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A REVIEW OF THE DRAFT CONSTITUTION OF THE SECOND REPUBLIC



Book Eight



ON PUBLIC FINANCE AND
THE PUBLIC SERVICE

Chapters 9 and 11

Introduction

Public money does not drop from the sky. It comes from the pockets of the people through direct and indirect taxation and the operation of public enterprises or corporations such as the GPTC, Gambia Ports Authority, former GPMB, etc.

Furthermore, loans taken by governments have to be paid from public coffers. A Constitution should explain who has authority to take money from the people; how the money is kept; how one can draw money from where it is kept; how this income and expenditure are to be accounted for; how the accounts are to be audited; how loans are to be paid; how to ensure that there is accountability in the use of public funds.

Furthermore, buying and selling is facilitated by local currencies. This local currency has to be minted; which body will be responsible for the minting or production of our local currency.

Finally, a country does sell goods outside of the country. This enables it to have foreign reserves. Who is to manage such foreign reserves?

The 1970 Constitution did have a provision on state finances. It made it a requirement for Parliament to make laws before public money is collected; that the money must be paid in our national treasury called Consolidated Revenue Fund; that a law must make provision for the withdrawal of money from such a fund.

The Minister of Finance was required to present the budget of the state for each coming financial year to the House of Representatives. The House was required to pass a Bill called an Appropriation Bill which was designed to provide for the issue of such sums of money from the government treasury or Consolidated Revenue Fund to carry out certain expenditure that are mentioned in the Bill. Once assented to by the President such Bills became Appropriation Act which gave authority for money to be withdrawn from the Consolidated Revenue Fund.

The 1970 Constitution made provision for the payment of salaries from the Consolidated Revenue Fund. Section 108 of the 1970 Constitution made provision for the payment of loans from public funds deposited in the Consolidated Revenue Fund. The Director of Audit was supposed to have access to all books, records, etc., and make enquiries on the expenditures of government on a yearly basis and submit report to the House of Representatives annually.

The President could appoint the Director of Audit but only the House could remove him or her from office after the decision of a tribunal is sought. There was no provision dealing with the minting of local currency or management of foreign reserves in the 1970 Constitution.

The Central Bank Act of 1992 empowered the Central Bank to regulate the

issue, supply, availability and international exchange of money. Well, find out what exist under the draft Constitution as far as public finance is concerned.

ON THE PUBLIC SERVICE

The provision dealing with the protection of public servants, that is, section 169; the provision authorising public servants to go on leave in order to stand for election, that is section 170, instead of being forced to resign and to lose all entitlements, as well as to stay out of the service for three years after losing an election, as was the case in the past; the provision where Permanent Secretaries are now to be appointed by the Public service Commission instead of the President, as was the case under the 1970 Constitution which empowered the President to remove them from office without giving any reason gives us quite a contrast between the two Constitutions for consideration.

CHAPTER 9

PUBLIC FINANCE

AUTHORITY TO IMPOSE TAXATION

Section 149 of the draft Constitution reads: "(1) No taxation shall be imposed except by or under the authority of an Act of the National Assembly.

"(2) An Act of the National Assembly may make provision-

"(a) for the collection of taxes proposed to be imposed or altered in a Bill which has been presented to the National Assembly during a period of four months from the date of presentation or such longer period as may be specified in a resolution passed by the National Assembly after the Bills has been presented;

"(b) for any local government authority established by law to impose taxation within the area for which such authority is established, and to alter such taxation, but no provision shall include power to waive any tax due.

"(3) Where any law confers power on any person or authority to waive or vary a tax imposed by any law, the exercise of that power in favour of any person or authority shall be subject to the approval of the National Assembly."

OBSERVATION

The National Assembly has power to impose taxes.

WHERE SHOULD PUBLIC MONIES BE KEPT?

Section 150 of the draft Constitution reads: "(1) There shall be a Consolidated Fund into which shall be paid-

"(a) all revenues or other money raised or received for the purposes of, or on behalf of, the Government; and

"(b) any other money raised or received in trust for, or on behalf of, the Government."

OBSERVATION

Public monies collected shall be paid into government treasury.

"(2) Notwithstanding subsection (1), an Act of the National Assembly may provide-

"(a) for the payment of particular revenue or other money into some other fund established for a specific purpose;

"(b) for the retention of revenue or other money by the department of Government that received it for the purpose of defraying the expenses of that department."

HOW IS PUBLIC MONEY WITHDRAWN FROM PUBLIC TREASURY

Section 151 of the draft Constitution reads: "(1) No money shall be withdrawn from the Consolidated Fund except-

"(a) to meet expenditure charged on that fund by this Constitution or an Act of the National Assembly; or

"(b) where the issue of that money has been authorised by an Appropriation Act, a Supplementary Appropriation Act or in accordance with subsection (4) of this section.

"(2) No money shall be withdrawn from any other public fund of The Gambia unless the issue of that money has been authorised by law.

"(3) No money shall be withdrawn from the Consolidated Fund or any other public fund of The Gambia (including a withdrawal under subsection (4) unless the withdrawal has been approved by the Auditor General or a member of the National Audit Office designated by him or her for the purpose and it is made in the manner prescribed by an Act of the National Assembly.

"(4) If the Appropriation Bill in respect of any financial year has not been passed into law by the beginning of that financial year, the President may authorise

the withdrawal of money from the Consolidated Fund for the purposes of meeting expenditure necessary to carry on the services of the Government for a period not exceeding four months from the beginning of the financial year.

"(5) The withdrawal of funds in accordance with subsection (4) shall not exceed one third of the sums authorised for the relevant services by the Appropriation Act for the immediately preceding financial year.

"(6) Where money is charged on the Consolidated Fund or any other public fund by law, it shall be paid out of that fund to the person or authority to whom it is due."

OBSERVATION

Public monies must be issued as required by law.

ANNUAL REVENUE AND EXPENDITURE OF GOVERNMENT

Section 152 reads: (1) The President shall cause to be prepared and laid before the National Assembly at least thirty days before the end of the financial year, estimates of the revenue and expenditure of The Gambia for the following financial year. The estimates shall include any estimates which, under this Constitution, are to be submitted directly to the President by the Chief Justice or any other authority for presentation by the President to the National Assembly.

"(2) The appropriate committee of the National Assembly, shall review the estimates of revenue and expenditure and report on them to the National Assembly.

"(3) When estimates of expenditure have been approved by the National Assembly, an Appropriation Bill shall be introduced in the National Assembly for the issue from the Consolidated Fund of the sums necessary to meet that expenditure (other than expenditure charged on the Consolidated Fund), under separate votes for the several services required and for the purposes specified therein.

"(4) In addition to presenting the estimates for the following financial year, the President may cause to be prepared and presented to the National Assembly;

"(a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and

"(b) estimates of revenue and expenditure in respect of such programmes and plans.

"(5) The Chief Justice and any other authority which is entitled to draw up its own estimates for presentation by the President to the National Assembly shall provide the President with such estimates at least ninety days before the end of the previous financial year.

OR C

"(6) An Act of the National Assembly may make provision to give effect to this section."

OBSERVATION

The provision where the courts and the Independent Electoral Commission, etc., prepare their own budgets which the President submits to the National Assembly without alteration as well as submitting plans beyond one year are developments in the Constitution.

WHERE THE SUM BUDGETTED IS EXHAUSTED, THEN WHAT?

Section 153 reads: "(1) Subject to section 151, if in respect of any financial year it is found that the amount appropriated under the Appropriation Act is insufficient or that a need has arisen for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the National Assembly before the expenditure has been incurred.

"(2) Where a supplementary estimate or estimates have been approved by the National Assembly, a Supplementary Appropriation Bill shall be introduced into the National Assembly for the appropriation of the sums so approved."

AN EMERGENCY OR CONTINGENCY FUNDS BE SET ASIDE?

Section 154 of the draft Constitution reads: "(1) An Act of the National Assembly may make provision for the establishment of a Contingencies Fund and for authorising the President to make advances from that fund if he or she is satisfied that there has arisen an unforeseen and urgent need for expenditure for which no other provision exists:

"Provided that the President shall not authorise any expenditure from the Contingencies Fund in excess of one per cent of the estimates approved by the National Assembly for the current year before he or she has caused a supplementary estimate in respect of such excess expenditure to be presented to the National Assembly.

Etc.

"(2) Where any advance is made from the Contingencies Fund, a supplement-

tary estimate shall be presented, and a Supplementary Appropriation Bill shall be introduced for the purpose of replacing the amount so advanced within ninety days of the advance being made."

ON LOANS

Section 155 reads: "(1) The national assembly may, by resolution supported by the votes of a majority of all the members, authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account.

"(2) An agreement to which subsection (1) refers shall be laid before the National Assembly and shall not come into effect until it is approved by the National Assembly.

"(3) No loan shall be raised by the Government on behalf of itself or any other person or authority otherwise than by or under the authority of an Act of the National Assembly.

"(4) An Act of the National Assembly authorising the raising of a loan shall provide-

"(a) that the terms and conditions of a loan shall be laid before the National Assembly and that the loan agreement shall not come into operation until they have been approved by the National Assembly; and

"(b) that any money received in respect of a loan shall be paid into the Consolidated Fund or some other public fund of The Gambia.

"(5) An Act of the National Assembly may provide for the application of this section, with any necessary modifications, to-

"(a) any guarantee by the Government; or

"(b) an international business or economic transaction to which the Government proposes to become a party,

"(6) The President shall, at such times as the national Assembly may require, present to the national Assembly such information as he or she may have relating to-

"(a) the granting of loans, their servicing and repayment;

"(b) the payment into the Consolidated Fund or other public fund of money derived from loans raised on institutions outside The Gambia."

OBSERVATION

The powers of the National Assembly to make laws to monitor terms and conditions of loan agreements as well as to ensure that monies received are paid into the Consolidated Revenue Fund did not feature in the 1970 Constitution.

The 1970 Constitution did not give the House of Representatives the powers that the draft Constitution gives to the National Assembly. The President is required by the draft Constitution to present to the National Assembly, upon request information concerning the granting, the securing and payment of loans and sums paid to the Consolidated Fund which are derived from loans.

ON THE SALARIES TO BE PAID FROM THE PUBLIC ACCOUNT

Section 156 states: "(1) The salaries and allowances, and the retirement benefits, of the holder of the offices to which this section applies shall be a charge on the Consolidated Fund.

"(2) This section applies to the offices of-

"(a) the President and the Vice President;

"(b) the Speaker;

"(c) a judge of a superior court;

"(d) a member of the Independent Electoral Commission;

"(e) the Auditor-general;

"(f) the Ombudsman; and

"(g) the Director of Public Prosecutions."

HOW ARE STATE DEBTS TO BE PAID

Section 157 states: "(1) The public debt of The Gambia shall be a charge on the Consolidated Fund and such other public fund as an Act of the national assembly may prescribe.

"(2) For the purposes of this section, the public debt includes interest on the debt, sinking fund payments and redemption money in respect of that debt, and all costs, charges and expenses incidental to the management and repayment of that debt."

HOW STATE ACCOUNTS ARE TO BE AUDITED TO ENSURE ACCOUNTABILITY

Section 158 reads: "There shall be an Auditor General whose office shall be an office in the public service."

"(2) The Auditor General shall be appointed by the President in consultation with the Public service Commission, and subject to confirmation by the National Assembly.

"(3) Before assuming the functions of his or her office, the Auditor General shall take and subscribe the prescribed oaths.

"(4) Subject to the other provisions of this section, a person holding the office of Auditor General shall vacate his or her office when he or she attains the compulsory retirement age, or upon the termination of his or her appointment by the President.

"(5) A person holding the office of Auditor general may be removed from office only for inability to perform the functions of his or her office (whether from infirmity of mind or body or from any other cause) or for misbehaviour or incompetence, and shall not be removed except in accordance with the provisions of this section.

"(6) Where the Speaker receives a notice in writing signed by not less than one half of all the members of the national Assembly of a motion alleging that the Auditor general is unable to perform the functions of his or her office on any of the grounds set forth in subsection (4) with particulars of the allegations (and any necessary documentation), and requesting that a tribunal be appointed to investigate the allegations, the Speaker shall cause a vote to be taken on the motion without debate.

"(7) If the motion is supported by the votes of a majority of all the members of the national assembly--

"(a) The national assembly shall appoint a tribunal consisting of a Chairman and not less than two other members, one of whom shall be a person who holds or has held high judicial office;

"(b) the tribunal shall investigate the matter in camera and shall report to the National assembly on the facts thereof and advise whether the Auditor general ought to be removed from office. The Auditor General shall have the right to appear and be legally represented before the tribunal;

"(c) if the tribunal reports to the National Assembly that it finds that the particulars of any allegation against the Auditor general contained in the motion have not been substantiated, no further proceedings shall be taken under this section in respect of that allegations;

"(d) where the tribunal reports to the National assembly that it finds that the particulars of any such allegation have been substantiated, the National Assembly may on a motion supported by the votes of a majority of all the members, resolve that the Auditor general be removed from office; and if the National Assembly so resolves, the person holding the office of Auditor general shall thereupon cease to hold office.

"(8) Where a tribunal is appointed under this section, the National assembly may suspend the person holding the office of Auditor General from performing the functions of his or her office. Such suspension may be revoked by the National Assembly at any time and shall, in any case, cease to have effect if, on its consideration of the report of the tribunal, the National Assembly does not pass a resolution to remove the Auditor General from office.

"(9) If the office of Auditor General is vacant or the holder thereof is for any reason unable to exercise the functions of his or her office, the Chairman of the Finance and Public Accounts Committee of the national Assembly, in consultation with the Speaker, may appoint a suitably qualified person to act as Auditor General."

OBSERVATION

Section 158, subsection (4) indicates the termination of the appointment of the Auditor General by the President. However, subsection (7) (d) indicates that the Auditor General shall cease to hold office once the National Assembly accepts the report of a tribunal established to investigate any allegations of infirmity of mind or body, misbehaviour or incompetence.

Subsection (5) indicates that the Auditor General shall not be removed unless the National Assembly passes a motion and a tribunal is set as established in subsection 7. This means that a President cannot terminate the services of an Auditor General.

Hence, the provision in subsection (4) which says that the Auditor General will vacate his or her service upon termination of his or her office by the President should be deleted.

Section 158, subsection (6) did indicate that where a motion is passed by the members of the National Assembly for the Auditor General to be removed on the grounds set up in subsection (4). This is an error. The grounds for removal is stipulated in subsection (5).

Section 158, subsection (9), which indicates that if the office of Auditor General is vacant the chairperson of the Finance and Public Accounts Committee of the

National Assembly, in consultation with the Speaker can appoint a suitably qualified person. This is also a new input which strengthens the powers of the National Assembly and the independence of the Auditor General from the Executive. However, what should be added is that the filling of the vacant post should be temporary until the Public Service Commission appoints a suitably qualified person.

THE ROLE OF THE NATIONAL AUDIT OFFICE

Section 159 states: "(1) There shall be a National Audit Office in the public services of which the Auditor General shall be the head, and the other members of which shall assist the Auditor General in the performance of the functions conferred on him or her by this Constitution or any Act of the National Assembly.

"(2) Subject to any Act of the National assembly, the staff of the national Audit Office shall be appointed by the Auditor general after consultation with the Public Service Commission, and, in the case of such senior or professional staff as may be prescribed by regulations of the Public Service Commission.

"(3) The accounts of the national Audit Office shall be audited by an appropriately qualified auditor or firm of auditors appointed by the Finance and Public Accounts Committee.

"(4) The Auditor General shall submit the annual estimates of expenditure for the National Audit Office for the following year to the President for presentation to the National Assembly in accordance with this Constitution. The President shall cause the estimates to be placed before the national assembly without amendment, but may attach to them his or her own comments and observations."

OBSERVATION

The provision which requires the Finance and Public Accounts Committee of the National Assembly to appoint independent auditors to audit the accounts of the National Audit Office is also absent in the 1970 Constitution. The independent financial arrangement of the Audit Office is also designed to consolidate the independence of the office.

THE ROLE OF THE AUDITOR GENERAL

Section 160 reads: "The Auditor general shall-

"(a) before any money is withdrawn from the Consolidated Fund or any other public fund, ensure that the withdrawal is in accordance with the provision charging

the same on that fund or the relevant Appropriation Act or other Act of the National Assembly and that it complies with the procedures prescribed by an Act of the National Assembly;

"(b) satisfy himself or herself that money charged on the Consolidated Fund or other public fund, or appropriated by an Act of the National Assembly, and expended, has been applied for the purpose for which it was so charged or appropriated, and that expenditure conforms to the authority that governs it;

"(c) at least once in every year audit and report on the public accounts of The Gambia, the accounts of all offices and authorities of the Government of The Gambia, the accounts of the courts, the accounts of the National Assembly and the accounts of all Public Enterprises;

"(d) within six months of the end of the immediately preceding financial year to which each of the accounts referred to in paragraph (c) relates, report to the National Assembly on the accounts and draw attention to any irregularities in the accounts audited and to any other matter which, in his or her opinion, ought to be brought to the notice of the National Assembly;

"(e) after his or her annual reports on the accounts of the Government of The Gambia, of all offices and authorities of the Government, of the courts and of the National Assembly have been discussed in the National Assembly, cause the same to be published for public information;

"Provided that where there is any undue delay in the discussion of any such accounts in the National Assembly, the Auditor General may publish his or her report in advance of such discussion;

"(f) exercise such other functions as may be conferred on him or her by an Act of the National Assembly.

"(2) In the exercise of his or her functions under this Constitution or any other law, the Auditor General shall-

"(a) at all times carry out economy, efficiency and effectiveness examinations to satisfy himself or herself that public funds are spent in such manner as to reduce waste, eliminate inefficiency and maximise the benefits to be gained from the use of resources;

"(b) have power to disallow any item of expenditure which is contrary to law and to surcharge:

"(i) the amount of any expenditure so disallowed upon the person responsible for incurring or authorising the expenditure; or

"(ii) any sum which has not been brought into account upon the person by whom that sum ought to have been brought into account; or

(iii) the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

"(3) A person aggrieved by any disallowance or surcharge made by the Auditor general may appeal to the High Court.

"(4) The Auditor general and any member of the national Audit Office authorised by him or her shall have power to call for and inspect all books, records, returns, reports and other documents in the exercise of the functions conferred upon him or her by this Constitution or an Act of the National Assembly and to make such enquiries and to call such witnesses who, in his or her opinion, have any responsibilities in relation to the accounts referred to in subsection (1).

"(5) Wherever discrepancies of a criminal or fraudulent nature are discovered during the audit of accounts by the Auditor general, he or she shall immediately cause a report of his or her findings to be submitted to the Inspector general of Police.

"(6) Where the Government holds a minority interest in any company, the Auditor general may exercise, on behalf of the Government, the power to inspect the books of account of the company and report to the Government.

"(7) In the exercise of his or her functions under this Constitution or any other law, the Auditor General shall not be subject to the direction or control of any other person or authority.

"(8) Nothing in this Constitution shall preclude the Auditor general, at the request of the head or governing body of any public body, corporation or institution referred to in subsection (1)(c), or on his or her own initiative, from carrying out any special audit of such body, corporation or institution; and where he or she carries out such a special audit, it shall be reported to the Finance and Public Accounts Committee.

"(9) The Finance and Public Accounts Committee of the national Assembly may extend the time within which any such report as is referred to in subsection (1)(d) shall be made to the National Assembly."

OBSERVATION

The condition established in the draft Constitution for the annual report of the Auditor General to be published for public information was absent in the 1970 Consti-

tution. The provision that the Auditor General may also publish his or her report in advance when the National Assembly's observation experiences undue delay is also absent from the 1970 Constitutional provisions.

THE CENTRAL BANK HOW STATE CURRENCIES ARE TO BE ISSUED

Section 161 reads: "(1) There shall be a Central bank of The Gambia.

"(2) The central bank shall be the only authority to issue the currency of The Gambia.

"(3) The central bank shall be the sole banker of the Government and it shall be the principal depository bank of all funds raised for, or on behalf of, the Government.

"(4) The Central Bank shall-

"(a) promote and maintain the stability of the currency of The Gambia;

"(b) direct and regulate the financial, insurance, banking and currency system in the interest of the economic development of The Gambia;

"(c) encourage and promote sustainable economic development and the efficient utilisation of the resources of The Gambia through the effective and efficient operation of a banking and credit system;

"(d) exercise such other functions as may be conferred on the central bank by an Act of the National assembly.

"(5) It shall be the duty of the central bank to ensure that all money paid to or received for or on behalf of the Government is recorded in proper books of account in accordance with recognised accounting standards. It shall ensure that all withdrawals from the various Government accounts with itself are properly authorised in accordance with this Constitution and any Act of the National Assembly and that the over-drawing on any of the Government's accounts with itself is permitted only if so authorised."

OBSERVATION

The whole section dealing with the Central Bank as the only authority responsible for issuing the currency of The Gambia did not feature in the 1970 Constitution.

HOW THE BANK IS TO BE MANAGED

Section 162 reads: "(1) The authority of the central bank shall vest in the Board

of Directors of the bank which shall comprise-

"(a) a Chairman, who shall be the Governor and Chief Executive of the bank;
and

"(b) four other Directors.

"(2) The members of the Board of Directors shall be appointed from among persons of standing and experience in financial matters by the President, in consultation with the Public Service Commission.

"(3) Subject to the provisions of this section the Directors, other than the Chairman, shall be appointed for a term of two years and the appointments shall be made with a view to ensuring that no more than two such Directors' terms of office expire in any one year. Such Directors may be re-appointed for a further term.

"(4) Any Director may be removed from office by the President if-

"(a) he or she is convicted of an offence involving dishonesty or fraud;

"(b) he or she is declared bankrupt or makes a composition with his or her creditors;

"(c) he or she is unable to perform the functions of his or her office due to infirmity of mind or body or for any other cause;

"(d) he or she knowingly engages in any activity detrimental to the interests of the Central Bank.

"(5) A Director shall have the right to be heard in person or by his or her legal representative against any proposal to remove him or her.

"(6) Where a Director is, by reason of illness which is believed to be of limited duration, unable to perform the functions of his or her office, the President may appoint a suitably qualified person to act for such Director.

"(7) Except with the approval of the national assembly, neither the Governor nor any General Manager of the central Bank shall hold any other office of profit or emolument or occupy any other position carrying the right to remuneration for the rendering of services.

"(8) Nothing in this section shall be construed as prohibiting any Director, other than the Governor, from conducting business with the Central Bank or any other person or authority, provided he or she declares his or her interest in writing to the

Board of Directors and abstains from participating in any meeting of the Board at which a matter in which he or she has such an interest is a subject for discussion.

"(9) The Board of Directors shall regulate its own procedures and may make rules and give directions to regulate the administration of the central bank and the conduct of its business.

"(10) Within three months following the end of its financial year, the Central Bank shall submit to the National Assembly a report of its activities and business for the previous year.

"(11) In the performance of its functions, the central bank shall be subject to the direction and control of the Ministry of Finance, in accordance with the central bank Act.

"(12) The central bank shall have regular consultations with the President and any other relevant authorities or agencies."

CHAPTER 11

THE PUBLIC SERVICE

WHO ARE THE MEMBERS OF THE PUBLIC SERVICE?

Section 166 reads: "(1) Subject to an act of the National assembly, the public service of The Gambia shall comprise the civil service as established immediately before this Constitution comes into force and the offices declared elsewhere in this Constitution to be offices in the public service.

"(2) Subject to this Constitution, Acts of the national assembly may provide for the establishment and regulation of separate public services of The Gambia (which may include common services for the staff of local government authorities or the staff of Public Enterprises). Any such Act shall include provision for-

"(a) the appointment or election of a competent authority for the administration of the particular public service;

"(b) the functions and membership of the service,

"and may provide for an appointing authority other than the Public Service Commission for the service. Any such particular public service shall form part of the public service of The Gambia.

"(3) For the avoidance of doubt, it is hereby declared that an office in the public service includes the office of judge of a superior court, and of any other court the emoluments of which are payable out of any public fund of The Gambia, and the office of a principal representative of The Gambia abroad.

"(4) In this Constitution, an office in the public service does not include-

"(a) the offices of President, Vice President, Speaker or Deputy Speaker of the National Assembly, Secretary of State or a member of the national Assembly;

"(b) the offices of a member of any commission (other than a commission the members of which are hereby or by an Act of National Assembly declared to hold an office in the public service), or a member of the Advisory Committee on the exercise of the Prerogative of mercy or the Advisory Committee on the conferment of honours."

OBSERVATION

This indicates that an office in the public service does not include the offices of President, Vice President, Speaker of the National Assembly, Secretary of State or a member of the National Assembly.

How is this to be interpreted in light of section 62 (3) (a) which bars a person who has been compulsorily retired, terminated or dismissed from public office from standing as a presidential candidate.

Section 233, however, defines public office as thus: "Public office" includes an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by an Act of the National assembly, and the office of a member of a local government authority or the staff of a local government authority or a member of a Public Enterprise or of the staff of a Public Enterprise."

To avoid doubt, something needs to be stated to reconcile section 160 with section 233.

APPOINTMENT AND REMOVAL OF OFFICERS IN THE PUBLIC SERVICE

Section 167 reads: "In this Constitution-

"(a) power to appoint any person to hold or to act in the public service shall include the power to confirm appointments, to exercise disciplinary control over and to remove persons holding or acting in such offices and to re-appoint or reinstate any person appointed in exercise of the power in question such power is expressly or by necessary implication vested in some other person or authority;

"(b) power to remove an officer in the public service shall include power to require such officer to retire from the public service:

"Provided that nothing in this paragraph shall be construed as conferring on any person or authority the power to require a judge of a superior court, the Director of Public Prosecutions, the Auditor General or the Ombudsman or a deputy Ombudsman to retire from the public service;

"(c) any provision which vests in any person or authority power to remove a person from any public office shall be without prejudice to the power of any person or authority to abolish any office or to an law for the compulsory retirement of public officers.

HEAD OF THE PUBLIC SERVICE

Section 168 reads: "(1) The President, acting in accordance with the advice of the Public Service Commission, shall appoint a person holding an office in the public service on permanent terms to be the Head of the Civil Service. The Head of the Civil Service shall be the competent authority for the Civil Service.

"(2) The Head of the Civil Service shall not hold any other office of profit or emolument in the service of The Gambia."

PROTECTION OF CIVIL SERVANTS FOR LAWFUL BEHAVIOUR

Section 169 reads: "(1) No public servant shall be-

"(a) victimised or discriminated against either directly or indirectly for having discharged his or her duties faithfully and according to law;

"(b) be removed from office or reduced in rank or otherwise punished without just cause.

"(2) In this section, "public Servant" means a person holding an office in a public service, a person in the service of a local government authority, and a person in the service of a Public Enterprise."

POLITICS, ELECTIONS AND THE PUBLIC SERVANTS

Section 170 reads: "(1) A person holding an office in a public service shall not hold office in any political party.

"(2) Any person who holds an office in a public service who wishes to contest an election for a political office shall, prior to nomination as a candidate, obtain one year's leave of absence without pay, which leave shall not unreasonably be refused.

"(3) If a person who has obtained leave of absence in accordance with this

section is elected to a political office, he or she shall immediately resign from his or her office in the public service and, if he or she fails to do so, he or she shall be removed from such office."

OBSERVATION

Section 130 of the Elections Decree indicates: "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 (her) 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 (her) his (her) job irrespective of his (her) political affiliation."

This is a better provision and it should be incorporated to replace section 170 of the draft Constitution.

ON COMPULSORY RETIREMENT AGE

Section 171 states: "Save as provided in this Constitution, a person holding an office in a public service-

"(a) shall retire from such office on attaining the age of fifty five years or such other age as may be prescribed by an Act of the national assembly (which age is referred to as "the compulsory retirement age"); and

"(b) may retire with an earned pension at any time after attaining the age of forty five years or such other age as may be prescribed by an Act of the National Assembly."

ESTABLISHMENT OF A PUBLIC SERVICE COMMISSION AND MEMBERSHIP

Section 172 reads: "(1) There shall be a Public Service Commission for The Gambia.

"(2) The Public Service Commission shall comprise a Chairman and not less than two nor more than four other members. The members shall be persons of high integrity and good character and shall be appointed by the President. All the members of the Commission shall be full time members.

"(3) A person shall not be qualified to be appointed a member of the Public Service Commission if he or she-

"(a) is a member of a public service or a member of a disciplined force;

"(b) is a member of the National Assembly or of a local government authority;

"(c) is a member of the governing body of a Public Enterprise;

"(d) is a member of the executive body of a political party;

"(e) has within the two years preceding his or her appointment, been nominated as a candidate in an election to the National Assembly;

"(f) is not qualified to be elected as a member of the National Assembly or is disqualified from holding an office in the public service.

"(4) A member of the Public Service Commission shall not hold any other public office and shall be disqualified for appointment to any office in the public service during a period of three years after he or she ceases to be a member of the Commission.

"(5) Subject to the provisions of this section, the members of the Public Service Commission shall be appointed for a term of two years, which term shall be renewable:

"Provided that half of the members first appointed after the coming into force of this Constitution shall be appointed for a term of two years in order to provide continuity in the Commission.

"(6) A member of the Public Service Commission may be removed from office by the President only for inability to perform the functions of his or her office by reason of infirmity of mind or body or any other cause, or for misconduct or incompetence.

"(7) Before assuming the functions of his or her office, a member of the Public Service Commission shall take the prescribed oaths.

"(8) Except as provided in this Constitution or any other law not inconsistent with this Constitution, in the exercise of its functions under this Constitution, the Public Service Commission shall not be subject to the direction or control of any other person or authority."

APPOINTMENTS OF STAFF

Section 173 states that: "(1) Save as otherwise provided in this Constitution or any Act of the National Assembly for the establishment of a particular public service, the power to make appointments to offices in the public service shall vest in the Public Service Commission.

"(2) Subsection (1) does not apply in relation to-

"(a) any office in the service of a local government authority;

"(b) any office as a member, or in the service, of a Public Enterprise;

"(c) any office as a member of the disciplined forces.

"(3) The power to make an appointment to the office of permanent secretary of a department of the Government shall be exercised by the Public Service Commission in consultation with the Head of the Civil Service.

"(4) No person shall be appointed to the personal staff of the President or the Vice President except with the agreement of the President or Vice President, as the case may be.

"(5) The power to appoint persons to hold or act in any office in an institution of higher education, research or professional training established within the public service, shall vest in the governing body of that institution.

"(6) The Commission shall, in any case in which this Constitution requires an appointment to be made after or in consultation with, or on the recommendation of, the Commission, exercise its powers in that regard, and may, at the request of the President or the competent authority concerned, render advice on appointments within their respective powers."

THE POWERS OF THE PUBLIC SERVICE COMMISSION

Section 174 reads: "(1) The Public Service Commission shall have power-

"(a) to make provision for the overall management and efficiency of the public service;

"(b) to review the terms and conditions of service of persons holding office in the public service;

"(c) to review the General Orders and Regulations of the public service and the requirements of the public service as respects training and qualifications and to advise the Government thereon;

"(d) to prescribe the terms and standards for entrance and promotion examinations and establish standards and guidelines for the public service.

"(2) The Public Service Commission shall have such supervisory and regulatory powers to give effect to their functions under subsection (1) as may be pre-

scribed by an Act of the National Assembly.

"(3) Subject to this Constitution and any Act of the National Assembly establishing a particular public service, the functions of the Commission under subsection (1) may be exercised in respect of offices in the public service notwithstanding that the power to make appointments to such offices is vested in some person or authority other than the Commission.

"(4) The President may delegate such of his or her powers relating to the public service as he or she thinks fit to the Public Service Commission or to the competent authority for any particular service of the public service, subject to such conditions as may be included in the instrument of delegation or any subsequent instrument.

"(5) The Public Service Commission may with the approval of the President and subject to confirmation by the National Assembly make regulations for the performance of its functions.

"(6) The Public Service Commission shall submit an annual report on the performance of its functions to the National Assembly."

ON PUBLIC ENTERPRISES

ON THE NATURE OF PUBLIC OR GOVERNMENT ENTERPRISES

Section 175 states that: "(1) In this constitution, Public Enterprise means any body corporate or other body or institution, wholly owned or controlled by the Government.

"(2) The members of the Board of Directors or other governing body of a Public Enterprise shall be appointed by the President after consultation with the Public Service Commission and shall be selected from amongst persons of integrity, competence and maturity of judgement. A member of the National Assembly, the holder of a political office or an officer of a political party shall not be qualified to be appointed to the Board of Directors or other governing body of a Public Enterprise.

"(3) The Chief Executive of a Public Enterprise shall be appointed by the President after consultation with the Board of Directors or other governing body of the Public Enterprise and the Public Service Commission. All other appointments to the staff of a Public Enterprise shall be made by the Board of Directors or governing body, or by some member of the staff of the Public Enterprise appointed by the Board

or governing body.

"(4) Within six months of the coming into force of this Constitution, an Act of the National Assembly shall establish a committee to monitor the operations of Public Enterprises, and shall prescribe the manner in which such enterprises shall be accountable to the National Assembly and shall conduct their affairs in order to promote efficiency, transparency and probity in all their undertakings.

"(5) A Public Enterprise shall, within three months of the end of its financial year submit an annual report to the National Assembly on its business and operations during the preceding year:

"Provided that the appropriate committee of the National Assembly may extend the time for the submission of any report.

"(6) On the coming into fore of this Constitution, the Public Service Commission shall provide existing Public Enterprises with guidelines on personnel matters and shall provide such guidelines to any Public Enterprise established thereafter."

PENSIONS

ON THE PAYMENT OF PENSIONS

Section 176 states that: "(1) The law applicable to any benefits to which this section applies shall, in relation to any person who has been granted, or who is eligible to be granted, such benefits, be that in fore on the relevant date or any later law that is not less favourable to that person.

"(2) In this section "the relevant date" means-

"(a) in relation to benefits granted before the 18th February 1965, the date on which those benefits were granted;

"(b) in relation to any benefits granted on or after the 18th February 1965 to or in respect of any person who was a public officer before that date, the 18th February 1965;

"(c) in relation to any benefits granted or to be granted to or in respect of any person who became, or becomes, a public officer on or after the 18th February 1965, the date on which he or she became or becomes a public officer.

"(3) Where any person is entitled to exercise an option as to which of two or more laws shall apply in his or her case, the law specified by him or her in exercising the option shall, for the purpose of this section, be deemed to be more favourable to

him or her than the other law or laws.

"(4) Any benefit to which this section applies (not being a benefit that is a charge on some other fund of The Gambia) shall be a charge on the Consolidated Fund or upon such other special fund, whether contributory or non-contributory, as may be prescribed by Act of the National Assembly.

"(5) This section applies to any benefits payable under any law providing for the grant of pensions, gratuities or compensation to persons who are or have been public officers in respect of their service in the public service or to the widows, children, dependents or personal representatives of such persons in respect of such service.

"(6) Reference to the law applicable to any benefits to which this section applies includes references to any law relating to the time at which and the manner in which any person may retire in order to become eligible for those benefits."

PENSIONS TO BE FREE FROM TAXATION.

Section 177 reads: "A pension payable to any person who is or has been a public officer in respect of his or her service in the public service or to the widow, children or dependents of such persons in respect of such service shall-

"(a) be free of all tax;

"(b) shall be subject to review to take account of relevant salary increases.

**SEE BOOK NINE ON THE TRANSITIONAL
PROVISIONS WHICH EXPLAINS HOW EXECUTIVE AND
LEGISLATIVE POWER WILL BE TRANSFERRED FROM THE
AFPRC TO THE PRESIDENT AND
NATIONAL ASSEMBLY OF THE SECOND REPUBLIC**

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