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STRENGTHENING THE GAMBIA'S ELECTORAL REGIME - A QUEST FOR INCLUSIVE AND PARTICIPATORY DEMOCRACY

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1 Introduction

In the contemporary world, democratic elections have become one of the commonly accepted ways of measuring and signifying democracy.¹ The importance of a fair and credible electoral system cannot be underestimated, particularly in Africa where elections are more often reported to be marred with countless malpractices and irregularities.² In a move towards securing a fair and credible electoral system, many African countries have pulled significant strides in an attempt to align their Constitutions with the principles of universal suffrage. The impetus remains a quest to fortify their relatively young democracies and to cut the notorious wings of impunity, arbitrary exercise of state power by staunch dictators and autocrats who prefer bullets over ballot to secure power. To facilitate a just democratic consolidation, elections should meet a globally observed set of criteria.³ The criteria are:⁴ First, that elections be based on and guided by the rule of law, meaning that democratic elections should be organised and carried out in terms of electoral laws and principles adopted by the legitimate representatives or body.⁵ Second, that the democratic elections

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1 M Bogaards 'Elections, Election outcomes, and democracy in Southern Africa' (2007) 14 *Journal on Democratisation* 73. See also FU Ozor 'Electoral process, democracy and governance in Africa: Search for an alternative democratic model' (2009) 36 *South African Journal of Political Studies* 315 at 315-316. See also J Hoffman *State, power and democracy: Contentious concepts in practical political theory* (1988) 31.

2 L Rakner & H Rønning 'Do elections imply democracy or autocracy? Election processes, liberation movements and democratic change in Africa' (2010) 9 *CMI Brief* at 1-2. See generally SI Lindberg *Democracy and elections in Africa* (2006).

3 AM Mangu & M Budeli 'Democracy and elections in Africa in the Democratic Republic of Congo: Lessons for Africa' (2008) 12 *Journal of Law, Democracy and Development* 109.

4 See Mangu & Budeli (n 3) 109-111. See also P Tlakula 'Democratic elections in a global context' (2007) 10 *Potchefstroom Electronic Law Journal* 98.

5 Mangu & Budeli (n 3) 109.

should be fair, open and free. This requires that elections should be held on a regular basis, be exempted from any form of manipulation or rigging and that every qualifying citizen should be entitled to vote irrespective of gender, race, disability or minority denomination.⁶ Third, that the electoral processes should be facilitated by the Electoral Management Body (EMB) that should always act impartially and be independent from the government of the day, from all political parties and from any other internal or external forces. Fourth and lastly, that the electoral processes be brought to an official end with the proclamation of the election outcome or results within a reasonable time after voting has been completed and for the judiciary to decide on any electoral disputes should there be any.⁷

Moreover, democratic elections connote a more inclusive and liberal process of choosing public representatives to govern a particular society, group or state. Being the most central aspect of democracy,⁸ elections manifest in different forms depending entirely on what is applicable and deemed appropriate by the concerned polity.⁹ Nevertheless, not all elections are democratic, nor are all elections that claim to be democratic actually 'democratic' in a true sense of the word.¹⁰ In many African countries, and perhaps beyond Africa, election malpractices and unfairness have become the order of the day, the 'free and fair elections' notion has proved to be a mirage, and electoral violence and cases of electoral fraud and corruption are common.¹¹

The Gambia is not immune from all these besetting challenges and phenomenal poignancies. Bearing testimony to this observation is the act of defiance levelled against the democratic processes by Jammeh through baseless disputation over the 2016 presidential election outcomes, where he lost to President Barrow. During the time, several democratic backslidings were noted, including media suppression, lack of inclusiveness of the electoral processes towards disabled persons and other minority groups, as well as the systematic exclusion and underrepresentation of women and youth. To this end, therefore, the immediate objective of this chapter is to examine and gauge the extent to which the 1997 Constitution of

6 As above.

7 Tlakula (n 4) 98.

8 See generally G Sorensen 'Democracy and the developmental state' in J Nyang'oro (ed) *Discourses on democracy: Africa in comparative perspective* (1996).

9 See generally F Roberts & E Obioha 'Electoral violence and role of the Nigerian Police' in G Onu & A Momon (eds) *Electoral and democratic consolidation in Nigeria* (2005).

10 UOI Ekanem & OJ Forsberg 'An analysis of the 2015 Nigerian Presidential Election' (2018) 1 *PURSUES: Undergraduate Research Journal* 5.

11 See generally G Goodwin-Gill *Free and fair elections* (2006).

The Gambia represents an appropriate electoral system which is broadly inclusive and compliant with the accepted participatory and liberal democratic practices. This chapter is constructed against the background of the recent experience of the controversial 2016 presidential elections that marked a significant shift from a deeply authoritarian to a multi-party system of government. Lastly, the chapter evaluates this experience and asks whether true electoral democracy, which is inclusive and liberal, has now been established in The Gambia.

The significance of this chapter is to fill the existing gaps in literature in respect of three important aspects. First, the chapter gives a detailed reflective discussion on the topical issues arising from 2016 presidential elections, which have not been considered in the main earlier accounts by Niklas Hultin and others.¹² Second, the chapter analyses the selected clauses in the new 1997 Gambian Constitution which relate to elections in a more detailed manner than in existing works. The closely related work is the earlier study of Abou Jeng which provides the main analysis of the 1997 Gambian Constitution in general.¹³ The study does not deal effusively and specifically with election-related clauses.¹⁴ Lastly, none of the earlier works discuss the details on the responses by some politicians to the Elections Amendment Act of 2015 and on the 'Calama Revolution' formed during the 2016 presidential election. The chapter immediately commences by giving the general continental position and experience of democratic consolidation in Africa and narrows the focus down to the Gambian context along the discussion.¹⁵ This reflection is important since 'any evaluation of the on-going processes of democratic renewal in Africa must be considered against the background of the continent's past experiences'.¹⁶

In general, the African continent has for a long time been, and still is, grappling with issues inimical to effective consolidation of democracy.¹⁷

12 See generally N Hultin et al 'Autocracy, migration, and The Gambia's "Unprecedented" 2016 Election' (2017) 116 *Journal of African Affairs* 321.

13 See generally A Jeng 'From hope to despair: Travails of constitutional law making in Gambia's Second Republic' in A Saine et al (eds) *State and society in The Gambia since independence: 1965-2012* (2013) 113-150.

14 As above.

15 See C Appiah-Thompson 'In defence of electoral politics and democracy in Africa: Review of Lindberg's Thesis' (2015) 7 *Journal of African Studies and Development* 251.

16 JO Ihonvbere 'A balance sheet of Africa's transition to democratic governance' in JM Mbaku & JO Ihonvbere (eds) *The transition to democratic governance in Africa: The continuing struggle* (2003) 33.

17 For this reason, several strides have been taken at a continental level to foster the promotion, establishment and strengthening of democratic institutions, the rule

The 2016 Gambian presidential elections, and perhaps the sternly litigated outcomes of the 2018 general elections in Zimbabwe, are recent cases in point. Quite a number of factors are attributable to this crisis, including the diminishing civility in interactions among public representatives, which decreases public confidence and trust in democratic institutions,¹⁸ the collapse of law and order,¹⁹ personal ambition for power, privilege and wealth,²⁰ manipulation of electoral processes to remain in power,²¹ the use of propaganda and political violence to intimidate and suppress dissenting voices,²² and the rigging of elections.²³ All these problems are recurring and continue to manifest in various forms across the African continent despite its experience of the ‘third wave’ of democratisation in

of law, human rights and independent electoral systems. These strides include the adoption of the African Charter on Democracy, Elections and Governance (adopted on 30 January 2007 and entered into force on 15 February 2012). In a further effort to promote democracy and political stability in Africa, the African Union (OAU) adopted the Declaration on the Framework for an OAU Response to Unconstitutional Changes in Government (the Lomé Declaration) in July 2000. By adopting the Lomé Declaration, the OAU recognised that rather than relying on past decisions made by the OAU’s Assembly or Council of Ministers in response to unconstitutional changes of government in specific countries, the OAU needed to provide a solid framework and a general policy that would clearly articulate the principles of democratic governance to which each member state must adhere. In the Lomé Declaration, to be addressed specifically was the impact of coup d’états on democracy in Africa, which appeared to be the most significant effort because of the prevalence of such coups in Africa at that time. Another relevant regional instrument in this regard is the Elections Declaration that was adopted by member states of the OAU in 2002. The Elections Declaration was aimed at setting regional standards for monitoring free and fair elections in African countries, thereby facilitating the consolidation of democracy and establishment of democratic institutions across Africa. However, the Elections Declaration, like the Lomé Declaration, is a non-binding declaration of the OAU, meaning that member states of the OAU were not legally bound by its provisions. Important to note is that the Elections Declaration evidences the OAU’s commitment to foster democracy in Africa. Among other things, the Elections Declaration required member states to take all steps necessary to ensure implementation of the democratic principles established by the Declaration, including guaranteeing the civil liberties of all citizens such as ‘freedom of movement, assembly, association, expression, and campaigning as well as access to the media’.

- 18 ‘The Westminster model failed Africa’ *The Guardian* 19 May 2010.
- 19 HK Prempeh ‘Africa’s “constitutionalism revival”: False start or new dawn?’ (2007) 5 *International Journal of Constitutional Law* 473.
- 20 SI Lindberg & S Meerow ‘Persistent authoritarianism and the future of democracy in Africa’ in N Brown (ed) *Democratization: Doubt, dictatorship, diffusion and development* (2011) 186.
- 21 PD Williams ‘State failure in Africa: Causes, consequences and responses’ (2007) *Europa Yearbook: Africa South of the Sahara* 2.
- 22 S Guriev & D Treisman *How modern dictators survive: An informational theory of the new authoritarianism* (2015) 2.
- 23 EO Abuya ‘Can African states conduct free and fair presidential elections?’ (2010) 8 *Northwestern Journal of International Human Rights* 124.

the 1990s²⁴ and the collapse of the administrative control of the Soviet Union in the late 1980s.²⁵ During this transitional period, the system of multiparty elections ensued across the continent. However, this system, unfortunately, failed in many countries.²⁶ In most instances, the failures took the form of insistence to *de facto* one-party rule and suppression of opposition forces from mobilising an alternative voice.²⁷

Moreover, McGowan has noted that the peripheral nature of the West African politics and their fringe economies, coupled with selfish behaviour of the political leadership, through military and civilian means, have also contributed towards continental instability.²⁸ Tar similarly observes that the democratic regressions that the African continent is suffering from can be attributed to an extreme concentration of dictatorship, authoritarianism, *de facto* monarchies and dynasty rulers across the continent.²⁹ Bayart's disparaging lamentation of the capricious 'politics of the belly' still remains relevant in many contexts.³⁰

2 Historical and political background of The Gambia

The Gambia is a relatively small West African country lying across the Atlantic coastline and well known for its tourism attraction. Dating to as far back as the mid-1400s, it was opportunistically used by Europeans engaged in the business of trading black slaves.³¹ Like many other African

24 SM Jaw 'Restoring democracy in The Gambia: An analysis of diaspora engagement in Gambian politics' Master's thesis, University of Bergen, 2017 at 16. See generally SP Huntington *The Third wave: Democratization in the late twentieth century* (1991).

25 F Reytjens 'The winds of change: Political and constitutional evolution in Francophone Africa' (1991) 35 *Journal of African Law* 44.

26 Jaw (n 24) 16-17.

27 M Bratton 'Where do elections lead in Africa?' in M Bratton (ed) *Voting and democratic citizenship in Africa* (2013) 17-18. See generally S Levitsky & LA Way *Competitive authoritarianism: Hybrid regimes after the Cold War* (2010). See also G Hyden *African politics in comparative perspective* (2012) 195. See also I Elbadawi & N Sambanis 'Why are there so many Civil Wars in Africa? Understanding and preventing violent conflict' (2000) 9 *Journal of African Economies* 1.

28 PJ McGowan 'Coups and conflict in West Africa, 1955-2004: Part I, Theoretical perspectives' (2005) 32 *Armed Forces and Society* 5 at 6-7. See generally SI Linberg *Democracy and elections in Africa* (2006).

29 UA Tar 'The challenges of democracy and democratisation in Africa and Middle East' (2010) 3 *Information, Society and Justice* 81. See generally J Brownlee *Authoritarianism in an age of democratization* (2007).

30 See generally JF Bayart *The state in Africa: The politics of the belly* (1993).

31 A Hughes & D Perfect *Historical dictionary of The Gambia* (2008) 13. The Gambia occupies an area of 11 295 km with an estimated population of 2.2 million as per the

countries, The Gambia has lived through a history of colonialism and arbitrary exercise of political and administrative power. From 1816, The Gambia was ruled under the British crown colony system with its administrative arm being accountable to the Governor in modern day Sierra Leone. The Gambia became a separate colony for the first time in 1843 and the second time, when its administrative ties with Sierra Leone were severed, in 1888.³² Later in 1894, its first Protectorate Ordinance was passed.³³ The Gambia achieved full internal self-government in 1963 and reclaimed its independence from Britain in 1965.³⁴ It became a Republic within the Commonwealth in 1970,³⁵ which had a stable form of democracy under the leadership of Jawara and his People's Progressive Party (PPP) until 22 July 1994.³⁶

In 1981, the government of Jawara experienced an unsuccessful coup attempt led by Kukoi Samba Sanyang. Sanyang was bitter since he was, on two occasions, unsuccessful in his candidacy to the parliament. Jawara appealed to Senegal for help through military intervention, which was successful in defeating the rebel force.³⁷ Following the failed coup, averted by the Senegalese troops, The Gambia and Senegal signed the Treaty of Confederation called the 'Senegambia' in 1982, which existed until 1989.³⁸ This Treaty entailed the integration of these two independent countries into one political and economic federation with cooperation in many areas, such as the economy and security.³⁹

Following the 1994 coup that successfully ousted Jawara through the military junta called the Armed Forces Provisional Ruling Council (AFPRC), Jammeh, who was a Lieutenant at the time, announced that the presidential elections would be held in September 1996, which were conducted as planned. However, these elections were not democratic⁴⁰ and

Worldometers' report. The population density of the Gambia is 176.1 inhabitants per square kilometers.

32 B Turner 'The Gambia' in B Turner (Ed) *The statesman's yearbook* (1998) 583.

33 D Perfect *Historical dictionary of The Gambia* (2016) 347.

34 B Turner 'The Gambia' in Turner (n 32) 583.

35 As above.

36 E Sanyang & S Camara 'The Gambia after election: Implications for governance and security in West Africa' (2017) *Friedrich Ebert Stiftung* 6.

37 Report of the Commonwealth Expert Team 'The Gambia Presidential Election' (2011) 3.

38 B Turner 'The Gambia' in Turner (n 32) 583. See also Sanyang & Camara (n 36) 6.

39 Sanyang & Camara (n 36) 6.

40 A Schedler (ed) 'Electoral authoritarianism: The dynamics of unfree Competition' (2006) 3.

far from being free and fair,⁴¹ since all the pre-coup political parties such as the PPP, National Convention Party (NCP) and the Gambian People's Party (GPP) were banned from contesting the elections. This suppression of pre-coup political parties was done intentionally by Jammeh to weaken political contestation against him, resulting in him being contested by only three weak opposition candidates. Out of the three contestants, two came from newly formed parties, namely Hamat Bah of the National Reconciliation Party (NRP) and Ousainou Darboe of the United Democratic Party (UDP), while the third contestant, Sidia Jatta, was from the People's Democratic Organisation for Independence and Socialism (PDOIS), the pre-coup party that was later not allowed to operate again and contest.⁴² The independent media was also suppressed. Subsequently, a new Constitution was drafted and took effect on 16 January 1997.

As one would have expected, following the presidential elections which were held in September 1996, Jammeh emerged victorious and became the second President of The Gambia (after Jawara) since gaining its independence in 1965.⁴³ From 1996, Jammeh remained in power until the 2016 presidential elections where he lost to Barrow, becoming the third President of The Gambia since independence.⁴⁴ The next presidential elections are planned to be held in 2021.

3 A case study of the 2016 presidential elections in The Gambia

Since The Gambia became a Republic in 1970 and adopted its current Constitution in 1997, Gambians have been heading off to the polls at intervals of five-year tenure to elect a President.⁴⁵ The presidential elections are managed by the Independent Electoral Commission (IEC), established in terms of section 42 of the 1997 Constitution. As highlighted above, Gambian presidential elections have always been characterised by violence, suppression of the press and bloody conflicts.⁴⁶ Since 1996,

41 EJ Ceesay *The Military and 'democratisation' in The Gambia: 1994-2003* (2006) 160.

42 See generally D Perfect 'The Gambia under Yahya Jammeh: An assessment' (2010) 99 *The Round Table: The Commonwealth Journal of International Affairs* 55.

43 Perfect (n 42) 55. Perfect impeccably points out several things that led to Jammeh's victory in the 1996 elections. Among other things, despite Jammeh's degree of personal popularity, he has received enormous support from fellow members of his ethnic group, the Jola, who had previously been of marginal importance in the Gambian ethnic politics. See also Ceesay (n 41) 212.

44 Hultin et al (n 12) 323.

45 Sanyang & Camara (n 36) 13.

46 S Nabaneh 'Voting out the "billion-year" Dictator in The Gambia: The role of women and youth in the democratization process' Conference paper presented at African

Jammeh was re-elected for three successive terms (namely, 2001, 2006 & 2011) until the 2016 elections, when he refused to step down even after losing to Barrow.

Arguably, Jammeh remained in power for such a long time because the 1997 Constitution of The Gambia does not provide for presidential term limits. So, he exploited and capitalised on this serious constitutional omission. The Constitution simply provides that ‘the term of office of an elected President shall ... be for a term of five years; and the person elected President shall before assuming office take the prescribed oaths’.⁴⁷ The provision is conspicuously silent on the term limit of the President. Abou Jeng correctly argues that this constitutional omission constitutes ‘a major betrayal’, particularly as initial drafts of the constitution contained term limit, which were removed before the referendum.⁴⁸ Jeng has not been alone in staking this claim. Fombad and Inegbedion have noted the importance of presidential term limits in African Constitutions.⁴⁹ The two argue that despite democratic progress by African countries, there is still the absence of a culture of political accountability capable of facilitating peaceful alternation of state power. They further argue that the presidential term limits are:⁵⁰

Necessary in Africa, not only because of our weak and fragile constitutional and democratic roots with no culture, history or tradition of competitive politics, but also because of the extensive personal powers that our presidents are usually conferred or arrogate to themselves, *vis-a-vis* the judiciary and the legislature, that enables them to manipulate these weak institutions and remain in power in perpetuity.

However, and fortunately, the elections which were held on 1 December 2016 heralded the end of the 22-year dictatorship of Jammeh. On 2 December 2016, the IEC released the results which declared Barrow as the

Democracy Forum ‘Democracy in Africa – A way forward’ 24-25 May: Rwanda (2018) 2.

47 See section 63 of the 1997 Constitution of the Gambia.

48 Jeng (n 13) 132.

49 C Fombad & NA Inegbedion ‘Presidential term limits and their impact on constitutionalism in Africa’ in C Fombad & C Murray (eds) *Fostering constitutionalism in Africa* (2010) 15. See generally YK Museveni *What is Africa’s problem?* (2000). Similar to Fombad and Inegbedion, Museveni has rightly argued that the longer a president stays in office, the harder it becomes to remove him in a democratic manner.

50 Fombad & Inegbedion (n 49) 20.

winner,⁵¹ and Jammeh accepted the defeat.⁵² Following the announcement of election results, the majority of Gambians celebrated what they referred to as 'an end of dictatorship'.⁵³ Certainly, Jammeh's downfall was worth celebrating because his regime was characterised by unthinkable miseries, human rights violations, suppression of dissident journalists and activists, torture and a clampdown on active political opposition.⁵⁴

Despite the celebrations on 2 December, as the BBC reports,

hopes were not high for a peaceful transfer of power, with a crackdown on opposition leaders months before the polls ... and post-election demonstrations and then the switching off [of] the internet.⁵⁵

Shockingly, a week after the announcement of revised election results by the IEC, Jammeh changed his mind and disputed the results, stating, among others, that there were a number of fraudulent acts and 'severe abnormalities that occurred during the elections'.⁵⁶ As a result, on 13 December, Jammeh unilaterally invalidated the election results and called for fresh elections to be officiated by the IEC under the different electoral administration.⁵⁷ As Nabaneh correctly notes, the unilateral invalidation of the election results by Jammeh amounted to a pure act of *ultra vires* which violated the long-standing practice and law which gives only the Supreme Court the powers to do so.⁵⁸

Furthermore, Jammeh's rejection of the election results gave rise to what Nabaneh terms 'unprecedented political stalemate' in The Gambia,⁵⁹ with the vast majority of Gambians seeking refuge in fear of electoral

51 Nabaneh (n 46) 3. See also Jaw (n 24) 7, who points out that the initial results the IEC chairman announced showed that in the triparty simple majority race, Jammeh defeated with a 9 per cent margin. However, the 5 December revision which the IEC blame on a tallying error shows about a difference in 19 000 votes, thus reducing Barrow's lead from a 9 per cent margin to 4 per cent.

52 Jaw (n 24) 7.

53 Jaw (n 24) 9.

54 C Hartmann 'ECOWAS and the restoration of democracy in The Gambia' (2017) 52 *Africa Spectrum* 86 at 86.

55 'Gambia's Jammeh loses to Adama Barrow in shock election result' *BBC News* 2 December 2016 <https://www.bbc.com/news/world-africa-38183906> (accessed 15 April 2019).

56 Jaw (n 24) 7.

57 'Gambia leader Yahya Jammeh rejects election result' *BBC News* 10 December 2016 <https://www.bbc.com/news/world-africa-38271480> (accessed 15 April 2019).

58 Nabaneh (n 46) 3.

59 Nabaneh (n 46) 4.

violence, including the Presidential-elect himself, Barrow who went on a temporary exile to Senegal where he was sworn in as the Gambian President on 19 January 2017.⁶⁰ Besides, other Gambians unequivocally stated that the then hostility forced them to vote for Jammeh, albeit involuntarily and unwillingly simply because they were in fear of his anger in case of defeat by Barrow.⁶¹

Although there was a small African Union (AU) contingent to play a supervisory role during the elections, Jammeh had by then already refused the registration of international election observers.⁶² In response to his refusal to hand over the Presidency to Barrow, who was sworn in as such on 19 January 2017 at the Gambian Embassy in Senegal, the Economic Community of West African States (ECOWAS), with the support of the AU and United Nations (UN), swiftly intervened.⁶³ The ECOWAS intervened through the threat of force against Jammeh and deployed a large number of troops to occupy The Gambia to usher Barrow into the Presidency.⁶⁴ Owing to ECOWAS military intervention, Jammeh succumbed and stepped down, thus transferring power to his successor, Barrow.⁶⁵ Immediately afterwards, on 21 January 2017, Jammeh left for exile in Equatorial Guinea.⁶⁶

The transition to the new administration of Barrow brought hope for progress and development in The Gambia. The aspirations of the Barrow-led government are found in the 2018-2021 National Development Plan (NDP) that was shortly developed thereafter. Among other things, the Barrow-led government has moderated its focus towards 'delivering good governance and accountability, social cohesion and national reconciliation and a revitalised and transformed economy for the wellbeing of all Gambians'.⁶⁷ This NDP succinctly captures and outlines a clear-cut action plan that will ensure the attainment of an inclusive Gambia, political

60 Jaw (n 24) 8.

61 A Withnall 'Gambia Election: Government shuts down internet as President Yahya Jammeh faces threat to 22-year Rule' (2016) <http://www.independent.co.uk/news/world/africa/gambia-election-president-yahya-jammeh-shuts-down-internet-phones-polls-open-a7449371.html> (accessed 15 April 2019).

62 Hartmann (n 54) 86.

63 The intervention by ECOWAS and its role in 'restoring democracy' in The Gambia during the 2016 presidential elections will be explored at length later on in this chapter.

64 Nabaneh (n 46) 4.

65 As above.

66 F Ogbuitepu 'Researching Gambian legal information' (January 2019) <http://www.nyulawglobal.org/globalex/Gambia1.html> (accessed 17 April 2019).

67 See the general orientation to the 2018-2021 NDP.

stability and an overall security sector reform.⁶⁸ Moreover, the NDP adopts a forward-looking commitment towards achieving an integrated and holistic approach to development centred on tackling economic, social and environmental issues.⁶⁹ Most importantly, the new government has made an undertaking to mend ties with the international community in tackling governance issues and improving human rights conditions so as to realise good governance, equality and democracy.⁷⁰

4 Electoral laws in The Gambia

The electoral processes in The Gambia are generally governed by the Constitution of the Republic of The Gambia (1997),⁷¹ the Elections Act of 2009,⁷² the Elections Amendment Act,⁷³ and several other pieces of delegated legislation in the form of guidelines, codes of conduct for contestants and political parties, rules, regulations and orders.⁷⁴ For example, there is 'Code on Election Campaign Ethics Order' and the 'Media Rules'.⁷⁵ The Gambian legal framework on elections has experienced several reviews and amendments since the 2012 National Assembly elections. Two of these amendments occurred in 2015, which were highly criticised by the politicians stating that they were obstructing political participation by setting strict policy measures and regulations for the registration of political parties.⁷⁶ It is worth examining these laws, with specific focus on the presidential elections.

68 See International Peace Institute 'Toward a new Gambia: Linking peace and development' (2018) 2 https://www.ipinst.org/wp-content/uploads/2018/01/1801_Gambia-SDGs.pdf (accessed 16 April 2019).

69 International Peace Institute (n 68) 3.

70 As above.

71 As amended in 2001, thereafter 'the 1997 Gambian Constitution'. See generally Ogbuitepu (n 66).

72 CAP 3:01 of 2009, thereafter 'the Elections Act'.

73 Act 6 of 2015, thereafter 'the Amendment Act'.

74 Report of the Commonwealth Expert Team (n 37) 9.

75 These codes and rules were developed by the IEC and are of binding effect in terms of section 92(1) of the Elections Act, with respect to the code for parties and candidates, and sections 93 & 134 for the media. Further discussion on this will be made later in this Chapter.

76 European Union Election Observation Mission 'The Gambia: National Assembly elections - 6 April 2017' (2017) 11.

4.1 Constitutional provisions

The 1997 Constitution, which is the supreme law of The Gambia,⁷⁷ vests national sovereignty in the people of The Gambia.⁷⁸ The people exercise this sovereignty and power directly through participation in referendums or elections and indirectly through their elected representatives. Adult suffrage is universal, equal and by secret ballot. Given the multi-party system,⁷⁹ the Constitution guarantees civil and political rights in section 26.⁸⁰ It states 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; (c) to have access on general terms of equality, to public service in The Gambia.

These rights are exclusively enjoyed by citizens who have acquired the citizenship of The Gambia in any manner stipulated in the 'Citizenship Clause' (Chapter III) of the Constitution. Quite clearly, section 39 of the 1997 Gambian Constitution affords every Gambian citizen, of 18 years or older and of sound mind, a right to vote for a President, members of the National Assembly and lastly, for local government authorities and traditional rulers in the area in which he or she is ordinarily a resident. Furthermore, section 40 of the Constitution stipulates the manner and form in which the voting shall occur, and that is by secret ballot. Lastly, section 41 provides that an Act of the National Assembly may be passed

77 Sections 4 & 37 of the 1997 Constitution. Any other law which is found to be inconsistent with its founding values and provisions shall, to the extent of its inconsistency, be declared void.

78 Chapter I(2) of the 1997 Constitution.

79 All the political parties in The Gambia are regulated by Part 7 of Chapter V of the 1997 Gambian Constitution which, among other things, prohibits the formation of political parties based on ethnic, regional and racial lines (section 60). There are currently ten registered political parties in The Gambia. To become a registered political party, organisations must comply with all the requirements established under section 105 of the Elections Act (2009). These ten political parties are: Alliance for Patriotic Re-Oriented and Construction (APRC); Gambia Moral Congress (GMC); Gambia Party for Democracy and Progress (GPDP); National Alliance for Democracy and Development (NADD); National Convention Party (NCP); National Democratic Action Movement (NDAM); National Reconciliation Party (NRP); People's Democratic Organisation for Independence and Socialism (PDOIS); Peoples Progressive Party (PPP); and the United Democratic Party (UDP).

80 For a clear and comprehensive discussion of the Gambian political discourse and multi-party system, see generally ADS Taal 'Multi-party democracy, electoral laws and political governance in postcolonial Gambia' (2014) 24 *West Africa Review* 41.

to give effect to the constitutional framework of the Gambian electoral system.⁸¹

However, the most significant gap in the Gambian electoral laws is the absence of any meaningful regulation of political party and election campaign funding. There are no disclosure requirements for political parties' donations and campaign expenditures. This is a major omission. Political financing is relatively under-regulated in Africa at large and, as Saffu argues, it remains 'a matter of unregulated self-help'.⁸² In many African countries, political parties generally raise funds through illegal means such as corrupt kickbacks and misappropriation of state resources. The Gambia is certainly not immune from this continental calamity. In a 2003 study, Saffu put across arguments to sustain the interest in, and a need to cater for, political party funding in African legal frameworks:⁸³

The use and abuse of state resources is a corrupt form of massive public funding, albeit indirect and unauthorized by the law, and is available only to the governing party. Governing parties' use of state resources, with evident impunity, and their brazen demand for and acceptance of kickbacks explain much of the apparent electoral impregnability of many African governing parties, even those with clear records of economic and human rights failures. They manage to build such formidable electoral war chests that their impoverished opponents usually have little chance.

As for The Gambia, the omission is quite surprising not least because one of the incidents during the 2011 presidential elections was that the Alliance for Patriotic Re-Oriented and Construction (APRC) used government vehicles and other resources for the purposes of its political campaigns.⁸⁴ Arguably, this was made possible by the absence of political

81 An Act of the National Assembly shall, among the bigger scheme of other things, regulate: '(a) the registration of voters for the purposes 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'.

82 Y Saffu 'The funding of political parties and election campaigns in Africa' in R Austin & M Tjernström (eds) *Funding of political parties and election campaigns* (2003) 21. See also N Check et al 'The integrity of political finance systems in Africa: Tackling political corruption' International IDEA Policy Paper 20 (2019) <https://www.idea.int/publications/catalogue/integrity-political-finance-systems-africa> (accessed on 14 June 2020).

83 As above.

84 Report of the Commonwealth Expert Team (n 37) 18.

party funding and donation disclosures in the 1997 Constitution or other implementing legislation.

4.2 Presidential elections in The Gambia

The presidential elections in The Gambia are regulated in Part 3 of Chapter V of the 1997 Constitution. Section 46 of the Constitution requires that the presidential elections be held within three months before the expiration of the term of the incumbent President. Furthermore, the presidential election schedule, including the dates for the nomination of candidates and for holding elections, is to be determined by the IEC.⁸⁵ Section 47 lays down the preconditions that a presidential candidate must satisfy before he or she can be nominated as such, it reads:

- A candidate for election to the office of President shall, on or before nomination day –
- (a) satisfy the Commission that his or her nomination is supported by not less than five thousand registered voters consisting of not less than two hundred from each administrative area, as signified by their signatures or otherwise;
 - (b) deposit with the Commission such sum as may be president by the Elections Decree or any Act of the National Assembly replacing or amending that Decree, which shall be returned if he or she receives not less than forty per cent of the valid votes cast at the election.

In instances whereby a nominated presidential candidate dies between nomination day and polling day, the IEC shall determine a new nomination day and, if necessary, a new day (or days) for the elections.⁸⁶ Remarkably, the 2001 constitutional amendments brought a relatively significant shift by changing the electoral system for presidency from a two-round majority run-off to a plurality system.⁸⁷ Still, it did not introduce the term limits.

85 The IEC is established in terms of Part 2 of Chapter V of the 1997 Constitution.

86 Section 48(2) of the 1997 Gambian Constitution.

87 Following the disputed presidential elections on 18 October 2001, in which he defeated Ousainou Darboe, Jammeh amended the Constitution to avoid a required two-round majority run-off if he gained less than 50 per cent of the votes of the registered electorate in future elections, thus creating a 'first-past-the-post' electoral process. The two-round majority run-off system, on the one hand, entails that if no (presidential) candidate receives an absolute majority in the first round of elections outcome, the two candidates with the most votes of the registered electorate proceed to a second round, where the candidate with the highest number of votes wins. On the other hand, is a plurality or majority system in which a second election is held if no candidate achieves a given level of votes, most commonly an absolute majority (50 per cent plus one), in the first election round. In The Gambia, this system takes the 'first-past-the-post' approach, the simplest form of plurality/majority electoral system where the winning

The amendments also had a provision for a second ballot if a presidential candidate fails to obtain the 50 per cent threshold of the votes cast on a first ballot.⁸⁸ Currently, presidential elections take place under a simple majority system ('first-past-the-post') with the whole country serving as a single constituency. The first-past-the-post system simply entails that the candidate who receives the most votes becomes the winner.⁸⁹

Lastly, the Constitution provides, in section 49, that any registered political party that (or an independent candidate who) has participated in presidential elections, may approach the Supreme Court with an application seeking the declaration of validity (or invalidity) of such elections within ten days following the official release and declaration of election results by the IEC.

4.3 Legislative framework

A Constitution cannot capture all the details on elections. What it does, however, is to provide the foundational context for the Acts of the National Assembly that are passed to enumerate further on and give effect to its foundational provisions. Accordingly, section 41 of the Constitution instructs the National Assembly to legislate an Act aimed at governing elections, which was enacted as the Elections Act,⁹⁰ and its amended versions.

4.3.1 *The Elections Act (2009 Amendment)*

This Act was passed to regulate and guide the organisation of all elections in The Gambia, including presidential elections. For each election, the Act determines a wide range of issues such as the rightful constituency, the requirements for eligibility, the time and duration of the campaign, registration of both voters and political parties, nomination of candidates, the conduct of polls and the electoral processes to be conducted from the time voting commences to the time the final results are announced. It also clearly sets out the role of the IEC in the whole process.⁹¹ In terms of

candidate is the one who gains more votes than any other candidate. See A Saine 'The Gambia's 2006 Presidential Elections: Change or continuity' (2008) 51 *African Studies Review* 64.

88 Report of the Commonwealth Expert Team (n 37) 10.

89 IM Warioba 'The first-past-the-post electoral system versus proportional representation in Africa: A comparative analysis' unpublished LLM dissertation, University of Pretoria, 2011, at 22.

90 Election Act of 1963.

91 Report of the Commonwealth Expert Team (n 37) 10.

section 65 of the Act, during election day, the polls shall open at 07h00 and close at 18h00.⁹² However, during the 2011 presidential elections, the section 65 directive was flouted since the polls were closed at 16h00, two hours before the stipulated poll closure time.⁹³ Every citizen is required to vote at the place where they are registered, however, this is to the exception of election officials and police officers who are on duty during the election day, since they are allowed to vote (upon presentation of the required documentation) at the polling stations where they may be stationed.⁹⁴

In quest of being inclusive and to address high levels of illiteracy, the Gambian electoral system features a unique form of voting through the use of 'ballot tokens', rather than the conventional ballot papers, which requires a certain degree of voter literacy.⁹⁵

4.3.2 *The Elections Amendment Act of 2015*

Having exposed the fault lines in some of the provisions of the Elections Act, as a result of a major shift in the political landscape, there was a need for amendments to rectify the deficiencies and such a move culminated in the passing of the Amendment Act.⁹⁶ The Amendment Act introduced several significant changes to the overall electoral regime and this, as reported by the EU observers, had the effect of obstructing political participation and regressing democracy by making it difficult to register a political party and more costly to run as a candidate for presidential

92 However, the polls may close earlier if all voters allotted to the polling station have voted and may also close later if there are voters still waiting at close of polls.

93 Report of the Commonwealth Expert Team (n 37) 10.

94 As above.

95 See generally chap 5 and sec 63 of the Act. The 'ballot tokens' voting system was introduced in the early 1960s. The marbles are cast in separate iron-made drums for each party/candidate. Each party/candidate competing in an election has a drum painted with identifying colours and a party symbol/photograph. 'At the polling station on Election Day, drums are placed inside the polling booth (a screened compartment or small side room). After being issued a marble, the voter proceeds to the polling booth to vote. When a marble is dropped in the drum of the selected candidate hits a bell whose sound clearly indicates to those in the polling station that a vote was cast. Interestingly, since they have bells, bicycles are banned from the immediate proximity of polling stations on Election Day. After the voting process has ended, votes are counted in the counting centres by placing the marbles into specially designed trays (with either 200 or 500 holes), a system that allows counting officials to easily ascertain the number of votes cast in each drum'. See Report of the Commonwealth Expert Team (n 37) 10.

96 The Amendment Act was passed by the National Assembly on 7 July 2015 and assented to by the President on 20 July 2015. Some of the restrictive measures in this amendment have been removed in the 2017 amendment.

election.⁹⁷ Among these drastic changes, the most topical two will be briefly discussed below.

The first amendment is found in section 43 of the Act, which makes a provision for a mandatory deposit of a certain fee that the election candidates must make in advance. For presidential candidates, the Act exorbitantly increased the deposit fee from D 10 000 to D 500 000, whereas for the candidates for legislature it was slightly increased from D 5 000 to D 10 000. For presidential candidates, the amount is excessive as the deposit is forfeited if a candidate does not win 49 per cent of the votes, an extremely high mark to cross. Political leaders from different political parties, such as Mai Ahmad Fatty of the MCP, sternly criticised these amendments and described them as a strategy and ploy by the government to suppress and arbitrarily limit the participation of the opposition parties in general elections, and presidential elections in particular.⁹⁸

Furthermore, Mai Ahmad Fatty stated that the amendment introduced

feudalism into national politics and thus creating political dynasties of the rich and the powerful. It puts elected public office up for sale and beyond the reach of the ordinary citizen.⁹⁹

The other criticism against the amendment came from the leader of the opposition UDP, Ousainou Darboe who argued that the amendment was primarily designed to benefit the ruling party and to keep it in perpetual power.¹⁰⁰ Moreover, Darboe stated that the Gambian residents want the laws that will make electioneering a friendly and easy exercise, the laws that will promote the very essence of democracy, the laws that treat election candidates on an equal footing and not the laws that confer favouritism on certain candidates over the others.¹⁰¹

The second strand of restrictive and drastic amendment is found in section 105 of the Amendment Act. The section introduces yet another form of political suppression by requiring that all the executive members of the registered political parties reside in The Gambia and have offices

97 European Union Election Observation Mission (n 76) 11.

98 The Law Library of Congress 'Gambia: Increased monetary deposit requirements for election candidates' (21 July 2015) <http://www.loc.gov/law/foreign-news/article/gambia-increased-monetary-deposit-requirements-for-election-candidates/> (accessed 19 April 2019).

99 As above.

100 'Legal battle to start: UDP to challenge new Elections Act' *The Point* 30 July 2015.

101 As above.

across the country in all regions. The first manifestation of undemocratic taste of the Amendment Act appears on its provision which requires that political parties hold bi-annual congresses and report to the IEC annually on their finances. Concernedly, the oversimplification of a political party funding model by the Amendment Act, which treats it as an incidental matter, shows its deficient nature and complacency towards democratic aspirations.

As already highlighted earlier, the funding of political parties is not regulated in The Gambia and therefore, the latter provision in the Amendment Act regarding reporting on the political party finances is just an opportunistic and pompous pulling of a political stunt. As it will be argued at the end of this chapter, there is a greater need for The Gambian National Assembly to pass an Act that will specifically regulate political party funding, and not to nestle this critical aspect under the Act that is meant to regulate something else.

Furthermore, section 105 of the Amendment Act, in addition to the requirement that a party post a bond of more than D 1 000 000, has also increased the number of signatures required to second or support the registration of the political party. Prior to the amendment, only 500 signatures of registered voters were required in the process of registering the political party. Currently, 10 000 signatures of registered voters, with at least 1 000 from each of the administrative areas, is required.

4.4 Subsidiary rules, code of conduct and regulations

Supplemental to the Constitution and the Acts, there are other subordinate instruments that are set to regulate certain aspects of the broader electoral system. These instruments include the Code on Election Campaign Ethics Order (Code of Ethics) for election candidates and political parties, as well as the Media Rules.¹⁰² As part of its constitutional mandate, the IEC is responsible for developing and subsequently implementing these instruments with a view of regulating behaviour of political parties and their candidates on the pre-election environment and during campaigns. In terms of section 92(1) of the Elections Act, the Code of Ethics carries a binding effect on all the participants. Furthermore, the Media Rules also enjoy the same binding effect in terms of sections 93 and 134 of the Elections Act.

The Code of Ethics mimics the Elections Act in many respects. For example, section 91(b) of the Act states that ‘a candidate or political party

102 Report of the Commonwealth Expert Team (n 37) 13.

shall not, during an election campaign period ... abuse or engage in the improper use of property of the Government for political propaganda purposes'. The equivalent of the latter requirement is found in section 2(d) of the Code of Ethics. Also, section 3 of the Code of Ethics stipulates the sanction that shall be imposed upon non-compliance with its provisions by either the political parties or their candidates or both. To that effect, the section states that a breach of the provisions 'shall result in the cancellation of the registration of a political party or, in the case of an independent candidate, the cancellation of the nomination of the candidate'. However, the IEC failed to adequately implement these provisions during the 2011 presidential elections where the APRC was reported to have used government vehicles for the purposes of its political campaign.¹⁰³

5 Participation and inclusion in The Gambia's 2016 presidential elections

Many African countries are striving for electoral reform with a view of achieving an improved electoral democracy that is sensible to inclusive suffrage and liberal aspirations. Given that, it is therefore important to reappraise how the systems have fared in terms of active participation and inclusion of the marginalised groups (youth, women and disabled persons) and political cleavages, with the use of The Gambia's recent experience to draw out lessons for the rest of the continent.

5.1 Youth activism and elections in The Gambia

The recognition and integration of youth activism in shaping and strengthening democracy is a well-documented aspect of policy reform debates at the continental level. This is probably what prompted the AU to adopt the normative and institutional framework, namely the African Youth Charter of 2006.¹⁰⁴ This Charter, among other things, requires member states to enhance and promote youth participation in decision-making processes concerning their aspirations, well-being, integration, democracy and governance. The Gambia, as a member state to the AU, ratified the Charter in 2009 and is accordingly bound to observe the fundamental objectives of the Charter.¹⁰⁵ According to this Charter, a

103 Report of the Commonwealth Expert Team (n 37) 18. See also A Saine *The paradox of third-waved democratization in Africa: The Gambia under AFPRC-APRC Rule, 1994-2008* (2009) 125.

104 African Union, African Youth Charter, 2 July 2006. The African Youth Charter was adopted by the Heads of State and Government at their Summit in Banjul in July 2006, (thereafter the Youth Charter).

105 See art 1 of the Youth Charter: 'Obligation of State Parties'.

'youth' is any person between the ages of 15 and 35 years.¹⁰⁶ The young people in The Gambia constitute the largest constituent group in the country with up to 63 per cent of the overall population.¹⁰⁷ It has been reported by the Commonwealth Observers that this large constituent facet is systematically side-lined and marginalised, and their intolerable under-representation in the National Assembly confirms this.¹⁰⁸ Even more appallingly, this is the same group that is hard struck by unemployment.¹⁰⁹

Despite the social challenges they face, it has been observed that young people contributed to a large number of participants that supported the APRC and voted during the previous elections.¹¹⁰ Their role in restoring democracy in The Gambia crystallised during the 2016 presidential elections when most of them vowed and rallied to elect the new President, Barrow with a hope of attaining democratic change,¹¹¹ something they have been denied for 22 years under the autocratic government of Jammeh.¹¹² During the 2016 presidential elections, there was strong evidence of youth participation manifesting in various forms, both as voters and as polling staff and party agents.¹¹³ Following the unlawful invalidation of the 2016 presidential election results by Jammeh, which led to political instability in the country, the young people started a movement called #GambiaHasDecided and popularised it through social media platforms.¹¹⁴ Even post the 2016 presidential elections, the young people have continued to demonstrate commitment and ethos towards

106 See 'Definitions Clause' of the Youth Charter.

107 Report of the Commonwealth Expert Team (n 37) 21.

108 Report of the Commonwealth Expert Team (n 37) 21. However, it is important to note that The Gambia has a number of youth groups such as the National Youth Parliament (NYP) that was invented in 2002 with funds from the United Nations Population Fund. Since 2005, the NYP has engaged in the monitoring of both presidential and legislature elections and in the mobilisation of young people to register and vote.

109 L Connolly 'Sustaining peace in the 'New Gambia': The need for investment in peace and development' *Accord* 31 May 2018 <https://www.accord.org.za/conflict-trends/sustaining-peace-in-the-new-gambia/> (accessed 20 April 2019).

110 Report of the Commonwealth Expert Team (n 37) 21.

111 A Hughes 'Democratisation under the military in The Gambia: 1994-2000' (2000) 38 *Journal of Commonwealth & Comparative Politics* 35. This change did not only allow the new government of The Gambia to close a dark chapter of bad governance since 1994, but also presents an opportunity for renewed commitment to observe human rights and democracy.

112 D Perfect 'The Gambian 2016 Presidential Election and its Aftermath' (2017) 106 *The Round Table* 323.

113 Report of the Commonwealth Expert Team (n 37) 21.

114 See generally Connolly (n 109). Jammeh directed the police force to unleash ammunition on the group of young people that openly detested his authoritarian behaviour by taking it to the streets of Banjul, with the slogan 'GambiaHasDecided'.

ensuring that the Barrow-led government upholds its pledge to respect democratic values and human rights. Promisingly and commendably, the new government under Barrow has so far made significant strides to be inclusive of and responsive to youth interests. Among other achievements, 40 youth councillors have been elected during the local government elections in April 2018, there is clearly hope for more improvements.¹¹⁵

5.2 Women integration and elections in The Gambia

The electoral performance of women is of great significance in assessing democratic practice and expectations. The women's movement in The Gambia made an incredible shift and visible entrance to the nation's political landscape during the 2016 political crisis. They asserted themselves and demanded gender parity and respect for women's civil and political rights. Their call was well in line with the global agenda for women empowerment that dates back to the early 1980s.¹¹⁶ At an international plane, this agenda is honoured through the Convention on the Elimination of Discrimination Against Women¹¹⁷ and, at regional level, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹¹⁸ Domestically, section 28 of the Gambian Constitution ascertains the rights of women. It states that 'women shall be accorded full and equal dignity of the person with men' and that they 'shall have the right to equal treatment with men, including equal opportunities in political, economic and social activities'.

115 S Nabaneh 'Voting out the "billion-year" dictator in The Gambia: The role of women and youth in the democratization process' *Africa Democracy Forum* 18 December 2018 <http://www.africademocracyforum.org/en/blog/voting-out-%E2%80%99billion-year%E2%80%99-dictator-gambia-role-women-and-youth-democratization-process> (accessed 20 April 2019).

116 A Twinomurinzi 'Challenges women face in trying to access the African human rights protection system' unpublished LLM dissertation, University of Pretoria, 2013, at 34. Within this international framework, there are instruments such as the UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III); the UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol 993, p 3; and the UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol 999, p 171.

117 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol 1249, p 13.

118 African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003. This Protocol is the culmination of rigorous debates and consistent activism on the part of several women organisations and civil society groups across Africa. See also F Banda 'Blazing the trail: The African: Protocol on Women's Rights' (2006) 50 *Journal of African Law* 72. See generally DM Chirwa 'Reclaiming (wo)manity: The merits and demerits of the African Protocol on Women's Rights' (2006) 53 *Netherlands International Law Review* 63.

However, no positive efforts have been made by the government to deepen the democratic participation of women candidates through an affirmative action provision. Instead, it is left to political parties to integrate women as electoral candidates at organisational level, something that never gets done. In this regard, Lindeke and Wazala's contention is that the structural barriers to women's participation in democratic processes are, in general, that the electoral system, quotas, eligibility requirements and voter attitudes towards women candidates do not facilitate gender inclusion.¹¹⁹ This is relatively true. The authors believe that changed political practice and affirmative action provisions can achieve inclusive and participatory democracy.¹²⁰ Furthermore, Bauer and Burnet have argued that the adoption of an electoral system of gender quotas can help in increasing women's representation in politics and governance.¹²¹ The system of gender quota implies that a certain number of elective seats is reserved for female candidates. This system is very important in that it bolsters and strengthens strong links between democratisation and gender inclusion.¹²²

Despite being systematically excluded, women activism persists in The Gambia and a special case in point is 'Think Young Women', a non-profit organisation which aims to ensure that women and girls play a significant role in the inclusive transitional justice process in The Gambia. Moreover, this organisation identifies and criticises all the Gambian laws that are repugnant and devoid of women's equal rights, opportunity and participation.¹²³

5.3 The 'Calama Revolution'

Mahomed was quite correct in his contention that social movements constitute effective trajectories to fight for more inclusive, open, free and just societies and that they can also be used as mechanisms to challenge political, social and economic abuses of power.¹²⁴ In the case of The

119 WA Lindeke & W Wazala 'Regional elections in Namibia: Deepening democracy and gender inclusion' (1994) 41 *Africa Today* 5 at 9.

120 Lindeke & Wazala (n 119) 14.

121 G Bauer & JE Burnet 'Gender quotas, democracy, and women's representation in Africa: Some insights from democratic Botswana and autocratic Rwanda' (2013) 41 *Women's Studies International Forum* 103.

122 SHassim 'Perverse consequences? The impact of quotas for women on democratisation in Africa' in I Shapiro et al (eds) *Political Representation* (2010) 211.

123 See Nabaneh (n 115).

124 H Mahomed 'Funding African movements? Philanthropic revolutions needed first' Alliance https://static1.squarespace.com/static/593ea10db8a79bc4102e122f/t/5c41f015b91c913ddad69637/1547825175537/Alliance_FundingAfricanMovements.pdf

Gambia, the typical example of this kind of movement is the 'Calama Revolution', the women-driven movement that challenged the abuse of state power by Jammeh.¹²⁵ The EU observers noted that this movement made a meaningful contribution towards democracy building in The Gambia.¹²⁶

The political change began on 18 April 2016, where a number of UDP opposition members, led by the youth leader Solo Sadeng, embarked on a protest seeking to achieve what they called 'electoral reform' in The Gambia.¹²⁷ This resulted in the majority of the protesters being unlawfully detained.¹²⁸ In response to this, the Gambian women assembled to form the 'Calama Revolution' and effectively utilised their combined political strength to advance their position for the release of opposition leaders. They achieved this by occupying the streets of Banjul in peaceful protest and demonstrations in front of the Supreme Court, whilst waiting for the prisoners to be transferred for their trials.¹²⁹ The government eventually allowed the protest to unfold.

In the process, there were several views that second-guessed and opposed this radical movement. Among those criticisms, it was stated that the *Calama Revolution* never existed, was poorly coordinated, lazy and not visible.¹³⁰ This is a clear distortion of the truth about the events that transpired during the 2016 crisis, an attempt to mask the history of radical women movement in The Gambia.

5.4 Disability and elections in The Gambia

Section 31 of the Constitution provides for the rights of people with disabilities. The section starts by guaranteeing their human dignity, that it shall always be respected and that they should be protected against any unwarranted form of exploitation and discrimination. The section

(accessed 20 April 2019).

125 Kayjatta 'The End of Politics: The Gambia's New Found Freedom' (12 December 2017) http://www.gambia.dk/forums/topic.asp?TOPIC_ID=15829 (accessed 20 April 2019).

126 European Union Election Observation Mission (n 76) 27.

127 See Kayjatta (n 125).

128 As above.

129 S Bojang 'The Gambia: One year after Jammeh, what has changed?' *Heinrich Böll Stiftung* 14 May 2018 <https://za.boell.org/2018/05/14/gambia-one-year-after-jammeh-what-has-changed> (accessed 20 April 2019).

130 'The end of politics: The Gambia's new found freedom' *Bantaba in Cyberspace Forum* 25 December 2017 http://www.gambia.dk/forums/topic.asp?TOPIC_ID=15829 (accessed 16 May 2019).

further requires that the conditions of disabled persons should always be considered in all participatory processes. On 6 July 2015, The Gambia ratified the UN Convention on the Rights of Persons with Disabilities (2006)¹³¹ and to date, however, it has not taken any measures to incorporate the objectives of the Convention into its domestic electoral laws. The Elections Act, albeit incidentally, provides that assistance may be provided to facilitate voting by persons with special needs. However, the Act is not specific in terms of the form and means of assistance it refers to. It has been reported by the EU election observers that during the 2016 presidential elections, the disabled persons' right to secrecy of ballot was undermined and grossly violated in numerous instances.¹³²

In general, the barriers to participation of people with disabilities in electoral processes in African countries are well-documented. These barriers are categorised into *technology*, where electoral materials such as ballots are not in accessible formats; *infrastructure*, where there are physical hindrances to polling stations; and *negative attitudes* and *stigmatisation* of disability.¹³³ Interestingly, there are many approaches that can be developed to cater for disabled persons during democratic processes. For instance, just to mention two, there is a use of a tactile ballot guide in Ghana to allow visually impaired people to vote in confidence and, in Mauritius, all voting stations are required to be adapted with ramps and adjustable height booths to accommodate voters using wheelchairs,¹³⁴ otherwise such premises cannot be used as polling stations.

5.5 Media and elections in The Gambia

Section 25(1)(a) of the Constitution guarantees freedom of speech and states that 'every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media'. Furthermore, section 207(1) of the Constitution provides that the 'freedom and independence of the press and other information media are guaranteed'. However, this right has not yet been entrenched and

131 UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007). The UN Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 13 December 2006, and entered into force together with its Optional Protocol on 3 May 2008.

132 European Union Election Observation Mission (n 76) 27.

133 B Virendrakumar et al 'Disability inclusive elections in Africa: A systematic review of published and unpublished literature' (2018) 33 *Journal of Disability and Society* 509 at 527-533.

134 As above.

protected through detailed and dedicated legislation.¹³⁵ Again, this is a major failure. The majority of liberal democracy theorists have argued for and considered media freedom as an essential tool for the deepening of democracy and prevention of democratic reversals.¹³⁶ This is so because media freedom, through investigative journalism, reduces chances of manipulation of electoral processes by exposing incidents of electoral fraud and corruption.¹³⁷ Also, in a way, investigative journalism provides civil society groups and opposition parties with the necessary information to rely on when electioneering and propagating their assessments of elections.¹³⁸

Given this significant role of the media, it is no surprise that most media entities and personalities are often the target of repression and censorship.¹³⁹ During the 2016 elections in The Gambia, many dissident journalists suffered this form of prejudice, where Jammeh capitalised on the absence of media freedom protection in the legal framework to harass, suppress and prevent them from discharging their core mandate, which is to report on the countries recent developments to the public and the global community at large.¹⁴⁰ Fearing for their lives, most journalists had to migrate to the neighbouring Senegal since they knew that they would have been killed like Deyda Hydera, the senior journalist who was murdered in December 2014 for criticising and reporting against Jammeh's authoritarian rule.¹⁴¹ Since Barrow acceded to the presidency, the reported incidents of media freedom suppression have decreased overwhelmingly.

6 Where to from here? Lessons and projections for the future

As pointed out earlier, many African countries are striving for electoral reform with a view of achieving an improved system of electoral

135 European Union Election Observation Mission (n 76) 27.

136 See generally R Gunther & A Mughan *Democracy and the media: A comparative perspective* (2000). See also J Teorell *Determinants of democratization: Explaining regime change in the world, 1972- 2006* (2010).

137 P Norris *Why electoral integrity matters* (2014) 96.

138 See generally S Birch *Electoral malpractice* (2011). See also N Kerr & A Lührmann 'Public trust in elections: The role of media freedom and election management autonomy' Afrobarometer Working Paper 170 (March 2017) http://afrobarometer.org/sites/default/files/publications/Working%20papers/afropaperno170_public_trust_in_elections.pdf (accessed 20 April 2019).

139 A Schedler *The Politics of uncertainty: Sustaining and subverting electoral authoritarianism* (2013) 67.

140 Perfect (n 42) 58.

141 Hughes & Perfect (n 31) 97. See also Saine (n 103) 75-78.

democracy that is sensitive to inclusive suffrage and liberal aspirations. The Gambia is certainly on this mission too and at this juncture, it begs the question: how to get there from here? To usher in a more liberal and inclusive electoral democracy in The Gambia, the following points need to be carefully considered.

6.1 Domestication and integration of regional and international instruments

It has been shown in the preceding discussions that The Gambia has acceded to a number of regional and international treaties, such as the African Youth Charter, the Convention on the Elimination of Discrimination Against Women, the Protocol to the African Charter on Human & Peoples' Rights on the Rights of Women in Africa and the Convention on the Rights of Persons with Disabilities. However, none of these instruments has been integrated in the Gambian domestic laws. Therefore, it is recommended that the Gambian government must domesticate these instruments and pass sector-specific legislation on all the aspects addressed by the Treaties to achieve the democratic gains of good governance and participatory democracy contained therein.

6.2 Adequate inclusion of youth and women

It is further recommended that The Gambia must make more policy and legislative strides to achieve the inclusion of youth and women in governance and decision-making platforms. To achieve substantive representation of women, there is a need to adopt an electoral gender quota system, among other affirmative action avenues. This system has yielded positive results in other African countries where it is in use. Equally, the government must promote more awareness raising campaigns to encourage youth and women to actively participate in democratic processes. Lastly, the communities and political groups should be sensitised against misogynistic perceptions about women who contest for elective offices.

6.3 Increase the participation of people with disabilities in elections

It is recommended that the Gambian government should formulate legislation that promotes equality, active participation, and inclusion of people with disabilities in democratic processes. In doing so, certain improvements can be taken into account such as; first, electronic and technological mechanisms including a braille system to meet the needs of visually impaired voters; second, infrastructural improvements in voting

stations to enhance access by, for instance, people with wheelchairs; third, utilising awareness-raising campaigns and civic education programmes on disability issues to eliminate public stigmatisation; and lastly, special voter education programmes for persons with disability.

6.4 Reintroduction of presidential term limits

The Gambia must revisit its 1997 Constitution and reintroduce the clause on presidential term limits. Term limits, through power constraint of individual leaders, promote alternation of state power, which is central to democratic theory. Experts in constitutionalism and democratisation studies seem to agree that term limits are key component of what democracy ought to constitute.¹⁴² This component fosters, among other things, accountability, constitutionalism, rule of law and sustainable constitutional governance.¹⁴³

6.5 Regulation of political party and campaign financing

It is recommended that the Gambian government should pass a law that regulates political party funding. The non-regulation of this aspect has been associated with lack of accountability, transparency and looting of state resources. Among other areas of focus, these laws should explore the possibility of placing limitations on private donations the political parties receive for the campaigns during elections and the disclosures of all their campaign expenditures. South Africa has recently engaged in developing the law relating to this aspect and The Gambia may draw some lessons in that regard.¹⁴⁴

6.6 Strengthening of voter registration safeguards

Voter registration is one of the stages in electoral processes that are very prone to easy manipulation, thus affecting the validity of election results. The chapter has demonstrated how Jammeh has capitalised on poor voter registration safeguards and rigged election results to remain in power. For this reason, special efforts need to be made in The Gambia to strengthen voter registration. Precautionary measures may include a double-verification process on voter list's accuracy and reliability. Accuracy in this case means that all eligible voters are listed; they are listed only once;

142 Fombad & Inegbedion (n 49) 15. See also G Maltz 'The case for presidential term limits' (2007) 18 *Journal of Democracy* 128.

143 Fombad & Inegbedion (n 49) 17. See also D Vencovsky 'Presidential term limits in Africa' (2007) 2 *Conflict Trends* 15.

144 Tlakula (n 4) 110-111.

and only eligible persons are listed. Creating and maintaining an accurate voter list requires internal safeguards as well as a system of cross-checks. It is vital to keep lists up to date, and to eliminate duplicate registrations, names of voters who have moved out of the electoral district or lost eligibility, such as the deceased. Equally critical to maintaining electoral integrity is close monitoring and enforcement of the relevant voter registration procedures.

6.7 Voter education

Voter education programmes can also be developed and promoted in order to deal with voter illiteracy that has negatively affected the consciousness of some citizens and thus limiting their ability to observe, analyse and make an informed decision in political, social and economic realms to which they are entitled to fully participate as citizens.

7 Conclusion

The active participation and equal representation of women and youth, as well as the inclusion of persons with disabilities, in electoral processes, are key determinants in assessing the democratic practice of a particular country. In this chapter, an attempt has been made to gauge the extent to which the narrative and text of the 1997 Gambian Constitution has fared in terms of inclusivity towards youth, women, persons with disabilities and the political cleavages in general. At this point, the only sensible conclusion one can draw is that the 1997 Gambian Constitution falls short in providing the frames that could achieve these aspirations. Although there is hope for democratic consolidation in certain constitutional provisions and their supervisory mechanisms, however, and unfortunately, these strengths are more than outweighed by the constitutional shortcomings. For instance, it has been shown how important democratic aspects, such as political party funding regulation and presidential term limits, are being unattended. It is these insurmountable frailties that perhaps led Abou Jeng to conclude, quite correctly, that: 'The Gambia's 1997 Constitution is not a people's Constitution [but] a constitutional tragedy, the substitution of hope with despair!'

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