

Embassy of the Republic of The Gambia

To: - The Republic of France (Residence)
- Hungary
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- Permanent Delegation to UNESCO in Paris
and
- Permanent Mission to The United Nations
Office and Other International Organizations
In Geneva

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Paris, 20th August 2015

**SUBJECT: UNOHCHR RESOLUTION 27/24 OF THE HUMAN RIGHTS COUNCIL STUDY ON
BEST PRACTICES EXPERIENCES AND CHALLENGES AND WAYS TO OVERCOME THEM
WITH REGARD TO THE PROMOTION, PROTECTION AND IMPLEMENTATION OF THE
RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS IN THE CONTEXT OF EXISTING HUMAN
RIGHTS LAW**

The Embassy of the Republic of The Gambia in France presents its compliments to the office of the United Nations High Commissioner for Human Rights (UNOHCHR) and has the honor to enclose herewith The Gambia's response to the above captioned subject referred.

The Embassy of the Republic of The Gambia in France avails itself of this opportunity to renew to the office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Paris 20th August 2015



UNOHCHR
PALAIS DES NATIONS
1211 GENEVA 10,
SWITZERLAND

OHCHR REGISTRY

CC: Permanent Secretary
Ministry of Foreign Affairs

24 AUG 2015

Recipients : *HR Council*.....
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PARTICIPATION IN THE CONDUCT OF PUBLIC AFFAIRS

1. Do the Constitution and /or other laws of your country provide for the right of individuals to participate in the conduct of public affairs? Please provide information on relevant legislation and constitutional provisions.

Although there is no single specific document that addresses all the issues relating to participation in public affairs in The Gambia, The Constitution provides for the protection, promotion and respect of the rights of all persons in The Gambia which includes the rights of non Gambians. The rights of non Gambians are also protected by international and regional instruments on Human Rights, ratified by The Gambia.

Section 17 of Chapter IV of The Constitution of The Republic of The Gambia, underlines that the fundamental rights and freedoms enshrined in this chapter shall be respected and upheld by all organs of the Executive, legislature, by all natural and legal persons in The Gambia and shall be enforceable by the Courts in accordance with the Constitution of The Gambia.

Subsection 2 of the said Section 17 safeguards the rights and freedoms of every person in The Gambia, whatever his or her race or colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.

Section 33 of the Constitution affords protection from discrimination. It stresses the fact that all persons are equal before the law and no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

The term 'discrimination' was also defined under this section to include affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, Language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to **disabilities or restrictions** to which persons of one such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

2. What is the scope and content of the right to political and public participation as provided in national law?

Section 26 of the Constitution of The Gambia provides 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 representations;

- 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;
 - c) To have access, on general terms of equality, to public service in The Gambia.
3. How does the State guarantee that all individuals take part in the conduct of public affairs? Which concrete measures (including legislations) does the State take in order to enable the full and equal political participation by members of all groups? How does the State monitor and enforce legislation adopted to enable the full and equal political and public participation by members of all groups?

Section 39 of the Constitution reinforces the right to vote and be registered. It states that:

- (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.
- (2) Every citizen of The Gambia who is a registered voter shall be entitled to vote in a referendum held in accordance with the Constitution or any other law.
- (3) Every citizen of The Gambia being of the age of eighteen years or older and of sound mind shall be entitled, in accordance with the provisions of this chapter and any Act of the National Assembly providing for such elections, to vote in elections for local government authorities and traditional rulers in the area in which he or she is ordinarily resident.

Section 28 of the Constitution provides for the rights of women. It states that;

- (1) Women shall be accorded full and equal dignity of the person with men
- (2) Women shall have the right to equal treatment with men, including equal opportunities in political, economic and social activities.

Section 31 of the Constitution also provides for the rights of people with disabilities. Subsection (2) states that persons with disabilities shall be entitled to protection against exploitation and to protection against discrimination, in particular as regards access to health services, education and employment.

Section 33 of the Constitution which provides for equality before the law, elucidates on what the expression 'discrimination' means.

The Election Act, Cap: 3:01 laws of The Gambia 2009 established an Independent Electoral Commission which was provided for under Article 42 of the Constitution. Amongst its duties, it regulates the registration of voters and conduct of elections in The Gambia. It also serves as a mechanism for the state to monitor and enforce legislation adopted to enable the full and equal political and public participation by members of all groups.

4. To what extent are all individuals consulted during the legislative and policy making processes? Please describe best practices or experiences of representatives structures, processes or any other means to encourage participation prior to reaching a political decision.

Prior to the enactment of any legislation in The Gambia, series of consultations are held with the relevant stake holders at the formulation stage. Such contributions are taken into account and included into the policy document or draft legislation. Further, a series of validation and sensitization workshops are also held to educate the public and bring this policy or legislation to all individuals. Such sensitizations are also carried out using media avenues where a wider demographic are invited to take cognizance and get involved in the process by sending in observations or information they feel should be included.

5. Are there any outreach efforts in place to effectively involve women, indigenous peoples, persons with disabilities, members of minorities and other groups requiring special attention in participatory processes?

The Government of the Gambia has numerous outreach programs to effectively involve all groups of individuals including women, Indigenous peoples, persons with disabilities, members of minorities and other groups requiring special attention in participatory processes. There are community outreaches to sensitize community members who normally would not have access to these information thereby by involving them in the process.

The National Council for Civil Education (NCCE) also carries out series of sensitization programs to educate the public on the right to vote and what it entails especially groups that require special attention.

There are also outreach programmes to target and encourage women and people with disabilities in a bit to get them involved in the process.

The electoral commission also encourages these groups of people by providing assistance needed to fully participate.

There are numerous charitable and nongovernmental organizations that are also involved and support or compliment the efforts of the state to effectively achieve this.

RIGHT TO VOTE AND BE ELECTED

6. Is there universal and equal suffrage in your country? Are the rights of articles 25(b) of ICCPR guaranteed by law? If yes, please make reference to such legislation.

Section 26 of the Constitution of The Gambia provides 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 representations;
- 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;
- c) To have access, on general terms of equality, to public service in The Gambia.

7. Which obstacles have been identified as preventing individuals from exercising the right to vote and which measures have been adopted to overcome them?

Obstacles that have been identified as preventing individuals from exercising their right to vote include:

- i. Lack of interest in politics
- ii. Lack of funds/poverty
- iii. Time

Measures which have been adopted by the State to overcome these obstacles include:

- i. Undertaking series of programmes through the media and other informal avenues to sensitize and educate the public on the importance of exercising their right to vote.
- ii. Polling stations are brought closer for easy access, to save cost and to vote in a timely manner.
- iii. Registration and issuing of voter cards free of charge.

8. Is information on voter registration and on the electoral process (e.g. voting sheets) available in formats and languages, including minority languages, that render them accessible to all? Please provide examples.

Information on voter registration and on the electoral process is available and accessible. During the election season/period, there are series of programmes on TV and other media avenues regarding the registration and electoral process carried out in

all the languages including minority languages so that this information is made accessible to all individuals. At Community level informal programmes are also carried out to reach the grass root.

9. If voter registration is required, how is it facilitated? Age education and registration campaigns organized prior to major elections?

Preceding the elections, voters are required to register so as to obtain voters cards. This is done every election year. Numerous stations are set up where individuals can register and obtain their voters cards. There are series of campaigns to educate individual about the registration process before all major elections.

10. With respect to the right to vote and to be elected, how are the rights and needs of members of specific groups (women, persons with disabilities, minorities, indigenous peoples, first time voters etc.) taken into account?

The rights and needs of members of specific groups which include women, persons with disabilities, minorities, indigenous peoples, first time voters etc are always taken into consideration. They are given priorities taking into account their specific situations or need. Allowances are made to endure that their right to vote is protected.

11. What are the legal restrictions to the to stand for elections in your country, if any? Which practical obstacles have been identified in relation to the right to be elected? Which measures have been put in place to overcome these obstacles?

The legal restrictions to the right to stand for elections in The Gambia can be found under **Section 48 of the Elections Act Cap: 03:01 Laws of The Gambia**. It states that: The following persons may not be nominated as candidates for election to any of the offices outlined in Section 39, unless before nominations are held, they vacate their offices-

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

Section 39 referred to above regards the candidate for election to the office of the President, member of the National Assembly, Mayor or Mayoress, Councilor or such other offices as the Electoral Commission may by Order publish in the national gazette designate.

Under Section 62(3) of the Election Act, A person who, while holding public office in The Gambia, has been –

- (a) compulsorily retired, terminated or dismissed from such office; or
- (b) has been found guilty of any criminal offences by any court or tribunal established by law; or
- (c) has been found liable for misconduct, negligence, corruption or improper behavior by any commission or committee of inquiry established by law,

Shall not be qualified for election as President.

The Constitution of The Gambia specifies under section 39(1) that only persons who are citizens of the Gambia, are 18 years of age or older and are of sound mind are eligible to stand for elections.

12. What positive measures have been taken to ensure that women, members of minorities, indigenous peoples, persons with disabilities and members of other disadvantaged groups are able to stand for elective office?

Political groups are encouraged to put forward women as electoral candidates for all elections.

13. What measures (including legislative measures) are in place to ensure that candidates for elective office are not faced with discrimination, harassment, and violations of their rights of their rights to freedom of opinion, expression, assembly and association?

Chapter IV of the Constitution provide for the protection of fundamental rights and freedoms in The Gambia. **Section 17 of the Constitution** states:

(1) The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by all organs of the Executive and its agencies, the Legislature and, where applicable to them, by all natural and legal persons in The Gambia, and shall be enforceable by the Courts in accordance with this Constitution.

(2) Every person in The Gambia, whatever his or her race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, shall be entitled to the fundamental human rights and freedoms of the individual contained in this chapter, but subject to respect for the rights and freedoms of others and the public interest.

Section 25(1) of the Constitution further provides that:

(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 practice any religion and to manifest any such practice;

(d) Freedom to assembly and demonstrate peaceably and without arms;

(e) Freedom of association, which shall include freedom to form and join associations and unions, including political parties and trade unions;

(f) Freedom to petition the Executive for redress of grievances and to resort to the Courts for the protection of his or her rights.

Subsections (4) of Section 25 highlights that the rights contained above are not absolute. They should be exercised within the confines of the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedom thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of Court.

Section 26 of the Constitution gives any individual who is of full age and capacity the right to vote and stand elections and be voted for which shall be by universal and equal suffrage and be held by secret ballot.

Section 28 and 31 coupled with Section 33 provides for the rights of women and persons with disabilities to exercise their right to vote and to stand for elections. Article 33 reinforces that this groups should be protected from any form of discrimination whatsoever that violates said rights whether it be harassment or violations of their right to freedom of opinion, expression, assembly and association.

14. Please explain how possible interferences with the electors' will and with voter or candidate registration are avoided. Is undue interferences prohibited by law? How does the State ensure effective access to judicial and other remedies in case violations?

Every individual who intends to exercise their right to vote is registered prior to the elections and issued voters card. The casting of votes is done by way of secret ballot and so removes the issue of interferences.

Candidates that have fulfilled the requirements of the law to be registered as a candidate in the elections are registered without any interferences.

All undue influence is prohibited by law. Article 119 Of the Election Act states that-

A person is guilty of undue influence if he or she directly or indirectly –

(a) by himself or herself or by any other person on his or her behalf, makes use of or threatens to make use of any force, violence or restraint or inflicts or threatens to inflict by himself or herself or by any other person injury, damage, harm or loss on or against a person in order to induce or compel the person to vote or refrain from voting or on account of the person having voted or restrained from voting at an election; or

(b) by abduction, duress or any fraudulent device or contrivance impedes or prevents the free use of the vote by a voter or thereby compels, induces or prevails on a voter to give or refrain from giving his or her vote at an election.

Queries could be forwarded to the Electoral Commission or to the Court for redress.

EQUAL ACCESS TO PUBLIC SERVICE

15. What are the conditions for access to public service in your country? Do any restrictions apply? How is the requirement for equal access met?

Section 8 of the Public Service Act states that;

(1) In selecting candidates for appointment, an appointing authority shall have regard primarily to the efficiency of the public service.

(2) When any public office is vacant the following persons shall, subject to satisfying any scheme of service laying down the qualifications for such public office, be qualified for appointment to the office in the following order of preference-

- (a) any public officer who is a citizen of The Gambia;
- (b) any other citizen of The Gambia
- (c) any public officer who is not a citizen of The Gambia;
- (d) any other person who is not a citizen of The Gambia, on the advice of the Secretary General.

The restriction can be found under section 9 of the Public Service Act.

It provides that;

- (1) A person who has been convicted of an offence involving dishonesty or who has been dismissed from the public service shall only be appointed to a public office after a period of four years from such convictions or dismissals, as the case may be, on the recommendation of the Secretary General.

(2) A person shall not be appointed to public office unless he or she holds the qualifications set out in the scheme of service applicable to that office.

(3) A person who is not a citizen of The Gambia shall not be appointed to any public office on pensionable terms.

16. How does the State ensure that recruitment processes used by government authorities and political associations are transparent, objective and reasonable? Which measures (e.g. temporary special measures, quotas, etc.) are in place to ensure the equal recruitment of women, minorities, persons with disabilities and members of other disadvantaged groups?

The Public Service Act cap: 36:10, Laws of The Gambia regulates the operation of the public service in The Gambia. This Act also established the Public Service Advisory Committee whose duty include advising the Minister on matters affecting the public service.

Additionally, Section 172 of the Constitution established a Public Service Commission in The Gambia. They have the mandate amongst others, to make appointments to offices in the public service. Under section 174 of the Constitution, contains further function of the Commission which also includes the overall management and efficiency of the public service.

All recruitments for the public service must go through the public service commission which is made up of individuals from different works of life after a prior application to the personnel management office. This process ensures that recruitment process is carried out in a transparent, objective and reasonable manner.

OTHER

17. Please state if there are restrictions imposed on the rights contained in Art. 25 of ICCPR in your country. If so, how does the State ensure that these restrictions are non-discriminatory, exceptional and based on reasonable and objective criteria?

The rights enshrined in Article 25 of the ICCPR are protected by the Constitution of The Gambia under Section 25(1) of the Constitution. It provides that:

(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 practice any religion and to manifest any such practice;

(d) Freedom to assembly and demonstrate peaceably and without arms;

- (e) Freedom of association, which shall include freedom to form and join associations and unions, including political parties and trade unions;
- (f) Freedom to petition the Executive for redress of grievances and to resort to the Courts for the protection of his or her rights.

Subsections (4) of Section 25 contains the restrictions to the rights contained above which are not absolute. It states that these said rights should be exercised within the confines of the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedom thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of Court.

18. The full enjoyment of the rights protected in Art. 25 of ICCPR require respect for the rights guaranteed in articles 19, 21, and 22 of ICCPR. In this regard, what legislation is in place to ensure an independent and pluralistic media? Are journalists, human rights defenders and civil society organizations able to freely pursue their activities? Please provide information on restrictions to freedom of association, in particular the right to form and join associations concerned with political and public affairs? If there are any conditions to exercise the rights guaranteed in articles 19, 21 and 22 of ICCPR, are they prescribed by law, necessary and proportionate?

Section 207 of the Constitution provides for the freedom and responsibility of the media. It states that-

- (1) The freedom and independence of the press and other information media is hereby guaranteed.
- (2) An Act of the National Assembly may make provision for the establishment and operation of the press and other information media.
- (3) The press and other information media shall at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the Government to the people of The Gambia.

Section 209 of the Constitution makes it clear that this right is not absolute and is subject to laws which are reasonably required in a democratic society in the interest of national security, public order, and public morality and for the purposes of protecting the reputations, rights and freedoms of others.

In The Gambia, journalist, human rights defenders and civil society organizations are able to freely pursue their activities within the confines of the laws.

The restrictions to freedom of association are those contained in Section 25 (4) of the Constitution above.

There are no conditions to the exercise of the rights guaranteed under Article 19, 21 and 22 of the ICCPR. Section 25 (4) of the Constitution just states that these rights should be exercised within the confines of the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedom thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of Court.

19. Please provide information on measures taken to ensure that information and education materials on human rights, in particular on rights and opportunities relating to participation in public and political affairs, are available and accessible to all.

Information and educational materials on human rights, in particular on rights and opportunities relating to participation in public and political affairs are accessible. During the period of all major elections, series of programmes are carried out through the various media avenues educating the public on their right to participate in public and political affairs. This information is also translated in the local languages thereby making it accessible to all.

20. Please provide information on how your country ensures that its public institutions are accountable for their policies on public and political participation.

All public institutions are accountable to the Public Service Commission and The Public Service Authority and are held accountable by them for any Public policy.