

African Commission on
Human & Peoples' Rights



Commission Africaine des Droits
de l'Homme et des Peuples

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PERIODIC REPORT OF GAMBIA

I N T R O D U C T I O N

PHYSICAL FEATURES

The Republic of The Gambia is situated at approximately thirteen degrees north of the equator. It occupies a narrow 350 k.m. long strip on both banks of the river with a width not exceeding 50 k.m. and has a territorial expanse of 11,300 square kilometres. It is bounded on the north, south and east by Senegal a former French Colony and to the west by the Atlantic Ocean. The country is divided into five regions, the Western Division, the North Bank Division, the Lower River Division, the MacCarthy Island Division and the Upper River Division. Each of these divisions are headed by Divisional Commissioners, responsible for the administration of the divisions.

POPULATION

In The Gambia census are taken periodically. The last census was conducted in April 1993 however a final report of the 1993 census is yet to be published and so far only a provisional report has been published. The Gambia has a population of 1,025,807 consisting of 514,530, males and 511,337 females. Compared to the 1983 census figure of 687,817, there has been a steep and startling increase in the country's population by 49.15 per cent.

It has been suggested by the Central Statistics that apart from fairly high natural growth rate (2.9 per cent per annum) large scale influx across the international border giving rise to a large number of immigrant could be a major cause for the stupendous increase in population.

THE ECONOMY

The Gambian economy is mainly agrarian and monocultural. Groundnut is the major cash crop and is produced mainly by men. The men alone produce cotton for export. Over 80% of the population live in the rural area and are engaged in crop production. Women are mainly engaged in the production of food crops mostly for consumption such as rice. Vegetables sorghum, millet and maize.

The Gambian economy is currently being diversified into animal husbandry, oil seeds production, cotton production, fisheries and poultry farming with a view to reducing over reliance on groundnut farming.

The tourist industry has become the Gambia's most important foreign exchange earner. The trade liberalisation policy has provided a conducive atmosphere for the re-export trade to thrive, however due to restrictions imposed by neighbouring State there has been a decline in the re-exporting activities. The country imports half of its food supplies including the staple food rice, all of its fuel and capital goods and most other manufactured goods.

THE POLITICAL SYSTEM

The Gambia is a member of the British Commonwealth since independence in 1965. The Gambia was until 22nd July, 1994 under the leadership of Sir Dawda Kairaba Jawara. The Gambia was proclaimed a Republic in April, 1970 with Sir Dawda Jawara becoming President. Under the 1970 Republic Constitution, the tenure of presidential office is fixed to the House of Representatives, so the general elections are not only for members of the house but for the President. In July 1994 a successfully coup d'etat brought into power Lt. Yahya Jammeh who is Chairman and Head of State of The Armed Forces Ruling Provisional Council.

The Armed Forces Provisional Ruling Council consists of five military officers and the Attorney General and Minister of Justice. There are civilian ministers four of whom are women.

THE LEGAL SYSTEM

The Gambian legal system is modelled on the English Legal system. The law consists of the Common Law, doctrines of equity and statute of General Application. In The Gambia, the Sharia is regarded as Customary Law and is applicable for over 90% of the population as its personal law. Therefore both English Law and Sharia are administered contemporaneously. The latter is however restricted to matters like marriage, divorce and inheritance. With the military takeover, parts of the Constitution of The Republic of The Gambia 1970 has been suspended, however chapter 111 of The Constitution which guarantees civil and political rights is still in force.

As a party to the Charter, The Gambia is obliged under Article 62 of the Charter to report to the Commission on measures taken on progress made and on any difficulties encountered in the discharge of its obligations under the Charter. This initial report is seeking to discharge that duty.

ARTICLE 2 - ENJOYMENT OF THE RIGHTS AND FREEDOMS
RECOGNISED AND GUARANTEED IN THE CHARTER

AND

ARTICLE 3 - EQUALITY BEFORE THE LAW

These are secured by sections 13 and 25 of the Constitution.

Section 13 reads-
Fundamental
rights and
freedoms

"Whereas every person in The Gambia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest".

Section 25 reads -
Protection
from discri-
mination

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either or itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place or origin, political opinions, colour or creed whereby persons or one such description are subjected to disabilities or restrictions to which persons of another such descriptions are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision -

- (a) for the appropriation of public revenues or other public funds;
- (b) with respect to persons who are not citizens of The Gambia;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons

of that description;

- (d) for the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law; or
- (e) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 19, 21, 22, 23 and 24 of this Constitution being such a restriction as is authorised by section 19(2), section 21(5), section 22(2), section 23(2) or paragraph (a) or paragraph (b) of section 24(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law ".

The Constitution provides for men and women to be equal in law. There is no discrimination in The Gambia based on race, religion or language. The status of women is improving with government encouragement through the work of the Women's Bureau and the National Council for Women, and also through increased educational opportunities.

Violence against women, usually wife beating is not uncommon, particularly in rural areas, but there are no accurate statistics to help determine the extent of the problem. The Government does not sanction this practice, which is subject to the provisions of the Criminal Code if brought to the courts. The police do not normally intervene in domestic disputes, and women are reluctant to go outside the family for redress.

Female circumcision is practiced in The Gambia reinforced by traditional beliefs. However the Women's Bureau in the Office of the President conducts an ongoing campaign, to inform women of the negative effects of circumcision.

ARTICLE 4 - RIGHT TO LIFE, INVIOABILITY AND INTEGRITY OF THE PERSON

The right is secured by sections 14 and 19 of the Constitution. Section 14 reads -

"Protection of right to life

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or
- (e) if he dies as a result of a lawful act of war.

In The Gambia there has been no reported political killings or reports of disappearances. There have although in the past been unsubstantiated reports of the use of excessive force by police officers. This led to a Government investigation to the excessive use of force by some police officers leading to the death of a senegalese national. Three police officers were subsequently charged with murder and tried. Two of them were convicted and imprisoned in respect of this incident.

Section 19 reads -

"Protection
against
arbitrary
search or
entry

(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any property for a purpose beneficial to the community;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Government of The Gambia, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society".

ARTICLE 5 - RIGHT TO THE RESPECT OF THE DIGNITY
INHERENT IN HUMAN BEINGS

This right is secured by sections 16 and 17 of the Constitution.

Section 16 reads -

Protection from
slavery and
forced labour

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period of public emergency or in the event of any other emergency of calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) any labour reasonably required as part of reasonable and normal communal or other civil obligations."

Section 17 reads:-

Protection
from inhuman
treatment

- (1) No person shall be subjected to torture or inhumane or degrading punishment or other treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in The Gambia on 23rd April, 1970."

The Constitution outlaws torture and mistreatment of prisoners. However prison conditions are severe and there were in past years occasional reports of mistreatment of prisoners. Since the prison reforms of 1988, there have been no further reports of such incidents. Government allows prison visits of the local Red Cross and by close family members.

In 1991 there was a report of alleged police brutally leading to the death of a person in custody. He was suspected of having committed a crime and is alleged to have been beaten by the police to extract a confession from him. Two police officers have been convicted and imprisoned in respect of this incident, the first of its kind in the country.

As a result of the recent coup d'etat a number of persons have been detained under the state security detention of Armed and Police personnel decree number 3 of 1994. However the decree provides for a review of the detention order within thirty days. This decree does not apply to civilians.

ARTICLE 6 - RIGHTS TO LIBERTY AND SECURITY

This right is secured by section 15 of the Constitution.

Section 15 reads:-

Protection of
right to
personal
liberty

(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say :-

- (a) in execution of the sentence or order of a court, whether established for The Gambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of the Supreme Court or the Court of Appeal punishing him for contempt of that court or of another court of tribunal;
- (c) in execution of the order of a court made to secure the fulfillment of any obligation imposed on him by law;

- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under law of The Gambia;
- (f) under the order of a court of with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the unlawful entry of that person into The Gambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from The Gambia or for the purpose of restricting that person while he is being conveyed through The Gambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (h) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Gambia, or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for

restraining that person during any visit that he is permitted to make to any part of The Gambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained

- (a) for the purpose of bringing him before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of The Gambia;

and who is not released, shall be brought without undue delay before a court

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person or from any other person or authority on whose behalf that other person was acting."

ARTICLE 7 - RIGHT TO HAVE ONES CAUSE HEARD

This right is secured by sections 20 and 28 of the Constitution.

Section 20 reads:-

Provision to
secure
protection
of law

(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings for the determination of the existence or extent of any civil right or obligations before any other adjudicating authority, including the announcement of the decision of the court or other authority shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority -

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

- (a) subsection 2 (a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

- (b) subsection 2 (d) of this section to the extent that the law in question prohibits legal representation in proceedings before a court, by whatever name called administering customary law or before another court on appeal from such a court;
- (c) subsection 2(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person and to be paid their expenses out of public funds; or
- (d) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) In this section "criminal offence" means a criminal offence under the law of The Gambia."

The regular court system is composed of the Supreme Court and the Court of Appeal. Courts of first instance include the Magistrates or District Courts, Customary or Area courts. The nature of the case usually determines which court has jurisdiction. In principle Customary and Sharia courts have jurisdiction only if both plaintiff and defendant agree to it. Sharia courts are however limited to followers of Islam.

Trials in the regular court system are public and respect constitutionally guaranteed individual rights. These include a presumption of innocence, the right to be present at a public trial, to confront witnesses and present evidence and to be represented by legal counsel. In capital cases, the Government provides counsel for defendants. Bail is rarely granted to those charged with murder. Conviction for murder carries with it a life sentence but provides for appeal from the Supreme Court to the Court of Appeal.

Death sentences imposed by the courts consequent upon a murder charge have in practice always been commuted to a custodial sentence. In 1983 therefore the Government of The Gambia abolished the death penalty and is looking forward to becoming a State Party to the U.N. Second Optional Protocol to the International Convention on Civil and Political Rights.

ARTICLE 8 - FREEDOM OF CONSCIENCE PROFESSION

FREE PRACTICE OF RELIGION

This right is secured by section 21 of the Constitution.

Section 21 reads:-

Protection of
freedom of
conscience

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) Every religious community shall be entitled at its own expense to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains in the course of any education which it otherwise provides.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required -

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion;

and, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly."

The above provision guaranteeing freedom of religious belief religious practice and religious education are respected. The country is predominantly muslim, but other religions are allowed. There have been no reported cases of discrimination. The Christian religion is freely practiced. Missionary activity is permitted, and missionaries are active in several parts of the country.

Adherence to a particular religion confers no official benefit/advantage or disadvantage in civil, political economic, military or other sectors.

Koranic and Christian schools exist alongside the public school system.

ARTICLE 9 - RIGHTS TO RECEIVE INFORMATION AND EXPRESS
AND DISSEMINATE OPINIONS WITHIN THE LAW

The Constitution provides for freedom of speech and expression. The Government does not attempt to censor published materials. Whether they originate within or outside the country. Both the opposition and the independent press are openly critical of the Government. Criticism of the government is tolerated to a degree, for example if it is libel, then Government will intervene. There is also open discussion of political, social and economic issues.

There is no television in The Gambia, but Senegalese broadcasts can be received. The Government even though it dominates the media through Radio Gambia, does not interfere with the two commercial radio stations, which mainly broadcast music. Foreign magazines and newspapers are available in the capital and are not censored. There is however no university in The Gambia, but a college does exist, where students have formed an association. The National Union of Gambian students in Sierra Leone have been active in The Gambia whilst on vacation.

The Constitution provides under section 22 as follows:-

Protection of
 freedom of
 expression

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

- (b) that is reasonably required for the purpose of protecting the reputations rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers, and except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

The rights is subject to laws relating to libel and slander/defamation as well as sedition which are designed to protect the rights and reputations of other persons and communal peace and harmony.

ARTICLE 10 - RIGHT TO FREE ASSOCIATION

ARTICLE 11 - RIGHT TO ASSEMBLE FREELY

These rights are secured by section 23 of the Constitution:

Section 23 reads:

Protection of
freedom of
assembly
and
association

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (c) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

Gambians freely exercise their constitutional rights of assembly and association. However prior authorisation for public demonstrations is required in the interests of public safety and order.

There is no legal compulsion to join any association or organisation. There is no requirement for registration of political parties and no prohibition in their formation. Labour organisations - of employers and employees - are freely established.

ARTICLE 12 - RIGHT OF FREEDOM OF MOVEMENT

This right is secured by section 24 of the Constitution.

Section 24 reads:-

"Protection of
freedom of
movement

(1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout The Gambia, the right to reside in any part of The Gambia and immunity from expulsion from The Gambia.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of his section to the extent that the law in question makes provision -

- (a) for the imposition of restrictions on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia that are reasonably required in the interests of defence, public safety or public order;
- (b) for the imposition of restrictions on the movement or residence within The Gambia or on the right to leave The Gambia of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) for the imposition of restriction, by order of a court, on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia either in consequence of his having been found guilty of a criminal offence under the law of The Gambia or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from The Gambia;
- (d) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of The Gambia;

- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in The Gambia;
- (f) for the imposition of restrictions upon the movement or residence within The Gambia or on the right to leave The Gambia of any public officer;
- (g) for the removal of a person from The Gambia to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted; or
- (h) for the imposition of restrictions on the right of any person to leave The Gambia that are reasonably required in order to secure the fulfillment of any obligations imposed on that person by law and except so far as that provision or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedoms of movement has been restricted by virtue of such a provision as is referred to in subsection (3) (a) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are entitled to practice as a barrister or a solicitor in The Gambia.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered:

Provided that authority, unless it is otherwise provided by law, shall not be obliged to act in accordance with any such recommendations."

Article 12 however goes further than our section 24 in relation to the right to leave any country including one's own. This is not provided for.

The Constitution entitles its citizens to move freely throughout The Gambia, reside in The Gambia and immunity from expulsion.

Gambians travel abroad in large numbers and many study overseas. Some have even emigrated and settled abroad and acquired other nationality. The Gambia does not however recognise dual nationality.

The Gambia permits temporary refuge for refugees. In 1990 a small number of refugees from Liberia settled in The Gambia.

There is no local legislation relating to the right of asylum and to refugees but The Gambia is party to all the major international instruments relating to refugees - both U.N. and OAU - and has scrupulously been observing them.

Infact The Gambia maintains an open-door policy with regard to immigration which accounts for the large number of nationals from the countries in the subregion within The Gambia.

ARTICLE 13 - RIGHT TO PARTICIPATE FREELY IN THE GOVERNMENT OF ONE'S COUNTRY

There are provisions for this right in our Elections Act, Presidential Elections act and the Constitution.

The Gambia is also a party to the Civil and Political Rights Covenant.

In The Gambia citizens have the right to change their governments through peaceful means. The President and Members of Parliament from various constituencies are popularly elected. Since independence in 1965 Presidential and Parliamentary elections are held regularly every five years. The President as head of the executive is elected by universal adult suffrage. Citizens must be at least 18 years of age to vote. During each election opposition parties participate in free and fair elections, under which not only the right to vote is guaranteed, but balloting is in secrecy and maximum security is guaranteed for people to vote freely.

Gambian politics however have been male dominated, though women face no legal impediments to political participation of voting. However financial limitations and traditional familial obligations are serious hurdles to increase participation of women in Gambian politics.

The Constitution provides for government through an Executive President who is directly elected on the basis of universal adult suffrage every five years. The legislature, from whom other members of the executive are also drawn is also directly elected on the basis of universal adult suffrage.

For the purpose of these elections the country is divided into thirty-six constituencies each of which elects one member of the House of Representatives.

In both elections the Constitution and the Elections Act provide that every Gambian of 21 years of age who is not subject to certain legal disqualifications is entitled to vote and contest elections as a candidate.

The law also provides for the participation of all citizens in referenda which are called to decide specific political issues.

These provisions have been strictly adhered to since independence in 1965 with elections being regularly held every five years freely and fairly involving the participation of opposition political parties which have always been represented in the House of Representatives. The Constitution and all Acts dealing with the election process have been suspended by the military.

ARTICLE 14 - RIGHT TO PROPERTY

This right is secured by section 18 of the Constitution.

Section 18 reads:

"Protection
from depri-
vation of
property

(1) No property of any description shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia except by or under the provisions of a law that -

- (a) requires the payment of adequate compensation therefore; and
- (b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the Supreme Court.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section -

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or rights -
 - (i) in satisfaction of any tax, rate or due;
 - (ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of The Gambia;
 - (iii) as an incident of a lease, tenancy mortgage, charge, bill of sale, pledge or contract;

- (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;
- (vi) in consequence of any law with respect to the limitation of actions; or
- (vii) for so long as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required and has without reasonable excuse refused or failed to carry out),

and except so far as that provision or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or a right over property) that is to say:-

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto for the benefit of other persons entitled to the beneficial interest in the property; or

- (iv) property subject to a trust for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory acquisition of any interest in or right over property where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

(4) The provisions of this section shall apply in relation to the compulsory taking of possession of property of any description and the compulsory acquisition of rights over and interests in such property by or on behalf of the Republic."

ARTICLE 15 - RIGHT TO WORK UNDER EQUITABLE AND SATISFACTORY CONDITIONS

This right is secured under our non-discrimination clauses, section 25 of the Constitution (supra).

ARTICLE 16 - RIGHT TO ENJOY THE BEST ATTAINABLE SATISFACTORY CONDITIONS

ARTICLE 17 - RIGHT TO EDUCATION

ARTICLE 18 - THE FAMILY AS THE NATURAL UNIT AND BASIS OF SOCIETY

ARTICLE 19 - EQUALITY OF PEOPLES

ARTICLE 20 - RIGHT TO SELF DETERMINATION

ARTICLE 21-
AND 22

RIGHT TO DEVELOPMENT

The Gambia has no specific legislation on the above articles. Articles 16 - 22 of the Charter. The Gambia is however a party to the Social and Economic Rights Covenant and Government's entire policy is geared towards seeking for the generality of the population those socio-economic rights set out in the Covenant and Charter. For example, the thrust of Government's new Ten Year Education Policy adopted in 1991 is to democratise education and make it available to the vast majority.

Education and health attract a large proportion of public investment.

Women continue to be in a disadvantaged position essentially not because of any legal impediments but because their status continues to be influenced largely by tradition. The low level of female in-take in the school system (one-third in primary and one-fourth in secondary schools) is now rising.

In order to enable it address the status of women, the obstacles to their equality and thus be able to ensure their full and active participation in the life of the nation, the Government has by law created a National Women's Council to advise it on all matters relating to the status of women. The Council is serviced by a secretariat styled and Women's Bureau.

In addition a Multi-Sectoral Working Group on Girls Education has been recently established under the Ministry of Education. Because of the high priority presently given to female education the working group is chaired by the Chief Education Officer, who incidently is a woman. The working group also comprises representatives of government, bi-lateral and multi-lateral agencies, non-governmental organisations, the media and the business sector.

The Gambia is also party to both the UN Convention on the Rights of the Child and the African Charter on the Child. It has also been implementing an immunisation programme designed to enhance child and maternal health. The provisions of the Maintenance of Children Act and the Children and Young Persons Act also cater for the maintenance of children by parents/guardians and for the humane treatment of children and young persons by the judicial system.

The rights of the family are of great importance in The Gambia's conservation of Muslim society. Marriage, the raising of children and religious instructions regulated by a combination of personal preferences and ethnic and religious tradition. The Government does not normally intrude in family matters. Family Planning is encouraged, but has not yet been enforced.

ARTICLE 23 - PEOPLE'S RIGHT TO NATIONAL AND INTERNATIONAL PEACE AND SECURITY

Government has been legislating to ensure that people do not disrupt by their conduct, national peace and tranquility and to make sure that peace and tranquility is maintained between The Gambia and other countries. In fact The Gambia being a party to the Organisation of African Unity Charter, and that of the United Nations, has over the years been working towards international and national peace and security in accordance with the principles of solidarity and friendly relations as affirmed by the above-mentioned Charters.

Chapter VIII of the Criminal Code makes it criminal for any person to engage from within The Gambia in activities that can adversely affect relations of peace and tranquility between The Gambia and other friendly States.

Chapter VIII was amended in 1991 as follows:-

"Subversion against foreign States 59A (1) Any person who, in relation to any friendly State -

- (a) prepares or endeavours to overthrow the Government by unlawful means;
- (b) prepares or endeavours to procure by force any alteration of the law or the policies of Government;
- (c) prepares or endeavours to carry out by force any enterprise which usurps the executive power of the State in any matter of both a public and a general nature;
- (d) incites or assists or procures any person to invade such States with an armed force or unlawfully to subject any part of the State to attack by land, sea or air or assists in the preparation of any such invasion or attack;

ARTICLE 26 RIGHT TO AN INDEPENDENT JUDICIARY

Section 88 -

Establishment
of Court of
Appeal

(1) There shall be a Court of Appeal which shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The Judges of the Court of Appeal shall be -

(a) the President of the Court;

(b) such number, if any, of other Judge (hereinafter referred to as "Justices of Appeal" which expression shall where the context allows include the President of the Court) as may be prescribed by Parliament:

Provided that the office of a Judge of the Court of Appeal shall not be abolished while there is a substantive holder thereof: and

(c) the Chief Justice and other Judges of the Supreme Court ex officio.

(3) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(4) When the Court of Appeal is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of Judges, not being less than three.

Section 89 -

Establish-
ment of
Supreme
Court

(1) There shall be a Supreme Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The judges of the Supreme Court shall be the Chief Justice and such number, if any, of other judges (hereinafter referred to as "Puisne Judges") as may be prescribed by Parliament.

Provided that the office of a Puisne Judge shall not be abolished while there is a substantive holder thereof.

(3) The Supreme Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(4) The Supreme Court shall sit in such places as the Chief Justice may appoint.

Section 90 -

Appoint-
ment of
Judges of
the Court
of Appeal
and Supreme
court

(1) The President of the Court of Appeal and the Chief Justice shall be appointed by the President.

(2) The Justices of Appeal and the Puisne Judges shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission.

(a) A person shall not be qualified as a Justice of Appeal or as a Judge of the Supreme Court unless

(i) he holds or has held office as a Judge of a court having unlimited jurisdiction, in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction, in appeals from such a court; or

(ii) he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

(b) In this subsection "the specified qualifications" means the professional qualifications specified under the Courts (or by or under any law amending or replacing that Act) one of which must be held by any person before he may apply under that Act (or under any such law) to be admitted to practise as a legal practitioner in The Gambia.

(4) If the office of the President of the Court of Appeal is vacant or the President of the Court of Appeal is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other Judges of the Court as may for the time being be designated in that behalf by the President.

(5) If the office of Chief Justice is vacant or the Chief Justice is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the Justices of Appeal or the Puisne Judges or such other person qualified to be appointed as a Judge of the Supreme Court as the President may appoint:

Provided that -

- (a) a person may be appointed under subsections (4) or (5) of this section notwithstanding that he has attained the age prescribed for the purposes of section 91 (1) of this Constitution: and
- (b) a person appointed under subsections (4) and (5) of this section may, notwithstanding the assumption or resumption of the functions of the office of the President of the Court of Appeal or the office of Chief Justice, as the case may be, by the holder of that office, continue to act as President of the Court of Appeal or Chief Justice, as the case may be, for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(6) If the office of any Justice of Appeal is vacant or if any Justice of Appeal is appointed to act as President of the Court of Appeal or is for any reason unable to perform the functions of his office or if the President of the Court of Appeal advises that the state of business of the Court of Appeal so requires, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal.

(7) If the office of any Puisne Judge is vacant or if any such Judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice advises the President that the state of business in the Supreme Court so requires, the President acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a Judge of the Supreme Court to act as a Puisne Judge of that Court:

Provided that a person may act as a Justice of Appeal or as a Puisne Judge under subsections (6) or (7) of this section, notwithstanding that he has attained the age prescribed for the purposes of section 91(1) of this Constitution.

(8) Any person appointed under subsections (6) or (7) of this section to act as a Justice of Appeal or as a Puisne Judge, as the case may be, shall, subject to the provisions of section 91(4) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Judicial Service Commission.

Provided that, notwithstanding the expiration of the period of his appointment or the revocation of his appointment, he may thereafter continue to act a Justice of Appeal or as a Puisne Judge, as the case may be, for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Section 91 -

Tenure of
office of
Judges of
the Court
of Appeal
and Supreme
Court

(1) Subject to the provisions of this section, a person holding the office of a Judge of the Supreme Court shall vacate that office when he attains the prescribed age.

(2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of this section, a person holding the office of a Justice of Appeal or the office of a Judge of the Supreme Court may continue in office for so long after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) A person holding the office of Justice of Appeal or judge of the Supreme Court may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(4) A Justice of Appeal or a judge of the Supreme Court may be removed from his office if notice in writing is given to the Speaker, signed by not less than one-third of all the voting members of the House of Representatives, of a motion alleging that a Justice of Appeal or a judge of the Supreme Court, as the case may be, is unable to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) and proposing that the matter should be investigated under this subsection.

(b) Where a motion under subsection 4(a) of this section is proposed for consideration by the House of Representatives, the House shall not debate the motion but the person presiding in the House shall forthwith cause a vote to be taken on the motion, and, if the motion is supported by the votes of not less than two-thirds of all the voting members of the House, shall declare the motion to be passed.

(c) If a motion is declared to be passed under subsection 4(b) of this section -

(i) the House shall, by resolution, appoint a tribunal which shall consist of a Chairman and not less than two other members, one of whom shall hold or shall have held high judicial office;

- (ii) the tribunal shall investigate the matter and shall report to the Speaker of the House of Representatives on the facts thereof;
- (iii) the Justice of Appeal or judge of the Supreme Court whose inability to exercise the functions of his office is under enquiry in accordance with the provisions of this subsection, shall have the right to appear and to be represented before the tribunal during the investigation by the tribunal of the facts of the case;
- (iv) the House shall consider the report of the tribunal at the first convenient sitting of the House after the report is received and may, on a motion supported by the votes of not less than two-thirds of all the voting members of the House, resolve that the aforesaid Justice of Appeal or judge of the Supreme Court be removed from office and if the House so resolves, he shall thereupon cease to hold office.

- (d) If the question of removing a Justice of Appeal or judge of the Supreme Court from office has been referred to a tribunal under this subsection, the House of Representatives may by resolution, suspend that Justice of Appeal or judge of the Supreme Court, as the case may be, from performing the functions of his office and any such suspension may at any time be revoked by the House by resolution and shall, in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this subsection, the House does not remove such Justice of Appeal or judge of the Supreme Court from office.

(5) The prescribed age for the purposes of subsection (1) of this section is the age of sixty-five years in the case of a Justice of Appeal and sixty-two years in the case of a judge of the Supreme Court, or such other age as may be prescribed by Parliament;

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after the appointment of a person to be a Justice of Appeal or a judge of the Supreme Court shall not have effect in relation to that person unless he consents that it should have effect."

The Constitution also vests exclusive jurisdiction for the interpretation of the Constitution on the Supreme Court.

Section 93

"Reference to Supreme court in cases involving interpretation of Constitution

(1) Where any questions as to the interpretation of this Constitution arises in any proceedings in any subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 98 of this Constitution to the Court of Appeal or the Judicial Committee in accordance with the decision of the Court of Appeal or, as the case may be, the Judicial Committee."

In the matter of human rights the Supreme Court is also given an entrenched jurisdiction to decide on all questions relating to human rights and to make the necessary orders for the enforcement of those fundamental rights and freedoms guaranteed under the Constitution. Section 28 of the Constitution provides for this purpose as follows -

(1) If any person alleges that any of the provisions of sections 13 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction -

- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section;

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement (inclusive) of this Constitution:

Provided that the Supreme Court may decline to exercise its powers under this subsection, if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 13 to 27 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 95 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court)."