

Date Printed: 01/14/2009

JTS Box Number: IFES_27

Tab Number: 18

Document Title: BOOK SEVEN: ON FUNDAMENTAL RIGHTS AND
FREEDOMS

Document Date: 1996

Document Country: GAM

Document Language: ENG

IFES ID: CON00063



con/GAM/1996/0.09/eng.

FOROYAA

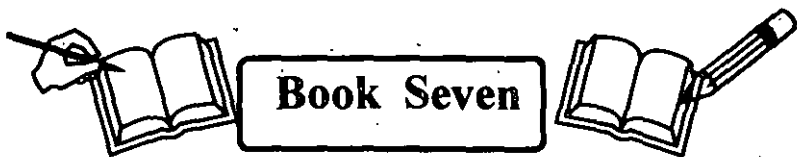
(FREEDOM)

SUPPLEMENT



No. 29/96 Monday, 22 July, 1996 ISSN: 0796-0573 Price: D2.00

A REVIEW OF THE DRAFT CONSTITUTION OF THE SECOND REPUBLIC



On Fundamental Rights And Freedoms

Chapter 4

INTRODUCTION

National liberation gave rise to the emergence of a sovereign republic. A sovereign Republic is inconceivable without a sovereign people who are free and empowered to determine her destiny.

Chapter One of the draft Constitution asserts that The Gambia is a sovereign Republic and that the sovereignty of The Gambia resides in the people; that all organs of government must derive their authority from the people; that authority must be exercised to promote the welfare of the people.

If all organs of government must derive their authority from the people, then the people must necessarily have equal rights to determine their manner of government. The 1970 Constitution did not include the fundamental right to determine one's manner of government in the fundamental rights and freedom provisions. Did the draft Constitution include this under the chapter dealing with fundamental rights and freedoms? Yes, it did. You will come across it in section 26.

It goes without saying that a people cannot assert their right to determine their manner of government until they have freedom to express their opinion and receive information on how their country is governed and freedom to assemble to discuss national and other affairs which serve their interests.

Suffice it to say, before one can associate, assemble or express one's opinion, one must be alive, one must have liberty, one must be free to move about. Freedom means that one cannot be arbitrarily arrested, detained, searched, tried without being given the right to defend oneself, enslaved, tortured and killed. The fundamental rights and freedoms seek to protect a person from such arbitrary detention and degrading punishments and to guarantee those rights which enable a people to live as free owners of a country.

Let us find out what Chapter 4 of the draft Constitution contains.

CHAPTER 4

ON PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Section 17 (1) of the draft Constitution reads: "The fundamental human rights

and freedoms enshrined in this Chapter shall be respected and upheld by all organs of the Executive and its agencies, the Legislature and, where applicable to them, by all natural and legal persons in The Gambia, and shall be enforceable by the Courts in accordance with this Constitution."

Section 17 (2) reads: "Every person in The Gambia, whatever his or her race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest."

OBSERVATION

The 1970 Constitution did not include gender, language, other opinion, social origin, property, birth or other status in giving guarantees or protection against discrimination.

THE RIGHT TO LIFE

Section 18 of the draft Constitution reads: "(1) No person shall be deprived of his or her life intentionally except in the execution of a sentence of death imposed by a court of competent jurisdiction in respect of a criminal offence for which the penalty is death under the laws of The Gambia as they have effect in accordance with subsection (2) and of which he or she has been lawfully convicted.

"(2) As from the coming into force of this Constitution, no court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.

"(3) The National Assembly shall within ten years from the date of the coming into force of this Constitution review the desirability or otherwise of the total abolition of the death penalty in The Gambia.

"(4) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say-

"(a) for the defence of any person from unlawful violence or for the defence of property;

"(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

"(c) for the purpose of suppressing a riot, insurrection or mutiny;

"(d) in order to prevent the commission by that person of a criminal offence, or

"(e) if he or she dies as a result of a lawful act of war."

OBSERVATION

This provision is the same as what obtained in the 1970 Constitution. However, since the death penalty was abolished and later restored, the provision charges the National Assembly to discuss the desirability of maintaining the death penalty within ten years after the Constitution comes into force.

RIGHT TO PERSONAL LIBERTY

Section 19 of the draft Constitution reads: "(1) Every person shall have the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

"(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language that he or she understands, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner.

"(3) Any person who is arrested or detained-

"(a) for the purpose of bringing him or her before a court in execution of the order of a court; or

"(b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the law of The Gambia,

"and who is not released, shall be brought without undue delay before a court and, in any event, within seventy-two hours.

"(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not thereafter be further held in custody in

connection with those proceedings or that offence save upon the order of a court.

"(5) If any person arrested or detained as mentioned in subsection (3) (b) is not tried within a reasonable time, then without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including, in particular, such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or proceedings preliminary to trial.

"(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting."

OBSERVATION

The provision is very similar to the 1970 Constitution provision except that it has established definite time frame for certain things which the 1970 Constitution does not contain. For example, it states that with three hours after a person is detained, he or she must be told the reasons for his or her arrest and detention and his or her right to consult a legal practitioner.

Secondly, the person who is not released from detention must be taken before a court within seventy two hours regardless of the time alleged.

PROTECTION AGAINST SLAVERY AND FORCED LABOUR

Section 20 of the draft Constitution reads: "(1) No person shall be held in slavery or servitude.

"(2) No person shall be required to perform forced labour.

"(3) For the purposes of this Section, the expression "forced labour" does not include-

"(a) any labour required in consequence of a sentence or order of a court;

"(b) labour required of any person while he or she is lawfully detained that, though not required in consequence of the sentence or order of the court, is reasonably necessary in the interests of hygiene for the maintenance of the place in which he or she is detained;

"(c) any labour of a member of a defence force in pursuance of his or her duties

as such or, in the case of a person who has conscientious objections to service as a member of any naval, military or air force, any labour which that person is required by law to perform in place of such service;

"(d) any labour required during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purposes of dealing with that situation; or

"(e) any labour reasonably required as part of reasonable and normal communal or other civic obligations."

OBSERVATION

This is the same as what is in the 1970 Constitution.

PROTECTION FROM TORTURE AND DEGRADING PUNISHMENT

Section 21 reads: "No person shall be subject to torture or inhuman or degrading punishment or other treatment."

PROTECTION FROM ARBITRARY SEIZURE OF PROPERTY

Section 22 reads: (1) No property of any description shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia, except where the following conditions are satisfied-

"(a) the taking possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any property in such manner as to promote the public benefit; and

"(b) the necessity therefor is such as to afford reasonable justification of the causing of any hardship that may result to any person having interest in or right over the property; and

"(c) provision is made by law applicable to that taking of possession or acquisition-

"(i) for the prompt payment of adequate compensation; and

"(ii) securing to any person an interest in or right over the property, a right of access to a court or other impartial and independent authority for the determination of his or her interest or right, the legality of the taking of possession or acquisition of the

property, interest or right, and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

"(2) Nothing in this section shall be construed as affecting the making of any law in so far as it provides for the taking or acquisition of property-

"(a) in satisfaction of any tax, rate or due;

"(b) by way of penalty for breach of law, whether under civil process or after conviction of a criminal offence;

"(c) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

"(d) by way of the vesting or administration of trust property, enemy property, bona vacantia, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate in the course of being wound up;

"(e) in the execution of judgements or orders of courts;

"(f) by reason of such property being in a dangerous state or liable to cause injuries to the health of human beings, animals or plants;

"(g) in consequence of any law with respect to the limitation of actions; or

"(h) for so long as such taking of possession may be necessary for the purpose of any examination, investigation, trial or inquiry, or, in the case of land, the carrying out thereon-

"(i) of work of soil conservation or the conservation of other natural resources;
or

"(ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable or lawful excuse refused or failed, to carry out,

"except so far as that provision, or as the case may be the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

"(3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking in the public interest of any property, or the compulsory acquisition the public interest of any interest in or right over property, where that property, interest or rights is held by a body corporate which is established directly by any law and in which no moneys have been invested other than moneys provided by an Act of the National Assembly.

"(4) Where a compulsory acquisition of land by or on behalf of the Government involves the displacement of any inhabitants who occupy the land under customary law, the Government shall resettle the displaced inhabitants on suitable alternative land with due regard to their economic well being and social and cultural values.

"(5) Any such property of whatever description compulsorily taken possession of, and any interest in or right over property of any description compulsorily acquired in the public interest for a public purpose, shall be used only in the public interest or for the public purposes for which it is taken or acquired.

"(6) Where any property as is referred to in subsection (5) is not used in the public interest or for the public purpose for which it was taken or acquired, the person who was the owner immediately before the compulsory taking or acquisition, as the case may be, shall be given the first option of acquiring that property, in which event he or she shall be required to refund the whole or such part of the compensation as may be agreed upon between the parties thereto; and in the absence of any such agreement such amount as shall be determined by the High Court."

OBSERVATION

This provision is basically the same as that in the 1970 Constitution. However what is added in the draft Constitution is that it is necessary for reasonable justification to be given for government to take over a property in the interest of the public.

That there should be prompt payment of adequate compensation. In the 1970 Constitution the word 'prompt' is not there. It is also an improvement that where the acquisition of the property of a person involves the displacement of the person, the government shall have the duty to resettle the displaced persons on a suitable alternative land.

Furthermore, that where the land is not utilized the original owners will have the first option to repurchase the land.

PROTECTION FROM ARBITRARY SEARCHES

Section 23 of the draft constitution reads: "(1) No person shall be subject to interference with the privacy of his or her home, correspondence or communications save as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the

protection of the rights and freedoms of others.

"(2) Searches of the person or the home of individuals shall only be justified-

"(a) where these are authorised by a competent judicial authority;

"(b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest and such procedures as are prescribed by an Act of the National Assembly to preclude abuse are properly satisfied."

ON FAIR TRIAL

Section 24 states that: "(1) Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or for the determination of the existence or extent of any civil right or obligation, shall be independent and impartial; and

"(a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or

"(b) where proceedings are commenced for the determination or the existence of any civil right or obligation,

"the case shall be afforded a fair hearing within a reasonable time.

"(2) All proceedings of every court and proceedings relating to the determination of the existence or extent of civil rights or obligations before any other authority, including the announcement of the decision of the court or other authority, shall be held in public:

"Provided that the court or other authority may, to such extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or interlocutory civil proceedings, or to such extent as it may be empowered or required by law to do so in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings persons other than the parties thereto and their legal representatives.

"(3) Every persons who is charged with a criminal offence-

"(a) shall be presumed innocent until he or she is proved, or has pleaded, guilty;

"(b) shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged;

"(c) shall be given adequate time and facilities for the preparation of his or her defence;

"(d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice;

"Provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the expense of the State.

"(e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

"(f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial of the charge;

"and, except with his or her own consent, the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impractical and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

"(4) When a person is tried for any criminal offence, the accused person or any person authorised by him or her in that behalf shall, if he or she requires and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time, and in any event within thirty days after the end of the trial, a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

"(5) No person shall be charged with or held to be guilty of a criminal offence on account of any act or omission which did not at the time it took place constitute such an offence, and no penalty shall be imposed for any criminal offence which is more severe in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

"(6) No person who shows that he or she has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other offence of which he or she could have been convicted at the trial for that offence save upon the order of a superior court made in the course of

appeal or revision proceedings relating to the conviction or acquittal:

"Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial or conviction of the member under service law; but any court so trying such a member and convicting him or her shall, in sentencing him or her to any punishment, take into account any punishment awarded him or her under service law.

"(7) No person shall be tried for a criminal offence if he or she shows he or she has been pardoned for that offence.

"(8) No person charged with a criminal offence shall be compelled to give evidence at the trial.

"(9) A person charged with a criminal offence in the High Court shall have the right to elect to be tried by a jury.

"(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

"(a) subsection (3)(a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

"(b) subsection (3)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds.

OBSERVATION

The 1970 Constitution only dealt with trial associated with criminal offences. The draft Constitution includes trials associated with civil rights or obligations where a person claims that his or her rights are violated by an authority or other person.

ON FREEDOM OF SPEECH, CONSCIENCE, ASSEMBLY, ASSOCIATION AND MOVEMENT

Section 25 states: (1) Every person shall the right to-

"(a) freedom of speech and expression, which shall include freedom of the press and other media;

"(b) freedom of thought, conscience and belief, which shall include academic

freedom;

"(c) freedom to practise any religion and to manifest such practice;

"(d) freedom to assemble and demonstrate peaceably and without arms;

"(e) freedom of association, which shall include freedom to form and join associations and unions, including political parties and trade unions;

"(f) freedom to petition the Executive for redress of grievances and to resort to the Courts for the protection of his or her rights.

"(2) Every person lawfully within The Gambia shall have the right to move freely throughout The Gambia, to choose his or her own place of residence within The Gambia, and to leave The Gambia.

"(3) Every citizen of The Gambia shall have the right to return to The Gambia.

"(4) The freedoms referred to in subsections (1) and (2) shall be exercised subject to the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedoms thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court."

OBSERVATION

The 19760 Constitution did not specifically express rights to demonstrate peacefully or the freedom to form and join political parties or to petition the executive for redress of grievances.

POLITICAL RIGHTS TO ELECT OR BE ELECTED

Section 26 of the draft Constitution reads: "Every citizen of The Gambia of full age and capacity shall have the right, without unreasonable restrictions-

"(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

"(b) to vote and stand for elections at genuine periodic elections for public office, which elections shall be by universal and equal suffrage and be held by secret ballot;

"(c) to have access, on general terms of equality, to public service in The Gambia."

OBSERVATION

The 1970 Constitution did not have such a provision.

FREEDOM TO MARRY ON THE BASIS OF MUTUAL CONSENT

Section 27 reads: "(1) Men and women of full age and capacity shall have the right to marry and found a family.

"(2) marriage shall be based on the free and full consent of the intended parties."

OBSERVATION

The 1970 Constitution did not have such a provision.

RIGHTS OF WOMEN

Section 28 states: "(1) Women shall be accorded full and equal dignity of the person with men.

"(2) Women shall have the right to equal treatment with men, including equal opportunities in political, economic and social activities."

RIGHTS OF CHILDREN

Section 29 of the draft Constitution reads: "(1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interest of children, to know and be cared for by their parents.

"(2) Children under the age of sixteen years are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or be harmful to their health or physical, mental, spiritual, moral or social development.

"(3) A juvenile offender who is kept in lawful custody shall be kept separately from adult offenders."

OBSERVATION

The 1970 Constitution did not have such a provision. Notwithstanding, what should be added is the right of children to be protected from social exploitation in

addition to the economic exploitation as well as the right for juvenile offenders to be kept in rehabilitation centres.

RIGHT TO EDUCATION

The 1970 Constitution did not have such a provision.

Section 30 reads: "All persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realisation of that right-

"(a) basic education shall be free, compulsory and available to all;

"(b) secondary education, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

"(c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by progressive introduction of free education;

"(d) functional literacy shall be encouraged or intensified as far as possible;

"(e) the development of a system of schools with adequate facilities at all levels shall be actively pursued."

RIGHTS OF THE DISABLED

Section 31 reads: "(1) The right of the disabled and handicapped to respect and human dignity shall be recognised by the State and society.

"(2) Disabled persons shall be entitled to protection against exploitation and to protection against discrimination, in particular as regards access to health services, education and employment.

"(3) In any judicial proceedings in which a disabled person is a party, the procedure shall take his or her condition into account."

The 1970 Constitution did not have such a provision.

PROTECTION OF LANGUAGE AND CULTURE

Section 32 reads: "Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language tradition or religion subject to the terms of this Constitution and to the condition that the rights protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity."

PROTECTION FROM DISCRIMINATION

Section 33 reads: "(1) All persons shall be equal before the law.

"(2) Subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.

"(3) Subject to the provisions of subsection (5), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

"(4) In this section, the expression "discrimination" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

"(5) Subsection (2) shall not apply to any law in so far as that law makes provision-

"(a) with respect to persons who are not citizens of The Gambia or to qualifications for citizenship;

"(b) with respect to the qualifications prescribed by this Constitution for any office;

"(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

"(d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.

"(6) Subsection (3) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (5).

"(7) The exercise of any discretion relating to the institution, conduct or discon-

tinuance of civil or criminal proceedings in any court that is vested in any person by the Constitution or any other law shall not be enquired into any court on the grounds that it contravenes the provisions of subsection (3).

OBSERVATION

The 1970 Constitution did not protect people from discrimination on the basis of gender, other opinions, social origin, property, birth and other status. However, IN the draft Constitution other status may include the disabled but protection from discrimination on the basis of disability should be specifically mentioned.

ON STATE OF EMERGENCY

Section 34 reads: "(1) The President may, at any time, by Proclamation published in the gazette, declare that-

"(a) a state of public emergency exists in the whole or any part of The Gambia;

"(b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.

"(2) A declaration made under this section shall lapse at the expiration of a period of seven days, or if the National Assembly is not then in session twenty one days, beginning on the day on which the proclamation is published in the Gazette unless, before the expiration of that period, it has been approved by a resolution of the National assembly supported by the votes of not less than two thirds of all the members thereof.

"(3) A declaration made under subsection (1) may at any time be revoked by the President by Proclamation which shall be published in the Gazette.

"(4) A declaration made under subsection (1) that has been approved by a resolution of the National Assembly shall, subject to subsection (3), remain in force so long as that resolution remains in force and no longer.

"(5) A resolution of the National Assembly passed for the purpose of this section shall remain in force for ninety days or such shorter period as may be specified therein:

"Provided that-

"(a) any such resolution may be extended from time to time by a further reso-

lution supported-

"(i) in the case of a first extension, by the votes of not less than three quarters of members of the National Assembly;

"(ii) in the case of a subsequent extension, by the votes of not less than three quarters of all the members of the National Assembly,

"but no extension shall exceed ninety days from the date of the resolution effecting the extension; and

"(b) any such resolution may be revoked at any time by a resolution supported by the votes of the majority of all the members of the National Assembly.

"(6) Any provision of this section that a declaration shall lapse or cease to be in force at any particular time shall be without prejudice to the making of a further declaration under this section whether before or after that time."

FUNDAMENTAL RIGHTS AND FREEDOMS DURING A STATE OF EMERGENCY

Section 35 reads: "(1) An Act of the National Assembly may authorise the taking, during any period of public emergency, of measures that are reasonably justifiable for dealing with the situation that exists in The Gambia.

"(2) Nothing contained or done under the authority of such an Act shall be held to be inconsistent with or in contravention of sections 19, 23, 24 (other than subsections (5) to (8) thereof) or 25 of this Constitution to the extent that it is reasonably justifiable in the circumstances arising or existing during a period of public emergency for the purpose for dealing with the situation."

PROTECTION OF DETAINED PERSONS DURING STATE OF EMERGENCY

Section 36 reads: "(1) Where a person is detained by virtue of or under any Act of the National Assembly referred to in section 35, the following provisions shall apply:

"(a) he or she shall, as soon as reasonably practicable, and in any case not later than twenty four hours after the commencement of the detention, be furnished with a statement in writing specifying in detail the grounds upon which he or she is detained; and the statement shall be read, and if necessary, interpreted, to the person who is

detained in a language which he or she understands;

"(b) the spouse, parent, child or other available next-of-kin of the person detained shall be informed by the authority effecting the detention and shall be permitted access to the person concerned at the earliest practicable opportunity, and in any case not later than twenty-four hours after the commencement of the detention;

"(c) where none of the persons mentioned in paragraph (b) can be traced or none of them is willing and able to see the person detained, the person who is detained shall be informed of this fact within twenty four hours of the commencement of the detention and he or she shall be informed of his or her right to name and give particulars of some other person who shall have the same right of access to the person who is detained as any of the persons mentioned in paragraph (b);

"(d) not more than fourteen days after the commencement of his or her detention, the authority which effected the same shall give notice in the Gazette stating that he or she has been detained and giving particulars of the provision of law under which the detention is authorised;

"(e) not more than thirty days after the commencement of his or her detention and after that at intervals of not more than ninety days during the continuance of his or her detention, the case of the person concerned shall be reviewed by a tribunal as provided in subsection (2);

"(f) the person who is detained shall be afforded every possible facility to consult a legal practitioner of his or her choice who shall be permitted to make representation to the tribunal appointed to review the case;

"(g) at the hearing before the tribunal appointed for the review of his or her case, the person detained shall be entitled to appear in person or by a legal practitioner of his or her choice and at his or her own expense.

"(2) A tribunal appointed to review the cases of persons who have been detained shall be composed of three persons being, or qualified to be appointed as, judges of the High Court.

"(3) A tribunal composed of the same members shall not review more than once the case of a particular person who has been detained.

"(4) On a review by a tribunal of the case of a person who has been detained, the tribunal may order the release of the person or it may uphold the detention; and the authority by which the detention was ordered shall act in accordance with the decision

of the tribunal for the release of any person.

"(5) No person may be detained under or by virtue of an Act of the National Assembly referred to in section 35 during any state of emergency in excess of a total of one hundred and eighty two days (whether such days are consecutive or not) and, on the expiry of that period, any person who has been so detained shall be entitled to invoke the provisions of section 19 (right to personal liberty).

"(6) In every month during the period in which a state of public emergency is in force and in which there is a sitting of the National Assembly, a Secretary of State authorised by the President shall make a report to the national assembly of the number of persons detained by virtue of or under an Act of the national assembly to which section 35 refers and the number of cases in which the authority which ordered the detention has acted in accordance with the decisions of the tribunal as provided in subsection (4).

"(7) For the avoidance of doubt it is hereby declared that where the declaration of a state of public emergency is revoked or otherwise ceases to be in force, any person who is in detention or in custody by virtue of or under an Act of the national assembly to which section 35 refers, other than a person sentenced to imprisonment by a court for an offence against such a law for a term which has not then expired, shall be released immediately without further order."

WHERE TO APPEAL TO FOR VIOLATION OF RIGHTS

Section 37 reads: "(1) If any person alleges that any of the provisions of sections 18 to 33 or section 36 (5) of this Chapter has been, is being, or is likely to be contravened in relation to himself or herself by any person he or she may apply to the High Court for redress.

"(2) An application may be made under this section in the case of a person who is detained by some other person acting on the detained person's behalf.

"(3) An application under this section shall without prejudice to any other action with respect to the same matter which is lawfully available.

"(4) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of the said sections 18 to 33

or section 36 (5), that court may, and shall if any party so requests, refer the question to the High Court, unless, in the opinion of the subordinate court, the raising of the question is merely frivolous or vexatious.

"(5) The High Court shall-

"(a) hear and determine any application made by any person pursuant to subsection (1) or (2);

"(b) determine any question arising in the case of any person which is referred to it in pursuance of subsection (4);

"and may, in addition to the powers conferred on it by section 5 (which relates to defence of the Constitution) make such order, issue such writ, and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions of the said sections 18 to 33 or section 36(5) to the protection of which the person concerned is entitled:

"Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any law.

"(6) The High Court shall consider every application and reference referred to it in pursuance of this section and, having heard arguments by or on behalf of the parties, shall pronounce its decision on the question in open court as soon as may be, and in the case of a reference under subsection (4), not later than thirty days after the conclusion of the final addresses of the parties.

"(7) An Act of the National Assembly may confer on the High court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

"(8) The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding other rights which may be prescribed by Act of the National Assembly as inherent in a democracy and intended to secure the freedom and dignity of man.

See Book Eight Dealing With Public Finance

Halfa Salah, Serrekunda Church's town

Editorial Board P.O. Box 2306 Serrekunda The Gambia, West Africa. Telephone (220) 393117 Fax (220) 393077

For The Editorial Board: Sam Sarr, Sidi Jatta, And Halfa Salah