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EXPLANATORY NOTE ON SOME OF THE MAIN CLAUSES OF THE GAZETTED 2024 DRAFT CONSTITUTION

NO.	PART/CHAPTER/CLAUSE OF THE CRC 2020 DRAFT	ACTION	REMARKS
1.	Chapter I - The Republic and Sovereignty of the People Clause 1(1)	- No action was taken regarding section.	- CRC concluded that the Draft Constitution adequately provides the characteristics of a secular State without the use of the word "secular" and it was therefore appropriate that the word is not used.

2.	<p>Clause 4(2): National Symbols (Flag)</p>	<p>The 2020 Draft states that the “National Flag” shall be the one in existence immediately before ...</p> <p>The 2024 Draft went further to describe the dimensions of the flag in a scheduled as done in section 3(1) of the current (1997) constitution.</p>	<p>Schedule 1:</p> <p>The National Flag of The Gambia shall be a flag of the following design:</p> <ul style="list-style-type: none"> - The flag shall measure twenty-seven units across and eighteen units down. - It shall be divided into horizontal stripes which shall have the following Colours and dimensions from the top to the bottom: <ul style="list-style-type: none"> ▪ Red- six units one third ▪ White- one unit ▪ Blue- four units one third ▪ White- one unit ▪ Green- six units one third.
3.	<p>Chapter IV - Citizenship Clause 14, 15 and Clause 16</p>	<ul style="list-style-type: none"> - The 2020 Draft appears to eliminate citizenship by descent and all citizens by descent to automatically become citizens by birth. - The 2024 Draft deleted clauses 14 and 15 of the 2020 Draft and replaced them with sections 8, 9 and 10 of the current (1997) constitution. - Additionally, clause 16 (citizenship by registration) of the 2020 Draft was amended to prescribe, among other things that marriage should subsist when a person applies to be registered as a Gambian and The Gambian spouse must consent to the application. 	<ul style="list-style-type: none"> - For clarity and simplicity, the revised 2024 draft provides a more straightforward and clearer definition of citizenship by simplifying the categories of citizenship. - The 2020 draft citizenship clause allowed for individuals who have been married to a citizen of The Gambia for at least five years to be registered as a citizen. The 2024 draft has increased the requirement to at least ten years of marriage before being eligible for citizenship. - The rationale behind this change is to ensure that the marriage is longstanding and stable before granting citizenship. A ten-year marriage is more likely to demonstrate a genuine commitment to The Gambia and its citizens, as opposed to a shorter five-year marriage. This could help prevent cases of individuals marrying solely for the purpose of obtaining citizenship. - Additionally, the 2024 draft now includes a requirement for the Gambian spouse to consent to the application for citizenship. This ensures that both parties are in agreement and supportive of the decision to apply for

			<p>citizenship, further strengthening the ties between the applicant and The Gambia.</p> <ul style="list-style-type: none"> - Overall, the 2024 draft aims to promote a higher standard for granting citizenship through marriage, ensuring that the process is fair, transparent, and importantly, based on long-term commitment and mutual consent. This change reflects a more thoughtful and comprehensive approach to citizenship registration, aligning with the values of integrity and respect for the institution of marriage. - Regarding Dual Citizens running for or occupying public offices such as President, Minister or Member of the National Assembly: - It is stated at paragraph 195 of the CRC on the draft constitution that 51.3% of Focused Group Discussion participants said Gambians with dual citizenship should give up their foreign citizenship before they are allowed to contest elections in The Gambia. - The main reason for this position is that many felt that this requirement was important to prevent conflicts of interest and divided loyalties in relation to The Gambia and other countries. - According to the CRC in its report at paragraph 181, “most of the position papers called for reducing the requirement for residency in The Gambia, following marriage with a citizen, from the 7 years to 5 years or even 3 years. In contrast, 78.9% of participants in the IPCs, 63.5% of FGD participants, 70.1% of PPP respondents, and 73.6% of HS respondents all agreed that 7 years was an adequate length of time to allow to elapse before granting people citizenship based on marriage.”
4.	Chapter V - Leadership and Integrity	- The 2020 Draft provides a chapter on leadership and integrity outlining the	- While the chapter on Leadership and Integrity in the 2020 draft constitution may be well-intentioned and necessary for promoting good governance, such

		<p>framework for the behaviour and responsibilities of public officers.</p> <ul style="list-style-type: none"> - The 2024 Draft deleted the entire chapter (clause 23 to 30). 	<p>provisions may also be too detailed and prescriptive for inclusion in a national constitution.</p> <ul style="list-style-type: none"> - Although it is important to emphasize the principles of transparency, accountability, and integrity in public service, the specificity of certain provisions, such as the restrictions on the activities of public officers and obligations of persons dealing with public officers, may be challenging to implement and monitor effectively. - The inclusion of such detailed provisions in a national constitution may limit flexibility and the ability to adapt to changing circumstances. - It is more appropriate for these aspects to be addressed in legislation or regulations rather than being enshrined in the constitution. - Additionally, the consequences outlined in clause 29 of the 2020 Draft for contraventions of the provisions are quite severe, with lifetime disqualification for public officers and terminations. The severity of these punishments is disproportionate. - It has been resolved that it is more practical to address these aspects through legislation or regulations that can be more easily amended and enforced. - Furthermore, the preamble and clause 2 of the 2024 Draft effectively replicate the essence and purpose of the chapter.
5.	Clause 34: Enforcement of fundamental human rights and freedoms	<ul style="list-style-type: none"> - The 2020 Draft Clause 34 provide a broader scope for the enforcement of fundamental human rights as it allows for a wider range of persons to bring court proceedings. - The 2024 Draft replaces clause 34 with clause 26 of the Draft Constitution to reflect section 37 of the 1997 Constitution, and specifically mentions 	<ul style="list-style-type: none"> - In terms of implementation and responding to possible law suits, clause 34 of the 2020 Draft will be more problematic for the government. This is because Clause 34 allows for a broader range of individuals and groups to institute court proceedings, including those acting on behalf of others, in the public interest, or as part of an association.

		<p>certain sections of the Constitution that are relevant to the enforcement of rights and gives more detailed procedures for bringing applications to the High Court</p>	<ul style="list-style-type: none"> - This could lead to high number of court cases being brought against the government, potentially putting a strain on the judicial system and government resources. - The provision retained from the 1997 Constitution offers safeguards to protect against claims that impede justice. This provision is important because it prioritises the careful and deliberate use of judicial resources, a consideration that is particularly important to the Government following the current preponderance of cases within the judiciary. - While inclusivity in cases related to violation of fundamental human rights is of paramount importance, it is equally important to recognise that a broad-based approach to litigation could further strain the already overburdened court system. Through this provision, the Government aims to strike a balance between ensuring the promotion and protection of human rights and preserving the efficient administration of justice.
6.	<p>Chapter VI - Protection of Personal Liberty</p> <p>Clause 39(4)(f)(i) & (ii)</p>	<ul style="list-style-type: none"> - The 2020 Draft proposed 48 hours detention period by the police. - The 2024 Draft retains the current 72 hours. 	<ul style="list-style-type: none"> - Maintaining police detention powers at 72 hours allows law enforcement agencies adequate time to thoroughly investigate and gather evidence in complex cases before deciding whether to charge an individual or release them. - Reducing the detention period to 48 hours could limit the ability of law enforcement to conduct a comprehensive investigation and may compromise their ability to protect public safety effectively. - A shorter detention period may also hinder the ability of law enforcement to effectively question suspects and obtain critical information in a timely manner, potentially

			<p>impeding their ability to prevent future crimes or identify potential threats to public safety.</p> <ul style="list-style-type: none"> - Reducing detention powers to 48 hours may result in increased pressure on law enforcement agencies to make hasty decisions regarding charging or releasing suspects, which could compromise the integrity of the investigative process and lead to mistakes or wrongful convictions. - While protecting individual rights to personal liberty is important, it is essential to strike a balance with the need to safeguard public safety and ensure that law enforcement agencies have the necessary tools and time to carry out effective investigations. - Maintaining a 72-hour detention period allows for this balance to be maintained, ensuring that the rights of both individuals and the public are respected and protected.
7.	Clause 47(2)(a): Right to own and operate media	<ul style="list-style-type: none"> - The 2020 Draft provides for the right to natural or juristic persons to own and operate media. - The 2024 Draft limits the right to own and operate media to only Gambians whether natural or juristic. 	<ul style="list-style-type: none"> - In the context of a small nation like The Gambia, restricting media ownership to citizens helps promote national security, preserve cultural integrity, ensure economic gains for locals, build public trust, and enhance regulatory efficiency. - Overall, confining the ownership and operation of media houses to Gambians is a measure to protect the national sovereignty of The Gambia. It will also ensure that media reflect and promote local content from a balanced and objective view, then report news about The Gambia from an indigenous perspective. The Government also believes that this provision will promote economic empowerment by creating opportunities for Gambians to invest in the media sector.

8.	Clause 47(5)	<ul style="list-style-type: none"> - The Draft 2020 provided that <i>“the State shall not penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.”</i> - The 2024 Draft deleted this paragraph. 	<ul style="list-style-type: none"> - While freedom of expression is a fundamental right, its exercise must be balanced against other important societal needs, such as preventing harm, ensuring social cohesion, combating misinformation, upholding professional standards, protecting public safety, and maintaining national security. - This clause could be seen as overly broad, potentially protecting harmful speech such as hate speech, incitement to violence, or defamation. - In a democratic society, it is crucial to balance freedom of expression with the need to protect individuals and groups from speech that can incite harm, discrimination, or violence. - Removing this clause allows the state to enact and enforce laws that address and mitigate such risks. - The clause could potentially hinder efforts to combat misinformation and disinformation, which can have serious consequences for public health, safety, and democracy. - In an era of rapid information dissemination, it is important for the state to be able to address the spread of false or misleading information that can cause panic, public disorder, or undermine democratic processes. - Professions such as journalism have ethical standards that need to be upheld to maintain credibility and public trust. Without the ability to enforce penalties, there may be little recourse against media professionals who violate these standards.
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9.	<p>Clause 50: Freedom of Assembly</p>	<ul style="list-style-type: none"> - Clause 50 of the 2020 Draft provides that; <i>“Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities or private institutions.”</i> - The 2024 Draft deleted and replace it with clause 42 which is a replica of section 25(1)(d) together with section 25(4) of the 1997 Constitution. 	<ul style="list-style-type: none"> - This is informed by the need to balance the protection of rights and public interests. Clause 42 of the 2024 Draft explicitly acknowledges the importance of balancing individual rights with broader societal needs. While it protects the freedom of assembly and demonstration, it also allows for necessary restrictions in cases where such freedoms might jeopardize national security, public order, or other critical societal values. - On the other hand, clause 50 of the 2020 Draft provides broad and somewhat unchecked rights without explicitly considering the potential need for restrictions in certain circumstances, which could lead to situations where public safety or national security might be compromised. - The ability to impose "reasonable restrictions" is critical in a democracy, where the exercise of one person's rights should not infringe on the rights of others or threaten the stability of the nation. - This approach provides the clarity and legal precision that will prevent arbitrary enforcement. The provision

			<p>also aligns with international standards such as the rights recognised by the International Covenant on Civil and Political Rights (ICCPR).</p> <ul style="list-style-type: none"> - The provision under Draft Constitution of the CRC, 2020 (“the CRC Draft Constitution”) does not sufficiently provide the necessary safeguards to address potential the risks to public safety and order. Neither does it establish guidelines to stabilise individual freedoms with the collective needs of society, on the proverbial scale of justice. Invariably, this portends challenges in maintaining peace and respect for cultural norms. The new provision, therefore, offers a more comprehensive and practical framework that will secure the right to peaceful without impeding the broader interests of the nation.
10.	<p>Clause 54: Right to marry and found a family</p>	<ul style="list-style-type: none"> - The 2020 draft provides for the rights to marry and found a family. - The 2024 Draft maintains that but added a new paragraph to clarify the definition of marriage: <i>“Marriage shall be recognised solely as a union between a man and woman and, no other union shall be legally recognised or construed as equivalent to marriage.”</i> 	<ul style="list-style-type: none"> - This is meant to emphasise the clear meaning of marriage in The Gambia. The new sub-section (2) provides clarity in the legal recognition of marriage within The Gambia as a union between a man and a woman. This reflects the cultural and religious values prevalent in The Gambia. - By explicitly stating that no other union shall be legally recognised or construed as equivalent to marriage, the provision seeks to preserve these values and prevent legal ambiguities that could arise from the recognition of alternative forms of unions. This is significant in order to maintain social cohesion and align the Constitution with the beliefs and practices of the majority of Gambians.

11.	<p>Clause 56(1)(a)</p> <p>Child right</p>	<ul style="list-style-type: none"> - The 2020 Draft provides a straightforward and simpler fundamental identity rights of the child. - The 2024 Draft deleted and replaces it with new elaborate clause from the 1997 constitution (section 29(1)). 	<ul style="list-style-type: none"> - While both clauses aim to ensure that every child receives essential identity rights from birth., Clause 48(1)(a) of the 2024 Draft provides much more detail and scope, providing safeguards under legislation favouring the child's best interests, thus encompassing parental care responsibly.
12.	<p>Clause 57</p> <p>Right to education</p>	<ul style="list-style-type: none"> - Clause 57 of the 2020 Draft has been deleted and replaced with clause 49 in the 2024 Draft, effectively deleting “and secondary” from 57(2)(a)’. - The 2024 Draft also added “numeracy” to “functional literacy” in clause 57(2)(d). 	<ul style="list-style-type: none"> - This is to maintain the status quo where basic education is free, compulsory and accessible. - Furthermore, the provision was amended to include both literacy and numeracy, highlighting their importance as basic skills for all citizens. Numeracy measures in importance with literacy and both subjects are necessary for daily living. Moreover, they equip people with the skill set to manage tasks such as budgeting and understanding information. The express inclusion of numeracy in the provision ensures that citizens are prepared to engage effectively in society and the economy. This provision equally underpins the fact that basic education is pivotal in enhancing further learning and economic participation. - The Government is constrained to prioritise free basic education to basic school rather than extend it to both basic and senior secondary education. The constraint is imposed by the resources at the disposal of the Government. Imperatively, Government must aspire to guarantee that every child completes the most critical years of schooling by using available resources to realise that aspiration.

			<ul style="list-style-type: none"> - This does not undermine the importance of providing free secondary education if limited resources did pose a formidable constraint. Nevertheless, by focusing on basic education and progressively expanding access to higher levels of education, the provision sets a realistic path toward universal education, ensuring that the most essential stages of learning are accessible to all.
13.	<p>Clause 65: Consumer Protection</p>	<ul style="list-style-type: none"> - The 2024 Draft deleted the entire clause 65 dealing with consumer protection. 	<ul style="list-style-type: none"> - Gambia already has a dedicated Consumer Protection Act and an established Commission to enforce consumer rights. - Including consumer protection rights in the constitution, particularly Clause 65(2), which applies to goods and services offered by public entities, could expose public enterprises (PEs) such as the national water and electricity company, transport corporations, and the Ports Authority to a heightened risk of litigation. The constitutional provision would elevate consumer rights to a constitutional level, potentially increasing the number of lawsuits filed against these entities for perceived breaches of consumer rights. - Public enterprises, especially those providing essential services like water, electricity, and transportation, operate under unique challenges and constraints. Subjecting them to constitutional litigation could lead to a surge in legal cases, diverting resources and attention away from their primary function of providing essential services to the public. It could also result in increased operational costs due to litigation, which might ultimately be passed on to consumers through higher prices or reduced service quality.
14.	<p>Clause 70(4): Extension of Public Emergency</p>	<ul style="list-style-type: none"> - The 2024 Draft deleted and replace “sixty days” with “ninety days”. 	<ul style="list-style-type: none"> - Government does not see the need to reduce the current 90 days to 60 days.

15.	<p>Clause 70(7)</p> <p>Jurisdiction of the Supreme Court to decide the validity of a declaration of a state of public emergency</p>	<p>The 2024 Draft deleted the entire clause 70(7).</p>	<ul style="list-style-type: none"> - The clause provides the Supreme Court with the authority to decide on the validity of declarations of state of public emergency, extensions of such declarations, and any legislation or actions taken in consequence. However, given that the National Assembly already exercises oversight on the process of declaring a state of emergency, the implementation of this clause in the draft constitution poses several potential challenges. - This clause introduces the possibility of conflict between the judiciary (Supreme Court) and the legislature (National Assembly). When both have overlapping oversight authority, disagreements over the validity of emergency declarations could arise, leading to institutional friction. - National Assembly oversight could be undermined if the Supreme Court has the ultimate say on the validity of its decisions concerning state emergencies. This might be perceived as diminishing the legislative branch's power and affecting the balance of power within the government. - The necessity of judicial approval for declarations and extensions of states of emergency could slow down government response time during crises, as each step might require legal validation. This might delay expedited governmental response in genuine emergencies. - Legal challenges against emergency declarations introduced substantively might deter governments from taking swift and necessary actions during emergent situations. - Consideration could be given towards enhancing existing National Assembly oversight mechanisms instead of introducing a parallel oversight provision in the form of this clause within the 2020 draft constitution.
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16.	Clause 71(3)(c): Derogations from fundamental human rights under emergency powers	<ul style="list-style-type: none"> - The 2024 Draft deleted “and forced labour”. 	<ul style="list-style-type: none"> - This provision conflicts with clause 40(3) where certain derogation of “forced labour” is allowed under certain circumstances such as emergencies.
17.	Clause 75(1)(d) The right to be registered and to vote	<ul style="list-style-type: none"> - The conviction of an election offence within the past 5 years deleted. 	<ul style="list-style-type: none"> - This deletion reflects a commitment to rehabilitation and reintegration rather than prolonged punishment. Disenfranchising individuals for protracted periods after they have served out their sentence may be viewed as unduly excessive and capable of undermining the ability of the individual to be reintegrated into society. The Government reaffirms its principles that an individual who has served out a custodial sentence, should regain the full rights of a citizen including the right to vote. The right to vote is fundamental in a democratic society. This approach also promotes inclusivity and encourages former offenders to participate positively in the democratic process.
18.	Clause 75(3) Voter registration	<ul style="list-style-type: none"> - The 2020 Draft provides for “continuous” voter registration. - The 2024 Draft replace “continuous” with “periodic and supplementary”. 	<ul style="list-style-type: none"> - It is acknowledged that continuous voter registration promotes inclusivity and continuous updates, but the benefits come at huge operational and financial costs that may pose serious challenges to the state’s capacity. - On the other hand, the current system of periodic and supplementary voter registration offers much more controlled, efficient, and cost-effective methods to maintain the electoral roll, ensuring the system remains manageable, accurate, and financially sustainable.

19.	Clause 79(4) Time within which electoral laws can be changed prior to elections	<ul style="list-style-type: none"> - The 2020 Draft provides that ... the NA shall not amend, repeal or introduce any law in relation to elections within a period of nine months before elections. - The 2024 Draft replaced “nine” with “six” to read “six months before elections...” 	<ul style="list-style-type: none"> - Six months is the standard in the sub-region which should be maintained. - ECOWAS Protocol on Democracy and Good Governance provides thus: <i>“No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors.”</i>
20.	Clause 81(3): Appointment of the members of the Independent Boundaries and Electoral Commission.	<ul style="list-style-type: none"> - The 2020 Draft requires NA confirmation of appointments with 60 majority. - The 2024 Draft replace with section 42(3) of the current (1997) constitution. 	<ul style="list-style-type: none"> - National Assembly confirmation of Presidential appointment of IBEC members have been removed from this clause and wherever it applies. - The replacement of this provision reverts to a more streamlined and centralised procedure for appointment. - The bureaucracy of confirmation by the National Assembly portends undue bottlenecks in providing prompt and quality electoral administration due to delay in appointing members of the IEBC. Reverting to the procedure under the 1997 Constitution, ensures that appointments can be made more efficiently by consulting statutory independent bodies in a manner that guarantees sufficient checks and balances through consultation with key independent bodies.
21.	Clause 83(1): Electoral boundaries	<p>Schedule 3 is amended thus:</p> <ul style="list-style-type: none"> - 53 single member constituencies - 7 women representing each administrative area - Seats will be allocated to political parties that contested the National Assembly elections as proportionate to the number of votes received by each party. 	<ul style="list-style-type: none"> - The affirmative female representation in the NA has been reduced to 7, and their mode of election changed from direct election to indirect elections based of proportional representation. - The 5 NA members nominated by the President which was removed under the 2020 Draft has been restored, and a recall process for the nominated members also specified.

		<ul style="list-style-type: none"> - 2 persons elected by persons with disabilities - 5 persons nominated by the President from among the private sector, civil society and other constituencies which may otherwise have not been represented in the National Assembly. 	<ul style="list-style-type: none"> - This practice has been part of The Gambia's democracy since independence. By continuing a well-established practice, The Gambia preserves the integrity of its democratic traditions and avoids abrupt changes that may confuse or destabilize political structures. - It ensures that the voice of underrepresented groups and constituencies, which may not have significant electoral power, is included in legislative processes. Small business owners, nonprofit leaders, and minority community representatives may otherwise be underrepresented in a purely elected assembly. - Including nominees from varied backgrounds introduces different experiences and viewpoints, enriching policy discussions and debates. - This practice fosters an inclusive assembly that reflects all societal segments such as representatives from minority ethnic groups, not just those with electoral majorities.
22.	Clause 83(2): Periodic review of the number, names and boundaries of electoral constituencies	<ul style="list-style-type: none"> - The 2024 Draft added National Assembly oversight in respect of constituency and other boundary demarcations by the Independent Boundaries and Electoral Commission. 	<ul style="list-style-type: none"> - National Assembly oversight is a necessary safeguard in this important process of constituency demarcation.
23.	Clause 84(2)(j) and (k) Political parties	<ul style="list-style-type: none"> - The 2020 Draft provides for the political parties to declare to the public their revenues and assets, and the sources of those revenues and assets. - The 2024 Draft deleted that paragraph and replace with section 60(3) of the current (1997) constitution. 	<ul style="list-style-type: none"> - The matter of political parties declaring their revenues, assets, and sources should be addressed through an Act of the National Assembly, which will provide the necessary provisions for the effective implementation of this requirement. - The deletion of these requirements reflects a shift towards a more flexible regulatory framework for political parties. It also aims to reduce administrative overheads while still ensuring accountability through other means, such as regular reporting to the electoral commission.

			<ul style="list-style-type: none"> - Granted that the importance of transparency needs to be reiterated, the Government recognises that overly stringent requirements could place undue burdens on political parties, particularly smaller ones. The existing legal framework provides sufficient mechanisms to monitor party finances.
24.	Clause 84(5): Political parties	<ul style="list-style-type: none"> - The 2020 Draft prohibits political parties from receiving foreign donations. - The 2024 Draft deleted this restriction. 	<ul style="list-style-type: none"> - While it is important to safeguard national sovereignty, the Government recognises that political parties may receive legitimate support from international partners. Deleting this provision allows for more flexibility in political funding, provided that all contributions are transparent and compliant with existing laws. Instead of an outright ban, the focus is to ensure that such contributions do not compromise national interests.
25.	Chapter VIII – The Executive Clause 88(1)(m): Powers of President	<ul style="list-style-type: none"> - The 2020 Draft omitted the President’s authority to deploy troops abroad, - The 2024 Draft provides for it by inserting “deploy troops outside The Gambia” immediately after “war” to read – ‘to declare war, deploy troops outside The Gambia and make peace;’ 	
26.	Clause 88(4): National Assembly confirmation or approval of Presidential appointments	<ul style="list-style-type: none"> - The 2020 Draft in this clause provides for one half majority for any NA confirmation/approval of presidential appointment where no other majority is provided. - The 2024 Draft deleted the clause entirely 	<ul style="list-style-type: none"> - The confirmation process is considered cumbersome. As a result, it may not be practicable to subject every person appointed by the President to the approval of the National Assembly. Arguably, this process may gradually whittle down the efficacy of a Presidential System of Government which allows the President to seek out highly qualified and competent persons for appointment. An overarching subjection of

			appointments in this regard may undermine the practice of separation of powers in The Gambia.
27.	Clause 89(1): Duty to attend and address the National Assembly	<ul style="list-style-type: none"> - The 2020 Draft requires the President annual address to the NA to be not later than April each year. - The 2024 Draft removes the first quarter timeline and left it open as currently provided for under section 77(1) of the (1997) constitution. 	
28.	Clause 89(3) and (5): President to designate representation to the National Assembly	<ul style="list-style-type: none"> - The 2024 Draft added “minister” in addition to the vice president as officials who may represent the President in the NA during the course of the year. 	<ul style="list-style-type: none"> - This amendment gives the President ample leverage to direct the most relevant and knowledgeable official to address specific issues as the need arise in the National Assembly. It equally recognises that the Vice President may not always be the most appropriate person to address all matters. This amendment is equally intended to improve the quality of information available at the disposal of the National Assembly as they discharge their constitutional duties on matters of national importance.
29.	Clause 90: Decisions of the President	<ul style="list-style-type: none"> - The 2020 Draft provides that this stipulates that any decision or directive made by the President when performing any function under the Constitution or an Act of the National Assembly must be in 	<ul style="list-style-type: none"> - While intended to ensure accountability and verification, the clause might inadvertently introduce significant inefficiencies, legal vulnerabilities, and administrative bottlenecks within the government’s decision-making processes.

		<p>writing and bear both the seal and the signature of the President</p> <ul style="list-style-type: none"> - The 2024 Draft deletes this clause entirely. 	<ul style="list-style-type: none"> - By making individuals personally liable for acting on non-compliant directives, there may be a reluctance among officials to act swiftly on presidential decisions for fear of personal repercussions. This could result in a hesitation to implement important directives in a timely manner. - Deleting this provision will streamline the decision-making process within the executive branch and improve on its capacity to respond promptly in handling national issues of urgent public importance. - The previous requirement for written decisions with formal seals was viewed as overly bureaucratic and could hinder the efficiency of governance. While accountability is important, the Government believes that there are other sufficient mechanisms in place to ensure that presidential decisions are transparent and properly documented.
30.	<p>Clause 92(2) Election of President</p>	<ul style="list-style-type: none"> - The 2020 Draft provides election of president to be held at least 6 weeks before the end of the incumbent's term. - Clause 82(2) of the 2024 Draft amended it to the effect that the election of president will be held within three months but not later than six weeks before the end of the term of the incumbent president.' 	<ul style="list-style-type: none"> - The 2020 Draft clause provides a specific minimum timeframe but does not specify a maximum period, allowing elections to potentially occur long before the six-week period. - The 2024 Draft clause provides that the election must occur within a specific window — starting from three months before and ending six weeks before the term's end. The clause provides a more defined timeframe, marking both the earliest and latest possible dates for the election.

			<ul style="list-style-type: none"> - The 2020 Draft allows for more flexibility regarding the election date, but it might introduce unpredictability and planning challenges. On the other hand, the 2024 Draft with its defined three-month window, provides a blend of flexibility and predictability, potentially leading to more orderly elections and smoother transitions of power. By setting a precise range, clause 82(2) might better serve the practical aspects of organizing and conducting presidential elections in a structured manner.
31.	Clause 93(1)(c): Qualifications for election as President	- deleted	<ul style="list-style-type: none"> - clause 93(1)(c) was inadvertently deleted first draft published but it will be restored.
32.	Clause 93(1)(d) and (f): Qualifications for election as President	<ul style="list-style-type: none"> - The 2020 Draft requires a mental health certificate and an undergraduate degree plus 5 years' work experience for aspiring presidential candidates - The 2024 Draft deleted these two requirements. 	<ul style="list-style-type: none"> - Most democracies are no longer using formal education such as holding a university degree as preconditions for running for office. The principle underpinning this is the democratic ideal that any eligible voter should also have the right to stand for election, regardless of their formal education. - This approach highlights the common commitment among democracies to inclusivity, ensuring that the lack of formal education does not become a barrier to political participation. - Similarly, mental health provisions are typically safeguards, ensuring those legally and functionally incapacitated are disqualified, but not imposing extensive blanket assessments that could infringe on personal liberties.
33.	Clause 94(1) (d): Disqualifications for election as President	<ul style="list-style-type: none"> - The 2024 Draft deleted "private sector" and wherever it occurs in a similar provision. 	<ul style="list-style-type: none"> - Holding candidates to account for misconduct across both public and private sectors might impose more stringent and uneven standards. The private sector is often less regulated with variable accountability mechanisms compared to the public sector, leading to possible unjust rulings or terminations that might affect more vulnerable employees unfairly.

			<ul style="list-style-type: none"> - The risk of unwarranted dismissals for reasons that may not be entirely objective or well-founded is higher - The private sector lacks a standardized protocol for addressing alleged misconduct, unlike the public sector which usually operates with detailed guidelines and more transparent disciplinary processes. - Excluding private sector indiscretions removes a potential barrier to political candidacy for many talented individuals whose careers might be unjustly marred by disputed or unfair dismissals.
34.	<p>Clause 95(1)(b):</p> <p>Nomination of candidates for President</p>	<ul style="list-style-type: none"> - The 2024 Draft deleted “anti-corruption commission” and replace with “Independent Boundaries and Electoral Commission” 	<ul style="list-style-type: none"> - These changes shifted the responsibility of receiving asset declarations of presidential candidates from the Anti-Corruption Commission to the Independent Boundaries and Electoral Commission (IBEC) to streamline the process and ensure that all relevant information is centralized in one place. This not only simplifies the process for candidates but also allows for better coordination and oversight by the electoral management body. - This also reduces duplication of efforts and potential delays in the nomination process. Candidates will now be able to submit their asset declarations directly to the IBEC, which can then verify the information and ensure compliance with the law in a more timely manner. - The Anti-Corruption Commission focuses on issues of corruption and integrity, while the IBEC is directly responsible for overseeing electoral processes, including the eligibility of candidates. Mandating the IBEC to superintend over the asset declaration process gives leverage to the body best suited and statutorily empowered with the electoral process to verify the qualifications of candidates thereby enhancing the efficiency of the electoral process.

35.	<p>Clause 99(1):</p> <p>Death of President-elect before assumption of Office</p>	<ul style="list-style-type: none"> - The 2020 simply states that the Chief Justice is to be sworn in as acting President until a Speaker is elected. - The 2024 Draft adds that where the Chief Justice is a non-Gambian, the most senior Gambian Judge at the Supreme Court shall be sworn in instead. 	<ul style="list-style-type: none"> - The main difference between the 2020 and 2024 clauses is that in clause 89 of 2024, it specifies that if the Chief Justice is a non-Gambian, the most senior Gambian Judge of the Supreme Court will be sworn in as acting President. - This redraft addresses the possibility of a non-Gambian Chief Justice being in office at a critical time. It ensures that in such a scenario, the leadership continues to vest in a Gambian while preserving national sovereignty and continuity in governance. This provision is important to maintain the legitimacy of the executive branch during a transition, and underscores the need for an acting President to be someone who fully understands the laws, life, and culture of The Gambia.
36.	<p>Clause 103:</p> <p>Disclosure obligations of President</p>	<p>The 2024 Draft by deleting clause 103(1)(a)(ii) and (b)(ii), removes the requirement for the President to disclose all the assets, liabilities, and business interests of their spouse.</p>	<ul style="list-style-type: none"> - The primary focus of the disclosure requirements should be on the President's own financial interests and potential conflicts of interest. Requiring detailed disclosures about the spouse's finances may not only infringe on the privacy rights of the spouse but may also not be directly relevant to the President's duties and could potentially expose the spouse to undue scrutiny and therefore distract the process and dilute the effectiveness of the transparency measures.
37.	<p>Clause 104(a):</p> <p>Restrictions regarding Office of President</p>	<ul style="list-style-type: none"> - The 2020 Draft made an absolute prohibition without exceptions. - The 2024 Draft exempts agriculture. 	<ul style="list-style-type: none"> - Agriculture is a fundamental sector of the country's economy and is critical for national food security, rural employment, and sustainable development. Allowing the President to engage in agricultural activities is critical in promoting and supporting this vital sector. - Allowing the president to engage in agricultural activities will always be beneficial and less intrusive to the primary responsibilities of the Presidential office. - Overall, this amendment recognises the importance of agriculture in The Gambia's economy and allows the President to participate in this sector without conflict of

			<p>interest, provided it does not interfere with official duties. It acknowledges that engaging in agricultural activities can be a source of additional income and contribution to the economy without compromising the responsibilities of the Office of the President. Additionally, this amendment resonates the agrarian heritage of the Gambia and the significant role that agriculture plays in national development.</p>
38.	<p>Clause 105(4): Immunity of President from legal proceedings</p>	<ul style="list-style-type: none"> - The 2020 Draft automatically terminates the immunity for any offences committed during the president's tenure once they leave office without needing additional processes. - The 2024 Draft provides a mechanism for the legislative body to assess and potentially remove the immunity of a former president. 	<ul style="list-style-type: none"> - Clause 95(4) of the 2024 Draft offers a middle ground between full protection of a President and automatic removal of immunity as seen in clause 105(4) of the 2020 Draft. - The former president retains immunity unless a significant majority in the National Assembly agrees there is reason enough to lift it, thus avoiding scenarios where a president might be constantly harassed or litigated against for political reasons immediately upon leaving office. This restraint helps in preserving the dignity and stability of the former head of state while still holding them accountable through a rigorous, legitimate process.
39.	<p>Clause 106(4): Vacancy in the Office of President</p>	<ul style="list-style-type: none"> - The 2020 Draft provides elections to be held within ninety days from the date the vacancy occurred, unless if the next election is due within 9 months. - The 2024 Draft restored the provisions in the current (1997) Constitution. 	<ul style="list-style-type: none"> - Having the Vice President or Speaker assume the office of President for the remainder of the term provides a clear line of succession, which can help maintain governmental stability and prevent chaos. - It helps to avoid the immediate pressures and risks associated with organizing a rapid election, thus allowing more time for thorough preparation and ensuring uninterrupted governance. - It is more cost-effective as it avoids the expense and challenges of holding an immediate election, which can divert resources and attention from ongoing governmental duties and public services.

40.	Clause 108(2) & (3): Removal of President by impeachment	<ul style="list-style-type: none"> - The 2020 draft clause lists "abuse of office," "violation of a provision of the Constitution," and "obstruction of justice" as grounds for removal, - The 2024 clause specifies "gross abuse of office" and "gross violation of a provision of the Constitution requiring a higher level of or more serious misconduct for removal of a president. - The 2024 draft clause also requires a higher level of support from the National Assembly for removal to take place – 2/3. 	<ul style="list-style-type: none"> - The changes in the 2024 Draft sets a higher threshold for the removal of the President and requires more serious misconduct and a higher level of support from the National Assembly for removal to take place.
41.	Clause 108(7) Removal of President by impeachment	<ul style="list-style-type: none"> - The 2020 Draft proposed the tribunal to be the Chief Justice as Chair; 3 current or former judicial officers; and one non-judicial officer/legal practitioner - The 2024 Draft reconstituted the Tribunal thus: <ul style="list-style-type: none"> - Chief Justice, as chair - One representative of: <ul style="list-style-type: none"> - Supreme Islamic Council - Christian Council - Medical and Dental Council - Chamber of Commerce 	<ul style="list-style-type: none"> - Both the 2020 and 2024 clauses involve the Chief Justice in constituting and appointing the tribunal, the 2020 draft emphasizes the composition of the Tribunal on a more judicial and professional background for the members of the tribunal, and the 2024 draft composition suggests a more diverse representation from various sectors of society, including religious, medical, and business communities. - This amendment broadens representation in the Tribunal which invariably ensures that decisions on presidential incapacity will be premised on input from diverse sectors of society, including the religious, medical, and business communities. This composition will enhance the legitimacy and impartiality of the decision of the Tribunal because it reflects a cross-section of the Gambian populace that is guaranteed to make critical decisions after broad-based consultation.
42.	Clause 108(11):	<ul style="list-style-type: none"> - The 2024 Draft Replace “two-third” with “seventy-five percent” as threshold for the removal of a president. 	<ul style="list-style-type: none"> - A higher threshold like 75% ensures that the removal process is not used frivolously or for purely political

	Removal of President by impeachment		<p>gains, reinforcing the seriousness of such actions, and ensuring broad, cross-party consensus.</p> <ul style="list-style-type: none"> - A higher threshold discourages frequent or destabilizing attempts to remove the executive, promoting a more stable governance environment.
43.	Clause 109(4)(b) & (c): Denial of retirement benefits of former presidents	<ul style="list-style-type: none"> - The 2024 Draft increases the robustness of the conditions under which retirement benefits can be revoked. 	<ul style="list-style-type: none"> - The 2024 draft emphasizes a formal legal conviction, especially one resulting in a custodial sentence, rather than potentially varied or politically charged outcomes from commissions of inquiry. - This guards against the possibility of politically motivated inquiries being used to strip benefits of former presidents unfairly. - The 2024 Draft reflects a commitment to due process and the principle that legal consequences should follow judicial rather than administrative findings. While commissions of inquiry play an important role in investigating misconduct, the removal of this clause ensures that only courts of law have the authority to strip former Presidents of their benefits. This change upholds the integrity of the legal process and ensures that penalties are imposed based on judicial findings. - Furthermore, this amendment provides a more compassionate approach to the treatment of former Presidents. It recognises that while serving a custodial sentence justifies the suspension of benefits, these should be restored once the sentence is completed. This approach balances the need for accountability with the recognition of the service of a former President to the nation.
44.	Clause 110(2): Office of Vice President	<ul style="list-style-type: none"> - The 2024 draft substituted “fourteen” with “twenty-one” days. 	<ul style="list-style-type: none"> - The President upon assuming office may need more time to settle for the person he or she would want to appoint as vice president.

45.	<p>Clause 112(b): Functions of the Vice President</p>	<ul style="list-style-type: none"> - Replace “act” with “oversee” as the vice president does not act but oversees the presidency when the president is away. 	<ul style="list-style-type: none"> - The Vice President continues to oversee and carry out his or her regular duties while the President is traveling. This means they ensure continuity and assist in managing the affairs of the executive branch but do not assume the President's formal powers unless specifically required to. - Generally, routine travel does not trigger a need for the Vice President to act as President; the President remains in command but may delegate specific tasks or responsibilities to the Vice President as needed.
46.	<p>Clause 115: Appointment of Ministers</p>	<ul style="list-style-type: none"> - The 2024 Draft effected the following changes: <ul style="list-style-type: none"> a. Removes the role of the National Assembly in ministerial appointments b. Removes the cap on the number of Ministers c. Lowers the qualification of the AG to "not less than 5 years standing." 	<ul style="list-style-type: none"> - The 2024 draft removes the cap on the number of Ministers, giving the President more flexibility and more discretion in appointing ministers based on the needs of the government. - This change is be aimed at ensuring that the President can adequately address varying governmental and administrative demands without being constrained by a fixed number. - The 2024 draft also lowers the years of required experience for the Attorney General, which potentially broadens the pool of eligible candidates. This could be due to a need for more flexibility in appointments or a recognition that capable individuals with fewer years of experience could still competently fulfil the role. - Eliminating the need for National Assembly confirmation centralizes executive power, allowing for quicker and potentially more streamlined appointments. - The rationale is to provide the President with greater flexibility in managing the Cabinet without delays that could be caused by legislative oversight, particularly in times of political urgency.

47.	<p>Clause 116(1)(b) & (c):</p> <p>Qualifications and disqualifications of Ministers</p>	<ul style="list-style-type: none"> - The 2024 draft changed tertiary education requirement to senior secondary school.’ - The 8 years post qualification experience removed by deleting paragraph (c) 	<ul style="list-style-type: none"> - This amendment is designed to broaden the criteria for eligibility for ministerial positions while acknowledging the fact that the capability for leadership is not limited by the absence of a higher education. - By lowering the educational requirement to “completion of senior secondary school”, the provision allows a wider pool of candidates to be considered for ministerial positions. - This amendment also creates opportunities for individuals who lack higher education but compensate with valuable practical experience, local knowledge, and other relevant competencies to be eligible for effective service in government positions. - In addition, the potential for leadership or the ability to serve as a minister may not be circumscribed by a specific number of years of experience. Removing this requirement broadens the prescriptions of the Constitution to the diversity of qualities apparent in candidates who may have demonstrated exceptional abilities within a short time frame or in different contexts.
48.	<p>Clause 116(3)(a):</p>	<ul style="list-style-type: none"> - The 2020 Draft exempted disqualification based on Commission of Inquiry finding, if the finding is overturned on appeal. - The 2024 Draft added that another exemption where the adversely mentioned person receives a pardon under an Act of the NA. 	<ul style="list-style-type: none"> - This amendment ensures that individuals who have been exonerated on appeal or granted amnesty are not unfairly barred from public service. It upholds the principle of justice by recognising the finality of legal processes and the legitimacy of amnesties granted under the law. By allowing these exceptions, the Government ensures that provisions that disqualify align with the decisions from the legal system then are applied in a manner that is both fair and just.

49.	Clause 116(2)(g) (i) and (j):	<ul style="list-style-type: none"> - The 2024 Draft deleted these paragraphs entirely 	<ul style="list-style-type: none"> - Deleting these disqualifications reflect a focus on rehabilitation and the principle that individuals should not be permanently barred from public service based on past offenses, especially if they have served out their sentences or exhibited remarkable reform. - The Government believes that redemption and the opportunity to serve should be available to all citizens, provided they meet the general requirements for public office. Significantly, this deletion promotes inclusivity and ensures that ministers are selected based on current qualifications and integrity, rather than past misdeeds.
50.	<p>Clause 119(b):</p> <p>Disclosure obligations of Vice President and Ministers – after leaving office</p>	<ul style="list-style-type: none"> - The 2024 Draft deleted this entirely 	<ul style="list-style-type: none"> - The asset declaration after leaving office should be left to the discretion of the Anti-Corruption Commission upon reasonable suspicion. - Mandatory declarations can be seen as intrusive, potentially infringing on personal privacy without justified cause. By having a system based on reasonable suspicion, the balance between transparency and individual privacy is carefully maintained. It reinforces the legal principle of "innocent until proven guilty," fostering a fairer environment for public officials. - Officials subjected to universal scrutiny might feel unjustly targeted, potentially deterring honest and capable individuals from public service. A system based on reasonable suspicion emphasizes the merit of officials who perform their duties ethically, knowing they won't be unfairly scrutinized but will be held accountable under credible conditions. - Mandating declarations can create opportunities for political weaponization, where opponents use procedural requirements to harass and undermine each

			other. Ensuring that asset declarations are requested only when there is reasonable suspicion helps avoid this potential misuse, protecting the process's integrity
51.	Clause 119	- The 2024 revised draft removed this clause from entrenchment	- Generally, by removing certain clauses from the entrenched list, the government is reducing the reliance on referendums for amendments that may be procedural or administrative and also ensuring that the Constitution remains a living document capable of evolving with the needs of society.
52.	Clause 120(c): Restrictions regarding Office of Vice President and Minister	- The 2024 Draft completely deleted the paragraph	<ul style="list-style-type: none"> - While it's essential to avoid conflicts of interest, the preceding clause (120(b)) already restricts officials from using their office for personal gain. - One of the roles of leaders, especially those holding significant offices such as the Vice President and Ministers, is to inspire and engage in civil society. Allowing these officials to engage in activities of a civic or charitable nature emphasizes that leadership extends beyond governmental duties, promoting a culture of active and engaged citizenship. - The right to associate and participate in varying social, civic, and charitable undertakings is a fundamental democratic freedom. Over-restriction in this area may be seen as unnecessarily infringing upon personal liberties. Providing freedom for officials to contribute to civil society respects their personal rights while balancing the adherence to public duties stipulated in other clauses. - There is also a risk of legal ambiguities such as defining "advocate for" or "promote" ambiguously which can lead to unnecessary litigation and distraction from public duties
53.	Clause 125(2): National Assembly confirmation in the	- The 2024 Draft provided for direct appointment by the president without	- For the same reasons as stated above

	appointment of Secretary to Cabinet	subject to confirmation of the National Assembly.	
54.	Clause 126(5): International relations	- The 2024 Draft reduced the votes needed from “two third” to “half” to bring it in line with clause 116(3)(a) previously 126(3)(a).	- Considering that Clause 126(3)(a), now 116(3)(a) sets the threshold for National Assembly votes needed to ratify an international treaty at 'half,' the 2024 Draft establishes the same vote threshold for withdrawal from such treaties.
55.	Clause 127(2): Establishment of Prerogative of Mercy Committee	- The 2024 Draft deleted the requirement for National Assembly confirmation	- The same reasons as above. This deletion streamlines the appointment process for these committees, allowing the President to appoint members without the additional step of parliamentary approval. It reflects the need for efficiency and promptness in forming committees that perform specific and time-sensitive assignments. - Deleting this requirement does not undermine parliamentary oversight but accords with the practical need for the President to have the flexibility to appoint qualified individuals to these committees without unnecessary delays.
56.	Clause 131 and 132: Public and Private Prosecutions	- The 2024 Draft deletes clause 131 and 132 entirely and replaced them with clause 121 and 122 being a replica of sections 84, 85 and 86 of the current (1997) constitution	- The proposed 2024 changes simplify the appointment process of the DPP by removing the involvement of the National Assembly ensuring that the DPP is appointed swiftly and with minimal bureaucratic hurdles. - On the qualifications and tenure, the 2024 Draft provides more clarity on the tenure and removal conditions for the DPP, ensuring that the officeholder's position is secure until retirement unless serious issues arise. - Concerning the powers and independence of the DPP, the changes strengthen executive oversight by making the DPP accountable to the Attorney General. This can be viewed as a way to ensure that the DPP's actions are consistent with broader government policies and priorities. Although this may diminish the DPP's independence, it increases accountability, making sure

			<p>that prosecutorial decisions align with the government's legal and policy framework.</p> <ul style="list-style-type: none"> - The 2024 Draft eliminates the requirement for the DPP to present an annual report to the National Assembly. While the DPP needs to remain accountable, the office should not be encumbered with extensive reporting obligations that could interfere with its primary responsibilities. The DPP should concentrate on prosecutorial duties without the potential influence of political considerations or public scrutiny that may result from such reports.
57.	Clause 133: Solicitor General and Legal Secretary	<ul style="list-style-type: none"> - This clause has been deleted entirely 	<ul style="list-style-type: none"> - The 2024 revised draft retains the current status quo as the Solicitor General is also the <i>De facto</i> Permanent Secretary of the Ministry of Justice.
58.	Clause 136(2): Establishment and composition of the National Assembly	<ul style="list-style-type: none"> - 2024 Draft amended schedule 3, now schedule 4, thus: - 53 single member constituencies - 7 women representing each administrative area - Seats will be allocated to political parties that contested the national Assembly elections as proportionate to the number of votes received by each party. - 2 persons elected by persons with disabilities <p>5 persons nominated by the president from among the private sector, civil society and other constituencies which may otherwise have not been represented in the national Assembly.</p>	<ul style="list-style-type: none"> - Both the 2020 and 2024 drafts agree on the election of 53 members from single-member constituencies. This ensures that a majority of National Assembly members are directly elected, maintaining a strong foundation of constituency-based representation. - The 2024 draft reduces the number of women representatives from 14 to 7 but changes the method of election to a proportional system. Seats are allocated to political parties based on the votes they receive in the general election. - The 2024 draft re-introduces the presidential nominations allowing for the inclusion of diverse voices, particularly from sectors that may not have strong political representation, such as civil society and the private sector. This can enrich legislative discussions with specialized knowledge and perspectives that might otherwise be absent. Paragraph 423 of the CRC Report indicates that a good number of contributions were received in support of presidential nomination.

			<ul style="list-style-type: none"> - In summary the 2024 draft enhances the representational structure of the National Assembly. It introduces proportional representation for women, maintains the representation of persons with disabilities, and re-introduces presidential nominations to ensure that all critical sectors of society have a voice.
59.	Clause 136 (3)	<ul style="list-style-type: none"> - The 2024 draft restored the current status as per section 93 of the current (1997) Constitution. 	<ul style="list-style-type: none"> - The 2024 draft retains the law where the Speaker and Deputy Speakers are to be elected from among nominated members. - Substituting this provision with the present provision in the 1997 Constitution acknowledges the fact that the current provision has established a clear procedure for electing the Speaker and Deputy Speaker. The Government recognises the need for change provided it is not a change so fundamental as to disenfranchise constituencies. In other words, clause 136(3) of the Draft Constitution which states that “the Speaker shall be an <i>ex officio</i> member without a vote” is capable of disenfranchising his constituents.
60.	Clause 137(1): Qualifications for membership to the National Assembly	<ul style="list-style-type: none"> - The 2024 draft reduces the age from 21 to 18 years for contesting NA elections - It also deleted the “anti-corruption” and replace with “Independent Electoral and Boundaries” commission. 	<ul style="list-style-type: none"> - Lowering the eligibility age would enable better representation of younger citizens, ensuring their concerns and perspectives are included in the legislative process. Younger generations often have unique insights and innovative ideas that can greatly contribute to national policy-making. - Since the legal voting age is already set at 18, it is therefore reasonable to allow 18-year-olds to also run for office which aligns with the principle that individuals old enough to vote and participate in the political process should also have the right to stand for some elections. - Reducing the age limit would likely stimulate greater political involvement among young people. Knowing that they can contest elections may motivate more youth

			<p>to engage with politics, increasing their participation in community issues and fostering a more active civil society.</p> <ul style="list-style-type: none"> - Globally, many countries have already reduced the age requirement for legislative positions, reflecting an international recognition of the valuable contributions young leaders can make.
61.	<p>Clauses 139(2), (3) and (4):</p> <p>Election of members of the National Assembly</p>	<ul style="list-style-type: none"> - The revised 2024 draft deleted paragraphs (2), (3) and (4) and restore section 43(d) 	<ul style="list-style-type: none"> - This replacement restores a familiar and effective framework for National Assembly elections. The provisions in the 1997 Constitution have been well-established and provide clear guidelines for the conduct of elections. Reverting to these provisions avoids potential issues that may arise from new clauses that have not been tested and also ensures continuity and stability in the electoral process.
62.	<p>Clause 141(1):</p> <p>Vacancy in the office of member of the National Assembly</p>	<ul style="list-style-type: none"> - The revised 2024 draft deleted paragraphs (h) and (i) 	<ul style="list-style-type: none"> - By removing restrictions that tie members to their initial political affiliations, the 2024 draft aims to reduce the likelihood of punitive actions taken against members who wish to change their political alignment based on principle or evolving political ideologies. This fosters a more honest and principled political culture. - Furthermore, without the threat of losing their seats, members may feel more empowered to voice dissent or address issues more freely and honestly. This can lead to more robust and comprehensive debates, providing a wider range of perspectives and potentially leading to better legislative outcomes. - The 2024 draft by this deletion introduces a more flexible, independent, and democratic legislative body. It would respect the principles of political freedom, improve representation, mitigate partisan retribution, foster robust debate, keep up with global democratic standards, and maintain stable governance.

63.	Clause 144: Recall of members	<ul style="list-style-type: none"> - considering the changes made to schedule 3, it became necessary to improve clause 144 thus: - specific recall of nominated members, - removal method for women representatives who would now be elected indirectly through political parties according to the proportion of the votes they receive in the National Assembly elections. 	<ul style="list-style-type: none"> - The 2024 Draft introduces a more comprehensive recall process, which, for the first time, encompasses the recall of nominated members as well as those who gained entry to the National Assembly through affirmative action.
64.	Clause 145(2): The Speaker	<ul style="list-style-type: none"> - The 2024 Draft removes the election of a Speaker from “outside” and restored the election to be from among nominated members. 	<ul style="list-style-type: none"> - The professional experience of the Speaker has been expanded to include civil society along with public service, private sector, or academia. - Electing a speaker from within the Assembly is currently working well for The Gambia and it enhances the representation and accountability of the leadership to the Assembly members.
65.	Clause 146(1): Deputy Speaker	<ul style="list-style-type: none"> - The 2024 Draft restored the law for Deputy Speaker to be elected from among “nominated” members. 	<ul style="list-style-type: none"> - The same reason as above.
66.	Clause 146(3) and (4):	<ul style="list-style-type: none"> - The 2024 Draft removes the requirement for two Deputy Speakers 	<ul style="list-style-type: none"> - Since its independence in 1965, The Gambia has functioned effectively with one Deputy Speaker in the National Assembly. Having one Deputy Speaker maintains the efficiency and cohesion of legislative operations. - The introduction of a second Deputy Speaker may lead to logistical complexities, potential conflicts, and power struggles. A streamlined leadership with one Deputy Speaker is better suited to manage legislative proceedings without creating additional layers of bureaucracy. - The introduction of an additional Deputy Speaker would necessitate increased allocation of resources, including

			<p>financial remuneration, staffing, and office accommodations.</p> <ul style="list-style-type: none"> - The proposed allocation of one Deputy Speaker from the majority party and another from the minority party or an independent member could potentially promote adversarial conditions. This could intensify partisan divides within the Assembly, detracting from collaborative bipartisan efforts essential for effective governance.
67.	Clause 148(2)(b) and (d): Speaker and Deputy Speaker	<ul style="list-style-type: none"> - The 2024 Draft stipulates that the Speaker and Deputy Speaker shall continue to be nominated members even after resigning from or being removed by the National Assembly from their respective positions. 	<ul style="list-style-type: none"> - The roles of the Speaker and Deputy Speaker are distinct from the general membership they hold within the National Assembly. - Recognizing the separation ensures that the basis for their removal or resignation is tied strictly to their capacity to preside over sessions and procedural matters, not to broader legislative functions. This distinction prevents punitive overreach and preserves the mandates provided by their nominators. - Allowing the Speaker or Deputy Speaker to remain as nominated members despite resigning or being removed provides continuity and stability in the National Assembly. These individuals have significant parliamentary experience and can contribute constructively to legislative processes.
68.	Clause 151(1) and (2): Sessions of the National Assembly	<ul style="list-style-type: none"> - The 2024 draft makes it a requirement for the Clerk to consult the President in fixing the first session of the NA after an election 	<ul style="list-style-type: none"> - By stating that the Clerk, in consultation with the President, shall fix the first session by Proclamation, clause 140 of the 2024 draft establishes a clear and straightforward process for determining the first session of the National Assembly after an election and it ensures a collaborative approach that considers the practicalities and logistics involved in convening the National Assembly. This collaborative effort can help streamline the process and reduce the likelihood of delays or disputes.

69.	<p>Clause 153(6):</p> <p>The legislative power of the National Assembly</p>	<ul style="list-style-type: none"> - the 2024 Draft makes the ‘seven days’ linked to the president being within the country. 	<ul style="list-style-type: none"> - Clause 142(6) of the 2024 Draft specifically ensures that the seven-day period for the President to assent to a Bill starts only when the President is present in The Gambia. - This provision accounts for the practical realities of governance, where the President may be outside the country for official duties or other reasons. It ensures that the timeline for assent is realistic and enforceable. - By clarifying that the seven-day countdown begins only when the President is physically present in The Gambia, Clause 142(6) helps prevent potential constitutional crises. If the timeline were to begin regardless of the President's location, there could be situations where the President is unable to fulfil his or her constitutional duties, leading to legal ambiguities or accusations of non-compliance.
70.	<p>Clause 161(4):</p> <p>Committees of the National Assembly</p>	<ul style="list-style-type: none"> - The 2024 Draft deleted the clause entirely 	<ul style="list-style-type: none"> - Deleting this clause allows for a more merit-based selection process for the chairmanship of the Standing Committee on finance and public accounts. - This change would ensure that the individual chosen to lead this important committee is selected based on their qualifications and expertise rather than simply their party affiliation. - By leaving this decision to the National Assembly, factors such as capacity, experience, and dedication to promoting fiscal responsibility could be given greater weight in the selection process ultimately leading to a more effective and accountable oversight of public finances, benefiting the entire nation.
71.	<p>Clause 167(2):</p> <p>National Assembly Service</p>	<ul style="list-style-type: none"> - the 2024 draft delete “quarterly” and replaced it with “monthly” 	<ul style="list-style-type: none"> - The Gambia operates a tax-based economy with deficit management, relying heavily on monthly revenue collections to sustain governmental operations. Monthly

			<p>allocations ensure that the distribution of funds aligns seamlessly with this revenue collection pattern, allowing for smoother financial operations and more consistent budgeting.</p> <ul style="list-style-type: none"> - In a deficit-based economy, where expenditures often exceed revenue, assuming that sufficient funds would always be available quarterly could be unrealistic. Monthly allocations reflect an adaptive financial strategy that acknowledges and responds to the fluidity of revenue availability.
72.	<p>Clause 173: Independence of the Judiciary</p>	<ul style="list-style-type: none"> - The 2024 draft removed sub-sections (2), (3), (4),(5) and (6) from entrenched clauses 	<ul style="list-style-type: none"> - The independence of the judiciary is a cornerstone of any democratic society, as protected in sub-sections (1) and (7). However, the removed clauses (2), (3), and (4) deal with practical aspects of judicial operations, support, and the structure of the courts and their removal from the entrenched list does not undermine judicial independence. - Sub-sections (5) and (6) deal with the remuneration and retirement benefits of judges. While it is crucial to protect the judiciary's independence, these financial provisions should also be subject to regular review to reflect the country's economic realities. - Allowing the National Assembly to amend these provisions ensures that there is oversight and flexibility in managing the nation's finances, especially in times of economic difficulty. It prevents the judiciary's remuneration from being insulated from necessary fiscal adjustments that other branches of government may have to endure. - Referendums are important tools for direct democracy, but their overuse can lead to voter fatigue and significant cost. - Generally, by removing certain clauses from the entrenched list, the government is reducing the reliance on referendums for amendments that may be

			procedural or administrative and also ensuring that the Constitution remains a living document capable of evolving with the needs of society.
73.	Clause 174(2)(a): Office of Chief Justice	- The 2024 draft deleted this provision entirely.	<p>The role of the Chief Justice should be based on merit and qualifications rather than nationality.</p> <ul style="list-style-type: none"> - By removing the citizenship requirement, the position of Chief Justice becomes open to a broader range of qualified candidates, including those from other jurisdictions with extensive judicial experience and expertise. This increases the likelihood of appointing a highly competent individual who can bring valuable knowledge, best practices, and perspectives from other legal systems, ultimately strengthening the Gambian judiciary. - Many countries do not impose a strict citizenship requirement for their top judicial positions, especially in smaller jurisdictions that may benefit from external expertise.
74.	Clause 191(2), (3) and (4) Qualification for appointment of judges	- The revised 2024 draft broadening the qualifications for appointment to include candidates from common law and Shari'ah jurisdictions outside The Gambia.	<ul style="list-style-type: none"> - Clause 180 of the 2024 Revised Draft allows candidates for judicial positions to be qualified to practice not only in The Gambia but also in a country with a common law tradition or a Shari'ah tradition and jurisdiction. - By allowing candidates qualified in common law and Shari'ah law jurisdictions outside The Gambia to be considered for judicial appointments, the revised draft broadens the pool of potential candidates. - This approach ensures that The Gambia can attract and appoint highly qualified judges with diverse experiences, who can bring new perspectives and legal insights to the judiciary. It also allows The Gambia to leverage the expertise of legal practitioners with significant experience in other jurisdictions, especially those with common law traditions similar to that of The Gambia.

75.	Clause 192(2) Vacancy in Office of Chief Justice	The 2024 draft deleted four months and replace with “a reasonable time.”	<ul style="list-style-type: none"> - Placing a fixed timeline in the constitution may create implementation challenges and where a suitable candidate could not be found within the 4 months, the breach of the time easily becomes
76.	Clause 194: Removal of a Judge from office	<ul style="list-style-type: none"> - The 2024 draft introduces public hearings and altered the composition of the Tribunal for the removal of the chief justice 	<ul style="list-style-type: none"> - Clause 183 of the revised 2024 Draft specifies that the tribunal’s proceedings "shall be held in public", a provision that emphasizes transparency and allows for public scrutiny of the process, which can enhance public confidence in the judiciary’s accountability mechanisms. - Regarding the composition of the Tribunal for Chief Justice Removal, the revised 2024 Draft requires the appointment of a retired or sitting judge from a Supreme Court or its equivalent in a country with a common law tradition and jurisdiction as the chairperson. - The legal practitioner required must have at least fifteen years’ experience just as the qualification for appointment as Chief Justice.
77.	Clause 195(6): Remuneration and retirement benefits of judges	<ul style="list-style-type: none"> - The revised 2024 draft inserted a new sub-section 195(7) to state that a retired Judge who chooses to practice shall forfeit the state pension. 	<ul style="list-style-type: none"> - Based on the need to preserve Judicial impartiality, Judges are expected to be neutral and impartial arbiters of the law. By not allowing retired judges to return to practicing law, there is less risk of their past decisions being influenced by potential future employment opportunities. - The shift from adjudicating cases to advocating in court can create awkward and potentially compromising situations. A judge who once ruled on cases may find themselves arguing before former peers, which can blur professional boundaries and ethical lines. - The judicial system relies heavily on public trust. If the public perceives that a judge could return to legal practice and potentially exploit his or her former position, it may erode trust in the judiciary and its decisions - Even if a retired judge upholds high ethical standards, the mere perception that they could wield influence over

			<p>former judicial colleagues could cast doubt on the fairness of the judicial process.</p> <ul style="list-style-type: none"> - The stipulation concerning the forfeiture of state pensions for retired judges who opt to return to legal practice addresses the rare instances where a retired judge on a pension decides to re-enter the profession.
78.	<p>Clause 198:</p> <p>Annual Budget of the Judiciary</p>	<ul style="list-style-type: none"> - The 2024 draft restored the current status core requiring the Judiciary to submit its budget to the executive for incorporation into the national budget for tabling and not directly to the NA. 	<ul style="list-style-type: none"> - It is the executive branch that prepares the national budget, with the National Assembly also submitting its budget to the executive for inclusion. Similarly, the Judiciary, as an organ of state, must submit its budget for inclusion in the national budget prior to it being presented to the National Assembly. - The removal of the provision requiring the Chief Justice or Judicial Secretary to appear before the National Assembly to defend the judiciary’s budget, as seen in the initial draft, may protect the judiciary from political pressures or influence. Such a process could expose the judiciary to political scrutiny and bargaining that may compromise its independence.
79.	<p>Clause 199(1):</p> <p>Judicial Service Commission</p>	<p>Revised Draft (Clause 188) comprises a broader and more diverse membership including:</p> <ul style="list-style-type: none"> (a) The Chief Justice (Chairperson) (b) Attorney General (c) A Judge of the Court of Appeal (d) A Judge of the High Court (e) The most senior Shari’ah Judge (f) One Principal Magistrate nominated by the Chief Justice (g) One Seyfo representing the District Tribunals, nominated by the Seyfolu (h) The Inspector General of Police 	<ul style="list-style-type: none"> - By including representatives from various judicial and non-judicial sectors, the revised draft takes a balanced approach to judicial administration. It recognizes that the administration of justice is not solely the domain of judges and lawyers but involves a wide range of actors, including law enforcement and public service officials. This balance is essential for creating a judicial system that is responsive to the needs of all its stakeholders and upholds the rule of law. - There is no universal standard for the composition of a Judicial Service Commission. For instance, in South Africa, the Judicial Service Commission (JSC) includes four individuals appointed by the President, as specified in Section 178 of the South African Constitution. In the

		<ul style="list-style-type: none"> (i) The President of The Gambia Bar Association (j) The Chairperson of the Public Service Commission (k) - Two persons with extensive experience in public service affairs, nominated by the President 	<p>UK, the Judicial Appointments Commission (JAC) is chaired by a layperson. Similarly, in Nigeria, the Judicial Service Commission includes two representatives from the general public, while in Kenya, the commission features a magistrate representative, a member from the public service commission, and two members of the public appointed by the President.</p>
80.	New Clause 203: Special Internationalised Tribunal	<ul style="list-style-type: none"> - The 2024 introduced a new clause (203) under Chapter X Part VII entitled “Internationalised Courts”: (1) Notwithstanding any other provision in this Constitution, The Gambia may establish or participate in the establishment of a special internationalised tribunal outside its judicial system to prosecute cases of serious human rights violations and international crimes in compliance with its obligations under international law. (2) The jurisdiction, organisation and function of such tribunal shall be regulated by the international legal instrument that establishes it. (3) A special tribunal established in accordance with subsection (1) shall be independent and impartial. It shall have the power to establish its own rules of procedure and evidence and shall act in compliance with international human rights and due process standards. It shall have full legal and juridical personality and shall have all the necessary powers 	<ul style="list-style-type: none"> - The introduction of clause 203 in the draft constitution reflects The Gambia's commitment to upholding its obligations under international law and sending a strong message that impunity will not be tolerated. - Lessons learned from the transitional justice process have shown that domestic judicial systems may not always have the capacity or independence to effectively prosecute such cases. By establishing an internationalised tribunal, The Gambia can ensure that perpetrators of these heinous crimes are held accountable, regardless of their status or influence within the country.

		<p>and mandate for its operation, including judicial co-operation and assistance.</p> <p>(4) The legal instrument that establishes such a tribunal may be subject to the ratification process outlined under section 126 (3).</p>	
81.	Chapter XI - Local Government & Decentralisation	<ul style="list-style-type: none"> - The 2024 draft deleted the entire Chapter XI and replace with Chapter XV of the current (1997) constitution (as amended) 	<ul style="list-style-type: none"> - The two chapters share numerous similarities, such as the establishment of Local Government Authorities, an emphasis on decentralization, provisions for elections and terms, financial management and accountability, and the promotion of local participation. - The revised draft offers a comprehensive framework for local governance, outlining the functions, powers, and duties of local government authorities. It mandates that additional details be specified in an Act of the National Assembly. - This replacement reinstates the framework that has governed local government and traditional rulers effectively for decades. The provisions in the 1997 Constitution establish a well-understood and stable basis for local governance. It also reinforces the role of traditional leaders and ensures effective decentralisation. Reverting to this established framework ensures continuity and stability in local governance.
82.	Clause 215(2)	<ul style="list-style-type: none"> - The 2024 draft removed this clause from the entrenched clauses 	<ul style="list-style-type: none"> - While the independence of institutions is a key pillar of a democratic framework, absolute rigidity can be counterproductive. Removing clause 215(2) from the entrenched clauses will enhance governance flexibility, ensure more timely and accountable amendments, and

			<p>ultimately better serve the nation's evolving interests and needs.</p> <ul style="list-style-type: none"> - Constitutional provisions should be adaptable over time to reflect the changing needs and circumstances of society.
83.	<p>Clause 215(3):</p> <p>Requiring the National Assembly to allocate adequate funds to each independent institution</p>	<ul style="list-style-type: none"> - The revised 2024 draft deleted the word "adequate" 	<ul style="list-style-type: none"> - The term "adequate" is inherently subjective and lacks a clear, objective measure. What constitutes "adequate" funding can vary significantly depending on perspective, context, and interpretation. - By omitting the word "adequate," the National Assembly retains broader discretion in determining the allocation of funds based on prevailing economic conditions, budget constraints, and national priorities. - A clause mandating "adequate" funding is likely to be a flashpoint for legal and political contention. Every independent institution could potentially challenge their funding as inadequate, leading to numerous legal battles that drain public resources and distract from governance
84.	<p>Clause 216(2):</p> <p>Appointment of Chairpersons of Independent Institutions</p>	<ul style="list-style-type: none"> - The requirement for confirmation by the National Assembly has been deleted and replaced with "in consultation with the Public Service Commission" 	<ul style="list-style-type: none"> - For the same reasons stated earlier
85.	<p>Clause 216(8):</p> <p>Requiring the Chairperson, and Vice-Chairperson of an independent institution or office to be of different gender and to be succeeded by a different gender.</p>	<ul style="list-style-type: none"> - This clause has been entirely deleted 	<ul style="list-style-type: none"> - The deleted clause is better handled through policies or secondary legislation, which can be more readily adjusted to changing societal needs and norms without the complexity of constitutional amendments. - Mandating gender-based successions might inadvertently prioritize gender over qualifications and merit. The deletion allows for more flexible leadership appointments, ensuring that the most qualified persons are chosen based on their competencies, experience, and contributions rather than conforming to rigid gender requirements.

86.	<p>Clause 217 and 2018:</p> <p>Qualifications, disqualifications and removal from office in respect of Independent Institutions</p>	<ul style="list-style-type: none"> - Clause 217 was deleted and the issues of qualifications and disqualifications referred to be in accordance with the Act of National Assembly that established the Independent Institution. - Clause 218 also deleted the removal from office shall be in accordance with the Act of National Assembly that established the Independent Institution 	<ul style="list-style-type: none"> - A national constitution should be a concise and clear document and the deletion of these clauses ensures the constitution remains clear, concise, adaptable, and focused on broader principles, allowing specific qualifications for appointment and removals from office of institutions to be detailed through more flexible and context-sensitive laws.
87.	<p>Clause 219(4):</p> <p>Prohibiting the National Assembly from reducing the budget of an independent institution or office below what was approved in the immediately preceding year.</p>	<ul style="list-style-type: none"> - This clause has been completely deleted 	<ul style="list-style-type: none"> - The deletion allows for greater flexibility in budgetary allocation, enabling the National Assembly to respond to changing national priorities and economic situations. Budgets often need to be adjusted annually based on varying circumstances such as economic downturns, shifts in policy priorities, or unforeseen emergencies. - A rigid budget policy could create imbalances in national finances. By having the flexibility to adjust the budgets of all departments and institutions, the National Assembly can ensure a more balanced and equitable distribution of resources. - Establishing a constitutional guarantee for budget levels could foster an entitlement mentality among independent institutions or offices. By requiring these entities to present and justify their budgets each year, it ensures that funding is based on actual needs and performance rather than on perceived guaranteed entitlements, leading to a more dynamic and accountable public sector.
88.	<p>Clause 220(3):</p> <p>Reporting obligations of the Independent Institutions to the NA</p>	<ul style="list-style-type: none"> - The 2024 draft amended this provision to the effect that it is the annual reports of an independent institution or office which shall be published in the <i>Gazette</i>, instead of every report the produce. 	<ul style="list-style-type: none"> - Requiring the publication of every report could place a significant administrative burden not only on the independent institutions but also on the Agency responsible for the Gazette. - By mandating only the annual reports, this burden is reduced, allowing institutions to focus their resources on

			key deliverables rather than complying with an overly demanding publication mandate.
89.	Clause 222(3)(e): Functions of the Anti-Corruption Commission	- Exempt elections, which shall remain with the IEBC	<ul style="list-style-type: none"> - The government has decided that asset declarations by electoral candidates should be submitted to the Independent Boundaries and Electoral Commission (IBEC) rather than the Anti-Corruption Commission (ACC) - This is meant to streamline Election Oversight. Consolidating all election-related responsibilities under the IBEC ensures that candidates and voters have a single, clear point of contact. This "one-stop-shop" approach simplifies the electoral process, boosting efficiency and reducing bureaucratic red tape. - While the IBEC serves as the primary repository for asset declarations, it retains the discretion to collaborate with the ACC as needed. Such partnerships can enhance due diligence without complicating the primary responsibility for electoral matters. This arrangement allows for specialized oversight when necessary, while maintaining a clear chain of accountability.
90.	Clause 224(b): Tenure of Auditor General	- The tenure has been changed from 9-years non-renewable to 5-years with a possible renewal once.	<ul style="list-style-type: none"> - A fixed nine-year term without reappointment might inadvertently lead to complacency. Knowing that they must potentially justify their reappointment after five years motivates the Auditor-General to maintain high standards of performance, engagement, and innovation throughout their tenure. - The establishment of a shorter, renewable term allows for more frequent assessment and evaluation of the Auditor-General's performance. This ensures that the Auditor-General remains accountable and maintains a high level of performance. - While nine years is a considerable period that could lead to entrenchment, the prospect of a five-year renewable

			term ensures that no single individual becomes overly entrenched in the office.
91.	Clause 227 (b) Publication of Auditor General's Report	Amended thus: “(b) publish his or her annual reports on the accounts referred to in section 225 (1) after submission of the report to the National Assembly and after the report has been discussed and adopted by the National Assembly.	<ul style="list-style-type: none"> - The 2024 revised draft stipulates that the Auditor General's reports can be published after they have been discussed and adopted by the National Assembly ensuring that these crucial documents are given proper legislative attention and oversight. - It affirms the role of the National Assembly in scrutinizing and officially adopting the reports before they are made public, ensuring due legislative process completed prior to publication.
92.	Clause 229(1) Central Bank of The Gambia	<p>The composition of the Board of Directors has been amended thus–</p> <ul style="list-style-type: none"> (a) A Chairperson, who shall be the Governor and Chief Executive of the Bank; (b) The Permanent Secretary of the Ministry of Finance; and (c) Four other Directors, not being members of the Central Bank, with extensive experience in the fields of economics, finance, banking or law or any other relevant field. <ul style="list-style-type: none"> - The 2020 draft proposed the CBG Chair to be appointed from outside the Bank 	<p>The Governor is typically the most knowledgeable person about the bank's operations, monetary policy, and financial stability issues. Chairing the board aligns this expertise with the bank's governance.</p> <ul style="list-style-type: none"> - A unified leadership structure helps in the smooth implementation of monetary policies and other economic measures which might get diluted if there is a separation between board leadership and executive management. <p>The following are good examples:</p> <ul style="list-style-type: none"> - The Federal Reserve in the United States is chaired by the Chairman of the Federal Reserve Board. The Chair (equivalent in role to a Governor in other central banks) is both the executive head and the board chair. - In Ghana, the Governor of the Bank of Ghana also serves as the Chair of its Board, ensuring that the policy guidelines and strategic direction decided by the board are seamlessly implemented by the bank's administration. - In South Africa, the Governor of the South African Reserve Bank chairs the Board of the Reserve Bank. - In Nigeria, the Governor of the Central Bank of Nigeria (CBN) chairs its governing board, maintaining harmony

			in policy formulation and administrative execution, which is critical in a complex economic landscape.
93.	Clause 229 (2): Tenure of non-ex-officio members of the CBG Board	- The tenure has been reduced from 5 years to 2 years renewable	- This is based on technical advice received by government.
94.	Clause 230(1): Objects and functions of the CBG	- A new paragraph (e) has been added as follows: “(e) Institute measure which are likely to have a favourable effect on the balance of payments, the state of public finances and the general development of the national economy;”	- Adding the new clause (e) to the Central Bank of The Gambia's mandate is a significant and prudent step toward ensuring comprehensive economic stewardship. It allows the central bank to play an integral role in promoting balanced payments, sustainable fiscal management, and broad-based national development. This broadened scope aligns the central bank's functions with contemporary economic challenges, driving coherent and resilient economic policies for The Gambia's long-term prosperity.
95.	Insert new Clause 230(2)	“(2) Without prejudice to sub-section (1), the Bank shall: (a) Support the general economic policies of the Government; (b) Promote the economic growth and the effective and efficient operation of a financial system in The Gambia; and (c) Comply with such other objects and perform such other functions as may be conferred on the Central Bank by an Act of the National Assembly. - 230(2) has now become 230(3) in the 2024 draft	- By supporting the general economic policies of the government, the central bank ensures that monetary policy is coherent with fiscal and other economic policies. This harmonization is crucial for achieving national economic goals. - A clear mandate to support government policies ensures that the central bank's strategies are consistent with the broader economic priorities of the nation, avoiding conflicts and enhancing policy efficacy. - Promotion of economic growth is a critical function that ensures the central bank actively contributes to creating an environment conducive to sustainable development and long-term prosperity.
96.	Clause 232(1)(b) Qualification for appointment as sole Commissioner of a Commission of Inquiry	- The revised draft deleted “twenty” and replace with “seven” years.	- Aligning the post-call experience requirement for a sole commissioner with that of High Court Judges ensures consistency within the legal framework. Since the commission's decisions are equivalent to judgments of

			<p>the High Court, it is reasonable to apply similar qualification standards.</p> <ul style="list-style-type: none"> - Reducing the experience requirement to 7 years significantly broadens the pool of qualified candidates. More legal professionals will meet the criteria, thereby facilitating the appointment process and reducing delays associated with finding sufficiently experienced individuals.
97.	Clause 240(3): Tax waiver	<ul style="list-style-type: none"> - The revised draft requires an Act of the National Assembly to confer power on any person or authority to waive or vary a tax. 	<ul style="list-style-type: none"> - By removing the requirement for approval by the National Assembly for each individual case of tax waiver or variation, the new clause empowers relevant persons or authorities to make decisions more efficiently while still upholding oversight as it requires that an Act of the National Assembly conferring power to waive or vary taxes must be in place. This ensures that there is still a legal framework within which tax waivers or variations can take place, preventing abuse of power or arbitrary decisions.
98.	Clause 240(4)	<p>Clause 240(4) has been amended thus: “(4) Where an Act of the National Assembly permits the waiver or variation of any tax or other charges –</p> <p>(a) a proper record of each waiver or variation shall be maintained together with the reason for the waiver or variation; and</p> <p>(a) An annual report of all the waivers or variations, and the reasons for such waivers or variations, shall be submitted to the National Assembly and the Auditor-General.”</p>	<ul style="list-style-type: none"> - The new clause requires an annual report of all waivers or variations to be submitted to the National Assembly and the Auditor-General. This ensures that there is regular oversight and accountability for any waivers or variations that occur, rather than requiring reporting only when the waivers or variations take place.
99.	Clause 240(6)	<ul style="list-style-type: none"> - The clause was deleted entirely 	<ul style="list-style-type: none"> - Rather than explicitly codifying rigid clauses, the deletion allows lawmakers and tax authorities to adapt and address specific needs on a case-by-case basis

			without undergoing constitutional amendments or enduring bureaucratic delays
100.	Clause 243(2): Percentage of expenditure allowed from the contingency fund prior to tabling a supplementary estimate before the NA	- The revised draft increased from 1% to 2%.	<ul style="list-style-type: none"> - Increasing the permissible contingency fund expenditure to two percent empowers the government to respond more swiftly and effectively to emergencies and unexpected economic challenges. Whether it is natural disasters, public health crises, or sudden economic disruptions, having more available funds ensures that immediate and adequate measures can be taken without delay. - A more substantial contingency authorization mitigates the constant need for supplementary estimates and subsequent approvals from the National Assembly for relatively small amounts above the one percent threshold. This reduces administrative delays and allows the legislative body to focus on broader issues without getting bogged down by frequent requests for minor budgetary adjustments. - By allowing the Minister responsible for finance greater leeway to address urgent expenditures, the government can better manage its fiscal resources and prioritize essential expenditures. This flexibility is particularly crucial during periods of economic volatility or unpredictability, where timely financial intervention can mitigate wider economic impacts.
101.	Clause 244(2): The Development Fund	Amended thus: “(2)The Government shall use the Development Fund to provide services to marginalised groups and disadvantaged areas to the extent necessary to bring the quality of services with respect to those groups and areas to the level generally enjoyed by the rest of the nation, so far as possible.”	<ul style="list-style-type: none"> - By removing the specific mention of "basic services" such as water, roads, health facilities, and electricity, and instead stating that the Development Fund will be used to provide services to marginalised groups and disadvantaged areas, the new clause allows for a more flexible interpretation of how the fund can be utilized to address the specific needs of these groups.

102.	Clause 245: Salaries charged on the Consolidated Revenue Fund	- Delete entirely	- Limiting the salaries of the prescribed institutions such as the National Human Rights Commission, the Ombudsperson, the Office of the Auditor-General and others in the deleted provision may impose financial limitations and impede administration, where funds are not readily available in the Consolidated Revenue Fund. Deleting this provision gives leverage to be able to meet statutory financial obligations from other established funds.
103.	Clause 246(2)	- Deleted entirely	<ul style="list-style-type: none"> - While it is important to hold public officials responsible for their actions, this deletion reflects a move towards a more measured approach that considers the context and circumstances of each case. The Government believes that mechanisms for accountability should be fair and ensure that public officials are not unduly penalised for decisions made either in good faith or under difficult circumstances. - The clause is vague and does not clearly define what constitutes "contrary to any law or existing instructions." This lack of specificity could lead to confusion and potential misuse of the provision. - Holding individuals accountable for any loss arising from the use of public funds, even if they have acted in good faith, or merely concurring, could create a disincentive for individuals to take on political or public office.
104.	Clause 247(1) and (2) Loan approval by the NA	- The 2024 draft deleted "not less than one half" and replaced it with a simple majority votes of the members of the NA.	- While approval from the National Assembly for loans is adequate, instituting specific voting thresholds adds an unnecessary layer of rigidity. This could be counterproductive and may further hinder the government's ability to efficiently manage and run the affairs of the state.

105.	Clause 264(1)(a) and (b)	<ul style="list-style-type: none"> - The “the Teacher Service Commission or the Health Service Commission” have been deleted. 	<ul style="list-style-type: none"> - The government's decision to remove both the Teacher Service Commission and the Health Service Commission from the draft constitution is a strategic and prudent move, given the proliferation of new commissions and agencies. - First, specialized sector commissions, while well-intentioned, can lead to overlapping functions and diffuse accountability. A centralized Public Service Commission along with the newly created ministry dedicated to public service reform can better coordinate and integrate efforts, ensuring that policies and initiatives are both coherent and thoroughly aligned with national priorities. - Secondly, the substantial financial burden associated with maintaining numerous commissions cannot be ignored. Each commission requires staffing, administrative support, office space, and operational budgets, all of which siphon off funds that could be better utilized in direct public service delivery. - By consolidating these functions within a single Commission, significant cost savings can be achieved. These savings can, in turn, be reinvested in critical areas such as education and healthcare, which directly benefit the populace. - Furthermore, the establishment of a Public Service Ministry provides a centralized mechanism to address inefficiencies and bureaucratic red tape, fostering a culture of accountability and performance. The reforms being initiated by this ministry can include modernizing public service processes, incorporating technology, and enhancing service provision models, which will ultimately lead to a more responsive and agile public service.
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106.	Clause 265(2)(b)	- Deleted confirmation by the National Assembly”	- This deletion streamlines the appointment process, allowing the President to appoint the Secretary and Head of the Civil Service without the additional step of parliamentary confirmation. It reflects the need for efficiency in filling these critical roles, ensuring that the civil service leadership can be appointed swiftly to maintain continuity in government operations. The government believes that the President should have the discretion to appoint the most qualified individuals to these key positions without unnecessary delays.
107.	Clause 265(3)(e) and (g): Mandate of the Secretary General	- To be deleted – delete paragraphs (e) and (g)	- There is now a minister for the Public Service who is a member of Cabinet and serves as the link between Cabinet and the public service, and ensures the implementation of the Cabinet and other government decision.
108.	Clause 266(1)(b): Qualifications of Secretary General	- The revised draft amended to include experience in the private sector or civil society among the criteria;	
109.	Clause 266(2): Disqualifications of Secretary General	- The revised draft deleted “private sector” from paragraph (c) and the whole of paragraphs (d) and (e) entirely.	- Excluding candidates based on prior political activities or associations risks discriminating against those who have engaged in lawful and democratic processes. For instance, It would be unjust to disqualify a brilliant public servant merely because they once sought office or aligned with a political entity promoting societal welfare initiatives. - Deleting these clauses permits experienced professionals from political backgrounds to contribute their expertise to civil service roles, thereby broadening the recruitment pool to include individuals who were previously engaged in political activities but possess significant administrative skills.

			<ul style="list-style-type: none"> - Merit-based consideration in appointments prioritizes skills, performance, and capabilities over a candidate's previous political pursuits. Countries recognizing meritocracy equally balance diverse perspectives, leveraging rich competence-based approaches rather than arbitrary political-based exclusions.
110.	Clause 269: Restriction on political activities of public officers	<ul style="list-style-type: none"> - The revised draft inserted a new subsection (4) to the effect that if a person who has obtained leave of absence failed to secure nomination or contested and lost the elections, he or she shall resume work as of right immediately after the election. 	<ul style="list-style-type: none"> - This clause encourages individuals, particularly public servants, to participate actively in the democratic process without fearing job security repercussions. They can contribute to the political landscape with the assurance of employment continuity. - The clause ensures there's no significant disruption to the human resource needs of the civil service. It maintains operational continuity, avoiding delays in resuming essential duties. - Once the election is over, the candidate can return to their non-partisan civil service role, maintaining a distinction between their prior electoral activities and their professional duties thereafter.
111.	Clause 273(1): Service Commissions	<ul style="list-style-type: none"> - The revised draft deleted paragraphs (b) and (c) 	<ul style="list-style-type: none"> - The deletion of this provision reflects a decision to streamline the governance structure and avoid the proliferation of commissions. - The government believes that the functions of these commissions can be effectively managed within existing structures, such as the Public Service Commission, without the need for separate entities. - This change promotes efficiency and reduces the administrative burden associated with managing multiple commissions.
112.	Clause 274(1)(a) and (f)	<ul style="list-style-type: none"> - The revised draft deleted "and V" in paragraphs (a) and (f) 	<ul style="list-style-type: none"> - The justification for deleting Chapter V of the Draft Constitution, regarding leadership and integrity in paragraph 3 is the same justification for deleting this clause and needs not be restated.

113.	Clause 277(2)(c): Additional powers and functions of Service Commissions	- The revised draft amended paragraph (c) adding the President to the National Assembly as receivers of the annual reports	- Service Commissions are entities under the Executive branch and it is crucial that their annual report are equally submitted to the President who is the Chief Executive.
114.	PART IV – State Owned Enterprises	- The revised deleted from clause 278 to 282 and replace them with Chapter XI Part III of the current (1997) constitution	- The replacement of these clauses with the provisions from the 1997 Constitution reflects a decision to maintain continuity in the regulation of public enterprises. - The provisions in the 1997 Constitution establish a clear and effective framework for managing these enterprises, ensuring that they operate in the public interest and are subject to appropriate oversight. - Reverting to this established framework ensures stability and consistency in the management of public enterprises.
115.	Chapter XVI, Part I Clause 284 Armed and Security Services	- The revised draft made some corrections in Heading and Title of the Chapter and Clause	
116.	Clause 284(1)	- The revised Draft amended the list and names of the Armed and Security Services of The Gambia as follows: – (a) The Gambia Armed Forces; (b) The Gambia Police Service; (c) The Gambia Immigration Service; (d) The Gambia Fire and Rescue Service; (e) The Gambia Correctional Service; (f) The State Intelligence Service; (g) The Gambia Revenue Authority; (h) The Drug Law Enforcement Agency, The Gambia; and	- The proposed changes in the revised draft from "The Gambia Prisons Service" to "The Gambia Correctional Service" signify the Government's transformative shift towards modern, rehabilitative approaches. - The term "Correctional" highlights a shift towards rehabilitation, educational programs, and preparation for reintegration into society rather than mere incarceration. - With an emphasis on correction and rehabilitation, this approach aims at addressing the root causes of criminal behaviour, striving to prevent reoffending.

		(i) Such other security service as may be established by an Act of the National Assembly.	- Global correctional trends emphasize human rights, dignity, and ethical treatment of inmates, moving away from punitive models toward rehabilitative systems.
117.	Clause 285(1): National Security Council	- The revised Draft added the Chief of Staff as a member of the SC	
118.	Clause 285(4): The President to be able invite non-members to Council meetings	- The revised draft amended this provision to the effect that the President may be able to invite any other person to attend and assist the Council with respect to any matter relating to national security.	
119.	Clause 286: The Gambia Armed Forces	- The revised draft added the Republican National Guard as an element of the Armed Forces. - It also inserted a new sub-clause (3) to clearly define the function of the Minister of Defence.	
120.	Clause 286(6)(a): requirement for The Gambia Armed Forces to report to the National Assembly whenever deployed in situations of emergency or disaster	The revised draft deleted the requirement for The Gambia Armed Forces to report to the National Assembly whenever deployed in situations of emergency or disaster.	- By removing the reporting requirement, the onus of immediate decision-making and deployment falls squarely on the Executive branch, which is typically better equipped for prompt action. - For example: The Executive can still be accountable through periodic reporting and oversight mechanisms without needing to inform the National Assembly for every deployment.
121.	Clause 290 Head of The Gambia Police Service	The revised draft amended the clause to make the functions and reporting line of the IGP precisely clear.	- The revised clause allows for the Minister responsible for internal security to provide directions to the Inspector-General of Police in matters of policy, which is essential for ensuring alignment between the police service and government priorities. This allows for a more cohesive approach to policing and security within The Gambia. - Furthermore, by removing the restrictions on the Minister giving directions to the Inspector-General of

			Police in specific operational matters such as investigations, enforcement of the law, and personnel management, the revised clause streamlines decision-making processes within the police service. This change allows for effective coordination between the Minister and the Inspector-General of Police, enhancing overall operational efficiency and effectiveness.
122.	Clause 291: Removal from Office of the IGP	- The revised draft amended the removal from office of IGP.	<ul style="list-style-type: none"> - The revised draft provides a more comprehensive list of grounds for the removal of the Inspector-General of Police compared to the 2020 draft. This expanded list allows for a more thorough evaluation of the Inspector-General's performance and conduct in office, ensuring that they are held accountable for their actions. - In particular, the inclusion of "incompetence" and "any other just cause" in the revised clause provides the President with the flexibility to remove the Inspector-General if they are not effectively carrying out their duties, even if their actions do not fall under the specific grounds listed. - Furthermore, the revised clause specifies that the removal of the Inspector-General must be on the ground of a serious violation of the Constitution or any other law, which shows a commitment to upholding the rule of law and ensuring that the Inspector-General is held to a high standard of conduct.
123.	PART IV: Internal Security Service Council.	HEADING: Change "Commission" to "COUNCIL"	(1) Change all "Commission" to "Council" wherever it occurs in the entire clause
124.	Clause 292(2)(a)	The revised draft amended the clause to make the Vice President, as Chairperson	<ul style="list-style-type: none"> - The revised clause appoints the Vice President as the Chairperson of the Internal Security Service Council. This change places the leadership of the council at a higher executive level, ensuring greater political accountability and oversight. The Vice President, being a key figure in the government, brings more direct influence and authority, which can enhance the council's

			<p>ability to implement decisions effectively and align security services with national policies.</p> <ul style="list-style-type: none"> - The revised version provides a more robust, accountable, and integrated framework for overseeing The Gambia's internal security services.
125.	New Clause: National Youth Service	<ul style="list-style-type: none"> - The revised draft reintroduced the national Youth Service as provided for under the current (1997) constitution 	<ul style="list-style-type: none"> - The National Youth Service Scheme (NYSS) provides an opportunity for young people from diverse backgrounds to come together, interact, and collaborate. This interaction is crucial in fostering a sense of national unity and patriotism. Through shared experiences and collective efforts, young Gambians can develop a stronger connection to their country and a deeper appreciation for the cultural, ethnic, and social diversity within The Gambia. - Participation in the National Youth Service encourages young people to take on civic duties and responsibilities, promoting a sense of citizenship and national pride. It provides them with opportunities to engage in community service, public health initiatives, and educational programs, helping them to develop leadership skills, teamwork, and a commitment to the public good. - The NYSS can serve as a critical platform for skills development and capacity building among the youth. By engaging in various service activities, participants acquire practical skills in fields such as agriculture, education, healthcare, environmental management, and infrastructure development. These skills not only make them more employable but also enhance their ability to start their own businesses, contributing to economic growth and reducing youth unemployment.
126.	Schedule 4: Transitional and Consequential Provisions	<ul style="list-style-type: none"> - The revised draft remove schedule 4 from entrenched clauses and deleted clause 5(2) of schedule 4 which states: 	<ul style="list-style-type: none"> - Applying the transitional clause that imposes term limits retroactively to the existing term of an incumbent president who assumed office under a different

		<p>“(2) Notwithstanding anything contained in this Constitution or any other law or any rule of interpretation or rule of construction, the term of office of the person holding the Office of President as at the effective date shall be construed to include the existing term and the person may contest election for the Presidency for only one more term as provided in this Constitution after the expiry of the existing term.”</p>	<p>constitutional framework without such limits is legally problematic.</p> <ul style="list-style-type: none">- It violates the principles of non-retroactivity, breaches legitimate expectations, undermines vested rights, and disregards democratic principles.
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