



PROACTIVE DISCLOSURE OF INFORMATION AND ELECTIONS IN GAMBIA

(2021 Presidential Elections)

AN ASSESSMENT OF THE GAMBIA'S COMPLIANCE WITH THE ***GUIDELINES ON ACCESS TO INFORMATION AND ELECTIONS IN AFRICA***, ISSUED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

GOVERNANCE

FREEDOM

INDEPENDENCE

DEMOCRACY

CREDIBILITY

TRANSPARENCY

MEDIA

INFORMATION

CITIZENS

VOTE

ELECTIONS

BALLOT

RIGHTS



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COMMISSIONED BY THE CENTRE FOR HUMAN RIGHTS
WITH THE SUPPORT OF ARTICLE 19 SENEGAL AND WESTERN AFRICA



Centre for
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UNIVERSITY OF PRETORIA





TUNISIA

Mediterranean Sea

MOROCCO

ALGERIA

LIBYA

EGYPT

Red Sea

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ETHIOPIA

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TANZANIA

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AND PRINCEPE

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GUINEA

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Universal Equal Area Projection

TABLE OF CONTENTS

Acronyms and abbreviations i

Preface	iii
Background to the report	vi
Provenance of the report.....	viii

Part One: Country Background 1

Chapter 1: Access to information and the 2021 presidential elections..... 2

1.1 Introduction.....	2
1.1.1 Geography and recent political history	2
1.1.2 COVID-19 and its impact on elections.....	3
1.1.3 COVID-19 Emergency Fund: Accountability and transparency.....	4
1.1.4 Political processes and the electoral system	5
1.2 Legal framework	5
1.2.1 International treaty obligations	5
1.2.2 National legislation on citizens' political rights and access to information.....	6

Part two: Stakeholder Assessment of Compliance with the Guidelines..... 12

Chapter 2: Appointing authority and election management body 13

2.1 Introduction.....	13
2.2 Challenges leading up to the 2021 presidential elections.....	13
2.3 Composition and mandate of the IEC	15
2.4 Pre-election proactive disclosure	22
2.5 Election day	26
2.6 After the election	27

Chapter 3: Political parties and candidates 31

3.1 Introduction.....	31
3.1.1 The Second Republic electoral history: Impact and consequences	32
3.1.2 The lead up to change through the ballot.....	33
3.2 Political parties.....	33
3.3 Proactive disclosure of information by political parties and candidates.....	38
3.3.1 Number of registered members	38
3.3.2 Nominating and electing candidates for internal and external office(s).....	39
3.3.3 Dispute resolution and appeal mechanisms	39
3.3.4 Mechanisms for public participation, including persons with disabilities	39
3.3.5 Mechanisms for monitoring nomination processes and proceedings.....	40
3.3.6 Party agents during the electoral process.....	41
3.3.7 Assets, investments, membership subscriptions, subventions and donations.....	41
3.4 Dearth of legislation and enforcement.....	42

3.5 Abuse of state resources	42
------------------------------------	----

Chapter 4: Election observers and monitors..... 47

4.1 Legislation and process	47
4.2 International, regional and domestic observer missions	48
4.3 Interaction with the IEC.....	49
4.4 Opinion polls	52
4.5 Voter tabulation	53
4.6 EOM observations on access to information	53

Chapter 5: Law enforcement agencies 56

5.1 Background to the reform of the state security sector	56
5.2 Transformation of the GPF: Powers and responsibilities	57

Chapter 6: Media providers, online platforms and regulatory bodies..... 63

6.1 Regulatory framework	63
6.2 Media and internet regulatory bodies	64
6.3 Compliance and enforcement	66
6.4 Broadcast media regulation and internet shutdowns	68
6.5 Regulations on internet shutdowns	68
6.6 Proactive disclosure of internal guidelines on election coverage	69

Chapter 7: Civil society organisations 72

7.1 Introduction.....	72
7.2 Legislative framework.....	73
7.3 Civil society umbrella organisations.....	74
7.4 National Council for Civic Education	74
7.5 Civil society and elections.....	75
7.6 CSO conflict with government and the IEC.....	76

Chapter 8: Conclusion and recommendations..... 78

8.1 General review	78
8.2 Recommendations	79
8.2.1 Government of The Gambia and the National Assembly:.....	79
8.2.2 The Independent Elections Commission	80
8.2.3 Political parties	81
8.2.4 Election observers	82
8.2.5 Law enforcement agencies (The Gambia Police Force)	82
8.2.6 Media and internet regulatory bodies	82
8.2.7 Civil society organisations	83

Acronyms and abbreviations

ACE	African Coast to Europe (submarine fibre cable)
ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Commission on Human and Peoples' Rights
AFPRC	Armed Forces Provisional Ruling Council
APRC	Alliance for Patriotic Reorientation and Construction
AU	African Union
BTU	Bathurst Trade Union
CepRass	Centre for Policy, Research and Strategic Studies
CDD-West Africa	Centre for Democracy and Development
CSO	Civil Society Organisation
CRPD	Centre for Research and Policy Development
ECOMIG	Economic Community of West African States Mission in Gambia
ECOWAS	Economic Community of West African States
EMB	Election Management Body
EOM	Election Observer Mission
EISA	Electoral Institute for Sustainable Democracy in Africa
EU	European Union
EWC	Elections Watch Coalition
GAF	Gambia Armed Forces
GAMTEL	Gambia Telecommunications Company Limited
GCCI	Gambia Chamber of Commerce and Industry
GDC	Gambia Democratic Congress
GP	Gambia Participates
GPF	Gambia Police Force
GPPA	Gambia Public Procurement Authority
GPU	Gambia Press Union
GRTS	Gambia Radio and Television Services
GSM	Global System for Mobile Communications
IEC	Independent Electoral Commission
IDEA	Institute for Democracy and Electoral Assistance
IPC	Inter-Party Committee
IRI	International Republican Institute
MCG	Media Council of The Gambia

MOJA-G	Movement for Justice in Africa-Gambia
NCCE	National Civic Education Council
NHRC	The Gambia National Human Rights Commission
NPP	National People's Party
NRP	National Reconciliation Party
NUP	National Unity Party
PAG	Peace Ambassadors Gambia
PDOIS	People's Democratic Organisation for Independence and Socialism
PIU	Police Intervention Unit
PPP	People's Progressive Party
PURA	Public Utilities Regulatory Authority
RSF	Reporters Sans Frontiers
TANGO	Association of Non-Governmental Organisations
UDP	United Democratic Party
UNDP	United Nations Development Programme
WANEP	West Africa Network for Peacebuilding
WFD	Westminster Foundation for Democracy

Preface

The research on 'Proactive disclosure of information and elections in The Gambia: 2021 Presidential Elections' is the fourth study in the series assessing state compliance with the Guidelines on Access to Information and Elections in Africa (the Guidelines). The project that is under the stewardship of the Centre for Human Rights, University of Pretoria has assessed state compliance in South Africa (2019), Uganda (2020), Ghana (2020), Tanzania (2021), and Kenya (2022). I hereby gladly welcome the addition of The Gambia to this analysis. The importance of this assessment cannot be disputed.

The African Commission on Human and Peoples' Rights (the African Commission) developed the Guidelines in 2017 to bolster the normative framework on access to information and elections in Africa. As the foundational document for human rights in Africa, the African Charter on Human and Peoples' Rights (the African Charter) is the main frame of reference. Article 9 guarantees the right to information as well as the inseparable freedom of opinion and expression. Article 9 rights are crucial enabling rights for the right to meaningful political participation enunciated under article 13 of the African Charter. Further reinforcing the protection of these rights are instruments such as the Declaration of Principles on Freedom of Expression and Access to Information in Africa, the Model Law on Access to Information for Africa, the African Charter on Democracy, Elections and Governance, and the African Union Convention on Preventing and Combating Corruption. The implementation of this normative framework by states would greatly enhance the state of human rights, elections, and democracy in Africa that has been ranked poorly globally.

In the context of elections, meaningful political participation by the electorate is impracticable without access to accurate, credible and reliable information. A well-informed electorate can transform voting into a substantive act of consciously shaping the democratic trajectory of a country through active participation in political processes. In the absence of access to information, the integrity and legitimacy of electoral processes is undermined. This vision is however obstructed by a pervasive culture of secrecy and impunity within governments and electoral stakeholders. The Guidelines confront this challenge by emphasising the responsibilities of key electoral stakeholders in the body politic to not only facilitate access to information of public interest, but to do so proactively, therefore mainstreaming it in the election cycle. Proactive disclosure implies regular flow of information that is not prompted by public information requests. It places the onus on holders of public interest information to integrate access to information in their processes and procedures. Key electoral stakeholders tasked with proactive disclosure of information in the Guidelines are: authorities responsible for appointing the Election Management Bodies; Election Management Bodies; political parties and candidates; law enforcement agencies; election observers and monitors; media and online media platform providers; media regulatory bodies; and civil society organisations.

The Gambia report comprehensively analyses the extent to which these electoral stakeholders complied with the Guidelines during the 2021 presidential elections. The Constitution of The Gambia in section 26 provides for the right to political participation. Although access to information is not expressly recognised in the Constitution, section 25 guarantees freedom of speech and expression, as well as freedom of the media. These rights are indivisible from

access to information, and enablers of political participation.

As a point of departure, I would like to congratulate The Gambia for passing its Access to Information Act, 2021. This is a positive step towards meeting article 1 obligations of the African Charter for states to adopt legislative and other measures to give effect to the rights, freedoms, and duties articulated therein. The African Commission looks forward to evidence of its implementation and operationalisation as the legislation comes into full effect in 2023. The African Commission encourages the government of The Gambia to comprehensively report on this and other measures it has adopted to comply with the Guidelines, in undertaking its state reporting obligations under article 62 of the African Charter.

While the findings of the report acknowledge a measure of proactive disclosure of information by electoral stakeholders it reveals a bigger gap in information disclosure practices that has engendered significant public distrust. In particular, recommendations are extended to the Independent Electoral Commission (IEC) to address the public trust deficit and effectively undertake its mandate. A nod is given to law enforcement agencies given improvement in undertaking their duties during elections although there is still a need for proactive disclosure on election related crimes.

The African Commission acknowledges that The Gambia respected internet freedom and kept the internet on during the 2021 elections, a departure from the 2016 elections. Internet shutdowns are a violation of human rights. The Declaration of Principles on Freedom of Expression and Access to Information (Principle 38) and the Guidelines (Guidelines 26 and 27) prohibit states from implementing shutdowns unless in exceptional cases that are justifiable and compatible with international laws and standards. The 2020 decision of the ECOWAS Court of Justice in *Amnesty International Togo and 7 others v The Togolese Republic* is also instructive as it affirmed the complementarity of access to the internet and freedom of expression, and the need to legally protect this right. With the increasing integration of technology in the exercise of human rights including electoral participation, internet shutdowns pose a significant threat to access to information, political participation, and the general exercise of other human rights.

Further, the presence of an enabling legislative framework for access to information and related rights cannot be overemphasised. The report flags potentially restrictive laws in The Gambia including on criminal defamation and sedition, and calls on the government and National Assembly to comply with relevant court decisions and repeal the contentious provisions. Accountability and transparency efforts from electoral stakeholders and in democratic processes such as elections are best pursued within a conducive legislative framework.

The Gambia has witnessed a chequered political history marred with protracted military rule, dictatorship, and human rights violations and abuses. Re-emerging from this past and consolidating the country's democracy requires the concerted effort of all relevant stakeholders at state and continental level. The African Commission therefore urges electoral stakeholders to implement the recommendations of the report towards enhancing access to information during elections as well as overall improvement of election integrity and democracy in The Gambia.

The African Commission also reiterates its appreciation to the Centre for Human Rights, for leading this research project, as well as ARTICLE 19 WEST AFRICA and the Gambia Press Union for their support in the development of this report. In conclusion, the African Commission underscores that the next steps are crucial to ensure the recommendations of the report are implemented.

Honourable Commissioner Ourveena Geereesha Topsy-Sonoo

Special Rapporteur on Freedom of Expression and Access to Information in Africa, African Commission on Human and Peoples' Rights

Background to the report

The African Union (AU) has established fundamental aspirational norms and treaty frameworks to bolster sound democratic practice on the continent, driven by citizenry-centred processes and elevating public accountability. These include: the African Charter on Human and Peoples' Rights (the African Charter), the continent's guarantor of human rights; the AU Convention on Preventing and Combating Corruption; the African Charter on Democracy, Elections and Governance (ACDEG), which identifies continental election standards; and the African Peer Review Mechanism (APRM) which functions as the accountability process for each state signatory.

Like most AU member states, The Gambia claims to hold itself to these high aspirations. These ambitions focus on cultivating a culture of human rights, transparency and accountability, sound democratic practice, elevated popular participation, and citizen-driven processes for good governance. However, it is not enough to merely hold periodic elections and tick boxes, as has been the case in the past several decades since Africa embraced participatory democracy and pluralistic political systems. Elections have become procedural, predictable and unrepresentative of the will of the people. The broader ambition of consolidating democratic gains has been plagued by term elongation, unconstitutional constitutional amendments, rigging of electoral processes, and political interference in appointment processes of election officials and in critical institutions of the state. Further challenges include closing civic space, abuse of state resources, and bolstering incumbency advantage through illicit financing of campaigns and weaponizing state security apparatus, including the judiciary and legislature. These shortcomings undermine the credibility of elections and the legitimacy of the governments. AU member states have been complicit in such undemocratic behaviour.

In 2015, the African Commission on Human and Peoples' Rights (ACHPR) adopted Resolution 307 (EXT. OS/XVIII), requesting the Special Rapporteur on Freedom of Expression and Access to Information in Africa to develop guidelines to close the gap in guaranteeing the credibility of elections and strengthening overall democratic governance in Africa. In 2016, a task team was established and a series of expert consultations were held. A draft outline of the guidelines was developed and presented to the ACHPR. As part of the development of the guidelines, meetings with access to information experts and key stakeholders involved in electoral processes were held in Johannesburg, Nairobi and Maputo, in 2017. The final draft of the Guidelines on Access to Information and Elections in Africa (the Guidelines)¹ were completed and presented to the ACHPR for adoption at the end of that same year. The ACHPR adopted the Guidelines in November 2017 during its 61st Ordinary Session.

The swiftness of the process was deliberate since 27 African states were poised to undertake various forms of elections that year.² This presented an opportunity for the Guidelines to deepen sound democratic practice and infuse a degree of credibility into Africa's elections processes, with the specific objective of blunting the effects of rapacious power, money, and unfair influence.

The Guidelines enunciates the proactive disclosure obligations of information holders involved in various aspects of the electoral processes in countries on the continent. By doing so, it seeks to advance the transparency, credibility and integrity of all aspects of the electoral processes. Accordingly, the Guidelines aim to infuse a degree of positive influence and responsiveness from the supply side of power (the people) by subjecting any citizen vying for public office to regulations that encourage the practice of electoral transparency and accountability, and by allowing the electorate to determine how power is gained, maintained and dispensed.

1 ACHPR 'Guidelines on access to information and elections' (2017) https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/guidelines_on_access_to_information_and_elections_in_africa_en.pdf (accessed 26 May 2022).

2 EISA '2018 Africa election calendar' <https://www.eisa.org/calendar2018.php> (accessed 26 May 2022).

The Guidelines present the opportunity to test the operationalisation of access to information principles, and the application of law in both policy and practice. However, whereas the Guidelines solidify the right of all Africans to vote and participate freely in elections in an accountable manner, they do not replace existing national access to information legislation, policies, practice and procedures. Their purpose is to complement and strengthen such national mechanisms.

Given the pivotal role that the Centre for Human Rights, University of Pretoria (the Centre) played in the development of the Guidelines, it continues to play a critical function in assessing AU member states' implementation of and compliance with the Guidelines. The Centre served as the secretariat for the process of developing the Guidelines, including its conceptualising, drafting, and implementation of the project. This was done under the leadership of the African Commission's Special Rapporteur on Freedom of Expression and Access to Information in Africa. At the time of publication of this report, the Centre has assessed the performance of Ghana, South Africa, Uganda, Tanzania and Kenya in terms of their proactive disclosure of election-related information under the Guidelines. The Gambia joins in this assessment.

The Gambia has undergone 22 years of a closed and revisionist culture in which media laws were crafted to make media operations and information gathering to be as economically prohibitive and legally restrictive as possible. By 2016, the country and its inhabitants were faced not only with the monumental tasks of fundamental change, reform and alignment with regional, continental and international norms, but also with the challenge of catching up with its immediate neighbours in the region. Disappointingly, the first five years of President Adama Barrow's administration have witnessed very limited reforms. Opportunities were missed in laying the foundations for impactful change through a legislative agenda that would elevate the principles of people power by transforming existing legislation to promote the demand for public accountability, the right to information, and freedom of expression within a culture of transparency. Opportunities for establishing and supporting strong independent institutions for promoting and protecting fundamental freedoms that support and sustain people empowerment (rather than executive and political power) have neither been taken up nor implemented. This, despite the unprecedented goodwill shown by the international community at the dawn of the 'new' Gambia in 2017.

Nevertheless, The Gambia did muster a fair degree of political will and passed the Access to Information Act in 2021, becoming the latest member state of the Economic Community of West African States (ECOWAS) to have done so. Advocacy initiatives leading to the development and adoption of the Act were largely led by civil society through the National Coalition on Access to Information, launched in 2018. According to Article 19 West Africa, which played a leading role in advocating for the Access to Information Act:³

From the beginning of the process, the Gambia Press Union (GPU), together with the civil society coalition, worked with relevant ministries including the Ministry of Information and Communication and the Ministry of Justice until the Bill was enacted.

3 Article 19 'The Gambia: Access to Information Bill is a step towards greater transparency' (8 September 2021) <https://www.article19.org/resources/the-gambia-access-to-information-bill-is-a-step-towards-greater-transparency/#:~:text=ARTICLE%2019%20welcomes%20the%20signing,obtain%20information%20from%20public%20institutions> (accessed 26 May 2022).

Provenance of the report

This report assesses The Gambia's level of compliance with the ACHPR Guidelines within the dictates of the Access to Information Act and other existing legislation. In particular, the report investigates the roles of relevant election stakeholders identified in the Guidelines:

- Appointing authorities;
- The Election Management Body (EMB), in this case the Independent Electoral Commission (IEC);
- Political parties and candidates;
- Election Observer Missions (EOMs);
- Media and internet regulatory bodies;
- Print, broadcast and online media providers and platforms; and
- Civil Society Organisations (CSOs).

The report was researched and written by a lead researcher, Jeggan Grey-Johnson, and two local researchers based in The Gambia: Sait Matty Jaw and Yusef Taylor, who focus on media and journalism, and academia, respectively. The report assesses the levels of compliance with the Guidelines by key stakeholders in the electoral processes and procedures of The Gambia. This systematic audit takes into consideration the limitations the country faces in terms of the operationalisation of its nascent Access to Information Act, which was only enacted in 2021. It also digs deeper and assesses how the election stakeholders adapted to the culture of proactive disclosure envisaged by the Guidelines.

The report aims to assess the compliance with the Guidelines by stakeholders involved in elections, and to provide recommendations that will contribute to electoral transparency in The Gambia.

This assessment took the combined form of desk research, selected interviews, and limited group discussions. The process started in November 2021 before the presidential elections, with stakeholders at the national level meeting to discuss access to information in the country. Presentations by the Centre, Article 19 West Africa, and the research lead were made to the gathering.

Access to information is generally a challenge. The specific need for proactive disclosure is made more difficult when stakeholders exude paranoia when questioned. Added to this innate culture of information 'hoarding' is also the unwillingness, or inability, to disclose vital information in a timely manner. Platforms for accessing information such as government websites are at best not up to date, and where they do exist, the information is often inadequate. In a recent article on the National Archives, Hassoum Ceesay states:⁴

Sadly, at the time of writing, the catalogue and index are in tatters. They have not been updated since 1999, and many pages have come off the clippings and risk being lost creating a debilitating gap for researchers. There is no soft copy of the catalogue, meaning that even if it were to be updated today, it has to be totally retyped again. The very few new acquisitions, mainly newspapers, are written in ink on the margins of the pages of the catalogue. None of the archive's collection is available online or in digital form. Two attempts to digitize parts of the collection have stopped due to lack of funds and staff capacity and frequent power outages. However, an even more serious threat is the lack of trained archivists to run the archives.

4 H Ceesay 'Doing archival research in The Gambia: Locating and appraising the sources' (1998) 25(39) Revista Esboços 53 <http://dx.doi.org/10.5007/2175-7976.2018v25n39p49> (accessed 26 May 2022).

Ceesay's final observation on record-keeping and information management was as follows:⁵

It is obvious that the archives mentioned above all share the common challenge of inadequate cataloguing, deterioration of collection and lack of qualified staff. Therefore, for scholars and researchers to make the best out of their potential, urgent conservation interventions such as digitizing, staff training, and proper cataloguing should be undertaken.

Clearly, information storage and retrieval are a major challenge for the country. Similarly, this predicament is amply demonstrated by political parties and some CSOs that do not always provide adequate and up-to-date information on their activities, processes, policies and priorities.

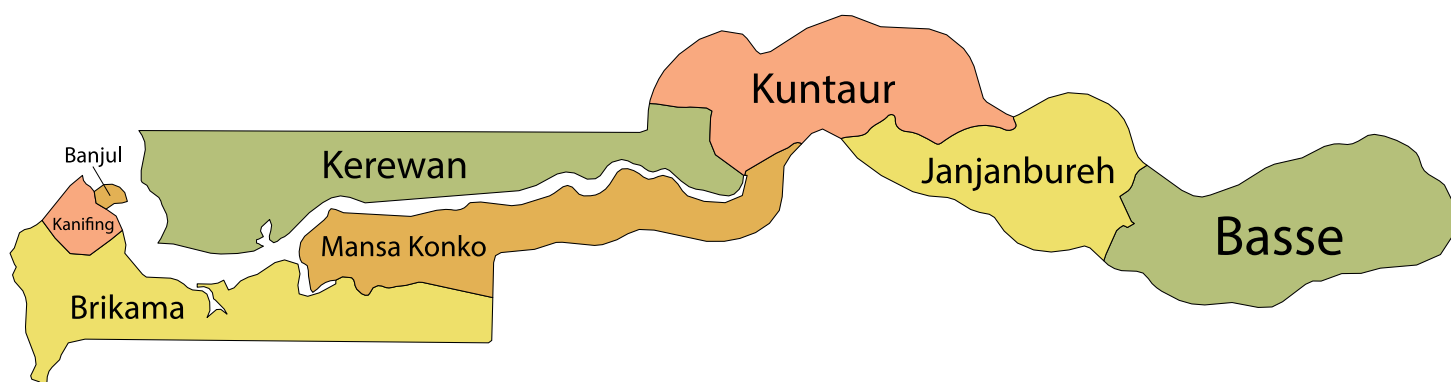
Unlike for the countries that have already undergone similar assessments, this report uses a set of matrices that are based on the evidence gathered to determine whether the threshold being assessed for every category of stakeholder has either been met, partially met, or not met at all. Finally, this report has a concluding chapter that looks exclusively at the conclusions drawn from the assessment and recommendations proposed for each stakeholder as set out by the findings of the research.

5 As above.



Part One: Country Background

Chapter 1



CHAPTER 1: ACCESS TO INFORMATION AND THE 2021 PRESIDENTIAL ELECTIONS

1.1 Introduction

1.1.1 Geography and recent political history

The Gambia is the smallest country on mainland Africa, stretching 450 km along the Gambia River.² This West African nation is surrounded by Senegal, except for the 60 km Atlantic Ocean coastline. The Gambia has a population of 2.1 million, and with 176 people per square kilometre, it is one of the most densely populated countries in Africa.⁶ A former British Protectorate, The Gambia gained independence in 1965 and was one of few African countries that embraced and sustained multiparty democracy at that time.

The country is deeply enmeshed within surrounding Senegal, a former French colony. As a consequence, cultural, socio-economic and security interests between the two countries are intertwined. In addition, family ties and affiliations across ethnic lines are also firmly entrenched on both sides of the River Gambia, with Dakar in the bordering region to the north and Casamance to the south. The two countries entered into a sudden and rushed political confederation in 1982, following a foiled coup that proved bloody yet short. The Senegambia Confederation, as it was known, was primarily premised on a mutual defence agreement that was later expanded into other broader arrangements. After almost a decade of a rocky relationship between President Abdou Diouf of Senegal and Sir Dawda Jawara of The Gambia, relations soured and the political and military arrangements were dissolved by Senegal on 30 September 1989. That move produced unintended consequences for both countries and, ultimately, the entire ECOWAS region.

The fragility of The Gambia's security and its deliberate policy of outsourcing military and security guarantees to larger and stronger countries remained after the dissolution of the confederation. President Jawara approached the Nigerian government to assist The Gambia to train and maintain its own military force. However, the military coup in Nigeria in 1993, which toppled then president Ibrahim Babangida and brought in General Sana Abacha, would reverberate within The Gambia's political and security apparatus. As the stability of the Nigerian top command was broken by the General Abacha putsch, cracks began to form in the Gambian capital Banjul, creating a complicated opening for insurrection by the rank-and-file within The Gambia Armed Forces (GAF). On 22 July 1994, The Gambia's reputation as a stable democratic state was irreparably shattered. Four young lieutenants, led by Yahya Jammeh, overthrew the almost three-decade old Peoples' Progressive Party (PPP) under Sir Dawda Jawara and swiftly ushered in the Armed Forces Provisional Ruling Council (AFPRC). The country underwent a long stretch of challenges to democracy and good governance as well as a slew of human rights abuses. This period ended in 2016 with the historical victory of the opposition coalition, an unlikely electoral victory that ended a 22-year dictatorship in the most spectacular of circumstances.

However, a drawn-out impasse over the elections following a rejection of the results by the incumbent Jammeh almost took the country to the brink of civil war. It finally came to a peaceful conclusion on 22 January 2017, with ECOWAS intervening to enforce the election results and pressuring Jammeh into exile in Equatorial Guinea.

President-elect Adama Barrow was sworn in at the Gambian embassy in Dakar and returned to The Gambia days later, where he was sworn in again and began his term in office. After five years at the helm, the country witnessed failed promises, political infighting, cabinet reshuffles and the splintering of the coalition parties that had brought Barrow to power. The Barrow

⁶ World Bank 'The World Bank in The Gambia' <https://www.worldbank.org/en/country/gambia> (accessed 19 March 2022).

administration also failed to reform the security sector, the civil and foreign service, state-owned enterprises and government institutions, including the IEC. Although various commissions of inquiry were established, the lack of political will to follow through on their recommendations further dented the credibility of such processes and, by extension, also compromised the goodwill that the government enjoyed from the citizenry and the international community, including bilateral, multilateral and private donor institutions.

1.1.2 COVID-19 and its impact on elections

The COVID-19 pandemic hit the country with about 18 months to go before the presidential elections, and The Gambia battled to carve out a strategic response to the pandemic. It issued no fewer than five State of (Public) Emergency declarations in 2020. President Barrow made two statements to the nation (both recorded) two weeks apart. Section 34 of The Gambian Constitution gives the president the power to declare a State of (Public) Emergency. On 27 March 2020, via a Proclamation, President Barrow used this prerogative to curb the movement of persons, prohibit price hikes on basic commodities, restrict open markets, and to enforce social distancing and partial stay-at-home regulations.

On 3 April 2020, President Barrow requested a reconvening of the National Assembly to consider an extension of the state of emergency by an extra 90 days.⁷ The President's request was debated, and a counter motion referred the matter to the National Assembly Human Rights Committee and Constitutional Affairs to scrutinise the regulations before voting on them. After the debate at plenary level, the National Assembly, amongst other things, reduced the number of days to 45 and made strong recommendations on safeguarding citizens' fundamental human rights during the State of (Public) Emergency.

The rolling out of the 27 March 2020 Proclamation was improper since it had neither been gazetted nor made public. The Proclamation was actually a decree, which is illegal. The debate by the National Assembly highlighted this anomaly and sought to legislate against such a lapse. The subsequent regulations were vague, which made them subject to abuse. Contradictions within the Regulations made them vulnerable to arbitrary interpretation and abuse by the authorities tasked to enforce them. As an example, the Police Intervention Unit (PIU) raided the largest market in The Gambia (Serekunda), forcing shop owners to close and stop selling their wares. Some were threatened, others beaten. A few hours later, it was made public that security officers had no right to force such closures and the shops were reopened, only to be closed again 48 hours later. Security personnel rounded up 'idle' youth in the vicinity for breaking social distancing rules, cramming them into vehicles and locking them up in overcrowded cells. The courts were closed at that time, and there were no special courts in place to deal with any breaches of the State of (Public) Emergency regulations. This sequence of events depicted also speaks to the negative effect of an absence of effective compliance by institutions of the state, with their responsibility to proactively disclose information as required under the public's right to information.

On the socio-economic front, according to an Afrobarometer report published in August 2021, only about one in four Gambians (27%) say economic conditions have improved during the past year, an 18-percentage-point decline from 2018. While almost half (45%) believe things would get better during the coming year, this figure reflects a sharp drop in optimism compared to 2018 (78%).⁸ However, many people remained optimistic about the ability of the IEC to manage the scheduled presidential elections during the pandemic.

7 The National Assembly must approve any extension after seven days if it is not in session at the time.

8 SM Jaw & D Kandeh 'Majority of Gambians say their country is heading in the wrong direction' (11 August 2021) 471 Afrobarometer Dispatch https://www.afrobarometer.org/wp-content/uploads/2022/02/ad471-gambians_say_country_headed_in_the_wrong_direction-afrobarometer_dispatch-11aug21.pdf (accessed 26 May 2022).

1.1.3 COVID-19 Emergency Fund: Accountability and transparency

Accessing information on the overall budgeting and expenditure of the COVID-19 resource envelope was a major challenge, especially given the fact that the country was poised to go to the polls the following year. Added to this, there has been great discontent in the way the resource envelope was repurposed to deal with the COVID response.

About half a billion dalasi (USD 9.8 million) was initially earmarked for the COVID-19 Emergency Fund, which proceeded to balloon to four times that amount. On 7 April 2020, The Gambia Chamber of Commerce and Industry (GCCl), together with eight CSOs, wrote to President Barrow proposing economic policy options for The Gambia's COVID-19 response. In that letter, the signatories stated that:⁹

the Development Objective of our recommendation is: (i) to restore the loss of income of the poor and vulnerable; and (ii) to mitigate job loss and maintain critical value chains, adversely impacted by the implementation of COVID-19 containment measures. This objective can be achieved through the implementation of the following three components. Component A – Support to the Poor, to provide financial support to the poor and vulnerable to cover loss of income and lost livelihoods. Component B – Support to Businesses, to provide support to Small and Medium Enterprises (SMEs) and other businesses affected by the economic slowdown in the form of tax and import duty rebates, access to foreign currency, concessional loans and other economic stimulants. Component C – Project Management, for the design, implementation and real time results monitoring, coordination with the private sector, relevant government agencies and programs.

This proposal was not responded to and, in the meantime, rampant corruption over resources took place. While subsequent investigations carried out by the National Assembly were inconclusive, CSOs working in the transparency sector produced detailed investigations into the abuse of the funds and reported, amongst other findings, that:¹⁰

- The government remained elusive and unresponsive to the Gambian public.
- From the Central Bank, the government illegally withdrew 25% of the International Monetary Fund's USD 47.1 million disbursement to fight COVID. This was a loan that taxpayers must ultimately service. The withdrawal was illegal since it should have gone to the National Assembly, thereby breaching section 155(3) of the Constitution.
- It was difficult to track the expenditure of donated funds, with the government accountable to neither donors nor citizens.

The COVID-19 response, and the massive resource envelope released by the government, no doubt played a major role in giving undue advantage to the incumbent so close to the elections. Food aid, contracts to preferred suppliers, and even excess cash were used to great effect as campaign tools to garner support and boost the eventual number of votes that the president secured on 4 December 2021, achieving an undisputed victory.

Nevertheless, the COVID-19 pandemic did not affect the election process. By the time the registration commenced, The Gambia's daily infection cases had passed from a peak of about 587 in August 2021 down to almost zero cases in November–December the same year.¹¹ Nevertheless, there was ample evidence that fears of 'super-spreader events' were well

9 The Point 'Gambia: Business, civil society and youth ask The Gambia to prioritize poor and vulnerable in its COVID-19 Response Plan' (8 April 2020) <https://thepoint.gm/africa/gambia/article/business-civil-society-and-youth-ask-the-gambia-to-prioritize-poor-and-vulnerable-in-its-covid-19-re> (accessed 26 May 2022).

10 Gambia Participates 'Corona, The Gambia and the millions [Video clip]' <https://www.youtube.com/watch?v=e53otChkjCo> (accessed 26 May 2022).

11 Worldometer 'The Gambia: Coronavirus cases' <https://www.worldometers.info/coronavirus/country/gambia/> (accessed 26 May 2022).

founded, with political rallies being held across the country where there was limited wearing of masks and zero social distancing. One Election Observer Mission (EOM) noted that:¹²

The December 4 presidential 2021 contest took place within the context of new global concerns about a new COVID-19 variant. Elections Watch Observers noted inconsistent adherence to COVID-19 safety protocols. While 73% of Elections Watch Observers noted that IEC officials wore face masks throughout the day, Elections Watch Observers also reported that in only 7% of polling streams did all or most voters wear face masks. In 87% of polling streams observed, some voters wore face masks, and in 6% no voters wore face masks. In addition, only 19% of polling streams observed by Elections Watch Observers had sufficient social distancing throughout the day.

1.1.4 Political processes and the electoral system

The Gambia is a Presidential Republic in which the president is both the head of state and head of government. The country has undergone three referendums. The first was in November 1965 when, at independence, the leadership of the internal government sought to replace Queen Elizabeth II as Head of State, thereby also eliminating the post of Governor-General. However, that first attempt failed. There were 154 626 registered voters for the referendum, with 93 484 valid votes cast. While 65.85% voted for the proposal, this failed to reach the two-thirds support (66.66%) required for the proposal to be accepted. A second attempt was made five years later in 1970, which resulted in a successful 'Yes' vote. Then Prime Minister David (later Dawda) Jawara was duly elected president by Parliament, replacing Queen Elizabeth II (represented by Sir Farimang Mamadi Singhateh) as Head of State on 24 April 1970.¹³

The First Republican Constitution was promulgated and remained until 1994, when it was abrogated and replaced by rule of decree by the military junta. In 1996, The Gambia's military transition ended, with the commencement of the Second Republic after a referendum was held on 8 August of the same year. The new Constitution was approved by 70% of voters, with a voter turnout of 87%.¹⁴

1.2 Legal framework

1.2.1 International treaty obligations

The Gambia has signed on to approximately 157 international, continental and regional treaties and conventions. The most significant to this assessment are listed in Table 1.1.

Table 1.1: Ratification of international treaties and conventions

1979	International Covenant on Civil and Political Rights (ICCPR)
1983	African Charter on Human and Peoples' Rights (African Charter)
2009	African Union Convention on Preventing and Combating Corruption (AUCPCC)
2018	African Peer Review Mechanism (APRM)
2019	African Charter on Democracy, Elections and Governance (ACDEG)

- 12 EWC '2021 presidential election preliminary statement' (5 December 2021) 3 https://www.ndi.org/sites/default/files/EWC%20-%20Preliminary%20Statement%20on%20the%202021%20Presidential%20Election_Final.docx.pdf (accessed 8 April 2022).
- 13 UCA 'Gambia (1965-present)' <https://uca.edu/politicalscience/dadm-project/sub-saharan-africa-region/gambia-1965-present/> (accessed 19 March 2022).
- 14 As above.

However, despite the plethora of agreements to which the country acceded, the principles of democracy, the rule of law, protection of human rights, transparency and accountability remain elusive, especially during the 22 years of the Armed Forces Provisional Ruling Council (1994–1996) and Alliance for Patriotic Reorientation and Construction (1996–2016) administrations. Nevertheless, the Constitution, in section 219 (foreign relations), provides for the domestication of The Gambia's treaty obligations:

The state shall endeavour to ensure that in international relations it

- (a) promotes and protects the interests of The Gambia;
- (b) seeks the establishment of a just and equitable international economic and social order;
- (c) fosters respect for international law, treaty obligations and the settlement of international disputes by peaceful means; and
- (d) is guided by the principles and goals of international and regional organisations of which The Gambia is a signatory.

1.2.2 National legislation on citizens' political rights and access to information

Constitution of The Gambia, 1997

The legal system of The Gambia is based on common law. The most relevant access to information provision is in the 1997 Constitution.¹⁵ As mentioned earlier, it was accepted in a referendum (70% 'Yes' vote) in 1996, ushering in the Second Republic the following year. Even though the Access to Information Act was passed in 2021, policy and practice on the proactive disclosure of information is virtually non-existent. This is despite the fact that the Constitution provides ample protection to the right of access to information as an integral part of the right to freedom of expression and related rights. Article 25 on the freedom of speech, conscience, assembly, association and movement states:

1. Every person shall have the right to –

- (a) freedom of speech and expression, which shall include freedom of the press and other media;
- (b) freedom of thought, conscience and belief, which shall include academic freedom;
- (c) freedom to assemble and demonstrate peaceably and without arms;
- (d) freedom of association, which shall include freedom to form and join associations, and unions including political parties and trade unions.

¹⁵ Constitution of the Republic of The Gambia, 1997
<https://www.refworld.org/docid/4811c33f2.html> (accessed 19 March 2022).

Section 26 of the Constitution tries to uphold citizens' rights, stating that:

Every citizen of The Gambia of full age and capacity shall have the right, without unreasonable restrictions –

- (a) To take [part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and stand for elections at genuine periodic elections for public office, which elections shall be by universal and equal suffrage and be held by secret ballot.

Section 39, which focuses on the franchise, provides for the right to vote and be registered:

- (1) Every citizen of The Gambia being eighteen years or older and of sound mind shall have the right to vote for the purpose of elections of a President and members of the National Assembly and shall be entitled to be registered as a voter in a National Assembly constituency for that purpose.

Section 40 states that all elections are to be by secret ballot and section 41 prescribes electoral law and its emanation as follows:

Subject to the provision of this Constitution, an Act of the National Assembly may make provision for giving effect to the provisions of the Chapter and without prejudice to the generality of the foregoing may provide for –

- (a) the registration of voters for the purpose of public elections;
- (b) voting at, and the conduct of, public elections and referenda;
- (c) The duties of public officers in connection with the registration of voters and the conduct of public elections and referenda;
- (d) Equal access to public facilities and the media by candidates at public elections.

Article 19's 'International standards: Right to information' states that:¹⁶

The right of access to information is recognised under Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) as an element of freedom of expression. It is included as the right to seek and receive information.

16 Article 19 'International standards: Right to information' (5 April 2012) <https://www.article19.org/resources/international-standards-right-information/> (accessed 19 March 2022).

Access to Information Act, 2021

On 1 July 2021, The Gambia became the latest country in the ECOWAS region to promulgate an access to information law,¹⁷ which was signed by President Barrow about a month after its passage through the National Assembly. It came into force on 18 August of the same year.

The Act applies to all public institutions and to semi-autonomous, or even private bodies, that are owned or controlled by the government. It also extends, in section 3(c), to cover 'a private organisation or private person who operates with substantial public funds or benefits (directly or indirectly from public funds) or which performs public functions and services using public funds'. Section 7(1) of the Act also provides for proactive disclosure:

7(1) Every public body shall publish in such

Disclosure manner as maybe prescribed the following information as produced by or in relation to that body within 30 days of the information being generated or received by that body –

- (a) manuals, policies, procedures or rules or similar instruments which have been prepared for, or are used by, officers of the body in discharging that body's functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the body with respect to rights, privileges or benefits, or to obligations, penalties or other consequences, penalties or other consequences, to or for which persons may be entitled or liable;
- (b) the name, designations and other particulars of the Information Officer of the public body, including his or her contact details and electronic addresses where persons may submit requests for information;
- (c) any prescribed forms, procedures, processes and rules for engagement by members of the public with the public body;
- (d) the particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formation or implementation of its policies, or similar documents;
- (e) where meetings of the public body, including its boards, councils, committees or similar or other bodies are open to members of the public, the process for direct or indirect engagement and where a meeting is not open to the public, the contents of submissions received, the process for decision making and decisions reached.
- (f) detailed information on the design and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
- (g) all contracts, licences, permits, and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
- (h) all contracts, licences, permits, authorisations and public-private partnerships granted by the beneficiaries;

¹⁷ Access to Information Bill, 2021 https://www.rti-rating.org/wp-content/uploads/2021/09/Gambia.ATI_Jul21.passed-by-assembly.pdf (accessed 19 March 2022).

- (i) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the public body; and
- (j) any other information as directed by the Information Commission.

(2) Every public body shall annually publish in such manner as may be prescribed the following information produced by or in relation to that body –

- (a) the particulars of its organization, functions and duties;
- (b) information containing interpretations or particulars of Acts or policies administered by the body;
- (c) details of its processes and procedures for creating, keeping, organizing and maintaining information;
- (d) a list of all the categories of information held by it or under its control;
- (e) a directory of its employees including their powers, duties and titles, indicating the permanent staff, the temporary staff and the outsourced staff, recruitment procedures and vacancies;
- (f) the salary band for each public employee and officer, including the system of compensation as provided in its laws, and the procedures followed in its decision-making process, including channels of supervision and accountability;
- (g) detailed travel and hospitality expenses for each employee and officer, and gifts, hospitality, sponsorships or any other benefits received by each employee and officer;
- (h) a description of the composition, functions and appointment procedures of the boards, councils, committees and other bodies consisting of two or more persons, constituted for the purpose of advice to or managing the public body;
- (i) the detailed actual budget, revenue, expenditure and indebtedness for the current financial year, including all related estimates, plans, projections and reports, including audit reports;
- (j) the annual reports submitted to the Information Commission under section 54 of this Act; and
- (k) any other information as directed by the Information Commission.

However, the Act has an overriding effect on inconsistent legislation, as indicated in section 4:

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secret Act, General Orders of the government, regulations and by-laws of any public body.

Article 19 of the ICCPR is significant because, during the 3rd cycle and 34th session of the United Nations Universal Periodic Review, it was recommended that The Gambia: 'Ensure

media and freedom of expression provisions contained within the Constitution comply with international standards, as outlined under article 19 of the International Covenant on Civil and Political Rights'.¹⁸ The recommended reforms focused on freedom of opinion and expression and the right to information, precisely because there are still laws on The Gambia's statute books that contravene access to information principles. These include: sections 51, 52, 59 and 181 of the Criminal Code;¹⁹ sections 138 and 173(A) of the Information and Communications Act (Amended Act) 2013 (which create several new offences for online speech, punishable by a 15-year jail term and/or a fine of three million dalasi (USD 283 000));²⁰ and section 61 of the Children's Act ²¹– all of which impede free speech and media rights.

Additionally, proposals to advance the reform of media laws and other legislation impacting on freedom of expression were presented to the government by the Committee to Protect Journalists in May 2018. These proposals put forward a number of recommendations, which included 'repealing section 173(A) of the Information and Communications Act 2009 (as amended 2013) and the provisions on criminal defamation (section 178 of the Criminal Code) and sedition (section 52 of the Criminal Code)'.²² Notably, in May 2018, the Supreme Court of The Gambia declared parts of the Information and Communications Act as unconstitutional. The Court struck down 'criminal defamation' by narrowing the definition of sedition to apply only to 'the person of the president' and the 'administration of justice'.²³

The disposal of archaic and repressive laws impeding on freedoms was not lost on the ECOWAS Court, which ruled, in February 2018, that Gambian authorities should repeal criminal prohibitions on libel, sedition and false news.²⁴

- 18 Article 19 'Universal Periodic Review submission for consideration at the 34th session of the working group in November 2019' (4 April 2019) 5 https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf (accessed 26 May 2022); see also UNHRC 'Universal Periodic Review – Gambia: Matrix of recommendations' <https://www.ohchr.org/en/hr-bodies/upr/gm-index> (accessed 19 March 2022).
- 19 The Criminal Code https://www.policinglaw.info/assets/downloads/Gambian_Criminal_Code.pdf (accessed 19 March 2022).
- 20 The Information and Communications Act, 2009 <https://www.wipo.int/wipolex/en/text/238413> (accessed 19 March 2022). For an analysis of the amendment see Refworld 'The Gambia: New internet law furthers government crackdown on free expression' [https://www.refworld.org/docid/51dfb8074.html#:~:text=On%205%20July%202013%2C%20Gambia's,Dalasis%20\(around%2063%2C250%20Euros\),](https://www.refworld.org/docid/51dfb8074.html#:~:text=On%205%20July%202013%2C%20Gambia's,Dalasis%20(around%2063%2C250%20Euros),) (accessed 19 March 2022).
- 21 The Children's Act, 2005 <https://www.ilo.org/dyn/travail/docs/1957/Children%20Act.pdf> (accessed 19 March 2022).
- 22 Article 19 et al 'Joint submission to the Universal Periodic Review of the Gambia by ARTICLE 19, Access Now and the Committee to Protect Journalists for consideration at the 34th session of the Working Group in November 2019' (4 April 2019) 6 https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf (accessed 19 March 2022).
- 23 Global Freedom of Expression 'Gambia Press Union v. Attorney General' <https://globalfreedomofexpression.columbia.edu/cases/gambia-press-union-v-attorney-general/> (accessed March 2022). On 2 September 2014, The Gambia Press Union (and its vice-president and an individual member) brought an application before the Supreme Court of The Gambia, arguing that the provisions of the Criminal Code relating to the offences of sedition and the publication of false news or information were unconstitutional. The Press Union believed that the rights of media practitioners to freedom of speech and of the press were violated by the existence of the law (para 1). The Press Union argued that sections 51 (definition of seditious intention), 52 (offence of committing an act with seditious intention), 52A (power to confiscate printing machine on which seditious material is published), 53 (statutory time limit for initiating prosecution), 54 (evidence required for a conviction), 59 (publishing or reproducing any statement or report likely to cause fear and alarm to the public or to disturb the peace) and 181A (false publication) of the Criminal Code were unconstitutional.
- 24 Federation of African Journalists and Others v The Gambia, ECW/CCJ/JUD/04/18 <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/04/FAJ-and-Others-v-The-Gambia-Judgment.pdf> (accessed 26 May 2022).

Additionally, the Indemnity (Amendment) Act 2001 – which gives the president power to indemnify any person against prosecution for any act committed to quell an unlawful assembly or other emergency situation – is a danger to fundamental freedoms that speak to free expression and the demand for public accountability and/or information.

The most egregious of these laws was an amendment by the National Assembly to section 114 of the Criminal Code in 2013, setting out stiffer punishments for persons found guilty of giving false information to public officials. The law gives courts the mandate to impose a jail term of five years, or a fine of 50,000 dalasi (USD 1 000), for a misdemeanour that previously received a jail term of not more than six months or 500 dalasi (USD 10). Clearly, this amendment not only discourages whistle-blowing but also exposes whistle-blowers, or any person seeking to access information for that matter to reprisals, intimidation and total exposure to harm.

The implementation of the Access to Information Act, according to experts, should be a process that is dependent on principles of technical skill, political will and ability. In their research, Laura Neuman and Richard Calland refer to these precepts as: ‘the politics of implementation’.²⁵

In essence, a whole new infrastructure and a collaborative culture is needed to transform the way information is managed, organised, stored, accessed, protected, and proactively disclosed in The Gambia. This requires major seismic shifts in the legislative processes and political leadership as well as in the proactive stance and constructive engagement of non-state actors, particularly CSOs. The next steps towards institutionalising and operationalising the access to information infrastructure, as prescribed by law, requires the creation of an Information Commission. Part V, section 41 of the Act requires the president, in consultation with the Public Service Commission and through the confirmation of the National Assembly, to appoint five Commissioners, two of whom must be women. It is unclear how far this process has progressed or if it has even begun.

25 L Neuman & R Calland ‘Making the Access to Information law work: The challenges of implementation’ (2007) https://www.cartercenter.org/resources/pdfs/peace/americas/making_the_law_work.pdf (accessed 26 May 2022).



Part two: Stakeholder Assessment of Compliance with the Guidelines

Chapter 2



CHAPTER 2: APPOINTING AUTHORITY AND ELECTION MANAGEMENT BODY

2.1 Introduction

The Gambia's National Assembly passed the Access to Information Act, which was assented to by President Barrow on 8 August 2021. However, the Act will only come into effect in 2023. Provision 61 of the Access to Information Act, which provides for an 'Implementation Plan', states that:

every public body and relevant private body shall submit an implementation plan to the Commission within eighteen months of the commencing of this Act, or within six months of the establishment of the body, whichever is the earlier.

Therefore, since the Act was assented to on 8 August 2021, by 8 February 2023, public bodies should submit their implementation plans to the Commission, if the Commission has not been established earlier.

Further to this, provision 62, which focuses on 'Publication of Information Manual', mandates that:

within two years of commencement of this Act, or within six months of the establishment of the body, whichever is the earlier, all information holders must prepare information manuals to be widely disseminated.

Therefore, by 8 August 2023, all 'information holders' should disseminate 'information manuals' to the public. According to the Act, an information holder means a public body.

According to the IEC's website, 'a seven-member Provisional Independent Electoral Commission (PIEC) was established on the 20th of December 1995'.²⁶ The PIEC was temporary and only served to bridge the gap while the country transitioned from a military regime to a constitutional democracy. The PIEC oversaw the 1996 referendum, and the presidential and National Assembly elections. The PIEC was then dissolved, and the IEC was formed on 17 April 1997. The difference between the two is the IEC's permanent status and the reduction of its membership from seven to five commissioners. The IEC's mandate is provided for under section 42 of the 1997 Constitution. The PIEC, on the other hand, was mandated by section 6 of the PIEC Decree, Decree 62 of 1995.

2.2 Challenges leading up to the 2021 presidential elections

The Gambia's IEC has witnessed many challenges over the years and its credibility has waned and ebbed. The IEC has fielded, amongst other events, political interference by former president Jammeh, court cases, accusations of political bias by opposition parties, and wanton disenfranchisement of the diaspora voters, which is a sizable fifth (about 19%) of eligible voters. In addition, the IEC has experienced unceremonious dismissals and illegal appointments of its chairpersons. On 29 November 2021, Afrobarometer released a report showing that despite fairly positive assessments of election quality, only about half (49%) of the citizens say they

26 IEC Gambia 'A brief history of politics and elections in The Gambia' <https://iec.gm/about-iec/history/> (accessed 17 May 2022).

trust the IEC 'somewhat' or 'a lot', a significant decline compared to 2018 (64%).²⁷

In January 2021, Gambians from the diaspora took the government and the IEC to court over the continued disenfranchisement of more than 200 000 Gambians living abroad. In March the same year, the Supreme Court ruled that:²⁸

Pursuant to section 39 of the Constitution, every Gambian, including those residing outside the jurisdiction, is entitled to be registered and to vote in an election to the offices of President, members of the National Assembly, for local government offices and traditional rulers as well as in referenda.

However, the IEC has refused to abide by this ruling and went ahead with a voter registration exercise at the national level in June and July 2021. About 987 484 Gambians had registered at the end of July 2021, which is low given that the number of registered voters was 886 578 in 2016. This means that only about 100 000 more people have registered five years later. For a population of 2.3 million people, where the median age is 20 years, it is difficult to fathom the level of apathy that has struck the country since the departure of President Yahya Jammeh and the commencement of the coalition government led by President Adama Barrow. The IEC has admitted that irregularities occurred during the registration process including multiple registrations. The IEC requested the Ministry of Justice to appoint judges for the revising courts. Additionally, the National Human Rights Commission (NHRC) completed a report on the registration exercise, in which it also observed irregularities and proposed recommendations.²⁹

On 30 October 2021, the IEC presided over the nomination process of presidential candidates. This process was flawed since the IEC had not yet established a verification mechanism to investigate candidates' declaration of their assets and academic qualifications (a senior secondary school certificate). This transpired amid allegations that certain candidates have criminal records and submitted falsified documents to support claims of eligibility.

Nevertheless, on 5 November, the IEC invited the public (mostly the media) to a vetting exercise of the presidential aspirants, which was unsatisfactory and could just as well not have taken place. Those that took part described the process as too restrictive and a mere procedural exercise that did not serve the purpose of real scrutiny. Participating journalists stated that the time for vetting was too short as they were only given a few minutes to examine the candidates' documents and no opportunity to raise any questions. On the same day, after a closed session, the IEC announced the names of those that had qualified and who had not, including three independent candidates and two political parties that had withdrawn from the process. Six independent candidates were disqualified under section 42(2)(a) of the 2009 Elections Act because some had submitted information in support of their nomination by registered voters on notebooks and not on the IEC's legally prescribed form. Most only submitted information in support of their nomination by fewer than the legally required 200 registered voters per administrative district. Others submitted neither a signed Code of Campaign Ethics as per section 92(2) of the Elections Act, nor the assets declaration form as per section 42(7). The only female candidate, Marie Sock, was also effectively disqualified because she did not meet the requirements of section 42 (2)(a) of the Election Act, which dictates the number of

27 SM Jaw & MAA Twum 'Most Gambians value elections but fewer trust the institution that manages them' (22 November 2021) 491 Afrobarometer Dispatch https://www.afrobarometer.org/wp-content/uploads/migrated/files/publications/Dispatches/ad491-most_gambians_value_elections_but_fewer_trust_iec-afrobarometer_dispatch-19nov21.pdf (accessed 26 May 2022).

28 Bakary Bunja Dabo and Others v Attorney General and Independent Electoral Commission (2020) SC 001/2020.

29 GM NHRI 'Voter registration monitoring report 2021' <https://www.gm-nhrc.org/download-file/1c7a4523-f922-11eb-86ec-022a5fa1767e> accessed 26 May 2022).

registered voters needed to support the candidate's nomination. She also did not submit an asset declaration form as per section 42(7) of the Election Act. The biggest scalps the IEC took were Citizens' Alliance, led by Dr Ismaila Ceesay, and Mai Fatty's Gambia Moral Congress, disqualifying each of them. Both mounted a court challenge to overturn their disqualification, and won. In total, 17 presidential aspirants were disqualified.

Table 2.1: Cases brought against the IEC in 2021

Complainants and their issues	Date of ruling and the verdict	Outcome
Five Gambians in the diaspora with respect to the disenfranchisement of 200 000 Gambians living abroad.	On 27 January 2021, the Supreme Court stated that barring Gambians in the diaspora from becoming members of executive committees of political parties was illegal. It also reaffirmed a second principle, under section 39 of the Constitution, which guarantees the right of every eligible Gambian residing in and outside the country to vote in elections and referenda.	The judgment was not adhered to by the IEC. The case was referred back to the Supreme Court after enforcement was sought at the High Court.
Gambia Participates, Policy Development and Research Centre, a councillor of the Banjul City Council with respect to a filed summons before the High Court against the Mayoress of Banjul (Rohey Malick Lowe), the IEC and the Attorney-General challenging the legality and validity of the mandate accorded to the Mayoress to issue attestations to Banjul constituents in ongoing general voter registration.	In July 2021, the Court agreed that the 'actions of the Mayoress of Banjul in issuing attestations to constituents of the City of Banjul in Independent Electoral Commission (IEC) general registration of voters process are in contravention of the Elections Act'. The court moved to ask the IEC to cancel all voter cards that were supported by attestation forms issued and/or endorsed by the Mayoress of Banjul.	There is no evidence that the IEC has complied with the ruling.
Ismaila Ceesay, presidential aspirant with respect to the violation of his rights when he was disqualified from running for the highest office, without due process of the law being followed.	On 23 November 2021, the Court agreed that the IEC's wanton disregard and non-compliance with the prescription of the law and its own guidelines profoundly violated the right of Citizens' Alliance leader Dr Ismaila Ceesay to stand for election.	The IEC has yet to comply with the ruling.
Mai Fatty, presidential aspirant and candidate, with respect to the violation of his rights when he was disqualified from running for the highest office, without due process of the law being followed.	The Court agreed that the IEC's wanton disregard and non-compliance with the prescription of the law and its own guidelines profoundly violated the right of Gambia Moral Congress leader Mai Fatty to stand for election.	The IEC has yet to comply with the ruling.

2.3 Composition and mandate of the IEC

The IEC was established by section 42 of the 1997 Constitution, which states:

- (1) There shall be an Independent Electoral Commission for The Gambia which shall be part of the public service.
- (2) The members of the Commission shall be a Chairperson and four other members.
- (3) The members of the Commission shall be appointed by the President in consultation with the Judicial Service Commission and the Public Service Commission.
- (4) Subject to the provision of this section, the members of the Commission shall be appointed for a period of seven years and may be re-appointed for one further term.

Currently, there are four commissioners, namely: Alieu Momarr Njai (Chairperson), Joseph Colley (Vice-Chairperson), Anthony Robert Secka (Commission Member) and Lamin Cham (Commission Member). The only female IEC member retired three months before the 2021 presidential elections leaving the Commission a member short. This was confirmed on the IEC's website on 1 October 2021.³⁰

Quorum: According to provision 42(2) of The Gambia's 1997 Constitution, 'The members of the Commission shall be a Chairman and four other members.' Provision 42(7) states: 'Three members of the Commission including the Chairman shall form a quorum.' With regards to reporting the IEC's activities, provision 42(9) states that 'the Commission shall make an annual report on its activities to the National Assembly'. However, this is not proactively disclosed on the IEC's website.³¹

Appointment procedures: Enquiries about the appointment of members of the IEC have revealed that there is very little information shared with the public on the appointment and termination of the commissioners. In 2021, the filling of the position of the Vice-Chairperson was announced when Joseph Colley took up the office after serving for years as IEC Director of Communications. Before Colley's appointment, President Barrow had illegally appointed Mr Oreme Joiner. This news faced public outcry as Mr Joiner was allegedly from the president's National People's Party (NPP).³² The appointment was rescinded, and Mr Colley was eventually appointed to the position.³³

Information on the date of members' appointments to the IEC is rarely made available. In the case of the current IEC Chairperson, a cloud still hangs over the legality of his tenure. Although

30 M Jah 'Resignation of IEC only female Commissioner Isatou Jallow Ndure' Independent Electoral Commission (1 October 2021) <https://iec.gm/retirement-of-iec-only-female-commissioner-isatou-jallow-ndure/> (accessed 22 May 2022).

31 See information on five commissioners at IEC Gambia 'Commissioners' <https://iec.gm/about-iec/commissioners/> (accessed 18 May 2022).

32 Y Taylor 'UDP condemns IEC's indefinite postponement and appointment of Remi Joiner' Gainako (Banjul) 5 January 2021 <https://gainako.com/udp-condemns-iecs-indefinite-postponement-appointment-of-remi-joiner/> (accessed 18 May 2022).

33 'Barrow makes U-turn on Remi Joiner's IEC appointment after outcry' Gambiana (Banjul) 7 January 2021 https://gambiana.com/barrow-makes-u-turn-on-remi-joiners-iec-appointment-after-outcry/?fbclid=IwAR1YjV5-X9NugWJ4dvp_eHpRk4nTwuXP1N8j3CRvS75MY630a_-mOxkOhvk (accessed 18 May 2021).

his term expired, he continues to serve as head of the IEC. Journalists' questions about the commencement of his term were not answered during press conferences in 2021.

Gender balance: There are no legal requirements with regards to the gender composition of the IEC. However, there have been three female commissioners since 1997: the first was Sarah Grey-Johnson, followed by Fatima Baldeh and then by recently retired Isatou Jallow Ndure.

As the only female commissioner, Madam Isatou Jallow Ndure resigned in the run-up to the election in November 2021. Enquiries from international advocacy organisations revealed that her position is still vacant and that she had actually tendered her resignation in July 2021. The IEC has not responded to questions from journalists on when another commissioner will be appointed and on the gender composition of the IEC in general. However, the IEC reiterated that commissioner appointments are sanctioned by the president, whom they are currently waiting on.

Appointment: Appointment procedures of IEC commissioners are opaque, in contrast to the newly established NHRC, which goes through a rigorous public process as well as vetting and interviews by the National Assembly. Civil society also has a lot more involvement in the vetting process of NHRC commissioners compared to the vetting process at the IEC.

Currently, there is no provision to consult with civil society on the appointment and termination of IEC commissioners. One key difference is that commissioners' appointments are not subject to approval by the National Assembly. The Constitution provides for the IEC to submit an annual report to the National Assembly, and that is where their interactions end. However, it is worth noting that the Constitutional Review Commission (CRC), enacted by the fifth legislature, recommended public involvement in the appointment process, but the draft Constitution was rejected in its second reading by the National Assembly defeating the recommendation.

Termination: The Constitution provides for the president to remove a commissioner. However, before their removal, a tribunal of three judges of the Superior Court investigates the matter and reports on the facts. The commissioner in question is entitled to appear before the tribunal with legal representation. Section 42(6) of the Constitution states that:

The President may remove a member of the Commission from office –

- (a) For inability to perform the functions of his or her office whether arising from infirmity of mind or body or from any other cause;
- (b) If any circumstances arise which would have disqualified him or her from appointment to the Commission; or
- (c) For misconduct, but before removing a member, the president shall appoint a tribunal of three judges of a superior court to enquire into the matter and report on the facts. A member of the Commission shall be entitled to appear and be legally represented before the tribunal.

However, in reality, these procedures have never been followed. For instance, former President Jammeh arbitrarily dismissed Bishop Telewa Johnson, who was chairperson of the IEC at the time, and another commissioner, Imam Saga Fatty. They were replaced with Gabriel Roberts (the former PIEC Chairperson, who was dismissed by President Jammeh after unsubstantiated accusations of misconduct during the 1996 elections), and James Abraham. In actual fact, both Chairperson, Bishop Johnson and Imam Fatty's dismissals were linked to the IEC's decision in December 2000 to seek a ruling from the Supreme Court on holding local government elections and on their apparent assertiveness over the boundary demarcation exercise, which

had irked Jammeh. The Supreme Court ruled in the IEC's favour and the Bishop and the Imam were dismissed.

President Jammeh, at the time, had acted unconstitutionally. In response to the injustice and arbitrariness on President Jammeh's part, the leading opposition parties, the United Democratic Party (UDP) and the National Reconciliation Party (NRP), filed a legal suit against the Attorney-General, challenging the removal of the commissioners. The presidential elections of 2002 were imminent and, for reasons best known to the Supreme Court, it opted to deliver its judgment after the elections. When it finally ruled on the matter, the Supreme Court decided to dismiss the case. This started a wave of wanton political interference in the IEC by then President Jammeh. Consequently, security of tenure was severely weakened and practically non-existent. Commissioners were hired and fired with great frequency. What is more, commissioners endured intimidation and harassment even after their removal from office. Former Chairman Ndoni Njie and Commissioner Sulayman Mboob were arrested and detained in 2006 after their unceremonious removal from the IEC under President Jammeh's orders, following a controversial supplementary registration exercise. However, neither constitutional process nor procedure was followed in this matter.

Access to information: The IEC currently has a records office that stores physical records, which can be accessed after seeking approval. The procedure for accessing information involves submission of a letter of request for information. The requested information is only released after the IEC's approval. This is a cumbersome and time-consuming process for the media and the general public. The unavailability of the request process online exacerbates the lengthy process. Even information that has already been made public may require approval from the IEC Communications Director or a senior officer. In most cases, information is not made available in braille for visually impaired persons. Although IEC infomercials and press releases are often aired on radio and TV in English and local languages, sign language is not featured during any of the IEC's press conferences and stakeholder engagements.

Monthly IEC briefing: The IEC holds monthly press briefings with the media, civil society leaders, and political party representatives, which has been the IEC's primary form of engagement for informing key stakeholders. At the time of drafting this study, the most recent stakeholder engagement was on 2 March 2022. This is in addition to two press briefings in February and in March. It must be noted that the IEC did not hold any press conferences after either the nomination process for the presidential elections or during the run up to the parliamentary elections. The IEC did, however, hold an election observer briefing in the week of the parliamentary elections.

Information on upcoming elections and political issues is usually shared during press briefings, which are often an entry point for stakeholders to request information. Follow-ups for requested information can be pursued at the IEC headquarters by contacting the IEC Communications Director.

IEC website:³⁴ The IEC maintains a website that contains information on election data, constituencies, political parties, and other data and statistics. This wealth of information constitutes a database for research on Gambian elections. Unfortunately, the IEC's online presence is somewhat limited to their website. On social media, the IEC has Facebook and Twitter accounts, although they had not been updated regularly until recently. At the time of drafting this study, the last Facebook and Twitter posts were both on 6 April 2022, and a review of these accounts shows that postings are not frequent.³⁵

Standard procedure for RFI: There is no known procedure for requests for information (RFI), which includes RFI on the costs of reproduction, timeframes and the format of information requested. The most effective RFI approach is to contact the IEC Communications Director via

34 IEC 'Home' <https://iec.gm/> (accessed 26 May 2022).

35 See IEC Facebook page at <https://www.facebook.com/www.iec.gm/>; and the IEC Twitter account at <https://twitter.com/gambiaiec> (accessed 26 May 2022).

telephone and/or email. Journalists regularly struggle to obtain information from the IEC. The information requested is sometimes provided but at other times, the request can either be denied or delayed.

Organisational structure and operations of the IEC: The IEC outlines its organisational and management structure on their website.³⁶ However, no names are provided for the actual designations (see Figure 2.1).

According to the IEC website on 'Management':³⁷

The Commission is composed of persons appointed in accordance with Section 42 of the Constitution, and the Staff of the IEC who are appointed by the Commission. The former directs the policies of the IEC and the latter implements the adopted policies. The Staff structure at Headquarters is set into five distinct functional Divisions with each Division headed by a Director. These Divisions are: Administration, Operations, Training, Communications and Public Affairs, Finance and Information Technology.

However, the Elections Act prescribes how election officers are to be appointed. Section 5 states that:³⁸

- (1) Subject to this section and section 6, the Commission may appoint such number of election officers as it may consider fit, on such terms and conditions as it may determine.
- (2) Without prejudice to subsection (1), the Commission shall appoint for each Administrative Area a Returning Officer, and the Commission may appoint one person to hold both positions.
- (3) For purposes of conducting elections, the Commission shall appoint Presiding Officers whose duties shall include the smooth conduct of elections at polling stations.

In the context of the 2021 presidential elections, the IEC had only four commissioners, who usually act as both returning and presiding officers covering seven administrative areas. The Chairperson is based at the Election House, the IEC headquarters. This meant that an additional four people were co-opted and/or appointed to cover all these areas. In so doing, it is unclear whether the IEC followed the proper process for appointing these additional returning and presiding officers as prescribed in the Elections Act and there is no information to that effect:

Regarding objections to appointments, section 6 provides as follows:

- (1) Where the Commission appoints a person as an election officer, it shall publish that person's name in the Gazette inviting members of the public to make objections to the appointment.
- (2) A member who objects to an appointment under subsection (1) shall, within

36 IEC Gambia 'IEC Gambia organisational design' <https://iec.gm/about-iec/organisational-design/> (accessed 26 May 2022).

37 IEC Gambia 'Management' <https://iec.gm/about-iec/management/> (accessed 26 May 2022).

38 Section 5, Elections Decree No. 78 of 1996, as amended by Decree No. 91 of 1996, Decree No. 93 of 1996, Act No. 7 of 2001 <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5bea5346f950b7739509fdc5/1542083423420/Elections+Decree+78+of+1996.pdf> (accessed 26 May 2022).

seven days of the publication of the appointment in the Gazette, give the Commission his or her reasons in person or writing for objection to the appointment.

- (3) Where the Commission receives an objection under this section, it shall consider the objection and take a decision and its decision shall be final.
- (4) Where the Commission does not receive an objection in accordance with this section, it may confirm the appointment.

Annual report: While an annual report on the IEC's activities is submitted to the National Assembly, the report is not proactively disclosed to the public on any online platforms. To access the IEC's annual report, a request must be lodged at the National Assembly or at the IEC.

Procurement: With fewer than 11 months to the elections, the IEC made a submission to the National Assembly Select Committee on Lands, Regional Affairs and Ombudsman with the complaint that the Gambian government was not helping it resolve their stand-off with The Gambia Public Procurement Authority (GPPA). The disagreement concerned the awarding of a contract (for a biometric on-the-spot voter-registration system, and other materials) to Electoral Service International, a Canadian company whose offer was said to be less than that of the companies Smart Business Group, EKEMP International, and Dermalog. The GPPA wrote to the IEC citing section 12(2) of the GPPA Act, 2018.³⁹ This requires the GPPA's approval of all procurement processes; and since the IEC had not complied with the Act, the GPPA refused to approve the IEC's preferred supplier. The GPPA asked for the evaluation and ranking matrix of the other companies' bids.

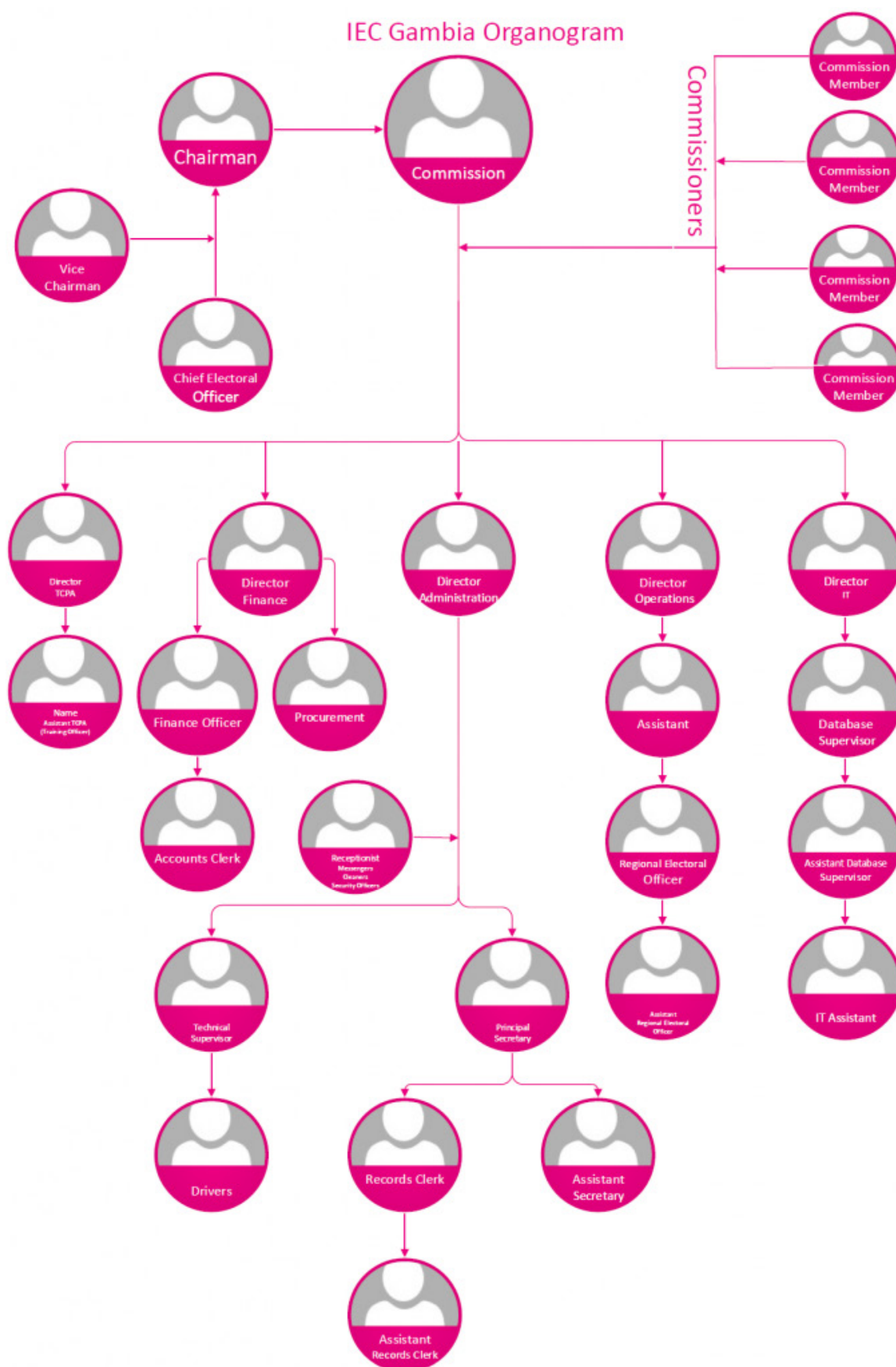
Needless to say, the stand-off had an impact on the election timetable, which led to another postponement of the voter registration exercise which had been scheduled to commence on 14 January 2021. The controversy forced the IEC to disclose more detailed information on its procurement procedures. In addition, the IEC was compelled to conduct a second procurement process for the biometric voter card registration system. However, the same company was awarded the project. While some information was made available to the media at the time, procurement procedures remain opaque. The National Assembly Select Committee did subsequently open an investigation into the matter. The outcome of that investigation is still unclear.

Funding and finance: The Elections Act provides for the IEC to acquire funds through two avenues: appropriations by the National Assembly, and/or grants, donations and fees (for example, for the registration of parties and candidates). The IEC may not, however, receive donations from political parties. Information on IEC funding is publicly available in the national budget, which, however, does not indicate the sources of funding. In some instances, the manner in which the funds are to be spent is not sufficiently itemised. This lacuna was detected when the funding allocation for the diaspora was being queried in 2020/21. After significant efforts to ascertain whether funding for diaspora registration and voting had been allocated in the 2021 budget, it was concluded that the budget data is not sufficiently disaggregated for this purpose. This raises questions on the manner in which the budget is presented.

Background of officers and their asset declarations: Information on the professional backgrounds of some IEC members is available on the website, which is nevertheless minimal and inconsistent, and is not standardised. Background information is not available for every commissioner, and neither is there any policy for members' declarations of their assets and interests, nor of the IEC's internal code of conduct.

³⁹ GPPA Act <https://gppa.gm/wp-content/uploads/2023/03/Final-GPPA-Act-2022-1-1.pdf> (accessed 26 May 2022).

Figure 2.1: IEC Gambia organogram⁴⁰



⁴⁰ IEC Gambia (n 36).

2.4 Pre-election proactive disclosure

Electoral calendar: In the pre-election period of the 2021 presidential elections, the IEC provided a detailed electoral calendar that was mostly followed. There were some challenges along the way, such as the rejection of the Draft Constitution by the National Assembly, which resulted in the referendum on the Draft Constitution being removed from the calendar. Similarly, the scheduled registration of the diaspora was removed from the calendar. Additionally, the IEC was forced to issue at least three notices on the elections calendar, which caused some confusion and consternation amongst stakeholders. Nonetheless, this was the first time a detailed longitudinal calendar had been issued by the IEC.⁴¹

Demarcation of constituencies: The process for demarcating constituencies does not fall within the IEC's mandate. Although the IEC was instituted as an electoral management body by the 1997 Constitution, provision 50 calls for the National Assembly to 'establish a Boundaries Commission which shall be responsible for demarcating constituency boundaries for the purpose of elections to the National Assembly'. To date, such a commission has not been established and the IEC itself does not have powers to demarcate constituencies. Section 88 of the 1997 Constitution states that:

- (1) The National Assembly shall comprise –
 - (a) Forty-eight members elected from the constituencies demarcated by the Boundaries Commission; and
 - (b) Five members nominated by the president [Act no 6 of 2001].

Constituencies were demarcated by former president Jammeh in 2015, increasing their number from 48 to 53. It is unclear whether the National Assembly (dominated by Jammeh's APRC party) overstepped its mandate and whether the demarcation was legal. This uncertainty notwithstanding, the increase to 53 constituencies persists.

While the list of constituencies has been published online by the IEC, there is no map for voters to identify their constituency. However, a voter's constituency is indicated on their voter's card. There has been a proposal by the Attorney General to further increase the number of constituencies to 69 and reduce the number of nominated National Assembly members from five to two, making a total of 71 seats. This proposal has yet to be finalised.

Voter registration process: The qualification criteria for obtaining a voter's card is well publicised by the IEC in newspapers, and online, and broadcast on TV and radio multiple times during the registration period. The registration process was outlined via a televised demonstration at the IEC headquarters, which showed how voter cards are issued and the procedures that voters go through before receiving the card.

The IEC targeted one million Gambians for registration in 2021. A total of 967 157 voters were registered at the end of the process, falling short of the IEC's target by about 40 000, which had already been reduced from the first announced target. The voters' roll is required to be made public by law, to allow the general public an opportunity to inspect the register in their area and then challenge any suspected illegal voters. Despite this, the IEC did not face any legal challenges at the revising courts, which usually rule over voter registration disputes, since no complaints were lodged. This was the first time in the history of The Gambia's modern politics that no political party had challenged the voter list. However, in the build-up to the commencement of the revising courts, some significant challenges bubbled to the

41 IEC Gambia 'Electoral Calendar 2021–2023' (19 July 2020) <https://iec.gm/download/electoral-calendar-2021-2023/> (accessed 26 May 2022).

surface, such as the removal of voter registers posted outside polling stations. Additionally, the IEC disclosed the double registration of at least 3 000 voters; however, this disclosure was curiously withdrawn by the elections regulator, claiming a fault in the system. Even then, the political opposition did not demand to vet such anomalies.

Another challenge was the lack of advocacy around how to contest the voters register. The IEC was invited by a Gambian CSO to appear on a radio programme to sensitise the public on the required process for challenging suspected illegal voters, but they never showed up. A number of concerns were flagged on social media, showing what appeared to be underaged children queueing to register for a voter's card.

Information on the location of voting centres was readily available. However, because The Gambia does not operate a postal address system, polling stations are often not easy to locate. Nevertheless, there are visible notices identifying polling stations once the area is located.

Voting stations: The IEC makes a concerted effort to position registration centres at schools and well-known public spaces such as at bantaba (local community centres). The location and number of voting stations is well publicised, and, in many cases, these are the same as the registration venues. This duplication helps ensure that voters are familiar with their voting station. The challenges that exist with voting stations are the same as those experienced at registration stations.

Voters' roll: The voters' roll is only made available to the public when it is posted outside registration centres in the run-up to the revising courts joining the process. The revising courts only sit after voter registration has been conducted. The law provides for the voters' roll to be posted at the registration centres so voters can challenge any suspected illegal voters via the revising court – although only voters registered at a particular polling station are posted outside that station. Political parties are provided the complete national voters' roll, however, allowing them to also challenge any suspected illegal voters on the roll.

Code of conduct for the media: The IEC rolled out its code of conduct for the media during a monthly stakeholder engagement held on 2 March 2021. Although the law had been in existence since the 1996 Election Decree, it had not been enforced in the past.

In The Gambia, canvassing for votes and airing of political advertisements is not allowed on the day before an election. During the 4 December 2021 presidential elections, the IEC admonished two Gambian media houses for airing political advertisements for the incumbent on this 'cooling-off' day. The IEC took exception to this violation of the 'cooling off' period and published its media laws, which are included in the Electoral Act. According to the media regulations in the Electoral Act that were handed out to journalists, 'the IEC shall, during an election campaign period, ensure that equal airtime is given to each candidate and national party on the public radio and television' (provision 93).

These media regulations are split into three sections. Part A focuses on 'rules relating to the public media and allocation of airtime' (provisions 93 and 134), and on 'private radio stations' (provisions 94 and 95). Part A also includes 'special provisions for the end of the campaign'. Part B contains 'media guidelines for candidates to have their campaign material broadcast on radio and television', while part C covers 'general ethics for all journalists and the media within election period'.

Outside the campaign and election period, the main media regulator is the Public Utilities Regulatory Authority (PURA), which only issues licences to radio and television stations. Newspapers and online media are not regulated by PURA; however, the Media Council of The Gambia has been established as an independent body by The Gambia Press Union (GPU). This body is discussed further in section 3.2 of this report.

Information on political parties: In the run-up to the elections, the criteria for registering

political parties and a list of registered parties was made available by the IEC. This provision is contained in the 1996 Election Decree, although some sections have been amended. The details of the political parties registered to participate in the election are all readily available on the IEC website.⁴²

Political parties in existence prior to the Elections Amendment Act 2015⁴³ are exempted from undergoing the stringent requirements of the new law, precisely because amendments from 2015 and 2017 could not be retroactively applied. Currently, political parties are required to pay a non-refundable fee of one million dalasi (USD 20 000) to be registered.

From 2016 to date, an additional ten parties have been registered via the new requirements, which include a total of 10 000 signatures of registered voters. This followed amendments that were made to the Electoral Act after 2015. From the requirement of 10 000 registered voters' signatures, at least 1 000 signatures must come from each of the seven administrative areas. Alternatively, 3 000 registered voters can come from any of the seven administrative areas. All ten parties paid one million dalasi (USD 20 000) to register. A registered voter is allowed to append their signature in the list of more than one political party.

Nominations and qualifications: Only six candidates contested the 2021 presidential elections: President Adama Barrow (NPP), Ousianou Darboe (UDP), Halipha Sallah (PDOIS), Mama Kandeh (GDC), Abdoulie Ebrima Jammeh (NUP), and Essa Faal, an independent candidate. Up to 26 presidential aspirants had applied to the IEC for clearance to contest the 4 December elections, but only six candidates were approved. This resulted in two parties successfully challenging the IEC's decision to disqualify them in court. The revising courts ordered the reassessment of the applications of Mai Fatty of The Gambia Moral Congress and Dr Ismaila Ceesay of Citizens' Alliance. In this regard, the Elections Act provides for the process for assessing the eligibility of persons who may or may not be nominated as candidates. Section 48 of the Elections Act illustrates:

The following persons may not be nominated as candidates for election to any office outlined under section 39, unless before nominations are held, they vacate their offices –

- (a) Magistrates and judges;
- (b) Members of The Gambia Armed Forces, Police Force, and any other security forces on active duty; and
- (c) Members of the Commission.

And, according to section 49:

- (2) A registered voter may object to a nomination paper on all or any of the following grounds, but on no other ground that –
 - (a) the description of the candidate is insufficient to identify the candidate;
 - (b) the nomination paper does not comply with or was not delivered in accordance with the provision of this Act;

42 As above.

43 IEC Gambia 'Election Act Amendments 2015'
<https://iec.gm/download/election-act-amendments-2015/> (accessed 26 May 2022).

- (c) 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.

In a letter to the IEC Chairperson, before the presidential candidate nominations, the Right2Know Gambia publicly raised concerns over the eligibility of some presidential aspirants, including reservations about some candidates' unconfirmed qualifications. The IEC ignored the concerns.

Code of conduct: The IEC code of conduct is not widely publicised. The IEC Code on Election Campaign Ethics Order is mandated by section 92(1) of the 1996 Elections Decree.⁴⁴ In the run-up to the 2021 presidential elections, in a meeting convened by the Inter Party Committee (IPC), a second 'code of conduct for political parties during a campaign' was publicised and signed by all registered political parties and is known as the Jang Jang Bureh Peace Accord.⁴⁵

A third code of conduct was signed by all presidential candidates in the run-up to the 4 December 2021 presidential elections. This initiative, pioneered by H.E. Mohammed Ibn Chambas, was coordinated by the International Institute for Democracy and Electoral Assistance (International IDEA) and monitored by the Panel of Eminent Persons, consisting of religious and moral leaders.⁴⁶

International IDEA also developed an additional code of conduct in the run-up to the 9 April 2022 parliamentary elections, which was signed by all candidates that qualified for the National Assembly elections.

Information on eligibility criteria that is available from the IEC is listed below:

- Information on arrangements for the inspection of the voters' roll by the public, to allow for any necessary corrections to be made – only available to political parties;
- Criteria and requirements for the registration of political parties;
- Timelines for the registration of international and domestic election observer missions; and
- Code of conduct for media.

44 As above.

45 E Jallow 'All registered parties sign Jang Jang Bureh Peace Accord' Gainako (Banjul) 11 November 2021 <https://gainako.com/all-registered-parties-sign-janjanbureh-peace-agreement-says-inter-party-committee/> (accessed 26 May 2022).

46 Y Taylor 'Factsheet: Find out details of the Peace Agreement signed by 6 Gambian Presidential Candidates' Gainako (Banjul) 9 December 2021 <https://gainako.com/factsheet-find-out-what-was-contained-in-the-peace-agreement-signed-by-the-six-gambian-presidential-candidates/> (accessed 26 May 2022).

Information on eligibility criteria that is not readily available is listed below:

- Details of applications made by political parties for registration as participants in the electoral process, specifying the number of applications made, the number of applications granted, the number denied and reason(s) for each denial;
- Number and nature of complaints or petitions received by the IEC and how they have been addressed;
- Mediation and conflict-resolution mechanisms in place for addressing election-related complaints or petitions;
- Policy on voter education;
- List of service providers, the criteria for their selection and the content of their service contracts and details of the procurement process;
- The criteria for accreditation of election observers and monitors;
- Details of applications for accreditation by election observers and monitors, including the number of applications rejected and the reasons for the rejection;
- Criteria for the accreditation of the media during the electoral process;
- Details of application for accreditation by the media, including the number of applications received, number rejected and the reasons for the rejection;
- Number of complaints or petitions received and how they were addressed, if applicable;
- Categories of observers admitted; and
- Register of the different categories of observers and deployment areas.

2.5 Election day

The locations, opening and closing times of voting stations are well publicised and announced before elections. The IEC does this via the media, civil society leaders, and political actors. The IEC increases the number of press briefings as election day draws closer. On the election day itself, the IEC holds a series of briefings, announcing results as they come in.

Compared to the previous election in 2016, the pace of announcing results in the 4 December 2021 presidential elections was slow. In contrast to the usual custom, results were announced the following day. This unexpected delay was exploited by the opposition, who called a press conference denouncing the results before they were even announced.

There is a system in place to allow for transparency in the results. The marble tokens used for voting are counted on the spot in the full view of the media and the candidates' agents at the polling stations. Once counting is concluded, the results are posted outside each polling station. The IEC does not usually make individual polling station results available online; instead, voters, media, and candidates' agents take photos of the results and publish them online themselves.

After the results are posted at the polling stations, they are transmitted to the IEC's regional headquarters where they are collated and compiled, before being transmitted to the IEC's national headquarters for final compilation and checking. The final results are then announced by the IEC Chairperson.

Glitches are often reported by the media and election observers – and not by the IEC. During the presidential elections, the IEC responded swiftly to glitches occurring when the marble tokens could not fit through the slots in the ballot boxes. The IEC advised polling agents to file the opening slots and/or use pliers to widen the openings.

2.6 After the election

The IEC does not provide a timeline for the declaration of results, neither is this mandated by law. However, section 81 of the Elections Act prescribes how results should be transmitted and announced:

- (1) On completion of the requirements of section 80, the Returning Officer shall report the results of the elections to the Commission by such means of communication as the Commission may direct.
- (2) The Commission shall, as soon as practicable on receipt of the elections results, declare –
 - (a) The results; and
 - (b) Elected, the candidate, or in case of a list of candidates the number on that list in accordance with section 79, who received the greatest number of votes.

Only the IEC can declare election results. Although third parties are prohibited from announcing any results, analysis thereof is encouraged, and various media houses engage in predicting results. The IEC Chairperson makes the announcements via media broadcasts.

The details of any objections are made public by a petitioner, as was the case in the recently concluded presidential elections. After the conclusion of the elections, there were a series of press conferences, mainly from election observers. Observers can hold press conferences as early as the same day of the election, and for the recent presidential elections, observers held a press conference as early as March.

The IEC posted the 2021 presidential election results online.⁴⁷ These results were challenged in court by the UDP; however, the case was thrown out by the Supreme Court.

Table 2.2: Proactive disclosure of information required of the IEC⁴⁸

Required proactive disclosures	Explanation	Outcome
Process for the selection and appointment of members of the IEC	Detailed in the Constitution but there is no public transparency of the process.	Not met
Procedure for the termination of appointed members of the IEC	Not available online.	Not met
Remuneration and conditions of service of IEC members	Not available online.	Not met
Facilitates access to information through record keeping, proactive disclosure and establishing clear procedures	This has been a major challenge for the IEC. Requests for information have gone unanswered, particularly from the diaspora. IEC officials have often been combative with the media, walking out of interviews, or threatening reporters that probe into 'controversial' issues.	Not met

47 IEC Gambia 'Presidential results 4th December 2021'

<https://iec.gm/download/presidential-results-4th-december-2021/> (accessed 26 May 2022).

48 ACHPR (n 1) secs 13–19.

Required proactive disclosures	Explanation	Outcome
Organisational structure	Published on the IEC website. ⁴⁹	Met
Strategic plan	Not available online.	Not met
Decision-making process	Not available online.	Not met
Procedure for recruitment of both permanent and temp staff and conditions of service	Not available online.	Not met
Training policies	Not available online.	Not met
Code of conduct for employees	Not available online.	Not met
Budget and sources of funding	Not available online. Budget data available in the National Budget is not detailed enough.	Not met
Mechanisms for voter identification	Publicised in the run-up to the voter registration exercise and presidential elections.	Met
Procurement policy, processes and awarding of contracts	Not published until the GPPA demanded a re-tender for voter registration.	Partially met
Annual reports and audited accounts	Not available online.	Not met
Details of the professional background of IEC members	Published on the IEC website. ⁵⁰	Met
Policy on declaration of assets and interests by IEC members; and its code of conduct and ethics	Not available online.	Not met
Detailed electoral calendar	Published once, however, some activities have not been conducted and no revised calendar was been issued. ⁵¹	Partially met
List of constituencies or voting districts	Is not a standalone, but can be accessed when viewing election results online.	Met
Location and number of voting stations	Published on the IEC website. ⁵²	Met
Criteria and requirements for registration of political parties	Published on the IEC website. ⁵³	Met
Details of applications made by political parties for registration as participants in the electoral process, specifying the number of applications made, and applications granted, denied and reasons for each	Partially available. The IEC announced that some 30 parties had applied for registration but details on those rejected and the reasons for rejection have not been disclosed.	Partially met

49 IEC Gambia (n 36).

50 IEC Gambia (n 31)

51 IEC Gambia (n 41).

52 IEC Gambia 'Team movement 2021 voter registration' <https://iec.gm/registration/team-movement-2021-voter-registration/> (accessed 26 May 2022).

53 IEC Gambia 'How to register a party' <https://iec.gm/political-parties/how-to-register-a-party/> (accessed 26 May 2022).

Required proactive disclosures	Explanation	Outcome
Code of conduct applicable to political parties and candidates	This information is not disclosed proactively however, it is available on the IEC's website and candidates must sign it when contesting elections. ⁵⁴	Partially Met
Declaration and publication of final election results, down to the polling station level	The presidential elections results have been published online. ⁵⁵	Partially met
Details of political parties registered as participants in the electoral process, specifying their number and names	Published on the IEC website. ⁵⁶	Met
Public access to the voters' register for inspection	This process was derailed because the voters' register was ripped from the walls of a number of voter registration centres.	Partially met
Details of all objections, complaints or petitions received and how they were addressed	This information is not proactively disclosed by the IEC.	Not met
Qualification, rules and procedure for nomination of candidates by political parties	This was widely reported by the IEC in the run up to every election.	Met

54 IEC Gambia (n 34).

55 IEC Gambia 'Presidential results 4th December 2021' <https://iec.gm/download/presidential-results-4th-december-2021/> (accessed 26 May 2022).

56 IEC Gambia '2021 Presidential election nominated candidates' <https://iec.gm/registration/2021-presidential-election-nominated-candidates/> & IEC Gambia 'Nominated candidates National Assembly elections, 9th April 2022' <https://iec.gm/registration/nominated-candidates-national-assembly-elections-9th-april-2022/> (accessed 26 May 2022).



Chapter 3



CHAPTER 3: POLITICAL PARTIES AND CANDIDATES

3.1 Introduction

The Gambia's earliest experiment with electoral democratic practice was in 1843 when the first Legislative Council of The Gambia was established. This small body of 'political administrators' consisted of the Governor and two public officials.⁵⁷ This remained the case until the 1940s, when the Legislative Council was expanded to four unofficial members who were Gambians but nominated by the Governor to serve on the council. However, they could not vote. It took almost seven years for the first direct election for a seat on the Legislative Council to occur. Edward Francis Small was elected.

Again in 1951, three seats were up for grabs, and John Colley Faye (Democratic Party) and Ibrahima Momodou Garba-Jahumpa (Muslim Congress Party) were elected in Bathurst, while Henry Madi (Independent) was elected in Kombo St Mary. This era started the genesis of political party formations and electioneering in The Gambia. According to authors Hughes and Perfect:⁵⁸

The second Wyn-Harris constitution, which was drawn up in 1953 and came into effect in 1954, increased the number of elected members in Bathurst to three. The number of unofficial members of the Executive Council was increased to six and, following the election, three of the elected members were offered specific portfolios and termed 'ministers,' although they were required to work with advisory committees, which included the European heads of departments. These developments were sufficient to encourage the formation of political parties in the Colony by politically ambitious members of the Bathurst elite. Rev. J.C. Faye, an Anglican deacon of Wolof/Serere origin, who had represented the Upper River Division on the Legislative Council since 1947, was instrumental in creating the Gambia Democratic Party (GDP) in June 1951. I.M. Garba-Jahumpa, a Wolof Muslim schoolteacher, who had been an unsuccessful candidate in the 1947 election, formed the Gambia Muslim Congress (GMC) in January 1952. Around April 1954, supporters of P.S. N'jie, a Roman Catholic Wolof barrister, set up the United Party (UP). All these parties were concerned primarily with Colony issues and were prevented by law from campaigning in the Protectorate, which remained largely unaffected by these developments.

This is significant since the foundations around ethnic, regional and religious canvassing and formations were being cultivated from the onset of multi-party democratic dispensation. May 1960 witnessed the first general elections with the United Party of Mr Pierre N'jie and the newly formed Protectorate People's Party going head-to-head. Although the PPP won nine of the 19 elected seats, Mr N'jie, the leader of the United Party (which had fewer seats), became the country's first Chief Minister and head of the coalition government in March the following year. He was appointed by Governor-General Edward Windley after a majority of the eight chiefs supported him:⁵⁹

In the same year, a new Constitution with universal suffrage was introduced with the voting age set at 21 years. At this time in the history of The Gambia, in every Administrative Area the Registering Officer carried out a General Registration of voters for each constituency in his administrative area. Supplementary registration exercises were carried out every year other than a general registration year. The PPP with the majority of seats in the 1962 General Elections formed the government and Mr Dawda Kairaba Jawara took office as the Premier of The Gambia and spearheaded the movement towards complete independence. Full internal self-government was granted in 1963.

57 A Hughes & D Perfect A political history of the Gambia, 1816-1994 (2006).

58 A Hughes & D Perfect The historical dictionary of The Gambia (2008) 48.

59 IEC Gambia 'A brief history of politics and elections in The Gambia' <https://iec.gm/about-iec/history/> (accessed 26 May 2022).

In 1965, The Gambia gained independence, and in 1970 became a Republic under the 1970 Constitution. The country held six elections (in 1966, 1972, 1977, 1982, 1987, 1992), with each poll returning the Protectorate People's Party under the leadership of Sir Dawda Jawara to power. Election disputes have not been common, with the most famous being the 1962 election. The United Party challenged the election results in the courts, alleging that the register of voters had been invalid. The claim was upheld by the West African Court of Appeal in April 1963. Mr N'jie tried to persuade the British government to call a new election, but this was unsuccessful.

3.1.1 The Second Republic electoral history: Impact and consequences

In 1996, Colonel Yahya Jammeh, retired from the military and stepped into the political fray, formed APRC, and stood for presidential elections. He won that contest and subsequent polls in 2001, 2006 and 2011. However, in 2001, Jammeh avoided a second round by less than a percentage point. Sensing the closeness of the result, Jammeh was motivated to swiftly move to amend the Constitution (Act 12 of 2003) and expunge the 50-plus-one threshold and insert a first-past-the-post principle. The 2011 elections registered the largest margin of victory for the incumbency and with it came a fourth term after garnering 72% of the votes. Jammeh's APRC swept every constituency – a victory that was unmatched in the nation's electoral history, but an exercise that was declared a sham by ECOWAS, which refused to observe the polls.⁶⁰

Election violence has been a common occurrence during the Second Republic, with a pattern of intimidation, police and military brutality and mob assaults meted out on the political opposition, most notably the UDP. Certain elements of the episodes of election violence have featured prominently in the Truth, Reconciliation and Reparations Commission witness testimonies.⁶¹ A particular episode ended up ultimately transforming the political history and trajectory of the country forever. On 14 April 2015, the UDP staged a peaceful protest calling for much needed electoral reforms in The Gambia, ahead of the country's December elections, and clamouring to put an end to dictatorship. Peaceful protesters were arrested, and reports at the time stated that at least three people were killed while in police custody. Fifty-five people were arrested, including the UDP youth leader Solo Sandeng, who died in police custody. In seeking the release of arrested colleagues and the bodies of the dead, UDP leader Ousianou Darboe organised a press conference and then led a peaceful march of his party members the following day from his home on Kairaba Avenue in Kanifing. Alongside his entire party executive, Mr Darboe and others were physically assaulted, arrested and taken away to an unknown location in the country. Nineteen detained supporters of the UDP, including Darboe, were accused and charged with taking part in an unlawful assembly, riot, incitement of violence, riotously interfering with traffic, holding a procession without a licence and disobeying an order to disperse from an unlawful procession. The accused were: Femi Peters, Lamin Dibba, Kemesseng Jammeh, Lamin Jatta, Yaya Bah, Babucarr Camara, Fakebba Colley, Ismaila Ceesay, Momodou Fatty, Dodou Ceesay, Samba Ceesay, Mamud Kinteh, Mfamara Kuyateh, Fanta Darboe, Lamin Njie, Juguna Suso, Momodou L.K. Sanneh, and Yaya Jammeh (no relation to then president Jammeh). Court cases commenced in earnest, and bail was not granted. Female members of the group that were arrested spoke through their lawyer of being raped. Protests intensified for weeks on end with fewer than 19 months to the elections. The protests in April and May that year, dubbed the Kalama Revolution, led mainly by the youth and women's' groups, only further served to unmask public disenchantment

60 'Doubts over "unfair" presidential election result' Aljazeera 24 November 2011 <https://www.aljazeera.com/news/2011/11/24/doubts-over-unfair-gambia-presidential-vote> (accessed 26 May 2022).

61 Truth, Reconciliation and Reparations Commission Final Report, Volume 1 (Part A) Compendium on Findings and Recommendations Torture of UDP Supporters (2021) https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2022/06/TRC_TRRC_Gambia_-Compendium-Part-A-Final-Report.pdf (accessed 26 May 2022).

with the APRC regime and further lifted the fear factor that Jammeh so ably utilised over his 22-year reign.

3.1.2 The lead up to change through the ballot

From the outset, it was clear on paper that, with the habitual practice of regulatory abuse by the state – in particular Yahya Jammeh's APRC, who manipulated the National Assembly to amend laws, pricing out political competition, and curtailing freedoms of expression, association and assembly – it was going to be extremely difficult to challenge an incumbent. The Elections Amendment Act of 2015, which was also challenged at the ECOWAS court, had laid the foundation for arbitrary and biased application by the IEC, which was deemed pliable. ECOWAS had refused to observe the elections for the second time in two election cycles, citing the fact that the Elections Amendment Act, and previous legal mechanisms, contradicted the regional (Supplementary) Protocol on Democracy and Good Governance. The European Union (EU) had, only 24 months prior, made it clear that without democratic and electoral reforms they would not be financing The Gambia government's development programmes. Jammeh reacted by declaring the top EU's representative a persona non grata. This resulted in the further withholding of hundreds of millions of euros from the country, a disbursement that had traditionally funded elections.

The possibility of holding elections in 2016 was in jeopardy. Most CSOs were resigned to the fact that elections might not be held due to the lack of funds. Most CSOs were, however, confident that Jammeh could not afford not to hold elections because he was diplomatically, internationally, politically and economically isolated due to years of defiance, abuse of his power, corruption, and rising unpopularity. He had to forge ahead to extract a mandate, however illegitimate, to ensure his power was sustained.

On 2 December 2016, the IEC valiantly declared someone else, and not Jammeh, as winner of the polls. However, that election had the second lowest voter turnout in its history, with only 59% of voters casting their ballot. The APRC garnered almost 40% of the vote against a coalition made up of the UDP, the People's Democratic Organisation for Independence and Socialism (PDOIS), the National Reconciliation Party (NRP), the Peoples' Progressive Party (PPP), two smaller parties, and two independent candidates. The Coalition only won by three percentage points, at 43%. The third factor, an off-shoot of the APRC, the Gambia Democratic Congress (GDC) led by Mama Kandeh, took 18% from Jammeh at the time. Adama Barrow went on to secure the reins of power, completing his full five-year mandate and subsequently winning a second term in 2021.

3.2 Political parties

The Republic is a multi-party democratic State founded on respect for the rule of law and the national values and principles of governance enshrined in this Constitution.

Chapter 1 of the Constitution prohibits a one-party state. However, although political parties were allowed to exist, they have historically failed to pose any significant threat to the power of incumbency, in the First Republic under Jawara's PPP, and later in the Second Republic under Jammeh's APRC as well as recently under Barrow's National Peoples' Party (NPP). Section 60 of the 1997 Constitution prescribes that:

(1) No association, other than a political party registered under or pursuant to an Act of the National Assembly, shall sponsor candidates for public elections.

(2) No association shall be registered or remain registered as a political party if –

- (a) it is formed or organized on an ethnic, sectional, religious or regional basis;
 - (b) its internal organisation does not conform with democratic principles; or
 - (c) its purpose is to subvert this Constitution or the rule of law.
- (3) An Act of the National Assembly shall make provisions for the better implementation of this section.

The Elections Act (as amended) does not place a restriction on the number of political parties. Section 104 states that:

- (1) The number of political parties shall not be limited by law and every citizen of The Gambia shall have the right freely to choose whether or not he or she becomes a member of a political party he or she supports.

However, attempts have been made to muzzle opposition political party activity and their existence under the Jammeh regime. On 7 July 2015, The Gambia's National Assembly passed into law the Electoral Amendment Bill, tabled by the Office of the President, which increased the deposits required for candidates to run for president, National Assembly member, mayor and councillor. For example, candidates for president are required to pay the equivalent of about half a million dalasi (USD 10 000), while candidates for the National Assembly and local offices must pay amounts ranging from 2 500 dalasi (USD 50) to 50 000 dalasi (USD 1 000). This was an astronomical increase that made The Gambia one of the most expensive countries for people vying for office.⁶² The amendment also sought to place unreasonable restrictions on political parties, requiring all executive members of political parties to reside in The Gambia, have offices in every region of the country, hold bi-annual congresses, and report annually to the IEC on their finances. The number of signatures needed to register a political party was also increased from 500 to 10 000 registered voters, in addition to the requirement that a party post a non-refundable deposit of one million dalasi (USD 20 000). The move by the APRC, headed by Jammeh at the time, aimed to contradict the letter and spirit of the Constitution and was a routine exercise from the first to the fourth National Assembly of the Second Republic. The amendment was duly challenged at the ECOWAS court, without success.

In 2017, the Elections Act was amended again. The reason given for the amendment at the time was that it was a response to the major shrinking of the political space during Jammeh's era, and thus the 2017 proposed amendment would free up political space and contestation. This was disingenuous. The exercise was short sighted and extremely selective and was carried out in bad faith. Instead of focusing on expunging the original intentions of the Jammeh regime to ring fence political contestation and boost the chances of election victory for an entrenched incumbency, the Barrow administration, instead, looked to further the aim of his predecessor, and focus on one key aspect of the 2015 enactment: the registration fees for candidates vying for office at the level of the National Assembly and local government. This was not a coincidence since the election for the Fifth Parliament was around the corner. In essence, the amendment only focused on the issue of candidature (refundable) deposits. The exorbitant fees were rolled back to their initial amounts of 10 000 dalasi (USD 242) for presidential candidates, 5 000 dalasi (USD 121) for the National Assembly, 2 500 dalasi (USD 60) for mayoral candidates and 1 250 dalasi (USD 30) for local councillors.

Other salient aspects of the 2015 Amendment Act were left intact. Primarily amongst which, was the increased monetary requirements for the registration of political parties, including:

62 R Jadamah 'Vox pop on the Elections (Amendment) Act 2015' Foroyaa (Banjul) 12 August 2015 <https://foroyaa.net/vox-pop-on-the-election-amendment-act-2015/> (accessed 26 May 2022).

- All executive members of the political party must be resident in The Gambia;
- The political party must have a secretariat in each administrative region of the country;
- The party must hold a biennial congress;
- A significant increase – from 500 to 10 000 members (the equivalent of one per cent of the voter population) – of the number of members of the political party should be registered as voters, with at least 1 000 members from each administrative area; and
- A registration fee of one million dalasi.

In 2021, the Supreme Court ruled against the requirement for executive members of political parties to reside in the country, declaring it unconstitutional.

Part VIII, section 6, of the Elections Act requires political parties to fill out and send an application to the IEC as follows:

- (a) The political party's constitution;
- (b) The political party's full name and address;
- (c) The names and addresses of all the registered officers of the political party;
- (d) The full address of the political party's secretariat;
- (e) The political party's emblem, colour, motto and symbol, which shall have no ethnic, religious or regional connotations.

Under section 107, the party is also required to submit a manifesto.

There are currently 18 registered political parties in the country. They are: Alliance for National Re-orientation and Development (ANRD); Democratic Party (DP); National Unity Party (NUP); Gambia Alliance For National Unity (GANU); Citizens' Alliance (CA); Gambia For All (GFA); National People's Party (NPP); All Peoples Party (APP); Gambia Action Party (GAP); Gambia Moral Congress (GMC); Alliance for Patriotic Re-Orientation and Construction (APRC); Gambia Democratic Congress (GDC); National Convention Party (NCP); National Reconciliation Party (NRP); Peoples Progressive Party (PPP); People's Democratic Organisation for Independence and Socialism (PDOIS); Gambia Party for Democracy and Progress (GPDP); and United Democratic Party (UDP).

The run-up to the 2021 presidential elections witnessed major dysfunction of the political parties, with the prevalence of cult personalities and strongman tactics, with party leaders almost unilaterally deciding on the direction of the party. This revealed the lack of internal party democracy, transparency and accountability within the hierarchy of the party structures. The grand coalition of 2016 splintered, with Barrow's NPP poaching some UDP party leaders, but with UDP leader Darboe retaining most of the leadership structure. This damaged the UDP brand and standing. The PPP, which was the oldest party in the country, also disintegrated, splintering twice over unfair election processes, and resulting in the formation of the Gambia For All (GFA) party and the candidacy of a formidable independent. The NPP was accused of co-opting the APRC, which it seduced by access to public resources, political positions, and the possible return of Jammeh. However, these accusations were strongly denied by President Barrow when the coalition was announced. Nevertheless, this alliance did not hold, with Jammeh rebuffing Barrow's advances and causing yet another splinter of the major party with Jammeh loyalists opting out of an APRC/NPP merger.

The fluidity of the political terrain revealed the dysfunctionality of political parties in the

country, exposing the lack of internal political party democracy and leadership renewal in the older parties, and an inability to fully organise and build a formidable political formation within the new parties that had haphazardly established themselves for the sole purpose of competing in presidential elections. The chaos led to the unintended consequences of a record number of independent candidates vying for office. As a result, only four parties had candidates for the 2021 presidential elections:

- **The GDC**, established in 2016 as a breakaway from the APRC, probably has the most dynamic website amongst the four parties, with rich information including its constitution uploaded and accessible to anyone:⁶³

The Gambia Democratic Congress (GDC) is a social democratic party that believes in human dignity and the equality of all people irrespective of gender, ethnicity, origin, faith, social, economic, cultural, political and other differences. GDC is committed to the principles of a just society characterised by peaceful co-existence, freedom, responsibility and meaningful participation of all persons in national affairs. GDC is fully committed to the principles of democracy, good governance, the rule of law and respect for human rights and freedoms as well as the protection of these essential values and their constant adaptation to the changing needs of our modern times and society. GDC is inspired by a vision of The Gambia as a highly developed, harmonious and successful nation with a happy and united population enjoying a high standard of living. To realise this vision, GDC commits itself to the development of a highly skilled and motivated workforce as well as the pursuit of justice and equality of opportunities for all persons including women, youth and Gambians in the diaspora.

- **The NPP**, which was formed almost a year after the total disintegration of the 2016 coalition, with UDP members being the last to be discarded by President Barrow in a cabinet reshuffle that saw two vice-presidents replaced in a period of 24 months. This left Barrow some room to quickly establish a party to hang his political aspirations on for the 2021 race, registering the NPP on 31 December 2019. The party's website is bereft of information and does not have a constitution that one can access. It is therefore difficult to fully assess its processes and procedures, even hypothetically. Additionally, the party repeatedly refers to The Gambia as 'The Third Republic'. It is difficult to fathom the fact that the head of state and the incumbent candidate's own party is unaware that the country is in fact a 'Second Republic' and not a third:⁶⁴

I am standing by the people of this country to contest as a Presidential candidate and Head of State of the Third Republic of The Gambia. The Third Republic, which we shall have to build together, calls for a new kind of devotion to duty and selfless sacrifice, propelled by a new kind of consciousness: a consciousness grounded in positive thinking, being forthright, forward-looking and pragmatic for productivity. This must be a new consciousness that can perceptively unmask and decisively neutralise all forms of retrogressive divides and alienation, ranging from divides that have to do with ethnicity, culture, sex, religion, age, status and belief, to divides linked to profession, craft, interest, educational background or any other form of social orientation. This type of consciousness is what truly enlightened, politically aware and mature people should stand for. Indeed, this is what I stand for. This is what the progressive and patriotic citizens of The Gambia yearn for, and this is what the NPP stands for. Thus, there has evolved between us a natural partnership, a spontaneously generated mutual contract arising from our commonalities and homogeneity as true Gambians. As democrats, patriotic citizens, humanists and visionaries who love ourselves and our nation as much as we love humanity and all the ideals that go with both national and global peace, progress and development.

63 GDC 'The party' <https://www.gdc.gm/> (accessed 26 May 2022).

64 NPP 'Message from the President' <https://www.npp.gm/about-the-party/> (accessed 26 May 2022).

- **The PDOIS** puts forward fundamental questions that it proposes to answer, thus justifying itself to the electorate:⁶⁵

As we search for the way forward PDOIS came into being after posing the following fundamental questions: Where can we find a country where a government of the people, for the people and by the people exists? Where is the country where the direction of public affairs rests in the hands of the People? Where can we find a country where the people are free to scrutinise, expose and organise in workplaces, neighbourhoods and other social groups to stamp out abuse of authority, official corruption and misrepresentation? Where can we find a country whose government is determined by the will of a mature and well provided for people who elect representatives for no purpose other than to ensure proper and effective representation? Where do we find a government whose members are not privileged and who receive no greater income than they render to society in service? Where do we find a country whose government is not only constituted by the elective principle, but whose members are also accountable for misrepresentation? Where do we find a government which is not only constituted on the basis of periodic elections, but where the people have the authority to remove those elected before their term of office ends for misrepresentation? Where can we find a country where elections are stripped of all corrupt practices, mystification, bribery, inducement and intimidation; where candidates do not need money to be heard by the electorate; where the state media are accessible to all candidates so that the electorate can balance the issues raised and compare candidates? Where can we find a non-parasitic and responsive system of representation where representatives are no longer privileged lords standing above the people, but are humble servants who are chosen by, checked on, accountable to and removable by the people whenever they fail to honour their promises and mandate? The answers are simple. They are nowhere to be found in our present-day world.

The PDOIS, founded in 1986, is also the oldest party now in existence. Although it has built a formidable and loyal following over the decades, the PDOIS is often criticised for its lack of leadership renewal and generational mix despite bringing new blood into its fold in 2021.

- **The UDP** is the largest political opposition party in the country, describing itself as:⁶⁶

The UDP won 31 out of 53 contested seats at the National Assembly in the last parliamentary elections of 2017. We also control all but one of the eight local government councils in The Gambia. We represent all segments of the Gambian society and operate an open-door policy on membership. The UDP has chapters across the globe including in the United Kingdom, Mainland Europe, the Middle East, Angola, and the United States of America.

The UDP is the second oldest party that contested the elections but has been criticised for its lack of leadership renewal, with the current party leadership being at the helm of affairs for 26 years since its inception in 1996. The party's website⁶⁷ is robust and filled with valuable information. However, a UDP constitution is absent, making it difficult to assess the policies and principles that speak to access to information proactive disclosures.

3.3 Proactive disclosure of information by political parties and candidates

In The Gambia, the proactive disclosure of information as provided for in regional instruments and mechanisms is also established within its electoral laws. The 1996 Election Decree and its

65 PDOIS 'Our party' <https://pdois.org/our-party/> (accessed 26 May 2022).

66 UDP 'Who we are' <https://udp.gm/about-us/> (accessed 26 May 2022).

67 UDP 'Home' <https://udpthegambia.com/> (accessed 26 May 2022).

subsequent amendments provide for the management of elections in The Gambia. Section 103 of the 1996 Election Act provides for the establishment of political parties to:

- Participate in the shaping of the political will of the people;
- Disseminate information of political ideas and on political, economic and social programs of national character; and
- Sponsor candidates for public election.

The proactive disclosure of information regarding political parties' constitutions, names, office(s) and policies is enforced by the IEC as provided for in the Electoral Act. In 2015, the Act was amended to include additional provisions relating to the proactive disclosure by political parties, requiring that each party has a secretariat in each administrative region, holds biennial congresses and has 10 000 members with at least 1 000 members from each administrative area.

While there has been considerable progress in institutionalising the party system in The Gambia, parties are still weak and lack cohesive policies and procedures for promoting internal party democracy.

In The Gambia, political parties are very visible and clearly distinctive in terms of colours and other party symbols. Section 105(2)(e) of the Elections Act makes it a requirement for political parties to submit at registration, party emblems, colours, mottos and symbols that do not carry any ethnic, religious or regional meaning. All political parties have met this indicator. Their symbols, logos and trademarks have not only been submitted to the IEC but they have also been proactively disseminated, thus resulting in their being widely recognised by the population. Each party has its own unique colour approved by the IEC. For instance, all the four major parties that contested the 2021 presidential election have different party colours: UDP – yellow; PDOIS – brown; NPP – grey; and GDC – purple.

3.3.1 Number of registered members

For a political party to be registered in The Gambia, the party should have 10 000 members with at least 1 000 members from each of the seven administrative areas. Out of the four parties that contested the presidential elections, only the GDC and NPP were subjected to this disclosure as these parties were formed following amendments to the 2015 Electoral Act.

Although it is difficult for parties to know the exact number of registered members, all parties have nevertheless submitted estimated numbers as the number of membership cards they have issued as per their financial reports. However, no official membership figure is to be found on party websites. Usually, parties rely on election results to determine their membership and sympathisers, based on the number of votes received.

3.3.2 Nominating and electing candidates for internal and external office(s)

All parties have established criteria and procedures for the nomination and election of candidates, which are known to all members and are usually announced via the media during elections. Each party sets its own process and procedures, which differ slightly from one party to another. All parties hold primaries as the process through which candidates are elected. Such procedures are set out in each party's constitution.

However, the incumbent NPP was the only party not to hold a congress as required by the Elections Act. The Right2Know Coalition and DUGA wrote to the IEC, requesting a rectification of this anomaly.⁶⁸

68 'Gambia: 2 Diaspora CSOs urge IEC to suspend NPP, nullify its candidates' The Point (Banjul) 7 April 2022 <https://thepoint.gm/africa/gambia/headlines/2-diaspora-csos-urge-iec-to-suspend-npp-nullify-its-candidates> (accessed 26 May 2022).

The UDP, in their 2020 congress and as part of efforts to promote internal party democracy, amended its constitution to provide for primaries. However, consensus building has been the general norm in the selection of candidates for elected offices. This usually involves allowing interested candidates to talk among themselves and agree on a single candidate. Though this is the parties' preferred approach, in instances where consensus is not reached, a decision is then made through a secret ballot. Nevertheless, with respect to internal party competition on seeking external office, parties generally rely on their constitution and by-laws to announce their selection of candidates. For party internal processes, the announcement is usually made at congresses across the national structure.

3.3.3 Dispute resolution and appeal mechanisms

Political parties have two approaches for dispute resolution. On the one hand, parties have established advisory and disciplinary committees within the party structures to ensure order. In terms of how they function, one may argue that the advisory committee is the carrot while the disciplinary committee is the stick. When disputes arise, the advisory committee is usually alerted to provide advice to the people involved. Such committees are usually made up of founding members, who determine the procedures for dispute resolution. However, in many cases, the disputes are usually resolved by the courts.

3.3.4 Mechanisms for public participation, including persons with disabilities

All political parties have established mechanisms for public participation, which are usually targeted at young people and women through the party's youth and women's wings, respectively. These wings replicate the national party structure and are usually headed by secretaries for youth and women. Senior members of these wings automatically become central committee members. Parties such as the UDP have adopted quota mechanisms within the party that are targeted at women and the youth. A resolution passed in their last congress called on the party to ensure that at least 30% of the internal and external offices are allocated to women. However, this development has yet to be reflected in the party's amended constitution.

While progress has been made on instituting mechanisms for youth and women, those targeted at persons with disabilities (PWDs) are yet to be fully developed. While political parties generally recognise the need for inclusion, some have not been able to establish mechanisms to realise the establishment of committees for PWDs, amongst other marginalised groups. Although the UDP has integrated PWDs into its party structure, it is yet to formally create mechanisms for full participation and inclusion of PWDs. However, unlike the UDP, the GDC has established a PWDs committee with the same structure as other party committees or wings. Some executives of the PWDs committee become automatic members of the central executive committee of the party.

3.3.5 Mechanisms for monitoring nomination processes and proceedings

All parties have established mechanisms to monitor the electoral process, which are carried out at both the party and IPC level. At the party level, each party nominates an electoral committee during elections that is responsible for the management and recruitment of agents, and for collating results from party agents. This committee primarily leads the party's electioneering activities. They liaise with the IEC to deal with matters arising from the field and also serve as agents for their parties at the headquarter level. In addition to these agents, parties also have mobile teams that monitor the activities of their members as well as the general process. Parties also jointly participate in monitoring the nomination process and proceedings through the IPC.

The IPC was established by political parties and coordinated by the IEC as a forum for dialogue and cooperation, and for ensuring consensus building amongst parties on contested electoral and political issues, among other duties. All registered parties automatically become members of the IPC. During elections and the registration of voters, the IPC organises monitoring teams based on the parties' declarations on their membership. From here, political parties also engage in monitoring the proceedings. According to the United Nations Development Programme (UNDP),⁶⁹ which funds the IPC, the UNDP will

act as the guardians of democracy and under the auspices of Inter-Party Committee (IPC) will be expected to forge a united front to build consensus on the governance reform agenda including electoral reforms, draft new constitution, Elections Bill 2020, Access to Information Bill, among others. It is against this background that UNDP, through the Peace Building Fund (PBF) project on leadership and accountability supported the Inter-Party Committee (IPC) to hold a forum dedicated to dialogue on elections bill 2020 and the induction of political parties to the Inter-Party Committee (IPC) instruments - the Memorandum of Association between political parties and the Code of Conduct.

All 16 political parties registered by the Independent Elections Commission (IEC) reviewed the IPC instruments and committed to the general principles of the MOU. The latter includes the right of political parties to campaign freely in the country, refrain from frustrating legitimate activities of other political parties, avoid using inflammatory or defamatory language, and restrain from intimidation in any form. Overall, this initiative will contribute to peaceful conduct of elections during the 2021-2023 electoral cycle.

However, the IPC has not been as effective since its processes are not made public and the details of their deliberations are opaque.

3.3.6 Party agents during the electoral process

The disclosure of the names of party agents and/or representatives responsible for various stages of the electoral process is usually carried out by the party. During the registration of voters and on polling day, parties recruit agents from within their membership to serve as watchdogs at the polls. Each party is required by the IEC to submit their list of party agents for accreditation, and it is only through this process that the names of agents are disclosed.

3.3.7 Assets, investments, membership subscriptions, subventions and donations

Party audits

The Electoral Act as amended in 2015 requires parties to organise a biennial congress and to submit audited financial accounts to the IEC. All parties have complied with this provision except for the NPP, which was formed less than two years before the election. Parties that do not submit audits risk being deregistered by the IEC and have thus largely been compliant to avoid deregistration.

However, while parties do submit audits to the IEC, which the public does not have access to, they have not published their financial statements in public in a structured manner. However, donations and other contributions are periodically announced on party WhatsApp groups, social media forums and sometimes on party Facebook pages.

⁶⁹ United Nations 'Inter-party dialogue on Memorandum of Understanding, Code of Conduct and Elections Bill 2020' 8 December 2020 <https://gambia.un.org/en/104085-inter-party-dialogue-memorandum-understanding-code-conduct-and-elections-bill-2020> (accessed 26 May 2022).

Receipt of campaign funding from both public and private sources

Since the Elections Act amendment of 2015 requiring parties to provide audited reports, parties have started issuing receipts for donations received from members within and outside The Gambia. All the parties interviewed acknowledged that these receipts are provided to any individual that contributes to the party. In addition to the receipts being publicised, the information is sometimes announced publicly.

Campaign expenditure line items specifying sources and amounts of funding

Parties, usually by the treasurer during their biennial congresses, present the party's financial report, which describes the financial state of the party. Part of the disclosure during this period is the report on expenditure, which sometimes includes costs related to an election. This information is usually disclosed to congress delegates and later in the financial report that is submitted to the IEC. However, there is no such information provided on the parties' websites or made available to the public by any other means.

Annual audited financial reports

Parties are expected to submit their annual audited financial report to the IEC. However, compliance has been challenging. All the parties interviewed confirmed that they have nevertheless submitted their financial reports to the IEC to ensure the continuous registration of the party. The reports are not, however, available to the public. It must be noted that all political parties were eager to share some information of their finances but with the caveat that certain confidential details are only provided to the IEC.

Section 104(6) of the Electoral Act as amended states that a political party is required to:

As occasion may require, declare to the Commission and public its revenues and assets and the source of its revenue and assets.

Publish annually its audited accounts and to lodge a copy with the Commission.

In order to access information relating to political parties' assets and sources of revenue, one is directed to the IEC, but even so, one is unlikely to obtain the requested information. Generally, political parties do not voluntarily disclose their financial information. Only the UDP, in 2018/19, attempted to proactively disclose their sources of funding.

3.4 Dearth of legislation and enforcement

There is no law requiring the disclosure of financial resources, covering the period starting one year before and ending six months after elections, including government or Central Bank contracts with currency printers; Central Bank or Monetary Policy Committee reports; and Central Bank reports on government-issued bonds.

There are no laws, processes or procedures requiring the disclosure by political parties of institutional resources, covering the period starting one year before and ending six months after elections, including advertising rates and the allocation of airtime space to all political parties in state-supported media coverage, vehicle or flight logs and fuel allocations to government departments and service agreements, and contracts and tenders awarded, their amounts and budgets.

Ahead of the 2021 presidential election, the Gambia Radio and Television Services (GRTS) benefited from supplementary appropriation from the National Assembly for effective coverage of the election. They bought new vehicles and provided to each candidate a coverage team during the election period. The IEC is the body responsible for the allocation of airtime

on the national broadcaster during campaigning. During the campaign period, each party is allocated 20 minutes daily to air party manifestos and programmes.

There are no laws, regulations or procedures requesting the disclosure of regulatory resources, covering the period starting one year before and ending six months after elections, including documentary justification for requests for approval of supplementary budgets passed by parliament and political party finance legislation.

There are no laws, regulations or processes requesting the disclosure of enforcement resources, covering the period starting six months before and ending three months after elections, including details and records of the election deployment strategy for the police, military, paramilitary, and other law enforcement agencies involved in ensuring security throughout the electoral process.

3.5 Abuse of state resources

State resources are defined by the Guidelines on Access to information and Elections states as:⁷⁰

Any monetary and other resources that are directly or indirectly under the control of Government or a political entity at the national, regional or local level, which may be human, financial, institutional, regulatory or enforcement related.

The abuse of state resources has been a persistent factor in The Gambia's body politic since independence. However, it was firmly entrenched during the Jammeh dictatorship. This was sadly carried over into the Barrow administration and there are no signs that the practice will abate. The Constitution obligates the head of state to carry out a 'meet the people' tour under section 222(15) which compels the president to undertake a nation-wide tour at least twice a year in order to familiarise themselves with the current conditions and effects of government policies. Section 222 (13) states:

In the performance of his or her duties, a public officer shall observe the following rules:

Association –

A person holding an office in public service or any disciplined force shall not –

c). take part in any activity which shall cast doubt on his or her capacity to deal impartially with matters or issues which are the concern of his or her public office or which interfere with the performance of his or her public duties.

The tour is supposed to be a nonpartisan affair. But time and again, both during Jammeh's time in power and currently during Barrow's tenure, the tour has been used as a platform for self-promotion, unabashed incumbency advantage, and boosting the chances of electability at the polls.

Nine months before the 2021 elections, in March, the president undertook the tour, utilising all available state resources, including government vehicles and fuel, military, police and support staff, and segments of the civil service. The meetings were political in nature. DA Jawo, a journalist and former minister of information and communications infrastructure in

⁷⁰ ACHPR (n 1) 12.

the Barrow administration, provided the following description of this nationwide tour:⁷¹

We have seen a press release trending on social media announcing President Barrow's impending departure for his annual 'Meet the People Tour' from the 19th [of] March to 6th April. We have also seen a letter "ordering" government institutions and agencies to provide vehicles and drivers for the tour. We all know that 90 percent of the people using those vehicles would be militants and supporters of the National People's Party (NPP). The question that all reasonable Gambians seem to ask is whether this is the most appropriate time for him to undertake the tour. The Independent Electoral Commission (IEC) has already fixed the official campaign period for the National Assembly elections from 17th March to 7th April when all parties and candidates are supposed to be out in the country to campaign for the elections. It is therefore quite obvious that this so-called 'Meet the People Tour' is purely a disguise for campaigning for the NPP candidates, using state resources and vehicles. We are all aware that virtually all of President Barrow's such outings are more political in nature and reality than discussing issues affecting the farming community. It is therefore quite unfair for him to use state resources and vehicles to campaign for his candidates while the other parties and candidates use their own resources. Everyone is therefore anxiously waiting to see what the IEC is going to say or do about such blatant abuse of incumbency and the electoral process. It would also be interesting to see how the commission is going to handle the situation and harmonise it with their campaign schedule. Of course, they would not dare consider the tour as part of the campaign and still ignore the use of government resources and vehicles, and yet we all know that is exactly what it is. In fact, it is very likely that because of the official tag attached to the tour, his entourage would be given unlimited airtime on GRTS and the public media, thus defeating the very purpose of the IEC media schedule which is meant to give equal access to the media of all candidates.

Table 3.1: Proactive disclosures required of political parties⁷²

**Don't know: There is no evidence either way.*

Proactive disclosure required	GDC	NPP	PDOIS	UDP
Constitution, names of office bearers as well as the policies of the political party.	Met	Met	Met	Met
Symbols, logos or trademarks associated with the political party.	Met	Met	Met	Met
Number of registered members.	Partially met	Don't know*	Don't know	Partially met
Criteria and procedure for nomination and election of candidates for internal and external office(s).	Met	Don't know	Met	Met
Process for dispute resolution and the relevant appeal mechanisms.	Met	Don't know	Met	Met

71 DA Jawo 'Meet the people tour: Another abuse of incumbency?' The Standard (Banjul) 21 March 2021 <https://standard.gm/analysis/meet-the-people-tour-another-abuse-of-incumbency/> (accessed 26 May 2022).

72 ACHPR (n 1) sections 20–22.

Mechanisms for public participation, including any special mechanisms for persons with disabilities.	Met	Not met	Not met	Not met
Mechanisms for monitoring of the nomination process and proceedings.	Met	Met	Met	Met
Names of party agents or representatives responsible for or on duty at various stages of the electoral process.	Met	Met	Met	Met
Assets, investments, membership subscriptions, subventions and donations.	Partially met	Partially met	Partially met	Met – the only party to publicly disclose donations in 2018
Financial schemes initiated.	Partially met	Partially met	Partially met	Partially met
Receipt of campaign funding from both public and private sources.	Not met	Not met	Not met	Not met
Campaign expenditure broken down into distinct line items.	Not met	Not met	Not met	Not met
Annual audited financial reports supplied to the IEC.	Met	Met	Met	Met
All other information, proactively disclosed or available on request.	Partly met – accepted an interview request on access to information	Not met	Partly met – directed researchers to sources of information	Partly met – accepted an interview request on access to information
Proactive disclosure required	GDC	NPP	PDOIS	UDP
Financial resources, covering the period starting one year before and ending six months after elections, including government or Central Bank contracts with currency printers; Central Bank or Monetary Policy Committee reports; and Central Bank reports on government-issued bonds.	N/A	See the section of this report on abuse of state resources	N/A	N/A

Institutional resources, covering the period starting one year before and ending six months after elections, including advertising rates and the allocation of airtime space to all political parties in state-supported media coverage, vehicle or flight logs and fuel allocations to government departments and service agreements, contracts and tenders awarded, their amounts and budgets.	N/A	See the section of this report on abuse of state resources	N/A	N/A
Regulatory resources, covering the period starting one year before and ending six months after elections, including documentary justification for requests for approval of supplementary budgets passed by parliament and political party finance legislation.	N/A	See the section of this report on abuse of state resources	N/A	N/A
Enforcement resources, covering the period starting six months before and ending three months after elections, including details and records of the elections deployment strategy for the police, military, paramilitary, and other law enforcement agents involved ensuring security throughout the electoral process.	N/A	See the section of this report on abuse of state resources	N/A	N/A



Chapter 4



CHAPTER 4: ELECTION OBSERVERS AND MONITORS

4.1 Legislation and process

The laws that regulate elections, and the regulator itself, are derived from a military pronouncement, Decree No. 78, which birthed the transition to a multiparty civilian democratic dispensation. This was regularised in the 1997 Constitution under section 41: 'Electoral laws'. Furthermore, the power of elections regulation is vested in the Elections Act 2001, the 2015 Elections (Amendment) Act, and later, the 2017 Elections (Amendment) Act, which regulate voter eligibility, political party registration, candidate nomination, conducting polls, campaigning, and other electoral processes.

Within these frameworks, The Gambia organised one election while transitioning from military rule to civilian multiparty democracy in 1996. Half a dozen elections (1996, 2001, 2006, 2011, 2016, 2021) have taken place within the framework of the Second Republican Constitution of 1997. During this time, the process continues to be overseen by the IEC. The EMB has the mandate to approve Election Observer Mission (EOM) applications for participating in the process by overseeing and accrediting local and international observers. The IEC's EOM approval process is guided by its code of conduct, which states:⁷³

Observers accredited by the Independent Electoral Commission (IEC) are obliged to fully adhere to this code of conduct. Acceptance of this code is a precondition for accreditation.

There are two categories of election observers accredited by the IEC to observe all phases of the process, namely international and local (domestic) observers. International elections observers are defined to include international bodies or organisations such as embassies or foreign missions to The Gambia, international charitable organisations, internationally established democracy and good governance organisations, and foreign media houses. Local/ domestic observers comprise local charitable organisations, locally established democracy and good governance organisations, and local media houses. The IEC divulges the eligibility criteria for EOMs by dispatching letters with information on the upcoming elections calendar. Interested organisations are required to write to the IEC stating the reasons for their interest in observing the election. A completed accreditation form is then deposited with the IEC. Thereafter, the IEC makes a determination on their accreditation. Observers are also provided with badges for identification purposes.

The history of election observation during the period since the IEC was established has been chequered. Local observers, generally national CSOs and NGOs, are mainly supported by the UNDP and other international development partners such as the EU and the Commonwealth. The UNDP has served as the implementing agency for the electoral support project, which was designed to deliver four outputs, namely:⁷⁴

1. Strengthening the capacity of the IEC for strategic planning, policy and operational work to promote credible elections;
2. Promoting women's electoral and political participation;
3. Enhancing the capacity of the National Council for Civic Education, the security forces and CSOs for increased civic and voter education and elections; and

73 IEC Gambia 'Code of conduct for election observers' <https://iec.gm/election-observation/code-of-conduct-for-election-observers/> (accessed 26 May 2022).

74 UNDP 'Electoral support to The Gambia 2016 to 2018' (8 February 2016) <https://info.undp.org/docs/pdc/Documents/GMB/Electoral%20Support%20to%20The%20Gambia%202016-2018.pdf> (accessed 26 May 2022).

4. Supporting the capacity of the media to foster the deepening of democracy.

4.2 International, regional and domestic observer missions

Traditionally, the largest EOM has been from the EU, which over the years has supported both long-term and short-term observer missions, investing euros towards election support. However, in June 2015, the EU's diplomatic relations with the Gambian government under former president Yahya Jammeh soured. The EU even withheld funding equivalent to USD 37 million due to the expulsion of an EU diplomat from the country and because of human rights concerns that ostensibly threatened the 2016 presidential elections.

In 2021, the EU deployed a core team of 16 experts based in Banjul and 16 long-term observers deployed throughout the country:⁷⁵

For the election day on 4 December, the EU EOM deployed 16 additional locally recruited short-term observers to monitor polling, counting and collation of results. In total, the EU EOM deployed 40 observers from 17 EU member states, as well as from partner countries Canada, Norway, and Switzerland.

The mission followed an established methodology, adhering to the Declaration of Principles for International Election Observation, which the EU states had endorsed under UN auspices in October 2005, and which are now followed by over 50 organisations.

Additionally, ECOWAS – which had sent EOMs to The Gambia in 1996, 2001 and 2006 – demonstrated incredible standards when it refused to observe elections in two consecutive cycles, in 2011 and 2016. In 2021, the regional body acted on the ECOWAS Supplementary Protocol on Democracy and Good Governance (2001) and deployed 12 long-term observers (LTOs) and 62 short-term observers (STOs) for the presidential elections. A total of 74 election day observers were eventually deployed.

The AU has traditionally been a mainstay for sending EOMs to the country for presidential and legislative elections. This time around, it deployed nine LTOs and 60 STOs:⁷⁶

The observers were drawn from African Ambassadors accredited to the AU, election management bodies (EMBs), independent electoral and governance experts, and civil society organizations (CSOs) from 30 African countries. It was supported by the technical team from the AUC and the Electoral Institute for Sustainable Democracy in Africa (EISA).

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed 15 international observers from 13 African countries, drawn from EMBs, CSOs and academia.⁷⁷ In addition, the Commonwealth deployed an unspecified number of people to various areas of the country.

75 EU Election Observation Mission 'Final report presidential election, 4 December 2021' (2021) 7 https://www.eeas.europa.eu/sites/default/files/eu_eom_gam_2021_fr_1.pdf (accessed 10 March 2022)..

76 African Union Election Observation Mission 'Statement of preliminary findings, 4th December 2021 Presidential Election in The Gambia' (2021) 2 <https://au.int/en/pressreleases/20211206/statement-preliminary-findings-african-union-election-observation-mission-4> (accessed 10 March 2022).

77 EISA Election Observation Mission to the 2021 Presidential Election in The Gambia 'Preliminary statement' (2021) 1 <https://www.eisa.org/wp-content/uploads/2023/05/eom-report-2021-preliminary-statement-the-gambia-wft-eisa.pdf> (accessed 10 March 2022).

At the local level, two observer groups worked on both a long-term and short-term basis, namely Gambia Participates, which deployed 460 election day observers, and Peace Ambassadors Gambia (PAG). Gambia Participates launched their pre-election observation team on 30 October 2021, deploying LTOs across the 53 constituencies in The Gambia. In addition, Gambia Participates deployed 460 election day observers while PAG deployed 300 static and 150 mobile observers.

West Africa Network for Peacebuilding (WANEP) monitored incidents of violence during the campaign and coordinated the activities of various CSO coalitions monitoring the elections. This included the CSO Coalition on Elections, a local observer group made up of over 20 CSOs in The Gambia that was established in 2006, with WANEP as its Secretariat.

Furthermore, The Gambia National Human Rights Commission (NHRC), leading a team of West African human rights institutions, observed the election in an elongated fashion, releasing several reports from the registration process through to the election itself.⁷⁸ NHRC observers monitored 67 voter registration centres, the nomination of 22 presidential candidates, up to 18 political campaigns, and 146 voting centres across the country.

All the EOMs were provided with the criteria for observation eligibility, which was available and accessible through the IEC website.⁷⁹ The IEC, however, was reluctant to grant observer status to Gambia Participates, which had months earlier taken the IEC to court over claims made by the Mayoress of Banjul, and won.

4.3 Interaction with the IEC

Accredited EOMs are usually invited to briefing sessions, which the IEC holds to share information on the state of readiness and unfolding process of the impending election being observed. It also, in most cases, allows EOMs to seek clarification where needed:⁸⁰

The information of such nature includes a Handbook for Polling Officials, a handbook for elections observers, observers' kits, badges and observers' T-shirts.

[...] After the conduct of the elections, the observers are again treated to a debriefing session wherein each observer group will submit a provisional report of their observation mission of the election which will later be followed by the submission of their final reports. These reports are usually discussed by the Commission so as to be able to know the weaknesses and strengths of the IEC and be able to improve where need be.

78 NHRC 'Reports' <https://www.gm-nhrc.org/reports> (accessed 10 March 2022).

79 IEC 'Election observation' <https://iec.gm/election-observation/> (accessed 10 March 2022).

80 IEC Gambia 'Information on election observation' <https://iec.gm/election-observation/information-on-election-observation/> (accessed 10 March 2022).

Table 4.1: Breakdown of key EOMs, their codes of conduct, funders, conflicts of interest and reports

Names of key office bearers	Code of conduct for observers	Source/List of funders	Conflict of interest	Prelim. report within 30 days
				Final report within 90 days
African Union				
Kgalema Motlanthe	Yes, although not made publicly available.	N/A	Yes	Yes, 6-12-2021 N/A
The Commonwealth				
Chief Olusegun Obasanjo	Yes, embedded in its Commonwealth Handbook on Election Observation.	Self-funding	Yes	Yes, 6-12-2021 N/A
Economic Community of West African States (ECOWAS)				
Earnest Bai Koroma	Yes, although not made publicly available.	N/A	N/A	Yes, 6-12-2021 N/A
Electoral Institute for Sustainable Democracy in Africa (EISA)				
John Dramani Mahama	Yes, the EISA EOM Observer Code of Conduct must be signed by all observers prior to deployment, or they are not deployed.	Yes, all financial support for EISA EOMs is disclosed in statements and full acknowledgement.	Yes, nationals of the country in question are not allowed to be observers. All person's affiliations and nationalities are also included in the final observer team lists which are published via EISA's website.	Yes, 06-12-2021 N/A
European Union (EU)				
Norbert Neuser	Yes	Yes	Yes	Yes, 06-12-2021 Yes, 22-02-2022

Names of key office bearers	Code of conduct for observers	Source/List of funders	Conflict of interest	Prelim. report within 30 days
				Final report within 90 days
Gambia Participates (GP)				
Names and contact information of the EOM leadership and the structure of the EOM is highlighted in the GP Manual for Election Day, which is made available to master trainers to filter the information down to polling unit observers. LTOs were also taken through the EOM leadership and communication channel.	Yes, there is a code of conduct for all the observers including data entry clerks. EOM staff are also trained on the organisation's election code of conduct and that of the IEC.	Yes, on 31 March 2022, during a press briefing organised by the GP, they disclosed the total number of funders dedicated to the project, and the donor, the IEC.	Yes, the conflict-of-interest policy is codified in GP's Election Monitoring Pledge, which is signed by all the observers.	Yes, 06-12-2021 N/A
The Gambia National Human Rights Commission (NHRC)				
Emmanuel Daniel Joof	Yes, there was a checklist and code of conduct and training undertaken.	Yes, Organisation Internationale de la Francophonie and the UN Office of the High Commissioner for Human Rights (OHCHR).	Yes	Yes, Dec 2021 Yes, Feb 2022
Election Watch Committee				
Not distinctively, but has listed Yankuba Manjang as Executive Secretary; Momodou Juju Jallow as Program Manager; and Mbaye Mballow as Communication Officer.	N/A	Yes, the National Endowment for Democracy and technical support from the National Democratic Institute for International Affairs.	N/A	Yes, 05-12-2021 N/A

Names of key office bearers	Code of conduct for observers	Source/List of funders	Conflict of interest	Prelim. report within 30 days
				Final report within 90 days
Westminster Foundation for Democracy*				
N/A	N/A	Yes, funded by the Foreign, Commonwealth and Development Office.	N/A	Yes, 07-12 2021 Yes, 13-01-2022
CSO Coalition on Elections and a partner to National Elections Group (NEG)**				
Mrs Hannah Forster	Yes. Following training, the grouping developed a code of conduct. Also worked with International IDEA to develop a code of conduct for candidates. The group was also part of the National Elections Response Group	Yes, funded by partners including UNDP (Banjul), International IDEA, ECOWAS and WANEP (main Secretariat in Ghana) with funding from the EU	N/A, the International Republican Institute (IRI) had supported the preparation of a strategic plan, including a code of conduct which is underway.	Yes, statements were issued within the 30 days. But a fuller report on the elections is underway.
West African Elders Forum***				
Goodluck Jonathan	N/A	N/A	No	No

*Westminster Foundation for Democracy's Thematic Election Expert Observation Mission (TEEOM) commenced work on 31 October 2021. The mission's focus was on the rights and opportunities of women, youth, persons with disabilities and other underrepresented groups to participate in the electoral process. It also assessed media freedoms, the role of the media and online coverage of the election campaign. The TEEOM did not deploy observers and so was not in a position to assess the overall integrity of the electoral process but did offer some reflections on other aspects of the process based on its own independent analysis.⁸¹

**NEG is represented by national FBOs, police, Gambia Women's Federation; and various institutions, and is hosted by WANEP as the Secretariat for the grouping.

***West Africa Elders Forum, headed by Goodluck Jonathan, was not observing but focused on peacebuilding initiatives instead. It did not give a report.

4.4 Opinion polls

The Centre for Policy, Research and Strategic Studies (CepRass), through the Opinion Polls and CSO Capacity Building programme, conducted a series of opinion polls on the 2021 presidential elections (in September and November, and a post-election poll in December 2021), and was the only organisation to have done so.⁸² The project proactively discloses its funders as the

81 Westminster Foundation for Democracy 'Final report: Thematic Election Expert Observation Mission on Gambia's 2021 Presidential Election' (2022) 3 <https://www.wfd.org/what-we-do/resources/preliminary-statement-wfd-thematic-election-expert-observation-mission-gambia> (accessed 8 March 2022).

82 CepRass 'CepRass has conducted the first opinion polls ahead of the December 2021 Election' <https://ceprass.gm/research/ceprass-election-opinion-polls/> (accessed 8 March 2022).

The Centre for Research and Policy Development (CPRD), the Centre for Democracy and Development (CDD-West Africa) in partnership with ARTICLE 19, and the Fact-Check Centre also conducted research and observation through the establishment of an election analysis centre to observe the online landscape during the Gambian presidential elections. According to the project profile, it aimed: to collect and analyse information on the conduct of the elections in real time in order to assess the credibility and veracity of the information on social media; to optimise a fact-checking system on election day; and to verify any information observed on election day.⁸³ However, the project has not disclosed its funders.

4.5 Voter tabulation

Gambia Participates was the only organisation to use technology to track the election results as part of their promotion of election transparency.⁸⁴

The Marble mobile application project (funded by the National Endowment for Democracy), is named for the marble stone used in elections in The Gambia since independence in 1965, is a digital tool created in 2018 to provide up-to-date, timely and accurate election information to electorates to promote election transparency and accountability. The application is intended to be used to inform and educate people on elections in general.

The Elections Watch Coalition (EWC) was a partnership of three organisations with different expertise and backgrounds, which collaborated to observe the 2021 presidential elections. The EWC comprises PAG, ACTIVISTA and the National Youth Parliament (NYP). The EWC functioned as the decision-making body on all matters relating to the 2021 Elections Watch Project, with PAG serving as the EWC's Secretariat.⁸⁵

4.6 EOM observations on access to information

Almost all the EOMs applauded the Gambian government for passing the Access to Information Act in 2021. However, there were concerns about its applicability and promotion within the elections as described below by EISA, the NHRC, EU, CPRD/CDD-West Africa/ARTICLE 19/Fact-Check Centre, EWC, and the WFD observer missions, respectively.

Stakeholders consulted by the EISA Mission expressed concerns about the time allocated to scrutinise the nomination papers before the conclusion of the nomination process, limiting the opportunity to verify the bona fides of all contesting candidates. This restricted the right of access to information and ultimately impacted on the transparency of the process. In addition, the period between nomination and the start of the campaign was two days, further impacting on the right to effective remedy as it did not provide ample time for filing and adjudication of petitions arising from the nomination process.⁸⁶

In view of the above, and pursuant to sections 12 (a), (e), (i) and (j) of the NHRC Act 2017, the Commission makes the following recommendations for reform of the electoral system. 'Amendment of the existing laws to ensure adherence to principles

83 The Gambia Analysis Centre 'Preliminary statement' 6 December 2021.

84 Gambia Participates 'Marble Project (up to phase III)' https://www.gambiaparticipates.org/project_view_details/4 (accessed 8 March 2022).

85 EWC (n 12).

86 EISA (n 77) 6.

of universal suffrage and legal and political equality, and to advance compliance with international treaty obligations. 'Transparency and credibility of electoral processes, laws, and governing bodies are mandatory not only to ensure the integrity and fairness of elections, but for better governance, political stability, national security, and human rights law compliance.'⁸⁷

The legal framework also unduly restricts freedom of expression online and does not guarantee a genuine independence of the Public Utilities Regulatory Authority (PURA). Privacy and personal data are not protected. The 2021 Access to Information Act, if properly implemented, will broaden the scope of information that government institutions, including the IEC, must publish online. Such enhanced transparency should reduce adverse effects of disinformation.⁸⁸ [...] The IEC should publish the complete presidential election results, disaggregated by polling station, on its website without delay. In all future elections, disaggregated results should be released during the tabulation process.⁸⁹

Disinformation was a major challenge during the electoral process (Deliberate attempts to sway voters in particular directions; pictures from SA surfaced in Gambia elections). Access to credible information particularly online impacted fact checks (difficulty in sourcing out information from elections stakeholders to verify information. Social media formed the biggest platform for the dissemination of political messages (personal messages, rumours, fake news)⁹⁰

In its pre-election statement, the EWC noted the lack of information concerning the location of collation centres and the collation procedures. The IEC did not publish collation centre locations until a day before the conduct of the polls; this created challenges for the EWC's plans for observing the process.⁹¹

The IEC lacks the capacity to communicate effectively online. The IEC also lacks the capacity to monitor social media to gain advance warning of emerging threats to electoral integrity and, in the event of an escalation of tensions, the lack of effective preparation from social networks, lawmakers and the IEC continues to pose risks for the spread of disinformation and hate speech.⁹²

87 NHRC 'Advisory note on the Elections Act vis-à-vis the 1997 constitution and the 2020 draft constitution' 22
<https://www.gm-nhrc.org/download-file/92fdfa76-9c4d-11eb-86ec-022a5fa1767e> (accessed 22 March 2022).

88 EU EOM (n 75) 3.

89 EU EOM (n 75) 4.

90 CPRD, CDD-West Africa in partnership with ARTICLE 19 and the Fact-Check Centre 'Preliminary statement' 1.

91 EWC (n 12) 44.

92 Westminster Foundation for Democracy (n 81) 23–27.



Chapter 5



CHAPTER 5: LAW ENFORCEMENT AGENCIES

5.1 Background to the reform of the state security sector

The Gambia has been saddled with a highly chaotic, ethnicised, politicised and compromised security sector due to the 22 years of Jammeh's regime. During this period, the militarisation of politics had been the main thrust of the Armed Forces Provisional Ruling Council (AFPRC) administration since it took the reins power in 1994, and then transformed itself into a civilian movement as the APRC in 1996. The APRC then went on to dominate the political landscape for the next two decades.

At the height of state paranoia during the non-democratic period, there were over a dozen formal and informal security agencies in existence under the central command of President Jammeh. In 2017, President Barrow publicly admitted that: 'It was clear to us that we were taking over a security sector that had been deeply politicised and not responsive to the needs of our people.'⁹³ As a result, one of the core ambitions of the governing 'Coalition 2016' was to enact robust reform of the security sector to meet the transformation expectations of most Gambians.

There are eight officially recognised security institutions in the country, namely: the Gambia Armed Forces (GAF), State Intelligence Services (formerly the National Intelligence Agency), Gambia Police Force (GPF), Drug Law Enforcement Agency Gambia (DLEAG), Gambia Fire and Rescue Service (GFRS), Gambia Prison Service (GPS), Gambia Revenue Authority (Customs and Excise), and the Gambia Immigration Department.

The areas identified as priorities for the general reform of the security sector were as follows:⁹⁴

- Restore public trust and confidence by addressing post-authoritarian legacies;
- Develop an overarching security governance framework;
- Reform, empower and strengthen civilian management and oversight bodies;
- Address cross-cutting perennial challenges; and
- Address specific institutional reform activities.

However, these intended reforms have been irreparably stalled and no longer appear to be a priority for the Barrow administration. This situation has resulted in the extended presence of the Economic Community of West African States Mission in Gambia (ECOMIG), backed by a United Nations Security Council draft resolution. This multi-country force was mobilised and deployed in 2017 following the protracted standoff between Yahya Jammeh and Adama Barrow over the results of the 2016 presidential elections. ECOMIG, which started off with about 4 000 troops, was only meant to stay for six months. But five years later, ECOMIG remains in place with a dwindling number of 1 000 operatives, comprising 750 Senegalese, 200 Nigerian and 50 Ghanaians. To most people's incredulity and consternation, ECOMIG was to be transformed into a national police mission by the end of 2021. At the time of drafting this report, such a transformation had not yet happened.

The Constitution of The Gambia (1997), under Chapter XII, Part I, makes provision for the establishment of a police force. Section 178 states that:

93 Republic of The Gambia 'Security sector reforms strategy 2020–2024' (16 April 2020) xi <https://info.undp.org/docs/pdc/Documents/GMB/SSR%20STRATEGY%20FINAL-%20Monday%2027%20April.pdf> (accessed 22 March 2022).

94 Republic of The Gambia (n 93) vi.

(1) There shall be a Police Force of The Gambia of which the Inspector General of Police shall be the head.

(2) The Police Force shall be equipped and maintained to perform its traditional role of maintaining law and order, and such other functions as may be prescribed by an Act of the National Assembly.

(3) No person or authority shall raise any other police force or service except by or under the authority of an Act of the National Assembly.

According to its website, the GPF is tasked with the primary responsibility for domestic intelligence, security and law enforcement. Established in 1965, the GPF is headed by the Inspector General of Police (IGP) under the ambit of the Ministry of the Interior. Today, the GPF has 5 000 uniformed and plainclothes men and women serving across the country. As an independent state institution, the GPF is expected to perform its duties as dictated in the 1997 Constitution.⁹⁵ Under President Jammeh, the police – and particularly the paramilitary wing, the Police Intervention Unit (PIU) – were indicted for various human rights violations, including the murder of student protesters in 2000, and the arrest and detention of human rights activists and journalists over a period of two decades. The police were certainly not independent and did not abide by the tenets of the Constitution to protect public property, maintain public safety, fight crime and cultivate community relations. Instead, the police instilled terror among the population and pursued criminal activities involving large-scale bribery and illicit dealings with known criminals.

In 2013, then IGP, Ensa Badjie, and two former chiefs of the Gambia Armed Forces, Lt. Colonel Mam Matarr Secka and Major Kuluteh Manneh, were sentenced to ten years' imprisonment. The convicted trio were found guilty of official corruption, sedition, abuse of office, economic crimes, obtaining goods by false pretences and conspiracy.⁹⁶ Fast forward to ten years later, and the GPF seems to have shaken off its poor image and is arguably the most reformed security agency in the country.

5.2 Transformation of the GPF: Powers and responsibilities

The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH supports the GPF in three areas. Most notably, GIZ advises the police on formulating and implementing a public relations strategy. Formats for ongoing dialogue between the police and civil society are being developed together with the national media. Police officers are trained in dealing with the public and media.⁹⁷ The United Nations Children's Fund (UNICEF) is also working with the GPF with respect to improving community policing.

These initiatives continue to augment the role of the police during elections, and none more so than the NHRC, through a set of guidelines produced for the GPF that are largely based on the African Commission Guidelines on Policing Assemblies in Africa.⁹⁸ The Guidelines on Policing Public Assemblies in The Gambia recognise the right to assemble and demonstrate peacefully and freely with others, which the document states is a cornerstone of democracy. The NHRC guidelines also provide individuals and groups with a platform to express civil, political, economic, social, cultural, and environmental rights, to hold the government to

95 Gambia Police Force 'About GPF' <https://gambiapoliceforce.com/about-gpf/> (accessed 26 May 2022).

96 AA Saho 'Gambia: Ex-IGP, Ensa Badjie and co. handed 10 years imprisonment', Foroyaa (Banjul) 23 January 2013 <https://allafrica.com/stories/201301240587.html> (accessed 26 May 2022).

97 GIZ 'Improving national police structures in The Gambia' <https://www.giz.de/en/worldwide/92518.html> (accessed 26 May 2022).

98 Guidelines on Policing Public Assemblies in The Gambia <https://www.gm-nhrc.org/download-file/fa6c59fd-c457-11ea-9dc8-022a5fa1767e> (accessed 26 May 2022).

account, and to raise and defend issues of common or national interest. These rights, by extension, are guaranteed by the Constitution. Part 1, Provision 2, of these NHRC Guidelines states that:⁹⁹

2.1. The drafting and implementation of Standard Operating Procedures (SOPs), policies and guidelines by the Police force governing the right to assemble freely with others must:

2.1.1. Require Police responses that favour the presumption of the exercise of the right to assemble freely with others by all persons involved, or believed to be involved, in the assembly;

2.1.2. Be consistent with the Constitution, regional and international human rights instruments ratified by The Gambia;

2.1.3. Recognise that limitations and restrictions on the right to assembly freely with others must be treated as an exception, and that any limitations or restrictions imposed must be legal, necessary, non-discriminatory, and proportionate, and be:

2.1.3.1. Decided on a case-by-case basis; and

2.1.3.2. Reviewable by competent, independent, and impartial administrative, judicial, or quasi-judicial authorities, in both law and practice, within 72 hours.

This is significant because it is the police, via the IGP, that is the responsible authority for issuing permits for public protests, assemblies and, by extension, political rallies. These powers are given to the IGP through the Public Order Act, which was enacted in 1961, four years prior to independence.¹⁰⁰ The colonialists' approach was to dampen popular participation and the freedoms of expression and assembly. The Act has since been amended but still maintains some of its draconian provisions, with arbitrary mechanisms that the IGP can wield to clamp down on dissent. Section 5 of the Public Order Act No. 7 of 1961, on 'control of processions', provides:

- (1) The Inspector General of Police (IGP), in the city of Banjul, Kanifing, Municipality, or, in any of the Regions, the Governor or the persons authorized by the President, may direct the conduct of all public processions and prescribe the route by which and the times at which any procession may pass.
- (2) Any person who is desirous of forming any public procession shall first make application for a license to the Inspector general of Police or the of Governor of the Region, or other person appointed by the President, as the case may be, and if the Inspector General of Police, or the Governor of the Region, or any other person authorized by the President is satisfied that the procession is not likely to cause breach of the peace, he or she will issue a license specifying the name of the license and defining the conditions on which the procession is permitted to take place.

Furthermore, a procession may be halted by a magistrate or a police officer (not below the rank of sub-inspector) if there is a perceived violation of the conditions of the licence to hold a

99 NHRC 'Guidelines on policing public assemblies in The Gambia' at 5 <https://www.gm-nhrc.org/guidelines-sop> (accessed 26 May 2022).

100 The Public Order Act <https://security-legislation.gm/wp-content/uploads/2022/05/PUBLIC-ORDER-ACT-1.pdf> (accessed 26 May 2022).

procession. Anyone that violates the order by holding a procession without a permit commits an offence which is punishable by a term of three years in prison. According to the NHRC: 'Over the years the application of the Public Order Act has resulted in a series of human rights violations including death and injury to protesters.'¹⁰¹ Consequently, the power to grant permits for political rallies during the election period has been handed over to the IEC. The police assist the IEC in granting permits and organising schedules for political party rallies.

The GPF has made tremendous progress in its information and media engagements. It publishes a newsletter and maintains a website and Facebook page, through which it provides regular updates to the public on its activities.¹⁰²

However, whereas definite progress has been made in terms of the GPF's proactive disclosure practices, their methods of handling protest are still state-centric, and have led to injuries and the loss of life. Nevertheless, the 2021 Afrobarometer survey shows that popular trust in the security forces remains relatively strong and well ahead of trust in elected leaders. Despite people reporting a decline in their safety over the last three years, 59% of the population say they trust the GPF 'somewhat' or 'a lot', only one percentage point decline from 2018.¹⁰³

The Guidelines on Access to Information and Elections in Africa include law enforcement agencies as important stakeholders in the electoral process. They serve as facilitators of an orderly, peaceful and transparent election. During elections, members of the GPF are permitted inside polling stations to provide protective services, aiding and ensuring the openness, freedom and integrity of voting. Furthermore, the GPF ensures that voting is conducted in a lawful manner, and that electoral malpractices with the potential of leading to electoral violence are averted.

One visible transformation seen within the GPF has been their role in coordinating electoral security during the 2021 presidential elections. Unlike under former president Jammeh, where the opposition enjoyed no state security, the GPF provided security to all candidates, visibly demonstrating their independence. Ahead of the 2021 elections, many Gambians were worried about potential electoral violence resulting from the polarising nature of Gambian politics as seen on social media. However, many still believed that the solutions to countering violence should be provided by the GPF. The GPF are duty-bound to be neutral and, particularly, to show their neutrality during the election campaigns. They used this mandate to provide all candidates with police security details and to manage crowd control. At all times, their main objective was to ensure a violence-free election.

A simple and user-friendly handbook was developed to serve as a guide on the responsibilities and conduct of police officers on election duty.¹⁰⁴ In 2020, in collaboration with the NHRC, the GPF also developed a Code of Conduct for The Gambia Police Force.¹⁰⁵ These regulations set out clear instructions on the minimum standards of behaviour expected of police officers. Police officers are called upon to internalise the values and principles enshrined in the document, which also acknowledges the critical role the GPF plays in promoting, protecting, respecting

101 NHRC 'Advisory note on the right to freedom of association and assembly vis-à-vis the Public Order Act' 8 <https://www.gm-nhrc.org/download-file/d35e2981-af67-11ea-9dc8-022a5fa1767e> (accessed 26 May 2022).

102 The website GPF http://www.gambiapoliceforce.com/?fbclid=IwAR2-gj7Br0_V1m4a0K57bvecYxQ71ct3U0IAe3RDAwWfjqI3WsPuMIGIdM (accessed 26 May 2022) was down. The Facebook page is at <https://www.facebook.com/PolisoMagazine/> (accessed 26 May 2022).

103 'Gambians less safe but want ECOMIG to leave Afrobarometer survey shows' Afrobarometer 28 May 2021 <https://www.afrobarometer.org/articles/gambians-feel-less-safe-want-ecomig-leave-afrobarometer-survey-shows/> (accessed 26 May 2022).

104 Pocketbook on election security <https://security-legislation.gm/wp-content/uploads/2022/05/POCKETBOOK-ON-ELECTION-SECURITY-1.pdf> (accessed 26 May 2022).

105 NHRC 'Code of Conduct for The Gambia Police Force' <https://www.gm-nhrc.org/download-file/f9783686-9c4e-11eb-86ec-022a5fa1767e> (accessed 26 May 2022).

and fulfilling the fundamental human rights of all citizens.

Prior to polling day, the GPF frequently participated in monthly electoral dialogue events organised by the IEC and other stakeholders, which were held to update the public on their plans and preparations for the election. These meetings were crucial in the sense that they brought together all stakeholders in the electoral process to raise and discuss concerns.

In further recognition of the GPF's successful transformation, the 2022 Budget Speech states that:¹⁰⁶

The Gambia Police Force (GPF) has over the past year registered laudable achievements in the fight against crimes despite resource constraints and the impact of COVID-19 pandemic. The Zero Crime Operation launched early this year has proven effective in combating the increase in criminal activities as several criminals were arrested, criminal hideouts demolished. Those arrested are going through the due process of the law. The Government is committed to providing the requisite resources to combat all criminal activities. In line with the Government Security Sector Reform (SSR) agenda, and in a bid to invest in training and capacity building of officers, the GPF in collaboration with national and international partners have conducted training for about 600 police officers in different areas of policing.

These achievements notwithstanding, there was documented evidence of police brutality in the immediate aftermath of the announcement of the results on 6 December. The media reported that the GPF fired teargas and beat up UDP supporters protesting against the presidential results.¹⁰⁷

There is no available information on the budgetary allocation for the police for the elections in 2021.

Table 5.1: Proactive disclosures required of law enforcement agencies¹⁰⁸

Proactive disclosure required	Explanation	Outcome
Code of conduct and roles during the electoral period.	A handbook was developed during the election in addition to the code of conduct developed by the NHRC for the GPF.	Met
Training and operational plan and manuals for the electoral period.	The police organised several internal training sessions for their members ahead of the polls. Details about such training were shared during the monthly electoral updates.	Met
Deployment plans from the pre- to post-election period.	The GPF provided security to all candidates during the campaign and worked with the IEC to provide security on polling day.	Met

106 Ministry of Finance and Economic Affairs '2022 Budget Speech: Improving domestic productive capacity and resilience for inclusive and sustainable economic growth' 28 October 2021 at 55.

107 K Busari 'Police fire teargas as Gambian opposition protest deteriorates' Premium Times (Banjul) 6 December 2021 <https://www.premiumtimesng.com/news/top-news/499464-breaking-police-fire-teargas-as-gambian-opposition-protest-deteriorates.html> (accessed 26 May 2022).

108 ACHPR (n 1) section 24.

Budgetary allocations and actual expenditure for the electoral period.	Although not published, it is strongly believed that the GPF was allocated a budget to deliver on their mandate. Usually, such a budgetary allocation is made under the IEC.	Partly Met
Details of reported election-related crimes including number of cases reported and steps taken to investigate, prosecute and/or withdraw such cases.	Few major election related crimes and no prosecutions were reported. This is perhaps due to the limited scale and nature of the crimes. Instead, the GPF thanked Gambians for their peaceful behaviour throughout the electoral process.	Not met
Details of arrangements where any other persons or groups are authorised by law enforcement agencies to perform specific law enforcement-related tasks during the electoral period.	Although the GPF is the primary duty bearer for security during elections, they also worked with other security agencies such as the Immigration and Fire Service, particularly during registration and polling.	Met



Chapter 6



CHAPTER 6: MEDIA PROVIDERS, ONLINE PLATFORMS AND REGULATORY BODIES

6.1 Regulatory framework

The Gambia has ratified several international conventions and regional charters, such as: the ICCPR, the African Charter, ACDEG, the African Charter on Principles of Public Service and Administration, and the AU Convention on Combating and Preventing Corruption. These instruments guarantee freedom of expression and of the media, the right to disseminate and access information, and the right to public participation.

With respect to domestic legislation, section 25 of the 1997 Constitution guarantees freedom of speech and expression and media freedom; freedom of peaceful assembly; and freedom of association.

The Information and Communications (Amendment) Act of 2013 is also relevant. Although the Act, which was passed in 2009, tries to streamline the sector and further infuse a degree of efficiency and effective service delivery mechanisms through a more transparent regulatory framework, it nevertheless has an overbearing character and draconian provisions. In 2013, National Assembly amendments to the 2009 Information and Communications Act severely restricted press freedom and the right to freedom of expression on the internet. It effectively criminalised online speech, encouraged self-censorship and violated the public's right to know. The Act further established new sets of offences for online speech that are punishable by a 15-year jail term and/or a fine of three million dalasi (USD 60 000). It criminalised what it termed: 'spreading "false news" about the government or public officials; caricaturing or making derogatory statements against public officials; incitement, dissatisfaction or instigating violence against the government'. The law was challenged by the GPU in 2018. The Supreme Court ruled that 'criminal defamation', 'libel' and 'false news online' are in fact unconstitutional. The Court also upheld the 'false publication' and broadcasting law as constitutional; however, it scrapped the section on sedition law to only protect the President.¹⁰⁹

Additionally, in November 2020, draconian clauses were expunged through an amendment of the law under the Information and Communications (Amendment) Bill 2020. The Bill also gives powers of regulation to PURA. Part I, section 2 (functions of the minister and the authority) states that:

(2) Within the context of the objectives defined in subsection (1), the Authority shall

(a) advise the Minister on policy formulation and development strategies for the information and communications sectors;

(b) develop regulations for adoption by the Minister in the information and communications sectors, after consultation of stakeholders in accordance with this Act; [...]

(i) monitor compliance with existing regulations and terms of licences, authorizations and permits granted in the information and communications sectors, and for that purpose, receive and study all information and documentation required from the operators of information and communication networks and services under the terms of their licences and terms of reference, and request any additional information that may be needed.

109 MS Joof 'Gambia: Supreme Court scraps criminal defamation, upheld false publication' Front Page International (Banjul) 9 May 2018 <https://frontpageinternational.wordpress.com/2018/05/09/gambia-supreme-court-scraps-criminal-defamation-upheld-false-publication-law/> (accessed 26 May 2022).

6.2 Media and internet regulatory bodies

In The Gambia, existing regulatory institutions that intersect with the media and their operations are a mixture of statutory and voluntary/membership bodies. The Public Utilities and Regulatory Authority (PURA) was created by an Act of the National Assembly in 2001 (the PURA Act), which established an independent agency mandated to regulate certain 'regulated public services'.¹¹⁰ Under section 2(1) of the PURA Act, the agency is mandated to regulate the communications, transportation, energy and water sectors in the country. PURA's role is further defined in the Regulation of Information and Communications Services and Systems Information and Communications Act of 2009. In Part I, section 3 describes the functions of the Minister under the following provisions:

(3) The Government shall take the necessary steps to guarantee the independence and transparency of policy and regulatory authorities through –

(a) clear, precise terms of reference for the authorities and decision-making bodies in the sector as defined in this Act;

(b) the creation of transparency mechanisms and the distribution of procedures for consultation with the sector players, giving interested parties an opportunity to bring forward their observations on proposed measures within a reasonable timeframe;

(c) publication of annual reports of activities; and

(d) the publication of all major decisions of the Authority in the Gazette or in an official publication of the Authority or by any other relevant means.

In 2016, Freedom House reported that:¹¹¹

Consumer activists have described PURA as an ineffective regulator that seems more concerned about its image than the interests of consumers. As it stands in 2016, PURA lacks the expertise, equipment, and enforcement power to carry out its mandate. Furthermore, PURA is not independent, at least in its composition. The president appoints the governing board on the recommendation of the Minister of Finance and Economic Affairs.

The situation has not changed since then, at least in terms of appointments to the governing board and ultimately the senior management team.

In 2021, as the country readied for elections, The Gambia jumped 56 places to 87th in the Reports Sans Frontiers (RSF) global rankings on press freedom.¹¹² According to the EU Election Observer Mission Report,¹¹³ about 46% of Gambians are connected to the internet, and about half a million Gambians are Facebook users. The diaspora continues to play an important role in enhancing participatory journalism. Blogs, Facebook pages and social media broadcasts have in no small measure contributed towards popular participation in the country. This

110 PURA Act <https://pura.gm/wp-content/uploads/2021/02/Pura-Act-2001.pdf> (accessed April 2021).

111 Freedom House 'Freedom on the net 2016: The Gambia' (2016) https://freedomhouse.org/sites/default/files/FOTN_2016_The_Gambia.pdf (accessed April 2021).

112 RSF '2021' <https://rsf.org/en/index?year=2021> (accessed May 2021).

113 EU EOM (n 75).

added pluralism in media space only strengthens press freedom, freedom of expression and access to information since there is no independent public broadcaster and only a state broadcaster, Gambia Radio and Television Services (GRTS), which has nationwide coverage. There are five commercial TV stations, and 40 commercial radio and nine community radio stations. Nevertheless, cross ownership of the media has not been properly addressed, with telecommunication giants, mainly in the Global System for Mobile Communications (GSM) sector, allowed to own and operate radio and television stations as well.

Despite the massive and rapid expansion of the media in the country, two private radio stations were forced to close down in 2020 by armed personnel of the Gambian police, on orders that the broadcasters were spreading 'incendiary messages' and 'inciting violence'. This repression was condemned by the GPU and affiliates. As Anthony Bellanger, the General Secretary of the International Federation of Journalists (IFJ), said at the time:¹¹⁴

These blatant attacks against media freedom and journalists are unacceptable in a democratic society. They also violate international conventions on freedom of expression and media freedom that the Gambia had signed and ratified. We urge the Gambian government to comply with the international laws and end the crackdown on media.

The GPU, the main governing institution for the Gambian media, has a Charter of Ethics for Journalists,¹¹⁵ which contains a section on 'Elections, broadcast journalism and online journalism' that the Media Council of The Gambia (GMC) abides by and enforces. Part 5 of the revised Charter states that the media should:

68. Give voices to the public about matters relevant to election
69. Investigate and expose electoral malpractices
70. In times of referendum, give equal time and space to both sides
71. Grant parties or candidates direct access programmes on a fair and non-discriminatory basis
72. Provide comprehensive and impartial coverage of elections; and in local languages
73. Where fees are applied, charge uniformly for all political parties and candidates
74. Remain independent of the politicians and parties we cover
75. Provide policy in undertaking election coverage
76. Not take inducement, gifts and bribery from politicians
77. Not fan election violence or encourage hate speech and incitement

114 International Federation of Journalists-Africa 'The Gambia: Police close down two radio stations and arrest four journalists' (28 January 2020) <https://www.ifj.org/fr/salle-de-presse/nouvelles/detail/category/press-releases/article/the-gambia-police-close-down-two-radio-stations-and-arrest-four-journalists.html> (accessed April 2021).

115 GPU 'Cherno Jallow Charter of Ethics for Journalists' <https://gpu.gm/gpu/#collapse-bc2283064ab9298a8123> (accessed 26 May 2022).

78. Resist threats and not censor election programmes in any way unless they are certain that this is necessary to prevent harm, such as an act of violence or tribal tension

79. Where there is conflict of interest, whether by ownership or party affiliation, it should be known

80. Acknowledge any financial support for coverage of electoral process

81. Be transparent and fair in political advertisements.

The IEC also disseminated a media code of conduct after its stakeholder engagement in March 2022, which focuses exclusively on TV and radio.¹¹⁶ Both the GPU and the IEC's codes of conduct include requirements for media organisations to charge the same fees and to give equal airtime to all political actors.

Sections 94 and 95 of the 1996 Election Decree require that only IEC-approved TV and radio stations can carry political advertisements. The 1996 Decree requires both TV and radio to charge a uniform fee and limits them to a maximum of ten minutes of advertising per candidate per day. The law makes a distinction between political news coverage, political commentary, and political advertising, which are exempt from the ten-minute limit for political advertising per candidate.

6.3 Compliance and enforcement

Section 240 of the Compliance to the Licence and the Communication Act of 2009 makes it explicitly clear that:

(1) All broadcasting licensees shall comply with the terms and conditions of their licence, and any other provisions specified in this Act.

(2) The Authority shall monitor compliance with the terms and conditions of broadcasting licenses, and with other material provisions of this Act relevant to broadcasting licences.

(3) The Authority may hold public hearings on any matter relating to the monitoring and enforcement of broadcasting licences.

(4) Where the Authority determines that a broadcasting licensee has failed to comply with the terms and conditions of the licence, or the provisions of this Act, it shall notify the licensee in writing.

(5) If, after hearing any representations made by a broadcasting licensee who has been notified in accordance with subsection (4), the Authority confirms the non-compliance, it shall publish its findings and the reasons for them.

(6) Having taken into account the nature, gravity and consequences of the non-compliance, and after hearing any representations made by the licensee or any other interested persons in response to the publication of its findings, the Authority shall recommend to the Minister to make one or more of the following orders which it considers appropriate –

116 E Jallow 'IEC issues media rules restricting political advertisement' Gainako (Banjul) 22 March 2022 <https://gainako.com/iec-issues-media-rules-restricting-political-advertisement/> (accessed 26 May 2022).

(a) requiring in the case of a licence to broadcast:

(i) a correction,

(ii) an alternative version, or

(iii) a balancing opinion, whichever is applicable;

(b) directing the licensee to desist from noncompliance;

(c) directing the licensee to take appropriate remedial steps.

(7) If the broadcasting licensee does not comply with an order under subsection (6), the Minister may prohibit the licensee from providing a broadcasting service for any period which, in the first instance, may not exceed thirty days.

The Compliance to the Licence and the Communication Act of 2009 also provides for a process and procedure when dealing with complaints. Section 241 lays these processes out as follows:

(1) The Authority shall publish the form and procedure as regards the adjudication of complaints concerning television or sound broadcasts.

(2) A person who has reason to believe that a broadcasting licensee has failed to comply with the terms and conditions of the licence or the Code of Conduct may lodge a complaint with the Authority within thirty days of the occurrence of the alleged non-compliance.

(3) A complaint referred to in subsection (2) shall be in writing and, on receipt by the Authority, shall be notified to the licensee concerned.

(4) After having considered a complaint and any representation in relation to it, the Authority shall publish its findings.

(5) The Authority shall keep a record of all complaints regarding broadcasting received by it and shall publish each year an analysis of them.

(6) The Authority shall not deal with any complaint which is the subject matter of litigation before the Court.

The GPU's Media Council of The Gambia (MCG) receives complaints on its behalf about the media's compliance with the GPU Code of Conduct. No complaints received on elections have been revealed since the MCG's formation in 2020. In fact, the MCG's efforts and complaints received are rarely publicised. On one occasion, in 2020, the MCG Secretary announced that five complaints had been received. However, when questioned by journalists to provide more details, only those details pertaining to the nature of the complaints were revealed, excluding the actual parties involved.¹¹⁷

During a stakeholder engagement between the media and the IEC in March 2022, one of the

117 Y Taylor 'Four media houses receive Media Council The Gambia's complaint ruling' Gainako (Banjul) 9 December 2020 <https://gainako.com/four-media-houses-receive-media-council-the-gambias-complaint-ruling/> (accessed 26 May 2022).

means of regulating the media advanced by IEC staff present was to strip the media company of their licence to operate. Stripping a media company of their licence can only be done by PURA in consultation with the Ministry of Information and will ultimately lead to loss of revenue for the state. This highlights that the IEC has only a small role in regulating the media. However, the IEC can enforce compliance and mete out punishment by revoking the accreditation of any media organisation that violates their code of conduct.

An example of a serious violation during the 4 December 2021 presidential elections concerned the prescribed 'cooling-off' day (see section 2.4 above). The day before an election, the law requires all stakeholders to refrain from campaigning and airing political advertising. However, on 3 December 2021, both Paradise TV and Eye Africa TV aired campaign videos of two political parties. The IEC took exception to this and threatened to revoke their media accreditation. In the end, only an intervention by the GPU president succeeded in convincing the IEC not to revoke these companies' accreditation.

6.4 Broadcast media regulation and internet shutdowns

While PURA is responsible for regulating all broadcast (TV and radio) media, the Election Act gives the IEC powers to regulate the media during elections. These two authorities combined can revoke the licences of broadcast media only as a last resort. During an election period, the IEC is in charge of regulating the whole media sector whereas PURA is responsible for regulating the media in non-election times.¹¹⁸ However, while online media receives less regulation in general, The Gambia is prone to internet shutdowns throughout the year. As a case in point, 1 January 2022 witnessed a 14-hour internet blackout.¹¹⁹

In the run up to the 4 December 2021 presidential elections, the Gambia Participates CSO launched 'Marbles',¹²⁰ its award-winning platform that publishes election results online and in real time. Gambia Participates organised a press conference prior to the election and urged the government not to shut down the internet on election day – which was a real possibility since an internet shutdown had occurred during the 2016 presidential elections.¹²¹

As per Gambia Participates' demand, the 4 December 2021 presidential elections were not marred by any internet shutdowns, and their Marble platform was a key source of information for many Gambian voters.

6.5 Regulations on internet shutdowns

There are no laws regulating shutdowns of the internet in The Gambia. However, the main company involved in maintaining the internet gateway is the state-owned Gambia Telecommunications Company Limited (GAMTEL), which usually provides reasons for any internet shutdowns. In the context of confusion around who actually owns and manages the internet gateway, internet shutdowns are often explained as cable theft or maintenance issues.

The Gambia is connected to the African Coast to Europe (ACE) submarine fibre cable. The ACE consortium consists of over 23 member countries that have routed a fibre cable from France

118 E Jallow 'IEC issues media rules restricting political advertisement' Gainako (Banjul) 22 March 2022 <https://gainako.com/iec-issues-media-rules-restricting-political-advertisement/> (accessed 26 May 2022).

119 Y Taylor 'The Gambia's internet shuts down for over 14 hours on first day of 2021' <https://gainako.com/the-gambias-internet-shuts-down-for-over-14-hours-on-the-first-day-of-2021/> (accessed 26 May 2022).

120 See Gambia Participates (n 84).

121 Y Taylor 'Government must not shut down internet on Election Day says Gambia Participates' Gainako (Banjul) 3 December 2021, <https://gainako.com/government-must-not-shutdown-internet-on-election-day-says-gambia-participates/> (accessed 26 May 2022).

to South Africa via the west coast of Africa. The ACE cable was planned and implemented by the French telecommunications manufacturer ALCATEL.¹²² The Gambian government, with assistance from the World Bank, invested USD 25 million to be connected to the ACE cable.

When the internet was shut down during the 2016 presidential elections, no reason was advanced for this occurrence. With the widespread use of mobile phones, the results were being disseminated via social media platforms and messaging services such as WhatsApp in real time. However, it was obvious that the incumbent, who was losing the election, attempted to restrict this flow of information via the internet since on-the-spot counting meant a quicker turnaround of the election results, with less opportunity for interference. In contrast, there was no internet shutdown during the 2021 presidential elections.

6.6 Proactive disclosure of internal guidelines on election coverage

There is no existing legal requirement or culture in the media sector to proactively disclose their editorial policy and ethical codes of conduct on election coverage. According to the IEC's 1996 Elections Decree, state media (radio, TV and print) are to establish internal guidelines, which should be submitted to the IEC for approval. Sections 93 and 134 of the Election Act require that such guidelines should be published and come into force no later than 17 March 2022. The GPU Code of Conduct requires that any conflict of interest, whether due to ownership or party affiliation, must be disclosed publicly. The GPU Code of Conduct also requires the media to acknowledge any financial support they have received for their coverage of electoral processes, thereby placing the onus on the media to be independent and fair with respect to political advertising.¹²³ In this respect, the EU Observer Mission made the following observation:¹²⁴

All news coverage by GRTS was positive or neutral in tone. In contrast, monitored commercial TV stations displayed significant bias towards the incumbent. Eye Africa TV covered the GDC, the independent candidate, NPP, NUP, PDOIS and the UDP by devoting 9, 8, 40, 6, 24 and 13 percent of news coverage, respectively. Paradise TV devoted 11, 16, 37, 7, 15 and 15 percent news coverage to the listed candidates. QTV virtually covered only the NPP by devoting 92 per cent of its news coverage to Adama Barrow. The tone of the coverage was predominantly (89 percent) neutral or positive.

Table 6.1: Proactive disclosure required of the media¹²⁵

Proactive disclosures required	Regulatory agency concerned	Outcome
Regulations on media coverage to ensure fair and balanced coverage of the electoral process.	The GPU and the IEC both have rules on coverage of the electoral process.	Met
Significant transparency on political advertising policy on media and online media platforms.	Information on political advertising is not publicly available. Only the EU has published such information, in their 2021 Presidential Elections Observer Report.	Unmet

122 PURA 'PURA explains frequent fibre cuts and plans to explore securing second fibre cable and extra backup facilities' <https://pura.gm/pura-explains-frequent-fibre-cuts-and-plans-to-explore-securing-second-fibre-cable-and-extra-backup-facilities/> (accessed April 2022).

123 GPU (n 115).

124 EU EOM (n 75) 25.

125 ACHPR (n 1) section 29.

Proactive disclosures required	Regulatory agency concerned	Outcome
Details of all complaints or petitions received during the electoral period and how these were addressed.	This information is not publicly available. It is known that the IEC had concerns with two TV stations which aired political advertisements during the cooling off period.	Unmet
The availability of a code of conduct for online media.	The GPU has a Code of Conduct; however, the IEC and PURA do not have one for online media.	Partially met
Reasons for internet shutdowns are proactively disclosed to the public.	Internet shutdowns are usually explained by GAMTEL. However, reasons for the shutdown during the 2016 elections were not disclosed.	Partially met
Decisions of media or internet regulatory bodies subjected to judicial review.	This is not done in The Gambia. However, media platforms dissatisfied with PURA decisions may seek legal redress.	Unmet
Editorial and ethical codes or guidelines disclosed proactively.	This information is not publicly available.	Unmet
Information on complaints and sanctions for transgressions.	This information is not publicly available.	Unmet
Code of Conduct for staff on procedural matters.	This information is not publicly available.	Unmet
Criteria for political advertising and news coverage for political campaigns.	GPU claims that only one media platform has met this criterion.	Unmet
Proactive disclosure of conflicts of interest including media ownership, political affiliation or party support.	This information is not publicly available.	Unmet



Chapter 7



CHAPTER 7: CIVIL SOCIETY ORGANISATIONS

7.1 Introduction

Civil society Organisations (CSOs) are understood to be the third pillar of society, distinct from government and business and including the family and private spheres. The term 'civil society organisation' is convoluted. As is the case with other contexts, in The Gambia, the term has been used largely to refer to Non-Governmental Organisations (NGOs), community and faith-based organisations and trade unions, as well as diaspora organisations.¹²⁶

The Gambia has a long history of civil society and non-state actors' engagement in the socio-political and economic development in the country. For instance, the pre-independence period saw the rise of many CSOs and pressure groups that mobilised citizens to act, including in the struggle for independence.¹²⁷ Trade unions in particular, were instrumental in protecting the public space while advancing the interests of their diverse membership. Though there were civil groups in Bathurst (then Banjul), such as Tonya, Ken Street Vows and many others, trade union leaders dominated the civic space. The Bathurst Trade Union (BTU), founded in 1929 by Edward Francis Small, was the first trade union established in The Gambia.¹²⁸ From the 1960s, the Gambia Workers' Union dominated the civil society space and contributed to the country's eventual independence. Through agitation, strikes and public pressure, the trade unions also paved the way for multi-party democracy at a time when African countries morphed into one-party states and/or military-led regimes.

However, the influence of unionism steadily declined after independence whereas the emergence of youth movements and NGOs working to support or compliment government efforts grew. While pressure groups such as Movement for Justice in Africa-Gambia (MOJA-G) and other leftist groupings were politically charged, and even radically oriented and outwardly revolutionary, NGOs focused on addressing the development challenges in the country in order to complement the government's efforts.

Between 1994 and 2016, many human rights activists were arrested and tortured, forcing many into exile. Some of these activists continued demanding accountability and more open civic space in The Gambia. New transnational CSOs emerged in the diaspora with the aim of restoring democracy. Several organisations emerged in Europe, America and Africa to fight human rights abuses in The Gambia. For two decades, the diaspora systematically sustained and represented Gambian civil society voices while the public space in The Gambia was constricted. Their organisations and networks beyond the country were able to internationalise Gambian politics, thereby bringing considerable attention to the human rights situation in the country. Since 2001, the diaspora has contributed significantly to the political process, mostly aligned with the opposition. The diaspora organisations were the main funders of opposition party activities. In fact, they sponsored the establishment of the first grand opposition coalition in 2005. In 2016, through the Gambia Democracy Fund and other initiatives, the diaspora was able to raise huge sums of money for Coalition 2016. Through 'go-fund-me' and other mechanisms, millions of dalasi were raised. The diaspora was also engaged in contentious politics, largely working to push back against the Jammeh regime. The diaspora established radio stations and organised protests in their host countries in order to bring attention to the dire human rights situation in The Gambia. Social media in particular were instrumental in their campaign to restore democracy in The Gambia.

Today, CSOs in The Gambia have grown in number and diversity. Within the context of elections and electioneering, CSOs have been involved in voter education activities, organising debates

126 Gambia Bureau of Statistics 'Civil society contribution towards achieving the MDGS in The Gambia' (2005) <https://www.gbosdata.org/downloads-file/civil-society-contribution-towards-achieving-the-m-1> (accessed 26 May 2022).

127 A Hughes & D Perfect 'Trade unionism in The Gambia' (1989) 88(353) African Affairs 549.

128 As above.

between candidates for presidential, local government and parliamentary elections, training on human rights, instituting public interest litigation, and a range of other commitments that seek to strengthen democracy.

7.2 Legislative framework

Following the 1994 take over, the work of CSOs was mostly limited to social causes and developmental matters due to the toxic nature of military rule and the decrees that propped up the regime. The infamous Decree No. 81 of 1996, known as the Non-Governmental Organisation Decree, came into force in 1996, and section 4 required that:

There is hereby established within the Ministry of Local Government and Lands a semi autonomous Non- Governmental Organisation Affairs Agency.

The Agency shall,

(a) serve as an administrative link between the Government and non-governmental organisations operating in The Gambia,

(b) advise Government on all matters relating to nongovernmental organisations,

(c) implement the National Policy on non-governmental organisations and the provisions of this Decree,

(d) process and grant Clearance Certificates to prospective non-governmental organisations prior to their incorporation

under the Companies Act,

(e) ensure the compliance of non-governmental organisations with the provisions of the Protocol of Accord and the

Non-Governmental Organisation Code of Conduct to

(f) facilitate, monitor and evaluate the activities of non-governmental organisations ' at community levels,

(g) liaise with the Association of Non-Governmental Organisations to facilitate the operations of non- governmental organisations with a view to increasing their level of contributions and impact on of the socio-economic Gambia.

Section 11 of the Decree also forced all existing NGOs to re-register with the Agency that would oversee their activities and police their operations:

All non-governmental organisations existing prior to the coming into force of this Decree are required to re-apply to the Agency for registration under this Decree.

After the era of military decrees, and The Gambia's resumption to civilian rule, the registration process for CSOs became part of the Companies Act of 2013 and the Non-Governmental Organisations Act of 2009. NGOs register through the Ministry of Justice and, after two years,

organisations can then apply to register as an NGO through the NGO Affairs Agency in the Ministry of Regional Governments and Land. In 2010, the oversight role and NGO supervision and regulation was placed under the direct purview of the Office of the President through the NGO Affairs Agency. The NGO Code of Conduct and a Protocol of Accord were introduced, which organisations are compelled to sign with the relevant ministries and other departments. Regardless of the attempted veneer of close collaboration between the government and the non-state sector, animosity and suspicion was rife among the government authorities, which viewed all NGOs as opposition sympathisers.

Despite promises of reforms within the sector by the Barrow administration, little has changed. In 2020, the International Center for Not-for-Profit Law (ICNL) Sub-Saharan Africa team facilitated a three-day consultative meeting in Banjul to discuss the country's new NGO Bill. The Association of Non-Governmental Organisations (TANGO) and the Gambian NGO Affairs Agency and several government officials representing the Ministry of Lands, Regional Development and Religious Affairs (which drafted the bill), the Ministry of Justice (in charge of reviewing the bill), and the NGO Affairs Agency (the country's NGO regulatory body) also attended.¹²⁹ The NGO Bill was not tabled in the Fifth Assembly and is therefore still in abeyance.

7.3 Civil society umbrella organisations

TANGO was formed in 1983 and is the umbrella organisation for NGOs and CSOs in The Gambia. The body was established to better harmonise and coordinate the work of non-state actors. Its membership is made up of national organisations working in differing communities across the country, supported by the international donor community and external partner agencies and governments. While the membership has traditionally been NGOs that largely perform service delivery to compliment government efforts, the organisation is expanding to cater for the growing civil society community that focuses on social policy and rights-based work. In fact, it has effectively turned to be the de facto leader of both NGOs and civil society in post-Jammeh era.

7.4 National Council for Civic Education

Section 198 of the 1997 Constitution states that:

There shall be established a National Council for Civic Education whose composition, functions and powers shall be prescribed by an Act of the National Assembly

(1) The functions of the National Council for Civic Education shall be –

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

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

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

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

129 ICNL 'Civil society and government meet in The Gambia to discuss new NGO Bill' <https://www.icnl.org/post/in-the-news/consultative-meeting-convened-in-the-gambia> (accessed 27 May 2022).

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

(f) Such other functions as an Act of the National Assembly may prescribe

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

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

The National Civic Education Council (NCCE) is primarily charged with voter and civic education in the country. It embarked on a nationwide civic and voter education drive before the 2021 election period. Their campaign has primarily been aimed at curbing voter apathy and ensure a violence-free election:¹³⁰

The campaign in a form of face-to-face community sensitisation was aimed at promoting civic awareness for increased electoral participation and implemented in all the five regions of the country covering 120 major communities/villages to enhance the understanding and appreciation of citizens of their civic rights and duties of voting as well as spur inclusive and popular participation in the elections and promote political tolerance in this charged political fever.

The NCCE is also proactively engaging the government on the drafting of a (new) NCCE Bill, which seeks to:¹³¹

obtain a direct and detailed mandate of the institution, clear the ambiguity of the independence of the NCCE, enhance the availability of funds with predictability and certainty and set up of regional offices across all the regions of the country to bring civic education to the doorsteps of people in rural Gambia, which according to the NCCE chairman, will expand NCCE's capacity in terms of a new legal instrument and structural reforms to improve efficacy and efficiency in service delivery precisely.

7.5 Civil society and elections

CSOs have become very creative in their approach to promoting credible elections, as demonstrated in the 2021 presidential elections. They have evolved from traditional election observation and have integrated technology into the election observation process. All the three domestic observer groups –Gambia Participates, Election Watch Committee, and CSO Coalition on Election – had situation rooms providing real-time updates on the electoral process. Other groups such as the Election Analysis Center helped monitor and counter false news in the online space. Accreditation is provided by the IEC, following a written application to the IEC Chairperson. This is the same process that general EOMs follow (see Chapter 4, on Election observer missions).

130 NCCE 'NCCE concludes civic and voter education campaign for the December polls' (7 December 2021) <https://www.ncce.gm/ncce-concludes-civic-and-voter-education-campaign-for-the-december-polls/> (accessed 27 May 2022).

131 NCCE 'NCCE convened stakeholders to validate new 2021 bill' (16 September 2021) <https://www.ncce.gm/ncce-convened-stakeholders-to-validate-new-2021bill/> (accessed 27 May 2022).

7.6 CSO conflict with government and the IEC

CSOs have at times clashed with the government as well as with the IEC over elections regulations and processes. For instance, several court cases were brought against the IEC by both diaspora CSOs such as Right2Know-Gambia and DUGA over the disenfranchisement of more than 100 000 eligible Gambian voters living abroad. Local CSOs, such as Gambia Participates and the Center for Research and Policy Development, have also locked horns with the IEC over the illegal attestations of voters, bringing a court case against the Mayoress of Banjul. The two CSOs challenged the IEC's decision before the High Court, seeking for the Court to declare that the mayor, as per section 12 of the Elections Act, had no power to issue attestations. The Court ruled in the CSO's favour. The court action and verdict irked the IEC, which in turn threatened to withhold accreditation to the two CSOs. The litigant CSOs were eventually accredited to observe the 2021 elections.

Table 7.1: Proactive disclosure of information required of CSOs¹³²

Required proactive disclosures	Explanation	Outcome
Organisational aims and objectives.	TANGO's organisational aims and objectives are on its website.	Met
Membership and composition.	This is listed; however, links to most of the member organisations are not operational.	Partially met
Details of key staff and office bearers.	This is also listed and accessible.	Met
Sources of funding	Names of partners supporting the work of the organisations are listed.	Met
Operational plans, methodology, manuals and their implementation for civic and voter education.	There are headings that speak to strategic plans, operational manuals, the 2020 Annual Report, among others, but these are not accessible.	Not met
Possible conflicts of interest, which may include the promotion of a particular religious, ethnic or political interest, or bias and/or prejudice in cases where they participate in both voter education and election observation.	Not available	Not met
Campaign funders.	Not available	Not met

132 ACHPR (n 1) section 30.



Chapter 8



CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

8.1 General review

In 2021, the year in which the presidential polls were organised, The Gambia ranked 102 out of 180 countries in the Corruption Perception Index conducted by Transparency International.¹³³ This is a curious standing because it meant that the country had regressed from its highest ranking of 93 in 2018 to the 2021 ranking of about 102. A year later, in 2022 it has tumbled down to 110. Obviously, these standings are a major improvement from 2016, while Jammeh was still in power, when it ranked 145 out of 180 countries.

The culture of secrecy, suspicion of probity, and resentment of a questioning public over affairs of state is still prevalent in The Gambia. The Barrow administration has practically mimicked the machinations of its predecessor as to how information is hoarded, economically dispensed, and involuntarily divulged. Reform has been laborious and slow. In essence, little has changed. Amnesty International issued a report on 23 September 2021, with fewer than 75 days to the presidential elections. It lamented the broken promises of President Adama Barrow, made five years earlier, to prioritise and urgently embark on reforms:¹³⁴

Upon assuming power in 2017, President Adama Barrow vowed to carry out critical reform in the country and to reverse the oppression which characterised the previous government. Nearly five years later, Gambia's legislative landscape has barely changed', said Michele Eken, Amnesty International West Africa researcher.

[...] On 14 February 2018, the Court of Justice of the Economic Community of West African States (ECOWAS) issued a judgment that found most Gambian media laws violated freedom of expression. The court asked the government to repeal or amend all criminal laws on libel, sedition, and false news in line with Gambia's obligations under international human rights law.

The report went on to claim that most of the laws used to oppress human rights defenders, activists and journalists during Jammeh's rule are still in force, contradicting the general legal direction and aspirations that the region, and indeed the continent, is gravitating towards. It seems that the country, which was already marching out of sync with the rest of the African continent under Jammeh, has not fared much better under Barrow in its timely coordination of the implementation of continental standards and regional norms.

This report's assessment of The Gambia's compliance with the Guidelines on Access to Information and Elections in Africa has exposed a wide gap across the board. All the election stakeholders fell short of meeting the criteria that would demonstrate and present the evidence of a democratic state supported and sustained by the principles of transparency and information retention, retrieval and sharing within a system anchored in legal and policy frameworks that encourage and support public consultation and citizen participation in public affairs, and elevate the demand for public accountability.

The 1997 Constitution is weak in ensuring that principles of accountability – through the proactive disclosure and accessibility of information in the public's interest – is firmly rooted in the statute books. There is little provision for public interest litigation since the legal system remains archaic in that regard, limiting an empowered citizenry from holding public officials

133 See the updated index at Transparency International 'Corruption Perception Index' <https://www.transparency.org/en/cpi/2021> (accessed 26 May 2022).

134 Amnesty International 'Gambia: Oppressive laws remain despite President's promises' (23 September 2021) <https://www.amnesty.org/en/latest/news/2021/09/gambia-oppressive-laws-remain-despite-presidents-promises/> (accessed 26 May 2022).

to account. Where there are avenues for such a proactive citizenry, the justice system is notoriously slow in prosecuting cases; and when cases are prosecuted, judgments are seldom implemented. There are numerous examples that fall exclusively within the ambit of elections, representation and participation, as this study has pointed out.

Nevertheless, the Gambia now has an access to information law and this presents an opportunity for a seismic shift in the transparency and accountability domains and to register strong and positive impact on the consolidation of sound democratic practice and good governance. If political will and a collective ambition are marshalled to institutionalise and operationalise the Access to Information Act of 2021, then it will be possible to effectively hold to account public officials who oversee critical state assets (including infrastructure, monetary, natural and other resources), regulatory mechanisms and all political, social, economic and judicial entities.

This plea – and indeed the vision of an open, free, truly democratic and transparent society that empowers its citizen to question and probe its leadership and those that hold public office and manage state assets – reaffirms the tireless efforts of people who have championed for the cause of press freedom and democracy. That feat must now be transformed from policy into practice.

8.2 Recommendations

8.2.1 Government of The Gambia and the National Assembly:

Although transformation and change take time, after five years of the post-dictatorship dispensation, rapid transformation through a robust legislative agenda in the Sixth Assembly should be prioritised. Before the next general election in 2026, and during the tenure of the Sixth Assembly, government authorities should:

- Reintroduce the 2020 Draft Constitution to the Sixth Assembly for swift passage to a referendum and let the citizenry decide how they wish to be governed and by which set of aspirations they wish to be guided. If this is not possible, then:
 - Implement the recommendations of the NHRC Advisory Note on the Elections Act vis-a-vis the 1997 Constitution and the 2020 Draft Constitution.
- Fast track the institutionalisation and operationalisation of access to information processes as required by the Access to Information Act.
- Ensure that there is a Political Party Funding Act that provides legislation for the annual disbursement of public money to political parties represented in the National Assembly based on the best practice of other AU member states, and to devise a mechanism that will track expenditure of such funds to ensure their utilisation in a judicious and transparent manner for the purposes for which they have been allocated.
- Regulate private funding (donations) to political parties and devise a mechanism requiring the disclosure of all donations above 50 000 dalasi (USD 700) by political parties and their donors, and impose certain restrictions on the source and use of such donations.
- Ensure that there is legislative power given to the IEC to regulate the utilisation of state resources, six months before and after an election, to stem the persistent culture of abuse of state resources during elections. This should include all regulatory and enforcement resources as outlined in the Guidelines on Access to information and Elections in Africa.
- Implement the recommendations from the various EOMs (the AU, ECOWAS, EU, EISA, and local observers), whose suggestions are anchored on the need for an improved democratic dispensation through the strengthening of election integrity.
- Ensure that the disenfranchisement of the diaspora is halted by extending the franchise to them, as reaffirmed by the Supreme Court ruling.
- Reform the appointment processes of the IEC commissioners to reflect the independence, integrity, credibility and national character of the country (including

taking into account issues of gender balance, intergenerational mix, religious minorities, and PWDs) so that it is responsive to the demands of a modern election management body by ensuring that:

- Commissioners are appointed by the president (from a shortlist) through a public process for vetting and interviewing candidates, led by the National Assembly, members of the Inter-Party Committee and the Public Service Commission.
- The IEC is compelled to adhere to the principles of a service delivery entity as well as an organiser of elections, and be empowered to be transparent and accessible in its response to the public and stakeholders with respect to information on all their processes, including the tenders, contracts, and documents submitted by political parties and candidates for all elections, as per legislation and the regulations.

8.2.2 The Independent Elections Commission

As this assessment reveals, the IEC has, over the years, been plagued by many challenges. One of which is of its own making, namely the attitude that it is above the law, with its unresponsiveness to probity and public criticism, and its unwillingness to engage stakeholders in an open and transparent manner. It has in many instances been defensive, combative, abstruse and aloof. It must endeavour to reverse this behaviour, which undermines its credibility and legitimacy as the election management body. The IEC is clearly suffering from a trust deficit.¹³⁵ It must, therefore, embrace and value its mandate, which goes beyond elections management, and realise that it is a service delivery institution accountable to all stakeholders.

Accordingly, the IEC should:

- Adhere to and implement relevant court judgments.
- Urgently halt the continued disenfranchisement of the diaspora and facilitate the processes to ensure that Gambians abroad are registered to vote and are afforded the opportunity to vote in all elections from their respective countries of residence.
- Implement the recommendations from the various EOMs (the AU, ECOWAS, EU, EISA, and local observers), which are anchored on improving the democratic dispensation through the strengthening of election integrity.
- Implement the recommendations of the final report of the Westminster Foundation for Democracy on the 2021 presidential elections.
- Nurture and sustain a culture of proactive disclosure of its processes, including procurement, contracting and appointment.
- Regularly update public interest information on its website.
- Publish and make accessible the process for the selection and appointment of members of the IEC, and the remuneration and conditions of service of the entire body.
- Facilitate access to information through record-keeping, proactive disclosure and establishing clear procedures.
- Publish and make available details of all objections, complaints or petitions received, and how they were addressed.
- Publish and make available evidence of all candidates' qualifications, asset declarations and sworn affidavits at least three months before an election for public scrutiny within a reasonable timeframe.
- Subject itself to a financial and performance audit after every election (presidential, National Assembly and local government), and publish the outcome.
- Promote active participation in electoral processes and exercises through systematic and sustained civic and democracy education programmes.
- Manage all political party funding and donations in adherence to the law.
- Provide leadership and strategic partnerships, and strengthen its convening power within the Inter-Party Committee and amongst all candidates vying for public office.

135 Jaw & Twum (n 27).

8.2.3 Political parties

The proliferation of political parties in the last three years has had a positive impact on political pluralism. However, there is need for sharp and focused introspection by all political parties to reflect on the daunting issues that undermine their sustainability, credibility and effectiveness.

The challenges of leadership renewal loom large. All parties are saddled with the burden of personality cult, where the party founder remains at the helm of affairs for virtually the entire life-span of the party. This has resulted in the splintering of political parties, old and new, over the period.

Democratic practice within political parties has also been questioned, as have the internal measures for dealing with transparency and accountability. Internal party dispute resolution has been ineffective, leading to protracted court battles between party leaders and their members. This has resulted in at least three parties still vying to be the 'legitimate' party – as has been the case with the oldest parties in the country, the APRC, PPP and NCP.

The undemocratic characteristics of political parties have also been exposed by the way in which coalitions and alliances are formed. These formations are often not subject to internal party structures, debates and/or discussions, with decisions taken by few and the rest follow. The nature of these political pacts is usually vague, and formal agreements, where they exist, are not made public, leaving them open to public speculation and conjecture. This is precisely what happened with the Coalition 2016's MoU since the jury is still out as to whether the MoU – which stipulated a three-year mandate for Adama Barrow – was signed or not.

Political parties are also highly secretive about the funds they receive through donations. This is a high-risk policy as it makes the party susceptible to illicit monies and resources filtering through election processes and systems. It also exposes the parties to money-laundering and corruption. The Afrobarometer survey spoke to the levels of mistrust in politicians, placing them at the bottom of the trust ladder, with National Assembly members and local government councillors only enjoying 44% and 43%, respectively, of the public's trust.¹³⁶

In light of this assessment, political parties should:

- Implement the recommendations of various EOMs (the AU, ECOWAS, EU, EISA, and local observers), whose suggestions are anchored on improving the democratic ethos in the country through the strengthening of election integrity.
- Publicly disclose all assets, investments, membership subscriptions, subventions and donations.
- Publicly disclose their financial arrangements as well as receipts of campaign funding from both public and private sources, together with campaign expenditures broken down into distinct line items.
- Regularly update their websites and ensure that party constitutions and other documents of public interest are accessible to the public.
- Disclose the qualifications and assets of party leaders and candidates, including elected officials.
- Make all audited reports accessible to the public.

8.2.4 Election observers

EOMs have played a role in strengthening The Gambia's electoral processes through their technical and financial resources. Their active participation has generally been welcomed by all stakeholders, and there was little or no animosity and tension during the 2021 presidential elections. Their reports have added value to strengthening electoral democracy. However, the entanglement of local election observers is confusing, with CSOs playing multiple roles in

¹³⁶ As above.

multiple groupings. Accordingly:

- The roles of local election observers should be clearly defined and distinguishable, whereby each organisation is solely focused on a single element of the process (for example, observing, results tabulation, early warning detection and monitoring).
- The final reports of all EOMs should be made accessible to the public in a timely manner as envisaged by the Guidelines on Access to information and Elections in Africa, namely within 30 days for their preliminary report and 90 days for their final report.

8.2.5 Law enforcement agencies (The Gambia Police Force)

The GPF demonstrated remarkable improvement during the elections process, as the assessment has shown. It also enjoys some degree of public trust, with 59% of people polled stating that they trusted the institution, making it the fourth most trusted entity in the country.¹³⁷ Nevertheless, the GPF should:

- Implement the recommendations from the various EOMs (the AU, ECOWAS, EU, EISA, and local observers), whose suggestions are anchored on improving the democratic ethos in the country through the strengthening of election integrity.
- Provide details of all reported election-related crimes, including the number of cases reported and the steps taken to investigate, prosecute and/or withdraw such cases.

8.2.6 Media and internet regulatory bodies

Regulation of the media in The Gambia is not straightforward since the powers of control rest both in the Public Utilities Regulatory Authority and the Minister of Information and Communications Infrastructure, which makes regulation political. Whereas strides have been made to respect the independence of PURA, its appointment processes do not point to real independence. This is because the head of state appoints the Board and has sway over the Finance Minister's discretion in appointing a CEO. These appointments are often shielded in secrecy and are not open to public participation.

In light of this assessment, the government should:

- Reform the appointment processes of the Board and Commissioners to reflect the independence, integrity, credibility and national character of the country (including providing for gender balance, intergenerational mix, religious minorities and PWDs) so that it is responsive to the demands of a modern Public Utility Regulatory Authority. The Board members and Commissioners should be appointed by the president (from a shortlist) through a public process for vetting and interviewing candidates, led by the National Assembly, members of the Inter-Party Committee and the Public Service Commission.
- Urgently begin the process of transforming the Gambia Radio and Television Service into an independent public broadcaster that is accountable to the public.
- Empower PURA to tackle the challenges of cross-ownership within the media as well as the monopoly of global mobile communications companies who also own radio and television stations in the country.
- Refrain from shutting down the internet, as it did during the 2021 presidential elections, and promote access to universal, equitable, affordable and meaningful access to the internet for the electorate and general public.

In addition, PURA should proactively disclose:

- All tenders and contracts of its procurement activities.
- All licensing and spectrum bids, and the awarding of such and their conditions of service.
- Details of all complaints or petitions received during the electoral period and how these were addressed.

137 As above.

- Information on complaints and sanctions for media transgressions.
- The decisions of media and/or internet regulatory bodies that are subjected to judicial review.

PURA should also:

- Work with the IEC and the media community to demonstrate significant transparency on their political advertising policy for all media providers and online media platforms by devising a mechanism to track political advertising.

The Media Council of The Gambia and the Gambia Press Union should:

- Work with the government and the National Assembly to accelerate the institutionalisation and operationalisation of the Access to Information Act of 2021.
- Ensure that the process of operationalising the Access to Information Act is transparent and inclusive.
- Ensure the availability of a code of conduct for online media.
- Ensure the proactive disclosure of conflicts of interest, including media ownership, political affiliation and/or party support.
- Establish and make available the criteria for political advertising and news coverage for political campaigns.
- Establish a code of conduct for staff on procedural matters.
- Proactively disclose editorial and ethical codes of conduct and/or guidelines.

8.2.7 Civil society organisations

CSOs continue to contribute towards the opening of civic space and public debate, and act as a catalyst for popular participation and the amplification of citizen voices in their engagement with policy and law makers as well as political, religious, community leaders and captains of industry.

The role played by the sector during the elections is significant as documented in chapter 4 and 7 of this study on EOMs. The CSOs, particularly TANGO as the umbrella body, should consider opening its membership and aim to attract the new generation of activists and ‘raptivists’, digital natives who can trigger the benefits of the triangulating power of technology, diaspora participation and involvement, and the youth. It should also encourage its members to be more proactive in their disclosure of information and to embrace the culture of effective communication and information sharing amongst its membership.

However, these paradigm shifts can only be possible if the CSO and NGO sector receive effective support through being provided with more sustainable funding, strategic capacity building and support, and medium to long term investment.

The regulatory framework for the effectiveness of non-state actors is also important. Two crucial bills – which would primarily unlock the sector’s potential to deliver effectively on its mandate – remain in abeyance, namely the NGO Bill and the NCCE Bill. Accordingly:

- The government of The Gambia, and the National Assembly should urgently enact the NGO and NCCE bills, through an open process that is inclusive and transparent.

All CSOs should:

- Organise themselves as one homogeneous entity to work with the government and the National Assembly for the rapid tabling, passage, and enactment of the NGO Bill and the NCCE Bill.
- Implement the recommendations of various EOMs (the AU, ECOWAS, EU, EISA, and local observers), whose suggestions are anchored on improving the democratic ethos through the strengthening of election integrity.
- Regularly update their respective websites and strengthen their communications and outreach capabilities.

- Proactively disclose information on their operational plans, methodology and manuals, and their implementation, for civic and voter education.
- Put in place an effective mechanism that identifies and dissuades conflicts of interest, which may include the promotion of a particular religious, ethnic or political interests and/or bias/prejudice in situations where they participate in both voter education and election observation.



GOVERNANCE

FREEDOM

INDEPENDENCE

DEMOCRACY

CREDIBILITY

TRANSPARENCY

MEDIA

INFORMATION

CITIZENS

VOTE

ELECTIONS

BALLOT

RIGHTS

