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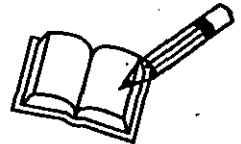


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A REVIEW OF THE DRAFT CONSTITUTION OF THE SECOND REPUBLIC



Book
Twelve



**THE OMBUDSMAN, THE LAND COMMISSION,
THE NATIONAL COUNCIL FOR CIVIC
EDUCATION, THE COMMISSIONS OF
INQUIRY AND THE MEDIA.**

Chapters 10, 14, 17, 18 and 19

INTRODUCTION

Book Twelve deals with the office of Ombudsman, the establishment of a National Council for Civic Education, the establishment of Commissions of Inquiry, the establishment of a Land Commission and the Media.

The reader may now ask: What is the significance of establishing the office of Ombudsman?

Chapter 1 of the draft Constitution accords fundamental rights and freedom to persons in The Gambia. Chapter 2 empowers the courts to enforce the provisions of the Constitution.

Hence, those who allege that their rights have been violated may resort to the courts for redress. The fact of the matter, however, is that very few people know how to find their way in the court system. Moreover, few people may be able to afford to pay for legal counsel.

Furthermore, Chapter 21 establishes a code of conduct for public officers so that they display respect for law, professional competence and forgo nepotism, favouritism or other form of behaviour which are prejudicial to the right of others. Such public officers are to deal impartially with all cases before them. Hence, if a person finds the action of a public officer in granting employments or one form of service or another to be unfair, one has to turn to someone for redress.

The office of Ombudsman is created by the draft Constitution to receive reports and investigate allegations of maladministration, mismanagement, or discriminatory practices in any government department, by any authority or public body as the National Assembly shall decide through an appropriate law.

Chapter 14 establishes a Land Commission which shall process applications for State land, investigate land disputes, assess land tax, monitor registration of properties and manage all State land on behalf of government. If such a Commission functions properly, there should be a fair distribution of State land.

Chapter 17 deals with the National Council for Civic Education. One may wonder whether this would become a propaganda tool of a party in power at state expense. A review of the provision will reveal that the Council is to educate and encourage the people to defend the Constitution, create national consciousness regarding principles of the Constitution, formulate programmes to promote awareness of civil and fundamental rights, duties and responsibilities and educate Gambian citizens about international, regional and sub-regional matters. The National Assembly is supposed to make laws for the proper functioning of the Council. The draft Constitution indicates that the Council shall be apolitical. This, however, is inconceivable since the very work of the Council is a political one. What should be indicated is that the members of the Council, in the discharge of their responsibilities, shall be non partisan.

Chapter 18 deals with Commissions of Inquiry which may inquire into the conduct of public officers and other authorities to control corruption.

Chapter 19 guarantees freedom of the media and charges the media with the responsibility of upholding the accountability of the government of the Gambian people. State owned newspapers, journals, radio and television are to afford fair opportunities for divergent views. Finally, it charges the National Assembly with the responsibility of preparing a code of conduct for the media to ensure impartiality, independence and professionalism that is required for a media in a democratic society. This is the stated aim.

Let us proceed to the text of the draft Constitution on the chapters mentioned.

CHAPTER 10

THE OMBUDSMAN

WHO IS TO ESTABLISH LAWS FOR DEFINING THE FUNCTIONS OF OMBUDSMAN?

Section 163 of the draft Constitution reads: "(1) Subject to the provisions of this Constitution, an Act of the National Assembly shall within six months of the coming into force of this Constitution establish the office of Ombudsman and provision for his or her functions and duties-

"(a) in the investigation of any action taken by a government department or other authority, or other public body, to which the Act applies, being action taken in the exercise of the administrative functions of that department or authority, on a complaint by a member of the public who claims he or she has suffered injustice in consequence of maladministration or mismanagement, or discrimination on any ground set out in Chapter IV, in connection with such action;

"(b) in the investigation, on his or her own initiative, of allegations of maladministration, mismanagement or discriminatory practices in any government department, authority, or other public body, to which the Act applies;

"(c) in the investigation of complaints of any failure to observe the Code prescribed in Chapter XX for the conduct of public officers.

"(2) Without prejudice to the generality of subsection (1), an Act of the National Assembly may;

"(a) determine the departments, authorities and other public bodies to which the Act shall apply;

"(b) determine the actions or classes of action which may be subject to such

investigations;

"(c) determine the departments, authorities, public bodies and actions which shall be excluded from such investigations;

"(d) determine the procedure to be adopted in any investigation and the powers which may be exercised in the course of such investigation, including the power of the Ombudsman to require persons to furnish documents and other information and to provide evidence, and provide for the right of any department, authority, other public body or person to be heard when its, or his or her, actions are the subject of an investigation;

"(e) provide for sanctions for the obstruction of the Ombudsman in the exercise of his or her functions or a failure to comply with his or her lawful requirements;

"(f) provide for the making of reports by the Ombudsman, including an annual report to the National Assembly, and reports to the Inspector General of Police in the event of his or her investigations disclosing the commission of a criminal offence or to the Attorney General in the event of their disclosing any other failure to comply with a provision of law;

"(g) provide for the appointment of one or more deputy Ombudsman, to exercise, under the directions of the Ombudsman, the functions of that office;

"(h) make such administrative and financial provisions as may be necessary or desirable for the efficient functioning of the office of Ombudsman."

APPOINTMENT OF OMBUDSMAN

Section 164 (1), (2) and (3) read: "(1) The power to appoint an Ombudsman and any deputy Ombudsman shall vest in the President after consultation with the Public Service Commission.

"(2) In making an appointment under this section, the President shall have regard to the need for persons exercising the functions of Ombudsman to have substantial administrative or professional experience.

"(3) The office of Ombudsman and deputy ombudsman shall be offices in the public service."

APPOINTMENT OF OMBUDSMAN

Section 164 (4) reads: "A person shall not be qualified to hold office as Ombudsman or deputy Ombudsman if he or she is a member of the National Assembly, a Secretary Of State or holds any other public office.

Section 164 (5) reads: "Subject to this Constitution, an Act of the National

Assembly shall prescribe the tenure and terms of service of the Ombudsman and any deputy Ombudsman."

REMOVAL OF AN OMBUDSMAN FROM OFFICE

Section 164, subsection (6) reads: "An Ombudsman or deputy Ombudsman may only be removed from office by the President for inability to discharge the functions of his or her office (whether arising from infirmity of mind or body or from any other cause) or for misconduct, and shall not be removed unless the National Assembly has appointed a tribunal to investigate the case and his or her removal has been approved by resolution of the National Assembly. The Ombudsman or a deputy Ombudsman shall have the right to be heard and to be legally represented before the tribunal."

INDEPENDENCE OF THE OMBUDSMAN

Section 165 reads: (1) Subject to the provisions of this Chapter, in the exercise of his or her functions, the Ombudsman and a deputy Ombudsman shall not be subject to the direction or control of any other person or authority but subject only to the Constitution and the law.

"(2) All departments, authorities and other public bodies which are subject to investigate by the Ombudsman shall accord such assistance as he or she may require for the protection of the independence, dignity and effectiveness of the Ombudsman in the performance of his or her functions."

CHAPTER 14

LANDS COMMISSION

ESTABLISHMENT AND FUNCTIONS OF THE LAND COMMISSION

Section 191, subsection (1) of the draft Constitution states: " There shall be established a Land Commission which shall in coordination with the relevant public agencies and governmental bodies, perform the following functions-

"(a) on behalf of the Government, manage all lands vested in the State;

"(b) process applications for grants of State land and make recommendations thereon to the Secretary of State;

"(c) process applications for title deeds from deemed lessees and make recommendations thereon to the Secretary of State for approval;

"(d) investigate disputes on land ownership and occupation in any area de-

signed by an Act of the National Assembly;

"(e) assess land tax and premium for properties within any area designated by an Act of the National Assembly;

"(f) monitor the registration of properties and inspect land registers and records; and

"(g) perform such other functions as the Secretary of State responsible for land may assign to the Commission."

APPOINTMENT OF MEMBERS OF THE LAND COMMISSION

Section 191, subsection (2) reads: "The members of the Land Commission shall be appointed by the President in consultation with the Attorney General."

MODE OF OPERATION OF THE LANDS COMMISSION

Section 191, subsection (3) and (4) read: "The Land Commission shall submit a quarterly report on the performance of its functions to the National Assembly.

"(4) An Act of the National Assembly may make further provisions for the purposes of this chapter."

CHAPTER 17

THE NATIONAL COUNCIL FOR CIVIC EDUCATION THE ESTABLISHMENT AND COMPOSITION OF THE COUNCIL

Section 201, subsections (1) reads: (1) Subject to the provisions of this Constitution, an Act of the National Assembly shall, within six months of the coming into force of this Constitution, establish and make provision for a National Council for Civic Education.

Subsection (2): "The Council shall consist of a Chairman and four other members appointed by the President subject to confirmation by the National Assembly. Members of the Council shall be persons of high moral standing and no person who holds office in any political party shall be qualified to be appointed or to hold office as a member of the Council.

APPOINTMENT AND TENURE OF OFFICE

"(3) Subject to this Constitution, an Act of the National Assembly shall prescribe the tenure and terms of service of members of the Council.

"(4) A member of the Council may only be removed from office by the President for inability to discharge the functions of his or her office (whether arising from infirmity of mind or body or from any other cause) or for misconduct.

"(5) The staff of the Council shall be appointed by the Council after consultation with the Public Service Commission."

FUNCTIONS OF THE COUNCIL

Section 202 (1) reads: "The functions of the National Council for Civic Education shall be-

"(a) to create and sustain within society an awareness of the principles and objectives of this Constitution as the fundamental law of The Gambia;

"(b) to educate and encourage the public to defend this Constitution against all forms of abuse and violence;

"(c) to formulate, from time to time, for the consideration of the Government programmes at national and district levels aimed at realising the objects of this Constitution;

"(d) to formulate, implement and oversee programmes aimed at inculcating in the citizens of The Gambia awareness of their civic and fundamental rights, duties and responsibilities;

"(e) to educate the citizens of The Gambia about international, regional and sub-regional matters relevant to The Gambia, and

"(f) such other functions as an Act of the National Assembly may prescribe."

"(2) An Act of the National Assembly may provide for the establishment of district branches of the Council.

"(3) In the exercise of its functions, the Council shall be apolitical and, save as may be provided by an Act of the National Assembly, shall not be subject to the direction or control of any other person or authority."

CHAPTER 18

COMMISSION OF INQUIRY

ESTABLISHMENT OF A COMMISSION OF INQUIRY

Section 203 reads: "(1) The President may, whenever he or she deems it advisable, issue a Commission appointing one or more Commissioners and authorising such Commissioners to inquire into-

- "(a) the conduct of any public officer;
- "(b) the conduct of any District Chief or Alkalo;
- "(c) the conduct or management of any department or authority of the public service or any local government authority or Public Enterprise;
- "(d) any matter whatever arising in The Gambia in which an inquiry would, in the opinion of the President, be for the public good.

"(2) The National Assembly may request the President to establish a Commission of Inquiry for any of the purposes set out in subsection (1).

"(3) Except as may be ordered by the presiding Commissioner in the interest of public morality, public safety or public order, the proceedings of a Commission of Inquiry shall be held in public:

"Provided that the presiding Commissioner shall be entitled to excuse any particular person or persons for the preservation of order."

QUALIFICATIONS OF MEMBERS OF COMMISSIONS OF INQUIRY

Section 204 reads: "(1) A person shall not be appointed a sole Commissioner or the Chairman of a Commissioner of Inquiry unless-

"(a) he or she is, or has been, a judge of a superior court, whether in The Gambia or outside it;

"(b) he or she is qualified to be appointed a judge of a superior court.

"(2) Where a Commission of Inquiry consists of more than two members, at least one Commissioner shall be a person who has special qualifications or knowledge in the field of the matter under investigation."

FUNCTIONS AND POWERS OF A COMMISSION OF INQUIRY

Section 205, subsection (1) reads: "(1) A Commission of Inquiry shall-

"(a) make a full and impartial investigation into the matter in respect of which the Commission is established; and

"(b) furnish in writing a report on the results of the inquiry, including a statement of the reasons leading to the conclusions of the Commission.

Subsection (2) reads: "(2) A Commission of Inquiry shall have all the powers, rights and privileges of a judge of the High Court at a trial in respect of-

"(a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;

"(b) compelling the production of documents;
and
"(c) issuing a commission or request for the examination of witnesses abroad
and
"(d) making interim orders."

IMMUNITIES OF MEMBERS OF THE COMMISSION

Section 205, subsection (3) reads: "A Commissioner appointed under section 200 shall not be liable to any action or suit in respect of any matter or thing *bona fide* done or omitted to be done in the performance of his or her functions as a Commissioner."

PUBLIC EXPOSURE OF REPORTS OF THE COMMISSION

Section 206 reads: "On receipt of the report of a Commission of Inquiry-

"(a) the President shall within six months publish the report and his or her comments on the report, together with a statement of any action taken, or the reason for not taking any action thereon; or

"(b) where the President refuses to publish the report for reasons of national security or otherwise in the public interest, he or she shall, within six months, publish a statement to that effect."

FINDINGS OF THE COMMISSION

Section 207 reads: "(1) Where a Commission of Inquiry makes an adverse finding against any person, it shall, at the time of submitting its report to the President, inform such person of the finding and the reasons therefor.

"(2) A person against whom any such adverse finding has been made may appeal against such finding to the Court of Appeal as of right as if the finding were a judgement of the High Court; and on the hearing of the appeal the report shall be treated as if it were such a judgement.

"(3) An appeal under this section shall be made within three months of the appellant being informed of the adverse finding as provided by subsection (1) or such later time as the Court of Appeal may allow."

PROTECTION OF WITNESSES

Section 208 reads: "A witness before a Commission of Inquiry shall be entitled to the same immunities and privileges as if he or she were a witness in proceedings before the High Court."

CHAPTER 19

THE MEDIA

GUARANTEE OF THE FREEDOM OF THE PRESS AND OTHER MEDIA

Section 210 reads: "(1) The freedom and independence of the Press and other information media are hereby guaranteed.

"(2) An Act of the National Assembly may make provisions for the establishment and operation of the Press and other information media.

"(3) The Press and other information media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the Government to the people of The Gambia."

OPENNESS OF STATE OWNED MEDIA

Section 211 reads: "All state owned newspapers, journals, radio and television shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinion."

CORRECTION

Section 212 reads: "The provisions of sections 207 and 208 are subject to laws which are reasonably required in a democratic society in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of others."

Sections 207 and 208 have nothing to do with the Media. This must be an error.

THE ROLE OF THE NATIONAL ASSEMBLY IN FORMULATING A MEDIA POLICY

Section 213 reads: "An Act of the National Assembly shall within one year of the coming into force of this Constitution make provision for the establishment of a National Media Commission to establish a code of conduct for the media of mass communication and information and to ensure the impartiality, independence and professionalism of the media which is necessary in a democratic society."

CHAPTER 23

MISCELLANEOUS

APPOINTMENT OF OFFICERS

Section 230 reads: "(1) In this Constitution, unless a contrary intention appears:

"(a) any reference to a power of appointment to an office shall be construed as including a reference to the power to appoint a person to act in or perform the functions of that office;

"(b) any reference to the holder of an office by a term designating his or her office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

"(2) Where in this Constitution power is vested in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself or herself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions."

RESIGNATIONS OF OFFICERS

Section 231 reads: "(1) Any person who is appointed or elected to, or otherwise selected for, any office established by or under this Constitution may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed, elected or selected. In the case of:

"(a) the President, his or her resignation shall be addressed to the Speaker and to the Chief Justice;

"(b) the Vice President, his or her resignation shall be addressed to the President;

"(c) the Speaker or the Deputy Speaker, his or her resignation from that office shall be addressed to the Clerk of the National Assembly; and

"(d) a member of the National Assembly, his or her resignation shall be addressed to the Speaker.

"(2) Any such resignation shall take effect, when no date is specified, when the writing is received-

"(a) in the case of the President, by the Speaker;

"(b) in any other case, by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it."

RE-APPOINTMENTS OF OFFICERS

Section 232 reads: "(1) Subject to the provisions of this Constitution, where a person has vacated any office established by or under the Constitution, he or she may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

"(2) Where by this Constitution a power is conferred on any person or authority to make any appointment to any public office, a person may be appointed to that office notwithstanding that some other person may be holding that office when that other person is on leave of absence pending relinquishment of the office; and where two or more persons are holding the same office by reason of any appointment made in pursuance of this subsection, then, for the purposes of any function conferred on the holder of that office, the person last appointed shall be deemed to be the holder of the office."

THE END OF THE REVIEW OF

THE DRAFT CONSTITUTION

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