



CONCERNED CITIZENS OBSERVATIONS & COMMENTS ON THE CRC FINAL DRAFT CONSTITUTION – MARCH 2020



Concerned Citizens (CC) is a registered Social Development Enterprise engaged in various socio-economic and cultural development activities for the betterment of The Gambia and its people. Concerned Citizens has a large membership and following, spreading far and wide in the country and abroad.

*CC first came together as a group during a consultative forum which was held at the National Nutrition Agency (NaNA) Conference Hall in Bakau on the 29th December 2018. An important output of this Conference was the development and production of the **Concerned Citizens' Muslim Position Paper** which was submitted to the CRC on Monday the 31st December 2018.*

*Concerned Citizens produced and submitted on Tuesday the 19th November 2019 to the CRC an **initial response paper** to the CRC first draft Constitution.*

*CC submitted to the CRC on Friday the 27th December 2019, a **second supplementary response paper** in reaction to the first draft constitution.*

*This report highlights the **views and position of CC and partners** regarding the CRC final draft Constitution.*





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1.0 Foreword

Concerned Citizens (hereafter referred to as “CC”), acknowledges the CRC for the commendable effort to produce a first and final draft Constitution which intends to reflect the opinions and aspirations of Gambians at home and abroad. Concerned Citizens observes that the CRC consultation processes have been participatory and inclusive. The CRC gave Gambians the opportunity to express their views in the Constitutional Review and Building processes which should be unselfishly applauded.

CC first came together as a group during a CC organised consultative forum which was held at the National Nutrition Agency (NaNA) Conference Hall in Bakau on the 29th December 2018. An important output of this Conference was the development and production of the **Concerned Citizens’ Muslim Position Paper** which was submitted to the CRC on Monday the 31st December 2018. Thereafter, Concerned Citizens produced and submitted on the 19th November 2019 to the CRC **an initial response paper** to the first draft Constitution. The deadline for the submission of reactions to the first draft Constitution was extended by the CRC, which gave Concerned Citizens and its partners the opportunity to organize a **National Conference of Imams** on the 22nd December 2019 at the QCity. The results of discussions from the QCity consultative conference was documented in a **second supplementary response paper** in reaction to the first draft constitution which was also submitted to the CRC on the 27th December 2019.

Through participatory consultations and strong collaboration with its partners, CC has yet again conducted a thorough review of the CRC’s final draft constitution and herein make known its position, especially with regards to matters and issues which were raised in CC’s Muslim Position Paper and subsequent reactions / responses to the draft constitutions. In order to fully appreciate the justifications for the position of CC regarding the final draft CRC constitution, it is important to read the entire document up to its conclusion. I take this opportunity to commend the hard work of the gallant men and women of CC who have truly sacrificed and volunteered to ensure that all pertinent issues are documented and reported via the appropriate communication channels throughout this entire process. May Allah SWT bless and reward them all. I now respectfully call upon and enjoin the right authorities to not only take note, but to also implement responsible actions which shall lead to peaceful co-existence, progress and prosperity for all.

Yours Sincerely,

Dr. Omar Jah Jr.
For Concerned Citizens



2.0 Introduction - Concerned Citizens in Brief

Concerned Citizens (CC) was registered in early 2019 as a Social Development Enterprise engaged in various socio-economic and cultural development activities for the betterment of The Gambia and its people (however with a special focus on Muslims). Concerned Citizens has a large membership and following, spreading far and wide in the country and abroad.

CC first came together as a group to discuss and collectively present the opinions and views of Muslims in the drafting of a new Constitution for The Gambia during a forum at the National Nutrition Agency (NaNA) Conference Hall in Bakau which organized on Saturday the 29th December 2018. The activity was an open participatory forum for all Muslims to discuss the CRC Issues Document. The NaNA forum brought together and enlisted the popular support and proactive participation of individuals and representatives from various Muslim groups and associations throughout the country. It was the NaNA forum which set the tone and pace for CC's work regarding the constitutional review and building processes.

3.0 Summary - Review of the CRC Final Draft Constitution

Concerned Citizens (CC) has gone through the Constitutional Review Commission's final draft Constitution 2020 vis-à-vis the Concerned Citizens' position papers. CC would like to acknowledge and commend the efforts of the CRC for taking into account points raised in the CC position papers and other position papers submitted by individual Muslims and Islamic organizations.

Concerned Citizens wish to underline that the Constitutional Review Commission's (CRC) mandate has elapsed with the submission of the final draft constitution and the accompanying final report to the presidency. Therefore, this report is intended to highlight the issues CC engaged the CRC on during public consultations and the submission of position papers to ascertain whether the issues identified by CC were considered or not, and if considered, whether the said issues were sufficiently addressed, which now shapes the position of CC and its partners regarding the CRC final draft constitution.



It is equally important to remind that the CRC's mandate was to draft a constitution that would reflect the wishes and aspirations of the people of The Gambia including the views of the person on the farm as well as the one on the rice field. It is important to note that comparing the 1997 Constitution to the CRC final draft constitution, significant improvements have been realized. For example, the non-inclusion of the word secular; the changing of nomenclature from Qadi to Shari'ah Court; the establishment of the Shari'ah High Court; the expansion of the jurisdiction of the Shari'ah Court to include Waqf (i.e. Endowment); extension of the appellate jurisdiction of the Sharia'h court - from the Shari'ah Court to the Supreme Court etc.

4.0 Concerned Citizen's Position Papers submitted to the CRC

Concerned Citizen's submitted **its first position paper** in December, 2018 after convening a conference of Imams, clerics, opinion leaders and heads of Islamic organizations at the National Nutrition Agency (NaNA) Hall in Bakau. From the conference, issues for submission to the CRC were outlined including:

- **The non-inclusion of the word "secular" in the constitution**
- **The non-recognition and complete exclusion of the LGBTQI community**
- **The unequivocal definition of the contract of marriage (to mean between a man and a woman ONLY)**
- **Change in nomenclature from Qadi to Shari'ah Court**
- **Expand the jurisdiction of the Qadi Court**
- **Public Morality & Social Protection Laws**
 - *The rejection of any socio-cultural practices or norms which promotes immorality, hooliganism and or tribalism.*
- **Culture and Society**
 - **The rejection of practices contrary to Islamic beliefs and practices**
- **Women, Children & Gender**
- **Equal Education Opportunities for All**
- **Allocation of Public Expenditure/Financing on Religious Affairs**



These were the issues raised and discussed by the CC in its first position paper submitted to the CRC in December 2018, out of which special attention and focus was placed on secularism, marriage, right to practice religion and Qadi Court. The CRC thereafter published its **first draft Constitution in November, 2019** and CC made the following observations:

- **The inclusion of the word ‘secular’ was avoided**
- **Qadi Court was changed to Shari’ah Court**
- **The jurisdiction of the Sharia/High Court was extended to include endowment (Waqf), Adoption and Burial**
- **The Shari’ah High Court was established**
- **The right to practice religion featured in Section 25 (1) (c) in the 1997 Constitution, when compared to Section 47 - Freedom of Conscience in the first CRC draft Constitution, was expanded to include enabling subsections in the latter.**

However, after the publication of the CRC’s first draft constitution, much controversy ensued regarding whether or not to include the word “secular”, as well as the establishment of the Sharia High Court. CC therefore deemed it necessary to defend the non-inclusion of the word ‘secular’ in the draft constitution, justify the change in name from Qadi court to Sharia Court and the expansion of the jurisdiction of the Shari’ah Court.

This led to the convening of another national conference (i.e. *Concerned Citizens Roundtable Conference of Islamic / Traditional Muslim Leaders and heads of Organisations on the CRC Draft Constitution and Way Forward Prior to a Referendum*) which was held on the 22nd December 2019 at the QCity. Imams, traditional and opinion leaders were invited from across the length and breadth of the country to discuss and proffer solutions to the CRC on the first draft constitution. Subsequently, CC submitted another position paper in response to the CRC’s first draft constitution.

After this, the CRC published its final draft constitution on the 31st of March, 2020 together with a report to His Excellency, the President of the Republic of The Gambia as required by the Constitutional Review Commission Act of 2017.



5.0 CC's Reaction to the CRC's Final Draft Constitution

After a careful perusal of the CRC final draft Constitution, the following is hereby observed:

5.1 Secularism (Section 1¹)

- The CRC declined the invitation to insert the word "secular" in **Section 1** of the final draft Constitution and thereby maintaining the status quo as in the 1997 Constitution and the first draft Constitution. It should be noted that justifications for this non-inclusion was explained in the CRC Final Report². This is indeed commendable.
- However, in response to the heated debate on the inclusion or otherwise of the word "secular" in the draft constitution, the CRC conveniently introduced a new Subsection where it is stated that *"The Gambia comprises people of different faiths and every faith shall be respected and treated fairly without any discrimination."* It is our view that the introduction of this new subsection places no restraint or negative implication on the Islamic faith. It is a declaration that requires (particularly the State) everyone to respect and treat all faiths fairly.

¹ This refers to the CRC's final draft Constitution. Thereafter, any further mention of any section equally refers to the CRC final draft Constitution.

² The CRC commissioned a research paper on the history and modern understanding and approaches in relation to the use of the word "secular". The result showed that the word "secular", including the words "secularism" and "secularisation" evolved over time in history and scholars were not unanimous on any single definition. After careful study and consideration of the research paper in the context of the 1970 Constitution and the 1997 Constitution, both of which did not use the word "secular", the CRC considered it best to maintain the status quo and therefore retain section 1 (1) of the 1997 Constitution, which was an offspring from section 1 (1) of the 1970 Republican Constitution.



5.2 Culture (Section 12)

- **Section 12** of the final draft constitution under culture, recognizes and enjoins the State to recognize and protect the religious diversity of the Gambia in order to foster national cohesion and peaceful coexistence. This is not in our view detrimental to the Islamic faith.
- However, the declaration only seeks to protect the religious diversity of the people. It is our view that, there is more to religious diversity. The State should not only protect religious diversity, but should also promote and protect religious values for a sound and morally upright society.

5.3 Freedom of religion and conscience (Section 49)

- The right to freedom of religion in Section 47 of the first draft constitution was retained to maintain the same provisions as featured in Section 49 of the CRC final draft Constitution, however with noticeable change in the labelling of this latter section to include *religion*.
- In section 49 of the CRC final draft constitution, this section was renamed as *Freedom of religion and conscience*. Section 49 (3) of the final draft constitution states that: "A person **may not be denied** access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion".
- It is therefore the view of CC that the rights enshrined in section 49 (1) (2) and (4) could be subject to section 49 (3) of the final draft constitution by virtue of the use of the word **"may"** in section 49 (3). This could be prone to arbitrary denial of the enjoyment of the rights to practice and manifest one's religion or belief. The enjoyment of such fundamental human rights and freedoms, should not be subject to the whims and caprices of persons, institution or authorities.



5.4 Right to marry (Section 54)

- The right to marry was redrafted. **Section 52 (1)** of the first draft constitution stated that: ***“Men and women of full age and capacity have the right to marry and found a family. Subsection (2) of the said Section went further to say that - Marriage shall be based on the free and full consent of the “intended parties.”***

However and comparatively,

- **Section 54 of the final draft constitution** now declares the right to marry in the following terms: ***“A man and a woman of full age and capacity have the right to marry and found a family, and such marriage shall be based on the free and full consent of the man and the woman.”***
- It is our view that the right to marry in this section is merely declaratory and NOT definitive (or descriptive). This means that **Section 54** of the final draft constitution **on Marriage** declares the right to marry, but **does not define** the contract of **marriage as being between a man and a woman ONLY.**
- It is important to note that, there is no difference between the first and the current Sections on Marriage in both CRC draft constitutions, except that there were semantic variations (i.e. the former was pluralized – “men and women”; and the latter was singularized – “A man and a woman”). Also in the first draft of the CRC constitution, Section 52 (2), the last phrase ***“intended parties”*** is deleted in the final draft Constitution.
- Referring to the CRC Final Report, clause 278 of page 72, the following is cited: ***“Furthermore, there was strong opinion to clarify that marriage is between a man and a woman who must consent to the relationship. It was also pointed out that the proposed Draft Constitution did not make any provision on legal aid, which is considered a fundamental human right. The CRC reviewed these opinions and considered that there is merit in not circumscribing the freedom of expression beyond what is necessary. It also saw the need to clarify the public debate on the right to marry. The matter relating to legal aid was a clear omission in the proposed Draft Constitution and therefore, required rectification in the Draft Constitution.***



- Concerned Citizens in all of its position papers strongly proposed that marriage should be CLEARLY DEFINED in the new Constitution, in simple and unambiguous terms, **as a contract between a man and a woman**, consistent with the Gambia's religions, socio-cultural norms, practices and values, which are part of the foundation of the nation and the cumulative civilization of the Gambian people and nation.
- Furthermore, if marriage is not clearly defined, it could open the floodgates for the multiple interpretation (or misinterpretation) of marriage to include same-sex marriage. It should be noted that homosexuality is criminalized in **The Gambia's Criminal Code** (*Vol. III, Cap 10:01 Revised Laws of The Gambia 2009*). Also, the current **Draft Criminal Offences Bill of 2019** reflects the same position with regards to homosexuality and other *unnatural offences*. This clearly shows that the past, current and future trajectory of the Gambia and its people does not and will not condone same-sex marriage.
- The new Constitution should therefore mirror the same (i.e. zero tolerance for same-sex marriage) if it should stand to be truly reflective of the will, views and aspirations of the Gambian people.

[5.5 Marginalised Groups \(Section 84 \(2\) \(e\)\)](#)

- On the issue of marginalised groups, the CRC in *Section 82 (2) (e)* of the first draft constitution extended the definition of marginalised group beyond **women, youth, persons with disabilities**, to include "and **other marginalised groups.**" The CRC in the final draft constitution deleted the phrase "*and other marginalised groups*", and maintained either "women, youth and persons with disabilities", or "marginalised groups", which are used interchangeably. Please contrast *Section 82 (2) (e) of the first draft constitution* with *Section 84 (2) (e) of the final draft constitution* to view and appreciate the difference.



- The CRC in *clause 276* of their **final report** states that “**overwhelming opinion suggested that the definition of minority groups should not include** the lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community, because they are against Gambian culture, tradition, values, and norms (and religion).” This position is not clearly reflected in the draft constitution.

5.6 Shari’ah High Court (Section 187)

- Comparing the first and final draft CRC constitutions on the issue of the Sharia High Court, it remains predominantly the same except for few adjustments made in relation to appointments, representation and the jurisdiction of the Sharia High court in the final CRC draft constitution.
- The issue of ‘Adoption’ and ‘burial’ in the final draft constitution is removed from the jurisdiction of the Shari’ah High court and the court now remains with the power to decide on issues of *marriage, divorce, inheritance and Waqf only*. Also, in the first draft constitution, a person qualified in Sharia could represent a party or litigant in the said court. However, in the final draft constitution, the person in addition to being qualified in Sharia must be a legal Practitioner.
- It is worthy to note the extension of the appellate jurisdiction of the Shari’ah court. Matters emanating from the Shari’ah Court can now be appealed up to the level of the Supreme Court (which was hitherto not the case).

5.7 Protection against discrimination (Section 69)

- Burial and adoption is now treated under *Section 69* of the final draft constitution which states that decisions in matters of adoption, marriage, divorce, burial, and devolution of property on death or other matters of personal law shall not constitute discrimination. This is fairly balanced.



5.8 Summary Table of Findings /Analysis & Observations

CRC FINAL DRAFT CONSTITUTION			
No.	SECTIONS	OBSERVATIONS	COMMENT/POSITION
1	Secularism – S ³ . 1	Not included in final draft constitution	The word “secular” is not included in the final draft constitution. This is commendable.
2	Marriage – S. 54	Redrafted in final draft constitution. However this needs to be improved as featured in the comments section.	The right to Marry is ONLY declaratory and not definitive / descriptive. Marriage should be defined as a social contract between a man and a woman. This is not desirable.
3	Right to Religion- S. 49	Broadened and expanded in the final draft constitution. However serious improvements need to be made.	Section 5.3 featured in page 4 of this report highlights important observations which should be clearly taken on board. Section 49 (3) is not favourable.
4	Culture - S. 12	Foundation of existence	Culture, ethnic and religious diversity is said to be the foundation of our existence. This is fine.
5	Freedom of expression – S. 46	Excludes preaching hatred, vilification etc.	Freedom of expression does not cover ethnic or religious hatred, hatred resulting in vilification of others or incitement to cause harm. This is fine.

³ “S” stands for Section



6	Protection against discrimination S. 69	Adoption and burial are removed from the jurisdiction of the Shari'ah Court and now featured in Section 69.	The right to protection against discrimination does not include a decision made in terms of burial, adoption etc. This is fine.
7	Shari'ah High Court – S. 187	Jurisdiction broadened.	The jurisdiction of the Shari'ah High Court is now broadened to include endowment (<i>Waqf</i>). This is good.
8	Shari'ah Court – S. 175 (1) (c)	Name change from Qadi to Shari'ah Court.	The Qadi court is now referred to as the "Shari'ah Court". The Shari'ah High Court is now established. This is good.
9	Shari'ah appeal cases – S. 188 (3) S. 183 (1) (a) S. 180 (1) (a)	Shari'ah cases can now be appealed up to the Supreme Court	Shari'ah appeal cases could now go to the Shari'ah High Court, Court of Appeal and finally to the Supreme Court. At the court of Appeal and the Supreme Court, the Panel must constitute a Sharia qualified person in dealing with Shari'ah appeal case. This is fine.
10	Marginalised Groups S.84 (2) (e)	<i>Other marginalised groups</i> deleted in the final draft constitution	Please refer to clause 5.5 in page 6 of this report for full details and explanations. The omission of the phrase <i>other marginalised groups</i> in the final draft is good.
11	Sections 1 (3) 88 (5) (b) and 153	Religious harmony	The introduction of this Subsection is geared towards nurturing and preserving the already existing religious harmony in the Gambia. This is fine.

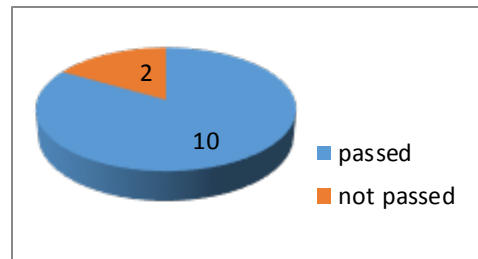


12	Section 5 (4) (d)	Religious harmony	Enjoins Government to promote the ethnic, religious, and cultural / language diversities of all Gambians as a source of national pride and unity. This is fine.
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6.0 Conclusion & Position of Concerned Citizens on the CRC Final Draft Constitution

All of the above are the observations made in relation to the CRC final draft Constitution 2020. These observations are neither exhaustive nor conclusive. They are meant to only identify the areas of interests to Concerned Citizens, especially in relation to issues submitted to the CRC in its position papers.

Looking at the results of the Summary Table above in 5.8, wherein 10 out of the 12 issues raised have passed and are acceptable to Concerned Citizens and partners, could be further translated to show that 83% of all the issues raised by CC has been duly featured in the CRC final draft constitution.



Based on the foregoing, it is the position of Concerned Citizens and partners that the CRC final draft Constitution **should be voted YES** in the Referendum.



7.0 Way Forward prior to a Referendum

Concerned Citizens shall continue to engage the masses (especially Muslims) through targeted and filtered information, education and communication messages. Concerned Citizens shall continue to work with its partners to ensure that the interests of the Muslim community and its people are fulfilled, and within the confines of the Law.

Concerned Citizens shall equally continue to engage members and authorities within the executive, the legislative and other relevant government agencies, so to raise their awareness levels vis-à-vis the needs and aspirations of the Muslim community and its people, thereby facilitating conducive processes of informed decision making and taking.

Concerned Citizens shall continue to preach messages of love and peaceful coexistence, tolerance, religious freedom and respect for others and their faiths. However, Concerned Citizens shall not relent to strongly advocate for the non-inclusion of the LGBTQI community in any aspect of the Laws of The Gambia, since this as adequately justified above, is alien and inconsistent to our faiths, culture, values, practices and norms. Similarly, Concerned Citizens shall continue to emphasize the need to clearly define in the Constitution (or through any other subsequent and appropriate amendment by the National Assembly) that the social contract of marriage is between a biological man and a biological woman.

Finally, it is important to note that Muslims form more than 90% of the Gambian population and this should be respected. Whereas we Muslims do not intend to take undue advantage due to our larger population size, we shall however neither agree, nor accept to be treated as a minority in our own country for whatever reason. For the latter to happen, would indeed constitute gross injustice and a complete failure to abide by the principles of democracy. Concerned Citizens in consultation and collaboration with its partners, shall henceforward serve as the conscience and voice of the Muslim Community and its people.

Prepared by
Concerned Citizens
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