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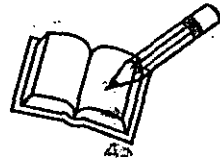


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A REVIEW OF THE DRAFT CONSTITUTION OF THE SECOND REPUBLIC



Book Four



On Local Government And Traditional
Rulers And Directive Principles
Of State Policy

Chapters 15 and 20

INTRODUCTION

The draft Constitution states in the Preamble that the Constitution "affirms that all power emanates from the sovereign will of the people"

Furthermore, Chapter One asserts that:

"The sovereignty of The Gambia resides in the people of The Gambia from whom all organs of government derive their authority and in whose name and for whose welfare and prosperity the powers of government are to be exercised...."

Suffice it to say that the national government is responsible for taking money from the people to provide public services and promote the general development of the country. Everybody is also aware that there is a local governments which collects revenue from the people. Those who own compounds do pay rates. Those who sell in the markets do pay duties. Those who drive taxis and run workshops do pay duties and licences and so on and so forth.

The Local Government institutions are supposed to utilize the funds of the people in each local government area to provide services for the various communities. What kind of local government structures have been created by the draft Constitution? Are they different from what was available in the past? Can the new structures be said to be an improvement?

The first point to note is that the 1970 Constitution had no provision for local government. The Provinces Act, which was a colonial legacy, provided for the appointment of chiefs and alkalolu. There was no provision for election of chiefs and alkalolu. The President could remove chiefs from office and the District Authority could remove Alkalolu from office. The elections which used to take place had no legal foundation. The Local Government Act and the laws providing for the Banjul City Council and the Kanifing Municipal Council enabled the country to have area coun-

cils and municipal councils. Let us now proceed to find out what the draft Constitution provides.

CHAPTER 15

ON LOCAL GOVERNMENT AND TRADITIONAL RULERS

System Of Local Government

Section 192 reads:

"(1) Local government administration in The Gambia shall be based on a system of democratically elected councils with a high degree of local autonomy.

"(2) An Act of the National Assembly shall provide for the establishment of city councils, municipalities and area councils (which are together referred to as local government authorities), and the general district in which each shall have jurisdiction. The geographical boundaries of each local government authority shall be determined by the Independent Electoral Commission.

Under the Provinces Act and the various Local Government Acts, it was the duty of the President to determine local government boundaries. If the draft Constitution were to be approved, the Independent Electoral Commission will assume such a responsibility.

However, the draft Constitution leaves it to the National Assembly and President of the Second Republic to establish the local government structures. In this regard, it is necessary for Gambians to ask political parties to explain what type of local government structures they intend to

establish if they were made members of the National Assembly. This should be explained in their programmes before we vote for anyone.

FUNCTIONS OF THE LOCAL GOVERNMENT INSTITUTIONS

Section 192, subsection (3) reads:

"An Act of the National Assembly shall make provision for the functions, powers and duties of local government authorities including provision for-

"(a) the infrastructure and development of the area within the authority's jurisdiction;

"(b) the encouragement of commercial enterprises;

"(c) the participation of the inhabitants in the development and administration of the area;

"(d) the essential and other services to be provided by the authority;

"(e) the raising of local revenue;

"(f) the management, control and oversight of the authority's finances and the audit of its accounts by the Auditor General;

"(g) the making of by-laws;

"(h) the preservation of the environment;

"(i) the promotion of Gambian traditions and culture;

"(j) the control of financial and other resources allocated by the Central Government."

OBJECTIVE OF THE LOCAL GOVERNMENT SYSTEM

Section 192, subsection (4) reads:

"It shall be an object of the local government system that, as far as possible, issues of local policy and administration shall be decided at a local level and that local government authorities shall cooperate with the central Government in adopting a policy of decentralisation."

WHAT LAWS ESTABLISHING LOCAL GOVERNMENT STRUCTURES MUST CONTAIN

Section 193 of the draft Constitution reads:

"An Act of the National Assembly by or under which a local government authority is established shall include provision for-

"(a) the election of members of the authority from among residents of the area within the authority's jurisdiction at intervals of four years, and the qualifications for election;

"(b) the additional representation on the authority of District Chiefs and representatives of local commercial, occupational or social interests or groups, whether by election or otherwise;

"(c) the direct election of the mayor or chairman of the authority;

"(d) the tenure of office of members of the authority;

"(e) the recall by their wards of members of the authority;

"(f) the appointment of committees from amongst the members of the authority, including finance, establishment and appointment, and development committees;

"(g) the appointment of a chief executive for the authority to be responsible to the authority for the administration of its services and the implementation of its policy and programmes; and for the terms and conditions of his or her appointment."

TRADITIONAL RULERS

ESTABLISHMENT OF CHIEFTAINCY AND DISTRICT AUTHORITY

Section 194 subsection (1) reads:

"The institution of chieftaincy is hereby guaranteed and confirmed."

Section 194, subsection (2) reads:

"In each chieftaincy district there shall be a District Authority constituted in accordance with the customs and traditions of the people of that district."

ELECTION OF CHIEFS

Under the Provinces Act, unless removed by the President, chiefs were appointed for life. Under the draft Constitution, chiefs are to be

elected to stay in office up to the age of seventy years. Section 194, subsection (3) reads:

"The office of District Chief shall be filled by election and, subject to the provisions of the Constitution, the holder shall retire at the age of seventy years."

WHO IS QUALIFIED TO BE ELECTED AS CHIEF?

Section 194, subsection (4) reads:

"A person shall be qualified for election as a District Chief if-

"(a) he or she was born in the chieftaincy district and has ordinarily resided there for at least three years immediately preceding the election;

"(b) he or she is a registered voter;

"(c) he or she is registered as a voter for the National Assembly elections in the constituency in which the chieftaincy district or any part of it is situated;

"(d) he or she satisfies the Independent Electoral Commission that he or she is knowledgeable in the customs, traditions, culture and customary laws of the chieftaincy district; and

"(e) he or she is of good character and has not been convicted in any country of an offence involving dishonesty or moral turpitude."

WHAT IS THE DUTY OF A CHIEF?

Section 195, subsection (1) reads:

"It shall be the duty of the District Chief to-

"(a) promote good order and peace and stability in his or her district;

"(b) preside over district tribunals and to hear and determine matters over which they have jurisdiction according to law;

"(c) assist the local government authority in the collection of rates and other local taxes within his or her district;

"(d) promote the general economic development of his or her district;

"(e) safeguard the traditions, customs and culture of his or her district and to promote the well being of its people;

"(f) keep a register of every village in his or her district;

"(g) perform such other duties as may be prescribed by Act of Parliament or imposed on him or her by the local government authority."

THE ROLE OF THE DISTRICT AUTHORITY

Section 195, subsection (2) reads:

"A District Chief shall be assisted in the performance of his or her functions and duties by the District Authority and by such staff as may be assigned to him or her by the local government authority."

THE SALARY OF CHIEFS

Section 195, subsection (3) reads:

"A District Chief shall be entitled to such salary and retirement benefits as may be prescribed by the Local Government Authority, which shall be responsible for effecting such payments."

HOW IS A CHIEF TO BE REMOVED FROM OFFICE?

Section 194, subsection (5) reads:

"A District Chief may be removed from office by the President on the advice of the Secretary of State responsible for Local Government, or on the recommendation of not less than two-thirds of the members of the Area Council on the grounds-

"(a) of misconduct or incompetence;

"(b) of inability to perform the functions of his or her office whether arising from infirmity of mind or body or any other cause;

"(c) that he or she has become a member of a registered political party, has been appointed a Vice President-President or Secretary of State or to an office in the public service or has contested an election for President or the National Assembly;

"(d) that he or she has been convicted of an offence punishable by imprisonment."

OBSERVATION

Of course, under the Provinces Act the President did not have to explain why a given chief has been removed from office. The draft Constitution does provide grounds for removal. However, since chiefs are to be representatives, their removal should be by the Judicial Service Commission after considering the report of a tribunal. It is also important to note that while under the 1970 Constitution, thirty six chiefs could elect five members of the House of Representatives, under the draft Constitution, chiefs do not elect their own representatives. The debate is now on whether the election of chiefs should be every five years or just a one time affair where the person retains office until retirement age unless removed for misconduct or incompetence by the President.

Furthermore, how is the Commission to determine that a person is knowledgeable in the customs of the area. Lastly, how many educated Gambians reside for three years in a given district prior to the nomination of candidates for chieftaincy elections.

INSTITUTION OF ALKALO

Section 196, subsection (1) reads:

"The institution of alkalo is hereby guaranteed and confirmed."

APPOINTMENT OR ELECTION OF ALKALO FOR LIFE

Section 196, subsection (3) reads:

"The Alakalo shall be appointed in accordance with the customs and traditions of the village, save that where there is no consensus as to an appointment, the office shall be filled by election and, subject to the provisions of this Constitution, the holder shall office for life."

QUALIFICATION FOR APPOINTMENT OR ELECTION

Section 196, subsection (2) reads:

"A person shall be qualified for appointment or election as an Alkalo if-

"(a) he or she was born in the village and has ordinarily resided there for at least three years immediately preceding the appointment or election;

"(b) he or she is a yard owner;

"(c) he or she is registered as a voter for the National Assembly elections in the constituency in which the village or any part of it is situated;

"(d) he or she is knowledgeable in the customs, traditions, culture and customary laws of the village; and

"(e) he or she is of good character and has not been convicted in any country of an offence involving dishonesty or moral turpitude."

Establishing ownership of a yard as a criteria for qualification to be appointed or elected Alkalo is disadvantageous to young people and women. The same goes for the three residential consideration.

DUTIES OF ALKALO

Section 197, subsection (1) reads:

"It shall be the duty of the Alkalo to-

"(a) promote good order and peace and stability in his or her village;

"(b) assist the District Chief in the collection of rates and other local taxes within his or her village;

"(c) promote the general economic development of his or her village;

"(d) safeguard the traditions, customs and culture of his or her village and to promote the well being of its people; and

"(e) perform such other duties as may be prescribed by an Act of the National Assembly or imposed on him or her by the District Chief."

INCOME OF ALKALO

Section 197, subsection (2) reads:

"An Alkalo shall be entitled to such benefits as may be prescribed by the Department for Local Government, which benefit shall be paid for by the Area Council."

REMOVAL OF ALKALO

Section 196, subsection (4) reads:

"An Alkalo may be removed from office by the Commissioner in consultation with the Chief of the district in which his or her village is situated on the grounds-

"(a) of misconduct or incompetence;

"(b) of inability to perform the functions of his or her office whether arising from infirmity of mind or body or any other cause;

"(c) that he or she has become a member of a registered political party, has been appointed a Secretary of State or to an office in the public service, or has contested an election for President, Vice-President or the National Assembly;

"(d) that he or she has been convicted of an offence punishable by imprisonment."

OBSERVATION

Should Chiefs be able to remove Alkalolu as under the Provinces Act or should Alkalolu be free from administrative grip? In order to free Alkalolu from the grip of political representatives, their removal should be by the Judicial Service Commission relying on the recommendation of a tribunal. The debate is also on as to whether the position of Alkalo should be held for life or through periodic elections.

CHAPTER 20

DIRECTIVE PRINCIPLES OF STATE POLICY

Chapter 20 seeks to establish principles that are to govern the policies and practices of those who manage state affairs. Such principles did not exist under the 1970 Constitution. Let us now examine the principles that are being recommended as directives to govern state policy.

THE IMPLEMENTATION OF THE PRINCIPLES

Section 214 of the draft Constitution reads:

"The principles of state policy in this Chapter shall form part of the public policy of The Gambia for the establishment of a just, free and democratic state. These principles shall not confer legal rights or be enforceable in any court but-

"(a) subject to the limits of the economic capacity and development of The Gambia, the Executive, the Legislature and all other organs of State in taking policy decisions, making laws and in the administration of The Gambia, shall according to their respective functions be guided by and observe them with a view to achieving by legislation or otherwise the full realisation of these principles; and

"(b) the courts are entitled to have regard to these principles in interpreting any laws based on them."

THE PRINCIPLES GOVERNING NATIONAL UNITY

Section 215, subsection (1) reads:

"All organs of the State shall strive towards the realisation of national unity, peace and stability."

Subsection (2) reads:

"Every effort shall be made to integrate the people of The Gambia and foster loyalty to The Gambia without discrimination."

Subsection (3) reads:

"All the people of The Gambia shall be entitled to their ethnic, religious and cultural values which do not disturb the unity or cohesion of the State."

CONSERVING THE SOVEREIGN WILL OF THE GAMBIA

Section 216 states:

"(1) The State and all citizens of The Gambia shall endeavour to protect and enhance national sovereignty including social, political, and economic independence and territorial integrity.

"(2) The State shall pursue policies which avoid undue dependence on other nations and institutions."

ON PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Section 217 states:

"(1) The Gambia shall be a democratic state dedicated to freedom, peace, progress, prosperity and justice.

"(2) The people shall express their will and consent as to who shall govern them and how they shall be governed, through regular, free and fair elections of their representatives.

"(3) The State shall be guided by the principles of decentralisation and devolution of governmental functions and powers to the people at appropriate levels of control to facilitate democratic governance."

"(4) In the composition of the Government, women shall be fairly represented.

"(5) The Government, with due regard to the principles of an open and democratic society, shall foster accountability and transparency at all levels of government."

ON ECONOMIC MANAGEMENT OF THE STATE

Section 218 of the draft Constitution states:

"(1) The State shall endeavour to create an economic environment that maximises the rate of economic growth and employment and se-

cures the maximum welfare and prosperity for all persons in The Gambia.

"(2) The State shall endeavour to keep inflation under control.

"(3) Recognising that the most secure democracy is one that assures the basic necessities of life for its people, the State shall endeavour to establish an efficient, dynamic and self-reliant economy whose underlying principles shall include ensuring:

"(a) ample and equal economic opportunity for all citizens and a pronounced role for the private sector, and the encouragement of private initiative;

"(b) that persons bear their fair share of social and national responsibilities including their responsibility to contribute to the development of the country; and

"(c) a balanced development of all parts of The Gambia, improvement in the quality of life in rural communities and redressing economic imbalances between rural and urban communities.

"(4) The State shall pursue a policy of

"(a) giving adequate priority to those sectors of the economy which promote national prosperity;

"(b) promoting the development of agriculture and related industry;

"(c) encouraging and protecting beneficial foreign investment;

"(d) protecting the environment of the nation for posterity; and

"(e) co-operate with other nations and bodies to protect the global environment.

(5) The State shall endeavour to ensure equal opportunity and full participation for women in the economic development of the country."

ON SOCIAL DEVELOPMENT

Section 219 of the draft Constitution:

"(1) The State shall endeavour to secure and promote a society founded on the principles of freedom, equality, justice, tolerance, probity and accountability.

"(2) The State shall pursue policies to protect the rights and freedoms of the disabled, the aged, children and other vulnerable members of society and to ensure that such persons are provided just and equitable social opportunities.

"(3) The State, in pursuing policies under subsection (2), shall be bound by the fundamental rights and freedoms in the Constitution and shall be guided by international human rights instruments to which The Gambia is a signatory and which recognise and apply particular categories of basic human rights to development processes.

"(4) The State shall endeavour to facilitate equal access to clean and safe water, adequate health and medical services, habitable shelter, sufficient food and security to all persons.

"(5) The State shall encourage and promote the establishment and maintenance of contributory schemes that shall provide economic security for all citizens.

"(6) The State shall endeavour to ensure safe systems of working for persons who are employed and to provide that such persons are entitled to adequate rest, leave and leisure.

"(7) The State shall endeavour to ensure that adequate sports facilities are established throughout The Gambia and that sports are promoted as a means of fostering national integration, health and self-discipline and international friendship and understanding."

ON EDUCATIONAL DEVELOPMENT

Section 220 reads:

"(1) The State shall endeavour to provide adequate educational opportunities at all levels of study for all citizens.

"(2) The State shall pursue policies to ensure basic education for all

citizens and shall endeavour to provide adequate resources so that such tuition for basic education shall be free for all citizens.

"(3) The State shall endeavour to provide skills training centres.

"(4) The State shall take measures to create an adult literacy programme, rehabilitative vocational training for the disabled, and continuing education programmes."

ON THE PRESERVATION OF CULTURAL VALUES

Section 221 reads:

"The State and all the people of The Gambia shall strive to protect, preserve and foster the languages, historic sites, cultural, natural and artistic heritage of The Gambia."

ON FOREIGN RELATIONS

Section 222 reads:

"The State shall endeavour to ensure that in international relations it:

"(a) promotes and protects the interest of The Gambia;

"(b) seeks the establishment of a just and equitable international economic and social order;

"(c) fosters respect for international law, treaty obligations and the settlement of international disputes by peaceful means; and

"(d) is guided by the principles and goals of international and regional organizations of which The Gambia is a signatory."

DUTIES OF CITIZENS

Section 223 reads:

"(1) The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations, and accordingly, every citizen shall:

"(a) promote the prestige and good reputation of The Gambia and respect the symbols of The Gambia;

"(b) uphold and defend the Constitution;

"(c) foster national unity and live harmoniously with others;

"(d) respect the rights, freedoms and legitimate interests of others and refrain from acting in a manner detrimental to the welfare of other persons;

"(e) serve The Gambia by working conscientiously in his or her chosen occupation;

"(f) protect and preserve public property and expose and combat the misuse and waste of public funds and property;

"(g) contribute to the well being of the community in which the citizen lives;

"(h) be loyal to The Gambia and contribute to its defence when necessary;

"(i) cooperate with the appropriate agencies in the maintenance of law and order; and

"(j) protect and conserve the environment of The Gambia.

"(2) It shall be the duty of every citizen to abide by and conform with the provisions set out in subsection (1), but such duties shall not, of themselves, render any person liable to proceedings of any kind in any court."

Do you agree with these principles?

CONCLUDING REMARKS

LOCAL GOVERNMENT AND THE ELECTIVE PRINCIPLE

The elective principle goes hand in hand with the duty to check representation. This is why election must be periodic. The draft Constitution goes a bit further than the situation in the First Republic by establishing a legal basis for election of chiefs and Alkalo, but it does not entertain the principle of periodic election. The debate should, therefore, continue on this issue.

See Book Five Which Deals With Citizenship And Code of Conduct For Public Officers

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