

# COMPARATIVE REVIEW REPORT: 2020 & 2024 DRAFT CONSTITUTIONS



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## INTRODUCTION

The review commenced with a welcoming remark and an invitation to the high table, presented by Annetta Mahoney, the Programs Manager of Gambia Participates. She underscored the significance of engaging with Civil Society Organizations (CSOs) and their perspectives on the ongoing constitutional reform process. Annetta highlighted that the lack of awareness regarding the positions of these organizations is a critical gap, as their input is central to ensuring that the constitutional framework aligns with the aspirations and needs of the Gambian people. Recognizing the pivotal role of CSOs in national development, the discussions set the stage for a comprehensive dialogue aimed at strengthening democratic governance in The Gambia.

This review, built upon extensive consultations with CSOs and a detailed assessment by Gambia Participates, reflects the collective effort to contribute meaningfully to the constitutional discourse. Through these discussions, Civil Society Organizations will present a position paper that articulates the unified stance of the Gambian people. The position paper will call for an inclusive, participatory, and transparent constitutional process that upholds the principles of democracy, human rights, and good governance, ensuring that the 2024 Draft Constitution truly reflects the will of the people and strengthens the nation's governance framework.

## ORIENTATION AND OVERVIEW

Marr Nyang, the Executive Director of Gambia Participates emphasized the need for Civil Society Organizations (CSOs) to take a clear stance on the draft constitution, highlighting that both the government and CSOs agree on the necessity of a constitution that protects citizens' rights and dignity. He stressed the importance of understanding the Draft to avoid misdirection, noting that it contains valuable provisions for nation-building. To aid this understanding, a constitutional lawyer was invited to explain the document and help CSOs formulate recommendations. Marr acknowledged that while the first consultation was not very inclusive, there is an opportunity for a more participatory involvement of citizens through the National Assembly. He urged CSOs to reach a consensus to ensure unified messaging and avoid misleading the public. Plans for nationwide engagement on the constitution were outlined, with an emphasis on identifying both its merits and shortcomings.

## KEY REMARKS

Congratulating Gambia Participate, Salieu Taal, Board Chairperson of Gambia Participate, stated, "What is very clear is that the overwhelming number of Gambians want and need a new constitution." He recalled that the last Barometer report shows that 67% of Gambians want a new constitution. He reminded attendees that the current president was elected to lead not just governance reform but systemic change. "The foundation of these systems is the 1997 Constitution," he added. "Mind you, the second line of the constitution says that 'power lies with the people,' but that is eroded in practice," Mr. Taal noted.

He stated that a constitution must ensure elected representatives serve the interests of their constituents and represent Gambians' aspirations. In building this new Gambia, he emphasized starting with a robust constitution. He remarked that “the new constitution must transcend party gains; it must serve a purpose that stands the test of time.” Mr. Taal stressed considering what constitution benefits the country and its citizens rather than what serves only the Executive, Judiciary, or National Assembly.

He urged all to view it as a document capable of serving generations of Gambians. “It is a legal document written in legal language, but every Gambian has a stake in it,” Mr. Taal noted. He highlighted that this gathering must consolidate civil society positions on the draft constitution, emphasizing that CSOs represent diverse demographics unrelated to any political party and act as watchdogs for national development.

## SEPARATION OF POWERS

The discussion turned towards separation of powers, a concept explored by philosophers over centuries, ensuring no branch oversteps its bounds or infringes upon others' rights. In terms of executive powers, it was noted that while presidents nominate five members to the National Assembly, typically representing religious groups, youth, persons living with disabilities, and other minority groups, the 2020 draft removed this provision due to complications arising from nominated members' roles as Speaker or Deputy Speaker.

The 2024 draft altered this approach; however, concerns arose regarding instances like Ya Kumba Jaitieh's attempted removal at presidential request after her actions displeased him. The Supreme Court ruled that while the president can nominate members, he/she lacks the authority to recall them before their term ends.

In addressing this issue, Mr. Fatty, a Constitutional Lawyer, highlighted a need for recommendations regarding presidential nominations, should they remain solely in presidential hands? This raised questions about whether such practices are democratic when all other members are elected but the leadership is derived from the nominated cohort.

Participants argued that the presidential nomination could be seen as undemocratic. They suggested specifying in the constitution that presidents should not have recall powers unless clearly defined procedures are established for such actions. Participants also pointed out ambiguities surrounding elected members' recall processes without clear guidelines or historical precedents in The Gambia.

## 2024 DRAFT VS. 2020 DRAFT

Mr. Marr Nyang directed participants' attention to Chapter 6 on fundamental rights and freedoms. The Constitutional Review Commission (CRC) recommended limiting detention without charge to 48 hours; however, this was replaced with provisions from the 1997 Constitution in the 2024 draft.

In terms of fundamental rights and freedoms:

- The 2024 draft changed stipulations requiring permits from police chiefs for public gatherings making it a mandatory step for one to attain a police permit while the 2020 provides freedom to peaceful assembly without police permit.
- Consumer protection provisions were removed.
- The judiciary's independence was questioned due to budgetary constraints imposed by executive oversight.
- Political party funding provisions were reintroduced in response to concerns about incumbents having advantages over opposition parties.
- Asset declaration requirements for vice presidents and ministers were also flagged for review.
- Succession planning for presidential death or removal was deemed necessary for future governance stability.

### On Republic and Sovereignty:

- The term "organ" was replaced with "Executive," focusing narrowly on one government component, a potentially dangerous precedent limiting other state organs' authority.
- Chapter Two's supremacy clause raised concerns about fostering dictatorial tendencies due to vague language.
- The 2024 draft explicitly defined land ownership responsibilities across various governmental levels, local governments included, to enhance accountability among independent institutions like national human rights commissions.

## CITIZENSHIP PROVISIONS

Discussions highlighted discrepancies between drafts regarding citizenship:

- The 2020 draft offered more inclusive criteria for citizenship acquisition compared to restrictive measures in 2024.
- Participants recommended allowing children born in The Gambia to acquire citizenship regardless of parentage.
- Provisions ensuring citizenship for children whose parents are unknown were deemed essential for preventing statelessness.

Mr. Marr Nyang emphasized participation isn't limited by legal expertise; everyone should contribute their perspectives.

Participants raised concerns regarding national assembly members' capacities influenced by party affiliations rather than individual competencies, highlighting how political dynamics often overshadow national interests during deliberations. In addition to this, it is noted that language barriers hinder effective parliamentary participation; thus discussions emerged around allowing members to express themselves in languages they are comfortable with rather than solely English.

## LEADERSHIP AND INTEGRITY

Every provision from Chapter 5 concerning leadership integrity was removed under claims it would be difficult to govern morals and values effectively. Participants argued these provisions are crucial for accountability within public service roles, advocating reinstating them based on successful examples from South Africa and Kenya's constitutions.

## FUNDAMENTAL HUMAN RIGHTS & FREEDOM

Discussions around fundamental human rights revealed significant differences between drafts:

- The language concerning life rights shifted from specific protections against intentional deprivation in 2020 to broader statements about life rights in 2024.
- Recommendations were made regarding reducing detention duration from 72 hours back down to 48 hours, a compromise aimed at protecting individual rights while ensuring law enforcement efficacy.

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## MEDIA OWNERSHIP & FREEDOM

Participants expressed concerns over media ownership restrictions proposed in the 2024 draft, noting that the 2020 draft provided more liberal provisions allowing broader ownership opportunities. They emphasized maintaining protections against penalizing individuals based on public discourse, underscoring the importance of media freedom for a democratic society.

## RIGHT TO EDUCATION

Attention was drawn to Section 57(2)(a) concerning the right to education, highlighting that it lacks clear definition in the current drafts. It was recommended to adopt the explicit provisions from the 2020 draft, which delineate responsibility for free education, while incorporating literacy initiatives from the 2024 draft.



## CONSUMER PROTECTION

Consumer protection was included in the 2020 draft but omitted in the 2024 draft. The current stance suggests Parliament should enact legislation to add substance to the 2024 provision. Civil Society Organizations advocated for reinstating this section to enhance coherence.

## STATE OF PUBLIC EMERGENCY

Concerns were raised about the extent of presidential powers during emergencies. While the 2020 draft allowed the president to declare a state of emergency at any time, the 2024 draft requires it to be published. Participants stressed that excessive presidential power could jeopardize democratic principles.

Key points of consensus included:

- Ensuring emergencies are justified and do not infringe on citizen rights unnecessarily.
- Limiting military checkpoints, emphasizing police responsibility in a democratic state.
- Extending state of emergency duration by 90 days, as in the 2024 draft, but noting the National Assembly's oversight role.
- Recognizing economic and human rights concerns during emergencies, and ensuring curfews are applied proportionately.
- Supporting judicial oversight to uphold human rights during emergency declarations.

## RIGHTS TO VOTE AND ELIGIBILITY

The 2020 draft restricted voting for those with past convictions, a clause removed in the 2024 draft. Participants proposed that voting rights should be regulated by electoral laws, allowing citizens with minor offenses to vote while differentiating serious crimes. For presidential candidate qualifications, participants called for clarity to prevent disqualification based on politically motivated convictions.

## ELECTORAL LAWS

Participants accepted a 2024 draft provision reducing the timeframe for amending electoral laws before elections from nine months to six months.

## INDEPENDENT BOUNDARIES AND ELECTORAL COMMISSION MEMBERSHIP

Discussions focused on appointing members of independent commissions, with participants recommending National Assembly confirmation following presidential nominations. They argued that asset declarations should remain with the Anti-Corruption Commission due to resource limitations within the Independent Electoral Commission (IEC).

## DEMARCATION OF ELECTORAL BOUNDARIES

There was a debate over whether boundary demarcation should require National Assembly approval. The recommendation was to leave this responsibility solely to the IEC.

## POLITICAL PARTY FINANCING

The 2020 draft required political parties to publish audit reports, detailing financial contributions and expenditures. Participants advocated for this transparency provision to remain, especially concerning foreign donations.

## EXECUTIVE POWERS AND PRESIDENTIAL OBLIGATIONS

Concerns were raised regarding presidential obligations, particularly the omission of “at all times” in the 2024 draft, which participants agreed should be reinstated for clarity.

Additional points included:

- Favoring the 2024 draft’s detailed approach to presidential authority in declaring war and deploying troops.
- Requiring National Assembly approval for all presidential appointments, as outlined in the 2020 draft, to enhance accountability.

## MEDIA OWNERSHIP & FREEDOM

Participants raised concerns about proposed restrictions on media ownership in the 2024 draft, contrasting it with the more liberal 2020 provisions, which permitted broader ownership opportunities. The discussions underscored the need to protect media freedom robustly and avoid penalizing individuals for public discourse, affirming media freedom as fundamental to democracy.

## RIGHT TO EDUCATION

Participants referenced Section 57(2)(a) on the Right to Education, noting that it lacks clear definitions in the current drafts. Recommendations included adopting 2020 draft provisions that specify the party responsible for providing free education and incorporating 2024 draft elements on literacy initiatives.

## CONSUMER PROTECTION

While the 2020 draft included consumer protection provisions, these were removed in the 2024 draft. It was suggested that Parliament should create legislation to address this issue, while the CSOs advocated for reintroducing this section to enhance the draft's coherence.

## STATE OF PUBLIC EMERGENCY

The topic of public emergencies sparked concerns regarding presidential powers. The 2020 draft stated that the president "shall" declare a state of emergency, while the 2024 draft changed this to "may," causing some debate over the implications for citizen rights and democratic principles.

Additional issues included:

- **Emergency Extensions:** The 2020 draft allowed a 60-day National Assembly extension for emergencies, whereas the 2024 draft extended this to 90 days.
- **Economic Impacts:** Participants discussed the adverse economic effects of business closures during states of emergency.
- **Judicial Oversight:** Consensus favored maintaining Supreme Court jurisdiction over emergency validity, as proposed in the 2020 draft.

## RIGHTS TO VOTE AND ELIGIBILITY

The 2020 draft restricted voting rights to individuals free from criminal convictions, which was removed in the 2024 draft. Participants suggested leaving voting eligibility for individuals with minor offenses to electoral laws. Discussions also covered qualifications for presidential candidates, advocating for clarity on politically motivated convictions.

## ELECTORAL LAWS

A reduction in the timeframe for amending electoral laws before elections from nine months in the 2020 draft to six months in the 2024 draft was accepted.

## INDEPENDENT BOUNDARIES AND ELECTORAL COMMISSION MEMBERSHIP

Participants favored National Assembly confirmation for commission appointments post-presidential nomination. Asset declarations should remain with the Anti-Corruption Commission rather than shifting to the IEC due to limited resources.

## POLITICAL PARTY FINANCING

The 2020 draft mandated political parties publish financial contributions and expenditures. Participants supported retaining these provisions for transparency, especially concerning foreign donations.

## EXECUTIVE POWERS AND PRESIDENTIAL OBLIGATIONS

Participants discussed presidential obligations, emphasizing the importance of including "at all times" in the 2024 draft. On establishing commissions, they preferred the detailed 2024 provisions.

Presidential appointments were generally agreed to require National Assembly approval, as in the 2020 draft.

## JUDICIAL INDEPENDENCE

Concerns about judicial independence led participants to recommend adhering to the 2020 draft provisions, emphasizing integrity and professionalism in judicial appointments.

## QUALIFICATIONS FOR PRESIDENTIAL CANDIDATES

The discussion highlighted the need for minimum educational qualifications, with participants supporting the 2020 draft's requirements, including an undergraduate degree and relevant experience.

## ASSET DECLARATIONS AND ANTI-CORRUPTION MEASURES

Participants stressed that asset declarations should be submitted solely to the Anti-Corruption Commission due to resource constraints.

## PRESIDENTIAL IMPEACHMENT PROCESS

Participants supported the 2020 draft's simpler majority threshold for impeachment, preferring it over the two-thirds requirement in the 2024 draft. They also expressed concerns about potential bias in impeachment tribunals, recommending they be composed solely of legal professionals.

## APPOINTMENT PROCEDURES AND MINISTERIAL QUALIFICATIONS

The timeframe for appointing a vice president increased from 14 to 21 days. Opinions on National Assembly approval for ministerial appointments varied:

- Some participants supported presidential autonomy in cabinet formation, while others raised concerns about potential favoritism.
- Accountability mechanisms suggested included oversight by the Anti-Corruption Commission, National Assembly, CSOs, and media. Participants emphasized the importance of ministerial qualifications, recommending relevant experience or at least a university degree alongside administrative skills.

## CABINET RESHUFFLING

While the 2020 draft required parliamentary approval for reshuffling, participants debated the impact of this requirement on efficiency. They generally favored the 2024 draft's flexibility, noting that presidential trust is crucial.

## DISQUALIFICATIONS OF MINISTERS

Participants preferred the 2020 draft's disqualification criteria to safeguard against corruption. Reinstating these provisions was advised to maintain high standards for ministerial integrity.

## FUNCTIONS AND INCIDENTS OF OFFICE

The CSOs recommended replacing “may” with “shall” in the 2024 draft to make considerations of competence, expertise, and experience mandatory for presidential appointments, maintaining the accountability language of the 2020 draft.

## DISCLOSURE OBLIGATIONS OF VICE PRESIDENT AND MINISTERS

The 2020 draft required disclosure of all assets and business interests of ministers' spouses; this provision was removed in the 2024 draft. Participants debated whether asset disclosure should extend beyond just the president and vice president to include ministers as well.

An argument was made against including spouses in asset disclosures, stating it infringes on personal privacy and financial independence. Questions about where to draw the line regarding asset disclosures among various public officials were raised. One view highlighted potential risks if spouses' assets are not disclosed at appointment time, suggesting an amendment to Anti-Corruption Commission (ACC) regulations allowing oversight of spouses' financial dealings while maintaining privacy. The recommendation was asset disclosure for presidents and vice presidents only, excluding ministers' spouses from public disclosure requirements.

## RESTRICTIONS REGARDING OFFICE OF VICE PRESIDENT AND MINISTERS

The 2020 draft included restrictions on using ministerial positions for personal gain; this section was omitted in the 2024 draft. Participants agreed to maintain provisions from the 2024 draft, as they believed these deletions had little impact on legislation.

## SECRETARY TO CABINET

The process for appointing a Secretary to Cabinet shifted from requiring parliamentary approval in the 2020 draft to complete presidential discretion in the 2024 draft. Participants argued that this position should remain free from political influence due to its administrative nature, emphasizing the need for individuals trusted by the president who understand Civil Service operations. The consensus was to maintain provisions from the 2024 draft regarding this appointment process.

## INTERNATIONAL RELATIONS

Participants unanimously supported the reinstatement of the 2020 draft provisions concerning international relations without further deliberation.

## DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

It was emphasized that DPP appointments must remain independent and should undergo National Assembly vetting and approval due to their sensitive nature, warning against potential politicization if left solely at presidential discretion. Participants agreed on maintaining parliamentary scrutiny over DPP appointments as outlined in the 2020 draft. The omission of provisions related to the Solicitor General and Legal Secretary from the 2024 draft was noted, as it removes advisory functions within legal ministry operations. Participants recommended reinstating this section as per its inclusion in the 2020 draft.

## LEGISLATURE

### Qualifications

Both drafts contained similar qualifications for legislative members, but participants debated age requirements; 21 years in the 2020 draft versus 18 years in the 2024 draft. They argued that while youth representation is vital, maturity and experience are equally important for legislative responsibilities. Participants emphasized that understanding complex issues requires competence beyond awareness. The consensus was to maintain qualifications at age 21, with recommendations for secondary school completion and three years of work experience as prerequisites for candidacy.

## ASSET DISCLOSURE

Participants agreed on requiring asset disclosures before elections rather than after, suggesting oversight responsibilities be transferred from the Independent Electoral Commission (IEC) to ACC for better accountability measures before candidate confirmations occur.

## ELECTION PROCEDURES

The debate surrounding simultaneous presidential and National Assembly elections highlighted logistical concerns tied to marble voting systems versus paper ballots. Participants generally favored maintaining provisions from the 2020 draft advocating for concurrent elections due to cost-effectiveness and increased voter participation while acknowledging potential challenges such as longer queues at polling stations. Concerns were raised about allowing presidential discretion over National Assembly election dates, and participants agreed this responsibility should rest solely with IEC due to potential conflicts of interest during elections involving sitting presidents.

## VACANCY PROVISIONS

Participants expressed concerns over provisions declaring seats vacant if members switch parties after being elected. They argued that this infringes upon individual rights and undermines constituents' representation based solely on party affiliation rather than personal merit or community support. Recommendations were made to amend these provisions based on principles established during past

Supreme Court rulings affirming voters' rights over party policies concerning elected representatives' affiliations. The recommendation was to maintain provisions from the 2024 draft but to remove the recall provision due to the potential adverse effect of party-switching dynamics on individual representation rights.

## SPEAKER ELECTIONS

Participants agreed that both Speaker and Deputy Speaker positions should be filled exclusively by elected members rather than nominated ones, to preserve legislative independence from executive influence during leadership selection processes within National Assembly operations. This led to a discussion on quota systems aimed at increasing women's representation. While participants acknowledged existing barriers for female candidates within political landscapes, they advocated for broader inclusivity measures without compromising merit-based selections, recognizing marginalized groups' representation needs through alternative channels beyond quotas alone.

## THE JUDICIARY

The discussions highlighted comparisons to practices in France and the UK. A suggestion was made to adopt the provisions of the 2020 draft, citing that if The Gambia adopts these provisions, the Judiciary should define The Gambia's common law as it has been since independence. Independence of the Judiciary was underscored, with recommendations to maintain the 2020 draft provisions.

## JURISDICTION OF THE SUPREME COURT

The 2024 draft removed Chapter 5 from the 2020 draft, though the language in the 2024 draft is clearer, with "power" changed to "authority." Participants recommended retaining the 2024 draft's language but including the entirety of Chapter 5 from the 2020 draft, maintaining its original numbering.

## APPOINTMENT OF CHIEF JUSTICE AND OTHER JUDGES OF SUPERIOR COURTS

The 2024 draft offered a progressive approach to appointments. Given the addition of two subsections, participants recommended adopting the 2024 draft provisions.

## QUALIFICATION FOR APPOINTMENT OF JUDGES TO THE SUPREME COURT

The qualifications for appointment as Supreme Court judge are nearly identical in the 2024 draft and the 1997 constitution, requiring 15 years of practice. Language in the 2024 draft was noted as somewhat ambiguous, with a recommendation to clarify that candidates must have experience in both common law and Sharia law. Additional suggestions included separating Normal/Common Law Courts from Sharia Courts to ensure the Supreme Court does not have a purely Sharia practitioner as a judge.

## VACANCY IN OFFICE OF CHIEF JUSTICE

Participants agreed that the Chief Justice's office should not remain vacant for four months, as provided by the 2020 draft, and they supported provisions in the 2024 draft for public tribunal proceedings.

## REMOVAL OF CHIEF JUSTICE FROM OFFICE

Participants recommended adopting the 2024 draft provisions for the removal of the Chief Justice.

## REMUNERATION AND RETIREMENT BENEFITS OF JUDGES

A new clause was added in the 2024 draft regarding remuneration through government ministries. Participants agreed that competitive remuneration is essential to attract top practitioners, emphasizing judicial independence. It was suggested that the National Assembly establish a framework for judges' remuneration.

## FINANCIAL MATTERS OF THE JUDICIARY

The Judiciary is mandated to submit annual expenditure estimates directly to the National Assembly, rather than through the president. It was recommended that the submission process go through the Minister of Finance for presentation to the National Assembly without alterations.

## LOCAL GOVERNMENT AND TRADITIONAL RULERS

The establishment of a Special Internationalized Tribunal in the 2024 draft allows for special international cases. Participants recommended maintaining this provision.

## PRINCIPLES OF DECENTRALIZED GOVERNMENT

Participants emphasized that removing principles supporting decentralized government undermines democracy by limiting local input. They recommended that the National Assembly reinstate these principles as foundational guidelines for judicial interpretation.

## SYSTEM OF LOCAL GOVERNMENT

The 2020 draft clearly defined the structure and powers of local government, while the 2024 draft left these areas vague. Participants recommended maintaining the clear definitions from the 2020 draft.



## ESTABLISHMENT OF INDEPENDENT INSTITUTIONS AND OFFICES

Both drafts offered similar provisions for independent institutions, with some language clarity improvements in the 2024 draft. Recommendations included retaining provisions from both drafts, specifically around funding and independence of institutions.

## AUDITOR GENERAL

The provisions regarding auditor general appointments differ between drafts: nine years without reappointment in 2020 versus five years with reappointment options in 2024.

### **Recommendations:**

- Maintain provisions from the 2020 draft regarding auditor general tenure.
- Maintain powers outlined in the 2020 draft.
- Maintain report provisions from the 2020 draft.

## CENTRAL BANK

Separation between who runs and chairs the central bank board is crucial for best practices. Concerns were raised about potential conflicts if ministry officials hold board seats due to executive influence over banking systems. The recommendation on this matter is to reinstate provisions from 2020 with amendments reflecting suggestions from 2024 concerning board composition.

## EX-OFFICIO MEMBERS

In previous constitutions, appointments were made by presidents without specification in current drafts regarding board appointments or term limits.

### **Recommendations:**

- The draft should stipulate who appoints boards.
- The draft should require National Assembly approval for appointments.
- The Draft should extend term limits to four years with two-term tenures.

## IMPOSITION, WAIVER, AND VARIATION OF TAX

Concerns were raised about limiting parliamentary powers concerning tax waivers but noted benefits such as making essential commodities affordable through justified waivers requiring gazetting under previous drafts. They recommend that the provisions from the 2020 draft regarding tax imposition and waivers be maintained.

## CONTINGENCIES FUND

This fund addresses miscellaneous issues allowing governments flexibility without including certain expenditures directly into budgets. Participants agreed to the provisions from the 2024 draft regarding contingencies funds management.

## SALARIES CHARGED ON CONSOLIDATED REVENUE FUND

**Recommendation:** Maintain provisions from the 2020 draft concerning salaries charged on consolidated revenue funds.

## ACCOUNTABILITY

**Recommendation:** Maintain accountability provisions outlined in the 2024 draft.

## LOANS

The lack of clarity regarding quorum requirements in loans under 2024 contrasts with detailed stipulations in previous drafts.

**Recommendation:** Reinstate the provisions from the 2020 draft concerning loans management and stipulations on quorum requirements.

## LIMITS ON STATE BORROWING, PUBLIC DEBTS, AND STATE GUARANTEES

**Recommendation:** Reinstate provisions outlined in the 2020 draft regarding borrowing limits and public debts management.

## ANNUAL ESTIMATES AND APPROPRIATIONS BILL

The independent body should directly present its annual estimates to the National Assembly instead of routing through presidential channels as per earlier drafts' recommendations.

**Recommendation:** Maintain provisions outlined in both drafts concerning annual estimates and appropriations bills management.

## LAND, ENVIRONMENT, AND NATURAL RESOURCES

### PRINCIPLES OF LAND, ENVIRONMENT, AND NATURAL RESOURCES POLICY

The removal of specific policy subsections raises concerns about safeguarding land against tampering over time. Additional safeguards are crucial for ensuring responsible land use by governments acting as trustees for citizens' interests rather than claiming ownership arbitrarily.

## **Recommendations:**

- Reinstate policy subsections (i) and (k) from the 2020 draft.
- Substitute Section 234(4)(a) in 2024 with Section 254(4)(a) from 2020 regarding land policies.

## ISSUE OF LAND OWNERSHIP

The government's role as a trustee must prioritize citizens' interests over arbitrary claims on land ownership without due process adherence as stipulated previously but omitted in current drafts.

**Recommendation:** Reinstate land ownership provisions outlined in the 2020 draft.

## LAND HOLDINGS BY NON-GAMBIANS

Under current law, ownership of land by foreigners cannot exceed 50 by 50 meters and must be leasehold. However, this provision has not been implemented, and some individuals own large plots. In the 2020 draft, deemed leases are set for 30 years, while the 2024 draft extends this to 50 years. Some recommend maintaining the 50-year lease for guarantee purposes, as businesses established on the land may have their leases renewed. The 2024 draft is more forward-looking, and participants recommend maintaining its provisions.

## THE PUBLIC SERVICE

### **Appointment to and Removal from Offices in the Public Service**

Participants recommend maintaining the provisions of the 2024 draft, which includes Teachers, Health, and Local Government Service Commissions.

## SECRETARY GENERAL AND HEAD OF CIVIL SERVICE

The president appoints these individuals, and high standards for experience and apolitical qualifications are recommended. Participants suggest reinstating the clause requiring the Secretary General to be apolitical. The 2024 draft provisions regarding qualifications and responsibilities are supported.

## PROTECTION OF PUBLIC OFFICERS

The removal of the phrase "according to the law" may create ambiguity. Reinstating this phrase will clarify protections and ensure processes are lawful.

**Recommendation:** Reinstating the provisions from the 2020 draft is suggested.

## RESTRICTIONS ON POLITICAL ACTIVITIES OF PUBLIC OFFICERS

To ensure a neutral public service, participants suggest reinstating a removed clause that prevented public officers from holding office in political parties.

**Recommendation:** Reinstate provisions from the 2020 draft, with amendments to the 2024 provision's subsection (4).

## QUALIFICATIONS, DISQUALIFICATIONS, AND TENURE OF MEMBERS OF SERVICE COMMISSIONS

For service commission members' terms, participants recommend maintaining the three-year renewable terms of the 2024 draft. Reports submitted to and by the president should follow the 2024 draft.

## MEMBERS OF STATE-OWNED ENTERPRISES

This subsection was not included in the 2020 draft. For members of state-owned enterprises, participants recommend maintaining the 2024 draft provisions.

## APPOINTMENT, QUALIFICATIONS, AND DISQUALIFICATIONS

The 2020 draft raised standards for appointments within state-owned enterprises (SOEs), while the 2024 draft has fewer restrictions, potentially allowing for less qualified appointments. Participants recommend reinstating the 2020 draft provisions on appointments and qualifications for SOE heads.

## NATIONAL SECURITY SERVICE

Certain institutional names have been changed in the 2024 draft as part of ongoing reforms. The removal of obligations for defense reporting to the National Assembly after deployment should be reinstated to uphold oversight. Participants recommend restoring the 2020 draft's independent command authority for the Inspector General of Police.

## AMENDMENT OF CONSTITUTION

### **Amendments on Entrenched Clauses**

Participants favor the entrenched clauses from the 2020 draft to safeguard institutions such as the Independent Electoral Commission (IEC). Recommendations include entrenching independent institutions in both drafts and reinstating 2020 clauses for local government.

## MISCELLANEOUS

### **Appointment of Chairperson and Vice Chairperson of Statutory Bodies**

Provisions regarding appointments, omitted in newer drafts, clarify chairperson and vice chairperson appointment methods across statutory bodies. Participants recommend maintaining the 2024 draft for second deputy speaker appointments and upholding provisions related to service commissions.

## CONCLUSION

The discussions held during the review of The Gambia's 2024 Draft Constitution were insightful, uniting civil society stakeholders in a shared vision for a constitutional framework that resonates with the aspirations of the Gambian people. The event underscored the crucial role of Civil Society Organizations (CSOs) in voicing public concerns, strengthening democratic ideals, and fostering accountability within governance structures. Through the collaborative insights of CSOs, government representatives, legal experts, and international organizations, a robust critique emerged that acknowledges the draft's potential to enhance rights protections while also identifying key areas requiring amendment to fully align with national and developmental goals.

In addressing the draft, speakers emphasized the importance of inclusivity, transparency, and public engagement to build a document capable of serving present and future generations. The call for nationwide participation resonated as a cornerstone in establishing a constitution that reflects the will of the people. Acknowledging the 67% of Gambians desiring a new constitution, participants advocated for a framework that transcends political interests, safeguards citizens' rights, and promotes good governance. The need for the constitution to empower vulnerable groups, uphold democratic principles, and embed mechanisms for accountability was strongly voiced.

As a culmination of these efforts, a position paper has been developed to articulate the unified stance of CSOs on the draft constitution. This paper, grounded in principles of democracy, human rights, and social justice, will serve as a guiding document in advancing an inclusive and participatory constitutional reform process. With commitment and unity, the Gambian people, led by civil society, will strive to ensure that the 2024 Constitution becomes a lasting foundation for democratic governance and a beacon of hope for future generations.

