

THE CONSTITUTIONAL REVIEW COMMISSION BILL, 2017

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THE CONSTITUTIONAL REVIEW COMMISSION BILL, 2017

A BILL ENTITLED –

AN ACT to provide for the establishment of a Constitutional Review Commission to draft and guide the process of promulgating a new Constitution for The Gambia and for connected matters.

[]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY PROVISIONS

1. Short title

This Act may be cited as The Constitutional Review Commission Act, 2017.

2. Interpretation

In this Act, unless the context otherwise requires –

“Chairman” means the Chairman of the Commission appointed under section 4 (a) and shall, where the Vice Chairman is performing the duties of chairman in the Chairman’s absence, include the Vice chairman appointed under section 4 (1) (b);

“Commission” means The Constitutional Review Commission established under section 3;

“Constitution” means the proposed new Constitution of The Republic of The Gambia that the Commission is tasked under this Act to draft;

“member” means a member of the Commission, and includes the Chairman and the Vice Chairman of the Commission;

“Minister” means the Attorney General and Minister of Justice;

“President” means the President of The Republic of The Gambia;

“**Secretariat**” means the Secretariat established under [section 15 \(1\)](#);

“**Secretary**” means the Secretary to the Commission appointed under section 15; and

“**technical committee**” means a committee established by the Commission in accordance with [section 11 \(1\)](#).

**PART II – ESTABLISHMENT OF THE CONSTITUTIONAL REVIEW COMMISSION,
COMPOSITION AND RELATED MATTERS**

3. Establishment of The Constitutional Review Commission

(1) There is established by this Act, the Constitutional Review Commission.

(2) The Commission shall perform the functions imposed, and exercise the powers conferred, on it under this Act.

4. Composition of the Commission

(1) The Commission shall consist of –

(a) a Chairman who shall be the Chief Justice or a judge of the superior courts designated in writing by the Chief Justice;

(b) a Vice Chairman who shall be a legal practitioner of not less than 10 years standing nominated by the Minister; and

(c) nine other members nominated by the President.

(2) The President shall ensure that the members he or she nominates pursuant to subsection (1) (c) are individuals of high moral character and integrity who have appropriate academic qualifications and experience in a relevant field of expertise.

5. Appointment of members of the Commission

(1) Subject to subsection (3), the members of the Commission shall be appointed by the President.

(2) The President shall, in appointing the members, have regard to the geographical, Professional, age and gender diversity of The Gambia.

- (3) A person shall not qualify to be appointed as a member if he or she –
- (a) is a serving member of any disciplined force, whether in The Gambia or otherwise;
 - (b) has been convicted of an offence involving dishonesty [or moral turpitude];
 - (c) is not a citizen of The Gambia;
 - (d) is a member of the National Assembly; or
 - (e) is of an unsound mind.

6. Functions of the Commission

- (1) The functions of the Commission are to draft a new Constitution and prepare a report in relation to the Constitution.
- (2) In carrying out its functions under subsection (1), the Commission shall –
- (a) seek public opinion and take into account such proposals as it considers appropriate;
 - (b) adhere to national values and ethos; and
 - (c) safeguard and promote the following matters –
 - (i) the existence of The Gambia as a sovereign independent State;
 - (ii) The Gambia’s republican system of governance, including its democratic values and respect for and promotion of the rule of law and fundamental rights and freedoms;
 - (iii) the separation of powers, including the independence of the judiciary;
 - (iv) national unity, cohesion and peace;
 - (v) the importance of ensuring periodic democratic elections based on universal adult suffrage, including the introduction of term limits for serving in the office of President; and

- (vi) The Gambia's continued existence as a secular State [in which all faiths are treated equally and encouraged to foster national cohesion and unity].

(3) For the purposes of subsection (2), the Commission shall afford the people of The Gambia, both within and outside the country [to the extent practicable], the opportunity to freely express their opinions and make suggestions on matters they feel should be considered in the Constitution.

(4) The Commission may, where it considers it necessary, invite persons, including representatives of professional, civic, political and other organisations, to appear before the Commission to make such presentations as those representatives consider relevant or make presentations on topics the Commission may specify.

7. Independence of the Commission

In the performance of its functions, the Commission shall not be subject to the direction or control of any person or authority.

8. Sittings and procedures of the Commission

(1) The Commission shall sit in such places and at such times as the Chairman may determine.

(2) In the conduct of its proceedings, the Commission shall determine its own rules of Procedure but shall, unless it reaches a consensus, take its decisions by a majority vote of its members present.

(3) The quorum of the Commission shall be six members.

9. Terms of office of the Commission and its members

(1) Subject to subsection (2), the establishment of the Commission shall be for a period not exceeding eighteen months.

(2) Where the President considers it necessary, he or she may, on the recommendation of the Chairman of the Commission, extend the term of the Commission for a period not exceeding six months.

(3) A member shall, unless he or she vacates office earlier in accordance with section 14, serve as such member for the term of the Commission.

10. Vacation of office

(1) A person ceases to be a member –

(a) upon his or her death;

(b) if he or she resigns from office;

(c) upon his or her inability to perform his or her functions;

(d) if he or she is absent from three consecutive sittings of the Commission without leave of the Chairman; or

(e) if he or she becomes otherwise disqualified by virtue of section 5 (3).

(2) Where a member resigns, he or she shall address his or her resignation to the Chairman who shall notify the President accordingly, except that the Chairman shall address his or her resignation to the President.

(3) The President may, having regard to sections 4 and 5, appoint another person to replace the Chairman or other member, as the case may be, for the unexpired term of the Chairman or other member that has resigned.

11. Technical committees of the Commission

(1) The Commission may, in order to facilitate and assist its work, establish such technical committees as it considers necessary.

(2) The Commission shall appoint as members of a technical committee persons with appropriate educational qualifications and experience.

(3) A technical committee shall –

(a) comprise such number of persons as the Commission may determine and may include members and non-members; and

(b) be chaired by a member nominated by the Chairman.

(4) In appointing a technical committee, the Commission shall prepare and provide the committee with terms of reference.

(5) Except where the Commission determines otherwise, a technical committee shall determine its own rules of procedure but shall, unless it reaches a consensus, take its decisions by a majority vote of its members present.

(6) The quorum of a technical committee shall be one half of its total membership.

12. Oaths and affirmations and confidentiality

(1) Every member and the Secretary shall, before assuming office, subscribe before the President to an oath or affirmation for the due execution of office.

(2) A person who is appointed to a technical committee pursuant to [section 11](#) shall, before assuming office, subscribe before the Chairman to such oath of confidentiality as the Commission may determine.

13. Immunity of members, Secretary, staff and technical committee members

A member, the Secretary (including staff of the Secretariat), member of a technical committee and any consultant, adviser or other expert appointed by the Commission shall not be liable to any action for or in respect of any matter or thing done or omitted, in good faith, in the performance of his or her functions or the exercise of his or her powers under this Act.

14. Salaries and allowances

(1) The members, Secretary and staff of the Secretariat shall be paid such salaries and allowances as may be determined by the Minister.

(2) The members of a technical committee shall be paid such allowances as the Commission may, with the approval of the Minister, determine.

(3) Where the Commission engages the services of a consultant or an adviser or other expert pursuant to [section 18](#), it shall pay the consultant, adviser or other expert such consultancy or other fee as the Commission may, with the approval of the Minister, determine.

PART III – ADMINISTRATIVE PROVISIONS

15. Secretariat and appointment of Secretary

(1) There shall be a Secretariat of the Commission which shall serve as the administrative office of the Commission.

(2) Subject to subsection (3), the Minister shall, after consultation with the Chairman, appoint a suitable candidate as Secretary to the Commission.

(3) A suitable candidate to serve as Secretary to the Commission shall be a person who—

- (a) has appropriate academic qualifications at a tertiary level, coupled with relevant experience to assist him or her to perform the functions of Secretary effectively;
- (b) has good writing and communication skills; and
- (c) does not suffer from any of the disabilities outlined in [section 5 \(3\)](#).

(4) The Minister may, upon receiving a written recommendation from the Commission and after affording the Secretary the opportunity to be heard on the recommendation, remove the Secretary from office if the Minister considers that the recommendation provides justified reason or reasons for the removal of the Secretary.

16. Functions of the Secretary

(1) The Secretary shall –

- (a) be responsible for the day to day administration of the Secretariat;
- (b) supervise and direct the work of the staff of the Secretariat;
- (c) arrange and facilitate the business of the Commission and a technical committee, including the members of the Commission and the technical committee in relation to matters regarding the work of the Commission;
- (d) record or ensure the proper recording of the sittings of the Commission and any technical committee; and
- (e) perform such other functions as the Chairman or the Commission may assign to him or her from time to time.

(2) In the performance of his or her functions, the Secretary shall be answerable to the Commission.

17. Appointment of other staff of the Secretariat

(1) The Secretary may, with the approval of the Commission, appoint suitable staff of the Secretariat that can efficiently and effectively aid the work of the Commission.

(2) A person appointed pursuant to subsection (1) shall, subject to [section 14 \(1\)](#), hold office on such terms and conditions as the Secretary may, with the approval of the Commission, determine.

18. Appointment of consultants, advisers and experts

(1) The Commission may, where it considers it necessary for the due execution of its functions, identify and appoint persons with relevant qualifications and experience as consultants, advisers or experts to perform specific tasks for and on behalf of the Commission.

(2) Subject to [section 14 \(3\)](#), a consultant, or an adviser or expert, shall be appointed on such terms and conditions as the Commission may determine.

PART IV –FINANCIAL PROVISIONS

19. Funds of the Commission

The funds of the Commission shall consist of –

- (a) monies appropriated to the Commission by the National Assembly; and
- (b) donations received from any lawful source approved by the Minister.

20. Annual estimates, accounts and audit

(1) The Secretary shall, after consultation with the Chairman –

- (a) not later than two months before or after the commencement of operations of the Commission, prepare and submit to the Minister the budget estimates for the year or part thereof of operation of the Commission;
- (b) not later than three months before the end of the financial year, prepare and submit to the Minister the budget estimates of the Commission for the ensuing year;

(c) in respect of each financial year, prepare a statement of accounts of the Commission; and

(d) within three months after the end of the financial year, prepare and submit the Commission's statement of accounts to the Auditor General for audit.

(2) The Minister shall, as soon as practicable after receipt of the Commission's budget estimates under subsection (1) (a) or (b), transmit the budget estimates to the Minister responsible for finance for his consideration and approval.

(3) The Minister may not alter the budget estimates of the Commission, but he or she may, if he or she considers it necessary, make comments on the whole or any specific aspect of the budget estimates and make such comments available to the Minister responsible for finance at the same time that the Minister transmits the Commission's budget estimates.

(4) The Secretary shall keep proper records and books of account of the Commission's income and expenditure.

(5) The audited accounts of the Commission and the Auditor General's report on those accounts shall form part of the auditor General's overall annual report to the National Assembly.

PART V – MISCELLANEOUS

21. Submission and publication of the Constitution and report

(1) The Commission shall, upon the completion of its work, submit a Constitution and a report thereon (in originals) to the President.

(2) The Commission shall, upon the submission of the draft Constitution and report to the President, publish the Constitution and the report.

(3) The Constitution and the report may, in addition to being published in the *Gazette*, be published in such other manner as the Commission considers fit.

22. Approval of Constitution and report by the National Assembly.

(1) The President shall, within sixty days of receiving the Constitution and the report under section 21 (1), transmit a copy thereof to the National Assembly.

(2) The Secretary shall, after consulting with the Clerk of the National Assembly following the action referred to in subsection (1), make a sufficient number of copies of the Constitution and the report for purposes of the National Assembly.

(3) The National Assembly shall, acting in accordance with section 226 of the 1997 Constitution, debate and approve the Constitution [without amendment].

23. Approval of Constitution by referendum

(1) Upon the enactment by the National Assembly of the Bill approving the Constitution, the Speaker shall, following the assent of the President, immediately transmit a copy of the Constitution to the Independent Electoral Commission.

(2) The Commission shall, within sixty days of receiving a copy of the Constitution in accordance with subsection (1), organise a referendum on the Constitution.

24. Adoption and entry in force

The Constitution shall be considered to be adopted once it has been approved at a referendum and shall come into force immediately, unless the National Assembly had, in relation to the Bill approving the Constitution, appointed a date no longer than three months after approval of the Constitution at a referendum on which the Constitution is to come into force.

25. Dissolution of the Commission

(1) The Commission shall stand dissolved within one calendar month after the date of enactment by the National Assembly of the Bill approving the Constitution.

(2) During the period prior to the enactment by the National Assembly of the Bill approving the Constitution, members of the Commission may be requested to attend before the National Assembly to clarify any matter and answer any question relating to the provisions of the Constitution.

(3) Subject to subsection (4), the Secretariat and all staff of the Secretariat, including any technical committee (if not dissolved earlier), consultant, adviser or other expert, established or employed by the Commission shall cease to function upon the dissolution of the Commission.

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(4) The Secretary may, with the approval of the Minister, continue in office after the

dissolution of the Commission for the sole purpose of preparing the Commission's statement of accounts to submit to the Auditor General in accordance with [section 20](#).

26. Regulations

The Minister may, on the recommendations of the Commission, make Regulations for the effective implementation of this Act and for any other matter, which is consistent with the purposes of this Act.

OBJECTS AND REASONS

Under the AFPRC government, a new constitution was drafted and approved in a referendum in August, 1996 which ushered in the 2nd Republic with the 1997 Constitution of the Republic of The Gambia. During the two decades since the adoption of the 1997 Constitution, there have been numerous amendments to the Constitution to the point of abuse. Provisions that have been carefully drafted in the 1997 Constitution to create proper checks and balances between the different arms of the Gambian State were deliberately and systematically eroded or completely removed resulting in weakened institutions and undermining democratic governance. Constitutional amendments were often intended to satisfy or achieve the parochial interests of one man. Thus, the 1997 Constitution no longer protected the fundamental rights of the citizenry in the manner envisaged by the drafters.

While proposals have been made to amend certain aspects of the Constitution, it is thought that overall, the strategic objective of a return to sustainable democracy, would require the drafting of a new Constitution. Based on the foregoing, this Bill intends to establish a

Constitutional Review Commission (CRC) to guide the whole process of a new Republican Constitution that will usher in a Third Republic.

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ABUBACARR TAMBADOU

HON. ATTORNEY GENERAL AND MINISTER OF JUSTICE

OBJECTS AND REASONS

Upon The Gambia attaining Republican status in [1971?], the country received its first Republican Constitution. In a 1996 referendum, a new Constitution (current Constitution) was approved which ushered in the second Republic. The latter Constitution has undergone numerous amendments since its approval which has necessitated its review at this time to ensure certainty and better streamlining and content. A constitution is the fundamental legal instrument of any country that is designed (for the most part) to ensure appropriate separation of powers in relation to the executive, legislature and judiciary, define the fundamental rights and freedoms of citizens and others, and establish key institutions to aid the administration of good government generally.

In order to ensure a proper and comprehensive review of the second Republican Constitution, the Bill proposes the establishment of a Constitutional Review Commission (CRC) made up of prominent Gambians with the appropriate educational qualifications and experience. If the Bill is approved, the CRC (upon formal establishment) is expected to consult as widely as possible with the general public of Gambians at home and abroad as well as professional, political, civic and similar organisations. The primary responsibility of the CRC will be to draft a new Constitution for The Gambia; it will, in addition, prepare a report on the draft Constitution outlining its work and providing a better insight into the CRC's adoption of specific provisions of the draft Constitution.

The ultimate objective of the Bill is to create the necessary legal platform for the development of a new well-researched and drafted modern constitution that will serve The Gambia for a considerable period and thus for the current generations and many future generations yet unborn. The hope is that such a constitution will usher in the third Republic for The Gambia.

Abubacarr Tambadou
Hon. Attorney General and Minister of Justice