



# FACTSHEET

## On the 2020 Draft Constitution of The Gambia

The 2020 constitution was released by the Constitutional Review Commission in March 2020 after a two-year drafting process that included nationwide consultations with citizens, civil society, government, and political parties. The President gazetted the draft on May 28, 2020 for a period of three months after which the National Assembly will begin its review. This factsheet—offered by the National Youth Parliament, Activista The Gambia, Beakanyang, and Gambia Participates—contains key aspects of the 2020 draft constitution as compared to the current 1997 Constitution. The factsheet is divided into 19 democratic themes chosen based on priorities identified through consultations with Gambian citizens, other civil society organizations, and government, traditional, and religious leaders throughout the country.

1997 Constitution	Draft (2020) Constitution	Why it is Important
<b>Democratic Theme 1: National Values and Principles</b>		
The 1997 Constitution has no chapter on national values and principles.	National values and principles guide Gambian behavior and conduct. They are divided into national values and governance, culture, and duties of citizens. <sup>1</sup> Principles of governance guide public officers and	These values and principles guide Gambians on how to live in their community and relate with one another. They guide relations between citizens and the State, its servants,

<sup>1</sup> Sections 11, 12 & 13 of the draft constitution.

	<p>individuals who work for the State. These values include patriotism, national unity, decentralization and power sharing, the rule of law, and citizen participation.<sup>2</sup> In addition, the draft constitution protects human rights, promotes sustainable development,<sup>3</sup> recognizes culture, and respects ethnic and religious diversity.<sup>4</sup> It imposes duties on citizens to – for instance – protect the constitution as well as foster national unity, cohesion, and harmonious life.<sup>5</sup> Everyone must observe national values and principles.</p>	<p>and political leaders. They are the bedrock on which Gambian society is founded.</p> <p>Gambians must foster harmony by respecting the beliefs of others. This does not require adopting a different lifestyle; diversity means <i>accepting</i> differences within one’s community, including divergent religious and political beliefs. Embracing this diversity will foster national unity and patriotism.</p> <p>These values are also important to uphold the rule of law. Specifically, state decisions must be transparent, written, and respect the law. Further, national values and principles aid courts in interpreting the constitution by providing a framework for evaluating the obligations of state officials.</p>
<b>Democratic Theme 2: Leadership and Integrity</b>		
<p>The 1997 Constitution has no chapter on leadership and integrity.</p>	<p>Principles on leadership and integrity apply to all state employees (public officers) at the national or local level as well as at state-owned enterprises. These principles also apply to private entities that hold public contracts (e.g., to build roads, schools or hospitals).<sup>6</sup></p>	<p>These principles provide accountability and require transparency for public officers; they guide those who work for the State in performing their duties. For instance, state employees must be recruited based on their merit and competence; applicants should not be recruited because of their tribe or region of origin. Further, all government posts must be</p>

<sup>2</sup> Section 11(2)(a) of the draft constitution.

<sup>3</sup> Section 11(2)(b) of the draft constitution.

<sup>4</sup> Section 12(2) of the draft constitution.

<sup>5</sup> Section 13(1) of the draft constitution.

<sup>6</sup> Section 23(1) of the draft constitution.

	<p>These principles govern the responsibilities and conduct of persons indicated above. Leadership and integrity principles restrict the ability of individuals working for the State to engage in lucrative activities and receive gifts.<sup>7</sup> In addition, they provide sanctions for any person who violates these principles.<sup>8</sup></p> <p>Leadership and integrity principles also govern private entities that work with or otherwise interact with individuals working for the State. These principles provide that everyone must, “act honestly, transparently, fairly, respect the people and the rule of law, maintain and uphold confidence and respect in the integrity of the relationship.”<sup>9</sup> This prohibits corruption or the violation of state regulations. Further, it forbids the misuse of state resources and property.<sup>10</sup></p>	<p>advertised so that all qualified applicants can apply.</p> <p>In addition, promotions must be transparent and based on merit. State employees cannot be promoted due to nepotism or cronyism. If this happens, any person can complain before the relevant organs. These behaviors undermine national unity and patriotism and must be sanctioned. Those who manage state resources must use funds to benefit the nation. Leadership and integrity principles mitigate corruption, embezzlement of public funds, and misuse of authority for personal gain.</p> <p>State employees must respect procedure when withdrawing money from a state account. They cannot deposit money in a private account not accepted by the State. These principles allow banks to refuse service to state employees who are suspected of violating procedure.</p>
<b>Democratic Theme 3: Powers of the President of the Republic</b>		
<p>The 1997 Constitution determines the authority of the President.<sup>11</sup> The 1997 Constitution differentiates between the</p>	<p>Under the draft constitution, the President can exercise some authority without consulting other institutions. Similar to the 1997</p>	<p>Modern democracies limit executive powers – particularly those held by the President – to prevent tyranny. When the President has</p>

<sup>7</sup> Sections 24, 25 & 26 of the draft constitution.

<sup>8</sup> Section 29 of the draft constitution.

<sup>9</sup> Section 28 of the draft constitution.

<sup>10</sup> Section 28(f)(i) of the draft constitution.

<sup>11</sup> Section 76 of the 1997 Constitution.

<p>powers the President can exercise with and without consulting other institutions. For instance, some appointments must be confirmed by the legislature.</p> <p><b>Powers exercised without consultation</b></p> <p>The President appoints the Vice President,<sup>12</sup> Secretaries of State,<sup>13</sup> Director of Public Prosecutions,<sup>14</sup> etc. They conduct relations with other States and international organizations.<sup>15</sup> The President can nominate five National Assembly members.<sup>16</sup></p> <p><b>Powers exercised in consultation with other institutions</b></p> <p>The President appoints the Chief Justice in consultation with the Judicial Service Commission (JSC)<sup>17</sup> and judges of superior courts on the recommendation of the JSC.<sup>18</sup> The President can remove superior court</p>	<p>Constitution, some appointments are subject to the consultation or recommendation of external institutions while others must be confirmed by the National Assembly.</p> <p><b>Powers exercised without consultation</b><sup>31</sup></p> <p>The President can appoint the Vice President without consulting any institutions<sup>32</sup> and remove a minister.<sup>33</sup> The President can also appoint the Solicitor General and legal secretary, convene and preside cabinet meetings, appoint high commissioners, ambassadors, diplomatic representatives and issue commissions of inquiry in accordance with the constitution.<sup>34</sup> He or she can declare a state of emergency, but the National Assembly must approve any extension.<sup>35</sup> These powers are the same as in the 1997 constitution.</p>	<p>enormous and unchecked powers, it can lead to abuse (i.e., corruption, mismanagement, embezzlement, nepotism, and patronage). Excessive power weakens the State and its institutions. The draft constitution addresses the potential abuse of power by requiring confirmation of appointees to ensure that they meet the constitutional and any other requirements.</p> <p>The draft constitution maintained the power of the President to appoint and remove the Vice President without consultation. The President is obligated only to appoint a person who meets the conditions established by the constitution.</p> <p>Unlike the 1997 Constitution, the President will no longer nominate National Assembly members. This will increase the independence of members to defend the interests of their constituents. Any National</p>
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<sup>12</sup> Section 70(3) of the 1997 Constitution.

<sup>13</sup> Section 71(3) of the 1997 Constitution.

<sup>14</sup> Section 84(2) of the 1997 Constitution.

<sup>15</sup> Section 79 of the 1997 Constitution.

<sup>16</sup> Section 88(1)(b) of the 1997 Constitution.

<sup>17</sup> Section 138(1) of the 1997 Constitution.

<sup>18</sup> Section 138(2) of the 1997 Constitution.

<sup>31</sup> Section 88 of the draft constitution defines presidential powers.

<sup>32</sup> Section 110(2) of the draft constitution.

<sup>33</sup> Section 115(4) of the draft constitution.

<sup>34</sup> Sections 133(2); 88(1)(c); 88(1)(i); 88(1)(j) of the draft constitution.

<sup>35</sup> Section 70 of the draft constitution.

<p>judges in consultation with the JSC.<sup>19</sup> The president appoints one person to the JSC<sup>20</sup> and the Auditor-General after consultation with the Public Service Commission (PSC).<sup>21</sup> The President can terminate their appointments.<sup>22</sup> The President appoints the members of the Board of Directors of the Central Bank in consultation with the PSC<sup>23</sup> and can remove them.<sup>24</sup> The President can accord mercy to convicted individuals after consultation with the Mercy Committee<sup>25</sup> and confer honors and awards.<sup>26</sup> The President can appoint members of the electoral commission in consultation with the JSC.<sup>27</sup> The President may remove them by establishing a tribunal to enquire into the matter.<sup>28</sup></p> <p><b>Appointments subject to legislative confirmation</b></p>	<p><b>Powers exercised in consultation with other institutions</b></p> <p>For the President to grant a pardon or sentence reduction, the Mercy Committee must recommend that he/she do so. The National Assembly must approve a declaration of war. The appointments of the solicitor general and legal secretary and of members of the Board of Directors of State-Owned Enterprise are made after recommendations from the Public Service Commission.<sup>36</sup></p> <p><b>Appointments subject to legislative confirmation</b></p> <p>The National Assembly must confirm the following presidential appointments: cabinet ministers,<sup>37</sup> the electoral commission,<sup>38</sup> the Prerogative of Mercy Committee, of the</p>	<p>Assembly member appointed by the President may no longer hold a seat in the National Assembly.</p> <p>The draft constitution also changed the procedure to appoint ministers and members of independent institutions. Every minister appointed by the President must be confirmed by the National Assembly. Generally, the President provides a name to the National Assembly, which will assess if the person is fit to be a minister. This is an important development because the Assembly can ensure that persons are appointed on the basis of their abilities to perform public mission and not due to nepotism, political affiliation, etc.</p> <p>The National Assembly also must confirm the appointment of members of independent institutions, including the Auditor General,</p>
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<sup>19</sup> Section 141(2)(c) of the 1997 Constitution.

<sup>20</sup> Section 145(3)(e) of the 1997 Constitution.

<sup>21</sup> Section 158(2) of the 1997 Constitution.

<sup>22</sup> Section 158(4) of the 1997 Constitution.

<sup>23</sup> Section 162(2) of the 1997 Constitution.

<sup>24</sup> Section 162(4) of the 1997 Constitution.

<sup>25</sup> Section 82 of the 1997 Constitution.

<sup>26</sup> Section 83 of the 1997 Constitution.

<sup>27</sup> Section 42(3) of the 1997 Constitution.

<sup>28</sup> Section 42(6) of the 1997 Constitution.

<sup>36</sup> Sections 133 and 278(1) of the draft constitution.

<sup>37</sup> Section 88(4) of the draft constitution.

<sup>38</sup> Section 81(3) of the draft constitution.

<p>The appointment of the ombudsman and their deputies must be confirmed by the National Assembly.<sup>29</sup> The President can remove them, but the National Assembly must appoint a tribunal for the removal process.<sup>30</sup></p>	<p>Director of Public Prosecutions, Chairperson of the National Commission for Civic Education.<sup>39</sup> The National Assembly also confirms the appointment of justices of the Supreme Court; members of independent institutions;<sup>40</sup> members of the Land, Environment and Natural Resources Commission;<sup>41</sup> and the chairperson of the National Commission for Civic Education.<sup>42</sup></p>	<p>the National Human Rights Commission, and the ombudsperson. These institutions are important to protect human rights, maintain the rule of law, and prevent corruption. By vesting the confirmation power in the National Assembly, the draft constitution prevents against the appointment of incompetent persons and maintains the independence of the National Assembly.</p>
<p><b>Democratic Theme 4: Powers of the National Assembly</b></p>		
<p>The primary role of the National Assembly is to adopt laws.<sup>43</sup> It evaluates and approves the state budget.<sup>44</sup> It also can prolong a state of emergency,<sup>45</sup> remove the President through a vote of no-confidence (requiring a two-thirds vote) subject to a referendum.<sup>46</sup> It also can</p>	<p>The draft constitution confers legislative and appropriations authority on the National Assembly.<sup>56</sup> Other powers include: extending a state of emergency period to 60 days,<sup>57</sup> approving a declaration of war or making peace,<sup>58</sup> authorizing the government to grant</p>	<p>Vesting the confirmation and removal authority in the National Assembly is exceedingly important because it maintains the separation of powers and prevents corruption. If the National Assembly removes a minister, the President must replace him or her.</p> <p>The President has the power to choose an individual he/she wants to appoint as a</p>

<sup>29</sup> Section 164(1) of the 1997 Constitution.

<sup>30</sup> Section 164(6) of the 1997 Constitution.

<sup>39</sup> Sections 81(3); 128; 131(2) and 299(2) of the draft constitution.

<sup>40</sup> Section 216 of the draft constitution.

<sup>41</sup> Section 256(2) of the draft constitution.

<sup>42</sup> Section 299(2) of the draft constitution.

<sup>43</sup> General powers are defined in Sections 100 and 102 of the draft constitution.

<sup>44</sup> Section 152(1A) of the 1997 Constitution.

<sup>45</sup> Section 34(2) of the 1997 Constitution.

<sup>46</sup> Section 63(3) & (4) of the 1997 Constitution.

<sup>56</sup> Sections 153 and 250 of the draft constitution.

<sup>57</sup> Section 70(4) of the draft constitution.

<sup>58</sup> Section 88(1)(m) of the draft constitution.

<p>remove the President for mental or physical incapacity<sup>47</sup> and for misconduct.<sup>48</sup></p> <p>The National Assembly authorizes the prosecution of a former President.<sup>49</sup> It can dismiss the Vice President and secretaries of state through a vote of censure.<sup>50</sup></p> <p>The National Assembly receives and assesses government activity reports,<sup>51</sup> examines or approves proposals for raising revenue, and examines government accounts and expenditures.<sup>52</sup> The National Assembly can ask the President to present information on granting loans, their servicing and repayment, and payments made under the Consolidated Fund.<sup>53</sup></p> <p>The National Assembly (50%) can initiate the removal proceedings against a judge.<sup>54</sup> If –</p>	<p>or raise loans,<sup>59</sup> and limiting state borrowing and public debt.<sup>60</sup></p> <p>The National Assembly confirms presidential appointments, including the Vice President, authorizes membership to international organizations,<sup>61</sup> and approves the ratification of treaties.<sup>62</sup></p> <p>The National Assembly must not amend or repeal election laws nine months before elections.<sup>63</sup> The draft constitution forbids the National Assembly from establishing a one-party state, adopting an official state religion, or overriding court decisions.<sup>64</sup></p> <p>The National Assembly can remove the President by reason of mental or physical incapacity<sup>65</sup> and for misconduct</p>	<p>minister if she/he meets conditions. However, the National Assembly must accept this individual (through confirmation). This procedure allows the Assembly to evaluate the ability of the person to work for government. If the person has bad morals or is known for bribing state servants or other acts of corruption, the Assembly can make sure the President does not appoint that person. Thus, contrary to the 1997 Constitution, the President will think more than once before he/she appoints an individual. It is good for democracy and accountability in The Gambia.</p> <p>The National Assembly will clarify the procedure for confirming presidential appointments under its Standing Orders. Citizens can provide input regarding</p>
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<sup>47</sup> Section 66 of the 1997 Constitution.

<sup>48</sup> Section 67(2) of the 1997 Constitution.

<sup>49</sup> Section 69(3) of the 1997 Constitution.

<sup>50</sup> Sections 70(8), 71(5) and 75 of the 1997 Constitution.

<sup>51</sup> Section 102(a) of the 1997 Constitution.

<sup>52</sup> Section 102(c) of the 1997 Constitution.

<sup>53</sup> Section 155(6) of the 1997 Constitution.

<sup>54</sup> Section 141(5) of the 1997 Constitution.

<sup>59</sup> Section 247 of the draft constitution.

<sup>60</sup> Section 248 of the draft constitution.

<sup>61</sup> Section 126(2)(b) of the draft constitution.

<sup>62</sup> Section 126(3)(a) of the draft constitution.

<sup>63</sup> Section 79(4) of the draft constitution.

<sup>64</sup> Section 153(2) of the draft constitution.

<sup>65</sup> Section 107 of the draft constitution.



<p>following an investigation and tribunal – allegations against a judge are substantiated, he or she can be removed by two-thirds vote of the National Assembly.</p> <p>The 1997 Constitution prohibits the National Assembly from establishing a party state, adopting an official state religion, or modifying court decisions.<sup>55</sup></p>	<p>(impeachment).<sup>66</sup> It removes the Vice President and ministers by passing a vote of censure.<sup>67</sup></p> <p>The National Assembly can appoint a Committee to investigate ministries, government departments, and state enterprises. It can investigate any other matter of public importance.<sup>68</sup></p> <p>Powers of the National Assembly are limited and citizens may petition the National Assembly.<sup>69</sup> It cannot reduce the budget of an independent institution below the approved amount in the preceding year,<sup>70</sup> it must seek expertise when adopting legislation,<sup>71</sup> etc.</p>	<p>appointments through formal and informal engagements.</p>
<b>Democratic Theme 5: Powers of the Judiciary</b>		

<sup>55</sup> Section 100(2) of the 1997 Constitution.

<sup>66</sup> Section 108 of the draft constitution.

<sup>67</sup> Section 122 of the draft constitution.

<sup>68</sup> Section 161(2) of the draft constitution.

<sup>69</sup> Section 163 of the draft constitution.

<sup>70</sup> Section 219(4) of the draft constitution.

<sup>71</sup> Sections 124(2), 124(3) and 135(2)(b) of the draft constitution.



<p>Under the 1997 Constitution, the Supreme Court, Court of Appeal, High Court, Special Criminal Court, Magistrate Courts, Cadi Courts, District Tribunals, and courts established by law form part of the judiciary.<sup>72</sup></p> <p>There are specific matters that only the Supreme Court can hear. For example, only the Supreme Court can interpret and apply constitutional provisions to issues outside of human rights.<sup>73</sup> Only the Supreme Court can hear challenges to violations of the constitution or other laws by the National Assembly or other authorities.<sup>74</sup> The Supreme Court can decide the validity of presidential and legislative elections.<sup>75</sup> The Supreme Court can also decide whether information disclosed in court could threaten national security.<sup>76</sup></p> <p>It hears appeals of decisions made by the Court of Appeal.<sup>77</sup> The Court of Appeal hears</p>	<p>The Supreme Court, Court of Appeal, High Court, Court Martial, Magistrate’s Court, Shari’ah Court, District Tribunal, and lower courts or tribunals established by law form part of the judiciary.<sup>85</sup> The Court Martial is new and Shari’ah Court replaces Cadi Courts. A Shari’ah High Court is also new in the draft constitution.</p> <p>As in the 1997 constitution, there are matters that only the Supreme Court can hear; however, the draft constitution extends the Supreme Court’s jurisdiction to hear matters on appeal from other courts, such as the Court of Appeal, High Court, Shari’ah High Court, and Court Martial.<sup>86</sup> Further, the Supreme Court hears appeals against Court of Appeal decisions on local government. Individuals may also challenge Commission of Inquiry findings at the Supreme Court.<sup>87</sup></p> <p>The draft constitution also empowers the Supreme Court to its own decisions.<sup>88</sup></p>	<p>The draft constitution confers on courts sufficient powers to combat arbitrariness and ensure that justice is served for all citizens. It is important that individuals can petition the Supreme Court. Local governments can also petition courts and challenge higher levels of government for encroachment on their powers.</p> <p>The Shari’ah Court and Shari’ah High Court are important features of the Gambian judiciary. Individuals to whom Shari’ah law applies may bring cases related to personal affairs, such as marriage and inheritance. The draft constitution’s inclusion of Shari’ah courts recognizes the importance of reflecting the specific identity of the Gambian people in the country’s legal framework.</p>
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<sup>72</sup> Section 120 of the 1997 Constitution.

<sup>73</sup> Section 127(a) of the 1997 Constitution.

<sup>74</sup> Section 127(b) of the 1997 Constitution.

<sup>75</sup> Section 127(c) of the 1997 Constitution.

<sup>76</sup> Section 127(d) of the 1997 Constitution.

<sup>77</sup> Section 128 of the 1997 Constitution.

<sup>85</sup> Section 175 of the draft constitution.

<sup>86</sup> Section 180(1) of the draft constitution.

<sup>87</sup> Section 180(1)(d) of the draft constitution.

<sup>88</sup> Section 181(1) of the draft constitution.

<p>appeals of decisions (judgments, orders and decrees) by the High Court or any other court indicated by the law.<sup>78</sup></p> <p>Unlike the Court of Appeal, the High Court hears civil and criminal cases.<sup>79</sup> When an individual seeks the interpretation of a constitutional right or its application, he/she can approach the High Court.<sup>80</sup> It can hear appeals from lower courts and supervise their activities.<sup>81</sup></p> <p>The Special Criminal Court hears and decides on criminal offences related to theft, misappropriation, and offences concerning public funds and property.<sup>82</sup> The 1997 Constitution allows an act of the National Assembly to clarify this provision.<sup>83</sup></p> <p>The Cadi Court and Cadi Appeal Panel apply Shari’ah law to issues of marriage, divorce, and inheritance. Parties or interested persons must be Muslim.<sup>84</sup></p>	<p>The Court of Appeal hears appeals from the High Court, Shari’ah Court, and Court Martial. It receives petitions on local government elections and challenges to findings of commissions of inquiry.<sup>89</sup></p> <p>The High Court hears civil and criminal cases.<sup>90</sup> Specifically, the High Court interprets and applies human rights enumerated in the constitution.<sup>91</sup> It hears appeals from lower courts and supervises their activities.<sup>92</sup> There are no major changes to the High Court in the draft constitution.</p> <p>The Shari’ah High Court decides matters formerly decided by the Cadi Court: marriage, divorce, inheritance, and endowment (<i>waaf</i>) for people to whom Shari’ah applies. It also hears appeals from Shari’ah Court. Unlike the Cadi Court, parties and interested persons for the Shari’ah High Court do not need to be Muslim.</p>	
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<sup>78</sup> Section 130 of the 1997 Constitution.

<sup>79</sup> Section 132(1)(a) of the 1997 Constitution.

<sup>80</sup> Section 132(1)(b) of the 1997 Constitution.

<sup>81</sup> Sections 132(2) and 133 of the 1997 Constitution.

<sup>82</sup> Section 135 of the 1997 Constitution.

<sup>83</sup> Section 136 of the 1997 Constitution.

<sup>84</sup> Section 137(4) of the 1997 Constitution.

<sup>89</sup> Section 183 of the draft constitution.

<sup>90</sup> Section 185(1)(a) of the draft constitution.

<sup>91</sup> Section 185(1)(b) of the draft constitution.

<sup>92</sup> Sections 185(3) and 186 of the draft constitution.

## Democratic Theme 6: Elections – Presidential, Legislative and Local

### 6.1 Presidential

<p>Presidential elections occur three months before the incumbent’s term ends.<sup>93</sup> The candidate who obtains the highest number of votes is the winner.<sup>94</sup> Under the 1997 Constitution, election of the president does not require an absolute majority vote.</p> <p>The following individuals <i>cannot</i> run for president: dual citizens; naturalized citizens; citizens under 30 years old; residents who reside in The Gambia for fewer than five years before elections; individuals less than a senior secondary school; those compulsorily retired or dismissed from public office; and convicted criminals of misconduct, negligence, corruption, or improper behavior.<sup>95</sup></p>	<p>The draft constitution establishes principles of the electoral system, including the freedom to exercise political rights, fair representation of gender in elective public bodies, and fair representation of youth and persons with disabilities (PWDs).<sup>96</sup></p> <p>Presidential elections are held six weeks before the end of the incumbent’s term.<sup>97</sup></p> <p>Presidential candidates must be: citizens by birth, aged 30 or older, and residents of The Gambia for three years prior to the vote. Candidates must also be mentally fit to serve office, a registered voter, and educated with an undergraduate degree and five years’ experience at minimum or with a senior secondary school certificate and 12 years’ work experience at minimum.<sup>98</sup></p> <p>The draft constitution disqualifies certain individuals from running for President, including dual citizens or citizens by registration or naturalization; individuals</p>	<p>An absolute majority vote enhances the legitimacy of a presidential election. A run-off election also forces candidates to form coalitions through compromise and negotiation as well as appeal to a wider range of voters’ interests.</p> <p>Allowing dual citizens to run for the President can compromise a country’s independence. A President should always give priority to the country that they serve.</p>
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<sup>93</sup> Section 46 of the 1997 Constitution.

<sup>94</sup> Section 48(3) of the 1997 Constitution.

<sup>95</sup> Section 62 of the 1997 Constitution.

<sup>96</sup> Section 74 of the draft constitution.

<sup>97</sup> Section 92(2) of the draft constitution.

<sup>98</sup> Section 93 of the draft constitution.

	<p>convicted of gross misconduct, misbehavior, negligence, or corruption by a commission of inquiry; individuals convicted by a court or tribunal of dishonesty, immoral conduct, or for an offence punishable by 12 months' imprisonment. Individuals convicted of inciting ethnic or religious hatred or adjudged for bankruptcy are also disqualified from the presidency.<sup>99</sup></p> <p>The draft constitution reduces some requirements of presidential candidates. For example, Gambians in the diaspora can run if they provide evidence of three annual visits to the country before elections.</p>	
<b>6.2 Legislative</b>		
<p>Legislative elections are held three months after the presidential election.<sup>100</sup> Candidates must be Gambians aged 21 or older, reside in the constituency for at least one year before nomination, and speak English. Candidates must also declare their assets.<sup>101</sup></p> <p>The following individuals are disqualified: dual citizens, persons of unsound mind, persons sentenced to death or six months</p>	<p>Legislative and presidential elections are held on the same day.<sup>103</sup> Qualified legislative candidates include individuals with citizenship aged 21 or older, a senior secondary school certificate, and proficiency in English. Legislative candidates must declare assets to the Anti-Corruption Commission.<sup>104</sup> Registered and naturalized citizens may contest 10 years after naturalization.<sup>105</sup></p>	<p>The harmonization of presidential and legislative elections is important because it is likely to increase voter turnout and decrease the cost of elections and the campaign period so that elected officials can focus more on governing. Harmonizing elections also prevents interference by the President in the organization of legislative elections.</p>

<sup>99</sup> Section 94 of the draft constitution.

<sup>100</sup> Section 96 of the 1997 Constitution.

<sup>101</sup> Section 89(1) of the 1997 Constitution.

<sup>103</sup> Section 139 of the draft constitution.

<sup>104</sup> Section 137 of the draft constitution.

<sup>105</sup> Section 137(3) of the draft constitution.

<p>imprisonment in the period of five years before elections. Directors of Seyfos or Alkalos and individuals who have filed for bankruptcy or been found guilty of abusing their power over elections are also disqualified from running in legislative elections.<sup>102</sup></p>	<p>Conditions for disqualification include: registered and naturalized citizens with non-Gambian citizenship; honorary citizens; persons of unsound mind, persons dismissed for dishonesty or immoral conduct; individuals convicted of gross misconduct, misbehavior, negligence or corruption 10 years or less before nomination; individuals convicted of dishonesty or immoral conduct or sentenced to 12 months' imprisonment or more; members of disciplined forces; elected local government officials; and a Seyfo or Alkalo, etc.<sup>106</sup></p>	<p>Setting clear criteria for candidates increases the quality of individuals occupying the National Assembly. Also, excluding Seyfos and Alkalos from the legislature maintains the non-partisanship nature of their positions of their offices.</p>
<p><b>6.3 Local Council</b></p>		
<p>Local government elections are determined through an act by the National Assembly.<sup>107</sup> Citizens vote directly for mayors and chairpersons. The President appoints the Seyfo in consultation with the Minister of Local Government.<sup>108</sup> The Minister of Local Government appoints Alkalos in consultation with the Divisional Commissioner, district Seyfo or Chairperson of Kanifing Municipality.<sup>109</sup></p>	<p>Local government authorities are elected directly by registered voters every five years. Local government authorities must have high moral character and integrity.<sup>110 111</sup> Seyfos are directly elected by voters in the district on a non-partisan basis. Alkalos are selected in accordance with traditional lines of inheritance and appointed by the Minister of Local Government.<sup>112</sup></p>	<p>The draft constitution ensures that the executive and legislative branches do not interfere in the appointment of Seyfos, thus enhancing their autonomy.</p> <p>The selection of Alkalos in the draft constitution reflects traditional practices and values specific to The Gambia without imposing models for selecting local government officials from other countries.</p>

<sup>102</sup> Section 90(1) of the 1997 Constitution.

<sup>106</sup> Section 138 of the draft constitution.

<sup>107</sup> Section 194 of the 1997 Constitution.

<sup>108</sup> Section 58 of the 1997 Constitution.

<sup>109</sup> Section 59 of the 1997 Constitution.

<sup>110</sup> Section 209 of the draft constitution.

<sup>111</sup> Section 208 of the draft constitution.

<sup>112</sup> Section 211 of the draft constitution.

### Democratic Theme 7: Presidential Term Limits

<p>In Section 63, a presidential term is five years, but does not limit the number of terms that a President can serve.</p> <p>If the National Assembly’s term is extended due to a state of war or emergency, the President’s term is also extended.<sup>113</sup></p>	<p>Section 102 mandates the President is elected for a five-year term. No person shall be President more than two terms. It also prevents persons who have served two terms as President from competing again.</p> <p>Like the 1997 constitution, the President’s term is extended when the National Assembly’s term is extended.<sup>114</sup></p> <p>Schedule 4(5) of the draft constitution provides that the incumbent’s term from 2017-2021 constitutes their first term. The incumbent can only run once more for reelection of a second term.</p>	<p>Term limits strengthen democratic institutions. Term limits are a check on presidential authority as incumbents are less able to use state institutions to manipulate elections or erode power of other branches of government and opposition parties. Term limits increase opportunities for a new generation of political leaders to bring fresh ideas and potential policy changes.</p>
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### Democratic Theme 8: Citizenship

<p>Under the 1997 Constitution, citizenship is acquired by birth,<sup>115</sup> descent,<sup>116</sup> marriage,<sup>117</sup> and naturalization.<sup>118</sup> Dual citizenship is also permitted.<sup>119</sup></p>	<p>Like the 1997 Constitution, citizenship status for Gambians before the adoption of the new constitution is maintained.<sup>120</sup> Individuals must reside in The Gambia before they can apply for naturalization (length was changed in the draft constitution).<sup>121</sup> Dual citizenship is allowed; individuals can be deprived of</p>	<p>Citizenship is an entry point for enjoying fundamental rights guaranteed by the constitution and accessing basic services. Setting clear and reasonable criteria for citizenship can strengthen democracy, for example through the organization of fair</p>
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<sup>113</sup> Section 63(6) of the 1997 Constitution.

<sup>114</sup> Section 102(3) of the draft constitution.

<sup>115</sup> Section 9 of the 1997 Constitution.

<sup>116</sup> Section 10 of the 1997 Constitution.

<sup>117</sup> Section 11 of the 1997 Constitution.

<sup>118</sup> Section 12 of the 1997 Constitution.

<sup>119</sup> Section 12A of the 1997 Constitution.

<sup>120</sup> Section 14 of the draft constitution.

<sup>121</sup> Section 12(1) of the 1997 Constitution

	<p>citizenship and have their citizenship restored.</p> <p>The draft constitution does not distinguish citizenship by birth and by descent.<sup>122</sup> Individuals born on Gambian soil are citizens if a parent or grandparent is a citizen. A child less than eight years old found on Gambian soil with unknown parents is granted citizenship.<sup>123</sup> The spouse of a Gambian can apply for citizenship after five years, a reduction from seven years.<sup>124</sup> Individuals seeking naturalization are no longer required to renounce their nationality of origin.<sup>125</sup></p> <p>The draft constitution does cover the automatic citizenship of children born in The Gambia from foreign national parents. Recent research on citizenship laws in Africa found that automatic citizenship is generally defined by legislatures based on the economic situation of the country.<sup>126</sup></p>	<p>elections that do not exclude certain candidates to limit competition.<sup>127</sup></p>
<b>Democratic Theme 9: Secularism</b>		

<sup>122</sup> Section 15 of the draft constitution.

<sup>123</sup> Section 15(3) of the draft constitution.

<sup>124</sup> Contrast section 11(a) of the 1997 Constitution with section 16(1) of the draft constitution.

<sup>125</sup> Section 17(4) of the draft constitution.

<sup>126</sup> Bronwen Manby *Citizenship law in Africa: A comparative study* (2010) 2.

<sup>127</sup> Specific examples from West Africa: In Côte d'Ivoire, Alassane Ouattara was excluded from contesting in the 1995 presidential elections due to questions of citizenship. The Liberian civil war occurred in part as a result of disputes over citizenship between natives and descendants of American slaves.



<p>Section 1(1) of the 1997 Constitution establishes The Gambia as “a sovereign secular Republic,” thus prohibiting government-mandated religions.</p> <p>Section 1 is entrenched meaning that an act of the National Assembly cannot amend it. To revise this provision, a referendum would have to be organized pursuant to Article 226(4) and (7).</p>	<p>The draft constitution removed the word “secular” from Section 1. The President and National Assembly are prohibited from establishing a state religion.<sup>128</sup> Any citizen of The Gambia has the right to manifest and practice their faith and/or religion without state interference based on the freedoms of conscience, religion, thought, belief, and opinion, all of which are included in the draft constitution.<sup>129</sup></p>	<p>Establishing a secular state guarantees that The Gambia respects the fundamental freedoms of conscience, religion, thought, belief, and opinion, all important components of a strong democracy. The government cannot impose a religion on Gambians or provide benefits to followers of one religion over another. If a Muslim is married to a Christian, marriage and divorce does not need to be carried out according to Shari’ah law.</p>
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### Democratic Theme 10: The Bill of Rights

<p>The following rights are <u>recognized</u> in the 1997 Constitution: the right to life (Section 18); right to personal liberty (Section 19); protection from slavery and forced labor (Section 20); protection from inhuman treatment (Section 21); protection from deprivation of property (Section 22); right to privacy (Section 23); provision to secure the protection of the law and a fair trial (Section 24); freedoms of speech, conscience, assembly, association, and movement (Section 25); political rights (Section 26); right to marry (Section 27); rights of women (Section 28); rights of children (Section 29); rights to education (Section 30); rights of the disabled (Section 31); right to culture (Section 32); protection from discrimination</p>	<p><b>The following rights and freedoms are retained in the draft constitution:</b> the right to life (Section 38); protection of liberty (Section 39); protection from slavery, servitude, human trafficking, and forced labor (Section 40); right of human dignity and protection from torture and inhuman treatment (Section 41); protection of property (Section 42); right to privacy (Section 43); right to a fair trial (Section 45); political rights (Section 53); right to marry (Section 54); rights of women (Section 55); rights of children (Section 56); right to education (Section 57); rights of persons with disabilities (Section 58); cultural rights (Section 59); protection from discrimination (Section 69); and rights of persons detained under emergency powers (Section 72).</p>	<p>The draft constitution improves respect for democratic principles by increasing the number and scope of rights included. The improved Bill of Rights in the draft constitution also enhancing protections for citizens. For example, if a Gambian does not have access to adequate housing or reasonable standards of sanitation, he/she can demand that the state provide adequate housing. Under the draft constitution, it is an obligation of the government. The government also has the obligation to include adequate food, clean and safe water, and social security in the annual budget.</p>
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<sup>128</sup> Section 88(5)(b) and 153(2)(b) of the draft constitution.

<sup>129</sup> Section 49 of the draft constitution.

(Section 33); and rights of persons detained under emergency powers (Section 36).

**The following rights and freedoms were improved in the draft constitution:** Section 25 of the 1997 constitution on freedoms of speech, conscience, assembly, association, and movement was expanded in the draft constitution to seven additional provisions: freedom of expression (Section 46), freedom of the media (Section 47), access to information (Section 48), freedoms of religion and conscience (Section 49), freedom of assembly (Section 50), freedom of association (section 51), and freedom of movement (section 52). The draft constitution extends the scope of state obligations for some rights, for example socio-economic rights.

**The following are rights and freedoms added to the draft constitution:** right to fair administrative action (Section 44); freedom of the media (Section 47); access to information (Section 48); freedom of religion (Section 49); right to found family (Section 54); fair labor practices (Section 60); right to a clean environment (Section 61); elderly rights (Section 63); youth rights (Section 64); consumer protection rights (Section 65); right to development (Section 66); rights of the sick (Section 67); gender balance and fair representation of marginalized groups (Section 68); and economic and social rights (Section 62).

### Democratic Theme 11: The Right to Freedom of Expression

Section 25 guarantees the right to freedom of expression but does not define its meaning and scope. This right applies to every person, including non-nationals.

Section 46 of the draft constitution expands the right to freedom of expression. The right applies to everyone and now contains three elements: the freedom to seek, receive, impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. The draft constitution does not limit how individuals express themselves, for example online or through the radio. Individuals cannot be punished for freely expressing themselves, however there are some limitations. Ideas and information expressed must not aim to propagate war or incite other people to violence or break the law. Individuals cannot advocate for ethnic or religious hatred.

Expression is a form of participation in public affairs because the state belongs to every Gambian, not just those who are in power. The right to freedom of expression allows individuals to voice their concerns to political leaders and participate in the management of public affairs. This right is recognized under human rights treaties ratified by The Gambia, including the African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights.

Freedom of expression allows enhanced competition among political parties and their associated candidates. Citizens can be better informed about the platforms and priorities of the various political parties when all parties are allowed to speak freely.

If a mayor, Seyfo, minister, or the President makes a statement that you do not agree with, you can express your views on that statement without interference or fear of retaliation. Expression can also be constructive in the sense that citizens may use this opportunity to commend government actions and/or suggest areas for improvement. Those in positions of leadership must promote free speech because it allows them to understand what people need the most (roads, schools, hospitals) and what they think should be changed.

## Democratic Theme 12: Freedom of the Media and Access to Information

Section 207 of the 1997 Constitution concerns freedom of the media. While recognizing freedom of the press, the Constitution allows the National Assembly to regulate how citizens exercise this right. The Constitution asserts that freedom of the press promotes accountability of the government to all Gambians.

Citizens' right to access information is not included in the 1997 Constitution.

Section 47 guarantees independence of the media and expands the definition of this right. goes further to define the scope of this right covering the following aspects:

- Right of individual and organization to own and operate media.
- Freedom to gather, process and transmit news and information without direct or indirect interference.
- Protection from control and censorship.
- Protection from disclosure of sources of information.

The draft constitution provides that every person has the right to the correct or delete false or misleading information that affects him/her.

The State must publicize important information, but the National Assembly may disallow publishing information when the interest of keeping it outweighs the public interest to access the information.<sup>130</sup>

The draft constitution recognizes rights that will increase transparency and accountability of the government. Because the State is obliged to publicize important information, citizens have access to information (and can demand access to information) to hold the government accountable.

Access to information is important for all Gambians, including journalists, civil servants, civil society members and religious or traditional leaders. Any citizen can, for example, approach the Ministry of Finance or National Assembly to ask about money spent on building new schools or hospitals. Citizens can then assess if the money was used correctly by examining the number of schools and hospitals built. Access to information enables citizen control over the government. The more that citizens demand information, the more capable they are at influencing the management of public affairs. This right confirms that the state works for the betterment of its citizens.

Freedom of the media allows every Gambian to create and operate media. The government cannot dictate how citizens collect, treat and disseminate information. The draft

<sup>130</sup> Section 48(4) of the draft constitution.

		constitution also protects citizens from interference and censorship.
<b>Democratic Theme 13: Gender Balance and Fair Representation of Marginalized Groups</b>		
<p>Political Objective 214 in the 1997 Constitution guarantees fair representation of women.<sup>131</sup> Objective 215 obliges the government to ensure “equal opportunity and full participation for women in the economic development of the country.” These objectives are, however, neither binding nor justiciable.</p> <p>The 1997 Constitution also establishes the National Youth Service but does not include information about its participation in politics.<sup>132</sup></p>	<p>In Section 68 of the draft constitution, the government is obliged to ensure women, youth and persons with disabilities are represented in institutions established by the constitution and by an act of the National Assembly, statutory bodies, and state-owned enterprises.</p> <p>For elections, Schedule 3 reserves 14 seats for women, two elected from each administrative area, and two elected persons with disabilities from members of the federation representing such persons.</p> <p>Section 64 of the draft guarantees the rights of youth, including access to relevant education, training and employment and protection from abuse and violence. The draft constitution requires that political parties nominate youth to 10% of all candidate positions.<sup>133</sup></p>	<p>Inclusion of marginalized groups is an essential aspect of strong democratic governments. In addition, increasing representation of marginalized groups equips the government to better respond to the needs and priorities of marginalized persons in The Gambia. Studies show that, for example, female legislators speak more confidently about gender issues than their male counterparts.<sup>134</sup> Female legislators throughout sub-Saharan Africa have contributed to improvements to reducing gender-based and domestic violence legislation, and combatting biases in land rights or family laws.<sup>135</sup> Representation of women and disabled persons in the National Assembly and in other elected positions also reassures citizens that the government serves the interests of all Gambians. It also promotes social cohesion, and national unity.</p>
<b>Democratic Theme 14: Fiscal Responsibility and Transparency</b>		

<sup>131</sup> Political objectives form part of Directive Principles of State Policy. They are “public policy of The Gambia” and aim to foster a “just, free and democratic state” (Section 211 of the 1997 Constitution). Unlike other constitutional rules, Directive Principles of State Policy do not confer subjective rights to individuals and cannot constitute a basis for a claim before a court of law.

<sup>132</sup> Section 195-197 of the 1997 Constitution.

<sup>133</sup> Section 204(2)(e) of the draft constitution.

<sup>134</sup> Amanda Clayton, Cecilia Joseffson & Vibeke Wang ‘Quotas and women’s substantive representation: evidence from a content analysis of Ugandan plenary debates’ (2016) *Politics & Gender* 1-29.

<sup>135</sup> Gretchen Bauer ‘Women in African parliaments’ in *The Palgrave Handbook of African Women’s Studies* (2018).

<p>The 1997 Constitution establishes different mechanisms to further fiscal responsibility and transparency. The executive manages the government’s finances, but the National Assembly approves government expenditures and local and national tax rates.<sup>136 137</sup> This is attributed to the idea that the people (who the National Assembly represents) regulate state expenditures.<sup>138</sup> The National Assembly can also authorize the government to grant<sup>139</sup> and raise loans,<sup>140</sup> an Appropriation Bill to approve money paid from the Consolidated Fund<sup>141</sup> or a Supplementary Appropriation Bill when money approved in the Appropriation Bill is insufficient.<sup>142</sup></p> <p>The Central Bank is the only government bank. State funds must be deposited in the Central Bank to avoid mismanagement of state funds, corruption, embezzlement, and violations to financial regulations.<sup>143</sup></p>	<p>The draft constitution contains a new chapter on public finances providing principles on management of public finances.<sup>147</sup> These principles include transparency, accountability, public participation, and appropriate resource allocation.</p> <p><b>New provisions</b> encompass the establishment of a development fund for marginalized areas,<sup>148</sup> the need for consultation before imposition of taxes,<sup>149</sup> consultation on the national budget<sup>150</sup> or transparency, accountability and public participation.<sup>151</sup></p> <p>Development fund will support development of entities that cannot raise sufficient local revenues. The consultation before imposing taxes aims to ensure taxes are adapted to people’s socio-economic conditions. Taxes must neither be arbitrary nor oppress individuals. People must also express their</p>	<p>Improvements to the draft constitution improve citizen awareness about and participation in determining state expenditures. They increase the National Assembly’s control on finances and uphold transparency by requiring the Auditor-General to publish reports describing how public accounts were used. Citizens and other institutions can know, in advance, what has been approved and afterward, how and for what purpose the funds have been utilized. If discrepancies are observed, citizens can demand accountability.</p> <p>The National Assembly is also given sufficient time (60 days before the end of the financial year) to consider estimates submitted by the government. This period is important as it allows the Assembly to obtain different views from experts and citizens and make possible recommendations for</p>
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<sup>136</sup> Section 149(1) of the 1997 Constitution.

<sup>137</sup> Section 149(2)(b) of the 1997 Constitution.

<sup>138</sup> Section 150(2)(a) of the 1997 Constitution.

<sup>139</sup> Section 155 of the 1997 Constitution.

<sup>140</sup> Section 155(3) of the 1997 Constitution.

<sup>141</sup> Section 152(3A) of the 1997 Constitution.

<sup>142</sup> Section 153 of the 1997 Constitution.

<sup>143</sup> Section 161(3) of the 1997 Constitution.

<sup>147</sup> Section 238 & 239 of the draft constitution.

<sup>148</sup> Section 244 of the draft constitution.

<sup>149</sup> Section 238(2)(b) of the draft constitution.

<sup>150</sup> Section 250(5) of the draft constitution.

<sup>151</sup> Section 238(1)(a) of the draft constitution.

<p>The Central Bank is led by a board of directors comprised of the chairman, who is the governor of the bank, chief executive of the bank and four other directors.<sup>144 145</sup> The President leads appointments of board members. The President is obliged to consult the Public Service Commission. Directors are appointed for two years; their term can be extended with the President's approval.<sup>146</sup></p>	<p>views on the budget and raise concerns on its ability to respond to problems they face. The consultation allows them to suggest expenditures that are unnecessary and can be cut off.</p> <p>An elaborate and detailed section on the provision of financial means to local government authorities is provided.<sup>152</sup></p> <p>Elaborate provisions on taxation<sup>153</sup> and on the drafting and adoption of the budget are made.<sup>154</sup></p> <p>A section on public procurement is also provided that guides operations for contracting for goods, works and services.<sup>155</sup> The section includes principles of fairness, equitability, transparency, competitiveness, and cost-effectiveness.</p> <p><b>Improvements from the 1997 Constitution</b> include the development of several mechanisms to ensure that the National Assembly performs its functions correctly:</p>	<p>improvement. A short period may lead to the approval of estimates that do not address basic socio-economic conditions of people.</p> <p>By ensuring that Central Bank Board members are removed according to the procedure applicable to independent institutions, the draft constitution offers better protection to members of the boards than any other constitution in Africa.</p>
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<sup>144</sup> Section 162 of the 1997 Constitution.

<sup>145</sup> Section 162(1)(a) & (b) of the 1997 Constitution.

<sup>146</sup> Section 162(2) & (3) of the 1997 Constitution.

<sup>152</sup> Section 239 of the draft constitution.

<sup>153</sup> Section 240 of the draft constitution.

<sup>154</sup> Sections 250, 251 & 252 of the draft constitution.

<sup>155</sup> Section 253 of the draft constitution.



	<p>1. The National Assembly is entrusted with the power to determine taxes,<sup>156</sup> including taxes to be collected by local government authorities in areas where they are established;<sup>157</sup></p> <p>2. The National Assembly will determine instances when the waiver of taxes is permitted.<sup>158</sup> However, when this is done, public record accompanied by reasons of such waiver should be kept and reported to the National Assembly and the auditor-general. The waiver must be published in the <i>Gazette</i>;</p> <p>3. The National Assembly can also make provisions to establish a Contingencies Fund.<sup>159</sup> The minister responsible for finance may be allowed to withdraw money from the Fund when an unforeseen urgency arises. The National Assembly must approve this through a Supplementary Appropriation Fund;<sup>160</sup></p> <p>4. When voting for the Appropriation Bill, the National Assembly also provides for the Development Fund;<sup>161</sup></p> <p>5. Like in the 1997 constitution, the power to adopt government estimates is vested in the National Assembly and exercised by way of</p>	
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<sup>156</sup> Section 240(1)(a) of the draft constitution.

<sup>157</sup> Section 240(2)(b) of the draft constitution.

<sup>158</sup> Section 240(4) of the draft constitution.

<sup>159</sup> Section 243 of the draft constitution.

<sup>160</sup> Section 243(3) of the draft constitution.

<sup>161</sup> Section 244(3)(a) of the draft constitution.

	<p>the vote of the Appropriation and Supplementary Appropriation Bills;<sup>162</sup></p> <p>6. The National Assembly is the competent authority to grant and raise loans;<sup>163</sup></p> <p>7. The National Assembly can limit borrowings of the state and the public debt.<sup>164</sup></p> <p><b>Central Bank:</b> The draft constitution maintains almost the same structure of the Central Bank.<sup>165</sup> It is placed under the leadership of the board of directors and the chairperson of the board is no longer the governor of the central bank but an individual external to the bank.<sup>166</sup></p> <p>The Board is also composed of three other individuals with relevant experience in economics, finance or law. The independence of members of the Central Bank is strengthened by provision on the appointment and removal of members of independent institutions. This constitution also limits the appointment of members of the board to a five-year term renewable once, as compared to the previous constitution.<sup>167</sup></p>	
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<sup>162</sup> Section 250 of the draft constitution.

<sup>163</sup> Section 247 of the draft constitution.

<sup>164</sup> Section 248(1) of the draft constitution.

<sup>165</sup> Section 229 of the draft constitution.

<sup>166</sup> Section 229(1)(a) of the draft constitution.

<sup>167</sup> Section 229(2) of the draft constitution.

	<p><b>Follow-up mechanisms and limitations:</b> The draft constitution innovates by requesting the National Assembly to adopt an act to limit state borrowings, public debts and state guarantees.<sup>168</sup> Only the National Assembly can increase the limit and not the government. In determining the limit, citizens may express their views and experts may clarify if the limit is reasonable and justified. This puts constraints on the government. This principle combats illegitimate debts - those debts/loan raised by the state in order to feed individual interests. It prevents abuses that occurred during the previous governments known for their propensity to raise unnecessary loans for personal consumption.</p> <p>The Committee evaluating the budget must seek the public's opinions and include their view in recommendations submitted to the National Assembly.<sup>169</sup> Citizens can thus indicate whether certain spheres of life received less financial allocations than others. For example, if more expenditures are geared to government salary, president's security and the military than public and social services, this is an opportunity for citizens to express their view and call the National Assembly to cut unnecessary expenditures.</p>	
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<sup>168</sup> Section 248 of the draft constitution.

<sup>169</sup> Section 250(5) of the draft constitution.

	<p>The Auditor-General must present an annual report six months after the end of the fiscal year to describe how public accounts were utilized.<sup>170</sup> This annual report must be made public 90 days after it is presented to the National Assembly, an important procedure to enhance financial transparency of the government,<sup>171</sup></p>	
<b>Democratic Theme 15: Local Government and Decentralization</b>		
<p>Local governments include city councils, municipalities and area councils.<sup>172</sup> The electoral commission has the powers to determine the boundaries among local government areas.<sup>173</sup> The 1997 Constitution allows the National Assembly to regulate certain aspects of local government.<sup>174</sup> The Functions, Powers and Duties of Local Government Act determined most details about local government in The Gambia.</p> <p>Local government authorities must be elected and are autonomous.<sup>175</sup></p>	<p>The draft constitution establishes a local government service commission,<sup>176</sup> requires gender and youth representation in local government structures<sup>177</sup> and increases the term of local government officials from four to five years.<sup>178</sup> Seyfos are directly elected and are prohibited to engage in partisan politics. It includes principles of decentralized government that do not exist in the 1997 Constitution.<sup>179 180</sup></p> <p>Local government includes principles such as the promotion of government accountability;</p>	<p>Local governance structures empower citizens to exercise their right to self-determination. Citizens chose leaders that will govern them, participate in the development of local policy and raise funds locally (notably through taxes). The draft constitution strengthens the independence of local government entities. The draft also requires local governments to respond to the needs of vulnerable people, such as persons with disabilities, and to ensure that women and youth are represented.</p>

<sup>170</sup> Sections 227(1)(a) & 225 of the draft constitution.

<sup>171</sup> Section 227(1)(b) of the draft constitution.

<sup>172</sup> Section 193(2) of the draft constitution.

<sup>173</sup> Section 193(2) of the draft constitution.

<sup>174</sup> Section 193(3) of the 1997 Constitution.

<sup>175</sup> Section 193(1) of the 1997 Constitution.

<sup>176</sup> Section 273(1)(d) of the draft constitution.

<sup>177</sup> Section 204(2)(c)(d) & (e) of the draft constitution.

<sup>178</sup> Section 209 of the draft constitution.

<sup>179</sup> Section 211(2) of the draft constitution.

<sup>180</sup> Section 203 of the draft constitution.

	<p>self-governance rests with the people; local communities have the right to self-determination, including management of affairs and furthering development; promotion of social and economic development; and equitable sharing of national resources.</p>	
<p><b>Democratic Theme 16: The Independent (Boundaries and) Electoral Commission</b></p>		
<p>The Independent Electoral Commission (IEC) is comprised of a chairperson and four members.<sup>181</sup> The president appoints them but must consult with the Judicial and Public Service Commissions.<sup>182</sup> They are appointed for a seven-year term renewable once.<sup>183</sup></p> <p>The constitution provides conditions for qualification and disqualification of IEC members. Members of the National Assembly cannot become members of the IEC, nor can persons nominated as a candidate two years preceding their appointment, persons who held positions in an organization that supported candidates for National Assembly and local government elections, among others.<sup>184</sup></p>	<p>Like the 1997 constitution, the Independent Boundaries and Electoral Commission (IBEC) is comprised of the chairperson and four members appointed by the President.<sup>187</sup> However, the National Assembly must confirm their appointments with 60% approval.<sup>188</sup></p> <p>To be appointed to the IBEC, an individual must be a Gambian citizen, have a university-level degree, declare their assets and liabilities, prove that they have paid taxes, be experienced in public affairs, and be of high moral character and proven integrity.</p> <p>Conditions for disqualification include: persons declared of unsound mind, a National Assembly member, a candidate for the</p>	<p>The draft constitution increases the independence of the IBEC and strengthens its resiliency to withstand the arbitrary removal of members. Requiring 60% approval in the National Assembly of IBEC appointments helps facilitate a culture of dialogue and compromise in the legislature. Reaching a 60% approval vote in the National Assembly also increases public confidence in IBEC leadership. In addition, the rigidity of removal procedures increases the IBEC's ability to organize free, fair and credible elections without fear or interference. A strong and independent IBEC will increase the prospects for democratic elections in The Gambia.</p>

<sup>181</sup> Section 42(1) of the 1997 Constitution.

<sup>182</sup> Section 42(3) of the 1997 Constitution.

<sup>183</sup> Section 42(4) of the 1997 Constitution.

<sup>184</sup> Section 42(5) of the 1997 Constitution.

<sup>187</sup> Section 81(2) & (3) of the draft constitution.

<sup>188</sup> Section 81(3) of the draft constitution.

<p>The President has the power to remove IEC members from office.<sup>185</sup> Reasons for removal include inability to perform functions due to infirmity of mind or body, disqualification or misconduct. The President must appoint a tribunal composed of three judges of the superior court to hear arguments for removal.<sup>186</sup></p>	<p>National Assembly or any political office five years or less before the appointment, or an individual that has worked for an organization that supported a National Assembly or local government candidate.<sup>189</sup> The chairperson must meet conditions for appointment as a judge of the Supreme Court.<sup>190</sup></p> <p>Stringent conditions are established for removal of IBEC members.<sup>191</sup> The draft defines reasons for removal, including the inability to perform functions due to infirmity of body or mind, disqualification, misconduct, misbehavior, disqualification from their previous profession, incompetence, and bankruptcy. This list is more detailed in the 1997 constitution. Removal procedures require the establishment of an independent tribunal to hear complaints.<sup>192</sup></p>	
<b>Democratic Theme 17: The Anti-Corruption Commission</b>		
<p>The 1997 Constitution does not establish the Anti-Corruption Commission (ACC). The ACC can be created by an act of the National Assembly. There are not details about the</p>	<p>The draft constitution establishes the ACC as an independent institution comprised of three commissioners and other staff.<sup>193</sup> The chairperson is appointed for a five-year term.</p>	<p>The ACC is an important institution to strengthen accountability, prevent corruption and corrupt practices.</p>

<sup>185</sup> Section 42(6) of the 1997 Constitution.

<sup>186</sup> Section 42(6)(a)(b)(c) of the 1997 Constitution.

<sup>189</sup> Section 217(2) of the draft constitution.

<sup>190</sup> Section 217(3) of the draft constitution.

<sup>191</sup> Section 218 of the draft constitution.

<sup>192</sup> Section 218(6) of the draft constitution.

<sup>193</sup> Section 222(1) of the draft constitution.

<p>mandate of the Commission or tenures for commissioners and staff.</p>	<p>Two members are appointed for a four-year term. Both terms can be renewed once.<sup>194</sup></p> <p>The ACC aims to combat corruption and embezzlement of public funds. Its functions include to (1) prevent, eradicate or suppress corruption and corrupt practices;<sup>195</sup> (2) conduct research to prevent corruption and submit recommendations to relevant authorities;<sup>196</sup> (3) promote values of honesty and integrity in government and state organs operations; and (4) investigate allegations of corruption receive declarations of assets, among others.<sup>197</sup></p> <p>To be appointed to the ACC, individuals must be a Gambian citizen, have a university-level degree, declare their assets and liabilities, prove that they have paid taxes, be experienced in public affairs, and be of high moral character and proven integrity. The chairperson must meet conditions for appointment as a judge of the Supreme Court.<sup>198</sup></p> <p>Conditions for disqualification include: persons of unsound mind, National Assembly</p>	<p>The ACC can also improve the prospects for democratic elections because before the IBEC accepts the candidacy application for President, the ACC must receive their declaration of assets. The appointed vice-president and ministers, among others, must also declare their assets verifying that they are fit to serve their positions. Declaration of assets helps the ACC, and in turn citizens, better understand if government officials used state resources to enrich themselves. The declaration also protects state funds and resources by ensuring they serve their purpose as approved by the National Assembly.</p> <p>Extension of the ACC’s mandate to include research and issuance of recommendations is important to preventing corruption practices and raising awareness about potential areas for abuse of power.</p>
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<sup>194</sup> Section 222(2) of the draft constitution.

<sup>195</sup> Section 222(3)(a) of the draft constitution.

<sup>196</sup> Section 222(3)(b) of the draft constitution.

<sup>197</sup> Section 222(3)(c)(d)(e)(f) of the draft constitution.

<sup>198</sup> Section 217(3) of the draft constitution.



	<p>members, candidates for the National Assembly or any political office five years or less prior to appointment, or holding office in an organization that supported a National Assembly or local government candidate.<sup>199</sup></p> <p>Stringent conditions are established for the removal of members from independent institutions.<sup>200</sup> The draft defines reasons for removal, including the inability to perform functions due to infirmity of body or mind, disqualification, misconduct, misbehavior, disqualification from an earlier profession, incompetence, and bankruptcy. This list is longer and more detailed than the 1997 Constitution. The draft provides removal procedures, including the establishment of an independent tribunal to hear allegations.<sup>201</sup></p>	
<b>Democratic Theme 18: The National Human Rights Commission</b>		
<p>The 1997 Constitution does not establish a National Human Rights Commission (NHRC). The National Assembly can establish a NHRC.</p>	<p>The draft constitution establishes a NHRC comprised of a chairperson and four commissioners.<sup>202</sup> The chairperson's term is five years and commissioners are appointed for four years. Their term is renewable once. The draft constitution provides a framework that the National Assembly must follow to define the NHRC's powers.<sup>203</sup></p>	<p>The NHRC ensures fundamental rights are observed and respected at all the levels of public administration and the government.</p> <p>The NHRC acts as a quasi-judicial body by receiving receive and resolving complaints of human rights violations, however it does not render judicial decisions. The NHRC</p>

<sup>199</sup> Section 217(2) of the draft constitution.

<sup>200</sup> Section 218 of the draft constitution.

<sup>201</sup> Section 218(6) of the draft constitution.

<sup>202</sup> Section 221(1) of the draft constitution.

<sup>203</sup> Section 221(3) of the draft constitution.

	<p>The NHRC promotes human rights, culture and respect in public and private institutions. The NHRC monitors, investigates and reports on respect for human rights, and receives complaints of human rights violations. Individuals can petition the NHRC for violations to the Bill of Rights.</p>	<p>supports courts and tribunals to ensure that all rights are respected.</p> <p>An important aspect of the NHRC is that individuals can file petitions. For example, if the government blocks citizens' access to the internet or removes a website because it contains criticism of the government, a citizen of The Gambia can petition the NHRC because those actions could be violations of the draft constitution's right to freedom of expression. In other countries in Africa, the NHRC can deliver its decisions quicker than courts and be more accessible to less educated citizens.</p>
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**Democratic Theme 19: The Auditor-General and National Audit Office**

<p>The 1997 Constitution establishes the Auditor-General and National Audit Office.<sup>204</sup> The President appoints the Auditor General after consulting the PSC.<sup>205</sup> The Auditor General can be removed from office for misbehavior and incompetence.<sup>206</sup> The Auditor-General leads the National Audit Office.<sup>207</sup></p> <p>Some functions of the Auditor General include approving funds withdrawal from the</p>	<p>The draft constitution establishes the Auditor-General and National Audit Office. The Auditor-General is appointed for nine years and cannot be reappointed. As an independent institution, conditions of the Auditor-General's appointment and removal are similar to the Independent Boundaries and Electoral Commission.</p> <p>Six months after the end of the financial year, the Auditor-General must report: (1) public accounts of The Gambia; (2) accounts of all</p>	<p>The 1997 and draft constitutions establish the Auditor-General position. Both constitutions provide robust mechanisms that ensure that the Auditor-General combats mismanagement of public funds. A difference is that the draft constitution mandates that the Auditor-General serves for only one nine-year term. The 1997 constitution did not provide for term limit for the Auditor-General. The absence of term limits increases the likelihood that the Auditor-General prioritizes</p>
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<sup>204</sup> Section 158 of the 1997 Constitution.

<sup>205</sup> Section 158(2) of the 1997 Constitution.

<sup>206</sup> Section 158(5) of the 1997 Constitution.

<sup>207</sup> Section 159 of the 1997 Constitution.

<p>Consolidated Fund;<sup>208</sup> ensuring funds withdrawals from the Consolidated Fund are approved through an Act of the National Assembly;<sup>209</sup> and reporting on The Gambia's public accounts.<sup>210</sup></p>	<p>office and authorities; and (3) accounts of the National Assembly, judiciary and all commissions and independent institutions.<sup>211</sup> As in the 1997 Constitution, the Auditor-General must ensure funds withdrawn from the Consolidated Revenue Fund are approved in an appropriations bill of the National Assembly.<sup>212</sup></p> <p>The draft constitution clarifies powers of the Auditor General.<sup>213</sup></p>	<p>pleasing the President over fulfilling his or her responsibilities to earn re-appointment. The Auditor-General in the draft constitution is empowered to oversee movement of all state money, enterprises and organs without interference.</p>
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<sup>208</sup> Section 160(1)(a) of the 1997 Constitution.

<sup>209</sup> Section 160(1)(b) of the 1997 Constitution.

<sup>210</sup> Section 160(1)(c) of the 1997 Constitution.

<sup>211</sup> Section 225(1) of the draft constitution.

<sup>212</sup> Section 225(2) of the draft constitution.

<sup>213</sup> Section 226 of the draft constitution.