

## **CHAPTER VIII 1997 CONSTITUTION**

### **THE JUDICATURE**

#### **PART 1: THE COURTS OF THE GAMBIA**

##### **THE COURTS AND THE JUDICIAL POWER 120.**

(1) The Courts of The Gambia are:

(a) Superior Courts comprising;

(i) the Supreme Court,

(ii) the Court of Appeal,

(iii) The High Court and the Special Criminal

Court, and

(b) the Magistrates Courts, the Cadi Court, District Tribunals and such lower courts and tribunals as may

be established by an Act of the National Assembly.

(2) The judicial power of The Gambia is vested in the courts and shall be exercised by them according to the respective jurisdictions conferred on them by law.

(3) In the exercise of their judicial functions, the courts, the judges and other holders of judicial office shall be independent and shall be subject only to this Constitution and the law and, save as provided in this Chapter, shall not be subject to the control or direction of any other person or authority.

(4) The Government and all departments and agencies of the Government shall accord such assistance to the courts as the courts may reasonably require to protect their independence, dignity and effectiveness.

##### **THE CHIEF JUSTICE 121.**

(1) The Chief Justice shall be the head of the Judiciary and, subject to the provisions of this Constitution shall be responsible for the administration and supervision of the courts.

(2) An Act of the National Assembly may provide for the making of rules by the Chief Justice or such other authority as may be specified therein for regulating the practice and procedure of the courts.

##### **THE SUPERIOR COURTS 122.**

In addition to any other power conferred on the court, each of the superior courts shall-

(a) be a superior court of record and shall have power to commit for contempt to itself and all such powers as are vested in a court of record; and

(b) in relation to any matter within its jurisdiction, have power to issue such orders and directions as may be necessary to ensure the enforcement of any judgment, decree or order of the court.

**Immunity from suit 123.**

A judge or other person exercising power shall not be liable to any action or suit for any act or omission by him or her in good faith in the exercise of his or her judicial function.

**Courts to give timely decision 124.**

(1) It shall be the object of every court to deliver its decision expeditiously and-

(a) in the case of a reference to the Supreme Court as to the interpretation of this Constitution or as to whether or not any person was validly elected to the office of President or was validly elected to, or vacated his or her seat in the National Assembly, not later than thirty days; or

(b) in any other case, not later than three months after the conclusion of the evidence or arguments on appeal, and final addresses. Provided that vacations shall be excluded from any prescribed period.

(2) it shall be the duty of the Chief Justice to ensure compliance with the provisions of subsection (1)

(3) For the avoidance of doubt, it is hereby declared that the validity of any decision shall not be called

in question on the grounds that it was not delivered in accordance with the provisions of subsection (1).

**PART 2: THE SUPERIOR COURTS**

**A: THE SUPREME COURT**

**Composition of Supreme Court 125.**

(1) Within eighteen months of the coming into force of this Constitution, there shall be established a Supreme Court of The Gambia which shall consist of-

(a) the Chief Justice;

(b) not less than four other Justice of the Supreme Court;

**6 of 2001.** (c) such judge of the Court of Appeal as the Chief Justice may, by writing under his or her hand, select to sit in the Supreme Court for the determination of a particular cause or

matter. Provided that no judge shall be selected under this paragraph unless he or she is qualified to be appointed a Justice of the Supreme Court.

(2) The Supreme Court shall be constituted by an uneven number of not less than five judges of the Court. Provided that a single judge of the Court may exercise the powers of the Court in any inter-locutory matter, which may be subject to a fresh application to a bench of five judges of the Court.

(3) The Chief Justice shall preside at sittings of the Court. In his or her absence, the most senior of the other judges of the Court shall preside.

(4) The Supreme Court may sit at any place in The Gambia appointed by the Chief Justice.

### **Jurisdiction of Supreme Court 126**

(1) The Supreme Court shall be the final court of appeal for The Gambia and shall have such appellate and other jurisdiction as may be conferred on it by this Constitution or any other law Provided that the Supreme Court shall not have original jurisdiction in respect of any criminal matter.

(2) The Supreme Court may depart from a previous decision when it appears to it right to do so, and all other courts shall be bound to follow the decisions of the Supreme Court on a matter of law.

(3) For the purpose of the hearing and determination of any matter within its jurisdiction, the Supreme Court shall have all the powers conferred by law on any other court established by this Constitution or any other law.

### **Original jurisdiction 127**

(1) The Supreme Court shall have an exclusive original jurisdiction -

(a) for the interpretation or enforcement of any provision of this Constitution other than any provision of sections 18 to 33 or section 36 (5) (which relate to fundamental rights and freedoms);

(b) on any question whether any law was made in excess of the powers conferred by this Constitution or any other law upon the National Assembly or any other person or authority;

(c) on any question as to whether or not any person was validly elected to the office of President or was validly elected to, or vacated his or her seat in, the National Assembly; or

(d) on any question whether any official document should be produced, or its contents disclosed, in proceedings before a court where such production is resisted on the grounds that its production or the disclosure of its contents would be prejudicial to the security of the state or be injurious to the public interest.

(2) where any question referred to in paragraphs (a), (b) or (d) of subsection (1) arises in any proceedings in any other court, that court shall stay its proceedings and refer the matter to the Supreme Court for its determination, and such other court shall give effect to any decision of the Supreme Court in the matter.

(3) The proceedings in the Supreme Court on any question referred to in paragraph (d) of subsection (1) shall be held in camera.

### **Appellate jurisdiction 128**

(1) An appeal shall lie to the Supreme Court as of right

(a) from any judgment of the Court of Appeal on an appeal in any civil or criminal cause or matter from a judgment of the High Court in the exercise of its original jurisdiction;

(b) from any judgment of the Court of Appeal dismissing an appeal from a sentence of death imposed by any other court; or

(c) in such other case as may be prescribed by an Act of the National Assembly.

(2) An appeal shall lie to the Supreme Court with the leave of the Court of Appeal from a judgment of the Court of Appeal in any cause or matter commenced in a court other than the High Court where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest that the cause or matter should be heard by the Supreme Court.

(3) An appeal shall lie to the Supreme Court with the leave of the Court from any other judgment of the Court of Appeal.

(4) An appeal shall lie to the Supreme Court, in any case referred to in sub-section (1), (2) or (3) at the instance of a party to the proceedings in the Court of Appeal or with the leave of the Supreme Court or the Court of Appeal, at the instance of any other person having an interest in the matter or, in a criminal cause or matter, at the instance of the Attorney General acting in the interest of justice and for the avoidance of abuse of the legal process:

Provided that in any appeal at the instance of the Attorney General, the Supreme Court shall have no power to reverse any acquittal at a court of first instance or reverse a judgment allowing an appeal against conviction of a criminal offence.

## **B: THE COURT OF APPEAL**

### **Composition of Court of Appeal 129**

(1) There shall be a Court of Appeal of The Gambia which shall consist of-

(a) the President of the Court of Appeal;

(b) not less than three justices of the Court of Appeal; and

(c) such judge of the High Court as the Chief Justice may, by writing under his or her hand, select to sit in the Court of Appeal for the determination of a particular cause or matter:

Provided that no judge shall be selected under this paragraph unless he or she is qualified to be appointed a judge of the Court of Appeal.

(2) The Court of Appeal shall be constituted by three judges of the Court:

Provided that a single judge of the Court may exercise the powers of the Court in any interlocutory matter, subject to an appeal from his or her decision to a bench of three judges of the Court;

(3) The President of the Court of Appeal shall preside at sittings of the Court in his or her absence, the most senior of the other judges of the Court shall preside.

(4) The President of the Court of Appeal may, in consultation with the Chief Justice, establish such divisions of the Court of Appeal as he or she thinks fit to sit at such places in The Gambia as he or she may determine.

### **Jurisdiction of Court of Appeal 130**

(1) The Court of Appeal shall have jurisdiction to hear and determine appeals from judgments, decrees and orders of the High Court, and such other appellate jurisdiction as may be conferred on it by an Act of the National Assembly.

(2) The Court of Appeal shall have jurisdiction in appeals from Court-martial in the manner provided by law.

(3) An appeal shall lie as of right to the court of appeal from any judgment, decree or order of the high court.

(4) For the purpose of hearing and determining any appeal within its Jurisdiction, the court of appeal shall have all the powers vested in the court from which the appeal is brought.

## **C: THE HIGH COURT**

### **Composition of the High Court 131**

(1) There shall be a High Court of The Gambia which shall consist of -

(a) The Chief Justice;

(b) Not less than seven other justices of the High Court; and

(c) Any judge of a superior court whom the Chief Justice may, by writing, request to sit as a judge of the High Court.

**6 of 2001** (2) The High Court shall be duly constituted by a single judge.

(3) The High Court may sit at such places in The Gambia as the Chief Justice may determine, and he or she may establish permanent divisions of the Court to sit at various places throughout The Gambia and appoint judges of the Court to any such division.

### **Jurisdiction of High Court 132**

(1) Save as provided in section 127, the High Court shall have original jurisdiction -

(a) to hear and determine all civil and criminal proceedings;

(b) to interpret and enforce the fundamental rights and freedoms as provided in sections 18 to 33 and section 36 (5), and in the exercise of such jurisdiction, the Court shall have all such power and authority as may be conferred by this Constitution or any other law.

(2) The High Court shall have such jurisdiction in appeals from courts subordinate to it (other than the *cadi* court) as may be prescribed by an Act of the National Assembly.

### **Supervisory Jurisdiction 133**

The High Court shall have supervisory jurisdiction over all lower courts and adjudicatory authorities in The Gambia, and in the exercise of its supervisory jurisdiction, shall have the power to issue directions, orders, or writs, including writs of habeas corpus, orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing its supervisory powers.

## **D: SPECIAL CRIMINAL COURT**

Special Criminal Court 134.

(1) There shall be a Special Criminal Court which shall be constituted by a panel consisting of a Chairman and not less than two other panel members

(2) A person shall not be appointed to be a Chairman of the Court unless he or she is qualified to be appointed a Judge of the High Court.

**6 of 2001** (3) The members of the Court shall be appointed by the President in consultation with the Judicial Service Commission.

### **Jurisdiction 135.**

The Court shall have jurisdiction to hear and determine all criminal offences relating to theft, misappropriation and other similar offences in which public funds and public property are affected.

### **National Assembly to make Further provision136.**

An Act of the National Assembly shall make further provision for the purposes of this sub-part.

### **PART 3: THE CADI COURT**

#### **The Cadi Court 137.**

- (1) A Cadi Court shall be established in such places in The Gambia as the Chief Justice shall determine.
  - (2) The Cadi Court shall be composed-
    - (a) for hearings at first instance, by a panel consisting of the Cadi and two other scholars of the Sharia qualified to be a Cadi or Ulama; and Paragraph (b) **(Deleted by No. 6 of 2001)**
  - (3) The decision of the majority of a panel of a Cadi Court shall constitute the decision of the Court.
  - (4) The Cadi Court shall only have jurisdiction to apply the Sharia in matters of marriage, divorce and inheritance where the parties or other persons interested are Muslims.
- 6 of 2001** (5) Any party to a proceeding in the Cadi Court who is dissatisfied with a decision of the Court may appeal to the Cadi Appeals Panel.
- (6) A person shall be required to be of high moral standing and professionally qualified in the Sharia in order to be appointed a Cadi or Ulama.
  - (4) A party to proceedings in the Cadi Court shall be entitled to be represented, at his or her own expense, by a person qualified in the Sharia.

#### **Cadi Appeals Panel 6 of 2001 137 A.**

- (1) There shall be a Cadi Appeals Panel which shall consist of-
  - (a) a chairperson; and
  - (b) not less than four other members.
- (2) The Panel shall be constituted by three members of the Panel.
- (3) The Chairperson of the Panel shall preside at a sitting of the Panel and in his or her absence, the most senior member shall preside.
- (4) The Chairperson and other members of the Panel shall be appointed by a Cadi Appeals Selection Committee which shall consist of-
  - (a) the Chief Justice;
  - (b) the Attorney General; and
  - (c) a member of the Supreme Islamic Council nominated by that Council.
- (5) A person shall not be qualified for appointment to the Panel-

(a) as a Chairperson, unless the person-

(i) is a legal practitioner and has been so qualified for a period of not less than five years, and

(ii) is professionally qualified in the Sharia;

(b) as a member, unless the person is professionally qualified in the Sharia.

(6) The Panel shall have jurisdiction to hear and determine appeals from judgment of the Cadi Court and from the District Tribunals where Sharia law is involved.

(7) The Cadi Appeals Selection Committee shall prescribe rules of practice and procedure of the Panel.

#### **PART 4: THE JUDGES**

Appointment of judges 138.

(1) The Chief Justice shall be appointed by the President after consultation with the Judicial Service Commission.

(2) All other judges of the superior courts except the judges of the Special Criminal Court shall be appointed by the President on the recommendation of the Judicial Service Commission.

(3) Appointments of judges of the Superior courts shall be by warrant signed by the President and sealed with the Public Seal.

(4) Before assuming the functions of his or her office, a judge of the superior courts shall take the prescribed oaths.

#### **Qualifications for appointment of judges 6 of 2001 139.**

(1) A person shall be qualified for appointment as Chief Justice if he or she is qualified to be appointed Judge of the Supreme Court or has been a Judge of a superior court of a common law country for not less than ten years.

(2) A person shall be qualified to be appointed a judge of the Supreme Court if he or she holds or has held office as a judge of the Court of Appeal, or as a judge of a court having similar Jurisdiction in a common law country, in each case for not less than five years, or if he or she has practiced as a legal practitioner before a court having unlimited jurisdiction in civil and criminal matters in a common law country for not less than twelve years.

(3) A person shall be qualified to be appointed as a judge of the Court of Appeal if he or she holds or has held office as a judge of the High Court, or as a judge of a court having similar jurisdiction in a common law country, in each case for not less than five years, or if he or she has practised as a legal practitioner before a court having unlimited jurisdiction in civil and criminal matters in a common law country for not less than eight years.

(4) A person shall be qualified to be appointed as a judge of the High court if he or she holds or has held office as a Principle Magistrate or Master in The Gambia, or an office, which is the opinion of the Judicial Service Commission, enjoys a comparable jurisdiction in a common law country, in each case for not less than five years, or if he or she has practised as a legal practitioner before a court having unlimited jurisdiction in civil and criminal matters in a common law country for not less than five years.

(5) In this section, common law country” means-

(a) a country within the Commonwealth; or

(b) a country outside the Commonwealth prescribed by an Act of the National Assembly for the purposes of this Assembly for the purposes of this section the courts of which exercise a common law jurisdiction.

#### **Vacancy in office of Chief Justice 140.**

In the event of there being a vacancy in the office of the Chief Justice, or if he or she is, for any reason unable to perform the functions of his or her office, the President may appoint the most senior judge of the Supreme Court to act in that office-

(a) until a person has been substantively appointed to, and assumed the functions of that office; or

(b) until the Chief Justice has resumed the functions of his or her office, as the case may be. A vacancy in the office of Chief Justice shall be filled by a substantive appointment within six months.

#### **Tenure of office of judges 141.**

(1) No office of judge shall be abolished while there is a substantive holder thereto.

(2) Subject to the provisions of this section, a judge of a Superior Court-

(a) may retire on pension at any time after attaining the age of sixty-five years;

(b) shall vacate the office of judge on attaining the age of seventy years; or

(c) may have his or her appointment terminated by the President in consultation with the Judicial Service Commission.

(3) Notwithstanding that he or she has attained the age at which he or she is required to vacate his or her office as provided in this section, a person holding the office of a judge may continue in office for a period of six months after attaining that age to enable him or her to deliver judgment or do any other thing in relation to proceedings that were commenced before him or her previously thereto.

**6 of 2001** (4) The Chief Justice, a justice of the Supreme Court, the Court of Appeal and the High Court and members of the Special Criminal Court may only be removed from office for inability to perform the functions of his or her judicial office, whether arising from infirmity of body or mind, or for misconduct.

(5) A judge may be removed from his or her office if notice in writing is given to the Speaker, signed by not less than one-half of all the voting members of the National Assembly, of a motion that the judge is unable to exercise the functions of his or her office on any of the grounds stated in subsection (4) and proposing that the matter should be investigated under this section.

(6) Where a notice of a motion is received by the Speaker under subsection (5), the Speaker shall forthwith cause a vote to be taken on the motion without debate

(7) If such motion is adopted by the votes of not less than two-thirds of all the members of the National Assembly-

(a) The National Assembly shall, by resolution, appoint a tribunal consisting of three persons, at least one of whom shall hold or shall have held high judicial office who shall be the chairman of the tribunal;

(b) the tribunal shall investigate the matter and shall report to the National Assembly through the Speaker whether or not it finds the allegations specified in the motion have been substantiated.

(c) If the tribunal reports to the National Assembly that it finds the particulars of any such allegation have not been substantiated, no further proceedings shall be taken under this section in respect of that allegation;

(d) If the tribunal reports to the National Assembly that it finds that the particulars of any such allegation have been substantiated, the National Assembly shall consider the report at the first convenient sitting and if, on a motion supported by the votes of not less than two-thirds of all the members, the National Assembly resolves that the judge be removed from office, the judge shall immediately cease to hold office.

(5) where a tribunal is established under this section in respect of any judge, the judge shall stand suspended from office. The suspension shall cease to have effect if the tribunal reports that none of the allegations against the judge has been substantiated or if a motion for his or her removal from office is not supported as provided in paragraph (d) of subsection (7).

(6) All proceedings in a tribunal under this section shall be held in camera and the judge concerned shall have the right to appear and be legally represented before the tribunal.

### **Remuneration Of judges 142.**

(1) A judge of a superior court shall be entitled to such salary, allowances, and on retirement such gratuity and pension, as may be prescribed by an Act of the

National assembly.

(2) The salary, allowances, retirement gratuity and pension of a judge, as so prescribed at the time of his or her appointment, shall not be varied to his or her disadvantage.

## **PART 5: ADMINISTRATION OF THE COURTS**

### **143 Administrative provisions**

(1) In the exercise of his or her responsibilities for the administration of the courts, the Chief Justice may issue orders and directions for the proper and efficient operation of the courts.

(2) There shall be a Judicial Secretary to assist the Chief Justice in the exercise of his or her responsibilities for the administration of the courts and financial matters. The Judicial Secretary shall be responsible to the Chief Justice for the performance of his or her duties.

**6 of 2001** (3) The Judicial Secretary shall be appointed by the President on the advice of the Judicial Service Commission.

### **Financial 144**

(1) The Chief Justice shall submit the annual estimates of expenditure for the Judicature to the President for presentation to the National Assembly in accordance with this Constitution. The President shall cause the estimates to be placed before the National Assembly without amendment but may attach to them his or her own comments and observations.

(2) The Judicature shall be self-accounting, and the moneys charged on the Consolidated Fund or appropriated by an Act of the National Assembly for the Judicature shall be paid by the Accountant General to the accounting officer for the Judicature as required by the Chief Justice.

## **PART 6: THE JUDICIAL SERVICE COMMISSION**

### **The Judicial Service Commission 6 of 2001 145**

(3) There shall be a Judicial service commission which shall consist of -

(a) the Chief Justice, who shall be Chairman;

(b) a judge of a superior court;

(c) the solicitor General;

(d) a legal practitioner of at least five years standing at The Gambia Bar, nominated by the Attorney General in consultation with The Gambia Bar Association;

(e) one person appointed by the President; and

(f) one person nominated by the National Assembly.

(2) The members of the Commission (other than the members referred to in paragraphs (a) (e) and (g) of subsection (1) shall be appointed by the President in consultation with the Chief Justice and subject to confirmation by the National Assembly.

(3) A member of the National Assembly shall not be qualified to be appointed a member of the Commission.

(4) Subject to subsection (5), a member of the Commission shall hold office for a term of three years and may be re-appointed.

(5) A member of the Commission shall vacate his or her office if he or she ceases to hold the office specified in subsection (1) by virtue of which he or she was appointed or if he becomes a member of the National Assembly.

(6) A member of the Commission (other than an ex officio member) may be removed from office by the President with the approval of the National Assembly, but may only be removed for inability to exercise the functions of his or her office (whether arising from infirmity of mind or body or for any other cause) or for misbehaviour. A member shall be entitled to be heard in person or by a legal representative against any proposal to remove him or her.

(7) If a member of the Commission is, for any reason, unable to exercise the functions of his or her office for a limited period, the President, acting in accordance with the advice of the Chief Justice, may appoint a person similarly qualified to act in his or her place.

(8) A member of the Commission shall not enter upon the duties of his or her office until he or she has taken and subscribed to the prescribed oaths.

#### **Appointment of judicial Officers and Court staff 146.**

(1) The power to appoint persons to hold or act in any office to which this subsection applies shall vest in the Judicial Service Commission. Provided that the Commission may, with the approval of the Chief Justice and subject to any conditions as it may think fit, delegate the powers referred to in this subsection to any judge or to the holder of any office to which this subsection applies.

(2) Subsection (1) applies to the offices of-

(a) Master, Registrar and Assistant Registrar of a superior court;

(b) The office of magistrate;

(c) The office of a member of any subordinate court; and

(d) Such other offices of a member of any court as may be prescribed by an Act of the National Assembly.

(3) The appointment of other officers and staff of the courts shall be made by the Chief Justice or such, other judge or officer of the court as the Chief Justice after consultation with the Judicial Service Commission may direct.

**Other functions of the Commission 147.**

In addition to the other functions conferred on the Judicial Service Commission by this Constitution, the Commission shall have power-

(a) to advise the President in the exercise of their powers relating to the appointment of judges;

(b) to make recommendations as to the terms and conditions of service of judges and other judicial officers and officers and staff of the courts;

(c) to make proposals to improve the administration and efficiency of the courts;

(d) to prepare and implement programmes for the education of the public about the administration of justice; and

(e) to exercise such other functions as may be conferred on it by an Act of the National Assembly.

**Operation and Procedure 148**

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

(2) The Commission may by rules or otherwise regulate its own procedure.

(3) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of a member. Provided that any decision of the Commission shall require the concurrence of a majority.