation after 2 to 4 years of residency in The Gambia. Such a provision, the paper indicated, would encourage these descendants of former slaves who are returning “home” to The Gambia to make significant investments in the country. The CRC, having carefully considered this submission, formed the view that The Gambia should be welcoming to descendants of the enslaved. However, the subject matter goes beyond the descendants who are currently in the country and they include those that may yet wish to settle in The Gambia. This has significant ramifications and require further study to better appreciate any potential implications for the country. This will also ensure that the descendants of the enslaved, when granted citizenship, are fully integrated into

²⁶ Article 10 of the Ghana Citizenship Act 2002 enacted pursuant to Article 7 of the Ghana Constitution (1996 provides for 5 years residency period; Article 12 (2) (a) of Uganda Constitution 1995 provides for 3 years residency period; and section 13 (1) (a) of the Malawi Citizenship Act 1966 enacted pursuant to section 47 (2) of the Malawi Constitution 1994 provides for 5 years residency period.

Gambian society. In this context therefore, the Draft Constitution provides a framework to enable the National Assembly to enact legislation conferring citizenship on persons who are otherwise not eligible under the Draft Constitution.

189. The public consultations and surveys also yielded important perspectives on the issue of citizenship by naturalisation. A majority of participants in the public consultations in The Gambia and respondents in the HS and online survey agreed with the suggestion that the 15 years residency requirement for eligibility for citizenship by naturalisation is adequate. Specifically, 77.8% and 63.5% of participants in the IPCs and FGDs, respectively, said the 15 years residency requirement is adequate. Similarly, 66% and 74.6% of the online PPP survey, and HS respondents said the 15 years residency period was sufficient. One reason for this conclusion is that many participants felt that the 1997 Constitution had a fifteen-year residency requirement, and this has served the country adequately. Many also felt that non-citizens wishing to be naturalised should first be well-rooted in the country (by being knowledgeable in its people, culture, values and generally its way of life and be fully integrated into Gambian society) before being considered for the grant of citizenship by naturalisation.
190. In contrast, 78% of participants in the public consultations with Diaspora Gambians in Europe, and 100% of participants in the consultations in the USA, thought that 15 years is too long a period to wait for eligibility to be granted citizenship by naturalisation. Participants in both jurisdictions said that the requirement may discourage people with a lot of potential to assist national development from applying for Gambian citizenship. As such, they suggested that the residency requirement should be reduced to 7 to 10 years.
191. The CRC also reviewed the provision of the 1997 Constitution on citizenship by naturalisation against the views expressed through the various public consultation platforms. It recognised that public opinion has not shifted greatly against the 15 year requirement for a non-citizen to be granted naturalisation. Accordingly, the CRC came to the conclusion that it is more desirable than otherwise to retain the 15 year residency requirement that is contained in the 1997 Constitution.
192. The 1997 Constitution does not address the issue of children of parents that have either registered or naturalised as citizens of The Gambia. The Convention on Certain Questions Relating to the Conflict of Nationality Laws²⁷ recommends that families are not separated and, to the extent feasible, should be kept together in the best interests of

²⁷ Article 13 “Naturalisation of the parents shall confer on such of their children as, according to its law, are minors the nationality of the State by which the naturalisation is granted. In such case the law of that State may specify the conditions governing the acquisition of its nationality by the minor children as a result of the naturalisation of the parents. In cases where minor children do not acquire the nationality of their parents as the result of the naturalisation of the latter, they shall retain their existing nationality.”

the children. The CRC considered this matter in the context that a child under the age of 18 years whose parent has registered or naturalised as a citizen of The Gambia may be registered as a citizen of The Gambia. However, the caveat is that the child would have been living with the parent at the time the parent acquired Gambian citizenship by registration or naturalisation.

6.5.3.4. Dual citizenship

193. The issue of dual citizenship is one of the most important constitutional issues in The Gambia today, particularly because of the relatively large number of Gambians in the Diaspora. For this reason, the CRC solicited opinions and perspectives on how dual citizenship should be treated in the new Constitution, considering that the 1997 Constitution was amended in 2001 to allow, for the first time in the constitutional history of The Gambia, citizens of The Gambia to acquire and hold the citizenship of another country without losing their Gambian citizenship.
194. Most of the position papers submitted to the CRC indicated that citizens of The Gambia should be allowed to hold the citizenship of other countries. The main reason for this, they said, is the need to provide an inclusive environment that would encourage Gambians abroad who have citizenship of other countries to return home and invest in the country. However, some added that there should be a proviso that Gambians with dual or multiple citizenships should not be allowed to run for or occupy public offices such as President, Minister, or membership of the National Assembly. On the other hand, others suggested that Gambians with dual nationalities should be allowed to run for and hold public offices as long as they renounce their foreign citizenships, and have lived in The Gambia for at least 5 consecutive years.
195. The majority of participants in the FGDs (60.1%) and the HS respondents in The Gambia (84.8%) agreed that non-Gambians wishing to naturalize as Gambians should first renounce the citizenship of their original or other countries. In the same vein, 51.3% of FGD participants said Gambians with dual citizenship should give up their foreign citizenship before they are allowed to contest elections in The Gambia. The main reason for this position is that many felt that this requirement was important to prevent conflicts of interest and divided loyalties in relation to The Gambia and other countries.
196. In contrast, 20.2% of FGD participants and the majority (49.1%) of online PPP survey respondents said non-Gambians wishing to naturalize as Gambians should not be required to renounce their citizenship of other countries. Furthermore, 83% of participants in consultations in Europe and many participants in the consultations in the USA said that people with dual nationalities should be allowed to contest elections and hold public office in The Gambia. To hold otherwise, many felt, would rob The Gambia of valuable talent from the Gambian Diaspora.

197. The CRC also reviewed the issue of dual citizenship, and observed that while the 1997 Constitution allows Gambians to acquire citizenship of other countries without losing their Gambian citizenship, it requires a non-Gambian to renounce his or her citizenship before acquiring Gambian citizenship.

198. Upon a detailed review and analysis of the opinions canvassed, the CRC did not find justification to reverse the position under the 1997 Constitution whereby Gambians could, if they wish, acquire and hold the citizenship of other countries, in addition to retaining their Gambian citizenship. This position has, therefore, been affirmed in Chapter IV of the Draft Constitution. With respect to foreign nationals in The Gambia who meet the requirements for naturalisation and wish to naturalise, the CRC formed the view that since Gambians can acquire foreign citizenship, it was only fair that non-citizens in The Gambia should be accorded the opportunity to acquire and hold Gambian citizenship while at the same time maintaining their original or other citizenships. However, this flexibility (from the rigid position under the 1997 Constitution) should be based on the principle of reciprocity. This means that foreign nationals wishing to naturalise as citizens of The Gambia may only retain their original or other citizenship if their country of origin or other country of citizenship accords citizens of The Gambia the same treatment (without having to give up their Gambian citizenship).

6.5.3.5. Deprivation of citizenship

199. While public opinion did not weigh in on the issue of depriving persons who have obtained their Gambian citizenship by registration or naturalisation of that citizenship, the CRC recognised the importance of the provision in the 1997 Constitution (section 13) which outlines the grounds on which a registered or naturalised citizen may be deprived of his or her Gambian citizenship. The grant of citizenship comes with obligations to the State and with certain responsibilities (such as being a good citizen and not getting involved in criminal activity). In that context, the Draft Constitution has retained the essence of section 13 of the 1997 Constitution, but with the addition of two new grounds that can give rise to deprivation of Gambian citizenship. These are where a registered or naturalised citizen, during any war or threat of war in which The Gambia is involved, trades or communicates with the enemy, and where such citizen engages in any activity that is inimical to the security or economic well-being of The Gambia.

200. It is also open to a registered or naturalised citizen of The Gambia to renounce his or her Gambian citizenship. While nothing stops a citizen of The Gambia by birth from renouncing his or her Gambian citizenship, he or she cannot be forcibly denied or in any way deprived of his or her Gambian citizenship.

6.5.3.6. Restoration of citizenship

201. While the issue of restoration of citizenship was not dwelt into by participants during the public consultations, the CRC considered this matter and formed the view

that the provisions of section 14 of the 1997 Constitution should be retained in the new Constitution. The restoration of such citizenship would relate to those Gambians who, as citizens by birth, renounced their citizenship. They should be able to have their citizenship restored upon notifying the Minister responsible for immigration in that regard.

6.5.3.7. Act of the National Assembly on citizenship

202. Considering the fact that the Draft Constitution cannot address all issues relative to citizenship, the CRC formed the view that section 15 of the 1997 Constitution should be maintained. That section essentially empowers the National Assembly to enact legislation according Gambian citizenship to persons who are otherwise not so recognised under the Constitution; this power extends to the issue of renunciation of Gambian citizenship.

203. The CRC realises that the importance of the issue of citizenship cannot be overemphasised. In particular, the CRC is acutely aware of the fact that this issue can make or break the unity of the country if not properly handled, as it has indeed brought a civil war and untold deprivation to the people of Côte d'Ivoire.²⁸ For this reason, the CRC based its decisions about citizenship on extensive deliberations on the issue, as well as feedback from the public and best practices from other countries with legal systems similar to The Gambia.

204. Following the publication of the proposed Draft Constitution and the second round of public consultations, 23 submissions on citizenship were received by the CRC. These related to birth right citizenship issues mainly, but also included issues related to the citizenship of children under 8 years found in The Gambia with unknown parents, adopted children, naturalised Gambians retaining their foreign nationalities, descendants of the enslaved and dual citizenship. Generally, there was overwhelming support for retaining the provisions in the proposed Draft Constitution. The CRC did not find a compelling basis for effecting any amendments in this regard.

6.5.4. Provisions of the Draft Constitution

205. The Chapter on citizenship contains sections 14 - 22 and defines who a citizen of The Gambia is and how a non-Gambian may acquire Gambian citizenship.

206. The Chapter preserves the citizenship of persons who were citizens of The Gambia before the coming into force of the Draft Constitution. A distinction is no longer made between citizens by birth and citizens by descent. Any person born of a Gambian parent,

²⁹ Cote d'Ivoire: Democracy and civil war – Citizenship and peacemaking (January 2011) <https://africanarguments.org/2011/01/24/democracy-and-civil-war-citizenship-and-peacemaking-in-cote-divoire/> last accessed 11th January 2020

whether within The Gambia or outside The Gambia, automatically acquires and holds citizenship of The Gambia by birth.

207. Furthermore, the Chapter has expanded the acquisition of citizenship through a grandparent and restates the position in the 1970 Constitution. Thus a child whose grandparent (one or both) is or was a citizen of The Gambia at the time of the child's birth effectively makes that child a citizen of The Gambia. In addition, the Chapter provides that a child of 8 years or under who is found in The Gambia, and whose parents are unknown, is presumed to be a citizen of The Gambian.
208. The Chapter also provides for citizenship by registration to persons who marry Gambian citizens and continue to be ordinarily resident in The Gambia for a period of 5 years (reduced from 7 years). That status is not altered by virtue of any annulment or dissolution of the marriage, provided that at the time of the annulment or dissolution of the marriage the court does not make any finding that the parties, at the time of entering into the marriage knew that the marriage was unlawful or fraudulent. This caveat is designed to prevent marriages of convenience to acquire Gambian citizenship.
209. Citizenship by naturalization is also provided for, but naturalized citizens are no longer required to renounce their original nationality if their country of origin does not require Gambians who wish to naturalise in that country to renounce their Gambian nationality. In addition, a child of a naturalised or registered citizen under the age of 18 years who, at the time of the parent's naturalisation or registration, is living in The Gambia with the parent, may be registered as a citizen of The Gambia.
210. Non-Gambian children adopted by Gambian parents can apply to register as Gambian citizens; such application may be made on their behalf by the adoptive parents. Dual citizenship, restoration of citizenship and deprivation of citizenship are also provided for.

6.6.CHAPTER V - LEADERSHIP AND INTEGRITY

6.6.1.Dimensions of the Issue

211. The dimensions of the issue are as follows:
- (a) What are the responsibilities of leadership?
 - (b) How should public officers conduct themselves, and what oath of office should they take?
 - (c) What are the guidelines for ensuring the financial probity of public officers?
 - (d) What restrictions should be placed on the activities of public officers?
 - (e) What obligations do people dealing with public officers in the service of the State have?

(f) What are the consequences of contravention of the provisions of Chapter V (Leadership and Integrity) of the Constitution?

(g) What additional legislation is needed on leadership?

6.6.2. Current State of the Law on the Issue

212. Although the 1997 Constitution does not have a Chapter on leadership and integrity, Chapter XXI has provisions similar to those in Chapter V (Leadership and Integrity) of the Draft Constitution. Section 221 (1) of the 1997 Constitution provides for the application of the Code of Conduct detailed in section 222 of that Constitution. In particular, section 221 provides that the Code of Conduct shall apply to people holding public office or holding office in a public service, as well as members and staff of LGAs, public enterprises, and disciplined forces.

213. The Code of Conduct in the 1997 Constitution is provided in section 222 under 4 headings, namely, Duties of Public Officers, Financial, Association, and Additional provisions relating to the President. Essentially, section 222 provides that a public officer has a duty to respect and comply with the law, and prohibits a public officer from holding more than one full-time public office for which he or she is paid a salary.

214. The last provisions of section 222 of the 1997 Constitution provide that the President shall, as and when necessary, address the nation in person, and shall undertake a nationwide tour at least twice a year to familiarise himself or herself with the conditions in the country and the effects of government policies. Section 223 of the 1997 Constitution provides for the declaration of assets by public officers, while section 224 deals with actions the Ombudsman can take in the event of a contravention of the Code of Conduct.

6.6.3. Submissions Received, Analyses and Decisions

215. The issues of leadership and integrity are very important for any nation, including The Gambia, which has, for a considerable period, experienced serious issues of governance, including abuse of office and misuse of public funds and resources.

216. Against this background, the CRC public consultations and the submissions received revealed a very deep and strong sentiment and yearning among Gambians for a leadership that has probity and integrity and puts the interests of the nation before their personal interests. It is the CRC's assessment, from the public reactions it has witnessed and the written submissions it has received, that the generality of Gambians appear to have lost faith in government as an institution. There is no gainsaying, therefore, that the people have high hopes that the Draft Constitution will address pertinent issues of the public's concerns that can usher in and strengthen leadership and integrity through the pillar of good governance.

217. Participants in both domestic and external consultations said that persons occupying elective office should be prohibited from establishing foundations and charitable organizations, and engaging in business activities. They were of the view that persons elected into public office should concentrate their efforts and energies on executing the functions of their offices, and any engagement in another activity would inevitably result in distracting them from their core obligations. Participants in the consultations were also of the view that elected officials should be prohibited from accepting personal gifts and, therefore, all gifts received by such officials should be transferred to the State. The participants generally felt strongly that transparency and probity in government are essential to good governance and, consequently, elected officials should not be seen to be unduly profiting on account of their elected offices. In essence, participants felt strongly that this should not be restricted to elected officials only, but should govern every holder of public office.
218. Feedback on the domestic and external consultations by the CRC also suggested that the President, NAMs, Cabinet Ministers, and all other senior public officers should declare their assets before assuming office, and upon vacating their offices. It was also suggested that whistle blowers should be provided protection, and policies toward that effect should be put in place.
219. The CRC conducted research on the public finance management dimensions of the Constitution, and considered a number of issues with direct relevance to the subject of leadership and integrity. Almost all of the constitutions reviewed emphasised the need for accountability and transparency in public finance, the need to ensure that public expenditure is directed toward national development, with special provision being made for marginalized groups and areas. The CRC was persuaded that these best practices should be incorporated in the new Constitution, especially given that the 1997 Constitution does not have any specific provisions on sound public finance management.
220. With respect to the President's annual meet-the-farmers tour, the CRC considered that since the subject under the 1997 Constitution was dealt with under the Directive Principles of State Policy and therefore not obligatory, it is appropriate that it should be addressed as a matter of Government policy. However, it is important that there is direct interface between the President and the farmers on an annual basis.
221. Following the publication of the proposed Draft Constitution and the second round of public consultations, 7 submissions on Leadership and Integrity were received by the CRC. After further deliberations on the issue of gifts to public officials, the CRC decided that there should be a provision in the Draft Constitution enabling the National Assembly to determine a minimum threshold for gifts that must be transferred to the State when received by public officials.

6.6.4. Provisions of the Draft Constitution

222. Chapter V is new and is premised on ensuring good governance in the administration of government. It is hoped that in the future, the principles and code of conduct provided in this Chapter will be strictly adhered to by all Gambians, especially those entrusted with public offices to perform public functions.
223. This Chapter emphasises that all sovereign authority emanates from the people. It provides guiding principles of leadership, integrity, transparency, selfless service in the public interest, accountability and discipline. These principles are very much in line with best practices for public finance management as evidenced by research carried out by the CRC, and inspired by feedback from participants in various consultations the CRC held with citizens, both in The Gambia and abroad.
224. Chapter V further provides for the conduct, and the taking of oath of office, of public officers. It also provides for the financial probity of public officers. The Chapter provides that a gift to a public officer on account of his or her office is a gift or donation to the State or institution he or she represents. In that regard, such a gift must be handed over to the ACC (unless otherwise exempted), or to the institution concerned. This provision is in line with feedback received by the CRC from the many public consultations it had with citizens and other stakeholders. Emphasis was placed on the need for probity and integrity, and the need to curb corruption among public officers. In the same vein, it is in line with section 222 (11) of the 1997 Constitution which explicitly bans a public officer from asking for, or receiving gifts, because of work done as part of his or her duty as a public officer.
225. The CRC also noted that the United States Government has strict guidelines on the issue of gifts to the US President and public officials,²⁹ as part of its Ethical Code of Conduct for Employees of the Executive Branch.³⁰ In reviewing regulations governing declaration of gifts to public officers, the CRC discussed whether or not to have them apply only to a particular class or to all public officials. It concluded that the requirement should apply across the board, irrespective of whether one holds an elective or appointed office. The CRC also discussed whether or not there should be a lower limit to the monetary value of gifts that must be declared and handed over to the State, and in the end decided on not having a lower limit and that all gifts must be declared, and turned over to the State.

²⁹ O Oksman 'The Gifts of the Presidents for decades, foreign dignitaries have showered U.S. leaders with presents, ranging from the extravagant to the bizarre' (February 15, 2016) <https://www.theatlantic.com/politics/archive/2016/02/the-unusual-gifts-given-to-presidents/462831/> last accessed 11th January 2020

³⁰ Electronic Code of Federal Regulations (2020) <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5#sp5.3.2635.b> last accessed 11th January 2020

226. Chapter V also prohibits a full-time public officer working for the State from engaging in any other gainful employment, and restricts a public officer (except those appointed to office which, by its nature, requires a person affiliated with a registered political party) from holding office in a registered political party. In addition, Chapter V forbids a retired public officer on a pension from public funds from holding more than 2 concurrent paying positions as chairperson, director, or employee of an SOE or Statutory Body, or any organ or agency of the State.
227. Against this background, the CRC observed that the salaries of public officers should be increased if the provisions of the Draft Constitution, especially the restriction on full-time public officers having other gainful employment, are to be meaningfully complied with. The CRC urges both the Government and the National Assembly to take this observation into consideration when the new Constitution comes into effect.
228. Chapter V also provides that a person who enters or proposes to enter into a relationship with an agency or organ of the State, whether or not the relationship is contractual, has a duty to deal honestly, transparently, and fairly, and must not enter into an agreement knowing that it will be detrimental to the public interest. This effectively covers any person (individual or legal) who enters or seeks to enter into contract with the Government or any institution or agency of the Government. A person who fails to comply with these prohibitions is liable to be disqualified from holding public office for life (in the case of a public officer), unless a shorter period is prescribed in an Act of the National Assembly, or having any relationship with the State or any organ or agency of the State, including any Statutory Body or an SOE.
229. Persons seeking elective office or appointed to certain high offices are required to be individuals with integrity and of appropriate leadership qualities, who have the primary function of ensuring national unity, cohesion and peace. Accordingly, those individuals are not expected to engage, or in the past to have engaged, in advocating ethnic or religious hatred, or advocating hatred resulting in the vilification of others within society or incitement to cause harm. Accordingly, provision is made in the Draft Constitution (sections 94 (1) (f), 116 (2) (h) and 138 (1) (g)) disqualifying a person from being nominated to contest the Office of President or NAM or to be appointed as Vice President or Minister if, at any time during 10 years prior to the individual's nomination or appointment, the individual has been found to have advocated for such hatred. In that context, Chapter V provides that any person may institute an action in the High Court to declare that such an individual has advocated hatred as provided in the Draft Constitution.

6.7.CHAPTER VI - FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

6.7.1.Dimensions of the Issue

230. The dimensions of the issue are as follows:

- (a) Do the fundamental rights and freedoms provisions in the 1997 Constitution adequately embody the rights and freedoms enshrined in international treaties to which The Gambia is a party? If not, which treaty provisions have been left out or are not adequately covered?
- (b) Should the death penalty, which the 1997 Constitution appears to recognise, be retained in the new Constitution, or should there be specific provision that abolishes the death penalty?
- (c) Should the Constitution provide a framework to enable the National Assembly to enact legislation permitting prisoners to be paroled as a rehabilitative measure to achieve better prisoner integration back into public life upon being discharged?
- (d) The current Constitution protects children under the age of 16 years from economic exploitation, hazardous employment or interference with their education and health (in compliance with established international standards). Should that age be raised (to say under 18 years)?
- (e) Should there be a default provision that specifically allows the courts to rely on international treaties to which The Gambia is a party in interpreting the fundamental rights and freedoms contained in the Constitution?
- (f) Are the protections accorded to the rights and freedoms of the press and other information media sufficient to guarantee their independence, while preserving the rights and freedoms of others? If not, what is deficient and how can the deficiency be dealt with?
- (g) Should established public broadcasting stations be subject to State censorship or be under the direction and control of any authority (such as the Executive, for example)? If not, how can they be made accountable?
- (h) Should specific provision be made in the new Constitution outlining the right to health care service and decent housing, in a similar manner as the current Constitution provides in relation to education?
- (i) Should the right to free education extend beyond providing basic secondary education?
- (j) Are the current constitutional provisions relating to the rights of marginalised groups of Gambian society, in particular the youth and persons with disabilities,

adequate? If not, what additional measures should be included in the new Constitution?

- (k) Are women sufficiently empowered, protected and accorded equality to exercise and enjoy their full rights as citizens? If not, what measures can be taken to ensure the exercise and enjoyment of those rights?
- (l) Should specific provision be made in the Constitution on the right to clean air and a clean environment? If so, what should the right to clean air and a clean environment entail?
- (m) Are there any other fundamental rights and freedoms provisions in the 1997 Constitution that are not clear or adequate in protecting the rights and freedoms of citizens and other persons residing in The Gambia? If so, which rights and freedoms require reform?

6.7.2. Current State of the Law on the Issue

- 231. Chapter IV of the 1997 Constitution provides for protection of fundamental rights and freedoms in 22 sections (17 - 38) covering various issues. Among these are the fundamental rights and freedoms relative to the protection of the rights to life, personal liberty, privacy, marriage and education. Other rights provided for are protection from slavery, forced labour, inhuman treatment, discrimination and deprivation of property, as well as political and cultural rights, and rights of women, children and persons with disabilities.
- 232. Chapter IV includes sections on freedom of speech, conscience, assembly, association and movement. In the same vein, Chapter XIX (The Media) of the 1997 Constitution has 3 sections on freedom and responsibility of the media, the responsibility of State-owned media, and the limitations on rights and freedoms.
- 233. The next 3 sections of Chapter IV (sections 34 - 36) provide for the declaration of a state of emergency, derogations or suspensions of fundamental rights under emergency powers, and the rights of persons detained under emergency powers. The last 2 sections of Chapter IV (sections 37 and 38) provide for the enforcement of the protective provisions, and the interpretation of the Chapter IV provisions.
- 234. The first section (17) of Chapter IV of the 1997 Constitution relates to fundamental rights and freedoms, and essentially provides that all organs of the State, as well as all natural and legal persons in The Gambia, shall respect and uphold the provisions of the Chapter, and that they shall be enforceable by the courts. Furthermore, the section provides that every person in The Gambia shall be entitled to the fundamental human rights and freedoms of the individual contained in Chapter IV of the 1997 Constitution, subject to respect for the rights and freedoms of others, and respect for the public interest.

235. Section 18 of Chapter IV provides for the protection of the right to life, and states that no person shall be intentionally deprived of his or her life except in the execution of a death sentence duly imposed by a court. Section 18 also provides that a person who dies as a result of the reasonable and justifiable use of force shall not be regarded as having been deprived of his or her life in contravention of the provisions of the section.
236. The 1997 Constitution also provides (in section 19) for the protection of the right to personal liberty. In particular, the section provides that every person shall have the right to liberty and security of person, and no person shall be subjected to arbitrary arrest or detention. Furthermore, the section provides for the rights of persons who are arrested or detained, including the right to compensation of any person who is unlawfully arrested or detained.
237. Section 20 of the 1997 Constitution provides for protection from slavery and forced labour, and specifically provides that no person shall be held in slavery or servitude, or required to perform forced labour. The section also provides a list of types of work that are not included in the expression “forced labour.”
238. Section 21 of the 1997 Constitution provides that no person shall be subject to torture or inhuman or degrading punishment or other treatment, while section 22 provides that no property shall be possessed or rights over it acquired compulsorily except under certain specific conditions detailed in the section. In addition, section 22 provides for the compensation of persons whose property has been compulsorily and lawfully acquired by the State.
239. The right to privacy is provided for by section 23, which states that no person shall be subject to interference with the privacy of his or her home, correspondence or communications except when it is in accordance with law and in the interest of national security, public safety and other needs of a democratic society. Section 23 also provides that searching the person or home of individuals shall only be justified under certain circumstances, including authorisation by a competent judicial authority.
240. Section 24 provides that any court or other adjudicating authority shall be independent and impartial, and shall accord any person charged with a criminal offence a fair hearing within a reasonable time. The section also provides that court proceedings shall be held in public, except under specific circumstances detailed therein. It provides, in addition, for the presumption of innocence of every person charged with a criminal offence, as well as his or her rights and responsibilities as an accused person.
241. The 1997 Constitution also provides for freedom of speech, conscience, assembly, association and movement in section 25. Specifically, the section provides that every person shall have the right to freedom of speech and expression, thought, conscience, and belief, as well as freedom to practise any religion, freedom to assemble and demonstrate peaceably, and freedom of association. Other rights provided by the section

include the right to petition the Executive to seek redress of grievances, the right to move freely throughout The Gambia and to choose a place of residence in the country, and to leave and return to The Gambia.

242. Freedom of the media is closely related to, and is part of, freedom of speech. The 1997 Constitution thus provides a Chapter on the media which, in 3 sections, provides for the freedom and responsibility of the media (section 207), the responsibility of State owned media (section 208), and the limitations on the rights and freedoms of the media (section 209). Section 207 guarantees the freedom of the Press (and other information), which shall at all times be free to uphold the provisions of the Constitution in this regard, and the responsibility and accountability of Government to the people of The Gambia. Section 208 provides that all State owned media shall afford fair opportunities and facilities to present divergent views and dissenting opinion, while section 209 provides that the provisions of sections 207 and 208 are subject to laws reasonably required in a democratic society to maintain national security and public order and to protect the reputations, rights and freedoms of others.
243. Section 26 provides that every citizen of The Gambia of full age and capacity shall have the right to take part in public affairs, to vote and stand for elections, and to have access to public services in The Gambia. Section 27 provides that men and women of full age and capacity have the right to marry and start a family, and that the marriage shall be based on the free and full consent of the parties involved.
244. Furthermore, the 1997 Constitution provides for the rights of women in section 28. Specifically, that section provides that women shall be accorded full and equal dignity with men, and that women shall have the right to equal treatment, as well as equal opportunities (in politics, economic and social activities) with men.
245. The rights of children are provided in section 29 of the 1997 Constitution, which states that children shall have a right to a name at birth, acquire a nationality, and be cared for by their parents. Section 29 also provides that children under 16 years of age are entitled to be protected from economic exploitation, and work that is hazardous or interferes with their education, or is harmful to them. In addition, section 29 provides that a juvenile offender in lawful custody shall be separated from adult offenders.
246. Section 30 provides that all persons shall have the right to equal educational opportunities and facilities, and toward that end, basic education shall be free, secondary (including technical and vocational education) and higher education shall be made generally available and accessible to all, functional literacy shall be encouraged, and adequate facilities are to be developed at all levels in the school system.
247. The rights of the disabled are provided in section 31 of the 1997 Constitution, which states that the State and society shall recognize the rights of the disabled and handicapped to respect and human dignity. Disabled persons shall also be entitled to

protection against exploitation and discrimination, especially with regards to access to health services, education, employment, and justice.

248. Every person shall also be entitled to enjoy, practice, and promote any culture, language, tradition or religion as provided in section 32, as long as this entitlement conforms to the terms of the Constitution and do no impinge on the rights and freedoms of others, or the national interest.
249. Section 33 provides that all persons are equal before the law and, subject to the provisions in sections 33(5) and 33(6), no law shall discriminate, nor shall any person be discriminated by law or any public officer or authority.
250. The 1997 Constitution also provides for the declaration of a state of public emergency in section 34. Specifically, the President may, by proclamation in the Gazette, declare a state of public emergency in all or parts of The Gambia, and the declaration shall remain in force for a maximum of 21 days, unless the National Assembly approves the prolongation of the state of public emergency.
251. Section 35, which makes provision for derogations from fundamental rights and freedoms under public emergency powers, provides that an Act of the National Assembly may authorise reasonably justified measures to deal with the situation during a state of public emergency, and that nothing in that section shall be seen to be inconsistent with sections 19, 24, or 25 and section 23 (except for subsections (5) to (8)).
252. Section 36 provides for the rights of persons detained during a state of public emergency. These rights include, that a person detained shall, within 24 hours of detention be provided, in writing, the reasons for the detention; and the spouse, parent, child or other available next of kin shall be allowed access to the detained person. The section also specifies the procedure to be adopted by a tribunal to review the case of the detained person, and specifies that no person shall be detained for a period of over 100 days (consecutive or not).
253. The last 2 sections of Chapter IV of the 1997 Constitution are sections 37 (enforcement of protective provisions) and 38 (interpretation of Chapter IV). Section 37 provides that any person may apply to the High Court for redress if he or she feels that any provision of sections 18 - 33 or section 36 (5) of the Constitution has been or is being contravened in relation to him or her. Section 37 also provides that such an application can be made on behalf of the person who is detained, and that the High Court shall, upon the establishment of the legitimacy of that application, hear the application, and may issue such writ, or give such order or direction it deems appropriate for enforcing or securing the relevant provisions of Chapter IV.
254. Section 38 provides for the definition of various terms and phrases used in the Chapter.

6.7.3.Submissions Received, Analyses and Decisions

6.7.3.1.Right to life

255. The CRC received 23 position papers that addressed the issue of the death penalty, of which 16 were against the death penalty, mainly based on support for the right to life. Even those who supported the death penalty emphasized that it should be used only where it is absolutely necessary, and the crime being punished is beyond any reasonable doubt and egregious as in a deliberate killing/murder or serial killing. Those in support of retaining the death penalty in the Constitution also said that retaining it will serve as a deterrent to the crimes of murder, uphold the sanctity of human life, and promote peace and justice.
256. Participants at CRC consultations in the USA were mostly opposed to the death penalty. Specifically, 74% of them argued that the death penalty should be abolished and replaced with life imprisonment. On the other hand, 26% of them said that the death penalty should be maintained and specified in the new Constitution.
257. In the same vein, 65% of participants in CRC consultations in Europe opposed the death penalty, with some of them arguing that it should be replaced with life imprisonment. On the other hand, 35% of them said it should be maintained and specified in the new Constitution.
258. Almost 75% of participants in the CRC consultations in Saudi Arabia supported the retention of the death penalty which, they suggested, should be specified in the Constitution, while participants at CRC consultations in Senegal and Mauritania were equally divided on the issue of the inclusion of the death penalty in the new Constitution.
259. In the IPCs, there were those who supported retaining the death penalty as a form of punishment and others who opposed it. 68.4% of the participants at the IPCs were in support of the death penalty, based on the reasoning that it would serve as an important deterrent to increased amount of murders taking place in The Gambia. On the other hand, 31.6% of the participants opposed the death penalty because first time offenders should be given a second chance. Participants who supported retaining the death penalty also believed that it should only be applied in cases where the killings were intentional. Similar opinions were shared during the FGDs, face-to-face interviews, HS and through the PPP. Except in the PPP where 49.5% of respondents opposed retaining the death penalty, the majority of the participants in the FGDs (76.5%), HS (64.9%) and face-to-face interviews (57.2%) were in support of retaining the death penalty.

6.7.3.2.Protection of liberty

260. The CRC also received a position paper with regards to protection of personal liberty, suggesting that the duration of detention of arrested persons before they are brought before a court should be reduced from 72 hours (as currently provided in the

1997 Constitution (section 19 (3)) to 48 hours. In the same vein, it was also suggested that the new Constitution should contain non-derogable (unconditional) provisions that absolutely prohibit torture.

261. During the public consultations, both within and outside the country, and through the other public consultations platforms, people generally agreed that the right to personal liberty should be respected and protected.

6.7.3.3. Protection from cruel and inhuman treatment

262. With regards to protection from cruel and inhuman treatment, the CRC received opinions that touched on the subject. Apart from generally advocating for and demanding respect for the human person against any form of torture or other inhuman and cruel treatment, it was suggested that section 18 (protection of right to life) of the 1997 Constitution should be revised and brought in line with international standards with a view to controlling and limiting the discretion and excessive use of force by law enforcement officials.³¹

6.7.3.4. Freedom of the media

263. With regards to the freedom of the media, the CRC received opinions suggesting that the new Constitution should include provisions that adequately protect freedom of the press and work of the media. The CRC also received submissions that advocated for limiting the rights to freedom of speech and/or expression to avoid the dissemination of “harmful” propaganda and hateful speech which could threaten national security by inciting and advocating for hatred, tribalism, injustice, defamation, and violence in the country. There were even calls for either banning or placing strong restrictions against the use of social media. However, the overall view was that there is a need to ensure a proper balance between respecting and granting the media the rights they deserve to be able to acquire and inform the public on relevant information on the one hand, and on the other hand, ensuring respect for the rights of others.

6.7.3.5. Rights of women

264. On the rights of women, the CRC received opinions calling for the amendment of laws on sexual and gender-based violence, such as Female Genital Mutilation (FGM), and child marriage, arguing that the provisions of the 1997 Constitution against these practices are not adequate. There were also opinions expressed that certain cultural practices, such as FGM, should be respected and not interfered with by the State. The view was also expressed that the rights of women should not be subordinated to the rights of men and that all should be treated with respect and equality. In addition, further

³¹ Many examples were cited arising from the revelations at the TRRC proceedings; the Faraba Banta incident, in which a detachment of the Police Intervention Unit (PIU) opened live gun fire at protesting civilians, was also cited as an example that should never be allowed to occur again in the country.

opinion was expressed that women should be empowered (as a basic right) to be able to fully participate in public affairs without being vilified on the basis of their gender.

6.7.3.6. Rights of children

265. In the same vein, some opinions proposed that the minimum age of children protected by law from economic exploitation, hazardous employment or interference with their education and health should be increased from 16 years, as is stipulated in the 1997 Constitution (section 29 (2)), to 18 years. The view was expressed that The Gambia is a party to the Minimum Age Convention³² and Worst Forms of Child Labour Convention³³ of the International Labour Organization (ILO), and both Conventions prescribe a minimum age of 18 years to protect children against all forms of economic exploitation. Generally, opinion was unanimous that children need to be adequately protected and cared for in order to help and promote their development in a conducive environment.

6.7.3.7. Right to education

266. The right to education is another issue on which many people provided the CRC with comments and perspectives, with all recognising the value of education in the overall national development of The Gambia. In fact one opinion suggested that free and accessible education should be extended to all and up to the upper basic and secondary levels, as the International Covenant on Economic, Social and Cultural Rights (ICESCR),³⁴ to which The Gambia is a party, calls for.

267. It was also suggested that access to university education should be facilitated by providing loans to qualified and eligible students, and facilitating the payment of these loans through deductions from the salaries of beneficiaries once they get employed after graduation. It was proposed that such measures will enable Gambians to acquire the right sets of skills and knowledge, and reach their full potentials. They will then be able to gain meaningful employment in order to benefit themselves and the society at large. It was, however, pointed out that the country's education system would need to be reformed at all levels to promote the culture, tradition, economic and social values of The Gambia.

268. During the IPCs, participants recommended the introduction of free education up to tertiary level due to the financial difficulties encountered by average Gambian families in providing their children with tertiary education. There were participants who

³² C138 - Minimum Age Convention, 1973 (No. 138) <https://tinyurl.com/repqx3y> Last accessed 11th January 2020

³³ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 Last accessed 11th January 2020

³⁴ International Covenant on Economic, Social and Cultural Rights (1966) <https://www.ohchr.org/en/professionalinterest/pages/ceschr.aspx> Last accessed 11th January 2020

observed that although the provision of free education up to tertiary level is a necessity, it could be an expensive venture which the Government would be unable to maintain. That although it is important for a country to produce home-grown skilled workers and professionals in national and international development sectors, prudence should be exercised and studies carried out to determine the economic and financial feasibility of such a proposal. During the face-to-face interviews, 98.6% of Gambians interviewed stated that the Government should preserve the right to free basic, secondary and higher education. 87.5% of respondents to the PPP also supported protection of the right to education, while 99.1% of respondents to the HS also expressed similar opinions. All the participants who supported this position believed that the right to education should also be made a justiciable right.

269. Participants at the CRC public consultations in the USA, Europe, Africa, and the Middle East also provided suggestions on the right to education. In the USA, for example, 81% of participants who commented on the issue of free education were of the opinion that Government should provide free education from basic to secondary school levels, while 19% of them said that free education should be provided up to the tertiary level.

270. Similarly sentiments were expressed by participants who commented on the issue of free education at CRC consultations in Europe. Specifically, 47% and 43% of them respectively said that free education should be provided up to the secondary school level, and the tertiary level. On the other hand, 7% of participants said that free education should be provided only up to the basic cycle level.

271. Participants at CRC consultations in Saudi Arabia all agreed that free education should be provided up to tertiary level, while 75% of participants at the consultations in Senegal said that the new Constitution should provide for free education up to the tertiary level.

6.7.3.8. Rights of persons with disabilities

272. The CRC also received opinions which addressed the issue of rights of persons with disabilities. Specifically, it was proposed that the new Constitution should provide for improved access for persons with disabilities and their protection from discrimination, especially considering the fact that The Gambia acceded, in July 2015³⁵, to the Convention on the Rights of Persons with Disabilities.³⁶ This Convention stipulates that persons with disabilities should be free from all forms of discrimination and social exclusion. It was also suggested that it is high time that the Disability Bill is enacted.

³⁵Convention on the Rights of Persons with Disabilities (December 2006) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en last accessed 11th January 2020

³⁶ Convention on the Rights of Persons with Disabilities (2006) <https://tinyurl.com/hqq9r4q> last accessed 11th January 2020

There was suggestion that at least 16% of jobs in the country should be reserved for persons with disabilities. In this vein, it was proposed that persons with disabilities should be provided appropriate skills through training and education tailored for them as a means to improve their opportunities in employment and thus enhance their capacity as productive members of Gambian society. Emphasis was also placed on the need to create opportunities for persons with disabilities to be able to fully participate in public affairs to contribute their quota to national development.

6.7.3.9. Economic and social rights

273. The CRC received suggestions in relation to economic and social rights which should be properly identified and provided as enforceable rights under the new Constitution. Some opinions suggested that the new Constitution should make provision for comprehensive and affordable health care for Gambians. In this regard, senior citizens of 65 years and older should be provided comprehensive and free health care services, and these services should be applicable at all public health facilities.
274. On the issue of access to decent housing, the CRC received opinions to the effect that the new Constitution should provide for affordable housing and land allocation rights. It was pointed out that although housing is a basic human right, most Gambians cannot afford housing, especially under the present schemes of the Social Security and Housing Finance Corporation (SSHFC). Similar sentiments were expressed by participants at CRC consultations in the US, Europe, Saudi Arabia, Senegal and Mauritania.
275. Further opinions called for including in the new Constitution a provision that clearly spells out the right to clean air and a clean environment, and the protection of the environment from unsustainable exploitation as fundamental rights of the people. Furthermore, the new Constitution should provide for compliance with national and international laws and standards on environmental protection, preservation and conservation.

6.7.3.10. Gender balance and fair representation of marginalised groups

276. The CRC received opinions on the issue of gender balance and fair representation of marginalised groups. In particular, it was suggested that the new Constitution should be very clear in the definition, understanding, application and protection of minority groups and their rights. Specifically, overwhelming opinion suggested that the definition of minority groups should not include the lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community, because they are against Gambian culture, tradition, values, and norms.
277. Opinion was also expressed that the rights of elderly members of Gambian society should be included in the new Constitution. Another view proposed that legislation should be developed and enacted to identify and protect the rights of the elderly, similar

to the Children's Act and the Women's Act, the observation being made that the 1997 Constitution neglected the elderly. It is important that the new Constitution should cater to their needs, especially retired ex-service men and women.

278. Following the publication of the proposed Draft Constitution and the second round of public consultations, 25 submissions on fundamental human rights and freedoms were received by the CRC. These included submissions on the right to privacy, the right to personal liberty, the right to marry, the right to freedom of expression and the right to legal aid. In particular, the opinion was expressed that the provision in the proposed Draft Constitution (that was published for public consultation) relating to freedom of expression which excludes the uttering of abusive or threatening speech as part of the freedom of speech was a retrograde step and does not encourage the exercise of free speech in an open and democratic society. Furthermore, there was strong opinion to clarify that marriage is between a man and a woman who must consent to the relationship. It was also pointed out that the proposed Draft Constitution did not make any provision on legal aid, which is considered a fundamental human right. The CRC reviewed these opinions and considered that there is merit in not circumscribing the freedom of expression beyond what is necessary. It also saw the need to clarify the public debate on the right to marry. The matter relating to legal aid was a clear omission in the proposed Draft Constitution and therefore, required rectification in the Draft Constitution.

6.7.4. Provisions of the Draft Constitution

279. Chapter VI of the Draft Constitution significantly improves on the fundamental human rights provisions in the 1997 Constitution. It explicitly provides for 31 fundamental human rights and freedoms in contrast to the 17 rights specified in the 1997 Constitution. The Draft Constitution introduces new justiciable rights, including the right to fair labour practices, consumer protection rights, the rights of the sick and the elderly, the rights of the youth, the right of access to information, the right to development, the right to a clean environment and other economic, social, and cultural rights. The rights to freedom of speech, conscience, assembly, association and movement which are all lumped together in section 25 of the 1997 Constitution have now been provided for in separate sections of the Draft Constitution and better clarified. The right to marry as provided for in the 1997 Constitution is also clarified.

280. The Draft Constitution further provides more progressive provisions on locus standi (standing). For the first time, provision is made on non-derogable rights. Guidance is also, for the first time, given to the courts on how to apply rights guaranteed in this Chapter. In addition and for the first time, the Draft Constitution places an obligation on the State to ensure gender balance and fair representation of women, the youth, and persons with disabilities in offices established under the Draft Constitution and in all other public bodies, including SOEs.

281. The CRC considered it appropriate to provide for the general framework on the rights of women, children and persons with disabilities in the Draft Constitution and leave the details in the Women's Act and the Children's Act. Since there is no statute on persons with disabilities, the CRC recommends that the Disability Bill should be enacted for The Gambia without any further delay. The CRC further recommends that a Disability Council should be established in the proposed statute and the organisation representing persons with disabilities should be properly consulted to obtain their opinions in relation to the Bill.

282. This Chapter on fundamental human rights and freedoms consists of 2 parts: Part I provides the general provisions of fundamental human rights and freedoms, and Part II details the provisions of the Constitution for each of the fundamental rights and freedoms; it concludes with special circumstances, such as the declaration of state of public emergency, the implications of such declarations, and provisions for the interpretation of Chapter VI (similar to what is provided in the 1997 Constitution).

6.7.4.1.PART I - General Provisions on Fundamental Human Rights and Freedoms

283. Part I of Chapter VI of the Draft Constitution deals with the general provisions of fundamental human rights and freedoms under seven headings. The Draft Constitution thus provides that fundamental rights and freedoms are an integral part of the democratic State of The Gambia, and is the foundation for sound national development policies. In addition, the Draft Constitution recognises and protects fundamental human rights and freedoms to preserve the dignity of individuals and communities and to promote social justice. Section 31 of the Chapter also provides that the fundamental human rights and freedoms enshrined in the Constitution are not granted by the State, but naturally belong to each individual. Furthermore, section 31 provides that the National Assembly shall not enact any legislation to indemnify any person of any abuse of another person's fundamental rights and freedoms enshrined in the Draft Constitution.

284. Section 32 of the Draft Constitution on the application of fundamental human rights and freedoms, provides that the fundamental human rights and freedoms enshrined in the Draft Constitution shall be respected and upheld by the State and all persons (natural and legal) in The Gambia, and enforceable by the courts in accordance with the Constitution. In addition, section 32 provides that every person shall be entitled to the fundamental human rights and freedoms enshrined in the Constitution, subject to respect for the public interest, and the rights and freedoms of others. Finally, section 32 provides for the application of these fundamental human rights and freedoms by the courts, and how the State should implement these rights in the face of limited resources.

285. Section 33 of the Draft Constitution, which deals with the implementation of fundamental human rights and freedoms, provides for how the State and its organs shall implement these rights and freedoms. In particular, the section provides that the State

and its organs shall observe, respect, protect, promote and fulfil these rights, and take legislative, policy and other measures to achieve the progressive realization of these rights. The section further provides that all State organs and public officers shall address the needs of vulnerable groups, including women, the elderly, persons with disabilities, children, and the youth.

286. With regards to the enforcement of these rights, section 34, dealing with the enforcement of fundamental human rights and freedoms, provides that every person has the right to initiate court proceedings claiming that a fundamental right or freedom provided by Chapter VI of the Draft Constitution has been denied, violated or infringed, or is threatened with contravention. Furthermore, section 34 provides that court proceedings in this regard may be instituted by a person or association acting in their own, or another person's interest, or in the public interest. The section also provides that the rules for these court proceedings shall be made by the Chief Justice, but that the absence of the rules does not limit the right of any person to commence the court proceedings and to have the issue heard and determined by a court.
287. Section 35 deals with the authority of the courts to uphold and enforce Chapter VI, and provides that the High Court has jurisdiction to hear and determine applications of redress of a denial, violation or infringement, or a threat to any, of the fundamental rights and freedoms in Chapter VI, and makes provision on how the court may grant such relief.
288. Part I ends with 2 sections which provide the circumstances under which these fundamental human rights and freedoms may be limited, how they may be limited, and by who (including the State and the National Assembly). In particular, section 36, which makes provision for the limitation of fundamental rights and freedoms, states that a fundamental human right or freedom shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society.
289. Section 37 of the Draft Constitution provides for the fundamental human rights and freedoms which shall not be limited, namely, protection from slavery, servitude and human trafficking, right to human dignity and protection against torture and inhuman treatment and the right to an order of habeas corpus. The right to an order of habeas corpus entails a request for a court order to produce in court a person who is detained. In this regard, the court is empowered to determine whether or not the detention of that person is lawful.

6.7.4.2. Part II – Specific Rights and Freedoms

290. This Part of Chapter VI of the Draft Constitution provides for specific rights and freedoms, which include civil and political rights, economic, social and cultural rights and group rights. In particular, most of the economic, social and cultural rights that are

currently provided for in the 1997 Constitution as directive principles of state policy are now made justiciable in this Chapter.

291. Following the elaborate public consultations and cognisant of the value and importance of a free press and an independent media, the CRC considered it important that issues relating to the press and the media should be properly addressed to prevent violations inimical to the efficient and effective functioning of a free press and an independent media in The Gambia. Whereas the 1997 Constitution created a separate Chapter on the media, the Draft Constitution recognises the close relationship between the media and the fundamental rights of free speech, association and assembly. Accordingly, the Draft Constitution addresses the rights and freedoms of the media under the Chapter on fundamental rights and freedoms.
292. In this context, the CRC considered the need for section 47 (in the Draft Constitution) to provide for the protection of the media against persecution, and to ensure that all State-owned media is not used as propaganda tools. Furthermore, section 47 also provides for the creation of an independent regulatory body to regulate broadcasting and communications services in the public interest, and ensure fairness and diversity of opinion.
293. The Public Utilities Regulatory Authority (PURA) presently performs some of the functions provided for in section 47 of the Draft Constitution. The CRC noted in its deliberations that the independence of PURA, a statutory body, was probably compromised not because of a problem with the statute that created it, but because of Executive overreach and poor implementation of the statutory provisions that created it. The mandate of PURA may be expanded to accommodate the constitutional provisions, which must include a membership that is appropriately diverse and truly representative and independent to attract public confidence.
294. The right of access to information is also introduced. Instead of maintaining the current Chapter in the 1997 Constitution on the media as pointed out in paragraph 281 above, this Part makes rights relating to the media and media freedom enforceable as fundamental rights.
295. The CRC also took note of the overwhelming view supporting free education up to tertiary and higher education level, the argument being that after secondary school education most families are unable to support their children to undertake tertiary and higher education. The CRC, however, is also cognisant of the resource constraints faced by the State, the principal duty bearer responsible for providing education to citizens. The CRC also noted that the education of children with disabilities was an issue, as was the use of local languages in schools and that all these would further burden the State in providing free education in the country. In this context, therefore, the CRC considers it appropriate that the State should bear responsibility for providing free education up to

secondary school level. The provision of free education to tertiary and higher education level should be progressively realised as provided in section 57 of this Chapter.

296. Rights of the youth, the elderly, persons with disabilities and the sick, consumer protection rights and the right to health care service and fair labour practices are also introduced for the first time. The right to a clean environment and the right to development are also provided for the first time in this Chapter.
297. In applying economic, social and cultural rights, this Chapter for the first time imposes an obligation on the State to show, where it claims that resources are not available, that it has given priority to ensuring the widest possible enjoyment of these rights having regard to the prevailing circumstances.
298. A general clause on limitation of rights is also introduced. This Chapter further provides for non-derogable rights (that is, rights that must continue to be respected and cannot in any way be suspended or violated during a period of public emergency) and also contains more progressive rules on *locus standi* (standing) in enforcing human rights provisions in the Constitution.

6.8.CHAPTER VII – REPRESENTATION OF THE PEOPLE

6.8.1. Dimensions of the Issue

6.8.1.1.Part I - Franchise

299. The dimensions of the issue are as follows:
- (a) What are the principles on which the electoral system are based?
 - (b) How should elections be conducted?
 - (c) What are the characteristics of free and fair elections?
 - (d) Who has the right to be registered and to vote?
 - (e) Should candidates and political parties subscribe to a code of conduct?
 - (f) Who is eligible to contest as an independent candidate?
 - (g) How should public elections and referenda voting be conducted?
 - (h) What laws should govern the elections and electoral processes in The Gambia?
 - (i) What are the obligations of the Independent Electoral Commission?

6.8.1.2.Part II – The Independent Boundaries and Electoral Commission

- (a) Should the role of the Independent Electoral Commission include boundary delineation/delimitation, or should a separate Constituency, District, and Ward Boundaries Commission be established?

- (b) Should members of the Commission be appointed by the President, acting on the advice of the Judicial Service Commission (JSC), instead of after consultation with the JSC and the Public Service Commission?
- (c) Who should have responsibility for nominating members of the Commission for consideration for appointment?
- (d) Should qualifications for Commission membership be identified and specified, and, if so, what should these qualifications be?
- (e) Should the President have the power to remove a commissioner, or should this be aligned to the procedure available for the removal of judges or the Chief Justice?
- (f) Should the term limit of the Commission members be maintained or be revised?
- (g) Should members of the Commission (including the Chairman) be required to publicly declare their assets as a condition for appointment to the office of member of IEC?
- (h) Should members of the Commission (including the Chairman) be similarly required to publicly declare their assets after leaving office, and if so, to which body should the declarations be made?

6.8.1.3.Part III – Political Parties

- (a) Should certain basic requirements for forming and maintaining a political party be prescribed in the Constitution, instead of the election laws, and if so, what should those basic requirements be?
- (b) Should the Constitution prescribe minimum standards (such as air time, accounts and audit, establishment and management of party funds, etc.) which an Act of the National Assembly relative to political parties must contain or address?
- (c) Should there be restrictions on private funding of political parties and/or elections, and if so, should this be restricted to external funding?
- (d) Should there be a requirement for disclosure by a political party of the source of funding and, if so, should disclosure be required only if the funding exceeds a certain amount?
- (e) Should political parties be required to provide the IEC, within a specified period of the end of the political parties' financial year (say 6 months), with copies of their audited financial statements for the preceding year?
- (f) Where a political party fails to provide its audited financial statement within the prescribed period (and, if granted an extension, within the period of extension),

should provision be made for the automatic deregistration (by operation of law) of the political party? If so, should the automatic deregistration be permanent?

- (g) Should provision be made requiring political parties to disclose to the IEC any financial irregularity discovered? If so, should the IEC be empowered to order an independent audit of the finances of the political party concerned?
- (h) Where the IEC refuses to register or deregisters/cancels the registration of a political party on the grounds established under the Elections Act, should the aggrieved political party be permitted to pursue its appeal beyond the Court of Appeal to the Supreme Court?

6.8.2. Current State of the Law on the Issue

6.8.2.1. Part I – Franchise

300. The 1997 Constitution has 3 sections in Part I (the franchise) of Chapter V (Representation of the people). Section 39 provides for the right of every adult citizen of sound mind to vote in Presidential, National Assembly, referenda, and local government elections. Section 40 provides that voting in all public elections and referenda shall be by secret ballot, while section 41 provides for an Act of the National Assembly to give effect to the provisions of Chapter V, and provide for, among other laws, the registration of voters in public elections, voting at, and conduct of, public elections and referenda, the duties of public officers with regards to the registration of voters, and how public elections and referenda are conducted.

6.8.2.2. Part II – The Independent Boundaries and Electoral Commission

301. Chapter V of the 1997 Constitution provides for the IEC in Part II, which has four sections. Section 42 establishes the IEC as part of the public service. In addition, the section provides for the number of members of the IEC (including the Chairman) and their appointment by the President in consultation with the Judicial Service Commission and the Public Service Commission. Section 42 also provides for the term of the IEC, being a maximum of two terms of 7 years each, the disqualifications for membership of the IEC, as well as the power of the President to remove a member of the IEC, and the quorum of the IEC.

302. Section 43 of the 1997 Constitution provides for the functions of the IEC, which includes the registration of voters and political parties, conducting the election of a Speaker and Deputy Speaker of the National Assembly, determining and announcing the dates and times of elections and referenda, and ensuring that candidates declare their assets at the time they are nominated. The section also provides that the IEC shall not be subject to the direction or control of any other person or authority.

303. The last two sections of Part II of Chapter V of the 1997 Constitution are section 44, which makes provision for the funding of the IEC, and section 45, which provides

that an Act of the National Assembly may make further provisions to effect the purposes of Part II of Chapter V of the Constitution.

304. On the issue of boundary delimitation, the 1997 Constitution empowers the National Assembly to establish a boundaries commission for the purposes of demarcating constituency boundaries. However, no such commission was established. The 1997 Constitution provides that in the absence of such a commission, the IEC may, in consultation with the appropriate Ministry, demarcate constituency boundaries.

305. The 1997 Constitution does not make specific provision on the IEC Chairman and members declaring their assets before assuming office and after leaving office.

6.8.2.3. Part III – Political Parties

306. The 1997 Constitution provides for political parties in only one section (section 60 of Part VII of Chapter V). Specifically, section 60 provides that only a political party registered under an Act of the National Assembly shall sponsor candidates in public elections. In addition, the section provides that no association shall be registered or remain registered as a political party if it does not conform with democratic principles, or is organized or formed on an ethnic, religious, regional, or sectional basis, or if it is aimed at subverting the Constitution or the rule of law.

6.8.3. Submissions Received, Analyses and Decisions

6.8.3.1. Part I – Franchise

307. The CRC received opinions on the issue of the franchise, with most opinions, including opinions from the IPCs, expressing support to extend the franchise to Diaspora Gambians. All the position papers received by the CRC which addressed this issue recommended that Diaspora Gambians should be allowed to vote, and some even suggested that at least 6 National Assembly seats should be reserved for them.

308. In particular, most participants at public consultations in the USA, Europe, Africa, and the Middle East said Diaspora Gambians should be allowed to vote. All participants at consultations in the USA said that Diaspora Gambians should be allowed to vote, although 51% of them said that right should be restricted to Presidential elections. 86% of participants at consultations in Europe said voting rights should be extended to Diaspora Gambians, although they were divided on the issue of whether or not that voting right should only apply to Presidential elections. Participants at consultations in Africa (Senegal and Mauritania), and the Middle East (Saudi Arabia), just as is the case with the participants at the IPCs, also overwhelmingly agreed that Diaspora Gambians should be allowed to vote in elections in The Gambia.

309. The main reason many Diaspora Gambians felt that they should be given the franchise to vote is that they make significant contributions to the economy and welfare

of the country. Similarly, many participants in the IPCs felt that as citizens of The Gambia, Diaspora Gambians should vote at elections.

6.8.3.2.Part II – The Independent Boundaries and Electoral Commission

310. The CRC received submissions on the issue of the IEC, its membership and its functions. Some opinions expressed the view that IEC Commissioners should be appointed or nominated for appointment by the President, and they should serve a maximum of 2 terms of 5 years each. Other views were that IEC Commissioners should be selected by an independent body. Some suggested that the current term of 7 years for IEC Commissioners is appropriate and should be maintained. Furthermore, it was suggested that the nomination and appointment of IEC Commissioners should be subject to vetting and approval by the National Assembly. This way, it was argued, the independence and impartiality of the IEC and its Commissioners would be guaranteed.
311. On the other hand, participants at public consultations by the CRC in the USA and Europe said that the IEC Commissioners should be nominated by the President and their appointment confirmed by the National Assembly. Participants at consultations in Europe were divided on the issue of the appointment of the IEC Chairperson, with some proposing that he or she should be appointed by the people (through direct elections), whilst others suggested that he or she should be appointed by the National Assembly, and others proffered that the President should appoint the IEC Chairperson. Participants at consultations in Africa wanted IEC Commissioners to be appointed by an independent body, instead of by the President, while those in the Middle East said the IEC Chairperson should be appointed by the National Assembly, or the political parties.
312. Many participants at CRC consultations advocated for the declaration of assets by the IEC Chairperson and Commissioners. Participants at consultations in Europe recommended that the IEC Chairperson and Commissioners should declare their assets before they assume office, and after they leave office. Similar opinions were expressed by participants at the IEC consultations in the Middle East and USA. The IPC showed an overwhelming support for requiring IEC Commissioners to declare their assets both before assuming office and within a specified period after leaving office.
313. There was general agreement that the IEC should be empowered under the new Constitution to carry out (amongst other things) the function of electoral boundary delimitation. There was equal support for the new Constitution to provide for the qualifications of Commissioners, including the Chairperson, of the IEC. This would necessarily take into account the disqualifications relative to those offices.

6.8.3.3.Part III – Political Parties

314. Whilst the participants at the IPCs expressed opinions on political parties, there were few written submissions on the subject. Although 178 position papers were received in total during the first round of public consultations, only 3 of them were from

political parties.³⁷ The opinions expressed with respect to political parties related more to the issue of political party funding, disclosure of source of funding and publication of financial statements. The overwhelming view was that only Gambian citizens should be allowed to provide funding to political parties; the reason advanced for this position is to prevent external influence on domestic politics. In addition, participants were of the view that all political parties should disclose their sources of funding as this accords with transparency. Furthermore, they were of the view that all political parties should be required to prepare and publish annual audited financial statements to establish how the funds are expended. The rationale given for this view was that citizens make contributions to political parties and therefore, have a right to know how those funds are expended.

315. The CRC also held a 2 day consultation meeting with all the political parties, during which representatives of the political parties gave their views on the Draft Constitution, particularly on the provisions relating to the franchise and political parties. During these consultations, 33% of persons who responded on the issue recommended that all political parties should be required to declare their sources of funding while 67% disagreed with this recommendation. The contrary views on this issue were based on the belief that a party's source of funding is private and should not be a matter for public concern. On the other hand, the participants who supported declaration of source of funding believed that this is important to ensure transparency and democracy.
316. The CRC received 2 position papers on the issue, one from an educational institution and another from an individual. The former advocated that there should be no restrictions on private funding of political parties, and that they should not be required to disclose their sources of funding; the latter expressed the view that political parties should disclose their sources of funding and that any financial irregularity should be notified to the IEC.
317. Participants at CRC consultations in the USA overwhelmingly supported the suggestion that the new Constitution should require political parties to disclose their sources of funding. In addition, they recommended there should be a system to regulate the sources of funding of political parties to help address the issue of influence and external participation in Gambian politics.
318. In the same vein, 75% of participants at CRC consultations in Europe, and almost all participants at CRC consultations in Senegal, agreed that political parties should disclose their sources of funding for transparency and accountability. The general views expressed in support of this position were that (i) citizens make contributions to political parties and should be entitled to know how those contributions are expended; and (ii)

³⁷ Peoples Progressive Party (PPP), Gambia Party for Democracy and Progress (GPDP), United Democratic Party (UDP).

political parties should be free from any undue external influence through any form of funding considering that each political party is potentially a government in waiting. However, some participants at the consultations in Europe said that political parties should not disclose their sources of funding because Government does not finance political parties. Some participants suggested that Government should finance political parties.

319. The CRC considered the views expressed by political parties relating to disclosure of sources of funding, during the face-to-face consultation with them, and weighed them against the feedback from the IPCs and external consultations. It concluded that the sources of income of political parties should be disclosed for transparency, accountability and to ensure that there is no undue external influence in the political affairs of the country.
320. Following publication of the proposed Draft Constitution and the second round of public consultations, 15 submissions on provisions of this Chapter were received by the CRC. These submissions were in addition to the numerous opinions expressed on the subject during the second round of public consultations. The views expressed related to the voting system, declaration of assets by IEC Commissioners, restrictions on private funding of political parties and the need for disclosure of their source of funds, whether the IEC's mandate should be expanded to include the demarcation of constituency boundaries and whether to hold the National Assembly and Presidential elections on the same day. On all these matters, there was general confirmation on what was contained in the proposed Draft Constitution. The CRC deliberated on these submissions and updated the Draft accordingly.
321. On whether we should change from the token system of voting to the ballot voting system, the CRC decided that this issue is best dealt with in the Elections Act. Account was taken of the fact that this is a subject that is susceptible to change and it was, therefore, best that it is addressed under the Elections Act rather than invite an amendment to the Constitution when that can be avoided.

6.8.4. Provisions of the Draft Constitution

322. Chapter VII introduces innovative provisions, especially on the representation of women, the youth and persons with disabilities in the National Assembly. It also broadens the mandate of the IEC to include the demarcation of constituency boundaries. The Chapter further provides more elaborate and progressive provisions on political parties.
323. This Chapter contains sections 74 - 84 and provides in 3 Parts for the Franchise (registration to vote and voting), establishment of the Independent Boundaries and Electoral Commission (renamed from Independent Electoral Commission) and Political Parties. The processes for the conduct of elections, the number and qualifications and

disqualifications of members of the IBEC, and the obligations and prohibitions related to political parties are clearly outlined in the Chapter.

6.8.4.1.Part I – Franchise

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

6.8.4.2.Part II – The Independent Boundaries and Electoral Commission

325. This Part establishes the IBEC and outlines its composition and functions. Some of its functions are to conduct and supervise all public elections and referenda, register political parties, compile and regularly revise the register of voters, ensure continuous voter registration, delimit the constituencies and wards for purposes of public elections, confirm that a candidate for public election has made a full declaration of his or her assets to the ACC and to announce the final results of all elections and referenda. The name change from the IEC has been necessitated by the fact that the IBEC is now constitutionally mandated to demarcate electoral boundaries. The continuous voter registration requirement will ensure that all Gambians who are qualified to be registered to vote are able to register at any time up to a period of 6 months before elections are due. This therefore eliminates the current periodic voter registration system which has the effect of “disenfranchising” many persons who otherwise are eligible to be registered to vote.

6.8.4.3.Part III – Political Parties

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

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

6.9.CHAPTER VIII - EXECUTIVE

6.9.1.Dimensions of the Issue

328. The dimensions of the issue are as follows:

6.9.1.1. PART I - Guiding Principles of Executive Authority and General Duties

- (a) Who should executive authority of The Gambia be vested in?
- (b) How should he or she exercise that authority?
- (c) What is the extent of the executive authority?

6.9.1.2.PART II - Office of President, Powers and Duties

- (a) What are the roles and powers of the President?
- (b) What duty does the President have toward the National Assembly?
- (c) How should the decisions of the President be communicated?
- (d) What are the liabilities of persons who act or purport to act on a decision or directive of the President?
- (e) What is the procedure for temporary succession to the Office of President?

6.9.1.3.PART III - Election to the Office of President

- (a) Should the current status quo contained in the 1997 Constitution regarding educational qualification of the President be maintained, and if not, what educational qualifications should be specified?
- (b) Should the current position in the 1997 Constitution whereby there is no upper age limit for the Presidency be maintained, or should there be a minimum and maximum age limit?
- (c) Should holding dual nationality disqualify a Gambian from running for the Office of President?
- (d) Should not being ordinarily resident in The Gambia for a prescribed period (currently 5 years) be grounds to be disqualified from election to the Office of President and, if so, is the currently prescribed residency period too high?
- (e) Should compulsory retirement, or termination or dismissal from public office (not related to criminality), be a disqualification for election to the Office of President (these are disqualifications under the 1997 Constitution)?
- (f) Should an adverse finding by a commission of inquiry, which has not translated into prosecution and conviction by a court of competent jurisdiction, be a disqualification for election to the Office of President, as is the case under the 1997 Constitution?

- (g) Should a person be required under the Constitution to declare his or her assets to the Independent Electoral Commission (or the Anti-Corruption Commission) before being eligible for nomination for election to the Office of President?
- (h) Where the Speaker assumes the Office of President as a result of a vacancy in that Office and in the permanent absence of the Vice President (for whatever reason), should the assumption of office by the Speaker be for the residue of the term of the former President or for a prescribed period to enable fresh election to the Office (taking into account the fact that the Speaker is not elected by the public)?
- (i) If, in relation to paragraph (h), the Speaker is to serve for a prescribed period in a caretaker capacity, what should that period be?
- (j) In the unlikely scenario where the Speaker is not available or is unable (for whatever reason) to assume the Office of President, what arrangement should be introduced to ensure succession to the Office of President?
- (k) Should a candidate be declared winner after securing a majority of the votes cast and counted, or should a candidate be declared winner only after attaining 50%+ 1 of the total votes cast and counted?
- (l) Use of ballot papers versus use of tokens: should The Gambia continue with the use of marbles/tokens in casting votes or should this be amended to paper ballots?

6.9.1.4.PART IV - Terms and Conditions of Office of President

- (a) Should a term limit be prescribed for the Office of President (the current Constitution does not prescribe a term limit) and, if so, what should the term limit be, and should term limits be applied only to consecutive terms?
- (b) President X completes one term in office, but fails to win the next election to attain a consecutive two terms limit. Should President X be able to contest another election and serve for the prescribed maximum term if elected to office?
- (c) If the current President were to decide to contest the next Presidential race after the expiry of the current term, how and when should his term limit be prescribed to commence (that is, should the current term being served be counted towards his eligible terms or should his term be reckoned to commence from the next term after the new Constitution has come into force)?
- (d) President X is elected as President at age 72. The Constitution, for example, prescribes an upper age limit of 75. Should President X be permitted to continue in office to complete his or her term?

- (e) Should the President's term in office expire at the same time as that of Parliament (especially where candidates for Ministerial positions have to be subjected to confirmation by the National Assembly)?
- (f) When should a President-elect assume office (the current prescribed period is 60 days after his or her election)?
- (g) Should the President be required to declare his or her assets to the Independent Electoral Commission or Anti-Corruption Commission within a specified period after leaving office and, if so, what should be the specified period?

6.9.1.5.PART V – Other Offices in the Executive

6.9.1.5.1. Vice President and Ministerial portfolios

- (a) Should dual nationality be a disqualification for appointment to the Office of Minister of Government?
- (b) Is the post qualification experience of 5 years to qualify for appointment as Attorney General sufficient and, if not, what period should be prescribed?
- (c) Should qualifications be identified and specified for appointment to the Office of Minister (only disqualifications are outlined in the 1997 Constitution)?
- (d) If qualifications should be identified and specified for appointment to the Office of Minister, what should those qualifications be?
- (e) Considering the representativeness of Cabinet, should the new Constitution make specific provision regarding the composition of Cabinet in a manner that ensures that marginalised groups (such as women, youths and persons with disabilities) are accorded Cabinet portfolios and/or properly represented in Cabinet?
- (f) Should it be a condition for assumption of office that the VP and Ministers of Government must declare their assets (either publicly or privately with a specified public functionary – such as the Anti-Corruption Commission)?
- (g) Should it also be a condition that the VP and Ministers of Government must declare their assets within a specified period after leaving office and, if so, what should that specified period be?
- (h) Should the Constitution specify the maximum number of Ministers of Government that can be appointed (the current Constitution does not have any after a constitutional amendment removed the maximum of 15)?
- (i) Should there be positions of Deputy Ministers with each Ministry having only one Deputy who (amongst other things) assists the Minister and oversees the Ministry in the absence of the Minister?

- (j) Should Deputy Ministers have the same qualifications as Ministers in order to be appointed as such?
- (k) Should provision be made for the position of Cabinet Secretary in the Constitution?
- (l) Should collective Cabinet responsibility include the President (the current Constitution excludes the President)?

6.9.1.5.2. Office of Secretary General

- (m) Should the Office of Secretary General be specifically established under the Constitution and made Head of the Civil Service with responsibility for ensuring a professional Civil Service?
- (n) If the answer to paragraph (m) is in the affirmative (Yes), should the appointment of the Secretary General be apolitical and the appointee to that Office be governed by Civil Service Rules?

6.9.1.5.3. Prerogative of Mercy Committee

- (o) Should the President be empowered to substitute a less severe penalty than that imposed by the courts? OR
- (p) Should the President's power to exercise mercy be restricted to granting a pardon, respite and remission of sentence only?
- (q) Is the current composition of the Committee considered to be adequate and certain and, if not, should the membership be better defined with specified qualifications?
- (r) Should there be a term limit for membership of the Committee and, if so, what should that term limit be?

6.9.1.5.4. Independent Office of Director of Public Prosecutions

- (s) Should an independent Office of Director of Public Prosecutions be established?
- (t) What should be the qualifications and experience for appointment as Director of Public Prosecutions?
- (u) Security of tenure – should the Office of Director of Public Prosecutions receive the same level of security of tenure as that of judges?
- (v) Should the Director of Public Prosecutions be a Gambian or is there a case for this being made flexible whereby a non-Gambian can be appointed to that Office?

6.9.2.Current State of the Law on the Issue

6.9.2.1.PART I - Guiding Principles of Executive Authority and General Duties

329. The 1997 Constitution does not identify specific guiding principles relative to the functioning of the Executive, however Part III of Chapter VI makes provision for Executive Powers. Section 76 specifically provides that executive power of The Gambia is vested in the President and shall be exercised by him or her either directly or through the Vice President, Ministers or officers responsible to him or her.

6.9.2.2.PART II - Office of President, Powers and Duties

330. The 1997 Constitution provides for the Office of President in Part I of Chapter VI. Specifically, section 61 provides for a President of The Gambia who shall be the Head of State and Commander-in-Chief of the Armed Forces. As was pointed out earlier, the powers of the President are provided in the 1997 Constitution by section 76, while section 77 provides for the obligations of the President in terms of his or her relationship with the National Assembly. Although the 1997 Constitution does not provide for how decisions by the President should be communicated, it provides, in section 64, for the temporary exercise of the President's functions.

6.9.2.3.PART III - Election to the Office of President

331. The 1997 Constitution provides for the election of President in Part III of Chapter V (Representation of the People). Specifically, section 46 provides for holding of a presidential election three months before the end of the term of the incumbent President, with the IEC determining the dates for the nomination of candidates for the elections.

332. The qualifications for election as President are spelt out in section 62 of Chapter VI and require that a candidate for election as President must be a Gambian citizen by birth or descent and is at least 30 years old. Other requirements are that the candidate has completed senior secondary school education, and is qualified to be elected as a National Assembly member.

333. Section 62 of the 1997 Constitution also provides for disqualifications for election as President, which includes holding the status of citizenship or nationality of countries other than The Gambia. Persons who have been compulsorily retired, terminated or dismissed from office, found guilty of any criminal offence, or been found liable for misconduct, negligence, corruption or improper behaviour by a commission of inquiry shall not be qualified for election as President.

334. Section 47 of the 1997 Constitution provides for the conditions for the nomination of a candidate for Office of President, including demonstrating the support of registered voters for his or her candidacy, and a deposit of money with the IEC.

335. The procedure on election of President is provided for in section 48 of the 1997 Constitution which specifies a first-past-the post system³⁸ in which the person who receives the highest number of votes that are validly cast shall be declared duly elected as President. Section 48 also provides for the procedure on the death of a nominated candidate between nomination day and polling day and outlines the procedure for a second round of election in circumstances where there has been an equality of votes between leading candidates in the first round.

336. Section 49 makes provision for any registered party which, or independent candidate who, has contested in the Presidential election to challenge the validity of the election of a President by filing a petition to the Supreme Court within 10 days of the declaration of the results of the election.

6.9.2.4.PART IV - Terms and Conditions of Office of President

337. The 1997 Constitution provides for terms and conditions of Office of President in 6 sections (64-69) in Part I of Chapter VI. Section 64 provides for the temporary assumption of the powers of President by the Vice President or the Speaker whenever an inquiry has been launched into the alleged mental or physical incapacity of the President to discharge the functions of his or her office. Section 65 provides the criteria for which the Office of President shall become vacant during the term of a presidency, while section 66 provides for the procedure to follow whenever the Speaker has been notified in writing by not less than half of all members of the National Assembly that the President is incapable of discharging the functions of his or her office, and how to treat the report of the Medical Board appointed to investigate such an allegation.

338. Section 67 provides for the grounds on which the President may be removed from office, including abuse or wilful violation of the oath of allegiance or the President's Oath of Office. The section also provides for the procedure the Speaker should follow upon being notified by members of the National Assembly of a motion to remove the President for any misconduct defined in section 67 (1). The salary and allowances of the President are provided in section 68, while section 69 provides for the immunity of the President from civil and criminal proceedings.

6.9.2.5.PART V – Other Offices in the Executive

339. The 1997 Constitution provides for the offices of Vice President, Ministers and the Cabinet in Part II of Chapter VI. Specifically, the offices are provided in 6 sections, starting with section 70, which provides for a Vice-President who shall be the principal assistant of the President. The section also provides that the President shall appoint the

³⁸ Electoral Reform Society 'First Past the Post' (2015) <https://www.electoral-reform.org.uk/voting-systems/types-of-voting-system/first-past-the-post/> last accessed 11th January 2020

Vice-President, and outlines the conditions under which the Office of Vice-President shall be vacant.

340. Section 71 provides for Ministers, who may be of such number, including the Attorney General, as the President may consider necessary. The section also provides the disqualifications of a candidate for Minister and Attorney General, how the Office of Minister shall become vacant, and their appointment and revocation of appointment by the President. Section 72 provides the functions and limits of the Vice-President and Ministers, while section 73 provides for a Cabinet which shall consist of the President, Vice-President and Ministers, and the Cabinet is responsible for advising the President on policy matters.
341. Section 74 provides for the collective responsibility of the Vice President and Ministers in respect of the advice given to the President by the Cabinet, while section 75 makes provision for the National Assembly to pass a vote of censure against a Minister or the Vice-President for a variety of reasons, including misconduct in, or abuse of, office.
342. Part IV of Chapter VI provides for prosecutions and creates the Office of the Director of Public Prosecutions (section 84), the Control of Prosecutions (section 85), and Private Prosecutions (section 86).

6.9.3.Submissions Received, Analyses and Decisions

6.9.3.1.PART I - Guiding Principles of Executive Authority and General Duties

343. The CRC received seven position papers which addressed the issue of the system of government that should be used in The Gambia. Five of the 7 papers received recommended a Presidential system of government, but added there is need to avoid party affiliations and bias in appointing ministers and other high level government officials. Two position papers, one each from an individual and an institution, recommended a hybrid system of government to ensure greater checks and balances.
344. The IPC, including the HSs and other public consultations platforms (excluding the external consultations), revealed an overwhelming support for the Presidential system of government, with participants expressing the view that the President should be elected directly by the people, with Cabinet Ministers comprising professionals to be selected and appointed by the President. However, the view was expressed that under the Presidential system of government Cabinet Ministers have been found to be detached from the people and seem responsible only to the President (who has the power to remove them). This lent support to the other opinion (albeit in the minority) that Ministers should be selected and appointed from the National Assembly as they are more likely to connect with and be sympathetic to the electorate.

345. Participants at CRC consultations in the USA mostly agreed that a Presidential system of government would be the best system for The Gambia and should be maintained. On the other hand, participants at CRC consultations in Europe were divided on the matter with half of them suggesting a Parliamentary system of government and the other half suggesting a hybrid system of government (comprising elements of the Presidential and Parliamentary systems of government).

6.9.3.2.PART II - Office of President, Powers and Duties

346. Most of the submissions received by the CRC suggested a Presidential system of government for The Gambia. One position paper proposed that the new Constitution should limit the powers of the President to grant amnesty to prisoners. In addition, there was overwhelming opinion that the new Constitution should not give power to the President to nominate members to the National Assembly. The argument, essentially, was that the new Constitution should aim to provide a separation between the Executive and the Legislature, while at the same time maintaining appropriate checks and balances. People generally argued that if the President is allowed to nominate members to the National Assembly, the independence of those nominated members becomes questionable as they are likely to owe some allegiance to the President instead of the Legislature and the country. This public view effectively mirrors the legal position outlined in the CRC Act (section 6) which requires the CRC (amongst other guiding principles) to fully take into account the separation of powers in drafting the new Constitution.

347. Opinions were also expressed advocating the need to identify the powers of the President and have them appropriately circumscribed; the duties of the President should also be clearly delineated, with most opinions expressing the view that the President should concentrate his or her efforts and energies on running the affairs of State.

6.9.3.3.PART III - Election to the Office of President

348. The CRC received numerous opinions on the Office of President in general and specific terms. With regards to the educational qualifications for election as President, 75% of participants at the IPCs recommended that the educational qualifications for a President should be a secondary school leaving certificate.

349. 41% of the participants who commented on the issue in consultations with Gambians in the USA said that a candidate for election as President should have at least a tertiary-level education, while 35% of participants said the minimum level of education should be secondary school education. On the other hand, 24% of participants said there should be no minimum requirements for the level of education of a candidate for election as President.

350. Similarly, an overwhelming majority of the participants who spoke at consultations with Gambians in Europe to the issue of the minimum educational qualification of a candidate for election as President were of the opinion that the minimum educational qualification should be secondary school education, with the minority saying that the minimum should be tertiary level of education. On the other hand, the majority of participants at CRC consultations with Gambians in Senegal and Mauritania said that the minimum academic qualification of a candidate for President should be tertiary level of education. Two participants at the consultations with Gambians in Saudi Arabia expressed support for a minimum of tertiary education requirement for Presidential candidates while 2 others were in favour of a minimum of secondary school education for a President.
351. The above statistics are a clear indication of the divided nature of the opinions received by the CRC on this issue. Some of the participants who were in support of tertiary education believed in the importance of having a President who is not only experienced, but also has a good grasp of basic governance principles and mechanisms. The CRC considered these opinions and concluded on this issue that, in addition to academic qualifications, a good President should have adequate experience, be a person of high moral character and proven integrity, and have an unblemished history and commitment to serve the country. Therefore, providing tertiary education as the only educational requirement to be met by a President would limit the opportunities of persons who possess the other qualities of a good leader but were not fortunate to obtain tertiary education.
352. On the issue of the age of a candidate for President, 10 position papers were submitted to the CRC; 3 of those papers were from institutions, and 7 from individuals. One submission suggested that the minimum age requirement should be 25 years, 4 suggested 35 years, 3 recommended 40 years, while 2 recommended no age limits. During the IPCs, an overwhelming majority of the participants (91.5%) recommended that the minimum age requirement for a President should be either 30 years or 35 years. 55% of participants at the CRC consultations in Europe said that the minimum age for a candidate for election as President should be 40 years. On the other hand, 78% of participants at the CRC consultations with Gambians in the USA said the minimum age should be 30 years, while 71% of participants in consultations in Senegal said the minimum age of a candidate for President should be 35 years. Contrary opinions shared during the CRC consultations in Europe revealed a preference for a minimum age requirement of 40 years by 55% of the participants. Two participants who commented on the issue at the CRC consultations in Jeddah recommended that the minimum age requirement should be 35 years and 40 years, respectively. Five out of 7 [71%] of respondents in the consultations held in Senegal and Mauritania proposed 35 years as the minimum age requirement for the President.

353. With regards to the maximum age of a candidate for election to the Office of President, 10 position papers (from 7 individuals and 3 institutions) suggested that the maximum age of a candidate for election as President should be 75 years; the same upper age limit suggested by the 71% of participants who responded on the issue at CRC consultations in Senegal and Mauritania. One participant at the consultation in Saudi Arabia recommended that the Constitution should not provide for an upper age limit. In contrast, the majority of participants at consultations in Europe said the maximum age limit should be 80 years, while the majority of participants at the CRC consultations in the USA said there should be no upper age limit. The IPC revealed that the majority advocated for an upper age limit, but could not agree on what that age should be. Opinions were split between the upper age limit of 60, 65, 70, 75 and 80 years.
354. Views were also expressed by some participants in the public consultations that an upper age limit should not be prescribed for the Office of President, the argument being that the people should be trusted to elect a person of whatever age that they trust and have confidence in to lead the country. If a Presidential candidate is frail from age and unable to effectively perform the Office of President, the people should be trusted to make the difference and take the appropriate decision through their exercise of the franchise.
355. Having carefully reviewed public opinion, it is clear that an overwhelming majority of Gambians preferred that an upper age limit be prescribed for an aspirant for the Office of President. There was no consensus on any particular upper age limit. While ordinarily the CRC could have worked out a median upper age, a comparative analysis and review of Constitutions of other countries show that no upper age limit is prescribed. In addition, the strong view has been canvassed that efficiency and effectiveness in the Office of President or Prime Minister is not premised on age, rather it is based on competence, experience and confidence in the candidate wishing to vie for the top public office. Furthermore, it is considered to be the constitutional right of every citizen, irrespective of age, gender, ethnicity, etc., to seek public endorsement for appropriate public office. While this argument may be viewed as relevant for any other elected public office, there was strong opinion during the public consultations that the CRC should give maximum credence to experience for the holder of the Office of President.³⁹ Consequently, the CRC formed the view that the Draft Constitution should not prescribe an upper age limit and the electorate should be allowed to make an assessment of candidates' age vis-a-vis the candidates' qualification, experience and competence to be elected to the Office of President.
356. The CRC also received position papers on disqualifications for election as President. There were opinions proposing that Gambians who have citizenship of other

³⁹ The minimum age of 30 years for eligibility to vie for the Office of President was generally considered to provide the necessary experience in relation to that Office.

countries should not contest or hold the Office of National Assembly member, Minister or President. On the other hand, it was also proposed that Gambians with nationalities other than Gambian citizenship should be allowed to run for public office if they renounce their foreign citizenship and live in The Gambia for at least 5 years before they can be appointed or elected to public office (this is essentially the current position in the 1997 Constitution). Similarly, participants at CRC consultations in Senegal and Mauritania unanimously agreed that people with dual citizenship should not be appointed to the Office of President, Vice President, or Cabinet Minister. One participant who spoke on the issue of citizenship of Presidential candidates at the CRC consultation in Saudi Arabia recommended that Gambians with dual citizenship should be qualified to contest in Presidential elections as they too contribute to the country's economy. This view was applauded by all the participants present at the meeting. Similarly, 80% of the participants in Europe and 61% of participants in the USA recommended that dual citizens should be qualified to contest in Presidential elections.

357. The public expressed general concern relating to divided loyalty if a Gambian with dual nationality is allowed to run for the Office of President. In the same vein, the majority of Diaspora Gambians were of the view that all Gambians should be allowed to participate in all elections, including contesting for the high Office of President. In addition, they also felt strongly that the 5 year residency requirement for eligibility to contest the Presidency should either be abolished or reduced. Having carefully considered all the submissions on this subject, the CRC saw merit in the argument for the top Office of President to be held by a person who holds only Gambian nationality. To do otherwise has the potential to create debate and arguments of loyalty or otherwise to the country, which could create a distraction to a dual national occupying that Office.
358. The CRC recognises that every citizen has the constitutional right to participate in and contest for political office. Accordingly, the Draft Constitution should not create unreasonable barriers that have the effect of preventing any diaspora citizen from contesting the Presidency. In this respect, the 5 year ordinary residency period contained in the 1997 Constitution is considered long and is reduced to 3 years. Furthermore, the Draft Constitution clarifies and defines the term "ordinarily resident" to include residing outside of the country for any extended period but occasionally visiting the country at least once a year.
359. With regards to declaring the winner of a Presidential election, the CRC received 20 position papers with proposals on whether an absolute or simple majority should be used to determine the winner. 75.5% of the position papers; 50% of the participants in the CRC consultations in Europe; 74% of participants in the CRC public consultations in the USA; 31.3%, 42.9% and 69.8% of participants in the FGDs, face-to-face interviews and HS, respectively, supported adopting the absolute majority system of

voting in elections. During the IPC, an overwhelming majority of the participants also recommended the absolute majority system of voting in public elections.

360. The reason for their support of the absolute majority system is that it would ensure that the government formed would be supported and voted in by the majority of voters, which is what the true spirit of democracy is about. Furthermore, it was argued, with the expected proliferation of political parties in the country, a simple majority would mean that any party can win after the first round of elections, even if it does not have the support of the majority of the votes cast. In contrast, no candidate would be declared winner in the absolute majority system if no one has the absolute majority of votes cast, i.e. 50% of the votes cast plus 1 vote. It was also argued that the absolute majority system helps build coalitions to contest the second round of voting.
361. Participants at the CRC consultations in Europe were divided on whether the absolute majority or simple majority system should be used in The Gambia. Some proponents of the simple majority system argued that second round of elections can be expensive and sometimes leads to political deadlocks and violence.
362. What essentially has emerged is that the greater majority of people wish to see participatory democracy in which the voices of the majority determine a winner of a Presidential election. The CRC notes that this was also the position with respect to the 1997 Constitution, notwithstanding that the Government at the time subsequently amended the Constitution to do away with the absolute majority winning system and replaced it with the simple majority winning system.

6.9.3.4.PART IV - Terms and Conditions of Office of President

363. The CRC received submissions relating to the terms and conditions of the Office of President. The majority of Gambians in Senegal and Mauritania recommended that there should be a 5 year term for the President and that he or she should serve for a maximum of 2 terms, thus making a total of 10 years. In addition, they proposed that the President should be allowed to appoint a Vice President (without the need for a running mate). Participants at the CRC consultations in the USA also overwhelmingly agreed that there should be a two-term limit of 5 years each for the Office of President.
364. In the IPC, including the responses received through the other public consultations platforms, there was near unanimity that no person should serve in the Office of President beyond 10 years of 2 five-year terms. The principal reason advocated for this position is that the Office of President is a public office of trust in relation to which no particular individual has or should have a monopoly and true development is achieved through the injection of new blood into the Office on a periodic basis. Furthermore, the point was made that longevity in the Office of President has the potential to negatively change otherwise good Presidents, for which the people ultimately end up suffering.

365. From the assessment of the CRC, what has come out indisputable from the public consultations is that Gambians no longer have the appetite to see any individual, irrespective of ability or performance, serving in the position of Office of President for a period exceeding 10 years, whether consecutive or otherwise. Across the African continent, there has been a lot of debate over the years about the virtues of Presidential term limits with arguments “for their existence or even for an obligation to impose them”.⁴⁰ The African Union (AU) Commission, for instance, has advocated that “constitutional and legal frameworks should determine the tenure and number of terms that a head of state and government can stand for election”.⁴¹ In 2015, ECOWAS pushed for a two-term limit for the Office of President for its Member States and all but two agreed.⁴² The AU Peace and Security Council (PSC) has been leading the AU’s efforts to address concerns relative to peace and stability in Member States, in particular ensuring adherence to constitutionalism. Indeed the *Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Changes of Government in Africa* specifically declares that “constitutions shall not be manipulated in order to hold on to power against the will of the people” and that “constitution-making or constitutional review processes shall not be driven by personal interests and efforts aimed at undermining popular aspirations”.
366. Bearing in mind the ECOWAS and AU positions with regard to term limits in Office of President and, in particular, the importance of respecting the wishes and aspirations of the people and thus ensuring peace and stability, the CRC considers it critical that the wishes of Gambians that no President should serve in office for more than 2 terms must be respected.
367. With regard to the declaration of assets, there was unanimity from the public consultations that the President should declare his or her assets before assuming office. In the same vein, participants in the CRC consultations also strongly felt that a similar declaration should be made upon leaving the Office of President. This obligation of upfront declaration of assets before or at the time of assuming office and upon or immediately after leaving office should be extended to the Offices of Vice President, Minister, National Assembly Member and all senior public officers.
368. The CRC notes the public sentiments on these issues and considers the issue of transparency to be at the heart of good governance. However, with regard to the view that assets declaration should extend to the family members of the President, serious account should be taken of the fact that certain family members of the President should be entitled to their privacy, especially where they do not hold any public office or

⁴⁰ “Presidential Term Limits and the African Union”, by Micha Wiebusch & Christina Murray, *Journal of African Law* Vol. 63, No. S1

⁴¹ *Ibid* at footnote 2

⁴² The Gambia and Togo held out against the two-term limit.

perform any public function, or where they run their own personal businesses. The mere fact that one's parent or relative occupies the Office of President should not necessarily translate into that person losing his or her privacy or that the person should face some restrictions in their legitimate personal endeavours (whatever the nature of such endeavours).

369. Furthermore, a strong opinion was expressed that the President should not receive personal gifts, and all gifts received should be forfeited to the State. Participants were generally of the view that gifts received on account of the performance of public duties or simply in relation to a public office should not be retained, but should rather belong to the people. The essence of the argument was that transparency in government requires not only a proper declaration of assets, but also openness in revealing gifts received while serving in public office. This should not be limited to the Offices of President, Vice President or Minister, but should extend to all public offices to stem incidences of corruption or the appearance of such behaviour. On the basis that the public interest should override private interests in relation to persons occupying public offices, the CRC assessed the public opinion as a demand for greater transparency and probity in government, whether it is with respect to assets declaration or the receipt of gifts.

370. With regard to other transparency issues concerning the Office of President, the majority of participants in the CRC public consultations said that the restriction against the President receiving or accepting gifts should extend to his or her family members. In addition, participants formed the overwhelming view that the holder of the Office of President should be prohibited from establishing charitable institutions (such as foundations and other not-for-profit bodies) and/or engaging in business activities. The supporting argument for this was that the President should be more concerned about executing the duties for which he or she is elected to office, which includes ensuring that Government institutions are properly resourced and performing. It was argued that to allow a President to engage in the establishment of charitable institutions or in business would potentially create unnecessary competition with relevant Government institutions, especially in relation to sourcing funds and other resources.

6.9.3.5.PART V – Other Offices in the Executive

371. In relation to other offices in the Executive, public opinion generally supported the idea of separating the Office of DPP from that of the Attorney General so as to make the former more independent. There were, however, a few submissions that advocated retaining the status quo as it currently exists under the 1997 Constitution, where the Office of DPP falls under the Office of the Attorney General and the DPP's prosecutorial decisions on initiating, taking over and continuing, and discontinuing prosecution are subject to the approval of the Attorney General.

372. Following the publication of the proposed Draft Constitution and second round of public consultations, 25 submissions were received on the subject of the Executive. A number of these submissions were focused on the powers of President, election of President, qualifications for election as President, assumption of office of President, disclosure obligations of either President, Vice President or Minister, and qualifications and disqualifications of Vice President. The views expressed in the second round IPCs confirmed the provisions of the Draft Constitution. However, there was opinion that the President should not be unduly constrained with regard to the appointment of the Vice President and Ministers by subjecting them to parliamentary confirmation. In addition, some were of the view that the capping of ministerial portfolios to 15 should be removed and that the President should be allowed to appoint such number of Ministers as he or she considers desirable.
373. With respect to the issue of parliamentary confirmations, the CRC recognised that a trend in Presidential system of governance is to create a balance whereby ministerial appointments are subject to confirmation by the Legislature.⁴³ During the public consultations there was overwhelming opinion that the appointment of Ministers by the President should be subject to the approval of the National Assembly. In the considered view of the CRC and bearing in mind the trend in a Presidential system of governance, confirmation of appointment of Ministers is a process that, if properly applied, assists the President in forming a strong government thereby strengthening the relationship between the Executive and the Legislature. However, it is important that the National Assembly does not abuse its confirmation powers by stifling the President's efforts in appointing qualified and competent persons. Accordingly, appropriate checks should be provided to guard against such potential abuse.
374. In relation to the Office of Vice President, the overwhelming public opinion was that the President should be allowed to appoint his or her Vice President. In the proposed Draft Constitution, the CRC considered the subject within the context of the Cabinet along with Ministers and provided that all Presidential appointments of Cabinet members should be subject to confirmation by the National Assembly. However, following the second round of public consultations and upon further deliberations, the CRC considered it reasonable that the President should be given a free hand to identify and appoint his or her second in command (i.e. the Vice President).
375. In relation to the capping of ministerial portfolios, a comparative study revealed that some jurisdictions provide a cap whilst others do not. Where a cap has been provided, it has been designed to control the creation of numerous portfolios and strengthen good governance. The CRC considers that the number of ministerial portfolios should be limited within the Constitution to prevent an unnecessary

⁴³ Examples are Cape Verde, Ghana, Liberia, Nigeria, Sierra Leone, Uganda, Kenya and USA.

proliferation of ministries which has a potential consequent negative effect on national resources.

6.9.4. Provisions of the Draft Constitution

376. Chapter VIII of the Draft Constitution introduces new provisions on the Executive. It introduces, for the first time in the constitutional history of The Gambia, term limits for the Office of President. In a similar vein, it introduces confirmation by the National Assembly of appointments of Ministers. It is considered that the President should be allowed a free and unfettered right to select and appoint his or her Vice President. Accordingly, an appointment to that Office shall not be subject to confirmation by the National Assembly. The Chapter also outlines the qualifications and disqualifications in respect of the Offices of President and Ministers, requirement for the declaration of assets by the President, Vice-President and Ministers to the ACC before and after leaving office, and when a President-elect should assume office.

377. The Draft Constitution also bars the President from engaging in business ventures, using his or her office for personal gain, or participating in or promoting the establishment of any charitable organization or institution. It further requires all decisions taken or directives issued by the President to be in writing and to bear his or her seal and signature; this is designed to prevent persons from engaging in misconduct by using the name or authority of the President in ways that are not legal or legitimate. Furthermore, Gambians of dual nationality are no longer barred from appointment as Ministers of Government. However, to be eligible to contest election for the Office of President, a person must hold and retain only the citizenship of The Gambia. However, the residency requirement to run for the Office of President has now been reduced from 5 years to 3 years. In effect, a person must (amongst other qualifications) be ordinarily resident in The Gambia for a period of at least 3 years before becoming qualified to run for the Office of President. This means that the person must either be permanently resident in The Gambia or, if resident outside The Gambia, the person visits occasionally (not less than once in each year). This Chapter also prohibits the President from declaring any religion as a State religion.

6.9.4.1.PART I – Guiding Principles of Executive Authority

378. The Draft Constitution introduces a new Part I relative to guiding principles of Executive authority. This Part provides that Executive authority is derived from the people of The Gambia and that such authority is vested in the President. This authority includes upholding the values and principles of the Constitution and all other laws validly enacted by the National Assembly, and are to be exercised in a manner that accords with the rule of law.

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

6.9.4.2.PART II – Office of President, Powers and Duties

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

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

382. The powers of the President are also defined and he or she is required to address the National Assembly on matters concerning the state of the nation at least once a year being no later than April.

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

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

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

6.9.4.3.PART III – Election to the Office of President

386. This Part provides that the election of the President in a national election is to be held 6 weeks before the end of the term of the incumbent President. This is designed to ensure a smooth transfer of power in a manner that ensures that an incumbent President does not stay in office beyond the constitutionally mandated period.

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

388. The Part further requires the IBEC to declare a candidate elected as President if the candidate has received more than half of the votes cast at the election. If no candidate is so elected at the first election, the IBEC shall hold a second election within 14 days

where the 2 candidates who received the most votes would be the only contestants. This is a departure from the simple majority rule in the 1997 Constitution (although it essentially replicates the original position in the 1997 Constitution before it was subsequently amended to provide for a simple majority win).

389. The IBEC is required to declare the results and the winner of the election within 72 hours following the close of the polls and to deliver a written notification of the result to the Chief Justice. Where it is not possible to declare the results and the winner within the period of 72 hours after the close of the polls, the IBEC shall apply to the Supreme Court for an extension of time. This is also a new provision, consistent with the fixed time frame for the declaration of results and the winner in an election.
390. Where the President-elect dies before assuming office and before a Speaker is elected to office, the Chief Justice shall be sworn-in as acting President until a Speaker is elected. The IBEC is then required to conduct a fresh Presidential election within 90 days after the death of the President-elect. This is also a new provision.
391. This Part further provides that a person declared winner of a Presidential election shall assume office on the day after the expiry of the incumbent President's tenure. The winner of the election shall then subscribe to the prescribed oaths to be publicly administered by the Chief Justice and if the Chief Justice is not available, the most senior Gambian judge of the Supreme Court shall administer the oath. These are new provisions.
392. A registered political party or an independent candidate who has participated in a Presidential election may apply to the Supreme Court challenging the validity of the election. If the Presidential election is declared invalid, the IBEC shall conduct a fresh election within 90 days after that declaration.

6.9.4.4.PART IV – Terms and Conditions of Office of President

393. This Part is in sections 102 – 109 and provides that the term of office of President is 5 years. It bars any person from holding office as President for more than 2 terms of 5 years each, whether consecutive or not. This is a novel provision meant to prevent self-perpetuation in office.
394. The President is required, within 3 months of assuming office, to disclose all his or her liabilities, business interests and assets to the ACC. The President is further required to disclose all his or her liabilities, business interests and assets to the ACC within 3 months after leaving office. These requirements are similarly applicable to the spouse of the President.
395. A sitting President is barred from holding any other public or private office or to engage in the establishment of any organization or charitable institution.

396. Provision is made for the immunity of the President from civil and criminal proceedings, while in office. The President may, however, become the subject of prosecution after he or she leaves office. In addition, a President who has served a first term in Office may be the subject of legal action or barred from contesting the subsequent election if he or she is found to have made a false declaration of assets or advocated ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm.

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

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

6.9.4.5.PART V – Offices in the Executive

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

6.9.4.5.1. Vice President and Ministers

400. This sub-Part establishes the Office of Vice President and the holder of the office is to be appointed by the President within 14 days of the President assuming office.

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

402. The appointment of Ministers, including the Attorney General, is provided for in this sub-Part as well as their qualifications and disqualifications. Such appointments are subject to confirmation by the National Assembly. However, in order to ensure that confirmation achieves its intended purpose, provision is made requiring Parliamentary decision within a prescribed period, including providing reasons for any non-confirmation of a candidate selected by the President. In addition, the National Assembly must be guided by the relevant criteria established in the Draft Constitution, including respect for the guiding principles outlined therein, exercising good judgment

and treating candidates with respect. The procedures required in this regard must be set out in the National Assembly Standing Orders.

403. This sub-part also specifies when and how the Office of Minister becomes vacant. The number of Ministers including the Attorney General is not to exceed 20 and shall take into account the economic circumstances of the country and the extent to which the economy can effectively sustain the Ministries to be headed by the Ministers.
404. The Vice President and Ministers shall be responsible for such Ministries and Departments the President may assign to them.
405. The Vice President and Ministers are required to declare their assets, liabilities and business interests within 3 months of assuming office and within 3 months after they leave office.
406. The holder of the Office of Vice President or Minister is barred from holding any other public or private office during his or her tenure, use his or her office for personal gain, establish or advocate for or participate in or promote the establishment of a charitable organization or institution. These are significant improvements on the 1997 Constitution.
407. An obligation is further imposed on the Vice President and Ministers to report to the National Assembly whenever required to do so. The National Assembly, by a resolution supported by not less than two-thirds of all members, can pass a vote of censure against the Vice President or a Minister, and when a vote of censure is passed, the President must remove the person concerned. The conditions which may trigger a vote of censure by the National Assembly are prescribed to prevent Parliamentary overreach.

6.9.4.5.2. The Cabinet

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

6.9.4.5.3. Other Powers of the President

409. Under this sub-Part, the Government is forbidden to enter into any agreement which would make The Gambia lose its sovereignty. It is further provided that treaties signed by the President shall be ratified by the National Assembly. These ensure appropriate checks and balances to maintain the integrity of The Gambia as a sovereign State and prevent any onerous commitment of the country to treaties that may otherwise not be in the best interest of The Gambia.
410. Provision is made for the establishment of the Prerogative of Mercy Committee whose main function is to review cases of persons convicted which are referred to the

Committee and to make recommendations to the President for the exercise of his or her prerogative to either grant a pardon or remit the whole or any part of a sentence of court or substitute a less severe form of punishment imposed on a person.

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

6.9.4.5.4. Other Public Offices

412. This sub-Part establishes the Office of Chief of Staff to the President whose main function is to act as principal adviser to the President and to assist in managing the President's office. This is new and it has been provided principally to disengage the Secretary General from the Office of the President and establish it as a separate Office responsible for ensuring the development of a professional civil service that is efficient and effective.
413. The Office of DPP is established to be independent of the Office of the Attorney General. The DPP is responsible for initiating, taking over and continuing, and discontinuing criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person. The DPP is also required to prepare and present an annual report to the National Assembly regarding the exercise of the powers given to him or her under the Constitution. This is a new provision. Additional provision is made for an Act of the National Assembly to make provision for private prosecutions within 12 months of the coming into force of the Constitution.
414. The Office of Solicitor General and Legal Secretary is provided for and the office holder is to be appointed by the President. This is a new provision.

6.10.CHAPTER IX - THE LEGISLATURE

6.10.1.Dimensions of the Issue

415. The dimensions of the issue are as follows:
- (a) Should the National Assembly comprise purely of elected members or should space still be allowed for nominated membership?
 - (b) What criteria should be used for membership of the National Assembly?
 - (c) What criteria should be used for disqualification from membership of the National Assembly?
 - (d) Should the Speaker and Deputy Speaker of the National Assembly be elected from amongst the elected Members or should they be elected private citizens irrespective of political party affiliation?

- (e) Should general elections for National Assembly membership be held at the same time as the election of President or should the current system (provided in the 1997 Constitution) be maintained?
- (f) Should the President be able (as is the current position under section 96 of the 1997 Constitution) to declare general election to membership of the National Assembly to be held at a time different from what is provided in accordance with the 1997 Constitution?
- (g) Should marginalised groups – women, youths and persons with disabilities – be provided with separate and specific opportunities to attain appropriate representation in the National Assembly?
- (h) Should the Constitution prescribe a period within which the first session of the National Assembly has to be convened after the holding of a general election?
- (i) Should more pronounced roles be accorded to the Leaders in the National Assembly representing the Majority and the Minority?
- (j) Should the Constitution enable Members of the National Assembly to participate in the proceedings of the Assembly in any of the local languages (the current Constitution leaves this to be done by an Act of the National Assembly and has never been acted upon)?
- (k) Are the powers of the National Assembly adequate for its roles in representing the people and having proper and efficient oversight responsibilities?
- (l) Should a Second Chamber of the National Assembly be established for effective balance in the enactment of legislation and conduct of other affairs of the Legislature and of the country and thus ensuring a balanced check on the Executive?
- (m) Should representation be based on proportional representation (according to the population size of each Administrative Area)?

6.10.2. Current State of the Law on the Issue

416. The provisions of the 1997 Constitution on the Legislature are contained in Chapter VII and organized in 5 Parts, namely: Part I (Establishment of the National Assembly and members), Part II (The meeting and dissolution of the National Assembly), Part III (Legislation and other powers of the National Assembly), Part IV (Procedure in the National Assembly), and Part V (Responsibilities, privileges and immunities).
417. Part I has 9 sections (87 - 95). The first 3 sections provide for the establishment of the National Assembly (section 87), composition and number of members of the National Assembly (section 88) and qualifications for membership of the National

Assembly (section 89). The qualifications for eligibility for membership of the National Assembly include being a citizen of The Gambia, being of the age of 21 years or more, being ordinarily resident in The Gambia for a period of at least 5 years prior to nomination, fluency in the English language, and making a declaration of assets.

418. Section 90 provides for disqualifications for membership of the National Assembly and these include (amongst others) holding citizenship of any country other than The Gambia, membership of a disciplined force, and conviction for any abuse of office or corruption. The tenure of National Assembly members is provided in section 91, while section 92 provides that an Act of the National Assembly may make provision for the recall of an elected National Assembly member. Part I also provides for the election of Speaker and Deputy Speaker in section 93, appointment of the Clerk of the National Assembly in section 94, and remuneration and other benefits of the Speaker, the Deputy Speaker and other members of the National Assembly in section 95 to be prescribed by an Act of the National Assembly .
419. Part II of Chapter VII of the 1997 Constitution provides for the general election of National Assembly members (section 96), the sessions and sittings of the National Assembly (sections 97 and 98 respectively) and the term of the National Assembly (section 99).
420. The legislative and other powers of the National Assembly are provided for in 3 sections in Part III of Chapter VII of the 1997 Constitution. Section 100 provides that the legislative power of The Gambia shall be exercised by Bills passed by the National Assembly and includes provisions on the powers that the National Assembly does not have with regard to passing a Bill. Section 101 provides for how Bills and motions are introduced in the National Assembly by a member of the Cabinet or a member of the National Assembly. Section 102 makes provision for additional functions of the National Assembly, which include the function to receive and review reports on activities of the Government and proposals for raising revenue by the Government, examine the accounts and expenditure of the Government, deal with proposals for the conduct of referenda on issues of national importance pursuant to a Bill, and advise the President on any matter within his or her responsibility.
421. The procedure to be followed in the National Assembly is dealt with in Part IV of Chapter VII. Specifically, section 103 provides that the Speaker (or the Deputy Speaker in the absence of the Speaker) shall preside at any sitting of the National Assembly, while section 104 provides for the effect of a vacancy and the required quorum in the National Assembly. Section 105 provides that the National Assembly's business shall be conducted in the English language or any other language the National Assembly prescribes in an enactment. Other sections of Part IV deal with voting in the National Assembly (section 106), consequence of an unqualified person sitting or voting in the National Assembly (section 107), regulation of procedure in the National Assembly

(section 108), obligation of the National Assembly to appoint specified and other standing committees or other necessary committees of the National Assembly (section 109), and the National Assembly Service (section 111) for the purpose of providing services and support to the National Assembly.

422. Part V of Chapter VII provides for the responsibilities, privileges and immunities of National Assembly members. These responsibilities are maintaining the dignity of the National Assembly and regarding themselves as servants of the people (section 112). The Part also provides for freedom of speech and debate in the National Assembly (section 113), privileges of National Assembly members (section 114), immunity of National Assembly members from service of process and arrest while on their way to, or attending or returning from, any proceedings of the National Assembly (section 115), immunity from being compelled to serve as a witness in court while attending the National Assembly (section 116), immunity from jury service (section 117), immunity from civil or criminal liability for publishing a text or summary of reports, papers, etc., or a contemporaneous report of the proceedings, of the National Assembly (section 118), and privileges accorded to witnesses attending the National Assembly.

6.10.3. Submissions Received, Analyses and Decisions

423. The CRC received various submissions on the issue of the National Assembly and legislation generally. These included proposals on the issue of nominated membership of the National Assembly, with 11 position papers (from 5 institutions and 6 individuals) suggesting that the President should have power to nominate some NAMs (essentially advocating for maintaining the status quo as outlined in section 88 (1) (b) of the 1997 Constitution). Similarly, 10% of participants at CRC consultations in the USA and all participants who spoke to the issue at the CRC consultations in Senegal and Mauritania said that the President should have the right to nominate NAMs. Similarly, one participant at the CRC consultation in Saudi Arabia and in Europe, respectively, was also of the view that the President should retain power to nominate National Assembly members. However, one submission to the CRC proposed that the President should not have the power to remove nominated NAMs. One reason provided to justify granting the President power to nominate NAMs is that this will ensure that minority groups are represented in the National Assembly.

424. However, the majority of participants at the IPCs recommended that the President's power to nominate NAMs should be abolished in order to reduce Executive influence and enhance the independence of the National Assembly. The CRC also received position papers opposed to granting the President power to nominate NAMs. Four position papers, and 90% individuals who spoke to the issue at the CRC consultations in the USA opposed the idea of granting the President power to nominate NAMs. One reason for this opposition is to ensure greater independence of the National Assembly. In the same vein, participants at CRC consultations in Senegal and Mauritania said the

Speaker and Deputy Speaker of the National Assembly should all be elected from amongst the Nominated Members to ensure fair play during the Assembly's proceedings.

425. With regard to the academic qualification requirements for membership of the National Assembly, 40% of participants at CRC consultations in Europe said that the educational level of a candidate for election as a NAM should be a minimum of secondary school education, while 40% of them said the minimum level of education should be a tertiary level education. On the other hand, 9 out of 16 position papers addressed the issue of qualifications for election as a member of the National Assembly and stated that the minimum requirement should be a high school diploma. The majority of opinions expressed in the IPCs on this issue was that a minimum educational requirement of a high school diploma would be adequate and sufficient as NAMs with such qualifications would be capable of carrying out their functions effectively and efficiently. Other justifications for high school diploma being minimum education requirement for NAMs is to ensure that a large spectrum of Gambians are not excluded from contesting national assembly membership (i.e. due to higher education requirements).
426. With regards to the age requirements for qualification as a candidate for election as a NAM, most of the position papers recommended that the minimum and maximum age for qualification for election as a NAM should be 21 years, and 65 years, respectively. However, participants at CRC consultations in Europe said that the age limit of NAMs should be from 18 years to 65 years. Gambians who spoke during the IPCs proposed 21 years as minimum age limit for NAMs, and 75 years as maximum age limit.
427. Other important considerations on the qualification for election as a NAM are dual citizenship and residency in The Gambia. Participants at CRC consultations in the USA recommended that the Diaspora Gambians should have a seat in the National Assembly, and participants who spoke on the issue of dual nationality at CRC consultations in Europe also recommended that dual nationals should be allowed to contest for election as NAMs.
428. Three out of the 5 position papers received addressed the issue of dual nationality and qualification for National Assembly membership and indicated that persons with dual nationality should be allowed to contest NA seats. Similar majority opinion was expressed during the CRC consultations in Europe and the USA, with all of the participants agreeing with the recommendation that Gambians with dual nationalities should be allowed to contest in NA elections, because every qualified Gambian should have a right to contest in all elections. On the contrary, during the FGDs held at the IPCs, only 9.3% of participants recommended that Gambian with dual citizenship should be allowed to contest in NA elections. A number of submissions made in the position papers called for a representative for Diaspora Gambians in the National

Assembly to underline the contributions they are making to the development of the country, and thus enable their proper representation in the National Assembly.

429. With regard to the residency requirement, the CRC received a number of proposals on the one year residency requirement in section 89 (1) of the 1997 Constitution. While 50% of participants who spoke to the issue at the CRC consultations in Europe said that this residency period should be reduced to 6 months, the other half of them said the residency requirement should be increased to 3 years. On the other hand, participants at CRC consultations in the USA suggested that the residency requirement should be set at one year, while participants at CRC consultations in Senegal and Mauritania said the one year residency requirement should be increased. Gambians at the IPC had a divergent view on the residency requirement for NAMs, with the majority holding the view that candidates vying for National Assembly positions should, as a precondition, have stayed in their various constituencies for minimum period of 5 years.
430. The CRC also received opinions and proposals on the issue of representation of marginalized and disadvantaged groups – women, youth and persons with disabilities – in the National Assembly. Specifically, all participants at CRC consultations in the USA who spoke to the issue said that the new Constitution should ensure the representation of marginalized groups. In the same vein, participants at CRC consultations in Senegal and Mauritania said that the new Constitution should provide for marginalized groups to enable them attain appropriate levels of representation in the National Assembly.
431. Regarding the recall of NAMs, the 14 position papers that addressed the issue were unanimous in their opinion that any NAM who changes his or her political affiliation should be stripped of his or her seat.
432. Eight position papers and one participant at the CRC consultations in Europe proposed that the new Constitution should empower constituencies to recall their elected representatives, especially in the case of inefficiency or ineffectiveness while in office. A similar view was shared by one participant at the CRC consultations in Saudi Arabia and supported by all the participants. In addition, majority of Gambians consulted in the IPCs supported the recall of NAMs on grounds of ineffectiveness. 78.8% of participants in the FGDs, 81.4% of respondents in the face-to-face interviews, 90.7% of respondents in the HS and participants at the CRC consultations in USA also recommended that the right to recall NAMs should be retained in the Constitution. Such provision, they argued, would also deter corrupt practices and abuse of office by NAMs.
433. The CRC also received proposals from participants at its consultations in Europe that Presidential and National Assembly elections should be held on the same day. 53.2% of participants at the FGDs held during the IPCs recommended that Presidential and National Assembly should be held on the same day to save time and cost and to avoid overcrowding and violence during numerous election campaigns. However, only

30.3% of respondents in the HS agreed to same day elections for President and the NAMs. Similarly, participants at CRC consultations in the USA and Europe largely agreed that the Presidential and Parliamentary elections should both be held on the same day to reduce cost and encourage voter turnout. Two participants at the CRC consultations in Saudi Arabia also expressed similar opinions. The greater view was also expressed that Diaspora voting should be limited to Presidential elections, as to require otherwise would be enormously expensive.

434. With regard to language used in the National Assembly, 13 of the 15 position papers received, recommended that NAMs should be allowed to use local languages (in addition to the English language) in the proceedings of the National Assembly. 94.9% of the participants at the IPCs were in support of the use of local languages in the National Assembly, to facilitate greater clarity and effective communication with the general public, while 5.1% of the participants had contrary opinions, stating that English language is the official language of The Gambia and all National Assembly members are expected to understand and speak it. Similarly, 88% of participants who spoke on the issue at the CRC consultations in Europe supported the use of local languages in National Assembly proceedings. The main reason for support in this regard is that the use of local languages will increase the ability of many Gambians who do not understand the English language to follow and understand National Assembly proceedings.
435. Most of the participants in all the public consultations felt that the new Constitution should specify the election dates. This subject was considered too important to be left in the hands of a single functionary. In a similar vein, most participants advocated institutionalizing the positions of Majority Leader and Minority Leader in the National Assembly with clear pronounced functions.
436. There was overwhelming opinion that, as part of the process of checks and balances within government, Vice Presidential and Ministerial appointments should be subjected to confirmation by the National Assembly. It was further argued that the requirement for such confirmation should be extended to all key offices in the public service as this would ensure that the right and competent persons are appointed to such offices and thus improve the governance architecture of The Gambia.
437. The issue relating to whether The Gambia should consider establishing a second or parallel Parliamentary Chamber (or second legislative body) did not gain any traction during the IPCs as most people thought that the current single National Assembly was sufficient; a second Chamber was seen as an unnecessary cost. The response was not really different in the Diaspora consultations. There was also no traction for including in the new Constitution proportional representation as the mechanism for electing candidates to the National Assembly. Similarly, there was very little participation on

whether the new Constitution should specify a period within which the National Assembly should sit after a general election.

438. Following the publication of the proposed Draft Constitution and second round of public consultations, 17 submissions were received by the CRC on the subject of the Legislature. The submissions were focused on establishment and composition of the National Assembly, qualifications for membership to the National Assembly, vacancy in the office of member of the National Assembly, the Speaker, Majority and Minority Leader and the legislative power. The views expressed during the second round public consultations confirmed the provisions in the Draft Constitution, therefore no changes were made to this Chapter.

6.10.4. Provisions of the Draft Constitution

439. Chapter IX of the Draft Constitution is divided into 8 Parts and deals with the Legislature, which is an organ of State and is responsible for enacting laws, providing oversight on the Executive and approving financial expenditures of the Government, amongst other functions. The principles that guide its functions are outlined and necessary for the members to be aware of and perform their functions effectively.

440. The Chapter also introduces innovative provisions on the Legislature. It transforms the National Assembly into an organ of government comprising purely of elected members (thereby dispensing with nominated membership as contained in the 1997 Constitution), and requires the election of the Speaker of the National Assembly from outside the National Assembly. It further introduces elective positions for marginalised groups and the progressive introduction and use of local languages and Gambian sign language in the National Assembly. It also removes the residency requirement for National Assembly membership to enable any qualified Gambian to seek nomination for election to the National Assembly, and provides more elaborate provisions on the recall of National Assembly members.

441. For the first time, the Draft Constitution provides for the offices of 2 Deputy Speakers, Majority and Minority Leaders, the National Assembly Service Commission and the public's right to petition the National Assembly on matters of public interest. Since the Draft Constitution provides for the Presidential and National Assembly elections to be held on the same day, which means the term of the current National Assembly would have to come to an end 3 months before the time stipulated in the current Constitution, the CRC decided to introduce a transitional provision to deal with this scenario.

6.10.4.1. PART I – Principles of Parliamentary Governance

442. This Part deals with the principles of parliamentary governance and the relationship between members of the National Assembly and the citizens. It is important that to pursue and promote democratic governance, both the citizens and the National

Assembly are able to hold the Executive accountable and ensure good leadership that fosters national cohesion, unity and peace. This Part is new and considered fundamental to democratic governance. It reinforces the National Assembly's accountability to the people of The Gambia.

443. Provision is made for the duties and functions of the National Assembly, which include (amongst others) the ratification of all treaties including bilateral and multilateral agreements entered into by the Government, ensuring that legislative measures to be debated by the Assembly benefit from expert and public opinions (where feasible), keeping the public informed of the execution of its mandate and confirming appointments to some public offices, including appointments to Ministerial positions.⁴⁴ The latter is a new provision.

6.10.4.2.PART II – Establishment and Composition of the National Assembly

444. Under this Part, the Draft Constitution specifically establishes the National Assembly. The CRC, in its deliberations and consultations with the citizens, recognized and took on board the views expressed by the citizenry on the vulnerable status of the youth, women and persons with disabilities and the need to encourage them to actively participate in political affairs. The strong opinion canvassed was the need to prescribe a procedure that would enable this group to be adequately represented in the National Assembly; hence the provision for the composition of the National Assembly to include a number of women and persons with disabilities, in addition to those who may be elected from single member constituencies.
445. The Part also prescribes the qualifications and disqualifications of its membership and the mode of election of members of the National Assembly. The qualifications for a person to be nominated to contest election to the National Assembly include being a citizenship by birth, being 21 years old or older, attaining a minimum of senior secondary school certificate or its equivalent and ability to speak the English language with a degree proficiency, and declaring assets to the ACC prior to the date of nomination. A person who is a registered or naturalised citizen may be nominated for election to the National Assembly if, by the nomination day, the person has remained registered or naturalised as a citizen for a period of at least 10 years. The Part provides 13 disqualifications for nomination to contest election for National Assembly membership. These disqualifications are: holding the nationality of another country other than The Gambia as a registered or naturalised citizen; being an honorary citizen; being of unsound mind; being found liable (within 10 years prior to nomination) for gross misconduct or misbehaviour, or negligence or corruption by a commission of inquiry; conviction for an offence involving dishonesty or immoral conduct or receiving a sentence of imprisonment of 12 or more months; conviction for abuse of office,

⁴⁴ See paragraph 400 for details.

corruption, or any offence, relative to public elections; being found (within 10 years to nomination day) to have advocated ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm; holding a public office unless otherwise exempted; being a member of a disciplined force; being an elected member of an LGA; being a Seyfo or Alkalo; being adjudged or declared bankrupt or entering into arrangements with creditors; and making a false declaration of assets.

446. Provision is also made under this Part for how a vacancy occurs in the office of a member of the National Assembly and the power and procedure for suspension of a member of the National Assembly. In addition, constituents' right to recall their National Assembly members and the procedures to be satisfied therewith are outlined.

6.10.4.3. PART III – Leaders of the National Assembly

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

448. The Part provides novel provisions in the sense that the Speaker of the National Assembly is to be elected from outside the general membership of the National Assembly. The Speaker's qualification is prescribed and includes being of citizenship by birth and being a person of high moral character with proven integrity and fair-mindedness; the Deputy Speaker is to be elected from amongst the members of the National Assembly. Furthermore, the positions of Leader of the Majority Party and Leader of the Minority Party are given constitutional recognition and their mode of election prescribed.

6.10.4.4. PART IV – Sessions and Sittings of the National Assembly

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

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

6.10.4.5. PART V – Legislative and Other Powers of the National Assembly

451. This Part makes provision for the exercise of legislative power by the National Assembly. It prescribes how Bills and motions are to be introduced and passed. This is an important regulation of a fundamental procedure to be followed by the Assembly. A

further provision is made for the President to assent to all Bills passed by the National Assembly within 30 days of receipt thereof and, where the President declines to assent to a Bill, he or she must return the Bill to the Assembly for further consideration, giving reasons for such an action. Where the National Assembly (after passing the Bill with a at least a two-thirds majority) sends back the Bill to the President, he or she must assent to it; if the President fails or refuses to assent to the Bill, the Bill shall be deemed to have been assented to.

452. The same Part prohibits the National Assembly from passing a law that establishes a one party State, establishes any religion as a State religion or alters the decision or judgment of a court in any proceedings or retroactively deprive a person of a vested or acquired right.

6.10.4.6.PART VI – Procedure in the National Assembly

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

454. Provision is also made for the public's right to petition the National Assembly on any matter within the authority of the Assembly including, but not limited to, a request to enact, amend, revise, or repeal or revoke any legislation or debate a matter that is considered to be in the public interest or designed to ensure and promote good governance, transparency and accountability.

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

6.9.4.7 PART VII– Responsibilities, Privileges and Immunities

456. In the performance of their functions, members of the National Assembly are to be responsible to their constituents and above all act in the best interest of the country. This Part makes provision for immunity of members in respect of what they say during deliberations in the National Assembly; they are also immune from service of legal process whilst on the National Assembly premises or to or from the National Assembly. The Part also provides privileges to witnesses who appear before the Assembly.

6.9.4.8 PART VIII – National Assembly Service Commission

457. This Part establishes a National Assembly Service, and a National Assembly Service Commission, to enable the National Assembly to deal with administrative,

managerial and staff matters of the Assembly. It establishes the Office of the Clerk of the National Assembly and makes provision for appointment of members of staff of the National Assembly.

6.11.CHAPTER X – JUDICIARY

6.11.1.Dimensions of the Issue

458. The dimensions of the issue are as follows:

6.11.1.1.Chief Justice and other Judges – Appointment, Qualification, Disqualification, tenure, etc.

- (a) Should the appointment of the Chief Justice by the President be in consultation with the Judicial Service Commission or be in accordance with the advice of the Commission?
- (b) Should the Constitution maintain provision (section 139 (1) of the 1997 Constitution) allowing the appointment of a non-Gambian as Chief Justice? If not, should specific provision be made that only a Gambian citizen (other than an honorary citizen) should be appointed as Chief Justice?
- (c) Considering the qualifications set out in section 139 of the 1997 Constitution for appointment as a Supreme Court, Court of Appeal and High Court judge, is there a case for amending any of the qualifications set out thereunder and, if so, what qualifications should be amended and why?
- (d) Should the Constitution specifically outline disqualifications for a person being appointed as a judge and, if so, what should those disqualifications be?
- (e) Should the appointment of other judges of the superior court be made by the President acting on the advice of the Judicial Service Commission or on the recommendation of the Judicial Service Commission?
- (f) Is the 5 years post-qualification experience for appointment as Court of Appeal or High Court judge not too short (same for Chairman of Cadi Appeals Panel)?
- (g) Should judges be required to vacate office after a specified age (75 under the 1997 Constitution) or should they be permitted to continue serving so long as they are certified as medically fit?
- (h) Should judges be permitted to retire on their salary (to constitute their pension), as is the case in some countries, as a measure of preserving the integrity of judges and judicial service whereby retired judges may not be justified in seeking other employment?

- (i) Should the President continue to exercise the power of terminating the appointment of a judge after consultation with the Judicial Service Commission or should termination be on the recommendation of the Commission after an adverse finding by an independently constituted tribunal of a specified number of judges (with possibly a lay person)?
- (j) In any case, should the National Assembly have any say with regard to the termination of appointment of a judge (separation of powers) as is provided in the 1997 Constitution?
- (k) Should the proceedings of a tribunal duly constituted to investigate and determine the culpability or otherwise of a judge be held in camera or be public?

6.11.1.2. Judicial Service Commission

- (l) Should the mandate of the Judicial Service Commission be expanded to include the appointment, removal and discipline of persons in positions that require legal qualifications and, if so, should the name be changed to Judicial and Legal Service Commission or other name? This will extend to all legal staff positions in the Attorney General's Chambers and Ministry of Justice, Legal Aid, Law Reform Commission, etc.
- (m) Is the composition of the Judicial Service Commission as provided in the 1997 Constitution sufficient and balanced; if not, what should the composition look like?
- (n) Should there be a cap on the number of terms a person can serve as member of the Judicial Service Commission, instead of allowing them to indefinitely renew their appointments as the 1997 Constitution provides?
- (o) Should the National Assembly be involved in confirming the appointments and removal of Judicial Service Commission members by the President (as is the case in the 1997 Constitution)?

6.11.1.3. Cadi Court & Cadi Appeals Selection Committee

- (p) Is there a need for the continued existence of the Cadi Appeals Selection Committee or should members thereof be co-opted into the Judicial Service Commission either 'permanently' or whenever a matter is to be decided in relation to the Cadi Court or a Cadi is to be appointed/removed/disciplined?
- (q) Is the current composition of the Cadi Appeals Selection Committee considered to be professionally representative and balanced and, if not, what should the composition look like?
- (r) Should provision be made to enable a further appeal of a Cadi's decision to the Supreme Court?

- (s) Should the power granted to the High Court pursuant to section 133 of the 1997 Constitution be reformulated so that the power does not extend to decisions of a Cadi Court and a Court Martial, appeals from which should go directly to the Court of Appeal?
- (t) Is the 5 years post-qualification experience for appointment as Chairman of the Cadi Appeals Panel not too short (same for appointment of Court of Appeal and High Court judges)?

6.11.1.4. Special Criminal Court

- (u) Should the Special Criminal Court continue to be a specific feature within the Constitution and, if so, should the members of the Special Criminal Court be appointed by the President in consultation with the Judicial Service Commission or acting on the advice or recommendation of the Commission?

6.11.1.5. Election Petitions

- (v) Should the Supreme Court be given power to hear all election petitions or should the current status quo whereby the Supreme Court hears only petitions arising from Presidential and Parliamentary elections be maintained?
- (w) If the current status quo on dealing with election petitions is to be maintained, should the Chief Justice still be required to sit and hear as a Judge of the High Court all election petitions arising from local government elections? If not, how is it preferred that this subject be dealt with?

6.11.2. Current State of the Law on the Issue

459. Chapter VIII (The judicature) of the 1997 Constitution consists of 6 Parts. Part I outlines the courts of The Gambia; Part II outlines the superior courts; Part III deals with matters concerning the Cadi Court; Part IV addresses matters concerning the judges; Part V deals with the administration of the courts; and Part VI relates to the Judicial Service Commission (JSC).
460. Part I of the Chapter is in 5 sections, starting with section 120, which provides that the courts of The Gambia consist of the superior courts (comprising the Supreme Court, the Court of Appeal, the High Court and the Special Criminal Court), the Magistrate's Court, the Cadi Court, the District Tribunals and such lower courts and tribunals that an Act of the National Assembly may establish. The section further provides that the judicial power of The Gambia is vested in the courts which, along with the judges and other holders of judicial office, shall be independent and subject only to the Constitution and the law.
461. The 1997 Constitution provides for the powers and responsibilities of the superior courts in section 122. Section 123 provides a judge or any other person exercising judicial power immunity from suit for any act or omission by him or her done in good

faith while exercising his or her judicial function. Section 124 provides that all courts shall aim to deliver their decisions expeditiously, and that it is the duty of the Chief Justice to require compliance with these provisions, although the validity of any court decision shall not be questioned on the grounds of a delay in its delivery.

462. Part II of the Chapter makes provision for the composition and jurisdiction of the Supreme Court, the Court of Appeal, the High Court (including the supervisory jurisdiction of the High Court), and the Special Criminal Court, while Part III provides for the Cadi Court and the Cadi Appeals Panel, including their establishment, composition, jurisdiction and powers.

463. Part IV provides for the appointment of judges (section 138), the qualifications for appointment of judges (section 139), as well as how to deal with a vacancy in the Office of Chief Justice (section 140), the tenure of office of judges in (section 141), and the remuneration of judges (section 142).

464. Part V provides for the administration and financial management of the courts in two sections (sections 143 and 144), while the last part, Part VI provides for the JSC, its members, their qualifications and tenure of office (section 145). Section 146 provides for the appointment of judicial officers and court staff, including the Master, Registrar and Assistant Registrar of a superior court. Sections 147 and 148 respectively deal with other functions of the JSC and the JSC's operation and procedures.

6.11.3. Submissions Received, Analyses and Decisions

465. The CRC received many proposals on the Judiciary from position papers and consultations with Gambians in the country and outside. With regards to the Office of the Chief Justice and the judicial system, the CRC received 10 position papers which addressed the issue of the nationality of the Chief Justice, with all of them recommending that the Chief Justice should be a Gambian national. The same views were expressed by participants at the CRC consultations in Europe and the USA, as well as in Senegal, Mauritania and Saudi Arabia. The overwhelming opinion from the IPCs expressed the same view that the position of Chief Justice should be restricted to Gambian citizens.

466. Nine position papers received by the CRC proposed that the Chief Justice should be appointed by the President, and that other judges should be similarly appointed. However, these appointments should be on the advice of the JSC and confirmed by the National Assembly.

467. With regard to the qualification of judges, the CRC received recommendations on the following minimum qualifications for judges: 10 years post call experience for a High Court Judge, 15 years post call experience for a Court of Appeal Judge, and 20

years post call experience for a Supreme Court Judge. Contrary recommendation was received that the provisions of the 1997 Constitution for post call experience of 5 years for High Judges, 8 years for Court of Appeal Judges, and 12 years for Supreme Court Judges should be retained.

468. With regards to the Shari'ah High Court, an overwhelming majority of participants who spoke on the issue at the CRC consultations in Senegal, Mauritania and Saudi Arabia said that all Shari'ah-related matters should be referred to the Cadi Courts for adjudication. Similarly, some participants at the CRC consultations in Europe and the USA expressed the view that Shari'ah cases should not be heard by District Tribunals, but by the Cadi Courts.
469. The CRC also received proposals on the issue of the Cadi Appeals Panel recommending the abolition or removal of the Cadi Appeals Panel because it delays the administration of justice in Shari'ah matters. There were a few other opinions which proposed that the Cadi Appeals Panel should be retained in the new Constitution.
470. With regard to District Tribunals, the CRC received proposals that the District Tribunals should be removed from the purview of the Ministry of Local Government, Lands and Regional Administration and fully integrated into the Judiciary. There was further opinion that the JSC should appoint members of District Tribunals, while a contrary opinion advocated that the Chief Justice should appoint members of District Tribunals.
471. The CRC also received proposals with regard to the JSC. In particular, proposals were made that the JSC should be given the mandate to appoint the Shari'ah Court judges at all levels, appoint District Tribunal members, and impose disciplinary measures on all judges, except for Supreme Court judges.
472. With regard to the composition of the JSC, opinion was expressed that it should comprise the Chief Justice (as Chairperson), the Solicitor General, a Principal State Counsel, a judge of the Superior Courts nominated by the Chief Justice, 2 lawyers with at least 10 years post call experience nominated by the Gambia Bar Association, and a lay person appointed by the President. The CRC also received a position paper from an individual proposing a two-term limit for members of the JSC, while another individual recommended that NAMs should be involved in confirming appointments and removing JSC members.
473. With regard- to the Special Criminal Court, the CRC received proposals on the issue of whether or not this Court should be included in the new Constitution. The 6 position papers received by the CRC on the subject proposed that the Special Criminal Court should not be provided for in the new Constitution.
474. The CRC also received representation on the matter of Court Martial which proposed that the new Constitution should have a specific provision for setting up a

Court Martial and that appeals should be as of right from a Court Martial to the Court of Appeal.

475. The issue of election petitions also drew the attention of many participants. Proposals were received that only Presidential election petitions should be heard by the Supreme Court and that all other election petitions should be heard by the High Court. A proposal was also received recommending the establishment of an Election Tribunal to hear all election petitions (National Assembly and Local Government), but excluding Presidential election petitions. Yet there were other proposals recommending that the Supreme Court should hear all election petitions.
476. With regard to the issue of power to commit for contempt, opinions were received that the new Constitution should provide that all courts have the power to commit for contempt.
477. Following the publication of the proposed Draft Constitution and second round of public consultations, 23 written submissions were received by the CRC on the subject of the Judiciary. The submissions ranged from principles of justice, judicial authority, independence of the judiciary, the courts and judicial power, establishment and composition of the Supreme Court, original jurisdiction, establishment and composition of Court of Appeal, supervisory jurisdiction of the Shari'ah High Court, to the Judicial Service Commission and appointment of judicial officers and judiciary staff. Concern was particularly expressed regarding the extent of the jurisdiction of the Shari'ah High Court and whether or not the jurisdiction extends to persons other than those professing the Muslim faith. The CRC deliberated on this and determined that the jurisdiction of the Shari'ah High Court (including the Shari'ah Court) applies only to members of the Muslim faith in respect of marriage, divorce, inheritance and endowment (*waqf*). Furthermore, only a person who is qualified in Shari'ah from an institution recognised by the General Legal Council can be appointed as a Shari'ah High Court judge.

6.11.4. Provisions of the Draft Constitution

478. This Chapter of the Draft Constitution is divided into 6 Parts and deals with the Judiciary as an organ of State, and provides for matters relating to the administration of Justice. The Chapter commences by outlining important principles of justice.
479. Chapter X introduces new provisions on qualifications for appointment to the superior courts, and confirmation of appointments of the Chief Justice and Supreme Court Judges by the National Assembly. It further renames the Cadi Courts as Shari'ah Courts (the correct name for such Courts) and transferred jurisdiction over all Shari'ah related matters from District Tribunals to the Shari'ah Courts. The District Tribunals are also moved from the Ministry of Local Government, Lands and Regional Administration to the Judiciary. The Draft Constitution now provides that matters

relating to Shari'ah could be litigated right up to the Supreme Court. It also introduces new provisions on the remuneration and retirement benefits of judges and further provides a new process for the removal of judges.

480. In addition to the provisions of the Draft Constitution, the CRC recommends that Judges of the superior courts should be able to retire on health grounds. It further recommends that the JSC should ensure fairness in appointing a legal practitioner to a tribunal constituted to look into allegations of misconduct against a judge. This will ensure that no injustice is occasioned to a judge who is the subject matter of an investigation. The CRC further recommends the enactment of a law to deal with retirement benefits for judges as is the case with the National Assembly Salaries and Pensions Act for National Assembly members, the Cabinet Members Payment of Gratuities Act for Cabinet Ministers and the Former Presidents Office, Allowances and Other Benefits Act for Presidents who leave office.

6.11.4.1.PART I – Principles Governing the Administration of Justice

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

6.11.4.2.PART II – Office of the Chief Justice and Judicial System

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

6.11.4.3.PART III – Superior Courts and Jurisdiction

483. This Part establishes the superior courts, prescribes their composition and respective jurisdictions. It provides, for the very first time, the establishment of the Shari'ah High Court (which essentially replaces the Cadi Appeals Panel), to hear appeals from the Shari'ah Court (renamed from Cadi Court). This is essentially a re-organisation of the existing Cadi Court structure to afford persons subject to the jurisdiction of that Court to have rights of appeal. In that context, therefore, the Part provides for appeals from the Shari'ah High Court to the Court of Appeal and onward to the Supreme Court. This is new.

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

6.11.4.4.PART IV – The Judges

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

486. The Chief Justice and Justices of the Supreme Court are to be appointed by the President acting on the advice of the JSC after confirmation by the National Assembly. This is a departure from the 1997 Constitution which only required the President to consult with the JSC in appointing the Chief Justice and other superior court judges.

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

488. The Constitution provides security of tenure for judges, guarantees their independence and provides for a more elaborate procedure for the removal of a judge. The President no longer has the power to summarily dismiss a judge without resorting to the procedure outlined in the Constitution.

6.11.4.5.PART V – Administration of the Courts

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

6.11.4.6.PART VI – The Judicial Service Commission

490. The appointment of judicial officers and judiciary staff is regulated under this Part. The JSC is established and is responsible for matters of appointment and other related staff matters, including assisting in the general administration of the Judiciary.

6.12.CHAPTER XI - LOCAL GOVERNMENT AND DECENTRALISATION

6.12.1.Dimensions of the Issue

491. The dimensions of the issues of local government and decentralisation are as follows:

6.12.1.1.General

- (a) Are the current local government structures established under the 1997 Constitution adequate for purposes of ensuring effective governance?

- (b) Are the powers devolved to the local government bodies (Area Councils, Municipalities, etc.) sufficient to ensure proper administration and the development of the various regions in The Gambia?

6.12.1.2. Seyfos and Alkalos

- (c) Should a Seyfo continue to be appointed by the President in consultation with the Local Government Minister (position under the 1997 Constitution) or be directly elected by their districts or be selected according to traditional lines of inheritance?
- (d) If they are to be elected, should such election be apolitical and on the basis of independence of candidates (no political party affiliation whatsoever)?
- (e) What should be the term of office of an elected Seyfo or should the term be for the lifetime of the elected Seyfo?
- (f) Should the appointment of an Alkalo vest in the Local Government Minister acting in consultation with regional Governors and a Seyfo or Mayor or Chairperson, as the case may be, (position under the 1997 Constitution) or should it be elective or selected on the basis of traditional lines of inheritance? **OR**
- (g) Should the appointment of an Alkalo be based on village consensus as a first step, failing which (as a second step) the village should elect their Alkalo (to be conducted by the IEC)?
- (h) What protections (if any) should be accorded to the Offices of Seyfo and Alkalo (such as security of tenure where the position is apolitical)?
- (i) If the positions of Seyfo and Alkalo are to be apolitical (meaning no political affiliation), should the new Constitution make provision specifically prohibiting a Seyfo and an Alkalo from engaging in partisan politics?

6.12.2. Current State of the Law on the Issue

492. The current Chapter on Local Government in the 1997 Constitution entitled 'Local Government and Traditional Rulers' contains 2 sections, respectively relating to system of local government and LGAs.

493. Section 193, which deals with system of local government, identifies the system of local administration in The Gambia as one based on a system of democratically elected councils with a high degree of local autonomy. It further empowers the National Assembly to provide for the establishment of Local Government Authorities and their respective jurisdictions through an Act of the National Assembly. However, the power to determine the boundaries of Local Government Authorities is vested in the IEC. Section 193 (3) vests the National Assembly with the power to enact legislation which makes provision for the functions, powers and duties of Local Government Authorities,

including provision for infrastructural development of local government areas, encouragement of commercial enterprises, participation of inhabitants in the development and administration of the area, raising of local revenue, managing the Authorities' finances, making of by-laws and preservation of the environment. This section also gives Local Government Authorities the autonomy to make policy and administration decisions at a local level, and makes it an obligation on the Authorities to cooperate with the Central Government in the adoption of a policy of decentralisation.

494. Furthermore, section 194 requires the legislation which establishes Local Government Authorities to also provide for the election of members of the Authorities; their tenure of office and qualifications; representation of District Chiefs and interest groups; election of Mayors and Chairpersons; recall of members by their wards; appointment of committees; and appointment of Chief Executives of the Authorities.

6.12.3.Submissions Received, Analyses and Recommendations

495. The CRC received submissions from Gambians through position papers, domestic and external consultations and surveys, on the issues raised on Local Government and decentralisation.

496. A number of the submissions made through the position papers highlighted the necessity and importance of setting out principles of local government in the new Constitution in order to ensure representation and participation of women, youth and persons with disabilities.

497. A clear issue which was highlighted in almost all responses relating to Local Government during the consultations was the need for a revision of the Local Government Act, 2002. Some of the proposals outlined made recommendations on how the revision of the Act should be conducted; one position paper proposed dividing Central River Region into 2 Regions, North and South, but there was no traction on that subject even during the IPCs.

498. During the public consultations, the CRC raised the issue of whether or not the need was present to further empower LGAs to ensure their autonomy. In this regard, the majority of the participants recommended that the Municipalities and Area Councils should be empowered to carry out their functions effectively and thus better serve the areas and communities for which they have responsibility.

499. Several submissions and contributions received by the CRC were focused on the appointment and dismissal of Regional Governors, a Seyfo or an Alkalo, with many advocating for election to these offices. The submissions also addressed matters relating to the relevance of the existence of an unelected Regional Governor where you have an elected Area Council with a Chairperson and a Chief Executive Officer. The general consensus on the appointment of Regional Governors from the position papers and contributions during consultations was that they should be elected in the same manner

as Mayors. The data received and analysed by the CRC also supports this position as it indicates that 63% of the people interviewed during the HS opposed the appointment of Regional Governors by the President. Furthermore, 74% of the people interviewed in the HS were of the opinion that Governors and CEOs of Area Councils can and should exist simultaneously in the local government areas.

500. Regarding the other Offices of LGAs, i.e. Seyfos and Alkalos, the views on their appointment were divided. There were four divergent views on how Seyfos and Alkalos should be appointed, namely, through traditional lines of inheritance, elections, appointment by the President or appointment by village/local community consensus. Out of the 13 submissions received on this particular subject-matter, 4 were in favour of elections, 5 supported appointment through traditional lines of inheritance, and there were 2 submissions apiece for views on Presidential appointment and appointment through village/local community consensus.
501. The submissions which were in support of elections underscored that the election of Seyfos and Alkalos should be apolitical and that a term limit of 2 terms of 5 years each should be introduced. The proponents for appointment via village/local community consensus recommended that there should be an option to resort to elections organized by the IEC if the villagers/local community fail to arrive at a consensus. The CRC also received suggestions that a minimum age requirement of 40 years should be introduced for Seyfos, alongside a minimum education requirement of at least a secondary school leaving certificate. The position papers also indicated that the new Constitution should not make any provision, deliberately or otherwise, for the termination or removal of a Seyfo or Alkalo by the President, Minister or any person in authority. Termination or removal of Seyfos or Alkalos should go through local government processes clearly stipulated in the Local Government Act and referenced in the new Constitution.
502. The data received from the HSs as well as the majority opinion from the IPCs were in favour of the election of Seyfos, and the appointment of Alkalos through traditional lines of inheritance. The reasons given for these recommendations were the same as those represented in the position papers.
503. Following the publication of the proposed Draft Constitution and second round of public consultations, submissions were received by the CRC on the subject of Local Government. The CRC received 2 proposals that Seyfos should not be elected, but should be appointed following traditional lines of inheritance. The CRC however further reviewed its research and analysis of the history of chieftaincy in The Gambia. The review confirmed that the institution of Chieftaincy was imposed by the colonial system of administration, based on indirect rule, to undermine and replace the revered and traditional institution of Kings, (Burs or Mansa), that hitherto existed in The Gambia. The colonial administration went further to divide The Gambia into Districts and installed Seyfos in areas where no Kings or Kingdoms existed to facilitate colonial

administration. The installation of a Seyfo followed several modes ranging from appointment to election, from the colonial period to present day. However irrespective of the mode of installation, a common thread that existed from the colonial period to date is that the institution of the chieftaincy has been or continued to be used by various administrations to facilitate and reinforce their rule, and to establish a strong hold and grasp on the community that the Chief has control over. As a result the position became highly politicised resulting in community division based on partisan lines. Furthermore, with the appointment of Chiefs by the Executive, the institution ceased to draw its legitimacy from the support of the people who expected a Seyfo to function according to popular will based on the customs and traditions of the community. With all these problems relating to the institution of the Chieftaincy, the public, during the IPC, overwhelmingly advocated for Seyfos to be elected on non-partisan basis, and that they should abstain from mobilising votes for any political party. The CRC supported by its research recognised the importance of the overwhelming view expressed by the public and decided to maintain the provisions in the proposed Draft Constitution, which provide for the election of Seyfo on a non-partisan basis.

6.12.4. Provisions of the Draft Constitution

504. Chapter XI (Local Government and Decentralisation) of the Draft Constitution is divided into 4 Parts, namely, principles of decentralised local government (Part I), establishment and composition of Local Government Authorities (Part II), elections and terms and conditions of appointment of Local Government Authorities (Part III) and other offices, and Local Government Authorities (Seyfos and Alkalos) (Part IV).
505. The Chapter strengthens the powers of the LGAs by providing for their financial autonomy and accountability and by placing an obligation on the State to provide necessary resources for them to carry out their functions effectively. It also provides for a Local Government Service Commission, adequate gender and youth representation in the local government structures, and increases the term of office for elected local government officials to 5 years from the current 4 years. The Chapter further provides for the election of Seyfos and prohibits Seyfos and Alkalos from participating in partisan politics.

6.12.4.1. PART I – Principles of Decentralised Government

506. This Part identifies the principles of decentralised government, which includes the promotion of democracy and accountability, fostering national unity, bestowing power of self-governance to the people, protecting marginalised groups and facilitating decentralisation of State organs to the administrative areas of The Gambia. This Part is new and was inspired by the overwhelming public demand for a strengthened local government system. Comparative studies carried out by the CRC also revealed a people-centred local government system which ensures the participation of people in

democratic and decision-making processes at the local level, while at the same time ensuring that functions, powers, responsibilities and resources are at all times transferred in a coordinated manner from the Central Government to local government units.⁴⁵ This Part also provides for adequate gender and youth representation in LGAs to promote women and youth participation in decision making bodies at a decentralised level. This equally applies in relation to persons with disabilities.

6.12.4.2.PART II – Establishment and Composition of Local Government Authorities

507. This Part deals with the establishment and composition of LGAs, and is adapted from the provisions of the 1997 Constitution. It empowers the National Assembly to enact legislation to provide for the composition of members of LGAs, and provides the functions and powers of LGAs. A new provision is introduced which prohibits the interference or compromise of an LGA in the exercise of its powers or performance of its functions. The aim is to give LGAs autonomy in the exercise of their functions, and to protect them from undue influence from Central Government. This will ensure good governance and also hold LGAs to account for the performance of their functions.

6.12.4.3.PART III – Election and Terms and Conditions of Appointment of Local Government Authorities

508. This Part provides for the election and terms and conditions of appointment of LGAs, and contains three provisions dealing with election of members of the Authorities, their term of office, and the financial autonomy and accountability of LGAs. The Part extends the term of office of LGAs from 4 years (section 194 (a) of the 1997 Constitution) to 5 years to align the terms of office of all elected officials in The Gambia with the terms of office of the President and National Assembly members. In addition, the Part has a new provision which guarantees LGAs' financial autonomy, which is considered important in the governance structure of a properly empowered and functioning local government system. The Part further empowers the National Assembly to enact legislation to promote good governance of LGAs.

6.12.4.4.Part IV – Other Offices of Local Government Authorities

509. The last Part of the Chapter is new and it establishes other Offices of LGAs, namely, Seyfos and Alkalos, and provides procedures for their election. The Part also prohibits Seyfos and Alkalos from participating in active party politics or associating or affiliating with any political party or expressing political views in the performance of their duties. The overwhelming public opinion stressed the importance of the traditional rulers in maintaining community unity and cohesiveness and, as such, they should not be engaged in partisan politics. However, the CRC considered that in order to restore the glory and dignity of the Offices of Seyfo and Alkalo, a Seyfo and an Alkalo, once they

⁴⁵ See the Constitutions of Uganda and Ghana.

assume office, should serve for a lifetime instead of being subjected to regular or periodic elections. In the same vein, the occupants of such offices should not be subjected to arbitrary removal; the conditions for their removal should be specified and must be strictly adhered to. The conditions for their removal are specified in this Part to relate only to grounds of ill-health due to infirmity of body or mind, or gross misconduct or misbehaviour.

6.13.CHAPTER XII - INDEPENDENT INSTITUTIONS

6.13.1.Dimensions of the Issues

510. The dimensions of the issues are:

6.13.1.1.Part I – Establishment of Independent Institutions and Offices

- (a) Should there be a separate Chapter in the Constitution providing for uniformity in the terms and conditions for appointment, qualifications and disqualifications, removal from office, finance and reporting obligations for Independent Institutions?

6.13.1.2.Part II – National Human Rights Commission

- (b) Should there be a term limit for panel members of the National Human Rights Commission?
- (c) Should the functions of the National Human Rights Commission be prescribed fully in the Constitution?
- (d) Should the function to investigate human rights issues be reposed solely in the National Human Rights Commission?
- (e) Should the National Human Rights Commission be accorded quasi-judicial powers? If so, what should those powers be?
- (f) Should the National Human Rights Commission function with a panel of qualified and competent individuals whose appointment is prescribed in the Constitution?

6.13.1.3.Part III - Anti-Corruption Commission

- (g) Should there be a term limit for occupying the Office of Chief Executive of the Anti-Corruption Commission?
- (h) Should the functions of the Anti-Corruption Commission be prescribed fully in the Constitution?
- (i) Should the function of investigating corruption be reposed solely in an independent Anti-Corruption Commission?

- (j) Should the Anti-Corruption Commission be established under the Constitution and provided with all the necessary constitutional protections to function efficiently and effectively?

6.13.1.4.Part IV - The Ombudsperson (Ombudsman)

- (k) Should the Office of Ombudsman be re-established under the Constitution and thus accorded constitutional status and protection?
- (l) Should the appointment of the Ombudsman be prescribed in the Constitution?
- (m) Should the qualifications and disqualifications of the Ombudsman be prescribed in the Constitution? If so, what should those qualifications and disqualifications be?
- (n) The 1997 Constitution empowers the President to appoint the Ombudsman and his or her deputies in consultation with the Public Service Commission, subject to confirmation by the National Assembly. Does this provide an adequate check and balance to ensure the independence of the Office of Ombudsman?
- (o) Should there be a term limit for occupying the Office of Ombudsman (for example, maximum of 2 five year terms)?
- (p) Should the functions of the Ombudsman be prescribed fully in the Constitution?
- (q) Should the function of the Ombudsman extend to investigating corruption and human rights issues (as provided in the 1997 Constitution) or should this authority be reposed in an independent Anti-Corruption Commission and National Human Rights Commission respectively?
- (r) Should the Office of the Ombudsman have jurisdiction in relation to the security service?
- (s) Furthermore, should the function of the Ombudsman be restricted to matters of maladministration in Government?
- (t) Should the exercise of powers by the Ombudsman be restricted to undertaking investigations and making recommendations to the relevant Government authorities to address?

6.13.1.5.Part V - The Auditor General and National Audit Office

- (u) Are current security of tenure provisions for the Auditor General sufficient – is there a case for the same security of tenure as is available with regard to judges?
- (v) Are there additional measures required to ensure greater transparency in audit exercises and publication of audit reports?
- (w) The National Assembly is required to debate audit reports – are the current provisions adequate and clear on such an obligation?

- (x) Should the qualifications/disqualifications and experience of the Auditor General be specified in the Constitution in defined (rather than general) terms?
- (y) Should the appointment of the Auditor General by the President not be in accordance with the advice of the Public Service Commission, instead of after the President consulting the Commission? What appropriate checks and balances should be put in place?

6.13.1.6. Part VI - The Central Bank of The Gambia

- (z) Should the Board of the Central Bank of The Gambia be appointed by the President in consultation with the Public Service Commission (as provided in the 1997 Constitution) or should the President effect the appointment acting on the advice of the Public Service Commission or other independent institution?
- (aa) Should the appointment of the Governor of the Central Bank be subject to National Assembly approval?
- (bb) Should the Constitution make specific provision with regard to the qualifications and disqualifications of the Governor of the Central Bank?
- (cc) Should the Constitution make specific provision with regard to the qualifications and disqualifications of the other directors of the Board of the Central Bank?
- (dd) Should the security of tenure of the Governor of the Central Bank be specified in the Constitution?
- (ee) Should the other members of the Board of the Central Bank be similarly protected for their term in office?

6.13.1.7. Part VII - Commissions of Inquiry

- (ff) What are the functions and powers of a Commission of Inquiry?
- (gg) Should a Commission of Inquiry be accorded quasi-judicial powers? If so, what should those powers be?

6.13.2. Current State of the Law

511. Although the 1997 Constitution establishes some Independent Institutions, it does not provide for an NHRC and an ACC. However, Acts of the National Assembly created the current NHRC; an Act of the National Assembly also created an ACC, but the ACC is (as of the date of this Report) yet to become functional.
512. Furthermore, the 1997 Constitution provides for the establishment of the Office of the Ombudsman by an Act of the National Assembly. In addition, that Constitution provides in Chapter X for the appointment and tenure of the Ombudsman, as well as his

or her independence. Similarly, the 1997 Constitution provides for an Auditor-General and establishes a National Audit Office in Part II of Chapter IX, and establishes the Central Bank of The Gambia in Part III of the same Chapter. The 1997 Constitution also provides for the functions and appointment of the Auditor-General, and the function of the National Audit Office. Similarly, the 1997 Constitution provides for the role of the Central Bank of The Gambia, establishes the Board of Directors of the Bank, and provides for the composition, qualifications, and disqualifications of members of the Bank's Board.

513. The 1997 Constitution provides for the issuing of Commissions of Inquiry in Chapter XVIII as well as the qualifications of a presiding Commissioner. The Chapter also provides for the functions and powers of a Commission of Inquiry, the publication of Reports of the Commission, as well as the procedure to follow when adverse findings are made by the Commission.

6.13.3.Submissions Received, Analyses and Decisions

6.13.3.1.Part II – National Human Rights Commission

514. The CRC received a submission which recommended that the NHRC should be established under the Constitution, with its functions prescribed therein. The position paper also recommended that appointment of the Chairperson should be effected by the President subject to the advice of the JSC or other related bodies. It was also suggested that the appointment process should be scrutinized and approved by the National Assembly.

515. The IPCs revealed an all-round support for establishing a NHRC that will aid the protection and promotion of human rights in The Gambia; the external consultations were similarly supportive.

6.13.3.2.Part III – Anti-Corruption Commission

516. With regard to the issue of the ACC, a position paper suggested that the new Constitution should establish it and provide its functions. There was suggestion that the President should appoint the head of the ACC and other heads of independent institutions in consultation with an independent body, subject to approval by the National Assembly. Another position paper suggested that the ACC should be established in accordance with the AU Convention on Preventing and Combating Corruption, and that it should be answerable only to the National Assembly.

517. Overall, the general public advocated for the establishment of an ACC in the new Constitution and for persons of high morals and integrity be appointed to the institution to aid good governance in the country. Indeed many participants during the public consultations decried what they perceived as open and rampant corrupt behaviour

(including the display of wealth within short periods after assumption of office) on the part of public officers entrusted with public offices to ensure the development of the country. During the IPCs in particular, participants attributed their poor conditions (including lack of basic amenities) to corruption in government over the years with no hope for redress to elevate and make their lives better. They called for the establishment of a strong and impartial ACC.

6.13.3.3.Part IV – Office of the Ombudsman

518. The CRC received submissions on the issue of the Office of the Ombudsman from both institutions and individuals. Opinion was expressed that the qualifications and disqualifications of the Ombudsman should be prescribed in the new Constitution to ensure the independence of the Office of the Ombudsman. It was also suggested that the new Constitution should specifically establish the Office of Ombudsman, and provide for its powers and functions taking a cue from best practice from other countries around the world; this would help restore public confidence in the Office. There was suggestion that the Ombudsman should be appointed by the President, subject to the advice of the JSC or other related body. It was also suggested that these processes be scrutinized and approved by the National Assembly.

519. The IPCs provided a good opportunity for many participants to learn about the role and functions of the Office of Ombudsman and how the institution contributes overall to good governance. They supported and advocated for the establishment of the Office of Ombudsman in the new Constitution.

6.13.3.4.Part V – Auditor-General and National Audit Office

520. With regards to the Auditor-General and the National Audit Office, there was overwhelming opinion of the need for the security of tenure for the Office of Auditor-General. Further opinion recommended that the qualifications and functions of the Auditor-General should be clearly specified in the new Constitution in order to ensure that only qualified and competent professionals are appointed to the Office. There was even suggestion that the appointment of the Auditor-General should be done by the National Assembly, and not the President, in order to prevent conflicts of interest and ensure that the Auditor-General is able to perform the functions of his or her Office without feeling beholden to any particular public functionary.

521. The opinions expressed in relation to the security of tenure of the Auditor-General underscored the importance of according to the Office financial and functional independence, in line with international best practice.

6.13.3.5.Part VI – Central Bank of The Gambia

522. In relation to the Central Bank of The Gambia, the opinions received by the CRC recommended (amongst other things) that the objectives of the Central Bank should be

clearly stated in the new Constitution; this should include clear provisions setting out the qualifications and disqualifications of members of the Bank's Board of Directors. There was also recommendation that the new Constitution should accord the Central Bank greater independence, which should include removing the Bank from what was viewed as the control and directive of the Minister of Finance.

523. The CRC received further opinion that the Governor of the Central Bank should be appointed by the President in consultation with the PSC and with the approval of the National Assembly. Another opinion recommended that the new Constitution should forbid the President from approving or giving directives in relation to withdrawal of money from the Central Bank without the approval of the National Assembly. Such a provision, it was argued, would prevent abuse of power and commission of economic crimes against the State.

6.13.3.6. Part VII – Commissions of Inquiry

524. The CRC did not receive any position paper or oral submissions on Commissions of Inquiry. The importance of creating a constitutional framework to govern the issuing of Commissions of Inquiry was, however, recognised by the CRC and the subject is appropriately addressed in the Draft Constitution.

6.13.4. Provisions of the Draft Constitution

525. Chapter XII is new and it provides for the establishment of Independent Institutions in 7 Parts. This is a departure from the 1997 Constitution, which does not provide a separate Chapter for Independent Institutions. Instead, the 1997 Constitution provides the Independent Institutions (of Auditor-General and Audit Office, Ombudsman and CBG) in 3 different Chapters. Furthermore, the 1997 Constitution does not provide for the NHRC (which exists by virtue of an Act of the National Assembly) and the ACC.

526. The new Chapter XII recognises and caters for Independent Institutions, such as the NHRC, the ACC, the Office of the Ombudsperson (renamed from Ombudsman), the Office of the Auditor-General, CBG and Commissions of Inquiry. The Chapter contains provisions meant to ensure the independence and security of tenure of officers of these institutions. It also provides for the appointment of Chairpersons and members of the Governing Boards of these Independent Institutions. Generally, these Independent Institutions are viewed as particularly significant in the overall governance architecture of The Gambia. The CRC formed the view that the new Constitution should positively respond to the public call for improved governance institutions to preserve and protect human rights, good administration and national resources and wealth.

6.13.4.1.Part I – Establishment of Independent Institutions

527. Part I of the Draft Constitution establishes 5 Independent Institutions, namely, the NHRC, the ACC, the Ombudsperson, the Auditor-General, and the CBG; in addition, it establishes the framework for the issuing of Commissions of Inquiry, which is viewed as an important institution that lends support to assuring good governance. As already noted, the establishment of the NHRC and the ACC is new; both institutions are considered key in ensuring respect for, and preservation and protection of, human rights, as well as promoting good governance.

6.13.4.2.Part II – National Human Rights Commission

528. Part II of Chapter XI of the Draft Constitution establishes the NHRC and provides for its composition, functions and powers. The NHRC is designed to promote respect for human rights and develop a culture of human rights in The Gambia. The CRC formed the view, based on the opinions expressed during the public consultations, that the NHRC is an important institution that deserves a place in the Constitution. The Gambia is a party to a number of international human rights treaties⁴⁶ and, therefore, has a legal obligation to ensure adherence to them. In this context, the NHRC is effectively clothed with quasi-judicial powers whereby it can receive and investigate complaints of human rights abuses and/or violations.

6.13.4.3.Part III – Anti-Corruption Commission

529. Part III establishes the ACC and provides for its composition, functions and powers. The establishment of the ACC is aimed at preventing, eradicating and suppressing corruption and corrupt practices in The Gambia, particularly in the administration of government as an institution. The ACC is also tasked with promoting values of honesty and integrity in the affairs of the State and Government, and promoting public awareness about the dangers of corruption. The ACC is provided for in the Draft Constitution in response to calls from many Gambians for its establishment to help in bringing an end to corrupt behaviour in the institution of government and thus ensure that national resources and wealth are directed to meaningful national development, including improvement to the livelihood of Gambians generally, and thus engender a sense of national pride.

6.13.4.4.Part IV – The Ombudsperson

530. The Draft Constitution establishes the Office of the Ombudsperson in Part IV of Chapter XII. Considering the central role that the Office of the Ombudsperson plays in administrative governance, it is important that the institution is properly empowered to discharge its mandate. For this reason, the Draft Constitution provides the composition,

⁴⁶ Examples are the African Charter on Human and Peoples Rights (Banjul Charter), UN Convention on the Rights of the Child, UN Convention on the Elimination of All Forms of Discrimination Against Women and the UN Protocol on Economic, Social and Political Rights.

functions, and powers of the Ombudsperson and does so in a manner aimed at ensuring its independence. .

531. The Draft Constitution differs from the 1997 Constitution in a significant way, in that the 1997 Constitution left the establishment of the Office of Ombudsman to the National Assembly instead of establishing it in the Constitution. The CRC, based on the public opinions expressed on the issue of good governance during its public consultations, formed the view that the institution should be constitutionally established in the new Constitution with defined responsibilities and powers vis-à-vis the other Independent Institutions. The Draft Constitution also changed the name of the Office from “Ombudsman” to “Ombudsperson” to make it gender neutral, in line with international best practice.

6.13.4.5.Part V – Auditor-General and National Audit Office

532. The Draft Constitution establishes the Office of Auditor-General and National Audit Office under Part V of Chapter XII. Just like the 1997 Constitution, the Draft Constitution provides that, the Office of the Auditor-General shall be in the public service. The Draft Constitution provides a term limit of 9 years for the holder of the Office of Auditor-General. This accords with international best practice whereby the holders of that Office are assured security of tenure and thus expected to function and perform their constitutional and legal duties responsibly without fear of removal (save for defined reasons). This approach is different from the 1997 Constitution, which has not created a term limit in relation to the Office of Auditor-General.

6.13.4.6.Part VI – Central Bank of The Gambia

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

534. Unlike the 1997 Constitution, the Governor of the CBG is no longer the Chairperson of the Board of Directors, although he or she remains a member of the Board. This accords with the principles of transparency and good governance. It is considered important that the Chairperson of the Board of Governors should not be a person with executive powers within the CBG; the Chairperson should be an individual who can play a significant oversight role in relation to the governance and other affairs of the CBG, hence the balance created between executive and non-executive membership of the Board.

6.13.4.7.Part VII – Commissions of Inquiry

535. This Part gives the President the power to issue Commissions of Inquiry and sets out the circumstances that may give rise to the issuing of such Commissions; it also

defines the powers and functions of a Commission of Inquiry. In essence, this Part replicates the provisions of the 1997 Constitution, which the CRC found to be appropriate.

6.14.CHAPTER XIII - PUBLIC FINANCE

6.14.1.Dimensions of the Issue

536. The dimensions of the issues are as follows:

- (a) In relation to the waiver of taxes, should an enactment empower a public functionary to impose or waive taxes by way of an Order, Regulations or otherwise?
- (b) Is 14 days (as provided in the 1997 Constitution) not too short for the National Assembly to properly and effectively consider the annual estimates laid before it?
- (c) Is 7 days (as provided in the 1997 Constitution) not too short to require the National Assembly to consider and pass an Appropriation Bill, after the Bill has been introduced?
- (d) Should the Government be allowed to grant loans from public funds (as provided in the 1997 Constitution)?
- (e) What other measures are necessary and justified to prevent the abuse and misuse of public funds that should be considered in the new Constitution?
- (f) Should the subject of public procurement be provided for in the new Constitution?

6.14.2.Current State of the Law on the Issue

537. The 1997 Constitution provides for Public Finance in Chapter IX, with Part I thereof (sections 149 - 157) dealing with Taxation, Consolidated Fund, Withdrawals from the Consolidated and other Funds, Annual Estimates and Appropriation Bill, Supplementary Appropriation, Contingencies Fund, Loans, Salaries, and Public Debt.

538. Part II of that Chapter provides for the Office of Auditor-General, establishment of the National Audit Office, and functions of the Auditor-General in (sections 158, 159, and 160 respectively).

539. Part III of Chapter IX provides for the establishment of the Central Bank and the Board of the Central Bank (sections 161 and 162, respectively).

6.14.3.Submissions Received, Analyses and Decisions

540. The CRC finds the provisions of Chapter IX of the 1997 Constitution to be in good order in many respects. However, it has taken into account the concerns and opinions expressed by participants during the public consultation periods.
541. During the public consultations there was overwhelming opinion that the new Constitution should contain provisions that properly and effectively safeguard the public finances and hold public officials accountable in relation to any dealing concerning public funds and assets generally. The subjects of competence and trust were consistently raised as important pre-requisites to raising and spending public revenue for national development purposes. Concerns were also raised by some participants about successive governments saddling future generations of Gambians with unbearable debt. They formed the view that greater effort should be expended in raising public revenues locally and applying those revenues sensibly and responsibly.
542. On the issue of waiver of taxes, opinion was expressed that this process needs to be more transparent and applied across the board without any measures to protect a few persons. The point was made that any wide scale waiver of taxes (bearing in mind, particularly, that The Gambia relies heavily on tax revenues) could potentially dent the revenue base of the country. In considering this matter, the CRC formed the view that where a law confers powers on any person or authority to waive or vary a tax imposed by that law, that person or authority should be legally obligated to report to the National Assembly and the Auditor General quarterly on the exercise of those powers. This will aid good governance and ensure transparency in any matter regarding the exercise of a discretion, whether constitutionally or statutorily, in relation to the waiver of taxes.
543. On the issue of the budget, the general consensus from the public consultations was that the 14 days provided in the 1997 Constitution for the National Assembly to review the annual budget and the 7 days required for the National Assembly to pass the Appropriation Bill are not enough. The CRC agrees with this position and is of the considered view that Legislators should be afforded sufficient time within which the annual budget may be properly scrutinized and passed into law through an Appropriation Bill. The stipulated periods of 14 days and 7 days to respectively review and pass an Appropriation Bill as contained in Chapter IX of the 1997 Constitution are inadequate to ensure proper scrutiny and balance within the annual budget.
544. During the public consultations, opinion was also expressed for the need to inform the public with regard to any raising of taxes by the Government. Participants lamented that quite often the public is unaware of proposals to raise taxes and generally taxes are imposed without any notice. This causes problems of compliance with the new taxes. Following further research on this subject, the CRC recognised that international best practice leans towards greater public involvement in developing and applying taxes.

Generally, when people are informed and consulted on and indeed involved in shaping taxes, there is a greater chance of compliance when those taxes are enacted into law. This, consequently, reduces the cost of compliance and the need for taking enforcement action on any wide scale. In this context, the CRC also considered the importance of not giving retroactive effect to tax legislation as the consequence for doing so occasions hardship on taxpayers.

545. Following the publication of the proposed Draft Constitution and second round of public consultations, there was broad public support for the provisions contained therein. The few submissions received by the CRC after publication of the proposed Draft Constitution essentially buttressed the provisions on public finance management. The submissions were focused on taxation, Development Fund, public procurement, the Consolidated Revenue Fund and loans. Considering the overwhelming opinion expressed on the need to ensure good governance and transparency in financial management, the CRC formed the view that it is essential to identify and provide key principles of public finance which must be adhered to in dealing with public assets. Part of this entails encouraging and assuring persons who expose waste or mismanagement of public funds not to relent in their efforts of protecting public assets and that they will, in the process, be protected under the Constitution. This relates back to the provisions of Chapter II of the Draft Constitution on National Values and Principles of Governance, which has equal application to matters falling within public finance management.

6.14.4. Provisions of the Draft Constitution

546. Chapter XIII deals with Public Finance and is divided into 6 Parts. The Parts cover Principles of Public Finance, Taxation, Public funds, Loans and Grants, Government Guarantees and Public Debt, Budget, and Public Procurement.

547. The Chapter introduces new provisions relating to the creation of a Development Fund for marginalized areas, the need for consultation before the imposition of tax, stakeholder consultations on the National Budget, more progressive and stricter rules on public finance management, transparency and compliance with laid down public finance laws and regulations.

548. Part I of this Chapter sets out the principles that would direct public finance in the country, in order to guide the Government and all public institutions, including persons dealing with the Government and such public institutions, to ensure the proper management of the public finance system in The Gambia.

549. Part II provides (section 240) for the raising of taxes and how taxation is to be administered in the country. It controls the waiver and variation of taxes and prescribes the procedure to be followed for any imposition, waiver or variation of taxes.

550. Part III is new and it deals with Government financial support to Local Government Authorities. The Part also regulates how loans are to be contracted and makes provision for the management of the public debt (among others). Furthermore, it recognizes the oversight role of the National Assembly regarding the management and control of the public debt.
551. The provisions on the Auditor-General and the National Audit Office, which were placed under Public Finance in the 1997 Constitution, are now provided for in Chapter XIII dealing with Independent Institutions. The powers, functions, qualifications, independence, appointment and removal procedures have been clearly spelt out in that Chapter.
552. The Chapter also establishes a Development Fund and stipulates that 5% of all the revenue collected by the Government each year, calculated on the basis of the most recent audited accounts of revenue received, shall be paid into the Fund. The revenue raised and paid into this Fund is to be applied in developing marginalised areas in the country. This is specifically designed to raise the standard of development of such areas to bring them to par with other areas and groups within the country. It is important to note that revenues collected and paid into this Fund can only be used for the purposes set out in the Chapter and, irrespective of any revenues accumulated within the Fund, the required annual payment into the Fund must be strictly adhered to.
553. A new provision on accountability is also introduced in the Chapter, which seeks to hold the accounting officers of Ministries and Departments, as well as holders of other public offices accountable to the National Assembly for the use of public funds, including any misuse and the reasons therefor.
554. In relation to the Annual Estimates and Appropriation Bill, the Draft Constitution mandates the President to cause the Minister for Finance to lay before the National Assembly, at least 60 days before the end of the financial year, estimates of the revenue and expenditure of The Gambia for the following year. This is a departure from the 1997 Constitution which provides that this be done at least 30 days before the end of the financial year. The period within which the Appropriation Bill should be considered and passed has been raised from 7 days (under the 1997 Constitution) to 14 days.
555. A new Part on Public Procurement has also been introduced in Chapter XIII. It provides a framework for the regulation of public procurement and requires transparency in all procurements to prevent corruption.

6.15.CHAPTER XIV - LAND, ENVIRONMENT AND NATURAL RESOURCES

6.15.1.Dimensions of the Issue

556. The dimensions of the issue are as follows:

6.15.1.1.Land Commission

- (a) Should the new Constitution be more explicit in establishing the Land Commission than the 1997 Constitution to include identifying the composition, functions and powers of the Commission and, if so, how should the Commission be composed and what should constitute its functions and powers?
- (b) What security of tenure should be accorded to members of the Land Commission to ensure their independence?
- (c) Should the role of the Land Commission be expanded to include oversight with respect to integrated land, natural resources and environment preservation to ensure systemic and responsible management and protection?

6.15.1.2.Land, Environment and Natural Resources

- (d) Should specific provision be made in relation to land ownership in The Gambia as between citizens and non-citizens and, if so, what provision on land ownership in The Gambia should be in the new Constitution?
- (e) What measures should be considered as a mechanism for the adequate protection, conservation, management and sustainable use of The Gambia's natural resources?
- (f) What specific provisions would you recommend as adequate measures to protect and preserve The Gambia's environment and ensure clean air?
- (g) What other measures do you consider to be sufficiently important to warrant inclusion in the new Constitution in relation to the Land Commission, land ownership and use, and the protection and preservation of The Gambia's environment and natural resources?

6.15.2.Current State of the Law on the Issue

557. Despite the small size of The Gambia, a relatively high population density, and the precarious state of the country's land and environmental resources, the 1997 Constitution has only one section on land; that section only deals with the establishment of the Land Commission. The 1997 Constitution contains no provision on land ownership, land use and administration, and land tenure system of The Gambia, and leaves the composition, functions and powers of the Land Commission to be determined by an Act of the National Assembly. The only other section of the 1997 Constitution that mentions "land" is section 22 (Protection from the deprivation of property) in Chapter IV (Fundamental Human Rights).

558. Similarly, the word "environment" is mentioned only 5 times in the 1997 Constitution, once in section 193 (3) (h) which provides that the preservation of the

environment shall be one of the functions, powers, and duties of Local Government Authorities, and 3 times in section 215 (economic objectives) in terms of the duty of the State to pursue a policy that protects the environment of the nation for posterity, and cooperating with other nations and bodies to protect the global environment. Section 220 (duties of a citizen) also provides that it is the duty of a citizen to protect and conserve the environment of The Gambia.

6.15.3.Submissions Received, Analyses and Decisions

559. The CRC received submissions on the issues of land, the environment and natural resources. Some participants in the consultations opined that the protection of the fauna and flora of the country should be provided and entrenched in the Constitution, and that at least 40 percent of the territorial landmass and maritime resources should be protected in the Constitution through a special clause. Other participants recommended that vehicles that emit harmful substances should be taxed higher, and industries that are responsible for pollution should be fined. Participants generally advocated for a pollution-free society, which will help to improve human and animal health considerably.
560. Most of the participants in the public consultations supported giving the Land Commission a constitutional status, suggesting that it should be established to deal with the issue of land ownership in The Gambia. In addition, almost all participants who addressed the issue called for the protection and preservation of natural resources and the environment. In addition, participants advocated for the equitable sharing of proceeds from natural resources between the State and the communities in which such resources are located. This, according to them, will not only ensure the progressive development of the communities, but also prevent disharmony or violence between State actors or licensees and the communities. The Faraba incident (in which some members of the Faraba community and security forces guarding a sand mining resource clashed resulting in fatalities) was constantly cited as an avoidable example.
561. The CRC, in its review of land, environment and natural resources issues in The Gambia, found that disputes over land ownership caused by increasing population and increased urbanization, especially in the Greater Banjul Area (GBA), are major challenges in the country. In addition, a breakdown of traditional authority for land management, reduced institutional capacities, the absence of a National Land Policy and an up-to-date land use plan for the GBA and urban growth centers, all pose major challenges to land resources management in the country.
562. The increased demand for land has increased its value, and induced an increased tendency to monetise it. This has created the unfortunate scenario whereby farmers, who traditionally had relied on their lands for survival, parting with their lands for

undervalued benefits resulting in long term hardships for them. The unregulated real estate agencies and land speculators have proliferated, adding a new dimension to the problem of land disputes and, indeed, many of the participants in the public consultations placed the blame on increased land disputes squarely at the doorsteps of unregulated real estate agents and land speculators. Specific concerns were raised by some participants in the public consultations regarding non-citizens engaging in land speculation which, in the participants' view, is a source of conflict in the long run with potential devastating consequences. In fact, one participant described land disputes in the country as a ticking time bomb which requires immediate action.

563. It is the assessment of the CRC that in the long run, land disputes pose a significant threat to social cohesion and stability, and it will take proactive measures such as sound policies as well as sound institutions to avert these conflicts. The development of such policies and the strengthening of the governing institutions must receive immediate attention to avert negative consequences, apart from ensuring that adequate land, including farmland, is preserved for generations of Gambians yet unborn.
564. In the same vein, it is the CRC's assessment that serious consideration should be given to preserving the natural environment to ensure appropriate balance in the country's ecosystem, particularly in the face of increased change in the climate. Furthermore, the exploitation of the country's natural resources should be guided by sound policies that promote respect for the land and the environment, while at the same time ensuring that proceeds realised from such exploitation result in some tangible benefits to the communities in which such natural resources are located. This will ensure responsible affinity to the environment and prevent conflicts that may otherwise arise.
565. Against this background, the Draft Constitution expands the mandate of the Land Commission to include oversight with respect to integrated land, natural resources and environment preservation to ensure systemic and responsible management and protection of these natural resources. It is in that context that the Land Commission has been renamed the "Land, Environment and Natural Resources Commission" (LENRC) to give it a much broader mandate to serve as agent in preserving the country's natural environment by providing necessary guidance and advice to key Government institutions.
566. The CRC considered it appropriate to reduce the duration of the leasehold tenure that non-Gambians can have, and protect the interests of local communities where land is involved, particularly in investments. Furthermore, any continued involvement of non-citizens in land speculation, including the buying and selling of land, will be encouraging a potential conflict in the long run that may have negative consequences of great proportion. This should be avoided.

567. There has been near unanimity in the calls for the new Constitution to establish an Agricultural Service Commission (ASC) to cater for the farming community, considering that agriculture is effectively the country's major revenue source. While the CRC did not consider the establishment of an ASC as necessarily a solution to the plight of farmers considering the numerous institutions relative to agriculture and the low level of formal (governmental) employment in that sector, it found merit in the need to consult farmers on any development of agricultural policies that affect the farming community in the country. In addition, the CRC found great merit in the need to protect and preserve farming lands in the country.
568. On environmental issues generally, the CRC identified land degradation, coastal erosion, loss of forest cover and biodiversity, as well as waste management, illegal settlements and sand mining as the biggest challenges facing the country. The CRC also found that these issues are made more serious by weak institutional and regulatory frameworks, as well as poor enforcement and implementation of environmental regulations. To cap the challenges, a meeting with the Government institutions on land, environment and natural resources revealed a serious failure of coordination between them, including jurisdictional overreach on the part of some of the institutions to the detriment of the environment.
569. The CRC thus considers it appropriate to create a measure in the new Constitution. It is considered essential that all development projects and initiatives in the country should have an environmental impact assessment conducted as a pre-requisite to their launch and continually monitored for compliance. In a similar vein, all policies should have a strategic environment assessment (SEA) to ensure a sustainable environment.
570. With regards further to natural resources, the CRC noted that these have suffered the "tragedy of the commons" (meaning that everyone benefits from them but nobody takes care of them), especially with regards to water, sand, forests and marine resources. The CRC also noted that it is important that the State ensures sustainable exploitation, utilization, management and conservation of natural resources, especially the petroleum resources that are emerging. It is the CRC's assessment that the State should ensure that any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of The Gambia, to any other person or body of persons howsoever described, for the exploitation of petroleum and large scale extraction of natural resources made or entered into after the coming into force of this Constitution should be subject to approval by the National Assembly.
571. The second round of public consultations by the CRC resulted in 21 submissions made by citizens and other stakeholders in relation to the subject of Land, Natural Resources and the Environment. While there was general support amongst the citizenry of the measures provided in the Draft Constitution to preserve and protect the land, environment and natural resources, the local diaspora community felt strongly that they

were being dispossessed of their acquired land and denied the ability to transfer such land to their heirs. Similarly, the mainly foreign business community⁴⁷ felt strongly that the measures on land ownership discouraged investment and, therefore, advocated for a more liberal approach that balances protection of land for the benefit of citizens with encouraging meaningful investment.

572. Further, while there was general agreement during the second round of public consultations that there was no need for an ASC, the CRC was urged to give serious consideration to crafting a provision that ensures the involvement of farmers in decisions that affect agriculture.

573. The CRC deliberated on the submissions received during the second round of public consultations and updated the Draft Constitution accordingly.

6.15.4. Provisions of the Draft Constitution

574. Chapter XIV introduces new provisions recognising and reinforcing the importance of land, natural resources and the environment. It emphasises the need to protect The Gambia's land and natural resources for both current and future generations of Gambians. New provisions on land ownership and tenure are accordingly introduced. The mandate of the Land Commission (renamed the Land, Environment and Natural Resources Commission) under the 1997 Constitution is now broadened to include the environment and natural resources.

575. The Draft Constitution's provisions on land, environment and natural resources are organized in Chapter XIV in 3 Parts, namely, (i) Principles of equitable use of land, environment and natural resources, (ii) Land, Environment and Natural Resources Commission, and (iii) General provisions.

576. Part I of Chapter XIV defines the principles of land, environment and natural resources and provides that these resources must be managed in a manner that is equitable, efficient, productive and sustainable. The Part also provides for these principles to be implemented through a national land, environment and natural resources policy developed and reviewed regularly by Government, and through Acts of the National Assembly.

577. The Part further emphasises equitable sharing of natural resources and access to such resources. It also recognises the valuable role that farmers can play in shaping policies on agriculture and, therefore, obligates the State to consult with the farming community in the development of such policies.

⁴⁷ There were also a few individual citizens and State institutions that advocated for a more liberal approach to land preservation and protection vis-à-vis non-citizens' ability to acquire and hold land.

578. Part II of the Chapter establishes the Land, Environment and Natural Resources Commission (LENRC) and provides for its composition, powers and functions, including the possibility of expanding the powers and functions through an Act of the National Assembly. In addition, the Part provides the qualifications and disqualifications LENRC members and prescribes the circumstances under which they may be removed from office and the manner of their removal. In order to ensure the independence of the LENRC, the Part provides that the LENRC shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.
579. Part III of the Chapter makes provision for land ownership and tenure in The Gambia, as well as the ownership of land in the country by non-citizens. The Part makes the important declaration that all land in The Gambia belong to the people of The Gambia as a nation, as communities, and as individuals. Further provision is made that land tenure in The Gambia shall be based on freehold, leasehold and customary land tenure, unless otherwise provided by an Act of the National Assembly.
580. Part III of the Chapter provides for landholding by non-citizens of The Gambia. It specifically provides that a non-citizen of The Gambia shall not have freehold interest in or right over land in The Gambia, and that any non-citizen holding a freehold title on any land in The Gambia before the coming into force of the Draft Constitution shall have that land converted to a leasehold for a period of 99 years after the Draft Constitution comes into force. A non-Gambian holding land in customary tenure shall have that land converted to a leasehold land for a period of 50 years after the coming into force of the Draft Constitution. It must be pointed out, however, that the 99-year lease is longer than the recommendations received by the CRC which ranged from 21 years (for non-Gambian citizens) to 25 years (for non-Gambian investors). Provision is also made on land ownership by diplomatic missions in The Gambia; restriction is placed on the conversion of land from the purpose for which it was given or allocated to another purpose.
581. Specific provision is made in response to the feedback and submissions received by the CRC on the very sensitive issue of land ownership in The Gambia. The CRC was informed during the public consultations, and found through indepth research that many communities were being taken advantage of when it came to land resources. Of particular concern in this regard is the ownership of residential land by non-Gambians who leverage their buying power to squeeze Gambians out of the land market, and thereby creating the prospect of an increasing population of landless Gambians in their own country. It was also noted that some of the non-Gambians would eventually sell those lands back to Gambians at increased prices.
582. The CRC recognized that land is an important factor of production and a valuable asset in any investment and, as such, can be used as an incentive to attract foreign

investment in The Gambia. To balance these conflicting interests (the need to attract foreign investments and ensure access of Gambians to land), the Chapter provides restricted access of non-Gambians to land by restricting them to leasehold ownership.

583. The provisions also address a key concern of many Gambians, which is the conversion of land from agricultural or industrial use to residential purposes, and the speculative use of land by investors. For this reason, provision is made that any non-Gambian who holds leasehold property shall not convert that property for another purpose, and that the land shall revert to the State if it is no longer used for the purpose for which the land was initially allocated. The obligation is on the Government (as the primary representative of the State) to preserve and protect land and, consequently, to enforce the prohibitions and restrictions relative to the acquisition and use of such lands.

6.16.CHAPTER XV - THE PUBLIC SERVICES

6.16.1.Dimensions of the Issue

584. The dimensions of the issue are as follows:

6.16.1.1.Public Service Commission

- (a) Should the Public Service Commission (PSC) be restricted to dealing with mainstream Civil Service appointments and related matters only?
- (b) Should the position of Secretary General as Head of the Civil Service be apolitical based on confirmation by the National Assembly and appointment by the President?
- (c) Should all Permanent Secretaries' appointments as administrative heads of Ministries of Government be subject to approval by the President?
- (d) Should details regarding the PSC, save composition and terms and conditions of service of members, be dealt with in an Act of the National Assembly, instead of in the Constitution?
- (e) Should members of the PSC serve only for a specified term limit? If so, what should that term limit be (the 1997 Constitution provides a term limit of 2 years which may be renewed each time the term expires)?
- (f) What security of tenure (if any) should be accorded to members of the PSC to ensure the diligent and independent performance of their duties (for example, should they have the same security of tenure as members of the IEC, NHRC and ACC)?
- (g) Should the office of PSC members be full time (as currently provided in the Constitution) or should it be part time?

- (h) If it is to be part time, is the current Personnel Management Office adequately or can it be adequately restructured and resourced to deal with all administrative matters relative to the employment, termination of employment and general conditions of service of public officers?
- (i) Should the qualifications of membership of the PSC be better defined on academic and experience grounds, in addition to the current general terms of “high integrity and good character” provided in section 172 (2) of the 1997 Constitution?
- (j) Are the disqualifications for PSC membership as currently provided in section 172 (3) of the 1997 Constitution sufficient?

6.16.1.2. Teaching Service Commission

- (k) Considering the size of the teaching profession in The Gambia, is it time that a teaching service commission (TSC) is established to properly and professionally steer the profession and improve school education?
- (l) If the answer to paragraph (k) is in the affirmative (Yes), should details regarding the TSC, save composition and terms and conditions of service of members, be dealt with in an Act of the National Assembly, instead of in the Constitution?
- (m) Should the provisions relative to the Office of PSC have equal application in relation to the Office of TSC? If not, what provisions should not apply?

6.16.1.3. Health Services Commission

- (n) Considering the size of the health service profession in The Gambia, is it time that a health service commission (HSC) is established to properly and professionally steer the profession and improve the delivery of health service?
- (o) If the answer to paragraph (n) is in the affirmative (Yes), should details regarding the HSC, save composition and terms and conditions of service of members, be dealt with in an Act of the National Assembly, instead of in the Constitution?
- (p) Should the provisions relative to the Office of PSC have equal application in relation to the Office of HSC? If not, what provisions should not apply?

6.16.1.4. Public Enterprises

- (q) Should the President be the authority to appoint the chief executive of a public enterprise (as is currently the case under section 175 (3) of the 1997 Constitution, but after consultation with the Board of Directors) or should such an appointment power be reserved for the Board of Directors only?

- (r) If appointment of the chief executive of a public enterprise is to be carried out by the Board of Directors, should specific provision be made requiring a vacancy in the Office of a chief executive to be advertised publicly to secure the service of a suitably qualified candidate?
- (s) Should the PSC have any jurisdiction to provide a public enterprise with guidelines on personnel matters (as is the case under the 1997 Constitution) or should this be left to the public enterprise to determine?
- (t) Should chief executive officers of public enterprises be subject to confirmation by the National Assembly (through a Select Committee, for example) before they can be appointed to assume office?
- (u) Should the new Constitution provide security of tenure for chief executive officers of public enterprises?
- (v) As a measure of good governance, should public enterprises be required, in addition to preparing and providing an annual report to the National Assembly, to publish their audited accounts in the Gazette and on their website on an annual basis, providing a breakdown on income and expenditure?
- (w) Should specific provision be made in the Constitution that the chief executive officer of a public enterprise shall automatically stand dismissed if there is a failure, within a specified period (say 6 months) of the end of each financial year, to provide the National Assembly with the annual report, or to publish the audited accounts, of the public enterprise, unless the failure to do so is determined to lie with the Board of Directors?
- (x) Should specific provision be made in the Constitution that the Board of Directors of a public enterprise shall automatically stand dismissed if there is a failure, within a specified period (say 6 months) of the end of each financial year, to provide the National Assembly with the annual report, or to publish the audited accounts, of the public enterprise, unless the failure to do so is determined to lie with the chief executive officer?
- (y) Are there other measures by which public enterprises can be held accountable to ensure good governance and the good administration of public property?

6.16.2.Current State of the Law on the Issue

6.16.2.1.PART I - Public Services

585. This Part of the 1997 Constitution provides for the appointment, removal, protection and retirement of civil servants. It states that the public service of The Gambia consists of the civil service as established immediately before the 1997 Constitution

came into force, and other offices declared elsewhere in that Constitution to be offices in the public service .

586. This Part further declares 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. However, this excludes the offices of President, Vice President, Speaker and Deputy Speaker of the National Assembly, Minister or a member of the National Assembly and a member of the Advisory Committee on the exercise of the prerogative of mercy or the Advisory Committee on the conferment of honours.
587. The Part also provides for the appointment and removal of public officers. The power to remove an officer in the public service shall include the power to require such officer to retire from the public service. However, this power to require the retirement of an officer from the public services does not extend to the offices of a superior court judge, the DPP, the Auditor-General or the Ombudsman or Deputy Ombudsman. On the other hand, any law that vests in any person or authority the power to remove a person from a public office does not affect the power exercised in relation to the abolition of any office relative to the compulsory retirement of public officers.
588. The Part further provides that the President shall appoint a person holding an office in the public service on permanent terms to be the Head of the Civil Service, who shall be the competent authority for the Civil Service. It also provides that the holder should not hold any other office of profit or emolument in the service of The Gambia. The appointment by the President shall be done in accordance with the advice of the PSC.
589. The Part also provides protection for public servants from victimisation or discrimination in the exercise of their official functions in accordance with the law.
590. Public servants are also restricted from political activities. For instance, any person who holds an office in the public service shall not hold office in any political party. In the event the person wishes to contest an election for a political office he or she shall, prior to nomination as a candidate, obtain one year's leave of absence without pay, which leave shall not unreasonably be refused. If elected into office, the person shall immediately resign from his or her office in the public service.
591. Further provision is made relating to the retirement age of persons holding office in the public service. Such persons are subject to compulsory retirement upon reaching the age of 60 years⁴⁸; voluntary retirement is pegged at 45 years.

⁴⁸ This age was increased from 55 years in 2004 by a constitutional amendment (Act No. 4 of 2004). However, no corresponding amendment was effected to the voluntary retirement age, which therefore remains at 45 years.

6.16.2.2.PART II - Public Service Commission (PSC)

592. Part II of this Chapter of the 1997 Constitution establishes the PSC and makes provision for its composition, powers and functions. The PSC comprises a Chairman and not less than two nor more than four other members. It provides that a member cannot be a member of a public service, a disciplined force, the National Assembly, a local government authority, the governing body of a public enterprise, or the governing body of a political party. Such person is disqualified for PSC membership if, within the two years preceding his or her appointment, he or she had been nominated as a candidate in an election to the National Assembly, is not qualified to be elected as a member of the National Assembly or is disqualified from holding an office in the public service.
593. The President is empowered to remove a member of the PSC only by reason of infirmity of mind or body or for any other cause, or for misconduct or incompetence.
594. The PSC is vested with the power and function to effect appointments to, and exercise disciplinary control over, public offices, including appointments to the Office of Permanent Secretary in consultation with the Head of the Civil Service (that is, the Secretary General). This power, however, does not apply to offices in a local government authority, a public enterprise or a disciplined force. Similarly, the exercise of the power does not extend to appointments of the personal staff of the President or Vice President save with their agreement. The governing body of an institution of higher education, research or professional training established within the public service is responsible for the appointment of their own staff (and not by the PSC).
595. Overall, the PSC is vested with the power to ensure the management and efficiency of the public service, review the terms and conditions of persons serving in public offices within the public service, review the General Orders and Regulations of the public service in relation to training and qualifications, and prescribe terms and standards for entrance and promotion examinations and establish appropriate standards and guidelines for the public service.
596. The PSC is obligated to submit an annual report to the National Assembly on the performance of its functions.

6.16.2.3.PART III - Public Enterprises

597. This Part of the 1997 Constitution covers public enterprises, public service pensions and the protection of pension rights. The Part defines a public enterprise as a body corporate or other body or institution, wholly owned or controlled by the Government. The members of the Board of Directors or other governing body of a public enterprise are to be appointed by the President after consultation with the PSC. The chief executive of a public enterprise is to be appointed by the President after consultation with the Board of Directors or other governing body of the public enterprise and the PSC.

598. Provision is made that within 6 months of the 1997 Constitution coming into force, the National Assembly (through an Act) shall establish a committee to monitor the operations of public enterprises. The CRC observes that this constitutional obligation on the National Assembly was never carried out.

599. Each public enterprise is required to submit an annual report to the National Assembly concerning its business and operations. The report is to be submitted within 3 months of the end of the year to which the report relates, although the relevant committee of the National Assembly relative to public enterprises may extend the period of submission beyond the stipulated 3 months.

600. In relation to pensions, the Part provides that 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 dependents of such persons in respect of such service shall be free of all tax; such pension is subject to review to take account of any relevant salary increases. Further provisions are made relating to the relevant dates to which pensions apply.

6.16.3. Submissions Received, Analyses and Decisions

601. The public consultations generally revealed support for reforms to the public service and its institutions to steer forward national development through efficient and effective service delivery. While there was broad agreement that the PSC remains an important institution in the regulation and supervision of the Civil Service, many participants felt that the public service has grown exponentially over the years and the time has come for certain key institutions and their governing powers and functions to be separately identified and empowered to ensure greater efficiency and effectiveness. Accordingly, submissions were received advocating strongly for the inclusion of a Teaching Service Commission (TSC), Health Service Commission (HSC) and Agricultural Service Commission (ASC). The information collected from the public consultations indicates that a low percentage suggested that a TSC and HSC should not be included in the new Constitution.

602. With respect to the HS, a majority of the respondents suggested that a TSC should be included in the new Constitution to ensure a better and effective administration of the education sector at all levels. Similarly, a majority of participants from the IPCs supported the establishment of an HSC, with the justification that such an institution will guarantee that the indispensable needs of the health sector to better serve the population are catered for at all levels and in a sustainable manner. The majority of the contributions from the public consultations also showed an overwhelming support for establishing an ASC. This, they believed, would ensure that the needs of the agricultural sector, particularly those of the farming community, are taken care of at all levels. While there was broad support for establishing the TSC, HSC and ASC, there was little

contribution with regard to the details of the composition, powers and functions of these proposed institutions, save that they should be given powers similar to those of the PSC.

603. On the suggestions for a term limit of members of the PSC, TSC, HSC and ASC, there was no dissent to this being provided in the new Constitution. There was, however, not much opinion on what the term limit should be with many participants preferring to leave this matter to the CRC to determine. In a similar vein, there was broad support for providing security of tenure for the Offices of Secretary General, Permanent Secretary and member of a service commission (namely, PSC, TSC, HSC and ASC).
604. There was broad support for specifically establishing in the new Constitution the position of Secretary General as Head of the Civil Service. The public opinion was that the position should be apolitical and separate from the Office of the President. The Office of Secretary General, according to participants in the public consultations, should be treated as a professional position to have overall oversight of the functioning of the Civil Service as a professional institution that should be able to serve every government elected into office with dedicated efficiency and effectiveness. The view was also expressed that appointments to the offices of Secretary General and Permanent Secretary should be effected by the President subject to confirmation by the National Assembly.
605. From the submissions received, a high above-average percentage of Gambians consulted externally suggested that the President should appoint chief executive officers and Boards of Directors of State Owned Enterprises (SOEs) with the approval of the National Assembly. An analysis of the position papers also revealed that a high percentage of the submissions recommended that the National Assembly should confirm the appointment of chief executive officers and Board members of the SOEs. The IPC results showed strong support for National Assembly confirmation of the President's appointment of chief executive officers and Board members of SOEs. In essence, the overwhelming public opinion was that appropriate balance should be brought to bear on the nomination, appointment and removal from office of chief executive officers and Board members of all SOEs in order to ensure adherence to good governance principles and promote efficiency and effectiveness in service delivery.
606. Furthermore, the view was expressed that public enterprises should be appropriately accountable to the National Assembly with respect to their operations and, in that context, should submit annual reports to the Assembly. There was no dissent to the suggestion that failure to submit an annual report, including audited financial statements, on time should lead to the automatic removal from office of a chief executive officer or a Board of a public enterprise, depending on whether such failure rests with the Chief executive officer or the Board.

607. Following the publication of the proposed Draft Constitution and second round of public consultations, 11 submissions were received by the CRC on the subject of Public Services. The submissions dealt with various issues including the Service Commissions, appointment of CEOs of State Owned Enterprises and confirmation of such appointments by the National Assembly, period of submission of annual reports of SOEs to the National Assembly, appointment and functions of Permanent Secretaries, exclusion of public servants from political activities and establishment of a commission for persons with disabilities. The views expressed during the second round IPCs confirmed the provisions in the Draft Constitution, therefore no changes were made to this Chapter.

6.16.4. Provisions of the Draft Constitution

608. Chapter XV introduces new service commissions in addition to the PSC. It establishes the Office, and redefines the role, of the Secretary General as Head of the Civil Service and makes the office more independent with a view to making it strictly professional and apolitical.

609. This Chapter has 4 Parts and essentially deals with the public services of The Gambia. It is in response to the demands from the public to create separate service commissions for teachers, health service providers and the Civil Service. Thus, the TSC and the HSC are created for the first time in the new Constitution.

610. The CRC considered the broad public opinion to establish an ASC but, after careful review, formed the view that the numbers (in terms of established Civil Service employees in the agricultural sector) and the nature of the agricultural sector did not justify establishing a separate commission specific to agriculture. However, following the second round of public consultations by the CRC and the general acceptance by participants that it was not feasible to establish a service commission specific to agriculture in the traditional sense of a service commission, the farming community still emphasised the importance of involving them in key Government decisions affecting them. Accordingly, this matter has been appropriately dealt with under Chapter XIV of the Draft Constitution (Land, Environment and Natural Resources) placing an obligation on the State to consult with and seek the opinions of farmers in the development of policies relative to agriculture. In addition, the State is required to protect agricultural land; this is a measure designed to ensure the preservation of farming in the country to ensure adequate food supply for the country in the long term.

611. Chapter XV also makes provisions for SOEs which are entrusted with the responsibility of managing vital sectors of the economy and services of The Gambia. The Chapter further provides for the security of tenure of the chief executive officers of public enterprises and members of their governing Boards, so as to protect them from

any interference in the performance of their duties. Accordingly, a criteria and procedure are established pursuant to which a chief executive officer and a member of its governing Board may be removed from office.

6.16.4.1.Part I – The Public Services of The Gambia

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

613. The Part also establishes the Office of Secretary General and Head of the Civil Service and the Office of Permanent Secretary. Their qualifications and functions are also provided for. The Secretary General is to be appointed by the President acting on the advice of the PSC, subject to confirmation by the National Assembly. In the performance of his or her functions, the Secretary General shall not be subject to the direction or control of any other person or authority, but is required to have due regard to the policies and programmes of the Government. These are new provisions. Although the public opinion was that appointment to the Office of Permanent Secretary should be subject to confirmation of the National Assembly, the CRC considered that the President should not be unduly constrained with regard to appointment to such an Office; National Assembly confirmations should be reserved for the most senior positions, taking into account the nature and strategic position of the office within the Government structure, especially in relation to issues of governance. It is also noted that subjecting Presidential appointments of every senior position to Parliamentary scrutiny and confirmation may be giving too much power to the Legislature in executive matters; the desired balance in government may be lost. It is enough that Parliament has general oversight with respect to the operations of the executive.

6.16.4.2.Part II – Service Commissions

(i) General provisions

614. This sub-Part establishes 3 service commissions for the Civil Service. These are the PSC, TSC and HSC. They are each responsible for the appointment, removal and overall discipline of public officers under their jurisdiction. The Personnel Management Office is identified as the Secretariat to provide support, guidance and proper streamlining of the work of the service commissions.

(ii) Public Service Commission

615. The PSC is vested with the power to ensure that the public service is efficient and effective. It is responsible for the development of human resources and should ensure that adequate and equal opportunities are afforded to every qualified person employed in the service of the Government. The jurisdiction of the PSC does not, however, extend

to the National Assembly, the Judiciary, the security service sector and LGAs (each of which have their own separate commissions).

(iii) Teachers Service Commission

616. The TSC is responsible for appointment of teachers, assigning them to schools and reviewing the standard of education and training needs of those entering the teaching service, amongst others.

(iv) Health Service Commission

617. The HSC is responsible for appointments into the public health care sector and for the development of human resources to adequately cater for national health care needs. In essence, the HSC is to ensure that there is an efficient and effective health care delivery system through appropriate training and appointments to relevant health care offices.

6.16.4.3. Part III – General Provisions on Service Commissions

618. This Part provides for the qualifications, disqualifications and tenure of office of members of service commissions and the independence of such commissions. Each service commission is empowered to exercise delegating functions and to make such regulations for the better performance of its functions and to prescribe such code of conduct for public officers within its jurisdiction as the service commission may consider fit. As a measure of accountability, each service commission is obligated to prepare and submit to the National Assembly an annual report with respect to the performance of its functions.

6.16.4.4. Part IV – State Owned Enterprises

619. This Part regulates the appointment, qualifications and disqualifications of the chief executive officers and Board members of SOEs. It provides for the establishment of a body (through an Act of the National Assembly) to monitor the operations of SOEs. This provision is replicated from the 1997 Constitution as the CRC considers it sufficiently important to ensure proper and much broader level of accountability of SOEs entrusted with the management of State assets and resources, including the appropriate and efficient delivery of services to the general public. The Part effectively places an obligation on the National Assembly to enact the relevant legislation within 6 months after the coming into force of the Draft Constitution. In addition, each public enterprise is required to submit an annual report to the National Assembly within 3 months of the end of its financial year outlining its business and operations for the preceding year; the period for the submission of the report may be extended by the committee of the National Assembly responsible for public enterprises.

6.17.CHAPTER XVI - NATIONAL SECURITY

6.17.1.Dimensions of the Issue

620. The dimensions of the issue are:

6.17.1.1.National Security Council

- (a) Is the current composition of the National Security Council right and sufficient?
- (b) If the answer to paragraph (a) is in the negative, who else should be included or who should be excluded?
- (c) Are there any further issues relating to the National Security Council that the new Constitution should embrace? If so, what are those issues?

6.17.1.2.National Security Service Commission

- (d) Should there be a separate but combined national security service commission properly resourced by professionals to assist with appointments and related matters concerning the security services comprising the Armed Forces, Police, Prison, State Security Service, National Drug Law Enforcement Agency, and Fire and Rescue Service?
- (e) If the answer to paragraph (d) is in the affirmative, who should be identified as members of such national security service commission?
- (f) Considering the nature, function and discipline of the Armed Forces, should the Armed Forces be dealt with separately outside any joint security service commission?
- (g) If the answer to paragraph (f) is in the affirmative (Yes), what are the justifiable reasons for such a separation?
- (h) What should be prescribed as the qualifications and disqualifications of members of a joint security service commission?
- (i) Should constitutional provisions be restricted to merely establishing the various service institutions, leaving details (excluding membership and functions of the combined Security Service Commission) thereof to be dealt with by Acts of Parliament?

6.17.2.Current State of the Law on the Issue

621. The 1997 Constitution deals with the security institutions in 2 separate Chapters. Chapter XII covers the Police Force and the Prison Service, while Chapter XIII deals with the Armed Forces and the National Intelligence Agency. The other security institutions – Fire and Rescue Service, Immigration, Drug Law Enforcement Agency (established by statute after the adoption of the 1997 Constitution) and Gambia Revenue

Authority (formally Customs and Excise) – are not established or otherwise dealt with under the 1997 Constitution; they are each either a creature of statute or of policy.

622. Part I of Chapter XII of the 1997 Constitution essentially establishes The Gambia Police Force (headed by the Inspector General of Police) and a Police Council whose composition, functions and powers are required to be prescribed by an Act of the National Assembly. The Part prohibits any person or authority from raising another police force or service except in accordance with an Act of the National Assembly.
623. Part II establishes the Prison Service (headed by the Commissioner of Prisons) a Prison Service Council whose composition, functions and powers are required to be prescribed by an Act of the National Assembly. Unlike Part I in relation to the Police Force, Part II specifically empowers the President to appoint the Commissioner of Prisons in consultation with the National Security Council (NSC); this power of the President extends to persons of the rank of Assistant Commissioner and above, but acting in accordance with the advice of the Commissioner of Prisons through the Minister (with responsibility for the Prison Service). All other appointments vest in the Commissioner of Prisons acting in his or her absolute discretion.
624. Part I of Chapter XIII establishes The Gambia Armed Forces (GAF) (comprising the Army, Navy and Air Force). The functions of the GAF are outlined in respect of 3 matters: the preservation and defence of the sovereignty and territorial integrity of the country; aiding civil authorities in emergencies, including during natural disasters; and engaging in activities relative to agriculture, engineering, health and education to help steer the development of the country. The GAF is required to maintain harmony and foster understanding with the civilian population and to respect the fundamental rights and freedoms of others.
625. The Chief of Defence Staff has (subject to the authority and direction of the President and the Armed Forces Council) responsibility for the operational control and administration of the GAF. Part I also establishes the Armed Forces Council, outlining its membership and functions, including appointments in the GAF. Part II establishes the National Intelligence Agency (NIA), which is under the command of the President.
626. The 1997 Constitution also provides for the establishment of NSC comprising the President, the Vice-President, the Secretaries of State responsible for defence and internal affairs, the Chief of Defence Staff and two other members of the Armed Forces appointed by the President, the Inspector General of Police, the Director-General of the National intelligence Agency and the intelligence adviser to the President. This provision, however, is covered under Part III (executive powers) of Chapter VI (the executive).

6.17.3.Submissions Received, Analyses and Decisions

627. With respect to the security service sector, an overwhelming majority of participants during the public consultations expressed the view that there should be disciplined security forces that uphold and respect the law and, in particular, respect the fundamental rights and freedoms of all persons. Participants were very specific in not wanting to ever again see any military or other security force intervention in government; security personnel who wish to lead the country must follow the law like all else and seek leadership mandate from the electorate.
628. There were a few opinions that recommended the abolition of the GAF. Most of those who spoke on this felt that maintaining a military force is an expensive undertaking which The Gambia could ill-afford in the face of economic challenges. Some cited what they referred to as indiscipline in the military and the recent abuse of civilians by some elements of the GAF.
629. The CRC held a face-to-face meeting with the Service Chiefs and senior security sector officials. Participants at that meeting stated that coordination is an important challenge the security service sector is grappling with, and that there should be one unified NSC. However, there were differences of opinion on the structure of the NSC, with some preferring a leaner NSC while others advocating for an inclusive process that encompasses all the security service sectors. The Service Chiefs supported the establishment of a National Security Service Commission, and agreed that political appointments into the security service sector should be prohibited. Instead, the Security Chiefs emphasized that appointments in the security services should follow a well-structured recruitment and promotion procedure.
630. Following the publication of the proposed Draft Constitution and second round of public consultations, 5 submissions were received by the CRC on the subject of National Security. Opinion was expressed that the name of the National Security Service Commission should be renamed to “Internal Security Service Commission”, considering the fact that the Commission’s jurisdiction is limited to the Police Service, Immigration Service, Prison Service, Fire and Rescue Service and Drug Law Enforcement Agency. The nature and operation of the GAF and NIA (renamed State Intelligence Service) did not make them suitable candidates for inclusion in the Commission.
631. There was further opinion that the NSC membership was too large and that effectiveness required a leaner NSC that can quickly respond to issues. In addition, recommendation was received that the new Constitution should establish the office of national security adviser. After a careful consideration of, and further research on, these submissions, the CRC acceded to the suggestion for renaming the National Security Service Commission as the Internal Security Service Commission. This Commission’s

jurisdiction will cover all security services except the Armed Forces and the State Intelligence Service. In a similar vein, the size of the NSC has been reduced (from what was provided in the previously published proposed Draft Constitution) and, therefore, does not include the Immigration Service, Prison Service, Fire and Rescue Service and Drug Law Enforcement Agency. However, considering the pivotal roles these security service institutions play in overall national security, the option is considered to empower the President (as Chairperson of the NSC) to invite such other members of the “excluded” security services to attend and render advise on any matter considered relevant to national security.

6.17.4.Provisions of the Draft Constitution

632. Chapter XVI slightly revises the membership of the NSC by making the Minister responsible for justice a member and restricting representation from the military to only the Chief of Defence Staff. The intelligence adviser to the President is now replaced with the National Security Adviser to the President. The CRC did not consider it necessary to establish within the new Constitution the Office of National Security Adviser, especially in the absence of the Executive advising on such a policy decision.

633. The Chapter further introduces an Internal Security Service Commission for the first time. It also provides for new provisions for the appointment and independence of the Inspector General of Police. The Gambia Police Force and the Gambia Immigration Department are now renamed the Gambia Police Service and the Gambia Immigration Service respectively. This is in consonance with current global trends in making these institutions more service oriented and forging a closer working relationship between the institutions and the civilian population.

6.17.4.1.PART I – The Security Services And National Security Council

634. The security services and the NSC are established under this Part. The security services are identified to constitute The Gambia Armed Forces; The Gambia Police Force; The Gambia Immigration Service; The Gambia Fire and Rescue Service; The Gambia Prison Service; The State Intelligence Service; The Gambia Revenue Authority; and the Drug Law Enforcement Agency. The National Assembly may, through appropriate legislation, establish such other security service as it may consider fit. The President is empowered to invite members of the other security services (not being members of the NSC) to attend the deliberations of the NSC to provide advice on necessary security matters. All the security service institutions are subordinate to civilian authority.

635. The NSC has the responsibility of taking appropriate measures to ensure that the internal and external security of The Gambia is properly safeguarded and, in that regard, to ensure co-operation between the relevant departments and agencies of the

Government. In addition, the NSC is required to advise the President on national security matters, the integration of domestic and foreign policies relative to the security of The Gambia, the necessary reforms to maintain a harmonized national security service, and “the measures that are necessary to ensure a well-trained and professional national security system that is effectively responsive to threats to, and the protection of, The Gambia”.

6.17.4.2.PART II – The Gambia Armed Forces

636. The GAF is established and provision is made for appointments of the Chief of Defence Staff and recruitment to GAF. It has the duty to defend and preserve the sovereignty and territorial integrity of The Gambia and assist in such other manner (such as during periods of emergency and unrest) as may be required of it to maintain and restore peace and stability. The Chief of Defence Staff, Chief of Staff and Commanders of the Army, Navy and Air Force are to be appointed by the President and may be similarly removed by the President. Only citizen of The Gambia and persons of high moral character and proven integrity are to be appointed to any of these positions in the GAF.

6.17.4.3.PART III – The Gambia Police Service

637. The name of The Gambia Police Force is changed to The Gambia Police Service. This Part provides that the Minister responsible for internal security may only give direction to the Inspector General of Police with respect to matters of policy for The Gambia Police Service and that any direction given by the Minister to the Inspector General of Police must be in writing. This provision is designed to ensure that The Gambia Police Service functions and operates as a professional institution guided by the law, with service officers upholding and respecting the rule of law and the fundamental rights and freedoms of others.

638. In that context, therefore, the Part further provides that no person may give any direction to the Inspector General of Police with respect to investigation of offences, enforcement of the law and the employment, assignment, promotion, suspension or dismissal of any member of The Gambia Police Service. The Constitution, therefore, makes the Office of the Inspector General of Police more independent and detached from undue influence in matters concerning law enforcement. Accordingly, the Inspector General of Police may be removed from office only on the ground of a serious violation of the Constitution or other law (including the Chapter on fundamental rights and freedoms), gross misconduct or misbehaviour, inability to perform his or her functions (whether as a result of infirmity of body or mind) or bankruptcy or entering into an arrangement with creditors. These provisions are new. The functions of The Gambia Police Service are outlined and appropriately streamlined. These relate to the duty to investigate and prevent crime, protect life and property, maintain law and order

and ensure public safety. In addition, it has the duty to aim for the highest standards of professionalism and discipline, prevent corruption and promote and practice discipline, transparency and accountability, respect the rule of law (which should guide the execution of its duties and responsibilities), comply with standards of human rights and fundamental freedoms and respect for human dignity, train its officer to the highest standards of competence and integrity, and foster harmony with the larger Gambian society.

6.17.4.4.PART IV – Internal Security Service Commission

639. This Part establishes the Internal Security Service Commission. It provides for the composition, qualifications, disqualifications and appointment of members of the Commission, and their security of tenure and removal from office. The functions of the Commission are outlined and essentially relate to matters pertaining to the employment, discipline and promotion of persons within the security services over which the Commission has jurisdiction; the independence of the Commission with respect to the performance of its functions is also assured. The security services covered under this Part are the Gambia Police Service, Gambia Immigration Service, Drug Law Enforcement Agency, Gambia Fire and Rescue Service and Gambia Prison Service.

6.18.CHAPTER XVII - NATIONAL YOUTH DEVELOPMENT

6.18.1.Dimensions of the Issue

640. The dimensions of the issues under this Chapter are as follows:

- (a) In the light of the manner in which the National Youth Service Scheme operates compared to how it was envisaged under the 1997 Constitution, should National Youth Service be a feature of the new Constitution?
- (b) Should special attention be given to national youth development?
- (c) How do we ensure that the youth are included in the formulation of policies and decision making processes?

6.18.2.Current State of the Law on the Issue

641. The Chapter in the 1997 Constitution on the youth deal with the National Youth Service Scheme and participation in the Scheme. It specifically establishes the National Youth Service Board and the National Youth Service Scheme. It empowers the National Assembly to enact legislation to provide for the composition, operation and functions of the Scheme.⁴⁹

⁴⁹ This was carried out through the National Youth Scheme Act (Cap. 49:04).

642. Under the Chapter, Gambian citizens who have attained the age of 18 years are required to join the National Youth Service, subject to such exceptions and deferments as may be prescribed in an Act of the National Assembly. The Chapter further provides that persons who seek employment in the public service may be required to provide proof of having participated in, or been exempted from joining, the National Youth Service.
643. In addition, provision is made for the responsibility of the National Youth Service Board, its composition and appointment procedure and its power to make regulations for the performance of its functions.

6.18.3. Submissions Received, Analyses and Decisions

644. Due to the nature of Chapter XVI of the 1997 Constitution, the issues raised on youth service during consultations only related to whether national youth service should be made compulsory for all Gambians who have completed secondary or university education. The information received from position papers, household surveys and both domestic and external consultations showed an overwhelming support of the implementation of compulsory national youth service in The Gambia.
645. However, following consultations with officials of the National Youth Service Scheme, it emerged that the provisions of the 1997 Constitution were never fully implemented and that the Scheme has effectively become an institution that engages in the training and facilitation of employment of youths. The Scheme, it has been reported, is never adequately funded and it has a long list of applicants each year that it can neither train nor provide assistance to in order to secure employment. In effect, the good intentions of the Scheme, as outlined in the 1997 Constitution, have never been realised from inception.
646. It is against this background that the CRC, after thorough consultation, considered that appropriate and realistic targets and efforts should be engaged to ensure that the youth of the country are properly given the foundations they need to develop and become meaningful contributors to national development. As the future leaders of The Gambia, it is particularly essential that the youth are prepared with relevant and appropriate skills and knowledge to enter the employment world and gain the necessary experience, including the experience of leadership and managerial responsibility. In that context, the CRC placed emphasis on youth development by setting out necessary guiding principles to ensure youth participation in nation building. In addition, consideration is given to ensuring that the youth are given opportunities to develop by placing relevant obligations on the State. The need also arises to involve the youth more in policy developments affecting them. These should form the foundations for youth development, in addition to ensuring that existing schemes are funded and fully supported.

647. Following the publication of the proposed Draft Constitution and the second round of public consultations, the CRC received 3 submissions on the subject of National Youth Development. In the second round of public consultations, there was overall support for the provisions of the Proposed Draft Constitution on national youth development, especially considering that the State is being obligated to continue with and financially support existing national youth service schemes, including training and job placement. However, there was specific call for the National Youth Council to be established under the Draft Constitution to give it necessary gravitas. This Council is currently a creature of statute under the National Youth Council Act (Cap. 55:02) and essentially deals with the composition, objectives and functions of the members of the Council. The Act also establishes the Council's Secretariat, makes provision for the registration of National Youth Organisations and establishes the Council as a self-accounting body. The objectives of the Council include facilitating youth empowerment for active participation in national development, and supporting and encouraging youth participation in the development of policies and programmes.
648. In addition, the National Youth Service Scheme (NYSS) made numerous suggestions on this Chapter; the submissions were mainly focused on youth employment and empowerment. The NYSS suggested that the Draft Constitution should retain the provisions of Chapter XVI (National Youth Service Scheme) of the 1997 Constitution to strengthen and ensure a well-disciplined and enterprising youth population. The submission further recommended the inclusion of compulsory youth service for all Gambians over the age of 18 years and that the completion of youth service should be a prerequisite to being engaged in any paid work.
649. It is the assessment of the CRC that youth unemployment in the country is increasingly becoming a sore point for many and, if not appropriately and adequately managed sooner, it could potentially become an albatross to meaningful national development. It is important that adequate resources are ploughed into developing the youth and affording them opportunities to harness their potentials. Accordingly, emphasis must be placed on youth development to ensure a positively growing youth population that becomes an asset to national development, not a hindrance.
650. While the CRC considered the intention for the establishment of the NYSS to be a good one, discussions with representatives of the institution revealed that such intention was never actualised, due mainly to the absence of adequate funding. It is the considered view of the CRC that this institution should be retained and strengthened outside of constitutional remit. What the new Constitution should usefully focus on is youth development and ensuring that the youth are fully engaged and consulted in all matters relating to the development of policies affecting them.

6.18.4. Provisions of the Draft Constitution

651. The Chapter on the youth in the Draft Constitution has been renamed from "The National Youth Service" to "National Youth Development". This is based on the public consultations which revealed that the Chapter on National Youth Service in the 1997 Constitution does not adequately provide for rights of the youth and the obligations of the State to the youth. This is in addition to the fact that the National Youth Service Scheme has not been functioning as originally intended. The CRC recognised the vulnerable status of youth in The Gambia and the inequities faced by them, particularly the growing rate of youth unemployment and lack of enough youth representation in decision making bodies and processes. While the Chapter in the Draft Constitution contains three sections like the Chapter in the 1997 Constitution, the provisions differ in the sense that the Chapter in the Draft Constitution deals with new issues namely, principles of youth development, obligations of the State to the youth and consultation with the youth in matters of policy development relating to or affecting the youth.
652. Chapter XVII of the Draft Constitution for the first time introduces principles of youth development. These principles are meant to guide the State in matters relating to the youth. There are also new provisions imposing an obligation on the State to consult the youth on all matters concerning them. Unlike the 1997 Constitution, the National Youth Service Scheme is not explicitly provided for in the Draft Constitution, but the National Assembly is given powers in the Draft Constitution to establish similar initiatives. This is in addition to strengthening existing schemes (including the National Youth Service Scheme under the National Youth Service Scheme Act) or institutions to facilitate the overall development of the youth.
653. The Chapter also makes it an obligation on the State to factor the youth "in all affairs of State policy to ensure their development and effective participation in nation building". The applicable principles to this effect are identified as the youth being an important constituent of the State; the necessity of training youth for public life and preparing them to conduct themselves professionally and ethically; the importance of youth participation and inclusion in building and fostering national unity and service to the people; the right of the youth to be afforded opportunities to serve The Gambia on principles of equality, commitment, service to State, non-discrimination and love for nation; and the right of youth to be provided with support for their development. These principles are not meant to be exhaustive and, consequently, the National Assembly is empowered to provide further principles through legislation.
654. In addition to the principles of youth development, the CRC considered it pertinent to outline the obligations of the State to the youth and also provide a timeframe within which the said obligations should be fulfilled. Accordingly, the State is tasked with the obligation of establishing schemes and institutions necessary for the training and development of the youth, strengthening existing schemes and providing adequate

funding for all of these matters. These provisions should be complied with within three years of the coming into force of the Draft Constitution. The time frame is particularly relevant to ensure the speedy resolution of issues affecting the youth, including the growing youth unemployment. The State is also under an obligation to promote and protect the rights of the youth and eliminate all policies and practices that hinder the growth, development and advancement of the youth.

655. Finally, the Chapter requires the State to consult with the youth on all matters of development of policies and decision making affecting the youth. Factoring youth opinion in such matters should immensely assist in shaping relevant and appropriate policies and the taking of informed decisions that will have positive results on youth development.

6.19.CHAPTER XVIII - THE NATIONAL COMMISSION FOR CIVIC EDUCATION

6.19.1.Dimensions of the Issue

656. The dimensions of the issue are as follows:

- (a) Should the National Commission for Civic Education (NCCE) be specifically established in the Constitution?
- (b) Is the NCCE adequately empowered under the current Constitution to perform its functions in an efficient and effective manner?
- (c) Are there any additional measures that are considered relevant and necessary in relation to the NCCE for inclusion in the new Constitution?

6.19.2.Current State of the Law on the Issue

657. The 1997 Constitution provides for the NCCE in two sections which establish, and provides the functions of the Council. Section 198 provides for the establishment of the NCCE and its composition, functions and powers shall be prescribed by an Act of the National Assembly. It must be noted, however, that section 198 was amended by Act No. 6 of 2001.

658. Section 199 of the 1997 Constitution provides for the functions of the NCCE, notwithstanding the provision of section 198 that an Act of the National Assembly shall provide the functions of the Council. Among the functions of the NCCE provided in Section 199 of the 1997 Constitution are that it shall create and sustain awareness of the principles and objectives of the Constitution as the fundamental law of The Gambia, and that it shall educate and encourage the public to defend the Constitution against all forms of abuse and violence. Section 199 (2) provides that an Act of the National Assembly will provide for the establishment of district branches of the NCCE.

6.19.3.Submissions Received, Analyses and Decisions

659. Prior to the publication of the Draft Constitution, the CRC did not receive any submissions on the NCCE, except for a meeting it had with representatives of the NCCE itself. The CRC-NCCE meeting discussed the mandate and functions of the NCCE, as well as the challenges they face. They mentioned to the CRC that the NCCE is not well-funded, and they had serious constraints during the Second Republic by virtue of the difficult political atmosphere that existed then.
660. Following the publication of the proposed Draft Constitution and the second round of public consultations, the CRC received two submissions on the subject of civic education. One of the submissions related to the renaming of the NCCE from a Council to a Commission, while the other recommended that its status should be augmented to an independent institution. The CRC therefore, deliberated on the submissions and updated the Draft Constitution by changing the name of the Council to a Commission, with the qualification for membership of the Commission being the same as that of Independent Institutions.

6.19.4.Provisions of the Draft Constitution

661. Chapter XVIII provides for the NCCE, but expanded its mandate to include education and dissemination of information on other laws including the Constitution. The name of the National Council for Civic Education is now changed to the National Commission for Civic Education.
662. The CRC reviewed its discussions with the NCCE leadership, as well as the provisions of the 1997 Constitution that provided for the NCCE. The CRC also noted that despite the challenges faced by the NCCE, it can play an important role in national development, namely, the sensitization of the public on important development issues. In addition, the CRC concluded that the NCCE should be properly established in the Constitution.
663. Against this background the CRC decided to maintain the NCCE in the new Constitution, but as a Commission. Section 299 establishes the National Commission for Civic Education (the Commission) and provides for its composition. The Commission shall comprise a Chairperson and four other members, all of whom shall be appointed by the President subject to confirmation by the National Assembly.
664. Section 300 provides that the qualifications and disqualifications of members of service commissions shall apply to the members of this Commission.
665. Section 301 provides for the functions of the Commission, which includes creating and sustaining an awareness of the principles and objectives of the Constitution, educating and encouraging the public to defend the Constitution, and financial autonomy of the Commission is guaranteed.

6.20.CHAPTER XIX - AMENDMENT OF THIS CONSTITUTION

6.20.1.Dimensions of the Issue

666. The dimension of the issues are as follows:
- (a) What should be the procedure for the amendment of the Constitution?
 - (b) Which provisions of the Constitution should be entrenched?
 - (c) Which provisions of the Constitution should not be entrenched?

6.20.2.Current State of the Law on the Issue

667. The 1997 Constitution under section 226 outlines how the provisions of the Constitution may be altered or amended.
668. Section 226 (1) and (2) dealing with the amendment of non-entrenched clauses, provide that non-entrenched provisions of the Constitution can only be amended after a Bill for the amendment is published in at least 2 issues of the Gazette, the latest publication being not less than 3 months after the first and the Bill is introduced into the National Assembly not earlier than 10 days after the publication. The Bill must be supported by not less than three-quarters of the members of the National Assembly and assented to by the President.
669. Section 226 (4), provides for the amendment of entrenched clauses of the Constitution. These are the provisions of the Constitution that have to be taken through a special procedure if they are intended to be amended; the provisions are listed in section 226 (6). In addition to the procedure spelt out in section 226 (1) and (2), it is mandatory for there to be a referendum before an entrenched clause of the Constitution can be amended. Section 226 (4) requires that at least 50% of registered voters must take part in the referendum and the proposed amendment should be supported by at least 75% of voters who took part in the referendum.

6.20.3. Submissions Received, Analyses and Decisions

670. Bearing in mind the technical nature of issues relating to amendment of constitutions, issues relating to amendments of the Constitution during the public consultations did not generally arise. Consequently, it received no submissions on the subject, save for the suggestion by very few participants that the entire new Constitution should be entrenched. The CRC, however, commissioned a research paper to look both at the provisions of the 1997 Constitution and the Draft Constitution to help determine what specific provisions of the Draft Constitution may be entrenched. To help frame the

issue of entrenched clauses for the preparation of the new Constitution, the research paper suggested the entrenchment of 11 constitutional issues, and gave examples of entrenched provisions in the constitutions of other countries. Among these are the supremacy of the Constitution, fundamental rights and freedoms, Presidential term limits, and sovereignty of the people. The research paper also discussed the issue of unamendable clauses, i.e. those clauses which cannot be changed by amendment, and provided examples of their use in the constitutions of India, France, and Italy.

671. The Committee of Experts on Constitutional Law was also tasked to make recommendations to the CRC on the amendment procedure of the Constitution and the provisions that could be entrenched. The Committee undertook a comparative analysis on the subject matter and made recommendations which the Commission deliberated on.

672. Following the publication of the proposed Draft Constitution and the second round of public consultations, the CRC received 3 submissions on the subject of Amendments. The submissions focused on the amendment of entrenched clauses. One of the submissions recommended that the same provisions for amendment of entrenched clauses should be maintained in the Draft Constitution. The other 2 submissions recommended that the National Assembly should consider and vote on any proposed amendment of an entrenched provision before its submission for referendum. A number of participants in the second round of public consultations also expressed satisfaction with the provisions of the proposed Draft Constitution and recommended that they should be left intact to form part of the Draft Constitution. The satisfaction expressed and the recommendations also related to the provisions of the proposed Draft Constitution that were identified for entrenchment.

6.20.4. Provisions of the Draft Constitution

673. The Draft Constitution provides for the amendment of the Constitution in Chapter XIX. Section 302 provides that the National Assembly may only amend the Constitution in an open and transparent manner by giving reasons for any proposed amendment; informing and giving the people reasonable opportunity to express their opinions on any proposed amendment; and most importantly, the amendment of the Constitution should be in the best interest of the Gambian people. These are new provisions.

674. Just like the 1997 Constitution, the Draft Constitution contains entrenched and non-entrenched provisions. Section 304 provides that non-entrenched clauses of the Constitution may be amended by a Bill for that purpose supported by two-thirds of the members of the National Assembly. An amendment Bill of an entrenched provision requires a referendum where at least 50% of the registered voters cast their votes at the referendum; and at least 60% of the persons who voted at the referendum cast their votes

in favour of the passing of the Bill. Once the required vote for the amendment of an entrenched provision is attained at a referendum, the National Assembly is required to pass the Bill in relation to the Draft Constitution within 14 days after the referendum and then forward it to the President who must assent to it within 7 days after it is presented to him or her. The entrenched provisions are outlined in section 303 of the Draft Constitution.

675. Chapter XIX contains more entrenched clauses than the 1997 Constitution. The Chapter increases the period for amendment of entrenched and non-entrenched clauses. It does not, unlike the 1997 Constitution, provide for any form of immunity or amnesty for any Government official or office and only contains one unamendable provision which prohibits the National Assembly from amending the Constitution to increase the term of Office of the President contrary to the prescribed term limit.

6.21.CHAPTER XX - MISCELLANEOUS

6.21.1.Dimensions of the issue

676. What should the Miscellaneous Chapter of the Constitution contain?

6.21.2.Current state of the Law on the Issue

677. Under the 1997 Constitution, the Miscellaneous Chapter is divided into 2 Parts relative to Administration and General matters respectively.

Part I, in particular, deals with the appointment and resignation of persons whose offices are provided for in the Constitution. Section 227 thereof provides that where an appointing authority appoints a person who is unable to execute the functions of the office, the acting appointment shall not be called in question on the ground that the substantive holder is not able to perform those functions. Section 228 provides that a person who is appointed, elected or otherwise selected under the Constitution may choose to resign by writing to the appointing authority or to some other persons provided in the Constitution.

678. Part II, on the other hand, defines or clarifies the meanings of various terms used in the Constitution. It also provides under section 231 that where a power is conferred on a person to appoint, it may be construed that the person has the authority to terminate such appointment. The section further provides that where a person or authority is required to consult with another body, he or she is not obliged to act in accordance with the advice of that person or authority. These provisions are generally of a standard nature designed to provide clarity and prevent ambiguity.

6.21.3.Submissions Received, Analyses and Decisions

679. There were no submissions or position papers as to what should be in the Miscellaneous Chapter of the Constitution. The CRC, however, reviewed the provisions of Chapter XXXIII of the 1997 Constitution and also relied on the proposals and recommendations from various technical committees to include certain provisions in this Chapter.

6.21.4.Provisions of the Draft Constitution

680. Chapter XX of the Draft Constitution deals with miscellaneous matters and includes innovative provisions, such as the duty to provide reasons for adverse decisions and the duty not to act on an unlawful directive.

681. This Chapter is divided into 2 Parts, with the first Part dealing with appointments, resignations, etc. and the second Part dealing with general matters.

682. Parts I and II of the Miscellaneous Chapter are similar to Parts I and II of the Miscellaneous Chapter of the 1997 Constitution. The Draft Constitution, however, provides some new and innovative provisions which include: the duty to provide reasons for adverse decisions taken against a person in the public service; the duty not to act on an unlawful directive; and the requirement that to publish anything in the Gazette may include publication of the matter in print, online and broadcast media. In addition, the Chapter provides a new provision that a Chairperson and Vice Chairperson of a Statutory Body shall not be of the same gender and, consequently, a Chairperson and Vice Chairperson shall be succeeded in office by a person of a different gender (this will ensure equal treatment of the genders with respect to such key positions in Statutory Bodies). The intention is that while a person's appointment as Chairperson or Vice Chairperson, as the case may be, of a Statutory Body may be renewed, once the person leaves that Office his or her successor must be a person of a different gender.

683. Furthermore, provision is made to the effect that where under the Constitution or any other law a discretionary power is conferred on a person, that person is required to exercise the discretion justly and fairly; the person must not act in a manner that is "arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law". This is particularly important to ensure the equal treatment of persons.

684. The Chapter further provides guidelines on its interpretation by defining certain terms used in the Draft Constitution. It provides further that the Constitution should be interpreted in a manner that will advance the rule of law, promote fundamental rights and contribute to good governance. The final provision (section 319) repeals the 1997

Constitution, which takes effect after the Draft Constitution is adopted at a referendum and assented to by the President.

6.22.SCHEDULES

685. The Draft Constitution has 4 Schedules. The first relates to the administrative areas of The Gambia; the second provides for the oaths of office of the President, Vice President, Speaker and Deputy Speaker of the National Assembly and the Chief Justice; the third specifies the constituencies for the National Assembly elections; and the fourth provides for transitional and consequential provisions.
686. The first Schedule identifies the current 7 Administrative Areas of The Gambia. While there has been a written submission calling for the CRC to create, through the Draft Constitution, an eighth administrative area,⁵⁰ this suggestion has not gained any traction during the public consultations. The CRC did not find any compelling argument for creating an eighth administrative area. In any case, it considered that this was a matter that required in-depth policy study to determine the benefits and costs associated therewith, which the CRC could not carry out within the time frame of its assignment.
687. The CRC observed that the 1997 Constitution has not provided for any form of specific oath or affirmation; rather, it merely referenced oaths to be subscribed to before assuming certain offices (such as those of President, Vice President, Minister, Speaker and Chief Justice). This effectively presumed that the oaths referred to relate to those prescribed under the Oaths Act (Cap. 35:03). While the oaths outlined in that Act relate to offices from Vice President, they do not relate to the Office of President. Section 3 of the Act provides that a holder of an Office specified in the Column II of the Second Schedule to the Act shall take and subscribe to the oath or oaths appropriate to the office set out in Column III. The Offices stated in Column II range from the Office of Vice President to Ministers, NAMs, Private Secretaries and Seyfos, but excludes the Office of President. Therefore, it would appear that the oaths subscribed by the Presidents under the 1997 Constitution were not pursuant to any constitutional or legislative prescription. However, the oaths prescribed under the Oaths Act were expedient to be used and effectively became the convention for swearing-in a winner of a Presidential election to assume the Office of President.
688. During the public consultations phase, there was suggestion for the oaths of office for the Office of President, in particular, to be prescribed in the Draft Constitution. Based on research and a comparative analysis of other Constitutions in Africa,⁵¹ the

⁵⁰ A passing comment was made in the public consultations phase for a ninth administrative area comprising URR North.

⁵¹ The Constitutions of Ghana, Kenya, Nigeria, Sierra Leone, Uganda, Zimbabwe and Malawi, for example, prescribe the oaths for the top constitutional positions.

CRC considered it important that the oaths and affirmations relating to the key offices of President, Vice President, Speaker, Deputy Speaker and Chief Justice should be specifically prescribed and elaborated in the Draft Constitution. These are accordingly prescribed in the fourth Schedule of the Draft Constitution.

689. During the public consultations process, there was near public unanimity that the term of the President should be limited to 2 terms of 5 years each, thus making a total of 10 years altogether, whether consecutive or otherwise. The Gambian population, clearly wearied of the experience of long Presidential tenures in the past was vocal that they do not wish to have any person serve in the Office of President for more than 10 years irrespective of how competent or progressive the person may be. The CRC was mindful of the following 2 issues: the first is for the existing term of the incumbent President to commence from the date he assumed office in January 2017; the second is for the incumbent's term of office to be reckoned from a period upon or after the coming into force of the Draft Constitution. Research has revealed that this subject has been one of the most difficult and divisive issues for many modern African constitutional developments. Some constitutional review bodies chose to steer away from the subject by leaving it open and, therefore, subject to judicial interpretation.⁵² Others, like Kenya, chose to confront the issue and indicate a clear path forward and away from judicial interpretation.⁵³ The former has invariably resulted in political uncertainty and instability, while the latter has seen through a smooth transitional constitutional order. After careful consideration of public opinion on this subject and based on research, the CRC provided a transitional measure in the proposed Draft Constitution that the incumbent President's term of office shall be reckoned to commence from the date he assumed the Office of President. In that context, therefore, he can only serve for one more term after his existing term of office expires thereby giving him a total of potential 10 years in office as President of the Republic of The Gambia.

690. The transitional provision on the term of the incumbent President was again raised during the second round of public consultations. An overwhelming majority of participants considered the provision to be a good one that should usher in a new era of Presidential term limit. In fact during the second round of public consultations, only one individual spoke against the provision and strongly argued that the incumbent President's term of office should be reckoned from the date of the coming into force of the Draft Constitution. One institution made the same argument.

691. The CRC deliberated further on this matter extensively and, in particular, considered the views expressed against the inclusion of the incumbent President's

⁵² Some examples are Democratic Republic of Congo, Burundi and Senegal.

⁵³ The Constitution of Kenya, 2010 is specific in paragraph 12 (3) of the Sixth Schedule that the "person who was elected President before the effective date is not eligible to stand for election as President under this new Constitution."

existing term of office. It also took into account the efforts of the African Union to strengthen democratic governance in Member States. In the end, it decided that the more appropriate approach and what is best going forward for democratic governance in The Gambia is to reckon the incumbent President's term of office to include his existing term. Three specific reasons are advanced for this. First, the Gambian public is clearly wearied and worried about their President staying in office for an unduly long period and have, therefore, opted for a maximum period of 10 years for service in the Office of President. They have also, during the second round of public consultations, overwhelmingly supported the position that the incumbent President's existing term of office should be counted towards the prescribed 10 years of 2 five-year terms. Secondly, the Draft Constitution is transformative and clearly recognises and has placed great emphasis on good governance for the stability and future development of The Gambia; the Office of President is where the pace must be set and it must begin with the term limit of the incumbent President to win public confidence. Thirdly, the constitutional review process and the drafting of the Draft Constitution gives great opportunity for the incumbent President to set the sterling example of laying the foundation, tone and future of a two-term limit to the Presidency in The Gambia by not serving in office beyond a maximum period of 10 years of 2 five-year terms.

692. The transitional measures also recognise that the Draft Constitution has a number of provisions that need to be taken through an implementation phase in order to be actualised. As a result provision is made for the establishment of a Constitution Implementation Commission, with responsibility for the implementation of the Constitution. The National Assembly is required to provide adequate funding to the Constitution Implementation Commission to ensure that it is able to discharge its functions efficiently and effectively.
693. In addition, provisions are made relative to the term and language of the existing National Assembly and how the next National Assembly (following the next general elections) is to be convened. Similar provisions are made with respect to LGAs – continuation of existing LGAs, the term of office of their elected members and the continuation in office of the traditional leaders (Seyfos and Alkalos). While the Draft Constitution extends the term of office of Local Government Councillors, that term will only take effect after the next Local Government elections. The existing constituency boundaries will continue to have effect and the new boundaries outlined in Schedule 3 will only take effect for the next general elections.
694. Provision is also made with respect to serving judges, who shall be deemed to have the requisite qualifications for appointment to their offices. Any Commission of Inquiry issued and continuing under the 1997 Constitution, upon the coming into force of the Draft Constitution, shall continue under the 1997 Constitution until it terminates.

However, any new Commission of Inquiry may only be issued under the Draft Constitution.

7. ISSUES NOT INCLUDED IN THE DRAFT CONSTITUTION

695. The following issues have been advocated for, but are not included in the Draft Constitution:

- (a) **Prisoners' right to vote:** this is provided for by assuring the right to vote to all Gambians that are of the age of 18 and above; no distinction is made between citizens. The rest are left to administrative processes;
- (b) **Death penalty:** specific reference to the term is omitted as the death penalty is prescribed in statute (that is, the Criminal Code (Cap. 10:01), The Gambia Armed Forces Act (Cap. 19:01) and Anti-Terrorism Act (Cap. 13:01)); whether or not the death penalty should remain is, therefore, left to the National Assembly to determine through a statutory process;
- (c) **Agricultural Service Commission:** after meeting with officials of the Ministry of Agriculture and its directorates, the CRC decided not to create an Agriculture Service Commission because, unlike the other service commissions, the staff complement of the agricultural sector in the Public Service is too minimal to warrant establishing a separate commission. However, the public demanded for greater attention to the agriculture sector and for the State to provide maximum assistance to the farming communities in The Gambia, including the timely provision of fertilizer. There is, therefore, the need for coordination of agricultural programmes for better efficiency and outcomes;
- (d) **Marble voting versus Ballot paper:** after thorough consideration and bearing in mind that even if retained at this time, marble voting may be replaced in the long term, it was felt that this matter is best regulated under statute – for now, under the Elections Act. During the in-country public consultations, the public expressed in large numbers their preference for the continued use of the marble voting system which, they explained, they understand better and is faster in terms of the counting of votes;
- (e) **Creating a constituency for the Diaspora:** this mechanism was advocated by many Gambians in the Diaspora and some Gambians during the IPC. The CRC considered the subject carefully and formed the view that it has practical difficulties of implementation. Gambians are sparsely spread across the globe and, with limited resources, its implementation will present logistical challenges to try and reach out to every jurisdiction to afford Gambians resident abroad to exercise the franchise in electing their representatives. In addition, any elected

representative of the Diaspora will need to be physically present in The Gambia to regularly attend sittings of the National Assembly; the alternative could be to elect a Gambian at home or a Diaspora Gambian willing to relocate back to The Gambia to satisfy the sittings of the National Assembly and effectively represent the Diaspora. The issues are just many and do not lend themselves to easy resolution. Accordingly, the CRC formed the further view that, in view of the removal of the one year residency requirement thereby enabling all Gambians, irrespective of their place of residence, to contest election for National Assembly membership, there is no need for creating a separate constituency for the Diaspora;

- (f) **Minimum personal net worth should be prescribed for Presidential aspirants:** this was advocated for, but not considered practical or that it could be administered without flaws. In any case, it runs counter to the fundamental right of every citizen to participate in political life. Creating a financial threshold to be able to run for the Office of President may give the appearance of politics for the rich only. Instead, the CRC has established strong institutions to ensure appropriate checks and balances with respect to the exercise of executive power;
- (g) **Election of Regional Governors:** upon further research and review and after discussions with relevant authorities and stakeholders, coupled with an evaluation of the history that abounds that Office, the CRC has concluded that the Office of Regional Governor is a Civil Service position and should remain as such. The Draft Constitution clearly defines the roles and functions of LGAs, including clearly delineating their powers, and this should prevent any misunderstanding of the role of the institution of Regional Governor and that of LGAs. The roles of the Governors and CEOs of LGAs, however, need to be better defined in statute to guide the holders of such offices;
- (h) **Call to change the name of Alien Certificate for non-citizens:** this is currently a statutory issue and should appropriately continue to be dealt with in that context. However, the CRC observes (as was made known to it during the public consultations) that the use of the term “alien” in relation to non-Gambians is derogatory and should be substituted with another term (such as “temporary residency certificate, non-Gambian residency certificate”, etc.);
- (i) **Free education should be extended to schools with learning instruction in Arabic:** the reference to free and compulsory education extends to all registered public schools up to senior secondary level;
- (j) **Employers not issuing written employment contracts to nationals:** apart from the constitutional right to fair employment practices, this subject is

considered to be a matter regulated under the Labour Act (Cap. 56:01) and merely requires enforcement;

- (k) **Vice Presidential running mate:** the overwhelming public opinion rejected this suggestion. The view was that the President should have a free hand in selecting and appointing his or her own Vice President;
- (l) **Appointing Deputy Ministers:** the overwhelming public opinion was against this proposal. The view was that allowing such a regime would result in a further drain of meagre national resources when the Permanent Secretary could perform numerous functions with delegating authority; in addition, an overseeing Minister in the absence of a substantive Minister should suffice in ensuring the continued efficient functioning of a Ministry;
- (m) **Female genital mutilation (FGM):** there have been calls for decriminalising FGM so that communities that wish to do so can continue the practice. This has been deliberated on by the CRC; it formed the view that this was not an issue for the Constitution. The subject is considered best dealt with under statute (which is currently covered under the Women's Act, 2010 as amended);
- (n) **Payment of salaries to Alkalos:** the Alkalos are now properly categorized under the Chapter on Local Government and Decentralisation. The CRC received recommendations from every Region of the country calling on LGAs to favourably consider appropriately remunerating Alkalos on a regular basis as the current retention commission from collected rates does not qualify as appropriate or adequate remuneration;
- (o) **Benefits for Seyfos:** the Seyfos are pivotal to community cohesion and are regularly called upon to implement Government decisions and/or directives which often require them to traverse their districts regularly. This is considered an administrative matter which should be seriously considered to preserve the dignity of the Office of Seyfo ;
- (p) **Concerns with failure of adequate protection for grazing animals (including theft of animals):** this is an issue of failure of effective law enforcement. The CRC considers that the relevant authorities should effectively enforce the laws to address this issue and thus alleviate the concerns of citizens whose farms and gardens are destroyed by animals. However, this problem stems mainly from deforestation, bush fires, climate change, commercial farming and uncontrolled and unregulated real estate activities that are increasingly encroaching on and buying out traditional grazing land;
- (q) **Creating opportunities for Gambians in horticulture and other businesses to market and sell their produce:** a number of Gambians expressed the view that they are being crowded out of the local market and are, therefore, unable to

sell their produce locally. This requires coordination between the Ministries of Trade, Agriculture, and Women's Affairs to address these issues (as these concerns were mainly raised by women); and

- (r) **Encouraging sports:** there was a submission for the inclusion of sports and related matters in the Draft Constitution. In the 1997 Constitution this subject was mentioned in the Directive Principles of State Policy. Having carefully reviewed the submission, the CRC formed the view that this is a matter that is better addressed by policy and, if necessary, by statute (as, for instance, is the case with the National Sports Council Act (Cap. 53:03)). This provides better flexibility in addressing changing sporting activities.



8. CHALLENGES AND LESSONS LEARNED

8.1. Challenges

696. As with many assignments, it is not unusual to encounter challenges. These challenges may vary in nature, scope and proportion. The CRC faced some challenges during the process leading to and including the preparation of the Draft Constitution and this Report. Among these are:

- (a) When the CRC Commissioners were sworn into office, there was no Secretariat to facilitate their work; they had no dedicated staff either. This initial lack of a Secretariat and a dedicated staff meant the CRC could not commence work on the substantive aspects of its assignment in a timely manner;
- (b) The CRC had to develop terms of reference and assist with the process of identifying and engaging the Secretary to the CRC in accordance with the CRC Act, 2017; thus the absence of a Secretary at the commencement of its work meant that the CRC had to undertake almost all of the administrative necessities to steer its assignment;
- (c) The CRC had to spend time consuming efforts to assist with the development of job descriptions for, and recruitment of, staff of the Secretariat;
- (d) It took 4 months to secure permanent premises for the CRC Secretariat; prior to that the Commissioners' work were aided initially by the Hon. Attorney General kindly making available to the CRC the conference room of the Ministry of Justice and, subsequently, renting a conference room at a local hotel. These arrangements, though helpful to some extent, were not the most conducive, especially with the absence of dedicated staff;
- (e) When the CRC moved into its new Secretariat premises, it had to contend for a while without dedicated facilities – the offices and conference room had poor ventilation and no air conditioning (which made daily work a huge challenge), there were no desks or chairs and no computers, stationary, etc. to facilitate the CRC's work; these shortcomings contributed to the absence of a conducive enabling environment to ensure the uninterrupted execution and delivery of key assignments;
- (f) The CRC experienced delay in becoming self-accounting, which meant that all of its finance-related requests had to pass through the Ministry of Justice for approval;
- (g) Following the attainment of a self-accounting status, the CRC was confronted with having to deal in large monetary transactions to facilitate its assignments, including the first round of public consultations, because of the considerable delay and/or reluctance of the Central Bank to issue cheque books to the CRC

to facilitate its transactions (instead of having to deal in large bulk cash to carry out its transactions); the CRC's request to open a commercial account with one of the local banks was turned down. It took several months to receive limited cheque books from the Central Bank;

- (h) The CRC developed, amongst other things, an Action Plan to guide its operations leading to the preparation of the Draft Constitution and this Report; the Action Plan was time-based for various deliverables, including the commencement of the first round of public consultations. There was delay in disbursing funds to the CRC to undertake the first round of public consultations and, consequently, this had a negative boomerang effect on other deliverables under the Action Plan;
- (i) The CRC relied heavily on the Office of the President to provide it with official vehicles to enable the CRC to carry out its public consultations; when the CRC activities clashed with other Government official activities, the CRC had either to delay its own activities or rely on the magnanimity of Commissioners and the Secretary to volunteer their official and/or personal vehicles to facilitate the CRC assignments. This often caused some delays, with a boomerang effect on the delivery period for the Draft Constitution and this Report; and
- (j) The intervening Ramadan month in May/June of 2019 caused considerable delay in commencing the external public consultations.

697. In essence, these factors and/or shortcomings contributed significantly to the stress level of the CRC in trying to deliver on its mandate in a timely fashion, considering that the first 4 months of the 18 months for the delivery of the Draft Constitution and this Report were spent by Commissioners on dealing mainly with administrative matters (in addition to developing the strategy documents to guide the work of the CRC).

8.2. Lessons Learned

698. The CRC process has been very rewarding and brought specifically the importance and value of consulting on matters of general concern and application. The CRC Commissioners and staff of the CRC Secretariat have indeed learned a lot from their interactions with the general public and other stakeholders in the constitutional review process. Some of the lessons learned are as follows:

- (a) Public engagement on Constitution building is a sine qua non to developing appropriate policies geared towards nation-building and safeguarding the interests of the country. There is no short cut to a comprehensive Constitution; both the process of gathering information to establish overall public interest and the drafting of a new Constitution are considered crucial to public ownership of the final Constitution;

- (b) Having a team of translators and interpreters was helpful in reaching and engaging many rural-based Gambians who would otherwise not have been as engaged in the constitutional review process;
- (c) It was gratifying to have persons with disabilities turn out in their large numbers to participate in the public consultations. This proved the value of a proactive and inclusive process that caters for all shades of society. The CRC's use of a sign language expert during the public consultations and press conferences created an enabling environment which encouraged the hard-of-hearing to actively engage in the constitutional review process;
- (d) Gambians, especially those based in the rural communities, like the idea of being consulted to seek their opinions as opposed to imposing views on them; some of them complained of being called to meetings mostly to validate documents without necessarily seeking their input prior to preparation of the documents. This, from inception, reinforced the CRC to cast a much wider net to reach as many rural communities as possible to involve them in the development of the new Constitution;
- (e) An undertaking like the constitutional review process could not have been successfully carried out without a team of researchers; the experience of the researchers should be as varied as possible and an appropriate number of the research team should be engaged. The CRC had a good team of researchers, but on hindsight could have benefitted from more numbers to ease the heavy load that was thrust on the appointed team of researchers (even though they performed well);
- (f) Social media was very effective and relatively cheap in reaching young Gambians and those in the Diaspora;
- (g) Developing a meaningful partnership with media from inception was a win-win arrangement that has benefitted the general public within and outside the country; the regular CRC press conferences enabled the media to get the CRC message to the public, which in turn contributed positively to the CRC process;
- (h) The partnership forged with the NCCE was very helpful. The team of CRC and NCCE staff to sensitise the general public on the 1997 Constitution and what a constitutional review entails was extremely helpful in ensuring productive face-to-face dialogue with Gambians and other stakeholders;
- (i) The process of preparing a new Constitution is not a mean task and the CRC had to make adjustments in some instances to ensure adequate public engagement to ensure wider participation; the assistance of the CRC support partners in civil society helped immensely in ensuring that as many Gambians

of varied interest groups as possible were actively involved in the constitutional review process;

- (j) Prior to appointing a body to undertake a constitutional review process that is constrained by time, it is important that most (if not all) of the basic groundwork is prepared in advance to ensure a seamless settlement and commencement of work; the CRC lost many months dealing with administrative issues which an early establishment of a Secretariat could have averted.

9.RECOMMENDATIONS AND CONCLUSIONS

9.1.Recommendations

699. The public consultations provided a good opportunity for citizens and other stakeholder to share ideas with regard to matters they believed should be embodied in the Draft Constitution. Quite a number of those ideas have been embraced by the CRC and have indeed found their way into the Draft Constitution. However, there are others that, in the considered view of the CRC, need not be elevated to a constitutional status although they may be considered in some form to be given effect. There are also aspects of the Draft Constitution that need further action or require amplification to achieve the full effect of the intentions of certain provisions of the Draft Constitution.

700. In these contexts, therefore, the CRC makes the following recommendations which relate directly to the Draft Constitution. The implementation of these recommendations should be considered **immediate**:

- (a) The Draft Constitution makes a number of provisions empowering the National Assembly to enact legislation to give effect to specified matters. These are designed to amplify the relevant constitutional provisions and/or give effect to the full realisation of the frameworks built within the Draft Constitution. The National Assembly should take all necessary steps to ensure the full realisation of the issues that require immediate legislation and those that may be dealt with at future dates by developing an action plan in that regard;
- (b) Related to paragraph (a) is the need for the National Assembly to review existing legislation to bring them in conformity with the provisions of the Constitution; this may require amendments to existing legislation, complete revision of existing legislation or enactment of new legislation. To help guide this process, the CRC has identified in **Annex 4** specific existing legislation that require review and amendment and the subjects that require new legislation. These should be taken forward as soon as after the coming into force of the Draft Constitution;

- (c) To help in facilitating the recommendations in paragraphs (a) and (b), the Draft Constitution provides in Schedule 4 the establishment of the Constitution Implementation Commission. This Commission is designed specifically to aid the process of ensuring that matters within the Draft Constitution on which action is required are indeed carried out within a period of 3 years (with a possible renewal once). In this regard, the National Assembly is strongly encouraged to formally establish, immediately after the Draft Constitution comes into force, the select committee of the Constitution Implementation Oversight Committee and provide required funding for the Constitution Implementation Commission;
- (d) It is further recommended that the Office of the Attorney General and Minister of Justice should work closely with the Constitution Implementation Commission and the National Assembly Constitution Implementation Oversight Committee to provide legislative drafting expertise and advice to facilitate the drafting of necessary amending or new legislation to ensure conformity with the provisions of the Draft Constitution;
- (e) The primary function of the National Assembly is to enact legislation. It is, therefore, important that the National Assembly is properly resourced with a qualified and competent team of legislative drafters who can guide the Assembly and the relevant legislation select committee on proposed Bills presented to the Assembly for enactment purposes. The same resource may be used to prepare Bills for consideration by the National Assembly, thereby easing the pressure on the Office of the Attorney General and Minister of Justice as the current primary drafter of legislation. Besides, this will ensure that the National Assembly properly scrutinises all Bills with the primary aim of ensuring that they achieve their intended purposes and the Assembly, is able to function independently without any over-reliance on the resources of the Executive;
- (f) The National Assembly should, as a matter of priority, review its Standing Orders to make adequate provisions for the confirmation process of candidates identified by the President for appointment to specified key offices provided under the Constitution. The review process must be guided by fairness and the need to ensure full cooperation with and assistance to the Executive in making the right choices for the specified offices; it is not the role of the National Assembly to dictate candidates that should be appointed by the President. This will achieve the purpose, and ensure full compliance with the requirements, of section 135 (3) - (6) of the Draft Constitution;
- (g) The Government and the National Assembly should work together to provide a comprehensive definition of the territory of The Gambia and thus ensure

certainty of the national boundaries of the country for both the present and future generations to properly and effectively safeguard;

- (h) The Government and the National Assembly should take necessary steps to regularise the citizenship status of children born in The Gambia of non-Gambian parents within the period of the cut-off date of 31st December, 2019 by carrying out the relevant study of the nature, size, complexity and implications of the issue;
- (i) A degree of certainty is required in the processing of applications for citizenship. Accordingly, it is recommended that the relevant laws on nationality should be reviewed to clearly outline the procedures for application, renunciation and deprivation of citizenship; this should include the development of appropriate forms that individuals can independently access, fill and submit;
- (j) The Government should adopt and encourage policies that promote ethnic and religious harmony between the different ethnic groups and faiths in The Gambia and ensure that the State does not engage in any activity that dilutes cohesive and peaceful relationships between the different ethnic groups and faiths; this will ensure maximum respect for the thrust of the CRC Act and the provisions of the Draft Constitution with respect to sustaining cohesiveness, unity and peace among all Gambians;
- (k) The Government should adopt necessary policy and legislative measures to gradually remove discrimination especially against women and persons with disabilities and eradicate inequality; this will accord with the provisions of Chapter VI of the Draft Constitution;
- (l) The Draft Constitution does not make a distinction between Gambians who are entitled to exercise the franchise. Accordingly, the Government should take appropriate steps to remove barriers against prisoners of Gambian nationality entitled to vote to exercise that right;
- (m) The Draft Constitution makes provision for all Gambians, including those in the diaspora, to exercise the franchise. In this respect, it is recommended that IBEC with the support of the Government should put in place appropriate measures and resources to facilitate unhindered Gambian diaspora participation in Presidential elections;
- (n) The Government should adopt appropriate measures to ensure the full devolution of government to the LGAs; this will ensure a bottom-up development process and thus reduce the weight on the central Government having to do everything. It will also ensure an expeditious resolution of issues at the Local Government level;

- (o) The Draft Constitution was developed after consultation with the people of The Gambia. In that context, the people need to be made continually aware and reminded of the provisions of the Constitution so they can take national pride in and protect it. In that vein, it is recommended that the NCCE should always be adequately funded to sensitise the general public on the Constitution and other laws of The Gambia;
- (p) For the purposes of submitting the Draft Constitution to a national referendum, it is strongly recommended that steps be taken (if not already done) to clean and bring up-to-date the existing register of voters; in addition, steps should equally be taken to conduct a comprehensive registration of new voters and prepare the ground for establishing a continuous voter registration system;
- (q) The Government and the National Assembly, in consultation with the Chief Justice and the JSC, should take steps to prepare and enact legislation to address the retirement benefits of judges of the superior courts, similar to the frameworks already established for a “retired” President and member of the National Assembly; this will be in line with the provisions of the Draft Constitution in ensuring parity between the 3 branches of government;
- (r) The steps should be taken to commence the process of establishing the TSC, HSC and ISSC (Internal Security Service Commission), with the PMO providing the relevant Secretariat support to ensure synergy;
- (s) The Office of Secretary General as Head of the Civil Service should be permanently relocated outside the Office of the President to ensure better concentration on the administration of the Public Service;
- (t) The Government should take steps to establish the ACC by identifying office premises for the institution and ensuring its adequate resourcing to promote a strong, functional, and independent body as contemplated under the Draft Constitution;
- (u) The Government should similarly take steps to independently accommodate the office of the DPP and provide it with the necessary resources so that it is functional within the time frame specified in the Draft Constitution (Schedule 4):
- (v) In order to ensure a stronger, proper, adequate and effective governance system amongst the SOEs, the monitoring body contemplated under section 281 of the Draft Constitution should be established by the National Assembly without any delay and within the time frame provided in the section (the CRC observed that this same requirement was contained in the 1997 Constitution, but had never been complied with);

- (w) Adherence to good governance was at the heart of the drafting of the provisions of the Draft Constitution to address the strong concerns of the Gambian people. In order to attain this goal in a meaningful and sustainable manner, steps should be taken to review and appropriately revise the salaries of public officers such that they are assured a decent standard of living. This will better position them to uphold and observe the highest ethical standards as contemplated by the Chapter on Leadership and Integrity under the Draft Constitution; and
- (x) As noted already noted in this Report,⁵⁴ a number of issues were raised during the public consultations which have not been given any specific constitutional recognition. This has not downplayed their relevance and the CRC fully recognises that they are central to the numerous concerns the people of The Gambia have raised during the public consultations. The CRC, therefore, considers it relevant to make the recommendations relevant to the issues raised (see **Annex 5**) which, if carried out, should strengthen both the implementation of the Draft Constitution (when it comes into force) and the good governance of The Gambia for generations to come.

9.2. Conclusions

701. The democratic and peaceful change of government that happened in December 2016 was a watershed moment in the history of The Gambia, and indeed African politics. The advent of the new Government of President Adama Barrow in January 2017 brought very high hopes in many Gambians that the country was embarking on an important journey to build a democratic, just and prosperous society.
702. In view of the recent political history of The Gambia, the decision to review the 1997 Constitution of the Republic of The Gambia was an important and widely welcomed one. The constitutional review process has been a valuable national experience in terms of its final products, namely, the Draft Constitution and this Report.
703. As has been highlighted in this Report, the Draft Constitution was prepared after the CRC thoroughly reviewed relevant background literature, held consultations with the Gambian public and other stakeholders, conducted research and carried out comparative study on constitutional law issues, and had its own internal deliberations on the issues, while at the same time giving maximum credence to the country's national ethos and values. As a result, the Draft Constitution embodies the hopes and aspirations of Gambians (who yearn for a free, peaceful, pluralistic and democratic society) as well as international best practices.

⁵⁴ See Section 7 "Issues not Included in the Draft Constitution".

704. The constitutional review process was also important because it offered Gambians in the country and the Diaspora the opportunity to freely engage in national dialogue about the Gambia we want. For this reason, it is the fervent hope of the CRC that this Draft Constitution will serve the needs of the Gambian people for generations to come, and that it will always serve to strengthen democracy and good governance in The Gambia, and keep our people united and cohesive in a peaceful and stable environment.

705. It is the case that a constitutional review process entails balancing numerous ideas and interests in order to craft a Constitution that truly represents the interests of present and future generations. This is not a mean feat, and it is precisely the reason why it is accepted that no country can boast of having a perfect Constitution. A well thought out Constitution that is not only people-centred, but also involves the opinions of the people through a process of participatory democracy, should generally be accepted with its imperfections.

706. In that context, the CRC reminds itself and all those in authority and indeed the Gambian people of the quotes from Philadelphia in 1787 from 2 prominent American Leaders when the Constitution of the United States of America was being considered for adoption.

First, from George Washington:

“I wish the Constitution which is offered had been made more perfect, but I sincerely believe it is the best that could be obtained at this time. From a variety of concurring accounts it appears to me that the political concerns of this Country are, in a manner, suspended by a thread. That the Convention has been looked up to by the reflecting part of the community with a solicitude which is hardly to be conceived, and that, if nothing had been agreed on by that body, anarchy would soon have ensued.”

Second, from Benjamin Franklin:

“I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise... I agree to this Constitution with all its faults... For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected?

Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best...The opinions I have had of its errors, I sacrifice to the public good. Within these walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the

objections he has had to it, and endeavour to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting from our real or apparent unanimity. On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.”

707. In the same vein, the CRC commends the Draft Constitution with all its imperfections and shortcomings that may be perceived of it and urge a unanimity of minds, based solely on what is in the best interests of The Gambia, particularly of generations yet unborn, that Gambians may embrace the Draft Constitution in order to move the country along the path of genuine and participatory democracy, respect for the rule of law and fundamental rights and freedoms, and good governance that we may build a nation where collective interests, now and in the future, reign above that which may be considered personal.
708. The Draft Constitution represents the first in the constitutional history of The Gambia that is designed, broadly consulted on based on full participatory democracy, and crafted by Gambians. The CRC, therefore, commends His Excellency, The President of the Republic, Adama Barrow, for the foresight and confidence he reposed in the CRC Commissioners to undertake this monumental task on behalf of the people of The Gambia.
709. It is the hope of the CRC that the Gambian authorities that have the power and authority to take the Draft Constitution forward receive the Draft Constitution in that respect and take full account of the recommendations and conclusions herein as representing the CRC’s rendition of the general views, aspirations and interests of Gambians as expounded by them during the 2 rounds of public consultations organised by the CRC. The Draft Constitution is, therefore, presented and submitted in the name of the people of The Gambia and in their interest to His Excellency, The President of the Republic of The Gambia, Adama Barrow, in accordance with the terms of section 21 (1) of the Constitutional Review Commission Act, 2017.

ANNEXES

ANNEX 1

COMPOSITION OF CRC STAFF

DEPARTMENT	NAME	DESIGNATION
HUMAN RESOURCES DEPARTMENT	Mr. Omar Ousman Jobe	Secretary
	Mr. Raymond Sarr	Head of HR and Admin
	Mrs. Rose Savage	HR and Admin Officer
	Mr. Amang Sanneh	HR and Admin Officer
	Ms. Fatoumatta Ceesay	Executive Assistant
	Mrs. Magigain Gorre-Ndiaye	Executive Assistant
	Mrs. Isatou Conteh	Executive Assistant
	Ms. Yasainey Jobe	Receptionist
	Mr. Karamo Jobarteh	Protocol Officer
	Ms. Metta Mboob	Protocol Officer
	Mr. Alpha O Sanyang	Procurement Officer
	Mr. Sheriff S Grant	Logistician
	Mr. Mulie Bah	Personal Security
	Mr. Babucarr S Njie	Messenger
	Mr. Siaka Camara	Office Assistant
	Mr. Foday Mboob	Messenger
	Mr. Lawrence Bruce	Consultant
	Mr. Ansu Ndure	Driver
	Mr. Ousman Senghore	Driver
	Mr. Momodou Sowe	Driver
	Mr. Alfusainey Baldeh	Driver
	Mr. Baboucarr Njie	Driver
	Mr. Alieu Ceesay	Security
	Mr. Kebba Gisse	Security
	Mr. Ebrima Sarr	Security
	Mr. Matarr Keita	Security
	Mr. Ebrima Drammeh	Security
	Ms. Mam Fatou Sanyang	Cleaner
	Ms. Awa Ceesay	Cleaner
	Ms. Awa Njie	Cleaner
	Ms. Fatou Jallow	Cleaner
FINANCE DEPARTMENT	Mr. Sam Ali Ashcroft	Head of Finance

	Mr. Sheikh Tijan Kuta	Finance Officer
	Mr. Bai Ebrahim Cham	Cashier /Finance Officer
	Ms. Rohey Sanyang	Finance Officer
COMMUNICATIONS DEPARTMENT		
	Mr. Sainey MK Marenah	Head of Communications
	Mrs. Saffiatou Savage-Sidibeh	Civic Education Officer /Records Officer
	Mr. Saikou Suwareh Jabai	Assistant Communication Officer
	Mr. Yaya B. Baldeh	Assistant Communication Officer
	Mr. Mamudou Suso	ICT/Website Officer
	Mrs. Halimatou Ceesay	Social Media Platform Operator
	Mr. Sainey Jallow	Local Language Expert/Linguist
	Mr. Essa M.A. Jallow	Local Language Expert/Linguist
	Mr. Haggie N. Sumbundu	Local Language Expert/Linguist
	Mr. Musa M. Keita	Local Language Expert/Linguist
	Mr. Sainey Dibba	Local Language Expert/Linguist
	Mr. Omar Bah	Local Language Expert/Linguist
	Mr. Lamin Saidybah	Local Language Expert/Linguist
	Mr. Cornelius J. Gomez	Transcriber/Note taker
	Ms. Mary Mendy	Transcriber /Note taker
	Mr. Samsideen Ceesay	Transcriber/Note taker
	Mr. Yankuba Manneh	Transcriber /Note taker
	Mrs. Jahou Gaye	Transcriber/Note taker
	Mr. Sanna Badjie	Transcriber/Note taker
	Mr. Lamin Jammeh	Transcriber/Note taker
	Mr. Momodou Lamin Jaiteh	Transcriber/Note taker
	Mr. Kawsu Jadama	Transcriber/Note taker
	Mr. Alasan Sowe	Transcriber/Note taker
PROGRAMMES DEPARTMENT	Mr. Mohammed H Loum	Head of Programmes (to 31 st October, 2019)

	Mr. Karafa Manneh	Monitoring and Evaluation Officer, & Head of Programmes (from 1 st November, 2019)
	Mr. Lamin Kabareh	Monitoring and Evaluation Officer
	Mr. Momodou Wuri Jallow	Monitoring and Evaluation Officer
	Mr. Nasiru Deen	Research Officer
	Mr. Ebrima Jarju	Research Officer
	Mr. Alieu Gako	Research Officer
	Ms. Ndey Ngoneh Jeng	Research Officer
	Mrs. Fatou Jallow	Research Officer
	Ms. Mammy Sowe	Research Officer
	Ms. Jainaba Njie	Research Officer
	Mr. Yaya Bajo	Research Officer
	Mr. Edrissa Ceesay	Statistician
	Mr. Alieu HB Bahoum	Deputy Statistician
	Mr. Jongkunda S Barrow	Regional Coordinator
	Mr. Modou Jagne	Regional Coordinator
	Mr. Famara Tabally	Regional Coordinator
	Ms. Binta Njie-Kalleh	Regional Coordinator
	Mr. Sinajo Ceesay	Regional Coordinator
	Mr. Ansumana Ceesay	Regional Coordinator
	Mr. Pa Malick Saïdy	Regional Coordinator
	Mr. Alpha O Jallow	Regional Coordinator
	Mr. Sankung Jarju	Regional Coordinator
	Mr. Momodou K Touray	Regional Coordinator
	Mr. Musa Jarra	Regional Coordinator
	Mr. Ebrima S Jallow	Regional Coordinator

ANNEX 2

TERMS OF REFERENCE AND MEMBERSHIP OF CRC TECHNICAL COMMITTEES

THE TECHNICAL COMMITTEE

ON LAND, ENVIRONMENT AND NATURAL RESOURCES

The following represent the TOR for the Committee:

1. Review, analyze and make recommendations on the issues identified by the CRC relating to land, natural resources and the environment;
2. Identify and analyze additional issues relevant to the theme of the Committee for consideration by the Commission;
3. Review and analyze the existing laws and policies of The Gambia relevant to land, natural resources and the environment, taking into consideration the existing national and global contexts, and advise on whether any such laws or policies are so fundamental as to require constitutional recognition;
4. Review best practices and international obligations on the constitutional regulation, conservation, and protection of land, environment and natural resources;
5. Review the existing institutional arrangement for the management, conservation, and use of land, natural resources, and the environment and advise on what aspects thereof require or would greatly benefit from constitutional recognition and protection;
6. To prepare and provide the CRC with periodic reports (to be agreed with the Chairperson of the CRC) on work being carried out by the Committee in relation to the matters specified in paragraphs 1 to 5 of these terms of reference; and
7. To prepare a final report outlining the Committee's advice, opinions and conclusions on the terms of reference set out in paragraphs 1 to 5 above.

Upon the completion of the assignment under these TOR, the Committee members may, as a whole or select group, be required to appear before the CRC to make an oral presentation of their work and the recommendations contained in their report.

The appointment of the Committee is for a period of 3 months. This period may be renewed by the CRC if considered necessary and subject to the availability of funds and other necessary resources. Any request for extension of appointment must be submitted by the Chairperson of the Committee of Experts to the Chairperson of the CRC at least one calendar month before the expiration of the tenure of the Committee. Extension of appointment shall be granted only with the approval of the CRC.

COMMITTEE MEMBERS

Commissioner Lamin S. Camara (Chairperson) and Commissioner Dr. Melville O. George (Co- Chairperson)

Mrs. Ndey Sireng Jobarteh-Bakurin – Member

Dr. Raymond Jatta – Member

Mr. Galo Saidu – Member

Mr. Pa Momodou Sarr – Member

Mr. Lamin Comma – Member

Mr. Kawsu Jadama – Secretary

THE TECHNICAL COMMITTEE ON PUBLIC FINANCE MANAGEMENT

The following represent the TOR for the Committee:

1. To receive issues and questions referred to the Committee by the CRC and carry out necessary research and investigation with a view to providing advice to the CRC with regard to the suitability or appropriateness of including such issues and questions in the drafting of the new Constitution for The Gambia;
2. To consider any technical matters relative to public finance management contained in the Issues Document (attached herewith as an Appendix) and render opinion on such matters;
3. To review the current fiscal policy of the Government of The Gambia and advise on any matters of policy that may be appropriately treated within the new Constitution, including those relative to public enterprises and the Central Bank of The Gambia;
4. To review, research and advise on measures considered necessary for strengthening public finance management institutions (including the Office of Auditor General and the Central Bank of The Gambia), systems, tools, processes and procedures to improve development and ensure proper, efficient and effective accountability with regard to public finances;
5. To advise on mechanisms and measures that may be considered for inclusion in the new Constitution to ensure relevant and effective management of the consolidated fund, contingencies fund and any other similar fund, loans and public debt

generally, and the development and treatment of the annual budget estimates, including supplementary budget estimates;

6. To consider and advise on whether (and, if so, how) the National Assembly oversight committee in relation to public finance and management issues can be strengthened to ensure transparency and proper and effective fiscal accountability in government, including in the public enterprises;
7. To prepare and provide the CRC with periodic reports (to be agreed with the Chairperson of the CRC) on work being carried out by the Committee in relation to the matters specified in paragraphs 1 to 6 of these terms of reference; and
8. To prepare a final report outlining the Committee's advice, opinions and conclusions on the terms of reference set out in paragraphs 1 to 6 above.

The appointment of the Committee is for a period of 4 months. This period may be renewed by the CRC if considered necessary and subject to the availability of funds and other necessary resources. Any request for extension of appointment must be submitted by the Chairperson of the Committee to the Chairperson of the CRC at least one calendar month before the expiration of the tenure of the Committee. Extension of appointment shall be granted only with the approval of the CRC.

COMMITTEE MEMBERS

Commissioner Fatoumata Jallow (Chairperson) and Commissioner Salimatta E.T. Touray (Co-Chairperson)

Mr. Mamour Jagne – Member

Mr. Alpha Barry – Member

Mr. Alhagi T S Alieu Njie – Member

Mr. Momodou Ceesay – Member

Mr. Anthony Taylor – Member

Mr. Amang Sanneh – Secretary

THE MEDIA, PUBLIC EDUCATION AND COMMUNICATIONS COMMITTEE

The following represent the TOR for the Committee:

1. To consider the provisions of the 1997 Constitution of the Republic of The Gambia to determine the nature and scope of the provisions relative to the press and other

information media and whether those provisions achieve the desired level of press and other media information independence in a democratic setting;

2. To develop a benchmarking framework that will serve the purpose of transfer of media, public education and communication knowledge and best practice in relation to a constitution-making process and advise the CRC accordingly;
3. To review international treaties applicable to The Gambia as they relate to the press and other information media to establish whether they are being adhered to, whether constitutionally or by statute;
4. To identify any specific issues relating to the press and other information media which are considered relevant to be accorded constitutional protection;
5. To explore and examine international best practices as they relate to the press and other information media and advise on any need for their adoption and how they may be appropriately dealt with as constitutional matters;
6. To prepare and provide the CRC with periodic reports (to be agreed with the Chairperson of the CRC) on work being carried out by the CRC-MPECC in relation to the matters specified in paragraphs 1 to 5 of these terms of reference; and
7. To prepare a final report outlining the CRC-MPECC's advice, opinions and conclusions on the terms of reference set out in paragraphs 1 to 5 above.

The appointment of the CRC-MPECC is for a period of 4 months. This period may be renewed by the CRC if considered necessary and subject to the availability of funds and other necessary resources. Any request for extension of appointment must be submitted by the Chairperson of the CRC-MPECC to the Chairperson of the CRC at least one calendar month before the expiration of the tenure of the CRC-MPECC. Extension of appointment shall be granted only with the approval of the CRC.

COMMITTEE MEMBERS

Commissioner Amie Joof-Cole – (Chairperson) and Commissioner Yankuba Dibba (Co-Chairperson)

Mr. Omar Wally – Member

Mr. Serign Faye – Member

Mr. Demba Kandeh – Member

Mr. Emil Touray – Member

Mr. Mamanding Kuyateh – Member

Mr. Lamin Jaiteh – Secretary

THE TECHNICAL COMMITTEE OF EXPERTS ON CONSTITUTIONAL LAW

The following represent the TOR for the Committee:

1. To receive issues and questions referred to the Committee of Experts by the CRC and carry out necessary research and investigation with a view to providing advice to the CRC from a constitutional law dimension;
2. To consider any technical matters relative to constitutional law contained in the Issues Document (attached herewith as an Appendix) and render opinion on such matters;
3. To consider the implications and application of international treaties to which The Gambia is a party and advise on any specific obligations in such treaties that may require reference or recognition in the new Constitution to be drafted for The Gambia;
4. To research and advise from a constitutional law perspective, how the term limit of the incumbent President of the Republic of The Gambia should be addressed in the new Constitution, assuming that the incumbent President decides to run for office again after his current term expires;
5. To consider and advise on any other transitional measures that may have constitutional law implications which should be addressed in the new Constitution by outlining how such measures should be addressed;
6. To consider modern rules and principles of constitutional law, including best practices, and advise on how these may be factored into the drafting of the new Constitution for The Gambia;
7. To prepare and provide the CRC with periodic reports (to be agreed with the Chairperson of the CRC) on work being carried out by the Committee of Experts in relation to the matters specified in paragraphs 1 to 6 of these terms of reference; and
8. To prepare a final report outlining the Committee of Experts' advice, opinions and conclusions on the terms of reference set out in paragraphs 1 to 6 above.

The appointment of the Committee of Experts is for a period of 4 months. This period may be renewed by the CRC if considered necessary and subject to the availability of funds and other necessary resources. Any request for extension of appointment must be submitted by the Chairperson of the Committee of Experts to the Chairperson of the CRC at least one calendar month before the expiration of the tenure of the Committee. Extension of appointment shall be granted only with the approval of the CRC.

COMMITTEE MEMBERS*

Vice Chairperson Mrs. Hawa Kuru Sisay-Sabally– (Chairperson) and Commissioner Gaye Sowe (Co-Chairperson)

Hon. Justice Basiru V.P. Mahoney – Member

Dr. Tijan Jallow – Member

Ms Jainaba Njie and Mr. Ebrima Jarju – Secretaries

THE TECHNICAL COMMITTEE ON THE DRAFTING OF, AND REPORT WRITING IN RELATION TO, A NEW CONSTITUTION FOR THE GAMBIA

The following represent the TOR for the Committee:

1. To receive and review drafting instructions from the CRC to establish whether or not such instructions are adequate and can appropriately facilitate the drafting of a new Constitution for The Gambia;
2. To draft a new Constitution for The Gambia on the basis of the drafting instructions approved and issued by the CRC by liaising with the CRC at all times to ensure that matters outlined in the drafting instructions are being adhered to and, where changes need to be effected for any good reason, such changes are considered and approved by the CRC;
3. To take into account and draft appropriate transitional provisions within a Schedule of the new Constitution;
4. In drafting the new Constitution, to take into account the reports and recommendations contained in the various reports of the technical committees established by the CRC in so far as nothing in those reports and/or the recommendations contained therein contradict or are inconsistent with the drafting instructions issued by the CRC;
5. To provide an initial draft of the new Constitution for approval by the CRC and subsequent publication to seek public opinion thereon;
6. In tandem with paragraph 5 above, to prepare a report in relation to the initial draft of the new Constitution outlining the processes and procedures adopted by the CRC in drafting the new Constitution and explaining the rationale for the provisions enshrined therein, including reasons for leaving out certain views, opinions and recommendations received during the CRC public consultations;

7. To prepare and submit to the CRC a final draft of the new Constitution, taking into account opinions received on the first draft of the Constitution as considered and approved by the CRC;
8. To prepare a final report in relation to the draft new Constitution in accordance with the terms set out in paragraph 6 above; and
9. To submit to the CRC the final draft Constitution and the final report in relation thereto no later than the xx day of , 2019.

The appointment of the Drafting Committee shall lapse upon the submission of the final draft new Constitution for The Gambia and the report in relation thereto, unless otherwise determined by the CRC.

COMMITTEE MEMBERS*

Commissioner Janet R. Sallah-Njie – Chairperson

CRC Chairperson Justice Cherno Sulayman Jallow, QC – (Co-Chairperson)

Dr. Katim Touray – Member

Ndey Ngoneh Jeng – Secretary

** The last 2 Committees herein were also comprised of the External Consultants: Prof. Dr. Albert K Fiadjoe from Ghana and Chief Justice Willy Mutunga from Kenya (Retired) who worked mostly from remote stations.*

ANNEX 3

LIST OF CRC RESEARCH PAPERS AND REPORTS

1. Comparative Review of the 1965, 1970 and 1997 Constitutions
2. Constitutional Preambles – Comparative Study and Developing a Preamble for the new Constitution
3. Secularism
4. Environment and Natural Resources – Preservation, Protection and Equitable Sharing of Natural Resources
5. Treatment of Returning Descendants of Slaves in Relation to Citizenship Rights – History, Advocacy and a Comparative Study of How They're Dealt With Elsewhere
6. Comparative Analysis of Systems of Voting in Elections – Token System vs. Ballot System
7. Marginalised Groups – Constitutional Protection of Rights and Freedoms, and Modalities for Ensuring Women's, Youths' and Disables Persons' Participation at all Levels of Decision-making
8. Incorporating Gender Perspective into Electoral Processes
9. Local Government Structures – History, working relationships and reforms
10. Public Finance Management – Study on Accountability and other Anti-corruption Measures Globally
11. Citizenship of Adopted Children
12. Comparative Study on Prisoners' Right to Vote
13. Public Interest Litigation as a mechanism for defending the Constitution and ensuring the protection of rights and freedoms
14. Analysis on Constitutional Entrenchment – Identifying subject areas considered sacrosanct for entrenchment
15. Comparative Study on Establishment of Special Criminal Court in Other Jurisdictions
16. Comparative study on Parliament's power to enact laws establishing special courts to try international law offences
17. Single and Group Tribunals in The Gambia – clarify their roles under existing laws and advise on whether there's a need for their continued existence under current laws.
18. Comparative Study on existence of Cadi Appeals Selection Committee (or a similar structure) in other jurisdictions

19. Comparative study on expanding the jurisdiction of the Cadi Court
20. Comparative study on the required qualifications for appointment of judges to the High Court, Court of Appeal and Supreme Court
21. Comparative study on whether leave to appeal from the Court of Appeal to the Supreme Court should be granted as of right or only by application
22. Comparative research on how Constitutions of other jurisdictions address the Supreme Court's power to reverse an acquittal by a court of first instance or by the Court of Appeal
23. Comparative research on the manner of appointment of the Chief Justice
24. Should the appointment of Supreme Court judges be subject to confirmation by the National Assembly?
25. Comparative study on legal proceedings against a sitting judge
26. Comparative study on functions of Judicial Service Commissions
27. The role of traditional rulers and the appointment of Chiefs in The Gambia

ANNEX 4

STATUTES TO BE REVIEWED, AMENDED OR ENACTED

S/NO	TITLE & DATE OF LAW	SECTIONS	RECOMMENDED ACTIONS
1.	The District Tribunals Act, CAP 6:03	Sections 2, 3, 4, 5, 34 and 11 (b),	<ul style="list-style-type: none"> • Sections 2, 3, 4, 5 and 34 of the District Tribunals Act should be amended to reflect the transfer of the District Tribunals from the purview of the Ministry of Local Government to that of the Judiciary • The CRC recommends that section 11 (b) of the District Tribunals Act be amended to reflect that Shari’ah matters are to be removed from the jurisdiction of the District Tribunals.
2.	Sharia Law Recognition Act CAP. 6:04	Section 9, and all other sections in the Act and its subsidiary legislation that refer to the “sharia court” as “cadi court”	<ul style="list-style-type: none"> • Section 9 of the Sharia Law Recognition Act should be amended to reflect that all matters, including Shari’ah matters, irrespective of their court of origin, end at the Supreme Court. • Section 9 of the Sharia Law Recognition Act should be amended to reflect that Shari’ah matters are to be removed from the jurisdiction of the District Tribunals. • The new provisions renaming the Cadi Courts to Shari’ah Courts would affect several provisions of the Sharia Law Recognition Act and its subsidiary legislation which refer to the court as the Cadi Court. • The CRC recommends the introduction of new provisions to give effect to the provisions on the jurisdiction of the Shari’ah High Court as contained in the Draft Constitution.

3.	Local Government Act CAP. 33:01	Sections 9 & 133(1),	<ul style="list-style-type: none"> • Section 9 of the Local Government Act, which prescribes a term of four (4) years for Local Government officials, should be amended to reflect the provisions in section 207 of the Draft Constitution which proposes that “Local government elections shall be held every five years”. • Section 133 (1) of the Local Government Act, which provides for the appointment of ‘Seyfos’ by the President, should be amended to reflect the change in the Draft Constitution which provides for the election of Seyfos. • The CRC recommends that new provisions be introduced in the Local Government Act to cater for the provision of a Local Government Service Commission • The CRC recommends that new provisions be introduced in the Local Government Act to cater for adequate gender and youth representation in the local government structures.
4.	Local Government Finance and Audit Act CAP 34:03	N/A	<ul style="list-style-type: none"> • The Local Government Finance and Audit Act already makes provision for what is envisaged in section 208 of the Draft Constitution. It should nevertheless be reviewed to ensure full synergy with the section in the Draft Constitution.
5.	Criminal Procedure Code CAP 11:01	Section 22 and section 69 (3)	<ul style="list-style-type: none"> • Section 22 (2) of the Criminal Procedure Code should be amended to be consistent with section 38 (4) (f) of the Draft Constitution which prescribes a maximum period of 48 hours within which a detained person is to be brought to court.

			<ul style="list-style-type: none"> • Section 69 (3) of the Criminal Procedure Code already provides for what is envisaged in section 130 of the Draft Constitution. However, the provision of the Code should be reviewed to ensure synergy with that section of the Draft Constitution.
6.	The Gambia Postal Service Act, CAP 73:01	Section 17	<ul style="list-style-type: none"> • Section 17 of The Gambia Postal Service Act should be amended to be consistent with section 279 of the Draft Constitution on the appointment of the Chief Executive Officer (CEO) of State Owned Enterprises.
7.	The Public Enterprises Act, CAP 87:01	Section 40	<ul style="list-style-type: none"> • Section 40 of the Public Enterprises Act should be amended to reflect the change in the time period within which an annual report is submitted to the National Assembly, as provided in section 282 of the Draft Constitution. • The Act should be amended to reflect the change in name from ‘Public Enterprises’ to ‘State Owned Enterprises’ which should change in the title of the Act and anywhere else it may appear in the Act. • New provisions should be introduced in the Act to provide for a monitoring body to monitor the operations of State Owned Enterprises as contained in section 281 of the Draft Constitution.
8.	The Ports Act, CAP 68:01	Section 12	<ul style="list-style-type: none"> • Section 12 of The Ports Act should be amended to be consistent with the Draft Constitution on the appointment of the Chief Executive Officer (CEO) of State Owned Enterprises.
9.	The Gambia Printing and Publishing	Section 11	<ul style="list-style-type: none"> • Section 11 of The Gambia Printing and Publishing Corporation Act

	Corporation Act CAP 32:01		should be amended to be consistent with the Draft Constitution on the appointment of the Chief Executive Officer (CEO) of State Owned Enterprises.
10.	The Gambia Radio and Television Services Corporation Act, CAP 74:06	Section 17	<ul style="list-style-type: none"> • Section 17 of The Gambia Radio and Television Services Corporation Act should be amended to be consistent with the Draft Constitution on the appointment of the Chief Executive Officer (CEO) of State Owned Enterprises.
11.	The Central Bank of The Gambia Act CAP 79:01	Section 10 (2), Section 13	<ul style="list-style-type: none"> • Section 10 (2) of The Central Bank of The Gambia Act should be amended as section 216 of the Draft Constitution provides that the chairperson and other members of an independent institution (such as the Central Bank) be appointed by the President subject to the confirmation of the National Assembly, contrary to the current provision of the Act which provides that members of the board are to be appointed by the President after consultation with the Public Service Commission • Section 13 on the removal of board members of the Central Bank should be amended to conform to the removal procedures of members of Independent Institutions provided in section 218 of the Draft Constitution.
12.	Assets Management and Recovery Corporation Act CAP 76:01	Section 10	<ul style="list-style-type: none"> • Section 10 of The Assets Management and Recovery Corporation Act should be amended to be consistent with the Draft Constitution on the appointment of the Chief Executive Officer (CEO) of State Owned Enterprises.

13.	The Ombudsman Act CAP 7:08	N/A	<ul style="list-style-type: none"> The Ombudsman Act should be amended to capture the change of name from “Ombudsman” to “Ombudsperson” and effect any related amendments.
14.	The Gambia Nationality and Citizenship Act CAP 16:01	Section 10 and Section 7	<ul style="list-style-type: none"> New provisions concerning the following should be introduced in the Gambia Nationality and Citizenship Act: <ul style="list-style-type: none"> Registration of citizens by persons born in The Gambia to non-Gambian parents; Renunciation of citizenship and the prescription of procedures for the acquisition and revocation of citizenship, including prescribing necessary Forms. Section 7 of the Gambia Nationality and Citizenship Act, which provides that any person who wants to naturalise as a Gambian will have to renounce his or her original citizenship, should be amended to conform with section 17 of the Draft Constitution which provides that ‘a person who wants to naturalise as a Gambian will not be required to renounce his original citizenship if his or her country of origin does not require a Gambian citizen to renounce his or her citizenship in order to naturalise in that country.’
15.	Elections Act CAP 3:01	Section 14 and section 42 (7)	<ul style="list-style-type: none"> Section 14 of the Elections Act, which makes provision for general and supplementary registration to be determined by the IEC, should be amended to conform to section 73(3) of the Draft Constitution which requires the continuous registration of voters. Section 42 (7) of the Elections Act, which stipulates that declaration of assets should be made to the IEC,

			<p>should be amended to conform to section 80(1)(k) of the Draft Constitution which provides that IBEC should confirm that a candidate for public elections has made a full declaration of his or her assets to the Anti-Corruption Commission.</p> <ul style="list-style-type: none"> • In addition, all references to the ‘Independent Electoral Commission’ should be amended to ‘Independent Boundaries and Electoral Commission’. • The Elections Act should be further reviewed to ensure synergy with the provisions of Chapter VII of the Draft Constitution, including provisions in Chapters VIII and IX on the qualifications, disqualifications, etc. of the President and Members of the National Assembly.
16.	National Centre for Arts and Culture Act CAP 49: 01	N/A	<ul style="list-style-type: none"> • The National Centre for Arts and Culture Act should be amended to: • Ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage. • Recognise and protect the ownership of indigenous seed and plant varieties, their genetic and diverse characteristics and their use by the communities of The Gambia. • These amendments should be carried out in the context of section 12 of the Draft Constitution.
17.	National Assembly (Powers and	N/A	<ul style="list-style-type: none"> • New provisions should be introduced to provide for the roles

	Privileges) Act CAP 2:02		<p>and responsibilities of the Majority Leader and the Minority Leader.</p> <ul style="list-style-type: none"> • New provisions should be introduced in to amplify the process and procedure relating to the public's right to petition the Assembly.
18.	Commissions of Inquiry Act CAP 30:02	N/A	<ul style="list-style-type: none"> • The provisions of the Commissions of Inquiry Act should be reviewed and, if necessary, amended to conform to the new provisions on commissions of inquiry in the Draft Constitution (Part VII of Chapter XII).
19.	Taxes Act CAP 83:01	N/A	<ul style="list-style-type: none"> • The Taxes Act should be amended, where necessary, to reflect the provisions captured in section 238 of the Draft Constitution which contains provisions on taxation. In particular, account should be taken of the provision relating to the need for public and expert opinion on proposed taxes and the prohibition against the retroactive imposition of taxes.
20.	Consolidated Revenue Fund Salaries Act CAP 75:05	N/A	<ul style="list-style-type: none"> • The provisions in the Consolidated Revenue Fund Act should be reviewed and, if necessary, amended to conform to the new provisions on the Consolidated Revenue Fund as contained in the Draft Constitution.
21.	Loans Act CAP 75:03	N/A	<ul style="list-style-type: none"> • The Loans Act should be reviewed to ensure synergy with sections 245, 246 and 247 of the Draft Constitution.
22.	Local Loans Act CAP 75: 02	N/A	<ul style="list-style-type: none"> • The Local Loans Act should be reviewed to ensure synergy with sections 245, 246 and 247 of the Draft Constitution.
23.	The Gambia Public Procurement Act	N/A	<ul style="list-style-type: none"> • The Gambia Public Procurement Act and its Subsidiary legislation

	(and Subsidiary legislation) CAP 77:01		already makes provision for what is envisaged in section 251 of the Draft Constitution on Public Procurement. Nonetheless, the Act should be reviewed in the context of section 251 of the Draft Constitution to ensure full compliance and, if necessary, introduce new provisions in the Act as contemplated in that section.
24.	The National Youth Council Act CAP 55:02	N/A	<ul style="list-style-type: none"> The National Youth Council Act should be reviewed to reflect the principles of youth development as provided in section 294 of the Draft Constitution.
25.	National Council for Civic Education Act CAP 49:02	N/A	<ul style="list-style-type: none"> The National Council for Civic Education Act should be amended to reflect the new name of ‘National Commission for Civic Education’ and ensure compliance with the expanded functions of the Commission; the amendment may also provide for the establishment of District Branches of the Commission.
26.	New: Access to Information Bill	N/A	<ul style="list-style-type: none"> The National Assembly should introduce provisions in the Access to Information Bill to limit access to information for public interest in conformity to the provisions of the Draft Constitution.
27.	Judiciary Salaries and Pensions Bill	N/A	<ul style="list-style-type: none"> The CRC recommends the enactment of a new legislation akin to the National Assembly Salaries and Pensions Act to provide for the remuneration and retirement benefits of Judges and Judicial Officers. Account should be taken of section 195 of the Draft Constitution.
28.	Anti-Corruption Bill		<ul style="list-style-type: none"> The CRC recommends that the Anti-Corruption Bill already tabled in the National Assembly should be reviewed in the context of the provisions in the Draft Constitution relative to the Anti-Corruption

			<p>Commission (ACC) established under section 212 of the Draft Constitution and should contain provisions that:</p> <ul style="list-style-type: none"> ○ Establish procedures and mechanisms for strengthening the administration of this Chapter XII as it relates to the ACC; ○ Prescribe penalties for contravention of the provisions of Chapter V on Leadership and Integrity; and ○ Prescribe any other matter that will ensure the promotion of the principles of Leadership and Integrity referred to in Chapter V.
29.	New legislation	N/A	<ul style="list-style-type: none"> • The CRC recommends the enactment of a new Act to make provisions on the procedure of the Prerogative of Mercy Committee and the criteria it should apply in considering and formulating its advice to the President.
30.	New Legislation	N/A	<ul style="list-style-type: none"> • The CRC recommends the enactment of a new Act to make provisions on the procedure of the Prerogative of Mercy Committee and the criteria it should apply in considering and formulating its advice to the President.
31.	Lands Commission Act CAP 57:07	Sections 4, 5, and 14	<ul style="list-style-type: none"> • This Act should be amended to take into account the change in name from “Land Commission” in section 4 to “Land, Environment and Natural Resources Commission” as found in section 253 of the Draft Constitution • Section 5 should be amended to conform to section 253 (2) of the Draft Constitution • Section 14 should be amended to take account of the functions outlined in the Draft Constitution

32.	State Lands Act CAP 57:02	Section 11	<ul style="list-style-type: none"> • Section 11 A (3) (a) (ii) of the Act in relation to the term for which a non-Gambian can hold land should be amended to reflect the provisions in the Draft Constitution
33.	Mines and Quarries Act CAP 64:01	N/A	<ul style="list-style-type: none"> • This Act should be amended to take account of the principles of land, environment and natural resources policy highlighted in section 252 of the Draft Constitution
34.	Petroleum, (Exploration, Development and Production) Act CAP 65:02	N/A	<ul style="list-style-type: none"> • This Act should be amended to take account of the principles of land, environment and natural resources policy highlighted in section 252 of the Draft Constitution
35.	Biodiversity and Wildlife Act CAP 62:01	N/A	<ul style="list-style-type: none"> • This Act should be amended to take account of the principles of land, environment and natural resources policy highlighted in section 252 of the Draft Constitution
36.	National Environmental and Management Act CAP 72:01		<ul style="list-style-type: none"> • This Act could be amended to take account of the right to a clean environment as provided in section 59 of the Draft Constitution
37.	Labour Act CAP 56:01	N/A	<ul style="list-style-type: none"> • The Labour Act already makes provision for the rights and privileges envisaged in the Draft Constitution including protections relating to child labour and right to join trade unions. The Act, should, however, be reviewed to ensure full protection to employees within the context of the right to fair labour practices under Chapter VI of the Draft Constitution.

ANNEX 5

MATTERS TO BE CONSIDERED ARISING FROM ISSUES RAISED DURING THE IPC

- (a) The Code of Ethics for public officers should be issued as subsidiary legislation under the Public Service Act or the Anti- Corruption Legislation, so as to ensure its effective enforcement. Giving the Code legislative force has the advantage of ensuring statutory consequences for failure to comply with or for any infraction of any provision of the Code;
- (b) The Government should update the General Orders (GO), Financial Instructions (FI) and the Regulations relating to the public service to help improve the effectiveness of the Civil Service;
- (c) The Office of Regional Governor is recognised as a civil service position and should, therefore, be non-partisan. While it is the case that Regional Governors are effectively the central Government's representatives in the Regions, their roles should be disengaged from political activity or any appearance thereof. This will strengthen respectability to the Office and enable the Regional Governors to provide unbiased and professional advice;
- (d) The CRC has found a lot of confusion between the role of a Regional Governor vis-à-vis the operation of LGAs. Some Regional Governors claimed not to have been given any terms of reference upon appointment. To address this conundrum, it is recommended that the Local Government Act (Cap. 33:01) should be reviewed to clearly outline in detail the roles and functions of Regional Governors, taking absolute care not to muddle such roles and functions with those of LGAs;
- (e) The Public Service is a constitutional creature that is designed (amongst other things) to facilitate the programmes of any sitting Government and uphold the highest tenets to ensure national development. It is, therefore, important that public officers are strictly apolitical and do not engage in negative activities that inhibit or are likely to inhibit a sitting Government's programmes. Accordingly, it is recommended that the Public Service should be taken through a phased reorientation to develop and/or strengthen the professionalism of the Public Service as an institution representing the interests of the State; in addition, the capacity of the Public Service should continually be re-evaluated and strengthened by ensuring appropriate training and placement of public officers;
- (f) The President should exercise the broad discretion given to him or her to ensure that Cabinet meetings are adequately informed to aid the decision-making

process. While generally, Ministers are capable of presenting and defending their papers before Cabinet, consideration should be given to the value of inviting Ministry experts to Cabinet meetings to advise on technical matters (where such matters arise). Accordingly, the attendance of Permanent Secretaries and their Ministry experts at Cabinet meetings for specific subject matters should be regular features, particularly when a paper is being considered in the absence of the substantive Minister;

- (g) It is the observation of the CRC (during the public consultations and through public interactions) that Seyfos and Alkalos are pivotal to national cohesiveness and unity. They are generally viewed positively in their respective districts and are critical to maintaining peace and ensuring community cooperation.⁵⁵ In particular, the Alkalos by convention serve as the recipients of known and unknown visitors to their villages, providing them with accommodation and food. Yet these Alkalos are not paid monthly salaries. This anomaly should be remedied immediately. Accordingly, the Government and the LGAs should enter into dialogue to ensure that Alkalos are properly and adequately remunerated;
- (h) In a similar vein, serious consideration should be given to providing each Seyfo with a means of mobility to enable them to reach their district people on a regular basis and, therefore, be in a better position to interface with the Regional Governors to ensure that messages to and from the central Government are dealt with in a timely manner;
- (i) Guidelines for the granting of bail to arrested suspects should be prepared to better guide The Gambia Police Service and judicial officers and thus ensure a clear and transparent process in dealing with suspects; there should also be a review process to prevent suspects languishing in remand. This will prevent the situation where some suspects are arrested and put in remand for indefinite periods;⁵⁶
- (j) The Gambia Immigration Service should seriously consider taking appropriate steps to recommend necessary legislative amendments to remove the reference to “alien” in the certificate in relation to non-citizens that are legally in the country. The term is considered derogatory and should be dispensed with;
- (k) The National Assembly members should develop mechanisms to better interface with their constituents. It is, therefore, recommended that each National Assembly member should establish in his or her constituency at least

⁵⁵ In a few districts, it was observed that some people did not hold their Seyfos, in particular, in high esteem, as they viewed them as “political stooges” that represented only sitting Presidents.

⁵⁶ It is not unknown for suspects to be in remand for months and even years before they are taken to court to be tried.

one constituency office that is permanently staffed to facilitate regular interface with constituents; and

- (1) There is the urgent need to regulate the real estate industry in The Gambia to protect land for current and future generations. The Government should urgently develop appropriate legislation to support the restrictions provided in the Draft Constitution to preserve farm land and control the carting away of Gambian land, which has the potential to create instability as more available land is squeezed from their traditional owners by the lure of “big capital”. The present generation, especially those in authority, have an obligation to the future generations of Gambians to preserve and bequeath land to those generations.

NON-CONSTITUTIONAL ISSUES

The CRC considers the following non-constitutional issues raised with the CRC to have equal relevance and should be addressed by the Government and, where necessary, with the cooperation of the National Assembly in enacting appropriate legislation:

- (a) **Matters relating to farming:** The CRC has made an effort to address farmers’ rights and protect their interests in the Constitution. However, the issues confronting The Gambia’s farming community (including those in horticulture and animal husbandry) are broad and varied and, if farming is to remain in the forefront of The Gambia’s economic development, due consideration should be given to including them upfront in matters concerning farming, rather than merely handing down to them policies and laws already decided without their input. In addition, the Government should consider injecting serious capital into farming by assisting farmers to graduate into mechanised farming to ensure food security for the country. In addition, farmers should be provided with necessary assistance to sell their produce and, to the extent feasible, either subsidise them or reduce the level of competition between imported goods and the same goods that are produced in the country; this will encourage many to go into farming and thus help in reducing the level of unemployment in the country;
- (b) **President’s meeting with farmers:** The 1997 Constitution provides for the annual meeting by the President with farmers; this is contained under the unenforceable Chapter on Directive Principles of State Policy. The CRC does not consider this to be a constitutional matter, but strongly recommends that the convention should be continued and made more meaningful by the President visiting and engaging farmers directly at their farm locations;
- (c) **Permanent Secretaries sitting on too many boards:** Permanent Secretaries should be encouraged to delegate representation on Boards of SOEs to their deputies and other senior officers in order to broaden their training and experience. Since the motivation for Permanent Secretaries sitting on too many Boards of SOEs (while their regular

duties at the Ministries “languish”), it is recommended that SOEs should be prohibited from paying allowances to public officers that sit on their Boards or restrictions created to bar any particular public officer from sitting on more than 2 SOE Boards;

- (d) **The Internal Audit Directorate (IAD):** The CRC determined that the IAD does a good job of preventing waste of State resources and thus ensuring appropriate financial management. While the IAD has not been given constitutional recognition, it is recommended that the Government and the National Assembly should work together to develop a specific statute establishing the IAD and providing for its governance and guaranteeing its independence ;
- (e) **Local Government Authorities and the Local Government Act (Cap. 33:01):** The Local Government Act has not been effectively implemented since its enactment over 18 years ago. This became very clear during the CRC’s dialogue with the Ministry of Local Government, Lands and Regional Administration, Regional Governors and LGAs. It was also apparent that the argument is used that LGAs are not strong enough as the pretext for the non-implementation of the Act. Whilst the CRC recognises the need to empower LGAs by incorporating very strong and comprehensive provisions on Local Government and devolution of powers, it also calls on the Government to renew its commitment to the provisions and spirit of the Act. Regarding the request by LGAs to change all the titles of “Chairman” to “Mayor”, the CRC considers that this is a matter that requires in-depth policy consideration and not fit for inclusion in the Constitution. In any case, if considered necessary, the subject may be addressed through an Act of the National Assembly. It is thus recommended that the LGAs should engage the Government to resolve this issue through an appropriate policy and legislative framework;
- (f) **Providing written contracts to employees:** Too many people have lamented to the CRC the practice of foreign-based employers in refusing to provide written contracts to Gambians employed by them. This “obliterates” any contractual obligations to the Gambian employees who are quite often laid off without any benefits whatsoever. The CRC considers this to be a flagrant violation of the law and the public officials responsible for labour matters cannot claim to be ignorant of this heinous, demeaning and exploitative practice. It is recommended that the Government takes immediate steps to enforce the labour laws of the country and appropriately deal with violators;
- (g) **Call to reintroduce price control:** Many Gambians, during the public consultations, have called for the reintroduction of price control on goods imported into and sold in the country. Generally, people have decried the high and constantly and uncontrolled changing prices of goods. The Government is strongly urged to find ways to resolve this legitimate concern considering, in particular, the low purchasing power of many citizens, especially those in the rural communities; and

(h) **Need to protect consumers:** It was brought to the attention of the CRC during the public consultations that some of the supermarkets in the country engage in the bad practice of selling expired goods and changing the expiry dates on goods. This must be considered a serious public health issue and the CRC strongly recommends that the Government either directly or through the relevant Government agency takes immediate steps to arrest this ugly behaviour in a sustained manner.

CRC

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