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SUPPLEMENT



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# **A REVIEW OF THE DRAFT CONSTITUTION OF THE SECOND REPUBLIC**



## **Does The Draft Constitution Aim To Establish A Military State?**

*On The Police Force, Prison Services, The Armed  
Forces And The National Youth Service Scheme*

Chapters 12,13 and 16

## INTRODUCTION

The Chapters dealing with the Disciplined Forces, that is, the Armed Forces, Police and Prisons are most significant.

A most common comment on the draft Constitution is that it is a military constitution; that its provisions have been tampered with to keep the military in power.

The first point to note is that in a coup d'etat the leaders often assume the executive and legislative powers of a state by forming a governing council. It is not the whole military which exercise executive and legislative authority. The Armed Forces continue to function as an army. Hence, if one says that a constitution is a military constitution, it means that its provisions should ensure that soldiers will continue to exercise legislative and executive authority. Let us find out whether that is the case.

First and foremost, it should be clear that the Elections Decree is to state who is to be qualified to stand as a presidential candidate in presidential and National Assembly elections.

Section 48 of the Elections Decree states categorically that "The following persons may not be nominated as candidates for election to any of the offices outlined in section 39, unless before nominations are held, they vacate their offices:

"(a) Magistrates and judges;

"(b) members of The Gambia Armed Forces, The Gambia Police Force and other security forces on active duty; and

"(c) members of the Commission."

Section 39 refers to candidates for election to the "office of President, member of the National Assembly, district chiefs, major, Chairman of a Municipal Council, councillor and village head...."

It is, therefore, clear that the members of the disciplined forces have to leave the force before they can stand for elections.

On the other hand, section 130 of the Elections Decree states that "Where a person who desires to run for an elective office in accordance with this Decree is an employee of any institution, the institution shall, upon application made by that person,

"(a) grant him leave of absence with pay for the duration of the election Campaign up until five days after the declaration of results; and

"(b) guarantee him his job irrespective of his political affiliation."

Hence, other public servants and employees are given privileges that are not accorded to members of the disciplined force.

It is important to mention in passing that under the General Orders which governed the operation of the public service under the previous government, a public servant, who wished to take part in elections had to resign. This meant one had to lose one's entitlements. One had to stay out of the service for three years before being considered for employment in the public service. GO 03106 reads: "A public officer (including a category 1 officer) wishing to stand for election to the House of Representatives must resign his appointment before doing so. Any application from him to be readmitted to the public service will not be considered until three years have elapsed from the date of his resignation."

Now, what does the draft Constitution say about the participation of members of the disciplined force as candidates in elections?

Section 90, subsection (1) (i) states that a member of the disciplined forces cannot stand as a candidate in National Assembly elections. It reads: "No person shall be qualified for election as a member of the national Assembly or inclusion in such an electoral list if he or she-

"(i) is a member of a disciplined force;"

Section 233 of the draft Constitution indicates that disciplined force "means the Police Force, the Prison Service and the Armed Forces;"

Furthermore, section 62 states that those who are not qualified to stand as candidates in National assembly elections are also not qualified to stand as candidates in presidential elections.

Section 62, subsection (1) (e) reads: "A person shall be qualified for election as president if-

"(e) he or she is qualified to be elected as a member of the National Assembly."

The draft Constitution, therefore, bars members of the disciplined force to stand as candidates in presidential and National Assembly elections. How then can one refer to it as a military Constitution?

Chapter One establishes that the sovereignty of The Gambia resides in the people; that all organs of government must derive their authority from the people.

This is different from a government that derives its authority by overthrowing the previous government.

Chapter Two establishes the constitution as the supreme law; that laws that are found to be inconsistent with the provisions of the constitution become null and void.

Under a government that came to power through coup d'etat, decrees become the supreme law. Constitutional provisions become void when they are inconsistent with provisions of decrees.

Section 26 makes it a fundamental right for Gambians to elect their representatives. This cannot be changed without a referendum.

Chapter 5 calls for the election of President and members of the National assembly as well as members of local government councils and office of traditional rulers.

It also establishes an Independent Electoral Commission whose members cannot be removed from office by the President. They can be removed by the Chief Justice after a judicial enquiry.

It also establishes political parties. It asserts categorically that "The number of political parties shall not be limited by law and every citizen of The Gambia shall have the right freely to choose whether or not he or she will become a member of a political party and which party he or she will support." Under the provisional government, political parties are banned.

Chapter 6 indicates that "There shall be a President of The Gambia who shall be the Head of State and of government and Commander-in-chief of the Armed Forces. The President is also to be elected.

Hence, the draft Constitution is saying that an elected President is going to be the commander-in-chief of the Armed Forces. Can anybody say that this is what is prevailing under the provisional government.

Section 100 states categorically that "(1) The legislative power of The Gambia shall be exercised by Bills passed by the National assembly and assented to by the President."

## CHAPTER 12

### **The Police Force And Prison Services**

#### ***Establishment Of A Police Force And Its Functions***

Section 178 of the draft Constitution reads: "(1) There shall be a Police Force of The Gambia of which the Inspector-General of Police shall be the Head.

"(2) The functions of The Gambia Police Force shall be-

"(a) to preserve law and order;

"(b) to prevent and detect crime;

"(c) to cooperate with the authorities established by this Constitution and any other law and with the population generally;

"(d) to perform such other functions as may be prescribed by an Act of the National Assembly."

"(3) No person or authority shall raise any other police force or service except by or under the authority of an Act of the National assembly.

"(4) All members of The gambia Police Force shall be gambian citizens of good character, shall in all official matters and at all times be disciplined and competent, and shall display a high degree of honesty, fairness and impartiality in their dealings with members of the public."

#### **OBSERVATION**

This means that the elected members of the National Assembly shall determine the functions of the Police Force.

#### **CONTROL OF THE POLICE FORCE**

Section 179 reads: "(1) Subject to the general authority and direction of the President, the Inspector General of Police shall be responsible for the operation, control and administration of the Police Force.

"(2) A Deputy Inspector general of Police shall assist the inspector general in the performance of his or her functions."

## **ON THE ESTABLISHMENT AND FUNCTION OF THE POLICE COUNCIL**

Section 180 reads: "(1) There shall be a Police Council which shall consist of-

"(a) the Secretary of State responsible for the Police who shall be Chairman (chairperson);

"(b) the Attorney General or his or her representative;

"(c) the Inspector General of Police;

"(d) the administrative head of the Department responsible for the Police; and

"(e) one other member appointed by the President.

"(2) The Police Council shall-

"(a) advise the President on all matters of policy relating to internal security, including the role of the Police Force, police budgeting and finance, administration, and any other matter which the Secretary of State may refer to the Council; and

"(b) with the prior approval of the President, make regulations for the performance of its functions under this Constitution and any other law, and, subject to any Act of the National Assembly in that regard, for the effective and efficient administration of the Police Force."

(3) Regulations made under subsection (2) shall include regulations in respect of-

"(a) the control and administration of the Police Force;

"(b) the ranks of the officers and men (women) of each unit of the Police Force, the members in each rank and the use of uniforms by the members;

"(c) the conditions of service, enrolment, pay, pensions, gratuities and other allowances of officers and men (women), and deductions therefrom;

"(d) the authority and powers of command of officers and men (women); and

"(e) the delegation to the Inspector-General and other officers of powers of discipline and the conditions subject to which such delegation may be made."

## **APPOINTMENT OF OFFICERS**

Section 181 states that: "(1) The Inspector General and the Deputy Inspector General shall be appointed by the President on the advice of the National Security Council.

"(2) A person shall not be qualified to be appointed in accordance with subsection (1) if he or she is not a citizen of The Gambia or if he or she holds the citizenship or nationality of any other country.

"(3) The President may remove the Inspector General and the Deputy Inspector General of Police from office for good cause or in the public interest.

(4) Subject to this section, the power to appoint persons in the rank of Assistant Superintendent and above in the Police Force shall be vested in the President on the advice of the Inspector General of Police through the Secretary of State.

"(5) The power to appoint persons to a rank in the Police Force below that of Assistant Superintendent shall vest in the Inspector General of Police."

## **ON THE PRISON SERVICE**

### **ESTABLISHMENT OF THE PRISON SERVICE**

Section 182 reads: (1) There shall be a Prison Service of The Gambia of which the Commissioner of Prisons shall be the Head.

"(2) The duties of the Prison Service shall be to do all things necessary for, and incidental to, the administration of prisons and the safeguarding of persons admitted to prison according to law and the regulations of the Prison Service.

"(3) All members of The Gambia Prison Service shall be Gambian citizens of good character and shall in all official matters and at all times be disciplined and competent and display a high degree of honesty, fairness and impartiality."

In the past, the Prisons were also under the Inspector General of Police. The draft Constitution makes a total separation.



## **OPERATIONAL CONTROL AND ADMINISTRATION OF PRISONS**

Section 183 of the draft Constitution reads: "Subject to the general authority and direction of the President and the control of the Prison Service Council, the Commissioner of Prisons shall be responsible for the operational control and administration of the Prison Service and prisons in The Gambia."

### **COMPOSITION AND FUNCTION OF PRISON SERVICE COUNCIL**

Section 184 reads: "(1) There shall be a Prison Service Council which shall consist of-

"(a) the Secretary of State responsible for the Prison Service who shall be Chairman (Chairperson);

"(b) the Attorney General or his or her representative;

"(c) the Commissioner of Prisons;

"(d) the Director of Social Welfare;

"(e) a judge of a superior court nominated by the Chief Justice;

"(f) a religious leader;

"(g) a registered medical practitioner;

"(h) a legal practitioner;

"(i) one other member.

"The members referred to in paragraphs (f) to (i) shall be appointed by the President."

"(2) The Prison Service Council shall-

"(a) advise the President on all matters of policy relating to the organization and maintenance of the prison system, including the role of the Prison Service, prisons budgeting and finance, administration, and any other matter which the President may refer to the Council;

"(b) give such directions to the Commissioner of Prisons as it considers necessary or expedient for the administration of prisons and the Prison Service;

"(c) oversee the welfare of prisoners;

"(d) draw up programmes for the training and rehabilitation of prisoners;

"(e) monitor the rehabilitation of prisoners;

"(f) keep and maintain full statistics of all prisoners in the charge of the

Prisons Service;

"(g) with the prior approval of the President, make regulations for the performance of its functions under this constitution and any other law and, subject to any Act of the National Assembly in that regard, for the effective and efficient administration of prisons and the Prison Service;

"(h) exercise such other functions as may be conferred on it by an Act of the National Assembly for the regulation of prisons."

"(3) Regulations made under subsection (2) shall include regulations in respect of-

"(a) the control and administration of prisons and the Prison Service;

"(b) the ranks of the officers and men (women) of the Prison Service, the members in each rank and the use of uniforms by the members;

"(c) the conditions of service, enrolment, pay, pensions, gratuities and other allowances of officers and men (women), and deductions therefrom;

"(d) the authority and powers of command of officers and men (women) of the Prison Service;

"(e) the delegation to officers of the Prison Service of powers of discipline over members of the Prison Service and the conditions subject to which delegation may be made;

"(f) the exercise of functions exercisable by the Public Service Commission in relation to the public service generally;

"(g) the conditions under which prisoners may be held in prison;

"(h) the parole system;

"(i) the making of reports of unjustified treatment of, and cruelty to, prisoners and other persons in custody;

"(j) the appointment of welfare committees for prisoners and discharged prisoners;

"(k) access to legal practitioners;

"(l) the making of reports on conditions of the prison and prisoners and other persons in custody."

### **APPOINTMENT OF OFFICERS**

Section 185 of the draft Constitution reads: "(1) The Commissioner of Prisons shall be appointed by the President on the advice of the National Secu-

rity Council.

"(2) Subject to this section, the power to appoint persons in the rank of Assistant Commissioner and above in the Prison Service shall be vested in the President on the advice of the Commissioner of Prisons through the Secretary of State.

"(3) Subject to any regulations made by the Prison Service Council, the power to appoint persons to a rank in the Prison Service below that of Assistant Commissioner shall vest in the commissioner."

## CHAPTER 13

### THE ARMED FORCES

#### ESTABLISHMENT OF THE ARMED FORCES

Section 186 reads: "(1) There shall be the Armed Forces of The Gambia which shall consist of the Army, the Navy and the Air Force and such other services for which provision is made by an Act of the National Assembly.

"(2) No person shall raise an armed force except by or under the authority of an Act of the National Assembly.

"(3) The Armed Forces shall be equipped and maintained to perform their role of defence of The Gambia as well as such other functions for the development of The Gambia as provided in this Constitution."

#### OBSERVATION

Here, the National Assembly is to determine the forces that are to constitute the armed forces of The Gambia.

#### PRINCIPAL FUNCTIONS OF THE ARMED FORCES

Section 187 reads: "(1) The principal functions of the Armed Forces are—

"(a) to preserve and defend the sovereignty and territorial integrity of The Gambia;

"(b) to aid the civil authorities, at their request, in emergencies and in cases of natural disasters;

"(c) to engage, at the request of the civil authorities, in productive activities, such as agriculture, engineering, health and education for the development of The Gambia.

"(2) It shall be the aim of the Government and the Armed Forces to maintain harmony and to foster understanding between the Armed Forces and the civilian population, and to that end-

"(a) the National Youth Service shall be organised with the cooperation and assistance of the Armed Forces;

"(b) the Armed Forces shall establish training programmes for their members at all levels to equip them with skills and trades, and a programme of secondment to civilian occupations, so as to enable members of the Forces to return, after their service, to a full and productive civilian life;

"(c) there shall be established an army reserve.

"(3) It shall be the duty of the members of The Gambia Armed Forces to respect the fundamental rights and freedoms of other persons."

### **OBSERVATION**

Here, the draft Constitution is talking about the armed forces aiding civilian authorities who are to foster understanding between them and the civilian population, as well as to prepare them for civilian life.

In the past, many people who left the force resorted to being security guards in order to survive rather than being absorbed into other areas of employment.

### **WHO IS TO CONTROL THE ARMED FORCES?**

Section 188 of the draft Constitution reads: "(1) Subject to the authority and directions of the President and of the Armed Forces Council, the Chief of Defence Staff shall be responsible for the operational control and administration of the Armed Forces.

"(2) Without prejudice to his or her general power and authority as commander-in-chief, the President may give a Force Commander directions with respect to the operational use of the Commander's forces in The Gambia for the purposes of maintaining and securing public safety and public order, and the Force Commander shall comply with those directions.

"(3) In the exercise of his or her powers as commander-in-chief, the Presi-

dent shall, whenever practicable, consult the National Security Council.

"(4) The President shall not deploy any troops outside The Gambia without the approval of the National Assembly."

### **OBSERVATION**

It is clear from this that the Armed Forces command structure is supposed to be under the jurisdiction of the President who is commander in chief. In the past, the President could send soldiers anywhere, such as Liberia without consulting the National Assembly.

Under the draft Constitution, any deployment of Gambian soldiers abroad would have to be done in consultation with the National Assembly which, of course, would be able to examine the risks and principles involved, as well as safeguard the allowances and conditions for compensation in case of tragedy.

### **THE ESTABLISHMENT AND FUNCTIONS OF THE ARMED FORCES COUNCIL**

Section 189 of the draft Constitution reads: "(1) There shall be an Armed Forces Council which shall consist of-

- "(a) the Vice President as Chairman (Chairperson);
- "(b) the Secretary of State for the time being responsible for defence;
- "(c) the chief of Defence Staff;
- "(d) the commanders of the Army, the Navy and the Air Force;
- "(e) two other persons appointed by the President subject to confirmation by the National Assembly.

"(2) The Armed Forces Council shall-

"(a) advise the President on all matters of policy relating to defence and strategy, including the role of the Armed Forces, defence budgeting and finance, administration, and any other matter which the President may refer to the Council;

"(b) advise the President on the promotion of officers to the rank of Lieutenant Colonel or its equivalent and above;

"(c) with the prior approval of the President, make regulations for the performance of its functions under this Constitution and any other law and, subject to any Act of the National Assembly in that regard, for the effective and efficient administration of the Armed Forces.

"(3) Regulations made under subsection (2) shall include regulations in respect of-

"(a) the control and administration of the Armed Forces;

"(b) the ranks of the officers and men (women) of each service, the members in each rank and the use of uniforms by the members;

"(c) the conditions of service, enrolment, pay, pensions, gratuities and other allowances of officers and men (women), and deductions therefrom;

"(d) the authority and powers of command of officers and men (women);

"(e) the powers of commanding officers to try members of the Armed Forces;

"(f) the establishment of research and development units for each service."

### **APPOINTMENT OF MEMBERS OF THE COMMAND STRUCTURE OF THE ARMED FORCES**

Section 190 of the draft Constitution reads: "(1) The President shall, after consulting the National Security Council, appoint:

"(a) the Chief of Defence Staff of the Armed Forces;

"(b) the Commanders of the Army, the Navy and the Air Force.

"(2) A person shall not be qualified for appointment in accordance with subsection (1) if he or she is not a citizen of The Gambia or if he or she holds the citizenship or nationality of any other country.

"(3) The President may, after consulting the National Defence Council, remove from office the Chief of Defence Staff or the Commander of the Army, the Navy or the Air Force.

"(4) The President may, after consulting the Armed Forces Council, appoint the commanders of any formation or unit of the Armed Forces.

"(5) The President shall, in accordance with the advice of the Armed Forces Council, grant commissions in the Armed Forces."

## **CHAPTER 16**

### **THE NATIONAL YOUTH SERVICE SCHEME THE FIRST NATIONAL ASSEMBLY AND THE NATIONAL YOUTH SERVICE SCHEME**

Section 198 of the draft Constitution reads: "(1) Subject to the provisions of this Constitution, an Act of the National Assembly shall within two years of the coming into force of this Constitution establish and make provision for-

"(a) a National Youth Service; and

"(b) a National Youth Service Board.

"(2) An Act of the National Assembly made for the purposes of this section shall provide-

"(a) for the establishment of a youth training scheme designed to provide-

"(i) training in good citizenship and civic responsibility;

"(ii) work experience;

"(iii) experience of various aspects of national life and development with a view to the development of leadership qualities;

"(b) for the various activities which may be undertaken or made available within the youth training scheme;

"(c) for the conditions and terms under which a person may be engaged in the National Youth Service and for exemptions from the Service and deferments of engagement;

"(d) such other matters as are necessary or desirable to provide for an effective Service and training scheme.

"(3) A youth training scheme may provide for military training."

## **OBSERVATION**

This simply indicates that the first National Assembly will determine what the National Youth Service Scheme should be.

Furthermore, it simply says that the Youth Training Scheme may provide military training. The decision is to be made by the elected representatives of the people in the Second Republic.

Suffice it to say, section 198 is not an entrenched clause. It can be changed by the members of the National Assembly without going to a referendum.

## **PARTICIPANTS IN THE SERVICE**

Section 199 reads: "(1) Citizens of The Gambia who have attained the age of eighteen years shall, subject to any exemptions and deferments prescribed by an Act of the National Assembly, be required to join the National Youth Service.

"(2) An Act of the National Assembly may provide that any person who seeks an appointment in the public service shall provide evidence of his or her having participated in, or been exempted from joining, the National Youth Service."

Section 200 reads: (1) The National Youth Service Board shall be responsible for the operation of the National Youth Service.

"(2) The Board shall be composed of a Chairman and four other members who shall be appointed by the President, in consultation with the Secretary of State.

"(3) Subject to this Constitution and any Act of the National Assembly, the Board may, with the prior approval of the President, make regulations for the performance of its functions under this Constitution or any other law and for the effective and efficient administration of the National Youth Service."



## **OBSERVATION**

Section 199 makes it mandatory for Gambian youths to join the Scheme. The question is whether the Government will have the capacity to provide the services. The Scheme, however, is to be under civil authority rather than the army. It is the National Assembly which may make laws to provide for its establishment and functions. A Board appointed by the President shall direct its operations.

**SEE BOOK**

**SEVEN ON FUNDAMENTAL RIGHTS  
AND FREEDOMS**

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