

2020

# DRAFT CONSTITUTION



**Constitutional Review Commission**

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## PREAMBLE

***We the people of The Gambia,***

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

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

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

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

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

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

# **CHAPTER I**

## **THE REPUBLIC AND SOVEREIGNTY OF THE PEOPLE**

### **The Republic**

1. (1) The Gambia is a Sovereign Republic.
- (2) The Gambia is a multi-party democratic State founded on respect for the rule of law and the national values and principles of governance enshrined in this Constitution.
- (3) The Gambia comprises people of different faiths and every faith shall be respected and treated fairly without any discrimination.

### **Sovereignty of the people**

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

### **The territory of The Gambia**

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

### **National symbols**

4. (1) The national symbols of The Gambia are –
  - (a) the National Flag;
  - (b) the National Anthem;
  - (c) the Coat of Arms; and
  - (d) the Public Seal.

(2) The National Flag, National Anthem, and Coat of Arms, shall be those in existence immediately before this Constitution came into force.

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

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

### **Decentralisation of government**

5. (1) The Gambia is divided into seven administrative areas as outlined in Schedule 1.

(2) A State organ shall ensure reasonable access to its services in all parts of The Gambia, so far as it is appropriate to do so having regard to the nature of the service.

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

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

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

### **National days**

6. (1) The national days are –

- (a) Independence Day – 18<sup>th</sup> February; and
- (b) Republic Day – 24<sup>th</sup> April.

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

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

## CHAPTER II

### THE CONSTITUTION AND THE LAWS

#### Supremacy of the Constitution

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

(2) No person may claim or exercise State authority except as authorised under this Constitution and other laws not inconsistent with this Constitution.

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

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

#### Defence of the Constitution

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

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

- (3) No person shall –
- (a) by himself or herself or in concert with others, by any violent or other unlawful means, suspend, overthrow or abrogate this Constitution or any part of it, or attempt to do any such act; or
  - (b) aid or abet in any manner any person referred to in paragraph (a).

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

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

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

#### Enforcement of the Constitution

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

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

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

- (b) a person acting as a member, or in the interest of a group or class of persons;
- (c) a person acting in the public interest; or
- (d) an association acting in the interest of one or more of its members.

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

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

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

### **Laws of The Gambia**

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

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

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

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

## **CHAPTER III**

### **NATIONAL VALUES AND PRINCIPLES**

#### **National values and governance**

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

- (a) applies or interprets this Constitution;
  - (b) enacts, applies or interprets any law; or
  - (c) makes or implements public policy decisions.
- (2) The national values and principles of governance include –
  - (a) patriotism, national unity, sharing and decentralisation of power, the rule of law, democracy and participation of the people;
  - (b) human dignity, equity, social justice, inclusiveness, equality, respect for human rights and freedoms, non-discrimination and protection of the marginalised;
  - (c) integrity, transparency and accountability; and
  - (d) sustainable development.

## **Culture**

**12.** (1) This Constitution recognises culture and respect for ethnic and religious diversity as the foundation of the nation and as the cumulative civilisation of the Gambian people and nation.

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

## **Duties of citizens**

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

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

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

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

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

## **CHAPTER IV**

### **CITIZENSHIP**

#### **Citizenship on the commencement of this Constitution**

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

- (a) by birth or, subject to section 15 (2), by descent; or
- (b) by registration or naturalisation.

#### **Citizenship by birth**

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

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

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

#### **Citizenship by registration**

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

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



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

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

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

### **Citizenship by naturalisation**

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

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

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

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

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

### **Dual citizenship**

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

### **Deprivation of citizenship**

19. (1) The Minister may apply to the High Court for an order to revoke the citizenship of a person who has been registered or naturalised as a citizen of The Gambia on the ground that the person –

- (a) has, since registration or naturalisation as a citizen of The Gambia, acquired by registration, naturalisation or any voluntary means, the citizenship of any other country;
- (b) has acquired the citizenship of The Gambia by means of fraud, false representation or the concealment of any material fact;

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

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

(3) The citizenship of a person who was presumed to be a citizen by birth, as contemplated in section 15 (3) may be revoked if –

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

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

### **Restoration of citizenship**

**20.** (1) A citizen of The Gambia by birth who had lost his or her citizenship of The Gambia as a result of the acquisition or possession of the citizenship of some other country shall, on a written notification to the Minister indicating his or her desire to restore his or her citizenship of The Gambia, have his Gambian citizenship restored.

(2) A citizen of The Gambia by naturalisation or registration who had lost his or her citizenship of The Gambia as a result of the acquisition or possession of the citizenship of some other country shall, on the renunciation of the citizenship of that other country and upon a written application to the Minister, be entitled to be registered as a citizen of The Gambia.

### **Act of the National Assembly on citizenship**

**21.** An Act of the National Assembly may make provision for –

- (a) registration as a citizen of The Gambia of a person who, on or before the 31<sup>st</sup> December, 2019, was born in The Gambia of non-Gambian parents, if the person had, since his or her birth, lived in The Gambia;
- (b) the acquisition of the citizenship of The Gambia by person who are not eligible to become citizens under the provisions of this Chapter;
- (c) the renunciation by any person of his or her citizenship of The Gambia;
- (d) prescribing procedures for the acquisition of citizenship; and
- (e) generally giving effect to the provisions of this Chapter.

#### **Interpretation of Chapter IV**

**22.** (1) In this Chapter, “**Minister**” means the Minister responsible for citizenship matters.

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

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

### **CHAPTER V**

#### **LEADERSHIP AND INTEGRITY**

##### **Application of this Chapter and guiding principles**

**23.** (1) This Chapter applies to every office and office holder and every authority, both public and private, and to every citizen or other person who has or is given, whether on contract or otherwise, a functional role or responsibility in relation to a duty that is in the public interest.

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

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

### **Responsibilities of leadership**

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

- (a) a privilege and public trust which must be exercised in a manner that –
    - (i) is consistent with the purposes and objects of this Constitution;
    - (ii) demonstrates respect for the people and the rule of law;
    - (iii) brings honour to the nation and dignity to the office; and
    - (iv) promotes public confidence and respect in the integrity of the office; and
  - (b) vested in the public officer holding the office the responsibility to serve the people of The Gambia, rather than the power to rule them.
- (2) The guiding principles of leadership and integrity include –
- (a) selection on the basis of personal integrity, competence, ability and suitability;
  - (b) election to a public office in free, transparent and fair elections;
  - (c) objectivity and impartiality in decision-making, and in ensuring that decisions are transparent and not influenced by nepotism, favouritism, improper motive or corrupt practice;
  - (d) selfless service based solely on what is in the public interest, demonstrated by –
    - (i) honesty in the execution of public duties;
    - (ii) the declaration of any personal interest that may conflict with public duties and responsibilities;
    - (iii) respect for and upholding of the national values and principles of governance outlined in section 11; and
    - (iv) the duty to expose, or engage in any lawful act to prevent, the misuse and waste of public funds and property;
  - (e) accountability to the public for decisions and actions; and
  - (f) discipline and commitment in service to the people.

### **Conduct and oath of office of public officers**

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

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

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

### **Financial probity of public officers**

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

the State, through the Anti-Corruption Commission, unless the gift is otherwise exempted, whether conditionally or unconditionally, by an Act of the National Assembly.

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

### **Restrictions on the activities of public officers**

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

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

(2) A public officer holding office in the public service, other than a public officer who is appointed to public office which requires a person with political affiliation with a registered political party, shall not hold office in any political party.

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

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

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

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

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

### **Consequence for contraventions**

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

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

- (a) in the case of a public officer –

- (i) shall be subject to such disciplinary process and procedure as is applicable in his or her case; and
- (ii) may, in accordance with the disciplinary process and procedure referred to in subparagraph (i), be dismissed or otherwise removed from office; and
- (b) in the case of any other person, shall have his or her relationship with the organ or agency of the State, or the Statutory Body or State Owned Enterprise, as the case may be, terminated, without prejudice to the right of the State or the Statutory Body or State Owned Enterprise to recover any loss incurred.

(3) A person who has been dismissed or otherwise removed from office, or whose relationship with an organ or agency of the State or a Statutory Body or State Owned Enterprise has been terminated, shall –

- (a) in the case of a public officer, be disqualified from holding any other public office for life, unless an Act of the National Assembly prescribes a shorter period; and
- (b) in the case of any other person, be disqualified from having any further or other relationship with the State or any organ of the State, or any Statutory Body or State Owned Enterprise.

(4) Subject to subsection (5), any person may, for the purposes of sections 94 (1) (f), 116 (2) (h) and 138 (1) (g), commence an action in the High Court seeking a declaration that a person has advocated ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm.

(5) Subsection (4) shall not apply if the Director of Public Prosecutions has initiated criminal proceedings against the person for advocating ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm.

### **Legislation on Leadership**

**30.** An Act of the National Assembly shall make provision –

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

## **CHAPTER VI**

### **FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS**

#### ***PART I***

### **GENERAL PROVISIONS ON FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS**

#### **Fundamental human rights and freedoms**

**31.** (1) Fundamental human rights and freedoms (“fundamental rights and freedoms”) are an integral part of The Gambia’s democratic state and form the foundation for the development and promotion of social, economic and cultural policies.

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

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

- (a) belong to each individual and are not granted by the State;
- (b) do not exclude other rights and freedoms not in this Chapter, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
- (c) are subject only to the limitations provided in this Constitution.

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

### **Application of fundamental human rights and freedoms**

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

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

(3) In interpreting this Chapter, a court, tribunal or other authority shall –

- (a) develop the law to the extent that it gives effect to a fundamental right or freedom;
- (b) adopt the interpretation that most favours the fulfilment of a fundamental right or freedom;
- (c) promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and
- (d) promote the spirit, purport and objects of this Chapter.

(4) In applying any rights under sections 57 (2) (b), (c) and (d), 62 and 66, if the State claims that it does not have the resources to implement the rights, a court, tribunal or other authority shall be guided by the following principles –

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

### **Implementation of fundamental human rights and freedoms**

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

(2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under sections 62 and 66.

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

### **Enforcement of fundamental human rights and freedoms**

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

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

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

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

- (a) the rights of standing provided for in subsection (2) are facilitated;
- (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
- (c) no fee may be charged for commencing the proceedings;
- (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
- (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

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

### **Authority of courts to uphold and enforce this Chapter**

**35.** (1) The High Court has jurisdiction, in accordance with section 185, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a fundamental right or freedom in this Chapter.

(2) In any proceedings brought under section 34, a court may grant appropriate relief, including

—

- (a) a declaration of rights;



- (b) an injunction;
- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in this Chapter and is not justified under section 36;
- (e) an order for compensation; and
- (f) an order of judicial review.

### **Limitation of fundamental human rights and freedoms**

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

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

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

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

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

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

- (a) section 39 – protection of liberty;
- (b) section 43 – privacy;
- (c) section 50 – freedom of assembly;
- (d) section 51 – freedom of association; and
- (e) section 60 – right to fair labour practices.

## **Fundamental human rights and freedoms that shall not be limited**

**37.** Notwithstanding any other provision in this Constitution, the following fundamental rights and freedoms shall not be limited –

- (a) section 40 (1) – protection from slavery, servitude and human trafficking;
- (b) section 41 – right to human dignity and protection against torture and inhuman treatment; and
- (c) section 71 (3) (e) - right to an order of habeas corpus.

## ***PART II***

### **SPECIFIC RIGHTS AND FREEDOMS**

#### **Right to life**

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

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

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

#### **Protection of liberty**

**39.** (1) Every person has the right to liberty and security of the person.

(2) No person shall be subjected to arbitrary arrest or detention.

(3) No person shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

(4) An arrested person has the right –

- (a) to be informed promptly, in a language that the person understands, of –
  - (i) the reason for the arrest;
  - (ii) the right to remain silent; and
  - (iii) the consequences of not remaining silent;
- (b) to remain silent;
- (c) to communicate with a legal practitioner of his or her own choice, and to consult his or her legal practitioner confidentially;
- (d) not be compelled to make any confession or admission that could be used in evidence against the person;

- (e) to be held separately from persons who are serving a sentence;
- (f) to be brought before a court as soon as reasonably practicable, save as otherwise provided in an Act of the National Assembly, not later than –
  - (i) forty-eight hours after being arrested; or
  - (ii) if the forty-eight hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- (g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
- (h) to be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons to not be released.

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

### **Protection from slavery, servitude, human trafficking and forced labour**

- 40.**
- (1) No person shall be held in slavery or servitude or be subjected to human trafficking.
  - (2) No person shall be required to perform forced labour.
  - (3) For the purposes of this section, the expression "forced labour" does not include –
    - (a) any labour required in consequence of a sentence or order of a court;
    - (b) any labour required of a member of The Gambia Armed Forces in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service as a member of any naval, military or air force, any labour which that person is required by law to perform in place of such service;
    - (c) any labour required during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purposes of dealing with that situation; and
    - (d) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

### **Right to human dignity and protection against torture and inhuman treatment**

- 41.**
- (1) Every person has inherent dignity and the right to have that dignity respected and protected.
  - (2) Every person has the right to freedom and security of the person, which includes the right not to be –
    - (a) subjected to any form of violence from either public or private sources;
    - (b) subjected to torture in any manner, whether physical or psychological;
    - (c) subjected to corporal punishment; or
    - (d) treated or punished in a cruel, inhuman or degrading manner.

## Protection of right to property

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

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

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

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

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

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

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of law, whether under civil process or after conviction of a criminal offence;
- (c) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (d) by way of the vesting or administration of trust property, enemy property, *bona vacantia* or the property of persons adjudged or otherwise declared bankrupt or insolvent, or persons of unsound mind;
- (e) in the execution of judgments or orders of courts;
- (f) by reason of such property being in a dangerous state or liable to cause injury to the health of human beings, animals or plants;
- (g) in consequence of any law with respect to the limitation of actions; or
- (h) for so long as such taking of possession may be necessary for the purpose of any examination, investigation, trial or inquiry, or, in the cases of land, the carrying out on the land of –
  - (i) work of soil conservation or the conservation of other resources; or
  - (ii) agricultural development or improvement which the owner or occupier of the land has been required and has without reasonable or lawful excuse refused or failed, to carry out, except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in an open and democratic society.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking in the public interest of any property, or the compulsory acquisition in the public

interest of any interest in or right over property, where that property or interest is held by a body corporate which is established directly by any law and in which no monies are provided by an Act of the National Assembly.

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

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

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

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

(9) The State shall support, promote and protect the intellectual property rights of the people of The Gambia.

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

### **Right to privacy**

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

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

- (a) in the interests of national security, public safety or the economic well-being of the country;
- (b) for the protection of health or morals;
- (c) for the prevention of disorder or crime; or
- (d) for the protection of the rights and freedoms of others.

(3) Searches of the person or the home of an individual shall only be justified –

- (a) where this is authorised by a competent judicial authority; and
- (b) in a case where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest and such procedures as are prescribed by an Act of the National Assembly to preclude abuse are properly satisfied.

### **Right to fair administrative action**

**44.** (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a fundamental right or freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) An Act of the National Assembly shall give effect to the rights mentioned in subsection (1) and shall include provision for –

- (a) the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
- (b) the promotion of efficient administration.

### **Right to fair trial**

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

(2) Every accused person has the right to a fair trial, which includes the right –

- (a) to be presumed innocent until the contrary is proven;
- (b) to be informed of the charge, with sufficient detail to answer it;
- (c) to have adequate time and facilities to prepare a defence;
- (d) to a public trial before a court established under or pursuant to a provision of this Constitution;
- (e) to have the trial begin and conclude without unreasonable delay;
- (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
- (g) to choose, and be represented by, a legal practitioner of his or her own choice, and to be informed of this right promptly;
- (h) to legal aid provided by the State if the accused person is a child, or the offence with which the accused person is charged carries a penalty of life imprisonment or higher;
- (i) to remain silent, and not to testify during his or her trial;
- (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
- (k) to adduce and challenge evidence;
- (l) to refuse to give self-incriminating evidence;
- (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
- (n) not to be convicted for an act or omission that at the time it was committed or omitted was not an offence in The Gambia;
- (o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted, or pardoned; and
- (p) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.

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

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

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

(6) An accused person –

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

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

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

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

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

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

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

## **Freedom of expression**

**46.** (1) Every person has the right to freedom of expression, which includes –

- (a) freedom to seek, receive or impart information or ideas;
- (b) freedom of artistic creativity; and
- (c) academic freedom and freedom of scientific research.

(2) The right to freedom of expression does not extend to –

- (a) propaganda for war;
- (b) incitement to violence or to break law and order; or
- (c) advocacy –

- (i) for ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm; or
- (ii) of hatred that is based on any ground of discrimination specified or contemplated in section 69 (6).

(3) In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of other.

### **Freedom of the media**

**47.** (1) There shall be a free and independent media.

(2) The freedom referred to in subsection (1) shall include –

- (a) the right of natural or juristic persons to own and operate media;
- (b) the freedom of the media to gather, process and transmit news and information without any interference, directly or indirectly;
- (c) protection from control or censorship of news by any person or authority prior to publication; and
- (d) protection from the disclosure of sources of information.

(3) The freedoms provided in subsection (2) do not extend to any expression specified in section 46 (2).

(4) All State-owned media shall –

- (a) be free to determine independently the editorial content of their broadcasts or other communications;
- (b) be impartial; and
- (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

(5) The State shall not penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

(6) An Act of the National Assembly may establish an independent regulator with responsibility for –

- (a) regulating the provision of broadcasting and communications services in the public interest;
- (b) ensuring fairness and diversity of opinion;
- (c) awarding licences in a fair and transparent manner;
- (d) the equitable allocation of frequencies and regulation of related matters between private and public broadcasters; and
- (e) setting media standards, and regulating and monitoring compliance with those standards.

### **Access to information**

**48.** (1) Every citizen has a right of access to information held by –

- (a) a public body;



- (b) a relevant private body performing or having direct or indirect bearing in the execution of a public function; and
- (c) another person and required for the exercise or protection of any fundamental right or freedom.

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

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

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

### **Freedom of religion and conscience**

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

(2) Every person has the right, either individually or in community with others, in public or in private, to manifest and practice any religion or belief without any interference by the State or any other person or authority.

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

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

### **Freedom of assembly**

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

### **Freedom of association**

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

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

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

- (a) registration may not be withheld or withdrawn unreasonably; and
- (b) there shall be a right to have a fair hearing before a registration is cancelled.

### **Freedom of movement**

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

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

### **Political rights**

**53.** (1) Subject to section 269, every citizen is free to make political choices, which includes the right –

- (a) to form, or participate in forming, a political party;
- (b) to participate in the activities of, or recruit members for, a political party; or
- (c) to campaign for a political party or cause.

(2) Every citizen of The Gambia of full age and capacity has the right, without unreasonable restrictions –

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to, subject to section 269 (1), vote and stand for elections, at periodic elections for public office, including any office of a political party of which the citizen is a member, which elections shall be by universal and equal suffrage and be held by secret ballot; and
- (c) to have access, on general terms of equality, to public service in The Gambia.

### **Right to marry and found a family**

**54.** A man and a woman of full age and capacity have the right to marry and found a family, and such marriage shall be based on the free and full consent of the man and the woman.

### **Rights of women**

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

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

(3) The State shall take measures, including affirmative action programmes, to ensure that women –

- (a) access relevant education and training;
- (b) have opportunities to associate, be represented and participate, in political, social, economic and other spheres of life;
- (c) are protected from abuse and all forms of violence and exploitation, including protection against hazardous or exploitative labour; and
- (d) access employment.

### **Rights of children**

**56.** (1) Every child has the right –

- (a) to a name and nationality from birth;

- (b) to adequate nutrition;
- (c) to be protected from abuse, neglect, all forms of violence and exploitation, inhuman treatment and punishment, and hazardous or exploitative labour;
- (d) to parental care and protection, which includes equal responsibility of the mother and father, to provide for the child;
- (e) to special protection against exposure to any physical or moral hazard; and
- (f) not to be detained, except as a measure of last resort, and then only for the shortest appropriate period.

(2) Every child is entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with his or her education or be harmful to his or her health or physical, mental, spiritual, moral or social development.

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

### **Right to education**

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

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

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

### **Rights of persons with disabilities**

58. (1) A person with any disability is entitled to –

- (a) be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
- (b) access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
- (c) reasonable access to all places, public transport and information;
- (d) use Gambian sign language, Braille or other appropriate means of communication;
- (e) access materials and devices to overcome constraints arising from the person's disability; and
- (f) protection against abuse, all forms of violence and exploitation, and discrimination, in particular as regards access to health and social services and employment.

(2) The State shall take measures, including affirmative action programmes, to ensure that persons with disabilities realise the rights outlined in subsection (1), including accessing employment and associating, being represented and participating, in political, social, economic and other spheres of life.

### **Cultural rights**

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

### **Right to fair labour practices**

**60.** Every person has the right to fair labour practices, including the right to –

- (a) fair remuneration;
- (b) reasonable working conditions;
- (c) form, join, participate, and organise a trade union; and
- (d) engage in collective bargaining with others, or within a trade union, to advance his or her interest.

### **Right to clean environment**

**61.** Every person has the right to a clean and healthy environment, which includes the right to have –

- (a) the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Chapter XIV; and
- (b) obligations relating to the environment fulfilled under Chapter XIV.

### **Economic and social rights**

**62.** (1) Every person has the right to –

- (a) the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (b) accessible and adequate housing, and to reasonable standards of sanitation;
- (c) be free from hunger, and to have adequate food of acceptable quality;
- (d) clean and safe water in adequate quantities; and
- (e) social security.

(2) A person shall not be denied emergency medical treatment.

### **Rights of the elderly**

**63.** The State shall take measures to ensure the rights of older persons to –

- (a) fully participate in the affairs of society;
- (b) pursue their personal development;
- (c) live in dignity and respect and be free from abuse; and

- (d) receive reasonable care and assistance from their family and the State.

### **Rights of the youth**

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

### **Consumer protection rights**

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

### **Right to development**

- 66.** (1) All peoples have, and every person has, a right to development, and to the enjoyment of economic, social, cultural and political development.
- (2) Women, children and persons with disabilities shall be given special consideration in the application of the rights referred to in subsection (1).
- (3) The special consideration referred to in subsection (2) shall include equality of opportunity for all in their access to basic resources, including education, health services, food, shelter, employment and infrastructure.
- (4) The State shall –
- (a) take measures to introduce reforms aimed at eradicating social injustices and inequalities, and
  - (b) protect, respect, promote and fulfil the right to development and to justify its policies in accordance with this responsibility.

### **Right of the sick**

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

### **Gender balance and fair representation of marginalised groups**

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

- (a) on bodies established under or pursuant to this Constitution and any Act of the National Assembly; and
- (b) on all other public bodies, including Statutory Bodies and State Owned Enterprises.

### **Protection from discrimination**

**69.** (1) All persons are equal before the law.

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

- (a) no law shall make any provision which is discriminatory either of itself or in its effect; and
- (b) no person shall be treated in a discriminatory manner by any other person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

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

- (a) with respect to persons who are not citizens of The Gambia or to qualifications for citizenship;
- (b) with respect to the qualifications prescribed by this Constitution for any office;
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (d) with respect to any matter that has as its object the amelioration of conditions of disadvantaged individuals or marginalised groups; or
- (e) to the extent necessary for the application of customary law, with respect to any matter in the case of persons who, under that law, are subject to that law.

(4) Subsection (2) (b) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (3).

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

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

### **Declaration of state of public emergency**

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

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

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

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

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

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

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

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

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

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

### **Derogations from fundamental human rights under emergency powers**

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

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

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

- (a) the right to life;

- (b) the right to human dignity and protection against torture and inhuman treatment,
- (c) the protection from slavery, servitude, human trafficking and forced labour;
- (d) the prohibition on retrospective criminalisation and imposition of greater penalties for criminal acts, save in relation to the application of customary international law; and
- (e) the right to *habeas corpus*.

### **Persons detained under emergency powers**

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

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

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

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



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

- (a) if the state of public emergency has not come to an end, be dealt with in accordance with section 39; and
- (b) if the state of public emergency has come to an end, be released immediately without any further order from the Court.

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

- (a) make a report to the National Assembly of the number of persons detained by virtue of this section or under an Act of the National Assembly; and
- (b) the number of cases reviewed by the High Court under subsection (1) (e) and the number of cases in which the authority which ordered the detention has acted in accordance with the decisions of the High Court as provided in subsection (3).

## **Interpretation of Chapter VI**

**73.** (1) In this Chapter, save where the context otherwise requires –

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

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

**"owner"** includes any person deprived of any right or interest pursuant to section 42.

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

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

## **CHAPTER VII**

### **REPRESENTATION OF THE PEOPLE**

#### ***PART I***

#### **FRANCHISE**

#### **General principles for the electoral system**

**74.** The electoral system shall comply with the following principles –

- (a) freedom of citizens to exercise their political rights under section 53;

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

### **The right to be registered and to vote**

**75.** (1) A person is qualified to be registered as a voter, and to vote, at elections or referenda if the person –

- (a) is a citizen of The Gambia;
- (b) is eighteen years old or older;
- (c) is not declared to be of unsound mind; and
- (d) has not been convicted of an election offence during the preceding five years.

(2) Every citizen of the age of eighteen years or above has a duty to register as a voter for public elections and referenda.

(3) The Independent Boundaries and Electoral Commission shall provide for and make necessary arrangements for the continuous registration of voters and the conduct of elections which shall be designed to facilitate, and shall not deny, an eligible citizen the right to vote or contest an election.

(4) The registration of voters shall cease six months before any public elections.

### **Candidates for election and compliance with code of conduct**

**76.** (1) The Independent Boundaries and Electoral Commission shall prescribe a code of conduct for all political parties and for all candidates in an election.

(2) In every election, all candidates and all political parties shall comply with the code of conduct prescribed by the Independent Boundaries and Electoral Commission pursuant to subsection (1).

### **Eligibility to contest as an independent candidate**

**77.** A person is eligible to contest as an independent candidate for election if the person –

- (a) is not a member of a registered political party; and
- (b) satisfies the requirements, prescribed in this Constitution and an Act of the National Assembly enacted pursuant to section 79 (1), for a candidate for any public election.

## **Secret ballot**

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

## **Electoral laws**

**79.** (1) Subject to the provisions of this Constitution, an Act of the National Assembly shall give effect to the provisions of this Chapter.

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

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

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

- (a) simple;
- (b) transparent; and
- (c) takes into account the special needs of -
  - (i) persons with disabilities; and
  - (ii) other persons or groups with special needs.

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

## **Obligations of Independent Boundaries and Electoral Commission at every public election**

**80.** At every public election, the Independent Boundaries and Electoral Commission shall ensure that –

- (a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent;
- (b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at the polling station at which the votes are cast;
- (c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and

- (d) appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials.

## ***PART II***

### **THE INDEPENDENT BOUNDARIES AND ELECTORAL COMMISSION**

#### **Establishment and membership of the Independent Boundaries and Electoral Commission**

- 81.** (1) There is established the Independent Boundaries and Electoral Commission (hereafter referred to as “the Commission”).
- (2) The members of the Commission shall be a Chairperson and four other members whose qualifications and disqualifications are as set out in section 217.
- (3) The members of the Commission shall be appointed by the President, subject to confirmation by the National Assembly with the votes of at least sixty percent of all the members of the Assembly.
- (4) Subject to the provisions of this section, the members of the Commission shall be appointed for a period of seven years and may be re-appointed for one further term.

#### **Functions of the Commission**

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

### **Electoral boundaries**

**83.** (1) Subject to this section, there shall be such number of constituencies for the purposes of the election of the members of the National Assembly as may be determined by the Commission and each constituency shall be represented by the number of members specified in Schedule 3.

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

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

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

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

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

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

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

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

- (a) amend Schedule 3 in relation to constituencies; and
- (b) act in accordance with the law relating to wards by publishing the alterations made with respect to wards.

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

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

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

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

### ***PART III***

## **POLITICAL PARTIES**

### **Political parties**

**84.** (1) No association, other than a political party registered under an Act of the National Assembly shall sponsor candidates for public elections.

(2) Every political party shall –

- (a) have a national character as prescribed by an Act of the National Assembly;
- (b) have a democratically elected governing body;
- (c) promote and uphold national unity;
- (d) abide by the democratic principles of governance, and promote and practise democracy through regular, fair and free elections within the party;
- (e) respect the right of all persons to participate in the political process, including women, youth and persons with disabilities;
- (f) promote gender equity in selecting candidates for election, having due regard to subsection (7);
- (g) ensure that at least ten percent of candidates for election to the National Assembly are youth;
- (h) respect and promote human rights and fundamental freedoms, and gender equality and equity;
- (i) promote the objects and principles of this Constitution and the rule of law;
- (j) declare to the public their revenues and assets, and the sources of those revenues and assets;
- (k) publish to the public annually their audited accounts within six months of the end of the financial year, failing which the Independent Boundaries and Electoral Commission may deregister the party; and
- (l) subscribe to and observe the code of conduct prescribed for political parties by the Independent Boundaries and Electoral Commission pursuant to section 82 (1) (g).

(3) A political party shall not –

- (a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
- (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;
- (c) establish or maintain a paramilitary force, militia or similar organisation;
- (d) engage in bribery or other forms of corruption; or

- (e) except as is provided under this Chapter or by an Act of the National Assembly, accept or use public resources to promote its interests or its candidates in elections.
- (4) A political party that fails to comply with –
  - (a) subsection (2) may be deregistered by the Independent Boundaries and Electoral Commission; and
  - (b) subsection (3) shall be deregistered by the Independent Boundaries and Electoral Commission.
- (5) No political party shall receive a contribution or donation from any person who is not a citizen of The Gambia or from any corporate or unincorporated body.
- (6) A member of an organisation or interest group shall not be required to join a particular political party by virtue of his or her membership of the organisation or group.
- (7) Nothing contained in Schedule 3 shall be construed to exclude a woman or a person with disabilities from contesting an election for a single member constituency, whether as an independent candidate or a member of a registered political party.

## **CHAPTER VIII**

### **EXECUTIVE**

#### ***PART I***

### **GUIDING PRINCIPLES OF EXECUTIVE AUTHORITY AND GENERAL DUTIES**

#### **Principles of executive authority**

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

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

#### **The Executive**

- 86.** (1) The Executive comprises the President, Vice President and other members of the Cabinet.
- (2) The composition of the Executive shall reflect the diversity of the Gambian people.

## ***PART II***

### **OFFICE OF PRESIDENT, POWERS AND DUTIES**

#### **Office of President**

- 87.** (1) There is established the Office of President of the Republic of The Gambia.
- (2) The President shall be the Head of State and of Government and Commander-in-Chief of The Gambia Armed Forces.
- (3) The President shall be the symbol of national unity and shall provide executive leadership in a responsible manner in accordance with this Constitution and the laws of The Gambia.
- (4) The President shall at all times –
- (a) respect, uphold and defend this Constitution as the supreme law of The Gambia;
  - (b) safeguard the sovereignty of The Gambia;
  - (c) uphold, promote and enhance the unity of Gambians;
  - (d) uphold and promote respect for the diversity of the people and communities of The Gambia; and
  - (e) take appropriate steps to promote and protect the rule of law and the fundamental rights and freedoms enshrined in this Constitution.

#### **Powers of President**

- 88.** (1) The President shall, subject to this Constitution, exercise or perform the following powers and duties –
- (a) give general direction and control over the affairs of the State in a manner not inconsistent with this Constitution or any Act of the National Assembly;
  - (b) assent to Acts enacted by the National Assembly and, where required, to bring the Acts into force;
  - (c) convene and preside over meetings of the Cabinet;
  - (d) constitute any public office for The Gambia;
  - (e) make such appointments to public offices as may be necessary in accordance with powers conferred on him or her by this Constitution or an Act of the National Assembly;
  - (f) assign responsibility for the implementation and administration of any Act of the National Assembly to the Vice President or a Minister;
  - (g) confer national honours;
  - (h) on behalf of The Gambia, negotiate, sign, enter into and accede to bilateral and multilateral agreements, including treaties, that are not against the public interest of The Gambia;
  - (i) appoint high commissioners, ambassadors and diplomatic representatives, and receive foreign diplomatic and consular representatives;
  - (j) issue commissions of inquiry in accordance with this Constitution and an Act of the National Assembly;



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

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

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

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

(5) The President shall neither have nor exercise any power to –

- (a) establish a one party State;
- (b) establish any religion as a State religion; or
- (c) alter the decision or judgment of a court in any proceedings.

(6) The prohibition under subsection (5) (c) shall not affect the President's exercise of the prerogative of mercy under section 128.

### **Duty to attend and address the National Assembly**

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

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

(3) The President may, or if he or she so designates the Vice President shall, at any time during the course of the year attend and address a special sitting of the National Assembly on a matter of national importance if the President is so requested by the National Assembly on a resolution passed by not less than one half of all the members of the National Assembly.

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

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

### **Decisions of the President**

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

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

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

### **Temporary succession to the Office of President**

**91.** (1) Where an inquiry is initiated under section 107 into the mental or physical capacity of the President to discharge the functions of the Office of President –

- (a) the President shall step down until such time as the inquiry is completed; and
- (b) the Vice President shall assume and perform the functions of the Office of President.

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

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

## ***PART III***

### **ELECTION TO THE OFFICE OF PRESIDENT**

#### **Election of President**

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

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

#### **Qualifications for election as President**

**93.** (1) Subject to section 94, a person is qualified for election as President if he or she –

- (a) is a citizen of The Gambia by birth;
- (b) has, on the date of nomination for election of President, attained the age of thirty years;

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

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

(3) For the purposes of subsection (1) (f) and (g), "work experience" relates to any field of employment, including self-employment, whether in the public sector or private sector.

### **Disqualifications for election as President**

**94.** (1) A person is disqualified for election as President if he or she –

- (a) holds the citizenship or nationality of, or in any other manner owes allegiance to, a country other than The Gambia;
- (b) acquired citizenship of The Gambia by registration or naturalisation;
- (c) has, within ten years immediately preceding the date of nomination for election as President, been found liable for gross misconduct or misbehaviour, or negligence or corruption by a commission of inquiry;
- (d) subject to subsection (2) (a), has, during any period of service in a public office or in the private sector in The Gambia, been terminated or dismissed for dishonesty or immoral conduct;
- (e) subject to subsection (2) (b), has been convicted by a court or tribunal of competent jurisdiction of –
  - (i) an offence involving dishonesty or immoral conduct; or
  - (ii) any other offence for which he or she has been sentenced for a term of imprisonment of twelve months or more;
- (f) has, within ten years immediately preceding the date of nomination for election as President, been found by a court or tribunal of competent jurisdiction to have advocated ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm;
- (g) has been adjudged a bankrupt and has not been discharged, or has entered into an arrangement with creditors;
- (h) is found to have made a false declaration of his or her assets by the Anti-Corruption Commission in relation to the election at which he or she wishes to be nominated for election as President;

- (i) has failed to submit to the Independent Boundaries and Electoral Commission on the date of nomination for election of President a certificate from the authority responsible for the collection of taxes that he or she has paid all taxes due from him or her; or
  - (j) after the date of nomination for election as President but before the date of election, has been declared to be of unsound mind.
- (2) The disqualification mentioned in –
  - (a) subsection (1) (c) does not apply if the finding of the commission of inquiry has been overturned on appeal;
  - (b) subsection (1) (d) does not apply if the termination or dismissal, as the case may be, has been litigated before a court of competent jurisdiction and the person has been found not to have acted dishonestly or immorally; and
  - (c) subsection (1) (e) does not apply if the conviction has been overturned on appeal or if the person has been granted a pardon.

### **Nomination of candidates for President**

**95.** (1) A candidate for election to the Office of President shall –

- (a) on or before the date for nomination –
  - (i) satisfy the Independent Boundaries and Electoral Commission that his or her nomination is supported by such number of registered voters, signified by their signatures or otherwise, as may be specified in an Act of the National Assembly; and
  - (ii) deposit with the Independent Boundaries and Electoral Commission such sum as may be prescribed by an Act of the National Assembly which shall be returned if he or she receives not less than such percentage of the valid votes cast at the public election as the Act may prescribe; and
- (b) subject to section 96, at least twenty-one days before the date for nomination, lodge a declaration of his or her assets with the Anti-Corruption Commission in such form as the Commission may determine.

(2) The Anti-Corruption Commission shall, upon receipt of an assets declaration from a candidate under subsection (1) (b) or section 96 (5) (b), conduct necessary investigations and submit a report to the Independent Boundaries and Electoral Commission before the date of nomination confirming whether or not the candidate has made an accurate declaration.

### **Procedure on nomination of candidates for President**

**96.** (1) If on the date appointed for the nomination of candidates for President only one candidate is nominated, the Independent Boundaries and Electoral Commission shall declare that candidate duly elected.

(2) If two or more candidates for President are nominated, an election shall be held to elect a President.

(3) If on the date appointed for the nomination of candidates for President no candidate is nominated, the Independent Boundaries and Electoral Commission shall appoint a new date, being not more than seven days, for nomination of candidates for President.

(4) If a person who has been nominated as a candidate for President dies between nomination day and polling day, the Independent Boundaries and Electoral Commission shall appoint a new nomination day, being not more than fourteen days after the death of the candidate for President.

(5) For purposes of subsection (4) and notwithstanding sections 92 and 95 (1) (b) –

- (a) the date stipulated for the election of President shall be delayed by seven days;
- (b) a new candidate for election as President shall, within seven days before the election, lodge with the Anti-Corruption Commission a declaration of his or her assets;
- (c) if the candidate that died was nominated by a registered political party, the new candidate shall be an individual nominated by that political party; and
- (d) if the candidate that died was an independent candidate, there shall not be any nomination for a new independent candidate.

### **Procedure of election of President**

**97.** (1) The Independent Boundaries and Electoral Commission shall declare a candidate elected as President if the candidate has received more than half of all the votes validly cast in the election.

(2) If, on the first election, no candidate is elected, the Independent Boundaries and Electoral Commission shall hold a second election within fourteen days of the date of declaration of the results of the first election.

(3) In the second election, the only candidates shall be the two candidates who received the highest number of valid votes cast at the first election.

(4) Where, at the first election, more than two candidates received equally the highest number or second highest number of valid votes, the candidates who received the highest number and second highest number of valid votes shall participate in the second election, unless any of them withdraws his or her participation.

### **Declaring winner of presidential election**

**98.** (1) The Independent Boundaries and Electoral Commission shall as soon as possible, but in any case not beyond seventy-two hours, after the polls are closed –

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

(2) Where the Independent Boundaries and Electoral Commission forms the view that it is not possible to declare the result of the election and the winner within the period specified in subsection (1), it may apply to the Supreme Court seeking an extension of time.

(3) The Supreme Court shall, upon receipt of an application under subsection (2), immediately hear and determine the application and, if it considers it justifiable, make an order –

- (a) extending the time for the declaration of the result of the election and the winner on such terms and conditions as it considers fit; and
- (b) directing the order made under paragraph (a) to be published in such manner as the Court deems fit.

### **Death of President-elect before assumption of Office**

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

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

### **Assumption of Office of President**

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

(2) The winner of an election for President shall, before assuming office, subscribe to the prescribed oath in Schedule 2.

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

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

### **Challenging validity of election of President**

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

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

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

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

## ***PART IV***

### **TERMS AND CONDITIONS OF OFFICE OF PRESIDENT**

#### **Term of office of President**

- 102.** (1) Subject to subsection (3), the President shall hold office for a term of five years.
- (2) No person shall hold office as President for more than two terms of five years each, whether or not the terms are consecutive.
- (3) Where the life of the National Assembly is extended for any period in accordance with section 140 (2) and (3), the term of office of the President shall be extended for the same period.
- (4) Where the term of office of the President is extended in accordance with subsection (3), the Independent Boundaries and Electoral Commission shall appoint a new date for holding election for the office of President within the period specified in section 92 (2).

#### **Disclosure obligations of President**

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

#### **Restrictions regarding Office of President**

- 104.** The President shall not, during his or her tenure of office –
- (a) hold any other public or private office and shall not perform remunerative work outside the duties of his or her office;
  - (b) use his or her office, or use information entrusted to or received by him or her in his or her official capacity, for personal gain directly or indirectly or place himself or herself in a situation where his or her material interests conflict with the duties and responsibilities of his or her office; or

- (c) establish, or advocate for, participate in, or promote, the establishment, or in any other way engage in the establishment, directly or indirectly, of any organisation or institution of a civic, charitable or other nature.

### **Immunity of President from legal proceedings**

**105.** (1) Subject to this section and section 29 (4) and (5), the President shall not, during his or her tenure in office, be liable to civil or criminal proceedings, whether in his or her personal capacity or in relation to the performance of a function of his or her office.

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

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

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

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

- (a) preventing the National Assembly from impeaching the President for obstruction of justice under section 108 (2) (d); and
- (b) extending to a crime for which the President may be prosecuted under any treaty to which The Gambia is a party and which prohibits such immunity and, for that purpose, section 10 (2) shall not apply.

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

### **Vacancy in the Office of President**

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

- (a) dies;
- (b) resigns in accordance with section 309; or
- (c) otherwise ceases to hold office under sections 101, 102, 107 or 108.

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

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

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



(5) Subsection (4) shall not apply if the period between the vacancy in the Office of President occurring and when the next election for that Office is due is nine months or less.

(6) The Vice President, Speaker or Chief Justice, as the case may be, shall, before assuming office as acting President as provided in this section, subscribe to the prescribed oath in Schedule 2.

(7) Upon assuming office as acting President –

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

### **Removal of President by reason of mental or physical incapacity**

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

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

(3) Where the National Assembly passes a resolution in accordance with subsection (1), the Speaker shall transmit the original of the resolution to the Chief Justice who shall, subject to subsections (4) and (5) and without any delay, constitute and appoint a medical board to inquire into and assess the allegation of mental or physical incapacity of the President.

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

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

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

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

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

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

(8) The Chief Justice shall, upon receipt of the report under subsection (7), transmit the report to the Speaker advising the Speaker on the opinion of the medical board on whether or not the President is capable of performing the functions of Office of President.

(9) If the report of the medical board finds that the President is incapable of performing the functions of Office of President, the Speaker shall place the report before the National Assembly which shall deliberate on the report and vote on it, and the President shall only be removed from office if at least two-thirds of all the members of the Assembly vote in favour of removal.

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

### **Removal of President by impeachment**

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

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

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

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

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

(5) Where the National Assembly passes a resolution in accordance with subsection (3), the Speaker shall transmit a copy of the resolution to the Chief Justice and the President.

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

(7) The tribunal shall comprise –

- (a) a Justice of the Supreme Court, as Chairperson;
- (b) three other persons who hold or have held high judicial office; and
- (c) one other person, not being a judicial officer (or having served as one) or a legal practitioner, who is of high moral character and integrity.

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

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

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

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

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

### **Salary and allowance**

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

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

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

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

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

- (a) who ceased to hold office in accordance with section 108;
- (b) who, since leaving office, has been convicted of an offence relative to the period when he or she served as President; or
- (c) against whom an adverse finding of abuse of office or corruption has been made by a commission of inquiry after leaving office.

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

(6) Where a President who receives the salary and other retirement benefits referred to in subsection (2) after a single term in office is, after a subsequent period of the Presidency since leaving office, elected as President, the benefits he or she was receiving prior to his or her election for the

subsequent period of the Presidency shall cease forthwith, and he or she shall only be entitled to the benefits after the end of his or her second term in office.

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

## ***PART V***

### **OTHER OFFICES IN THE EXECUTIVE**

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

##### **Office of Vice President**

- 110.** (1) There is established the Office of Vice President of the Republic of The Gambia.
- (2) The President shall, within fourteen days of assuming office, appoint the Vice President.

##### **Qualifications and disqualification of Vice President**

- 111.** (1) A person is qualified to be appointed Vice President if he or she has the qualifications required for the election of President under section 93.
- (2) The disqualifications outlined in respect of the nomination and election of President under section 94 (1) shall apply to the appointment of the Vice President with necessary modifications, but the person to be appointed as Vice President shall –
- (a) before assuming office, produce to the President a certificate from the authority responsible for the collection of taxes that he or she has paid all taxes due from him or her; and
  - (b) not be a member of the National Assembly.

##### **Functions of the Vice President**

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

### **Vacancy in the Office of Vice President**

- 113.** (1) The Office of Vice President shall become vacant –
- (a) on the death or resignation of the holder of that Office;
  - (b) on the revocation of the appointment of the person holding that Office;
  - (c) if the holder of that Office assumes the Office of President; or
  - (d) if the holder of that Office, while serving as Vice President, ceases to satisfy any of the qualifications applicable to the Office of President.
- (2) Where the Office of Vice President becomes vacant, the President shall, without any delay, appoint a new Vice President.

### **Revocation of appointment of Vice President**

- 114.** (1) The President may for any cause revoke the appointment of the Vice President.
- (2) Without prejudice to subsection (1), the President shall revoke the appointment of the Vice President if the National Assembly adopts a vote of censure against the Vice President in accordance with section 122.

### **Appointment of Ministers**

- 115.** (1) Subject to subsection (2), the President shall nominate and appoint –
- (a) such number of Ministers, not exceeding twenty, to assist with the running of the affairs of the State; and
  - (b) an Attorney General who shall be a Minister and shall be a legal practitioner of not less than ten years standing.
- (2) The President shall, within forty-five days of assuming office, nominate and appoint the Ministers, subject to confirmation by the National Assembly.
- (3) Where at any time during the term of office of the President, the President considers it necessary to nominate and appoint a Minister, the Minister shall be subject to confirmation by the National Assembly.
- (4) The President may, whenever he or she considers it fit, reassign a Minister.
- (5) In determining the number of Ministers to appoint, the President shall take into account the economic circumstances of the country and the extent to which the economy can effectively sustain the Ministries to be headed by the Ministers.

### **Qualifications and disqualifications of Ministers**

- 116.** (1) A person is qualified to be appointed a Minister if he or she –
- (a) is a citizen of The Gambia;

- (b) has attained a qualification at tertiary education level and can speak and write the English language well;
  - (c) has proven experience of not less than eight years from the date of earning the qualification mentioned in paragraph (b); and
  - (d) is of high moral character and proven integrity.
- (2) A person is not qualified to be appointed a Minister if he or she –
- (a) is a member of the National Assembly;
  - (b) has been declared to be of an unsound mind;
  - (c) has been adjudged a bankrupt and has not been discharged, or has entered into an arrangement with creditors;
  - (d) subject to subsection (3) (a), has within ten years immediately preceding the date of appointment as Minister, been found liable for gross misconduct, misbehaviour, negligence or corruption by a commission of inquiry;
  - (e) subject to subsection (3) (b), has during any period of service in a public office or in the private sector in The Gambia, been terminated or dismissed for dishonesty or immoral conduct;
  - (f) subject to subsection (3) (c), has been convicted by a court or tribunal of competent jurisdiction of –
    - (i) an offence involving dishonesty or immoral conduct; or
    - (ii) any other offence for which he or she has been sentenced to a term of imprisonment of twelve months or more;
  - (g) has, within seven years immediately preceding the date of his or her appointment as Minister, been convicted by a court or tribunal of competent jurisdiction of an offence relating to elections;
  - (h) has, within ten years immediately preceding the date of appointment as Minister, been found by a court or tribunal of competent jurisdiction to have advocated ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm;
  - (i) is found to have made a false declaration of his or her assets by the Anti-Corruption Commission;
  - (j) fails to produce a certificate from the authority responsible for the collection of taxes that he or she has paid all taxes due from him or her; or
  - (k) is a serving member of a disciplined force.
- (3) The disqualification mentioned in –
- (a) subsection (2) (d) does not apply if the finding of the commission of inquiry has been overturned on appeal;
  - (b) subsection (2) (e) does not apply if the termination or dismissal, as the case may be, has been litigated before a court of competent jurisdiction and the person has been found not to have acted dishonestly or immorally; and
  - (c) subsection (2) (f) does not apply if the conviction has been overturned on appeal or if the person has been granted a pardon.
- (4) Where the Vice President or a Minister has been found to have made a false declaration under subsection (2) (i), he or she shall not be eligible to be nominated or appointed as Vice President or

Minister, as the case may be, for a period of five years from the date he or she was found to have made the false declaration.

### **Vacancy in Office, and revocation of appointment, of Minister**

- 117.** (1) The Office of a Minister shall become vacant –
- (a) on the death or resignation of the holder of that Office;
  - (b) on the revocation of appointment of the person holding that Office; or
  - (c) if, during his or her tenure, any of the disqualifications outlined in section 116 applies or is discovered after his or her appointment.
- (2) The President may for any cause revoke the appointment of a Minister.
- (3) Without prejudice to subsection (2), the President shall revoke the appointment of a Minister if the National Assembly adopts a vote of censure against the Minister in accordance with section 122.

### **Functions and incidents of Office**

- 118.** (1) The Vice President and Ministers shall –
- (a) be responsible for such Ministries, Departments and other offices and business of the Government as the President may assign to them; and
  - (b) exercise general direction and control over their respective Ministries, Departments and other offices of Government.
- (2) The President shall, in assigning responsibilities in accordance with subsection (1), have due regard to the competence, expertise and experience of the Vice President or Minister concerned.
- (3) The Vice President and each Minister is accountable to the President for the administration of the Ministry and Departments and other offices and business of Government for which he or she has responsibility, and this accountability extends to the National Assembly in accordance with sections 121 and 122.
- (4) The Attorney General shall be the chief legal adviser to the Government and shall –
- (a) be the leader of the Bar;
  - (b) promote, protect and uphold the rule of law and defend the public interest;
  - (c) have the right of audience in all the courts of The Gambia in respect of civil matters;
  - (d) have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party; and
  - (e) in the performance of his or her functions, act in accordance with the dictates of the law.

### **Disclosure obligations of Vice President and Ministers**

- 119.** (1) The Vice President and each Minister shall –

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

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

### **Restrictions regarding Office of Vice President and Minister**

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

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

### **Responsibility of the Vice President and Ministers to the National Assembly**

**121.** The Vice President and each Minister shall –

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



### **Vote of censure**

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

- (a) his or her inability to perform the functions of his or her Office;
- (b) abuse of office or violation of a provision of this Constitution;
- (c) his or her misconduct in office;
- (d) failure to adhere to the prescribed oaths he or she has subscribed to on assuming office;
- or
- (e) persistent failure to attend sittings of the National Assembly to answer questions or provide information requested by the National Assembly.

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

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

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

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

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

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

### *(ii) The Cabinet*

### **Establishment and composition of the Cabinet**

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

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

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

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

## **Functions of Cabinet**

**124.** (1) The Cabinet shall be responsible for –

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

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

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

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

## **Secretary to Cabinet**

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

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

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

- (a) the administration of the Cabinet Office;
- (b) recording and arranging the business, and keeping the minutes, of the Cabinet, subject to any direction given by the Cabinet;
- (c) conveying the decisions of the Cabinet to the relevant persons and authorities and, where necessary, to follow up to establish whether the decisions have been acted upon and report back to the Cabinet; and
- (d) performing such other functions as may be assigned or directed by the President or the Cabinet.

*(iii) Other Powers of the President*

**International relations**

**126.** (1) The President shall be responsible for the conduct of relations with other states and international organisations.

(2) The Gambia shall not –

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

(3) A treaty entered into by the President pursuant to the powers granted by section 88 (1) (h) –

- (a) is subject to ratification by the National Assembly on a vote of not less than one half of all the members of the Assembly before it has any application to The Gambia; and
- (b) shall not become law unless section 10 (2) is complied with.

(4) The National Assembly may –

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

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

**Establishment of Prerogative of Mercy Committee**

**127.** (1) There is established the Prerogative of Mercy Committee whose members shall comprise –

- (a) the Attorney General, as Chairperson;
- (b) the Minister responsible for internal security; and
- (c) three other persons, not being public officers, of wide knowledge and experience and of high moral character and proven integrity, nominated by the President.

(2) The members of the Prerogative of Mercy Committee referred to in subsection (1) (c) shall be appointed by the President, subject to confirmation by the National Assembly.

(3) The heads responsible for the administration of prisons and social welfare shall serve as resource persons to the Prerogative of Mercy Committee

(4) The functions of the Prerogative of Mercy Committee are to –

- (a) review cases of prisoners referred to the Committee by the President to determine whether recommendation should be made in respect of the President's exercise of his or her powers under section 128 in relation to such prisoners; and
- (b) advise the President on which cases, if any, referred to the Committee merits the President's exercise of his or her power of mercy.

(5) The Prerogative of Mercy Committee may, in performing its functions, take into account the views of the victims, or in their absence the views of their families, in respect of the offences for which the prisoners are convicted and sentenced to imprisonment.

(6) An Act of the National Assembly shall provide for the procedure of the Prerogative of Mercy Committee and the criteria it should apply in considering and formulating its advice to the President.

### **Exercise of the power of mercy**

**128.** (1) The President may, on the petition of any person or on his or her own prerogative, and after consulting with and considering the advice of the Prerogative of Mercy Committee –

- (a) grant to any person convicted of an offence a pardon either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, in relation to a punishment imposed on that person for an offence;
- (c) substitute a less severe form of punishment for the punishment imposed on a person for an offence; or
- (d) remit the whole or any part of a punishment imposed on a person for an offence.

(2) The exercise by the President of the power to grant a pardon under subsection (1) (a) shall not extend to a decision of the National Assembly in respect of a President who has been impeached.

(3) Where, under subsection (1) (a), a person is granted –

- (a) a free pardon, he or she shall be treated as if he or she never committed the offence in respect of which he or she received the free pardon; or
- (b) a conditional pardon, the pardon remains in effect subject to compliance with the conditions of the pardon.

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

### **Honours and awards**

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

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

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

*(iv) Other Public Offices*

**The President's Chief of Staff**

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

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

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

- (a) act as the principal adviser to the President on the running of the affairs of the Presidency;
- (b) administer and manage the President's office, including the coordination of the administration and execution of the activities of that office and the protection of the interests of the President;
- (c) assist the President in establishing and managing the President's agenda and vision; and
- (d) perform all other functions assigned to him or her from time to time by the President.

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

**Director of Public Prosecutions**

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

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

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

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

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

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

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

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

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

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

(10) The provisions of section 194 as they relate to the removal of a judge of a High Court shall, with necessary modifications, apply to the removal of the Director of Public Prosecutions and any reference in that section to a judge of the superior court and the Judicial Service Commission shall be construed to refer to the Director of Public Prosecutions and the Public Service Commission respectively.

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

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

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

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

### **Private Prosecutions**

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

### **Solicitor General and Legal Secretary**

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

(2) The President shall appoint the Solicitor General and Legal Secretary, acting on the advice of the Public Service Commission.

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

## **CHAPTER IX**

### **THE LEGISLATURE**

#### ***PART I***

### **PRINCIPLES OF PARLIAMENTARY GOVERNANCE**

#### **Governing Principles**

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

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

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

#### **Duties generally**

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

(2) The National Assembly shall perform the functions outlined for it under this Constitution and other laws, including –

- (a) ratifying all treaties, including bilateral and multilateral agreements entered into by the Government;

- (b) ensuring that legislative measures to be debated by the Assembly benefit, to the extent feasible, from expert and public opinions before such measures are considered for enactment; and
  - (c) keeping the people informed of all other measures debated or to be debated in the Assembly that have or are likely to have an impact on the livelihood of the people and, where possible, advise the people on any options available to them.
- (3) Where the National Assembly is required under this Constitution to confirm or approve an appointment in relation to an office established under this Constitution or any other law –
  - (a) the National Assembly shall, within fourteen days of the receipt of the request for confirmation or approval, take a decision on the request; and
  - (b) where the National Assembly votes not to confirm or approve the appointment, the National Assembly shall, within three days of that vote, provide reasons in writing for its decision to the President.
- (4) Where the National Assembly fails to act under subsection (3) (a) or (b), the appointment shall be deemed to be confirmed or approved.
- (5) For the purposes of confirming or approving appointments under this Constitution, the National Assembly shall –
  - (a) be guided by the relevant criteria established in respect of the qualifications or disqualifications of an office to which appointment is to be made;
  - (b) give credence to the guiding principles applicable in respect of the relevant organ of State to which an appointment relates, including the guiding principles set out in section 134;
  - (c) exercise good judgment without reference to any differences in ideology, belief or political party affiliation; and
  - (d) treat any person that is the subject of confirmation or approval with respect and dignity and without discrimination.
- (6) In addition to the requirements of subsection (5), the National Assembly shall provide in the Standing Orders of the Assembly the procedures that will guide the confirmation or approval process.

## ***PART II***

### **ESTABLISHMENT AND COMPOSITION OF THE NATIONAL ASSEMBLY**

#### **Establishment and composition of the National Assembly**

- 136.** (1) There is established the National Assembly of The Gambia.
- (2) The National Assembly shall comprise the number of persons specified in Schedule 3, representing the constituencies therein specified.
- (3) The Speaker shall be an *ex officio* member of the National Assembly, without a vote.



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

. (5) For the purposes of the election of a Speaker and Deputy Speaker under sections 145 and 146, an elected person may participate in such election before subscribing to the prescribed oaths.

### **Qualifications for membership to the National Assembly**

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

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

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

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

### **Disqualifications for membership of the National Assembly**

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

- (a) as a registered or naturalised citizen, holds the citizenship or nationality of a country other than The Gambia;
- (b) is an honorary citizen;
- (c) is declared to be of unsound mind;
- (d) subject to subsection (2) (a), has, during any period of service in a public office or in the private sector in The Gambia, been terminated or dismissed for dishonesty or immoral conduct;
- (e) has, within ten years immediately preceding the date of nomination for election as a member of the National Assembly, been found liable for gross misconduct or misbehaviour, or negligence or corruption by a commission of inquiry;
- (f) has been convicted by a court or tribunal of competent jurisdiction of –
  - (i) an offence involving dishonesty or immoral conduct; or
  - (ii) any other offence for which he or she has been sentenced to a term of imprisonment of twelve months or more;

- (g) has, within ten years immediately preceding the date of nomination for election as a member of the National Assembly, been convicted by a court for abuse of office, corruption, or any offence, connected with public elections;
  - (h) has, at any time within ten years immediately preceding the date of nomination for election as a member of the National Assembly, been found by a court or tribunal of competent jurisdiction to have advocated ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm;
  - (i) unless granted leave of absence in accordance with section 269, holds a public office or an office in the public service;
  - (j) is a member of a disciplined force;
  - (k) is an elected member of a Local Government Authority;
  - (l) is a Seyfo or an Alkalo;
  - (m) has been adjudged a bankrupt and has not been discharged, or has entered into an arrangement with creditors;
  - (n) is found to have made a false declaration of his or her assets by the Anti-Corruption Commission in relation to the election at which he or she wishes to be nominated for election as a member of the National Assembly; or
  - (o) has failed to submit to the Independent Boundaries and Electoral Commission on the date of nomination for election as National Assembly member a certificate from the authority responsible for the collection of taxes that he or she has paid all taxes due from him or her.
- (2) The disqualification mentioned in –
- (a) subsection (1) (d) does not apply if the termination or dismissal, as the case may be, has been litigated before a court of competent jurisdiction and the person has been found not to have acted dishonestly or immorally;
  - (b) subsection (1) (e) does not apply if the finding of the commission of inquiry has been overturned on appeal; and
  - (c) subsection (1) (f) does not apply if the conviction has been overturned on appeal or if the person has been granted a pardon.

### **Election of members of the National Assembly**

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

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

- (3) The Supreme Court shall, upon receiving an application under subsection (2) –
- (a) determine whether the emergency situation contained in the application is of such a nature as to warrant postponement of the general election; and

(b) fix a new date for holding the general election, if it considers that the postponement of the general election is warranted.

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

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

(6) The provisions of this section are subject to section 140.

### **Term of the National Assembly**

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

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

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

### **Vacancy in the office of member of the National Assembly**

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

- (a) the member dies;
- (b) the member renounces his or her Gambian citizenship;
- (c) the member is declared to be of an unsound mind;
- (d) the member resigns his or her office as provided in section 309;
- (e) the member accepts appointment in a private position, or in a regional or international body other than in the capacity as a member of the National Assembly and following the nomination or approval of the Assembly;
- (f) the National Assembly is dissolved;
- (g) any circumstances arise that, if he or she were not a member, would cause him or her to be disqualified to be nominated for election as a member;
- (h) having been elected as a member of a political party, he or she voluntarily resigns from that political party, joins another political party or opts to sit as an independent member;
- (i) having been elected a member as an independent candidate, he or she joins a political party;
- (j) being a member representing a single seat constituency, an administrative area or the group representing persons with disabilities, he or she is recalled by the electorate of that constituency or group in accordance with section 144; or

(k) without the permission in writing of the Speaker or reasonable cause, he or she is absent from ten or more sittings of the National Assembly during any period that the Assembly is in session and continues to meet.

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

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

(4) A member of the National Assembly who is expelled by his or her political party from membership of that party shall remain as a member of the National Assembly in the capacity of an independent member for the remainder of the term of the Assembly.

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

### **Suspension of members of the National Assembly**

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

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

### **Determining question of membership**

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

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

### **Recall of members**

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

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

- (a) gross misconduct or misbehaviour likely to bring hatred, ridicule, contempt or disrepute to his or her office;
- (b) violation of a provision of this Constitution; or

(c) persistent failure to keep his or her constituents informed of decisions taken by the National Assembly or persistent absence from his or her constituency.

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

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

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

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

(5) The Independent Boundaries and Electoral Commission shall, before determining whether or not a case for the recall of a member of the National Assembly has been made out, invite the member concerned to make such representation to the Commission as the member considers fit, and the member may be represented by a legal practitioner of his or her choice.

(6) If the Independent Boundaries and Electoral Commission, after considering the petition and the representation of a member of the National Assembly concerned (if any), reports to the Speaker that the case for the recall of a member of the National Assembly has been made out, the Speaker shall immediately declare the member's seat vacant and notify the Chairperson of the Commission of that fact.

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

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

(9) Where the Speaker declares a member's seat vacant under subsection (6) or declines a petition to recall a member under subsection (8), he or she shall cause that fact to be published in the *Gazette*.

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

## ***PART III***

### **LEADERS OF THE NATIONAL ASSEMBLY**

#### **The Speaker**

**145.** (1) There is established the Office of Speaker of the National Assembly.

(2) The Speaker shall be elected by the members of the National Assembly from outside the National Assembly in accordance with the Standing Orders of the Assembly and shall be a person who –

- (a) is a citizen by birth;
- (b) is qualified to be elected as a member of the National Assembly;
- (c) has proven experience in the public service, private sector or in academia;
- (d) had not been nominated for election as a member of the National Assembly in the public election immediately preceding his or her election as Speaker; and
- (e) is of high moral character and proven integrity.

#### **Deputy Speaker**

**146.** (1) There is established the Office of Deputy Speaker who shall be elected from among the members of the National Assembly.

(2) The Deputy Speaker shall, in addition to presiding in the National Assembly in the absence of the Speaker as provided in section 155, perform such other functions –

- (a) delegated or assigned by the Speaker; and
- (b) as are incidental to the office of Deputy Speaker or as may be provided in an Act of the National Assembly.

(3) The National Assembly may, where it considers it expedient, elect two Deputy Speakers as follows –

- (a) one from the majority party or coalition of majority parties; and
- (b) one from the minority party or coalition of minority parties or an independent member.

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

#### **Election of Speaker and Deputy Speaker**

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

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

### **Taking oaths and vacating office**

**148.** (1) The Speaker and a Deputy Speaker shall, before assuming office, subscribe to the prescribed oath in Schedule 2.

- (2) The Speaker or a Deputy Speaker vacates office if he or she –
- (a) dies;
  - (b) resigns in accordance with section 309;
  - (c) ceases to satisfy any of the qualifications for the election of a member of the National Assembly; or
  - (d) is removed from that Office by a resolution of the National Assembly supported by the votes of not less than two-thirds of all the members of the Assembly.

### **Majority and Minority Leaders**

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

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

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

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

(5) The order of precedence to be observed in the National Assembly is as follows –

- (a) Speaker;
- (b) Deputy Speaker;
- (c) Leader of the Majority Party; and
- (d) Leader of the Minority Party.

(6) An Act of the National Assembly may make provision for the roles and responsibilities of the Leader of the Majority Party and the Leader of the Minority Party.

### **Remuneration and allowances**

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