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CONSTITUTIONAL REVIEW COMMISSION OF THE REPUBLIC OF THE GAMBIA

POSSIBLE AREAS FOR CONSTITUTIONAL REFORM

INTRODUCTION:

As part of the process of review of the 1997 Constitution of the Republic of The Gambia, the Constitutional Review Commission (CRC) has been mandated to draft a new Constitution and to prepare a report in relation to the new Constitution. The execution of this mandate requires the CRC to consult with Gambians and other stakeholders to seek their opinions on what they aspire to see included in a new Constitution for The Gambia. In that context, the CRC considers it relevant that, in order to aid meaningful dialogue on constitutional reform, it should identify issues to draw the attention of Gambians and other stakeholders on as a mechanism of initiating and gauging public opinion on those issues. That is the primary purpose of this document (referred to herein as the “Issues Document”); it raises issues to guide the drafting of the new Constitution.

Persons may choose to consider and respond to all the issues (formulated in the form of questions) identified below under the various headings. They may also choose to consider and respond only to specific areas of interest. All responses should be as clear as possible so that the opinions expressed are properly considered by the CRC.

Responses may be provided in writing and addressed to the CRC at its headquarters at the Futurelec Building, Bertil Harding Highway, Kotu, KSMD. They may also be submitted by email to crcgambia@gmail.com Persons residing in the Administrative Regions who wish to submit written responses may do so through the CRC Coordinators stationed at the Regional offices or by email. Responses may also be made orally during the CRC face-to-face public consultations. Gambians in the Diaspora who wish to consider and respond to the issues may do so by either mailing their responses to the CRC at its headquarters or sending them by email to the CRC’s email address cited above. There will also be the opportunity to share their opinions face-to-face with the CRC Commissioners in the countries and regions the Commissioners expect to visit during the public consultation phase of their assignment.



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It should be noted that some of the issues raised are of a technical nature (in square brackets and colour coded green) and may require a proper reference to the specific provisions of the 1997 Constitution in order to provide an appropriate response. Others relate to and have wider treaty implications. All of these and other matters will be duly considered by the CRC, but they are outlined here to provide an opportunity for persons who may wish to express opinion in relation to them. The CRC will place the 1997 Constitution online for reference purposes as soon as its website (currently under construction) is up and running.

Respondents are not in any way restricted to the issues outlined in this Issues Document. They may raise new issues not addressed in the Issues Document. They may strengthen some of the issues in different form and provide responses they consider appropriate. The ultimate objective in publishing the Issues Document is to commence dialogue on constitutional issues that may assist the CRC in drafting a new Constitution for The Gambia.

Some of the issues raised relate to matters that are dealt with under current relevant statutes. The issues should, in that context, be considered on the basis of whether or not they should be elevated to constitutional levels.

A downloadable copy of the Issues Document will be available on the CRC website (currently under construction). Respondents may provide their responses online or in writing submitted to the CRC. However, each response must relate to a specific question/issue which must be outlined in order to enable the CRC to relate it appropriately.

All responses to the Issues Document and other matters relating to reform of the 1997 Constitution MUST reach the CRC Secretariat no later than the close of business on 30th November, 2018.

ISSUES

1. Citizenship

- (i) *It is expected that existing rights and entitlements to Gambian citizenship will be preserved. These are the rights and entitlements that have been*



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- acquired prior to the coming into force of the new Constitution. Do you have any issue with this? If so, please outline your reason(s).*
- (ii) *Should a person who wishes to acquire Gambian citizenship be required to renounce any other citizenship he/she may have, when a Gambian can hold dual nationality?*
 - (iii) *Is the prescribed period of 7 years ordinary residence in The Gambia by a foreign person married to a Gambian before such foreign person can acquire Gambian citizenship reasonable?*
 - (iv) *If the answer to paragraph (iii) is in the negative (No), what should be the lesser prescribed period?*
 - (v) *Naturalization: the law requires 15 years ordinary residence in The Gambia before a foreign person can apply for citizenship by naturalization. Is this period too long, short or just right? If the period is not just right, what period would be reasonable?*
 - (vi) *Should a child one of whose grandparents was born in The Gambia be entitled to Gambian citizenship as of right?*
 - (vii) *Should a registered or naturalized Gambian exercising rights in a foreign country accorded to citizens of that country be deprived of his/her Gambian citizenship (the position under the 1997 Constitution)?*
 - (viii) *There are a number of non-Gambians who migrated to The Gambia and have lived in and had children born and raised in and went through the school system in The Gambia. Neither the parents nor the children have been naturalized or registered as citizens of The Gambia. Should this class of children be considered in the review process with a view to addressing their status in the draft Constitution (such as by granting them citizenship under and by virtue of the new Constitution)? What about their parents?*
 - (ix) *If this latter class of non-Gambians is to be accorded constitutional recognition to Gambian citizenship, should there be a cut-off period (date) for the application of such recognition (meaning that persons falling outside of that period (date) will have to formally apply to be registered or naturalized if they wish to become Gambian citizens)?*
 - (x) *If that latter class is not to be accorded constitutional recognition to Gambian citizenship, is the current statutory arrangement for registration/naturalization sufficient to adequately deal with the number of “illegal” immigrants in The Gambia and how should we ensure that the country’s long term residents with the non-Gambian status comply with the laws to fully integrate into Gambian society?*



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- (xi) *[Are there human rights implications for denial of constitutional recognition of citizenship to these category of persons? If so, what are they and how can they be properly dealt with?]*
- (xii) *Persons found within the country whose parents are unknown: should they be presumed to be citizens of The Gambia?*
- (xiii) *What are The Gambia's international obligations with regard to citizenship and is the country currently in full compliance with those obligations? If not, how should the country comply?*
- (xiv) *[The issue of refugees who have resided in The Gambia for a stated period: should they be permitted to apply to naturalize or register as citizens of The Gambia? Consider applicable international instruments (UN 1951 Refugee Convention and AU 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa).]*
- (xv) *[Is section 14 of the Constitution correct in so far as it makes reference to a former "citizen of The Gambia"?)]*
- (xvi) *[The issue of right to nationality: is this a citizenship issue proper or is it merely a rights issue to be dealt with under the Fundamental Rights and Freedoms Chapter?]*
- (xvii) *Citizenship of non-Gambian adopted children: the current Constitution is silent on this subject, although technically such children may be registered or naturalized as citizens of The Gambia upon application. Should the new Constitution specifically consider adopted children to qualify as citizens or simply to be eligible to apply to be registered or naturalized as citizens of The Gambia?*
- (xviii) *[Should the subject of honorary citizenship be dealt with or provided under the Constitution instead of being left to an Act of Parliament?]*

(18)

2. Fundamental Rights and Freedoms

- (i) *Do the fundamental rights and freedoms provisions in the 1997 Constitution adequately embody the rights and freedoms enshrined in international treaties to which The Gambia is a party?*
- (ii) *If the answer to paragraph (i) is in the negative (No), which treaty provisions have been left out or are not adequately covered?*
- (iii) *In relation to the right to protection of right to life, the current Constitution appears to recognise the imposition of the death penalty by a court of competent jurisdiction. Should this continue to be a feature of the*



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- Constitution or should there be specific provision that abolishes the death penalty?*
- (iv) *Should the Constitution provide a framework to enable the National Assembly to enact legislation permitting prisoners to be paroled as a rehabilitative measure to achieve better ‘prisoner’ integration back into public life upon being discharged?*
 - (v) *The current Constitution protects children under the age of 16 years from economic exploitation, hazardous employment or interference with their education and health (in compliance with established international standards). Should that age be raised (to say under 18 years)?*
 - (vi) *[Should there be a default provision that specifically allows the courts to rely on international treaties to which The Gambia is a party in interpreting the fundamental rights and freedoms contained in the Constitution?]*
 - (vii) *Are the protections accorded to the rights and freedoms of the press and other information media sufficient to guarantee their independence while preserving the rights and freedoms of others?*
 - (viii) *If the answer to paragraph (vii) is in the negative (No), what is deficient and how would you propose to deal with the deficiency?*
 - (ix) *Where a public broadcasting station is established, should it be subject to State censorship or be under the direction and control of any authority (such as the Executive, for example)?*
 - (x) *If a public broadcasting station is not to be subjected to State censorship or be under the direction or control of any authority, how should it be made accountable?*
 - (xi) *Should specific provision be made in the new Constitution outlining the right to health care service and decent housing, in a similar manner as the current Constitution provides in relation to education?*
 - (xii) *Should the right to free education extend beyond providing basic secondary education?*
 - (xiii) *Are the current constitutional provisions relating to the rights of ‘marginalised groups’ of Gambian society, in particular the youth and physically challenged persons, considered to be adequate?*
 - (xiv) *If the answer to paragraph (xiii) is in the negative (No), what additional measures would you recommend for inclusion in the new Constitution?*
 - (xv) *Are women sufficiently empowered, protected and accorded equality to exercise and enjoy their full rights as citizens?*



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- (xvi) *If the answer to paragraph (xv) is in the negative (No), what would you recommend as necessary measures to ensure the exercise and enjoyment of those rights?*
- (xvii) *Should specific provision be made in the Constitution on the right to clean air and a clean environment?*
- (xviii) *If the answer to paragraph (viii) is in the affirmative (Yes), what should the right to clean air and a clean environment entail?*
- (xix) *Are there any other fundamental rights and freedoms provisions in the current Constitution that are not clear or adequate in protecting the rights and freedoms of citizens and other persons residing in The Gambia?*
- (xx) *If the answer to paragraph (xi) is in the affirmative (Yes), which rights and freedoms require reform?*

(20)

3. *Elections – Independent Electoral Commission*

Independent Electoral Commission

- (i) *Should the role of the Independent Electoral Commission include boundary delineation/delimitation?*
- (ii) *If the answer to paragraph (i) is in the affirmative (Yes), should the name of the Commission be changed to “Independent Electoral and Boundaries Commission” or some other name (identify or suggest a name)? **OR***
- (iii) *Should a separate Constituency (and District/Ward) Boundaries Commission be established)?*
- (iv) *Should members of the Commission be appointed by the President, acting on the advice of the Judicial Service Commission (JSC), instead of after consultation with the JSC and the Public Service Commission (as is the case under the current Constitution)? [Explanation: When the President acts on the advice of the JSC, he or she is effectively obliged to accept the advice of the JSC and effect the appointments; on the other hand, if the President is empowered to appoint after consulting with the JSC and PSC, he need only consult them before effecting appointments. This latter process has variously been interpreted. One interpretation is that the President and the JSC must work together to achieve a consensus; the other interpretation is that the President is not bound by whatever advice the JSC and/or PSC might give and can therefore take his/her own decision after consulting.]*
- (v) *Who should have responsibility for nominating members of the Commission for consideration for appointment?*



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- (vi) *Should qualifications for Commission membership be identified and specified (only disqualifications are set out in the current Constitution)?*
- (vii) *If qualifications should be identified and specified, what should those qualifications be (bearing in mind the importance of integrity and independence)?*
- (viii) *Security of tenure – should the President have the power to remove a commissioner or should this be aligned to the procedure available for the removal of judges?*
- (ix) *Should the Commission Chairman’s removal be aligned to the procedure used for removal of the Chief Justice?*
- (x) *Should the qualifications of the Commission’s Chairman be specified in the Constitution? If so, what should those qualifications be?*
- (xi) *Currently the Constitution provides a term limit of 7 years for Commission members which is renewable for another term of 7 years. Should this be maintained or be revised? If it is to be revised, what period or periods should be stipulated?*
- (xii) *Should members of the Commission (including the Chairman) be required to publicly declare their assets as a condition for appointment to the office of member of IEC?*
- (xiii) *Should members of the Commission (including the Chairman) be similarly required to publicly declare their assets within a specified period (for example 3 or 4 months) upon demitting office?*
- (xiv) *If members of the Commission are to be required to make declarations, should those declarations be made to the Commission or some independent body (please specify if some other independent body –for example, the Anti-corruption Commission)?*

Prisoners

- (xv) *Should prisoners be allowed to vote?*
- (xvi) *If the answer to paragraph (xv) is in the negative (No), what would be a reasonable justification for excluding prisoners from voting?*

Diaspora Gambians

- (xvii) *Gambians in the Diaspora are citizens of The Gambia and therefore have a right to vote. Should there be specific provision in the Constitution that*



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- obligates the Government to make necessary arrangements to provide opportunity for Gambians in the Diaspora to cast their votes in elections?*
- (xviii) *If the answer to paragraph (xvii) is in the affirmative (Yes), should this be restricted to Presidential elections only, or Presidential and Parliamentary elections only? And should it be extended to local government elections?*

Elections

- (xix) *Should there be introduced a continuing voter registration system (thus eliminating the current arrangement on general registration and supplementary registration)?*
- (xx) *Should the closing period for the registration of voters in advance of an election be specified in the Constitution? If so, what period should be prescribed?*
- (xxi) *Should a system of advance voting be introduced to enable the elderly, infirm, election officers and security officers to be placed on election duty on election day, to cast their vote?*
- (xxii) *If the system of advance voting is to be introduced, is this sufficiently relevant to be prescribed in the Constitution or should it be dealt with under the election laws?*
- (xxiii) *Should The Gambia adopt the ballot system (paper form) or continue with the token system in the conduct of elections?*
- (xxiv) *In either case under paragraph (xxiii), should this be specified in the Constitution or be left to be determined under the election laws?*
- (xxv) *Should there be a restriction on Parliament's or other authority's power to amend, revise or in any other way change the laws or any provision thereof on elections within a specified period before elections are due? If so, what should the period be?*
- (xxvi) *Should there be specific provision prohibiting the postponement of Presidential elections? Should this be extended to Parliamentary elections?*
- (xxvii) *If the postponement of elections is to be prohibited, how should we deal with the issue of public emergencies when they arise at a time that affect or are likely to affect the conduct of elections (for instance, should the Supreme Court be the only authority empowered to sanction the postponement of elections to a specified date on the ground that the exercise of an emergency power to warrant the postponement of the elections is justified in all the circumstances)?*



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- (xxviii) *The current Constitution provides that the Commission “shall be part of the public service”. Should this continue or should the Commission (consistent with its name) be an institution independent of the public service (even though it is to be funded by monies voted by the National Assembly)?*
- (xxix) *Should the President be given the power to determine the date when the general election of members of the National Assembly shall take place (as currently provided in section 96 (2) of the Constitution)?*
- (xxx) *If the answer to paragraph (xxix) is in the negative (No), should the date for the holding of such general elections be determined and fixed in the Constitution? Or should it be specified in the election laws?*
- (xxxi) *If the answer to paragraph (xxx) is in the affirmative (Yes) and considering a situation where the holding of general elections on the fixed date becomes impossible or ill-advised, who should be given the power to reschedule the general elections? And what checks (if any) should be applied to the granting of such a power?*

(31)

5. Political Parties

- (i) *Should certain basic requirements for forming and maintaining a political party be prescribed in the Constitution (as opposed to being in the election laws)?*
- (ii) *If so, what should those basic requirements be (for example, having national character, upholding and promoting national unity, respecting objects and principles of the Constitution, upholding and promoting democratic values, etc.)?*
- (iii) *Should the Constitution prescribe minimum standards (such as air time, accounts and audit, establishment and management of political party funds, etc.) which an Act of Parliament relative to political parties must contain/address?*
- (iv) *Should there be restrictions on private funding of political parties and/or elections? If so, should this be restricted to external funding?*
- (v) *In terms of funding of a political party by Gambians or Gambian entities, should there be a requirement for disclosure by a political party of the source of funding?*
- (vi) *If the answer to paragraph (v) is in the affirmative (Yes), should the disclosure be required only if it exceeds a specified threshold (in money and/or in money’s value)? If so, what should that specified threshold be?*



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- (vii) *Should political parties be required to provide the IEC, within a specified period of the end of the political parties' financial year (say 6 months), with copies of their audited financial statements for the preceding year?*
- (viii) *If the answer to paragraph (vii) is in the affirmative (Yes), should the IEC be empowered to grant an extension or extensions for the submission of audited financial statements to take exceptional circumstances into account? If so, should an extension period or periods be capped to a specified period (say no more than 6 or 9 months in aggregate)?*
- (ix) *Where a political party fails to provide its audited financial statement within the prescribed period (and, if granted an extension, within the period of extension), should provision be made for the automatic deregistration (by operation of law) of the political party? If so, should the automatic deregistration be permanent?*
- (x) *Should provision be made requiring political parties to disclose to the IEC any financial irregularity discovered? If so, should the IEC be empowered to order an independent audit of the finances of the political party concerned?*
- (xi) *In circumstances where the IEC refuses to register or deregisters/cancels the registration of a political party on the grounds established under the Elections Act (that is, violation of election laws, including failure to notify change of name, emblem, motto, etc.), should the aggrieved political party be permitted to pursue its appeal beyond the Court of Appeal to the Supreme Court (currently the Court of Appeal is the final Court that decides on refusal to register or deregistration/cancellation of registration of a political party)?*
- (xii) *[What issues in paragraphs (i) – (xi) do you think should be dealt with or retained in an Act of Parliament, with the Constitution merely providing the framework?]*

(12)

6. Local Government

General

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



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- (ii) *If the answer to paragraph (i) is in the negative (No), what measures would you recommend to ensure an efficient and effective local government structure that delivers well for the benefit of the people of The Gambia?*
- (iii) *Are the powers devolved to the local government bodies (Area Councils, Municipalities, etc.) sufficient to ensure proper administration and the development of the various regions in The Gambia?*
- (iv) *If the answer to paragraph (iii) is in the negative (No), what would you identify as the deficiencies and how would you suggest to address the deficiencies?*

Seyfos and Alkalos

- (v) *Should Seyfos (Chiefs) continue to be appointed by the President in consultation with the Local Government Minister (current position) or be directly elected by their districts or be selected according to traditional lines of inheritance?*
- (vi) *If they are to be elected, should such election be apolitical and on the basis of independence of candidates (no political party affiliation whatsoever)?*
- (vii) *What should be the term of office of an elected Seyfo or should the term be for the lifetime of the elected Seyfo?*
- (viii) *Should the power to create Seyfo districts vest in the National Assembly on the recommendation of the Local Government Minister after consulting with a relevant regional Governor (current position)? **OR***
- (ix) *Should the power to create Seyfo districts vest in the Independent Electoral Commission (or other body with responsibility for boundary demarcation), whether exercised directly or as a recommendation to the National Assembly?*
- (x) *Should the appointment of Alkalos vest in the Local Government Minister acting in consultation with regional Governors and Seyfos or Chairperson of KMC (current position) or should it be elective or selected on the basis of traditional lines of inheritance? **OR***
- (xi) *Should the appointment of Alkalos be based on village consensus as a first step, failing which (as a second step) the village should elect their Alkalo (to be conducted by the IEC)?*
- (xii) *What protections (if any) should be accorded to the Offices of Seyfo and Alkalo (such as security of tenure where the position is apolitical)?*



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- (xiii) *If the positions of Seyfo and Alkalo are to be apolitical (meaning no political affiliation), should the new Constitution make provision specifically prohibiting Seyfos and Alkalos from engaging in partisan politics?*

(13)

7. The Executive & Service Commissions

(a) System of Government

General (see also paragraph (g) (i) below)

(i) *What system of government is preferred:*

- (a) *A Presidential system, where the President is elected directly by the people and his/her Cabinet members are selected outside of the National Assembly?*
- (b) *A Parliamentary system, where the President is chosen on the basis of the majority of elected members of the National Assembly who support him/her?*
- (c) *A Hybrid system, where the President is elected directly by the people but his/her Cabinet members are selected from amongst the members of the National Assembly*

(1)

(b) Office of President

Qualifications

- (i) *Should the current status quo contained in the 1997 Constitution regarding educational qualification be maintained?*
- (ii) *If the answer to paragraph (i) is in the negative (No), what educational qualifications should be specified for eligibility to run for the Office of President?*
- (iii) *Depending on the response to paragraph (i) above, how is it proposed to address current scenarios in which incumbents and heads of political*



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parties do not meet the educational qualifications outlined in relation to paragraph ((ii)?

- (iv) *Should the current position in the Constitution whereby there is no upper age limit for the Presidency be maintained? **OR***
- (v) *Should age limit – minimum & maximum – be prescribed for the Office of President (the current Constitution prescribes a minimum age limit of 35 to be eligible to run for the Office of President)?*
- (vi) *If the answer to paragraph (v) is in the affirmative (Yes), what would be considered appropriate age limits (both minimum and maximum)?*
- (vii) *Should there be qualifications additional to those in the current Constitution with respect to the Office of President? If so, what additional qualifications would you suggest?*

Disqualifications

- (viii) *Should holding dual nationality disqualify a Gambian from running for the Office of President?*
- (ix) *Should failure of not being ordinarily resident in The Gambia for a prescribed period (currently 5 years) be a disqualification?*
- (x) *If the response to paragraph (ix) is in the affirmative (Yes), is the current prescribed period of 5 years ordinary residence appropriate or too high? If it is inappropriate or too high, what period would be considered reasonable?*
- (xi) *Should compulsory retirement, or termination or dismissal from public office (not related to criminality), be a disqualification for election to the Office of President (these are disqualifications under the current Constitution)?*
- (xii) *Should an adverse finding by a commission of inquiry, which has not translated into prosecution and conviction by a court of competent jurisdiction, be a disqualification for election to the Office of President (this is a disqualification under the current Constitution)?*
- (xiii) *Are there other justifiable disqualifications that can or should be added to those in the current Constitution? If so, please specify.*

(13)

(c) Election and term limit of President



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Term Limit and Assumption of Office of President

- (i) *Should a term limit be prescribed for the Office of President (the current Constitution does not prescribe a term limit)?*
- (ii) *If a term limit is to be prescribed, what should the term limit be?*
- (iii) *Should term limits be applied only to consecutive terms?*
- (iv) *President X completes one term in office, but fails to win the next election to attain a consecutive two terms limit. Should President X be able to contest another election and serve for a consecutive term if elected to office?*
- (v) *[If the current President were to decide to contest the next Presidential race after the expiry of the current term, how and when should his term limit be prescribed to commence (that is, should the current term being served be counted towards his eligible terms or should his term be reckoned to commence from the next term after the new Constitution has come into force)?]*
- (vi) *President X is elected as President at age 72. The Constitution, for example, prescribes an upper age limit of 75. Should President X be permitted to continue in office to complete his/her term?*
- (vii) *Should the President's term in office expire at the same time as that of Parliament (especially where candidates for Ministerial positions have to be subjected to confirmation by the National Assembly)?*
- (viii) *When should a President-elect assume office (the current prescribed period is 60 days after his/her election)?*

Declaration of Assets

- (ix) *Should a person be required under the Constitution to declare his/her assets to the Independent Electoral Commission (or the Anti-corruption Commission) before being eligible for nomination for election to the Office of President?*
- (x) *Should the President be required to declare his/her assets to the same Commission within a specified period after demitting office?*
- (xi) *If the answer to paragraph (ix) is in the affirmative (Yes), what should be the specified period?*

Succession to the Office of President



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- (xii) *Where the Speaker assumes the Office of President as a result of a vacancy in that Office and in the permanent absence of the Vice President (for whatever reason), should the assumption of office by the Speaker be for the residue of the term of the former President or for a prescribed period to enable fresh election to the Office (taking into account the fact that the Speaker is not elected by the public)?*
- (xiii) *If, in relation to paragraph (xi), the Speaker is to serve for a prescribed period in a caretaker capacity, what should that period be?*
- (xiv) *In the unlikely scenario where the Speaker is not available or is unable (for whatever reason) to assume the Office of President, what arrangement should be introduced to ensure succession to the Office of President?*

Election to the Office of President

- (xv) *First-past-the-post versus 50+1 %: in a Presidential election, should a candidate be declared winner after securing a majority of the votes cast and counted or should a candidate be declared winner only after attaining 51% of the total votes cast and counted?*
- (xvi) *Use of ballot papers versus Use of tokens: should The Gambia continue with the use of marbles/tokens in casting votes or should this be amended to paper ballots?*

Removal of President from Office

- (xvii) *Where the National Assembly passes a no-confidence motion to remove a President from office, should that no-confidence motion be final or should it be subjected to endorsement or rejection at a referendum (as is provided in the current Constitution)?*
- (xviii) *Where a medical board is appointed to inquire into the health of the President and recommends that the President is incapable of discharging the functions of his/her office, should that recommendation be sufficient for the President to cease to hold office or should the recommendation be subject to a vote of the National Assembly to secure a two-third majority of*



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parliamentarians present and voting (as currently provided in the 1997 Constitution)?

- (xix) *Where a tribunal is appointed to investigate the alleged misconduct or other alleged misbehaviour of the President and finds that the allegation has been substantiated, should that finding be sufficient for the President to cease to hold office or should the removal of the President in relation to the finding be subject to a vote of the National Assembly to secure a two-third majority of all parliamentarians (as currently provided in the 1997 Constitution)?*

Benefits

- (xx) *Should there be constitutional provision permitting the President to retire (at the end of his/her term in office) on his/her salary as a measure of maintaining the integrity of the Office of President and the holder thereof and preventing self-perpetuation in office?*

(20)

(d) Proceedings against serving and ex-President

- (i) *Should the President be immune from criminal prosecution for conduct relative to his/her period of service as President?*
- (ii) *If the answer to paragraph (i) is in the affirmative (Yes), should that immunity extend to the period after the President has demitted office?*
- (iii) *If not, should any restriction be placed to such prosecution, as is the case under section 69 (3) (b) of the current Constitution?*
- (iv) *If the President is to be immune generally, should he/she nevertheless be made liable, whilst in office, for any act of obstruction of justice?*
- (v) *If the President is found liable for obstruction of justice, should conviction lead to automatic vacation of office or subject him/her to formal impeachment by the National Assembly?*

(5)



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(e) Prohibitions

- (i) *Should the President, while serving as such, be prohibited from accepting gifts personal to him/her or if the value of a gift to be received by him/her equals to or is more than a specified amount in dalasis?*
- (ii) *If the answer to paragraph (i) is in the negative (No), should the President be required to declare the gift he/she receives? **OR***
- (iii) *Should the President be able to receive a personal gift, but with the approval of the National Assembly if the gift exceeds a specified amount or its value in dalasis?*
- (iv) *Should the President be prevented from forming or tacitly supporting, or in any other way being associated with, a charitable/civic body whilst in office or establishing or associating with a body which has the potential to cause a conflict with his/her role as President?*
- (v) *If the answer to paragraph (iv) is in the affirmative (Yes), should that prohibition be extended to the President's immediate family members (spouse and children) or should it be extended more widely? If the prohibition is to be extended more widely, what would be the reasonable justification(s) for doing so?*
- (vi) *Are there other reasonable restrictions that should be applied in relation to the holder of the Office of President?*

(6)

(f) Office of Secretary General (see also sub-paragraph (j) (vi) below)

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

(2)



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(g) Vice President and Ministerial portfolios

- (i) *Should the Vice President (VP) and Ministers of Government be elected members of the National Assembly – Westminster System versus the Presidential System; or should there be a hybrid and, if so, what should that hybrid be?*
- (ii) *Should the VP be on the Presidential ticket when a person is contesting to be elected President?*
- (iii) *If the VP is not to be on the Presidential ticket, should the nominee for VP position be subject to confirmation hearing by a select committee of, and approval by, the National Assembly?*
- (iv) *Should dual nationality be a disqualification for appointment to the office of Minister of Government?*
- (v) *Is the post qualification experience of 5 years to qualify for appointment as Attorney General sufficient and, if not, what period should be prescribed?*
- (vi) *Should qualifications be identified and specified for appointment to the Office of Minister (only disqualifications are outlined in the current Constitution)?*
- (vii) *If qualifications should be identified and specified for appointment to the Office of Minister, what should those qualifications be?*
- (viii) *Considering the representativeness of Cabinet, should the new Constitution make specific provision regarding the composition of Cabinet in a manner that ensures that marginalised groups (such as women, youths and physically challenged persons) are accorded Cabinet portfolios and/or properly represented in Cabinet?*
- (ix) *If the answer to paragraph (viii) is in the affirmative (Yes), what would you suggest as a proper composition for Cabinet?*
- (x) *Should it be a condition for assumption of office that the VP and Ministers of Government must declare their assets (either publicly or privately with a specified public functionary – such as the Anti-corruption Commission)?*
- (xi) *Should it also be a condition that the VP and Ministers of Government must declare their assets within a specified period after demitting office?*
- (xii) *If the answer to paragraph (ix) is in the affirmative (Yes), what should that specified period be?*



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- (xiii) *Should the Constitution specify the maximum number of Ministers of Government that can be appointed (the current Constitution does not have any after a constitutional amendment removed the maximum of 15)?*
- (xiv) *Should there be positions of Deputy Ministers with each Ministry having only one Deputy who (amongst other things) assists the Minister and oversees the Ministry in the absence of the Minister?*
- (xv) *Should Deputy Ministers have the same qualifications as Ministers in order to be appointed as such?*
- (xvi) *Should provision be made for the position of Cabinet Secretary in the Constitution?*
- (xvii) *[Should collective Cabinet responsibility include the President (the current Constitution excludes the President)?]*

(17)

(h) Foreign affairs/International treaties

- (i) *[Should the Constitution prescribe the manner in which an international treaty/agreement (as opposed to a bilateral agreement) forms part of Gambian law or becomes binding and therefore enforceable?] OR*
- (ii) *[Should this be left to be dealt with by an Act of the National Assembly?]*
- (iii) *Should the new Constitution make specific provision prohibiting the President and/or the executive branch of government from withdrawing The Gambia from an international treaty or from membership of an international organisation without the approval of the National Assembly?*
- (iv) *Should the new Constitution prescribe any other matter relative to Gambia's foreign affairs and/or international treaties The Gambia is a member of?*

(4)

(i) Honours and Awards



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- (i) *Should the President’s power to confer honours and awards be prescribed in the Constitution (current provision) or should it be left to be dealt with by an Act of the National Assembly?*
- (ii) *Should the committee established under the current Constitution to advise the President on the exercise of his/her powers in conferring honours be similarly dealt with through an Act of the National Assembly?*

(2)

(j) Prerogative of Mercy Committee

- (i) *Should the President be empowered to substitute a less severe penalty than that imposed by the courts? **OR***
- (ii) *Should the President’s power to exercise mercy be restricted to granting a pardon, respite and remission of sentence only?*
- (iii) *Is the current composition of the Committee considered to be adequate and certain?*
- (iv) *If not, should the membership be better defined with specified qualifications?*
- (v) *Should there be a term limit for membership of the Committee?*
- (vi) *If the answer to paragraph (iv) is in the affirmative (Yes), what should that term limit be?*

(6)

(k) Public Service

The Public Service

- (i) *Should the President’s role in relation to public enterprises be restricted to the appointment of boards and removal of members of the boards?*
- (ii) *Is there a need to better define the distinction (if any) between offices in the Civil Service (mainstream government) and offices in the Public Service (inclusive of parastatals and other public bodies)?*
- (iii) *What powers should be exercisable by the President in relation to the Civil Service and the Public Service?*



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- (iv) *What checks and balances should be introduced to ensure the efficient and effective functioning of the Civil Service and the Public Service?*

Public Service Commission

- (v) *Should the Public Service Commission (PSC) be restricted to dealing with mainstream Civil Service appointments and related matters only?*
- (vi) *Should the position of Secretary General as Head of the Civil Service be apolitical based on confirmation by the National Assembly and appointment by the President?*
- (vii) *Should all Permanent Secretaries' appointments as administrative heads of Ministries of Government be subject to approval by the President?*
- (viii) *[Should details regarding the PSC, save composition and terms and conditions of service of members, be dealt with in an Act of the National Assembly, instead of in the Constitution?]*
- (ix) *Should members of the PSC serve only for a specified term limit? If so, what should that term limit be (the 1997 Constitution provides a term limit of 2 years which may be renewed each time the term expires)?*
- (x) *What security of tenure (if any) should be accorded to members of the PSC to ensure the diligent and independent performance of their duties (for example, should they have the same security of tenure as members of the Independent Electoral Commission, Human Rights Commission and Anti-corruption Commission)?*
- (xi) *Should the office of PSC members be full time (as currently provided in the Constitution) or should it be part time?*
- (xii) *If it is to be part time, is the current Personnel Management Office adequately or can it be adequately restructured and resourced to deal with all administrative matters relative to the employment, termination of employment and general conditions of service of public officers?*
- (xiii) *Should the qualifications of membership of the PSC be better defined on academic and experience grounds, in addition to the current general terms of "high integrity and good character" provided in section 172 (2) of the 1997 Constitution?*



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- (xiv) *Are the disqualifications for PSC membership as currently provided in section 172 (3) of the Constitution sufficient?*

(14)

(l) Teaching Service Commission??

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

(3)

(m) Health Services Commission

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

(3)

(n) National Security Council



Constitutional Review Commission

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- (i) *Is the current composition of the National Security Council right and sufficient?*
- (ii) *If the answer to paragraph (i) is in the negative (No), who else should be included or who should be excluded?*
- (iii) *Are there any further issues relating to the National Security Council that the new Constitution should embrace? If so, what are those issues?*

(3)

(o) National Security Service Commission (covering Police, Military, SIS, Prison, NDEA & Fire and Rescue) – Chapters XII & XIV of current Constitution

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

(6)



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(p) Office of Attorney General as Chief Legal Adviser to Government (Cross check Paragraph 10 (xxxiv) below)

- (i) *Should the current system whereby the Office of Attorney General and Minister of Justice constitutes a single office be maintained?*
OR
- (ii) *Should the Office of Attorney General be divorced from the position of Minister of Justice to which political appointment may be made?*
- (iii) *If the answer to paragraph (ii) is in the affirmative (Yes), should the Office of Attorney General be a permanent civil service post and ranked top of the ladder (above or same level as Secretary General)?*
- (iv) *If the answer to paragraph (ii) is in the affirmative (Yes), should the Minister of Justice have legal qualifications?*
- (v) *What functions should the Minister of Justice be able to perform?*
- (vii) *What should be the qualifications and experience for appointment as Attorney General (note that it's currently 5 years of legal practice)?*
- (viii) *Security of tenure – should the Office of Attorney General receive the same level of security of tenure as that of judges?*
- (ix) *If the independent Office of Attorney General is to be established, should provision be made in the new Constitution for the Attorney General to serve as an ex officio member of Cabinet?*
- (x) *[Should the position of Solicitor General and Legal Secretary be established under the Constitution (for consistency with the constitutional references to Permanent Secretary and Judicial Secretary)?]*
- (xi) *[If the answer to paragraph (x) is in the affirmative (Yes), what qualifications and disqualifications should be outlined for the position of Solicitor General and Legal Secretary?]*

(11)

(q) Independent Office of Director of Public Prosecutions (Cross check Paragraph 10 (xxxiv) below)

- (i) *Should an independent Office of Director of Public Prosecutions be established?*



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

(4)

8. Legislature – National Assembly

- (i) *[There is a need to specifically establish the National Assembly within the Constitution.]*
- (ii) *Composition of the National Assembly: it's currently made up of 53 elected members and 5 other members nominated by the President. Should the National Assembly comprise purely of elected members or should space still be allowed for nominated membership?*
- (iii) *If nominated membership of the National Assembly is to be maintained, should that power still vest in the President or is there another mechanism that should be employed?*
- (iv) *If another mechanism for nominated membership is to be employed, what is that mechanism and how is it envisaged to work in a democratic fashion?*

Qualification for Membership

- (v) *Should residence in a constituency or district for a specified period continue to be a valid qualification for election or should being a Gambian be a sufficient qualification?*
- (vi) *If residence is to be maintained as a valid qualification criteria, is the current period of residency requirement of 1 year reasonable or high? If it is high, what period is considered appropriate?*
- (vii) *Should the Constitution be specific on academic qualification as a criterion for eligibility as a candidate to contest election to the National Assembly (current requirement is ability to speak English with a degree of proficiency)?*



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- (viii) *If the answer to paragraph (vii) is in the affirmative, what should the academic qualification be?*
- (ix) *Should there be other qualifications and, if so, what should those be?*

Disqualification for Membership

- (x) *Should dual nationality be a bar to being elected as a Member of the National Assembly?*
- (xi) *Should an independent Member or elected Member lose his/her membership of the National Assembly on account of joining a political party (as an Independent) or a different political party?*
- (xii) *Should a Member of the National Assembly elected on a political party basis who is subsequently expelled from the political party be permitted to join another political party or to declare himself/herself as an independent Member of the National Assembly?*
- (xiii) *Should Members of the National Assembly be empowered to expel from the National Assembly one of their members if found to be in contempt of the House (current provision) or should this power reside with the Speaker? **OR***
- (xiv) *Should they simply be empowered to suspend a Member for a specified period (considering that the Member is elected by the people of his/her constituency)?*
- (xv) *Should there be an upper age limit for membership of the National Assembly?*
- (xvi) *Should there be other qualifications and/or disqualifications and, if so, what should those be?*

Recall of Members of the National Assembly

- (xvii) *Should the Constitution make specific provisions empowering the electorates of a constituency to recall their elected representative, instead of leaving the matter to be dealt with by an Act of the National Assembly?*



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(xviii) *If the answer to paragraph (xvii) is in the affirmative (Yes), what events should trigger the recall of an elected Member of the National Assembly?*

Election of Speaker and Deputy Speaker

- (xix) *Should the Speaker of the National Assembly be elected from amongst the elected Members or should the Speaker be an elected private citizen irrespective of political party affiliation? **OR***
- (xx) *If the Speaker is to be an elected private citizen, should there be a requirement that the Speaker is a non-political party affiliate (that is, not belonging to any political party)?*
- (xxi) *Should the Deputy Speaker of the National Assembly be elected from amongst the elected Members or should the Deputy Speaker be an elected private citizen irrespective of political party affiliation?*

General Election of Members

- (xxii) *Should general elections for National Assembly membership be held at the same time as the election of President or should the current system (as currently provided in the 1997 Constitution), whereby general elections are held at different times from that of President, be maintained?*
- (xxiii) *Should the President be empowered (as is the current position under section 96 of the 1997 Constitution) to declare general election to membership of the National Assembly to be held at a time different from what is provided in the Constitution in the public interest, or should this power vest in a different public functionary (the Supreme Court, for instance, to allow for a better determination of what constitutes the 'public interest')?*

Representation of Marginalised Groups (Women, Youth and Physically Challenged Persons)

- (xxiv) *Should marginalised groups – women, youths and physically challenged persons – be provided with separate and specific opportunities to attain appropriate representation in the National Assembly?*



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- (xxv) *If the answer to paragraph (xxiv) is in the affirmative (Yes), what specific opportunities would you recommend?*
- (xxvi) *If the answer to paragraph (xxiv) is in the affirmative (Yes) and as an example, should a specific number of seats be prescribed to enable only persons of the marginalised group to contest at large on the basis of proportional representation?*
- (xxvii) *If the answer to paragraph (xxvi) is in the affirmative (Yes), what number of seats should be prescribed? **OR***
- (xxviii) *As an alternative, should the new Constitution make provision requiring all political parties to field a percentage of candidates (of the total number they are fielding) from the marginalised group (ensuring a balance in the representation of the group)?*
- (xxix) *If the answer to paragraph (xxviii) is in the affirmative (Yes), what percentage should political parties be required to field?*

Term of the National Assembly

- (xxx) *[In relation to the power of the President to appoint a place (and date) for convening the first session of the National Assembly, should the Constitution prescribe a period within which the first session has to be convened after the holding of general elections?]*
- (xxxi) *[If the answer to paragraph (xxvii) is in the affirmative (Yes), what period should be prescribed?]*
- (xxxii) *Should more pronounced roles be accorded to the Leaders in the National Assembly representing the Majority and the Minority?*
- (xxxiii) *If the answer to paragraph (xxx) is in the affirmative, what should those roles be?*

Language of the National Assembly

- (xxxiv) *Should the Constitution make provision to enable Members of the National Assembly to participate in the proceedings of the National Assembly in any of the local languages (the current Constitution leaves this to be done by an Act of the National Assembly and has never been acted upon)?*

Miscellaneous



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(xxxv) *Are the powers of the National Assembly adequate for its roles in representing the people and having proper and efficient oversight responsibilities?*

(35)

9. *Legislature – Second Chamber of the National Assembly?*

- (i) *Should consideration be given to establishing a Second Chamber of the National Assembly for effective balance in the enactment of legislation and conduct of other affairs of the Legislature and of the country and thus ensuring a balanced check on the Executive?*
- (ii) *If the answer to paragraph (xxxiii) is in the affirmative (Yes), what should be the composition of the Second Chamber and how should it be referred to as?*
- (iii) *Should representation in the Second Chamber of the National Assembly be based on equality of numbers from each Administrative Area (for example, 3-4 from each Administrative Area)?*
- (iv) *Should representation be based on proportional representation (according to the population size of each Administrative Area)?*
- (v) *What should be the qualifications of persons to be elected to membership of the Second Chamber of the National Assembly (for example, tertiary education)?*
- (vi) *What should be the disqualifications that should be applied for election to membership of the Second Chamber of the National Assembly?*
- (vii) *Should there be a minimum age restriction to be able to be nominated to contest election into the Second Chamber of the National Assembly?*
- (viii) *Should there be a maximum age limit for membership of the Second Chamber of the National Assembly?*
- (ix) *What should be the functions of the Second Chamber vis-à-vis the National Assembly (for example confirmation of Ministerial and specific senior public service appointments, independent origination of legislation, confirmation of legislation from the first legislative chamber, impeachment of the President, censor of Ministers and heads of statutory bodies, etc.)?*



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- (x) *Are there any other matters in relation to National Assembly membership that should be considered as part of the constitutional review process?*

(10)

10. Judiciary

Special Criminal Court

- (i) *Should the Special Criminal Court continue to be a specific feature within the Constitution?*
- (ii) *If the Special Criminal Court is to remain as a feature of the Constitution, should the members of the Special Criminal Court be appointed by the President in consultation with the Judicial Service Commission or acting on the advice or recommendation of the Commission?*

Court Martial

- (iii) *The current Constitution does not establish a court martial as one of the courts in The Gambia, but reference is made to a court martial in relation to a decision of that court being appealable to the Court of Appeal. Should specific reference be made to a court martial to be established by an Act of the National Assembly to be conferred with specific functions and powers, with reserve powers to the Chief Justice? If so, what powers should be reserved to the Chief Justice?*

District Tribunals

- (iv) *The District Tribunals form part of the court system in so far as the performance of their judicial function is concerned; however, their members are appointed by the Executive arm of Government. Is this an anomaly, particularly in the context of judicial independence?*
- (v) *If the answer to paragraph (v) is in the affirmative (Yes), should members of District Tribunals (other than the President who is*



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- normally the Chief of the district) be appointed by the Chief Justice acting on the advice of the Judicial Service Commission?*
- (vi) *In view of the establishment of Cadis' Courts, should District Tribunals continue to have jurisdiction to hear Sharia-related matters?*

Cadi Court & Cadi Appeals Selection Committee

- (vii) *Is there a need for the continued existence of the Cadi Appeals Selection Committee or should members thereof be co-opted into the Judicial Service Commission either 'permanently' or whenever a matter is to be decided in relation to the Cadi Court or a Cadi is to be appointed/removed/disciplined?*
- (viii) *In any case, is the current composition of the Cadi Appeals Selection Committee considered to be professionally representative and balanced? If not, what should the composition look like?*
- (ix) *Currently appeals from a Cadi's decision are heard by the Cadi Appeals Panel where the appeal terminates. Should provision be made to enable a further appeal to the Supreme Court?*
- (x) *Should the power granted to the High Court pursuant to section 133 be reformulated so that the power does not extend to decisions of a Cadi Court and a Court Martial, appeal from which should go directly to the Court of Appeal?*
- (xi) *Is the five years post-qualification experience for appointment as Chairman of the Cadi Appeals Panel not too short (same for appointment of Court of Appeal and High Court judges)?*

Election Petitions

- (xii) *Should the Supreme Court be given power to hear all election petitions or should the current status quo whereby the Supreme Court hears only petitions arising from Presidential and Parliamentary elections be maintained?*
- (xiii) *If the current status quo on dealing with election petitions is to be maintained, should the Chief Justice still be required to sit and hear as a Judge of the High Court all election petitions arising from local*



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government elections? If not, how is it preferred that this subject be dealt with?

Power to commit for contempt

- (xiv) *Should the power to commit for contempt be constitutionally reserved for the superior courts only (as the current Constitution appears to provide)?*

Appeals

- (xv) *Should an appeal to the Supreme Court from a Court of Appeal decision requiring leave be restricted to the Court of Appeal or should there be provision enabling an application for leave to be made to the Supreme Court – either as an option or after a Court of Appeal decision on such an application?*
- (xvi) *There is currently provision effectively making an appeal from a High Court as of right. However, in relation to any other court, leave has to be sought from the Court of Appeal. Should this distinction be allowed to continue?*
- (xvii) *Should provision be made in the Constitution specifically making an appeal from a criminal matter as of right (as opposed to making reference to the court of origin of the case to determine whether leave is required)?*
- (xviii) *Should provision be made in the Constitution enabling an appeal from a decision of a Court Martial to be appealed as of right to the Court of Appeal?*
- (xix) *Consideration: Should the right to appeal generally be as of right, without being circumscribed by a requirement to obtain leave?*
- (xx) *In relation to section 24 (9) of the current Constitution which permits a person to elect to be tried by a jury, should this provision be removed in the light of the fact that no election had ever been made for jury trial?****
- (xxi) *Should an appeal at the instance of the AG (DPP) bar the Supreme Court from reversing an acquittal by a court of first instance or reversing a Court of Appeal judgment allowing an appeal against conviction (proviso to section 128 (4))?*



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

- (xxii) *Should the appointment of the Chief Justice by the President be in consultation with the Judicial Service Commission (current) or be in accordance with the advice of the Commission?*
- (xxiii) *Should the Constitution maintain a provision (section 139 (1)) allowing the appointment of a non-Gambian as Chief Justice? If not, should specific provision be made that only a Gambian citizen (other than an honorary citizen) should be appointed as Chief Justice?*
- (xxiv) *Who should nominate the Chief Justice? How should the Chief Justice be appointed to ensure that a qualified independent judge assumes the office of Chief Justice (for example, through confirmation by the National Assembly)?*
- (xxv) *Considering the qualifications set out in section 139 of the current Constitution for appointment as a Supreme Court, Court of Appeal and High Court, judge, is there a case for amending any of the qualifications set out thereunder? If so, what qualifications should be amended and why?*
- (xxvi) *Should the Constitution specifically outline disqualifications for a person being appointed as a judge? If so, what should those disqualifications be?*
- (xxvii) *Should the appointment of other judges of the superior court be made by the President acting on the advice of the Judicial Service Commission or on the recommendation of the Judicial Service Commission (as provided in the current Constitution)?*
- (xxviii) *Is the five years post-qualification experience for appointment as Court of Appeal or High Court judge not too short (same for Chairman of Cadi Appeals Panel)?*
- (xxix) *Should judges be required to vacate office after a specified age (currently 75) or should they be permitted to continue serving so long as they are medically fit if so certified?*
- (xxx) *Should judges be permitted to retire on their salary (to constitute their pension), as is the case in some countries, as a measure of preserving the integrity of judges and judicial service whereby retired judges may not be justified in seeking other employment?*



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

Judicial Service Commission

- (xxxiv) *Should the mandate of the Judicial Service Commission be expanded to include the appointment, removal and discipline of persons in positions that require legal qualifications (being the body with the requisite skills to make such determinations)? This will extend to all legal staff positions in the AGC&MOJ, Legal Aid, Law Reform Commission, etc.*
- (xxxv) *If the answer to paragraph (xxxiv) is in the affirmative (Yes), should the name be changed to Judicial and Legal Service Commission or other name?*
- (xxxvi) *Is the composition of the Judicial Service Commission as currently provided in the Constitution sufficient and balanced?*
- (xxxvii) *If the answer to question (xxxvi) is in the negative (No), what should the composition look like?*
- (xxxviii) *The current Constitution provides for the renewal of appointment of members of the Judicial Service Commission after the end of tenure of their office (3 years). Should there be a cap on the number of terms a person can serve as member of the Judicial Service Commission?*
- (xxxix) *Should the National Assembly be involved in confirming the appointments and removal of Judicial Service Commission members by the President (as is currently the case)?*

Miscellaneous



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- (xl) *[Should the Constitution continue to embody provision setting periods within which judicial decisions must be rendered (section 124), considering that in practice (especially with the Supreme Court sitting in sessions) various factors could make timely delivery of decisions impractical (notwithstanding the safeguard regarding the validity of judicial decisions in section 124 (3))?)]*
- (xli) *[With the Supreme Court now fully established, there's need to amend the language of section 125 (1) of the Constitution?]*
- (xlii) *[In relation to the specific jurisdiction of the Court of Appeal, should specific provision be made extending the jurisdiction to include adverse findings by a commission of inquiry (notwithstanding that section 204 permits one to appeal to the Court of Appeal against an adverse finding)?]*
- (xliii) *Should the qualifications for appointment as Judicial Secretary be specified in the Constitution and, if so, what should make up those qualifications?*
- (xliv) *[Would you agree that provisions of the Constitution that relate to judicial procedure should be dealt with through Rules of Court to allow for greater flexibility to effect necessary reforms from time to time?]*

(44)

11. Public Finance

Taxes and Budget Estimates

- (i) *In relation to the waiver of taxes, where an enactment empowers a public functionary to impose or waive taxes by way of an Order, Regulations or otherwise, should provision be made that such Order, Regulations or other subsidiary legislation be subject to the approval of the National Assembly?*
- (ii) *Is 14 days (as provided in the current Constitution) not too short for the National Assembly to properly and effectively consider the annual estimates laid before it?*
- (iii) *If 14 days is too short, what should be the appropriate period (if any) to allow proper and effective debate?*



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- (iv) *Is 7 days (as provided in the current Constitution) not too short to require the National Assembly to consider and pass an Appropriation Bill, after the Bill has been introduced?*
- (v) *If 7 days is too short, what time frame (if any) should be prescribed?*
- (vi) *Should the Government be allowed to grant loans from public funds (as currently provided in the Constitution)?*

Office of Auditor General and Audit

- (vii) *Are current security of tenure provisions for the Auditor General sufficient – is there a case for the same security of tenure as is available with regard to judges?*
- (viii) *Are there additional measures required to ensure greater transparency in audit exercise and publication of audit reports?*
- (ix) *The National Assembly is required to debate audit reports – are the current provisions adequate and clear on such an obligation?*
- (x) *Should the qualifications/disqualifications and experience of the Auditor General be specified in the Constitution in defined (rather than general) terms?*
- (xi) *Should the appointment of the Auditor General by the President not be in accordance with the advice of the Public Service Commission, instead of after the President consulting the Commission? What appropriate checks and balances should be put in place?*
- (xii) *Should the salary/allowance guarantees accorded to superior court judges whereby such salary/allowance cannot be altered without consent of the office holder be extended to other offices (such as Auditor General, Ombudsman, Director of Public Prosecutions, Attorney General, Chief of Defence Staff, Inspector General of Police, Director General State Intelligence Service, Chairman IEC and Chairman HRC)?*
- (xiii) *Should the National Assembly be empowered in the Constitution to enact legislation to protect persons in the public service, including those within the private sector, who report financial wrongdoings?*
- (xiv) *What other measures are necessary and justified to prevent the abuse and misuse of public funds that should be considered in the new Constitution?*

Central Bank of The Gambia



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- (xv) *Should the Board of the Central Bank of The Gambia be appointed by the President in consultation with the Public Service Commission (as is currently provided in the Constitution) or should the President effect the appointment acting on the advice of the Public Service Commission or other independent institution?*
- (xvi) *In any case, should the appointment of the Governor of the Central Bank be subject to National Assembly approval?*
- (xvii) *Should the Constitution make specific provision with regard to the qualifications and disqualifications of the Governor of the Central Bank?*
- (xviii) *Should the Constitution make specific provision with regard to the qualifications and disqualifications of the other directors of the Board of the Central Bank?*
- (xix) *Should the security of tenure of the Governor of the Central Bank be specified in the Constitution to be akin to the security of tenure outlined for judges, for instance?*
- (xx) *Should the other members of the Board of the Central Bank be similarly protected for their term in office akin to other superior court judges?*
- (xxi) *The current Constitution appears to permit a director of the Board of the Central Bank (other than the Governor) to conduct business with the Central Bank provided that the director declares his/her interest and abstains from participating in the meeting at which the interest is a subject of discussion. Does this provision accord with good governance, considering the potential for conflict of interest?*
- (xxii) *If the answer to paragraph (vii) is in the negative (No), what would you suggest as a measure of good governance that should be adopted?*

(22)

12. Land and the Environment

Land Commission



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- (i) *Should the Constitution be more explicit in establishing the Land Commission (section 192 merely states that there “shall be established a Land Commission whose composition, functions and powers shall be prescribed by an Act of the National Assembly”)?*
- (ii) *Should this Chapter of the Constitution be more expansive to include identifying the composition, functions and powers of the Commission?*
- (iii) *If the answer to paragraph (ii) is in the affirmative (Yes), how should the Commission be composed and what should constitute its functions and powers?*
- (iv) *What security of tenure should be accorded to members of the Land Commission to ensure their independence?*
- (v) *Should the role of the Land Commission be expanded to include oversight with respect to integrated land, natural resources and environment preservation to ensure systemic and responsible management and protection?*

Land, Environment and Natural Resources

- (vi) *Should specific provision be made in relation to land ownership in The Gambia as between citizens and non-citizens?*
- (vii) *If the answer to paragraph (v) is in the affirmative (Yes), what would you like to see in relation to land ownership in The Gambia?*
- (viii) *What measures should be considered as a mechanism for the adequate protection, conservation, management and sustainable use of The Gambia’s natural resources?*
- (ix) *What specific provisions would you recommend as adequate measures to protect and preserve The Gambia’s environment and ensure clean air?*
- (x) *What other measures do you consider to be sufficiently important to warrant inclusion in the new Constitution in relation to the Land Commission, land ownership and use, and the protection and preservation of The Gambia’s environment and natural resources?*

(10)

13. Ombudsman, Anti-corruption Commission and Human Rights Commission



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- (i) *Should the Office of Ombudsman be established under the Constitution and thus accorded constitutional status, instead of having it established through an Act of Parliament (as is currently the case)?*
- (ii) *Should the appointment of the Ombudsman be prescribed in the Constitution?*
- (iii) *If the answer to paragraph (ii) is in the affirmative, should the qualifications and disqualifications of the Ombudsman be prescribed in the Constitution? If so, what should those qualifications and disqualifications be?*
- (iv) *Should the Human Rights Commission function with a panel of qualified and competent individuals whose appointment is prescribed in the Constitution?*
- (v) *If the answer to paragraph (iv) is in the affirmative (Yes), what should be the number of panelists that should be appointed and what qualifications and disqualifications should be prescribed in their case?*
- (vi) *The 1997 Constitution empowers the President to appoint the Ombudsman and his or her deputies in consultation with the Public Service Commission, subject to confirmation by the National Assembly. Does this provide an adequate check and balance to ensure the independence of the Office of Ombudsman? Please provide reasons for your answer?*
- (vii) *While the National Assembly can reject the President's first nominee for the Office of Ombudsman, it cannot reject the President's second nominee. Is this a reasonable constraint on the National Assembly's power to confirm a suitable candidate for the Office of Ombudsman?*
- (viii) *If the answer to paragraph (vii) is in the negative (No), what would you suggest may be a fair balance to ensure that the Office of Ombudsman is occupied by a suitably qualified person?*
- (ix) *Should there be a term limit for occupying the Office of Ombudsman, panel member of the Human Rights Commission and Chief Executive of the Anti-corruption Commission (for example, maximum of two five year terms)?*
- (x) *Should the functions of the Ombudsman, Human Rights Commission and Anti-corruption Commission be prescribed fully in the Constitution (by, for example, transposing the additional functions*



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- contained in the Ombudsman Act and Human Rights Commission Act [and any new Anti-corruption Act] into the Constitution)?*
- (xi) *Should the function of the Ombudsman extend to investigating corruption and human rights issues (as currently provided) or should this authority be reposed in an independent Anti-corruption Commission and Human Rights Commission respectively?*
 - (xii) *If the answer to paragraph (xi) is in the affirmative (Yes), should the Anti-corruption Commission and Human Rights Commission be established under the Constitution and provided with all the necessary constitutional protections to function efficiently and effectively?*
 - (xiii) *Should the Office of the Ombudsman have jurisdiction in relation to the security service?*
 - (xiv) *Furthermore, should the function of the Ombudsman be restricted to matters of maladministration in Government?*
 - (xv) *Should the exercise of powers by the Ombudsman be restricted to undertaking investigations and making recommendations to the relevant Government authorities to address?*
 - (xvi) *Should the Human Rights Commission be accorded quasi-judicial powers? If so, what should those powers be?*

(16)

14. National Youth Service

- (i) *In the light of the manner in which the National Youth Service Scheme operates compared to how it was envisaged under the 1997 Constitution, should National Youth Service be a feature of the new Constitution?*
- (ii) *If National Youth Service should be a feature of the new Constitution, should it be made compulsory (as currently provided)?*
- (iii) *Should there be evidence of service in the national youth scheme as a condition of employment in the public service (as currently provided)?*

(3)

15. National Council for Civic Education



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- (i) *Should the National Council for Civic Education (NCCE) be specifically established in the Constitution?*
- (ii) *Is the NCCE adequately empowered under the current Constitution to perform its functions in an efficient and effective manner?*
- (iii) *If the answer to paragraph (ii) is in the negative (No), what measures would you suggest should be adopted to ensure that the NCCE plays a more effective functional role in creating awareness of constitutional matters amongst the wider Gambian society, thus ensuring citizens' ownership and defence of the Constitution?*
- (iv) *Are there any additional measures that are considered relevant and necessary in relation to the NCCE for inclusion in the new Constitution?*

(4)

16. Public Enterprises

- (i) *Should the President be the authority to appoint the chief executive of a public enterprise (as is currently the case under section 175 (3) of the 1997 Constitution, but after consultation with the Board of Directors)? **OR***
- (ii) *Should such an appointment power be reserved for the Board of Directors only?*
- (iii) *If appointment of the chief executive of a public enterprise is to be carried out by the Board of Directors, should specific provision be made requiring a vacancy in the Office of a Chief Executive to be advertised publicly to secure the service of a suitably qualified candidate?*
- (iv) *Should the Public Service Commission have any jurisdiction to provide a public enterprise with guidelines on personnel matters (as is the case under the current Constitution) or should this be left to the public enterprise to determine?*
- (v) *Should chief executive officers of public enterprises be subject to confirmation by the National Assembly (through a Select Committee, for example) before they can be appointed to assume office?*
- (vi) *If the response to paragraph (v) above is in the affirmative (Yes) and considering that the Board of Directors of the public enterprise is*



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- appointed by the President, should the Constitution provide security of tenure for chief executive officers of such public enterprises?*
- (vii) *As a measure of good governance, should public enterprises be required, in addition to preparing and providing an annual report to the National Assembly, to publish their audited accounts in the Gazette and on their website on an annual basis, providing a breakdown on income and expenditure?*
- (viii) *Should specific provision be made in the Constitution that the Chief Executive of a public enterprise shall automatically stand dismissed if there is a failure, within a specified period (say 6 months) of the end of each financial year, to provide the National Assembly with the annual report, or to publish the accounts, of the public enterprise, unless the failure to do so is determined to lie with the Board of Directors?*
- (ix) *Should specific provision be made in the Constitution that the Board of Directors of a public enterprise shall automatically stand dismissed if there is a failure, within a specified period (say 6 months) of the end of each financial year, to provide the National Assembly with the annual report, or to publish the accounts, of the public enterprise, unless the failure to do so is determined to lie with the Chief Executive not providing the Board with the audited accounts?*
- (x) *Are there other measures by which public enterprises can be held accountable to ensure good governance and the good administration of public property?*

(10)

17. Reasons for Adverse Decisions

- (i) *As part of the process of promoting good governance and good government, should the new Constitution make specific provision requiring persons and authorities with the power to take adverse decisions against public officers to formally state their reason or reasons for the adverse decision to the person against whom such decision is made?*

(1)



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TOTAL ISSUES FORMULATED = 369

18. *Preamble* [To be determined during the drafting of the new Constitution]
19. *Sovereignty* [To be determined during the drafting of the new Constitution]
20. *Entrenchment* [To be determined upon the drafting of the new Constitution]
21. *Transitional Provisions* [To be determined upon the drafting of the new Constitution]