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THE GAMBIA

CONSTITUTIONS
OF THE
COUNTRIES
OF THE
WORLD

Editors

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The GAMBIA

by

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THE GAMBIA

No. 1 OF 1970

Assented to in Her Majesty's name
this Twenty-fourth day of April, 1970.

A.S.JACK,

Acting Governor-General.

THE CONSTITUTION OF

THE REPUBLIC OF THE GAMBIA

LS

ERRATA

Page 8	-	Section 3 (1) (b)	-	marginal note	-	substitute "1" for "CR0.5.6"
		Section 3 (2)		lines 11 & 12	-	move out to in line with 2 of that sub
Page 22	-	Section 20 (9)	-	line 2	-	after "all p" add "of every" and proceedi
Page 35	-	Section 32	-	line 6	-	substitute "j" for "perofrai"
			-	line 7	-	substitute "j" for "perofra"
			-	marginal note	-	add "3/1982" "President".
		Section 33	-	marginal note	-	add "3/1982" "President".
		Section 33 (1)	-	line 1	-	substitute "f election" for electi".
		Section 33 (1) (c)	-	line 1	-	after "as" ad
			-	line 2	-	after "electi" add "to"
			-	line 7	-	substitute "f" for "ofr"
			-	line 9	-	substitute "f" for "ofr"
		Section 33 (2)	-	line 1	-	substitute "f" for "ofr"
Page 36	-	Section 33 (3)	-	line 2	-	substitute "f" for "ofr"
			-	line 6	-	substitute "f" for "ofr"
		Section 33 (6) (a)	-	line 2	-	substitute "b" for "beofre"
		Section 34	-	marginal note	-	add "3/1982" "President"
		Section 34 (1)	-	line 3	-	substitute "f" for "ofr"
Page 37	-		-	line 1	-	substitute "f" for "ofr"
		Section 35	-	marginal note	-	add "3/1982" "President".
		Section 36	-	marginal note	-	add "3/1982" "office"
Page 41	-	Section 39 (?)	-		-	add marginal r "3/1982" "1/1987"
Page 42	-	Section 40	-	marginal note	-	add "3/1982" b "President"
Page 43	-	Section 43	-	marginal note	-	add "1/1973" b "Secretaries".

Page 49	Section 37 (1) (d) -		for marginal note substitute the following marginal note: "3/1981 3/1982".
Page 58	Section 65A	- marginal note	- add "1/1973" below "business"
Page 59	Section 66 (1) (g)		- add marginal note "12/1979"
Page 66	Section 75 (2)		- add marginal note "1/1987"
Page 69	Part III	- Title	- substitute "PROROGATION" for "PROGATION"
Page 71		- line 1	- substitute "this" for "the"
Page 72	Section 90 (3) (a) (i)		add "or" after semi-colon at the end of that sub-paragraph and marginal note "L.N. 14/1978" against that line.
Page 75	Section 90 (4) (d)		- add marginal note "1/1987"
Page 79	Section 96A		- add asterix before "96A".
			- for marginal note substitute the following marginal note: "No appeal from Court of Appeal to Judicial Committee during state of emergency, in respect of offences under regulations made under Emergency Powers Act. 10/1981".
		footnote	- add " * This section was not enacted numbered such. See Act, 10 of 1981."
Page 95	Section 116	marginal note	- add "14/1978 18/1979 3/1980" below "Bureau".
Page 97		line 17	- substitute "may be, in" for "may be in, in"
Page 98	Section 116 (4)		- add marginal note "6/1982"
	Section 116 (5) (a)		- add marginal note "1/1987"
Page 101	FIRST SCHEDULE		- add marginal note "Section 116"
	SECOND SCHEDULE		- add marginal note "Sections 51 61(6), 64(3), 75(2), 92, 99(9), 110(11). 1/1987".

CHAPTER I - THE REPUBLIC

1. Declaration of the Republic.
2. Public Seal.

CHAPTER II - CITIZENSHIP

3. Persons who become citizens on 18th February, 1965
4. Persons entitled to be registered as citizens by virtue of connection with The Gambia before 18th February, 1965.
5. Persons born in The Gambia after 17th February, 1965.
6. Persons born outside The Gambia after 17th February, 1965.
7. Marriage to citizen of The Gambia.
8. Commonwealth citizenship.
9. Powers of Parliament.
10. Deprivation of citizenship on acquisition or exercise of right of other citizenship.
11. Procedure for deprivation of citizenship.
12. Interpretation

CHAPTER III - PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

13. Fundamental rights and freedoms.
14. Protection of right to life.
15. Protection of right to personal liberty.
16. Protection from slavery and forced labour.
17. Protection from inhuman treatment.
18. Protection from deprivation of property.
19. Protection against arbitrary search or entry.
20. Provisions to secure protection of law.
21. Protection of freedom of conscience.
22. Protection of freedom of expression.

23. Protection of freedom of assembly and association.
24. Protection of freedom of movement.
25. Protection from discrimination on the grounds of race, etc.
26. Derogations from fundamental rights and freedom under emergency powers.
27. Protection of persons detained under emergency laws.
28. Enforcement of protective provisions.
29. Declaration of emergency.
30. Interpretation and savings.

CHAPTER IV - THE PRESIDENT

PART I

Office of President

31. Office of President.

PART II

The First President of The Gambia

32. First President

PART III

Election, Tenure and Conditions of Office of the President

33. President's qualifications.
34. Election of President after dissolution of Parliament.
35. Returning Officer at elections of President.
36. Assumption and tenure of office.
37. Removal of President on grounds of incapacity.
38. Removal of President for violation of Constitution or gross misconduct.
39. Vacancy in office of President.

40. Salary and allowances of President.
41. Protection of President in respect of legal proceedings during office.

CHAPTER V - THE EXECUTIVE

42. Executive power.
43. Establishment of offices and functions of Vice-President, Ministers and Parliamentary Secretaries.
44. Permanent Secretaries.
45. Appointment of Ministers and Parliamentary Secretaries.
46. Tenure of office of Minister and Parliamentary Secretary.
47. Attorney-General.
48. Director of Public Prosecutions.
49. Cabinet.
50. Collective responsibility.
51. Oaths to be taken by Ministers and Parliamentary Secretaries.
52. Secretary to the Cabinet.
53. Constitution of and appointments of public offices.
54. Prerogative of mercy.
55. Advisory Committee.

CHAPTER VI - PARLIAMENT

PART I

Composition of Parliament

56. Establishment of Parliament.
57. House of Representatives.
58. Qualifications for membership of House of Representatives.
59. Disqualifications for membership of House of Representatives.

60. Election of elected members.
61. Constituency Boundaries Commission.
62. Constituencies.
63. Chief's representative members.
64. Supervisor of Elections.
65. Nominated members.
66. Tenure of seats of members of House of Representatives.
67. Speaker.
68. Deputy Speaker.
69. Clerk of the House of Representatives and his staff.
70. Decision of questions as to membership of House of Representatives.

PART II

Legislation of Procedure in House of Representatives

71. Legislative power of Parliament.
72. Alternation of this Constitution.
73. Titles of honour, etc.
74. Office of Chief.
75. Oath to be taken by member of House of Representatives.
76. Presiding in the House of Representatives.
77. Quorum in House of Representatives.
78. Use of English in House of Representatives.
79. Voting in House of Representatives.
80. Unqualified persons sitting or voting.
81. Restrictions with regard to certain financial measures.
82. President's right to attend and to address House of Representatives.

83. Regulation of procedure in House of Representatives, etc.

PART III

Summoning, Prorogation and Dissolution

84. Sessions of Parliament, etc.
85. Prorogation and dissolution of Parliament.
86. Summoning meetings of the House of Representatives.
87. General Elections.

CHAPTER VII - THE JUDICATURE

PART I

The Court of Appeal and the Supreme Court

88. Establishment of Court of Appeal.
89. Establishment of Supreme Court.
90. Appointment of Judges of the Court of Appeal and Supreme Court.
91. Tenure of office of Judges of the Court of Appeal and Supreme Court.
92. Oaths to be taken by Judges of the Court of Appeal and Supreme Court.
93. Reference to Supreme Court in cases involving interpretation of Constitution.

PART II

Subordinate Courts and Courts-Martial

94. Establishment of other Courts.

PART III

Appeals

95. Appeals on Constitutional questions and questions relating to fundamental rights.
96. Other Appeals from Supreme Court and Court of Appeal.
97. Appeals from subordinate courts and courts-martial.

98. Supplementary.

PART IV

Judicial Service Commission

99. Judicial Service Commission.
100. Appointment, etc., of Judicial officers.

CHAPTER VIII - FINANCE

101. Restriction on taxation.
102. Consolidated Revenue Fund.
103. Withdrawals from Consolidated Revenue Fund or other public funds.
104. Authorisation of expenditure from Consolidated Revenue Fund by appropriation.
105. Authorisation of expenditure in advance of appropriation.
106. Contingencies Fund.
107. Remuneration for certain officers.
108. Public debt.
109. Director of Audit.

CHAPTER IX - THE PUBLIC SERVICE

110. Public Service Commission.
111. Appointment, etc., of public officers.
112. Director of Audit.
113. Principal representatives of The Gambia abroad.
114. Permanent Secretaries, Secretary to the Cabinet and Establishment Secretary.
115. Police Force.
116. Pensions laws and protection of pensions rights.
117. Power to withhold pensions, etc.

CHAPTER X - TRANSITIONAL PROVISIONS

CHAPTER X - TRANSITIONAL PROVISIONS

118. Repeal of Constitutional instruments.
119. Existing laws.
120. Existing officers.
121. Parliament.
122. Miscellaneous transactional provisions.
123. Appeals in respect of certain decisions affecting pensions benefits.
124. Compulsory retirements to facilitate appointment of local candidates.
125. Transitional provisions relating to functions of existing public service authorities.
126. Legal proceedings.
127. Appeals to the Judicial Committee.
128. Prerogatives and privileges of the Crown.
129. Rights, liabilities and obligations.
130. Public Seal.

CHAPTER XI - MISCELLANEOUS

131. Resignation.
132. Re-appointments and concurrent appointments.
133. Interpretation.
134. Short title and commencement.

AN ACT to establish and to make provisions for the Constitution of the Republic of The Gambia.

[24th April, 1970.]

ENACTED by The Parliament of The Gambia

Chapter I

THE REPUBLIC

1. The Gambia is a Sovereign Republic.
2. The Public Seal of the Republic shall be such device as Parliament shall prescribe.

Date of commencement.

Enactment.

Declaration of the Republic.

Public Seal.

Chapter II

CITIZENSHIP

Persons who become citizens on 18th February, 1965.

3. (1) Every person who, having been born in The Gambia, is on 17th February, 1965 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of The Gambia on 18th February, 1965:

Provided that a person shall not become a citizen of The Gambia by virtue of this subsection if -

- (a) neither of his parents nor any of his grandparents was born in The Gambia; or
- (b) neither of his parents was naturalized in The Gambia as a British subject under the British Nationality Act, 1948, or before that Act came into force.

(2) Every person who, on 17th February, 1965, is a citizen of the United Kingdom and Colonies -

- (a) having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in The Gambia as a British subject before that Act came into force; or
- (b) having become such a citizen by virtue of his having been naturalised or registered in The Gambia under that Act, shall become a citizen of The Gambia on 18th February 1965.

(3) Every person who, having been born outside The Gambia, is on 17th February 1965 a citizen of the United Kingdom and Colonies or a British protected person, shall, if his father becomes, or would but for his death have become a citizen of The Gambia by virtue of subsection (1) or subsection (2) of this section, become a citizen of The Gambia on 18th February 1965.

4. (1) Any person who, but for the proviso to subsection (1) of section 3 of this Constitution, would be a citizen of The Gambia by virtue of that subsection shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make

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CRO. 6.0.56

Persons entitled to be registered as citizens by virtue of connection with The Gambia before 18th February 1965.

an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(2) Any woman who, on 17th February 1965, has been married to a person -

- (a) who becomes a citizen of The Gambia by virtue of section 3 of this Constitution; or
- (b) who, having died before 18th February 1965, would, but for his death, have become a citizen of The Gambia by virtue of that section

but whose marriage has been terminated by death or dissolution before 18th February 1965 shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(3) Any woman who, on 17th February 1965, has been married to a person who becomes, or would but for his death have become, entitled to be registered as a citizen of The Gambia under subsection (1) of this section but whose marriage has been terminated by death or dissolution before 18th February 1965 or is so terminated on or after that date but before 18th February 1967 and before that person exercises his right to be registered as a citizen of The Gambia under subsection (1) of this section, shall be entitled, upon making an application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(4) In this section "the specified date" means -

- (a) in relation to a person to whom subsection (1) of this section refers, 18th February 1967; and
- (b) in relation to a woman to whom subsection (3) of this section refers, 18th February 1967 or the expiration of a period of two years commencing with the termination of her marriage (whichever is the later),

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

5. Every person born in The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth:

Persons born in The Gambia after 17th February 19

Provided that a person shall not become a citizen of The Gambia by virtue of this section if at the time of his birth -

- (a) neither of his parents is a citizen of The Gambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to The Gambia; or
- (b) his father is a citizen of a country with which The Gambia is at war and the birth occurs in a place then under occupation by that country.

Persons born outside The Gambia after 17th February 1965.

6. A person born outside The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth if, at that date, his father is a citizen of The Gambia otherwise than by virtue of this section or section 3(3) of this Constitution.

Marriage to citizen of The Gambia.

7. Any woman who is married to a citizen of The Gambia or who has been married to a man who was, during the subsistence of the marriage, a citizen of The Gambia shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

Commonwealth citizenship.

8. (1) Every person who, under this Constitution or any Act of Parliament, is a citizen of The Gambia or who, under any enactment for the time being in force in any country to which this section applies, is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948, or who continues to be a British subject under section 2 of that Act, shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) The countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, Nigeria, The Republic of Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, Zambia, Singapore, Guyana, Botswana, Lesotho, Barbados, Mauritius and Swaziland.

(4) Subsection (3) of this section may from time to time be amended by resolution of the House

of Representatives.

9. (1) Parliament may make provision for the acquisition of citizenship of The Gambia by persons who are not eligible or who are no longer eligible to become citizens of The Gambia under the provisions of this Chapter.

Powers of Parliament.

(2) Parliament may make provision authorising the Minister to deprive of his citizenship of The Gambia any person who is a citizen of The Gambia otherwise than by virtue of section 3, section 5 or section 6 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of The Gambia.

10. (1) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country other than The Gambia, the Minister may by order deprive that person of his citizenship.

Deprivation of citizenship on acquisition or exercise of right of other citizenship.

(2) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 voluntarily claimed and exercised in a country other than The Gambia any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Minister may by order deprive that person of his citizenship.

11. (1) Before any order is made under section 10 of this Constitution or under a law made in pursuance of section 9(2) of this Constitution depriving a person of his citizenship of The Gambia, the Minister shall give that person notice in writing informing him of the ground on which the order is proposed to be made and of his right to have his case referred to a committee of enquiry.

Procedure for deprivation of citizenship.

(2) If any person to whom notice is given applies to have his case referred to a committee of enquiry the Minister shall, and in any other case the Minister may, refer the case to a committee of enquiry which he shall appoint for that purpose and which shall consist of a chairman who shall be selected by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia and two other members who shall be selected by the Minister.

(3) Where any case is referred to a committee under this section, the committee shall hold an enquiry in such manner as the Minister may direct

and submit its report to the Minister; and the Minister shall have regard to the report in determining whether to make the order but shall not be obliged to act in accordance with any recommendation contained in the report.

Interpre-
tation

12. (1) In this Chapter -

"British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948; and

"the Minister" means the Minister who is for the time being responsible for matters relating to citizenship of The Gambia.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 18th February 1965 and the birth occurred after 17th February 1965 the national status that the father would have had if he had died on 18th February 1965 shall be deemed to be his national status at the time of his death.

Chapter III

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Fundamental
rights and
freedoms.

13. Whereas every person in The Gambia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and

- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

14. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted.

Protect
right to

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

15. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:-

Protect
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persona
liberty

- (a) in execution of the sentence or order of a court, whether established for The Gambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of the Supreme Court or the Court of Appeal punishing him for contempt of that court or of

- another court or tribunal;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of The Gambia;
- (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into The Gambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from The Gambia or for the purpose of restricting that person while he is being conveyed through The Gambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Gambia, or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of The Gambia in which, in consequence of any such order,

- his presence would otherwise be unlawful.
 - (2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.
 - (3) Any person who is arrested or detained -
 - (a) for the purpose of bringing him before a court in execution of the order of a court; or
 - (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of The Gambia;
 - and who is not released, shall be brought without undue delay before a court.
 - (4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.
 - (5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.
 - (6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.
16. (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
- (3) For the purposes of this section, the expression "forced labour" does not include -
- (a) any labour required in consequence of the sentence or order of a court;

Protection from slave and forced labour.

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

17. (1) No person shall be subjected to torture or inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the

[Editor's Note: A blank page, not a part of the original text, is being inserted at this point so that the marginal inscriptions, which are part of the official Gambian printing, will continue to fall in their appropriate places on the outside of each page.]

infliction of any description of punishment that was lawful in The Gambia on 23rd April, 1970.

Protection from deprivation of property.

18. (1) No property of any description shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia except by or under the provisions of a law that -

- (a) requires the payment of adequate compensation therefor; and
- (b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the Supreme Court.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section -

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right -
 - (i) in satisfaction of any tax, rate or due;
 - (ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of The Gambia;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required and has without reasonable excuse refused or failed to carry out), and except so far as that provision or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or a right over property) that is to say:-

- (i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

(4) The provisions of this section shall apply in relation to the compulsory taking of possession of property of any description and the compulsory acquisition of rights over and interests in such property by or on behalf of the Republic.

19. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

Protection
against
arbitrary
search or
entry.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any property for a purpose beneficial to the community;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) that authorises an officer or agent of the Government of The Gambia, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

20. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within reasonable time by an independent and impartial court established by law.

Provisions
to secure
protection
of law.

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

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge.

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

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

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

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

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

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority -

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, public safety or public order.

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

- (a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(d) of this section to the extent that the law in question prohibits legal representation in proceedings before a court, by whatever name called administering customary law or before another court on appeal from such a court;
- (c) subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (d) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) In this section "criminal offence" means a criminal offence under the law of The Gambia.

Protection of
freedom of
conscience.

21. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required -

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

22. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interfer-

Protection of
freedom of
expression.

ence (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

23. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (c) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing

done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

24. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout The Gambia, the right to reside in any part of The Gambia and immunity from expulsion from The Gambia.

Protection of freedom of movement.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) for the imposition of restrictions on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia that are reasonably required in the interests of defence, public safety or public order;
- (b) for the imposition of restrictions on the movement or residence within The Gambia or on the right to leave The Gambia of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) for the imposition of restrictions, by order of a court, on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia either in consequence of his having been found guilty of a criminal offence under the law of The Gambia or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from The Gambia;
- (d) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of The Gambia;

- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in The Gambia;
- (f) for the imposition of restrictions upon the movement or residence within The Gambia or on the right to leave The Gambia of any public officer;
- (g) for the removal of a person from The Gambia to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted; or
- (h) for the imposition of restrictions on the right of any person to leave The Gambia that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are entitled to practice as a barrister or a solicitor in The Gambia.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered:

Provided that authority, unless it is otherwise provided by law, shall not be obliged to act in accordance with any such recommendations.

25. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall

make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision -

- (a) for the appropriation of public revenues or other public funds;
- (b) with respect to persons who are not citizens of The Gambia;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description;
- (d) for the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law; or
- (e) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

on the grounds of race etc.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 19, 21, 22, 23 and 24 of this Constitution being such a restriction as is authorised by section 19(2), section 21(5), section 22(2), section 23(2) or paragraph (a) or paragraph (b) of section 24(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Derogations from fundamental rights and freedom under emergency powers.

26. Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 15 or section 25 of this Constitution to the extent that the Act authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in The Gambia during that period.

Protection of persons detained under emergency laws.

27. (1) When a person is detained by virtue of any such law as is referred to in section 26 of this Constitution the following provisions shall apply, that is to say:-

- (a) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;
- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
- (c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are entitled to practice as a barrister or a solicitor in The Gambia;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense.

28. (1) If any person alleges that any of the provisions of sections 13 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the

case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction -

- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section.

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 13 to 27 (inclusive) of this Constitution:

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

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 13 to 27 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 95 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or

desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

29. (1) The President may, at any time, by proclamation which shall be published in the Official Gazette, declare that -

Declaration
of emergency

- (a) a state of public emergency exists for the purposes of this Chapter; or
 - (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.
- (2) Every declaration made under subsection (1) of this section shall lapse -
- (a) in the case of a declaration made when Parliament is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and
 - (b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless it has in the meantime been approved by a resolution of the House of Representatives supported by the votes of two-thirds of all the voting members of the House.

(3) A declaration made under subsection (1) of this section may at any time be revoked by the President by proclamation which shall be published in the Official Gazette.

(4) A declaration made under subsection (1) of this section that has been approved by a resolution of the House of Representatives in pursuance of subsection (2) of this section, shall, subject to the provisions of subsection (3) of this section, remain in force so long as that resolution remains in force and no longer.

(5) A resolution of the House of Representatives passed for the purposes of this section shall

remain in force for twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, supported by the votes of two-thirds of all the voting members of the House, each extension not exceeding twelve months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a majority of all the voting members of the House.

(6) Any provision of this section that a declaration made under subsection (1) of this section shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

(7) The President may summon the House of Representatives to meet for the purposes of subsection (2) of this section notwithstanding that Parliament then stands dissolved, and the persons who were members of the House of Representatives immediately before the dissolution shall be deemed, for those purposes, still to be members of that House but, subject to the provisions of section 67(4) of this Constitution (which relates to the election of the Speaker of the House of Representatives), the House shall not, when summoned by virtue of this subsection, transact any business other than debating and voting upon a resolution for the purposes of subsection (2) of this section.

Interpretation and savings

30. (1) In this Chapter, unless the context otherwise requires -

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

"court" means any court of law having jurisdiction in The Gambia other than a court established by a disciplinary law, and includes the Judicial Committee and in sections 14 and 16 of this Constitution a court established by a disciplinary law;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means -

- (a) a naval, military or air force;
- (b) a Police Force; or

(c) a prison service;

"legal representative" means a person entitled to practise as a barrister or a solicitor in The Gambia; and

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter "a period of public emergency" means any period during which -

(a) The Gambia is at war; or

(b) a declaration is in force under subsection (1) of section 29 of this Constitution.

(3) In relation to any person who is a member of a disciplined force raised under an Act of Parliament, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 14, 16 and 17 of this Constitution.

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

Chapter IV

THE PRESIDENT

Part I

OFFICE OF PRESIDENT

Office of
President.

31. There shall be a President of the Republic of The Gambia who shall be Head of State and Commander-in-Chief of the armed forces of the Republic.

Part II

INCUMBENT PRESIDENT

TO PERFORM FUNCTIONS OF PRESIDENT UNTIL
NEW PRESIDENT ASSUMES OFFICEIncumbent
President
to perform
functions
of President.

32. Notwithstanding the dissolution of Parliament and not until the person elected President under the new provisions of sections 33 and 34 of this Constitution, assumes office in accordance with section 36 of this Constitution, the person performing the functions of President immediately before such election shall continue to perform the functions of President under this Constitution.

Part III

ELECTION, TENURE AND CONDITIONS OF
OFFICE OF THE PRESIDENTQualification
and election
of President.

33. (1) A person shall be qualified for election to the office of President if -

- (a) he is a citizen of The Gambia;
- (b) he has attained the age of 30 years;
- (c) he is qualified to be registered as voter for the purposes of elections to the House of Representatives:

Provided that a Head Chief, notwithstanding any provision of law disqualifying him to be registered as a voter for the purposes of elections to the House of Representatives, shall be qualified for election as President;

- (d) he is a person who is otherwise qualified to be elected as a member of the House of Representatives.
- (2) A candidate for election to the office

of President shall complete and duly sign the nomination papers prescribed by or under an Act of Parliament and delivered to the Returning Officer on or before the day appointed for close of nomination.

(3) No person shall be accepted as a candidate for election to the office of President unless his nomination papers are accompanied by one hundred signatories or thumb impressions of persons whose names appear on the voters register and are qualified as voters for the purposes of elections to the House of Representatives.

(4) The election of the President shall be on the terms of universal adult suffrage and shall be conducted in a manner prescribed by this section and subject thereto by or under an Act of Parliament.

(5) An election to the office of President shall be held at such places and begin on such date as the Supervisor of Elections may by publication in the Gazette announce.

(6) The election to the office of President shall be held -

- (a) on a date not earlier than ninety days before the expiration of the term of office of the incumbent President nor later than thirty days after the expiration of such term;
- (b) in any other case within ninety days after the office of President becomes vacant.

(7) Every person who is registered to vote at an election of a member of the House of Representatives shall be entitled to vote at an election to the office of President:

Provided that a Head Chief may vote in a Presidential election in accordance with rules prescribed under an Act of Parliament.

34. (1) A candidate shall be declared elected as a President if at the close of nomination he is the only candidate validly nominated for the election to the office of President.

(2) Where at a Presidential election there are two or more candidates, a person shall be deemed to be duly elected as President if he has the highest number of votes cast at the election.

(3) Where no candidate is duly elected under subsection (2) of this section, the Supervisor

Procedure
for election
of
President.

of Elections shall within ten days arrange for a second election in accordance with subsection (4) of this section at which the only candidates shall be the candidates who obtained the two highest numbers of votes at the previous elections.

(4) A candidate shall be deemed to be duly elected at a Presidential election held under subsection (3) of this section if he obtains a majority of the valid votes cast at such election.

(5) Where after a second Presidential election held under subsection (3) of this section the two candidates obtained an equal number of votes, Parliament shall by a secret ballot elect one of the two candidates as President.

(6) The Chief Justice shall be the Returning Officer for the election of President.

(7) A document which is executed under the hand and Seal of the Chief Justice and states that the person named therein was declared elected as President, shall be prima facie evidence that the person named was so elected.

35. (1) Any question which may arise as to whether -

(a) any provision of this Constitution or any law relating to the election of a President has been violated; or

(b) any person has been validly elected as President under such provision;

shall be referred to the Court of Appeal within ten days of the declaration of the result of the election.

(2) Parliament may by an Act prescribe the conditions under which any person may bring a petition under this section.

(3) The decision of the Court of Appeal shall be final and no appeal shall lie therefrom to any other court or tribunal.

(4) A declaration by the Court of Appeal that the election of the President is not valid shall be without prejudice to anything done by the President before that declaration.

36. (1) A person elected to the office of President shall, subject to subsection (3) of this section, hold office for a term of five years commencing from the date on which he takes and subscribes the oath of allegiance and the oath for the due

Challenging
the election
of a President.

Assump-
tion and
term of
office.

execution of his office as set out in the First Schedule to this Constitution.

(2) The person elected President shall assume office on the day following the date of expiration of the term of office of the last holder of that office or in any other case on the day following his election.

(3) The office of President shall become vacant -

(a) when the term of office specified in subsection (1) of this section expires;

(b) if the President dies while holding such office, or resigns from the office of President;

(c) if the President ceases to hold such office under sections 37, 38 or 39 of this Constitution.

(4) At any time when The Gambia is at war and the President considers that it is not practicable to hold elections, the House of Representatives may by a resolution extend the period of five years specified in subsection (1) of this section for not more than twelve months at a time.

37. (1) If the Cabinet resolves, upon a resolution supported by the votes of a majority of all the members of the Cabinet, that the question of the mental or physical capacity of the President to discharge the functions of his office ought to be investigated and informs the Chief Justice accordingly, the Chief Justice shall appoint a board consisting of not less than three persons selected by him from among persons who are qualified as medical practitioners under the law of The Gambia and the Board shall enquire into the matter and shall make a report to the Chief Justice stating the opinion of the board whether or not the President is, by reason of any infirmity of mind or body, incapable of discharging the functions of his office.

(2) If the board reports that the President is incapable of discharging the functions of the office of President, the Chief Justice shall certify in writing accordingly and thereupon the President shall cease to hold office.

(3) Where the Cabinet resolves that the question of the mental or physical capacity of the President to discharge his functions ought to be investigated in accordance with the provisions of subsection (1) of this section, the President

Removal
of President
on
grounds of
incapacity.

shall, until another person assumes the office of President or the board, appointed in pursuance of subsection (1) of this section, reports that the President is not incapable of discharging the functions of his office (whichever is the earlier), cease to perform the functions of his office and those functions shall be performed by -

- (a) the Vice-President; or
- (b) during any period when there is no Vice-President or the Vice-President is absent from The Gambia or is unable, by reason of mental or physical infirmity, to discharge the functions of his office, any such Minister as the Cabinet shall appoint;

Provided that any person performing the functions of the office of President under this subsection shall not exercise the powers of the President to revoke the appointment of the Vice-President or to dissolve Parliament.

(4) A motion for the purposes of subsection (1) of this section may be proposed at any meeting of the Cabinet by any member thereof.

(5) For the purposes of this section -

- (a) the Cabinet may act notwithstanding any vacancy in its membership or the absence of any member;
- (b) a Certificate by the Chief Justice that the President is by reason of mental or physical infirmity, unable to discharge the functions of his office shall, in respect of any period for which it is in force, be conclusive and shall not be questioned in any Court.

Removal
of Presi-
dent for
violation
of Consti-
tution or
gross mis-
conduct.

38. (1) If notice in writing is given to the Speaker of the House of Representatives, signed by not less than one-half of all the members of the House of Representatives, of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct and specifying the particulars of the allegations and proposing that a tribunal be appointed under this section to investigate those allegations, the Speaker shall -

- (a) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by the House within 7 days of the notice;

or

- (b) if Parliament is not then sitting (and notwithstanding that it may be prorogued) summon the House to meet within 21 days of the notice and cause the motion to be considered at that meeting.

(2) Where a motion under this section is proposed for consideration by the House of Representatives, the House shall not debate the motion but the person presiding in the House shall forthwith cause a vote to be taken on the motion and, if the motion is supported by the votes of not less than two-thirds of all the voting members of the House, shall declare the motion to be passed.

(3) If a motion is declared to be passed under subsection (2) of this section -

- (a) the Chief Justice shall appoint a tribunal which shall consist of a Chairman and not less than two others selected by the Chief Justice, one of whom shall hold or shall have held high judicial office;
- (b) the tribunal shall investigate the matter and shall report to the House of Representatives whether or not they find the particulars of the allegation specified in the motion to have been sustained;
- (c) the President shall have the right to appear and be represented before the tribunal during its investigation of the allegations against him.

(4) If the tribunal reports to the House of Representatives that the tribunal finds that the particulars of any allegation against the President specified in the motion have not been substantiated, no further proceedings shall be taken under this section in respect of that allegation.

(5) If the tribunal reports to the House of Representatives that the tribunal finds that the particulars of any allegation specified in the motion have been substantiated, the House may, on a motion supported by the votes of not less than two-thirds of all the voting members of the House, resolve that the President has been guilty of such violation of the Constitution or, as the case may be, such gross misconduct as is incompatible with his continuance in office as President and, if the House so resolves, the President shall cease

to hold office upon the third day following the passage of the resolution unless he sooner dissolves Parliament.

(6) No proceedings shall be taken or continued under this section at any time when Parliament is dissolved.

Vacancy in
office of
President.

39. (1) If the office of President becomes vacant by reason of the death or resignation of the President or by reason of the President ceasing to hold office by virtue of section 37 or 38 of this Constitution, the Vice-President shall assume the office of President.

(2) Where the office of President becomes vacant in circumstances in which there is no Vice-President then, until a President assumes office in accordance with section 36 of this Constitution, the functions of the office of President shall be performed by such Minister as the Cabinet shall appoint.

(3) Whenever the President is absent from The Gambia or considers it desirable so to do by reason of illness or any other cause he may by direction in writing, authorise the Vice-President to discharge such of the functions of the office of President as he may specify and the Vice-President may discharge those functions until his authority is revoked by the President.

(4) If the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and the infirmity is of such a nature that the President is unable to authorise another person under this section to perform those functions -

(a) the Vice-President; or

(b) during any period when there is no Vice-President or the Vice-President is absent from The Gambia or the Vice-President is by reason of physical or mental infirmity, unable to perform the functions of his office, such Minister as the Cabinet shall appoint,

shall perform the functions of the office of President:

Provided that any person performing the functions of the office of President under this subsection shall not exercise the powers of the President to revoke the appointment of the Vice-President or to dissolve Parliament.

(5) Any person performing the functions of the office of President by virtue of subsection (4) of this section shall cease to perform those functions if he is notified by the President that the President is about to resume those functions.

(6) For the purposes of this section, a certificate of the Chief Justice that -

(a) the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and the infirmity is of such a nature that the President is unable to authorise another person under this section to perform the functions of his office; or

(b) the Vice-President is by reason of physical or mental infirmity unable to discharge the functions of his office,

shall, in respect of any period for which it is in force, be conclusive and shall not be questioned in any court:

Provided that any such certificate as is referred to in paragraph (a) of this subsection shall cease to have effect if the President notifies any person under subsection (5) of this section that he is about to resume the functions of the office of President.

(7) The Vice-President or a Minister shall not, by reason of his exercising the functions of the office of President under subsections (2)(a), (3) or (4) of this section, vacate his seat in, or be disqualified for election to, the House of Representatives.

40. (1) The President shall receive such salary and allowances, as may be prescribed by resolution of the House of Representatives; and such salary and allowances payable to the President are hereby charged on the Consolidated Revenue Fund.

Salary and
Allowance
of Presi-
dent.

(2) The salary and allowances of the President shall not be altered to his disadvantage during his period of office.

(3) The President shall be exempted from personal taxation.

41. Whilst any person holds or performs the functions of the office of President no civil or criminal proceedings shall be instituted or continued against

Protecti-
President
respect
legal pro-
ceedings dur-
ing office.

him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity.

Chapter V

THE EXECUTIVE

Executive power.

42. (1) The executive power of the Republic shall vest in the President and, subject to the provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him.

(2) In the exercise of any function conferred upon him by this Constitution or any other law, the President shall, unless it is otherwise provided, act in his own deliberate judgment and shall not be obliged to follow the advice tendered by any other person or authority.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

Establishment of offices and functions of Vice-President, Ministers and Parliamentary Secretaries.

43. (1) There shall be a Vice-President of The Gambia who shall be the principal assistant of the President in the discharge of his executive functions.

(2) Where the Vice-President is performing the functions of the President in accordance with section 39(1) of this Constitution, he may appoint a person from among the members of the House of Representatives to perform the functions of Vice-President and any person so appointed may discharge those functions accordingly:

Provided that a person appointed under this section shall cease to perform the functions of the office of Vice-President -

- (a) if his appointment is revoked by the Vice-President;
- (b) if he ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament; or
- (c) if the Vice-President ceases to perform the functions of the office of President.

(3) Notwithstanding the provisions of subsection (1) of section 43, and if occasion arises for making the appointment of a Vice-President

or other Minister or of a Parliamentary Secretary while Parliament is dissolved, the President may appoint a person who was a member of the House of Representatives immediately before such dissolution.

(4) There shall be such other offices of Minister of the Government and such offices of Parliamentary Secretary as may be established by the President.

(5) Subject to the provisions of section 50 the Vice-President and the other Ministers under the direction of the President shall be responsible for such departments of State or other business of the Government as the President may assign to them.

(6) Notwithstanding the provisions of subsection (5) of this section, the President shall be responsible for such departments of State or other business of the Government as he may determine.

(7) The function of Parliamentary Secretaries shall be to assist Ministers in the performance of their duties.

44. Where any Minister has been charged with responsibility for a department or departments of government, he shall exercise general direction and control over those departments; and, subject to such direction and control, every department of government shall be under the supervision of a public officer whose office is referred to in this Constitution as the office of permanent secretary:

Permanent Secretaries

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

45. (1) Appointments to the office of Vice-President, Minister or Parliamentary Secretary shall be made by the President from among the members of the House of Representatives by instrument under the Public Seal:

Appointment of Ministers and Parliamentary Secretaries

Provided that the Vice-President shall be appointed from among the elected members of the House of Representatives by instrument under the Public Seal.

(2) If the Vice-President is absent from The Gambia or is incapable by reason of illness or any other cause of discharging the functions of his office, the President may appoint a person from among the elected members of the House of

Representatives to perform the functions of the office of Vice-President and any person so appointed may discharge those functions accordingly:

Provided that a person appointed under this subsection shall cease to perform the functions of the office of Vice-President -

- (a) if his appointment is revoked by the President;
- (b) if he ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament; or
- (c) upon the assumption by any person of the office of President.

Tenure of office of Minister and Parliamentary Secretary.

46. The office of Vice-President, or other Minister or Parliamentary Secretary, shall become vacant -

- (a) if the President removes the holder from office by instrument under the Public Seal; or
- (b) if the holder ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament; or
- (c) on the acceptance of the President of the resignation of the holder of this office; or
- (d) immediately before the assumption of office of a President; or
- (e) if, in the case of the Vice-President, the holder of that office assumes the office of President in accordance with the provisions of section 39 of this Constitution.

Attorney General.

47. (1) There shall be an Attorney-General who shall be appointed by the President by instrument under the Public Seal and who shall be a Minister of the Government.

(2) The Attorney-General shall be a voting member of the House of Representatives by virtue of this subsection if he is not such a voting member apart from this subsection.

(3) If the person holding the office of Attorney General is for any reason unable to perform the functions conferred upon him by this Constitution

or any other law, those functions (other than functions as a member of the House of Representatives) may be performed by such other person, whether or not that person is a Minister, as may from time to time be designated in that behalf by the President.

(4) A person shall not be qualified to hold or perform the functions of the office of Attorney-General unless he is qualified for admission as an advocate in The Gambia and has been so qualified for not less than five years.

48. (1) There shall be a Director of Public Prosecutions, whose office shall be an office in the public service of The Gambia and, without prejudice to the provisions of this Constitution relating to the Public Service Commission, an office in the department of Government for which responsibility is assigned to the Attorney-General.

Public Prosecutions.

(2) The Attorney General shall have power in any case in which he considers it desirable so to do -

- (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Attorney-General under subsection (2) of this section may be exercised by the Attorney-General in person and through the Director of Public Prosecutions, acting under and in accordance with the general or special instructions of the Attorney-General, and through other officers of the department mentioned in subsection (1) of this section, acting under and in accordance with such instructions.

(4) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings,

nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purposes of this section any appeal from any determination in any criminal proceedings before any court of law or any case stated or question of law reserved for the purposes of any such proceedings to any other court shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (2)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

Cabinet.

49. (1) There shall be a Cabinet comprised of the Vice-President and the other Ministers, and at the meetings of which the President, or in his absence, the Vice-President, or some other Minister appointed by the President, shall preside.

(2) Subject to the powers of the President, the Cabinet shall be the instrument of policy and shall be responsible for advising the President with respect to the policy of the Government.

(3) The Cabinet may act notwithstanding any vacancy in its membership.

Collective Responsibility.

50. The Cabinet shall be collectively responsible to Parliament for all things done by or under the authority of the President or the Vice-President or any other Minister in the execution of his office. The provisions of this section shall not apply to -

- (a) the appointment and removal from office of Ministers of the Government and Parliamentary Secretaries, the assignment of portfolios to Ministers or any authorisation or appointment, as the case may be, under subsection (3) of section 39 or subsection (2) of section 45 of this Constitution;
- (b) the dissolution of Parliament;
- (c) the exercise of the powers conferred on the Attorney-General by sections 47 and 48 of this Constitution; or
- (d) the matters referred to in section 54 of this Constitution (which relates to

the exercise of the prerogative of mercy).

51. The Vice-President, a Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office as set out in the Second Schedule to this Constitution.

Oaths to be taken by Ministers and Parliamentary Secretaries.

52. (1) There shall be a Secretary to the Cabinet whose office shall be a public office.

Secretary to the Cabinet.

(2) The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible, in accordance with such instructions as may be given him by the President, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the President may from time to time direct.

53. Subject to the provisions of this Constitution and of any Act of Parliament, the President may constitute offices for the Republic, make appointments to any such office and terminate any such appointment.

Constitution of appointments to Public Offices.

54. The President may -

Prerogative of Mercy.

- (a) grant to any person convicted of any offence a pardon either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment imposed on any person for any offence or any penalty or forfeiture otherwise due to the Republic on account of any offence.

55. (1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of such persons not being less than two nor more than four as may be appointed by the President.

Advisory Committee.

(2) A member of the Advisory Committee shall hold office during the pleasure of the President.

(3) Where any person has been sentenced to death for any offence, the President shall cause the question of the exercise, in relation to that person, of the powers conferred by section 54 of

this Constitution to be considered at a meeting of the Advisory Committee.

(4) The President may determine the procedure of the Advisory Committee and, if present, shall preside at any meeting of the Committee.

(5) Subject to the provisions of subsection (3) of this section, the President may refer to the Advisory Committee any question as to the exercise of the powers conferred upon him by section 54 of this Constitution.

Chapter VI

PARLIAMENT

Part I

COMPOSITION OF PARLIAMENT

Establishment of Parliament.

56. (1) There shall be a Parliament which shall consist of the President and a House of Representatives.

(2) The legislative power of the Republic is vested in Parliament.

(3) Parliament shall have power to make laws for the peace, security, order and good government of The Gambia.

House of Representatives.

57. (1) The House of Representatives shall consist of a Speaker and the following other members, that is to say:-

30/1976

(a) until Parliament otherwise prescribes, thirty-six members who shall be known as "elected members" and who shall be elected in accordance with the provisions of section 60 of this Constitution;

1/1987

(b) five members who shall be known as "Chiefs' representative members" and who shall be elected in accordance with the provisions of section 63 of this Constitution;

3/1982

(c) the Attorney-General; and

3/1982

(d) until Parliament otherwise prescribes, eight members who shall be known as "nominated members" and who shall be appointed in accordance with the provisions of section 65 of this Constitution.

(2) Only an elected member or a Chiefs' representative member or the Attorney-General shall be entitled to vote upon any question before the House of Representatives and the elected members, the Chiefs' representative members and the Attorney-General are in this Constitution collectively referred to as "voting members".

58. Subject to the provisions of section 59 of this Constitution, a person shall be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, and shall not be so qualified unless, at the date of his nomination for election or, as the case may be, at the date of his appointment -

- (a) he has attained the age of twenty-one years;
- (b) he can speak English well enough to take an active part in the proceedings of the House;
- (c) in the case of a voting member, he is a citizen of The Gambia; and
- (d) in the case of an elected member, he is registered in some constituency as a voter in elections of elected members of the House and is not disqualified from voting in such elections.

59. (1) No person shall be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment -

- (a) in the case of a voting member, he is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to any foreign power or state;
- (b) he holds the office of Speaker;
- (c) he is, under any law in force in The Gambia, adjudged or otherwise declared to be of unsound mind;
- (d) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in The Gambia;

Qualifications for membership of House of Representatives.

Disqualifications for membership of House of Representatives.

(e) he is under a sentence of death imposed on him by a court in The Gambia, or is serving or has within five years of the date of his nomination or appointment completed serving a sentence of imprisonment for a term of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court and has not received a free pardon; or

(f) subject to such exceptions and limitations as may be prescribed by Parliament, he has any such interest in any such government contract as may be so prescribed.

(2) Parliament may provide that a person shall not be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment, he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the House or the compilation of any register of voters for the purposes of such an election.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the House of Representatives or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be nominated for election as a voting member of the House or to be appointed as a nominated member.

(4) No person shall be qualified to be nominated for election or appointed as an elected member of the House of Representatives who, at the date of his nomination for election, is, or is nominated for election as, a Chiefs' representative member and no person shall be qualified to be nominated for election as a Chiefs' representative member who, at the date of his nomination for election, is, or is nominated for election as, an elected member.

(5) No person shall be qualified to be nominated for election as a voting member of the House of Representatives, who, at the date of his nomina-

tion for election, is a nominated member; and no person shall be qualified to be appointed as a nominated member who, at the date of his appointment, is, or is nominated for election as, a voting member or who has, at any time since Parliament was last dissolved, stood as a candidate for election as a voting member but was not elected.

(6) Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his appointment -

(a) he holds or is acting in any office or appointment that may be prescribed by Parliament;

(b) he is a member of any naval, military or air force that may be so prescribed; or

(c) he is a member of any police force.

(7) For the purposes of subsection (1)(e) of this section -

(a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(8) In subsection (1)(f) of this section "government contract" means any contract made with the Government of The Gambia or with a department of that Government or with an officer of that Government contracting as such.

60. (1) The Gambia shall, in accordance with the provisions of section 62 of this Constitution, be divided into constituencies and each constituency shall elect one elected member to the House of Representatives, in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.

Election of
elected
members.

(2) The election of elected members of the House of Representatives shall be based upon universal adult suffrage, that is to say:-

- (a) every citizen of The Gambia who has attained the age of twenty-one years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections of elected members of the House of Representatives, be entitled to be registered as such a voter under any law in that behalf, and no other person may be so registered; and
- (b) every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of elected members of the House of Representatives, be entitled so to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

(3) In any election of elected members of the House of Representatives the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

Constituency
Boundaries
Commission.

61. (1) There shall be a Constituency Boundaries Commission which shall be appointed by the President in the circumstances specified in section 62(4) of this Constitution and which shall consist of a Chairman and two other members.

(2) The Chairman and the other members of the Commission shall be appointed by the President after consultation with the Judicial Service Commission.

(3) A person shall not be qualified to be appointed as a member of the Commission if -

- (a) he is a member of the House of Representatives;
- (b) he is, or has at any time during the two years immediately preceding his appointment been, nominated as a candidate for election as a member of the House of Representatives or of any such House of Representatives established for The Gambia by order of Her Majesty in Council before the coming into operation of this Constitution;
- (c) he is, or has at any time during the said two years been, the holder of an office in any organisation that sponsors

or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid or of any local government authority; or

(d) he is a public officer.

(4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant -

- (a) when the order of the Commission is published in the Official Gazette in accordance with the provisions of section 62(7) of this Constitution; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (3) of this section.

(5) The President after consultation with the Judicial Service Commission may remove a member of the Commission from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(6) A member of the Commission shall not upon enter the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Second Schedule to this Constitution.

(7) In the exercise of its functions under this Constitution the Commission shall not be subject to the direction or control of any other person or authority.

(8) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the President, may confer powers or impose duties on any public officer or on any authority of the Government of The Gambia for the purpose of the exercise of its functions.

(9) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

Constituencies.

62. (1) For the purpose of the election of elected members of the House of Representatives, The Gambia shall, in accordance with the provisions of this section, be divided into constituencies so that -

- (a) the number of such constituencies shall correspond with the number of seats in the House of Representatives (excluding the seats of nominated members, the Attorney-General if he is not an elected member and Chiefs' representatives members); and
- (b) the boundaries of such constituencies shall, if approved by the House of Representatives in accordance with the provisions of subsection (7) of this section, be such as the Constituency Boundaries Commission may prescribe.

(2) Each constituency shall return one member to the House of Representatives.

(3) All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practicable but the Commission may depart from this principle to such extent as it considers expedient in order to take account of the following factors, that is to say:-

- (a) the density of population, and in particular the need to ensure the adequate representation of sparsely populated rural areas;
- (b) the means of communication;
- (c) geographical features; and
- (d) the boundaries of existing administrative areas.

(4) The President shall appoint a Constituency Boundaries Commission for the purposes of reviewing the boundaries of the constituencies into which The Gambia is divided, in the following circumstances, that is to say:-

- (a) whenever a census of the population of The Gambia has been held in pursuance of any Law;

(b) whenever Parliament has made provision so as to alter the number of the constituencies into which The Gambia is divided; or

(c) at such times (being not less than eight years and not more than ten since the boundaries of the constituencies were last reviewed) as the President, in pursuance of a resolution of the House of Representatives, may from time to time appoint.

(5) Without prejudice to the provisions of subsection (7) of this section, whenever the Constituency Boundaries Commission has been appointed in the circumstances specified in subsection (4)(a) or in the circumstances specified in subsection (4)(b) of this section, it shall forthwith carry out a review of the boundaries of the constituencies into which The Gambia is divided and may (and in the circumstances specified in subsection (4)(b) shall), by order alter the boundaries in accordance with the provisions of this section to such extent as it thinks desirable in the light of those circumstances and the review:

Provided that a Commission established by reason of the holding of a census of the population may, if the Commission considers that the changes in the distribution of population reported on the census do not justify an alteration in the boundaries, so report to the President without entering upon a review of the boundaries of the constituencies.

(6) Without prejudice to the provisions of subsection (7) of this section, whenever the Constituency Boundaries Commission has been appointed in the circumstances specified in subsection (4)(c) of this section it shall, within the period of two years commencing with its appointment, carry out a review of the boundaries of the constituencies into which The Gambia is divided and may by order alter the boundaries in accordance with the provisions of this section to such extent as it considers desirable in the light of the review.

(7) Every order made by the Constituency Boundaries Commission under this section shall, if approved by resolution of the House of Representatives, be published in the Official Gazette and shall come into effect upon the next dissolution of Parliament after it was made.

(8) Any provision by Parliament altering the number of seats in the House of Representatives (other than the seats of Chiefs' representative members, the Attorney General if he is not an elected member and of nominated members) shall come into effect with the alteration of the constituencies that, in accordance with the provisions of subsection (5) of this section, is consequential thereon comes into effect; and any alteration of constituencies shall come into effect upon the next dissolution of Parliament.

(9) For the purposes of subsection (3) of this section the number of inhabitants of any part of The Gambia shall be ascertained by reference to the latest census of the population held in pursuance of any law.

63. (1) The Chiefs' representative members shall be elected by the Head Chiefs from among their own number in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) In any election of the Chiefs' representative members the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

64. (1) There shall be a Supervisor of Elections who shall be responsible for the registration of voters and the conduct of elections to the office of President, of members of the House of Representatives and of councillors to local government authorities.

(2) The functions of the Supervisor of Elections shall be exercised either by the person holding or acting in such public office as may for the time being be designated in that behalf by the President acting in consultation with the Public Service Commission, or by such other person who is not a public officer as may for the time being be so designated by the President acting in consultation with the Public Service Commission.

(3) A person shall not enter upon the duties of the office of Supervisor of Elections until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Second Schedule to this Constitution.

(4) For the purposes of the exercise of his functions under subsection (1) of this section, the Supervisor of Elections may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning

officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.

(5) The Supervisor of Elections may, whenever he considers it necessary or expedient so to do, report to the House of Representatives on the exercise of his functions under the foregoing provisions of this section; he shall submit every such report to the Minister for the time being responsible for matters relating to the election of members of the House of Representatives and that Minister shall, not later than seven days after the House first meets after he has received the report, lay it before the House.

(6) In the exercise of his functions under the foregoing provisions of this section, the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

(7) The Supervisor of Elections shall exercise such other functions in relation to elections (whether to the House of Representatives or to local government authorities) as may be prescribed by or under an Act of Parliament.

65. The nominated members shall be appointed by the President.

65A. The President may appoint a member of the Government from among members of the House of Representatives to be leader of Government business in the House of Representatives.

66. (1) A voting member or a nominated member of the House of Representatives shall vacate his seat therein -

- (a) if he is elected as Speaker;
- (b) if any other circumstances arise that, if he were not such member, would cause him to be disqualified under section 59(1) of this Constitution or under a law made in pursuance of section 59(2) or section 59(3) or section 59(6) of this Constitution to be elected as such or, as the case may be, to be appointed as such;
- (c) in the case of a voting member, if he ceases to be a citizen of The Gambia;

Chiefs' Representative members.

Supervisor of Elections.
3/1982

Nominated members.

Leader of Government business.

Tenure of seats of member of House of Representatives.

- (d) in the case of an elected member, if he ceases to be registered as a voter in elections of members to the House of Representatives or if he ceases to be qualified to vote in such election;
- (e) in the case of a Chiefs' representative member, if he ceases to be a Head Chief;
- (f) in the case of the Attorney-General, if he is not an elected member, if he is removed from office; or
- (g) if he is absent from two consecutive meetings of the House without having obtained, before the termination of either meeting, from the Speaker or other person presiding, permission to be or to remain absent therefrom; and any person vacating his seat under the provisions of this paragraph shall not be qualified to be nominated for election to the House of Representatives or appointed as a voting member or a nominated member during the period commencing with his vacating his seat and ending with the first dissolution of Parliament thereafter.

(2) Parliament may, in order to permit any member of the House of Representatives who has been adjudged or declared to be of unsound mind, adjudged or declared bankrupt, sentenced to death or imprisonment or convicted or reported guilty of any offence prescribed under section 59 of this Constitution to appeal against the decision in accordance with any law, provide that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of this section until such time as may be so prescribed.

Speaker.

67. (1) There shall be a Speaker of the House of Representatives who shall be elected by the House and who must be a citizen of The Gambia.

(2) A Minister or a Parliamentary Secretary shall not be qualified to be elected as Speaker.

(3) The Speaker shall vacate his office -

- (a) in the case of a Speaker who was elected from among the members of the House of Representatives, if any circumstances arise that, if he had not been so elected, would have caused him to vacate his seat as a member under section 66 of this Constitution;

- (b) if any circumstances arise that, if he were not Speaker, would cause him to be disqualified to be elected as such;
- (c) when the House of Representatives first meets after a dissolution of Parliament; or
- (d) if he is removed from office by resolution of the House of Representatives supported by the votes of not less than two-thirds of all the voting members.

(4) No business shall be transacted in the House of Representatives (other than the election of a Speaker) at any time when the office of Speaker is vacant.

68. (1) There shall be a Deputy Speaker of the House of Representatives who shall be elected by the House from among persons who are members thereof.

Deputy
Speaker.

(2) A Minister or a Parliamentary Secretary shall not be qualified to be elected as Deputy Speaker.

(3) The House of Representatives shall elect a Deputy Speaker -

(a) subject to the provisions of section 67(4) of this Constitution, when it first meets in every session; and

(b) when it first meets after the office of Deputy Speaker has become vacant, or as soon thereafter as may be convenient.

(4) The Deputy Speaker shall vacate his office -

(a) if he vacates his seat as a member of the House of Representatives;

(b) when the House first meets in each session;

(c) if he becomes a Minister or a Parliamentary Secretary; or

(d) if he is removed from office by resolution of the House of Representatives.

69. (1) There shall be a Clerk to the House of Representatives.

Clerk to the
House of Re-
presentative
and his stal

(2) The office of the Clerk of the House of Representatives and the offices of the members of his staff shall be public offices.

Decision of questions as to membership of House of Representatives.

70. (1) The Supreme Court shall have jurisdiction to hear and determine any question whether -

- (a) any person has been validly elected or appointed as a voting member of the House of Representatives;
- (b) any person has been validly appointed as a nominated member of the House;
- (c) any person who has been elected as Speaker of the House from among persons who are not members thereof was qualified to be so elected; or
- (d) the seat in the House of any member thereof has become vacant.

(2) An application to the Supreme Court for the determination of any question under subsection (1)(a) of this section may be made by any person qualified to vote in the election to which the application relates or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the Supreme Court for the determination of any question under subsection (1)(b) or subsection (1)(c) of this section may be made by any voting member of the House of Representatives or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) A application to the Supreme Court for the determination of any question under subsection (1)(d) of this section may be made -

- (a) by any voting member of the House or by the Attorney-General;
- (b) in the case of the seat of an elected member of the House, by any person registered in some constituency as a voter in elections of elected members of the House; or
- (c) in the case of the seat of a Chiefs' representative member, by any Head Chief,

and if it is made by a person other than the Attorney-General the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) Parliament may make provision with respect to -

- (a) the circumstances and manner in which and the imposition of reasonable conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(6) The determination of the Supreme Court of any question under this section shall not be subject to appeal.

(7) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Part II

LEGISLATION AND PROCEDURE IN HOUSE OF REPRESENTATIVES

Legislative
Power of
Parliament.

71. (1) Subject to the provisions of this Constitution, the legislative power of Parliament shall be exercised by bills passed by the House of Representatives and assented to by the President and a bill shall not become law unless it is so passed and assented to.

(2) When a bill is presented to the President for assent he shall either assent to the bill or withhold his assent and return the bill to the House of Representatives with a message stating the reasons why he has withheld his assent.

(3) A bill returned to the House of Representatives under subsection (2) of this section shall not be presented to the President for his assent for a second time within six months of it being so returned unless it is supported in the House of Representatives at the last stage before it is again presented by the votes of not less than two-thirds of all the voting members of the House.

(4) When a bill which has been returned to the House of Representatives and has thereafter been supported in the House in the manner specified in subsection (3) of this section by the votes of not less than two-thirds of all the voting members of the House, is presented to the President for assent a second time within six months of it being so returned, the President shall, unless he has first dissolved Parliament, assent to the bill within twenty-one days of its presentation.

(5) When a bill which has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the Gazette as law.

(6) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(7) All laws made by Parliament shall be styled "Acts" and the words of enactment shall be "Enacted by the Parliament of The Gambia".

(8)(a) Nothing in this section or in section 55 of this Constitution shall prevent Parliament from conferring on any person

or authority the power to make statutory instruments.

(b) Every statutory instrument shall be published in the Gazette not later than twenty-eight days after it is made or, in the case of a statutory instrument which will not have the force of law unless it is approved by some person or authority other than the person or authority by which it is made, not later than twenty-eight days after it is approved, and if it is not so published it shall be void from the date on which it was made.

72. (1) Subject to the provisions of this section, Parliament may alter this Constitution.

Alteration
this Consti-
tution.

(2) A bill for an Act of Parliament under this section shall not be passed by the House of Representatives unless-

(a) before the first reading of the bill in the House of Representatives, the text of the bill is published in at least two issues of the Gazette; and

(b) the bill is supported on the second and third readings by the votes of not less than two-thirds of all the voting members of the House.

(3) A bill for an Act of Parliament to alter any of the following provisions of this Constitution, this is to say:-

(a) this section;

(b) Chapter I, section 1, Chapter III and Chapter VII, except so far as Chapter VII makes provision for appeals to the Judicial Committee;

(c) Section 56, Section 71, Section 84, Section 85, Section 86 and Section 87,

shall not be submitted to the President for his assent unless the bill, after it has been passed by the House of Representatives and in the form in which it was so passed, has, in accordance with the provisions of any law in that behalf, been submitted to, and been approved at, a referendum.

(4) Every person who is entitled to vote in elections of elected members of the House of Representatives shall be entitled to vote at a

referendum held for the purposes of subsection (3) of this section and no other person may so vote; and the bill shall not be regarded as having been approved at that referendum unless it was so approved by the votes of not less than one-half of all such persons or by not less than two-thirds of all the votes validly cast at the referendum:

Provided that a Head Chief shall be entitled to vote at a referendum held for the purposes of subsection (3) of this section notwithstanding that he is not registered as a voter for the purposes of elections of elected members of the House of Representatives in accordance with the provisions of subsection (2) of section 60 of this Constitution.

(5) The conduct of any referendum for the purposes of subsection (3) of this section shall be under the general supervision of the Supervisor of Elections and the provisions of subsections (4), (5) and (6) of section 64 of this Constitution shall apply in relation to the exercise by the Supervisor of Elections or by any other officer of his functions with respect to a referendum as they apply in relation to the exercise of his functions with respect to elections of members of the House of Representatives.

(6) A bill for an Act of Parliament under this section shall not be submitted to the President for his assent unless it is accompanied by a certificate under the hand of the Speaker of the House of Representatives (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsection (2) of this section and, where appropriate, the provisions of subsections (3) and (4) of this section have been complied with, and every such certificate shall be conclusive for all purposes and shall not be enquired into in any court.

(7) In this section -

- (a) references to this Constitution include references to any law that amends or replaces any of the provisions of this Constitution; and
- (b) references to the alteration of this Constitution or of any chapter or section of this Constitution include references to the amendment, modification or re-enactment, with or without amendment or modification, of any provision for the time being contained in this Constitution or Chapter or section thereof, the suspension or repeal of any such provision, the making of a different

provision in lieu of such provision and the addition of new provisions to this Constitution or Chapter or section thereof, and references to the alteration of any particular provision of this Constitution shall be construed likewise.

73. (1) Subject to the provisions of this section Parliament may make laws for The Gambia with respect to titles of honour, decorations and other dignities. Titles of Honour etc.

(2) Any such law providing for the award of a title, decoration or other dignity shall confer the power to make the award upon the President.

(3) Except with the prior consent of the President -

- (a) a person who is a citizen of The Gambia; and
- (b) any other person who is a member of the public service or of the armed forces of the Republic.

shall not accept a title of honour, decoration or other dignity (other than a distinction conferred by an educational, professional or scientific body) from an authority of a country other than The Gambia.

74. No provision of law, in so far as it provides for the abolition of the office of Head Chief, Deputy Head Chief, Sub-Chief or Headman, shall have effect unless it is included in an Act of Parliament; and the provisions of section 72 of this Constitution shall apply in relation to a bill for such an Act as they apply in relation to a bill for an Act to alter this Constitution not being such a bill as is referred to in subsection (3) of section 72. Office of Chief.

75. (1) Every member of the House of Representatives shall, before taking his seat in the House, take and subscribe before the House the oath of allegiance but a member may before taking that oath take part in the election of a Speaker of the House. Oath to be taken by member of House of Representatives.

(2) Any person elected to the office of Speaker of the House of Representatives shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe before the House, that oath and the oath for the due execution of his office as set out in the Second Schedule to this Constitution, before entering upon the duties of his office.

Presiding in the House of Representatives.

76. There shall preside at any sitting of the House of Representatives -

- (a) the Speaker; or
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such member of the House (not being a Minister or a Parliamentary Secretary) as the House may elect for that purpose.

Quorum in House of Representatives.

77. If objection is taken by any member of the House of Representatives present that there are present in the House (besides the person presiding) less than one-fourth of all the members of the House and, after such interval as may be prescribed in the Standing Orders of the House, the person presiding ascertains that the number of members present is still less than one-fourth of all the members of the House, he shall thereupon adjourn the House.

Use of English in House of Representatives.

78. The business of the House of Representatives shall be conducted in English.

Voting in House of Representatives.

79. (1) Save as otherwise provided in this Constitution, any question proposed for decision in the House of Representatives shall be determined by a majority of votes of the members present and voting.

(2) The Speaker shall have neither an original nor a casting vote.

(3) The Deputy Speaker or other member of the House of Representatives presiding in the absence of the Speaker shall have a casting vote but no original vote.

(4) If there is an equality of votes on any question before the House of Representatives and either the Speaker is presiding or the Deputy Speaker or other member presiding does not exercise his casting vote, the motion before the House shall be deemed to be lost.

Unqualified persons sitting or voting

80. (1) Any person who sits or votes in the House of Representatives knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding two hundred dalasis, or such other sum as may be prescribed by Parliament, for each day on which he so sits or votes in the House.

(2) Any prosecution for an offence under this section shall be instituted in the Supreme Court and shall not be so instituted except by the Director of Public Prosecutions acting under the instructions of the Attorney-General.

81. Except on the motion of a Minister, the House of Representatives shall not -

- (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:-

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the Consolidated Revenue Fund or any other public fund of The Gambia or the alteration of any other public fund of The Gambia or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of The Gambia of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government of The Gambia; or

- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

82. (1) The President may, at any time, attend and address the House of Representatives.

(2) The President may send messages to the House of Representatives and any such message shall be read, at the first convenient sitting of the House after it is received, by the Vice-President or by a Minister designated in that behalf by the President.

83. (1) Subject to the provisions of this Constitution, the House of Representatives may regulate its own procedure and may in particular make, amend and revoke Standing Orders for the orderly conduct of its own proceedings.

Restrict with regard to certain financial measures.

President right to attend to address House Representatives.

Regulate of procedure in the Representatives.

(2) The House of Representatives may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

(3) Parliament may, for the purpose of the orderly and effective discharge of the business of the House of Representatives, make provision for the powers, privileges and immunities of the House and the committees and the members thereof.

Part III

SUMMONING, PROPRATION AND DISSOLUTION

Sessions of
Parliament,
etc.

84. (1) Each session of Parliament shall be held at such place within The Gambia and shall begin at such time (not being later than twelve months from the end of the preceding session if Parliament has been prorogued or twenty-eight days from the holding of a general election of members of the House of Representatives if Parliament has been dissolved) as the President shall appoint.

(2) Subject to the provisions of subsection (1) of this section, the sittings of the House of Representatives shall be held at such time and place as the House may, by its Standing Orders or otherwise, determine.

Prorogation
and dissolution
of
Parliament.

85. (1) The President may at any time prorogue Parliament.

(2) Subject to the provisions of this Constitution, the President may at any time dissolve Parliament.

(3) If the House of Representatives passes a resolution which is supported by the votes of a majority of all the voting members of that House, and of which not less than seven days' notice has been given in accordance with the procedure of that House, declaring that it has no confidence in the Government of The Gambia and the President does not within three days of the passing of that resolution dissolve Parliament, Parliament shall stand dissolved on the fourth day following the day on which that resolution was passed.

(4) Subject to the provisions of subsection (5) of this section, Parliament, unless sooner dissolved, shall continue for five years from the

date of the first sitting of the House of Representatives after any dissolution and shall then stand dissolved.

(5) At any time when The Gambia is at war, Parliament may extend the period of five years specified in subsection (4) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(6) If, after a dissolution of Parliament and before the holding of a general election of members of the House of Representatives, the President considers that owing to a state of emergency arising or existing in The Gambia or any part thereof, it is necessary to recall Parliament, the President may summon the Parliament which has been dissolved to meet and the Parliament shall be deemed to be the Parliament for the time being, but the general election of members of the House of Representatives shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day appointed for the nomination of candidates in that general election.

86. (1) The President may at any time summon a meeting of the House of Representatives.

(2) Subject to the provisions of subsection (1) of this section and of sections 38 and 39 of this Constitution, the sittings of the House of Representatives in any session of Parliament after the commencement of that session shall be held at such times and on such days as the House shall appoint.

87. Subject to the provisions of subsection (6) of section 85 of this Constitution, a general election of members of the House of Representatives shall be held at such time within three months after any dissolution of Parliament as the President may appoint.

Chapter VII

THE JUDICATURE

Part I

THE COURT OF APPEAL AND THE SUPREME COURT

88. (1) There shall be a Court of Appeal which shall have such jurisdiction and powers as may be

Summoning
meetings of
the House
Represent-
tives.

General
Election.

Establi-
ment of
Court of
Appeal.

conferred on it by the Constitution or any other law.

(2) The judges of the Court of Appeal shall be -

- (a) the President of the Court;
- (b) such number, if any, of other judges (hereinafter referred to as "Justices of Appeal" which expression shall where the context allows include the President of the Court) as may be prescribed by Parliament:

Provided that the office of a judge of the Court of Appeal shall not be abolished while there is a substantive holder thereof; and

- (c) the Chief Justice and other judges of the Supreme Court ex-officio.

(3) The Court of Appeal shall be a superior court of record and save as otherwise provided by Parliament, shall have all the powers of such a court.

(4) When the Court of Appeal is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of judges, not being less than three.

Establishment of Supreme Court.

89. (1) There shall be a Supreme Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The judges of the Supreme Court shall be the Chief Justice and such number, if any, of other judges (hereinafter referred to as "the puisne judges") as may be prescribed by Parliament:

Provided that the office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(3) The Supreme Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(4) The Supreme Court shall sit in such places as the Chief Justice may appoint.

90. (1) The President of the Court of Appeal and the Chief Justice shall be appointed by the President.

(2) The Justices of Appeal and the puisne judges shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission.

(3)(a) A person shall not be qualified to be appointed as a Justice of Appeal or as a judge of the Supreme Court unless -

- (i) he holds or has held office as a judge of a court having unlimited jurisdiction, in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such a court;

- (ii) he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

- (b) In this subsection "the specified qualifications" means the professional qualifications specified under the Courts Act (or by or under any law amending or replacing that Act) one of which must be held by any person before he may apply under that Act (or under any such law) to be admitted to practise as a barrister or a solicitor in The Gambia.

(4) If the office of President of the Court of Appeal is vacant or the President of the Court of Appeal is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other judges of the Court as may for the time being be designated in that behalf by the President.

(5) If the office of Chief Justice is vacant or the Chief Justice is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the Justices of Appeal or the puisne judges or

Appointment of Judges of Court of Appeal and Supreme Court.

Cap. 36

such other person qualified to be appointed as a judge of the Supreme Court as the President may appoint:

Provided that -

- (a) a person may be appointed under subsection (4) or (5) of this section notwithstanding that he has attained the age prescribed for the purposes of section 91(1) of this Constitution; and
- (b) a person appointed under subsection (4) or (5) of this section may, notwithstanding the assumption or resumption of the functions of the office of the President of the Court of Appeal or the office of Chief Justice as the case may be, by the holder of that office continue to act as President of the Court of Appeal or Chief Justice, as the case may be, for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(6) If the office of any Justice of Appeal is vacant or if any Justice of Appeal is appointed to act as President of the Court of Appeal or is for any reason unable to perform the functions of his office or if the President of the Court of Appeal advises that the state of business of the Court of Appeal so requires, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal.

(7) If the office of any puisne judge is vacant or if any such judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice advises the President that the state of business in the Supreme Court so requires, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a judge of the Supreme Court to act as a puisne judge of that court:

Provided that a person may act as a Justice of Appeal or as a puisne judge under subsection (6) or (7) of this section, notwithstanding that he has attained the age prescribed for the purposes of section 91(1) of this Constitution.

(8) Any person appointed under subsection (6) or (7) of this section to act as a Justice of Appeal or as a puisne judge, as the case may be, shall subject to the provisions of section 91(4) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Judicial Service Commission:

Provided that, notwithstanding the expiration of the period of his appointment or the revocation of his appointment, he may thereafter continue to act as a Justice of Appeal or as a puisne judge, as the case may be, for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

91. (1) Subject to the provisions of this section, a person holding the office of a Justice of Appeal or the office of a judge of the Supreme Court shall vacate that office when he attains the prescribed age.

(2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of this section, a person holding the office of a Justice of Appeal or the office of a judge of the Supreme Court may continue in office for so long after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) A person holding the office of Justice of Appeal or judge of the Supreme Court may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(4)(a) A Justice of Appeal or a judge of the Supreme Court may be removed from his office if notice in writing is given to the Speaker, signed by not less than one-third of all the voting members of the House of Representatives, of a motion alleging that a Justice of Appeal or a judge of the Supreme Court, as the case may be, is unable to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) and proposing that the matter should be investigated under this subsection.

(b) Where a motion under subsection (4)(a) of this section is proposed for

Tenure of office of Judges of Court of Appeal and Supreme Court.

consideration by the House of Representatives, the House shall not debate the motion but the person presiding in the House shall forthwith cause a vote to be taken on the motion, and, if the motion is supported by the votes of not less than two-thirds of all the voting members of the House, shall declare the motion to be passed.

- (c) If a motion is declared to be passed under subsection (4)(b) of this section -
- (i) the House shall, by resolution, appoint a tribunal which shall consist of a Chairman and not less than two other members, one of whom shall hold or shall have held high judicial office;
 - (ii) the tribunal shall investigate the matter and shall report to the Speaker of the House of Representatives on the facts thereof;
 - (iii) the Justice of Appeal or judge of the Supreme Court whose inability to exercise the functions of his office is under enquiry in accordance with the provisions of this subsection, shall have the right to appear and to be represented before the tribunal during the investigation by the tribunal of the facts of the case;
 - (iv) the House shall consider the report of the tribunal at the first convenient sitting of the House after the report is received and may, on a motion supported by the votes of not less than two-thirds of all the voting members of the House, resolve that the aforesaid Justice of Appeal or judge of the Supreme Court be removed from office and if the House so resolves, he shall thereupon cease to hold office.
- (d) If the question of removing a Justice of Appeal or judge of the Supreme Court from office has been referred to a tribunal under this subsection, the House of Representatives may, by resolution, suspend that Justice of Appeal or judge of the Supreme Court, as the case may be, from performing the functions of his office

and any such suspension may at any time be revoked by the House by resolution and shall, in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this subsection, the House does not remove such Justice of Appeal or judge of the Supreme Court from office.

(5) The prescribed age for the purposes of subsection (1) of this section is the age of sixty-five years in the case of a Justice of Appeal and sixty-two years in the case of a judge of the Supreme Court, or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after the appointment of a person to be a Justice of Appeal or a judge of the Supreme Court, shall not have effect in relation to that person unless he consents that it should have effect.

92. A Justice of Appeal or judge of the Supreme Court shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Second Schedule to this Constitution.

Oaths to
taken by
Judges of
Court of
Appeal &
Supreme
Court.

93. (1) Where any question as to the interpretation of this Constitution arises in any proceedings in any subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

Referen-
Supreme
Court in
cases in
ing inter-
tation of
Constitu-

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 98 of this Constitution to the Court of Appeal or the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, the Judicial Committee.

Part II

SUBORDINATE COURTS AND COURTS-MARTIAL

94. (1) Parliament may establish courts subordinate to the Supreme Court and courts-martial, and any

Establi-
ment of
other Co-

such court shall, subject to the provisions of this Constitution, have such jurisdiction and powers as may be conferred on it by any law.

(2) The Supreme Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(3) The Rules Committee established under the Courts Act may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by subsection (2) of this section.

Cap. 36.

Part III

APPEALS

95. (1) Subject to the provisions of section 70(6) of this Constitution, an appeal shall lie as of right to the Court of Appeal from decisions of the Supreme Court in the following cases, that is to say:-

- (a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution; and
- (b) final decisions given in exercise of the jurisdiction conferred on the Supreme Court by section 28 of this Constitution (which relates to the enforcement of fundamental rights and freedom);

and an appeal shall lie as of right direct to the Judicial Committee from any decision of the Court of Appeal in any such case.

(2) In this section -

- (a) references to final decisions of the Supreme Court shall be construed as including references to decisions given in pursuance of section 28(4) or section 93(2) of this Constitution; and
- (b) references to decisions of the Court of Appeal in any cases specified in subsection (1) of this section shall be construed as including references to decision given by that court on appeal from decision of the Supreme Court in any such cases.

96. (1) Subject to the provision of section 70(6) of this Constitution, an appeal shall lie as of right to the Court of Appeal from any decision given by the Supreme Court in the following cases, that is to say:-

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal is above the value of five hundred dalasis or where the appeal involves directly or indirectly, a claim to or question respecting property or a right above the value of five hundred dalasis;
- (b) final decisions in proceedings for dissolution or nullity of marriage; and
- (c) such other cases as may be prescribed by Parliament.

(2) Subject to the provisions of section 70(6) of this Constitution, an appeal shall lie as of right to the Judicial Committee from any decision given by the Court of Appeal in the following cases, that is to say:-

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of five thousand dalasis or upwards, or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of five thousand dalasis or upwards;
- (b) decisions in proceedings for dissolution or nullity of marriage; and
- (c) such other cases as may be prescribed by Parliament.

(3) Subject to the provisions of section 70(6) of this Constitution, an appeal shall lie, with the leave of the court that gave the decision, from the Supreme Court to the Court of Appeal and from the Court of Appeal to the Judicial Committee in the following cases, that is to say:-

- (a) decisions in any civil proceedings where, in the opinion of the court that gave the decision, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to the Judicial Committee, as the case may be; and

Other Appeals to Supreme Court and Appeal.

1/1987

1/1987

(b) such other cases as may be prescribed by Parliament.

(4) An appeal shall lie to the Judicial Committee with the special leave of the Committee from any decision given by the Court of Appeal in any civil or criminal matter.

No appeal from court of appeal to Judicial Committee during state of emergency, in result of offences under regulations made under Emergency Power Act.

96A. Notwithstanding the provisions of sections 95(1)(a) and 96(4) of this Constitution, when there is in force a proclamation published in the Gazette declaring the existence of a state of public emergency pursuant to section 29 of this Constitution, no appeal shall lie from the Court of Appeal to the Judicial Committee in respect of any decision, judgement, order, sentence or ruling relating to any offences created by or referred to in any regulations in force made under the Emergency Powers Act or any Act replacing the same.

Appeals from subordinate courts and courts-martial.

97. (1) Subject to the provisions of subsection (2) of this section, an appeal shall lie as of right to the Supreme Court from final decisions given by any subordinate court or a court-martial in any civil or criminal proceedings on questions as to the interpretation of this Constitution (not being questions that have been referred to the Supreme Court in pursuance of section 93(1) of this Constitution) or as to the contravention of any of the provisions of sections 13-27 (inclusive) of this Constitution (not being questions that have been referred to the Supreme Court in pursuance of section 28(3) of this Constitution).

(2) An appeal from a decision given by a subordinate court or a court-martial in any of the cases referred to in subsection (1) of this section -

(a) shall not lie direct to the Court of Appeal; and

(b) shall not lie direct to the Supreme Court if, under any law -

(i) an appeal lies as of right from that decision to another subordinate court or court-martial; or

(ii) an appeal lies from that decision to another subordinate court or court-martial with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

(3) An appeal shall lie as of right to the Supreme Court from final decisions given by any subordinate court in any case in which, if the decision of the subordinate court were a decision of the Supreme Court, an appeal would lie as of right to the Court of Appeal under section 96 of this Constitution:

Provided that -

(a) an appeal shall not lie to the Supreme Court from a decision given by a subordinate court in any such case if, under any law -

(i) an appeal lies as of right from that decision to the Court of Appeal; or

(ii) an appeal lies from that decision to the Court of Appeal with the leave of the court that gave the decision or of some other court and that leave has not been withheld; and

(b) an appeal shall not lie direct to the Court of Appeal or direct to the Supreme Court from a decision given by a subordinate court in any such case if, under any law -

(i) an appeal lies as of right from that decision to another subordinate court; or

(ii) an appeal lies from that decision to another subordinate court with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

(4) An appeal shall lie from a subordinate court or a court-martial to -

(a) the Supreme Court; or

(b) the Court of Appeal

in such cases (other than the cases referred to in subsection (1) or subsection (3) of this section) as may be prescribed by any law.

98. (1) The provisions of the Judicial Committee Act, 1833 and any rules made thereunder from time to time shall, in so far as they relate to the powers of the Committee and the procedure to be adopted

Supplementary.

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with respect to proceedings before the Committee apply in relation to proceedings before the Committee under this Chapter and for that purpose shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary by reason of the nature of those proceedings otherwise to bring them into conformity with the provisions of this Constitution.

(2) Subject to the provisions of this Chapter, provision may be made by or under an Act of Parliament regulating the procedure to be adopted by the Court of Appeal with respect to any appeal to the Judicial Committee under this Chapter or by the parties to any such appeal.

(3) Any decision given by the Judicial Committee in any appeal under this Chapter shall be enforced in like manner as if it were a decision of the Court of Appeal.

(4) The Judicial Committee shall, in relation to any appeal to it under this Chapter in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal.

Part IV

JUDICIAL SERVICE COMMISSION

Judicial
Service
Commission.

99. (1) There shall be a Judicial Service Commission which shall consist of -

- (a) The Chief Justice, as Chairman;
- (b) the Chairman of the Public Service Commission; and
- (c) a member who shall be styled "the appointed member" and who shall be appointed by the President, acting in consultation with the Chief Justice.

(2) A person shall not be qualified to be the appointed member of the Commission if -

- (a) he is a member of the House of Representatives;
- (b) he is, or has at any time during the two years immediately preceding his appointment been, nominated as a candidate for election as a member of the House of Representatives established for The Gambia by Order of Her Majesty in Council before the coming into operation of this Constitution;

(c) he is, or has at any time during the said two years been, the holder of an office in any organisation that sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the House of Representatives established as aforesaid or of any local government authority; or

(d) he is a public officer.

(3) Subject to the provisions of this section, the office of the appointed member of the Commission shall become vacant -

(a) at the expiration of two years from the date of his appointment; or

(b) if any circumstances arise that, if he were not the appointed member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) The appointed member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) The appointed member of the Commission shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Chief Justice represents to the President that the question of removing the appointed member of the Commission under this section ought to be investigated, then -

(a) the President shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice, one of whom shall hold or shall have held high judicial office; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the appointed member ought to be removed under this section.

(7) If the question of removing the appointed member of the Commission has been referred to a tribunal under this section, the President, acting in accordance with the advice of the Chief Justice, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that that member should not be removed.

(8) If the office of the appointed member of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, the President, acting in accordance with the advice of the Chief Justice, may appoint a person who is qualified to be the appointed member to act as that member, and any person so appointed shall, subject to the provisions of subsection (3) of this section, continue to act until the office in which he is acting is filled or, as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the President, acting in accordance with the advice of the Chief Justice.

(9) The appointed member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Second Schedule to this Constitution.

(10) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

(11) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the President, may confer powers or impose duties on any public officer or on any authority of the Government of The Gambia for the purpose of the exercise of its functions.

(12) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

100. (1) The power to appoint persons to hold or act in any offices to which this section applies (including the power to confirm appointments) the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Judicial Service Commission.

Appoint
ment of
Judicial
officers

(2) The Judicial Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more of its members or to any judge of the Supreme Court or to any person holding or acting in an office to which this section applies.

(3) The offices to which this section applies are -

- (a) the office of Registrar or Assistant Registrar of the Supreme Court;
- (b) the office of Magistrate;
- (c) subject to the provisions of subsection (4) of this section, the office of member of any subordinate court (other than the court of any magistrate who is authorised, by or under the law, to hold such a court by virtue of his holding or acting in any other public office and other than a court administering customary law and which has jurisdiction only in the Provinces); or
- (d) subject as aforesaid, such other offices of member of any court or connected with any other court as may be prescribed by Parliament.

(4) Where provision is made by or under any law for the appointment of assessors to assist or take part in the decision of the court in any case, the power to appoint persons to be such assessors, the power to exercise disciplinary control over persons so appointed and the power to remove such persons from office shall vest in the judges presiding over the court in that case.

Chapter VII

FINANCE

101. (1) No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament or by or under the authority of a provision upon which Parliament has conferred the force of law.

(2) Parliament may confer on any authority established by law for the purposes of local government, power to impose taxation within the area for which that authority is established and to alter taxation so imposed.

102. All revenues or other moneys raised or received by The Gambia (not being revenues or other moneys that are payable, by or under an Act of Parliament, or by or under any other law, into some other fund established for any specific purpose or that may, by or under such an Act or by or under any other law; be retained by the authority that receives them for the purpose of defraying the expenses of that authority) shall be paid into and from a Consolidated Revenue Fund.

103. (1) No moneys shall be withdrawn from the Consolidated Revenue Fund except -

- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any Act of Parliament or by or under any other law; or
- (b) where the issue of those moneys has been authorised by an Appropriation Act or by an Act made in pursuance of section 105 of this Constitution.

(2) Where any moneys are charged by this Constitution or by any Act of Parliament or by or under any other law, upon the Consolidated Revenue Fund or any other public fund, they shall be paid out of that fund by the Government of The Gambia to the person or authority to whom payment is due.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Revenue Fund unless the issue of those moneys has been authorised by or under any law.

(4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Revenue Fund or any other public fund.

Restriction on taxation.

Consolidated Revenue Fund.

Withdrawals from Consolidated Revenue Fund or other public funds.

Authorisation of expenditure from Consolidated Revenue Fund by appropriation.

104. (1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the House of Representatives in each financial year estimates of the revenues and expenditure of The Gambia for the next following financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Revenue Fund by this Constitution or by any Act of Parliament) have been approved by the House of Representatives, a bill, to be known as an Appropriation bill, shall be introduced in the House, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

(3) If in respect of any financial year it is found -

- (a) that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act, or
- (b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation Act or for a purpose to which no amount has been appropriated by that Act,

a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before the House of Representatives and a Supplementary Appropriation bill shall be introduced in the House, providing for the issue of such sums from the Consolidated Revenue Fund and appropriating them to the purposes specified therein.

Authorisation of expenditure in advance of appropriation.

105. Parliament may make provision under which, if the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may authorize the withdrawal of moneys from the Consolidated Revenue Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of that Act, whichever is the earlier.

Contingen-
cies Fund.

Remunera-
tion for cer-
tain officers

106. (1) Parliament may make provisions for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented and a Supplementary Appropriation bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

107. (1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by Parliament.

(2) Any salaries and any allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Revenue Fund.

(3) The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of a Justice of Appeal, a judge of the Supreme Court, a member of the Constituency Boundaries Commission, a member of the Public Service Commission and the Director of Audit.

(6) In relation to a person who, not being a public officer, is for the time being designated under section 64(2) of this Constitution to exercise the functions of the office of Supervisor of Elections, this section shall also apply to that office and shall so apply as if that person were the holder of that office.

Public debt.

Director of
Audit.

(7) Nothing in this section shall be construed as prejudicing the provisions of section 116 of this Constitution (which protects pension rights in respect of service as a public officer).

108. (1) All debt charges for which The Gambia is liable shall be charged on the Consolidated Revenue Fund.

(2) For the purposes of this section, debt charges include interest, sinking fund charges, the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Revenue Fund and the service and redemption of debt created thereby.

109. (1) There shall be a Director of Audit whose office shall be a public office.

(2) It shall be the duty of the Director of Audit -

(a) to satisfy himself that the provisions of this Chapter of this Constitution are being complied with;

(b) to satisfy himself that all moneys that have been appropriated by Parliament and expended have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and

(c) at least once in every year to audit and report on the public accounts of The Gambia, the accounts of all officers and authorities of the Government of The Gambia, the accounts of all the courts in The Gambia (other than courts no part of the expenses of which are defrayed directly out of moneys provided by Parliament), the accounts of every Commission established by this Constitution and the accounts of the Clerk to the House of Representatives.

(3) The Director of Audit and any officer authorised by him shall have access to all books, records, returns, reports and other documents and shall have authority to make such enquiry which in his opinion relate to any of the accounts referred to in subsection (2) of this section.

(4) The Director of Audit shall submit every report made by him in pursuance of subsection (2) of this section to the Minister for the time

being responsible for finance who shall, not later than seven days after the House of Representatives first meets after he has received the report, lay it before the House; and if the Minister for the time being responsible for finance shall make default in laying the report before the House, the Director of Audit shall submit the report to the Speaker of the House (or if the office of Speaker is vacant, or if the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker) who shall cause it to be laid before the House.

(5) The Director of Audit shall exercise such other functions in relation to the accounts of the Government of The Gambia or the accounts of other authorities or bodies established by law for public purposes as may be prescribed by or under an Act of Parliament.

(6) In the exercise of his functions under subsections (2), (3) and (4) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

Chapter IX

THE PUBLIC SERVICE

110. (1) There shall be a Public Service Commission which shall consist of a Chairman and a Vice-Chairman and not less than two nor more than four other members, who shall be appointed by the President.

(2) A person shall not be qualified to be appointed as a member of the Commission if -

(a) he is a member of the House of Representatives;

(b) he is, or has at any time during the two years immediately preceding his appointment been, nominated as a candidate for election as a member of the House of Representatives or of any such House of Representatives established for The Gambia by Order of Her Majesty in Council before the coming into operation of this Constitution;

(c) he is, or has at any time during the said two years been, the holder of an office in any organisation that

Public
Service
Commission.

sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid or of any local government authority; or

(d) he is a public officer.

(3) A member of the Commission shall not, except with the leave of the President, within the period of two years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office other than an office to which section 113 of this Constitution applies.

(4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant -

(a) at the expiration of two years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(5) A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(6) A member of the Commission shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the President that the member ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the President considers that the question of removing a member of the Commission under this section ought to be investigated, then-

(a) the President shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice, one of whom shall hold or shall have held high judicial office; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed under this section.

(8) If the question of removing a member of the Commission has been referred to a tribunal under this section, the President may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that that member should not be removed.

(9) If the office of Chairman of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by the Vice-Chairman or in his absence by such one of the other members of the Commission as may for the time being be designated in that behalf by the President.

(10) If at any time there are less than two members of the Commission besides the Chairman or if any such member is acting as Chairman or is for any reason unable to exercise the functions of his office, the President may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the President.

(11) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Second Schedule to this Constitution.

(12) Subject to the provisions of section 123(5) of this Constitution, the Commission shall, in the exercise of its functions under this

Constitution, not be subject to the direction or control of any other person or authority.

(13) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the President, may confer powers or impose duties on any public officer or any authority of the Government of The Gambia for the purpose of the exercise of its functions.

(14) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

Appoint-
ment etc. of
public
officers.

111. (1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices, and the power to remove such persons from offices shall vest in the Public Service Commission.

(2) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the President, to any public officer.

(3) The provisions of this section shall not apply in relation to the following offices, that is to say:-

- (a) the office of Justice of Appeal or Judge of the Supreme Court;
- (b) the office of Director of Audit;
- (c) any office to which section 100 of this Constitution (which relates to the offices within the jurisdiction of the Judicial Service Commission) applies;
- (d) any office to which section 113 of this Constitution (which relates to the offices of the principal

representatives of The Gambia abroad) applies;

- (e) the office of Secretary General or Permanent Secretary or Secretary to the Cabinet or Establishment Secretary; 1/1987
- (f) subject to the provisions of section 115 of this Constitution any office in the Police Force;
- (g) the office of Commissioner; or 18/1979
- (h) the office of Executive Secretary, Women's Bureau. 3/1980

(4) No person shall be appointed under this section to or to act in any office on the President's personal staff except with the concurrence of the President.

(5) Before any of the powers conferred by this section in relation to the Clerk of the House of Representatives or a member of his staff are exercised by the Public Service Commission or any other person or authority, the Commission or that person or authority shall consult with the Speaker of the House.

(6) Before the Public Service Commission or any other person or authority exercises its powers under this section to appoint to or to act in any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the Judicial Service Commission, the Public Service Commission or that person or authority shall consult with the Judicial Service Commission.

(7) A public officer shall not be removed from office, or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of a judicial function conferred on him unless the Judicial Service Commission concurs therein.

112. (1) The Director of Audit shall be appointed by the President, acting in accordance with the advice of the Public Service Commission.

Director of
Audit.

(2) If the office of Director of Audit is vacant or if the Director of Audit is for any reason unable to exercise the functions of his office, the President, acting in accordance with the advice of the Public Service Commission may appoint a person to act as Director of Audit, and any person so appointed shall, subject to

the provisions of subsections (3), (5) and (7) of this section, continue to act until a person has been appointed to the office of Director of Audit and has assumed the functions of that office, or, as the case may be, until the person in whose place he is acting has resumed those functions.

(3) Subject to the provisions of subsection (5) of this section, the Director of Audit shall vacate his office when he attains the prescribed age.

(4) A person holding the office of Director of Audit may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with the provisions of this section.

(5) The Director of Audit may be removed from office if the House of Representatives resolves that this matter should be investigated under this section, in which circumstance -

- (a) the House shall, by resolution, appoint a tribunal which shall consist of a Chairman and not less than two other members, one of whom shall hold or shall have held high judicial office;
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the House; and
- (c) the House shall consider the report of the tribunal at the first convenient sitting of the House after the report is received and may, upon such consideration, by resolution remove the Director of Audit from office.

(6) If the question of removing a person holding the office of Director of Audit from office has been referred to a tribunal under this section, the House of Representatives may, by resolution, suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the House by resolution and shall in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this section, the House does not remove the Director of Audit from office.

(7) The prescribed age for the purposes of subsection (3) of this section is the age of

fifty-five years or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Audit, shall not have effect in relation to that person unless he consents that it should have effect.

113. (1) The power to appoint persons to hold or act in offices to which this section applies and to exercise disciplinary control over or to remove from office persons holding or acting in such offices shall vest in the President.

Principal representatives of The Gambia abroad.

(2) The offices to which this section applies are the offices of Ambassador, High Commissioner, or other principal representatives of The Gambia in any other country or accredited to any international organisation.

114. (1) The power to appoint to or remove from office of any person holding the office of -

- (a) Secretary General;
- (b) Permanent Secretary;
- (c) Establishment Secretary;
- (d) Commissioner; or
- (e) Executive Secretary, Women's Bureau

Secretary-General, Permanent Secretary, Establishment Secretary, Commissioner and Executive Secretary, Women's Bureau.

shall vest in the President acting after consultation with the Public Service Commission.

(2) In this section and in section 111(3)(e) of this Constitution, "the Establishment Secretary" means the public officer who is for the time being in charge of staff and establishment matters in respect of the public service.

115. (1) The power to appoint a person to hold or act in the office of Commissioner of Police and the power to remove the Commissioner of Police from office shall vest in the President acting after consultation with the Public Service Commission.

Police Force.

(2) The power to appoint persons to hold or act in offices in the Police Force below the rank of Commissioner of Police but above the rank of Chief Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such

offices, and the power to remove such persons from office shall vest in the Public Service Commission.

(3) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (2) of this section to any one or more of its members or, with the consent of the President, to the Commissioner of Police or to any other member of the Police Force.

(4) The power to appoint persons to hold or act in offices in the Police Force of or below the rank of Chief Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices, and the power to remove such persons from office shall vest in the Commissioner of Police.

(5) The Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (4) of this section to any other member of the Police Force.

(6) Parliament may provide that, where the power to exercise disciplinary control over any member of the Police Force (including the power to remove him from office) has been exercised under subsection (4) or subsection (5) of this section by any member of the Police Force (hereinafter referred to as "the disciplinary authority"), the member of the Police Force in respect of whom it was so exercised may appeal from the decisions of the disciplinary authority to the Public Service Commission:

Provided that Parliament or (in the case of the exercise of a power under subsection (5) of this section) the Commissioner of Police may require appeals to be made to a member of the Police Force of higher rank than the disciplinary authority before they are made to the Public Service Commission.

(7) In this section "Commissioner of Police" means the officer, by whatever name called, commanding the Police Force.

(8) If provision is made by or under any law -

- (a) altering the ranks into which The Gambia Police Force established by the Police Act is divided; or

- (b) establishing a police force other than The Gambia Police Force or altering the ranks into which any such other police force is divided.

the Public Service Commission may, by order published in the Official Gazette, specify some rank (other than the rank of Chief Inspector) in The Gambia Police Force or, as the case may be, in that other police force as being equivalent to the rank of Chief Inspector as it exists in The Gambia Police Force under the law in force immediately before the coming into operation of this Constitution and the references in subsections (2) and (4) of this section to the rank of Chief Inspector shall then be construed as if they were, in relation to The Gambia Police Force or, as the case may be in, in relation to that other police force, references to the rank for the time being so specified.

116. (1) The law to be applied with respect to any pensions benefits that were granted to any person before 18th February 1965 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall -

(a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 18th February 1965, be the law that was in force on 17th February 1965; and

(b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 17th February 1965, be the law in force on the date on which that period of service commenced, or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

Cap. 143

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Widows' and Orphans' Pensions Act or under any law amending or replacing that Act or under any other law providing for the funding of pensions benefits, they are a charge on a fund established by that Act or by any such law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the Consolidated Revenue Fund.

(5) All sums that, under the Widows' and Orphans' Pensions Act or under any law amending or replacing that Act, or under any other law providing for the funding of pensions benefits, are to be paid by the Government of The Gambia into any fund established by that Act or by any such law or are otherwise to be paid by the Government of The Gambia for the purposes of that Act or any such law shall be a charge on the Consolidated Revenue Fund.

(6) In this section, "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(7) Reference in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(8) For the purposes of this Constitution and any law with respect to pensions, the Pensions Authority shall be -

- (a) in relation to the offices of Chief Justice, Justice of the Court of Appeal, Puisne Judge, Auditor General, Commissioner of Police, Master, Magistrate, Registrar and Assistant Registrar of the Supreme Court, the President acting in his discretion; and

Pensions
Law and
Protection of
pensions
rights.

- (b) in relation to any other office to which any pension laws apply, the President acting in accordance with the advice of the Public Service Commission.
117. (1) Where under any law any person or authority has a discretion -
- (a) to decide whether or not any pensions benefits shall be granted; or
- (b) to withhold, reduce in amount or suspend any such benefits that have been granted,

Power to withhold pensions etc.

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs, in his being granted benefits of a smaller amount.

(3) The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the Office of Justice of Appeal, judge of the Supreme Court, or Director of Audit has been guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.

(4) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held any office to which, at the time of such action, section 100 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial Service Commission.

(5) In this section, "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

Chapter X

TRANSITIONAL PROVISIONS

Repeal of Constitutional instruments. 15 Eliz. 2. c. 93 L.N. 9/1965 S.I. 1965 No. 115

Existing Laws

118. Subject to the provisions of this Chapter, the Act of Parliament of the United Kingdom entitled The Gambia Independence Act, 1964 and The Gambia Independence Order, 1965 (hereinafter referred to as "the existing Order") are hereby repealed.

119. (1) The existing laws shall continue to be the law of The Gambia as from the commencement of this Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(2) Where any matter that falls to be prescribed or otherwise provided for under this Constitution by Parliament or by any other authority or person, is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the commencement of this Constitution by or under the existing Order, that prescription or provision shall, as from the commencement of this Constitution, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution) as if it had been made under this Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The President may, by Order, made at any time before 24th April, 1972, make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Constitution or otherwise for giving effect or enabling effect to be given to the provisions of this Constitution.

(4) The provisions of this section shall be without prejudice to any powers conferred by this Constitution or by any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(5) For the purposes of this section, the expression "existing law" means any Act, law, rule, regulation, order or other instrument made in pursuance of (or continuing in operation under) the existing Order and having effect as part of

the law of The Gambia or of any part thereof immediately before the commencement of this Constitution or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect.

120. (1) Where any office has been established by or under the existing Order or any existing law and this Constitution establishes or provides for the establishment of a similar or an equivalent office, any person who, immediately before the commencement of this Constitution, holds or is acting in the former office shall, so far as is consistent with the provisions of this Constitution, be deemed as from the commencement of this Constitution to have been appointed, elected or otherwise selected to or to act in the latter office in accordance with the provisions of this Constitution:

Provided -

- (i) that any person who, under the existing Order or any existing law, would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or on the attainment of that age;
- (ii) that no alteration made in the functions, powers or duties of any office by this Constitution shall entitle the holder thereof for the purpose of any law with respect to pensions benefits to be treated as if his office had been abolished.

(2) Any person who, by virtue of this section, is deemed as from the commencement of this Constitution to have been appointed, elected or otherwise selected to hold or act in any office shall also be deemed to have taken and subscribed any necessary oath under this Constitution.

(3) A person who is a member of the Public Service Commission established by the existing Order may, notwithstanding that, by reason of his having held or been nominated for election to any office before 24th April 1970, he is disqualified to be appointed as a member of the Public Service Commission established by this Constitution, continue in office under this section as a member of that Commission and be re-appointed thereto upon the expiration of his term of office.

Existing officers.

(4) The provisions of this section shall be without prejudice to the provisions of section 121 of this Constitution.

(5) In this section, "existing law" means such a law as is referred to in section 119(5) of this Constitution.

(6) In this section, "pensions benefits" means any pensions, compensation, gratuity or other like allowances for the holder of that office in respect of his service as a public officer or for the widow, children, dependants or personal representative of such holder in respect of such service.

(7) Reference in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Parliament.

121. (1) The House of Representatives constituted by the existing Order (hereinafter referred to as "the existing House of Representatives") shall be the House of Representatives during the period beginning with the commencement of this Constitution and ending with the first dissolution of Parliament thereafter.

(2) The constituencies into which The Gambia was divided immediately before the commencement of this Constitution and until other provision is made in that behalf in accordance with this Constitution to be the constituencies into which The Gambia is divided in pursuance of section 62 of this Constitution; and the persons who, immediately before the commencement of this Constitution, are the elected members of the existing House of Representatives representing those constituencies, shall be deemed as from the commencement of this Constitution to have been elected to the House of Representatives in accordance with the provisions of this Constitution as the elected members representing the respective constituencies corresponding to those constituencies and shall hold their seats in accordance with those provisions.

(3) The registers of voters having effect immediately before the commencement of this Constitution for the purposes of elections to the existing House of Representatives shall, as from the commencement of this Constitution, have effect as if they have been compiled in pursuance of this Constitution.

(4) The persons who immediately before the commencement of this Constitution are the Chiefs' representative members, the person who immediately before the commencement of this Constitution is the Attorney-General, and the persons who, immediately before the commencement of this Constitution are the nominated members of the existing House of Representatives shall, as from the commencement of this Constitution, be deemed to have been elected or, as the case may be, appointed as the Chiefs' representative members, as Attorney-General and nominated as the nominated members of the House of Representatives in accordance with the provisions of this Constitution and shall hold their seats in the House of Representatives in accordance with those provisions.

(5) The person who, immediately before the commencement of this Constitution, is the Speaker of the existing House of Representatives, shall be deemed as from the commencement of this Constitution to have been elected as Speaker of the House of Representatives in accordance with the provisions of this Constitution and shall hold office in accordance with those provisions.

(6) Until Parliament otherwise provides, any person who holds or acts in any office the holding of which would, under the existing Order have disqualified him for membership of the existing House of Representatives, shall be disqualified to be nominated for election as a voting member or appointed as a nominated member of the House of Representatives as though provision in that behalf had been made in pursuance of section 59(6) of this Constitution.

(7) The Standing Orders of the existing House of Representatives as in force immediately before the commencement of this Constitution shall, until it is otherwise provided by the House of Representatives under section 83(1) of this Constitution, be the Standing Orders of the House; but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(8) Parliament shall, unless sooner dissolved, stand dissolved twelve months after the date on which the existing House of Representatives would, apart from this Constitution, have stood dissolved in pursuance of subsection (2) of section 60 of the existing Order repealed by section 118 of this Constitution.

(9) The President, in pursuance of a resolution of the House of Representatives, may, at any time after the commencement of this Constitution and before the date specified in subsection (8) of this section, appoint a Constituency Boundaries Commission in accordance with the provisions of this Constitution to review the boundaries of the constituencies into which The Gambia is divided.

(10) The Commission that is appointed in pursuance of subsection (9) of this section shall be deemed to have been appointed in the circumstances specified in section 62(4)(c) of this Constitution.

(11) Any person who, by virtue of this section, is deemed as from the commencement of this Constitution to have been elected as Speaker or any other member of the House of Representatives shall be deemed to have taken and subscribed any necessary oath under this Constitution.

Miscellaneous
transactional
provisions.

122. (1) Without prejudice to the generality of section 119 of this Constitution, all property which, immediately before the date of the commencement of this Constitution, was held by the Crown or by some other body or person (not being an authority of the Government of The Gambia) on behalf of or in trust for the Crown shall on that date, by virtue of this subsection and without further assurance, vest in the President and be held by him on behalf of, or, as the case may be, on the like trusts for the benefit of, the Government of the Republic; and all property which immediately before the date aforesaid, was held by an authority of the Government of The Gambia on behalf of or in trust for the Crown, shall be held by that authority on behalf of, or, as the case, may be on the like trusts for the benefits of, the Government of the Republic.

(2) References to the Crown in subsection (1) of this section are references to the Crown in right of the Government of The Gambia; and that subsection shall, with necessary modifications, apply in relation to rights, liabilities and obligations arising out of the contract or other arrangement as it applies in relation to property.

123. (1) The provisions of this section shall have effect for the purpose of enabling an officer to whom this section applies or his personal representatives to appeal against any of the following decisions, that is to say:-

- (a) a decision of the Public Service Commission to give such concurrence as is required by section 117(1) or section 117(2) of this Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of such an officer's service as a public officer;
- (b) a decision of any authority to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer; or
- (c) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the authority might be, to reduce the amount of any pensions benefits, that may be granted in respect of the officer's service as a public officer.

(2) Where any such decision as is referred to in subsection (1) of this section is taken by any authority, the authority shall cause to be delivered to the officer concerned or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made within the time stated in the notice, the authority shall notify the President in writing of that application and the President shall thereupon appoint an Appeals Board consisting of -

- (a) one member selected by the President;
- (b) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant; and

Appeals in respect of certain decisions affecting pensions benefits.

(c) one member selected by the other members jointly (or, in default of agreement between those members, by the Judicial Service Commission) who shall be the Chairman of the Board.

(4) The Appeals Board shall enquire into the facts of the case, and for that purpose -

(a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;

(b) may hear any other person who, in the opinion of the Board is able to give the Board information on the case; and

(c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When the Appeals Board has completed its consideration of the case, then -

(a) if the decision that is the subject of the reference to the Board is such a decision as is mentioned in paragraph (a) of subsection (1) of this section, the Board shall advise the Public Service Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice; and

(b) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (b) or paragraph (c) of subsection (1) of this section, the Board shall not have power to advise the authority concerned to affirm, reverse or modify the decision, but -

(i) where the officer has been removed from office, the Board may direct that there shall be granted all or any part of the pensions

benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and may direct that any law with respect to pensions benefits shall in any other respect that the Board may specify have effect as if he has so retired; and

- (ii) where some other disciplinary action has been taken in relation to the officer, the Board may direct that, on the grant of any pensions benefits under any law in respect of the officer's service as a public officer, those benefits shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of those benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary actions,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

- (6) In this section -

"pension benefits" has the meaning assigned to that expression in section 117 of this Constitution, and

"legal representative" means a person entitled to practice as a barrister or as a solicitor in The Gambia.

- (7) This section applies to any officer who is the holder of a pensionable office and -

- (a) is designated under the Overseas Service Aid Scheme; and

- (b) is, immediately before the commencement of this Constitution, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary.

Compulsory retirements to facilitate appointment of local candidates.

124. (1) If the President so requests, the authorities having power to make appointments in any branch of the public service shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in, that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; those authorities, if satisfied that such is the case, shall, if so requested by the President, select officers in that branch to whom this section applies and whose retirement would, in the opinion of those authorities, cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the President of the number of officers so selected; if the President specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), those authorities shall nominate that number of officers from among the officers so selected and require them by notice in writing to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) Any notice given under subsection (1) of this section requiring any officer to retire from the public service shall -

- (a) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date on which he shall so retire which shall be no earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, not earlier than when it would otherwise expire and

- (b) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that the officer may agree to the notice specifying an earlier date or, as the case may be, a shorter period.

(3) This section applies to any officer who holds a pensionable office and -

- (a) is designated under the Overseas Service Aid Scheme; and

(b) is, immediately before the commencement of this Constitution, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or

(c) is an overseas officer who, after the commencement of this Constitution, is appointed to any public office (otherwise than on promotion or transfer from another public office) and who is notified, at the time of his appointment, that this section will apply to him.

(4) In this section, "overseas officer" means an officer in the public service who is, either individually or as a member of a class, declared by the appropriate Commission to be an overseas officer, and "the appropriate Commission" means -

(a) in relation to an officer who can be removed from office by the Judicial Service Commission, that Commission; and

(b) in any other case, the Public Service Commission.

125. (1) Any power that, immediately before the commencement of this Constitution, is vested in an existing public service authority (that is to say, the Governor-General acting on the advice of the Public Service Commission established by the existing Order, or the Commissioner of Police) and that, under the existing Order is then delegated to some other person or authority shall, as from the commencement of this Constitution and so far as is consistent with the provisions of this Constitution, be deemed to have been delegated to such person or authority in accordance with those provisions.

Transitional provisions relating to functions of existing public service authorities.

(2) Any matter that, immediately before the commencement of this Constitution, is pending before an existing public service authority shall, so far as is consistent with the provisions of this Constitution, be continued before the corresponding public service authority established by this Constitution, and any matter that, immediately before the commencement of this Constitution, is pending before a person or authority to whom power to deal with that matter has been delegated by an existing public service authority shall, so far as is consistent with the provisions of this Constitution, be continued before the person or authority to whom that power was delegated:

Provided that, where the hearing of a disciplinary proceeding has begun but has not been completed immediately before the commencement of this Constitution, the continued hearing shall not be held before any person unless the hearing that has already taken place was also held before him; and where, by virtue of this proviso, the hearing cannot be continued, it shall be recommenced.

Legal proceedings.

126. (1) All proceedings that, immediately before the commencement of this Constitution, are pending before any court established by or under the existing Order or by or under any law continuing in operation under the existing Order may be continued and concluded after the commencement of this Constitution before the corresponding court established by this Constitution or by or under an existing law.

(2) Any decision given before the commencement of this Constitution by any such court as aforesaid shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Constitution as if it were a decision of the corresponding court established by this Constitution or by or under an existing law.

(3) Until otherwise provided by any law, any proceedings pending in any court immediately before 24th April, 1970 in which Her Majesty or any public officer is a party in respect of The Gambia, or the Government of The Gambia is a party, shall continue after that day -

Cap. 39

(a) in the case of proceedings brought in accordance with the Criminal Procedure Code with the Republic (whether or not that expression is used) substituted as a party; and

(b) in the case of all other proceedings with the Attorney-General, or some other public officer representing the Republic, as a party.

(4) In this section, "existing law" means such a law as is referred to in section 119(5) of this Constitution.

Appeals to the Judicial Committee.

127. (1) Any appeal or petition for special leave to appeal to the Judicial Committee from a decision given by the Court of Appeal established by the existing Order, being an appeal or a petition that is pending immediately before the commencement of this Constitution and -

(a) in the case of an appeal, is one in which the records have been registered in the Office of the Judicial Committee before the commencement of this Constitution; or

(b) in the case of a petition is one that has been filed in that Office before the commencement of this Constitution.

shall continue to lie to the Judicial Committee and may be prosecuted and disposed of in accordance with the law regulating the procedure in such appeals that is in force immediately before the commencement of this Constitution.

(2) Any Order made by the Judicial Committee on an appeal that lies to the Judicial Committee by virtue of subsection (1) of this section or on any appeal that has been made to the Judicial Committee at any time before the commencement of this Constitution shall be enforced in accordance with the law regulating the enforcement of such Orders that is in force immediately before the commencement of this Constitution.

128. Where under any law in force in The Gambia immediately before the commencement of this Constitution any prerogatives or privileges are vested in Her Majesty, those prerogatives or privileges shall, from the commencement of this Constitution, vest in the President.

129. (1) All rights, liabilities and obligations of -

(a) Her Majesty the Queen or the Governor-General, in respect, or in right, of the Government of The Gambia; and

(b) the Government of The Gambia or any public officer on behalf of the Government of The Gambia,

shall on and after the commencement of this Constitution, be the rights, liabilities and obligations of the Republic.

(2) In this section, "rights, liabilities and obligations" include rights, liabilities and obligations arising from contract or otherwise, other than the rights to which sections 122 and 128 of this Constitution refer.

130. Until Parliament otherwise provides, the Public Seal shall be the Public Seal in use immediately before the 24th April 1970.

Prerogatives
and privi-
leges of the
Crown.

Rights,
liabilities and
obligations.

Public Seal.

Chapter XI

MISCELLANEOUS

Resignation.

131. (1) Any person who is appointed, elected or otherwise selected to any office established by this Constitution or any office of Minister established under this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or otherwise selected:

Provided that -

(a) in the case of a person who holds office as President, his resignation from that office shall be addressed to the Chief Justice;

(b) the resignation of a person from the office of Speaker or Deputy Speaker of the House of Representatives shall be addressed to the House; and

(c) the resignation of any person from the office of member of the House of Representatives shall be addressed to the Speaker of the House.

(2) The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it was addressed or any person authorised by that person or authority to receive it.

Re-appointments
and concurrent
appointments

132. (1) Where any person has vacated any office established by this Constitution or any office of Minister established under this Constitution, he may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

133. (1) In this Constitution, unless the context otherwise requires -

Interpretation.

"the Commonwealth" means The Gambia, any country to which section 8 of this Constitution applies and any dependency of any such country;

"financial year" means the period of twelve months ending on 30th June in any year or on such other day as Parliament may prescribe;

Provided that whenever Parliament alters the date on which the financial year ends, it shall provide either -

(a) that the period beginning at the end of the last complete financial year under the law in force before the alteration takes effect and ending with the beginning of the first complete financial year under the law in force after the alteration takes effect shall be added to either of those years (as Parliament prescribes) and that the aggregate period, though greater than twelve months, shall be reckoned as one financial year;

(b) that the period beginning and ending as aforesaid, though less than twelve months, shall itself be reckoned as a complete financial year;

"Provinces" has the same meaning as in the Provinces Act; Cap. 151

"The Gambia" means the territory comprised in The Gambia on the 23rd April 1970;

"The Gazette" means the official gazette of the Government;

"Head Chief", "Deputy Head Chief", "Sub-Chief" and "Headman" have the same meaning as in the Provinces Act;

"high judicial office" means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or in any country outside the Commonwealth that may be prescribed by Parliament or the office of judge of a court having jurisdiction in appeals from such a court;

"the Judicial Committee" means the Judicial Committee of the Privy Council established by

1 & 4 Will.
4.c.4.

the Judicial Committee Act 1833 as from time to time amended by any Act of the Parliament of the United Kingdom;

"law" includes -

- (a) any instrument having the force of law made in exercise of a power conferred by a law; and
- (b) native law and custom and any other unwritten rule of law, and "lawful" and "lawfully" shall be construed accordingly;

"meeting" means all sittings of the House of Representatives held during a period when the House first sits after being summoned at any time and terminating when the House is adjourned sine die or at the conclusion of a session;

"oath" includes affirmation;

"Minister" includes the Vice-President and a Minister of State but does not include a Parliamentary Secretary.

Cap. 144

"the Police" Force" means The Gambia Police Force established by the Police Act and includes any other police force established by or under an Act of Parliament to succeed to or to supplement the functions of The Gambia Police Force but does not, save in the definition of a "disciplined force" in section 30(1) of this Constitution, include any police force forming part of any naval, military or air force or any police force for the protection of harbours, waterways, railways or air fields or any police force established by any local government authority;

"The President" means the President of the Republic;

"public office" means any office of emolument in the public service;

"public officer" means a person holding, or acting in any public office;

"the public service" means, subject to the provisions of this section, the civil service of the Government of The Gambia;

"session" means the period beginning when the House of Representatives first meets after 23rd April 1970 or after Parliament has at any time been prorogued or dissolved and ending when

Parliament is prorogued or when Parliament is dissolved without having been prorogued;

"sitting" means the period during which the House of Representatives is sitting continuously without adjournment and includes any period during which it is in committee;

"statutory instrument" means any proclamation, regulations order, rule or other instrument (not being an Act of Parliament) having the force of law;

"subordinate court" means any court of law established for The Gambia other than -

- (a) the Judicial Committee;
- (b) the Court of Appeal;
- (c) the Supreme Court; or
- (d) a court-martial; and

"voting member" has the meaning assigned to that expression by section 57(2) of this Constitution.

(2) In this Constitution, unless the context otherwise requires, references to offices in the public service shall be construed as including references to the offices of Justice of Appeal and judges of the Supreme Court and the offices of members of all subordinate courts (being offices the emoluments attaching to which or any part of the emoluments attaching to which, are paid directly out of moneys provided by Parliament) but not as including references to any office that, by virtue of subsection (3)(c) of section 100 of this Constitution, is excluded from the offices to which that section applies or to the office of assessor in any court.

(3) In this Constitution, reference to offices in the public service shall not be construed as including -

- (a) references to the office of the President, the Vice-President, the Speaker, or Deputy Speaker of the House of Representatives, or any Minister, Parliamentary Secretary or a member of the House of Representatives;
- (b) references to the office of a member of any Commission established by this Constitution or a member of the Advisory Committee on the Prerogative of Mercy;

(c) save in so far as may be provided by Parliament, references to the office of a member of any other council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law;

(d) references to the office of Head Chief, Deputy Head Chief, Sub-Chief, or Headman;

Cap. 109

(e) references to the office of any District Authority or member of any District Authority declared to be, or established as, such an Authority under the Local Government Act, or (to the extent to which any such law makes provision for the administration of Districts within the former Protectorate) by or under any law for the time being amending or replacing that Act; or

(f) except for the purposes of sections 61(3)(d), 99(d), 100(3), 110(2)(d) and 110(3) of this Constitution (which relate to disqualification for election or appointment to certain offices) references to an office in a naval, military or air force.

(4) For the purposes of this Constitution, a person shall not be regarded -

(a) as holding an office by reason only of the fact that he is in receipt of a pension or other like allowances;

(b) as disqualified for election to the House of Representatives or for appointment to any office to which a public officer is not qualified to be appointed by reason only that he holds a public office and he is on leave of absence pending relinquishment of that office.

(5) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office:

Provided that nothing in this subsection shall apply to references to the President or

Vice-President in sections 37, 38, 39(3) and (4), or 43 of this Constitution.

(6) Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some specified person or authority, no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

(7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that -

(a) nothing in this subsection shall be construed as conferring on any person or authority the power to require a Justice of Appeal or a judge of the Supreme Court or the Director of Audit to retire from the public service: and

(b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(8) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(9) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(11) Where, under any provision of this Constitution, any person or authority is authorised or required to exercise any function acting after consultation with some other person or authority, the person or authority first referred to shall not be required to act in accordance with the advice of the other person or authority and the question whether such consultation was made shall not be enquired into in any court.

(12) Where any power is conferred by this Constitution to make any order, regulation or rule or pass any resolution or give any direction or make any declaration or designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, resolution, direction, declaration or designation:

Provided that nothing in this subsection shall apply to the power to issue a certificate conferred by section 37 of this Constitution.

(13) Any reference in this Constitution to a law made before 24th April 1970 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect on 23rd April 1970.

(14) Any reference in this Constitution to a law that amends or replaces any other law or any provision of any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, suspends, repeals, adds new provisions or makes different provision in lieu of that other law or that provision.

(15) For the avoidance of doubt it is hereby declared that -

(a) any power to make laws conferred by this Constitution includes power to make laws having extra-territorial operation;

(b) any reference in this Constitution to the functions of the President includes a reference to his functions as Commander-in-Chief of the armed forces of the Republic;

(c) the functions of the Commander-in-Chief of the armed forces of the Republic shall be such as may be prescribed by Parliament.

(16) Subject to the provisions of section 72 of this Constitution, no amendment made to the Interpretation Act as in force at the date of the commencement, of this Constitution, shall have effect in relation to this Constitution.

Cap. 97

Short title and commencement.

134. This Act may be cited as the Constitution of the Republic of The Gambia and shall come into operation on 24th April, 1970.

THE CONSTITUTION OF THE GAMBIA

FIRST SCHEDULE

OATH FOR THE DUE EXECUTION OF THE OFFICE OF THE PRESIDENT OF THE GAMBIA

I, do swear (or solemnly affirm) that I will well and truly execute the functions of the office of President of the Republic of The Gambia, that I will preserve and defend the Constitution and that I will do right to all manner of people according to law, without fear or favour, affection or illwill.

So help me God. (To be omitted in affirmation.)

SECOND SCHEDULE

OATH FOR THE DUE EXECUTION OF THE OFFICE OF VICE-PRESIDENT, MINISTER, PARLIAMENTARY SECRETARY, MEMBER OF CONSTITUENCY BOUNDARIES COMMISSION, SUPERVISOR OF ELECTIONS, SPEAKER, JUSTICE OF APPEAL, JUDGE OF THE SUPREME COURT, MEMBER OF THE JUDICIAL SERVICE COMMISSION AND MEMBER OF THE PUBLIC SERVICE COMMISSION.

I, do swear (or solemnly affirm) that I will execute the functions of the office of.....

without fear or favour, affection or ill-will, according to the Constitution and other laws of The Gambia.

So help me God. (To be omitted in affirmation.)

Passed in the House of Representatives this Eighteenth day of December, in the year of our Lord One thousand nine hundred and Sixty-nine.

B. O. JOBE,
Clerk of the House of Representatives.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed the House of Representatives, and found by me to be a true and correct copy of the said Bill.

B. O. JOBE
Clerk of the House of Representatives.