



National Integrity Systems

Transparency International

Questionnaire

The Gambia 2004

Lead Consultants

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Currency

The Gambia's national currency is the dalasi and butut. One hundred bututs is equal to one dalasi. The currency is presently floating with rates fluctuating on a daily basis.

The exchange rate of the dalasi to the United States dollar is presently twenty-nine dalasis to one United States dollar. Against the pound sterling the dalasi is worth fifty dalasis. The dalasi being a floating currency in a free market economy with no fixed exchange rate has caused prices of goods to sky-rocket thus worsening the poverty situation of the Gambian people.

Abbreviations

APRC	Alliance For Patriotic Re-Orientaton and Construction
GDP	Gambia Democratic Party
NCP	National Convention Party
NDAM	National Democratic Action Movement
NRP	National Reconciliation Party
PDOIS	People's Democratic Organization for Independence and Socialism
PPP	People's Progressive Party
IMF	International Monetary Fund
MDI	Management Development Institute
NIS	National Integrity System

The Gambia

Executive Summary

The Constitution of The Gambia 1997 provides the framework for a transparent and accountable government. However, corruption is rampant at both central and local government levels to the extent that IMF has suspended its cooperation with The Gambia on account of distorted figures sent to them by the Central Bank of The Gambia.

There is no anti-corruption strategy or plan in place to actively combat corruption. The poverty situation in The Gambia has worsened; institutions created by both the Constitution and statute to ensure transparency, accountability and probity in public life have been undermined to the extent that they lack capacity and moral courage to execute their functions. The economic crisis has worsened with prices of basic commodities beyond the reach of the down-trodden masses. There is an increase in human rights violations by the State and its agents.

The National Integrity System study on The Gambia reveals that the overwhelming dominance of the President in all aspects of government has created political patronage. Further, the poor conditions of service of public servants coupled with spiralling inflation are found to be the leading causes of corruption in The Gambia.

There is lack of tolerance for the media of mass communication resulting in a stand-off in court between the media and the Government over the 2002 National Media Commission Act, whose main objective is to stifle media freedom as well as freedom of expression.

Government financial statements have not been audited since 1998 and there appears to be no political will to allow the Auditor General to audit the financial statements of the Government. This clearly is an indication of lack of financial accountability on the part of the Government.

The office of the Director of Public Prosecutions lacks independence to conduct prosecutions without the approval of the Attorney General. The holder of this office is answerable to both the Attorney General and Solicitor General.

The Judiciary lacks independence and despite constitutional protection offered to judges; some judges have had their services terminated by the Executive, the most recent being a Supreme Court judge whose service was terminated by the Solicitor General.

The police and other security agents openly display allegiance to the President and the APRC Party. They are notorious for selectively applying the law where cases have political undertones. The use of the Public Order Act to deny opposition parties licence to hold political rallies is a fine example of the police demonstrating loyalty to the President.

The Local Government authorities have lost their autonomy and are controlled by central government. Traditional rulers no longer exist; they have been replaced by political appointees of the President.

It is the recommendation of this study that civil society be encouraged to play a more active role in corruption prevention by exposing corruptions and lobbying donors to impose conditionalities that would ensure transparency and accountability in public life.

It is further recommended that a credible and independent body be created for the conduct of national elections; that the excessive and uncontrolled powers of the President be monitored; and that the lack of audited financial statements of Government coupled with the non-existent of government strategy to combat corruption be one of the priorities to be addressed with possible donor assistance.

Country Overview

Located in West Africa, The Gambia is one of the smallest African countries with a land area of 11,300 square kilometres. It is bound on the North, East and South by Senegal and on the West by the Atlantic Ocean. The River Gambia bisects the country into North and South. The capital is Banjul and it is located near the mouth of the river.¹ It is a former British Colony which attained full independence from Britain on 18th February, 1965 and it gained republican status in 1970. It has a population of about 1.3 million.

A relatively stable country, The Gambia suffered two major political crises in the form of an abortive coup d'état on 30th July, 1981 which resulted in many deaths, and an overthrow of its democratically elected government by its Armed Forces on 22nd July, 1994. Since then the political landscape of the country changed drastically with the coming into being of a military government from 22nd July 1994 which was dissolved in September 1996.

The coup happened at a time when most Gambians seemed dissatisfied with the government of the day which had been in power since independence.

Standards of living were dropping and there was gross indiscipline in the public service. The then President appeared to have been more concerned with trips abroad than with governance.

Following a constitutional referendum on a draft Constitution in August, 1996 on a draft which was adopted by the people and further approved by the National Assembly in January, 1997, the Gambia began its 2nd Republic under a new Constitution which differs from the Westminster model type of Constitution it had since 1970. It is a hybrid of the American and Westminster model types of constitutions. It provides for separation of powers with adequate checks and balances and gives the President executive functions. It prohibits any person from serving in any two of the arms of government at the same time. Therefore, the President and members of his cabinet cannot at the same time be members of the Legislature. The Legislature consists of career politicians. The current President belongs to a party, which holds the majority in the National Assembly. He was first elected in September 1996 for a five-year term and then re-elected in October 2001 for another five-year term.

There are eight registered Political Parties:

- Alliance for Patriotic Re-Oriented and Construction (APRC)
- United Democratic Party (UDP)
- Gambia Democratic Party (GDP)
- Peoples Progressive Party (PPP)
- National Reconciliation Party (NRP)
- People's Democratic Organization for Independence and Socialism (PDOIS)
- National Democratic Action Movement (NDAM)
- National Convention Party (NCP)

The majority party in the National Assembly is the APRC (42 seats), the PDOIS has two seats in the National Assembly whilst the NRP has one seat. The UDP and the PPP, under the chairmanship of the leader of the former Gambia Peoples Party (now unregistered), which formed an alliance during the last presidential elections, boycotted the National Assembly elections whilst NDAM is a new Political Party which was registered after the National Assembly elections in 2002. The third political party, the GDP, even though it was registered since the ban on political activities was lifted in 1996, has never taken part in any elections. It is however still officially existing by name only.

Presidential elections are always held separately from the parliamentary elections, usually three months in between. The last presidential elections were held in October 2001 while the parliamentary elections were held in January 2002.

The National Assembly consists of 53 members; five of whom are nominated by the President while the rest are directly elected to represent single-member constituencies. The principle of equal number of population does not apply to constituency demarcation and the gerrymandering of boundaries has made the Foni in particular to have constituencies that are unjustified under the said principle. While Foni is a small area compared to some other districts of the country, it has been given five constituencies, which altogether contain not more than 15,000 registered voters, compared to the biggest constituency, Kombo North, with a registered voter population of more than 40,000.

Members of the Executive are not members of the National Assembly although they do appear in the National Assembly on certain matters.

The government amended section 50(2) of the Constitution to avoid the application of the said principle. The original section read: "All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practical...". However, the amendment merely said under sub-section (i): "An Act of the National Assembly shall establish a Boundaries Commission which shall be responsible for the purpose of demarcating constituency boundaries for the purpose of elections to the National Assembly". This amendment virtually took away from the Independent Electoral Commission the power to demarcate constituency boundaries and instead gave it to a government-appointed body. This was a self-serving amendment which has now made our constituency demarcation quite disproportionate.

The Constitution of the Republic of The Gambia 1997 provides the framework for democratic governance. It provides for separation of powers of organs of Government, and gives each enough power to act as a check on the power of the other. It further creates independent constitutional offices, like the National Audit office headed by the Auditor General, and guarantees the independence of such offices. A striking feature of the Constitution is its provisions, which require transparency and accountability in public life.

The Gambia government consists of three arms, namely the Executive, Legislature and Judiciary.

The Gambia has an Executive President who is elected by the people every five years. As President he is the head of the Cabinet and Commander in Chief of the Armed Forces.

The Cabinet consists of persons who are appointed by the President. A member of the Cabinet cannot be a member of the National Assembly.

The National Assembly consists of forty-eight elected members and five nominated members. It is the principal law-making organ and is expected to act as a check on the Executive.

The Judiciary is responsible for interpreting the laws and the fountain of hope for the ordinary Gambians. It comprises Magistrates Courts, the High Court, Court of Appeal and the Supreme Court.

The lower bench is all Gambian but the High Court and Court of Appeal consist of Gambian and Nigerian judges.

The Supreme Court is without a quorum at the moment and has only one judge in the person of the Chief Justice. It has not held any session for more than a year now. The Government has either failed or refused to appoint judges.

The civil service has an estimated number of 11,645 employees according to the budget of 2003. However, with persons being fired regularly, the true size of the civil service cannot be stated with certainty.

The Gambia has a vibrant media which is always at odds with the Executive. There is only one Television Station owned by the Government. The Government also owns one radio station and a newspaper – *The Gambia Daily*. There are five regular private newspapers and one magazine. They are *The Point*, *The Independent*, *Foroyaa*, *The Enquirer* and *The*

Gambia News and *Report Magazine*. There are six radio stations which are privately owned.

The Gambia has an open market economy. The main sectors of the economy are agriculture -mainly for the production and export of groundnuts accounting for 24% of GDP in 1994/95; and re-export trade accounting for 16% GDP for the same year.² Tourism also plays a key role in the economy. The country imports a third of its food requirements, all of its fuel, and most capital and manufactured goods. The economy as at end of June 1996 saw an increase in the Gross Domestic Product by 3.2% as a result of growth in Construction (17.5%), Hotels and Restaurants (30%), transportation (15%), crop production (8.4%) and fishing (2.3%).³ By end of June 1997 GDP fell to about 2%. Groundnut production declined by 4% due to poor climatic condition and structural bottlenecks in the sector.⁴ Re-export trade also slumped during that period and the public finance situation continued to be an area of serious concern.⁵

The continuing deterioration of the economy coupled with the lack of financial prudence and failure on the part of the office of the Accountant General to prepare Government accounts for auditing seriously undermined the transparency and accountability of the Gambia Government. This grave situation was further exposed by the Auditor General in her report to the National Assembly in December 1998. Since then the Government's audited accounts have not been laid before the National Assembly.

Corruption Profile

There is official corruption in The Gambia which is supported by available evidence such as the Auditor General's Report 1998. This report which is discussed in some detail in the study indicts both central government and local governments. It exposes corruption in public life as well as showing a poor level of financial accountability. The recent revelation by the International Monetary Fund (IMF) concerning inaccuracies in data given to them by the Gambia Government and the present suspension of cooperation with The Gambia by that organization speaks volumes.

There have been a number of cases of high-level corruption, including the on-going prosecution of Youth Development Enterprises Limited, its Managing Director and Chairman for economic crime causing a total loss of revenue to government of about eighty-two million dalasis is testimony of on-going corruption in The Gambia (the Youth Development Enterprises Limited is a Company registered under the Companies Act of The Gambia. Its main objective is to import consumer goods such as rice, cooking oil, and sugar for sale to the public). It is interesting to note that the Chairman of the Company is also the majority leader in the National Assembly and a close associate of the President who rose from rags to riches. The same Chairman is on a United Nations travel ban for arms trafficking together with former Liberian President Charles Taylor and associates. Whilst the case is proceeding, the President for some unknown reasons disclosed in a television appearance that he is the financier of the beleaguered company. However the matter is sub-judice at the moment.

The Gambia Tourism Authority is at the moment hit with a financial scandal involving an estimated amount of 2.9 million dalasis. The former Secretary of State for Tourism, Yankuba Touray and the present Director General of the Gambia Tourism Authority, have been implicated in the scandal. The Director General has been suspended, the Chairman of the Board of Director of the Board of Gambia Tourism Authority fired, and the Secretary of State has also been fired. It is unclear whether this matter will reach the courts.

The refusal of the Government to get its accounts audited after 1998 is a cause for concern. It is generally believed that all is not well financially as a result of which the National Audit office has not been able to carry out its mandate under the Constitution.

At the political level there are allegations of corruption levelled against the Independent Electoral Commission. It is believed that rules are made and bent to suit the majority party. The opposition parties have in fact voiced their dissatisfaction with and distrust of the present composition of the Independent Electoral Commission. Street corruption is seen as less common although there are however isolated instances where at police check points, drivers and some police officers could be seen negotiating off the road instead of drivers being escorted to police stations.

The main causes of corruption in The Gambia are:

- The lack of ethics in the governance of this country – the rags to riches syndrome whereby the national interest is overlooked by those in public offices and those private individuals close to the regime in favour of their private personal interest;
- The absence of an anti-corruption strategy;
- The poor conditions of service for public officers coupled with a spiralling inflation and static salaries that make it difficult for most public servants to maintain a decent standard of living;
- The overwhelming dominance of the President in all aspect of government which encourages political patronage;
- The arbitrary exercise of power particularly in respect to hiring and firing public servants;

- The inability of the office of the Auditor General to audit the financial statements of government from 1999 to date and the failure of the Accountant General to reconcile government accounts and make financial statements available to the Auditor General;
- The muzzling of the independent media of mass communication to suppress freedom of the media and right to information;
- The lack of an independent credible institution to conduct free and fair national elections that would provide quality leadership.

The effects of corruption on the lives of Gambians have been devastating in that:

- It increased poverty and derailed the poverty reduction programme of the government which had promised improved living conditions for Gambians;
- IMF has suspended its cooperation with The Gambia and has strongly objected to the distorted figures presented to it by the Central Bank of The Gambia (it is feared by many that other donors would follow IMF's position);
- Institutions created by both the Constitution and statutes to ensure good governance, transparency, accountability and probity lack capacity and moral courage to carry out their functions and have been seriously undermined;
- There is an increase in human rights violation and gross indiscipline on the part of some security officers legally responsible to protect and promote human rights - e.g. unlawful arrests and detentions, preventing detained persons access to counsel and refusal to obey court orders directing release of detained persons;
- People have lost confidence in the regime and service delivery by public service institutions have deteriorated;
- Most people now depend on monies being sent in from relatives abroad,
- There is no major foreign investment;
- Local government institutions have been politicised to the extent that they neither engage their Constituents nor improve their conditions of living without discriminating against those members of the opposition.

The National Integrity System

Executive

As in the 1970 Constitution, the 1997 Constitution also vests executive power with the President. He is the Head of State and Government as well as Commander-in-Chief of the Armed Forces. He is required to uphold and defend the Constitution as the Supreme Law, guarantee and safeguard the territorial integrity of The Gambia. He could be removed from Office if he contravenes any provision of the Constitution. The President is required to have "a dignified and responsible life and be the standard bearer for decency, honesty, transparency and accountability in the conduct of public life".⁶ It is for these reasons that section 67 of the Constitution defines what amounts to misconduct of the President which constitutes a ground for his removal from Office. The President is directly elected by the people for a period of five years. There is no limit to the number of terms a person can serve as President in The Gambia. The President is the leader of the APRC and is elected on his party's ticket.

The powers of the President are wide, active in all aspects of the executive arm of government. He appoints the Cabinet, he chooses the five nominated members of the National Assembly, appoints the Chief Justice and other judges of the superior courts, the Director of Public Prosecutions, the Auditor General, the members of the Public Service Commission, board of directors of the Central Bank and all parastatals, the Ombudsman and Deputy Ombudsman, the head of the civil service, Inspector General of Police and his deputy, the Commissioner of Prisons, the Chief of Defence Staff, the armed forces Chief of Staff, the commander of the army, the navy and the air force, amongst others. This is power in excess and a recipe for corruption, since over-concentration of power in the hand of one individual undermines good governance, transparency and accountability in public life and the doctrine of separation powers.

The Constitution gives the President control of the police and prison services as well as the National Intelligence Agency. He has powers to direct and control the foreign affairs of state. In practice, he has the sole prerogative to constitute any public office and make appointments for such office. Inherent in his power to appoint is the power to remove, although in some instances like appointment and removal of judges there are specified Constitutional procedures to be followed. The Constitution does not give him power to appoint Permanent Secretaries and other senior government officers, in practice he dictates who should be appointed to any office and who should be dismissed, terminated or retired.

The Gambia is faced with an impotent Public Service Commission as well as impotent Boards of Directors of parastatals who receive instructions directly from the Office of the President for dismissals or terminations of public servants. Even the Judicial Service Commission which is expected to resist encroachment of judicial powers by the Executive has failed to live up to its Constitutional duties. The Executive fires judges and magistrates with impunity.

The President is immune from both criminal and civil suit whilst in office which continues even after he leaves Office. This immunity however is subject to some qualifications. He could be removed from Office if a motion of no confidence of the National Assembly is tabled for his removal and is supported by two-thirds majority of the Assembly. Where this motion is successfully passed it would be subject to referendum within thirty days for the public to endorse or reject the decision of the National Assembly. This cumbersome procedure is criticized by many as a deliberate act to allow a President who has lost favour with the National Assembly to manipulate the public which is highly illiterate and poor, to maintain his grip on power. The President may be removed on medical grounds, which does not require a referendum.

An attempt by the UDP to table a motion before the National Assembly for the President to be impeached on the grounds that he misconducted himself in a matter referred to as the CRUDE OIL SAGA was aborted by the APRC members through the use of their numerical strength in the National Assembly. This crude oil scandal was a subject of litigation in the courts in Britain between CHANTRILS COMMERCIAL S.A vs THE GOVERNMENT OF THE GAMBIA involving the lifting of crude oil in Nigeria for the benefit of Gambians. Judgment was entered against the Government of The Gambia. To date nobody has accounted for the proceeds of the sale of millions of barrels of crude oil given to Gambians by the Federal Government of Nigeria.

The oil allocation is not an annual allocation to The Gambia but instead it is usually from negotiations between the two governments as and when the beneficiary nation makes a request to Nigeria for assistance.

It is to be noted that the Nigerian Government has over the years given to some West African countries at a concessionary price to assist in their balance of payment support, and other economic activities. The Gambia is one country that has been benefiting from this concession the benefits of which Gambians are yet to enjoy. The recent agreements signed by The Gambia Government and the Nigerian Government institutions for the lifting have been hushed up by The Gambia Government. No disclosure of such agreements have been made to the public or the National Assembly. As usual, the public only became aware when a scandal broke out and the Nigerian media exposed it.

However, for a second time, the mother of all crude oil scandals has emerged, this time involving proceeds of sale amounting to almost half a billion dollars meant for Gambians but diverted for personal benefits of some Gambians and Nigerians. This was disclosed by a Nigerian newspaper *This Day* in their Wednesday 26th March 2003 edition of Diplomatic Matters Vol. 9 No. 2894. The Gambians whose names were mentioned are persons very close to President Yahya Jammeh, which compelled the Office of the President to come out with a press release confirming the existence of the deal but denied the allegations contained in that publication. The denial basically was that monies were not diverted to private pockets as alleged. What is surprising to the Gambian nation is that this particular gift from the Nigerian government to the people of The Gambia did not feature in the annual national budget, even though the government in the press release said that the proceeds have been lodged with the Central Bank of The Gambia. The Central Bank has neither denied nor admitted this fact.

Cabinet

Cabinet consists of the President, Vice-President and Secretaries of State. The Vice-President and Secretaries of State are appointed by the President. They are collectively responsible for any advice given to the President in Cabinet, and individually accountable to the President and the National Assembly for the administration of their Departments of State and other businesses of Government committed to their charge.⁷ The Cabinet is to comprise of not more than twenty Secretaries of State including the Attorney General. However, there is presently a cabinet of 14 Secretaries of State, including the Vice President, who is also minister for women's affairs. Both the President and the National Assembly have powers to remove a Secretary of State from office.

While Section 71 of the Constitution gives the President the power to hire and fire cabinet ministers, there is no law compelling him to give reasons for his actions. The National Assembly can only remove a Secretary of State by passing a vote of censure.

According to the 1997 Constitution, there should be a complete separation of powers between the three arms of government; the Executive, the Legislature and the Judiciary. Therefore, cabinet ministers should not also be members of the Legislature at the same time. However, while the Constitution gives the President powers to appoint ministers from outside of parliament, but those ministers are expected to be attending sittings of the National Assembly to answer to questions pertaining to their ministries as well as lay and defend bills emanating from the Executive concerning their ministries. The Legislature also has the power to summon any minister before them to explain any matter, and to even

recommend the removal of any member of the cabinet who in their opinion is not performing his/her duties satisfactorily.

The National Assembly can pass a vote of censure against any Secretary of State on grounds of misconduct, inability to carry out functions of his or her Office and for violation of the Constitution.⁸ However, this check on the Executive has never been used by the National Assembly.

The Cabinet of The Gambia changes character and composition every time with termination of appointments of its members every so often that the average citizen has lost track of the numbers so far terminated. No reasons are given by the President. It is believed that 62 cabinet ministers (secretaries of state) have had their services terminated from 1994 to date. The same is true with the public service, which has seen five secretaries general and countless permanent secretaries and other senior government officials terminated, dismissed or prematurely retired, to the extent that it cannot be said with certainty at any given time the number of people employed within the public service.

There is lack of security of tenure for public servants. The concept of dismissal at pleasure which was the prerogative of the crown during the colonial era has found its way back to The Gambia despite the existence of the Constitution of 1997 which offers protection and security of tenure. Sadly, in true Gambian spirit, the victims of wrongful dismissal or termination or premature retirement have been very reluctant to approach the courts for redress. Most prefer to leave everything to God.

Civil Rights Violation and Accountability

Chapter IV of the Constitution⁹ provides for protection of fundamental rights and freedoms. It therefore does not lie within the power or discretion of the Government not to grant or respect those guaranteed rights. Section 37 enables any person who alleges that any of the provisions of the Chapter "has been, is being or is likely to be contravened in relation to himself or herself," to apply to the High Court for redress.

The High Court is given jurisdiction to hear applications under this Chapter and make such orders, issue such writ, and give such directions, as it may consider appropriate for the purposes of enforcing or securing the enforcement of such rights.¹⁰ The High Court may decline to exercise its powers if satisfied that adequate means of redress is available under any other law.¹¹ The State is also liable in tort by virtue of section 4 of the State Proceedings Act.¹²

The State is prohibited by Section 100 (2) (c) of the Constitution to pass a law that would retroactively take away an existing right. The case of OUSMAN SABALLY vs INSPECTOR GENERAL OF POLICE, SECRETARY OF STATE FOR THE INTERIOR AND RELIGIOUS AFFAIRS, THE ATTORNEY GENERAL, CIVIL SUIT NO. 115/2000¹³ is relevant for our discussion. In that case plaintiff issued a writ of summons in the High Court seeking inter alia damages from the defendants for assault and injuries occasioned to him by state security personnel. The defendants denied the claim. The claim arose from the events of 10th and 11th April 2000 when there were public disturbances in some parts of The Gambia. The trial commenced before Justice Timothy Kabalata (a brilliant and honest Zambian judge sent to The Gambia on technical assistance at the time). On 1st March 2001 with the plaintiff being subjected to rigorous cross-examination by counsel for defendants. Plaintiff's first witness also testified and thereafter the suit was adjourned many times for continuation at the instance of the State.

Whilst the suit was still pending. An "Act to Amend the Indemnity Act and for matters connected therewith" was tabled before the National Assembly by the Secretary of State for the Interior and Religious Affairs (a defendant in the suit). It was enacted by the National Assembly and assented to by the President of the Republic of The Gambia on 2nd May 2001. It became Act No. 5 of 2001. Section 1 of the amending Act (Act No. 5 of 2001) provides that the Act "shall be deemed to have come into force on 1st January 2000."

Act No. 5 of 2001 indemnifies public officers and state agents against all claims in respect of actions undertaken during any period of public emergency, public disturbance or riotous situation. It goes further to oust the jurisdiction of the courts in favour of a Claims

Commission to be established to receive and hear claims and make recommendations to the President for compensation or otherwise. The defendants by a motion on notice applied to the court to strike out plaintiff's suit on the ground that there is no cause of action against the defendants by virtue of Act No. 5 of 2001.

Counsel for plaintiff argued before Kabalata J, that Act. No. 5 of 2001 retroactively purports to take away a vested right of the plaintiff to pursue his pending civil suit. It was therefore unconstitutional and in excess of the powers of the legislative authority. Counsel for the defendants submitted that Act No. 5 of 2001 was valid and constitutional and within the competence of legislative authority. Justice Kabalata accordingly held that since the issue of the interpretation of the Constitution has arisen, it must be referred to the Supreme Court for determination. The matter was then referred by way of reference to the Supreme Court in accordance with Section 127 (1) (b) and (2) of the Constitution. It became Civil Reference No. 2/2001. The reference question formulated by Kabalata J, was "Whether the Indemnity (Amendment) Act No. 5 of 2001 was made in excess of the powers conferred by the Constitution or any other law upon the National Assembly or any other person or authority."¹⁴

The Supreme Court unanimously held on 5th December, 2001 as follows: "The Court accordingly holds that the application of Act No. 5 of 2001 to terminate the legal proceedings instituted by the plaintiff and pending at the time of the enactment, will constitute a contravention of Section 100 (2) (c) of the Constitution and exceeds the competence of the legislative authority to the extent that the plaintiff would be deprived retroactively of his vested right to continue such proceedings. Accordingly the court hereby directs the High Court to dismiss the Motion filed by the defendants on 14th May, 2001 and to proceed, notwithstanding the provisions of Act No. 5 of 2001, with the hearing of the case..." The State filed for a review of this judgment which on a majority decision of 6 to 1 was dismissed by the Supreme Court in its judgment of 18th June, 2002.

Shortly after this judgment the State through the Solicitor General terminated the services of the only Gambian judge of the Supreme Court (Justice Hassan Jallow), effectively dismantled the structures of the Supreme Court which since this case has only one known judge in the person of the Chief Justice. The Court exists in the Constitution but is not functioning due to lack of judges.

In the case of ABDUL AZIZ JENG vs THE COMMANDER GAMBIA NATIONAL ARMY, THE ARMY CHIEF OF STAFF, THE ATTORNEY GENERAL, CIVIL SUIT NO. 4/2001.¹⁵ the plaintiff, who is a former army officer, sued the defendants for wrongful arrest and detention without trial for almost three years. The plaintiff, prior to the case, had requested after his release from detention to be re-instated in the army and paid some compensation. This was refused. He therefore sued the defendants. At the trial, military personnel armed to the teeth invaded the High Court wearing red berets with instructions to arrest the plaintiff. Some were seated in the courtroom. Trial judge, Belgore J, on the application of the plaintiff's counsel to make an order prohibiting defendants, their agents or servants from arresting or interfering with the liberty of the plaintiff pending the hearing and determination of the suit, granted the order. However, as soon as the plaintiff left the court premises with his counsel and family members, they were followed by security personnel, some of whom mounted a roadblock searching for the plaintiff. The plaintiff has since fled The Gambia and is believed to be seeking asylum abroad. The case has been adjourned *sine die*. These two cases are among many that demonstrate that the Executive mischievously disregards the rule of law and pays lip service to human rights promotion and protection.

Judicial Review of administrative action is available under the inherent jurisdiction of the High Court. The Public Service Commission regulations and other service rules allow public servants to seek administrative redress through mechanisms existing in various departments and institutions. There are also periodic circulars and gazettes on directives from the Office of the President.¹⁶ There is also the office of the Ombudsman,¹⁷ which handles administrative complaints. The office claims to have handled 400 complaints since 1999 and that all recommendations made on each were implemented by the Government. However, the constitutional requirement that the Ombudsman should send his reports to the President and the National Assembly twice yearly is yet to be done. No reports have so

far emanated from that office although the Ombudsman has in an interview promised to submit reports very soon.

There is no statutory requirement for a Secretary of State to declare his assets to any authority. The Elections Decree, 1996 is the only law which requires candidates for elective offices to declare their assets to the Independent Electoral Commission. The Independent Electoral Commission would display the asset declarations in their offices for public scrutiny, but that would only be for a short time and thereafter, they are not published.

Secretaries of State are appointed by the President; they do not contest elections. However during the transition period (during military rule) and post-transition, Ministers were required to declare their assets to the Head of State. This was a mere administrative formality.

Section 72 (4)(b) of the Constitution prohibits the Vice President and Secretaries of State from undertaking any activity inconsistent with their official positions or which is likely to expose them to any situation which carries with it risk of a conflict developing between their private and official interests. Section 72(4)(c) goes further to prohibit the Vice President and Secretaries of State from using information acquired in their official capacity to enrich themselves or any person.

There is a further administrative requirement contained in a directive¹⁸ from the Office of the President which requires Secretaries of State to avoid entering into transactions whereby their private pecuniary interests might come into conflict with their public duties.¹⁹

The only rule which is in the form of a directive from the Office of the President²⁰ requires a Secretary of State to avoid all transactions such as the acceptance of gifts of substantial value from members of the public which might conceivably infringe the stated principles governing the conduct of Secretaries of State.

There are no restrictions on post-ministerial or post-public service employment. There is however an open display of reluctance by the Government to sponsor or recommend the candidature of a person whose services have been dispensed with and who they consider to be a member of the opposition or have other grievances against that person. These rules however do not apply to the President.

Legislature

The National Assembly is the principal law-making organ²¹ of the State. Its main role under the Constitution is to represent the people and keep a check on the Executive by constantly scrutinizing its plans, policies, performance and above all its finances.²² The National Assembly consists of 48 elected members and five nominated members. The Speaker and Deputy Speaker are both nominated.²³ The nominated members are chosen by the President.

There is also the National Assembly Service,²⁴ which is the administrative arm of the National Assembly. The staff of this institution are public servants appointed by the National Assembly after consultation with the Public Service Commission. The clerk of the National Assembly is the administrative head of the National Assembly Service.

One of the functions of the National Assembly Service is to provide members of the National Assembly with facilities for drafting Bills and obtaining reasonable information from relevant Government Departments.²⁵ However, the National Assembly does not have its own Parliamentary counsel or draftsman. All Bills are drafted at the Drafting Department of the Attorney General's Chambers and Department of State for Justice.

The National Assembly's power to make legislation is limited and made subject to the Constitution. The Supreme Court has the power to declare any law passed by the National Assembly null and void to the extent to which that law is inconsistent with any provision of the Constitution or is made in excess of powers conferred by the Constitution or any other law²⁶ Members of the cabinet are not members of the National Assembly. Legislation passed by the National Assembly is assented to by the President before it can be gazetted.

The enacting formula for all legislation under the present Constitution reads, "ENACTED by the President and the National Assembly"²⁷ The prescribed formula makes the President and National Assembly jointly responsible for every piece of legislation, thereby giving the President a dual role.

The other functions of the National Assembly which act as a check on the Executive and makes it accountable to the National Assembly are:

- Through questions put to Secretaries of State on management of their respective departments, which is done by summoning Secretaries of State to appear before the National Assembly to answer questions already sent to them by any member of the National Assembly;
- Through motions, Bills, and resolutions submitted by Secretaries of State to the National Assembly;
- Review of reports on activities of the Government;
- Review of proposals for the raising of revenue by the Government;
- Examination of accounts and expenditure of the Government and other public bodies funded by public money and the reports of the Auditor General thereon approves the National Budget.

Furthermore the National Assembly can impeach the President, and remove a Secretary of State through a vote of censure. In practice, the National Assembly effectively carries out whatever the Executive wants and has so far failed to act as check on the Executive.

Government is not known to have submitted any reports on its activities to the National Assembly for scrutiny.

The Committees of the National Assembly to be appointed under Section 109 of the Constitution are:

- Public Appointments Standing Committee;
- Finance and Public Accounts Standing Committee;
- Standing Committee on Privileges;
- Standing Committee on Defence;
- Such other standing or other Committees as it considers necessary for the exercise of its functions.

The present National Assembly has only three opposition members. The majority are from the APRC party which is the party of the current President. The Speaker and Deputy Speaker are nominated members appointed by the President.

However, for the fact that the main opposition party boycotted the last parliamentary elections, the ruling party, knowing fully well that most of its candidates would be elected unopposed, mostly chose people who were willing to toe the line of the Executive in the National Assembly.

The opposition having been greatly out-numbered has been able to make its voice heard only through contributions to debates and question and answer time. They have not initiated private member's Bills, and only tabled a few motions.

Structure and Role of the Finance and Public Accounts Committee

The Finance and Public Accounts Committee of the National Assembly is appointed under Section 109 of the Constitution of the Republic of The Gambia 1997. Its membership is made up of members of the National Assembly. The number of members to form the committee is not prescribed. In practice however, the Speaker chairs the Committee assisted by members selected from all political parties represented in the National Assembly.

It is charged with the responsibility of scrutinizing financial statements and accounts sent to it by the Government. It sits on ad hoc basis and its composition does not remain static. The Auditor General's Report of December, 1998 was considered by a panel of nine members of the National Assembly who were appointed to sit as the Finance and Public Accounts Committee. The position of this Committee on the report is dealt with later in the study.

Elections and Political Party Funding

The Elections Decree, 1996, Decree, No. 78 Chapter V of the Constitution regulate elections in The Gambia. Section 42 of the Constitution creates the Independent Electoral Commission and Section 43 spells out its functions. The functions include the conduct and supervision of registration of voters, as well as the conduct and supervision of all elections, including presidential and parliamentary. It is also responsible for the registration of political parties. The President appoints members of the Commission in consultation with the Judicial Service Commission. Security of tenure is guaranteed. However, the President had prior to the 2001 elections dismissed the Chairman of the Independent Electoral Commission (Reverend Bishop Solomon Tilewa Johnson) and a member of the Commission (Imam Alhaji Saja Fatty) shortly before the elections without giving any reason and without following the procedures laid down in Section 42(6).

This controversial interference with the Independent Electoral Commission by the President shortly before the elections in which he was a candidate did cast a shadow on the entire elections. Irregularities such as allowing people whose names did not appear in the register of voters but had voters cards to have their names inserted in the registers and to vote were discovered. The Independent Electoral Commission did not deny this fact but attempted to give reasons for their wrongdoing. The chairman tried to justify it by saying that those people's names were left out of the register during the compilation because the Commission was then under intense pressure to finalise the list. Therefore, he said it would be unfair not to allow them to vote as it was never their fault not to be included in the list.

In the 1996 elections the Chairman of the Independent Electoral Commission was seen at a political rally of the ruling APRC Party wearing party campaign apparel. The People's Progressive Party in an interview for this study expressed its dissatisfaction with the Independent Electoral Commission, which it criticized for lacking independence and integrity to conduct free and fair elections. It is their firm belief that the current composition of the Independent Electoral Commission will not ensure transparent, free and fair elections in The Gambia. The United Democratic Party echoes the same views of the Peoples Progressive Party, and went further in criticizing the procedures for appointing the members of the Independent Electoral Commission. The fact that the Commission members are appointed by a person whose election it supervises under our current political dispensation does not augur well for transparency. It is their view that a neutral body should be responsible for such appointments and that stakeholders should be consulted before decisions are made on appointments.

The Electoral laws prohibit the use of government resources such as vehicles and other state machinery for election campaign purposes. However, the APRC Party has disregarded the operations of this law and uses state resources with impunity. The laws which place restrictions on civil servants' participation in political activities while holding public office are not enforced by the Government. In practice every public servant is expected to sympathize with the Government and opposition sympathizers have been openly victimized after elections. Some have had their services terminated without any reason being given. There is before the High Court the case of HADDIJATOU SANNEH vs GAMBIA INTERNATIONAL AIRLINES CIVIL SUIT NO. 73/2002. The plaintiff's husband, a member of the opposition United Democratic Party and a former Accountant General of the Government actively campaigned for the opposition party. The plaintiff, who was an employee of the Gambia International Airlines, a company owned by the Government, got her services terminated immediately after the elections even though she did not associate

herself with the political party (the matter is currently sub-judice and cannot be discussed in full in this study).

There are no rules regulating party funding and expenditure except that the amendment of Section 104 contained in the Elections (Amendment) Act, 2001 introduced a new subsection (7) which states:

“(7) A Political Party shall not receive any contribution from any person who is not a citizen of The Gambia, or from any corporate or unincorporated body”

This new sub-section is considered to be unworkable since the Independent Electoral Commission does not have the capacity to monitor party funds. There is no mandatory requirement for periodic disclosures of party assets and revenue sources, although the Independent Electoral Commission may require any political party to make disclosures of party assets and revenues whenever it so desires.

While Section 104 of the Constitution prohibits funding of political parties by non-Gambians, the reality is that political parties, including the ruling party, have been receiving funding from everyone willing to give them anything, and that includes non-Gambians. During the campaign for the last presidential elections, for instance, the ruling party received some material assistance from a Taiwanese businessman resident in the United States. There is no doubt that the opposition parties are also getting some assistance from sources other than Gambians. However, this would be extremely hard to verify since political parties do not publish their accounts or sources of funding.

While regionalism or ethnicity has never played any significant role in the Gambian political scene in the past, it seems to be increasingly evident that this is less so in the past few years, particularly since the assumption of power of the present regime. In the last presidential elections for instance, the people of Foni, President Yahya Jammeh's home area, insisted that no opposition party would be allowed to hold meetings in the area, and those who defied it were intimidated and their meetings were disrupted. It is also quite evident that the members of the president's own ethnic group, the Jola, massively voted for him, and are always quite hostile to any member of the opposition.

Supreme Audit Institution

The National Assembly has constitutional authority to monitor and control public revenue. It is the sole institution that approves the national budget. The Secretary of State for Finance presents the budget to the National Assembly in December of each year. The appropriate committee of the National Assembly reviews the estimates of revenue and expenditure and report on them to the general body of the National Assembly. When the estimates are approved, an Appropriation Bill is then introduced by the Secretary of State for the issue from the Consolidated Fund of the sums necessary to meet the expenditure.²⁸ There are other expenditure already charged on the Consolidated Fund which do not form part of the budget.

There is also the Contingencies Fund²⁹ which authorizes the President to make advances from that fund if he is satisfied that there has arisen an unforeseen and urgent need for expenditure for which no other provision exists. This power is limited in that he could only authorize expenditure not in excess of one per cent of the approved budget for the current year. The President is required to cause a Supplementary Appropriation Bill to be introduced in the National Assembly within ninety days of the advance being made.³⁰ The Bill would state the institution that is to benefit from it and the purpose for which the funds are required.

The public debt³¹ which includes interest on the debt, sinking fund payments and redemption money in respect of that, and all other costs, charges and expenses incidental to the management and repayment of that debt is charged on the Consolidated Fund. Salaries, allowances and retirement benefits of the President, Vice-President, superior court judges, members of the Independent Electoral Commission, the Auditor General, Ombudsman and Director of Public Prosecutions³² are also charged on the Consolidated Fund.

The Loans Act³³ authorizes the Secretary of State responsible for finance to raise loans to finance development schemes. Section 3 directs that prior approval of the National Assembly is required to raise such loans outside the country, although in cases of urgency where the Secretary of State deems it expedient in the interest of the country he could raise the loan before getting National Assembly approval³⁴. The approval takes the form of a resolution. This Act has been used regularly by the government due to the fact that The Gambia is primarily a donor-dependent country.

The Local Loans Act³⁵ empowers the Central Bank to raise loans within The Gambia for such sums of money as the National Assembly may by resolution authorize.³⁶ The prescribed method for raising the loan is by the creation and issue of registered stock which shall be known as Gambia stock, or by the issue of securities in the form of debentures or treasury bills.³⁷

The General Loan and Stock Act³⁸ authorizes the Secretary of State for finance or his agents raise loans by either by debentures or by stock. The principal monies and interests represented by debentures or stock issued under this Act are charged upon, and payable out of general revenues and assets of The Gambia.³⁹ This Act is however applicable to loans raised outside The Gambia. No public document could be accessed to confirm whether this Act has been used by the government.

The Constitution sets out financial procedures and controls which are intended to bring out transparency, accountability and probity in the handling and management of public funds. These controls and procedures are covered by the creation of the National Audit Office headed by the Auditor General and the Central Bank as depository of all public funds wherever held.

Accountant General

The office of the Accountant General is not a creature of statute. The Accountant General is appointed by the Public Service Commission and is bound by all rules and regulations relating to public servants.

The Accountant General is the Chief Accountant of the State and is in charge of treasury services and accounting services of the government. In addition the officer is required to prepare annual financial statements, a budget variance report and monthly payroll and advances report.

The office of the Accountant General is assisted by a team of accounting officers posted in all government accounting units and diplomatic missions.

The Accountant General is under the control of the Secretary of State for Finance, although in practice the present Accountant General seems to be answerable only to the President of the Republic.

The office of the Accountant General is required by Financial Instruction 0201 (vi) to ensure that no payment is made without proper authority. However it was discovered that the management of Deposit Account 803004 (it is not clear whose account it was) was done without clear or proper guidelines. The following findings were made by the Auditor General:

- The D1, 563,502.74 opening balance on the account of an un-named department as at July 1991 could not be substantiated.
- The validity of a transfer of D366, 356 made to the account, of which D25, 666.03 related to the recovery of overpayments of salaries from the gratuities of retired officers for another un-named department could not be checked as supporting documents were missing.
- Financial Instruction 0602 (2) requiring Tender Board approval for all procurements exceeding D10, 000 was flouted in a good number of cases by breaking payments down into smaller amounts.

- There was no evidence of delivery of purchases and in some cases procurement of furniture in excess of office requirements were made from the account.
- Incorrect entries were made in the account as well as per diem allowances and medical bills being charged to the account.
- There was no competitive tendering for purchases.

The Report also discovered that the Dutch Fuel Grant given to The Gambia Government was not properly managed. For instance there was no document to support the total quantity of fuel received from the Dutch Government, the amount sold and the balance. The balance of D146, 167 on the account, which was carried forward from 1991/1992, could not be confirmed; and the account was overdrawn by D1.478 million in October 1991. The account has to date not been reconciled and documents concerning the payment of D2.4 million paid during 1991-1992 remain missing. The attempt by the Auditor General to audit the Accountant General's main account with the Central Bank had to be abandoned due to missing cash books and other records.

Auditor General

Section 158 of the Constitution creates the office of the Auditor General which shall be an office in the public service. The Auditor General is to be appointed by the President after consultation with the Public Service Commission.

The Auditor General heads the National Audit Office and is not subject to the direction or control of any person or authority. The number of Auditors in the National Audit Office is about forty.

Section 160 of the Constitution spells out the elaborate functions of the Auditor General as follows:

"160. (1) The Auditor General shall:

- a. before any money is withdrawn from the Consolidated Fund or any other public fund, ensure that the withdrawal is in accordance with the provision charging the same on that fund or the relevant Appropriation Act or other Act of the National Assembly and that it complies with the procedures prescribed by an Act of the National Assembly;
- b. satisfy himself or herself that money charged on the Consolidated Fund or other public fund, or appropriated by an Act of the National Assembly, and expended, has been applied for the purpose for which it was so charged or appropriated, and that expenditure conforms to the authority that governs it;
- c. at least once in every year audit and report on the public accounts of The Gambia, the accounts of all offices and authorities of the Government of The Gambia, the accounts of the courts, the accounts of the National Assembly and the accounts of all public enterprises;
- d. within six months of the end of the immediately preceding financial year to which each of the accounts referred to in paragraph (c) relates, report to the attention to any irregularities in the accounts audited and to any other matter which, in his or her opinion, ought to be brought to the notice of the National Assembly;
- e. after his or her annual reports on the accounts of the Government of The Gambia, of all offices and authorities of the Government, of the courts and of the National Assembly, cause the same to be published for public information: provided that where there is any undue delay in the discussion of any such accounts in the National Assembly, the Auditor-General may publish his or her report in advance of such discussion;

- f. exercise such other functions as may be conferred on him or her by an Act of the National Assembly.

(2) In the exercise of his or her functions under this Constitution or any other law, the Auditor General shall –

- a. at all times carry out economy, efficiency and effectiveness examinations to satisfy himself or herself that public funds are spent in such manner as to reduce waste, eliminate inefficiency and maximize the benefits to be gained from the use of resources;
- b. have power to disallow any item of expenditure which is contrary to law and to surcharge;
 - i. the amount of any expenditure so disallowed upon the person responsible for incurring or authorizing the expenditure; or
 - ii. any sum which has not been brought into account upon the person by whom that sum ought to have been brought into account; or
 - iii. the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

(3) A person aggrieved by any disallowance or surcharge made by the Auditor General may appeal to the High Court.

(4) The Auditor General and any member of the National Audit Office authorized by him or her shall have power to call for and inspect all books, records, returns, reports and other documents in the exercise of the functions conferred upon him or her by this Constitution or an Act of the National Assembly and to make such enquires and to call such witness who, in his or her opinion, have any responsibilities in relation to the accounts referred to in subsection (1).

(5) Wherever discrepancies of a criminal or fraudulent nature are discovered during the audit of accounts by the Auditor General, he or she shall immediately cause a report of his or her findings to be submitted to the Inspector General of Police.

(6) Where the Government holds a minority interest in any company, the Auditor General may exercise, on behalf of the Government, the power to inspect the books of account of the company and report to the Government.

(7) In the exercise of his or her functions under this Constitution or any other law, the Auditor General shall not be subject to the direction or control of any other person or authority.

(8) Nothing in this Constitution shall preclude the Auditor General, at the request of the head or governing body of any public body, corporation or institution referred to in subsection (1) (c), or on his or her own initiative, from carrying out any special audit of such body, corporation or institution; and where he or she carries out such a special audit, it shall be reported to the Finance and Public Accounts Committee.

(9) The Finance and Public Accounts Committee of the National Assembly may extend the time within which any such report as is referred to in subsection (1) (d) shall be made to the National Assembly."

On 8th December, 1998, the Auditor General presented to the National Assembly the audited accounts of the Government, public enterprises, projects and other organizations pursuant to Section 160(1) of the Constitution of the Gambia 1997. Following the presentation of this report, the Finance and Public Accounts Committee of the National Assembly issued a report on the findings of the Auditor General. It is to be noted that shortly after the Auditor General presented her report, she lost favour with the government and was made the subject of investigation by a Commission of Inquiry that was not properly constituted. She took preliminary objection to her deputy being a

member of the Commission on several grounds, which the Commission overruled. She was subsequently dismissed from the services of the government. No audit reports have been presented to the National Assembly since 1998.

Prior to December 1998, the last financial statements of The Gambia were published in June, 1994 and covered the financial year 1st July 1991 – 30th June 1992.

The Auditor General at page 2 of the 1998 Report⁴⁰ lamented the apparent refusal of the Accountant General to submit to the National Audit Office the accounts for the financial years from 1993 –1997:

“The production of the accounts for The Gambia is the responsibility of the Accountant General. The accounts for the financial years from 1993 to 1997 have not been prepared and submitted to me for audit. A number of reminders to this effect were sent to the Accountant General. In their absence I am unable to report on the accounts as required by the Constitution. The failure to produce financial statements is a matter of grave concern as we are unable to confirm the level of expenditure made or revenue collected by the Government; whether the government is operating a surplus or deficit; and the overall indebtedness of the country. It also reflects poorly on the standing of the country that it is unable to produce accounts. I believe this is a serious matter, which should be addressed with urgency. Unless urgent and concrete action is taken to ensure the outstanding Government accounts are prepared and submitted for audit and the timely preparation of future accounts, the process of accountability is seriously undermined.” (Para 1.11)

To make matters worse, pre-auditing of all expenditure borne on the consolidated or other public funds is currently being done by the Office of the Accountant General even though Section 160 (1) (a) and (b) of the Constitution gave that power to the Auditor General.

The Report established as a fact that there is official corruption in The Gambia, which extends to Gambian diplomatic missions abroad. A key feature of the report is that Government Departments generally do not respond to audit queries contrary to Financial Instructions 0209 (xvii). Accounting Officers do not always comply with the Government’s Financial Instructions relating to “the issue, control and accounting for revenue collecting documents; maintenance of accounting records; procurement of goods and services and the completion of documents to support payments; and the preparation and submission of accounts for audit”. Other features include theft of funds, missing revenue and receipts books, lack of supporting documentation for expenditure, failure to obtain competitive tenders, poor accounting records, failure to recover salary advances to staff, failure to collect revenue, failure to maintain adequate stock and stock records.

The most glaring financial impropriety seems to emanate from the departments under the Department of State for Finance and Economic Affairs, namely the office of the Accountant General, Customs and Excise Department and Central Revenue Department (Income Tax Division).

In relation to the Customs and Excise Department, the report stated that missing receipts and cash books made it impossible to confirm that monies collected had been properly accounted for. There were instances of under-lodgement at the Bank in respect of customs duty and sales tax.

The rates applied in the assessment of customs duty and sales tax were in a number of cases inconsistent with the legal rates. Some export duty documents were altered making it difficult to assess how much money was collected.

In some cases the Direct Delivery Register showed certain importers clearing their goods without paying for them. The use of the Direct Delivery System is one of the major causes of revenue loss to Government. It is still being used despite its consequences to the Gambian economy.

The existence of corruption at the level of the Customs and Excise Department was also recognized by donor agencies. In a report of the Overseas Development Mission To The Gambia from 20-26 April 1997 identified the existence of petty corruption within the Department which it attributed to the low wages being earned by customs officers. It went

on to state that the "scope for more serious corruption remains." This observation remains true to day due to the wide discretionary powers given to certain customs officers and political interference.

In relation to the Income Tax Division of the Central revenue Department, the report found that no up-to-date records were kept in respect of the 10% deductions made by Government from rental payments to landlords in respect of rented properties occupied by the Government.

Cases of under-assessment of tax liability were found. It is the belief of the general public that such cases still exist.

In response, the Finance and Public Accounts Committee in its report of October, 1999 titled "Report on the Auditor General's Report, 1998" disclosed that they considered all queries and observations and recommendations of the Auditor General. They also summoned accounting officers of the various departments and made them provide answers to the queries raised by the Auditor General.

The Committee made the following findings and conclusions:

- That the National Audit Office be strengthened by providing it with trained personnel and adequate transportation to enable it efficiently and expeditiously carryout its functions;
- On the failure of accounting officers and the office of the Accountant General to prepare the daily accounts and the Annual Accounts, the Committee found that the combined delay in preparing the accounts and auditing them allowed for time to elapse before irregularities are discovered during which period some of those answerable had left the services of their respective departments or institutions, making it difficult to bring them to book.

On the queries in the Auditor General's Report the Committee had this to say at page 78 of their report,

"It has been observed that the irregularities featured in the Audit Report follow a distinct pattern which makes a number of them appear to be breaches of administrative rules and practices instead of criminal offences. Their widespread occurrence, however, suggests that they may not in some cases be innocent errors or omissions due to inadvertence or incompetence. For this reason, the auditors highlighted them, and the Committee demanded full explanations. The result was that many of the amounts involved were accounted for. These irregularities and incidents were in the form of missing revenue receipt books, and use of unofficial receipts, expenditure without supporting documents, failure to follow tender procedures, failure to recover salary advances, failure to maintain financial records and books, missing payment vouchers, missing cash books, misuse of school fees, non-delivery of purchased items and failure to deduct income tax from source among others.

While such irregularities cannot be totally prevented in any public service, they can be minimized by ensuring that most cases are promptly detected. The Committee is convinced that this can be achieved by putting in place and maintaining in all the offices concerned the simple official double-entry accounting system and carrying out frequent internal and external audit inspections. This would swiftly become a deterrent and most of the isolated irregularities that would still occur from time to time would be detected promptly and appropriate action taken as in the current exercise".

On failure to respond to audit queries, the Committee concluded that the time that elapsed contributed greatly to the loss of public funds, since the delay prevented recovery of stolen or misappropriated funds due to the fact that persons involved may have retired, absconded, died, terminated or dismissed. It was also discovered that predecessors hardly leave handing over notes to their successors which makes it easy for blames to be made against persons who are no longer in office, whilst those who succeed them refuse to take responsibility,

The Committee finally concluded that all recommendations contained in the Auditor General's Report be implemented, that their observations on the report be observed, and that in future the Auditor General should recommend that defaulting officers be surcharged. The Secretary General and head of the civil service was directed to pursue with permanent Secretaries the administrative measures called for, particularly in respect of recovering missing public funds and proper on the job training of personnel in the field of accounting.

Nothing has happened since the report apart from the dismissal of the Auditor General.

Judiciary

Chapter VIII of the Constitution deals with the judicature. Section 120 of the Constitution creates the courts of The Gambia and vests judicial powers in them. They are the Supreme Court, the Court of Appeal, the High Court, the Special Criminal Court, the Magistrates Courts, the Cadi Court and District Tribunals. Provision is also made for the establishment of such lower courts and tribunals, by an Act, as may be deemed necessary. The jurisdiction of each court is defined in this chapter.

The Chief Justice is the head of the Judiciary and is responsible for the administration and supervision of all courts,⁴¹ judges and other persons exercising judicial power are immune from suit in respect of acts or omissions made in good faith in the exercise of their judicial functions.⁴² Courts are required to deliver their decisions expeditiously and the Chief Justice is enjoined to ensure compliance. However, decisions delivered outside any prescribed period shall be valid and its validity cannot be questioned on the ground that it was not delivered within the stipulated time frame.

The Supreme Court which is the highest court of the land consists of the Chief Justice, not less than four other justices of the Supreme Court, and any judge of the Court of Appeal appointed to act as a justice of the Supreme Court. It is constituted by an uneven number of not less than five judges at any sitting, although a single judge of the court may exercise the powers of the court in interlocutory matters. Seven judges sit on any application for review of a judgment of the said court.⁴³

Section 127 of the Constitution gives the Supreme Court exclusive original jurisdiction for, (a) the interpretation of the Constitution or enforcement of the provisions of the Constitution other than the fundamental rights and freedoms provisions; (b) on any question whether any law is made in excess of powers conferred by the Constitution or any other law; (c) on any question as to whether a person was validly elected to the office of President or validly elected to, or vacated his or her seat in the National Assembly; on the question whether any official documents should be produced or their contents disclosed in proceedings before a court where such production or disclosure is resisted on grounds of state security.

Appeals lie to the Supreme Court as of right from any judgment of the Court of Appeal. The Court of Appeal consists of the President of the Court of Appeal, not less than three justices of the Court of Appeal, any High Court judge appointed to act as a justice of the court.⁴⁴ The court is constituted by three judges, although a single judge of the court may exercise powers of the court in interlocutory matters. Appeals lie as of right to the Court of Appeal from decisions of the High Court and any Court Martial.

The High Court consists of the Chief Justice and not less than seven other justices of the High Court, and any judge of the superior court whom the Chief Justice may by writing request to sit as a judge of the High Court. The High Court is constituted by a single judge. It has unlimited original jurisdiction in all civil and criminal proceedings, and in the interpretation and enforcement of the fundamental rights and freedoms under the Constitution. It has jurisdiction to hear appeals from courts subordinate to it other than the Cadi Court.⁴⁵ It also has supervisory jurisdiction over all lower courts and adjudicatory authorities in The Gambia.⁴⁶

The Special Criminal Court,⁴⁷ which is yet to be established, is to be chaired by a person who is qualified to be appointed a judge of the High Court. The Chairman and not less than

two other persons shall form the panel. The jurisdiction of the court is to hear and determine all criminal offences relating to theft, misappropriation and other similar offences in which public funds and public property are affected.⁴⁸ The wisdom behind the creation of this court is not decipherable. During the consultation period with the public prior to drafting the final copy of the Constitution it was strongly condemned and discouraged by the public who felt that there may be a hidden agenda since with the existence of the High Court there was no need for such a court.

The Cadi Court⁴⁹ has jurisdiction to apply Sharia in matters of marriage, divorce and inheritance where the parties or other interested persons are Muslims. The High Court has held in the case of SAINABOU JOHN vs ALHAJI B. S. O. JENG AND ORS⁵⁰ that a choice of law is available to litigants and where a party opts out of Sharia by going to the High Court, the High Court would have jurisdiction to adjudicate on that matter without regard to Sharia.

The Magistrates Court and District Tribunals were created by statute and given limited jurisdiction over matters that they could try. District Tribunals mainly apply customary law and lawyers cannot appear before such tribunals. Appeals lie from Magistrates Courts to the High Court and from District Tribunals to the High Court. District Commissioners who are political appointees are all ex-officio second class magistrates with a jurisdiction to try civil cases of up to half a million dalasis in civil cases, and in criminal cases they have the power to impose a term of imprisonment for a period not exceeding ten years and to impose a fine not exceeding five hundred dalasis. This jurisdiction which was only recently increased is seen to be a tool to silence the opposition sympathizers at the district level.

The Constitution guarantees judges security of tenure and provides that they could only be removed for misconduct, inability to perform their functions of office arising from infirmity of body or mind.⁵¹

Judges are appointed by the President.⁵² In the case of the Chief Justice the President appoints the person after consultation with the Judicial Service Commission, and in the case of all other judges the President can only appoint them on the recommendation of the Judicial Service Commission. Other judicial officers are appointed by the Judicial Service Commission.⁵³ The Judicial Secretary is appointed by the President.⁵⁴

The Judicial Service Commission consists of the Chief Justice, a judge of a superior court, the Solicitor General, a Legal Practitioner of at least five years standing at the Gambia Bar, nominated by the Attorney General in consultation with The Gambia Bar Association, one person appointed by the President and one person nominated by the National Assembly.

The Gambian Judiciary has been an institution that has greatly suffered from lack of independence, political interference, lack of manpower, lack of basic office stationery and a proper library. Judges and magistrates who have acted in accordance with the law and made decisions unfavourable to the state have been dismissed by the Executive, at times with the concurrence of the Judicial Service Commission, which acts on directives from the Executive.

The Gambia Bar Association, unable to stand by and watch the Judiciary destroyed by the Executive, sent a petition to the President on the 31st July, 2002 in which they made a bold statement directly telling the President that the Executive was interfering with the independence of the Judiciary and demanded that such interference should cease. Paragraph 2, 3, and 4 of the letter stated:

“Your Excellency, the judicature provided for in Chapter VIII of our Constitution vests judicial power of The Gambia in the Courts. It goes further to provide for an independent Judiciary subject only to the Constitution and other laws. Section 120(4) of the Constitution directs that the Government and all departments and agencies of the Government “shall accord such assistance to the courts as the courts may reasonably require to protect their independence, dignity and effectiveness.” Security of tenure of judicial officers is also guaranteed in the Chapter.

Your Excellency, in the recent past, The Gambia Bar Association witnessed with dismay the dismissal of some magistrates, the Master of the High Court, the

Judicial Secretary, a Judge of the High Court and now Hon. Hassan B. Jallow of the Supreme Court of The Gambia without being given a chance to be heard and without applying the very reasonable procedures laid down by the Constitution and other laws of the land. There was also a departure from the Constitution when a High Court judge was appointed as Acting Chief Justice, even though the Constitution clearly provides for the most senior judge of the Supreme Court to act in that office when there is a vacancy. There is an atmosphere of uncertainty and a strong concern for lack of security of tenure for judicial officers. This certainly does not augur well for the principles of sound and credible democratic governance spelt out in The Gambian Constitution.

As a Bar, we are stakeholders in the Judiciary, and it is our responsibility to ensure that the Rule of Law, Justice and Equity are respected, upheld and preserved at all times. Whilst we do not take delight in informing the Executive that its actions undermine the independence of the Judiciary, disregard the Rule of Law and above all create an atmosphere of uncertainty in our legal system, we think it is our duty to do so, in order to assist the Executive to reflect upon the consequences of its actions."

The letter ended with a request for time to have a meaningful dialogue with the President to iron out misunderstandings. The letter was ignored. It was followed by a reminder dated 12th November 2002 from the President of The Gambia Bar Association. That reminder was also ignored. Then a statement titled "Is the Judiciary being wound up?" was issued by The Gambia Bar Association which catalogued the series of interference with the independence of the Judiciary by the Executive, and the sacking of judges and magistrates who made orders which the Government did not like. Again there was no reaction from Executive.

The Gambia Bar Association took its case to the Bar Leaders Forum at the Commonwealth Law Conference in Melbourne and got a resolution. For its historic importance, the resolution is reproduced in table 1:

Table 1 Gambia Bar Association Resolution, 2003

"Bar Leader Forum - Commonwealth Law Conference Melbourne 17th April 2003

Resolution No. 3 (The Gambia)

The Leader of the Bars and Law Societies of the Commonwealth meeting at the Commonwealth Law Conference, held in Melbourne, Australia on 16th April, 2003 under the auspices of the Commonwealth Lawyers Association and the Law Council of Australia:

Observing the serious threat to the rule of law in The Gambia.

Recalling

The Harare Declaration, the founding principles of the Commonwealth and of the Commonwealth Lawyers Association and the Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence;

the report to Bar Leaders by the Gambia Bar Association released on 1st April 2003 expressing serious concern over threats to the independence of the Judiciary;

the recommended amendments to the Constitution proposed by the Law Reform Commission of The Gambia;

the international Conventions to which The Gambia is party;

the continued erosion by the Government of The Gambia of the rule of law and in particular the disregard for the rights of The Gambian people; and

the continuing harassment of lawyers and judges in the performance of their duties.

Considering the serious and continued threat to the independence of the legal profession and the Judiciary.

Being gravely concerned for the safety and rights of lawyers, members of the Judiciary and others advocating the rule of law and international human rights in The Gambia.

Urge the Government of The Gambia to:

Uphold the safety, well being and legal rights of all persons in The Gambia, in particular members of the legal profession, and to ensure that the right to a fair trial is not violated;

ensure that members of the Judiciary and legal profession of The Gambia are able to discharge their functions independently and without impediment; and

Resolve that they will:

Actively support the legal profession of The Gambia in their efforts to uphold the Rule of Law, the independence of the Judiciary and of the Legal Profession in The Gambia; and

Assist, within their means, in providing such technical and other assistance as The Gambia Bar Association may seek in those efforts."

As if the assault on the Judiciary was not enough, The Gambia Government has produced a new Constitution "THE PINK CONSTITUTION" in which they inserted and made deletions to some of the provisions contained in the 1997 Constitution. Even an entrenched clause, which required a referendum, was amended without a referendum. The judgment of the Supreme Court in the case of HON. KEMESSENG JAMMEH vs THE ATTORNEY GENERAL CIVIL SUIT NO. 4/2001 was flouted by the Executive when it amended Section 1 and paragraph 13 of the Schedule of the Constitution after the court struck out the amendments for being unconstitutional.

Civil Service

The Gambia with a population of about 1.3 million, has a civil service of 11,645 personnel according to the 2003 approved estimates of the Recurrent Revenue and Expenditure with Development Expenditure document.

The breakdown is as follows:

Table 2 Breakdown of Civil Service Personnel 2003

Institutions	Number of Personnel
Office of the President	473
National Assembly	35
Judiciary	214
Independent Electoral Commission	46
Public Service Commission	16
National Audit Office	81
Department of State for Defence (Soldiers not included)	30
Department of State for Interior (police officers not included)	51
Department of State for Tourism	45
Department of State for Foreign Affairs	124
Department of State for Justice	90
Department of State for Finance	610

Institutions	Number of Personnel
Department of State for Local Government	411
Department of State for Agriculture	951
Department of State for Work and Infrastructure	226
Department of State for Trade and Industry	146
Department of State for Education (Teacher included)	5,416
Department of State for Health (Nurses and Doctors included)	1,925
Department of State for Youth and Sports	37
Department of State for Fisheries and Natural Resources	570
Department of State for Communication, Information and Technology	148
Total	11,645

Source: 2003 approved estimates of the Recurrent Revenue and Expenditure with Development Expenditure 2003.

For security reasons the size of the armed forces including the police force is always not featured in public documents. It is therefore difficult to have an accurate data on the size of civil service as well as the public service of The Gambia.

Parastatals have an estimated number of 4,500 personnel. They are governed by Board of Directors appointed by the President and they report to their line Departments of State. Parastatals are public corporations that are set up government to render such services like provision of electricity, water and other similar public needs. Their managements are usually autonomous from the strict civil service structure.

There are presently fifteen Departments of State whose employees form the civil service. The head of the civil service is the Secretary General at the Office of the President who is appointed, in accordance with Section 168 (1) of the Constitution, by the President acting on the advice of the Public Service Commission. There is also the Secretary of Cabinet and a host of Permanent Secretaries and Deputy Permanent Secretaries. The Permanent Secretaries are the administrative heads in each Department of State.

The constitutional authority for appointment within the civil service rests with the Public Service Commission. Chapter XI of the Constitution deals with public service appointments, mode of appointment, powers and functions of the Public Service Commission, as well as its independence. All the members of the Commission are appointed by the President on the advice of the Secretary General who is the head of the civil service.

The main functions of the Public Service Commission include the overall management of the public service and insurance of efficiency; handling of matters relating to appointment, advancement, discipline,⁵⁵ power to review terms and conditions of service, training of staff, reviewing General Orders, and advising the government on matters pertaining to the public service.⁵⁶

The Public Service Commission is guided by the Constitution and public service regulations as well as the General Orders and Schemes of Service when making appointments, promotions and in matters concerning discipline.

General Order 02102 directs that minimum qualification for appointment to any post in the public service are as stipulated in the Scheme of Service applicable to that post; and General Order 02103 directs that appointments and promotions must take merit into account.

Candidates for appointment may be required to attend an interview or take a written test as part of the selection procedure.⁵⁷

Section 222 of the Constitution prescribes a Code of Conduct for public officers, whilst Chapter 3 of the General Orders is specific on conduct and discipline of civil servants.

Section 170 of the Constitution places restrictions on political activities by civil servants. It prohibits them from holding office in any political party and requires any civil servant who desires to contest an election to a public office, to take a year's leave of absence prior to nomination as a candidate. A civil servant who contests for an elective political office and wins is required to resign from his public office. Section 91 of the Elections Decree prohibits campaign in public offices, and Section 130 (a) and (b) of the said Decree guarantees a civil servant his job if he loses in the election irrespective of his political affiliation.

In practice, however, the Public Service Commission has been reduced to a mere rubber stamp receiving directives from the Executive. Despite the existence of laws governing the civil service, appointments, dismissals, terminations and career development are now based on directives in respect of some civil servants. Political patronage and favouritism now define the nature of the public service. The dismissal of public servants based on directives from the office of the President provide countless examples of the rubber stamping. No person has been given the right to be heard before dismissed or termination.

Open sympathizers of the APRC have been given positions they are not qualified to handle. The impasse between the Government, World Bank and African Development Bank over the termination of the appointment the Director General of GAMWORKS (GAMWORKS is an agency funded by donors and the Republic of The Gambia to award and monitor contracts for public works like construction of schools, roads, markets, and other public facilities. The World Bank and African Development Bank are donors participating in this agency) and the appointment of an APRC sympathizer is a case in point. The Government acted unilaterally without following agreed existing procedures binding on the Government and these two donor agencies. The situation caused delay and suspension of projects for more than a year. It has only recently been settled after the APRC sympathizer was removed.

Morale is at its lowest ebb and civil servants lack security of tenure in addition to being poorly paid. Nepotism and cronyism prevail in every aspect of public life with a subtle tribal divide now appearing for the first time in the history of the public service. Dismissal at pleasure prevails in the civil service even though Section 169 of the Constitution protects public servants from victimization, discrimination and demotion. Punishment or dismissal must be for a cause and a public servant has a right to be heard before any decision is made. Administrative checks and balances are available to assist civil servant get redress for administrative excesses of their seniors. Petitions are encouraged to be made to the head of department concerned or to the Ombudsman (although there is no whistle blower protection).

There are existing laws, which are geared towards achieving accountability, transparency and probity in the public service. Administrative actions of junior officers may be reviewed by their seniors and judicial review of administrative action is also available to remedy administrative decisions that are wrong. Complaints may also be lodged with the Ombudsman.

The Constitution at Section 223 requires public officers to declare their assets to the Office of the Ombudsman at the end of every two years whilst in office and upon ceasing to hold public office. The Ombudsman is required to submit the declaration of assets to the Finance and Public Accounts Committee of the National Assembly. The Constitution does not give the Finance and Public Accounts Committee of the National Assembly any role other than receiving the declarations submitted. The Ombudsman has no further role apart from submitting the declarations. However Sub-Section (3) of Section 223 authorizes the use of such declarations in proceedings before a court of competent jurisdiction, in proceedings before a Commission of Inquiry, and in disciplinary proceedings against any person who made the declaration. This important provision of the Constitution has never been complied with by public officers. The Office of the Ombudsman has also failed to invoke the provision to ensure compliance. No reason has been given by the Office of the Ombudsman for not taking up this constitutional responsibility.

There are rules governing the receipts of gifts by public officials. These rules are contained in paragraphs (11) and (12) of Section 222 of the Constitution. A public officer is not to accept or ask for any gift from any person on account of anything done, omitted to be done in the course of his or her official duties.⁵⁸ The only gifts or benefits a public officer is permitted to receive or accept are those from relatives and friends which are regarded as customary gifts.⁵⁹ No register of the receipt of gifts exists.

Section 221 of the Constitution of the Republic of The Gambia 1997 provides for the application of the prescribed Code of Conduct for Public Officers which extends to persons who hold public office or hold office in a public service, members and staff of local government authorities and public enterprises, and members of disciplined forces.

The Section further provides that failure to observe the provisions of the Code of Conduct shall not of itself render the officer liable to any civil or criminal proceedings in any court for such failure although it may be taken into account in any proceedings against such officers whether disciplinary or otherwise.

It is not clear why a Code of Conduct for public officers is included in the Constitution. The entire Section 222 and its paragraphs comprise the Code of Conduct. No authority has been identified to monitor and enforce the Code. Section 222 sets out the provisions of the Code of Conduct and makes the following rules:

- A public officer shall respect and comply with the law and shall conduct himself or herself at all times in a manner which promotes confidence in the integrity of public office.
- A public officer shall acquire such professional competence to enable him or her to perform the functions of his or her office with efficiency. He or she shall dispose promptly to the business of his or her office, shall devote adequate time to his or her duties, be punctual in attending work and expeditious in bringing to a conclusion any matter under his or her attention. A public officer shall require his or her staff to observe the same standards.
- A public officer shall not, in the course of his or her official functions and without lawful excuse, do or cause to be done any action which is prejudicial to the rights of any other person.
- In the exercise of his or her duties, a public officer shall avoid nepotism and favouritism.
- A public officer shall not encourage others to convey the impression that they are in a special position to influence him or her.
- A public officer shall take appropriate action with regard to contravention of this Code by members of his or her staff or others subject to his or her control.
- A public officer who does any act prohibited by this Code through an agent shall himself or herself be deemed to have done such act.
- A public officer shall not hold more than one full-time public office in respect of which he or she is paid a salary.
- A public officer shall not put himself or herself in a position where his or her personal interest conflicts with his or her duties or responsibilities.
- A public officer shall not ask for or accept any property or benefits of any kind for himself or herself or any other person on account of anything done or omitted to be done by him or her in the course of his or her duties. The receipt of any gift or benefit from or on behalf of a commercial firm, business enterprise or a person having or negotiating a contract with the Government shall be deemed to be in contravention of this paragraph unless the contrary is established.
- A public officer shall only accept gifts or benefits from relatives and friends to such extent and on such occasions as are customary. However the receipt of

any gift or donation by a public officer on any public or official occasion shall, if surrendered to the office, department or agency represented by the public officer, not be treated as a contravention of this Code.

The person holding an office in a public service or any disciplined force shall not:

- Allow his or her political inclinations to interfere with the discharge of his or her official duties.

Public servants are required by Section 223(1) of the Constitution to submit a declaration of their assets every two years to the office of the Ombudsman. They are also required to submit such declaration on ceasing to hold public office. These declarations when made are to be submitted to the Finance and Public Accounts Committee.

The Section goes further to provide for lack of credible explanation for assets acquired after the initial declaration of assets has been made (it is not clear why the word 'initial' is used in the section since declarations are to be made periodically). Subsection 4 of Section 223 states:

"Any property or assets acquired by a public officer after an initial declaration of assets required by subsection (1) which is not attributed to his income from his public office or other permitted employment, personal gifts as permitted by the Code of Conduct, inheritance or a loan or investment (including any savings scheme) on ordinary commercial terms shall be prima facie evidence of having been acquired, and in the absence of a credible explanation by the public officer concerned may be deemed to have been acquired, in contravention of the Code of Conduct and shall render the public officer liable:

- a. in the case of a public officer in a public service or who is subject to other disciplinary action by the appropriate person or authority; or
- b. in any other case to removal from office or, as the case may be proceedings for removal, as provided by this Constitution or any other law."

This subsection is a very interesting one which tends to create a legal fiction concerning acquisition of property. It also seeks to shift the burden of proof to the accused person. What amounts to "credible explanation" could be both subjective and objective depending on the nature of the case. The risk of having different standards for similar cases is evident from the use of language.

Section 222 of the Constitution also prohibits a public officer from putting himself or herself in a position where his or her personal interest will conflict with his official responsibility. To that end Section 222 paragraphs 11 and 12 provides as follows:

"11. A Public Officer shall not ask for or accept any property or benefits of any kind for himself or herself or any other person on account or anything done or omitted to be done by him or her in the course of his or her duties. The receipt of any gift or benefit from or on behalf of a commercial firm, business enterprise or a person having or negotiating a contract with the Government shall be deemed to be in contravention of this paragraph unless the contrary is established.

12. A Public Officer shall only accept gifts or benefits from relatives and friends to such extent and on such occasions as are customary. However the receipt of any gift or donation by a public officer on any public or official occasion shall if surrendered to the office, department or agency represented by the public officer, not be treated as a contravention of this Code."

These provisions are yet to be invoked by the authorities. It would appear from our research that most of the legal provisions dealing with accountability in public life are either not used or rarely used, although during military rule, Commissions of Inquiry were set up under Section 3 of the Public Assets and Properties (Recovery) Decree, 1994 – Decree No. 11. A lot of public servants appeared before these Commissions to assist in the investigations. Some were made to pay monies they misappropriated or could not account for. The Reports of these Commissions were submitted to the President. They are not available to the public.

Police and Prosecutors

The Police Act 1950,⁶⁰ established The Gambia police force⁶¹ for the “preservation of law and order, the protection of property, the prevention and detection of crime, the apprehension of offenders and the due enforcement of all laws and regulations”⁶² with which the police is charged. The Constitution also creates the police force in The Gambia to be headed by the Inspector General of Police.⁶³

Although the Constitution initially gave the President the power to appoint the Inspector General of Police and Deputy Inspector General of Police, this provision has now been repealed.⁶⁴

By Section 8(1) of the Police Act, appointment, discipline and termination of appointment of superior police officers is left to be regulated by the Constitution and any regulation made thereunder. Therefore the deletion of the provision for appointment without substitution leaves the police without an appointing authority for senior officers, whilst appointments of junior officers are regulated by the Police Act.

In practice however, the President appoints the Inspector General and is believed to have a say in all matters concerning the police.

The police force is divided into the Mobile Traffic Unit, Fraud Squad, Regular Police Para-Military Unit, Fire Service Unit and Licensing Officers. There is no security of tenure for the Inspector General of Police and his subordinates who have over the years either been retired or terminated without any cause. Since 1994 there has been at least five persons appointed Inspectors General of Police. Senior officers have constantly changed responsibilities and ranks. The police force is approximately 800 strong.

The Fraud Squad comprises one senior officer at the rank of superintendent and eleven other officers at various ranks. They have not received any special training and are usually recruited from among other sections of the police force. It is located within the Serious Crime Unit of the police. It has recently investigated the first ever alleged economic crimes case in The Gambia which is currently against the Youth Development Enterprise Limited, its Managing Director and Chairman who are presently being prosecuted for causing The Gambia Ports Authority an economic loss of 27 million dalasis, and the Customs and Excise Department loss of 55 million dalasis. The case started on 8th December, 2003. What is interesting about this case is that the Chairman of the Company is the Majority Leader of the Majority party in the National Assembly (APRC). Another interesting point is that the President of the Republic of The Gambia has in a television appearance declared to be the financier of the Youth Development Enterprises Limited (It is alleged by the State that named individuals and Youth Development Enterprises Limited had in the course of their transactions with The Gambia Ports Authority from 2001 to date intentionally caused loss to the Authority amounting to D27,163,395.55. In respect of Customs and Excise the State alleges that these persons and the company between 2001 to date intentionally caused the company to lose the sum of D70 million).

The implication of such statement to a suit that is presently pending in court is something that the defence lawyers would have to examine. However, the personal counsel of the Chairman of the Company was shot at and critically wounded on 26th December, 2003 outside his home. He has been evacuated to neighbouring Senegal for treatment. The motive behind the shooting remains unknown, and nobody has been caught. The case has been adjourned to January, 2004 for continuation.

Generally the police force is regarded as partisan and unprofessional in its dealing with the public, poorly trained and equipped. There are cases of unlawful arrests and detention, human rights violations and selective application of the law.

Armed with the Public Order Act,⁶⁵ the police has denied opposition parties, especially the United Democratic Party, permit to hold political rallies and has on some occasions disrupted political gatherings of the opposition. Police brutality was exposed by a Commission of Inquiry into the breakdown of law and Order in The Gambia on 10th and 11th April 2000 when unarmed students were gunned down. At the last Presidential elections held in October, 2001, campaign posters of the current President were seen

pasted at the police headquarters and other police stations as well as barracks. This received wide condemnation before they were removed.

Investigative techniques used by the police are outdated, the low level of education of most police officers coupled with the low income they earn undermine their ability to effectively execute their duties. There are instances where some police officers have been accused of asking for or taking bribes, but these are not documented.

The ability of the police to fight crime is further undermined by the operatives of the National Intelligence Agency who arrogate to themselves police powers. They virtually carry out all powers given to the police, including the arrest and detention of criminal suspects, they also interfere in civil disputes.

Director of Public Prosecutions and the State Law Office

The Office of the Director of Public Prosecutions is created by Section 84 (1) of the Constitution. A person is qualified to be appointed Director of Public Prosecutions only if he or she is qualified for appointment as a judge of the High Court.⁶⁶ The appointing authority is the President, who is not required to consult anybody when making such appointment.⁶⁷

A person holding the office of Director of Public Prosecutions may be removed from office only for inability to perform his duties, misbehaviour or incompetence.⁶⁸

The Director of Public Prosecution's functions are:

- a. "to initiate and undertake criminal proceedings against any person before any court for an offence against the law of The Gambia;
- b. to take over and continue any such criminal proceedings that have been instituted by any other person or authority;
- c. to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or herself or any other person or authority."⁶⁹

The functions of the Director of Public Prosecutions are exercised subject to the approval of the Attorney General. There are provisos which prevent the Director of Public Prosecutions from taking over and continuing any private prosecution without the consent of the private prosecutor and the court; he or she cannot discontinue any private prosecution without the consent of the prosecutor.⁷⁰

The power to discontinue proceedings cannot be exercised in relation to any appeal by a person convicted in any criminal proceedings or any case stated at the instance of such person.⁷¹ Whilst the Director of Public Prosecutions has authority to enter nolle prosequi, the authority to issue fiats under various laws such as the Drug Trafficking Decree and Criminal Procedure Code rests with the Attorney General.

The office of Director of Public Prosecutions does not have any autonomy. It is a department within the Attorney General's Chambers and Department of State for Justice, and is subject to the control of the Attorney General who is also the Secretary of State for Justice and a political appointee. The state counsel at the Attorney General's Chambers handle both criminal and civil cases. The Solicitor General is the administrative head of the Attorney General's Chambers and the Director of Public Prosecutions is answerable to both the Solicitor General and Attorney General.

Prosecutions are handled by the Attorney General's Department and the police. The two institutions cooperate in the execution of their duties. The police however only handle petty crimes before subordinate courts at times assisted by state counsel. Legal opinions are written by state counsel on matters referred to the office of the Director of Public Prosecutions by the police to guide them on the law and procedure.

The number of state counsel prosecuting criminal cases is less than twelve, they are all very young at the Bar and are virtually on their own with no senior to lead them. Court cases in The Gambia are very slow. There are no reported cases of corruption against state prosecutors and judges.

Public prosecutors have shown their lack of independence in many instances particularly in cases involving opposition party members and sympathizers of the ruling party. Furthermore, the police has been turned to a partisan political outfit whereby even campaign posters of the President have been pasted on some of their buildings during the last presidential elections. The case of THE STATE vs OUSAINOU DARBOE AND OTHERS, CRIMINAL CASE NO. 14/2000 where the leader of the opposition (presently the UDP) is facing a murder charge with some of his party militants for the death of an APRC militant who it is alleged was amongst a group of people who ambushed a UDP convoy en route to a political rally. It is alleged that Mr. Darboe was not at the scene of the crime. The summary of evidence before the court did not reveal that an eye-witness saw Mr. Darboe or any of the persons charged murdering the deceased or participating in the murder of the deceased. In THE STATE vs LAMIN WAA JUWARA, CRIMINAL CASE NO. 7/2003 – the accused person is the leader of the opposition NDAM party who is being tried for sedition over an interview he gave to the *Independent* newspaper where he berated the President. Juwara is being charged with sedition in that he gave a newspaper interview to a journalist calling on the public to be prepared for a peaceful demonstration to protest the economic hardship and apparent ineptitude of the political ruling class. No member of the public was called as witness other than the police investigating officer. There was no corroboration of evidence. The State called only this police officer and closed its case. The accused applied for the trial judge to excuse himself from the case since he did not have faith in him and doubted his impartiality, but the judge ruled that he would hear the case. The trial is continuing.

In these two cases the summaries of evidence presented by the office of the Director of Public Prosecutions do not seem to support the charges before the court, yet the office is vigorously prosecuting these political figures. The public believes these people are being prosecuted in order to get them behind bars before the next presidential elections in 2006.

Public Procurement

The Gambia Public Procurement Act 2001⁷² was enacted in an attempt to curb corruption and to dissolve both major and minor tender boards which have over the years performed dismally (including allowing some transactions completed before the boards were informed). By a directive ref: LDM 479/01/(111) dated 30th June 2003, addressed to all permanent secretaries, heads of local government authorities, heads of statutory authorities and agencies, managing directors of public enterprises and all heads of organs and agencies of government, the Secretary of State for Finance and Economic Affairs stated that:

- The Act provides for a system of decentralized procurement.
- The Act governs all public procurements by “Procuring Organizations” namely: departments of State, agencies and organs of the State, statutory bodies, public enterprises, and local government authorities engaging in the procurement of goods, works or services. In a bid to adequately prepare institutions for this new mandate, the GPPA (Gambia Public Procurement Authority responsible for procurement under the Act) in collaboration with the Management Development Institute (MDI), conducted extensive training of staff. The MDI is responsible for the training of different cadres of employees of the public services, as well as conduct remedial courses on various disciplines.
- As of 1st July 2003, all Procuring Organizations shall comply with requirements of The Gambia Public Procurement Act without exception. Any violation of the Act will result in the necessary sanctions being taken against the procuring organizations and individuals concerned in accordance with the Act.
- Furthermore, Chapter 6 of the Financial Instructions is being repealed and shall no longer apply. The Major and Minor Tender Board shall complete

those procurement actions that are before them as of 30th June 2003. They shall thereafter cease to exist.

What this new piece of Legislation seeks to do is to create an autonomous agency responsible for regulating and monitoring public procurement and decentralizes public procurement by giving power to Department of State agencies or organs of the State, statutory bodies or public enterprises as well as Local Government authorities. Thus the Act creates The Gambia Public Procurement Authority whose main function is to regulate and monitor all procurement above a specified amount. The amount to be specified by Regulation has not yet been prescribed. The authority must give approval at every stage of procurement proceedings including tendering, requests for proposals, awards and direct procurements.

The Act at Section 5 creates a board of directors as the governing body of the Authority. It comprises of:

- A Chairperson; appointed as usual by the President;
- The Permanent Secretary of the Department of State responsible for finance or his or her designate;
- The Solicitor General or his or her designate;
- The Auditor General or his or her designate;
- Two other persons; and
- The Director General of the Authority to be appointed by the President.

The Board has recently started work.

Ombudsman

Prior to 1997 The Gambia did not have the institution of the Ombudsman. It's creation in the 1997 Constitution is an innovation. This institution is required by law to ensure that grievances of individual members of the public are addressed, and that public officers guard against maladministration or abuse of office. It also administers the Code of Conduct for Public Officers contained in Chapter XXI of the Constitution. Section 163 of the Constitution creates the office of the Ombudsman who is to be appointed by the President. The appointee is required to have substantial administrative or professional experience,⁷³ and security of tenure is guaranteed.⁷⁴

Apart from the Constitution, the Ombudsman Act, 1997 defines and prescribes, in accordance with the Constitutional requirements, the duties, functions, and procedures of the office.

The main functions and duties include:

- Ensuring that the public is protected from abuse of administrative power, and ensuring that there is an effective and efficient body of public service where grievances are addressed;
- Taking measures calculated at curbing mismanagement, corruption and embezzlement of public funds;
- Referring breaches of the Code of Conduct to the appropriate disciplinary authorities.

The appropriate disciplinary authorities has not been defined. It could be assumed that the immediate senior of the officer concerned would be responsible for such disciplinary measures. The measures to be taken by the Ombudsman to curb corruption have not been defined. The breaches of the Code of Conduct, if ever reported by the office of the Ombudsman, have not been made public.

The office of the Ombudsman which came into operation in 1999 claims to have dealt with four hundred complaints and that all its recommendations in respect of those claims were

carried out by the Government. The type of cases that the Ombudsman's office claimed to have investigated appeared to have been grievances against senior officers made by the junior officers. The details were not disclosed for purposes of this study and no report on them has been submitted to the National Assembly. The Constitution requires the Office of the Ombudsman to send its report to the office of the President and the National Assembly twice in the year. However no report has been submitted so far, and no reason has been given for the non-compliance with the law.

Media

The Gambia has six regular newspapers and one regular magazine. Out of these only *The Gambia Daily* (published three times in the week) is owned by the state. All the rest are privately owned. *The Daily Observer* is the only daily paper in the country, *The Point* is published four times in the week, *The Independent* and *Foroyaa* are published two times in the week, and *The Enquirer* is published weekly. The only regular magazine, *The Gambia News and Report* magazine, is published weekly.

Apart from *The Gambia Daily*, which mostly carries government press releases and other official news, all the other newspapers carry stories about corruption. However, some of them such as *The Independent*, carry more stories of corruption than the rest.

There are eight radio stations and one television station in The Gambia. Two of the radio stations and the television channel form the Gambia Radio and Television Services (GRTS), which is government owned. Therefore, neither Radio Gambia in Banjul nor its sister station in Basse and the television carry any stories of official corruption. Indeed they mostly carry news and programmes that always tend to portray the government in good light. Hardly any dissenting views, either from members of the opposition or from others with viewpoints different from those of the ruling party are given airtime on GRTS. The other six radio stations are: Radio 1 FM, West Coast, Radio Syd, City Limits, Sud FM and Citizen FM (currently closed down). All these stations, with the exception of Sud FM and Citizen FM, hardly carry any news or other programmes that would pitch them against the government. In the case of Sud FM also, being a subsidiary of a Senegalese media house, even though it carries some limited local news, it mostly links up with its Dakar sister station for the news. Therefore, with the exception of Citizen FM, none of the other stations often carry anything about official corruption.

Of all the radio stations, only the GRTS radio stations actually cover the entire country, while the private radio stations have a limited range which usually do not usually go much beyond the Greater Banjul Area. There are also four community radio stations in various parts of the country. However only the Brikama Community Radio and Farafenni Community Radio are presently operational and neither of them nor the rest carry any hard news, including stories on corruption.

Freedom of the press is guaranteed in the 1997 Constitution. In Section 25, it states; "Every person shall have the right to - (a) freedom of speech and expression which shall include freedom of the press and other media". Also in Section 207 it states; "(1) The freedom and independence of the press and other information media are hereby guaranteed. (2) An act of the National Assembly may make provisions for the establishment and operation of the press and other information media. (3) The press and other information media shall at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the government to the people of The Gambia".

The Gambian media is divided into two main categories; the public media, which is tightly controlled by the government and hardly carries divergent views, and the private media, which is mainly composed of small independent publications or radio stations. Amongst the private media, it is only the *Foroyaa* newspaper, which is a bi-weekly publication which has any political party affiliation. It is owned by the socially-oriented PDOIS. The ruling APRC used to have their own weekly publication, *The Patriot*, but it has ceased to exist for more than a year.

These freedoms are to be exercised subject to the law in so far as the law imposes reasonable restrictions on the exercise of the rights and freedoms thereby conferred which are necessary in a democratic society and are required in the interest of the sovereignty and integrity of The Gambia, national security, public order, decency or morality or in relation to contempt of court. A general limitation of these rights is the declaration of a state of emergency. Section 34 of the 1997 Constitution confers on the President the power to declare a state of emergency, and the National Assembly may pass an Act which would authorize taking measures during a state of public emergency that are reasonably justifiable for dealing with the situation and nothing done under such an Act shall be held to be inconsistent with section 25 of the Constitution.

There exist various requirements for the licensing of newspapers and other forms of news media. There is the Newspaper Registration Act of 1940, which was amended in 1996 by Decree 70/71. This requires all newspapers, except those that belong to the government, to be registered with the Registrar General with a requirement for a bond of D100, 000. Then the recently inaugurated National Media Commission in section 13 makes it mandatory for all journalists and media organisations to be licensed on an annual basis. The section states; "No person shall, after the commencement of this Act engage in the dissemination of information by mass communication unless registered as a media practitioner or media organisation, as the case may be, in accordance with this section".

Private broadcasting is covered by the Telegraph Stations Act of 1913, which empowers to the minister of information to license the establishment of any radio station. The minister is also empowered to determine the period as well as the terms, conditions and restrictions to be imposed on the license, as he shall consider fit in the public interest.

There is however a requirement for those wishing to set up television and radio stations to obtain a license which has to be issued by the minister of information. The minister has the power to turn down any application and he/she is not required to give any reasons for his/her decision.

An innovation of the 1997 Constitution is the creation of a special chapter on the media, which states as follows:

- Section 207; "The freedom and independence of the press and other information media are hereby guaranteed. An Act of the National Assembly may make provisions for the establishment and operation of the press and other information media. The press and other information media shall at all times be free to uphold the principles, provisions and objectives of this Constitution and the responsibility and accountability of government to the people of The Gambia."
- Section 208: "All state owned newspapers, journals, radio and television shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinion."
- Section 209: "The provisions of section 207 and 208 are subject to laws which are reasonably required in a democratic society in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of others."
- Section 210: "An Act of the National Assembly shall within one year of the coming into force of this Constitution make provision for the establishment of a National Media Commission to establish a code of conduct for the media of mass communication and information and to ensure the impartiality, independence and professionalism of the media which is necessary in a democratic society."

A Bill establishing the National Media Commission was passed by the National Assembly in July 2002 and assented to by President Jammeh in August 2002. It is clear from the provisions of the Act that it is intended to regulate the private media, an attempt of which in 1991 met with strong opposition from the media when the national Press Council Act was enacted by the former civilian government of Sir Dawda Jawara. It was eventually abandoned when the Gambia Press Union refused to participate in it.

The enactment of the National Media Commission Act is seen as yet another milestone in government's attempt to control the activities of the private media. The recently inaugurated National Media Commission also contains provisions which not only require all independent media organisations to be licensed on an annual basis, but the Commission is also given the power to censor the media.

The chairperson of the Commission is a high court judge appointed by the chief justice. Two of the other 11 members are appointed by the minister of information while the rest are appointed by the various institutions they represent. However, most of those institutions are government or quasi-government institutions and therefore, their representatives cannot be independent of government policies and decisions.

The Act, while meant to regulate the media, instead contains draconian provisions which clearly seek to instead control the private media and media and media practitioners. Among those provisions are the ones that require individual journalists and media organisations to be licensed on an annual basis, with the minister of information being given the power to turn down the application for a license by any journalist or media organisation without giving any reason for his/her actions. This has therefore prompted the Gambia Press Union to not only refuse to participate in the National Media Commission, but to also take the decision to challenge its constitutionality in the courts. Indeed most people see the Act as another attempt by government to muzzle the independent media. Although the Commission has already been inaugurated, but apparently because its constitutionality is being challenged in court, it has not yet commenced operations. In section 13 of the Act, it has the power to license independent journalists and their publications on an annual basis. For example, section 15 states:

"If the government or any of its departments of state, organs or agencies allege in the complaint that the information provided to a media practitioner or media organization:

- was without authorisation; or
- is a contravention of the Official Secrets Act,

the Commission shall require the media practitioner or media organisation to disclose the source of the information and if a media practitioner or media organisation fails to disclose the source of information within the period stipulated by the Commission, the Commission shall impose one or more of the penalties provided for under section 29".

Those penalties referred to under section 29 include the suspension or revocation of the license of the media practitioner or media organisation; the imposition of a penalty of not less than ten thousand dalasis fine; and the closing down of the media organisation concerned.

While Section 207 guarantees press freedom, in practice it is not the case. The provisions of section 208 which seek to afford equal opportunity for the presentation of divergent views on state owned media are yet to become a reality. While radio and television broadcasting are under the same corporation, no legal machinery exists for their regulation or administration. There are therefore no mechanisms to ensure uncensored access. In effect, despite all those legal provisions, there is hardly any difference from what had existed in the first republic.

There have also been numerous cases of intimidation and harassment of journalists and their media houses, which include frequent arrests of journalists by the National Intelligence Agency and other security forces. Apart from the heavy taxation and other unnecessary financial burden imposed on media organisations, there are also the requirements of the recently inaugurated National Media Commission to be fulfilled, which include the annual registration of media practitioners and media organisations, which is discriminatory in nature in that it is only applicable to the independent media.

The libel laws remain virtually the same in both the first and second republics. They are both criminal and civil libel, the laws on sedition and the laws restricting public officials from passing information to 'unauthorized' persons. Therefore, the laws on libel and

sedition require revision to bring them in tune with the 1997 Constitution. The Criminal Code creates the offences of criminal libel.

Civil libel is regulated by the Common law, which in effect means that the courts may apply any legal precedents from Commonwealth jurisdictions which have the same Common law heritage.⁷⁵

The offence for criminal libel has been created by the Criminal Code, defined as the unlawful publication of any defamatory material by print, writing, painting or effigy or by any means otherwise than solely by spoken words or gestures.⁷⁶

However, prosecution for criminal libel had been so far very rare. Perhaps the most celebrated case in the recent past had been the one involving Sanna Manneh, the editor and proprietor of *The Torch* newspaper who in 1988 was charged with three counts of criminal libel. On 6 October 1988, *The Torch* carried an article captioned; 'Cabinet Reshuffle inevitable'. The article accused three cabinet ministers in the first republic of being involved in various acts of corruption. Mr. Manneh was eventually charged under section 178 of the Criminal Code on three counts of criminal libel. He pleaded not guilty on all three counts and he raised the defence of justification.

In a sensational trial that followed, the presiding magistrate Mr. Wallace Grante acquitted and discharged him on two of the counts and found him guilty on only one of the counts, but he only admonished and discharged him to be of good behaviour. The government appealed to the High Court against the judgement, but the appeal was later over turned by the Gambia Court of Appeal on a technicality.⁷⁷

There also exist various other laws under which the media can be censored. These include the Official Secrets Act of 1922, which still makes provision for the protection of official documents. The Act, which basically targets civil servants, discourages the media from obtaining information a result of government's obsession with the private media, there are numerous obstacles placed on the part of journalists in the course of their work.⁷⁸ Apart from the difficulty in obtaining official information, there is presently in force a circular, which forbids civil servants from talking to the press without the permission of the Secretary General who heads the civil service. There is the Cinematography Act of 1931, which also established a film censor board to review, examine and censor any films, advertisements and posters. The Act also provides for the licensing of premises for any such exhibition.

However, in addition to all these laws, some of which are now quite dormant, the authorities also would not hesitate to use any available means to clamp down on the media. A good case in point had been their treatment of Citizen FM.

This radio station was set up in 1996 by Baboucar Gaye, a veteran journalist. It happened to be the only private radio station which created its own news and also carried other programmes, including interviews with members of the opposition parties, some of which was quite critical of government actions. It was by far the most popular radio station in the country. Every morning people used to listen to its review of the newspapers in the local languages. That however was the programme that incensed the government the most. It appears that the government authorities did not mind the few educated Gambians reading what the private newspapers were writing, but when it came to those papers being translated in the local languages for everyone to know it, then that was much more than they could swallow. On several occasions, the authorities pleaded with Mr. Gaye to stop the programme but he refused. As a result, the proprietor and some of his staff were frequently arrested and harassed by agents of the National Intelligence Agency, mostly for no justifiable reasons. It was therefore not a surprise to many people when in 1998 the station was invaded by a group of armed soldiers and forcibly closed down, on the pretext that the proprietor Mr. Gaye did not pay his operational license for that year.

He was taken to court by the government and charged under an old colonial law (the Telegraph Act of 1913) for operating a radio station without a license, which is also a misdemeanour. After a long trial at the Kanifing Magistrates Court presided over by Mr. Willie Inyang, Mr. Gaye was found guilty of operating a radio station without a license and he was fined a token amount of D300 and the magistrate ordered that the radio equipment

be forfeited to the state. However, when Mr. Gaye appealed against the judgement at the High Court (presided over by Justice Wallace Grante, the magistrate who acquitted Sanna Manneh in 1988), in a landmark judgement, Justice Grante set aside Magistrate Inyang's judgement and he ordered the equipment to be returned to Mr. Gaye and the radio be allowed to operate.

That however, was not the end of Citizen FM's problems with the authorities. During the presidential elections in October 2001, Mr. Gaye defied a warning issued by the Minister of the Interior against private media houses broadcasting the results of the elections before they were declared by the chairman of the Independent Electoral Commission. He instead had his team of reporters in the various polling stations who were filing in reports of the results live on the radio. The Minister therefore ordered the police to go and shut down the radio, which they did. Even though he was eventually allowed to resume broadcasting, but it was not for long. Shortly after that he was arrested by the National Intelligence Agency and from his detention, he was asked to tell his staff to close down the radio until he paid some tax arrears he was said to be owing. However, despite him having paid all his arrears, he has still not been allowed to resume broadcasting.

Another of the private radio stations, Radio One FM, used to have a popular programme called Sunday News Hour in which a group of journalists used to discuss burning issues of the week. They used to invite people from all walks of life, including politicians. However, even though government officials and members of the ruling party were invited to the programme, but they usually always failed to turn up. They however criticized the programme as being sponsored by the opposition. It was therefore not a surprise to many people when in August 2001 the station almost got burnt when a group of unidentified assailants tried to set it on fire at night. It was thanks to the presence of the proprietor George Christensen who struggled with the assailants and managed to prevent them from setting the station on fire. In the struggle, he sustained some serious burns on his hands and other parts of his body and he spent some time in hospital. Many people attributed that to those who were opposed to the Sunday News Hour. Indeed a few months earlier, one of the journalists at Radio One Alieu Bah received a letter threatening him with dire consequences if he continued to work for the radio, and shortly after that, his house was torched and both he and his wife and child barely escaped injury. Even though the police promised to investigate the two incidents, until now, no one has been apprehended.

However because of the iron-grip control the government has on the GRTS radio and television as well as *The Gambia Daily*, with hardly any views opposed to the government are allowed access to them, the public rely heavily on the private media, particularly on the print media for reliable information. The government however seems to employ various means to squeeze the private media through heavy taxation and other high-handed tactics, apparently to weaken them and render them less effective. There are also various practical steps being taken by the government to restrict access to information. For example, neither President Yahya Jammeh nor any of his ministers ever holds press conferences. Indeed journalists from the private press, with the exception of the *Daily Observer* are hardly allowed access to State House or other functions where President Jammeh would be present. Indeed the government's obsession with the private media was so aptly demonstrated by President Jammeh during an interview with the *Daily Observer* when he was asked whether he was contemplating visiting the media houses to meet with their proprietors. He said; "You do not need to go to the toilet to know that it stinks".

Nevertheless, the role of the media in exposing corruption cannot be over-emphasized. However, while the private media, particularly the newspapers, have been covering cases of corruption, the lack of journalism training facilities in the country, means that there is an absence of in-depth investigation or follow up into such cases. The lack of training facilities as well as the difficulty in accessing official information is therefore hampering the adequate coverage of corruption issues. *The Independent* however leads the way into reporting corruption cases and exposing scandals. It is an independent bi-weekly newspaper which is jointly owned by two journalists. Therefore, we can say that its coverage of corruption cases is based on good journalism rather than being influenced by any partisan political considerations. Table 3 contains examples of some of the coverage of corruption:

Table 3 Examples of Media Corruption Coverage

<i>The Point</i> , Vol. 8 No. 29 dated 30th March 1999, "Gross Financial Mal-practices at the NYSS". It refers to discovery of fraud at the National Youth Service Scheme (NYSS) to the tune of D671, 476.86 as was disclosed by the Auditor General's Report.
<i>The Point</i> , Vol. 9 No. 79 dated 3 rd July 2000, "Where is Taiwan's \$52million – Hamat Bah asks". This refers to a loan from the Republic of Taiwan which was said to have not been accounted for by the government.
<i>The Independent</i> , Vol. 4 No. 46 dated 22nd December 2000, "Who owns Account No. 010010873901". This is about a cheque no. 131820 for D200, 000 which was drawn by Farato Farms Limited as payment to the Ministry of Agriculture but which the Permanent Secretary, Ministry of Agriculture allegedly attempted to pay it into his own personal account at the Standard Chartered Bank in Banjul.
<i>The Independent</i> , Vol. 4 No. 31 dated 18th October 2002, "Gambian 'Money Laundering MP' Arrested in Niger". This is about a National Assembly member who was detained in Niger accused of being found in possession of the equivalent of 200,000 Dollars worth in different currencies.
<i>The Independent</i> , Vol. 4 No. 60 dated 7 th February 2003, "MPs' passport deal runs out of luck". This is about the alleged sale of two Gambian passports by their owners, who were members of the National Assembly. The two passports were said to have already been issued with US visas and they were alleged to have sold them for US\$3,500 each.
<i>The Point</i> , Vol. 12 No. 57 dated 2 nd April 2003, "'Darboe uncovers oil deal' – asks Jammeh to explain". This refers to yet another discovery of a crude oil deal involving the government of The Gambia and the Federal Government of Nigeria, which was apparently kept as a secret to the people of both countries.
<i>The Independent</i> , Vol. 4 No.76 dated 4 th April 2003, "Jammeh Pressed Over Missing Oil". This is a call by leader of the opposition United Democratic Party Mr. Ousainou Darbo for President Yahya Jammeh to come out clean on a refined petroleum contract signed between The Gambia and the Federal Government of Nigeria which is alleged to have been diverted by certain officials close to President Jammeh.
<i>The Independent</i> , Vol. 4 No. 87 dated 12 th May 2003, "Nigeria – Gambia oil scam again". This refers to the discovery of a secret supply of crude oil to The Gambia from the Federal Republic of Nigeria on concessionary terms but the proceeds of which is not being reflected in the national budget.
<i>The Point</i> , Vol. 12 No. 108 dated 20 th June 2003, "Over D1 million misappropriated at Tourism Ministry".

Civil Society

In The Gambia, civil society is the weakest link in the process of good governance and democratisation. While there are several civil society organisations, their lack of unity and cohesion as well as proper coordination, ensures they remain quite weak and ineffective.

However, there is an on-going attempt to set up a civil society forum under the auspices of The Non-Governmental Organisation (TANGO), which would eventually be responsible for the coordination of the various civil society bodies.

Local Government

Local Government authorities were created during the colonial era to assist colonial Governors in the administration of the Protectorate.

After independence the character of Local Government authorities was expanded giving them some autonomy in the management of their localities. The Local Government Act (Chapter 30.01 of the Laws of The Gambia) governed the Local Government. However this Act was repealed by the Local Government Act, 2002 which gives Local Government authorities a high degree of autonomy and decentralized their activities.

The central government is still responsible for the appointment of District Commissioners, hospital authorities, Teachers in public schools, security officers and civil servants working in local government districts. Divisional Commissioners are supposed to be appointed by the President from among senior civil servants recruited from the civil service and who should operate above politics. However, the reality on the ground is completely different. Most of the present Commissioners are recruited among militants of the ruling APRC. This makes them quite powerful as they are seen as representing the President in their divisions. The Local Government Act 2002 does not recognize the position of District Commissioners. It creates at Section 42 of the office of Chief Executive whose office is to be an office in the Local Government Service. The President without any authority continues to appoint District Commissioners. Their role is purely political.

Central government continues to give subventions to assist local government councils financially due to their weak economic base. Members of the local government councils are directly elected by the people, but because of the political power base of the Divisional Commissioners, the local councils operate as their subordinates, when it should not have been the case.

The Local Government Act, 2002 attempts to put an end to executive interference with the administration of local government authorities which had caused delays in the implementation of development projects and programmes, and at times such programmes have been abandoned where central government does not consider them to be on their priority list. Local Government are given autonomy by statute in line with the decentralization programme of government. However, the District Commissioners continue to be obstacles to harmonious political co-existence.

In as much as the law makes provision for autonomy and decentralization, local government authorities have been greatly politicised. The ruling APRC interferes with the management of local councils, to the extent that some of these councils take instructions from the Secretary of State for Local Government. Militants of APRC are given jobs by these local authorities most of whom are not well educated.

In terms of corruption at local level the Commission of Inquiry was set under Section 3 of the Public Assets and Properties (Recovery) Decree, 1994. (Decree No. 11) by the then military government in a bid to expose the corruption it was alleging against the overthrown civilian government and local councils throughout the country were investigated and findings of corruption were made by the Commission. Some local government officers were ordered to pay back huge sums of money they could not account for. Others had their properties forfeited to the State where they failed to pay. This was one of the trying periods for Gambians who are generally very forgiving and found it appalling that such harsh measures were being taken against fellow Gambians.

There are instances of corruption at the local government level reported in the Auditor General's Report of 1998, and by the Commission of Inquiry into the Financial Activities of Government and Parastatals. No remedial measures have been taken, and in some cases the culprits are still in office.

The poor calibre of staff and poor financial management of local government councils have caused the public to lose confidence in their ability to perform their functions and promote development of their communities.

The institution of Chieftaincy and village head ("Alkalo") forms part of our local government. However, they have each lost their traditional roles and are now political appointees. They receive instructions directly from the Executive.

One aspect of local government which seems transparent is the requirement under Section 30 of the Local Government Act, 2002 which makes it mandatory for every meeting, other than a committee meeting, to be held in public.

Not much has been achieved under the present Local Government Act, 2002 which is still being tested. It is hoped that in time with proper civic education citizens as well as local authorities would be mindful of their respective roles in the development of their communities and take them seriously.

Anti-corruption Activities

Donor Anti-corruption Activities

Donor Anti-corruption initiatives include:

- Capacity building for the National Audit Office,
- Training for the office of the Ombudsman,
- Grants to develop the accountancy profession,
- Monitoring projects which they are funding.

The donors usually help organize training on various aspects of management as well as provide materials and equipment in order to build the capacity of the various institutions to enable them become more efficient in their work.

The United Nations Development Programme (UNDP) has been very active in the area of good governance and has funded some components of the Government's governance programme, such as the setting up of a National Governance Commission (responsible for monitoring the policy objectives of the Gambia Government's Governance Programme and ensuring timely implementation of these objectives) under the chairmanship of the speaker of the National Assembly as well as the frequent funding of seminars and workshops on good governance.

The Judiciary, National Assembly and Department of State for Justice in particular have received some funding to assist in building capacity and institutional strengthening of these institutions.

The International Monetary fund has suspended its cooperation with the Government of the Gambia. Speaking before the National Assembly, the newly appointed Secretary of state for Finance and Economic Affairs was quoted by the *Daily Observer* of 29th December, 2003, ISS No. 0796-0832 Vol. 11 at page 2 as follows:

"SOS Gaye said the main reason why IMF temporarily suspended its cooperation with the Government was due to failure by Government to meet with their [IMF] criteria. 'They are looking whether we are moving in the right direction and if this is the case, they would soon resume. Lack of audit of Government accounts has really affected our relationship with donors. It has become an embarrassment and has shaken our credibility as a nation but everything possible would be made to make things positive'."

The editorial of *The Independent* ISS No. 079-135 of 29th December, 2003 reported as follows:

"Even the International Monetary Fund [IMF] has seemingly lost faith in the facts and figures being dangled by The Gambia Government as the true reflection of the country's economic situation. If you doubt that check the embarrassing IMF observation in its latest statement about the data supplied to it by the Government '...information that has recently been made available to the staff [IMF] suggest that data on foreign international reserves provided to the fund earlier may have been significantly overstated and there were associated inaccuracies in the data on government expenditure, fiscal balances and credit flows in 2001. These developments threatens to impede progress on poverty reduction'."

Clearly, there appears to be little or no candour in The Gambia Government's dealing with donor agencies like the IMF. To provide overstated data to an international donor organization is unpardonable.

The positions of other donors were not available for inclusion in this study.

Government Anti-corruption Activities

Apart from a new Money Laundering Bill, which has been passed but yet to be available to the public there is no anti-corruption strategy or plan in place to actively combat corruption. Laws that may assist in this regard are not enforced and the Director of Public Prosecutions lacks independence and autonomy to initiate prosecutions without the approval of the Attorney General. Allegations of corruption so far have been levelled against very senior government officials and their associates and no one dares investigate. Transparency, accountability and probity have become dead slogans which are no longer part of the vocabulary used by those who govern.

Discussion of Key Issues

The NIS

The Gambia's National Integrity System is constrained by the absence of an anti-corruption strategy and political will to fight corruption. Some of the key issues concerning the operation of the NIS in The Gambia are discussed below.

Lack of Political Will

The Government has not shown any commitment to tackle corruption in The Gambia. Constitutional institutions created to ensure good governance, accountability and transparency have either refused or failed to carry out their duties. For instance the office of the Ombudsman is yet to submit a report to the National Assembly on its activities. The Ombudsman has also not made any request to public officers for declaration of their assets to him in accordance with the Constitution. The Auditor General has not given any reason on why the Government's financial statements have not been audited and laid before the National Assembly since 1998.

Evidence of allegations of corruption have not been investigated and some officials against whom adverse findings have been made by Commissions of Inquiry are still in government. There is no available evidence that the monies they were ordered to pay back to Government have been paid.

The absence of a comprehensive strategy or plan to combat corruption is a clear manifestation of the lack of political will to fight corruption, which appears to put the Gambia National Integrity System at a crossroads.

It is recommended that both the offices of the Ombudsman and Auditor General be compelled either by the legislature or by private citizens using court processes in order to force them to carry out their constitutional responsibilities.

The government should as a matter of urgency formulate a plan of action to combat corruption. A permanent Anti-Corruption Commission should be established to investigate and monitor corruption in the country.

The Legal Framework

There are rules in the Code of Conduct for public servants prohibiting conflict of interest, receipt of gifts from third parties on account of services rendered to such third parties. Secretaries of State are required to appoint trustees for their businesses, if any.

In practice the Code of Conduct is not enforced. There is no mechanism to monitor gifts that are received. No mechanism exists for whistle blower protection and the Independent Electoral Commission has not provided any regulation for political party funding and expenditure.

It is recommended that the existing law be enforced by those required by law to enforce them. It is further recommended that mechanisms be put in place to protect whistle-blowers and to monitor gifts given to Government officials.

The Independent Electoral Commission should endeavour to regulate political party funding and expenditure, as well as use all legal measures to prevent the APRC from using government resources during electioneering campaigns.

Need for Autonomy and Professionalism

The President's control of the entire government machinery has undermined democratic governance of the country. It has created political patronage and lack of security of tenure. Being responsible for every key appointments within the public service including the offices of the Auditor General and Director of Public Prosecutions, the Ombudsman, Governor Central Bank of The Gambia, Security Chiefs, every public servant is made to recognise the fact that they each hold their offices at the pleasure of the President. It is generally believed that out of fear of antagonising the President or his close associates a lot of public servants have not been able to maintain the level of professionalism expected of them.

No institution appears to enjoy independence. The public service appears to be truly dysfunctional, operating with no clear policy but with instructions from above.

The way forward would be to curtail presidential powers some of which arise from nowhere, and to allow institutions to work without fear or hindrance. The office of the Director of Public Prosecutions should be independent and prosecutions conducted without interference by the executive. The police service should be prohibited from active participation in politics and offered training in order to transform the present police force into a professional force with specialist skills in crime prevention and investigation. Above all, the poor remuneration package of public servants should be revised upwards to provide decent salaries that would ensure a reasonable standard of living for public servants, particularly those in the lower echelon.

Effectiveness of Government and Donor Activities

The effectiveness of donor activities in combating corruption cannot be properly assessed in this study due to lack of material on the issue. Only two donors like UNDP and DFID could be assessed. UNDP assistance was in the governance programme for the capacity building of the Department of State for Justice, the Good Governance Commission, and the National Assembly; the National Audit Office received assistance in the form of training from DFID which also supported the records management project. The Office of the Ombudsman also received assistance from UNDP. The Government, as stated earlier, has no official plan or strategy for combating corruption although the laws do exist.

Priorities and Recommendations

This study has clearly shown that the legal framework for transparency accountability in public life exists in The Gambia. However, the institutions that have been created to ensure transparency and good governance lack institutional strength, moral courage, independence and professional character to carry out their functions.

The over-concentration of power in the hands of the President and its arbitrary use in respect of hiring and firing of public servants has caused a high attrition rate in public service as well as undermining morale.

The lack of a credible Independent Electoral Commission coupled with the existence of a weak or virtually non-existent civic education panel to educate and create awareness on citizens' civic responsibilities particularly their duty and right to select their political rulers and representatives has marred the democratisation process in The Gambia. Local Government authorities presently lack the autonomy given to them by the Statute.

The priorities to be addressed with possible donor assistance and monitoring include the following:

- The lack of activism on the part of the civil society,
- The excessive and uncontrolled powers of the President,
- Lack of tolerance for the independent media

- Lack of independence of the office of the Director of Public Prosecutions,
- Non-existent of government strategy to combat corruption,
- Failure of the office of the Auditor General to provide the National Assembly with the audited accounts of the State,
- The creation of a credible and independent body to conduct elections in the Gambia (a dissolution of the present one may be ideal).

Future Research

Research in the following areas would assist in highlighting in detail problem areas in our governance programme and provide the opportunity for solutions:

- The Status of Gambia's governance and the impact of excessive presidential powers on governance .
- Developing mechanisms to trace assets of public officials and implementing the laws on disclosure of assets.
- The extent of decentralization under the Local Government Act, 2002.
- Developing civic education strategies to promote awareness of civic duties.
- Autonomy for the office of the Director of Public Prosecutions and the Central Bank.
- Research and assessment of the status of the Gambian Judiciary and donor support for an independent Judiciary.

Endnotes

- ¹ p31 African Governance Programmes Accountability and Transparency Volume 1
- ² p31 African Governance Programmes Accountability and Transparency Volume 1
- ³ p16 The Gambia Macro-Economic Framework for Development Co-operation: A Strategic Review of Emerging Priorities, 1998
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- ⁶ p31 Report of the Constitutional Review Commission and Memorandum of the Proposals for a Draft Constitution for the Second Republic of The Gambia, October, 1995
- ⁷ Section 74 Constitution of the Republic of The Gambia 1997
- ⁸ Section 75 Constitution of the Republic of The Gambia 1997
- ⁹ Section 17-38 Constitution of the Republic of The Gambia 1997
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- ¹⁵ Civil Suit No. 4/2001 Abdul Aziz Jeng Vs The Commander Gambia National Army & Ors
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- ³¹ Section 157 Constitution of The Republic of The Gambia
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- ³³ Chapter 75.03 Loans Act, Chapter 75.03 Laws of The Gambia Vol. VIII
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