



**National Assembly, New Assembly Building, Reginald Pyne Lane,
Banjul, The Gambia**

PARLIAMENTARY DEBATES

[HANSARD]

OFFICIAL HANSARD REPORT

FOURTH SESSION – THIRD MEETING

TUESDAY 22ND SEPTEMBER, 2020

SESSION – 2020

**DAY 3 OF THE DEBATE ON THE CONSTITUTION OF THE REPUBLIC OF THE GAMBIA, 2020
(PROMULGATION) BILL, 2020**



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Gambia**

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Third Meeting of the session of the Fifth Assembly
Of the Second Republic of The Gambia.

Proceedings of the Sitting Tuesday 22nd September of the House,
2020.

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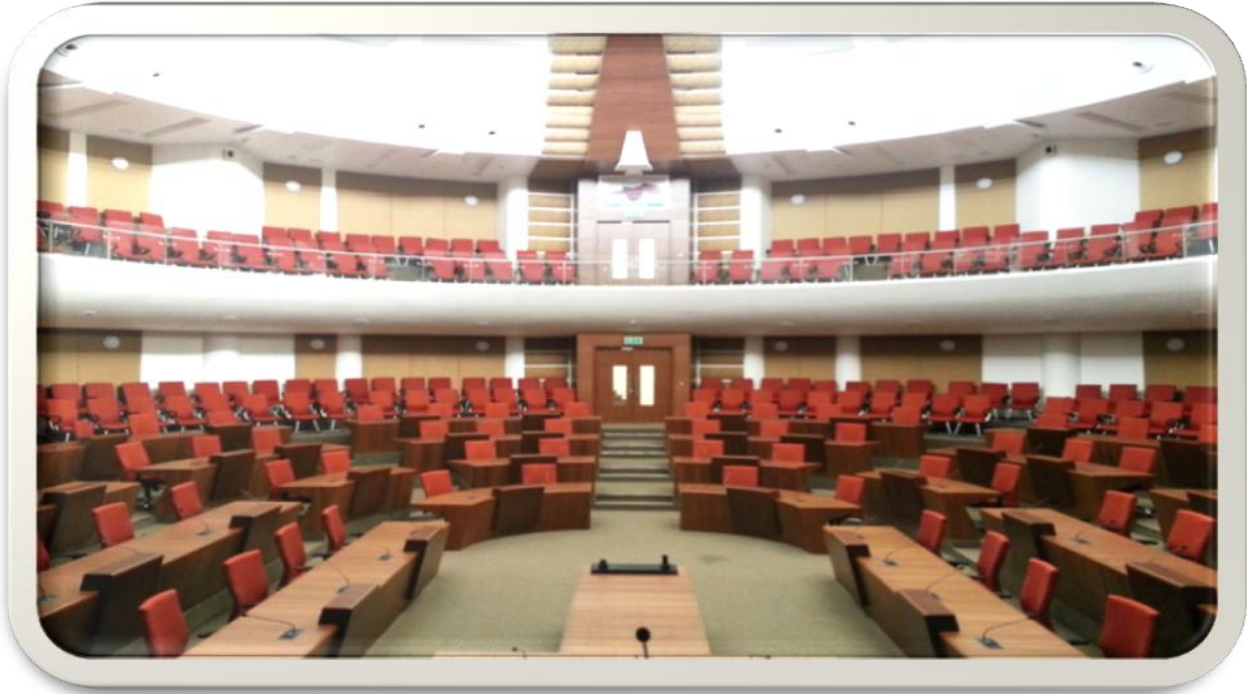
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THE CHAMBERS OF THE NATIONAL ASSEMBLY OF THE GAMBIA

OFFICIAL HANSARD REPORT OF THE PROCEEDINGS OF THE HOUSE

**THIRD SESSION – THIRD MEETING
OF THE FIFTH ASSEMBLY
OF THE SECOND REPUBLIC**

Tuesday 22nd September, 2020

1. PRAYERS

[The Speaker, Hon. Mariam Jack Denton, Reads the Prayers].

[The House met at 11:00 a.m. in New Assembly Building, Reginald Pye Lane, Banjul].

[The Speaker, Hon. Mariam Jack Denton, in the Chair].

The House was called to Order

Communications from the Chair

THE SPEAKER: Good morning Honourable Members, Honourable Ministers and members of the press. Honourable Members, we will recall that the debates on the general merits and principles of the constitution of the republic of The Gambia 2020 Promulgation Bill continued yesterday. Upon a motion without notice under clause 53[c] of the Standing Orders being moved and seconded and approved by the Assembly, the Assembly was adjourned for the debate to resume today. Today, we will continue with the debate on the general merits and principles of the said Bill to allow Honourable Members make their interventions and contributions before the Bill could see through the next level.

2. Correction and Approval of Records of Votes and Proceedings of the National Assembly Sitting of Monday 21st September 2020.

THE SPEAKER: Honourable Members, the Record of Votes and Proceedings of the National Assembly Sitting of Monday 21st September 2020 is before us for consideration and adoption. Can any Honourable Member please move that the said record of votes and proceeding be considered and adopted?

HON. ALHAJI SANKUNG JAMMEH [FONI JARROL]: I rise to move that the record of votes and proceedings of the National Assembly sitting of Monday, 21st September be corrected and considered.

THE SPEAKER: Any seconder?

HON. SAINY JAWARA [LOWER SALOUM]: I rise to second the motion.

[Question proposed]

HON. SAINÉY JAWARA [LOWER SALOUM]: The cover page, where you have the proceedings, “Monday” should be there instead of “Tuesday”.

HON. SALIFU JAWO [JOKADU]: Page 2, my name is not captured on the list of those present and I was here.

HON. DEMBO KM CAMARA [ILLIASSA]: No. 18 Honourable “Alagie Jawara” the spelling is wrong.

HON. OUSMAN TOURAY [SABACH SANJAL]: It is on the same issue, I think the spelling was right because that is how it is captured in other papers.

THE SPEAKER: I have already indicated that we will sort it out with the Honourable Member himself and we will get the correct spelling whether there is need to correct it or not. Thank you.

HON. YAYA GASSAMA [KIANG EAST]: At the bottom of Page 3, the following National Assembly seat was vacant but nobody is mentioned.

THE SPEAKER: You referred us to Page 3, the last paragraph, that the following National Assembly Member was absent with permission. Then the last sentence is the following National Assembly seat was vacant and then it continued on page 4, have you seen it?

HON. SUWAIBOU TOURAY [WULI EAST]: On the “Communications from the Chair”, the fifth line where it says she extended the same “appreciations”, take out the “s” from the word “appreciations”. On the second paragraph, fourth line, “Women Enterprises Fund” Bill, the name of the Bill is Women Enterprise Fund not “Enterprises”.

HON. SUWAIBOU TOURAY [WULI EAST]: Page 6 "Question put and Agreed to", where it says those in favour please say "AYE, those not in favour please so NO", but then there is a question mark. I do not think there is any need for that question mark since it is not a question.

HON. OUSMAN TOURAY [SABACH SANJAL]: If you go under Bills, the second paragraph, I just want us to see this together. The Honourable Speaker reminded Honourable Members that the consideration stage of the Gambia Women Enterprise Fund Bill 2020 was concluded on Monday 14th September 2020. Accordingly, it was appointed for the third reading in accordance with Standing Order 75. That is how the sentence ends. I do not know but I am not comfortable with this statement.

THE SPEAKER: You would have proceeded to that stage but for the fact that there were some errors in the final draft and the Chairperson of Women and Health Committee thought that they needed to get together to tidy it up, that is why we could not proceed and it was adjourned and given time for them to tidy it up with the Parent Ministry, Attorney General's Chambers and Printing Department. That is why we could not proceed with it.

HON. MAHTARR M. JENG [LOWER NIUMI]: Madam Speaker, could your explanation be contained in the form so as to allay his misunderstanding or to clear his doubt as you have explained.

THE SPEAKER: Following a point of Order raised by the Honourable Member for Banjul North, in accordance with Standing Order 70 [20] citing that there were few errors in the referencing on the final version of the Bill. Thus the Honourable Speaker, relying on Standing Order 13 [1], suspended the third reading of the Bill to allow the Minister in charge of the Bill to make the necessary adjustments and submit the final version to the Honourable Members.

HON. ALHAGIE DRAMMEH [JESHWANG]: Honourable Speaker, I think what you missed is what the Honourable Member is referring to. There still should be an omission after the word "according". It should have read "accordingly". Monday, 20th was appointed and then it will follow. That is what he is referring to and not any part of the sentence.

THE SPEAKER: Where will you put the "however"?

HON. ALHAGIE DRAMMEH [JESHWANG]: I am not saying "however"

THE SPEAKER: May the teachers or English students help us?

HON. ALHAGIE DRAMMEH [JESHWANG]: Madam, it is not "however".

THE SPEAKER: It will be consulted, it is noted. Thank you.

SAINEY TOURAY [JARRA EAST]: Page 7 at the end "ensuing debate continues" should be ensuing debate "continued".

HON. ALHAGIE SOWE [JIMARA]: Page 8, the following Honourable Members took the floor and continued the debate on the principles and merits of the Bill: No. 15 Honourable Amadou Camara, Nianija. I think he contributed last week Wednesday, not yesterday.

THE SPEAKER: Thank you, but I will check my records. Yes, Honourable Member for Nianija's contribution was not on the 21st. It was the day before, I have it on my records. Please correct that, Thank you. Any more corrections on Page 8?

HON. SUWAIBOU TOURAY [WULI EAST]: There is no need to put a question mark after those in favour please say "AYE and NO".

THE SPEAKER: Thank you, that was earlier made. Any more on page 9?

HON. ALHAGIE S.B. SILLAH [NIANI]: Instead of Honourable Amadou Camara, Nianija, I think it should be my name because my name Hon. Alhagie S.B. Sillah is not captured.

HON. MAHTARR M. JENG [LOWER NIUMI]: No. 6, Honourable Fatou K. Camara should be "Fatou K. Jawara"

SPEAKER: I always insist that my name should be spelt Mariam and not Mariama so you are right. We use the official names. Any more on page 9?

HON. ALHAGIE DARBOE [LOWER FULLADU WEST]: Page 9, last paragraph ensuing debate "continued" instead of "continues". Yes, I am referring to Page 9.

HON. SUWAIBOU TOURAY [WULI EAST]: Page 10, "Question Put and Agreed to", the first line. You can check it, it has been moved and seconded that the "continuation debate" i.e. "continuation of the debate". The same question, there is no need to put question mark when you ask people to say Yes or No.

[Question Proposed, Put and Agreed to]

[Records of Votes and Proceedings of the National Assembly Sitting of Monday 21st September 2020 be adopted with amendments]

3. Bill

Continuation of the debate on the general merits and principles of the Constitution of the Republic of The Gambia Promulgation Bill 2020 [by the Hon. Attorney General and Minister of Justice].

THE SPEAKER: Honourable Members, in accordance with the Clause 67 [1] of the Standing Orders, I would again open the floor for the debate on the general merits and principles of the Bill to continue. Any Honourable Member who wishes to take part may do so now. But Honourable Members, once more, I strongly wish to emphasise Standing Order 67 [1] that the debate shall strictly be on the general principles and merits of the Bill and not on the details for now. So please let us all take note so that we would not be called to order. Thank you very much.

HON. ALHAGIE DARBOE [LOWER FULLADU WEST]: Thank you very much Honourable Speaker for giving me the floor. I would like to join my colleagues in the debate on the Constitution of the Republic of the Gambia Promulgation Bill 2020 that is before us.

Honourable Speaker, much have been said and I am going to be very brief; I will not make repetitions. I think this draft Constitution before this august body is one of the best since The Gambia gained independence. It has catered for lots of important provisions of national interest which were not provided for in the previous constitutions. When you read through the draft, certain areas need to be looked at again at Committee Stage but that should not stop us from passing this draft Constitution for the simple fact that it is the verdict and aspirations of the Gambian people we represent here.

As other members have stated, this draft Constitution is not the making of the CRC. We assigned them to do this exercise through the length and breadth of this country and in the Diaspora by an Act of Parliament and they have done their part. For that matter, I would like to thank the CRC for a job well done. I am 100% in support of the Draft Constitution Promulgation Bill 2020 that is before us for ratification. I want to appeal to my fellow Honourable Members of this august body to give their blessings to this Draft Constitution and give it a chance as people representatives. Honourable speaker, I want to reserve my comments until Committee Stage and I thank you for giving me the floor.

[Applause]

HON. ALHAGIE DRAMMEH [JESHWANG]: Thank you very much for giving me the floor. I would also want to join my colleagues in appreciating the work of the CRC. They have endeavoured to give us a very good document. They have toured the length and breadth of the country and they have also gone outside the country to gauge the views of Gambians.

This document that they have given us is a progressive one and I believe that it has suggested improvements in the 1997 Constitution. I have also suggested some innovations and key among them are the affirmative actions on women and children.

However, Honourable Speaker no constitution is perfect, they have endeavoured their best. The document they have given us also has some flaws and I think this parliament has the right to touch it. I think what may have caused the problem is that we have some social media activists whose opinions people trust and they tend to mislead people. I think that has led people into being a little bit sceptical and it might be detrimental to the passing of this Constitution.

Honourable speaker, I could vividly remember our engagement with the CRC at the auditorium when we suggested the insertion of the National Assembly being given the powers to confirm the appointment of Ministers. I could quote exactly what the Chairman said. He said "We surely do not want to have a dictator Executive neither do we want to have a dictator Parliament and here it is". *[Applause]* I think we are creating a dictator parliament. I am saying that as a member of parliament and I think that would be fair. We are given the powers to confirm Ministers; we are given the powers to confirm the appointment of Judges. What control does the Judiciary have over the Assembly? What control does the Executive have over the Assembly? I do not think there is any. That is my view. Having said that, I think this Constitution deserves to move to the next stage. It is there and therein that we will have the opportunity to rectify anything that we think it is not in the best spirit.

Honourable Speaker, there are many people that called the 1997 Constitution the soldiers' Constitution, Yaya Jammeh's Constitution, APRC Constitution. In the same vein, I will call this one the Judiciary Constitution. *[Applause]* It is judiciary biased. I would highlight just a few because my colleagues have already highlighted them. One of those is the remuneration and retirement benefits of judges. We have judges, the suggestion is we employ them and pay them for life. They are given gratuity when they retire and their pension is supposed to match the salary of a sitting judge and that means

employing them for life and giving them gratuity in addition to that. I am saying why? It is not fair. I am taking the judges to be the same level as Ministers or even a little lower than the Speaker's Office and that of the Auditor General. What does the Auditor General go with? And what does the Speaker go with after retiring? What does the Executive Secretary of the National Human Rights Commission go with after retiring? Is it only the judges whose lives are at risk because as someone said they do a risky job? I do remember in 2016 December, we were all afraid. We thought at any day we would hear that the IEC Chairman has been kidnapped or killed because of how risky it was at the time for them? Why is the IEC Chairman not accorded the same right?

Another point Honourable Speaker is the Judiciary's budget, they are saying we should not give them less than what we have given them last year and we all know their 2019 budget, I think it was exactly ten million dalasi given for the construction of courts and I cannot remember the amount that was given for vehicles. So, what that would mean is, I do not think they would need to construct courts every year and what that would mean is every year we are giving excess money for them to use. Let also remember, we are saying our deficit is always increasing. What if we say now the year instead of twenty-five million, we want to spend twenty million. Does that not mean that every institution at least expect something lower than what you were given? When we have that in this Constitution, it becomes mandatory that we give them what they need or what is their fair share.

Another point is, the judiciary is asking that at the beginning of each quota we give them three months allocation. Is that realistic? We all know we collect and out of what we collect is what the government distributes. We all know that more than two thirds of what we collect is spent on salaries and the payment of debts. The one third that is left, they are saying "give us three months". What would warrant that? What would happen to other institutions? The one third would have to be distributed. Should they be given three months, and the balance, I am afraid many departments will not have anything to at least start the year.

Honourable speaker, I also want to comment on the notion that everything in this Draft Constitution is the wishes of The Gambian people. I am saying no to that. My colleague did some comparisons yesterday and I would not repeat that but those that are asking this Assembly to pass this as it is, I do not think they knew what is written. If you are Teacher or a Nurse out there, in the draft Constitution it says if you are in the government's payroll; you cannot work elsewhere. Is that what is good for The Gambia? I would ask. *[Interruption]* I am not asked to go to the details, so these are the principles, it is there.

THE SPEAKER: Are you deviating?

HON. ALHAGIE DRAMMEH [JESHWANG]: I am not deviating, they want me to quote the direct section but it is there in the Constitution. We are debating on the general merits and principles. I do not have to quote the section but it is actually the case.

THE SPEAKER: You will agree with me that the debate touches on the details and it should be confined to the merits not the details. It is okay, I do not get that but I think the Honourable Members should desist from interrupting other Members when they are on their feet. If you want to get the attention of anybody, I think the proper procedure is to write a note but you cannot just be interrupting, quote the relevant section or whatever. I think that is wrong.

HON. BILLAY G. TUNKARA [KANTORA]: That was my Point of Order.

THE SPEAKER: Was that your Point of Order? Yes, I did not get that because it was being murmured among themselves, not on the microphone.

HON. ALHAGIE DRAMMEH [JESHWANG]: I would happily continue, I am fully conscious of what is said in the Standing Orders.

THE SPEAKER: Sorry, I thought you were going out. It was not meant for you it was meant for Honourable Member for Central Baddibu.

HON. ALHAGIE DRAMMEH [JESHWANG]: Honourable Speaker, what I was just saying is that, this draft Constitution prohibits public servants to take another gainful employment outside of the public service. I was asking whether this is in the best interest of the people. For example I know if I were a doctor out there, I am being paid less than ten thousand in the RVTH and I can get that in a week's work per se for example in Netherlands, if I am banned from working in the public services in combination with private work, I would rather leave. Would that be in the best interest of the country? I doubt so. So, there is the need to touch this document and I think that is what every National Assembly Member wants. We want a very good document. We cannot give it perfection but we want to improve what is presented to us. Let the people give us the chance to allow us do our work. Why I am saying this is, if people are being harassed for having an opinion as to the defects of this Constitution, those people are tempted to kill it at the first instance and that is what is happening. I think there are people whose conscience is not clear because they are the ones that are causing NAMs on the other side to say "Let us kill it at this point". I am appealing to those people to say we have a chance of killing many birds with one stone. Let us allow it to pass this stage and during committee stage and consideration, we can have our issues addressed. I do appeal, please let us allow it to pass this stage and I think I said earlier, it has my blessings. In principle, I want it to pass this stage. Thank you very much.

THE SPEAKER: Honourable Members let me just draw our attention to Clause 32 [2], dealing with permissible interruptions. It appears as if there is a lot of interruption or there are many interruptions when an Honourable member is on his or her feet. Let us be mindful of this clause, we approved it so let us abide by it. It is very clear. If you want to raise a Point of Order, just ask for the floor and it will be given to you by the Chair or if you want to make an observation, the Honourable Member on the floor can give you permission and you can go ahead but you just cannot be interrupting, if I can use the word unnecessarily, maybe that is not even the correct word. Let us follow due procedure.

POINT OF OBSERVATION

THE SPEAKER: Observation from who?

HON. MAJANKO SAMUSA [NOMINATED]: You! You! You! I am observing you. Because Madam Speaker...

THE SPEAKER: I am not allowing you then.

HON. MAJANKO SAMUSA [NOMINATED]: No Madam Speaker, you listen to me even though you do not allow me because you are bringing new element. In the last four years, you never come up with this and then we are amending this Constitution. Madam Speaker, you have been allowing people to interrupt people's concern. It is today that you are bringing this element. That is what I observed.

THE SPEAKER: You are at liberty to do so provided that you are allowed but you cannot observe the Chair. Thank you very much.

HON. MAJANKO SAMUSA [NOMINATED]: It is my right also to tell you what I have observed. The irregularities that have been going on here, allowing others to observe, trying to be honest and harassing people while they are making their interventions. You have to be impartial Madam Speaker, with all due respect.

HON. SALIFU JAWO [JOKADU]: Thank you very much Madam Speaker for giving me the floor. Let me first of all thank the CRC for taking up a task in trying to do a work for this great nation. Madam Speaker let me just start with this saying and it is said in all our national languages, that is "When you pick a creature, you do not know exactly what that creature is and you happen to have two groups in front of you; one group is telling you that creature can bite and the other group is telling you that creature cannot bite, the wisest decision that you should take is for you to distance your foot from that creature". What that means is, there are so many talks on this draft. People are saying different things.

Now let me just quote a few clauses, not to waste the time of the Assembly, because much has been said. Going to Clause 15 which talks about citizenship, that is where I would start. We said we are in a global village, let me just give you a scenario. Your grandparents have never been to UK or USA neither your parents, but you are fortunate to go there in few years and acquire their citizenship and then you marry there, your children are born there and they acquire citizenship. Why is it that the issue of citizenship is so harsh in this country, and we say that we are in a global village? My point is, any person who is born in this country of ours [The Gambia] should automatically become a citizen whether your parents come from Japan or anywhere in the world. That is my stance.

Madam Speaker, you are here in The Gambia: you marry a wife here, your wife makes love here in The Gambia, got pregnant here in The Gambia and happens to travel to US or UK after eight and a half months of pregnancy. Then she delivered a child in UK or USA after being there for two weeks and that child becomes a citizen of that nation. Gambians are doing it and we do not want others also to enjoy the same right in this country, I say no to that.

When we go to the right to marriage in the draft, I can see a man and a woman which is so vague to me. Although we are told we cannot interpret the law, my understanding of it is that "a man" stands on its own and then "a woman" also stands on its own. Now it is not very clear. A man and a man can engage to my understanding and a woman and a woman also can engage; we have seen what happened in the last few months. Religious leaders were crying in the country talking about this gay and lesbian marriage which our culture and religions did not allow. I have seen a video footage and the person who sent it says it happened here in Serrekunda. A big gentleman who bleaches his entire skin, dresses in a skirt with Rasta makeup, "*bodize*" [bras] and whatever. People detected that he is a gay and they undress him and they found out that there is a big banana foiled in his pants in the streets. If this thing is not clear to us, these people are all over here hiding and they are just waiting for time. When the time comes and the issue is not made clear, they will come out and they can challenge their rights.

What are we going to do then? I am not in for that. This constitution must be very clear to me and to the entire Gambian people before I can append my signature to say yes on it.

Madam Speaker, when you go to the Office of the President as the Head of State, we said we want to usher in a very civilised democracy in this country and then we said the man sitting in that Chair should be toothless, he cannot bite, he cannot slap but the ordinary citizens can slap him or her and he cannot do anything. Is that justice? I am not in for that. Separation of powers must be done in the right channels. We cannot be interfering in some one's work and that person cannot interfere in ours, it is injustice. Appointment of Ministers, we said we have the Judiciary, Legislature and Executive. Now you want the Legislature to determine who should be in the Executive and should also have a hand in who should be in the Judiciary. Is that democracy? I disagree with that.

Madam Speaker, what I have said is just few points because I cannot exhaust all and many people have said a lot about this Constitution. My stance is that this draft must be very clear to our fingertips, if not we are going to be hypocrites. This Constitution should not be politicised, it is for every Gambian citizen.

Madam Speaker, let me just end by trying to put something across and it goes to the Coalition 2016 because it is where this draft emanated from. Coalition 2016, particularly those who were in government, you should remember that you were in a bus and that bus has a driver. I do not know how come you alighted from that bus but the driver is still driving and no accident has happened. Now what I am appealing to you is that, before you see yourself at ground zero, please run as fast as your legs can carry you so that you catch that bus and jump in again *[interruption]* on that note Madam Speaker.

THE SPEAKER: Can you just withdraw your last two sentences. Can you please confine yourself to the debate?

HON. SALIFU JAWO [JOKADU]: Withdrawn Madam Speaker.

THE SPEAKER: Thank you very much

HON. SALIFU JAWO [JOKADU]: There are so many things embedded in this draft and it needs to be made clear because we are saying that we are going to repeal the 1997 Constitution because so many amendments were made on it. What I can understand from the deliberations is that, when this one is also passed there is going to be as many amendments as possible. So, it comes to the same and I do not see any difference. On that note, I am counting on the Honourable Minister to clear the doubts of this National Assembly before we can proceed with this document. Thank you very much.

THE SPEAKER: Honourable Members, I think my duty is just to guide the proceedings and if I detect that somebody is going outside the parameters, I will call the Honourable Member to order unless I missed the point. If I start getting interruptions, I may not be too focused to address the issue at hand. So please allow me time. I always want to get the attention of all of us just to take note of clause 21 [1] of the Standing Orders which talks about discipline and suspension of members. I do not like using it very much. In fact, I do not think I have ever used it but it is provided for:

- (1) The Speaker or Chairperson, after having called the attention of the Assembly or Committee to the conduct of a Member who persists in irrelevance or tedious repetition either of his or her arguments or of the arguments used by other Members in debate, may direct the Member to discontinue his or her speech.*
- (2) The Speaker or Chairperson may, after having called the attention of the Assembly or Committee to the grossly disorderly conduct of a Member who –*
 - (a) willfully assaults, molests, obstructs or acts in a disorderly manner towards the Speaker or any other Member;*
 - (b) persistently and willfully obstructs the business of the Assembly;*
 - (c) willfully assaults, obstructs or resists any police constable or officer of the Assembly acting under the authority of the Speaker;*
 - (d) uses unacceptable language which he or she refuses to withdraw;*
 - (e) persistently or willfully refuses to conform with the Standing Orders; or*
 - (f) persistently or willfully disregards the authority of the Speaker;**order the Member to withdraw immediately from the Chamber during the remainder of the day's sitting.*

Please, Honourable Members let us just pay heed to this. We all agree to the Standing Orders and I always draw the attention of Honourable Members for us to exercise the decorum. This is parliament, it is our parliament and we are being watched all over the world. I think it is only proper for us to exercise discipline. Let us exercise discipline and restraint.

This is our country, our Constitution and our Parliament. Whatever decision we will take is a collective one. There is no need to quarrel over it. Please, I am just appealing for us to be patient. Thank you.

HON. MADI M.K. CEESAY [SERREKUNDA WEST]: Thank you very much Honourable Speaker. Before I proceed, I want to be on record that I am one of the Honourable Members of this House who is in full support of the Bill before us. I want to quote Nelson Mandela, when South Africans were writing their constitution, the message he sent to the members of the parliament was that "The Constitution you are writing now is a South African Constitution and not an ANC Constitution". I want to remind myself and my honourable colleagues that in the same vein we members of the parliament are also writing a constitution not for any individual person but for our country.

The Bill before us, I would say, is a Bill or Constitution that is progressive and innovative in the sense that there was a lot of consultations done before the CRC gets to this conclusion. Madam Speaker, first and foremost, let me commend the members of parliament who spoke before me for their interventions and I highly respect all opinions that were expressed in this august Assembly.

In the same vein, I also want to commend the CRC for the excellent job they have done. Last but not the least, I would also want to thank the Media for providing us with a very fair coverage. Fair in the sense that majority of the Media here are giving live coverage. That is fair enough. They are not paraphrasing the speech of anybody, so they need to be commended because the whole country cannot be here but we are followed from inside and outside. We must also know that we are people's representatives so their concerns are also very important. I welcome people who could not be here and they are following their Honourable Members to do one thing or the other because we are representing them. Putting them altogether, that is where we can have a decision that would be fair. So, I commend these people for the very good job they are doing.

Madam Speaker, like I was saying, this Bill before us is progressive and inclusive. So many people have said it. You cannot have a constitution that is perfect. All the people and organisations that were consulted by the CRC, their views cannot be there but comparatively, there must be an average of representation of their views in the Constitution. If all of us said this and I have not seen it in the Constitution, what kind of a constitution do we want? It is too big so it must be tailored to certain pages or clauses but what is important is how many of our views are not captured and based on that, we should be able to make a very good decision.

This draft Constitution before us also has an edge over the 1997 Constitution but the 1997 Constitution does not belong to anybody. It is a Gambian Constitution and I have participated in the referendum of that Constitution. It belongs to The Gambia and it does not belong to any particular political party nor does it belong to any particular sect of this country. It is our document; it is a national document. The 1997 Constitution, being a national document, is a living Constitution.

Constitutions are living documents; they need to be changed and amended from time to time. That does not mean that they are totally bad. In fact, I know most of the clauses in 1997 Constitution are in this draft Constitution. So, that should not be a problem. It is a living document and it has served us for more than twenty-six years now. And lest we forget, when the brains behind that constitution came to power, what did they do? They suspended the constitution that was here.

I do not see any problem amending or even changing that constitution to have a new constitution, including some of the beautiful clauses that were in the 1997 Constitution. It is a national document. That is how we should see it. It belongs to every one of us. The one we are writing now too, when it becomes the Constitution of this land, it belongs to everybody, it is not Adam Barrow's Constitution and it is not party A and X Constitution. It is Gambia's Constitution and I think we should be very clear about that, Madam Speaker.

Honourable Speaker, the 2020 draft really has reflected a good number of the aspirations and wishes of this country. To do justice to this draft Constitution before us is to allow it to go to the next stage, we are only a small fraction of the entire Gambia

(something like two million people), we are about 56 or 57 in this Parliament. Let us also allow the masses to have their voices heard on this Constitution. Killing this Constitution here will not be doing any justice to our electorates. Let us give them the benefit of the doubt; let them decide on it, let us do our bit and then pass it to them. A total rejection really will be too catastrophic, having in mind that we have spent a colossal amount of money on this Bill. One Hundred and Sixteen Million Dalasi! Do you want to throw that in the waste? Do we want to throw that away, for no purposes? Then we are not going to be fair to our tax payers. One hundred and Sixteen Million Dalasi!

Horrible things are happening in our health sector today. Our mothers and sisters that are giving birth are dying in their numbers because of the poor health system we have. Would it not be wise, before we waste this Hundred and Sixteen Million Dalasi to plough that back into the health sector? Let us be fair to our electorates. Let us allow this bill a chance to go to the next level and allow the rest of the Gambian People, who elected us in office to have a say on this Constitution, Madam Speaker.

Madam Speaker, like I said earlier on, the Bill has so many beautiful clauses. Just to give you a few, the clause concerning the recall of Members of Parliament is very welcoming and beautiful. The 1997 Constitution has the same merit but then it tells us that it has to come in as an Act of Parliament. All the Parliaments from 1997 to date failed woefully to bring in an Act of Parliament so that we could be recalled by people who are not satisfied with us but with this Constitution (1997 Constitution), Section 144 is not as difficult so we refused to come up with an Act of Parliament to be recalled. Now the electorates can have that without even an Act of Parliament. That is one of the beauties of this new Constitution, Madam Speaker.

Madam Speaker, term limit; it is very progressive. All over the world, people have changed to term limits e.g. our neighbours Senegal, Mali, Sierra Leone, Ghana, South Africa, you name them. Why should we be left out? These are some of the merits of this Constitution.

Madam Speaker, the vetting of some key appointments by the Parliament is progressive. There is nothing like the Parliament being given too much power. There is nothing like the President or the Executive being given too much power. We have to check on one another. Certain key positions needed to be vetted by this Parliament. We can put our inputs there but let us allow the masses to decide. We are just a small fraction of the total population of this country.

Madam Speaker, the clause that is giving chance to the people in the Diaspora to vote is also another noble clause in this Constitution. Last but not the least, the clause that is

asking the President to come to this Parliament not later than April of every year is beautiful, rather than saying you can go to the Parliament anytime. We must also understand that this Constitution before us is not Adam Barrow's Constitution; it is not targeting any individual. We had two former Presidents: Sir Dawda and Yahya Jammeh; they are gone. Former President Yahya Jammeh left his Constitution here. If it was his, he would have gone with it. So, this is no one's Constitution; this is our national document. These are some of the beauties of this Constitution. I am convinced that we should make sure it passes this stage and allow our electorates to have a say on it. They are watching us, they are listening to us, they are following our deliberations, and we must do the right thing.

Madam Speaker, I urged my colleagues to do what is right by passing this Bill. Like I said, allow the masses to have a say or have a chance in a referendum. It would not be fair for us to kill it here and it is in the best interest of this National Assembly to make sure that this Bill gets to the next stage.

To conclude, Madam Speaker, these are some of the disadvantages of coming last; almost every beautiful thing has been said by my honourable colleagues. I am sure we will start to think twice to allow this Bill to go to the next stage, if you want to do justice to the document and also to give our people who elected us here the right. We are here by chance but we are not the best in this country; we are here by chance but we are not the most knowledgeable in this country. Why would we not give chance to the 1.9 million that is out, or even more than that. My mathematics is not good but you take 56 out of 2 million people, why do we not give chance to the rest of the millions to also have a say? So, I urge my honourable colleagues to do justice to the document and allow it to go through the processes.

We have the right to touch the Constitution and it is the document that we can fine-tune at committee level. Why would we want to kill it now? If you are not happy with certain clauses, let us wait until the committee stage, it will be changed. There is no doubt about that. We have the mandate to touch it so why would you want to kill it before it even hatches? I thank you all.

HON. SAMBA JALLOW [MINORITY LEADER]: Thank you, Honourable Speaker, for giving me the floor. Honourable Speaker, let me join my colleagues to thank the CRC and the Attorney General, for presenting this important document to this august House.

Honourable Speaker, other speakers have said that it is history; we are promulgating a Constitution on top of an existing Constitution. I think this is the first time it happens in The Gambia. The 1997 Constitution is guiding us on the transition of the 2020 draft.

Honourable Speaker, my first submission to the Attorney General is on the supremacy of the Constitution. Honourable Speaker this clause, many Members have actually forwarded it to the Attorney General but for me when I saw that clause, the legality and the validity of this Constitution cannot be challenged in court, I had to make a little research because at that time I was not actually comfortable with the clause. I knew that this submission might come from the Judiciary. Then I made effort until I get the observation of the Judiciary on this clause.

Honourable Speaker, since we are coming to decide on this important document and then tomorrow whatever happens, to every citizen or to any of us we are going to resort to the Judiciary for its interpretation, if you can allow me, let me read that piece of observation with regards to this clause. Honourable Speaker it reads: "*Challenging the validity of this Constitutional clause [7] 3 of the draft Constitution provides as follows: the validity or the legality of this Constitution is not subjected to challenge by or before any court or organ of the State*".

This provision, in our view, in so far as it seeks to oust the jurisdiction of the court, is in consistent with the principle of access to justice and to the court. It is irreconcilable with the principle of the respect for the rule which permeates the rest of the Draft Constitution. How else should citizens be able to challenge the Constitution other than in the court of law? Why should the right be taken away? No cogent reason can, in our view, support such a proposal. We recommend that this provision should be deleted from the Constitution.

Honourable Speaker, I am not saying it is actually what happened because these are legally tested. When I saw the provision, I have to make my research until I get the submission of the Judiciary. So, Honourable Attorney General, I would definitely want you to help this House to understand this clause because this is dealing with supremacy of the Constitution and if the custodian of this Constitution has got their reservations at the drafting stage, definitely something should be done about it.

Honourable Speaker, my next point is the discrimination aspect of the new draft. We have seen a lot of discriminatory clauses in it. People have been talking about the issue of the Judiciary since yesterday. They were talking about their emolument and their retirement benefits but I believe there is some other discriminatory aspect also. If you look at the judges, a judge is just a judge. You have some judges that should be appointed by the President and confirmed by the National Assembly. You have some judges whose appointments should be under the Judiciary Service Commission. I do not know why they are treating their appointments differently. The other aspect of discrimination also, is about the retirement benefits, it is treated differently with the

entire civil service of this country. The way pension is computed in our Civil Service is your total emolument and length of service; it is computed in that way. That means the retirement benefits of the judges and the other aspect of the society is treated differently; that is also another issue. The new Constitution and the 1997 Constitution, none of these is accepting discrimination. We go to the 2020 draft and we see what it means by discrimination. In Section 69, it talks about protection from discriminatory and this is a fundamental right. It says: "*All persons are equal before the law; no law shall make any provision which is discriminatory either of itself or in its effect*". We have seen the discriminatory aspect in the new draft itself and it is almost the same text in the 1997 Constitution. Therefore, Honourable Speaker, promulgating any law that is discriminatory, is against both this one and the 1997 Constitution. I do not know how the Assembly would proceed with legislating laws that are actually discriminatory.

Honourable Speaker, the other discriminatory aspect of it is affecting the sitting President. The matter is not about the President. We are legislating and as long as we are legislating, we should legislate laws that suit everybody. If you look at it, the matter is not about term limit, I am talking about the discriminatory aspect of it. According to this Constitution, his current term is not accounted for and then actually he was given that right on this Constitution. Now if you go for elections, if a person wins other than him, he or she will serve two terms but for him if he wins, he serves one term. This is totally discriminatory. Are we going to enact law, especially the 2020 draft Bill itself and it will tell you, "Do not enact me as a law if I am discriminatory". What will be the approach?

Honourable Speaker, the Member for Jeshwang, was mentioning a clause. I think it is clause 27 and 29 of the 2020 draft Bill. Honourable Speaker, there is some laws that are heartless and as people's representatives, we should be very mindful of those laws. Clause 27, restriction on the activity of public officers, here it is telling you if you are employed by the government or any public institution, you are not going for any gainful employment.

Honourable Speaker, if our brothers travel outside, they work for 24 hours, 16 hours; they are given that right in foreign countries. For us, our own people, we deny them a right that they are given outside. I think we must think logically. Let us look at the laws that we are putting in place. How many Gambians in this country receive salaries that can sustain them even for one week? You are telling me if I have the energy, I have the power to work for government for 8 hours and then go and work somewhere else for 8 hours to improve my living, you said no to that and you want me to append my signature on that note? I will not do it.

You go to Section 28, which is the worst one; consequence for contravention... You go to Subsection 3:

A person who has been dismissed or otherwise removed from office, or whose relationship with the organ or agency of the State or the Statutory Body or State Owned Enterprise has been terminated, shall –

(a) in the case of a public officer, be disqualified from holding any other public office for life...

What are we doing? We are enacting laws that will be killing our own people, our own people that we say we are representing and we want to enact such and we said this is draconian; which law is more draconian than these clauses? We are here to enact draconian laws and we are enacting draconian laws. What is more serious than this one? These two clauses alone disqualified this 2020 Constitution because it is directly affecting the people we represent. We are banning them from work for life.

When the Jannet Commission submitted a report here, there were some people who were banned for life and it was a public outcry. Today we are legislators and we are asked to legislate such laws and we said it is progressive. One rotten potato spoils the whole lot and these clauses have spoiled this Constitution.

Honourable Speaker, on the session of the National Assembly, that is a beautiful clause that I wanted to add because, Honourable Speaker, I was expecting that we have a very innovative Standing Orders and we are drafting a law. Currently, if you look at how many bills we do refer to various committees, I would have loved the CRC to look into our Standing Orders, then our session be at least open. Because in our Standing Orders, the way we treat bills, we will have a session refer all those bills. We will not finish the process of those bills then we go again into the next session and have another Bill. That means that we are working with a backlog. If we do not mind, our term will finish and we will still have some backlog of Bills to treat. Since we are coming up with a new Constitution, I think the sitting of the Assembly could have been considered at least open and we have a long recess so that we can handle all our Bills in a session. But the way the trend is moving now, we might exit this term but still we will have some Bills behind and then I believe our session should have been definitely looked at so that instead of quarterly sittings, we open it then we have a longer recess so that we can handle our National Assembly business according to our Standing Orders. Presently, our Standing Orders, did not match with this quarterly sitting. I was actually expecting that.

Honourable Speaker, I heard some interventions; others are saying let us legislate it and then after we can come and amend. For me, I cannot understand that as a legislator. When it is wrong, it is wrong. You dare not legislate it while it is wrong and

then you come back and say you are amending it; that is a wrong process. Once it is wrong, it is wrong, let it stop there. If you do not have anywhere to amend it, let it stop there. The thinking of saying, "No these are clauses, some of them are positive", why do we not legislate and after we come and amend. AH-AH that is not the case; that is not how we legislate.

Honourable Speaker, my submission will be a little bit short because most of the bullets were fired. Honourable Speaker, the other issue is about Section 108 i.e. the reason for filing an impeachment against a sitting President. One of the clauses, as far as I am concerned, is very straightforward. It reads: "*One of the violations is violation of the Constitution*". You see any sitting President can violate the Constitution. According to the way it is texted in the 1997 Constitution, it is more preferably a wilful violation, if you violate it wilfully. Just to violate a Constitution, that means every month we will file a motion of impeachment against a sitting President because it is easy to do it. You can do it but not wilfully but why do we not consider it and look at it rather than leaving it this way. We have the word "wilfully", if he wilfully does it, I do not have a problem but sometimes also, a human being is a human being. He can do it while it is not wilful and it can definitely land him into something. I think we need to look at that provision.

Honourable Speaker, on the issue of the Attorney General, as I mentioned earlier on, we are promulgating a Constitution while there is an active Constitution guiding us. I would want you to help me here, if you go to Section 100 of the 1997 Constitution that deals with legislative powers of the National Assembly, I just want you to guide me because we are in the process of legislation. Section 100 reads: "*The legislative power of The Gambia shall be exercised by a Bill passed by the National Assembly and assented by the President*". Clause 2 is bringing a limitation or a restriction: "*The National Assembly shall not pass any bill to establish one party state, to establish any religion or to alter a decision or judgement of a court in any proceeding to the prejudice of any party to those proceeding or to deprive any person retroactively of a vested or acquired right*" but it continues, "*but subject there to, the National Assembly may pass bills designed to have retroactive effect*". I want the Honourable Attorney General to guide this Assembly as to what this clause is saying because, as I said earlier on, we are legislating but this is the guiding principle of our legislation, as long as it is still existing and active. Anything that we are dealing, we are using Section 225 to promulgate this Bill. Since the existing Constitution is limiting our powers to certain things, to me, it is still binding because as long as we are speaking it is the existing one.

I would definitely want you to help this Assembly to get clarification before we even pass this one, before someone will go and challenge our decisions in court because everybody is sitting down and looking at us.

Honourable Speaker, let me come to our people that we assigned to do this piece of legislation for us; I thank them very well. There is something that I will need, whether they did it or not; the statistics and survey, if we can get it or if they can put it in the public domain. The outcry is now the people's opinion. I can understand they give us a report and that is the report. I know but they have statistics that if you look at, you can definitely know if they have captured the will and aspirations of the people; not only the report but I will also need the statistics. They can make sure we get it or put it in the public domain.

Honourable Speaker, Attorney General we are in a process of promulgating a new Constitution, drafting Constitution is very difficult and amending the entire Constitution is very difficult. We have the power but you know these things are technically written and they are all intertwined. So, I do not know what will be our guideline because there are so many defects in this draft. We are here today saying, "This one was amended 50 times" but if you look at the proceedings of this Assembly, this one when it comes into existence, you will not amend it 50 times. Rather, you will amend it more than 100 times. This Constitution is so explicit, it looks like an Act and a regulatory body. That is not how the Constitution works. This is why everybody can just look at it and pick-up problems because it is so explicit. It is quite different, even the legal texting.

People are saying this is bad; constitutions are not bad, it depends on the people who are implementing the Constitution. It is not the 1997 Constitution: that the texting was not good, the provision were not good; it was about the implementers. If you forget the rule of the Constitution, what the Constitution is saying to you and you rule on your own way, that is not the fault of the Constitution. This is legally texted, you can be looking at this one for the whole day and you hardly extract something from it because it is legally texted. This one is just like grammar, you can just go in and pick a problem and this is what give us a problem in this Constitution.

Honourable Speaker, we should be very mindful of this Constitution because people are talking about One Hundred and Sixteen Million Dalasi. For me, the One Hundred and Sixteen Million is already gone but what about if you subject it to a referendum, where you are going to spend another One Hundred and Sixteen Million again and you are very sure, it will not pass? The opinion polls are there, nobody should talk before the Constitution works. This 2020 Constitution developed its problem from the drafting stage.

When Christians say no to it, when Muslims say no to it, when other institutions say no to it, who are they to vote for the people? Are they to vote for it? Are they not people? This is telling you that if it goes there, it is going to fail and you are going to waste

another money again. That is what will happen. If any politician goes inside and outside of this country and talk to the people, you have to look at the threshold that will pass this Constitution at referendum stage. Meeting that threshold is the biggest challenge and it will cost the government huge money to go and campaign against it. Those who are in for it, it is huge money: to go and campaign for it and you know it is going to be another waste? Actually, if we do not get what we want, let us find a way how we can get what we want to avoid waste. You know this one is donor funding but the referendum on this one is not going to be a donor funding. Instead, we are going to fund it. The public has already showed up their position, they are all keeping quiet. In fact, they will say go and enact it, we are the final decision makers.

Anyway, Honourable Speaker, this is what I have to say, just to show a little dissatisfaction with the CRC, the way they approached the crafting of the Constitution. You are drafting the Constitution depending on the reality and what is happening at present. If you draft Constitution like that, you lead people into a problem. The Constitution was actually drafted based on the reality, just what was happening within the country. This is why it is so explicit and reflects what is happening in the country and this is what has given this Constitution a problem. Honourable Speaker, on that note I thank you.

HON. ALH. MOMODOU L.K. SANNEH [DEPUTY SPEAKER]: Thank you very much Honourable Speaker for giving me the opportunity.

Honourable Speaker, I will start my intervention with a word of wisdom and to thank the former Attorney General and Minister of Justice for ably bringing this Commission Bill to the National Assembly and advised the government with regards to CRC. I think he has done a very good job, Honourable Speaker. Coming back again, he is not around but the current Attorney General who succeeded him, also had the opportunity to bring this 2020 Constitutional Bill to the National Assembly. They have done a good job; they have made history and then it will be in the history books.

Honourable Speaker, this is a process and it is a very long process and the process will go on for a very long time. Constitution is a very important document; it is the supreme law of the land. So, I am very much proud and happy that a Constitution of this nature is being drafted by our able personnel of The Gambia legal fraternity who took the charge of this Constitution. Honourable Speaker, they have done a wonderful job as far as I am concerned.

A lot of consultations have been done with regards to this new Constitution and before this Constitution. Honourable Speaker, if you can allow me, I will go a little bit back to the First Republic. On 18th February 1965, Gambia achieved independence and in 1970,

Republican status; a Constitution was prepared by the then First Republic but what was lacking there, Honourable Speaker, was the term limit of the President, which is very important. That warrant our first President to go up to a level of almost 30 years in power. Then the Second Republic, its Constitution is also a very good one but it lacks term limit and that also moved the second President of the Republic of The Gambia for another 22 years. The issue of term limit, Honourable Speaker, is very key and it is very important. It is a control measure to change our leaders and this Constitution, as far as I am concerned, has captured that. It is a way of controlling our leaders and limit them to what the Constitution says. After the first five years, if you are elected again for the second term, you serve for another five years.

Honourable Speaker, ten [10] years for a presidency, personally for me I think it is enough. It is a very big responsibility, being a President of a country. Having served ten [10] years and giving opportunity to others, Honourable Speaker, I think is a move in the right direction. The term of office is the reason why I am talking and this term of office on this Constitution, Honourable Speaker, is captured here and it is a move in the right direction.

Honourable Speaker, after having said that, I will go to another interesting point in the Draft Constitution, where it indicates promotion of agriculture which is in Section 255 [1] [a]: "*The government shall encourage and support development of agriculture and take positive measures to ensure that growth and development of farmers within the area to achieve food self-sufficiency in the Gambia*". I like this portion and I believe the Constitutional Review Commission Members, are real Gambians and they know the problem of the Gambia. That was the reason why, Madam Speaker, this is being captured and it is a very good area and it is captured. I think every Gambian should be happy about this because it is a way of creating our agriculture.

Madam Speaker, this country cannot go without agriculture. Agriculture is the backbone of this country and it is only agriculture that can take us out from poverty. It is only agriculture that can help us to be food self-sufficient. So, if it is captured in the Constitution, Madam Speaker, I personally see it as a very good foresight and it will help the government of the day to improve agriculture; to make sure that agriculture progresses, to make sure that agriculture becomes agriculture for the Gambian people. This is a very good clause, Madam Speaker, for which of course, I thank the drafters.

My next point, Madam Speaker, is about sensitization. This Constitution, I think NCCE should have been seriously engaged and involved in sensitizing Gambians about this Constitution. It is a legal document that we will find very difficult to interpret, Madam

Speaker. I think it is the role of NCCE to do that in consultation with the Office of the Minister of Justice, to make sure that there is a lot of clarity on this Constitution.

Honourable Speaker and Honourable Members, that being the case, I will propose that in our next budget, let NCCE be properly budgeted so that they will be able to carry out their functions effectively because it is very important. Most people in this country do not understand issues and they will go about saying things that are not correct, especially with this current trend of the Social Media in the country and outside the country. I think this is a good move, Honourable Speaker. That is my suggestion anyway.

Honourable Speaker, with regards to the appointment of Seyfos and Alkalos in the 1997 Constitution; Honourable Speaker, Page 40 Section 58: "The *President shall appoint the District Seyfo in accordance with the Minister responsible for the Local Government*". Honourable Speaker, before the First Republic, Seyfos were elected but when we came to the Second Republic, they have been appointed. With this election of the Seyfolou, what I am not in agreement with is, there is no term limit; when the Republic of the country has a term limit, when the parliament has a term limit, why Seyfos who are being elected and there is no term limit? You want to elect a Seyfo and leave him to be a Seyfo throughout his life. Certainly, I am not in agreement with that. If that is what will stand, I will go by the 1997 Constitution in appointing them. If you do something wrong, you will be removed.

Honourable Minister of Justice, I think this Constitution; certainly there is no perfect Constitution all over the world. Why I like this Constitution is the separation of powers and the term limit because these are control measures that none of our incoming Presidents will over stay in power. Sir Dawda has done a wonderful job for this country, taking this country from colonial rule to independence. Honourable Speaker, but lack of a term limit had given us a problem. The military came and we were thinking that really they say Military of difference. That is correct, they have also done their part but what is lacking was the term limit. So, this term limit alone in this Constitution is very important and it is helping this country. It is shaping a way for our young leaders, especially the young parliamentarians. The opportunity is there; you can never know, one of them can be a President tomorrow provided that the opportunity we have, let them make sure that they use that opportunity by educating themselves and improving themselves. The old people are going, it is their turn. There is nothing that can stop them, provided that they take their rightful positions in the society.

Honourable Speaker, this is what I have as my contribution and I will appeal and ask all the Parliamentarians to make sure that this Constitution moves from this Parliament. It

is a process: it starts with the Constitutional Review Commission, when they finished, this document was submitted to His Excellency the President of the Republic. This is what the law says. I do not know but I know the President of the Republic together with his Executive, of course including the Justice Minister, who must have played a very important role to advise the government. He made sure that all the legal requirements, before it comes to the Parliament, are met. They have done their part; it is our part now, it is our right and it is a right of each and every National Assembly Member to comment as people's representatives. You are sent here to make sure that you comment on issues of national interest. Now that is the second stage; first stage, second stage and now we are on the third stage. I think if this Constitution is passed, it is left to the general population of this country. If they approve it in a form of a referendum, that is fine. If they do not, really the Executive have done their part. National Assembly have done their part and I think with this 5th Legislature, we have made history and legacy. People respect this National Assembly over other National Assemblies. So, as a result of the new dispensation and the democratic system of our country, I think we are doing well.

Honourable Speaker, I think this will be my contribution. Coming to citizenship, Honourable Speaker, most of my colleagues talked about it here, giving an example of UK, America and the like. This country is Gambia, when we want to go to America, you require a visa, when you want to go to UK, you require a visa but in The Gambia here, our neighbours, our porous borders are opened, people come and still live with us. I am not saying that people should not come because Gambians go everywhere but what I am saying is that, our citizenship in my own way, I do not think it should be compared with that of UK and US. It has been indicated that, if you want to become a citizen of this country, there is a way, procedurally, naturalization is there. There is nothing that stops you but we have to be very careful and we have to make sure that we guide our citizenship. I think there was a problem in Ivory Coast with regards to the current President. That leads to a longer judicial battle. With that history, I think we have to be very careful. With that few remarks Honourable Speaker, I thank you for giving me the floor and I stand by supporting the bill. Thank you.

THE SPEAKER: Honourable Members, that was the last I have on my list. As I always say, I would endeavour to give an opportunity to each and everybody to make his or her contribution and that was the last on my list but if there is any other Honourable Member who wishes to take part, whose name was not captured, I will allow you. Majority Leader, I did not have his name. That is why I decided that I would allow everybody who wants to make an intervention.

HON. KEBBA BARROW [MAJORITY LEADER]: Thank you very much, Honourable Speaker, for giving me the floor. I also want to join my colleagues to thank the CRC and also Members of the National Assembly for coming up with the Bill in 2017.

Honourable Speaker, our country is at crossroads and I think it is very important for us as citizen of this country, to work towards ensuring that good governance and democracy is instituted in this country. We came out from a dictatorship of 22 years; we have seen what had happened over the last 22 years. The development of the 1997 Constitution was done at a rush and the people who were selected to do it are all citizens but the consultative process was very limited. I participated in the consultative process in my constituency in Kombo South, in 1996 and it was done in only one venue i.e. Gunjur, with less than 30 participants for the whole of Kombo South which showed that, the consultative process was not that very consultative and the Gambians were not consulted as to what should be in that constitution. A lot has been said about the development processes that have taken place in the formulation of this Constitution and I think we have been very lucky to have a very good team. People were saying that they do not have more qualified judges or legal minded people in the drafting of this Constitution. In 1996, when the consultative process was going on, the chairperson of the consultation was a medical doctor by profession, very well educated and he was able to handle this process. The 2017 CRC Commission is headed by a judge ... and also Awa Ceesay-Sabally. Who in this country can tell me that Awa Ceesay-Sabally does not know how to draft a Constitution?

POINT OF CLARIFICATION

HON. HALIFA SALLAH [SERREKUNDA]: A dominant judge who was the President or Chairman of the Constitutional Review Commission.

THE SPEAKER: Are you referring to the 1996 Consultation?

HON. HALIFA SALLAH [SERREKUNDA]: For the Constitution, the Constitutional Review Commission, the Chairman was Justice Quay.

HON. KEBBA BARROW [MAJORITY LEADER]: What I am saying in essence, I think we have a very good team that have developed this Draft Constitution and the process was very widely done in almost all the villages, in all the constituencies, in all the regions and most of the institutions were consulted in the drafting of this Constitution.

I think the beauty about this Draft Constitution is, it has a lot of novelty in some of the sections that were introduced. If you look in the Draft Constitution, this is the first time

that a section is talking about the affairs of the youths in this country and if you want to be serious in eradicating poverty and ensuring that youth unemployment is reduced. With 51% of our population, the youths need to be taken care of and this Constitution has given the mandate to be able to sit with the government and draw up their plans, resource them fully, to be able to run the Youth Empowerment Project (YEP) and other development projects that are there for the youths. This is a novelty that we need to work with and I think it is timely that we look at the problem of the youths, the women and the vulnerable Members of our communities.

Honourable Speaker, if you look at certain sections of this Constitution, it also talks about leadership. Leadership is the core and it helps good governance, accountability and transparency. It helps the people to be more committed and focused and to be able to work towards their terms of reference when they are appointed as people's representative or working in the public sector.

All those who are saying that people who are working in the public service should not be engaged in any other activities other than the work that they are doing. They want to ensure productivity and that the resources that are put in those departments, agencies and Ministries are fully utilized and people are committed to the work that they are doing. You cannot be doing two things at the same time and there is productivity; it is not going to be possible. These are issues that the Constitutional Review Commission has looked at and The Gambia as a tax-based economy, we need to improve the economic status of the people by ensuring that there is productivity in all that we are doing.

This is the first time that we have these Commissions that are going to be put in the Constitution: National Human Rights Commission, Anti-Corruption Bill, Teachers Service, Health, Education, etc. and these are the core areas of development in this country, the social sectors need to be improved. I think, Honourable Speaker, these are issues that we need to look at.

Some of the key things that we also need to look at, if you go to the report of the CRC, we have been very lucky that they have given us three sets of documents. The first one is the explanatory Memorandum on the Draft Constitution and they also took the trouble of coming up with a comprehensive Report of the work that they have done from day one to the submission of the report. I think this process has been very transparent and all the processes have been taken through the stages as enshrined in the Act which was passed by the National Assembly. It was the President who

appointed members of the Commission; all the 8 others members of the Commission were elected by the President. If the president committed and appointed these people, endorsed by the National Assembly, who are we to say that the work that they have done is not in the interest of the Gambian people? In the first instance, what we need to do is to scrap the CRC. [***Interruption***]

Honourable Speaker, the establishment of the Constitutional Review Commission was very clear in the Act which states its composition. The commission shall consist of:

- a) Chairperson who shall be the Chief Justice or a judge of the superior court, designated in writing by the Chief Justice.
- b) a Vice Chairperson who shall be a legal practitioner of not less than 10 years standing, nominated by the Minister.
- c) 9 other members nominated by the President.

All these nine members were nominated by the President and endorsed by the National Assembly and then the bill was enacted here in December 2017. The Commission had fulfilled all its mandates in the functions of the Commission on Page 4 of the Act. This is why some of the things that they had done are there because it is their function. One of the key things that they need to do is to look at the 1997 Constitution and adhere to and promote the following matters i.e. the existence of The Gambia as a sovereign state. If you look into the constitution, that is well-articulated and very well written. The Gambia republican system of governance, including the democratic values and respect for the promotion of rule of law and fundamental rights of freedom are well-articulated. All those things are in this Draft Constitution. If you go into the constitution, it also talks about the principles of good governance and parliamentary democracy.

The National Assembly authority will be expanded and then we will have a National Assembly Commission that will be headed by a Chairperson; two people and other members of the committee, will be nominated. This is going to enable National Assembly Members to fulfill the three core mandates of National Assembly Members: representation, legislation and oversight. If we look at our current situation as National Assembly, Members are complaining of limited resources to enable us do our oversight functions as a National Assembly. However, when we have this National Assembly Authority expanded and we have a Service Commission, that will enable us to have all the resources that we need to do our democratic functions. We as National Assembly Members will also have the capacity to be present in our constituencies at all times. This will give us the opportunity to have offices and be able to work with our people and the much talked about Constituency Development Fund will also be an opportunity for National Assembly Members to reach out to our people. I think that has been very

well catered for and this is an opportunity for us as National Assembly Members to look at this constitution and also make sure that it is passed in to law.

Honourable Speaker, going further, if you look at Chapter 3, it talks about the national values and principles of government. Those are very important issues that we need as a government. Unless that is done, if people do not have the values and are able to ensure that social cohesion exists in the communities and workplaces, it will be very difficult for us to move as a country. The Gambia being a tax based economy, it is also another thing that we need to do.

Leadership is very key and this is a chapter that is also new in the constitution. It is very noble to have this thing because it is going to enable citizens to conduct a financial probity of public officers, restrictions on the activities of public officers and obligation of persons dealing with public offices in the services of the State. This chapter also provides that we do not have to be working as civil servant, working in the public service without terms of reference and we want to engage in other activities and put aside the core function of our activities that we do. I think these are issues that we need to address as a country.

Honourable Speaker, moving forward, Chapter 10 is talking about the importance of local government development. If you look at all our seven administrative regions, including the two Municipalities, local governance is becoming a problem because the Governors are there as the overall arch of the Councils. The decentralization process embedded in 2002 Local Government Act was also watered down because there is reluctance; devolution of power to the Councils was not there. The excuse that they have been giving over the last 18 years is that they do not have the capacity. If people do not have the capacity and you are not ready to train them, how do you think they are going to be trained, they are going to have the capacity? Those are people who have standard, they have their qualifications and they have the benchmark that they set for those people to be appointed. Because you are not willing to devolve power to the Councils and you want everything to be in the centre, that is why the councils are suffering. All these things are issues that are going to help in the decentralization process and that is going to help us as National Assembly Members to know the local content and work with our constituencies and local authorities. That will help us to focus our interventions on programmes and activities that the local councils are going to do.

If you look at the 2002 Local Government Act, it has called for the devolution of power to the councils. I worked with the current Attorney General when he was doing some consultancy and working with NCCE. Basse was the only Area Council that had written

to the President that they want devolution of power, to be given the authority to control, develop programmes and also take care of these institutions. That letter was written to the Office of the President and it has been lying down. He (current Attorney General) was the one who was doing that and facilitating that program. Because of the reluctance from the Ministry, it has not gone and that one got there. All these are issues that we need to look at. When laws are put in place, enforcement or implementation of the programs and activities is a problem and the implementation schedule of this constitution is very clear. It is going to take care and ensure how we develop or implement this constitution. It will be done in a way that is going to help to ensure that people are acting according to the conduct and also what is all embedded.

Honourable Speaker, if you go to Chapter 13 (Public Finance), that also talks about transparency. How do we ensure that all revenues that are collected are put in a common basket? What I want the Honourable Minister to help us with is how they are going to ensure what is going to be done with those public finances. Are they going to also set up a commission that will be responsible for the distribution and coordination of those funds? If you want to give the responsibility to the Ministry of Finance, they have so much on their plate and currently they are also implementing some programs. How can they be a player and a referee at the same time? I think these are issues that we also need to look at and it is also going to help in the distribution of the national cake so that the most vulnerable and disadvantaged communities are also given the opportunity.

If you go to Chapter 14, Honourable Speaker, the National Security Service, a mention was made that the CDS had written. They said they had written to the CRC and they had not incorporated all the wishes that they want to do. CDS is empowered by the constitution to write regulations and submit it to the Security Council and the security services for approval. If you want all those regulations to be part of the constitution, people are saying that this is too bulky. How are we going end up with this? Are we going be like India, which is the longest constitution in the world, with over 146,000 words? Do you want us to do that? The culture of reading in this country is very low so these are issues that people need to understand. What are the elements that we should put in our constitution and what are the rules or regulations that we need to do as an institution? Those are issues that we need to take up and I think the Attorney General will help us with more details on that one.

The youth issue is very key and I think that is also very close to my heart. Honourable Speaker, I think as Gambians we need to be committed to what we say and what we do in this National Assembly. We are legislators and we are legislating a document. As highlighted by many speakers before me, from 1965 to now, the national constitution

has never gone through these processes. All these works that had been done over the last 18 months or so and all the processes were very transparent, they were very open. The CRC even had to extend the final submission on the first draft of the constitution by one month because they want to entertain more comments of institutions, agencies, departments, individuals and other organisations that are in country to bring in their submissions to ensure that they are incorporated. If you hold on to those things and you think you are going sit for them to come and you tell them what to do, it is going to be very difficult. Honourable Speaker, I think this constitution, it is time for us as Gambians, if we want to go by the transitional process of this country, we are at crossroads. We cannot afford to throw this constitution out.

[Interruption]

Talking about the security services, the Gambia Police Force is now going to be called the Gambia Police Services with all the other services under the police: the security services, immigration services, fire and rescue services and all those things. These are also novelties and there is an opening. This constitution is giving the institution powers to be able to grow. If institutions are there and they are not growing, there is lot of dissatisfaction in our institutions. There is no motivation in our institutions that is why our public enterprises and most of the government departments and agencies are dying because there is no motivation in the institution. The constitution is there to empower and we as legislators will be able to see that these organisations and institutions that are under our purview and the SOEs are also there to ensure that all the systems that are in place are looked after.

Honourable Speaker, I want to say this very clearly. If National Assembly Members can stand in this National Assembly to say that the government is going to go against this constitution; that is going to be catastrophic for this country. How can the government take responsibility and set up an institution that have conducted their work, submitted their report; the first and second and it was Gazetted. The intervals and provisions are done, the Bill is laid and Members are saying that government is going to vote against this constitution? That is too much.

[Interruption]

THE SPEAKER: As I said earlier on, we have to follow decorum. Please I saw two tags earlier on up there. Latrikunda Sabiji, what is your point?

HON. SAIKOU MARONG [LATRIKUNDA SABIJI]: I want to raise a Point of Observation, if the Honourable Member would allow me.

HON. KEBBA K. BARROW [KOMBO SOUTH/MAJORITY LEADER]: I am not taking any observations, please.

POINT OF ORDER

HON. FODAY N. M. DRAMMEN [TUMANA]: Thank you Honourable Speaker, this is Point of Order 17. While a Member is speaking, all the other Members shall be silent and **shall not** make unnecessary interruptions, Honourable Speaker.

HON. ABDULIE CEESAY [OLD YUNDUM]: Thank you Honourable Speaker, I am rising on Point of Order Clause 29 (1), content of speech. Every Member shall restrict his or her observations to the subject under discussion. We are talking about the merits and principles of the constitution and not talking about the government.

THE SPEAKER: Please to remind you, there had been occasions when other Honourable Members had made references to other institutions and they were allowed. Please, in all fairness, let us just... There was another one, Honourable Member for Tallinding Kunjang.

HON. FATOU K. JAWARA [TALLINDING KUNJANG]: I need a point of clarification from the Honourable Member. We want to know, for record purposes, who are the Members who were saying that government is not supporting this draft constitution.

THE SPEAKER: Let us follow the rules. Honourable Majority Leader can I just address that? Honourable Member for Tallinding, are you making an observation and what is the authority? No, there are two issues here: you either make a Point of Order as I always say you refer to the relevant clause or if you want to make an observation then the Honourable Member who is on the floor...

HON. FATOU K. JAWARA [TALLINDING KUNJANG]: I am seeking for a point of clarification, Madam Speaker. Please respect the Chair. I am addressing the Chair, stop the side issues. You are not the Chair, nonsense!

THE SPEAKER: Honourable Member for Tallinding, I am addressing the Honourable Member for Tallinding. Please, can you withdraw the word "nonsense"?

HON. FATOU K. JAWARA [TALLINDING KUNJANG]: Madam Speaker, I withdraw.

THE SPEAKER: Thank you very much, most appreciated. Please I am appealing and I had earlier on appealed, let us allow each and every Honourable Member to make his or her intervention. They have a right, let us stop the side bickering. Everybody can say

anything provided it is in accordance with the rules. We do not have to quarrel over it. Lower Saloum, I am not taking any further intervention.

HON. ALAGIE JAWARA [LOWER BADDIBU]: Point of Order, Madam Speaker. Clause 29 (5) – no Member shall impute improper motive to any other Member. What the Majority Leader said is that government is trying to bury this constitution and he is the head of government business in this House and he did not...

[Interruption]

HON. KEBBA K. BARROW [KOMBO SOUTH & MAJORITY LEADER]: I will not allow him, please. The records are there. If you go to Hansard, the statement is there. It is well recorded in the Hansard report, it is there.

THE SPEAKER: Honourable Majority Leader, please, can you address the Chair?

HON. KEBBA K BARROW [KOMBO SOUTH & MAJORITY LEADER]: I want to make this thing clear. This constitution is here to empower institutions as highlighted by the Deputy Speaker. The work of the National Civic Education Council is being broadened and expanded. A lot of resources are going to be put in that institution to ensure that they fulfil their core mandate as an educative organ of the government to ensure that all information that is necessary on this constitution is discussed at all the *Bantabas* and institutions and in all the local languages. That is what the CRC was trying to do.

This is a constitution that they want people not to be blindfolded and then they do not have any knowledge as what they are going to say. This promulgation process is an opportunity for us as Gambians, as a young democracy, we need to cherish this constitution and make sure that it is passed as a nation. Unless we do that, history is going to be there. I do not want to be part of a National Assembly where the people, young generations of this country will say "Once upon a time, the National Assembly Members of the Fifth Legislature..." That is very important as National Assembly Members. We want to make sure that whatever we are doing, nobody loves this country more than all of us; we are all citizens of this country. We have been in this country for 65 years and I spent all my life in this country. We have worked in the breath and length of this country, working for people to ensuring that the vulnerable members of our communities and those peoples who need help are supported. Why do we have, at this stage, to come and go against those people; to make them more vulnerable, to make them poorer? The poverty rate in this country is going very high and this constitution is trying to address that. I want to urge all National Assembly Members, let us look at what the document is saying and what it is trying to do to take

us to a place to ensure that this transition process is completed in a way that is enshrined in the memorandum that was set when we were doing the campaign in 2016.

We as Gambians need to be able to fly the flag high. We need to look at the realities of our constitution. Our diversity in this country is very important. The national anthem of this country is there to teach us. The morals, obligations and activities that we need to do as a citizen. We as Gambians need to cherish those lyrics in that National Anthem. We also need to look at the Coat of Arms of this country: Peace, Progress and Prosperity.

If we want to prosper as a country and have peace, we need to give liberty to the people, uplift the status of our vulnerable members, and ensure that everybody takes part in the decision making of this country, Honourable Speaker. It is about time for us as Gambians and we are going to take the bull by the horns. We are going to call on anybody who is trying to delay this democracy in this country. The Gambian people have suffered for over 30 years and this is an opportunity for us as Gambians to work to ensure that we liberate ourselves from poverty and also degradation and also ensure that all that is enshrined in this constitution is passed.

Honourable Speaker, finally, I cannot sit down without giving my fervent support and to congratulate the members of the CRC. Coming from the civil society, I have work with most of these people and I know the calibre of people they are. For all of these people, it is only Justice Jallow I have not worked with. From the Secretary General, write down to Awa Ceesay, Yankuba, Lamin Camara and all those people who are on this, they have worked tirelessly in this country to ensure that the poverty rate of this country is reduced. This is where we are coming from as a nation. On that note, Honourable Speaker, that is my submission.

THE SPEAKER: Thank you. Again, for the last time, anymore contributions? Foni Bondali, I did not hear your voice.

HON. KADDY CAMARA [FONI BONDALI]: If I talk here, I am going to blow a bomb here so I do not want to talk.

THE SPEAKER: Honourable Member I did not hear you, what were you saying? Did you say you want to take the floor?

HON. KADDY CAMARA [FONI BONDALI]: I said if I talk here I am going to throw a bomb here. That is why I want to reserve myself.

[Interruption]

THE SPEAKER: Honourable Member for Niamina East, this is with disrespect to the Chair. Please, can you resume your seat? Can you sit down? Honourable Members, we have exhausted the list of interventions. I will now invite the Honourable Attorney General and Minister for Justice to respond to the issues that have been raised and to wind up the debate before we proceed further. Please can we have some order, one meeting? Order please, Honourable Members, please order, thank you.

HON. DAWDA A. JALLOW [ATTORNEY GENERAL & MINISTER FOR JUSTICE]: Thank you very much Madam Speaker. It has been a very long debate. However, I will start first by clarifying one or two things. First, if government in the debate means the Executive, I represent the Executive here. If anybody had said something that you are referring to the Executive, that does not represent the Executive. I am the one representing the government in the chamber here. I tabled this Bill on behalf of the Executive and that is the situation. The other minor clarification probably I also need to make is the CRC process. The money that went into it, apart from the two vehicles that were donated by UNDP, has been funded entirely by the government of The Gambia.

So, it is our money, it is our process because we want to own it and we do not want to be influenced as to the way we should be governed. We had a lot of transitional justice activities that are going on, which our development partners are assisting in that regard. For the constitutional development process, government decided to own the process on behalf of Gambians. It is important that we make this clarification.

Constitutional making is a very serious process. It is not a joke at all and I appreciate the seriousness that this Assembly has accorded to this process. Democracy itself also is very complex and I think these three days of debate have shown how complex democracy can be. It might not necessarily be the best system. It has its own bitter pills that you sometimes swallow along. We go for democracy because it is the only best form of government that we can apply at the moment. I think this quotation is related to what Winston Churchill had once said. It might not give us what we want in the way we want it sometimes. It is a process, it is complex and the debate both inside the chamber here and outside is very high. We cannot expect anything less because this is an important exercise in our national history. Sometimes passions can be high but justifiably so.

A lot of issues have been raised. From my notes, I recorded statements and questions from 50 speakers, if my counting was right. It is my duty to provide you the responses and clarifications you sought. For some, I will be able to do it but for some probably I am not too sure whether you can get them readily available from me the way you

asked them because some questions are asking about things that have to do with the rationale, why something is in the Act and why something is not in the Act.

The answers to some of those rationale related questions are contained either in their report because the report accompanies the draft to explain the reasoning behind some of the provisions. I am not too sure how many of us would have read the report along with the draft because the remote is the explanatory note for some of the provision that might not be clear to you but that is one aspect. The other aspect is that CRC's mandate continues (Section 22 of their Act), until one month after this Bill has been tabled before you. This means they are still in place.

Section 22 Subsection 2 of their Act says this Assembly can invite CRC commission members to attend your proceedings to offer explanations and clarifications on quote: "Clarifications and explanation". There is a big question hanging over that. Probably, I would bring that at the end of whatever my responses would be because whichever way the vote goes today, it is my duty to attempt to clarify to you what the options are after the vote. Which way do we go: if we should vote YES at this stage, what are the options? If we should vote NO at this stage, what are the options? I do not need to mention the threshold because the Honourable Speaker has repeated it at the beginning of almost the first two sessions that we need three-quarters of your votes. And in either of the two readings i.e. the second and the third reading and the conjunction there under Section 22 (6) is "and", which means you need the three-quarters support now and at the third reading.

If you do not have it now technically, by my own interpretation, it could mean the Bill is dead today. You can have it now and the Bill can survive for a while. If you continue to disagree, your right to still extinguish this Bill will still be reserved for the third reading. You can still kill it at the third reading, if you are not able to get the three-quarters support at the third reading.

So, we need three-quarters approval now. We need a three-quarters approval at the third reading stage. We need both of them, that is the catch here; we need the three-quarters at both levels. We cannot afford to miss it now. If we miss it now, it is done. If we get it now and miss it at the third reading, it means the Bill will be dead but at a later stage (at the third reading) when we cannot get it at that stage. So, it is important that we make those clarifications.

For those of you who support the Bill, I probably would not have much to say in the interest of time except just to thank you for the positives and the good things that make you support the Bill. I think even in the normal rules of advocacy, I should divert

my energy more to those who have asked questions and have made it clear that their votes are dependent on the answers that they are going to get.

I have recorded every speaker by your constituency. You will excuse me if from what you have said I probably did not see anything, especially if you are supporting. Probably, I will just keep you and look at those areas that I believe had asked for clarifications. Some people have just raised concerns because even among those who are supporting, the majority position is that they are relying on possible amendment at committee stage. Let us support, we equally have concerns and we can take care of our concerns at the committee stage; that is if we get there. There are some very few who are saying let us approve it as it is. It goes to referendum and if it succeeds, we can come back after its enactment for amendments.

I saw these two groups. There are some that are saying let us move to the next level, do any changes we want to do at that level and have it passed. So, let us reach a compromise at that level. There is a particular group that said "No, let us not touch it at all. Let us approve it now then it goes to referendum. After it becomes the constitution, we will have the opportunity to come back and amend".

I believe all these groups exist in the chamber here. For those of you who are relying on a possible amendment at committee level, a question has persisted: do we have the right to amend or effect any changes? Some would say whether we can touch or we cannot touch the draft constitution at the committee level. We have been thinking along this. Let me just give you a legal answer. Technically, I do not know any law that can forbid you from doing it, because it is a legislature. It is introduced to you as a Bill so I do not know of any law that could say you cannot. That is clear and I would rather stop there. Let me not go further because once I start going into the moral aspect of it, whether you can touch it or not, that will be very subjective and it will be open to so many debates. I will leave that at least for now.

Legally, I do not see any law that can prevent you from amending or effecting changes at committee stage. The rest, probably if we are lucky that it passes this stage, we can talk about that because we have to accept the fact that we are also learning in the process. A lot of you have alluded to the fact that this is the first time this kind of thing is happening. Our laws, were they adequately prepared for this kind of situation? Probably, from our experience, we will develop our laws to deal with that. For those of you who are asking that question, my answer would be yes, legally you can and I do not think that would be wrong.

Honourable Member for Basse, I believe you are the first to have concerns with citizenship. The texts on citizenship are clear. I think those that are concerned is about

whether we need to keep or change them. I would not be able to offer justifications as to what we can keep at this stage. I would focus more on those who do not understand provisions and would require explanations. It appears those who have concerns about citizenship, it is not because they do not understand what is in the draft. It is because either they do not agree with it or they do not like it that way. We will leave that for further discussion.

You also made mention of the issue of the retrospective application of the term limit. It is a concern. Probably that is the Schedule 4 that says the term of the incumbent will be deemed to be the first term of office under this constitution. And then if the incumbent should contest and win then it means that new term will be his second term. There is a big disagreement over this issue, the argument as to whether a law can be retrospective or not. Generally, the Minority Leader attempted to say something, that we are doing this promulgation under an existing constitution which frown, as a general rule, on promulgating laws that have a retrospective effect. This issue is a grey area; it is a constitution. Remember, whatever is in this draft constitution, they are telling us that is what the Gambian people said. Now it is left to you to make a decision as MPs, whether you are convinced by that or not. Of course, if you are convinced that that is what Gambians say, then the Gambians as a population are the supreme lawmakers. If they say this is the law, it will be the law.

If you do not agree with that position, which you are entitled to, then that is your position. That will be my answer to that because the Minority Leader, in fact, flagged something which took my mind to something that I did not avert my mind to. We are making this under an existing constitution. Do we even face a threat of somebody not being happy with what we are doing and go to court? Remember, this is being done under the 1997 Constitution which has regulated your legislative powers; what you can do and what you cannot do and whether you do it properly or you did not do it properly. These are things that I will leave at that for now because the question has come over and over again. It is just a question of when it should begin.

The question of separation of powers was also very popular, whether presidential appointment should be subject to parliamentary approval or not. That one too is not a question of whether you understood or not, it is there. do you consider it appropriate or it is an excessive power given to one arm of government versus the other arm of government. That is a decision that you have to make. I do not need to make any further clarification on that. I would only clarify where the understanding is an issue. The issue of national languages has come. All of those things are issues that people want to see, that are not properly or adequately catered for.

The issue of the judiciary, whether or not judicial appointments should be subjected to parliamentary scrutiny; the risk of having that process politicized has been said. The budget of the judiciary and the seeming or apparent preferential treatment accorded to judges. In the report of the CRC, I will just make a little clarification here, not on the text. The text is clear, you are either in support of it or you are against it.

On the issue of judicial officers, there is probably something that I can clarify. If you are a judicial officer, if you are appointed as a judge, the draft is proposing that if you leave office you cannot take any other paid job for the rest of your life. You cannot practise as a lawyer. A former judge cannot be allowed to go back to court as a private lawyer. This is the difference between them and others who are working in other areas. As a former judge, when you retire you do not do other legal services, you retire for good. Provably this is one of the justifications of enhancing their retirement package because they cannot be involved in any other legal or gainful employment. Our employment is such that if I am not aging, I just go open my office and I start going to court.

If I was a judge, once I leave office, I do not go back to court to go and meet other lawyers that were appearing before me to go and appear with them before another judge. As a result, when you leave office as a judge, you do not practise law again and they also have a longer retirement age. I think you amended that here, is it 70, 75 or something of that kind? Again, that issue is not ambiguous. It is a question of whether you agree or do not agree with it.

The issue of plagiarism is common. It has come up many times and responses have been offered many times. The 1997 Constitution also has provisions that were almost literally lifted from the Ghanaian constitution because the Chairperson of that commission was also Ghanaian so we were learning from Ghana's 1990 or 1992 constitution at the time. It is not new in constitutional drafting or in legal legislative drafting in general to borrow clauses from existing laws. To what extent you are happy or not happy with that I leave that to you. My role is only to offer explanation where I can.

Honourable Member for Serrekunda posed challenges and questions on, for instance, how do we marry Section 102 and Section 226? Is IEC ready for the referendum within the next 6 months? Now, we are working on the Election Bill, it is ready. Whether or not this constitution passes, we are already working with the Offices of the Speaker and Clerk where if it is necessary we will convene an extraordinary session of this House, hopefully next month, for you to consider the Elections Bill because it is important. That is what is going to help the IEC to conduct the next elections and we heard the President say in his statement on the State of the Nation Address that the elections

calendar will remain intact. Elections will be held on time and as we are his assistants, we want to make sure that happens. The current electoral laws, we all know the state in which they are, require a lot of revision. A brand-new Bill has been drafted. I believe some political parties have already received invitation for the validation workshop. After that validation, we would be bringing it here. We believe if we have to wait for the December session, probably that will be late. We want to bring it, even if it requires an extra-ordinary session at least for that bill alone so that we can deal with that. The question of whether IEC is ready, we believe we will do what we can to support them. Let me put it that way. We will do what we can to support them to make sure they keep up to their calendar. If it requires their legislation being in place and other things, we will be supporting that so they should be able to hold their registration and conduct the referendum, hopefully on time.

The other promulgation issues that Honourable Members raised, I will leave that when I am discussing my options because they posed questions that are little bit challenging. The Honourable Member for Serrekunda is one of those who are of the view that we pass it the way it is. If we are not happy, we can always have an opportunity to amend subsequently. This issue of the validity of the constitution under the constitutional supremacy...

THE SPEAKER: Unless you wanted to take it but I would rather as we were doing before, allow him and then if he has committed anything or misquoted then you will come on board. Otherwise, everybody who is misquoted will come in. I think you just note it at the end.

HON. DAWDA A. JALLOW [ATTORNEY GENERAL & MINISTER OF JUSTICE]:

Thank you I will minimize quoting Members, because I might wrongly quote somebody and then that person will be duty bound to clarify. Alright, thank you.

The issue of validity of the constitution, my understanding of it is that the issue is still debatable. My take is that when you say the validity of the constitution cannot be challenged in any court, to me that is different from saying the validity of the provisions of the constitution cannot be challenged. If you cannot challenge the validity of the constitution, that is to say (in my view) once the constitution goes through all the processes and is completed, you cannot challenge the validity of the constitution as a document because it is already endorsed and it has gone through the promulgation process to the end. That notwithstanding, the provisions of the constitution can be violated that can continue to go to court. If you, the National Assembly, should pass a Bill and you pass it without following the due process as prescribed in the constitution, of course, that can go to court.

To me the two are different but this is law. You can interpret it differently but that is my take on it. That is my impression of that provision. If you say the validity and the legality of the constitution cannot be questioned before a court of law, my take is that once the constitution becomes the constitution, you cannot go to court and invalidate it. The question that begs is, against what instrument are you going to invalidate it? If you want to declare something invalid, you measure it against something. If you want to see whether an Act of Parliament is valid or not, you measure it against the Constitution. If you want to determine whether a constitution is valid or not you are going to measure it against what?

Let me just say it is my duty to clarify and I have to respect opinions on both sides and clarify as much as I can. Could it, by extension, mean how about if somebody wants to challenge the process leading to the processes of the promulgation? That could be an issue. After the constitution is passed, if somebody believes that the process was flawed, therefore because of the flaws of the process, it is invalid and you want to challenge it. Could we see this as a bar to that process or the right to go to court to challenge that? That is something else because I understand different lawyers are giving this issue a different interpretation. I will not claim that my own interpretation of it is the only correct one because I am seeing that dimension also. The process that led to the confirmation of the constitution, could somebody have the right to challenge whether that process itself was valid? If that process is invalid then the constitution itself will be invalid. So, can I go to court after the referendum and say something went wrong during the journey of the promulgation and therefore this constitution is invalid? Would this provision be robbing me of that right to do that? Some lawyers might look at it from that angle. But again, this is it. That is it for the validity.

The issue of election of a Speaker, I have looked at it myself. Probably, these are the areas where if we succeed in getting to committee level, all of us will require some clarification. I did not see how the procedure is provided that the speaker can be elected from outside of the parliament. How it happens, I did not see and I see the concern of Members who are raising that issue.

A lot of issues are repetitive: appointment of CJ and confirmation with respect to whether different judges have been given different appointment procedures. Those ones are very clear. It is either we say yes we want our judges appointed and be subjected to confirmation proceeding along with all the risk that it goes with or we do not want it, let us remove it. That one requires no further explanation because the text is clear in itself.

Now the issue of secularism, the word probably might not have come but religious freedom and the protection of our rights to any religion and opinion is guaranteed at different parts of the Draft Constitution. I think the provisions in the 1997 Constitution have been repeated in the draft, that parliament cannot have a right to declare Gambia a religious state or a one-party state. Somebody asked specifically the addition of the word "opinion" to that right, what would it mean? It is just the word itself; you have a right to form an opinion about somebody and you cannot commit an offense by having an opinion about something. Basically, that is what it is.

The changing of the name of the IEC, the issue of the Seyfolu and their tenure of office; many speakers, even those that are in support, said there should be tenure for the Seyfolu. They are not happy that Seyfolu are elected and they remain in office for life. The power of the National Assembly to review budgets, especially the budgets of the Judiciary and some of the independent institutions; like I said, if we succeed in getting to committee level, whether we can do a trade-off, I will address that towards the end of my submissions. They keep coming, cabinet appointments and so on.

The validity came again, the financial allocations to the judiciary has caused a lot of alarm. The Honourable Nominated Member, it was unfortunate that the translated or the recorded versions of the constitution were not made available to her before the introduction of the Bill. The CRC actually did translate the draft constitution into different languages and in audios but I think the distribution was not down on time for the Honourable Nominated Member. I believe after your intervention they should have provided you now with audio versions so that you do not have to get to somebody to help you to read it.

Like I said, I am seeing so many comments but even for those that are objecting, some of the comments are generally not because those that are in disagreement do not understand the provision. They understood them; they just do not agree with them and for that one I do not want to take much time to deal with that. The right to agree or disagree with the provisions of the draft constitution is yours; it is only where I can offer some explanations to clarify that I will try to give such.

The issue of secularism has been a concern. The word has not been there. The Honourable Member for Banjul said it would have been better if it is there. The word has been avoided and I think in their explanatory notes they gave reasons. Whether you are satisfied with that or not, they said they have catered for the protection of all religions.

The immunity of the NAMS not adequate; Honourable Member for Banjul North raised an issue that caught my attention. That has to do with the transparency of continuous voter registration. I think that is an operational matter. Maybe an Act of Parliament or probably when we bring the Elections Bill we can see whether it is going to be transparent enough. Instead of periodic registration, in the draft constitution continuous registration is proposed. Anytime somebody reaches 18 you can walk into any IEC office and get yourself registered and be placed on the elections database. I understand your concern but I think that can be addressed when we bring the Elections Bill because that will be an operational issue.

Issues I have offered a little explanation on, I will not repeat them in the interest of time with my people. There is a Member (I think it is Foni Jarrol) that said in the event of a tie in a second round, what happens? I tried to look for the answer but I could not find it. I do not know whether the draft has addressed that. What the draft addresses is, for presidential elections, in the first round the first and second winners will go for a second round. If there is more than one person that has a tie, they can all go for the second round unless any one of them withdraws. Your question is very pertinent. What happens when we go for a second round and in the second round itself the two people that are going for the second round get a tie, exactly the same number of votes? How do we decide who becomes the President? It appears the draft has not addressed that and as long as we are dealing with numbers that is a possibility, it is a real possibility. I think that is something that I also noted. It is a good observation.

Many people are saying some issues were raised during consultations that are not reflected. I do not think I can offer explanations for that. Their report tries to explain and from what I read from the report that accompanies the draft, expect in a few instances, like somebody validly argued about citizenship where they acknowledged overwhelming number of people they consulted suggested the particular form of citizenship. I think like automatic birth right to become a citizen, when they put in something different and I think just a few other areas where they departed. The rest of the CRC submission is that they followed the public view. I respect the position of the Minority Leader who said we need to see the statistics to confirm whether they did or did not. That is something else altogether but I can only rely on the report submitted by the CRC.

I think one other hot issue during the debate was the provision on marriage, the right to marry. I think it came up in a couple of submissions. Again, if I read 1997 Constitution, compared to the draft on the issue of marriage, some Members specifically asked that I explain because they do not want to vote in for a document that will indirectly legalize gay marriage because I think that is the major concern about the

definition of marriage. Section 27 of the 1997 Constitution says men and women of full age and capacity. The CRC repeated exactly the same provision in their first draft and there was a lot of noise. In the second draft, they changed it and said a man and a woman so the question posed to me is, I do not know if I will rephrase your question, which of these two provisions is gay-friendly or has risk of gay people using that provision as justification?

It says a man and a woman of a full age and capacity have the right to marry and found a family. Some people said they have spoken to lawyers who told them this is a grey area. I can only answer to the extent of my understanding of the law and that means other lawyers can understand it better than I do. That is the beauty of law and that is why we hassle all the time in the court. I will make a submission; somebody makes a different submission and the judge is there to agree or disagree with one of you.

If you say a man and a woman of full age and capacity have the right to marry, my take of that is a man and a woman with the conjunction. It does not provide for two men to marry. It says a man and a woman but somebody broke this down and said another lawyer said the word "and" there can... I do not know if I have to interpret it with all my legal knowledge. A man and a woman of a full age and capacity have the right to marry under that provision. My interpretation is that no two men or two women can rely on this to marry. For the marriage to be valid under this provision, it must be a man and a woman. It cannot be a man and a man because it is not saying that. It did not say a man and a man: it did not say a woman and a woman: it just says a man and a woman and in legislative drafting when you have "and" it means the two parts that the "and" is joining are inseparable. That is the technicality there that I know. If another lawyer is saying under this, gays can marry, that is not my understanding. I can only clarify to the extent of my knowledge.

That is my response to that issue of marriage but then somebody said one of the commentators said why do we not clear the doubt and just make a provision specifically to say gay marriage is forbidden in The Gambia? I heard that somebody was making a comment of that kind. Again, this is something we can consider when we get to committee stage but whether we get there or not, that is something else. Like I said, I will address that at the end of my submission.

There was a Member that commented on issue of right to property versus is it the rights of the thieves to steal your property? What do you do? There was a submission along that line but your right to property includes your right to defend that property so the right of self-defence include your right to legitimately defend your property so

nobody would say that you can sit idly and watch somebody steal your property. I think what the person is trying to talk about is too many rights are given. I do not think specific rights are given to thieves in any law. One probably is, maybe the human rights threshold is too high for him but that is it. If you catch somebody or anybody that is suspected of committing an offence, including an offence of theft, the proper thing to do is to hand the person over to the police. The question is trying to say I am prevented from dealing with the person personally. If you are allowed to deal with them personally then we will be taking the law in our own hands. I understand losing your valuable property to thieves is painful but as a society we agree that we have a system that the law will deal with them instead of us dealing with them personally.

The issue of Judiciary's budget, their retirement benefits, kept coming. Even those that are in support are not happy with that. I do not want to defend it too far so that it looks like another lawyer is defending their proposal but I took note of some comments; one or two comments which provably could be taken into consideration. Someone said the budget we approve for you in a given year may be based on certain considerations. Those considerations may not be continuing events into the subsequent year. If you tell me that the budget you gave me last year I cannot touch it in the subsequent year. I see that argument when the person was making a submission. If you are to build institutions, you are to buy vehicles and certain expenses, your budget may go up in that given year. The person is trying to argue that if in the subsequent year you are no longer building or buying those fixed assets and those kinds of assets would it be justifiable to say last year you gave me a hundred million Dalasi so this year you cannot give me less than one hundred million Dalasi. When that one came, I said okay there is something coming up there but that is what is there. We will see whether this is something that can be.

Nominated Member Jaiteh made extensive submissions. I will not be able to repeat some of them. Some of the statements you make, you are the only ones who can make them. I cannot make them there, but she raised some pertinent issues regarding if the constitution does not go through, the implication of that. She is in agreement with the affirmative actions that are provided in the draft constitution, the broadening and expansion of the autonomy of local governments and so on. I said those that are in support, we cannot say much.

Honourable Member for Upper Fulladu, there was a question asked, whether if I am getting it right (I said I will avoid quoting), whether if we should change anything in this draft would we be duty-bound, in order to do those changes, to go back to the citizenry? I do not have a straight answer to that for now but I will try to look at the options.

Honourable Member for Wuli East, thank you. One of the innovations cited by Honourable Member for Wuli East is private prosecution. It is only made elaborate but there is private prosecution provided for in the 1997 Constitution. Section 86 dealt with that in the 1997 Constitution so provably they just expanded it but there is room for private prosecution under the 97 Constitution. Of course, you made mention of the high threshold at the referendum. We are facing a very high threshold even in the House here as well. Equally, another monumental threshold at the referendum is a difficult task but that is it.

There was a specific question from the Honourable Member for Busumbala regarding female circumcision. Under the rights of the children, I do not think the word female or the phrase "female circumcision" is used. They are protected from all kinds of physical harms and other things so it depends on how you look at it. Children are protected from exposure to any physical or moral hazard. That is what I can offer but the word female circumcision, I do not think that has been used.

I think it is the same, Honourable Member for Busumbala (the youths); Section 84 (g), the ten percent allocation of rights to youths not being entrenched, that is correct. I can confirm that paragraph is not entrenched. The issue raised about whether pardoned convicts contesting elections and the disparity between that and dismissal or termination; that is how it is stated in the draft. It is there like that, if you are convicted and you receive pardon you are qualified. I think Section 27 is dealing with the other issues that are raised but there is a provision. If I get the Section before I conclude I will let you have it but there is a section which provides that when you are terminated or dismissed from the public service you can be disqualified. Concerns about impeachment of President made easier than removal of a high court judge, like I said these are not issues that border on misunderstanding. These are issues of whether I agree or not. I will leave those ones entirely to you. You form your opinion as to whether you agree or not. It is not the question of whether I need to add a clarification. They are exactly the way you see them so you can form your opinion based on the way they are.

Honourable Member for Tallinding raised a very pertinent issue. I did not have time to read clearly but she raised it. I do not know whether she was quoting. I do not know whether it is the 97 Constitution on this issue of the prohibition of amending any electoral law 9 months prior to subsequent elections. I think that was calling us to something. If I marry that to the Honourable Member for Serrekunda asking whether we are ready to go to referendum on the stated date, we will look at this and advise ourselves adequately on that. I did not have the time to consult on it and look at it but it is something we have noted.

The issue of 48 hours detention powers given to law enforcement versus 72 hours, I think this is Section 39 (4) paragraph (f). 48 hours is what they have provided there instead of the 72 hours that is in the 1997 Constitution. The caveat or consolation there is that they are saying if the 48 hours fall on a day that is not a court day, then the right to detain the suspect will be extended until the next available court day. My take will be that if you are arrested on a Thursday the 48th hour falls on a Saturday it is a non-court day, Sunday is a non-court day so the next legally acceptable day that you can be brought before a court of law would be on a Monday. Technically, that is what it means. The 72 hours versus 48 hours; they said if the 48th hour falls on a non-court day then it can be carried forward to the next available court day.

The issue of restricting public servants, that is true and that is what is in Section 27. Restriction on the activities of public officers, the only thing I can add there is, it said "except where an Act of National Assembly may provide otherwise". Those that are objecting to that provision, that is what is there. We cannot deny the obvious that is stated. It says a full-time public officer in the service of the State shall not engage in any gainful employment unless exempted by an Act of Parliament. That is the provision so if exemptions have to be, the House has to legislate and give exemptions. Otherwise, all public servants are going to be prohibited from taking any other gainful employment.

There is a request for clarification as to what type of pardon; is it conditional or unconditional pardon we are providing for? I would not be able to distinguish the pardon but the pardon that this constitution is granting is pardon sufficient enough to allow you to take public office. Otherwise, if it is not for the pardon, you could not have gotten the right. Basically, it is a pardon. Once it is granted to you, if for example your criminal conviction could have been a bar for you for a number of years from attaining or assuming certain public office, the pardon that is proposed in this draft constitution serves as an exemption to that. I do not know how you will categorize that kind of pardon because whether or not the pardon will erase the criminal records as if you were never convicted (that is an issue of debate even among us lawyers), whether a pardon is sufficient enough to give you a respite from serving your term or whether it deletes your criminal records or not. These are issues that people have different opinions on. What is provided for in the Draft Constitution is that if you get a pardon, then it serves as a waiver from the criminal record being a factor against you getting something. Basically, it removes it.

Some of the Members were so passionate about the apparent bias towards the judiciary. They say what is so special about judges. When everything goes wrong in society you come to us. *...laughter...* That is what makes the judges special. When all hopes are dashed, we only rely on the judiciary. That does not mean we are more important than

other sectors of society. On a more serious note, we need to give judges much more security and we are trying to encourage Gambianising the bench. It is important that you make the position not only important but attractive. The other reason for making it attractive is so that they are not susceptible to being corrupted. The courts deal with all sorts of things; they deal with liberty of men and women but they preside over commercial cases that will cost millions, if not billions. If we do not give them a condition of service that makes them a little bit comfortable, then they become very susceptible to other issues. This is why it is a standard worldwide; I have checked in Nigeria and Ghana. You will see that the same principle that this draft is proposing is what is in the Ghana Constitution and the Nigerian Constitution. The only difference is that our judges retire a little bit later, in Nigeria they retire at 65 and in Ghana around 60 or so but they all retire with their full package and their retirement package is adjusted as the salaries are adjusted. That one too I do not think is new unless I am getting it wrong. Even the normal public service, your retirement pay changes, when salaries scale changes. The pensioners get an increment when everybody gets an increment. Is that not normal? That is normal. I will leave it at that.

Alright, in our case we are saying they go with their salaries, allowances and everything but actually that is exactly the way it is provided for in other commonwealth jurisdictions. Of course, this is Gambia. It is now for you to decide. The CRC has made a proposal that is why it is called a draft. It is for this House and subsequently if it goes through, for the Gambian population to decide.

Some people made a lot of comments but some of those things would not require my immediate response. We can only talk about those things if we happen to get to committee level. That is when we can look at those things, whether these are things we can cater for or not. Some people have got concerns about legislating or providing regulations as to how political parties themselves operate.

That is to say the democratic principles that we envisage in the ways State matters are managed should be extended to political parties because they are institutions that are preparing to take over the State. As a result, if you want a democratic state, let us extend the same democratic principles to the way and manner the political parties themselves are managed. That is not in the draft and whether this is a matter for the constitution or it is a matter for another legislation, it is not sufficient for me to response to that now. If we should get to committee level, these are all proposals. Whether or not we can accommodate them, we will get to those questions when we get there.

The way your Standing Orders are and the way the constitution is also framed i.e. the 1997 Constitution, this process is a bit complicated and it is difficult. We cannot do any changes at this stage. We have to get to another stage where we can even determine whether we should change or we should not change and if votes need to be taken at this stage. That makes the matter a little more complex.

Somebody made mention of the issue of national days. He has a concern in us describing them as national days. He said apart from the exact day 1965 the rest are anniversaries. It sounded interesting to me so it is something that one can look into but it sounded new to me. If that is the correct position, we will see what we will do.

All treaties and bilaterals must be ratified by the National Assembly. I am not too sure but I do not think they departed from that. That has been a culture, somebody raised that concern but I think that is still the situation. At least one thing I know is when it comes to treaties that are legal in nature, our courts cannot enforce them unless they are domesticated. At least now it is clear in this draft. In the 1997 Constitution, we were mainly relying on the common law principle that common law countries do not automatically apply international treaties in their courts unless and until they are domesticated. Now it is specifically stated in the draft that it has to be domesticated before the court can apply it. However, the court can rely on them for persuasive purposes, just for them to get persuaded.

The use of "may" and "shall" is a question of language and that can be looked into internally. The issue of upper age limit has also been mentioned. It is not provided for and one Member strongly argued that this was the views of the people. For one reason, CRC in their report stated that because they do not find a common ground as to what that age should be, as a result they abandoned it. A member is strongly arguing that once you have a lower age limit for qualification as a President, there is a requirement for you to have an upper age limit. With the issue of citizenship, some people are very comfortable with automatic birth right but some people have reservations about automatic birth right. Opinions are a little bit divided on that.

The Minority Leader gave us a perspective of your consultations regarding the issue of validity but I think my answer is clear. My understanding is likely different from that understanding but I am not claiming that I am right. That is my understanding of that provision. Probably it would require some further clarifications and this is why there is a provision for the Members to stay in office until one month after the tabling. You made mention of some discriminatory clauses which are difficult to argue against. The different modes of appointment of judges; if they are all judges, why subject them to

the different modes of appointment? You are also among the people who are not happy with their retirement benefits.

Discrimination against the current President; even the other person wins that person get two (2) terms under this constitution and if the current wins he has one (1) term under this constitution. Well, that is it. You said the impeachment of the President has been too simplified i.e. the half of the National Assembly. That is correct.

You specifically asked me to clarify Section (100) (2) (c), to alter the decision of judgment of a court in any proceedings to the prejudice of any person in those proceedings; to deprive a person retrospectively of a vested or acquired right. This is your power not to be able to legislate and deny somebody of a vested right.

This is Section 100 paragraph 2 which says "*National Assembly shall not pass a Bill to alter the decision or judgment of a court in any proceedings to the prejudice of any party to those proceedings or to deprive any person retroactively of vested or acquired rights*".

The rest is the exemption, saying subject thereto, the National Assembly may pass Bills designed to have restorative effect. I do not know, for those of you who follow, we have a case, the Ousman Sabally case that we usually quote in the Supreme Court and the 2001 amendments that were done to the 1997 Constitution. This particular paragraph was interrogated extensively by the Supreme Court of The Gambia. The student demonstration was 2000 and the then government came to Parliament trying to amend the Indemnity Act to cover security forces that participated in suppression of that riot. To summarise, at the time the amendment was attempted in the Parliament here, Ousman Sabally was already in the court seeking compensation for some encounters he has had with the security forces during that riot.

Now if you indemnify the security forces, the amendment happened after the fact. The amendment came to the House after the riot had already happened. You came to amend the legislation and then to say that all the security forces that participated in that suppression of that riot cannot be sued or you cannot even claim something against government to that effect. The amendment was passed and then the government wanted to rely on that amendment to discontinue an already existing suit that was in the High Court. They applied to the Judge for the Judge to throw away that case because Parliament has just amended the law so this suit is no long good enough to stay in court.

The lawyer in matter said NO! The constitution in Section 100 (2) (c) had banned Parliament from making any law that can go backwards to remove a right that already

existed, that I had already acquired. Under the 1997 Constitution, that is an interpretative issue. The High Court could not do that so the matter was referred to the Supreme Court and the Supreme Court agreed and said the Parliament's amendment was null and void to that effect so the case must continue because the guy was already in court enjoying a right to sue so you cannot go to the Parliament and change the law and now come back to him to say your right to sue no longer exists. That much is what I can say, to explain that provision. I hope that explains it because that is the context I can give. That is a celebrated case with respect to this particular section of the constitution.

The Minority Leader made some issues when you made mention of the section i.e. where you were saying let us be careful so that we are not taken... The issue of whether CRC should provide the statistics as evidence to prove that what they wrote is the views of the people, I knew you are Parliamentarians you can ask for anything to help you to reach your conclusion but they provided us with a report and they have quoted their statistics in their report. If you want the statistics itself, it will get to a level where all these documents can be called and interrogated. Of course, I have nothing to that. My problem and concern here at the moment as the Mover is whether I am going to get to that level or not. That is my headache at the moment.

Honourable Deputy Speaker, we appreciate your comments and support and the Majority Leader equally. I do not see much issue that is raised that would require my intervention. Those who are in support, we have no problem with that. This brings me to my final conclusions. Like I said earlier, as the Attorney General and Minister of Justice, the only thing I can do is to show utmost respect to both sides of the debate. You only exercising your right and I did what I can do to offer you clarifications. It is your right to approve and it is your right to reject; that is the law. Whichever way you should decide, what opinions do we have? If we get a YES vote at this stage, you all know the Bill moves to the next stage. At that stage, CRC members can be invited. They are still in office like I said, by operation of law and they can offer even better clarifications and explanations than I attempted to do. This is provided for in Section 22 (2) of their Act.

However, the difficulty is whether if you want it amended at that stage, i.e. if we have to amend it, who is going to do the amendment because the CRC have done their job and they have submitted their report. Would the CRC be able to go back to this document and try to do another work? That is a grey area for now but they can be invited. The law said when they are invited they can only give you clarification and explanation. It did not say that they can change and that is the Act that you have passed. I can read it for your convenience. Section 22 (2) says: "*During the period prior*

to enactment by the National Assembly of the Bill introducing the constitution, Members of the Commission maybe requested to attend before the National Assembly to clarify any matter and answer any question relating to the provisions of the Constitution”.

Quite a number of you, even those in support of the Bill, are talking about amending at Committee level. Now, who does the amendment? It is a grey area; these are things that we need to look at. My office has a Drafting Department; we draft the Bills that we bring to you. Would we be the ones that will do the amendments and things like that? This remains an issue. That is why I said my Ministry, on behalf of the government, we are the ones that tabled the Bill. If it gets to a point when Parliament insists that they would have to change something, then it is our Ministry that will have to change it. All that that goes with that is something we need to avert our mind to. I answered that question earlier i.e. whether you can change or not, there is no law known to me that can forbid you from changing it.

Now whatever happens, I am still dealing with the first question. If we get a YES vote at this stage; if we get to that level hopefully, invite CRC members to offer clarifications and explanations. Whether or not changes are done, the Bill will ultimately have to come back to you. When it comes back, we will require the same threshold to get it to pass to go to referendum. You will have a second bite i.e. irrespective of whether we change something or we do not change something. The Bill will still come back and we will still require another three-quarters support from you in order to be able to send it to IEC for a referendum. So, this is it. Do we go there? If you go there, what do we do there? Are we going to change or are we going to only seek for clarification and come back? That is your determination. Of course, the flip side is if we get a NO answer at this stage, a NO vote.

My own interpretation of Section 226 of the current Constitution and I intimate earlier, a NO answer at this stage kills the Bill right here. That is my interpretation because 226 (4) is dealing with entrenched clauses and 226 (2) is dealing with ordinary amendment. Either way, you still need three-quarters support twice; you need it at second reading and third reading. If you miss one of them, my own take is death. For me, this activity that we are doing invokes both Section 226 (2) and Section 226 (4). We are invoking both of them because we are repealing and it is a complete repeal. Basically, both the entrenched and the non-entrenched clauses are going. We are flushing everything out and replacing them with something new. Even if you say we are only invoking Section 226 (4), the wording is very clear: *"The bill is supported on the second and the third reading. It is very clear, supported on the second and third reading by a vote of not less than three-quarters of all the Members"*. If you get less than three-quarters at the

first reading, is there even the need to go to the third reading because we have failed to meet the minimum threshold?

If I am correct, if the NO answer means that the Bill is finished today, so what? We are then left with the 1997 Constitution i.e. the constitution of the Republic of the Gambia 1997. The only other option in addition to that which is worth thinking about but we are not exploring at the moment because we are optimistic, is that this draft will have to go back to the drawing board and we have a second attempt. If you completely reject it and do not allow it to go to committee for consideration, then basically you telling us go back and redo it. If you want to come back, you can come back but for now go back. By sending us back with the Bill, it means we will continue to operate with the Constitution of the Republic of The Gambia, 1997. With those words, I leave it to you now. Thank you very much. ...*applause*...

THE SPEAKER: Thank you very much Honourable Minister. Earlier on, at the commencement of your response, Honourable Sallah wanted to raise an issue but I said it was better to allow you to complete and then some other Honourable Members may wish to seek further clarification. We are not opening the debate again. Please Honourable Members, it is just on points that have not been clarified. You will also agree with me that the Honourable Minister did respond on legal issues. The opinions, whether you like A or B, he has clearly indicated is left to Honourable Members. He has responded to the legal issues. We will take some further clarifications before we go to the next stage. It was Honourable Sallah who first raised his tag. Can you just allow me? I will come back to you.

Actually, I am been guided that probably we are deviating. I say it is not a deviation because we have done it earlier. After the response of a Minister, some Honourable Members may feel that their areas of concern have not been touched. There are not new issues; they are areas that have not been responded to. The issues have already been dealt with. I made it very clear, no new issues. They are areas that have already been raised and you feel that the Honourable Minister has not covered them. As I said also, the Honourable Minister has told us that he would respond on legal issues. The opinion is left to the Honourable Members. Thank you.

HON. HALIFA SALLAH [SERREKUNDA]: Thank you very much Madam speaker. The key issue is the position I expressed that due to the two (2) elements in Section 226 where we have entrenched and non-entrench clauses being considered in the Bill, that we must address the two issues because the entrenched ones we cannot touch. We must submit to the IEC for a referendum.

The non-entrenched ones we can touch because that is our mandate. We can actually amend just like we amended all these constitutional provisions. In fact, the upper age limit, it is this Parliament that removed it. This is how powerful this Parliament is. I am saying then what do we do under the current circumstances? This is where I said looking at the Act which mandates the CRC to prepare a Draft Constitution and submit it and that has been done. That is in the schedule now. What they have submitted has not been touched and the anticipation is that this is what goes to a referendum. If we start touching on those provisions that are not entrenched, the procedure there is that once we pass the Bill it should go to the President for assent. Bills that are not entrenched would be passed by the National Assembly and taken to the President for assent. If the President rejects and sends it back, then by force it must go to a referendum on those ones. That is what I was trying to clarify, the technicality.

THE SPEAKER: Sorry, before you respond, Honourable Minister. Honourable Member, unfortunately I was not on the chair when you made your intervention and the Hansard records are still not out but I just want to confirm that these are issues that were raised during your intervention and that the Honourable Minister has not responded adequately to them. If not, it would amount to new issues being raised. As I said, I was not on the chair and the Hansard records are not ready so, I just need confirmation from you that what you have just stated are issues that you raised during your first intervention and the issues have not been addressed by the Honourable Minister?

HON. HALIFA SALLAH [SEREKUNDA]: Thank you very much Madam Speaker. Precisely so, those are the elements which I had raised and indicated that since the work was done by the CRC, at the committee stage we have to have them and the Mover there so that whatever may be suggested, it must be something that they know is the mind of the population. In that regard, we may propose that we add that to whatever and it is only those things that they approve that ultimately will come by way of amendment to those provisions.

THE SPEAKER: Sorry, you have just said it. I just wanted confirmation from you but you already said it. I take your word, the Honourable Minister was here and he listened to your first intervention. If what you have repeated just now is what was said earlier on and has not been adequately captured, then allow him to touch on it. You already made your clarification and he started responding but then I interrupted, wanting to confirm that this is what was said. I do not think there is any need for it to be repeated again.

HON. HALIFA SALLAH [SERREKUNDA]: It is not repeating, Madam Speaker. It is simply stating what needs to be clarified. What I was saying is that I am not saying it should not be touched, I am saying it could be especially if the provisions deal with the non-entrenched ones. The entrenched ones, we cannot touch. That is what I am saying. I mentioned Section 88 (5), that guarantees the elements *...interruption...*

THE SPEAKER: Honourable Member for Serrekunda, with all due respect, you had already made your point. The Honourable Minister was about to respond when I intervened and I wanted to confirm that the issues that you have raised had been covered during your first intervention and not adequately captured in his response and you confirm yes. I said in that case the Honourable Minister can respond to the concerns that you have raised. I think we are speaking the same language.

HON. HALIFA SALLAH [SERREKUNDA]: I am saying the issues that I raised and he did not answer, that is what I wanted to put quickly and he will respond to them.

THE SPEAKER: Let us make some progress. You can just paraphrase the issues and just one more chance and allow others.

HON. HALIFA SALLAH [SERREKUNDA]: Section 88 (5) is the other element where the President can no longer declare a country based on religion and I mentioned that that is not entrenched so we should think of entrenching that so that both the Legislature and the Executive will not have that authority. I stood up when the Member for Foni Jarrol mentioned the issue of the declaration of the winner and he mentioned an element. It would be good for the Minister to look at Section 98 because there are two declarations: declaration in Section 97 (1), if the person has 50% is declared but then 98 is saying that the Commission will declare a winner. I compare it with the 1997 Constitution Section 48 and you will see that it is stated there it envisages a tie even though it is not dealing with the second round but it envisages tie and said that the person who has the highest number of votes would ultimately be declared the winner. Is it necessary to incorporate it as the Member for Foni Jarrol is saying? Could you also even have a tie again for all the elements then what do you do? I am just saying let us put all that into consideration and see how to handle this particular area.

HON. DAWDA JALLOW [ATTORNEY GENERAL AND MINISTER FOR JUSTICE]: Thank you very much Honourable Member for Serrekunda. I see the clarification from the Honourable Member as adding value to my responses. Probably those are gaps I did not adequately cover. The area that I am not very clear with is when you mentioned areas that are entrenched. We can touch areas that are not entrenched, we probably may not be able to touch, are you referring to the draft constitution? If it is the draft, nothing is entrenched yet because it going through promulgation. *[Interruption]*

Alright, there is no issue of what is entrenched and what is not entrenched so that is a little clarification I may need to know before I proceed with it.

HON. HALIFA SALLAH [SERREKUNDA]: Honourable Minister, this is the Constitution (the living document), the 1997 Constitution. The draft does not exist. What we are now doing is to promulgate and we have to rely on the powers we have under the 1997 Constitution to do that. The powers we have is to amend entrenched clauses and non-entrenched clauses but it indicates how we should do each and how we should actually amend non-entrenched clauses is there, and is Subsection 4 onwards. How we should amend non-entrenched clauses is there Subsections 1 to 3. The non-entrenched clauses (if we amend), we can pass the Bill but it must go to the President for his assent. The entrenched clauses, we approve, we do not pass. We approve then it goes to the Speaker and given to the IEC and that is where the six (6) months come. I do not want to go to the quotation. You will be able to see it. It says within six (6) months, the IEC must hold a referendum and what I mentioned was that IEC is scheduling a referendum in June 2021. If you look at the six (6) months that is dictated by the Constitution, we would not be able to...

[Interruption]

THE SPEAKER: Let us allow him to clarify otherwise it will be...

HON. DAWDA JALLOW [ATTORNEY GENERAL AND MINISTER FOR JUSTICE]: Now I understand. My take is, I do not think that is the situation we are dealing with because we do not have the luxury of identifying from this draft which part of the 1997 Constitution it is amending as to describe it entrenched and which of the draft is touching on the non-entrenched clauses of 1997 Constitution. That would have been easier for me. If we have brought an Amendment Bill to the 1997 Constitution and it covers different areas of the 1997 Constitution, then this compromise can come. We can say the areas we can do now and send for assent, let us splits, remove and deal with those ones. Unless I if am not understanding you, areas that are entrenched, we deal with them separately. For me, effectively this repeals this other one completely. The issue of how do we know from this draft which aspect of the 1997 Constitution; it is not effectively amending it. It is completely repealing it. That is the difficulty here. I think you made mention of Section 97 and Section 88 (5) of the draft.

THE SPEAKER: Honourable Member for Serrekunda, you referred to the relevant Sections. Can you just assist him in quoting it so that we save time?

HON. HALIFA SALLAH [SERREKUNDA]: Okay (88) 5, is saying...

HON. DAWDA JALLOW [ATTORNEY GENERAL AND MINISTER FOR JUSTICE]:

The President shall neither have nor exercise the power to establish a one-party... Just a moment, Madam Speaker, just to cross reference something. The issue of the tie situation can probably only be resolved when we get to that other level. Okay is there any other?

HON. DAWDA KAWSU JAWARA [UPPER FULLADU WEST]: Thank you Madam Speaker. I rise on a Point of Order, Clauses 53 (b), (d) and (f) of the Standing Orders.

Madam Speaker the point is that the Honourable Minister did a good job in trying to clarify some of the issues that we have raised but he has time and time again raised the issue that he does not think he is doing justice to some of the clarifications. We are at a critical point that could be determined by how much clarification we have. Therefore, I am of the view that we need CRC's support on informing us because the stakes are high. If we fail at this stage without getting the right information on some areas, that could affect our stance.

Section 53 (b) is saying: "The follow motion may be made without notice; a motion for the adjournment of the Assembly". Section 53 (d) is saying a motion for withdrawal of strangers. Section 53 (f) is saying a motion for the Assembly to resolve itself into a committee of the whole Assembly.

THE SPEAKER: Which Section are you relying on?

HON. DAWDA KAWSU JAWARA [UPPER FULLADU WEST]: Section 53 (b), (d) and (f). The reason why we want to invite the CRC to come on and support us in this particular...

THE SPEAKER: Honourable Member, with all due respect, I will disallow that Motion because it is not proper procedure. We are going by the dictates of the Constitution and we have gone this far. Let us finish this process and see what happens but really I do not think it is proper and fair at this point in time to adjourn.

HON. SAIKOU MARONG [LATRIKUNDA SABIJI]: Madam Speaker, I want rise on Standing Order 53 (c), Motion to adjourn a debate.

THE SPEAKER: Honourable, I have made a ruling that we are not going to adjourn. Let us finish this process and whatever happens afterwards is fine. I am just taking clarifications from Honourable Members for the Minister to clarify.

HON. SUWAIBOU TOURAY [WULI EAST]: Madam Speaker, I am not sure whether you were the one sitting but I raised an issue that there is misunderstanding,

misinformation going about. Even in this House, some people raised it. What is the position of the Executive on the retroactive provisions i.e. the two-term limit? Some people try to create misunderstanding around that. We want to be sure so that nobody misrepresents the Executive in this House. What is the position of the Executive on that? ...*applause*...

THE SPEAKER: I think there is a new issue. Honourable, we have also read the draft but there is no indication of the Executive's decision or whatever. If it is areas you have touched and the Honourable Minister has not adequately responded, I will allow you. Otherwise, NO.

HON. SULAYMAN SAHO [CENTRAL BADDIBU]: Madam Speaker, Section 100 of the Constitution Subsection (c). I want the Honourable Minister to further explain because to my own understanding, Subsection (c) allows us to make retroactive laws because if you look at Subsection (c), it says: *"To alter the decision or judgment of a court in any precedent proceeding to the prejudice of any party to those proceedings or deprive any person retroactively of vested or acquired right but subject thereto, the National Assembly may pass Bills desired to have retroactive effect."*

THE SPEAKER: May I ask? In your intervention, did you raise that issue? No Honourable, not only that but I think it has been touched by other Honourable Members and the Honourable Minister in all fairness did touch on retroactive provisions so please let us proceed.

The Honourable Member for Serrekunda did request that we ensure that we have the requisite number of Honourable Members but I do not think we even need to take a count of that. I think it is very obvious that almost everybody is here. Standing Order (16) 5, in any instance where the constitution requires a fixed majority to decide on a question, the Assembly shall not proceed to a vote on that question unless and until a number of members equivalent to such fixed majority is present at the time of voting.

The number of persons required to be present before voting can take place under this relevant clause of the Constitution is 42 and the motion must be support by at least 42 Members and this is equivalent to three-quarters. I stand to be corrected by our Mathematician, Honourable Member for Sandu. For the purpose of counting, it will be convenient to raise your hands or tags. Can we have your tags so that we will ensure that at least we have a minimum of 42? I think it is obvious.

Thank you, Honourable Members, it has been confirmed by the Table Office that we have more than 50 so we can proceed. Honourable Members, it has been moved and seconded that the Bill entitled The Constitution of the Republic of The Gambia 2020

Promulgation Bill 2020 be read a second time. Can you raise your tags please, let us take the count. The AYES please, just keep your tags up so that we have a correct count.

Honourable Members we have more than 42 here so we are not waiting for anybody. We have been always taking votes by show of hands here, this not the first time that we are doing it. This is a specific requirement and we want to ensure that what we are doing is right. Let us raise our tags and we do the counting properly again for the third time, thank you.

[Question Proposed, Put and Agreed to]

Honourable Members, these are the results: the AYES 31, the NOs 23. Honourable Members, according to Section 226 (2) (b) and 4 (b) of the 1997 Constitution, it reads and I quote Subsection 2: Subject to Section 4, a Bill for an Act of the National Assembly under this Section i.e. Section 226, shall not be passed by the Assembly or presented to the President for assent unless, 2 (b): the Bill is supported on the second and third readings by the votes of not less than three-quarters of all the Members of the National Assembly. Section 226 (b): a Bill for an Act of the National Assembly altering any of the provisions referred to in Subsection 7 shall not be passed by the National Assembly or presented to the President for assent unless, Subsection 4 (b): the Bill is supported on the second and the third readings by the votes of not less than three-quarters of all the National Assembly Members.

Three-quarters of all the National Assembly Members, as required by the aforesaid paragraph, is equal to 42 NAMs. The vote of the Honourable Members supporting the reading of the Bill fell short of the threshold of 42 Members. Therefore, as presiding officer and in accordance with Section 226 2 (b) and 4 (b) of the 1997 Constitution, I hereby announce that The Constitution of the Republic of The Gambia 2020 Promulgation Bill 2020 fails and would not proceed to the next stage of the process. I thank you all for your attention. ...***applause...***

Honourable Members, I am proposing that it is 4 o'clock. We have been here since morning and we are supposed to go to the next item which is to debate the State of the Nation Address by the His Excellence the President. I would suggest that we adjourn, using my powers, until tomorrow, at 10 o'clock when we commence the debate.

[Question Proposed Put and Agreed to]

The Assembly stands adjourned till Wednesday 23^d September, 2020 at 10:00 am.