

# **CONSTITUTION OF THE SECOND REPUBLIC OF THE GAMBIA**

*Adopted on 8 August 1996, entered into force in January 1997,  
last amended in 2001*

In the name of God, the Almighty,

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

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

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

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

This Constitution guarantees participatory democracy that reflects the undiluted choice of the people. The functions of the arms of government have been clearly defined, their independence amply secured with adequate checks and balances to ensure that they all work harmoniously together toward our common good. As we usher in the Second Republic and beyond, we give ourselves and generations of Gambians yet unborn this Constitution as a beacon of hope for peace and stability in our society and the good governance of The Gambia for all time.

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

## **CHAPTER I: THE REPUBLIC**

### **1. The Republic**

(1) The Gambia is a sovereign secular Republic.

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

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

### **4. Supremacy of the Constitution**

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

### **5. Enforcement of the Constitution**

(1) A person who alleges that -

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

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

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

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

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

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

- (b) any other person who is convicted of that offence shall be liable to the penalty prescribed by an Act of the National Assembly.

## 6. Defence of the Constitution

- (1) Any person who –
- (a) by himself or herself or in concert with others, by any violent or other unlawful means, suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act, or
  - (b) aids and abets in any manner any person referred to in paragraph (a), commits the offence of treason and shall, on conviction, be liable to the penalty prescribed by an Act of the National Assembly for that offence.
- (2) All citizens of The Gambia have the right and the duty at all times to defend this Constitution and, in particular, to resist, to the extent reasonably justifiable in the circumstances, any person or group of persons seeking or attempting by any violent or unlawful means to suspend, overthrow or abrogate this Constitution or any part of it.
- (3) A person who resists the suspension, overthrow or abrogation of this Constitution as provided in subsection (2), commits no offence.

## 7. The laws of The Gambia

In addition to this Constitution, the laws of The Gambia consist of –

- (a) Acts of the National Assembly made under this Constitution and subsidiary legislation made under such acts;
- (b) any Orders, Rules, Regulations or other subsidiary legislation made by a person or authority under a power conferred by this Constitution or any other law;
- (c) the existing laws including all decrees passed by the Armed Forces Provisional Ruling Council;
- (d) the common law and principles of equity;
- (e) customary law so far as it concerns members of the communities to which it applies;
- (f) the *Shari'a* as regards matters of marriage, divorce and inheritance among members of the communities to which it applies.

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# CHAPTER IV: PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

## 17. Fundamental rights and freedoms

- (1) The fundamental human rights and freedoms enshrined in this Chapter shall be respected and upheld by all organs of the executive and its agencies, the legislature and, where applicable to them, by all natural and legal persons in The Gambia, and shall be enforceable by the courts in accordance with this Constitution.
- (2) Every person in The Gambia, whatever his or her race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest.

## 18. Protection of the right to life

- (1) No person shall be deprived of his or her life intentionally, except in the execution of a sentence of death imposed by a court of competent jurisdiction in respect of a criminal offence for which the penalty is death under the laws of The Gambia, as they have effect in accordance with subsection (2), and of which he or she has been lawfully convicted.
- (2) As from the coming into force of this Constitution, no court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.
- (3) The National Assembly shall within ten years from the date of the coming into force of this Constitution review the desirability or otherwise of the total abolition of the death penalty in The Gambia.
- (4) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say -
- (a) for the defence of any person from unlawful violence or for the defence of property;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) for the purpose of suppressing a riot, insurrection or mutiny;
  - (d) in order to prevent the commission by that person of a criminal offence; or
  - (e) if he or she dies as a result of a lawful act of war.

## **19. Protection of the right to personal liberty**

- (1) Every person shall have the right to liberty and security of the person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as established by law.
- (2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language he or she understands, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner.
- (3) Any person who is arrested or detained -
  - (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
  - (b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the laws of The Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within seventy-two hours.
- (4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not thereafter be further held in custody in connection with those proceedings or that offence save upon the order of a court.
- (5) Any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including, in particular, such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or proceedings preliminary to trial.
- (6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting.

## **20. Protection from slavery and forced labour**

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

## **21. Protection from inhuman treatment**

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

## **22. Protection from deprivation of property**

- (1) No property of any description shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia, except where the following conditions are satisfied -
  - (a) the taking 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;
  - (b) the necessity therefore is such as to afford reasonable justification of the causing of any hardship that may result to any person having an interest in or right over the property; and
  - (c) provision is made by law applicable to that taking of possession or acquisition-
    - (i) for the prompt payment of adequate compensation; and
    - (ii) securing to any person having an interest in or right over the property, a right of access to a court or other impartial and independent authority for the determination of his or her interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) 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 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 injuries 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 case of land, the carrying out thereon –
  - (i) of work of soil conservation or the conservation of other resources; or
  - (ii) of 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 a democratic society.

(3) 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 interest or right 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.

(4) Where a compulsory acquisition of land by or on behalf of the government involves the displacement of any inhabitant who occupies the land under customary law, the government shall resettle the displaced inhabitants on suitable alternative land with due regard to their economic well-being and social and cultural values.

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

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

### 23. Privacy

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

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

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

### 24. Provisions to secure protection of the law and fair play

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

- (a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or
- (b) where proceedings are commenced for the determination or the existence of any civil right or obligation,

the case shall be afforded a fair hearing within a reasonable time.

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

Provided that the court or other authority may, to such extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or interlocutory civil proceedings, or to such extent as it may be empowered or required by law to do so in the interest of defence, public safety,

public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings persons other than the parties thereto and their legal representatives.

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

- (a) shall be presumed innocent until he or she is proved, or has pleaded, guilty;
- (b) shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice;  
Provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the expense of the state;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial of the charge; and, except with his or her own consent, the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impractical and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

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

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

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

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

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

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

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

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

- (a) subsection (3)(a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (3)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds.

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

(1) Every person shall have the right to -

- (a) freedom of speech and expression, which include freedom of the press and other media;
- (b) freedom of thought, conscience and belief, which shall include academic freedom;
- (c) freedom to practice any religion and to manifest such practice;
- (d) freedom to assemble and demonstrate peaceably and without arms;
- (e) freedom of association, which shall include freedom to form and join associations and unions, including political parties and trade unions;
- (f) freedom to petition the executive for redress of grievances and to resort to the courts for the protection of his or her rights.

- (2) Every person lawfully within The Gambia shall have the right to move freely throughout The Gambia, to choose his or her own place of residence within The Gambia, and to leave The Gambia.
- (3) Every citizen of The Gambia shall have the right to return to The Gambia.
- (4) The freedoms referred to in subsections (1) and (2) shall be exercised subject to the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedoms thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court.

## **26. Political rights**

Every citizen of The Gambia of full age and capacity shall have the right, without unreasonable restrictions -

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

## **27. Right to marry**

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

## **28. Rights of women**

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

## **29. Rights of children**

- (1) Children shall have the right from birth to a name, the right to acquire a nationality and subject to legislation enacted in the best interests of children, to know and be cared for by their parents.
- (2) Children under the age of sixteen years shall be entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or be harmful to their health or physical, mental, spiritual, moral or social development.
- (3) A juvenile offender who is kept in lawful custody shall be kept separately from adult offenders.

## **30. Right to education**

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

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

## **31. Rights of the disabled**

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

## **32. Culture**

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and to the condition that the rights protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity.

## **33. Protection from discrimination**

- (1) All persons shall be equal before the law.
- (2) Subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.

(3) Subject to the provisions of subsection (5), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or public authority.

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

(5) Subsection (2) shall not apply to any law in so far as that law makes provision -

- (a) with respect to persons who are not citizens of The Gambia or to qualifications for citizenship;
- (b) with respect to the qualifications prescribed by this Constitution for any office;
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.

(6) Subsection (3) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (5).

(7) The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by the Constitution or under any other law shall not be enquired into by any court on the grounds that it contravenes the provisions of subsection (3).

#### **34. Declaration of state of public emergency**

(1) The President may, at any time, by Proclamation published in the *Gazette*, declare that -

- (a) a state of public emergency exists in the whole or any part of The Gambia;
- (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.

(2) A declaration made under this section shall lapse at the expiration of a period of seven days, or if the National Assembly is not then in session twenty-one days, beginning on the day on which the Proclamation is published in the *Gazette* unless, before the expiration of that period, it has been approved by a resolution of the National Assembly supported by the votes of not less than two-thirds of all the members thereof.

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

(4) A declaration made under subsection (1) that has been approved by a resolution of the National Assembly shall, subject to subsection (3), remain in force so long as that resolution remains in force and no longer.

(5) A resolution of the National Assembly passed for the purpose of this section shall remain in force for ninety days or such shorter period as may be specified therein:

Provided that -

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

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

- (b) any such resolution may be revoked at any time by a resolution supported by the vote of the majority of all the members of the National Assembly.

(6) Any provision of this section that a declaration shall lapse or cease to be in force at any particular time shall be without prejudice to the making of a further declaration under this section whether before or after that time.

#### **35. Derogation of fundamental [rights under] emergency powers**

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

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

#### **36. Persons detained under emergency powers**

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

- (a) he or she shall, as soon as reasonably practicable, and in any case not later than twenty four hours after the commencement of detention, be furnished with a statement in writing specifying in detail the grounds upon which he or she is detained; and the statement shall be read, and, if necessary, interpreted to the person who is detained in a language which he or she understands;
  - (b) the spouse, parent, child or other available next-of-kin of the person detained shall be informed by the authority effecting the detention and shall be permitted access to the person concerned at the earliest practicable opportunity, and in any case not later than twenty-four hours after the commencement of the detention;
  - (c) where none of the persons mentioned in paragraph (b) can be traced or none of them is willing and able to see the person detained, the person who is detained shall be informed of this fact within twenty four hours of the commencement of the detention and he or she shall be informed of his or her right to name and give particulars of some other person who shall have the same right of access to the person who is detained as any of the persons mentioned in paragraph (b);
  - (d) not more than fourteen days after the commencement of his or her detention, the authority which effected the same shall give notice in the *Gazette* stating that he or she has been detained and giving particulars of the provision of law under which the detention is authorised;
  - (e) not more than thirty days after the commencement of his or her detention, and after that at intervals of not more than ninety days during the continuance of his or her detention, the case of the person concerned shall be reviewed by a tribunal as provided in subsection (2);
  - (f) the person who is detained shall be afforded every possible facility to consult a legal practitioner of his or her choice who shall be permitted to make representation to the tribunal appointed to review the case;
  - (g) at the hearing before the tribunal appointed for the review of his or her case, the person detained shall be entitled to appear in person or by a legal practitioner of his or her choice and at his or her own expense.
- (2) A tribunal appointed to review the cases of persons who have been detained shall be composed of three persons being, or qualified to be appointed as, judges of the High Court.
- (3) A tribunal composed of the same members shall not review more than once the case of a particular person who has been detained.
- (4) On review by a tribunal of the case of a person who has been detained, the tribunal may order the release of the person or it may uphold the detention; and the authority by which the detention was ordered shall act in accordance with the decision of the tribunal for the release of any person.
- (5) No person may be detained under or by virtue of an Act of the National Assembly referred to in section 35 during any state of emergency in excess of a total of one hundred and eighty two days (whether such days are consecutive or not) and, on the expiry of that period, any person who has been so detained shall be entitled to invoke the provisions of section 19 (right to personal liberty).
- (6) In every month during the period in which a state of public emergency is in force and in which there is a sitting of the National Assembly, a Secretary of State authorised by the President shall make a report to the National Assembly of the number of persons detained by virtue of or under an Act of the National Assembly to which section 35 refers and the number of cases in which the authority which ordered the detention has acted in accordance with the decisions of the tribunal as provided in subsection (4).
- (7) For the avoidance of doubt, it is hereby declared that where the declaration of a state of public emergency is revoked or otherwise ceases to be in force, any person who is in detention or in custody by virtue of or under an Act of the National Assembly to which section 35 refers, other than a person sentenced to imprisonment by a court for an offence against such a law for a term which has not then expired, shall be released immediately without further order.

### **37. Enforcement of protective provisions**

- (1) If any person alleges that any of the provisions of sections 18 to 33 or section 36(5) of this Chapter has been, is being, or is likely to be contravened in relation to himself or herself by any person he or she may apply to the High Court for redress.
- (2) An application may be made under this section in the case of a person who is detained by some other person acting on the detained person's behalf.
- (3) An application under this section shall be without prejudice to any other action with respect to the same matter which is lawfully available.
- (4) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of the said sections 18 to 33 or section 36(5), that court may, and shall if any party so requests, refer the question to the High Court, unless, in the opinion of the subordinate court, the raising of the question is merely frivolous or vexatious.
- (5) The High Court shall -
  - (a) hear and determine any application made by any person pursuant to subsection (1) or (2);



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

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

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

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

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

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

### **38. Interpretation of Chapter IV**

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

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

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

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

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

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

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

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

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

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

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

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

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

...

## **CHAPTER V: REPRESENTATION OF THE PEOPLE**

### **PART 1: The Franchise**

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

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

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

(3) Every citizen of The Gambia being of the age of eighteen years or older and of sound mind shall be entitled, in accordance with the provisions of this Chapter and any Act of the National Assembly providing for

such elections, to vote in elections for local government authorities and traditional rulers in the area in which he or she is ordinarily resident.

#### **40. Secret ballot**

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

...

### **PART 2: The Independent Electoral Commission**

#### **42. The Commission**

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

...

#### **45. Electoral laws**

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

...

### **PART 7: Political Parties**

#### **60. Political parties**

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

(2) No association shall be registered or remain registered as a political party if –

(a) it is formed or organized on an ethnic, sectional, religious or regional basis;

(b) its internal organisation does not conform with democratic principles; or

(c) its purpose is to subvert this Constitution or the rule of law.

(3) An Act of the National Assembly shall make provisions for the better implementation of this section.

...

## **CHAPTER VI: THE EXECUTIVE**

### **PART 1: The President**

...

#### **67. Misconduct by the President**

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

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

...

## **CHAPTER VII: NATIONAL ASSEMBLY AND LEGISLATION**

...

### **PART 3: Legislative and other powers of the National Assembly**

#### **100. The legislative power**

(1) The legislative power of The Gambia shall be exercised by Bills passed by the National Assembly and assented to by the President.

(2) The National Assembly shall not pass a Bill –

(a) to establish a one party state;

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

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

...

## **CHAPTER VIII: THE JUDICATURE**

### **PART 1: The Courts of The Gambia**

#### **120. The courts and the judicial power**

(1) The Courts of The Gambia are:

- (a) The Superior Courts comprising:
  - (i) the Supreme Court;
  - (ii) the Court of Appeal;
  - (iii) the High Court and the Special Criminal Court; and
- (b) the Magistrates Court, the Cadi Court, District Tribunals and such lower courts and tribunals as may be established by an Act of the National Assembly.
- (2) The judicial power of The Gambia is vested in the courts and shall be exercised by them according to the respective jurisdictions conferred on them by law.
- (3) In the exercise of their judicial functions, the courts, the judges and other holders of judicial office shall be independent and shall be subject only to this Constitution and the law, and, save as provided in this Chapter, shall not be subject to the control or direction of any other person or authority.

...

## **PART 2: The Superior Courts**

### **A: The Supreme Court**

...

#### **127. Original jurisdiction**

- (1) The Supreme Court shall have an exclusive original jurisdiction -
  - (a) for the interpretation or enforcement of any provision of this Constitution other than any provision of sections 18 to 33 or section 36(5) (which relate to fundamental rights and freedoms);
  - (b) on any question whether any law was made in excess of the powers conferred by the Constitution or any other law upon the National Assembly or any other person or authority;

...

- (2) Where any question referred to in paragraphs (a), (b) or (d) of subsection (1) arises in any proceedings in any other court, that court shall stay its proceedings and refer the matter to the Supreme Court for its determination, and such other court shall give effect to any decision of the Supreme Court in the matter.

...

### **C: The High Court**

#### **132. Jurisdiction of High Court**

- (1) Save as provided in section 127, the High Court shall have original jurisdiction –
  - (a) to hear and determine all civil and criminal proceedings;
  - (b) to interpret and enforce the fundamental rights and freedoms as provided in section 18 to 33 and section 36(5), and in the exercise of such jurisdiction, the Court shall have all such power and authority as may be conferred by this Constitution or any other law.

...

## **CHAPTER X: THE OMBUDSMAN**

#### **163. National Assembly to establish office of the Ombudsman**

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

...

#### **165. Independence of Ombudsman**

- (1) Subject to the provisions of this chapter, in the exercise of his or her functions, the Ombudsman and a deputy Ombudsman shall not be subject to the direction or control of any other person or authority but subject only to the Constitution and the law.
- (2) All departments, authorities and other public bodies which are subject to investigation by the Ombudsman shall accord such assistance as he or she may require for the protection of the independence, dignity and effectiveness of the Ombudsman in the performance of his or her functions.

...

## **CHAPTER XI: THE PUBLIC SERVICE**

### **PART 1: Offices in the public service**

...

**169. Protection of public servants**

- (1) No public servant shall be –
- (a) victimised or discriminated against either directly or indirectly for having discharged his or other duties faithfully and according to law; or
- (b) be removed from office or reduced in rank or otherwise punished without just cause.

...

**CHAPTER XIV: LAND COMMISSION**

...

**192. Land Commission**

There shall be established a Land Commission whose composition, functions and powers shall be prescribed by an Act of the National Assembly.

...

**CHAPTER XVII: THE NATIONAL COUNCIL FOR CIVIC EDUCATION**

**198. National Council for Civic Education**

There shall be established a National Council for Civic Education whose composition, functions and powers shall be prescribed by an Act of the National Assembly.

**199. Functions of the Council**

- (1) The functions of the National Council for Civic Education shall be –
- (a) to create and sustain within society an awareness of the principles and objectives of this Constitution as the fundamental law of The Gambia;
- (b) to educate and encourage the public to defend this Constitution against all forms of abuse and violence;
- (c) to formulate, from time to time, for the consideration of the government, programmes at national and district levels aimed at realising the object of this Constitution;
- (d) to formulate, implement and oversee programmes aimed at inculcating in the citizens of The Gambia awareness of their civic and fundamental rights, duties and responsibilities;
- (e) to educate the citizens of The Gambia about international, regional and sub-regional matters relevant to The Gambia; and
- (f) such other function as an Act of the National Assembly may prescribe.
- (2) An Act of the National Assembly may provide for the establishment of district branches of the Council.
- (3) In the exercise of its functions, the Council shall be apolitical and, save as may be provided by an Act of the National Assembly, shall not be subject to the direction or control of any other person or authority.

...

**CHAPTER XVIII: COMMISSIONS OF ENQUIRY**

**207. Freedom and responsibility of the media**

- (1) The freedom and independence of the press and other information media are hereby guaranteed.
- (2) An Act of the National Assembly may make provisions for the establishment and operation of the press and other information media.
- (3) The press and other information media shall at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the government to the people of The Gambia.

**208. Responsibility of state owned media**

All state owned newspapers, journal, radio and television shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinion.

**209. Limitations on rights and freedoms**

The provisions of sections 207 and 208 are subject to laws which are reasonably required in a democratic society in the interest of national security, public orders, public morality and for the purpose of protecting the reputations, rights and freedoms of others.

#### **210. National Media Commission**

An Act of the National Assembly shall within one year of the coming into force of this Constitution make provision for the establishment of a National Media Commission to establish a code of conduct for the media of mass communication and information and to ensure the impartiality, independence and professionalism of the media which is necessary in a democratic society.

### **CHAPTER XX: DIRECTIVE PRINCIPLES OF STATE POLICY**

#### **211. Application of the directive principles of state policy**

The principles of state policy in this Chapter shall form part of the public policy of The Gambia for the establishment of a just, free and democratic state. These principles shall not confer legal rights or be enforceable in any court but -

- (a) subject to the limits of the economic capacity and development of The Gambia, the executive, the legislature and all other organs of the state in taking policy decisions, making laws and in the administration of The Gambia, shall according to their respective functions be guided by and observe them with a view to achieving by legislation or otherwise the full realisation of these principles; and
- (b) the courts are entitled to have regard to these principles in interpreting any laws based on them.

#### **212. National integration and unity**

- (1) All organs of the state shall strive towards the realisation of national unity, peace and stability.
- (2) Every effort shall be made to integrate the people of The Gambia and foster loyalty to The Gambia without discrimination.
- (3) All the people of The Gambia shall be entitled to their ethnic, religious and cultural values which do not disturb the unity or cohesion of the state.

#### **213. National sovereignty and independence**

- (1) The state and all citizens of The Gambia shall endeavour to protect and enhance national sovereignty including social, political, and economic independence and territorial integrity.
- (2) The state shall pursue policies which avoid undue dependence on other nations and institutions.

#### **214. Political objectives**

- (1) The Gambia shall be a democratic state dedicated to freedom, peace, progress, prosperity and justice.
- (2) The people shall express their will and consent as to who shall govern them and how they shall be governed, through regular, free and fair elections of their representatives.
- (3) The state shall be guided by the principles of decentralisation and the devolution of governmental functions and powers to the people at appropriate levels of control to facilitate democratic governance.
- (4) In the composition of the government women shall be fairly represented.
- (5) The government, with due regard to the principles of an open and democratic society, shall foster accountability and transparency at all levels of government.

#### **215. Economic objectives**

- (1) The state shall endeavour to create an economic environment that maximises the rate of economic growth and employment and secures the maximum welfare and prosperity for all persons in The Gambia.
- (2) The state shall endeavour to keep inflation under control.
- (3) Recognising that the most secure democracy is one that assures the basic necessities of life for its people, the state shall endeavour to establish an efficient, dynamic and self-reliant economy whose underlying principles shall include ensuring:
  - (a) ample and equal opportunity for all citizens and a pronounced role for the private sector, and the encouragement of private initiative;
  - (b) that persons bear their fair share of social and national responsibilities including their responsibility to contribute to the development of the country; and
  - (c) a balanced development of all parts of The Gambia, improvement in the quality of life in rural communities and redressing economic imbalances between rural and urban communities.
- (4) The state shall pursue a policy of:
  - (a) giving adequate priority to those sectors of the economy which promote national prosperity;

- (b) promoting the development of agriculture and related industry;
  - (c) encouraging and protecting beneficial foreign investment;
  - (d) protecting the environment of the nation for posterity; and
  - (e) co-operation with other nations and bodies to protect the global environment.
- (5) The state shall endeavour to ensure equal opportunity and full participation for women in the economic development of the country.

#### **216. Social objectives**

- (1) The state shall endeavour to secure and promote a society founded on the principles of freedom, equality, justice, tolerance, probity and accountability.
- (2) The state shall pursue policies to protect the rights and freedoms of the disabled, the aged, children and other vulnerable members of society and to ensure that such persons are provided just and equitable social opportunities.
- (3) The state, in pursuing policies in subsection (2), shall be bound by the fundamental rights and freedoms in the Constitution and shall be guided by international human rights instruments to which The Gambia is a signatory and which recognise and apply particular categories of basic human rights to development processes.
- (4) The state shall endeavour to facilitate equal access to clean and safe water, adequate health and medical services, habitable shelter, sufficient food and security to all persons.
- (5) The state shall encourage and promote the establishment and maintenance of contributory schemes that shall provide economic security for all citizens.
- (6) The state shall endeavour to ensure safe systems of working conditions for persons who are employed and to provide that such persons are entitled to adequate rest, leave and leisure.
- (7) The state shall endeavour to ensure that adequate sports facilities are established throughout The Gambia and that sports are promoted as a means of fostering national integration, health and self-discipline and international friendship and understanding.

#### **217. Educational objectives**

- (1) The state shall endeavour to provide adequate educational opportunities at all levels of study for all citizens.
- (2) The state shall pursue policies to ensure basic education for all citizens and shall endeavour to provide adequate resources so that such tuition for basic education shall be free for all citizens.
- (3) The state shall endeavour to provide skills training centres.
- (4) The state shall take measures to create an adult literacy programme, rehabilitative vocational training for the disabled, and continuing education programmes.

#### **218. Cultural objectives**

The state and all the people of The Gambia shall strive to protect, preserve and foster the languages, historic sites, cultural, natural and artistic heritage of The Gambia.

#### **219. Foreign relations**

The state shall endeavour to ensure that in international relations it:

- (a) promotes and protects the interests of The Gambia;
- (b) seeks the establishment of a just and equitable international economic and social order;
- (c) fosters respect for international law, treaty obligations and the settlement of international disputes by peaceful means; and
- (d) is guided by the principles and goals of international and regional organisations of which The Gambia is a signatory.

#### **220. Duties of a citizen**

- (1) The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations, and accordingly, every citizen shall:
- (a) promote the prestige and good reputation of The Gambia and respect the symbols of The Gambia;
  - (b) uphold and defend the Constitution;
  - (c) foster national unity and live harmoniously with others;
  - (d) respect the rights, freedoms and legitimate interests of others and refrain from acting in a manner detrimental to the welfare of other persons;
  - (e) serve The Gambia by working conscientiously in his or her chosen occupation;
  - (f) protect and preserve public property and expose and combat misuse and waste of public funds and property;

- (g) contribute to the well-being of the community in which the citizen lives;
  - (h) be loyal to The Gambia and contribute to its defence when necessary;
  - (i) co-operate with the appropriate agencies in the maintenance of law and order; and
  - (j) protect and conserve the environment of The Gambia.
- (2) It shall be the duty of every citizen to abide by and conform with the provisions set out in subsection (1), but such duties shall not, of themselves, render any person liable to proceedings of any kind in any court.
- ...

## CHAPTER XXII: AMENDMENT OF THE CONSTITUTION

### 226. Alteration of this Constitution

- (1) Subject to the provisions of this section, an Act of the National Assembly may alter this Constitution.
- (2) Subject to subsection (4), a bill for an Act of the National Assembly under this section shall not be passed by the National Assembly or presented to the President for assent unless –
- (a) before the first reading of the Bill in the National Assembly, the Bill is published in at least two issues of the *Gazette*, the latest publication being not less than three months after the first, and the Bill is introduced into the National Assembly not earlier than ten days after the latest publication; and
  - (b) the Bill is supported on the second and third readings by the votes of not less than three quarters of all the members of the National Assembly.
- (3) If the President fails to assent within thirty days to a Bill passed by the National Assembly in accordance with subsection (2), the Bill shall be returned to the Speaker who shall refer it to the Independent Electoral Commission. The Independent Electoral Commission shall cause a referendum to be held on the Bill in accordance with subsection (4) and, if the Bill is supported on such a referendum by the majority provided for in that subsection, it shall again be presented to the President for his assent.
- ...

## SCHEDULE 2: TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

...

### Legal Proceedings

- (13) (1) No member of the Armed Forces Provisional Ruling Council, any person appointed Minister by the Armed Forces Provisional Ruling Council, or other appointees of the Armed Forces Provisional Ruling Council shall be held liable or answerable before a Court or authority or under this Constitution or any other law, either jointly or severally, for an act or omission in the performance of his or her official duties.
- (2) After the coming into force of this Constitution, it shall not be lawful for any court or tribunal to entertain any action or take any decision or make any order or grant any remedy or relief in any proceedings instituted against the Government of The Gambia or any person acting under the authority of the Government of The Gambia, or against any person or persons acting in concert or individually to assist or bring about the change in government which took place on the twenty second day of July 1994, in respect of any act or omission relating to, or consequent upon:
- (a) the overthrow of the government in power before the formation of the Armed Forces Provisional Ruling Council;
  - (b) the suspension or abrogation of the Constitution of The Gambia 1970;
  - (c) the establishment of the Armed Forces Provisional Ruling Council; or
  - (d) the establishment of this Constitution.
- (3) For the avoidance of doubt, it is declared that no action taken or purported to have been taken in the exercise of the executive, legislative or judicial power by the Armed Forces Provisional Ruling Council or a member thereof, or by any person appointed by the Armed Forces Provisional Ruling Council in the name of the Armed Forces Provisional Ruling Council except judges of the Supreme Court or the Court of Appeal, shall be questioned in any proceedings whatsoever and, accordingly, it shall not be lawful for any court or tribunal to make any order or grant any remedy or relief in respect of any such act.
- (4) The provisions of subparagraph (3) shall have effect notwithstanding that any such action as is referred to in that subparagraph was not taken in accordance with any procedure prescribed by law.
- (5) It shall not be lawful for any court or tribunal to entertain an action instituted in respect of an act or omission against a person acting or omitting to act on the instructions or authority of the Armed Forces Provisional Ruling Council, or a member thereof, and alleged to be in contravention of any law whether substantive or procedural, in existence before or during the administration of the Armed Forces Provisional Ruling Council.

...

### (15) *Abrogation of 1970 Constitution*

The Constitution of The Gambia 1970 (Act No1 of 1970) is hereby abrogated.

**(16)** *Substitution of life imprisonment for death penalty*

Where any law makes provision for a sentence of death in any case other than that provided for in section 18(2), the law shall have effect as if imprisonment for life were substituted for that penalty.

**(17)** *Paragraphs not to be amended*

The National Assembly shall have no power to pass a Bill to amend or repeal this paragraph or paragraph 11, 12, 13 or 14 of this Schedule.

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## THE GAMBIA

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