



The National Human Rights Commission

NATIONAL CONFERENCE ON THE DRAFT CONSTITUTION 2024, SIR DAWDA KAIRABA JAWARA INTERNATIONAL CONFERENCE CENTRE, BIJILO, WEST COAST REGION, THE GAMBIA

28TH - 29TH NOVEMBER 2024

FINAL COMMUNIQUE



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**NATIONAL CONFERENCE ON THE DRAFT CONSTITUTION 2024,
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CENTRE, BIJILO, WEST COAST REGION, THE GAMBIA, 28TH - 29TH
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Banjul, 29 November 2024- The National Conference on the Draft Constitution 2024 was held from 28th to 29th November 2024 at the Sir Dawda Kairaba Jawara International Conference Centre, Bijilo, West Coast Region, The Gambia, under the Theme: Advancing National Consensus on the Draft Constitution 2024.

The opening ceremony was presided over by Dr Saikou Kawsu Gassama, the Executive Secretary of the National Human Rights Commission. Key addresses were delivered at the opening ceremony by: Mr. Emmanuel Daniel Joof, Chairperson of the National Human Rights Commission; Ms. Penda Dibba, Executive Director, Gambia Bar Association (GBA); Ms. Yadicon Njie Eribo, Chairperson, The Association of Non-Governmental Organisations (TANGO); Mr. Karl Frédéric Paul, UN Resident Coordinator; Ms. Immaculada Roca i Cortés, EU Ambassador to The Gambia; and Mr. Hussein Thomasi, Solicitor General and Legal Secretary who represented the Hon. Attorney General and Minister of Justice and delivered the keynote address.

The National Conference was organized by the National Human Rights Commission (NHRC) with the joint support of the European Union and the United Nations Development Programme (UNDP) and in partnership with the Gambia Bar Association (GBA) and The Association of Non-Governmental Organisations (TANGO). The National Conference aimed to provide a platform for all the stakeholders, including political parties and citizens, to discuss the Draft Constitution 2024, share their concerns about the document, identify the sticking points and promote consensus on them, and develop, the overall objective, a unified position on the Draft Constitution 2024. Through this process, the Commission sought to enhance public discussion on the Draft Constitution 2024 and to promote the adoption of a Constitution by the National Assembly that adequately reflects the wishes and aspirations of the Gambian people.

Over one hundred representatives from the Government, political parties, Non-Governmental Organisations, Faith Based Organisations, Security Forces, independent national institutions, Gambia Federation of the Disabled, women-led groups, academia, the media, and community-based organisations in the Regions took part in the National Conference. The stakeholders addressed a wide range of issues, including the dynamics of constitutional making across Africa and

beyond with a focus on The Gambia, the lessons learned from the work of the Constitutional Review Commission (CRC), the similarities and differences between the Draft Constitution 2020 and the Draft Constitution 2024, the key changes in the Draft Constitution 2024 and the factors that led to the failure of the Draft Constitution 2020 at the National Assembly in September 2020. These discussions were geared towards the adoption by the National Assembly of a draft Constitution that adequately reflects the wishes and aspirations of the Gambian people.

Emphasizing the urgent need for a “people-centric” Constitution, the stakeholders expressed their concern and dissatisfaction over the lack of public participation, stakeholder consultation, and broad societal involvement in the preparation of the Draft Constitution 2024. The stakeholders lamented that the exclusion of civil society, faith-based groups and other critical stakeholders from the preparation of the Draft Constitution 2024, including the political parties, grassroots groups and representatives of other interest groups, has greatly compromised its legitimacy and acceptability by the people. The stakeholders further emphasized the fact that all citizens of the Gambia, including Gambians in the Diaspora, have the inalienable right to participate in the preparation of their Constitution, and to have their views and opinions given due weight and consideration.

Given that a constitution represents the will, wishes and aspirations of the people, the stakeholders called on the National Assembly to restore the rights of the people to ensure a broader consultation before the passing of the Constitution of the Republic of The Gambia (Promulgation) Bill, 2024.

Stakeholders discussed in great depth the Draft Constitution 2024 and further made comparisons between the provisions of the Draft Constitution 2020 and the Draft Constitution 2024. Stakeholders also examined the new provisions inserted in the Draft Constitution 2024 and the provisions of the Draft Constitution 2020 that have been expunged from the Draft Constitution 2024.

Stakeholders expressed deep concerns over the following in the Draft Constitution 2024: removal of Chapter V (Leadership and Integrity), weak checks and balances, enormous powers vested in the President, removal of clauses that guarantee the independence of all the Independent Institutions.

Stakeholders emphasised the critical role they play in constitution-making and pledged their continuous support to efforts towards the strengthening of principles of justice, accountability, rule of law, culture of human rights, democracy and good governance to achieve “a just, secure and prosperous society” in the country. They also emphasised the need for a constitution that embodies the wishes and aspirations of the people, and its primary importance as

the solid foundation on which the transitional justice process, institutional and all the associated reforms would be built. To this end, the stakeholders urged the National Assembly to be guided by the national interest in the decisions they take regarding the Draft Constitution 2024.

In their deliberations of the Draft Constitution 2024, the Stakeholders observed and recommended as follows:

General Observations

1. That the 1997 Constitution of The Gambia with its numerous amendments is not the appropriate legal framework to anchor the country's transition from a dictatorship to a people-centred democracy.
2. That there is overwhelming demand for the adoption of a new Constitution that is consultative and reflective of the wishes of The Gambian people.
3. That the process of preparation of the Draft Constitution 2020 was sufficiently consultative, inclusive and participatory.
4. That majority of stakeholders decried that their political parties, institutions, organisations, communities and special interest groups were not consulted by the Executive in the preparation of the Draft Constitution 2024.
5. That several key provisions in the Draft Constitution 2020 fundamental to ensuring a safeguarding democratic governance have either been deleted, modified or watered down.
6. That the oversight functions of the National Assembly to ensure proper scrutiny of the Executive have been removed in the Draft Constitution 2024.
7. That while the constitution-making process is also a political process, political negotiations and compromises must be guided by and rooted in the collective interest of the people.

General Recommendations

1. The National Assembly to adopt a new Constitution that reflects the wishes and aspirations of the people.
2. The National Assembly to adopt a new constitution that respects and upholds the principles of constitutionalism (separation of powers, checks and balances, independence of the Judiciary, and respect for fundamental human rights and freedoms, and the rule of law).
3. The National Assembly to consider and pass the Draft Constitution 2024 through the Second Reading to the Committee stage where proper and detailed scrutiny of the content should take place. At the Committee Stage when the Draft Constitution 2024 is being considered in detail, the National Assembly should solicit the views, opinions and contributions of the public and diverse stakeholders, and request position papers from concerned individuals, experts and special interest groups.
4. The oversight functions of the National Assembly as envisaged in the Draft Constitution 2020, including confirmation of all appointments, should be maintained.
5. The National Council for Civic Education, National Human Rights Commission, Civil Society Organizations and other stakeholders to raise awareness of the Draft Constitution 2024 and the importance of public participation in the constitution-making process.

Specific Recommendations for the National Assembly

1. **Fundamental Rights and Public Interest Litigation**
Retain the provision in Clause 34(2) of the Draft Constitution 2020, which is more elaborate and expressly provides for public interest litigation, expanding the scope of *locus standi* and allowing individuals and organizations with expertise in human rights to appear as *amicus curiae*.
2. **Detention Limit**
Amend Clause 31(4)(f)(i) of the Draft Constitution 2024 to limit police detention to 48 hours after arrest unless further detention is sanctioned by a competent court, as provided in the Draft Constitution 2020.

- 3. Leadership and Integrity**
Restore Chapter V of the Draft Constitution 2020 (Leadership and Integrity), which has been excluded from the Draft Constitution 2024, as it is vital for promoting transparency and good governance.
- 4. Media Ownership**
Review the prohibition under Clause 39(3) of the Draft Constitution 2024 that disallows non-Gambians from owning or operating media houses, as it is discriminatory. Non-Gambians should be allowed to own or operate media houses albeit governed by appropriate regulations.
- 5. State of Public Emergency Oversight**
Restore Clause 70(2)(c) and Sub-Clause (7) of the Draft Constitution 2020, which empowers the Supreme Court to oversee the powers of the President during a public emergency.
- 6. Director of Public Prosecutions (DPP)**
Restore Clause 131 of the Draft Constitution 2020 which promotes transparency in the appointment of the Director of Public Prosecution and safeguards the post holder's independence, powers, and removal from office.
- 7. Election of Speaker and Deputy Speaker**
Amend Clauses 134 and 135 of the Draft Constitution 2024 to require the Speaker and Deputy Speaker to be elected from among elected Members of the National Assembly.
- 8. Confirmation of Presidential Appointments by the National Assembly**
Restore all provisions of the Draft Constitution 2020 which empower or require the National Assembly to confirm all appointments by the President, including Ministers, Chairpersons and members of all independent institutions and the Director of Public Prosecution.
- 9. Presidential Succession**
Amend Clause 96 of the Draft Constitution 2024 to stipulate that a Vice President, Speaker, or Chief Justice acting as President should not hold the office for more than six months without a general election.
- 10. Citizenship by birth**
 - A. Amend Clause 15(1) of the Draft Constitution 2024 to grant automatic citizenship to any child born in The Gambia, irrespective of their parents' nationality.

B. Restore Clause 15 (3) on granting citizenship to a child found in The Gambia whose parents are unknown.

11. Naturalization Requirements

Reduce the residence requirement for naturalization under Clause 17(1) of the Draft Constitution 2024 from 15 years to 5 years.

12. Access to Education

Include “...and secondary...” after the word “... basic...” under Clause 49(2)(a) of the Draft Constitution 2024.

13. Political Party Contributions

Restore Clause 84(5) of the Draft Constitution 2020 which prohibits political parties from receiving contributions or donations from non-Gambians, corporate or incorporated bodies.

14. Attending and Addressing a Special Sitting of the National Assembly

Amend Clause 80(3) of the Draft Constitution 2024 to allow only the President or Vice President to attend and address a special sitting of the National Assembly on a matter of national importance if the President is so requested by the National Assembly.

15. Presidential Decisions in Writing

Restore Clause 90 of the Draft Constitution 2020 which requires all presidential decisions to be documented in writing.

16. Qualifications for Presidential Candidates

Restore Clause 93(1)(f) of the Draft Constitution 2020 which states the holding of a minimum of an undergraduate degree and five years of work experience as one of the criteria for qualification to be elected as President.

17. Running Mate Requirement

Include a new clause in the Draft Constitution 2024 to require a qualified Presidential candidate to have a running mate.

18. Role of the Anti-Corruption Commission

Restore Clauses 94 and 95 of the Draft Constitution 2020 to grant the Anti-Corruption Commission a role in presidential nominations.

19. Asset Declarations by Spouse(s) of the President

Restore Clause 103 (a) (ii) and (b) (ii) of the Draft Constitution 2020 which require the spouse(s) of the President to declare all assets, liabilities and business interests.

20. Eligibility for the position of Chief Justice

Restore Clause 174(2)(a) of the Draft Constitution 2020 which requires the Chief Justice to be a Gambian.

21. Judiciary’s Budget Process

Amend Clause 187 of the Draft Constitution 2024 to allow the Chief Justice to submit annual estimates of the Judiciary directly to the National Assembly.

22. Internationalized Courts

Retain Part VII (Internationalized Courts) in the Draft Constitution 2024.

23. Restoration of All Progressive Provisions of the Draft Constitution 2020

Restore all progressive clauses in the Draft Constitution 2020 that have been excluded or amended in the Draft Constitution 2024.

Conclusion

Finally, Stakeholders extended their appreciation to the National Human Rights Commission for convening such an important National Conference on the Draft Constitution 2024 and for its leadership in the promotion and protection of human rights in the country.

Done on the 29th Day of November 2024 at the SDK International Conference Center in Bijilo, West Coast Region, The Gambia.

Signed: _____


**Emmanuel D. Joof
Chairperson, NHRC**



Signed: _____


**Dr. Saikou Kawsu Gassama
Executive Secretary, NHRC**

