

The Gambia Presidential Election

4 DECEMBER 2021



The Commonwealth

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MAP OF THE GAMBIA



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LETTER OF TRANSMITTAL

Commonwealth Observer Group
The Gambia Presidential Election
4 December 2021

09 December 2021

Dear Secretary-General,

Following your invitation to observe the 2021 Presidential Election in The Gambia held on 4 December 2021, we have now completed our report and are pleased to submit it to you.

This has indeed been another landmark election in The Gambia. We laud the various pre-election commitments by political parties to foster a peaceful environment during this election, including the Inter-Party Committee's Memorandum of Understanding; the Janjanbureh Peace Accord; and the presidential candidates' agreement to sign a Code of Conduct. While we noted that there were issues with the acceptance of results among some opposition presidential candidates following the election, I am pleased to note that they ultimately united to put their differences aside, in the spirit of magnanimity and national unity. It is in this same spirit that we would urge ongoing political dialogue to address any issues of concern, and hope that these efforts will prevail throughout the election cycle, especially as The Gambia looks ahead to its legislative elections in April 2022, and beyond.

Generally, we found that the overall electoral environment for this election provided for the freedoms of association, assembly, expression and movement to be largely respected.

The Group also observed that, while the electoral framework largely provided an adequate basis for the conduct of a democratic election, it was noted that the legal framework for this election has remained unchanged since the previous election in 2016. While unsuccessful attempts were made to implement a number of constitutional and electoral reforms prior to this election, we would encourage ongoing dialogue to take forward these reforms at the earliest convenient opportunity.

We commend the Independent Electoral Commission (IEC) for its professionalism and effective management in the preparation and conduct of this election, noting the challenges imposed by the global coronavirus pandemic. Despite these challenges, the IEC proved well-prepared for the conduct of Election Day, with all polling procedures generally conducted in an orderly, transparent and largely peaceful environment. Polling officials demonstrated professionalism and dedication in discharging their duties.

The people of The Gambia had high expectations that accompanied this election, and we laud them for their passion and commitment in supporting a peaceful democratic process, and for turning out in significant numbers on Election Day to exercise their franchise.

It is our overall conclusion that these elections were peaceful, transparent and met key democratic benchmarks, and that any shortcomings highlighted in our report could be addressed through appropriate support.

We appreciate the opportunity given to us to observe this election and trust that our conclusions and recommendations will be received in the constructive spirit in which they are intended. We call upon the Commonwealth Secretariat, other pan-Commonwealth institutions, and international development partners to respond positively to these recommendations.

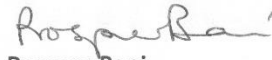
Yours sincerely


HE Olusegun Obasanjo
Chairperson

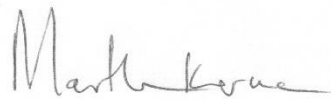
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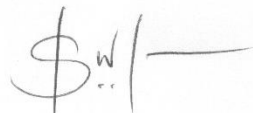
Robert Phiri



Hendrick Gappy



Shyamala Gomez



Hon Crispin Kaheru

ACRONYMS AND ABBREVIATIONS

ACDEG	African Charter on Democracy, Elections and Governance
APRC	Alliance for Patriotic Reorientation and Construction
ARO	assistant returning officer
COG	Commonwealth Observation Group
CMAG	Commonwealth Ministerial Action Group
CSO	civil society organisation
ECOMIG	ECOWAS Mission in The Gambia
ECOWAS	Economic Community of West African States
GDC	Gambia Democratic Congress
GPDP	Gambia People's Democratic Party
GTRS	Gambia Radio and Television Service
ICCPR	UN International Convention on Civil and Political Rights
IEC	Independent Electoral Commission
IPC	Inter-Party Committee
MoU	Memorandum of Understanding
NADD	National Alliance for Democracy and Development
NPP	National People's Party
NRP	National Reconciliation Party
PDP	People's Democratic Party
PDOIS	People's Democratic Organisation for Independence and Socialism
PO	presiding officer
PPP	People's Progressive Party
UDP	United Democratic Party

EXECUTIVE SUMMARY

The Commonwealth Secretary-General deployed a Commonwealth Observer Group (COG; ‘the Group’) to observe the 4 December 2021 Presidential Election in The Gambia. The Group was present in The Gambia from 26 November to 6 December 2021. The Group’s arrival was preceded by a Commonwealth Secretariat pre-election assessment mission, which was in the country from 25 to 29 October 2021 to assess the state of preparedness, the pre-election environment and to lay the groundwork for the COG’s arrival.

In carrying out its Terms of Reference, the Group met a broad range of stakeholders including the Independent Electoral Commission (IEC) of The Gambia, political party representatives, the Inter-Party Committee, civil society organisations, including women and youth groups, domestic and international election observer groups, the media, the police, Commonwealth High Commissions, and other diplomatic missions represented in The Gambia.

The Commonwealth Secretary-General constituted a Commonwealth Observer Group comprising experts drawn from the political, legal, human rights, media, civil society and electoral fields across various Commonwealth regions. The Group deployed across the country on Election Day, covering all the administrative regions of The Gambia.

The electoral framework largely provides an adequate basis for the conduct of democratic elections. However, it is noted that the legal framework for these elections has remained unchanged since the previous election in 2016, and that unsuccessful attempts were made to implement a number of constitutional and electoral reforms.

In conjunction with reviving dialogue on the existing areas of reform, the Group encourages the government, political parties and the IEC to hold consultations on enhancing the current legal provisions regarding political party registration, in order to offer clarity on current practices and to bring the provisions in line with relevant international standards and commitments. Several options are available in this regard, including amendments to the Elections Act, the introduction of subsidiary legislation, or the introduction of a standalone legislation on political party registration.

A peaceful environment prevailed before, during and after the polls. This was due to the various commitments by political parties to foster a peaceful environment in the lead-up to the Presidential Election. These included adherence to the Inter-Party Committee’s Memorandum of Understanding, the signing by all 18 parties of the Janjanbureh Peace Accord on 25 September, as well as the commitment by all presidential candidates to a Code of Conduct, which they signed on 11 November.

This election was conducted amid a global pandemic. While COVID-19 protocols were adhered to by some polling staff, it was noteworthy that this was not consistent. Many voters did not abide by these protocols, and social distancing, in particular, was not always observed.

Despite the challenges posed by COVID-19, the Independent Electoral Commission proved well-prepared for Election Day. The voting process was generally well-managed and transparent. Polling officials demonstrated professionalism and dedication in delivering these elections. Party agents, citizen and international observers were present and able to perform their duties unhindered. Voters demonstrated patience, resilience and commitment to their country's democratic process.

The Gambia's unique marble and drum voting system facilitated a quick, orderly and transparent vote count in the presence of party agents and observers. While noting that concerns were raised in some instances surrounding the issue of marbles not fitting into the mouths of ballot drums, it was observed that the IEC acknowledged the problem and instructed polling staff to address it.

The Group noted that there were different views regarding the merits of this system. Further dialogue should take place to ensure that all Gambians are able to reflect thoroughly on this, as well as other areas, within the context of the unimplemented reforms that will need to be addressed in the next electoral cycle.

The Group's overall assessment was that the election, as a whole, was peaceful, credible, transparent and inclusive. It offered eligible voters an opportunity to exercise their franchise. However, all electoral processes can be further strengthened. In accordance with our mandate, this report therefore offers a number of recommendations for consideration by electoral stakeholders in The Gambia. These recommendations are offered in a positive spirit of contributing to the deepening of democracy and strengthening of the electoral processes.

We wish to commend the voters for turning out in significant numbers on Election Day to exercise their franchise. We also congratulate the Independent Electoral Commission of The Gambia and polling staff, the political parties and their leaders, the Inter-Party Committee, civil society, the media, and the security forces for their respective roles in ensuring peaceful elections.

Recommendations

Electoral framework and election administration

- The National Assembly should ratify the African Union (2007) African Charter on Democracy, Elections and Governance (ACDEG), and sign and ratify the African Youth Charter (2006).
- Political parties and the Inter-Party Committee should renew bipartisan dialogue on electoral and constitutional reform, in particular on the issue of term limits and the establishment of a boundary commission.
- A boundary delimitation exercise is much needed. This should be carried out as soon as the constitutional reform issues relating to boundary delimitation are resolved.
- The IEC and political parties should renew dialogue on the issue of the marble and drum voting method.
- Political parties should undertake dialogue to consider the introduction of standalone legislation on the registration of political parties, or review Sections 104-109 of the

Elections Act, to ensure closer alignment with international standards on freedom of assembly and to bring clarity to the rules and procedures governing the revocation of political party registration.

- The National Assembly should consider reviewing the Elections Act to reduce the number of signatures required for presidential candidates, including the requirement to obtain 200 signatures from each administrative area. Proportional reductions should also be considered for other elections.
- The National Assembly should reform Section 49(5) of the Elections Act to afford candidates the right to legal redress in the High Court.
- The National Assembly should review Section 127 of the Elections Act to reflect the court's constitutional right and obligation to hear cases involving public institutions.
- The government should provide the IEC with additional funding to bolster its legal capacity.
- The government should provide the IEC with appropriate resources to undertake its constitutional duty to facilitate diaspora voting.
- The IEC should reform its approach to stakeholder communications and public relations and be more transparent in its decision-making, being sure to provide full and proper explanations in relation to the disqualification of any candidates.
- Electoral laws should be consolidated by the competent authority to reduce confusion among politicians and voters alike.
- The IEC could improve its public relations through improved use of its website, such as by ensuring all relevant laws are made available there and posting information relating to key decisions taken by the IEC, so as to keep electoral stakeholders better informed.

Participation and inclusion

Civil society

- The presidency should endeavour meet with civil society organisation (CSO) representatives championing the Women, Youth, Persons with Disabilities (PWDs) and Citizens Manifestos to develop a way forward to achieving key objectives.
- CSOs should continue to collaborate with government and other stakeholders to successfully advocate for meaningful policy reforms that strengthen the participation and inclusion of marginalised groups in the electoral process.
- The IEC should introduce a robust communication strategy to deliver relevant, meaningful information in real time to CSOs, taking advantage of the information and communications technologies available.
- The IEC should continue to work in close collaboration with CSOs to ensure complementary delivery of voter education programmes throughout the electoral cycle.

Women

- The president, in consultation with the Judicial Review Commission and the Public Service Commission, should ensure the inclusion of at least two women as IEC commissioners, out of the total number of five.
- In order to enhance women's political representation and participation, the National Assembly and political parties should consider the introduction of affirmative action

measures, such as reserved seats or a quota system for women in the National Assembly, the Cabinet, select committees, local councils and other elected positions.

- Political parties should consider establishing a fund for women to finance their participation in electoral processes.
- Political parties should include their women's wings in the formulation of party policy and manifestos.
- The IEC should foster a robust multistakeholder working relationship, including with the Women's Bureau under the Ministry of Gender, to carry out gender-sensitive voter education programmes.

Youth

- Political parties should reform their leadership structures to ensure the meaningful and equal participation of young men and young women.
- Political parties should strengthen the role of youth representative in the formulation of party policy.
- Youth and women CSO groups should continue to collaborate to address the existing gaps between male youth and female youth participation.

Persons with disabilities

- The IEC should undertake an accessibility audit to ensure PWDs are able to fully participate in the electoral process.
- The IEC should make available disaggregated data from voter registration on PWDs to better inform voter awareness programmes, identification of adequate polling stations, and provision of polling materials such as braille-labelled ballot boxes.
- Political parties should consider reforming their party structure to include PWDs in leadership structures and policy development processes.

Campaign and the media

Campaign

- The Gambia should consider introducing campaign finance legislation to strengthen transparency and accountability, with the IEC empowered and appropriately funded to compel disclosure of expenditures, to investigate breaches and to issue sanctions where appropriate. We encourage the Commonwealth Secretariat to support The Gambia in this regard.

The media

- The IEC should consider developing a robust media/communications department and placing greater focus on broadening its accessibility to the media and being more open in the sharing of information critical to the electoral process.
- The government should amend or repeal laws that impinge on freedom of expression, in line with the May 2018 ruling of the Court of Justice of ECOWAS (the Economic Community of West African States) and in line with regional and international standards and commitments.
- The Group encourages the Inspector General of Police, the Gambian Press Union and other civil society organisations to resurrect and maintain dialogue on media

freedoms to ensure that journalists can pursue their work in accordance with the democratic principles of freedom of expression, association and assembly.

- The government and the IEC should ensure that the provisions of the Access to Information Act are fully implemented, including improved storing, cataloguing and proactive disclosure of information into the public domain.
- Fact-checking initiatives for online media should be supported and developed further to counter mis- and disinformation.

Voting, counting and results process

- The IEC should review the location of polling streams, particularly those located on the side of busy roads.
- Procedures should be enhanced and training of polling staff improved to ensure greater consistency of queue management. The IEC should deploy more polling staff to ensure effective queue management at larger polling stations.
- Where possible, the IEC should ensure that all polling stations are generally located in accessible facilities to enable access voters in wheelchairs. Where this is not possible, it should ensure a greater level of assistance for PWDs and the elderly.
- The IEC should ensure proper signage and labelling of polling stations and queues to assist voters.
- The list of candidates and their photos should be displayed at polling stations in order to assist illiterate and/or partially sighted voters.
- The IEC should ensure adequate lighting in the voting booth to assist partially sighted voters.
- The IEC should adhere to COVID-19 protocols in the management of Election Day processes, including within polling stations.
- For general hygiene reasons, the use of cotton buds should be considered as an indelible ink applicator.
- The IEC should review the length of curtains at polling booths to ensure that the secrecy of the vote is not compromised.
- Rejected tokens should be kept separately to avoid double counting and to facilitate greater accountability of tokens.
- The IEC should ensure greater consistency in the application of the current practice of displaying results at the polling station.

CHAPTER 1: INTRODUCTION

The Commonwealth Secretary-General, Rt Hon. Patricia Scotland QC, constituted an Observer Group for the 4 December 2021 Presidential Election, following an invitation from the Independent Electoral Commission of The Gambia. Ahead of this election, the Secretary-General deployed a pre-election assessment mission to The Gambia from 25 to 29 October 2021, to assess whether there was broad support for the presence of a Commonwealth Observer Group, and to assess the prevailing situation as well as the pre-election environment.

The Commonwealth Observer Group ('the Group') was led by His Excellency Olusegun Obasanjo, former President of the Federal Republic of Nigeria, and comprised an additional seven experts drawn from the political, legal, media, civil society and electoral fields across various Commonwealth regions. A seven-person staff team from the Commonwealth Secretariat supported the Group. A full list of members is at Annex I.

Terms of Reference

The Group is established by the Commonwealth Secretary-General at the request of the Chairperson of the Independent Electoral Commission of The Gambia. The Group is to consider the various factors impinging on the credibility of the electoral process as a whole.

It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which The Gambia has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Group is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgment accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of The Gambia, the Chairperson of the Independent Electoral Commission of The Gambia, political parties taking part in the elections and thereafter to all Commonwealth Governments.

Activities

The Commonwealth Observer Group was present in The Gambia from 26 November to 9 December 2021 and an Arrival Statement was issued on 27 November 2021 (Annex II).

The Group met with a broad range of national and international stakeholders to gain a comprehensive picture of the electoral processes, political environment and preparations for the Presidential Election. These included the Independent Electoral Commission of The Gambia (IEC), the Inter-Party Committee (IPC), The Gambia Police, presidential candidates, political parties, High Commissions, the Association of Non-Governmental Organisations (TANGO), media houses, the Gambia Press Union, the West Africa Network for Peacebuilding (WANEP), international observers and local citizen observer groups.

Members of the Group deployed to all the administrative divisions of the country on 2 December to observe this Presidential Election. They were stationed in Banjul, Basse, Brikama, Janjanbureh, Kerewan and Mansa Konko, where they interacted at the regional level with representatives of the IEC, political parties, civil society organisations, international and citizen observer groups.

On 6 December 2021, the Chairperson of the Commonwealth Observer Group issued an Interim Statement (Annex III), highlighting the Group's preliminary findings and observations.

The Observer Group's Final Report was completed in The Gambia before the Group's departure on 9 December 2021, for transmission to the Commonwealth Secretary-General.

CHAPTER 2: POLITICAL BACKGROUND

Independence and the first republic (1965-1994)

The Gambia achieved independence on 18 February 1965, as a constitutional monarchy within the Commonwealth, and subsequently became a republic on 24 April 1970, following a referendum. President Sir Dawda Jawara of the People's Progressive Party (PPP) dominated political life from independence until 1994, when Lieutenant Yahya AJJ Jammeh led the military coup that ousted him.

The relative stability of the Jawara era was interrupted by a violent, though unsuccessful, coup attempt in 1981. President Jawara, who was in London when the attack began, appealed to Senegal for help. Senegalese troops defeated the rebel force. There were two important ramifications of the coup attempt: the establishment of a short-lived confederation with Senegal in February 1982; and the establishment of a Gambian army (later known as the Gambian National Army).

At the election held in 1982, Jawara was re-elected president with 72 per cent of the vote. Two new political parties emerged in 1986: the Gambia People's Party (GPP); and the People's Democratic Organisation for Independence and Socialism (PDOIS).

The 1994 coup and the transition to democracy

On 22 July 1994, the Armed Forces Provisional Ruling Council (AFPRC) seized power in a military coup d'état, deposing Jarawa's government. Lieutenant Jammeh, Chairman of the AFPRC, became Head of State. International reaction to the military take-over was generally unfavourable and The Gambia was placed on the formal agenda of the Commonwealth Ministerial Action Group (CMAG), pending a full return to democracy and constitutional rule.

A constitutional referendum took place on 8 August 1996. More than 70 per cent of voters were reported to have endorsed the proposed draft constitution. A presidential decree shortly thereafter lifted the ban on party political activity for all but three parties: the People's Progressive Party (PPP) of former President Jawara, the National Convention Party (NCP), and the Gambia People's Party (GPP). The only pre-coup parties authorised to contest the elections were the PDOIS and the People's Democratic Party (PDP). These parties were banned from contesting the 1996 elections under Decree 89, as were all holders of executive office in the 30 years prior to the 1994 military coup.

The effective ban on participation in the restoration of elected institutions of all those associated with political life prior to July 1994 provoked strong criticism from the Commonwealth Ministerial Action Group (CMAG), on whose agenda The Gambia remained.

A Presidential Election was held in 1996. The 22 July Movement (formed in 1995 to mark the anniversary of the coup) transformed itself into an official political party - the Alliance for Patriotic Reorientation and Construction (APRC) - to support Jammeh's campaign for the presidency.

A Provisional Independent Electoral Commission (PIEC) was established in 1996 to conduct national elections. The PIEC was transformed into the Independent Electoral Commission (IEC) in 1997 and was given additional responsibility for the registration of voters.

Jammeh and three rivals contested the presidential election on 26 September 1996. Jammeh received 56 per cent of the vote, becoming The Gambia's second elected president in 31 years of independence. Ousainou Darboe of the United Democratic Party (UDP) obtained 35 per cent of the vote.

Elections for the National Assembly were held on 2 January 1997. The APRC received 33 of 45 contested seats, while the UDP secured 7 seats, the National Reconciliation Party (NRP) 2 seats, the PDOIS 1 seat, and independents took the remaining 2 seats.

The 2001 and 2006 Presidential Elections

In July 2001, the ban on Jawara-era political parties and politicians was lifted; Decree 89 was repealed, and The Gambia was taken off CMAG's agenda. CMAG, nonetheless, called on the Government of The Gambia to take further measures to create an environment in which all political parties and individuals could freely participate in the political process.

Four registered opposition parties participated in the 18 October 2001 presidential election, which the incumbent won with almost 53 per cent of the vote. Darboe of the UDP, who had formed a coalition with Jawara's PPP and the Gambia People's Party (GPP), came second.

The UDP boycotted the parliamentary elections held on 17 January 2002, citing bias on the part of the IEC. The APRC, which ran unopposed in 33 out of 48 constituencies, secured 45 of the elected seats (in addition to the 5 appointed by the president). The opposition PDOIS secured two seats for the first time, while the last seat went to the NRP. Jawara was allowed to return from exile in September 2002, on condition that he did not participate in party politics.

Ahead of the next presidential election, in January 2005, the National Alliance for Democracy and Development (NADD) was launched (and later registered as a single party). NADD consisted of the country's four main opposition parties: the UDP, NRP, PDOIS and the National Democratic Action Movement (NDAM).

In legislative by-elections in September 2005, NADD won three seats in the National Assembly; it appeared that the coalition had gained support. However, in February 2006, the NADD began to unravel when the leaders of its two largest members, Darboe of the UDP and Hamat Bah of the NRP, left the coalition amid rumours of disagreements over the selection of a single presidential candidate. These two parties formed an alliance to contest the 2006 presidential election.

That election was held against the backdrop of a Commonwealth-brokered Memorandum of Understanding (MoU) for political parties, which sought to create a peaceful election environment and to encourage dialogue between the government and opposition through the Inter-Party Committee (IPC).¹

Prior to the elections, however, two incidents placed The Gambia on the regional and international radar: in March 2006, there was an alleged coup plot against President Jammeh, following which government security forces arrested a number of military and police officials, and clamped down on some private media organisations. The second

¹ 'The IPC of The Gambia was established by political parties as a forum for dialogue and co-operation to promote adherence to its MoU and Code of Conduct, promote national reconciliation and ensure consensus building amongst political parties on contested political and electoral issues'. (IPC The Gambia)

incident was when the African Union Summit was held in Banjul in July 2006, which focused attention on the political environment ahead of the elections.

In the September 2006 Presidential Election, President Jammeh received 67 per cent of the vote. Darboe of the UDP secured 27 per cent of the vote, while Halifa Sallah of the PDOIS received 6 per cent. Voter turnout was 58.8 per cent.

In the 2007 Parliamentary Elections, APRC won 42 seats, UDP won 4 and NADD won 1 seat. An independent candidate secured one seat and five members were appointed by the president.

The 2011 Presidential Election

The 2011 Presidential Election was held on 24 November amid criticism of the Government of The Gambia's human rights record, with a slew of allegations of harassment and arbitrary arrests of government critics. Key stakeholders in the electoral and political process were notably fearful of criticising the government, citing a number of incidents. These included:

- The murder in 2004 of Deydra Hydara, former Editor of *The Point* newspaper, following his arrest by security operatives.
- The disappearance of *Daily Observer* journalist Chief Ebrima Manneh, who had not been seen since July 2006.
- The arrest and subsequent release of the Campaign Manager of the UDP, Femi Peters, in December 2010. Peters was charged and later convicted and sentenced for 'control of procession' and 'control of use of loudspeakers' in public without permission from the Office of the Inspector General of Police, as was required under the Public Order Act. Following national and international protests, he was freed on 10 December 2010.

The impact of incidents such as these was further exacerbated by the overwhelming dominance of the executive, which had eclipsed the other arms of government, in conflict with the Commonwealth Latimer House Principles on the separation of powers among the executive, legislature and judiciary.

The Commonwealth Expert Team (CET) commented on the following improvements during the campaign period:

- A conciliatory tone in the rhetoric of the president - advocating for peaceful elections and refraining from speaking ill of the opposition.
- The improving role of the IEC and the state media in ensuring that, 'for the first time', all political parties were given equal airtime on state television, thereby ensuring the visibility of all parties during the brief campaign period.

The 2011 election was also marked by the formation of another political alliance, with Hamat Bah of the NRP joining forces with Sallah as the United Front, after a separation from Darboe. Darboe was standing once again as a presidential candidate for the fourth time.

The IEC, therefore, received and accepted nominations for the following three presidential candidates on 10 November 2011:

- Yahya Jammeh, leader of the APRC;
- Ousainou Darboe, leader of the UDP; and
- Hamat Bah (former leader of the NRP) leading the United Front (a coalition of four political parties - NRP, GPDP (Gambia People's Democratic Party), NADD and PDOIS).

Jammeh, who had been president since 1996, was re-elected with 72 per cent of the vote for another five-year term. Darboe of the UDP secured 17 per cent of the vote, while Bah received 11 per cent. Voter turnout was 83 per cent.

The Gambia's withdrawal from the Commonwealth

On 3 October 2013, The Gambia announced its withdrawal from the Commonwealth. The abrupt decision, made by Jammeh on the state-owned Gambia Radio and Television Service (GRTS), to leave the association took place against a backdrop of growing international isolation of The Gambia. It appeared the decision was made by Jammeh alone, without the knowledge of his Cabinet. Reaction to the decision was mixed. Members of the National Assembly, largely dominated by Jammeh's party (APRC), welcomed the announcement, while the main opposition leader in The Gambia, Ousainou Darboe, was opposed to the decision.

The 2016 Presidential Election

On 1 December 2016, the 22-year presidency of Yahya Jammeh ended with the election of Adama Barrow, the leader of a newly formed coalition. Barrow, a realtor and former UDP treasurer, led the 'Coalition 2016' against Jammeh.

The new coalition was an alliance of seven opposition parties, the UDP, PPP, PDOIS, NRP, GMC (Gambia Moral Congress), GPDP and NCP, which had unsuccessfully challenged Jammeh in previous elections. Key to the coalition's formation was agreeing to a three-year transition government. Barrow stated repeatedly that, on his election, the country would re-join the Commonwealth.

The backdrop of the 2016 election was increased disaffection with Jammeh and the governing party, both at home and in the diaspora. Concerns about the deteriorating human rights record in The Gambia were growing.

The IEC, under the new chairmanship of Alieu Njie, accepted nominations of three candidates for the presidency: Yahya Jammeh (APRC), Adama Barrow (Coalition 2016) and Mamma Kandeh (GDC). Both Jammeh and Barrow expressed their confidence in winning the election as they cast their ballots on 1 December. With borders closed and the internet shut down, only the African Union was granted observer status, with the Economic Community of West African States (ECOWAS) declining to observe because of concerns that the vote would be flawed, and the European Union (EU) denied entry to observe the polls.²

President Jammeh conceded defeat on television after the chairman of the IEC announced that Barrow had secured 45.5 per cent of the vote; Jammeh received 36.7 per cent and Kandeh 17.8 per cent. Turnout was 59.4 per cent, a significant reduction compared to 2011. Jammeh's decision to concede and leave office on 18 January 2017, was received with praise by regional and international bodies alike. However, Jammeh retracted this concession on

² Nije, E and A Saine (2019), 'Gambia's "Billion Year" President: The End of an Era and the Ensuing Political Impasse', *Journal of African Elections* Vol 18 No 2, available at: <https://eisa.org/pdf/JAE18.2Njie.pdf>

9 December, citing ‘serious and unacceptable abnormalities’ and called for fresh elections. This threw the country into a political crisis.

The former president questioned the validity of the count after the IEC changed some results, even though it insisted the outcome was not affected. The IEC announced that Barrow obtained 222,708 votes (43.3%) compared with Jammeh's 208,487 (39.6%). The third candidate, Mamma Kandeh, won 89,768 votes (17.1%), a slight decrease on results previously announced.

Former President Jammeh's party, the APRC, subsequently filed a legal petition against the result of the IEC with the Supreme Court, asking it to annul the results.

Following extensive diplomatic efforts by ECOWAS and the deployment of an ECOWAS Mission in The Gambia (ECOMIG), former President Jammeh stepped down and went into exile in Equatorial Guinea on 21 January 2017.

The above development paved the way for Barrow's second, and this time formal, inauguration in Banjul on 18 February 2017, following a first swearing-in ceremony in Senegal a month earlier, when the crisis was at its peak in The Gambia.

Political environment following the 2016 election aftermath

The Republic of The Gambia endured 22 years of repression under former President Yahya Jammeh's regime. This led to the weakening of key democratic institutions.

Since his assumption of office on 19 January 2017, President Adama Barrow and his administration have acknowledged these challenges. The government initially demonstrated the political will to focus on rebuilding and strengthening of key institutions. President Barrow publicly committed to restoring democracy and good governance by undertaking sweeping governance reforms, which include constitutional, electoral, judicial sector, security sector and public administration reforms. The government has also committed to providing an enabling environment for civil society organisations (CSOs) and the media to operate more freely. While some of the reforms were introduced, including passing an Access to Information Act 2021, most electoral and constitutional reforms have stalled due to disagreements regarding the issue of term limits and whether the new constitutional provision would be retroactive. This issue will be discussed in detail in Chapter 3.

President Barrow formed a new political party, the National People's Party (NPP), in December 2019, which marked three years since the last election. Before Barrow formed the new party, it emerged that some coalition partners were allegedly asking him to leave office, as per the agreement committing him to serve three years as opposed to the constitutional provision of five years. This was followed by protests by some groups asking the president to resign.

Financial crimes of the previous regime

On 13 July 2017, Barrow established the Janneh Commission, a three-person commission to probe financial activities of public bodies, enterprises and offices as regards their dealings with former President Yahya Jammeh and his associates. The Janneh Commission released its report in September 2019. It indicted some former government officials and financial institutions for having participated in financial malpractices and recommended that they be held accountable.

Human rights

Jammeh's administration was heavily criticised for its human rights violations, including a crackdown on dissenting views and limiting the freedoms of expression, association and assembly. Hence, the steps taken by Barrow and his government towards the promotion and protection of human rights have been welcomed.

The Truth, Reconciliation and Reparation Commission (TRRC) was established by an Act of Parliament passed in 2017 to address the human rights violations of the past and foster national healing, engaging with the media, political parties and civil society. Since its launch, the TRRC has been hearing the accounts of human rights violations perpetrated under Jammeh's administration. The TRRC released its interim report in April 2020. The final report was submitted to the president on 25 November 2021.

Political environment ahead of the December 2021 Presidential Election

The following issues provide the context in which the 2021 Presidential Election took place:

- The Presidential Election in The Gambia was the first election since former President Jammeh went into exile in Equatorial Guinea.
- President Adama Barrow's party (NPP) forged an alliance with a faction of Jammeh's party, the Alliance for Patriotic Reorientation and Construction (APRC). Some raised questions around his commitment to justice for the victims of Jammeh's human rights abuses.
- The continued presence of ECOMIG raised concerns about its role in the election.
- Nominations took place from 30 October to 5 November 2021. A total of 26 potential presidential candidates collected nomination papers, the highest number in Gambian electoral history. Twenty-one (21) out of 26 candidates filed their nominations. Only six aspirant presidential candidates had their nominations approved by the IEC, in accordance with Section 46(1) of the Elections Act, namely: Ousainou Darboe (UDP); Adama Barrow (NPP); Halifa Sallah (PDOIS); Mamma Kandeh (GDC); Essa Faal (Independent); and Abdoulie Jammeh (NUP). Fifteen (15) were rejected and five withdrew from the process. Out of the 15 rejected candidates, 2 filed petitions against the IEC at the High Court, seeking redress. These were Dr Ismaila Ceesay of the Citizens' Alliance and Mr Mai Ahmad Fatty of Gambia Moral Congress. This issue is discussed in detail in Chapter 3.
- On 22 September 2020, the National Assembly rejected the Constitution Promulgation Bill 2020. The bill did not get enough votes, a development that was not welcomed by all. This issue will be discussed in detail in Chapter 3.

CHAPTER 3: THE ELECTORAL FRAMEWORK AND ELECTORAL ADMINISTRATION

Background

The Gambia is a constitutional republic. The Constitution of the Second Republic of The Gambia (1997), along with various electoral laws, provide the legal framework for all elections and referenda in The Gambia. In addition, The Gambia has numerous rules and codes of conduct for political parties, candidates and the media. These are:

- The Constitution (1997)
- Elections Act (Cap 3:01)
- Elections Decree No. 78 (1996), amended by:
 - Decree No. 91 of 1996
 - Decree No. 93 of 1996
 - Act No. 7 of 2001
- Elections (Amendment) Act (2015)
- Elections (Amendment) Act (2017)
- Constitution (Amendment) Act (2017)
- Code on Election Campaign Ethics Order
- Election Petition Rules
- Media Code of Conduct
- Code of Conduct for Political Parties (2020)
- Case law

While The Gambia utilises a tripartite legal system that includes Islamic and customary law, the legal system pertaining to the governing of elections is common law. The Gambia's High Court was established by Section 131.1 of the Constitution and consists of a chief justice and at least seven other justices. The chief justice and justices of the High Court are appointed by the president, following consultations with the Judicial Service Commission.

Section 26b of the Constitution gives all Gambian citizens the right 'to vote and stand for elections at genuine periodic elections for public office, which election shall be by universal and equal suffrage and be held by secret ballot'. The Constitution also provides for the establishment of the Independent Electoral Commission (Section 42) and outlines the functions and source of financing of the Commission (Sections 43 and 44). This is discussed in greater detail below.

Sections 28 and 31 of the Constitution provide for the protection of equal rights for women and persons with disabilities (PWDs), while Section 33.4 proscribes any discrimination on the basis of 'race, colour, gender, language, religion, political or other opinion, national or social origin...'. Section 60.2 (a) stipulates that political parties cannot be formed on an 'ethnic, sectional, religious or regional basis'.

International, continental and regional standards and commitments

The Gambia is a state party to the following international, continental, and regional standards:

International (United Nations) treaty standards

- United Nations (1966) The International Covenant on Civil and Political Rights (ICCPR)
- United Nations Human Rights Committee 1996. General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service
- United Nations (1979) Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
 - United Nations CEDAW Committee, General Recommendation No. 23: Political and Public Life
 - United Nations CEDAW Committee, General Recommendation No. 25: Political and Public Life
- United Nations (2003) Convention Against Corruption (UN CAC)
- United Nations (2006) Convention on the Rights of Persons with Disabilities (CRPD)
- United Nations Human Rights Committee (2011) General Comment No. 34 on Freedoms of Opinion and Expression

African (Continental) treaty standards

- Organization of African Unity / African Union (1981), African Charter on Human and Peoples' Rights (ACHPR)
- African Union (2003) African Union Convention on Preventing and Combating Corruption (AU CPCC)
- African Union (2003) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ACHPR PW)
- The Gambia has signed but not ratified the African Union (2007) African Charter on Democracy, Elections and Governance (ACDEG)
- The Gambia has not signed or ratified the African Youth Charter (2006)

African 'political' commitments

- Organization of African Unity (1998) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights
- African Union (2002) Declaration on the Principles Governing Democratic Elections in Africa
- The New Partnership for Africa's Development Declaration on Democracy, Political, Economic and Corporate Governance Signed by Heads of State and Government of the Member States of the African Union (2002)

West Africa (ECOWAS) treaty standards

- ECOWAS (1991), Declaration of Political Principles of the Economic Community of West African States
- ECOWAS (2001) Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

The Commonwealth

- The Harare Commonwealth Declaration (1991)
- Charter of the Commonwealth (2012)
- The Revised Commonwealth Guidelines for the Conduct of Election Observation in Member Countries (2018)

Presidency

The Gambia uses a presidential system alongside a unicameral legislature. Under Section 61.1 of the 1997 Constitution, the president is Head of State, Head of Government and Commander-in-Chief of the armed forces. Presidents are elected for a term of five years and there are no term limits. Section 46 stipulates Presidential Elections are to be held within three months before the expiration of the current president's term.

Independent Electoral Commission

Establishment and independence

The Constitution provides for the establishment of an Independent Electoral Commission ('the Commission') and the procedures for appointments of members of the IEC (Sections 42 to 45). The IEC's independence is constitutionally guaranteed under Section 42(1), and in the exercise of its functions it is not subject to the direction or control of any person or authority. In accordance with Section 42 of the Constitution, the IEC is composed of a chair and four other members, one of whom is elected vice-chair. Members are appointed for an initial term of seven years, renewable once.

The authority to appoint members of the IEC is vested in the president, following consultation with the Judicial Review Commission and the Public Service Commission. The 2020 draft constitution, which called for the establishment of a new independent boundaries and electoral commission, included provisions for increased parliamentary oversight of the appointments process to this commission, but the draft constitution did not pass through the National Assembly.³ The Constitution also vests in the president with the authority to remove members of the Commission, following a tribunal of three judges convened to determine whether the impugned commissioner meets any of the grounds for dismissal contained in Section 42(6). Such grounds include inability to perform the functions of office due to infirmity of body or mind; circumstances arising after appointment that would have disqualified the commissioner from office under Section 42(5); or for misconduct in office (the Constitution does not define 'misconduct').

Since 1996, three chairpersons have been removed from office (one of them twice), and three members of the Commission have also been removed. Some stakeholders who briefed the Group suggested that in at least one case, due process was not followed. While the Group will not comment on such suggestions, it is nonetheless the case that the current arrangement does provide scope for undue political interference in the process. The Group thus recommends stakeholders revive previous reform efforts that would further strengthen the independence of the IEC.

Funding

³ The draft constitution stipulated that the Commission would need to receive approval of at least 60 per cent of the National Assembly.

Section 44 of the Constitution states that the Commission must submit estimates of its annual expenditures to the president for presentation to the National Assembly, which ultimately approves the budget. The IEC also receives ad hoc funding and support from a host of international donors.

Responsibilities

The IEC is responsible for the registration and supervision of political parties, the registration of voters for all levels of national elections and referenda, and the conduct of such elections. The IEC is also responsible for setting the dates, times and places of public elections and referenda, and for ensuring they are publicised and held accordingly.

While the Constitution does not stipulate any responsibility to undertake voter education, this obligation is found in General Comment No. 25 of the ICCPR, which The Gambia has ratified, and in Article 12 of ACDEG, which The Gambia has signed but not ratified.

Constitutional and electoral reforms

Following the 2016 election, a Constitutional Review Commission was established to draft a new constitution in consultation with a variety of national institutions and stakeholders. The key constitutional reform issues pertaining to elections included:⁴

- a proposal for a limit of two five-year terms for presidents (and a determination as to the retroactivity of this provision as pertaining to the incumbent);
- the establishment of a new independent boundaries and electoral commission, with power to undertake boundary delimitation exercises every 10 to 12 years; and
- a potential transition from the marble and drum voting system to paper ballots.

Were the draft constitution to have been approved by a majority of 75 per cent in the National Assembly, the constitution would have been put to a national referendum. In preparation for this possible referendum, the IEC envisaged undertaking a number of electoral reforms no sooner than six months before the referendum, including reform of the Elections Act and/or the drafting of a separate Referendum Act in order to provide a sound legal basis for the holding of the referendum. The IEC further envisaged a second tranche of reforms following the referendum, to ensure the electoral framework was in line with the provisions of the new constitution in time for the December 2021 Presidential Election.

The Constitutional Review Commission's mandate expired in December 2019, and the draft constitution was put before the National Assembly in September 2020. The draft constitution failed to secure the required supermajority, thus obviating the need for a referendum. The reform process ultimately stalled due to a lack of political will, most notably due to an impasse on the issue of term limits.

Term limits

⁴ Other areas of electoral reform that were discussed as part of this process included voter registration, candidate nomination and eligibility, election petitions, and political party registration.

The Constitution stipulates presidential terms are for five years, but it does not contain a provision on term limits for presidents. The draft 2020 constitution included a provision that would limit individuals to two five-year terms as president. However, disagreements within the National Assembly as to whether this provision would be retroactive or would only apply to future presidencies (the latter therefore allowing President Barrow to stand for a third term) played a significant role in the failure of the draft constitution to reach the required 75 per cent approval. As such, the constitutional reform process stalled.

Within days of winning re-election, President Barrow stated that he would work to pass a new constitution before the conclusion of his current five-year term, and that his intention was that this constitution would include a limit of two terms (as well as run-offs in instances where no candidate garnered more than 50 per cent in the first round). However, President Barrow did not specify whether his intention was that this provision would be retroactive or not.⁵

This Group firmly believes that term limits are an important component of a democratic presidential system. The executive and National Assembly are encouraged to continue working towards such an amendment to the constitution, in line with the spirit of Article 23(5) of the 2007 African Charter on Democracy, Elections and Governance.

Boundary delimitation

While the Presidential Election uses a single national constituency, it is nonetheless important to raise the issue of boundary delimitation, given that it was one of the key constitutional reform issues and it will be a live issue for the April 2022 Parliamentary Elections.

The boundary delimitation process is spread across a plethora of legislation and their amendments. Article 42(1) of the Constitution establishes the IEC, whose operations are guided by the Elections Act Cap 3:01 (Decree No. 78 of 1996) and the Local Government Act No. 5 of 2002 (Amendments). Part II (3)(2) of the latter granted the Commission powers to delimit ward boundaries only.

Section 50 of the Constitution originally gave the Commission powers to delimit constituency boundaries on the principle of equal representation for an equal number of inhabitants. However, constitutional amendments in 2001 transferred this mandate to the Constituency Boundaries Commission, which has yet to be established.

There is a need to establish the Constituency Boundaries Commission and clearly review the necessary legislation to reflect the delimitation of the constituencies. At present, there are very large disparities between the number of voters in each constituency, contrary to the principle of equal representation as stipulated by Article 25 of the ICCPR.⁶ To be cost effective, it is recommended that electoral boundaries be reviewed every ten years, as was the provision in the 2020 draft constitution. The process should ideally commence

⁵ Reuters (2021), 'Re-elected Gambian President Barrow promises new constitution, term limits', 8 December, available at: www.reuters.com/world/africa/re-elected-gambian-president-barrow-promises-new-constitution-term-limits-2021-12-07/

⁶ ICCPR Article 25, General Comment 25.

immediately after the conclusion of the next census exercise and should be completed at least 12 months in advance of the next Parliamentary Election.

Marble and drum versus paper ballots

The Gambia's famed marble and drum voting system, beloved by Gambians and admired internationally, has been the subject of much debate since 2016 - specifically, whether it ought to be replaced by paper ballots. The IEC's view was, and is, that the use of marble ballots may have worked well in an environment of limited political pluralism, but is impractical even for single elections contested by a large number of candidates, much less for harmonised and simultaneous elections.

Attendant challenges also include the cost of purchasing, the cost and difficulty of storage, the logistical challenge of transportation, and the allocation of separate colours to an increasing number of aspirants. Further, such a system precludes the future introduction of 'absentee' or mail-in ballots and challenges the feasibility of voting for those in the diaspora. This last point is particularly significant given the Supreme Court's January 2021 ruling, affirming the constitutionality of voting rights for the 200,000 Gambians living abroad.

Yet, supporters of the current system point to the system's familiarity to voters, the trust with which it is regarded, its ease of use and the inherent security features of the system. The system is easily used by illiterate voters, there is no way to identify the voter, there are almost no invalid votes, and 'carousel' and multiple voting are both almost impossible.

The Group recognises the impassioned - and valid - arguments offered by those on either side of the debate. Ultimately, this is a matter for Gambians to decide collectively, through a continuation of the good-spirited deliberations that characterised the last few years, and via a renewed willingness to seek compromise. The solution need not mean a 'zero-sum' outcome; innovative approaches, such as a redesign of the drum and separate voting procedures for 'absentee' voters, could be considered that would allow for elements of the existing system to work in harmony with the other. The Group encourages the Commonwealth Secretariat to support The Gambia in this process.

Other electoral reforms

Notwithstanding the stalled constitutional reform process, the current electoral cycle did see two areas of reform to the electoral framework. The first was the Elections (Amendment) Act of 2017, which reversed the steep increase in candidate nomination fees for Presidential, Parliamentary, Mayoral and Local Government Elections as stipulated in the Elections (Amendment) Act 2015, a legislative tool aimed at drastically shrinking the political space during the final term of the previous incumbent.

Election	Elections (Amendment) Act 2015	Elections (Amendment) Act 2017
Presidential	D500,000 (approx. US\$12,500)	D10,000 (approx. US\$250)
Parliamentary	D50,000	D5,000

	(approx. US\$1,250)	(approx. US\$125)
Mayoral	D50,000 (approx. US\$1,250)	D2,500 (approx. US\$60)
Councillor	D10,000 (approx. US\$250)	D1,250 (approx. US\$30)

Note: D = dalasi

The National Assembly is to be highly commended for this reform; it is no doubt responsible for the increase in the number of candidate nomination forms collected from the IEC, and for the widening of the political space more broadly.

The second reform was the Constitution (Amendment) Act 2017, which removed the age limit of 65 years for presidential and vice-presidential candidates. The Group regards this reform as being within the scope of international democratic norms; indeed, the previous age limit can reasonably be regarded as injurious to the ability of the electorate to pick a suitable candidate for high office.

Registration of political parties

The registration of political parties is provided by Sections 104 and 105 of the Elections Act. The IEC has the authority to register political parties if the application demonstrates, *inter alia*, that the prospective party's central objective is to participate in elections, that its internal organisation is in line with democratic principles, and that it is not formed on the basis of religion, ethnicity or region. Other requirements include: the need to have a secretariat in each region of the country; the requirement to hold biennial congresses; and, until a recent Supreme Court ruling, for all executives of the party to reside in The Gambia. Political parties must also adhere to the Code on Election Campaign Ethics.

While a number of these provisions are in adherence with fundamental democratic principles, as enshrined in Articles 22 and 25 of ICCPR, the Group contends that certain provisions are overly burdensome and place *de facto* limits on freedom of assembly. In addition, while the IEC can sanction political parties who are found to be in breach of the Code on Election Campaign Ethics, or revoke their registration entirely, there remains room for clarification on the process of revocation, including the investigation and appeals process, either through further subsidiary legislation or through the passing of a standalone political parties act. The Group encourages that further dialogue on this issue be pursued within the context of the broader set of unimplemented reforms.

Voter eligibility and voter registration

Article 43 of the Constitution assigns to the IEC the responsibility for registering qualified Gambian citizens to participate in public elections. The Elections Act directs the Commission to prepare, compile and maintain a register of voters for each constituency.

Sections 12(1) and (2) of the Elections Act provide the following qualifications for the registration of a voter:

(1) Subject to Section 13, a person shall be entitled to have his name entered on a register of voters in a constituency if he or she:

- a) is a citizen of The Gambia;
- b) has attained, or will on the date of the holding of the next election attain, the age of eighteen years; and
- c) is resident or was born in that constituency.

(2) Notwithstanding subsection (1), a person's name shall not be entered on a register of voters in a constituency unless he or she produces any one of the following documents:

- a) a birth certificate;
- b) a Gambian passport;
- c) a National Identity Card; or
- e) a document certified by the District Seyfo or an Alkalo of the village of birth of the applicant stating that the applicant was born in the district or village.⁷

The IEC conducted the voter registration exercise from May to July 2021 using the biometric technology that was introduced ahead of the 2011 elections. This technology provides for security features that are integrated in the voter card, and data capture that ensures the accuracy of the voters' list.

The voters' register was exhibited for a period of ten days to allow public scrutiny and address any objections. The pre-election assessment mission was informed that no objections were raised during the exhibition period. However, some stakeholders met by the pre-election assessment mission alleged that there were under-age voters and foreigners on the voters' register, as has been an issue in previous elections.

Article 39 of the Constitution provides for the right of every Gambian citizen, even those residing out of the country, to register and to vote. As a result, the IEC was taken to court over the disenfranchisement of the over 200,000 Gambians in diaspora. A Supreme Court ruling on 27 January 2021 ruled that they should be allowed to vote. However, the IEC did not make provisions for this in the 4 December Presidential Election. While there are no international obligations for the facilitation of diaspora voting, the IEC did not fulfil its duties in accordance with its own national legal framework, which it readily admitted in court. The Group suggests that the IEC revisits this issue with a view to addressing it in future elections.

In another case, two civil society organisations took the IEC to court regarding its decision to allow the Mayor of Banjul, who is an elected official, to provide attestations for the verification of voters to secure ID cards. Section 12(2)(e) of the Elections Act allows for a document, known as a 'letter of attestation', 'to be issued by a District Sefyo or an Alkalo of the village of birth of the applicant stating that the applicant was born in the district or village' for the purposes of voter registration, where the applicant cannot provide any of the documents listed at Section 12(2)(a-c). Since Banjul does not have an Alkalo, the IEC

⁷ Section 12(2)(d) was removed following the passing of Act No. 7 of 2001, but because texts have not been consolidated, Section 12(2)(e) retains its original numbering and is referred to as such in court cases.

conferred powers on the Mayor of Banjul to perform this function, who duly issued approximately 2,000 letters of attestation.

The IEC argued that, due to the supposed legal lacuna regarding attestations in Banjul, it sought recourse in Section 127 of the Act, which states that, 'Where an issue arises relating to electoral matters which is not addressed by this Act or any other law, the Commission shall resolve the issue in keeping with the standards and rules of natural justice and fairness.' It further argued that failure to invoke Section 127, and failure to allow the mayor to issue attestations, would have had the effect of disenfranchising 2,000 voters.

The applicant in the case contested that the wording of Section 12(2) of the Act was clear, and that if the drafters of the legislation had wished to allow for mayors to issue attestations, they would have included such a provision. The applicant thus averred that the IEC was wrong in conferring these powers to the Office of the Mayor of Banjul, and further applied for an order to strike-out and/or cancel voters' cards issued by IEC that were supported by the attestation of the Mayor of Banjul.

In the first instance, the court rejected the IEC's invocation of Section 127 of the Act, using a combination of constitutional and case law to assert the court's right to rule on matters pertaining to public institutions. The court also ruled that the IEC acted *ultra vires*, largely echoing the arguments of the applicant and stating that no such legal lacuna existed. The judge reminded the respondent that the 1886 Births, Deaths and Marriages Act made it a criminal offence for parents not to register the birth of a child in Banjul, meaning that any applicant should have been able to provide a birth certificate.

However, the court did not order the removal of the names of the people who received letters of attestation from the voter register, as requested by the applicant, noting that the authority to do so was vested in the Revising Court in accordance with Section 24 of the Act. Following the ruling, the Group was not aware of any cases being brought to the attention of the Revising Court.

The above court case does seem to be reflective of a lack of transparency from the IEC that has also been apparent in other court cases to which it was the respondent, including two cases relating to its decision to reject the candidatures of two presidential aspirants (see further down this chapter). The Group makes three recommendations in this regard: the IEC should seek to boost its legal capacity; the IEC should take steps to improve its level of transparency, through a new communications strategy; and the National Assembly should consider reviewing Section 127 of the Elections Act, which has the potential to be either over-used or misused and which, in any case, appears to be unconstitutional when tested in court.

Candidate eligibility

Section 26 of the Constitution sets out the fundamental political rights of Gambian citizens, including that, 'Every citizen of The Gambia of full age and capacity shall have the right, without unreasonable restrictions, to vote and stand for elections at genuine periodic elections for public office.' Section 62 of the Constitution sets out further eligibility criteria for presidential candidates. To be eligible, the candidate must be:

- a citizen of The Gambia by birth or descent;
- at least 30 years old;
- an ‘ordinarily’ resident in The Gambia for the five years immediately preceding the election;
- have completed secondary school education; and
- be qualified to be elected as a Member of the National Assembly (MNA).

Section 63 states that a candidate is not eligible to stand for election if he or she:

- holds a citizenship or nationality of another country;
- has been compulsorily retired, terminated or dismissed from office;
- has been found guilty of an offence by any court or tribunal established by law; or
- has been found liable for misconduct, negligence, corruption or improper behaviour by any commission or committee of inquiry established by law.

During the campaign, there was some disquiet regarding the eligibility of UDP leader Ousainou Darboe to stand as a presidential candidate. The objections, voiced by political opponents and in the media, related to his being relieved of the office of vice-president in March 2019, and his imprisonment in July 2016 for taking part in an unauthorised demonstration. Neither the IEC nor the High Court was called to pass judgement on the merits of either of these objections, as no formal petitions were received.

At least one reason for this appears to be a desire among Darboe’s opponents to sustain the level of nationwide calm that had hitherto prevailed in the pre-election period. The fact that the national interest of the country represented at least some part of this decision is a demonstration of burgeoning political and democratic maturity and is highly commended by the Group.

Candidate nominations

Section 42 of the Elections Act: Chapter 3:01 (as amended) provides for the nomination of candidates in elections. Judges, commission members, and members of The Gambia’s armed forces, police force and other forces on advice duty, are barred from seeking nomination.

Presidential candidates are required to submit to the IEC the signatures of 5,000 voters whose names appear on the voters’ register, with at least 200 being drawn from each administrative area. Candidates are also required to submit a sworn declaration of assets and a certificate showing that they have paid all their taxes. Finally, presidential candidates are required to pay a deposit of 10,000 dalasi (D), only returnable upon obtaining at least 40 per cent of the vote.

It is the view of the Group that the need to provide the signatures of 5,000 voters, with 200 from each administrative area, is overly burdensome and not conducive to enhancing political pluralism. The National Assembly should consider lowering this threshold.

According to Section 49 of the Elections Act, registered voters may object to a nomination paper on the following grounds:

1. the description of the candidate is insufficient to identify the candidate;
2. the nomination paper does not comply with or was not delivered in accordance with the provisions of the Act; or
3. it is apparent from the contents of the nomination paper that the candidate is not capable of being elected to the office to which his or her nomination paper relates.

The IEC confirmed that a total of 26 nomination papers were collected between 30 September and 29 October 2021. The nomination process was held between 30 October and 5 November 2021. Five (5) candidates (including the only female candidate) withdrew their applications in accordance with Section 51 of the Act, and 15 nominations were rejected by the IEC, leaving a total of 6 confirmed candidates for the Presidential Election. Two candidates, Dr Ismaila Ceesay (Citizens' Alliance) and Mr Mai Ahmad Fatty (Gambia Moral Congress) appealed their rejections in court.

Regarding the objection process, Sections 47(3) and 49(5) of the Elections Act are significant. Section 47(3) states that:

The rejection of a nomination paper shall be without prejudice to the delivering of a fresh nomination paper, provided that the subsequent nomination paper is delivered before the close of nominations.

Section 49(5) states that:

The decision of a Returning Officer on a nomination paper or any objection may be appealed against in writing presented to the Commission within two days of the decision, and *the decision of the Commission on the appeal shall be final and shall not be called into question in any court of law* [emphasis added].

Rejection of the nomination of Ceesay (Citizens' Alliance)

The IEC's justification for the rejection of Ceesay's nomination paper centred on the applicant's apparent failure to submit the names of 200 registered voters in the Banjul area, in accordance with Section 42 of the Act. While a list of 290 names was submitted by Mr Ceesay, this number was reduced to 115 once the IEC had rejected certain names on the basis that they appeared on nomination papers already received from other candidates, or because there were errors such as a lack of a surname or an incorrect voter ID number. On the appeals process itself, the IEC averred that Section 49(5) of the Elections Act precluded the ability of any court to pass judgement on the decision of the Commission.

Ceesay's counsel countered that the arbitrariness of the timeslots allocated to candidates to submit their papers at the IEC office had the effect of benefitting those candidates whose timeslots came sooner. Counsel further argued that the IEC's decision not to notify the candidate until after the close of the nomination process was against the spirit of Section 47(3) of the Act. In addition, the lack of notice and inability to remedy the situation

amounted to a punishment in contravention of the constitutional rights afforded to candidates in Section 26(b) of the Constitution.

On the initial issue of justiciability, the court asserted its constitutional right ‘to interpret and enforce fundamental rights and freedoms as provided in section 18-33 and section 36(5)’.⁸ On the issue of the legitimacy of the signatures themselves, the court determined this was beyond the scope of its remit; such matters were squarely and solely within the IEC’s purview. On the issue of the provision of Section 47(3), the court accepted the applicant’s argument that the IEC had failed to adhere to the spirit of the Act; indeed, that it had acted ‘against all known standards of fairness equity and natural justice’.

Finally, on the principle of remedy, the court ruled that Ceesay had the right to resubmit his nomination paper and signatures to the IEC, who were compelled to consider them in advance of the 4 December polls. The IEC was also ordered to pay D200,000 to Ceesay and Citizens’ Alliance. Ultimately, Ceesay did not contest the election.

Rejection of the nomination of Fatty (Gambia Moral Congress)

The IEC rejected Mai Ahmad Fatty’s nomination paper for failing to fully comply with Section 46 of the Act. Fatty took the IEC to court for failing to comply with Sections 47(1)(a) and (2) of the Act, which stipulate that the IEC must provide the disqualified candidate with a copy of the rejected nomination paper to allow him to submit a new nomination paper with the relevant defective sections amended. The court ruled in Fatty’s favour, finding that the IEC had failed to act in accordance with the ‘general tenor and purport’ of Sections 47(1)(a) and (2), and that this failure had the effect of depriving Mr Fatty of his constitutional rights under Section 26(b) of the Constitution.

The IEC’s loss of both court cases, in addition to its loss on the matter of attestations, would seem to suggest the Commission is lacking in legal capacity. The IEC’s defence that the court had no jurisdiction over the decisions of the IEC owing to the provision of Section 127 of the Act has twice been struck down as being unconstitutional in two separate cases. This once again highlights the need for the IEC to enhance its legal capacity. There is also a need for the IEC to show a greater level of transparency and good faith throughout the electoral process, to demonstrate good faith and enhance public trust.

COVID-19 measures

Since the onset of the pandemic, the government has introduced numerous laws, regulations and orders under the auspices of the Emergency Powers Act. For the 2021 Presidential Election, the government’s ‘Covid-19 orders and Regulations 2020’ were in effect.

The Group noted that such regulations did not seem to be adhered to by the majority of Gambians during the campaign period, with very few people wearing masks and very little social distancing at campaign activities. The issue of COVID-19 mitigation measures during the campaign and on Election Day is discussed further in Chapters 5 (Campaign and the Media) and 6 (Voting, Counting and Results Process).

⁸ The Constitution, Section 127(b).

The Group appreciates the difficult challenges faced by the IEC and other electoral stakeholders in administering an election during a pandemic, and the need to balance public health concerns against fundamental democratic principles, such as freedom of assembly and the right to vote in genuine periodic elections.

Post-election complaints, appeals and electoral petitions

Section 97 of the Elections Act provides the necessary legislation for electoral petitions. Following the announcement of results by the IEC chairman, two political parties (UDP and GDC) and the independent candidate rejected the election results. However, all candidates encouraged the public to remain calm and respect one another.

Furthermore, the international observers called on all the stakeholders to remain calm and urged them to seek redress through the established legal and institutional mechanisms.

Consolidation and accessibility of electoral laws

It is a fundamental principle of democracy that the law should be both clear and easily accessible to all citizens. The electoral laws of The Gambia are currently spread across numerous pieces of legislation, with the provisions of some pieces of legislation being superseded by provisions in other Acts. This has led to a situation in which even some politicians have reported being unsure of the law. The Group suggests that the competent authority consolidate electoral laws and ensure all legislation is properly digitised and is easily accessible on both the government and IEC websites.

Recommendations

- The National Assembly should ratify the African Union (2007) African Charter on Democracy, Elections and Governance (ACDEG), and sign and ratify the African Youth Charter (2006).
- Political parties and the Inter-Party Committee should renew bipartisan dialogue on electoral and constitutional reform, in particular on the issue of term limits and the establishment of a boundary commission.
- A boundary delimitation exercise is much needed. This should be carried out as soon as the constitutional reform issues relating to boundary delimitation are resolved.
- The IEC and political parties should renew dialogue on the issue of the marble and drum voting method.
- Political parties should undertake dialogue to consider the introduction of standalone legislation on the registration of political parties, or review Sections 104-109 of the Elections Act, to ensure closer alignment with international standards on freedom of assembly and to bring clarity to the rules and procedures governing the revocation of political party registration.
- The National Assembly should consider reviewing the Elections Act to reduce the number of signatures required for presidential candidates, including the requirement to obtain 200 signatures from each administrative area. Proportional reductions should also be considered for other elections.

- The National Assembly should reform Section 49(5) of the Elections Act to afford candidates the right to legal redress in the High Court.
- The National Assembly should review Section 127 of the Elections Act to reflect the court's constitutional right and obligation to hear cases involving public institutions.
- The government should provide the IEC with additional funding to bolster its legal capacity.
- The government should provide the IEC with appropriate resources to undertake its constitutional duty to facilitate diaspora voting.
- The IEC should reform its approach to stakeholder communications and public relations and be more transparent in its decision-making, being sure to provide full and proper explanations in relation to the disqualification of any candidates.
- Electoral laws should be consolidated by the competent authority to reduce confusion among politicians and voters alike.
- The IEC could improve its public relations through better use of its website, such as by ensuring all relevant laws are made available there, and posting information relating to key decisions taken by the IEC, so as to keep electoral stakeholders better informed.

CHAPTER 4: PARTICIPATION AND INCLUSION

Civil society participation

Context and the 2021 Presidential Election

Civil society organisations (CSOs) in The Gambia occupy an important space in efforts aimed to increase the participation and inclusion of traditionally marginalised groups, including women, youth and PWDs, in electoral process. CSOs such as The Association of Non-Governmental Organizations in The Gambia (TANGO) noted that the civil society had expanded since the 2017 democratic transition. While CSOs continued to face challenges of obtaining and maintaining adequate funding resources, it did not appear to prevent them from embarking on multistakeholder engagements to strengthen the voice of citizens in the democratic process.

In the events leading to the December 2021 Presidential Election, CSO representatives prepared Women, Youth, PWDs and Citizens manifestos, which were presented to the main political parties and independent candidates ahead of the elections. The manifestos called on the new president, who was to be installed in January 2022, to implement the key demands by allotted timeframes from each community. CSO organisations supplemented the IEC's voter education drive with their own programmes, supported by international partners. Some CSOs informed the Group that while they had endeavoured to support the IEC in its activities, this collaboration was hampered by a lack of communication on the part of the Commission.

CSOs, Gambia Participates, Peace Ambassadors (PAG), and the CSO Coalition on Elections conducted citizen observer missions, successfully deploying long-term observers to varying degrees to strengthen the electoral process. Gambia Participates, a youth-led CSO, also managed and deployed the Marble Election App, freely available on the Google and Apple app stores, to provide up-to-date developments during the election.⁹

Recommendations

- The presidency should endeavour to meet with the CSO representatives championing the Women, Youth, PWDs and Citizens manifestos to develop a way forward for achieving key objectives.
- CSOs should continue to collaborate with government and other stakeholders to successfully advocate for meaningful policy reforms that strengthen the participation and inclusion of marginalised groups in the electoral process.
- The IEC should introduce a robust communication strategy to deliver relevant, meaningful information in real time to CSOs, taking advantage of the information and communications technologies available.
- The IEC should continue to work in close collaboration with CSOs to ensure complementary delivery of voter education programmes throughout the electoral cycle.

⁹ Gambia Participates, Marble, available at: <https://gambiaparticipate.org/marble/>

Women's participation

Legal framework and context

Article 28 of the Gambian Constitution states that, 'Women shall be accorded full and equal dignity of the person with men,' and that, 'Women shall have the right to equal treatment with men, including equal opportunities in political, economic and social activities.'¹⁰ Article 214(4) on political objectives states that, 'in the composition of the government women shall be fairly represented'.¹¹ The Gambia has ratified the United Nations Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and this has been incorporated into national law through the Women's Act 2010. The Gambia has ratified The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol).

The stalled Constitutional Promulgation Bill of 2020 would have seen the introduction of provisions that would have strengthened women's political participation in the electoral process. Section 74 sets out the general principles of the elections system, noting fair representation for all genders in public bodies.¹² Section 55 would accord women full and equal dignity with men. It further outlines that the state would adopt affirmative action programmes to ensure that women were represented and participated in political life.¹³ Fourteen (14) reserved seats would have been provided for women in the draft constitution.

While women constitute 50.4 per cent of The Gambia's 2.4 million population and make up a majority of the registered voters, they continue to be under-represented as political leaders and elected officials.¹⁴ Prior to 2021 elections, women constituted only 17.4 per cent at the level of the Cabinet (only 4 women out of 23 Cabinet positions) and 10.3 per cent at the level of the National Assembly (only 6 out of 58 Members of the National Assembly). Women's participation is therefore mainly limited to voting and not contesting elective positions. Section 15 of the Women's Act 2010 stipulates that every organ and public institution should adopt temporary special measures to accelerate women's equality; yet there is no definition of what these temporary measures should be, for example, quotas.¹⁵ CSOs have noted that the underlying constraints limiting women's political participation and representation in The Gambia are attributed to dictates of culture, limited access to economic resources and limited economic mobility, and gaps in the education of young girls, which negatively impact their capacity and confidence to take up leadership positions.

The 2021 Presidential Election

Women formed the majority of registered voters in The Gambia, that is, 56.7 per cent, in the 2021 election. In the lead up to election, women rallied around a collective voice to demand for enhanced respect for their rights. One of the three female members of the

¹⁰ The Republic of The Gambia (1997), The Constitution of The Republic of The Gambia, available at: <http://hrlibrary.umn.edu/research/gambia-constitution.pdf>

¹¹ Ibid.

¹² Constitution Project (2020), Gambia (The)'s Draft Constitution, available at: https://constituteproject.org/constitution/Gambia_2020D.pdf?lang=en

¹³ Ibid.

¹⁴ Westminster Foundation for Democracy (2020), Advancing democracy in The Gambia through women's leadership, available at: www.wfd.org/story/advancing-democracy-gambia-through-womens-leadership

¹⁵ The Republic of The Gambia (2010), Women's Act 2010, available at: www.ilo.org/dyn/natlex/docs/MONOGRAPH/90619/115464/F-1335047347/GMB90619.pdf

National Assembly, the Member of Parliament (MP) for Banjul South, The Honourable Fatoumata Touma Njie, in conjunction with the Civil Society Gender Platform Initiative on Transformative Justice, proposed a private members bill for 16 reserved seats for women (including one PWD and one appointed by the president).¹⁶ This bill is still being considered.

CSO groups worked together to produce a Women's Manifesto calling for affirmative action to ensure women's participation in executive and legislature would be achieved by the new government.¹⁷ Women were seen participating during the campaign period, primarily in supportive roles for the major political parties. At the end of the nomination process, all six presidential candidates were male.¹⁸ Marie Sock, the only female independent candidate, had her nomination rejected by the IEC for failing to comply with the Elections Act Section 42(2)(a), that is, for not having the legally required number of registered voters to support her nomination, and with Section 42(7), for failure to declare her assets. It was the first time a woman had filed a nomination paper to contest the presidency.

The IEC is composed of a five-member commission, which had previously included one female commissioner who has since retired. The IEC informed the Group that at least 50 per cent of those trained in conducting the polls on Election Day were women, and high numbers of female presiding officers at polling stations were evident to observers on Election Day. According to the CSO Coalition on Elections' Situation Room, women were also fairly represented as party agents and security officials at the polling stations.¹⁹ Women voters were highly visible on Election Day, while in most instances pregnant, disabled and nursing mothers were given priority to vote.

Recommendations

- The president, in consultation with the Judicial Review Commission and the Public Service Commission, should ensure the inclusion of at least two women as IEC commissioners, out of the total number of five.
- In order to enhance women's political representation and participation, the National Assembly and political parties should consider the introduction of affirmative action measures, such as reserved seats or a quota system for women in the National Assembly, the Cabinet, select committees, local councils and other elected positions.
- Political parties should consider establishing a fund for women to finance their participation in electoral processes.

¹⁶ Nabaneh, S (2022), 'Women's Political Participation in The Gambia: Gender Quotas as Fast Track to Equality', *IACL-AIDC Blog*, 25 January, available at: <https://blog-iacl-aidc.org/spotlight-on-africa/2022/1/25/womens-political-participation-in-the-gambia-gender-quotas-as-fast-track-to-equality>

¹⁷ WFD (2022), *Final report: Thematic Election Expert Observation Mission: The Gambia Presidential Elections 2021*, available at: <https://www.wfd.org/what-we-do/resources/final-report-thematic-election-expert-observation-mission-gambias-2021>

¹⁸ Abdoulie Embrima Jammeh of the National Unity Party (NUP), Essa Mbye Faal an Independent Candidate, Mamma Kandeh of the Gambia Democratic Congress (GDC), Adama Barrow of the National People's Party (NPP), Halifa Sallah of the People's Democratic Organisation for Independence (PDOIS) and Ousainou Darboe of the United Democratic Party (UDP).

¹⁹ CSO Coalition on Elections (2021), *Electoral violence Monitoring, Analysis and Mitigation (EMAM) Closure of Polls Statement*, 4 December.

- Political parties should include their women's wings in the formulation of party policy and manifestos.
- The IEC should foster a robust multistakeholder working relationship, including with the Women's Bureau under the Ministry of Gender, to carry out gender-sensitive voter education programmes.

Participation of youth

Context and the 2021 Presidential Election

The Gambia has a young population, with 64 per cent currently under the age of 25 years. The International Labour Organization (ILO) estimates a youth unemployment rate of 15.5 per cent.²⁰ The Gambian Constitution guarantees the right to vote for every 18-year-old citizen and affords the right to stand in presidential elections for all citizens who have attained the minimum age of 30 years. These provisions guarantee a large proportion of young people the opportunity to engage fully in the electoral process as voters and/or candidates.

The Group noted that while youth CSO representatives recognised their limitations in influencing political parties' leadership, this did not prevent them from actively engaging in the electoral process. Youth representatives were actively engaged in political parties' structures through youth wings. Youth unemployment remained a key issue for all presidential candidates during the campaign.²¹ Disaggregated data provided by the IEC on voter registration shows that those aged 18-25 years constituted 30.6 per cent of registered voters, while those aged 26-35 made up 27.1 per cent, making youth voters the largest age group voting in the election.²² With over two-thirds of The Gambia's Facebook users between the ages of 18 and 35 years, social media platforms including Facebook, Twitter and WhatsApp allowed youth-led CSOs to reach out to peers, engage on campaign issues and raise voter awareness.²³ Social media was in some instances misused by young users, who posted inaccurate information, hate speech, insults and smears. This is discussed in greater length in the Chapter 5. Evidence gathered by the Westminster Foundation for Democracy showed that youth engagement in these spaces was gendered, with female youth often in a supporting role to their male counterparts.²⁴ On online platforms, male youth were more likely to lead and participate discussions in comparison to female youth.²⁵

On Election Day, the Group noted the presence and engagement of young people at the polling stations, as polling officials and voters. Youth-led CSOs, such as Gambia Participates and Peace Ambassadors (PAG), through their deployment of primarily youth observers before

²⁰ International Labour Organization, ILOSTAT database, available at: <https://data.worldbank.org/indicator/SL.UEM.1524.ZS?locations=GM>

²¹ DW (2021), 'Gambia: President Barrow wins election amid cries of foul play', available at: <https://www.dw.com/en/gambia-president-barrow-wins-election-amid-cries-of-foul-play/a-60026213>

²² Independent Electoral Commission (2021), Gender and Age Grouped By Region 2021, available at: <https://iec.gm/download/group-by-region-2021/>

²³ Westminster Foundation for Democracy (WFD) (2022), *Final report, Thematic Election Expert Observation Mission The Gambia Presidential Elections 2021*, available at: <https://www.wfd.org/what-we-do/resources/final-report-thematic-election-expert-observation-mission-gambias-2021>

²⁴ Ibid.

²⁵ Ibid.

and during the elections, increased the visibility and participation of young people in the democratic process.

Recommendations

- Political parties should reform their leadership structures to ensure the meaningful and equal participation of young men and young women.
- Political parties should strengthen the role of youth representatives in the formulation of party policy.
- Youth and women's CSOs groups should continue to collaborate to address the existing gaps between male youth and female youth participation.

Participation of persons with disabilities

Legal framework and context

The Gambian Constitution recognises the rights of PWDs and establishes protections against discrimination.²⁶ While The Gambia is yet to sign the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities, it has ratified The UN Convention on the Rights of Persons with Disabilities (CRPD), domesticating it into national law with the adoption of the Persons with Disabilities Act in July 2021. A lack of awareness of the new law and the government's obligations as a state party to the CRPD are an impediment to the law's effective implementation.

The Gambia Persons with Disabilities (PWDs) Manifesto, produced by Disabled Peoples Organisations (DPOs), states that there was a general lack of understanding among key stakeholders on the content of the Act.²⁷ Section 55 of the Persons with Disabilities Act provides for the enjoyment of the right to vote and hold public office without discrimination. The law mandates the government to ensure that electoral processes are accessible to PWDs. Section 58 of the 2020 draft constitution calls for affirmative action to ensure PWDs realise their full rights in political life.²⁸ Following his election in 2016, President Barrow nominated to the National Assembly Honourable Ndey Secka, a visually impaired advocate for the rights of PWDs.²⁹

The 2021 Presidential Election

During the campaign period ahead of the elections, PWDs were largely marginalised and were not seen by the Group to have played a major role in political parties' structures. While political parties had sign language present at major campaign events, accessibility and lighting were ongoing concerns for PWDs to fully participate in the electoral process.

²⁶ Article 31 and 33 of the Constitution of The Republic of The Gambia 1997, available at: <http://hrlibrary.umn.edu/research/gambia-constitution.pdf>

²⁷ WFD (2022), *Final report: Thematic Election Expert Observation Mission: The Gambia Presidential Elections 2021*, available at: <https://www.wfd.org/what-we-do/resources/final-report-thematic-election-expert-observation-mission-gambias-2021>

²⁸ Constitution Project (2020), *Gambia (The)'s draft constitution*, available at: https://constituteproject.org/constitution/Gambia_2020D.pdf?lang=en

²⁹ Sightsavers (2017), 'Sightsavers congratulates visually impaired Gambia activist on appointment as MP', available at: <https://www.sightsavers.org/news/2017/04/visually-impaired-gambia-activist/>

While voter education and political party campaigns were conducted on the radio, television, print media and social media, it was noted that these platforms were not always accessible to PWDs. However, the Group noted that some televised election and voter education programmes had sign language interpreters. The IEC did not provide disaggregated data on PWDs during voter registration, as they had for gender.³⁰

On Election Day, even though the polling stations observed were generally located on open ground such as schools and playgrounds, observers noted that PWDs faced accessibility challenges to enter polling stations without assistance from polling staff or companions. Ballot drums did not have braille labels adhered to them. Observers also noted that some polling stations had inadequate lighting, which became more of an issue as the day progressed. However, the Group observed that, in most instances, PWDs were given priority to cast their vote.³¹

Recommendations

- The IEC should undertake an accessibility audit to ensure PWDs are able to fully participate in the electoral process.
- The IEC should make available disaggregated data from voter registration on PWDs, to better inform voter awareness programmes, identification of adequate polling stations and provision of polling materials such as braille-labelled ballot boxes.
- Political parties should consider reforming their party structure to include PWDs in leadership structures and the policy development process.

³⁰ Independent Electoral Commission, Gender and Age Grouped by Region 2021, available at: <https://iec.gm/download/group-by-region-2021/>

³¹ Gambia Participates, which deployed the largest citizen observation mission ahead of election, found that 94 per cent of PWDs were given priority to vote.

CHAPTER 5: CAMPAIGN AND THE MEDIA

Campaign environment

In accordance with Section 85 of the Elections Act, the IEC announced the commencement of the official campaign period on 9 November 2021. The campaign period concluded on 2 December 2021. All political parties observed the 'cooling off period' on 3 December 2021. Six candidates participated in the 2021 Gambian Presidential Election campaign and were in compliance with the requirements. All political parties and candidates contesting any position in all elections conducted by the IEC are legally obliged to adhere to the Code on Election Campaign Ethics. It is worth noting that the members of the Inter-Party Committee (IPC) signed the Janjanbureh Peace Accord on 25 September 2021, and also held a national stakeholders' forum on 26 October 2021. In addition to these commendable efforts, on 11 November, the presidential candidates signed a code of conduct, committing themselves and their supporters to a peaceful election.

While a robust peace architecture to prevent large-scale violence does not exist in The Gambia, the IPC plays a crucial role in ensuring that campaigns and elections take place in a peaceful environment.

Despite reports of pockets of violence, mainly between the supporters of the National People's Party (NPP) and the main opposition United Democratic Party (UDP), the Group noted that, overall, the freedoms of assembly and association were respected and upheld during the campaign period. The Group was further informed that the campaigns were determined and scheduled by the IEC in a bid to avoid overlap between various political parties. The campaign schedule was largely adhered to by the political parties and the candidates. The IEC allowed campaigning to run at night, and political parties carried out campaigns in towns as well as in rural settings.

Messaging

During campaigns, messages were imparted to the public through both print and electronic media. Political parties and candidates used various modes of communication to canvas the votes. These included billboards, posters, daily papers, radio and television. Observers noted that candidates disseminated their campaign messages to the electorate without hindrance or fear. While this was a positive stride in the campaign period, the Group noted that social media had some negative impact, as some stakeholders abused it.

Hate speech and misinformation also characterised the campaign period to an extent, with a perception that the campaigning was being executed along tribal lines. Days before voters headed to the polls, opposition political parties condemned incendiary statements made by a senior member of the incumbent party, who was accused of seeking to fuel dangerous tribal divisions among Gambians.

Security

Political activities in The Gambia, including events relating to campaigns, are guided by legislation such as the Criminal Code (Amendment) Act 2004 and the Public Order Act (1990).

For the first time in the country's history, all presidential candidates were provided with security throughout the campaign, which contributed to a secure environment. The Group noted that, in this regard, the police were visible at most campaign rallies.

Campaign content

Some of the issues around which political parties and the candidates campaigned included job creation, economic development, expanding trade, environmental protection, public health security, energy security and accessible electronic infrastructure.

COVID-19 protocols

The IEC worked closely with the Ministry of Health and other relevant organisations to ensure that during the campaign season, COVID-19 protocols were adhered to. However, the Group observed that most supporters of the candidates did not respect those measures.

Campaign finance

There is no legal framework regulating campaign finance in The Gambia. In the absence of a regulatory framework, campaign funding is sourced from voluntary contributions from various sources. During consultations with the Group, some stakeholders raised concerns regarding private funding of political parties, stating that this could affect the playing field. As The Gambia embarks on various electoral reforms, the issue of political or campaign financing should be taken into consideration.

Financial inducements

There were unsubstantiated allegations of vote buying. The use of money and other inducements to influence voters emerged as a concern during the Group's consultations. This would be in violation of Sections 115 and 116 of the Elections Act.

The media environment

The Gambia has four daily newspapers – *The Standard*, *The Point*, *Foroyaa* and *The Voice*. *The Gambia Daily*, a state-owned publication, and *Daily News*, are published once a week. The publications are mainly in circulation in Banjul. Most now have online editions, though poverty rates continue to limit access to the internet.

Gambians have access to 33 radio stations, 6 TV stations and many news websites. Broadcast dominates the various media platforms, undoubtedly due to the high rate of illiteracy (50.8% of population).³² News reporting on the various radio stations is primarily a review of stories carried by the print media. More than half of media practitioners develop content for broadcast.³³

In the years since the 2016 election, journalists in The Gambia have been able to operate in a more free and diverse media environment compared to President Jammeh's tenure. Of the more than 100 journalists who fled abroad during the former regime, at least 30 have

³² UNESCO Institute for Statistics (2015), Literacy rate, adult total (percentage of people ages 15 and above) the Gambia, available at:

https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=GM&most_recent_year_desc=false

³³ Gambia Press Union, *Research report on working conditions of media workers in The Gambia*. 2020.

returned.³⁴ The Gambia ranks 85th out of 180 countries on the 2021 World Press Freedom Index.³⁵

Yet, while the Gambian Press Union noted that attacks on journalists had decreased since 2016, the pre-election assessment mission was informed that such attacks still occur. Three attacks and two arrests of journalists occurred in the months leading up to the election, despite a May 2021 dialogue with the police on media freedoms.³⁶

A number of laws that limit freedom of expression are still on the statute books. In 2018, the Court of Justice of the Economic Community of West African States (ECOWAS) asked the government to repeal sections of the Criminal Code that criminalise sedition and impinge on freedom of expression, and other laws that criminalise fake news and libel.³⁷ Section 138 of the Information and Communications Act (2009) grants broad and relatively unrestricted powers to national security agencies and investigating authorities to ‘monitor, intercept and store communications’, and compels operators and service providers to allow authorised interception of communications at the behest of the minister.³⁸

During the campaign period itself, the Group was informed that there were no instances of these laws being used against journalists. However, their continued existence on the statute books remains a concern for journalists, who believe they can be used by politicians to censor free speech.

The Group recommends the government amend or repeal laws that impinge on freedom of expression, in line with the May 2018 ruling of the Court of Justice of ECOWAS. The Group further encourages the Inspector General of Police, the Gambian Press Union and other civil society organisations to revive dialogue on media freedoms to ensure that journalists are able to pursue their work in accordance with democratic principles of freedom of expression, association and assembly, as well as privacy.

Online Campaign

The online environment in the country has also improved, with many Gambians using social media to openly express their views on a broad range of national issues, including those of a sensitive nature. However, the country’s ‘freedom on the net’ ranking was at 53/100 in 2021, a slight increase over the previous year’s ranking.³⁹ According to the Digital Report, internet penetration in The Gambia stood at 23.7 per cent in January 2021.⁴⁰ Less than a

³⁴ The Peninsula (2021), ‘Gambia’s journalists, free from dictator, work to win trust’, November, available at: <https://thepeninsulaqatar.com/article/31/12/2018/Gambia-s-journalists,-free-from-dictator,-work-to-win-trust?msclkid=aaeb9e6ea53f11ecacf51b4f8fe98687>

³⁵ Reporters Without Borders, ‘Gambia’, available at: <https://rsf.org/en/gambia>

³⁶ Interview with stakeholders.

³⁷ *Federation of African Journalists and Others v The Gambia* (ECW/CCJ/JUD/04/18), available at: <https://ihrda.uwazi.io/ar/document/w9z5b6xfwy>

³⁸ Section 138, Information and Communications Act 2009, available at: <https://wipo.lex.wipo.int/en/text/238414>

³⁹ Freedom house, Freedom on the Net 2021, available at: <https://freedomhouse.org/country/gambia/freedom-net/2021>

⁴⁰ Digital 2021, The Gambia Data Reportal, available at: <https://datareportal.com/reports/digital-2021-gambia>

third of media practitioners develop content for online, with 22 per cent saying that this is their main platform.⁴¹

Misinformation circulating on social media – the majority on Facebook – was of major concern during the recent campaign period. Over the course of 2021, the Gambia Press Union provided training on election reporting, including hate speech, media ethics, fact checking, and security and safety.

In addition, the Group took note of the establishment of FactCheck Gambia, an independent digital fact-checking platform which ‘seeks to close the palpable market gap for an independent, non-partisan fact-checking programme in The Gambia’. Working in partnership with media houses in The Gambia, its aim is to correct false or misleading claims or statements on both traditional and social media, and address the erosion of trust in the media by promoting a culture of accuracy and the safeguarding of the country’s democracy. The fact-checking site also offers tips on how to identify mis- and disinformation on social media.

FactCheck Gambia is to be highly commended for its important work. The Group encourages other electoral stakeholders, including political parties and the IEC, to work alongside FactCheck Gambia to further improve the information environment during the campaign period and throughout the electoral cycle.

There was continued media coverage of campaign activities after the official end of the campaign period at midnight on 2 December. The Group noted that, on 3 December, online television Eye Africa aired an exclusive interview with President Adama Barrow. Paradise TV also showed campaign advertisements of independent candidate Essa Faal and the National People’s Party (NPP), contrary to the IEC’s media rules on the election.⁴²

Reforms

There have been important reforms in recent years to strengthen the media landscape and foster an environment for a more democratically engaged citizenry. Due to the efforts of the Gambian Press Union, and later TANGO (The Association of NGOs), the Coalition on Access to Information was formed to lobby for the passing of legislation on access to information. Civil society organisations were joined in their efforts by a host of international partners and donors, which culminated in the passing of the Access to Information Act in July 2021.⁴³ The Act recognises access to information as a human right, facilitates the work of the media and provides Gambians with access to information needed to make more informed decisions. Such legislation is integral to the flourishing of democracy, as it empowers citizens to hold their government accountable.

⁴¹ Gambia Press Union, *Research report on working conditions of media workers in The Gambia*. 2020.

⁴² Factcheck Gambia, ‘Did some private media platforms violate IEC regulations ahead of the presidential election?’ Factsheet, available at: <https://factcheckgambia.org/factsheet-did-some-private-media-platforms-violate-iec-regulations-ahead-of-the-presidential-election/>

⁴³ *The Point* (2021), ‘Barrow signs Access to Information Bill into Law’, 27 August, available at: <https://allafrica.com/stories/202108270609.html>

The Gambian Press Union, the Coalition on Access to Information, the Gambia Bar Association and member organisations of TANGO are to be highly commended for their efforts to see this bill passed into law. This is a valuable example of the benefits of a strong and vibrant civil society. Aside from the immediate benefits to public accountability, the media's ability to access and report on public information will also help combat online disinformation. The government is also to be commended for working with civil society to pass this Act.

Some work remains to be done, however, to ensure the Act is fully operationalised. The Group recommends the government and public bodies, including the IEC, take appropriate steps to ensure that information is created, catalogued and stored in a manner that facilitates easy access to information.

The establishment of the Media Council of The Gambia in December 2018 was also a positive development. The non-statutory body regulates media content across platforms, promotes ethical journalism and investigates complaints relative to the Gambia Press Union's (GPU) Code of Conduct.

News media and the election

The Constitution guarantees freedom of speech and expression, including freedom of the press and other media. Media stakeholders reported to the Group that they did not experience harassment or intimidation while covering the campaigns and Election Day activities, an improvement over previous elections.

During the official campaign season, media practitioners provided robust coverage of the issues, covering all the relevant electoral issues. Allegations of vote buying was a key issue that received attention.

The political parties informed our Group that they received fair treatment from the Gambia Radio and Television Services (GTRS), the state broadcaster. This was in line with IEC media rules, which provide for equal access to media by parties active in the electoral process, and the country's obligations under various regional and international instruments, including the International Convention on Civil and Political Rights (ICCPR).

The United Democratic Party (UDP) reported that it was treated fairly after filing a complaint to the IEC regarding what had initially been inequitable access. During the campaign period, every candidate was given 10 minutes daily to address the nation on GRTS television and radio stations, and another 20 minutes per day to show campaign activities.⁴⁴

The Group took note of media stakeholders' complaint about a lack of adequate access to information from the Independent Electoral Commission. Although the Commission, which has a public relations officer, insisted that it had been transparent in the release of information on the electoral process, the Group noted the lack of results on the IEC website in the post-election period. The Group encourages IEC to fully implement the provisions of

⁴⁴ IEC Election Media Rules, available at: <https://iec.gm/election-observation/elections-media-rules/>

the Access to information Act, including the requirement for proactive disclosure of information in Section 7.

Recommendations

Campaign

- The Gambia should consider introducing campaign finance legislation to strengthen transparency and accountability, with the IEC empowered and appropriately funded to compel disclosure of expenditures, to investigate breaches, and to issue sanctions where appropriate. We encourage the Commonwealth Secretariat to support The Gambia in this regard.

The media

- The IEC should consider developing a robust media/communications department and placing greater focus on broadening its accessibility to the media and being more open in the sharing of information critical to the electoral process.
- The government should amend or repeal laws that impinge on freedom of expression, in line with the May 2018 ruling of the Court of Justice of ECOWAS and in line with regional and international standards and commitments.
- The Group encourages the Inspector General of Police, the Gambian Press Union and other civil society organisations to resurrect and maintain dialogue on media freedoms to ensure that journalists are able to pursue their work in accordance with the democratic principles of freedom of expression, association and assembly.
- The government and the IEC should ensure that the provisions of the Access to Information Act are fully implemented, including improved storing, cataloguing and proactive disclosure of information into the public domain.
- Fact-checking initiatives for online media should be supported and developed further to counter mis- and disinformation.

CHAPTER 6: VOTING, COUNTING AND RESULTS PROCESS

Background

The Gambia 2021 Presidential Election was conducted on 4 December. Polling occurred from 8:00am to 5:00pm at 1,554 polling stations across the country's seven administrative regions. Members of the COG observed the opening, polling and closing of the polls.

Each polling station was assigned a presiding officer, an assistant presiding officer, a polling officer and polling assistant where necessary. In addition, party agents and accredited domestic (citizen) and international observers had authorised access to the polling stations.

Security personnel were also present to guarantee security and maintain law and order. When entering for the purpose of voting, security personnel, the police and military were not allowed to enter with their firearms.

The Elections Act provided for voters with disabilities to be assisted by a person of their choice, who must be of voting age. To facilitate the franchise of individuals who were working with the IEC, but unable to vote at their designated polling station, the Elections Act made provision for them to vote elsewhere on presentation of their voter's card and authorised certificate.

Key procedures for opening and voting

Opening of the polls

- Prior to the opening of the polls, signage is displayed in the station, and in the voting booth.
- The presiding officer invites all party agents and observers present to inspect the empty ballot box, which is painted in the candidate's colour and has his or her picture, symbol and name affixed on the drum.
- The box is sealed, and party agents are then able to record the seals used to secure the ballot box.
- The number of ballot tokens are counted and declared.
- Party agents verify a copy of their voters' register.
- Voting is officially scheduled to commence at 8:00am

Voting

- Voters line up in mixed queues outside the polling stations.
- Voters approach the assistant presiding officer one at a time. The assistant presiding officer confirms the voter's card against the register. The name of the voter is then announced.
- The voter moves to the polling officer, who applies indelible ink on the finger of his/her left hand.
- When the presiding officer is satisfied with the mark, he/she is given a marble (a ballot token) to cast his/her vote.
- The voter proceeds to a voting screen and puts the marble in the ballot drum of his or her choice.

- The presiding officer ensures that the voter has voted by listening to the sound produced by the bell of the drum, as it is hit by the ballot token, and can hear/identify any incidence of multiple voting.

Assessment of the opening of the polls and voting

On Election Day, observers reported a largely peaceful process that was well managed and transparent, with voters free to exercise their franchise. We observed that, even before 8:00am, voters queued up at polling stations in a peaceful and orderly manner. Party and candidate agents, as well as national and international observers, were present at the polling stations observed. The turnout of voters was high, particularly at the outset of voting.

Some key observations of the Group included the following:

- In most of the polling stations observed, voting commenced on time and these stations were well administered.
- The Group was impressed with the conduct and professionalism of polling officials, who were competent, diligent and highly transparent in carrying out their duties.
- Polling procedures were largely followed, and the process was carried out in a generally transparent manner. There were sufficient resources, human and material, at each polling station. There was a higher participation of female polling officials, but few at the senior level.
- The Group also noted the efficient manner in which polling officials processed the high numbers of voters in the morning, and by midday there were very few long queues. However, in some bigger polling stations, the situation was somewhat chaotic, as there was a lack of proper queue control and voters ended up in the wrong queue. The Group recommends that a consistent procedure be instituted for effective queue management, and that queues be cordoned and clearly labelled. In addition, the role of the queue controller should be standardised and emphasised.
- The Group observed that all voters had to present their voter's card before being allowed to vote.
- Priority was accorded to pregnant and lactating women, persons with disabilities, and others, though this was managed inconsistently, with some stations having separate queues for priority voters, while others did not. However, there was a lack of ramps to facilitate voters in wheelchairs.
- Party agents were present in all polling stations observed and were diligent in the conduct of their duties.
- The Group observed good co-operation between the assigned police officers and polling officials throughout the voting process. The police presence was not obtrusive and provided adequate security, maintaining law and order at all the polling stations observed.
- While COVID-19 protocols were adhered to by some polling staff, it was noteworthy that this was not always the case. Many voters also did not abide by these protocols.
- It was noted that voters would dip a finger in the indelible ink pot. This is unhygienic and it is suggested that cotton buds be used as an applicator in future.

- Generally, the secrecy of the ballot was guaranteed. However, in a few polling stations, with short curtain screens, it was observed that the position of the voter could potentially be seen, and thus compromise the secrecy of the ballot.
- Rejected ballots were returned with the unused tokens. The Group proposes that rejected tokens are kept separately, to avoid double counting and to facilitate the accountability of tokens.

Key procedures for closing of polls

- Voting officially concludes at 5:00pm, however, voters who are in the queue after 5:00pm are allowed to vote.
- At the close of the polls, in the presence of party agents and observers, the ballot slot is sealed.
- The unused ballot tokens are counted and recorded.
- The close of poll report is duly completed and signed by polling agents. Necessary preparation is done for the handover to the assistant returning officer.

Key procedures for counting and results tabulation

- Presiding officer (PO) reads out ballot token account.
- Seals are checked by party agents before seals are broken.
- Tokens are spread onto sieve and filtered.
- PO arranges tokens on tray.
- PO shows the filled tray to authorised persons present.
- PO records votes polled by each candidate on the counting form.
- PO returns counted token back into their respective ballot drums.
- PO reseals ballot drums, records reseal numbers and allows all to record numbers.
- PO records votes polled by each candidate on the results form.
- After counting of results, PO dispatches the results for verification by the assistant returning officer (ARO).
- ARO adds up all the polling station results in the constituency and hands them over to the Regional Electoral Office.
- Collation agents sign the collated form.
- Polling/counting agents sign the close of poll report.
- Results are transmitted by ARO to the Regional Office in a sealed envelope.
- Regional Office verifies, certifies and transmits the results to the IEC headquarters for announcement by the chairman.

Assessment of counting and results tabulation

The counting and results tabulation process was generally regarded as highly transparent and well-managed. Counting procedures were followed meticulously, with candidates, party agents, and citizen and international observers all afforded a clear view of the entire process. It was noted that most of the results tabulation processes at the collation centres occurred late into the night and during the early hours of the following morning.

Some key observations of the Group included the following:

- In some instances, the seals were not checked before they were broken.
- It was good practice to display results at the polling station.
- It was observed that those who were in the queue at the close of polls were allowed to vote.
- Security personnel were visibly present throughout the counting process. The Group noted that their conduct was professional and non-intrusive. Their presence contributed to a peaceful, secure and conducive environment for the vote count.

Presidential Election results

The final result of the six presidential candidates were as follows:

Candidate	Affiliation	Votes	Percentage
Adama Barrow	NPP	457,519	53.2%
Ousainou Darboe	UDP	238,253	27.7%
Mamma Kandeh	GDC	105,902	12.3%
Halifa Ababacarr Sallah	PDOIS	32,435	3.8%
Essa Faal	Independent	17,206	2.0%
Abdoulie Jammeh	NUP	8,252	1.0%
Total votes cast		859,567	100.0%

Voting statistics

- Registered voters 962,157
- Total valid votes cast 859,567
- Percentage of valid votes cast 89.3 per cent

Recommendations

We urge the IEC to consider the following:

- Review the location of polling streams, particularly those located on the side of busy roads.
- Enhance procedures and improve training of polling staff to ensure greater consistency of queue management, and deploy more polling staff to ensure effective queue management at larger polling stations.
- Where possible, ensure that all polling stations are generally located in accessible facilities to facilitate access for voters in wheelchairs. Where this is not possible, ensure a greater level of assistance for PWDs and the elderly.
- Ensure proper signage and labelling of polling stations and queues to assist voters.

- Display the list of candidates and their photos at polling stations in order to assist illiterate and/or partially sighted voters.
- Ensure adequate lighting in the voting booth to assist partially sighted voters.
- Adhere to COVID-19 protocols in the management of Election Day processes, including within polling stations.
- For general hygiene reasons, consider the use of cotton buds as an indelible ink applicator.
- Review the length of curtains at polling booths to ensure that the secrecy of the vote is not compromised.
- Rejected tokens should be kept separately to avoid double counting and to facilitate greater accountability of tokens.
- Ensure greater consistency in the application of the current practice of displaying results at the polling station.

ANNEX I: COMPOSITION AND BIOGRAPHIES OF THE GROUP

Observers

HE Olusegun Obasanjo, Former President of Nigeria (Chair)

HE Olusegun Obasanjo served as President of Nigeria from May 1999 to May 2007. In August 2021, he was appointed African Union Commission High Representative for the Horn of Africa region. In 2008 he was appointed by the United Nations as a special envoy for Africa. In 2008, he was also appointed special Envoy on the Great Lakes region by UN Secretary-General Ban Ki-moon, and continues to be an integral actor in mediation efforts in eastern Democratic Republic of the Congo. HE Obasanjo has also served as the African Union's Special Envoy for Togo's 2010 Presidential elections, as well as South Africa's presidential polls in 2009. As the Special Envoy for ECOWAS, his role in defusing the crisis that threatened civil war in Cote D'Ivoire 2011 was vital. He is also an advocate for investment into Nigeria, and through his Foundation works on issues critical to advancement across Africa.

Prosper Bani (Ghana)

Mr Bani was a former Chief of Staff to President John Mahama of Ghana, and subsequently Minister of Interior. He served as a member of the National Police Council and the Armed Forces Council, and also provided oversight to the National Election Security Committee for the 2016 elections in Ghana. Mr Bani started his United Nations career as the Chief Technical Advisor for the UN Development Programme's (UNDP) Peacebuilding Project in Tajikistan in 1995. He is an expert in peacebuilding and crisis management, with over 15 years working for the United Nations in several countries across the world. He served in Geneva with the Humanitarian Relief Unit of UN Volunteers as Peacebuilding Programme Officer and led in the design of the policy framework for UN Volunteers' peacebuilding programmes. Mr Bani later joined the Bureau for Crisis Prevention and Recovery of UNDP as a Small Arms Control and Management Specialist, and in 2006 was appointed Advisor for Africa based in Dakar. During that period, he designed the Economic Community of West African States (ECOWAS) Small Arms Control Programme, which supported ECOWAS to establish Small Arms Commissions in all 15 member countries to reduce the circulation of illicit weapons in the region.

In 2009, he was appointed as the Team Leader for the Bureau for Crisis Prevention and Recovery in Africa and assigned to the UNDP Regional Service Center in Johannesburg. Mr Bani provided technical support to the establishment of National Peace Councils in Ghana and Kenya, which provided the foundation for similar councils to be set up in other countries. In 2012, Mr. Bani led the process to develop a strategic recovery programme to support the Intergovernmental Authority on Development (IGAD) to respond to the perennial drought confronting the member states and the Horn of Africa, as well as national recovery programmes in member states. Mr Bani was a lecturer, and later became Director of Studies, at the Ghana Institute of Journalism from 1984 to 1992. Mr Bani has a BA Hons degree in political science and sociology from the University of Ghana and master's degrees in politics and development strategies from the Institute of Social Studies in The Hague, the Netherlands, and another master's degree in politics and government from the University of Texas, USA.

Honourable Crispin Kaheru (Uganda)

Honourable Crispin Kugiza Kaheru is a Commissioner at Uganda Human Rights Commission (UHRC), the National Human Rights Institution of the Republic of Uganda. He has over fifteen years of international experience in designing, implementing and evaluating community level election, human rights, accountability, peace building and conflict resolution initiatives in Africa, Asia, and parts of Europe.

Between 2009 and 2019, Kaheru served as the National Coordinator of the largest civic coalition in Uganda/Eastern and Southern Africa, the Citizens' Coalition for Electoral Democracy in Uganda (CCEDU). Kaheru has also provided oversight to peace-building and electoral support processes in Uganda and other countries, including Pakistan, Bangladesh, Myanmar, Tanzania, Kenya, Ghana, Sierra Leone, Zimbabwe, Egypt, Namibia, Lesotho, Mozambique and South Africa.

Kaheru currently serves on governing boards of numerous reputable local and international organizations. He is the Chairperson of the East and Horn of Africa Election Observation Network (E-HORN) and a member of the African Union (AU) team of election experts since 2014. Kaheru has also authored over 500 analytical opinion pieces and over 10 research papers on elections, governance and human rights.

Kaheru holds a Master's degree in Public Administration and Management from Makerere University Kampala (2013), a Bachelor's degree in Political Science from Makerere University Kampala (2005) and a Post Graduate Diploma in Peace and Conflict Resolution Studies from the Complutense University of Madrid, Spain (2009).

Robert Phiri (Malawi)

Robert Phiri serves as Executive Director of Public Affairs Committee (PAC), a quasi-religious body working in the field of democratic governance and social cohesion. He is a member of African Union ECOSOC, and Steering Committee Member of AU-EU CSO of Joint African Union Strategy for Development (JAES) - focusing on good governance, human rights, development and social cohesion in Malawi. At programme level, he implements Democracy, Human Rights, Governance, Electoral and Peace & Security programmes including taking lead on UNDP supported Social Cohesion and EU Conflict Prevention Programmes within his organisation.

Phiri also works on conflict management activities, in particular providing support to national mediators and national dialogue teams during political disputes and electoral stalemates in Malawi. He has also been involved in Commonwealth, AU and COMESA International Observation Missions. Phiri holds MSc (Public Policy/Development Administration) (UK), LLB (Hon.) (UK), Bachelor of Commerce, Business Administration (MW), Diploma in Business Studies (MW), Certificate in Applied Conflict Transformation (Action Centre, RSA) and Certificate in Human Rights (Denmark).

Hon Martha Karua (Kenya)

Hon Martha Karua is an accomplished lawyer and politician known for her passion for gender and social justice, inclusive governance, conflict resolution and developmental issues.

She has over two decades of experience as a member of parliament, including several years as a cabinet minister. As minister of Justice and Constitutional affairs, she was the lead negotiator for the government during the post-election crisis. She was involved in the constitutional making process and oversaw the crafting of legislation that enabled the successful completion of the constitutional review, ushering Kenya's 2010 constitution.

Martha is the party leader of Narc Kenya on whose ticket she ran for president in 2013, and for governor Kirinyaga in 2017. She continues to be active on Kenya's political scene.

Hendrick Gappy (Seychelles)

Hendrick Gappy was the Electoral Commissioner of Seychelles from 1998 until 2018, with the additional responsibility of Boundaries Delimitation and also being the Registrar of Political Parties. In 2011, a new Electoral Commission was established with Hendrick as Chairperson plus four members. The Electoral Commission in partnership with all stakeholders undertook a massive Electoral Reform project on all legal instruments pertaining to elections. Prior to this, he served as the Director-General of the Management and Information Systems Division responsible for the National Statistics Office and the National IT Office. He has been the Census Commissioner on several occasions.

Internationally, Hendrick has been involved with various organisations including the Commonwealth, SADC, COI, the United Nations and others in the context of electoral observation, statistical reform, and evaluation of IT for voters registration systems. He has been a member of several Commonwealth Observer Groups, including in South Africa (1994) where Mandela was elected to power, Maldives (2013), Solomon Islands (2001, 2014 and 2019) and Antigua and Barbuda (2018).

Shyamala Gomez (Sri Lanka)

Shyamala Gomez is a Human Rights Lawyer and Women's Rights Activist. She is the Founder and Executive Director of the Centre for Equality and Justice (CEJ), a women's organization based in Colombo working on issues of post war and women. CEJ's work focuses on reconciliation, transitional justice, governance and taking women into account in these processes. She was Country Director at FOKUS WOMEN, the Country Office for FOKUS, a women's organization based in Oslo for five years. Ms. Gomez taught law at the Faculty of Law, University of Colombo for over eight years and also was the Gender Advisor to the UN Office of the Resident Coordinator, Colombo.

She has published on violence against women, conflict related sexual violence, masculinities, migrant rights, women's land rights, women's political participation, reproductive rights and on women, peace and security. A Fulbright Scholar, she has an LLB from the University of Colombo and a Masters in Law from Georgetown University, Washington DC. She was a Visiting Researcher at Harvard Law School in 2001-2002.

Candia Dames (The Bahamas)

Candia Dames is executive editor of The Nassau Guardian, the oldest newspaper in The Bahamas, which is based in Nassau. Dames, who also worked as a TV reporter, joined the media company in 2008 after spending 13 years with Jones Communications where she

ended her time as news editor. As the most senior editor at The Guardian, she has overall responsibility for editorial content of the daily paper as well as its online platforms. In the role, Dames helps formulate the paper's editorial positions on a broad range of issues and is responsible for staff training for the company's print, online and broadcast arms. Dames also writes the weekly "National Review" column, which analyses issues of a national nature, ranging from political and business to social and cultural. She has represented The Guardian extensively, both in The Bahamas and abroad.

Dames holds a Bachelor's degree in mass communications from Clark Atlanta University and a Master's degree in journalism from the University of Maryland. She is also a graduate of The College of The Bahamas (now University of The Bahamas) and is a former lecturer in journalism at that institution.

Commonwealth Secretariat Support Staff

Linford Andrews

Adviser and Head, Electoral Support Section - Staff Team Leader

Lindiwe Maleleka

Political Officer, Africa

Andy Baines

Programme Officer, Electoral Support Section

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Media Officer, Communications Division

Zippy Ojago

Executive Officer, Electoral Support Section

Lindsey Adjei

Local Support/Programme Assistant, Electoral Support Section

Junaid Malik

ICT Systems Specialist, ICT Section

ANNEX II: ARRIVAL STATEMENT



The Commonwealth

ARRIVAL STATEMENT BY THE CHAIR OF THE COMMONWEALTH OBSERVER GROUP TO THE GAMBIA PRESIDENTIAL ELECTION

**Statement by HE Olusegun Obasanjo
Former President of Nigeria**

Banjul, 27 November 2021

Following an invitation from the Chairperson of the Independent Electoral Commission of The Gambia, the Commonwealth Secretary-General, The Rt Hon Patricia Scotland QC, has constituted a Commonwealth Observer Group for the Presidential Election, scheduled for 4 December 2021. It is my honour and privilege to have been asked to lead the Group, and to be here in the country for these elections.

Our nine-member Observer Group has been drawn from across the Commonwealth and brings together a diversity of experience spanning the social and political spectrum, with experts in the fields of elections, law, civil society, politics, human rights and conflict resolution. The Group is supported by a staff team of six led by Linford Andrews, Head of the Electoral Support Section at the Commonwealth Secretariat.

Whilst the Commonwealth has a long history of observing elections in The Gambia, this is the first observer mission to the country since its return to the Commonwealth in 2018.

Our observers arrived in Banjul yesterday and today, and will soon commence their stakeholder briefings. We recognise the significance of this presidential election to the people of The Gambia, both here and in the diaspora, and the historical context in which this contest is taking place. We also recognise the particular challenges posed by the ongoing pandemic, both in terms of campaigning and election administration.

Our mandate, as set out in the Commonwealth's 'Revised Guidelines' for election observation, is to observe and evaluate the pre-election environment, polling day activities and the post-election period. We will consider whether conditions exist for a credible, transparent and inclusive election, including whether there is a level playing field for candidates; whether public media has been impartial; whether the process has been

inclusive; whether the administration of the electoral process has been transparent; whether the rule of law has been adhered to; and whether the result reflects the true will of the people.

Following the election, our Group will issue a report. As well as addressing the above matters, the report will assess whether the election was conducted in accordance with the standards to which The Gambia has committed itself, including its own laws and regulations, as well as the country's regional and international commitments. Our report will also consider whether the laws and regulations are in concert with these international commitments, and whether policies and procedures are in keeping with international good practice.

The report will make a number of recommendations on various aspects of the electoral process. Importantly, in the post-election period the Commonwealth Secretariat will, upon receiving formal requests from national stakeholders, seek to provide assistance on the implementation of these recommendations.

In conducting our duties and undertaking our assessment, we will be neutral, impartial, objective and independent. In accordance with the provisions of the Declaration of Principles for International Election Observation, to which the Commonwealth Secretariat is a signatory organisation, the Group has no executive role; its function is not to supervise but to observe the process as a whole and to give recommendations accordingly. We are here in our individual capacities as eminent and experienced Commonwealth citizens. The assessment by the Group will be its own and not that of any member government.

Over the coming days we will be meeting numerous stakeholders, including political parties, representatives of the police, civil society groups, citizen observer and monitor groups, and the media. From 2 December we will deploy our observers in small teams to each of the six regions to observe electoral preparations and meet with local stakeholders in their respective locations.

On Election Day, our Group will observe the opening, voting, closing, counting and the results management processes. We will issue an interim statement on our preliminary findings on 6 December 2021, and the Group will depart The Gambia by 10 December 2021. Our final report will then be prepared and submitted to the Commonwealth Secretary-General, and subsequently shared with relevant stakeholders and the public.

Our presence here affirms the support of the Commonwealth to this country and its democratic processes, and we hope that our Group's presence will confirm the Commonwealth's solidarity with the Gambian people.

On behalf of the Commonwealth Observer Group, I wish the people of The Gambia well as they embark upon this election. We encourage all Gambians to do their part to ensure that a peaceful, credible, transparent and inclusive process takes place on 4 December.

ENDS

ANNEX III: DEPLOYMENT PLAN

Region	City/Town	Observers
Banjul	Banjul	Team 1: Chair, Linford Andrews, Temi Kalejaiye
	Banjul	Team 2: Zippy Ojago, Lindsey Adjei, Junaid Malik
Western	Brikama	Team 3: Prosper Bani, Lindiwe Maleleka
Northern Bank	Kerewan	Team 4: Crispin Kaheru
Lower River	Mansa Konko	Team 5: Robert Phiri, Martha Karua
Central River	Georgetown	Team 6: Hendrick Gappy, Shyamala Gomez
North-Western	Basse	Team 7: Candia Dames, Andy Baines

ANNEX IV: INTERIM STATEMENT



**Interim Statement by HE Olusegun Obasanjo
Chair of The Commonwealth Observer Group
2021 Presidential Election, The Gambia**

6 December 2021

Banjul, The Gambia

Introduction

The people of The Gambia, members of the media, fellow observers, members of the diplomatic corps, ladies and gentlemen. Thank you for coming to this Commonwealth Observer Group Press Conference.

The Commonwealth is honoured to have been invited by the Independent Electoral Commission of The Gambia to stand in solidarity with all Gambians through this significant election, the fifth presidential election under the 1997 Constitution.

Our Group, which was constituted by the Commonwealth Secretary-General, The Right Honourable Patricia Scotland QC, comprises experts drawn from the political, legal, media, civil society and electoral fields across various Commonwealth regions. We have been in The Gambia since 26 November and will depart on 9 December 2021.

We deployed our observers to all the administrative divisions of the country on 2 December to observe this Presidential Election. Our teams were stationed in Banjul, Basse, Brikama, Janjanbureh, Kerewan and Mansakonko.

Prior to our deployment, we were briefed by various stakeholders, including the Independent Electoral Commission (IEC), the Inspector-General of Police (IGP), political parties and candidates, civil society organisations and media houses. We also established working relationships and exchanged information with other

international observers and local citizen observer groups. Our teams sought to obtain a representative sample of the process so as to enable us to arrive at a broad overview.

This is an interim statement, and as such provides an initial assessment of our key findings and initial impressions of the exercise. The final report, setting out our full findings on the entire process and our recommendations in greater detail, will be submitted to the Commonwealth Secretary-General.

Pre-Election Environment

I would like to begin by highlighting a number of positive aspects of the environment in the lead up to these elections.

Let me begin by commending the IEC for conducting this election, despite the great difficulties imposed by the impact of the COVID-19 pandemic globally. We note that various COVID-19 mitigation measures were put in place by the IEC to ensure that these elections were conducted safely and securely, though we note some challenges were encountered, which I will comment on shortly in our assessment of Election Day.

Other features of the electoral process are also worthy of commendation, such as the marble system of voting. I will comment on this shortly.

We note the peaceful environment that has prevailed in the pre-election period. We commend the various commitments by political parties to foster a peaceful environment in the leadup to the 2021 Presidential Election. These included adherence to the Inter-Party Committee's Memorandum of Understanding, the signing by all 18 parties of the Janjanbureh Peace Accord on 25 September, as well as the commitment by all presidential candidates to a Code of Conduct, which they signed on 11 November. It is our hope that they will continue to live up to these commitments even in the post-election period.

Constitutional and Electoral Framework

While the electoral framework does largely provide for competitive democratic elections, it is noted that the legal framework for these elections has remained unchanged since the previous election in 2016, and that unsuccessful attempts were made to implement a number of constitutional and electoral reforms. We nevertheless note and laud efforts at taking forward some reforms, which include:

- The enactment of the Access to Information Act, assented to by the President on 1 July 2021;

- The establishment and appointment of members of the National Human Rights Commission (NHRC), when it became operational in 2019;
- The independence granted to senior management of the national radio and TV, to assure free and equal coverage to candidates;
- Enhancement of the functional independence of the IEC, so that it only reports to the National Assembly.

Our role as Observers is also to look at areas where we might be able to provide recommendations for improvement.

Preparations by the Independent Electoral Commission (IEC)

Prior to Election Day, the IEC had provided assurances of its preparedness and readiness to conduct the election as scheduled, including recruitment and training of polling staff, distribution of materials and other logistics. The early adoption of an election calendar is to be commended and contributed to a well-managed process. It was also laudable that the IEC made available disaggregated data on some key aspects of the process, for example, a breakdown of the gender of registered voters.

The IEC took the Group through the process: registration, election preparedness, voting exercise, and result tallying. The Group was satisfied that many aspects of the election could be conducted in a professional manner. However, some concerns were conveyed to our Group during our various consultations with stakeholders, about the capacity of the IEC, as well as their communication strategy. We will provide recommendations on improvements that can be made in our final report. We note that the judiciary enjoys a high level of confidence among Gambians. As an illustration of its independence, a number of petitions filed by some candidates who were unsuccessful during the nomination phase against the IEC were ruled in their favour.

The Campaign

The Group was able to observe some campaign rallies, which were colourful, robust and peaceful. We commend the IEC and Police initiative to implement a campaign schedule to allow each presidential candidate's supporters to have sufficient time and space for their supporters to campaign freely. While noting that there were a few minor incidents, this scheduling has by and large contributed to a peaceful process.

We commend the efforts made to provide security for all the presidential candidates throughout the campaign period.

Our Group notes alleged reports of vote-buying by some candidates and political parties. We also noted some use of hate speech and inflammatory language during

campaign events and on social media. Elections Watch observers also reported an increase in the visibility of civic and voter education efforts by the IEC, NCCE, CSOs, and others ahead of the 4 December polls.

Media

The general feeling is that the media's responsibility to educate and inform citizens was an improvement as compared to previous elections.

The Group notes that press freedom is generally respected as provided by the constitution; the press seemed to be free to cover the campaigns and election without intimidation. This, too, is an improvement on previous elections. The Gambia has come a long way.

However, media stakeholders reported a lack of adequate media access to the IEC. This could have contributed to a lack of clarity in the country on certain issues and fuelled pockets of misinformation and disinformation - especially on social media. It is recommended that the IEC sets up a robust communication unit that the public and press can send complaints to, as well as seek clarifications on issues pertaining to elections.

Media stakeholders also raised concerns about the use of hate speech and inflammatory language by senior politicians during the campaign period.

We encourage political parties to adhere to all aspects of the code of conduct, to report abuses to the IEC and for the IEC to act on those complaints.

Election Day

Polling environment

Each of our teams was present for the opening of the polling stations and observed throughout the day as many polling stations as possible. We watched the closing of the voting. Where possible, our observers tracked the process of conveying the ballot drums to the counting centres and watched the counting. We were impressed by the enthusiasm with which the Gambian people exercised their democratic rights. We noticed that even before 8 am, voters queued up at polling stations in a peaceful and orderly manner.

Opening of polls

Our observers reported that the opening of polls generally occurred on time and that all pre-poll procedures were, on the whole, adhered to.

Conduct of the polls

Polling staff were efficient, meticulous, and highly transparent in the conduct of their duties.

While noting that concerns were raised in some instances surrounding the issue of marbles not fitting into the mouths of ballot drums, it was noted that the IEC acknowledged the problem and instructed polling staff to address it. This is an issue we will reflect further on and consider offering recommendations on how to address it, if necessary.

COVID-19 protocols

While COVID-19 protocols were adhered to by polling staff, it was noteworthy that this was not always the case by the voters.

Participation

Large numbers of voters were witnessed voting, and it was pleasing to note the significant presence of women and youth among voters and polling staff.

Priority voting

Priority was accorded to pregnant and lactating women, persons with disabilities, and others, though this was managed inconsistently, with some stations having separate queues for priority voters, while others did not.

Party agents

Party agents were present in all polling stations observed and were diligent in the conduct of their duties.

Security

Security was present at every polling station observed. They were professional and carried out their duties diligently. Observers noted national security personnel deployed in most of their areas and they should be commended for their role in maintaining peace during this period.

Secrecy of the ballot

Due to the unique nature of voting, it was noted that polling booths were sealed off with curtains to ensure the secrecy of the ballot. This was satisfactorily implemented in most cases.

Citizen and international observers

We would like to thank all international and domestic (citizen) observer groups we met on Election Day for the cooperation and exchange of views on the unfolding process.

Situation rooms

As Chairperson, I visited the Election Situation Room at the Coco Ocean Hotel, run by the CSO Coalition on Elections in partnership with WANEP, ECOWAS, UNOWAS and the Gambia National Human Rights Commission. Some of our observers also managed to visit other situation rooms, including the information centre operated by Elections Watch with support from NDI. These initiatives should continue to be encouraged, as they enhance transparency and provide a national perspective on key data emerging from the electoral process, especially on Election Day. This instils a level of confidence in the electoral process.

Close and count

It was observed that those who were in the queue at the 5pm close of polls were allowed to vote. The close and count followed due process, with a high degree of transparency, for which the IEC and its polling staff should be commended.

Conclusions and Post-Election Period

I commend the people of The Gambia for the largely peaceful, calm and orderly manner in which they cast their vote on 4 December. I also wish to acknowledge the IEC for its efficient conduct of the polls across the country.

The people of The Gambia have once again demonstrated patience and commitment to their democracy.

We appeal to them to maintain the same commitment in the post-election period, and as The Gambia prepares to return to the polls in April 2022 for the legislative elections.

It is the view of the Commonwealth Observer Group that this election was conducted in a credible, transparent and inclusive manner. We congratulate and commend the people of The Gambia for reaffirming their faith in the principles of democracy. Despite the various areas where we have recommended improvements for future elections, it is our considered assessment that they did not materially affect the conduct of this election.

The Gambia's unique marble voting system has once again allowed all Gambians who voted to do so in a transparent manner. While we note that there are different views on the value of this system, we therefore urge further dialogue to ensure that all Gambians are able to reflect thoroughly on this, as well as other areas, within the context of the unimplemented reforms that will need to be addressed in the next electoral cycle.

As the results process has now concluded, we hope that the peaceful atmosphere that has prevailed thus far throughout the electoral process will continue. We

reiterate our call on all political parties, their candidates, their supporters and other stakeholders in the electoral process, to continue to show restraint and magnanimity and to uphold their pre-election commitments to peace with the same spirit of national solidarity. We believe the people of The Gambia deserve that from their elected representatives.

The Commonwealth will remain engaged with the people of The Gambia in the journey to support all efforts in consolidating their democracy.

Let me conclude by reiterating the desire that all Gambians, especially the candidates who contested the presidential election, continue to uphold their commitment to peace. It was a special honour for me and my team to be in The Gambia at this important time and we thank you for your hospitality. We trust that our work will contribute to the strengthening of 10 democracy, good governance and the rule of law in The Gambia.

We continue to follow the process and our final report containing our conclusions and recommendations will be made public in a few weeks. We hope that our recommendations will be helpful to all stakeholders in strengthening democracy in The Gambia.

I thank you.

Ends.

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