



REPORT ON DRAFT CONSTITUTION 2020

Compatibility with human rights etc.



REPORT ON THE GAMBIA DRAFT CONSTITUTION 2020 & ITS COMPATIBILITY WITH HUMAN RIGHTS ETC. AND OBLIGATIONS UNDER INTERNATIONAL LAW

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1. Introduction

1.1 Purpose and objective of the Report

This unsolicited report is the result of a careful and thorough study of the provisions within the Draft Constitution (hereinafter “the Draft”), identifying those provisions whose substance are inconsistent with the Constitution, fundamental human rights and international treaties. The study which informed this report also sought to uncover and highlight the adversities such provisions present and offer sound recommendations for reasonable amendments by way of safeguards etc. in order to ensure compatibility and adequate protections.

Whilst the issue of fundamental human rights is the primary focus of this report, Draft provisions relevant to good governance and the enhancement and entrenchment of democracy, democratic accountability and institutions were also carefully considered and reasonable recommendations for amendments and further enactments made in the same regard.

This report’s objective is to compliment and consolidate the work of the Constitutional Review Commission (hereinafter “the CRC”) in order to assist the smooth, swift but safe abrogation of the existing Constitution. Although provisions in the abrogated 1970 Constitution and those in the existing Constitution are referenced, such are not the focus of this report.

It is acknowledged that there are indeed other areas of concern in the Draft which are over and beyond the scope of this report and which the study which informs this report did not consider.

1.2 Findings (overview)

Greater emphasis and focus were dedicated to human rights and The Gambia’s obligations under international treaties with respect to the same. It is this report’s finding that the majority of Gambians who took part in the consultation process by the CRC advocated for more human rights and a more open democratic space but, whilst the CRC set a new and high bar in the length it went with respect to its consultations, results of such consultations are for the most part and in key areas e.g. ‘birth right citizenship’ not reflected in the Draft. The unprecedented increase in the number of fundamental rights the State is constitutionally permitted to interfere with and restrict is a concerning finding as is the possibility for Shariah law to expand into other areas of law e.g. penal law and / or other sources of Gambian law e.g. the Common law to be shrunk, diminished or abolished by way of an amendment of an unentrenched provision (and without any need for a referendum).

The lack of clarity on issues regarding the repeal of the death penalty, the repeal of AFPRC decrees some of which are still part of the existing laws and, the prohibition of gender - based and cultural discrimination etc. under sources of law other than the Common law are also findings which deserve attention and further examination as is the absence of any provision to mandate Diaspora franchise and legislative representation among other findings all of which are comprehensively laid out in this report.

This report has also found that, whilst Draft provisions with respect to good governance and democratic accountability constitute a significant leap forward and an improvement

from the current and previous Constitutions, these are not robust enough to deter or prevent a dedicated actor with appropriate legislative power or influence undermining them so that they are rendered futile.

Apart from the above issues, it is also the finding of this report that the CRC significantly overreached its statutory boundaries as are outlined under section 6 CRC Act, terms of reference which this report has established were not complied with. For clarity, the findings of this report etc. are for information purposes rather than a criticism of the CRC collectively, individual Commissioners or any others mentioned herein, it is therefore not the intention nor the desire of this report for its findings to be construed otherwise.

As the only success story on the continent in terms of peaceful transition from a dictatorship through a democratic public vote, it is vital that the findings of this report are carefully considered by policymakers etc. so as to safeguard the aforesaid likewise The Gambia's democratic future.

2. The Constitutional Review Commission (CRC)

2.1 Functions and delegated authority

The CRC, constituted in June 2018 comprises 11 members (Commissioners) whom were charged with the delegated function of reviewing the Constitution of The Republic of The Gambia for the purposes of compiling a Draft Constitution in accordance with the mandate under the CRC Act 2017²⁸ (the Act).

2.2 Terms of reference

The terms of reference of the CRC as stipulated under section 6 of the Act²⁸ are as follows:

In carrying out its delegated function, the CRC was mandated to have regard to national values and ethos and safeguard and promote:

- The existence of The Gambia as a sovereign independent State;
- The Gambia's Republican systems of governance, including democratic values and respect for and promotion of the rule of law and fundamental rights and freedoms;
- The separation of powers;
- National unity, cohesion and peace;
- The importance of ensuring periodic democratic elections based on universal adult suffrage, including the introduction of term limits for serving in the office of President; and
- The Gambia's continued existence as a secular State.

3. The Constitutional Review Process Key Milestones

- a. As Above (See 3.1 to 3.10 above)

4. Provisions Adverse to Human Rights: Area of Concerns, Reasons for Concern and Proposed Changes (to ensure compatibility)

4.1 Draft section 10² – Laws of The Gambia

Area of Concern

- a. This Provision in the Draft Constitution² (hereinafter referred to as 'the Draft') is not entrenched (see section 303(1)²). In light of this, such provision could be amended without a referendum.
- b. Section 7 of the 1997 Constitution¹ (hereinafter referred to as 'the Constitution') which is the equivalent provision to draft section 10² is not entrenched. However, under such Constitution¹: i) there isn't established any on par parallel legal system to the Common law legal system; ii) any establishment of a parallel on par legal system would require a referendum. Therefore, these negate the need for entrenchment unlike the case for draft section 10².

- c. Draft section 10(1)(b) and Schedule 4(2)² did not expressly repeal Decrees by the AFPRC (which by virtue of s.7(c) of Constitution¹ are part of the “existing laws”).
- d. Under Draft section 10(2)², treaties to which The Gambia is a party would not have the force of law unless the National Assembly passes enabling legislation to give them the force of law.
- e. The language at Draft section 10(3)² does not mandate the Courts to have due regard to human rights treaties in its interpretation and application of constitutional provisions.

Reasons for Concern

- f. Unlike the Constitution¹, the Draft² proposes the establishment of a Sharia legal system which shall run parallel to the Common law legal system (see Draft sections 180(1)(a), 183(1)(a) and 188(2) & (3)²) and in light of this, unless Draft section 10² is entrenched, the scope of the Shariah could be extended into other areas of law (Criminal, Penal Law etc.) and / or other sources of Gambian Law under Draft section 10² expunged or shrunk without any referendum.
- g. Unless expressly repealed, AFPRC decrees will continue to have the force of law.
- h. Draft section 10(2)² will hinder the implementation and of international human rights treaties.
- i. Draft section 10(3)² will have the effect of undermining international human rights treaties to which The Gambia is signatory.

Proposed Change

- j. It is proposed that Draft section 10² be entrenched as a reasonable safeguard against the adversity at para 4.1(f) above.
- k. It is proposed that Draft section 10(1)(b) and / or schedule 4(2)² be amended to the effect that Decrees by the AFPRC are expressly repealed.
- l. It is proposed that Draft section 10(2)² be amended to the effect that human rights treaties are enforceable within a specified period e.g. 6 months from ratification, accession etc. whether domesticated or not.

- m. It is proposed that Draft section 10(3)² be amended to the effect that Courts are obliged to have due regard to human rights treaties The Gambia is a signatory to when interpreting and applying constitutional provisions.

Further Information

- n. The CRC final report³ is silent on this matter (see 154 – 160 of report³).
- o. Contrary to representations at para 155 of the CRC final report³ that “there were no submissions on this issue”, at least two submissions were made on this issue by the Gambia Christian Council in December 2018¹⁷ and December 2018^{17A} and Democracy Watch Gambia on 30 December 2018¹⁸ and 9 December 2019^{18A}.

4.2 Draft section 15² – citizenship by birth (persons born in The Gambia to non-Gambians)

Area of Concern

- a. This provision in the Draft² deprives citizenship to persons born in the Gambia to non-Gambian parents.
- b. The majority of submissions received on this subject were in favour of such persons being accorded birth right citizenship as highlighted at paras 172 - 176 of CRC final report³. Therefore, this Draft provision runs contrary to public opinion, something which renders futile the purpose of the consultation exercise.

Reasons for Concern

- c. Deprivation of birth right citizenship to persons born in The Gambia will render such persons stateless, something which does not sit well with International Law⁵.
- d. Additionally, as per the Convention relating to the Status of Stateless Persons⁴ (accessioned onto by The Gambia on 1 July 2014⁵), The Gambia has obligations towards such persons, obligations whose rigmarole and administrative burden may economically cost the State far more than the granting of birth right citizenship costs.

Proposed Change

- e. It is proposed that this provision be amended so that all persons born in The Gambia automatically acquire Gambian citizenship at birth as of birth right regardless of the nationalities or status of their parents

Further Information

- f. Public opinion among Gambian citizens is in favour of the above proposed change; this is highlighted at paras 172 – 176 of CRC final report³ and there is no reasonable justification to the contrary.
- g. The abrogated 1970 Constitution²⁰ at section 5 accorded birth right citizenship to all persons born in the Gambia regardless of the nationality of their parents with the only exception to this being persons born to non-Gambian parents wherein their father was a diplomat or enjoyed diplomatic immunity (section 5(a)) of abrogated Constitution²⁰ or, both parents are non-Gambians and birth took place in occupied Gambian territory by a country which their father was a Citizen and with whom The Gambia was at war (section 5(b)²⁰). Section 9 of the Constitution¹ is a regression from our first Republican Constitution²⁰, something is inconsistent with Gambian public opinion (see para 4.2(f) above), international law (see para 4.2(d) above) hence why there is no plausible argument in favour of the denial of birth right citizenship at Draft section 15². The Draft² ought to have restored and rectified this absurdity.
- h. Also, this provision is contrary to the spirit of and the international progressive trend on such matters¹².

4.3 Draft section 15² – Citizenship by birth (persons born outside The Gambia with at least one Gambian parent or grandparent)

Area of Concern

- a. This provision accords automatic citizenship by birth to all persons born outside The Gambia wherein at least one parent or grandparent is a Gambian. This is proposed to be retroactively applicable.

Reasons for Concern

- b. Whilst the intention of the provision is well placed, an automatic entitlement or granting of citizenship to such persons diminishes an important international law safeguard which they currently enjoy.
- c. Such automatic incentive would mean that such persons' countries of birth could, by operation of any law in such country revoke their citizenship without any recourse for them to rely on statelessness safeguards (entitlement to or acquisition of another citizenship undermines protections against such revocation) – in the case of Europe, Article 1(c) of Council of Europe Convention¹³ sets this out.

Proposed Change

- d. It is proposed that this provision be amended so that such entitlement or acquisition of nationality by birth (by descent under current law¹) is not

automatic but subject an application on the part of the subject and approval by the State or registration at appropriate Gambian mission.

Further Information

- e. For caselaw / precedent in this area, see judgement¹⁴ and legal commentary¹⁵ on the case of Shamima Begum v UK Home Secretary.
- f. A submission to this effect was made to the CRC at serial 7 on page 6 of Democracy Watch Gambia submission¹⁸ but, it is not known why such was not taken into account as the CRC final report³ is silent on this matter; Citizenship matters are covered at paras 170 – 180³

4.4 Draft sections 34 & 35² - Enforcement of fundamental human rights and freedoms & Authority of courts to uphold and enforce this Chapter [fundamental human rights]

Area of Concern

- a. These provisions, in detailing the role [jurisdiction] of the High Court (section 35(1)) and rules of procedure by the Chief Justice for litigation matters with respect to fundamental human rights (section 34(3))², did not acknowledge the jurisdiction of the National Human Rights Commission (see Draft section 221(3)&(4)² and section 13(2) NHRC Act²² regarding the same).
- b. These provisions did not address the existing unhelpful ambiguity as to which of the two (NHRC and high court) has superior jurisdiction over the other on the respective matters.

Reasons for Concern

- c. Whilst these provisions (or similar ones) are ones which already exists in the Constitution and ones which are absolutely necessary, in light of facts at paras 4.4(a) & (b) these have the effect of undermining or diluting the jurisdiction of the NHRC (as detailed at section 13(2) NHRC Act²²).

Proposed change

- d. It is proposed that these provisions be revisited and amended so that:
 - i) The jurisdiction of the NHRC on matters of human rights is explicitly acknowledged to avoid prejudicing NHRC jurisdiction; and
 - ii) The ambiguity as to jurisdiction etc (who has primary and / or original jurisdiction and which of the two has superior judicial authority: can a matter determined by the NHRC be appealed against or subsequently litigated at the high court or vice versa?) are addressed with explicit clarity.

Further Information

- e. The status of the NHRC (see Draft section 221²) in relation to the High Court is unclear:
 - i) is it a judicial authority or an enforcement authority or both?
 - ii) If it is a judicial authority, is it bound by high court decisions on human rights matters? To what extent does its powers and decisions carry the same force as those of the High Court? Can the high court overrule it on human rights matters or vice versa?
 - iii) Despite having high court powers (see section 13(2) NHRC Act²) its members / Commissioners do not enjoy the same protections as those enjoyed by high court judges under Draft sections 194² (see Draft section 218²). Is this anomaly in the public interest?
- f. Fundamental questions at para 4.4(e) above are ones which emerged following the creation of the NHRC but ones which Draft sections 34 and 35² have not addressed; these will lead to problems in future and Constitutional clarity is essentially necessary.

4.5 Draft section 36² - Limitation of fundamental human rights and freedoms

Area of Concern

- a. This provision seeks to create a Constitutional gateway through which fundamental human rights can at a later date be limited by an operation of law.
- b. The extent to which the exercise of fundamental human rights can be limited under this provision is open ended ("reasonable"(ness) and "justifiabl(e)"(ity) are in this context very low bars upon which to rely as legal tests for the limitation of rights which are so fundamental to the preservation and thriving of The Gambia's emerging democracy).

Reasons for Concern

- c. As per this provision, it is realistically possible (not remote at all) for any future administration at a later date to, through an operation of any law restrict the exercise of fundamental human rights despite the generous wordings of those provisions detailing such rights at part ii of the Draft².

Proposed change

- d. It is proposed that the entirety of this provision be expunged and the position of the current Constitution¹ (sections 18(1), 19(1), 22(2), 25(4) and 209) be maintained, and a new provision be drafted (as substitute) to the effect that any law seeking to limit any fundamental human rights shall be:
 - i) required to be necessary, proportionate and reasonable; and
 - ii) Shall have a mandatory periodic sunset clause (shall remain effective for no longer than a specified period and then automatically lapse unless reviewed and renewed by the National Assembly) so that it does not exist in perpetuity.

Further Information

- e. Draft section 36² apart from being such an open-ended restriction corridor, it is a fundamental rights limitation provision which is unprecedented under Gambian Constitutional law – no such provision existed in the 1970²⁰ Constitution nor exists in the current Constitution¹.
- f. Such a restrictive and adverse provision was not consulted on (see para 2 of CRC Issues Paper²⁶ and para 230 of CRC final report³) and whilst the CRC final report³ referred to the provision, it details no explanation as to why such an open-ended restriction corridor is necessary at all (see para 288 of CRC final report³).
- g. In light of the above, it is substantiated that Draft section 36² is arbitrary, unnecessary and presents a realistic possibility to be used as an undemocratic license for the diminishment of fundamental rights overtime, therefore, it is reasonable for it to be expunged and the proposed changes at para 4.5(d) adopted as a reasonable substitute (also see chapter 4, pp. 11 – 13 International IDEA Constitution - Building Primer – Limitation Clauses²¹).

4.6 Draft section 38² – Right to Life

Area of Concern

- a. This Draft provision is not explicit on the abolition of the death penalty.
- b. This Draft provision at subsection (2)² also creates defences for the deprivation of life by the State in circumstances where the use of lethal force is not even justifiable under international law: "protection of property", "to effect a lawful arrest", "to prevent the escape of a detainee", "to suppress a riot, insurrection or mutiny" and "to prevent the commission of a criminal offence" (see Article 3 UDHR⁶ and Article 6 ICCPR⁷).

Reasons for Concern

- c. As per this provision, the deprivation of life in circumstances which are not justifiable nor lawful under international law, will be justified and lawful due to lack of explicit clarity (on the death penalty) and the presence of unreasonable and sweeping defences to the use of lethal force by the State.
- d. It is acknowledged that this provision is identical to section 18 of the Constitution¹ which is also inconsistent with International law for the above reasons as well as section 18(3)¹ which mandated for a review of the death penalty to take place in 2007 but which to date has not been adhered to.

Proposed Change

- e. It is proposed that this provision be amended so that:
 - i) the death penalty is retroactively repealed and in explicit terms (and all death sentences commuted to life imprisonment and all executions from 2007 (when review was due) pursuant to section 18¹ granted posthumous pardon).
 - ii) Justification and defences for use of lethal force by the State (or its agents) is explicitly limited to the defence of life and limb and the prevention of grievous bodily harm **ONLY**.

Further Information

- f. Public opinion supports the abolition of the death penalty (see paras 255 – 259 of CRC final report³). In light of this as well as section 18(3) of the Constitution¹, there is no plausible reason why the death penalty should make it into the Draft (unless for the purposes of repealing it whether retroactively or otherwise).
- g. The above proposal(s) are in line with international Convention and standards. There is no favourable argument to the contrary.

4.7 Draft sections 39, 41 and 45² – Protection of Liberty & Right to human dignity, protection against torture and inhuman treatment and Right to fair trial

Area of Concern

- a. Like sections 19 and 21 of the Constitution¹, the above Draft provisions did not prescribe sufficient adverse measures or detriments in order to disincentivise and punish the breach of such fundamental rights by the State or State actors.

Reasons for Concern

- b. In the absence of sufficient and proportionate detriment for breaches, protections under these provisions will remain vulnerable to routine abuse by the State – the onus is solely on the victim to seek legal recourse.

Proposed Change

- c. It is proposed that these provisions be amended so that:
 - i) all apprehended persons are offered free legal representation as soon as practicable and before being questioned or asked to make cautionary statement.
 - ii) it guarantees a presumption for bail for all bailable offences (to place to burden of proof against court bail on the prosecution).
 - iii) in addition to payment of compensation as per Draft section 39(5)² any evidence acquired in breach of these provisions shall be rendered inadmissible to the extent that its acquisition was deemed to be in breach.
 - iv) In the event of any apparent breach, the relevant law enforcement authority / State actor shall be under a legal obligation to self-refer complaints to the relevant authority e.g. the NHRC²² or any other regulatory authority.
 - v) All people accused of imprisonable offences are availed legal representation at public expense.

Further Information

- d. This Proposal is in line with international standards and it shall enhance compliance with human rights and minimise abuse in this regard.

4.8 Draft sections 46, 49 and 50² – Freedom of expression, Freedom of Religion & Conscience and Freedom of Assembly

Area of Concern

- a. The undue restriction of fundamental rights at sections 46, 49 and 50² is not explicitly prohibited.

- b. Aspects of draft section 46 (2) & (3)² are vague and undermine this fundamental right and, draft section 49(3)² does not explicitly prohibit discrimination etc. on grounds of religion (it uses “may” as opposed to ‘shall’).

Reasons for Concern

- c. The exercise of these fundamental human rights will not to be protected from being undermined to the extent that they are rendered futile.

Proposed Change

- d. It is proposed that these provisions be amended so that:
 - i) it is explicitly stated that the exercise of these rights does not require permission from an authority unless such exercise of such right involves a procession which may interfere with the free flow of traffic etc.
 - ii) a static assembly only requires an advance notice sent (not application for permission) to the relevant authority.
 - iii) exceptions at draft section 46 (2) & (3)² are limited to incitement of violence or the communication of threats to cause physical violence (assault, rape, murder) against another or incitement of the same.
 - iv) At section 49(3)² “may” is substituted for ‘shall’ in order to explicitly prohibit the purported prohibited conduct.

Further Information

- e. Submissions to the above effect were made to the CRC (sent 30-Dec-2018¹⁸ and 9-Dec-2019^{18A}) but, these were not accommodated, and no reasons were given as to why this was the case (see paras 290 – 298 of CRC final report³).
- f. The above proposal is in line with international standards. There is no plausible argument to the contrary.

4.9 Draft section 69² – Protection from discrimination

Area of Concern

- a. Aspects of this Draft provision at subsection (3) & (4)² excludes certain marginalised and vulnerable groups from such protection from discrimination.
- b. It is acknowledged that aspects of Draft section (3)² of this provision also exists in the Constitution at section 33(5)¹.

Reasons for Concern

- c. The operation of these exclusions shall leave the relevant marginalised and vulnerable groups open to their rights being undermined in ways which are unjustifiable.
- d. These exclusions are inconsistent with and undermine the rights accorded to these marginalised groups elsewhere under the Draft².

Proposed change

- e. It is proposed that Draft section 69(3)(c) & (e)² be expunged so that no one is excluded from the enjoyment of protection from discrimination.

Further Information

- f. The CRC final report³ is silent on this matter (see paras 290 – 298 of report³).
- g. The above proposal is in line with international standards likewise human rights provisions in the Draft (chapter vi, part I²). There is no plausible argument to the contrary.

4.10 Draft section 153² – Legislative Power of the National Assembly

Area of Concern

- a. Safeguards in this provision (retained from 100(2) of the Constitution¹) are not adequate.

Reasons for Concern

- b. Aspects of the State, democratic principles and public policy which this provision seeks to safeguard may still be undermined despite this safeguard – the prohibited conduct is too narrow.

Proposed change

- c. It is proposed that draft sections 153(2) and 88(5)² be amended so that they safeguard against the National Assembly (and the President) passing a law (or making a declaration) to:
 - i) Create or abolish any political party or create a one-party State.
 - ii) Enable or prohibit the practice of any religion or establish any State religion.
 - iii) Influence, impact any Court proceedings or alter the decision or judgement of any Court.

- iv) Without prejudice to draft section 105² indemnify any criminality or civil wrong.

Further Information

- d. The proposal above is absolutely necessary to adequately safeguard against the undermining of the fundamental principles this provision seeks to safeguard.

4.11 Draft section 188 – Jurisdiction of the Shariah High Court

Area of Concern

- a. This provision alters the legal test for determining Sharia jurisdiction from whether the “parties” are Muslims or not (section 137(4) of the Constitution¹) to, whether the “cause or matter” belongs to a Muslim or not (draft section 188(1)²).

Reasons for Concern

- b. The operation of this proposed provision shall subject non-Muslim parties to Sharia unlike the current state of the law under section 137(4) of the Constitution¹.
- c. The latter part of para 477 of the CRC final report³ is acknowledged and it states:

“... 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)...”

The above extract from the CRC’s final report³ implies that it is not the intention of the drafters for Sharia to apply to non-Muslims. Whilst this non legally binding ‘assurance’ is acknowledged, it wholly contradicts the legally binding substance at Draft section 188(1)² as well as the intention of the submission which informed such change (see extract from Concerned Citizens’ submission²⁷ to CRC).

Proposed change

- d. It is proposed that Draft section 188(1)² be substituted for section 137(4)¹ so that the current position of the law is retained: non-Muslims explicitly and in no uncertain terms excluded from Shariah law, a safeguard which is guaranteed under the existing Constitution¹.

Further Information

- e. Hence it is the position of the drafters that it is not their intention to subject non-Muslims to Sharia jurisdiction (see para 4.11(c) above and para 477 of their report³), then, the current position of the law guarantees such at section 137(4) of the Constitution¹ and thereby negating the need for any change in this respect.
- f. The proposed change at para 4.11(d) above is also consistent with International Law (see Article 18 ICCPR⁸) and is therefore merited.

4.12 Draft section 191² – Qualification for Appointment of Judges

Area of Concern

- a. This Draft provision removes the requirement for one to be qualified and competent in the Common law before being appointed as a judge to sit in Common law courts unlike the current state of the law at section 139 of the Constitution¹.

Reasons for Concern

- b. The operation of this provision shall create a situation whereby Judges not qualified or competent in the Common law will be sitting in Common law courts and determining matters under the Common law. The adverse effects of this are:
 - i) due process, justice administration and the right to fair trial will be seriously undermined.
 - ii) It will result in avoidable miscarriages of justice and unsafe convictions.
 - iii) It will undermine the judiciary and The Gambia's Common law jurisprudence as a common law jurisdiction.

Proposed change

- c. It is proposed that section 191(1), (2), (3) & (4)² be amended so that appointment of all judges (except for the Sharia High Court) is subject to qualification, competence and experience in the Common law to the effect of section 139 (4) & (5) of the Constitution¹.

Further Information

- d. The above proposal is consistent with the position in all common law jurisdictions and as the issue of excluding the requirement for common law qualification and experience in this regard was not consulted on (see para 10, CRC Issues Paper²⁶ and paras 458 – 490, CRC Final Report³), there is no

plausible argument in favour of such significant and fundamental change. This is also an overreach of the terms of reference at section 6 CRC Act²⁸.

- e. Among other things, paras 485 – 488 of CRC final report³ which addresses the subject matter did not offer any explanation to substantiate such fundamental change. Therefore, there is no plausible reason why the proposal at para 4.12(c) above being the current state of the law must not be adopted.

4.13 Draft section 261² – Land ownership by non-Gambians

Area of Concern

- a. This provision proposes to:
 - i) Retroactively deny freehold titles to non – Gambians; and
 - ii) Retroactively restrict leasehold titles for non-Gambians to 50 years instead of the traditional 99 years.

Reasons for Concern

- b. The retroactive operation of this proposed draft provision is inconsistent with human rights (see Article 17, UDHR⁶).
- c. Furthermore, these restrictions may hinder investment, something which is an important aspect of the Gambian economy and the health of the nation.

Proposed change

- d. It is proposed that draft section 261² be amended so that non-Gambians enjoy the same property rights as Gambian citizens (but, for draft section 261(5)² to be retained as a reasonable safeguard against abuse).

Further Information

- e. The above is a reasonable proposal which shall bring the objectives of the proposed provisions in line with Article 17 UDHR⁶.

4.14 Draft sections 302 and 303² – Amendment of Constitution and Amendment of Entrenched Provisions

Area of Concern

- a. Draft section 303(3)(a)² lowers the percentage of votes required in the National Assembly from 75% to two thirds and from 75% to 60% at Draft section 303(3)(d)² at referendum for the amendment of the Draft Constitution².

Reasons for Concern

- b. The implication of this Draft provision invites abuse and exploitation which could lead to the undermining of important safeguards especially those availed in entrenched provisions.

Proposed change

- c. It is proposed that Draft section 303(3)(a)² be amended so that the threshold required in a referendum to alter entrenched provisions are retained at 75% being the current state of the law at section 226(2)(b) and (4)(b)&(d) of the Constitution¹.
- d. It is also proposed that additional provisions be introduced into the Draft so that:
 - i) A detriment (resignation of government and triggering of draft section 106² or, the triggering of Draft section 141² by-election in the case of opposition party and or parties seeking the same and / or independent candidate(s) seeking the same) shall be attached to any unsuccessful bid to seek amendment to any entrenched provision and / or enactment akin to the same.
 - ii) Amendment to any entrenched provision by sitting government shall be constitutionally barred unless such was party policy which was published in the relevant party's or parties' manifesto(s) during the preceding Presidential election.
 - iii) Any attempt by government to amend the two-term limit Provision for the Presidency (something prohibited under Draft section 302(4)²) shall be a cause for impeachment of the President or dissolution of government and triggering of by-election for all government legislative representatives.
 - iv) The substance at Draft sections 106 and 141² are amended to reflect proposal at para 4.14(d)(i) above.
 - v) Draft sections 10, 49(3), 88, 153, 188(1)² are entrenched (albeit it is acknowledged that some are already entrenched) and added to Draft section 302² as a progressive safeguard.

Further Information

- e. The issue of the threshold for amendments to the Constitution was not consulted on and the CRC final report³ is silent as to the merit for the significant reduction of these thresholds (see CRC Issues Paper²⁶ and paras 666 – 675 of CRC Final Report³). Given the importance attached to entrenchment and alterations of Constitutional provisions, the CRC has not advanced any reasons to show that such significant reductions are in the public good and therefore, there is no plausible argument for reduction of such thresholds.

- f. Most key votes in the National Assembly require at least a two third majority therefore, a lower threshold for alteration of entrenched provisions is not justified nor reasonable.
- g. The protections which safeguard entrenched provisions in the Draft are far much weaker than those accorded in any previous Constitution of our Republic (see section 226(2)(b) and (4)(b)&(d) of the Constitution¹ and section 72(4) of Abrogated 1970 Constitution²⁰).

Compatibility of Adverse Provisions

5.1 Terms of reference of the CRC²⁸

In determining compatibility (with the terms of reference) of the Draft provisions which are the focus of this report, the study examined and analysed their substance and Constitutional legal objective and effects and, test the same against the terms of reference at Section 6 CRC Act²⁸ as follows:

- a. Section 6(2)(d)(ii)²⁸ – respect for and promotion of the rule of law and fundamental rights and freedoms
 - i) The operation of the following provisions are in contravention of this term of reference in that they do not protect the appropriate fundamental human rights: draft sections 34, 35, 36 and 38² - Enforcement of fundamental human rights and freedoms, Authority of courts to uphold and enforce this Chapter [fundamental human rights], Limitation of fundamental human rights and freedoms and Right to Life (see paras 4.4 - 4.6 above) and Draft section 69² – Protection from discrimination: (see para 4.9 above).
 - ii) The operation of the following provisions are in contravention of this term of reference in that they undermine / expose / render vulnerable, fundamental human rights: Draft sections 10, 153, 188, 191 and 303² (see paras 4.1, 4.10, 4.11, 4.12 and 4.14 above).
- b. Section 6(2)(d)(iv)²⁸ - national unity, cohesion and peace
 - i) The CRC's commentary at para 700(j) of their final report³ is noted, it states:

“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”

However, in discharging their statutory mandated review exercise, the facts and evidence suggest that the CRC did not demonstrate such spirit nor achieved the objective(s) of such a test. By extension, the operation of the adverse provisions within the Draft Constitution² (specifically Draft section 10 (unentrenched in the face of the established parallel Sharia legal system), sections 49(3), 88, 153(2), 188(1), 191(1), (2), (3) & (4) and 303(3)(a) & (d)) shall render fair treatment of the Christian minority and others legally and Constitutionally impossible:

- Having received submissions¹⁷ and others asking that they (the CRC) Draft provisions to the effect that the State shall be neutral on matters of religion as a safeguard, these were not taken on board;
- Despite not taking on board submissions requesting safeguards (see paras 1 – 20 of submissions in December 2018¹⁷, December 2019^{17A} and serials 2, 67, pages 2, 3, 4, 43, 44 of 9 December 2019^{18A}), the CRC through Draft section 188(1)², removed existing protections under section 137(4) of the Constitution¹ which explicitly and in no uncertain terms excludes “non-Muslim parties” from Sharia jurisdiction (see para 4.11 above);
- The facts suggest that the manner in which the review process was conducted had the effect of pitching the Christian minority against members of the Muslim community (faiths which co-existed in peace and harmony for hundreds of years if not more); the proposition of such review, being the substance of the Draft, renders the Christian minority and others more vulnerable than under the existing Constitution and with diminished actionable rights, safeguards and/or protections (see paras 4.1, 4.10, 4.11, 4.12 and 4.14 above).

ii) The facts above suggest that the objective(s) of this term of reference were not achieved if not wholly contradicted by the CRC.

- c. Section 6(2)(d)(v)²⁸ - The Gambia’s continued existence as a secular State [in which all faiths are treated equally and encouraged to foster national cohesion and unity]
- i) Draft section 10² which is unentrenched in the face of an established parallel Sharia legal system, Draft section 88² which is inadequate and not entrenched, Draft section 153(2)(b)² whose protection against the introduction of a “State Religion” is inadequate (and/or futile whilst Draft section 10² remains unentrenched), Draft section 188(1)² which seeks to subject non-Muslims to Sharia law and section 191(1), (2), (3) & (4)² which removes the requirement for Common law competence for judges appointed to sit and determine cases under the Common law and, accords Judges qualified under only the Sharia, an exceptional degree of prominence and preference.

- ii) The facts at para 5.1(c)(i) above, when tested (individually and / or collectively) against those of any previous or existing Gambian Constitution, they by far denote a fundamental departure away from State neutrality on matters of religion in ways which adversely prejudice the Christian minority.
- iii) The facts above suggest that the objective(s) of the mandate under this term of reference have not been achieved if not wholly contradicted.

5.2 The Constitution¹

In determining compatibility (with the Constitution¹) of the Draft provisions² which are the focus of this report, the study examined and analysed their substance and constitutional legal objectives and effects and, test the same against the Constitution¹ as follows:

a. Section 22¹ - Protection from Deprivation of Property

Section 22(1)¹ of the Constitution prohibits the deprivation of property except in exceptional circumstances as set out at subsections (1)(a) to (c); subsections (2) to (6) of the same provision prescribes exceptions to such protection at subsection (1). Paras 559 – 583 of CRC final report³ are noted but, nothing within it demonstrates that any of those exceptional circumstances in section 22(1)(a) to (c)¹ or those exceptions at section 22(2) to (6)¹ of the Constitution are applicable to warrant or justify the objectives of the section 261(2), (4), (5), (6) and (8) of the Draft² (retroactive restriction of interest over land). Additionally, there is nothing within the CRC report³ which suggests that reasons given at para 562 of their report³ (“property speculation” by non-Gambians) are borne out from any reliable research, data or evidence, such is at best anecdotal and therefore unsafe to rely on to inform such fundamental public policy change(s).

b. Section 25(1)(b)¹ - Freedom of speech, conscience, assembly, association and movement

- i) Draft sections 10² (unentrenched in the face of the established parallel Sharia legal system), draft sections 49(3), 88, 153(2), 188(1), 191(1), (2), (3) & (4)² undermine the freedom of conscience and belief generally but in ways which will disproportionately impact Christians and others (see paras 4.1 and 4.8 - 4.11 above).
- ii) Draft section 36² also undermines the above fundamental rights (also see para 4.5 above)

c. Section 33¹ - Protection from Discrimination

The operation of the Draft sections referred to at para 5.2(b)(i) above undermine the protection from discrimination on grounds of religion and belief etc. (if not entirely discriminatory in themselves).

5.3 International treaties

In determining compatibility (with International Treaties) of the Draft provisions² which the focus of this report are, the study examined and analysed their substance and constitutional legal objectives and effects and, test the same against those International Treaties as follows:

a. Article 3 UDHR⁶ and Article 6 ICCPR⁷ - Right to Life

Draft section 38² offers no clarity on abolition of the death penalty, additionally, such Draft provision prescribes as defences to murder and the use of lethal force, things other than the protection of life and limb or prevention of grievous bodily harm. This provision is in breach of the right to life under UDHR⁶ and ICCPR⁷. Whilst the present state of the law is acknowledged, such does not prohibit a change of the same for the purposes of compliance with the above international conventions.

b. Article 7 UDHR⁶ and Article 26 ICCPR⁷ - Protection from Discrimination

- i) See para 5.2 above.
- ii) The exclusion of certain vulnerable groups from the protection from discrimination (Draft section 69²) renders such provision inconsistent with UDHR⁶ and ICCPR⁷ (see para 4.9 above).

c. Article 18 UDHR⁶ and Article 18 ICCPR⁷ - Freedom of Thought Conscience and Religion and other fundamental human rights pursuant to the same treaties

- i) See para 5.2(b) above.

d. Article 17 UDHR – Property Rights

- i) See para 5.2(a) above.

e. Convention on the Elimination of All Forms of Discrimination against Women

- i) See para 5.3(b)(ii) above.

5.4 Best practice and international standards

In determining compatibility (with best practice and international standards) of the Draft provisions² which the focus of this report are, the study examined and analysed their substance and constitutional legal objectives and effects and, test the same against the respective practices and standards as follows:

- a. Convention relating to the Status of Stateless Persons⁴ (accessioned onto on 1 July 2014⁵)
 - i) As The Gambia is a signatory of this convention⁵, it is required to comply with its obligations pursuant to the same, obligations which require The Gambian State to ensure the enjoyment of certain rights and protection from certain adverse treatments⁴.
 - ii) The obligations The Gambian State is required to fulfill under such international treaty⁴ are such that their administrative cost and rigmarole do not justify the denial of citizenship for persons born in The Gambia on the sole basis that their parents are not Gambian citizens and for “economic reasons” being the reason advanced by the CRC at para 178 of their report³.
 - iii) Whilst it is acknowledged that the denial of citizenship to persons born in The Gambia under Draft section 15(1)² is not a breach of this convention⁴, such runs contraflow to the spirit of such convention⁴ and has the effect of creating circumstances which would make compliance with such convention⁴ more difficult and costly if not so burdensomely impossible.
- b. Special Report - UNHCR 10-year campaign to end statelessness¹²

In 2014 the United Nations High Commission for Refugees launched a 10 year campaign¹² to end Statelessness, whilst it is acknowledged that such does not place any international law obligations on The Gambia as a member of such United Nations body, The Gambia as a member of the global community should be a leading player in shaping it. Part of this must include an alignment of our Constitutional settlement and framework in harmonization with the objectives of such international drive to end statelessness (also see para 5.4(a) above).

- c. Council of Europe Convention on Avoidance of Statelessness – No.200 of 2006¹³

The Council of Europe which constitute 47 members states in pursuit of the spirit the United Nations General Assembly Resolution 55/153 of 2001 and the Convention relating to the Status of Stateless Persons designed and adopted measures in order to avoid statelessness, something which gave rise to the above convention. Whilst it is acknowledged that The Gambia is not a member of nor bound by the Council of Europe, such is the international standard which The Gambia must measure up to. (Also see paras 5.4(a) and (b) above).

5.5 Overreaching of statutory authority²⁸

In making a determination with respect to the overreaching on the part of the CRC, of the statutory authority bestowed on it under section 6 CRC Act²⁸, this report examined such statutory authority and tested the same against the boundaries and substance of the CRC consultations as well as the final result by the CRC being the substance of the final Draft as follows:

- a. Mandate to Safeguard and Promote The Gambia's Republican system of government (section 6(2)(d)(ii)²⁸)
 - i) As part of its consultations, the CRC consulted on the introduction of systems of government other than the existing Republican system of government (see para 7(a) of CRC Issues Paper²⁶).
 - ii) Whilst the above noncompliant consultation did not lead to a proposition for the abolition of the existing Republican system of government, it is evidence which would support the proposition that the CRC misconstrued its terms of reference²⁸ and the limits and boundaries of the same.
- b. Mandate to Safeguard and Promote the Separation of powers (section 6(2)(d)(iii)²⁸)
 - i) See para 5.5(a)(i) above whose objective was to have introduced into the Draft², a system of government other than the mandated Republican system of government as mandated by the CRC Act²⁸.
 - ii) See para 5.5(a)(ii) above.
- c. Mandate with respect to ensuring the holding of democratic elections based on universal adult suffrage (section 6(2)(d)(v)²⁸)

The absence of a provision mandating Diaspora franchise and representation is an omission which contradicts this statutory mandate. (Also see para 7.1 below).

- d. Other Matters (not an exhaustive list)

It is the finding of this report that the CRC has significantly overreached its statutory authority and introduced major changes on matters and public policy areas which it had no mandate nor any discretion under the CRC Act²⁸ nor any other authority to do so. These are as follows:

- i) Creation of undue barriers to the application of international human rights law and the relegating the legal effect and application of human rights treaties in Gambian Courts to an option rather than being legally mandated (see para 4.1 of this report). (Also see Draft section 10(2)&(3)¹).
- ii) Creation of a situation whereby it will be possible for the jurisdiction of Shariah law to be extend into criminal, penal and other areas of law and / or other sources of Gambian law e.g. the Common law shrunk, diminished

and / or abolished by way of an amendment of an unentrenched provision (see para 4.1 above). (Also see Draft sections 10 and 303(1)²).

- iii) Restriction of the right of bona fide Gambia citizens with dual nationality to contest elected public office and entrenchment of such restriction by extending it to include those who “in any other manner owe allegiance to, a country other than The Gambia” (see para 7.3 below). (Also see Draft section 94(1)(a)²).
- iv) Abolition of the English language which is the country’s official language from being the language of the National Assembly (see para 7.6 below). (Also see Draft section 157²).
- v) Abolition of the Special Criminal Court (a vital judicial institution which deals with financial corruption etc.) (see para 7.7A below). (Also see Draft chapter X, part iii²).
- vi) The moving of the goal post with respect to the jurisdiction of the Shariah over non-Muslims (see para 4.11 above). (Also see Draft section 188(1)²).
- vii) The exclusion of the requirement for Judges to be qualified and have recognized competence in the Common law before being appointed as Judges and to hear and / or sit on matters under the Common law in Gambian Courts (see para 4.12 above). (Also see Draft section 191(1) – (4)²).
- viii) The fundamental and adverse alteration of the rules on land ownership etc. (also see para 4.13 above). (Also see Draft section 261²).
- ix) Reduction of the thresholds for the amendment of entrenched provisions from the existing 75% requirement in the National Assembly to “two thirds” (see Draft section 303(3)(a)²) and from the existing 75% requirement in a referendum to “60%” (see Draft section 303(3)(d)²). (Also see para 4.14 above).

6. Effect of Adverse Provisions

6.1 Religious minorities

- a. See paras 4.1, 4.10, 4.11, 4.12, and 4.14 above

6.2 Women and Children

- a. See paras 4.9 and 6.1 above

6.3 Others

- a. See paras 4.2, 4.3, 4.6, 4.7, 4.8, 4.13, 6.1 and 6.2 above

7. Other Draft Provisions which Require Further Attention

7.1 Draft section 74² - General principles for the electoral system

Area of Concern

- a. This provision accords a general franchise right and, does not explicitly mandate for franchise and right to representation for Gambian citizens in the Diaspora.
- b. This right as regards the Gambian Diaspora is left to political / administrative discretion rather than guaranteed as a constitutional right.

Reasons for Concern

- c. This undermines the rights guaranteed under Draft section 53 of the Draft², disenfranchises a vital section of the Gambian citizenry and denies political representation a section of the citizenry which accounts for over 20% of The Gambia's Gross Domestic Product (GDP)¹⁹.

Proposed change

- d. It is proposed that this provision is amended to explicitly guarantee the franchise (voting in the Diaspora) and representation (Diaspora Constituencies and elected Legislative representatives). This is a progressive measure which has already been adopted by our neighbours in Senegal²⁴ and Guinea Bissau²⁵.

Further Information

- e. Submissions were made to the above effect on 30 December 2018¹⁸ and 9 December 2019^{18A} but, these were not accommodated, and no reasons were given as to why this was the case as the CRC final report³ is silent on this matter (see paras 307 – 309 and 324 of CRC final report³).
- f. For the less than 10% of the Gambia's citizenry which contribute 20% to the Gambian economy¹⁹ to be disenfranchised is an indicting democratic deficit which ought to be addressed and engaged to The Gambia's economic interest like is being done by other neighbouring countries at invaluable economic gain and growth (see table at p.62 Thesis by Sainabou Taal²³).
- g. The above proposal is in line with public opinion (see paras 308 – 309 of CRC final report³), international standards and our neighbours in the subregion e.g. Senegal²⁴. Another example is Guinea Bissau²⁵ (at page (p.) 5, bullet point (bp.) 4, pp.6 bp.2 & 4, pp.15 para 1, pp.16 para 5, pp.17 para 2, pp.19 para 4, pp.23 para 2, pp.24, pp.30 paras 3 & 4, pp.32 para 2, pp.42 para 2 and pp.47 para 2) which guarantee these to their Diaspora citizens. There is no plausible contrary argument as to why this right should continue to be denied the Gambian Diaspora.

7.2 Draft section 93² – Qualifications for election President

Area of Concern

- a. Aspects of this provision (subsection (1)(c)) unduly restrict political participation.

Reasons for Concern

- b. It is not a reasonable restriction in a democracy.

Proposed change

- c. It is proposed that this provision be amended so that the prescribed “3 years ordinary residency” requirement is reduced to 12 months.

Further Information

- d. Whilst the CRC final report³ does not cover this in great detail, their consultations suggest majority support for greater participation in the electoral process by all Gambians without undue barriers (see para 356 and 357 of CRC final report³). There is no argument to the contrary of this proposed undue restriction.

7.3 Draft sections 94, 111 and 138(1)(a)² – Disqualification for election as President, Qualifications & disqualification of Vice President and Disqualifications for membership of the National Assembly

Area of Concern

- a. Subsection 94(1)(a)² unduly restrict political participation and the right for bona fide Gambian citizens to contest the Presidency. It also further entrenches the arbitrary bar under the Constitution¹ which is unanimously accepted as being unduly restrictive and unnecessary in a democracy.
- b. The phrase “owes allegiance to, a country other than The Gambia” is arbitrary, vague and a broad-brush.

Reasons for Concern

- c. It denies bona fide Gambian citizens a right to contest and hold high office, a right which they may not be able to even exercise in their country of second nationality or anywhere else. This is an unreasonable and arbitrary restriction.

Proposed change

- d. It is proposed that these provisions be amended so that:
 - i) dual nationals whose first citizenship is Gambian are eligible to contest the Presidency and National Assembly seats and be eligible

for appointment as Vice President on condition that they as soon as practicable denounce any additional nationalities following election and / or before inauguration into office.

- ii) The phrase “owes allegiance to, a country other than The Gambia” is expunged.
- iii) Reference to this undue barrier is expunged from section 111(2)² and all other provisions in the Draft².
- iv) dual nationals whose first citizenship is Gambian are eligible to contest National Assembly elections (section 138(1)(a)² amended to the effect of this change).

Further Information

- e. The above proposed change is in line with public opinion (see para 356 and 426 of CRC final report³).
- f. There is nothing within the CRC’s final report³ which substantiates why it is necessary or reasonable to bar bona fide Gambian Citizens from public office as proposed or at all. It is worthy of note that most of these citizens the Draft² seeks to bar were forced to leave the country by the wrongs of the past whose injustice necessitated this CRC process in the first place, therefore, to re-victimise these same citizens in light of the aforementioned and despite their immense contribution to nation building is unconscionable and without any merit whatsoever. (IOM Publication¹⁹ and Thesis by Sainabou Taal²³ offers useful substance in respect of the Contribution of the Gambian Diaspora).

7.4 Draft sections 139 and 140² Election of members of the National Assembly and Terms of the National Assembly

Area of Concern

- a. This provision proposes that the National Assembly be dissolved a day before the election (at Draft section 140(1)²) and for National Assembly elections to be held on the same day as Presidential elections (at Draft section 139(1)²).

Reasons for Concern

- b. This provision would create a situation whereby National Assembly members as candidates during an election campaign will retain all entitlements, benefits etc. as National Assembly members and whilst campaigning, something which accords them an unfair advantage (over other candidates) in terms of both resources and influence on voters etc.

- c. Should political crisis occur or emerge during or following the announcement of Presidential election results or lack thereof for any reason, the absence of a sitting National Assembly will compound such political crises creating a dangerous vacuum which may enable an incumbent to make use of emergency executive powers without oversight and in a manner which may not serve the national interest.

Proposed change

- d. It is proposed that these provisions be amended so that:
 - i) National Assembly Elections are held at a later date.
 - ii) The National Assembly is dissolved within a reasonable period before election e.g. no less than one calendar month before election (but without sitting NAMs, the Speaker, staff etc suffering any remuneration detriment due to such early dissolution for reasons of fairness), so that all National Assembly aspirants vying for seats will do so as candidates on an equal footing. This will ensure fairness and a level playing field.
 - iii) The Party and / or parties (independent, Coalition or otherwise) declared winner(s) at Presidential elections can at subsequent National Assembly elections ONLY field, sponsor, canvass for and / or support candidates in a percentage of all contestable Constituencies which is equal to their election mandate (percentage of votes cast in their favour) so that an incumbent dominated Legislature is prevented and to enhance checks and balances which did not work very well in the first and second republics with government dominated Legislatures..

Further Information

- e. The proposal at 7.4(d)(i) above is one which is absolutely necessary in order to prevent a sitting President who loses but refuses to concede defeat from seizing the opportunity to exploit the absence of a sitting National Assembly to consolidate power (e.g. replace Judges, replace the Electoral Commission, issue Directives, usurp and / or bestow emergency powers upon themselves etc.).
- f. The proposal at 7.4(d)(ii) above is in line with best practice around the democratic world e.g. the UK¹⁶.
- g. The proposal at 7.4(d)(iii) above is absolutely necessary in order to have power balance in the legislature and enhance legislative scrutiny of the executive and avoid the haemorrhaging of authority of other democratic institutions or adverse amendments to the Constitution by a sitting

government through the use of their legislative power and numbers in the National Assembly.

7.5 Draft section 145² – The National Assembly Speaker

Area of Concern

- a. This provision proposes that the Speaker be elected from outside the National Assembly.

Reasons for Concern

- b. The effect of this provision is that affairs within the elected National Assembly will be chaired by a Speaker whom is unelected by the electorate.

Proposed change

- c. It is proposed that Draft section 145(2)² of this provision be amended so that the Speaker shall be elected from among National Assembly members democratically elected by the electorate.

Further Information

- d. This is in line with public opinion (see para 424 of CRC final report³) and consistent with international standards in the democratic world.

7.6 Draft section 157² - Language in the National Assembly

Area of Concern

- a. This provision proposes that business in the National Assembly be conducted in English as well as any other indigenous language.

Reasons for Concern

- b. Compared to the Constitution¹ at section 89(1)(d)), the Draft raised the formal qualification bar for eligibility to contest as a National Assembly election candidate (section 137(1)(c)²) so, it is unlikely that members of the chamber will be limited in their command of the English language to necessitate the use of a language other than English. Therefore, the introduction of indigenous languages will only introduce further unnecessary rigmarole, administrative costs and lengthen proceedings without good reason.

Proposed change

- c. It is proposed that this provision be amended so that the English language shall be retained as the language in the National Assembly.
- d. In order to cater for voters and citizens among the general population whom are not versed in the English language, it is proposed that the State broadcaster be mandated to make such innovations as may be necessary in

order to facilitate the translation of live sittings in the main indigenous languages.

Further Information

- e. There is no public demand for such fundamental change (see paras 415 and 423 - 442 of CRC final report³). The CRC report³ offered no plausible reason for such fundamental change; English is the official language and there is no plausible argument why such should not remain the language of all official business in the National Assembly.
- f. The Gambia's population proficient in English in the first Republic was much lower than exists today and even so, English was adopted as the language of the Legislature at section 78 of 1970 Constitution²⁰ and such is accordingly retained in the second Republic at section 105 of the Constitution¹. Unless there is a compelling beneficial reason why this fundamental principle should change (which none is put forward in the CRC report³), there is no plausible reason why it should.

7.7 Draft sections 199, 218, 264, 266, 278 280, Part ii and Part iii² – Composition of Judicial Service Commission, Removal from Office of members of independent institutions, Appointment to and removal from offices in the public service, Qualifications, disqualifications, tenure and removal of the Secretary General, Appointment, qualifications, disqualifications and removal of board members of State-Owned Enterprises, Qualifications, disqualifications and removal of Chief Executive Officer, the Armed Forces and the Police

Area of Concern

- a. These provisions vest appointment powers on the president and the power to dismiss (by operation of precedent or under the same provisions).

Reasons for Concern

- b. The vesting of the power to appoint and the power to dismiss holders of such important offices renders the continued services of such officials to be at the pleasure of the President. This is an undesirable state of affairs in any democracy given the fundamental importance of such institutions.
- c. The operation of this provision reduces these holders of such fundamentally important posts to political appointees even though they are not and, they should not be, nor is it desirable for them to be.

Proposed change

- d. It is proposed that these provisions be amended so that it will be stated in explicit terms that the President's power to dismiss such office holders shall be on grounds of misconduct or infirmity and subject to an investigation and approval by the National Assembly.

- e. Additionally, in the case of the Armed Forces and Police, it is additionally proposed that dismissal from an appointed post shall not by itself constitute dismissal or enforced retirement from Service.

7.7A Draft chapter X, Part iii² – Abolition of the Special Criminal Court

Area of Concern

- a. The Draft proposes that the Special Criminal Court established under section Chapter VII, Part (sections 134 – 136) of Constitution¹ be abolished.

Reasons for Concern

- b. As such a Court was specifically established to take primary first instance jurisdiction over matters involving theft, misappropriation of public funds, property etc. (including financial corruption), its abolition will have an adverse and incapacitating impact on any efforts, policies (including legislation) for the purposes of combating financial corruption etc.
- c. In light of the above, such abolition renders public funds and property more susceptible to theft and misappropriation and minimises prospects of recovery of the same.
- d. Such abolition would by default transfer all such caseload to the Magistrates and High Court, something which will further overwhelm these and increasing case backlogs and the time it would take for cases to be dispensed with thereby dwindling trust in the justice system.
- e. Such abolition will by default do away with the institutional expertise and memory of such a niche Court on the subject matter (financial crimes etc.), something which is a vital asset for the purposes of dealing with such niche area of public justice.

Proposed Change

- f. It is proposed that:
 - i. such Court be maintained to have jurisdiction over the relevant niche but vital area of public justice; and
 - ii. a provision similar to section 136 of the Constitution¹ be drafted to give the National Assembly authority to legislate further and from time to time to introduce such changes as may be necessary for the effective operation of such important judicial institution.

Further Information

- g. The establishment of the Anti-Corruption Commission at Draft section 222² is acknowledged, however, as such is not a Court of law with the appropriate judicial authority, it must not be deemed to be a substitute for the Special Criminal Court and, the latter is a vital institution whose effective operation the success and timely dispensation of any anti-corruption initiative and drive depends on.
- h. Para 473 of CRC final report³ states that 6 submissions were received requesting the abolition of such Court, however, no reasons were advanced in the CRC report³ in support of such and no explanation put forward nor any reasonable justification (or any at all) to support the abolition of such a vital judicial institution. Additionally, submissions on 30 December 2018¹⁸ (at para 10 of submission) requiring for such Court to be maintained are not reflected in CRC report³.

7.8 Draft schedule 1² - Administrative Areas of The Gambia

Area of Concern

- a. This proposal details the administrative areas of the Gambia as:
 - i) Banjul
 - ii) Kanifing
 - iii) Brikama
 - iv) Kerewan
 - v) Mansakonko
 - vi) Janjangbureh
 - vii) Basse

Reasons for Concern

- b. The substance of this provision is not one for a Constitution. The operation of this provision restricts further boundaries re-demarcation etc to accommodate changes necessitated by population growth, administrative, economic and social realities.

Proposed change

- c. It is proposed that this provision be expunged and, if deemed necessary, amended so that it mandates for the National Assembly to pass an Act (legislation) within a specified period to address the subject following a consultation with the public and a careful study of the subject matter.

Further Information

- d. This subject requires adequate consultation and inquiry and, in any case it is one for primary legislation.

7.9 Draft schedule 3² - Constituencies for National Assembly Elections

Area of Concern

- a. This provision specifies the Constituencies for the purposes of elections as follows:
 - i) 53 persons elected from single member constituencies as demarcated by the Independent Boundaries and Electoral Commission;
 - ii) 14 women, 2 elected from each administrative area;
 - iii) 2 persons, elected by persons with disabilities from amongst the members of the federation representing such persons.

Reasons for Concern

- b. The allocation of Constituencies:
 - i) excludes a very economically active and vital citizenry in the Diaspora whose economic contribution accounts for 20% of Gambia's GDP¹⁹ but whom are denied democratic representation to the detriment of the national interest²³.
 - ii) Diversity allocations exclude other marginalised groups (whom as we speak have no representation in the National Assembly).
 - iii) Diversity allocations fail to appropriately and proportionately apportion the 16 'political mobility' / 'diversity' seats to all marginalised groups.
 - iv) Diversity allocations are too prescriptive, rigid and not designed to take account of any social and demographic change, something (social and demographic change) which is very fluid.

Proposed change

- c. It is proposed that this provision be amended so that:
 - i) The Diaspora be allocated no less than 5 seats and permitted representation from among its residents (e.g. 1 Constituency for the Americas, 1 Constituency for the UK and the Commonwealth, 1 Constituency for Europe and the rest of the world, 1 Constituency for Asia and the middle East and 1 Constituency for the rest of Africa).

- ii) The 16 'diversity seats' are not pre-allocated to any groups but for Constitutional and / or statutory guidelines to be enacted for the NHRC²² in consultation with any respective bodies to be charged with the responsibility of advising the Electoral Commission or any appropriate authority regarding the same and within a specified period before any election.

Further Information

- d. The essence of 'diversity' or mobility mechanisms is to level up and unless such is designed to be flexible and robust enough (rather than rigid and prescriptive) to take account of social and demographic change, it will be counterproductive.

7.10 Draft schedule 4 (2) & (18)² - Commission for implementation of the Constitution

Area of Concern

- a. Draft schedule 4(2)² has not expressly repealed the Decrees of the AFPRC. (also see para 4.1 above).
- b. Draft schedule 4(18)² proposes for an establishment of a Commission for implementation of the Draft (if it passes).

Reasons for Concern

- c. Decrees of the AFPRC will remain in force unless expressly repealed (also see para 4.1 above).
- d. The proposal at schedule 4(18)² for such Commission to include members from the CRC is counterproductive and inhibits the injection of new thinking and diverse ideas into the process.

Proposed change

- e. It is proposed that Draft schedule 4(2)² be amended so that Decrees of the AFPRC are expressly repealed (also see para 4.1 above).
- f. It is proposed that such Commission at Draft schedule 4(18)² to include persons other than members of the CRC so that new thinking and diverse ideas are taken aboard to maximise the quality of output.
- g. It is also proposed that such Commission's constitution at Draft schedule 4(18)² to take account of The Gambia's diverse people and, meaningfully represent all (including religious minorities, all genders, all Regions of the country, youths, the differently-abled ('disabled') and the Gambians in the Diaspora).

Further Information

- h. It is vitally important that such Commission as much as possible, reflect our (The Gambia's) diverse people and does not exclude representation for rural communities especially the Regions.

8. Recommendations

8.1 Recommendation(s)

It is hereby recommended that:

- a. The proposed changes above be adopted, and the Draft amended accordingly; and
- b. All provisions of the Draft be appropriately tested against all international treaties which are applicable to The Gambia¹¹ to ensure compliance and compatibility with human rights and international obligations.

8.2 Alternative Recommendation(s) to para 8.1

In the alternative to the above recommendation, it is recommended that:

- a. The current position of the law (as per the existing Constitution) be retained on matters in respect of matters at paras 4.1, 4.2, 4.3, 4.10, 4.11, 4.12, 4.13 and 4.14;
- b. For the Diaspora to be accorded a Constitutionally mandated franchise and legislative representation as the National Assembly sees fit and for all barriers to political participation impacting the Diaspora to be expunged from the Draft; and
- c. For recommendation at para 8.1(b) above be adopted for all relevant provisions.

8.3 Recommendation (for additional provision(s))

In light of the consistent and genuine lamentation in respect of the need for more capacity and expertise in the National Assembly (and to improve and enhance legislative efficiency and robustness of the legislature), it is recommended that an additional provision be drafted so that:

- a. There will be established an upper elected (nonpartisan) chamber (elected from among eligible professionals e.g. persons with substantive expertise and qualifications in respective and relevant professional works of life and disciplines) for the purposes of revising, complementing and informing legislation being passed by National Assembly prior to such being sent for assent etc. as follows:

- i) 2 elected (or nominated with security of tenure) to represent each Region and an additional 2 elected to represent the Diaspora; and
 - ii) To (if not elected by public vote) serve for a maximum of two terms only (consecutive or otherwise), or
- b. Such revising or technical assistance chamber be constituted as per the above (at para 8.3(a)) in respect of qualification, experience, expertise and Regional representation (not residency) but through a vote by elected National Assembly members for the purposes of revising legislation passed by National Assembly and offering technical assistance as may be necessary from time to time and prior to assent but without constitutional authority to overrule the elected National Assembly.

8.4 Recommendation (in the interest of transparency)

In the interest of transparency, it is recommended that submissions received and relied on by the CRC to be disclosed / published / made accessible to the general public. This is vital for the following reasons:

- a. So that submissions made and relied on or accommodated but whose sources have a vested interest which may be contrary to that of the national interest can be identified and corrective action taken e.g. those submissions seeking the abolition of the Court which deals with financial corruption (Special criminal court) deserve very close scrutiny.
- b. For reasons of completeness as the CRC final report which references such submissions, when read is incomplete without access or availability of those submissions which informs it.
- c. We are a democracy and, with such comes transparency and accountability both of which would support the full publication of all submissions and instructions relied on in compiling the Draft.

9. Appendices

1 The Constitution (effective from 25 January 1997) of The Republic of The Gambia

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12 A Special Report – UNHCR 10-year campaign to end statelessness

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15 Shamima Begum v UK Home Office (Commentary by OTS Solicitors)
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17 Submission by Gambia Christian Council to the CRC (15 December 2018) - Attached / Enclosed

17A Submission by Gambia Christian Council to the CRC (December 2019) - Attached / Enclosed

18 Submission to the CRC (sent 30-Dec-2018) by Democracy Watch Gambia
<https://dwgambia.org/assets/pdf/TheDWGConstitutionalReformRecommendationsPack.pdf>
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18A Submission to the CRC (sent 9-Dec-2019) by Democracy Watch Gambia - Attached / Enclosed

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APPENDIX 9.17A

The Gambia Christian Council Position on The Omission of Secular and Related Matters in the Draft Constitution

1. If you may recall, the **Gambia Christian Council {GCC}** on the 15 December 2018 submitted its contribution to the CRC regarding the provisions it wanted incorporated into the new constitution and also suggested amendments and additions to the provisions of the current 1997 Constitution of The Gambia which it wanted to be reflected in the draft.
2. The GCC acknowledges the fact that **Section 47** of the draft constitution maintains freedom of conscience which interalia includes freedom of religion a similar to **Section 25** of the current 1997 Constitution.
3. The GCC also acknowledges the fact that Section **151(2) (b)** of the draft constitution forbids the National Assembly from establishing any religion as a state religion similar to the current Section 100(2) (b) of the 1997 Constitution.
4. We also understand that both proposed provisions {Sections 47 and 151(2)(b)} aforementioned are among the entrenched clauses of the draft constitution which cannot be easily amended by the National Assembly without subjecting it to a referendum. Going by these two provisions, it appears that it will be very difficult to pass a law establishing any religion as a state religion in The Gambia.
5. We however also recognised and hasten to add that both **Sections 25** and **100(2) (b)** of the current 1997 Constitution are entrenched and are similar to the provisions contain in the said draft.
6. The position of the GCC is that both the proposed provisions on religious freedoms {Section 47 and Section 151(2) (b)} and the current provisions {Section 25 and 100(2)(b)} are similar and the same. The GCC further states that despite similar provisions guaranteeing religious freedoms in the current constitution and with similar entrench clauses, the Gambia was in 2015 declared an Islamic Republic by the former President to the dismay and detriment of Christians and non-Muslims. Shortly thereafter, non-Muslim females working in the civil service were forced to wear veils in accordance with the dictates of Sharia law. During that trying period for Christians, the National Assembly did not challenge such illegal and unconstitutional move and to the contrary, the former President's move was supported by the Supreme Islamic Council and the Banjul Muslim of Elders.
7. The GCC has during its submission to the CRC in December of 2018 clearly advocated for the inclusion of the word **"Secular"** in the new constitution as it is our firm believe and conviction that the state should be officially neutral in matters of religion without giving any preferential treatment to any one religion or religious groups and consequently, should treat all its citizens equally regardless of religion i.e. non-discrimination which goes beyond establishing any religion as a state religion.
8. The GCC therefore submits that Section 151(2) is not sufficient and therefore proposes that Section 151(2) be expanded to read as follows;

"The National Assembly shall not pass a Bill;

To establish any religion as a state religion; or prohibit the free exercise of religion”

We believe that this addresses the sometimes twisted definition some have attributed to the word secular to mean i.e. that it prohibits the free practice of religion.

9. Granted that the 1997 Constitution does not contain the word “**Secular**” the GCC does not however believe that this is a good reason why it should not be included in the new constitution as many new provisions that were not present in the 1997 Constitution **have been included in the draft constitution with Sharia given prominence in many sections of the Constitution which the GCC believes is an indication of intent to Islamise The Gambia.**
10. Guaranteeing freedom to practice one’s religion, and not establishing a religion as a state religion does not necessarily mean that the state (if not explicitly stated in its secular nature) will not give preferential treatment to one religion over another as the GCC have witnessed over the years.
11. The last 7 years have been a testing period for Gambian Christians ranging from encroaching on their land demarcated as cemetery for burials, wearing of veils in Christian run schools, declaring the Gambia an Islamic State, disparaging remarks about Christianity from the former head of state, the threats to close down the Christian Cemetery in Banjul, the invitation of the Islamic Scholar Dr Zakir Naik who publicly made critical remarks about Christianity and many more.
12. The GCC is concerned that the CRC may have been unduly influenced into omitting the word “**Secular**” in the proposed draft following the many audio clips that were circulated and purporting to come from an Islamic Scholar who put up a forceful argument against including the word “**Secular**” in the new Constitution which he argued was un-Islamic with insinuations that there were sinister groups with anti-religious agendas trying to influence members of the Constitutional Review Commission to include the word “**Secular**” to undermine Muslims etc.
13. The GCC is aware that there are some who are attributing the word “**Secular**” to mean irreligious, rejection and exclusion of religious considerations in everything pertaining to the state including not even having public religious prayers and/or religious symbols. This is certainly not what the GCC is advocating for.
14. **The GCC therefore proposes that the word “Secular” be added to the preamble of the Constitution and that Section 1 should also read that “The Gambia is a sovereign secular State”. The GCC further proposes that for the avoidance of doubt and to clear the air of misunderstanding, “Secular” can be defined in the Interpretation section of the Constitution.**
15. **The GCC also proposes that Section 36 of the draft Constitution which list the fundamental rights and freedom that may not be limited by the Constitution includes Section 47 (1) (2) and (3) of the draft Constitution which gives inter-alia the right to freedom of religion and association. It is our firm believe that this additional provision will address the perverse and warped interpretation that some are attributing to the word “Secular” to mean i.e. that it prohibits the free practice of religion.**

16. The GCC is of the firm belief and conviction that every Gambian and especially religious leaders should always endeavour to preach, justice, fairness, unity and respect for diversity. Our little Gambia needs healing especially after 22 years when the country was polarised on tribal and religious lines. One of the main causes of conflicts around the world especially in Africa centres is around religious and ethnic fights.
17. Let us try and unite our people and not divide them and teach our children to be compassionate human beings and let us not implant fear and or insecurity in the hearts and minds of our minorities.
18. Our neighbour SENEGAL sharing the same and similar culture, language, religious demographic etc. clearly states that Senegal is Secular and yet it has not aroused any negative debate.

I repeat the provision of the Senegalese Constitution below:

Article 1

The Republic of Senegal shall be SECULAR, DEMOCRATIC and SOCIAL. It shall ensure equality before the law for all citizens, without distinction as to origin, race, sex or religion. It shall respect all faiths. The official language of the Republic of Senegal shall be French. The national languages shall be Diolo, Malinke, Poular, Serer, Soninke and Wolof and any other national language which has been codified.

19. The GCC is proposing that a provision be created in the new Constitution which provides that religious institutions and communities shall have the right to develop without hindrance and shall not be subject to direct supervision by the state. They shall also regulate and administer their affairs autonomously.
20. Finally, the GCC urges the CRC to take into consideration Section 6(2) (VI) of the Constitutional Review Commission Act 2017 which directs the CRC when carrying out its functions to ensure:

“The Gambia’s continued existence as a secular State in which all faiths are treated equally and encouraged to foster national cohesion and unity.”

In addition to the matters aforesaid, The Gambia Christian Council further recommends that the below should be reflected in the new Constitution:

- a. **That “Secular” be inserted in the preamble of the draft constitution and that Section 1 should also include the word “Secular” after the word “Sovereign” akin to Article 1 of the Senegalese Constitution aforementioned;**
- b. **That all religions be respected and treated equally;**
- c. **That Sharia be only applicable to Muslims and where a Christian is affected in matters of inheritance, marriage, divorce and adoption, Civil law be applicable;**
- d. **That the proposed Sharia High Court be removed, and the Cadi Courts be maintained;**

- e. That public holidays be specified to include Christmas, Boxing day, Good Friday Easter Sunday, Easter Monday and all other holiday observed by the Muslims;
- h. That no state funds be used to enhance any particular religion in government institutions;
- i. That the portfolio of the Ministry of Religious Affairs be scrapped and instead an inter faith committee be created to advise the President on religious affairs;
- k. That Section 44 (2) (c) relating the “uttering of abusive or threatening speech or writing that causes feelings of ill-will, disaffection or hostility “ be expunged;
- l. That Section 44 (d) (i) should include “ethnic or religious incitement”
- m. That the full age of woman relating to the right to marry under section 52 (1) be 18 years and clearly defined in the interpretation clause;
- n. That Section 66 under the heading Gender balance and fair representation of marginalized groups” to include women, person with disabilities, youth and minority groups;
- o. That Section 67 (4) be expunged;
- p. That Section 82 (g) to include women ie relating percentage in the National Assembly;
- q. That Section 92 (1) (c) to be replaced with a court of competent jurisdiction and not by a Commission of Enquiry;
- r. That the qualifications provided under Section 109 for the President be applicable to the Vice-President, the Chief Justice and the Speaker of the National assembly;
- s. That Section 174 (b) to reflect not less than four, and not more than twelve other judges only i.e. only should be inserted; and
- u. Section 258 5 (b) on land holding by non-citizens be expunged because there are state institutions that regulate land in The Gambia and that let all persons living in The Gambia be qualified to own land.

APPENDIX 9.18A



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DRAFT CONSTITUTION

DWG CONSULTATION RETURNS

		(1)	(2)	(3)
	Section	Add	Substitute	Exclude
1	Several		Substitute the word: "is", "are", "will" with "shall" wherever appropriate for clarity and emphasis.	
2	1(1)	<p>Add the word "Secular" after the words "multi party"</p> <p>Note: As mandated by s.6(2)(d)(vi) CRC Act the secular identity and existence of The Gambia must be explicitly stated and established under this Constitution in no uncertain terms and in such a manner it leaves no doubt as to the validity of that fact.</p> <p>Add a subsection to the effect that:</p> <p>"This provision (guaranteeing the secular identity of the State) shall not impact the rights of private citizens as non-State actors to the exercise the fulfilment of their faith and beliefs including the right to establish such religious institutions</p>		

		<p>as may be required of their faith, belief and/or custom and, institutions which shall operate independent of the secular state and pursuant to unhindered freedoms under this Constitution.</p> <p>An Act of the National Assembly may be passed to introduce and establish an inter faith council / body which shall constitute a fair representation of all faiths and which shall be charged with the responsibility of:</p> <ul style="list-style-type: none"> • Maintaining understanding and peaceful coexistence of persons of all faiths / beliefs and informing govt policies regarding the same.” <p>Note: The secular identity of the State must not prevent the right of citizens as non-State actors to pursue ventures in accordance with their religious and /or customary beliefs (including the establishment of religious judicial institutions and entities which are independent of the secular State for their communities and congregation) in reliance on their fundamental</p>		
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		<p>rights and freedoms under a secular Constitution.</p> <p>Additionally the maintenance and upholding of the Gambia's secular identity was one of your terms of references (s.6(2)(d)(vi) CRC Act). This mandate must be fulfilled but with new thinking and through an innovative and ambitious approach which is fit for the 21st Century. We believe our recommended approach offers this.</p>		
3	1(2)	<p>Add the words "Secular values" after the words "founded on"</p> <p>Note: See s.1(1) above</p>		
4	4(1)		<p>Substitute the word "seven" to "eight" to incorporate the Gambian Diaspora as the eighth Administrative area and follow suit accordingly at Schedule 1.</p> <p>Note: The Diaspora contributes up to 29% of Gambia's GDP whose contribution is</p>	

			so immense, there is credence in giving such body of citizenry an explicit symbolic recognition.	
5	8	<p>Add a provision to the effect that:</p> <p>“There shall be available public funding for Challenges pursuant to this section.</p> <p>Challenges pursuant to the provision shall not attract adverse costs against the challenger or in favour of the State.</p> <p>The Executive shall within 12 months of this Constitution coming into force table before the National Assembly a Bill for the purposes of availing public funding for challenges pursuant to this section.</p> <p>Unless such Legislation is passed, all costs in connection with s.8 challenges shall be accounted to the State (in full if the state loses or 50% of the challengers’ total costs if the challenger fails).”</p>		
6	9			Exclude subsections 1 (d) and (e) and all references to them.

				Note: See s.1(1) above
7	14	<p>Add wording to the effect that:</p> <p>“A Citizen of the Gambia by birth born outside The Gambia is not a Citizen unless s/he acquires and holds a valid passport, Identity or voters’ card validly issued by the relevant authority of The Gambia.”</p> <p>Note: This caveat is particularly important in light of the changes to UK Immigration rules empowering the Home Secretary (not UK Courts) to remove, consider for removal, or revoke British Citizenship of anyone who is a dual national and whose presence in the UK s/he deems not to be conducive to the public good.</p> <p>The Provision of s.14 in its current form will create problems for British citizens by birth with Gambian descent (and increase reasons for deportation to The Gambia of bona fide British citizens by birth), something which could disproportionately burden The Gambia economically and financially.</p>		

		Under this provision in its current form, The Gambia will be obliged to accept deportations of such classes of people under international law even if in circumstances whereby they have no ties o attachment with or have ever visited The Gambia.		
8	16 (1)		Substitute “15 years” for “10 years.	
9	16 (2)			Exclude subsection (d) – it will disproportionately disadvantage persons of limited / modest means.
10	16	Add a subsection to the effect that: “A naturalised citizen may have such citizenship revoked if they cease to be ordinarily resident in the Gambia or emigrate out of the Gambia for a period of 5 consecutive years”		
11	18(1)			Exclude Subsection (d), (e), (f) Note:

				<p>These powers are open to abuse. The minister becomes the judge and jury. What if a naturalised citizen is an activist or a political opponent?</p> <p>If anyone including a naturalised citizen is suspected of criminality, his / her faith should be determined by a Court of law and not executive power.</p>
12	31(2)	<p>Add in those characteristics:</p> <p>“sect, belief, sexual orientation”</p> <p>Note: The list of protected characteristics must be wide enough to protect each and everyone from the breach of their fundamental rights.</p>	<p>Substitute the list of those protected characteristics with the words “protected characteristic” and elaborate on the interpretation at the interpretation provision at s.312</p> <p>Note: This will simplify language and prevent</p>	

			repetition of long phrases.	
13	33	Add words to the effect mandating the establishment of a statutory independent complaints bodies (one for the civil service and another for uniformed services) to serve as combined complaints handling bodies to handle all complaints including HR complaints in connection with those outfits. Otherwise, if the Courts are the first venue for all human rights complaints, there could be gridlock in the system which may put of complainants bringing complaints.		
14	35(4)			Exclude subsections (a), (b) and (e) – there does not appear to be any reasonable justification for denying service personnel of such rights, the denial of which could open the door to abuse and a repetition of the abuses which occurred under the previous

				regime. Service personnel are part and parcel of society and whatsoever treatment is meted on them eventually gets radiated onto wider society.
15	37(1)	<p>Add words to the effect that:</p> <p>“No law shall be passed (and no ruling made) to deprive a person of their life and, references to the “death penalty”, a “sentence to death”, “death sentence” in any laws passed or Court judgements made before the coming into force of this Constitution shall be deemed to mean “life imprisonment”.</p>	<p>Substitute subsection (1) for:</p> <p>“A person shall not be intentionally deprived of life under any circumstances.”</p> <p>Note: The right to life trumps all others.</p>	
16	37(2)		<p>Substitute subsections (a) – (f) for:</p> <p>“in the course of legitimate protection of life and limb”</p> <p>Note: There can be no legitimate justification for the deprivation of</p>	

			life except for the protection of life and limb of oneself, another or others.	
17	38(5)	<p>Add words to the effect that:</p> <p>“Any evidence gathered, acquired in connection with such unlawful detention and or apprehension shall not be admissible in any Court of law”.</p> <p>Note: This is in line with international standards and best practice plus it disincentives authorities from pursuing such unlawful conduct.</p>		
18	40	<p>Add words to the effect that:</p> <p>“Any person who is treated inhumanely or tortured by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting. And, Any evidence gathered, acquired in connection with such unlawful detention and or apprehension shall not be admissible in a Court of law”.</p> <p>Note:</p>		

		This is in line with international standards and best practice plus it disincentives authorities from pursuing such unlawful conduct.		
19	43(2)	<p>Add at the end of the subsection words to the effect that:</p> <p>“unless there is relevant new evidence which has come to light since having been acquitted”</p> <p>Add a subsection to the effect that:</p> <p>“There shall be legal aid at public expense for persons charged with any offence which carries a punishment which includes the loss of liberty</p> <p>An Act of the National Assembly may be passed to regulate and introduce further guidance in accordance with this provision”</p> <p>Add a subsection to the effect that:</p> <p>“There shall be a presumption in favour of bail for all persons charged with an offence and, this presumption shall not be departed from unless there is substantial evidence to the contrary and in exceptional circumstances. The</p>		

		<p>onus to overturn this presumption shall be on the prosecution.</p> <p>An Act of the National Assembly shall be passed within 6 months of this Constitution coming into force to regulate and introduce further guidance on Police bail and Court bail in accordance with this provision and any other provisions in this Constitution.”</p> <p>Note: The right to fair trial is diminished by the inability on the part of an accused to afford a legal defence and, an incapacitated mental state due to being held in indeterminate, unnecessary and unreasonable remand custody. Without these factors addressed, the right to fair trial remains diminished in our view.</p>		
20	44	<p>Add at subsection (1) words to the effect:</p> <p>“freedom of speech, freedom to express oneself in whatever mode of communication and on whatsoever subject as may be desired”</p> <p>Note:</p>	<p>Substitute subsection (2) with:</p> <p>“The right to freedom of expression does not extend to – the incitement of violence”</p> <p>Note: ‘free speech’ must not be unduly Policed. The</p>	

		The right to free speech must be explicitly stated as a guaranteed and existing freedom under the Constitution.	extent of the restrictions in the subsection in their current form have the effect of diminishing 'free speech'. The only legitimate restriction should be incitement. This is compatible with international standards.	
21	45(4)	<p>Add words to the effect that:</p> <p>"The State owned media shall operate independent of the State and / or any State bodies quasi or otherwise and, within 12 months of this constitution coming into force, The Executive shall table a Bill before Parliament pursuant to this provision in the absence of which Parliament shall of its own accord in consultation with the state broadcaster make such rules as are deemed appropriate (to oust the involvement of the State in the admin and running of the State broadcaster and guarantee continued funding) rules which shall become binding pending legislation pursuant to this provision".</p> <p>Note:</p>		

		The objects of this subsection and continued state control of the Public broadcaster as it is are in conflict and mutually exclusive.		
22	45(6)	<p>Add after “independent Regulator” the phrase “established by the stakeholders in the media fraternity and independent of the State”</p> <p>Note: The question as to who sets up this body lacks clarity and, the involvement of the State must be explicitly ousted.</p>		
23	45(7)			Exclude this subsection.
24	47(3)		<p>Substitute subsection (3) for:</p> <p>“The State shall publish and publicise any information whose publication genuinely harms national security.”</p>	
25	48	<p>Add words to the effect that:</p> <p>“Any law passed before the coming into force of this Constitution inhibiting this provision shall be</p>		

		<p>deemed incompatible and void to the extent of such incompatibility". And,</p> <p>"Pursuant to this provision, the IGP shall issue such permits as may be required without hinderance and provide such security as may be required to police and assist such lawful assembly". And,</p> <p>"Where such assembly is static, a permit is not required, a notice to the IGP or the nearest Police station shall suffice and, the absence of such notice shall not invalidate the lawfulness of such assembly".</p>		
26	52	<p>Add a subsection to the effect that:</p> <p>"Any marriage convened in the absence of meaningful consent, through coercion, undue pressure, in circumstances whereby freewill of either or both parties was absent at the time of such marriage shall be deemed void under this Constitution". And,</p> <p>Within 12 months of this Constitution coming into force, the Executive shall put before the National Assembly a Bill for the prohibition and criminalisation of</p>		

		forced marriage + grooming. Where such legislation is not passed pursuant to this section, the National Assembly shall of its own accord make such binding rules or pass legislation pursuant to this provision.		
27	54	Add words to the effect that: “the Executive shall within 12 months of the coming into force of this Constitution shall put before the National Assembly a Bill to criminalise child labour pursuant to this provision.”		
28	55	Add words to the effect that: “the Executive shall within 12 months of the coming into force of this Constitution table before the National Assembly a Bill for the purposes of enforcing the right to free and accessible education pursuant to this provision.”		
29	56	Add words to the effect that: “the Executive shall within 12 months of the coming into force of this Constitution table before the National Assembly an Equality Bill pursuant to this provision and to prohibit discrimination on grounds		

		of disability, gender, age, religion, sect, belief, ethnicity, race, colour, sexual orientation, pregnancy.”		
30	59	Add words to the effect that: “the Executive shall within 12 months of the coming into force of this Constitution table before the National Assembly an Environmental Protection Bill pursuant to this provision.”		
31	63	Add words to the effect that: “the Executive shall within 12 months of the coming into force of this Constitution table before the National Assembly a Consumer Rights Bill pursuant to this provision.”		
32	73(1)		Substitute “sixteen years” for “eighteen years” in subsection (b) and all other relevant references	Exclude subsection (d). Note: The restriction at subsection (d) is contrary to the spirit of the concept of universal suffrage
33	73(4)		Substitute “six months” to “one month”	

			Note: A six month cut off will disenfranchise youths whose 18 th birthday is within six months of any elections.	
34	77(4)		Substitute “nine months” to “eighteen months”	
35	82(1)		Explicitly qualify the meaning of “sponsor”. Does it mean to sponsor financially? Does it mean to have the candidate(s) contest in or under their (the organisation’s) name? Note: If by “sponsor” the former is intended, then this must be substituted for the latter.	
36	82(2)	Add words to the effect that: “the Executive shall within 12 months of the coming into force of	Substitute “character” with “Charter” or “Constitution” at subsection (a)	

		<p>this Constitution table before the National Assembly a Party Administration Regulation Bill pursuant to this provision.”</p> <p>Add at subsection (g) in addition to “youths”, words to the effect that:</p> <p>“women, disabled and members of marginalised groups shall constitute no less than 10% of Candidates at every election and, likely represented within the parties’ governing structure.”</p>		
37	84	<p>Add words to the effect that:</p> <p>“There shall be a Ministry for the Disabled, persons with challenging behaviours (eg. Autism) and the old and frail and such Portfolio shall be held by a member of this group but with capacity”</p>	<p>Substitute at subsection (2) words to the effect that:</p> <p>“The composition of the Executive shall reflect the diversity of the Gambian people and represent minority and marginalised groups as far as possible”.</p>	
38	86(1)	<p>Add at subsection (h) the words:</p> <p>“Subject to meaningful Legislative oversight and an enabling Act by the National Assembly”</p>		<p>Exclude from subsection (k)</p> <p>“...or remit or reduce a sentence imposed by a court on...”</p>

				Note: An Executive power to vary, tweak etc Court sanctions undermines the roles, authority of judges and Courts. The powers of clemency must be limited to pardon only.
39	86(4)		Substitute the words "...one half..." to "majority of total National Assembly Members"	
40	89(3)		Substitute the words "...shall not..." to "shall".	
41	91(1)	Add a subsection to the effect that: "If Senior secondary school certificate or qualification relied on is a qualification whose language of instruction was not English, must hold an internationally recognised English proficiency qualification / competency certificate. If Senior secondary school certificate or qualification relied on	Substitute subsection (b) to: "...thirty years..." for "eighteen years" Note: If one is old enough to vote, one should be old enough to contest. This notion is consistent	Exclude subsection (d) Note: Sound mind and capacity should be presumed unless there exists evidence to suggest otherwise.

		<p>is a qualification whose language of instruction was English but without the minimum of a Pass achieved in English Language, must hold an internationally recognised English proficiency qualification / competency certificate.”</p> <p>Note: A Senior Secondary School Certificate with a fail is equivalent to a nil qualification. These must be explicitly excluded as valid qualifications for purposes of eligibility.</p> <p>Also, as English is our official language, documentary evidence of the ability to understand and express oneself in English must be a requirement for such high Office.</p>	<p>with international standards.</p> <p>Substitute subsection (g) for:</p> <p>“holds a minimum of a senior secondary school certificate with not less than a Pass grade or its equivalent.”</p>	<p>Exclude subsection (e)</p> <p>Note: This is an undue restriction – nothing makes the citizen who before deciding to run for the Presidency whether voluntarily or not did not acquire a voters card.</p> <p>Exclude subsection (f)</p> <p>Note: This undermines the principle of elections being “free and fair”. This restriction unfairly disadvantages the poor – a citizen whose family can afford University tuition becomes eligible 7 years before another whose family is of limited means.</p>
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				Wealth or the lack of it must not boost or limit a citizens eligibility to contest for public office.
42	92(1)		<p>Substitute subsection (e) (i) and (ii) for:</p> <p>“subject to subsection (2) (b), has been convicted by a court or tribunal of competent jurisdiction in The Gambia or elsewhere of –</p> <p>(i) an offence involving dishonesty or driving under the influence or drugs; or</p> <p>(ii) sexual offence or cruelty or homicide.”</p> <p>Note: This restriction is to target an <u>explicitly specified group of offender</u> whose access to high public office is adverse to our national interest; it must not be vague or a broad brush, otherwise it can open</p>	<p>Exclude subsection (a)</p> <p>Note: Most Gambians who hold citizens of other countries by naturalisation are barred from contesting high public office in those countries, to have them barred again by their country of birth is grossly unfair (not to even mention the economic contribution these make to Gambian GDP).</p> <p>This restriction is unreasonable and undemocratic. Just an example, Boris Johnson, the</p>

			<p>the door for politically motivated prosecutions being employed as a tactic to exclude political opponents.</p>	<p>current UK Prime Minister is a US citizen as well as British, this took nothing away from his ability.</p> <p>Exclude subsection (d)</p> <p>Note: This is an unfair restriction. Such dismissal could be on a false premise.</p> <p>Any restriction due to character must be limited to convictions of findings by a Commission of Inquiry established under this Constitution or those which precede it.</p> <p>Exclude subsections (f) and (h).</p> <p>Note:</p>
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				Character bars should be based on a conviction by a court and not general opinion or feelings. This could cause problems.
43	93			<p>Exclude subsections (1)(b) and (1) and all references to it.</p> <p>Note: Asset declarations will be made following being elected so a declaration during nominations is an unnecessary rigmarole which could cause problems and is open to abuse by a determined incumbent in order to bar opponents.</p>
44	97	<p>Add a subsection to the effect that:</p> <p>“such acting President whether the Speaker or Chief Justice shall not be</p>		

		<p>eligible to contest in the elections which are organised to replace the demised President Elect”</p> <p>Note: This eliminates any issues of conflict of interests or potential conflicts of interest.</p>		
45	99	<p>Add at subsection (3) words to the effect that:</p> <p>“The swearing in of the President Elect shall not be prevented by an injunction by virtue of a petition”</p> <p>Note: There has to be explicit clarity on this issue so as to not put the Chief Justice and Supreme Court in the awkward position of having to decide an interim judgment on such hotly contested question. With explicit clarity it is more likely that a post election Constitutional crises or impasse will be avoided.</p>		
46	100(1)	<p>Add a subsection to the effect that subsection 100(1) shall retroactively apply dating from 18th February 1965.</p> <p>Note: This is a reasonable curb and safeguard which will not result in</p>	<p>Substitute “...five years...” for “...four years...”</p> <p>Note: Most advanced democracies have four</p>	

		any unfairness given those it shall affect will not be disadvantaged any more than those who become President under this Constitution.	instead of five year terms.	
47	102	<p>Add at subsection (c) after the words "...other nature..." words to the effect:</p> <p>"or have another do so on his behalf"</p> <p>Add a subsection to the effect that:</p> <p>"Any references and restrictions on the President in this provision shall apply to his / her spouse(s) and closed associates"</p> <p>Add a subsection to the effect that:</p> <p>"The President, his / her spouse(s) or close associates shall not accept and / or give out gifts in whatever capacity or have them accepted or given out by another on their behalf in whatever nature"</p>		
48	103	<p>Add to subsection (5) a subsection to the effect that:</p> <p>"Nothing contained in this section shall be construed as –</p>		<p>Exclude subsection (6)</p> <p>Note: Such an immunity is not consistent with the rules of</p>

		<p>preventing the National Assembly (on a motion following a Superior Court order or adverse finding by a National Assembly investigation) from revoking this immunity in retrospect by a two thirds majority of National Assembly Members present and in favour after a President ceases to be President.”</p> <p>Note: There has to be a provision to allow for the revocation of such immunity in retrospect after a President leaves office where there is a merit for doing so and that such revocation is in the public interest. Otherwise, this immunity may be abused to the detriment of the public and citizens.</p>		natural justice and is not in the public interest.
49	104	<p>Add a subsection to the effect that:</p> <p>An Acting President under this section shall be barred from contesting in any elections under subsection (4) to replace the vacant Presidency.</p> <p>Note: This eliminates any issues of conflict of interests or potential conflicts of interest.</p>		
	106	Add a subsection to the effect that:		

50		<p>“Impeachment processes, hearings etc. shall be conducted in public and the usual rules of public hearings shall apply with respect to sensitive disclosures which may from time to time be heard in camera.”</p> <p>Note: This process has to be transparent and be seen to be so.</p>		
51	114(2)	See s.91 above	See s.91 above	See s.91 above
52	118	See s.102 above		
53	120	See s.106 above		
54	124		<p>Substitute subsection (2)(a) to words to the effect that:</p> <p>“The Gambia shall not enter into an agreement or engagement with any state(s), country(ies), entity(ies) which has the potential or shall cause it to lose part, aspects, some or all of her sovereignty without such being put to a referendum and</p>	

			<p>endorsed by not less than seventy five percent of votes validly cast. Prior to such a referendum, a referendum Act must be passed by the National Assembly by no less than a two thirds majority”</p> <p>Note: This is a major and fundamental constitutional change and it must not be entered into without dedicated sensitisation, education of the public and subsequent democratic public endorsement.</p> <p>Substitute subsection (2)(b) for:</p> <p>“The Gambia shall not become or cease to become a member of any international organization unless the National Assembly by two thirds majority through a resolution</p>	
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			<p>passed by the Assembly passed such motion or through a referendum by over fifty percent of all votes validly cast.”</p> <p>Note: Membership or not of certain organisations come at a cost and, it is fair that such decisions are supported by a democratic mandate.</p>	
55	126(1)			<p>Exclude all references to any respite, reduction in sentence. Prerogative of Mercy must be limited to a pardon (free or conditional).</p> <p>Note: An Executive power to vary, tweak etc Court sanctions undermines the roles, authority of judges and Courts. The powers of clemency must be limited to pardon.</p>

56	127	<p>Add a subsection to the effect that:</p> <p>“Awards shall not be given in circumstances whereby there exists a conflict of interest”.</p> <p>Note: Eg a President awarding honours to the Chief Justice, the Commission members, National Assembly members or people in positions and institutions whereby impartiality is vital and whose responsibility include holding the Executive to account.</p>		
57	129		<p>Substitute subsection (1) to:</p> <p>“There is established the Office of Director of Public Prosecutions which shall be an office in the public service and shall operate independent of the office of the Attorney General.”</p> <p>Note: The separation and independence of the Office of the DPP from the office of the A.G</p>	

			<p>must be explicitly expressed.</p> <p>Substitute subsection (2) to words to the effect that:</p> <p>“The Director of Public Prosecutions shall be appointed by the President (on a fixed term contract of four years extendable by the National Assembly only for a further two years) and on the recommendation of the Public Service Commission, subject to confirmation by the National Assembly.”</p> <p>Note:</p> <p>It is not in the public interest to have such important post be a job for life for one individual. Just like self perpetuating rule in the presidency must not be allowed, its reminiscence must not be allowed elsewhere in the public sector. Additionally, time</p>	
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			<p>limited contracts for such roles is the norm in advanced jurisdictions.</p> <p>Substitute subsection (10) for:</p> <p>“The Director of Public Prosecutions may be removed from office on the same grounds and in accordance with the same process as exists in relation to the removal of a judge of the High Court but shall not be removed by the President or any other authority and through no other means.”</p> <p>Note: The vagueness of who can and cannot remove the DPP and through what mechanism may leave the question open to challenge. This has to be explicitly clear.</p>	
58	131	Add a subsection to the effect that:		

		<p>"The Solicitor General may be removed from office on the same grounds and in accordance with the same process as exists in relation to the removal of a judge of the High Court but shall not be removed by the President or any other authority and through no other means."</p> <p>Note: The vagueness of who can and cannot remove the SG and through what mechanism may leave the question open to challenge. This has to be explicitly clear.</p>		
59	133(2)	<p>Add a subsection to the effect that:</p> <p>"The National Assembly shall perform the functions outlined for it under this Constitution and an Act of the National Assembly, including—</p> <p>Scrutinising and holding the Executive to account;</p> <p>Where necessary scrutinise all bodies and office holders of offices and body corporates established under or pursuant to this Constitution, Act of the National Assembly or delegated legislation."</p>		

60	135		<p>Substitute "...ten years..." from subsection (3) to "...five years..."</p> <p>Note: Ten years is too unreasonable a restriction.</p>	<p>Exclude subsection (1)(b)</p> <p>Note: A citizen old enough to vote is old enough to contest. This is an unreasonable and regressive restriction which ousts if not have the effect of discouraging youth participation in politics.</p> <p>Exclude subsections (1)(d) and (2)</p> <p>Note: These declarations should be following being elected not before. These are unreasonable restrictions which could be too costly to manage and may bug down the Anti</p>
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				<p>Corruption Commission as such candidates will be in the hundreds. Additionally, candidates in rural settlements may be unduly burdened with something which can after all be done after they are elected.</p>
61	136		<p>Substitute subsection (1)(d) to:</p> <p>“has been convicted by a court or tribunal of competent jurisdiction in The Gambia or elsewhere of –</p> <p>(i) an offence involving dishonesty or driving under the influence or drugs; or</p> <p>(ii) sexual offence or cruelty or homicide.”</p> <p>Note: This restriction is to target an <u>explicitly</u></p>	<p>Exclude subsection (1)(m)</p> <p>Note: Restrictions on grounds of character are too serious and must be limited to court convictions rather than general opinion or feeling.</p>

			<p><u>specified group of offender</u> whose access to high public office is adverse to our national interest; it must not be vague or a broad brush, otherwise it can open the door for politically motivated prosecutions being employed as a tactic to exclude political opponents.</p>	
62	137		<p>Subsection (1) should be amended to reflect the current situation (Parliamentary elections held after Presidential elections).</p> <p>Note: The voters may become to confused as two concurrent campaigns will be running at the same time; the Commission may not cope as they will be required to count twice the number of votes than usual. This is a change too quick and must not be rigidly imposed but left open to be</p>	

			<p>addressed by the relevant Act of the National Assembly.</p> <p>Additionally, for party leaders who would otherwise also be candidates for Parliamentary elections, this system bars them from so doing.</p>	
63	138(1)		Substitute "...five years..." for "four years".	
64	139(1)			<p>Exclude subsection (h), (i)</p> <p>Note: This was one of the flaws of the 1997 Constitution which has been proven to be an undermining force to the authority on National Assembly Members to hold the Executive accountable. In Parliamentary elections, the</p>

				<p>electorate elect the individual and not the party, therefore there is no plausible explanation why such member must lose their seat if they cease to be members of their party.</p> <p>Additionally, this has since been amended by the current Parliament in accordance with wider public opinion.</p>
65	142	<p>Add a subsection to the effect that:</p> <p>“any National Assembly Member recalled pursuant to subsection (2)(a) shall maintain the benefit of their basic remuneration as a NAM for the remainder of the life of that Parliament until it is dissolved for elections.”</p> <p>Note: It is right that we uphold the virtues of fairness and not further put to a disadvantage a sitting NAM who</p>		<p>Exclude subsections (2)(b) and (d)</p> <p>Note: These are to vague and are best left out. Otherwise, internal party disputes may unduly result in by-elections or opposing forces</p>

		through ill health and through no fault of their own loses their seat. Not guaranteeing financial security in such instance will render an already vulnerable person even more vulnerable.		<p>may engineer a recall even in circumstances whereby such is unmerited.</p> <p>Grounds for recall should be limited to significant events which are clearly defined eg a Constitutional breach, adverse finding by the National Assembly etc. rather than grounds which are dependent on the opinion of the electorate.</p>
66	143(2)	<p>Add a subsection to the effect that:</p> <p>“The Speaker shall be a person who is qualified to be elected President”</p> <p>Note: If the Speaker could potentially become President (albeit acting) then it is not plausible that they do so without being otherwise qualified to hold such post. There has to be an eligibility consistency.</p>		

		<p>Add a subsection(s) to the effect that:</p> <p>“Each party with Parliamentary representation shall nominate 2 eligible candidates whom are not sitting members for election as speaker, And</p> <p>At such elections, there shall be three rounds. In the first round, the bottom half of candidates with the least number of votes validly cast shall be eliminated, in the second round all but the top two with the highest number of votes validly cast shall be eliminated, in the third round the contestant with the highest number of votes validly cast shall become Speaker and the other Deputy Speaker.</p> <p>The National Assembly may if it so choses elect a second deputy from among the sitting NAMs using the procedure herein.”</p> <p>Note: The procedure for nomination and election of Speaker is not addressed.</p> <p>Add a subsection to the effect that:</p>		
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		<p>"The Speaker and Deputy Speaker shall be subject to the same restrictions as the President and National Assembly Members and may be removed in the same manner as judges"</p> <p>Note: Security of tenure is important for such post holder likewise adequate restrictions.</p>		
67	151	<p>Add a subsection to the effect that:</p> <p>"The National Assembly shall not pass a Bill –</p> <p>"Which undermines, calls into question or compromises the Secular identity or nature of The Gambia."</p> <p>"The National Assembly shall not pass a Bill –</p> <p>To absolve any person(s), group of people, classes of people, entity of whatsoever nature or body corporate of criminal or civil culpability or prosecution or investigation".</p> <p>Note: We must prevent at all cost, an an Executive with a majority in</p>	<p>Substitute subsection (2)(b) with:</p> <p>"No State organ or authority or another doing so on its behalf shall pursue a course of action, pass a law, make a declaration, make an order – to further the cause of any religion or prohibit the exercise of any religion."</p> <p>Note: This is essential to prevent undermine the values and secular identity of the Republic. The current provision offers little (if any) safeguard.</p>	

		Parliament using such to suppress and indemnify criminality, cruelty, human rights abuses or civil wrongs eg. The Indemnity Act.		
68	155		<p>Substitute subsection (1) for:</p> <p>“The business of the National Assembly shall be conducted in the English language only; however, in committee sittings such other language which is indigenous to The Gambia may be used as deemed fit and appropriate.”</p> <p>Note: Main chamber sittings must maintain the Official language as the language of instruction. When NAMS go abroad on official business, they will be speaking English and their ability to represent the Gambia’s interest at such venue may become diminished overtime if we do not maintain English as the</p>	<p>Exclude subsection (3)</p> <p>Note: It is redundant.</p>

			language of the chamber. The ability of NAMs to meaningfully represent the interest of Constituents and the nation (when abroad) trumps the need and urge to speak local languages.	
69	160(2)		<p>Substitute the word "...suffer..." to the phrase "...may become subject to..."</p> <p>Note: Suitability and appropriateness of terminology is important.</p>	
70	161		<p>Substitute subsection (4) for:</p> <p>"An Act of the National Assembly shall be passed within 12 months of the coming into force of this Constitution to amplify and govern the process and procedure relating to the public's right to petition the Assembly."</p>	

			Note: The right to petition is so important a democratic instrument legislation regulating it must be passed without delay.	
71	168			Exclude subsection (6) Note: This caveat undermines the object on subsection (5).
72	173(1)			Exclude from subsection (c) and all other provisions in the draft the phrase "...the Shari'ah Court..." and all references to it and / or any other religious institution. Note: All religious judicial settings must operate independent of

				the State apparatus. The inclusion of religious courts under the wings of the State undermines the principle of separation of State and religion, a principle which is vital in a democracy.
73	185 - 187			Exclude ss.185 – 186 Note: See 173(1) above
74	198(1)(c)			Exclude subsection Note: See 173(1) above
75	207		Substitute subsection (5) to: “The qualifications and eligibility for contesting as a Mayor(ess) or Area Council Chairperson shall be the same as those for the	

			<p>Presidency at s.91 subject to the restrictions at s.92.”</p> <p>Note: The need for eligibility consistency for high office is important.</p>	
76	207		Substitute “...five years...” to “...four years...”	
77	208	<p>Add words to the effect that:</p> <p>“such Act shall be passed no later than a specified timeframe.”</p>		
78	214	<p>Add words to the effect that:</p> <p>“The appointment of heads of independent institutions shall be time limited to 4 years extendable by 2 years by the National Assembly”</p> <p>Note: Such important posts cannot be jobs for life – that may have an adverse consequence (self perpetuating).</p>		
79	216		Substitute subsection (1) for:	

			<p>“The National Assembly may recommend to the President through a vote of censure removal from office of a member of an independent institution or a holder of an independent office —</p>	
80	219		<p>Substitute subsection (1) for:</p> <p>“The National Human Rights Commission shall comprise five Commissioners, who shall be appointed through open, fair and transparent recruitment and for a term of three years, subject to renewal by the National Assembly for one more term.”</p> <p>Note: Unless these are appointed through open recruitment the potential for nepotistic appointments, abuse and perversion will</p>	

			remain. Such will undermine the institution.	
81	220		<p>Substitute subsection (2) for:</p> <p>“The Chairperson of the Anti-Corruption Commission shall be appointed through fair, open, transparent recruitment for a term of five years, and the two other members shall be appointed for a term of four years each, subject to renewal by the National Assembly for one more term.”</p> <p>Note: See s.219 above.</p>	
82	221		<p>Substitute subsection (2) for:</p> <p>Substitute subsection (2) for:</p> <p>“The Chairperson of the Ombudsperson and Deputy Ombudspersons shall</p>	

			<p>be appointed through fair, open, transparent recruitment for a term of five years, and the two other members shall be appointed for a term of four years each, subject to renewal by the National Assembly for one more term.”</p> <p>Note: See s.219 above.</p>	
83	229	<p>Add a subsection to the effect that:</p> <p>“Conflicted persons shall not be appointed as Commissioners, members or staff of any Commission of Inquiry; where any conflicted appointments occur, any member of the public can petition the President directly or through the Attorney General or the National Assembly for such appointment to be reviewed”.</p> <p>Note: This is important as it ensures sanity and prevent impropriety whether intended or otherwise.</p>	<p>Substitute subsection (4) for:</p> <p>“Where the President receives a request accompanied by the resolution of the National Assembly under subsection (3), he or she shall within one month issue a Commission of Inquiry in accordance with this section.”</p> <p>Note: It is vital that a time limit is prescribed to</p>	

			prevent avoidable problems.	
84	233	<p>Add a subsection to the effect that:</p> <p>“The President must publish the findings of a Commission of Inquiry as soon as practicable and implement its recommendations without exception or any variations whatsoever within three months of receipt”.</p> <p>Note: To avoid the recommendations of Commissions of Inquiries going unimplemented or undermined, such explicit restriction must be in place.</p>		
85	253	See s.214 above		
86	255		<p>Substitute subsection (4) for:</p> <p>See s.216 above</p>	
87	258			<p>Exclude subsections (1) - (6); (8), (9).</p> <p>Note: These are inconsistent with the virtues of</p>

				<p>fairness and the rules of civilised society.</p> <p>Enjoyment of property rights must not be subject to one's nationality, such could discourage foreign investment and deprive the State vital investment, revenue and tax receipts.</p>
88	261		<p>Substitute subsections (1), (2) for:</p> <p>"All appointments in the Public Service shall be completely free of any involvement of the Executive and subject to free, open and transparent recruitment and on merit"</p> <p>"The National Assembly shall within 12 months on the coming into force of this Constitution pass an Act which shall</p>	

			<p>direct, dictate and moderate recruitment, remuneration, promotion, retention, retirement, resignation and dismissal of public servants in accordance with this provision”</p> <p>The National Assembly may pass an Act for the purposes of establishing a Public Service Academy for the purposes of training, nurturing, upgrading and development of personnel and the institution.”</p> <p>Note: It is vital that the Public Service is free from political control so as to safeguard its impartiality and independence. It’s personnel must enjoy security of tenure without having to worry about their job security being dependent on the continuation in power</p>	
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			of any particular government.	
89	262		<p>Substitute subsection (1)(b) for:</p> <p>“Appointment of the Head of the Civil Service shall be completely free of any involvement of the Executive and subject to free, open and transparent recruitment and on merit;</p> <p>Such appointment shall be time limited for four years extendable by a further two years by the National Assembly.”</p>	
90	264(2)		See s.261 above	
91	270	<p>Add to subsection (1):</p> <p>“Emergency & Security Services Commission”</p>	<p>Substitute subsection (2)(a) for:</p> <p>See s.261 Above</p>	
92	275		<p>Substitute subsection (5):</p> <p>See s.216 above</p>	

93	277		<p>Substitute at subsection (1) the word "...President..." with "National Assembly".</p> <p>Substitute subsection (4) for:</p> <p>See s.216</p>	
94	278	<p>Add subsection to the effect that:</p> <p>"Such appointment shall be time limited for four years extendable by two years by the National Assembly"</p> <p>Note: Unless there is a time limit the culture of self perpetuation will entrench an such will undermine the quality of service being provided.</p>		
95	Part 1,		<p>Substitute the words "State Security Services" to "State Defence, Security and Essential (DSE) Services"</p> <p>Note: Use of appropriate terminology is</p>	

			<p>important so as to avoid State Agencies misusing their powers e.g. Fire Services personnel carrying out the functions of the Police as was the case leading to the death of Student Ebrima Barry in the lead up to the 2000 student demonstrations.</p> <p>There has to be clear distinction between the roles of the respective uniformed Services: the Armed Forces, the Security Services and the Essential Services providers.</p>	
96	282	<p>Add subsections to the following effect:</p> <p>“(1) State Defence Services:</p> <p>(a) The Gambia Armed Forces (GAF).</p> <p>(2) State Security Services:</p> <p>(a) State Intelligence Services (SIS);</p>		

		<p>(b) Serious and Organised Crime Agency (SOCA);</p> <p>(c) The Gambia Police Force (GPF).</p> <p>(3) State Essential Services:</p> <p>(a) The Gambia Revenue Authority (GRA);</p> <p>(b) The Gambia Prison Services (GPS);</p> <p>(c) The Gambia Fire and Rescue Services (GFRS);</p> <p>(d) The Gambia Immigration Services (GID);</p> <p>(e) Such other Essential Service as may be established by an Act of the National Assembly.”</p> <p>Note: Use of appropriate terminology is important so as to avoid State Agencies misusing their powers e.g. Fire Services personnel carrying out the functions of the Police as was the case leading to the death of Student Ebrima Barry in the lead up</p>		
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		to the 2000 student demonstrations. Militarisation of uniformed Services across the spectrum can be said to have been a contributing factor to the widespread repressive behaviour and attitude of such personnel towards one and other and the Civilian population. Moving forward, there must be established a clear distinction between Defence Services, Security Services and Essential Services.		
97	283			Exclude from the National Security Council: “(g) the Director General of The Gambia Immigration Service; (h) the Commissioner General of The Gambia Revenue Authority; (i) the Director General of Prisons;

				<p>(j) the Chief Fire Officer”</p> <p>Note: These are not Security or Intelligence Personnel and their inclusion in matters of National Security constitutes a perversion of their roles and responsibilities which when fed down their ranks will continue to breed the culture of a militarised attitude towards how such personnel conduct their duties and themselves, something which is adverse to the development of our democracy.</p>
98	Part ii	Add further provisions to the effect that:		

		<p>“The Gambia Armed Forces (GAF) shall be charged with the responsibility of Protecting the territorial integrity of The Gambia, provide support and specialist capabilities to the Police following any incidents of armed insurrection and states of emergency; in doing so, the GAF shall –</p> <p>(a) Not conduct any investigations whatsoever into any private citizen, body corporate or entity nor exercise any law enforcement duties or enjoy any such powers;</p> <p>(b) Subsection (b) shall not prevent the GAF Military Police personnel from exercising and discharging their law enforcement</p>		
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		<p>powers over GAF personnel as may be directed and authorised;</p> <p>(c) Refer (but cannot instruct the Police to investigate) any suspected criminal activity which it comes across to the Police (not the Director of Public Prosecution) for criminal investigations;</p> <p>(d) ensure disciplined and highly trained soldiers are fit and ready to deploy anywhere at any time to meet a variety of challenges and obligations;</p>		
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		<p>(e) strive for the highest standards of professionalism and discipline among its members;</p> <p>(f) prevent corruption and promote and practice discipline, transparency and accountability;</p> <p>(g) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities;</p> <p>(h) comply with standards of human rights and fundamental freedoms and respect for human dignity;</p>		
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		<p>(i) comply with standards of international law, laws of armed conflict, the Geneva convention and rules of engagement and all applicable international treaties and protocol which precede and predate this constitution;</p> <p>(j) train staff, men, women and officers to the highest possible standards of competence and integrity; and</p> <p>(k) foster and promote harmonious relationships with the broader</p>		
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		<p>Gambian society and citizenry in any theatre of operation on deployment.</p> <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision.”</p> <p>Note: The role of GAF must be explicitly spelt out and established to guide and instil understanding for lawmakers and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so GAF Personnel do not act outside their powers.</p>		
99	285		<p>Substitute subsection (1) for:</p> <p>“The President shall, after consulting the National Security Council, appoint from among the most senior officers in the ranks of the respective Service - ...”</p>	

			<p>Note: Any appointments which disregards seniority and the pecking order could undermine discipline and debase the authority of the chain of command in the respective services.</p>	
100	285		<p>Substitute at subsection (4)(b) the word "...President..." to "promotions board".</p> <p>Note: Promotions and Commissions in the Armed Services must be decided independent of politicians to avoid conflicts and the undermining discipline and the authority of the chain of command.</p>	
101	287	<p>Add a subsection to the effect that:</p> <p>"The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to</p>	<p>Substitute s.287 for:</p> <p>"The Gambia Police Force shall be charged with the responsibility of law enforcement</p>	

		<p>give further direction and guidance in accordance with this provision.”</p>	<p>and investigation of crime and criminality without exception and in doing so, shall –</p> <ul style="list-style-type: none"> (a) strive for the highest standards of professionalism and discipline among its members; (b) prevent corruption and promote and practice discipline, transparency and accountability; (c) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities; (d) comply with standards of human rights 	
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			<p>and fundamental freedoms and respect for human dignity;</p> <p>(e) train staff to the highest possible standards of competence and integrity; and</p> <p>(f) foster and promote harmonious relationships with the broader Gambian society.”</p> <p>Note: The Police’s role of Law enforcement and Criminal Investigation must be explicitly established.</p>	
102	288		<p>Substitute subsection (2) for:</p> <p>See s.285 above</p>	

103	289		<p>Substitute the word “...President...” with “by the National Assembly through a vote of censor”</p> <p>Note: The IGP must have security of tenure so as to be able to perform his duties without fear of premature removal.</p>	
104	Part IV		<p>Substitute “National Security Service Commission” for “National Security and Essential Services Commission”</p> <p>Note: This recognises the inclusion of uniformed services which are not Security Services.</p>	
105	290	<p>Add at the end of subsection (2)(b):</p> <p>“And who shall be appointed through fair and open recruitment on time limited contracts of four years extendable by two years by the National Assembly.</p>	<p>Substitute subsection (2)(a) for:</p> <p>See s.221 above</p>	Exclude subsection (3)

106	293		Substitute subsection (3) for: See s.216 above	
107	297		Substitute at subsection 2 the word "...President..." for "through open, transparent merit-based recruitment". Note: Recruitment must be on merit not patronage.	
108	Schedule 2	<p>Add subsections to the include:</p> <p>"1 Christian elected from each Administrative Area;"</p> <p>"1 person (of Gambian nationality but from a nonindigenous ethnicity) elected from every administrative area."</p> <p>Note: There is not a single Christian in this National Assembly. Christians have been consistently underrepresented in the Legislature likewise Gambians of non-indigenous ethnicity e.g.</p>	<p>Substitute at para (b) the figure "... 14..." to "7" and "...2..." to "1".</p> <p>Substitute at para (c) "...2..." to "7" and add words to the effect:</p> <p>"1 would be elected from every administrative area"</p> <p>Note: The political mobility and inclusion provisions must not be selective but should cater for all</p>	

		Lebanese Gambians, Hausa Gambians and so forth.	marginalised and underrepresented groups and be reasonable, proportionate and on par with each other.	
109	301	<p>Add Schedule 2 to the entrenched clauses.</p> <p>Note: The political mobility and inclusion clauses deserve the same level of protection from arbitrary change as other entrenched provisions.</p> <p>Add subsection(s) to the effect that:</p> <p>“All such amendments to entrenched clauses in this Constitution shall be deemed matters of confidence for which failure / unsuccessful attempts shall render the initiator(s) / beneficiary(ies) of such amendment’s position untenable in which case they shall resign failing which they shall be removed for misconduct (for by-election to be held in accordance with this Constitution in the case of a NAM) or (fresh Presidential only elections in the case of the President).”</p>		

		<p>“Any President who is compelled to resign under this provision shall retire on 50% of their salary (or 25% if removed) and be barred from contesting as a Presidential candidate in any future elections; this bar shall not extend to other elected offices of State”</p> <p>“Any National Assembly Member who is compelled to resign or is removed under this provision shall barred from contesting in the by-election their resignation or removal triggered and if removed having failed to resign shall be barred from contesting as a Presidential candidate in any future elections and from serving in any Cabinet or position of similar or equivalent status within the State; this bar shall not extend to other elected offices of State”.</p> <p>“Resignation or removal of a President under this provision shall not cut short the lifetime of any National Assembly”</p> <p>Note: The integrity of the entrenched clauses must be protected to prevent abuse or being</p>		
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		undermined. Therefore, such curb is vital.		
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RECOMMENDED FURTHER PROVISIONS

	Insert	Provision
1	Insert additional entrenched schedule (Public holidays)	<p>The Public Holidays shall be:</p> <p>1st January – New Year’s Day 15th August – Ascension Day (Sang Marie) 25th December – Christmas Day Good Friday Easter Sunday Easter Monday Islamic New Year Laylatul Qadr Eid El Fitr - (date Mecca observes it plus two additional days to cater for variances) Eid El Adha Ashura Gamo Mawlid al-Nabi al-Sharif</p> <p>Note: This offers clarity and respects fundamental religious rights rather than leave such to the discretion of the Executive.</p>

		<p>Also add words to the effect that:</p> <p>“The Executive may make further declaration for further holidays but, such authority shall not be used to substitute, vary or prejudice any of the national and public holidays under this Constitution.</p>
2	Insert additional entrenched provision	<p>Add a provision to the effect that:</p> <p>“There shall be constructed and maintained at public expense a National Memorial (7 identical memorials, 1 in every Region) for <u>all</u> slain victims of the former regime. The National Assembly shall within 12 months of this Constitution coming into force pass legislation to this effect.”</p> <p>Note: This will serve as an important symbolic remembrance for both historical purposes and for the purposes of the victims’ families.</p>
3	Add entrenched provisions at Part ii – Specific Rights and Freedoms	<p>Add additional provision for Prisoners’ and Inmates’ rights and for such to include all such rights except those restricted by virtue of their sentence / detention conditions and the right of prisoners / inmates / detainees to:</p> <ul style="list-style-type: none"> • Visits by family, friends and relatives without undue restriction or hinderance; • Private conjugal visits (for married / engaged inmates); • Visits by humanitarian agencies such as the red cross, human rights bodies and all such entities without undue restriction or hinderance; • Visits by religious leaders and charity organisations without undue restriction or hinderance; • Visits by their legal representative (even after all avenues of appeal are exhausted) without undue restriction or hinderance.

		<p>Also add a provision to set a basic constitutional standard which must be met by all prisons and detention facilities (including existing ones) whether temporary or permanent; or to mandate the National Assembly to pass legislation to that effect within 12 months of this Constitution coming into force. And setting explicit guidelines and objectives for the same purposes.</p> <p>Note: This is vitally necessary. Mile 2 and Janjangbureh prisons are unfit for human habitation likewise most Police Station and Immigration cells as well as the detention conditions; this is being revealed in the TRRC and is public knowledge and is being condemned on a regular basis at the TRRC albeit the the same breach is continuing. The Executive must be compelled by law to address this emergency and prevent a recurrence.</p> <p>Additionally, the rights of prisoners, inmates and detainees must be enshrined in law to guarantee them and prevent abuse. These cannot be left to the discretion of the Executive or Prison officers or Police officers.</p>
4	Insert as first Provision of Part iii (Security Services & Essential Services)	<p>“The State Intelligence Services (SIS) shall be charged with the responsibility of gathering, collecting and analysis of intelligence in support of the national security strategy, the protection against threats such as terrorism, espionage, sabotage, activities of agents of foreign powers, and from actions intended to overthrow or undermine Gambia’s sovereignty, independence and democratic existence as a Sovereign Republic whether by political, industrial, violent, covert or overt means; in doing so, the SIS shall –</p> <p>(a) Not conduct investigations of whatsoever nature whether criminal or otherwise nor handle suspects (albeit their expertise and guidance may be sought where absolutely necessary and from time to time in the investigation and / or prosecution of certain offences such as terrorism and espionage only);</p>

		<p>(b) strive for the highest standards of professionalism and discipline among its members;</p> <p>(c) prevent corruption and promote and practice discipline, transparency and accountability;</p> <p>(d) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities;</p> <p>(e) comply with standards of human rights and fundamental freedoms and respect for human dignity;</p> <p>(f) train staff to the highest possible standards of competence and integrity; and</p> <p>(g) foster and promote harmonious relationships with the broader Gambian society.</p> <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision.”</p> <p>Note: The role of SIS must be explicitly spelt out and established to guide and instil understanding to lawmakers and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so SIS Personnel do not act outside their powers.</p>
5	Insert as the Second Provision of Part iii (Security Services & Essential Services)	<p>“The Serious and Organised Crime Agency (SOCA) shall be charged with the responsibility of fighting serious and organised crime (including but not limited to smuggling, illegal fire arms, cyber financial crimes, drug trafficking, money laundering, illicit finance, modern slavery and human trafficking, organised immigration crimes, kidnap and extortion, sexual offences, bribery, corruption, tax evasion and sanctions evasion),</p>

	<p>gathering, collecting and analysing crime intelligence to build the best possible intelligence picture of serious and organised crime trends and patterns, pursuing the most serious and dangerous offenders and developing and delivering specialist capabilities on behalf of law enforcement and other partners; in doing so, SOCA shall –</p> <ul style="list-style-type: none"> (a) Conduct investigations into all investigations under its purview for the purposes of prosecution by the Directorate of Public Prosecutions; (b) strive for the highest standards of professionalism and discipline among its members; (c) prevent corruption and promote and practice discipline, transparency and accountability; (d) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities; (e) comply with standards of human rights and fundamental freedoms and respect for human dignity; (f) train staff to the highest possible standards of competence and integrity; and (g) foster and promote harmonious relationships with the broader Gambian society. <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision.”</p> <p>Note:</p>
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		<p>The role of SOCA must be explicitly spelt out and established to guide and instil understanding to lawmakers and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so SOCA Personnel do not act outside their powers</p>
6	<p>Insert as the Third Provision of Part iii (Security Services & Essential Services)</p>	<p>“The Gambia Police Force shall be charged with the responsibility of law enforcement and investigation of crime and criminality without exception and in doing so, shall –</p> <ul style="list-style-type: none"> (a) strive for the highest standards of professionalism and discipline among its members; (b) prevent corruption and promote and practice discipline, transparency and accountability; (c) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities; (d) comply with standards of human rights and fundamental freedoms and respect for human dignity; (e) train staff to the highest possible standards of competence and integrity; and (f) foster and promote harmonious relationships with the broader Gambian society. <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision.”</p> <p>Note: The Police’s role of Law enforcement and Criminal Investigation must be explicitly established to guide and instil understanding for lawmakers</p>

		and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so GRA Personnel do not act outside their powers.
7	Insert as Fourth Provision of Part iii (Security Services & Essential)	<p>"The Gambia Revenue Authority (GRA) shall be charged with the responsibility of collection of taxes and the administration and / or enforcement of other regulatory regimes including the national minimum wage; in doing so, the GRA shall –</p> <ul style="list-style-type: none"> (a) Conduct investigations into regulatory offences (civil offences but without any powers of arrest and or detention and may request the assistance of the Police for the purposes of effecting any arrests and detention where such is authorised) under its purview but shall not conduct criminal investigations or prosecutions of whatsoever nature or handle suspects (albeit their expertise and guidance may be sought where necessary and to the extent that such is necessary and from time to time in the investigation and / or prosecution of certain offences such as financial, Economic crimes, Corruption offences etc as the case may be); (b) Refer (but cannot instruct the Police to investigate) all suspected criminal activity it comes across to the Police (not the Director of Public Prosecution) for criminal investigations; (c) strive for the highest standards of professionalism and discipline among its members; (d) prevent corruption and promote and practice discipline, transparency and accountability; (e) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities;

		<p>(f) comply with standards of human rights and fundamental freedoms and respect for human dignity;</p> <p>(g) train staff to the highest possible standards of competence and integrity; and</p> <p>(h) foster and promote harmonious relationships with the broader Gambian society.</p> <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision.”</p> <p>Note: The role of GRA must be explicitly spelt out and established to guide and instil understanding to lawmakers and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so GRA Personnel do not act outside their powers.</p>
8	Insert as Fifth Provision of Part iii (Security Services & Essential)	<p>“The Gambia Prison Services (GPS) shall be charged with the responsibility of providing a safe and secure environment for prisoners and those in state custody, prisoner rehabilitation and training and prisoner and detainees’ welfare; in doing so, the GPS shall –</p> <p>(l) Not conduct investigations into any prisoner or private citizen of whatsoever nature as the GPS is not a law enforcement agency but a provider of essential public services;</p> <p>(m) Refer (but cannot instruct the Police to investigate) any suspected criminal activity which it comes across to the Police (not the Director of Public Prosecution) for criminal investigations;</p>

		<p>(n) strive for the highest standards of professionalism and discipline among its members;</p> <p>(o) prevent corruption and promote and practice discipline, transparency and accountability;</p> <p>(p) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities;</p> <p>(q) comply with standards of human rights and fundamental freedoms and respect for human dignity;</p> <p>(r) train staff to the highest possible standards of competence and integrity; and</p> <p>(s) foster and promote harmonious relationships with the broader Gambian society.</p> <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision.”</p> <p>Note: The role of GPS must be explicitly spelt out and established to guide and instil understanding for lawmakers and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so GPS Personnel do not act outside their powers.</p>
9	Insert as Sixth Provision of Part iii (Security Services & Essential)	<p>“The Gambia Fire and Rescue Services (GFRS) shall be charged with the responsibility of extinguishing fires, protecting life and property in the event of fires, rescuing and protecting people and animals during such other accidents, disasters and emergencies as an Act of the National Assembly may prescribe, collect information to assess risk within their</p>

		<p>competence and accordingly provide guidance to inform the Government's National Fire and Rescue Framework which shall outline the Government's high level priorities and objectives; in doing so, the GFRS shall –</p> <ul style="list-style-type: none"> (a) As Essential services providers not conduct any investigations into any private citizen, body corporate or entity (albeit their expertise and guidance may be sought where necessary and to the extent that such is necessary and from time to time in the investigation and / or prosecution of certain offences such as those related to fire safety, health and safety and others within their area of competence etc. as the case may be); (b) Refer (but cannot instruct the Police to investigate) any suspected criminal activity including those related to fire safety, health and safety etc which it comes across to the Police (not the Director of Public Prosecution) for criminal investigations; (c) strive for the highest standards of professionalism and discipline among its members; (d) prevent corruption and promote and practice discipline, transparency and accountability; (e) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities; (f) comply with standards of human rights and fundamental freedoms and respect for human dignity; (g) train staff to the highest possible standards of competence and integrity; and
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		<p>(h) foster and promote harmonious relationships with the broader Gambian society.</p> <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision.”</p> <p>Note: The role of GFRS must be explicitly spelt out and established to guide and instil understanding for lawmakers and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so GFRA Personnel.</p>
10	Insert as Seventh Provision of Part iii (Security Services & Essential)	<p>“The Gambia Immigration Department (GID) shall be charged with the responsibility of securing the Gambia’s borders, controlling immigration into Gambian jurisdiction, considering and processing applications for visas, residence & work permits, naturalisation, registration, denunciations of citizenships and issuing passports and identity cards; in doing so, the GID shall –</p> <p>(a) As essential services providers not conduct any investigations into any private citizen, body corporate or entity (albeit their expertise and guidance may be sought where necessary and to the extent that such is necessary and from time to time in the investigation and / or prosecution of certain offences such as those related to immigration offences and others within their area of competence etc. as the case may be);</p> <p>(b) Refer (but cannot instruct the Police to investigate) any suspected criminal activity including those related to immigration offences whereby deportation is not applicable and any which it comes across to the Police</p>

		<p>(not the Director of Public Prosecution) for criminal investigations;</p> <ul style="list-style-type: none"> (c) strive for the highest standards of professionalism and discipline among its members; (d) prevent corruption and promote and practice discipline, transparency and accountability; (e) have utmost respect for the rule of law which shall at all times guide the execution of its duties and responsibilities; (f) comply with standards of human rights and fundamental freedoms and respect for human dignity; (g) train staff to the highest possible standards of competence and integrity; and (h) foster and promote harmonious relationships with the broader Gambian society. <p>The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to give further direction and guidance in accordance with this provision and, prescribe very limited and monitorable powers of arrest for GID operational officers in prescribed circumstances.”</p> <p>Note: The role of GID must be explicitly spelt out and established to guide and instil understanding for lawmakers and relevant others, so they do not legislate for powers and responsibilities over and beyond the dictates of this Constitution and, so GID Personnel do not act beyond their powers.</p>
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11	Insert as Eighth Provision of Part iii (Security Services & Essential)	"The National Assembly may pass such further Act(s) of the National Assembly as may be necessary to establish further essential services providers (not defence or Law enforcement Agencies) and give further direction and guidance in accordance with this provision.
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4.2 Cadi Court and Muslim Religious Bodies

We the Concerned Citizens recommend that the nomenclature of Cadi Court be changed to Sharia Court, consistent with Sections 7 (f) & 137 (4) of the 1997 Constitution which made direct reference to wording 'Sharia', as the law applicable in the Cadi Court. Concerned Citizens can also refer to the progressive name changes which the Cadi Court has progressively undergone; from Muslim Court, to Muhammadan Court, and now to Cadi Court.

By extension, the Cadi Appeals Panel should also become the Sharia Appeals Court. The nomenclature 'Cadi Appeals Panel' is, in our view not fit for purpose. It is our understanding that a panel is a body that is temporarily constituted and can be dissolved at any time. Therefore, we recommend that there should a permanent 'Sharia Appeal Court' that will have the force of permanence and perpetual existence like any other common law court.

The current jurisdiction of the Cadi court covers three main areas of Islamic law which is *marriage, divorce and inheritance* as spelt out in *Section 137 (4)* of the 1997 Constitution. The said section is hereby reproduced: '*the Cadi Court shall only have jurisdiction to apply the Sharia in matters of marriage, divorce and inheritance where the parties or other persons interested are Muslims.*' This particular section has caused a lot of unrest in the Cadi court regarding the administration and distribution of the estate of a deceased Muslim man involving a non-Muslim widow. The question that always arise is whether the Cadi has jurisdiction to hear cases involving a non-Muslim widow or children as the case may be having regard to the wordings of section 137(4) of the 1997 Constitution.

It is therefore our humble submission that the Cadi Court should be empowered to be able to determine cases involving non-Muslim widows who were previously married to Muslim men. This is because the issue that comes before the Cadi court is not necessarily that of a non-Muslim widow, but rather the issue of the distribution of the estate of a deceased Muslim man which should be administered according to the dictates of Sharia.