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A REVIEW OF THE DRAFT CONSTITUTION OF THE SECOND REPUBLIC



Book Five



Citizenship And Code Of Conduct For Public Officers

Chapters 3 and 21

INTRODUCTION

Chapter One establishes the Republic of The Gambia. It states categorically that the sovereignty of the Republic of The Gambia resides in the people. This means that all organs of government must derive their authority from the people in whose name and for whose welfare and prosperity the powers of such organs of the state are to be exercised.

Under a monarchy, sovereignty resides in a king or queen. The people are mere subjects. In a sovereign Republic, the people are to rule directly or through chosen representatives.

The obvious question now arises: Who are the sovereign people of The Gambia in whom sovereignty resides?

This takes us to the question of citizenship which is covered in Chapter three of the draft Constitution. The draft Constitution, just like the 1970 Constitution, does not create a provision for citizenship by birth. It combines both birth and descent as a criteria for citizenship of one form.

For the information of the reader, there can be four classification of citizenship, that is to say, citizenship by birth; citizenship by descent; citizenship by naturalization and citizenship by registration..

In some countries, once a person has been born there, one becomes a citizen automatically regardless of the origin of one's parents. This is citizenship by birth.

In some countries, once one's parents are citizens of a country one is regarded as a citizen regardless of where one has been born. This is citizenship by descent.

Countries also do have laws where a foreigner can acquire citizenship after a given length of stay and upon meeting certain conditions established by laws. This is citizenship by naturalization.

Lastly, provisions are also established in some countries for a person who is married to a national to acquire citizenship by registration. Citizenship by registration can also be accorded to other categories of people in a country.

Let us now proceed to examine the types of citizenship which have been provided by the draft Constitution.

CHAPTER 3

CITIZENSHIP

Retention Of Citizenship By Those Who Were Citizens Before The Draft Constitution.

Section 8 of the draft Constitution reads:

"Every person who, immediately before the coming into force this Constitution, is a citizen of The Gambia, shall, subject to this Constitution-

"(a) continue to be a citizen of The Gambia;

"(b) retain the same status as a citizen by birth, by descent, by registration or by naturalisation, as the case may be, as he or she enjoyed immediately before the coming into force of this Constitution."

OBSERVATION

Who are citizens of The Gambia being referred to in section 8? They are those who were accorded citizenship under the 1970 Constitution.

A review of Chapter 2 of the 1970 Constitution, which deals with citizenship, reveals three categories of citizenship. Section 3 establishes two types of citizenship for those born in The Gambia before 1965.

Section 3, subsection (1) does not automatically give the person who is born in The Gambia citizenship. One parent or grandparent must be born in The Gambia or one parent must have naturalised in The Gambia in order for a person born in The Gambia before 18 February, 1965 could be considered a citizen. This is the first type of citizenship. It links birth with descent.

Section 3, subsection (2) establishes that those who were not born in The Gambia before 18 February, 1965 but had naturalised in The Gambia prior to that date shall also be citizens of The Gambia by naturalisation.

Now, it follows that a person can be born outside The Gambia of Gambian parents.

ON PEOPLE BORN OUTSIDE

Section 3, subsection (3) states that any person born outside The Gambia before 18 February, 1965, of a father who had been a citizen of colonial Gambia by birth combined with descent or naturalisation before 18 February, 1965, shall become citizen of The Gambia 18 February, 1965.

This provision did not mention the children of Gambian mothers born outside The Gambia.

CITIZENSHIP BY REGISTRATION

Section 4 of the 1970 Constitution created two categories of citizenship by registration for those born in The Gambia before 18 February, 1965 of parents or grandparents who are no Gambian citizens either by birth combined with descent or by naturalisation as well as women married to Gambian men before 18 February, 1965. This is citizenship by registration. Those who were born in The Gambia before 18 February, 1965 of parents who were not citizens of the Colony of The Gambia were to register by 1967 to be Gambian citizens. Many persons who should have benefitted from this never knew of such a provision. The draft Constitution should have given such people the opportunity to be registered by a further date if it is approved at a referendum but it has not.

Furthermore, women married to Gambian citizens as of 18 February, 1965, shall also have the right to be registered as Gambian citizens.

CITIZENSHIP BY THOSE BORN AFTER 17 FEBRUARY, 1965

Section 5 of the 1970 Constitution establishes citizenship by birth combined with descent, that is, one parent must have been born in The Gambia or must have naturalised to be a citizen of The Gambia before one can be a citizen. It also bars a child of a Gambian woman from being a citizen who has been born of a foreign father in the territory of The Gambia occupied by enemy forces.

Subsection (6) enables persons born outside of The Gambia after 17

February, 1965 to be citizens if their fathers are citizens of The Gambia by birth combined with descent or by naturalisation. It however, excludes the children of Gambian women who are born outside Gambia of foreign fathers.

CITIZENSHIP BY REGISTRATION

Section 7 enables foreign women married to Gambian citizens to become citizens by registration.

Furthermore, section 6 deprives people of citizenship who are born outside The Gambia of fathers who were also born outside The Gambia but had become citizens by virtue of the fact that their own fathers were citizens by birth combined with descent or by naturalisation.

However, section 9 of the 1970 Constitution permits laws to be made to accord citizenship to those who had not been made eligible by the 1970 Constitution. Hence, section 4 of the Gambian Nationality and Citizenship Act enables any Gambian to be registered by the Minister responsible for the administration of the Act. Apparently, children of Gambian mothers who are born outside of The Gambia may be registered under this provision even though the discrimination still remains manifest for the child of the Gambian man becoming automatically a citizen.

Section 3 (2) of the Gambia Nationality and Citizenship Act enables a person who is born in The Gambia of a father who was also born outside of The Gambia and became a citizen only by virtue of the fact that his or her father was a citizen by birth combined with descent or by naturalisation to be registered as a citizen.

Section 3 (1) of the Gambia nationality and Citizenship Act enables Commonwealth citizens who are of full age to apply to be registered as Gambian citizens.

Section 8 of the Gambia Nationality and Citizenship Act enables the President of the Republic to confer honorary citizenship and such person could have dual citizenship.

Lastly, section 4 enables the Minister in such special circumstances as he or she thinks fit to cause any minor child to be registered as a citizen. This is designed for children who are found in The Gambia without parents, etc.

OBSERVATION

It is amazing that even though the 1970 Constitution made provision for person born in The Gambia of foreign parents before 18 February, 1965, to be registered as citizens by 1967, Parliament did not make any law for such persons to register as citizens. Even though there could have been consistency in making persons born in The Gambia after 1965 of foreign parents to be registered as citizens, Parliament did not make any such law.

Even though provisions of Chapter II were not entrenched clauses and could be changed by parliament, no effort was made to end the discrimination of children born outside who had Gambian mothers. While children of Gambian fathers born outside could be citizens, those of Gambian mothers could not be citizens. Notwithstanding, parliament did proceed to give citizenship to would-be investors.

The question now arises: Did the draft Constitution address all the shortcomings of the 1970 Constitution and the laws made under them? Let us proceed with the rest of the provision on citizenship.

CITIZENSHIP BY BIRTH AND BY DESCENT

Section 9, subsection (1) of the draft Constitution reads:

"Every person born in The Gambia after the coming into force of this Constitution shall become a citizen of The Gambia at the date of his or her birth if, at the time of his or her birth, one or both of his or her parents is-

"(a) a citizen of The Gambia; or

"(b) ordinarily resident in The Gambia:

"Provided that a person shall not become a citizen under this subsection, if, at the time of his or her birth-

"(i) neither of his or her parents is a citizen of The Gambia and one or both of them possess diplomatic immunity in The Gambia;

"(ii) either parent is a citizen of a country at war with The Gambia and the birth occurs in a place then under occupation by that country."

COMMENT

Section 9, subsection (1) (b) seems to guarantee citizenship by birth but that guarantee is nullified by subsection (b) (i). Hence, if the draft Constitution is approved, citizenship by birth and descent will be evoked just like the 1970 Constitution. One must be born here and one of one's parents must also be a citizen.

CHILDREN WITHOUT PARENTS

Section 9, subsection (2) reads:

"A child of not more than seven years of age found in The Gambia whose parents are not known shall be presumed to be a citizen of The Gambia by birth."

COMMENT

This is in line with international law. Article 24 of the International Covenant on Civil and Political Rights asserts that any child has a right to a nationality. The position of the Bar Association that this will lead to baby dumping is not reasonable. There is nothing unique about being a Gambian citizen which will compel a woman just to dump her baby in The Gambia.

CITIZENSHIP BY DESCENT ALONE

Section 10 of the draft Constitution reads:

"A person born outside The Gambia after the coming into force of this Constitution shall be a citizen of The Gambia by descent if at the timer of his or her birth either or his or her parents is a citizen of The Gambia otherwise than by virtue of this section or any comparable provision of any ear-

lier Constitution."

COMMENT

In the past, the children of Gambian women born abroad of foreign fathers were discriminated. They were not citizens. The draft Constitution has addressed this problem.

CITIZENSHIP THROUGH MARRIAGE BY REGISTRATION

Section 11 of the draft Constitution reads:

"(1) Any person who-

"(a) is married to a citizen of The Gambia and, since the marriage, has been ordinarily resident in The Gambia for a period of not less than seven years; or

"(b) has been married to another who was, during the subsistence of the marriage, a citizen of The Gambia and, since the end of the marriage (whether by annulment, divorce or death), has been ordinarily resident in The Gambia for a period of not less than seven years,

"shall be entitled, upon making application in such manner as may be prescribed by or under an Act of the National Assembly, to be registered as a citizen of The Gambia."

COMMENT

In the past, only women could become citizens of The Gambia through marriage to Gambian men. Now, both men and women can be registered as citizens by virtue of marriage. However, women, who under the 1970 Constitution could register any day after marriage with a Gambian citizen, would now have to wait for seven years.

CITIZENSHIP BY NATURALIZATION

Section 12 (1) of the draft Constitution reads:

"Any person who has been ordinarily resident in The Gambia for a

continuous period of not less than fifteen years and who satisfies the conditions set out in subsection (2) may apply, in such manner as may be prescribed by or under an Act of the National Assembly, to be naturalised as a citizen of The Gambia."

COMMENT

In the past, one could naturalise after staying in The Gambia for seven years. Now, it is fifteen years.

NO POSSIBILITY OF DEPRIVING GAMBIAIS OF CITIZENSHIP BY BIRTH OR DESCENT OR BY DESCENT ALONE

Section 13, subsection (4) of the draft Constitution reads:

"Nothing in this or any other provision of this Constitution or any other law shall be construed as depriving, or authorising any person or authority to deprive, any citizen of The Gambia by birth or descent of his or her citizenship of The Gambia whether on account of such citizen's holding the citizenship or nationality of some other country or for any other cause."

DEPRIVATION OF CITIZENSHIP

Section 13 (1) of the draft Constitution reads:

"The Secretary of State may apply to the High Court for an order depriving a person who has been registered or naturalised as a citizen of The Gambia of his or her citizenship on the grounds that he or she-

"(a) has acquired by registration, naturalisation or any voluntary and formal act (other than marriage) the citizenship of any other country;

"(b) has acquired the citizenship of Gambia of fraud, false representation or the concealment of any material fact;

"(c) has, at any time since acquiring citizenship of The Gambia, voluntarily claimed and exercised in a country other than The Gambia any rights available to him or her under the laws of that country, being rights accorded

exclusively to its citizens;

"(d) has within seven years after being registered or naturalised been convicted in any country of an offence involving fraud, dishonesty or moral turpitude.

"and, in the cases referred to in paragraphs (c) and (d), it is not conducive to the public good that he or she should continue to be a citizen of The Gambia."

RESTRICTION OF CITIZENSHIP

Section 14 reads:

"A citizen of The Gambia who loses his or her citizenship of The Gambia as a result of the acquisition or possession of the citizenship of some other country shall, on the renunciation of the citizenship of that other country, be entitled to be registered, or if he or she was formerly a citizen by birth or descent, to be officially recognised, as a citizen of The Gambia."

POWERS OF THE LEGISLATURE TO MAKE LAWS ON CITIZENSHIP

Section 15 reads:

"An Act of the National Assembly may make provision for-

"(a) the acquisition of the citizenship of The Gambia by persons who are not eligible to become citizens under the provisions of this Chapter;

"(b) the renunciation by any person of his or her citizenship of The Gambia; and

"(c) generally to give effect to the provisions of this Chapter."

A PERSON BORN ABOARD A SHIP OR AIRCRAFT

Section 16, subsection (2) reads:

"For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the

ship or aircraft is registered or, as the case may be, in that country."

CITIZENSHIP STATUS DOES NOT CHANGE WITH DEATH

Section 16, subsection (3) reads:

"Any reference in this Chapter to the citizenship of a parent of a person at the time of that person's birth, shall, in relation to a person born after the death of that parent, be construed as a reference to that parent's citizenship at the time of death."

COMMENT

The draft Constitution does not address the situation of those born in The Gambia before 1965 of foreign parents who should have been registered as citizens by 1967, nor has it addressed the situation of those who have been born in The Gambia after 1965 of foreign parents. The fact that it seeks to make citizens all those who were qualified to be citizens under the 1970 Constitution should have led it to address the case of such people who were deprived of citizenship by the neglect of parliament and their political representatives.

CODE OF CONDUCT FOR PUBLIC OFFICERS

WHO THE CODE APPLIES TO

Section 224 (1) reads:

"The provisions of the Code of Conduct set out in section 222 shall apply to persons who hold public office or hold office in a public service, members and the staff of local government authorities and Public Enterprises, and members of a disciplined force (each of whom is in this Chapter referred to as a "public officer")."

CODE TO BE OF PERSUASIVE AUTHORITY

Section 224 (2) reads:

"The failure on the part of a public officer to observe a provision of this Code shall not, or itself, render that officer liable to any civil or criminal proceedings in any court,; but any such failure may-

"(a) in any proceedings in the National Assembly under this Constitution, or any disciplinary proceeding against a person, be taken into account in determining any question at issue in those proceedings;

"(b) in any proceedings before a court, be admissible in evidence and, if the provisions of the Code appear to the court to be relevant to any question arising in the proceedings, it may be taken into account in determining that question."

SUPPLEMENTARY CODES

Section 224, subsection (3) reads:

"An Act of the National Assembly may make provision-

"(a) for the modification of the Code of Conduct;

"(b) the adoption of supplementary codes of conduct by the Judicial Service Commission, the Public Service Commission, the competent authority of any public service or the disciplinary authorities of any disciplined force."

CODE OF CONDUCT

Section 225 reads:

"The Code of Conduct is as follows:

The Code Of Conduct

"In the performance of his or her duties, a public officer shall observe the following rules:

Duties Of Public Officers

"1. A public officer shall respect and comply with the law and shall

conduct himself or herself at all times in a manner which promotes confidence in the integrity of public office.

"2. A public officer shall acquire such professional competence to enable him or her to perform the functions of his or her office with efficiency. He or she shall dispose promptly of the business of his or her office, shall devote adequate time to his or her duties, be punctual in attending work and expeditious in bringing to a conclusion any matter under his or her attention. A public officer shall require his or her staff to observe the same standards."

"3. A public officer shall not, in the course of his or her official functions and without lawful excuse, do or cause to be done any action which is prejudicial to the rights of any other person.

"4. In the exercise of his or her duties, a public officer shall avoid nepotism and favouritism.

"5. A public officer shall not encourage others to convey the impression that they are in a special position to influence him or her.

"6. A public officer shall take appropriate action with regard to contravention of this Code by members of his or her staff or others subject to his or her control.

"7. A public officer who does any act prohibited by this Code through an agent shall himself or herself be deemed to have done such act."

CODE OF JUDICIAL OFFICERS

Section 225, subsection (8) reads:

"A public officer who exercises judicial functions shall:

"(a) maintain order and decorum in judicial proceedings before him or her;

"(b) be patient, dignified and courteous to all litigants, witnesses, legal practitioners and others in the exercise of such functions, and shall require similar conduct from his or her staff and others subject to his or her control;

"(c) abstain from comment about the outcome of any pending or anticipated legal proceedings in any court in The Gambia and require a similar abstention from his or her staff and others subject to his or her control;"

ON HONESTY

Subsections 9,10,11,12 read:

"9. A public officer shall not hold more than one full-time public office in respect of which he or she is paid a salary.

"10. A public officer shall not put himself or herself in a position where his or her personal interest conflicts with his or her duties or responsibilities.

"11. A public officer shall not ask for or accept any property or benefits of any kind for himself or herself or any other person on account of anything done or omitted to be done by him or her in the course of his or her duties. The receipt of any gift or benefit from or on behalf of a commercial firm, business enterprise or a person having or negotiating a contract with the Government shall be deemed to be in contravention of this paragraph unless the contrary is established.

"12. A public officer shall only accept gifts or benefits from relatives and friends to such extent and on such occasions as are customary. However the receipt of any gift or donation by a public officer on any public or official occasion shall, if surrendered to the office, department or agency represented by the public officer, not be treated as a contravention of this Code."

IMPARTIALITY OF PUBLIC SERVANTS

Subsection 13 reads:

"A person holding an office in a public service or any disciplined force shall not-

"(a) allow his or her political inclinations to interfere with the discharge of his or her official duties;

"(b) be a member of, or take part in a any association of persons which might prevent him or her from impartially discharging his or her duties;

"(c) take part in any activities which cast doubt on his or her capacity to deal impartially with matters or issues which are the concern of his or her public office or which interfere with the performance of his or her public du-

ties."

PUBLIC FUNCTIONS OF PRESIDENT

Subsection 14 and 15 read:

"14. The President shall in person address the nation as and when necessary.

"15. The President shall undertake a nationwide tour at least twice a year in order to familiarise himself or herself with current conditions and the effects of government policies."

DECLARATION OF ASSETS

Section 226 (1) reads:

"A public officer to whom this section applies shall submit to the Ombudsman a written declaration of all property and assets owned by him or her, and of liabilities owed by him or her, whether directly or indirectly-

"(a) within six months of the coming into force of this Constitution;

"(b) at the end of every two years;

"(c) on ceasing to hold public office."

ON DISCIPLINARY MEASURES

Section 226, subsections (4), (5) and (6) read:

"(4) Any property or assets acquired by a public officer after an initial declaration of assets required by subsection (1) which is not attributed to his income from his public office or other permitted employment, personal gifts as permitted by the Code of Conduct, inheritance or a loan or investment (including any savings scheme) on ordinary commercial terms shall be prima facie evidence of having been acquired, and in the absence of a credible explanation by the public officer concerned may be deemed to have been acquired, in contravention of the Code of Conduct and shall render the public officer liable-

"(a) in the case of a public officer in a public service or who is subject

to other disciplinary procedures, to disciplinary action by the appropriate person or authority; or

"(b) in any other case, to removal from office or, as the case may be proceedings for removal, as provided by this Constitution or any other law."

"(5) The Ombudsman shall submit his or her declaration of assets to the Finance and Public Accounts Committee of the National Assembly.

"(6) This section applies to all public officers other than members of the public service, the staff of a local government authority or Public Enterprise or members of a disciplined force, below such position or rank as may be prescribed by or under an Act of the National Assembly."

ROLE OF OMBUDSMAN

Section 227 reads:

"Where, in the course of any investigation, it appears to the Ombudsman that there has been a contravention of the Code of Conduct set out in this Chapter, he or she may-

"(a) in the case of a public officer in a public service or who is subject to other disciplinary procedures, refer the matter to the appropriate disciplinary authority; or

"(b) in any other case, refer the matter to the authority having power to remove the public officer from office or, as the case may be, to the National Assembly."

TAX PAYMENTS

Section 228 reads:

"The holder of a public office shall promptly pay all taxes due from him or her, and he or she shall, when required, provide evidence of such payment."

SEE BOOK SIX WHICH WILL DEAL WITH FUNDAMENTAL RIGHTS AND FREEDOMS

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