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**REPORT
1995-08-29**

REVIEWING THE ELECTORAL LAW IN THE GAMBIA

I visited the Gambia during the period 9 August - 18 August 1995. The objective of the mission was to provide advice and assistance to the Electoral Law Review Committee on technical and legal electoral matters in relation to the electoral legislation. Terms of Reference can be found in appendix 1.

My mission has been of purely technical nature but naturally any revision of an electoral law has political implications. I have felt no restrictions to comment on issues having political implications as long as it has been relevant for the technical, legal and administrative considerations. The political aspects are to be considered by relevant political bodies in the Gambia

Whatever recommendations I have given they have only been suggestions and all decisions whether to approve or not has been taken by the responsible body, the Electoral Law Review Committee.

Activities

During my visit I have had meetings with

- Ms Zahra Nuru, Resident representative of UNDP
- Mr Richard Church, Deputy Resident representative of UNDP
- Mr John Wayen, Resident Senior Economist of UNDP
- Mr Mustapha Waddah, Secretary General Office of the Chairman
- Mr Tamasir Mbye, Permanent Secretary Office of the Vice Chairman
- Mr Mustapha Marong, Attorney General and Minister of Justice
- Ms Hawa Sisay-Sabally, Solicitor General Ministry of Justice
- Justice Quaye, Chairman of the Constitutional Review Commission
- Mr Sarjo O Sonko, Chairman of the Electoral Law Review Committee
- Mr Sheriff N Sonko, Secretary to the Electoral Law Review Committee
- Ms Catherine A Goswell, Member of the Electoral Law Review Committee
- Dr D B Komma, Member of the Electoral Law Review Committee
- Mr Mr Cherno Jallow, legal drafter at the Attorney Generals office

I was also given the opportunity to meet the chairman and some members of the Constitutional Review Committee to discuss the links between the electoral law and the Constitution.

All meetings were held in an open friendly and constructive atmosphere.

General comments

There is a programme for transition of the Gambia to a multiparty democracy where free and fair elections are one of the main features.

Although it is not a task for this mission to discuss the transition programme, I agree with the views expressed by the UN needs assessment mission earlier this year. From technical electoral point of view it must be clearly emphasised that the timetable is very tight. If at all feasible, the holding of elections according to the schedule requires hard and devoted work by each and everybody involved in the preparations for the elections. Any delay or standstill in the preparations can easily jeopardize the reliance in the transition programme.

The Electoral Law Review Committee

According to the Terms of Reference for the Committee, included in this report as appendix 2, it is not only to review and redraft the electoral legislation in a consolidated and comprehensive way but also review and suggest an administrative structure for the conduct of elections. Furthermore the Committee is to examine all existing procedures for registration of voters, nomination of candidates etc to make the conduct of elections more transparent efficient and secure. The Committee is to finalize its work in four weeks.

The task of the Committee is certainly quite a mighty one but with hard work and devotion it is not impossible. However, it requires that all resources needed are available to the committee.

As the mission was very short and the Electoral Law Review Committee was not established until 14 August, the complete draft electoral law could not by any means be finalized during my visit. However, I worked intensely with the committee for five days and we definitely made some progress.

Working with the Committee I have dealt with most major fields of the electoral process. I have tried to provide examples from electoral legislation from other countries to broaden the base of input for the Committee.

Initially there were problems of practical nature such as lack of office facilities and secretarial staff which hampered the Committee the first few days of work.

I have made an agreement with the Committee to exchange drafts and comments during the further process.

The Electoral Law

The existing electoral law is, as witnessed by the UN needs assessment mission, written in a complicated language and the structure makes it difficult to comprehend. As the electoral law often is implemented by people without legal training, it is of outmost importance that the law is comprehensive and written in a language that can be understood by laymen.

I have suggested a new structure for the electoral law (appendix 3) to the Committee which in a more apparent way follows the chronology of the electoral process.

I am confident that the Committee now is fully aware of the importance of a language that is simple, clear, concise and straight forward.

If the draft electoral law, which is to be submitted by The Committee, is to be used

at the next election or referendum, it must promptly be promulgated as a decree.

Independent Election Commission

There is to be established an Independent Election Commission (IEC) for the purpose of conducting all elections.

The Committee has specified the responsibilities and duties for the IEC to be included in the electoral law. It is very essential for the reliance in the electoral process that such an independent body is established. The IEC can be established as an ad hoc commission to conduct elections and referendums until the Constitution is adopted.

The administrative structure of the electoral bodies have been discussed widely with the Committee. A description of the administrative structures and the responsibilities is to be included in the draft electoral law.

The Committee will suggest three administrative levels. IEC is the central authority. At the regional level there will be a Returning Officer for each administrative area. The local level will be the Presiding Officers, one for each polling station.

I have some doubt if just one Returning Officer at the regional level is sufficient. I tend to believe that a Regional Electoral Commission is a better solution to avoid that all major decision in the region are taken by just one person.

The proposed organizational structure is illustrated in appendix 4.

At all levels the electoral bodies are to be independent from all other state agencies.

Voter registration

A reliable voter registration is a fundamental prerequisite for a free and fair election. The Committee is fully aware that a substantial part of the problems with elections in the past has been related to the registration of voters. Therefore, the Committee has reviewed the existing procedures for registration of voters and tried to improve and simplify procedures and make it easier for the voters to be duly registered and to promote transparency, accountability and security of the registration process.

The Committee emphasizes the need for the voter to provide two photographs for the voting card which no doubt will create an obstacle for many voters, particularly in the rural areas. The cost of the photos will inevitably prevent some voters to get registered even though the Committee suggests a maximum price of ten dalasis for the photos. Furthermore, there is a risk that the political parties take the opportunity to intervene in the registration process and subsidize the photos for the voters. Such an intervention by political parties is naturally very undesirable.

To my experience it is possible, as they do in many other African countries, to build in security measures in the registration and voting procedures to make the photographs unnecessary. However, on this issue the Committee will not suggest to change the requirement for the voters to provide photographs.

To make it easier to find a voter in the register, I have suggested that information about where to find the voter in the register (page and line) can be put on the voters

card.

The present electoral law requires the voter to fill in an application form for registration. I was told that in previous elections the representatives of the political parties filled in the forms for many voters.

To avoid such party involvement in the registration procedures, I have recommended the Committee that all forms are to be filled in by the registration officers. Furthermore, it will facilitate the further administration of the registration documents if the forms are filled in a uniform way.

A major problem with the registration of voters is the difficulty to control the qualification for registration.

I have suggested to the Committee that no defined period of residence in the constituency to be included in the law. Such an requirement is difficult to control and can furthermore exclude potential voters from registration. It should be sufficient to be a resident in the constituency at the time for registration.

The Committee will probably suggest that a voter can be registered either at his place of residence at the time for registration or at his place of birth.

To give the voter a choice where to register can create technical and maybe even political problems. There can be a risk for mass transport of voters to certain constituencies for political reasons, which has happened in other countries.

Another requirement for registration difficult to control is citizenship.

A person must be either born in the Gambia or one of his parents must have been born in the Gambia. That requirement is not reflected in the registration forms. I have suggested that information about the voters place of birth and the parents names and place of births are included in the forms as a documentation of citizenship.

I have been told that the involvement of the representatives of the political parties creates serious problems for the registrations. I have suggested that strict rules for the party agents are issued, preferably in the electoral law, limiting their role to be observers and given the right to complain in a regulated way.

I have also suggested that all applicants denied registration, nomination or voting to be duly notified about the right to complain and how to submit the complaint.

Political parties

There are no provisions for political parties in the present electoral legislation. It is likely though, that the Constitutional Review Commission will suggest that parties are to register at the Independent Electoral Commission. Therefore, I have recommended that procedures for registration of parties should be included in the Electoral Law.

In many countries the political parties and independent candidates are given the right to appoint agents to follow voter registration, nomination, voting and counting. That is a way to secure the transparency of the process.

I have recommended strict rules to be included in the electoral law to regulate the rights and responsibilities of the agents. Under no circumstances the agents should be permitted to interfere in the procedures but be given the right to be present and submit complaint at every stage of the electoral process.

Nominations

The Committee has discussed the procedures for nomination of candidates for the different political offices. It will be suggested that a deposit fee and endorsement signatures is required for candidacy. I have recommended that the deposit should be moderate and the number of endorsement signatures to be low to avoid unnecessary high thresholds for candidacy.

Campaign roles

Rules of behavior for political parties and candidates are very in-mortar-it when it comes to establish a fair campaign. I have recommended such rules, distinct and comprehensive, to be included in the law. Furthermore, I think it is important that all parties and candidates must submit a written commitment to respect and obey such a code of conduct. I have pointed out for the Committee what kind of rules that can be included in the code of conduct.

voting

It is very essential that the polling stations for voting are not accommodating too many voters. I have discussed this issue with the committee and the committee will suggest that normally a polling station will accommodate not more than 2000 voters and not less than 100 voters.

It must be stressed however, that if a polling station is to accommodate 2000 voters it must be very well organized to avoid long lines of voters, confusion and late closing of the polling station.

Hours of voting, the same for all polling stations, will be suggested.

The committee will suggest that the marble system to be used despite some disadvantages from economic and logistical point of view. The marble system furthermore makes it very complicated if a absentee vote system should be considered.

The system of tendered ballots however the committee will suggest abolished as there is no real justification for it. In addition there is an obvious risk that the tendered ballots can be a threat to the secrecy of the vote as the marbles for tendered ballots are of a different color.

I have suggested the Committee that reports from the presiding officer in each polling station to be submitted to the returning officer. The reports should also content the names and signatures of the party agents and a statement if they have any complaints.

Counting of votes

The counting will be suggested take place at counting centres and conducted by the returning officer. The marble system of voters will probably cause serious logistic problems when it comes to transport of all boxes and escorting party agents.

Transport of ballot boxes is a problem when it comes to security and transparency. This problem was verified by a member of the public who expressed his concerns to the Committee about the transport of the boxes based on experiences from previous elections. The IEC will have to take particular measures to secure safe and transparent transport of the ballot boxes.

To promote maximum accountability I have suggested that the votes to be counted and accounted for polling station by polling station.

Comprehensive reports from the counting must be submitted by the Returning Officers. Party agents and observers must be given the opportunity to follow the counting.

International Observers

Provisions for international observers should be included in the law. They should be subject to rules similar to the rules for party agents.

Complaints

To ensure the fairness and the transparency of the process there must be possibilities for complaints and appeals.

I have suggested that everybody denied voter registration, party registration, candidacy or voting to be given information about the right to complain or appeal and how to do it.

The voters list, list of registered parties and candidates and the election results must be published in a suitable way and clear notices must be given how to complain.

The time limits for the entire complaints and appeal process must be clearly defined in the law.

The procedures for dealing with complains must be fair, reliable and fast. The committee will suggest that the Chief Justice assigns certain courts to process the complaints. Therefore, it is very essential that the courts are given sufficient resources to be able to process the complaints in the prescribed way.

GAM/55/005 - ASSISTANCE TO THE REFORM OF ELECTORAL SYSTEMS AND PROCESSES AND CONSTITUTIONAL REVIEW

TERMS OF REFERENCE FOR PROJECT PERSONNEL

CONSULTANT ON THE ELECTIONS LAW REVIEW

BACKGROUND

One of the activities to be undertaken under the AFPRC's Programme of Rectification and Transition to Democratic Rule in The Gambia is the review of the elections legislation, by an Ad Hoc Committee to be appointed by the Government, as the regulatory basis for the election process. The United Nations Development Programme (UNDP) has agreed to provide initial financing for the funding of an Elections Law Expert to assist the Committee.

PROJECT IMPLEMENTATION MODALITY

The Elections Law Expert and other project personnel will initially be fully financed by UNDP. Donor contributions through the UN or in a parallel financing modality will be utilized for this and other experts in the areas covered by the project, as well as supplies for the organisation of the electoral process.

Specific revisions to the current project will take place on receipt of those contributions.

NATURE OF ACTIVITIES

The Elections Law Expert will work in close co-ordination with the Ad Hoc Committee and advise the members generally on the review of the Elections Legislation.

Without limiting the generality of the foregoing, the expert will:

Assist in appraising and reviewing the existing administrative structures, as reflected in the legislation, with a view to determining their adequacy for the conduct of transparent, free and fair elections.

Assist in examining the elections procedures including the registration of voters, and the nomination and selection of candidates in order to identify procedural weaknesses, administrative bottlenecks, etc, which impede the efficiency of the process.

Review the administrative arrangements for the conduct of the elections.

Consult with the Electoral Commission on the Constitutional Provisions for the Institutional Framework for the conduct of the elections.

Revise the elections legislation, including subsidiary regulations, rules and bylaws in the light of findings made in relation to the above, and fill any omission.

Advise on the feasibility of consolidating all elections legislation i.e. referendum, parliamentary and presidential elections, and local government elections.

Prepare final draft legislation after all comments and observations thereon have been received.

LOCATION AND DURATION OF ASSIGNMENT

Banjul with travel to the provinces if required for 2 months

he committee shall

- a) examine the administrative structures for the conduct of elections with a view to determining their adequacy for the conduct of transparent free and fair elections;
- b) examine and study the procedures in place for the registration of voters and candidates for elections, including the manner in which the qualifications and disqualifications of such voters and candidates are determined with a view to removing any systemic and procedural weaknesses;
- c) review the appeal process relating to the registration of voters and the nomination and registration of candidates with a view to making it more efficient, expeditious and transparent;
- d) appraise the administrative arrangements for the conduct of elections for purposes of identifying obstacles or any weaknesses which hinder the efficiency and security of the process;
- e) consult with the Constitutional Review Commission on matters concerning the institutional framework for the conduct of elections;
- f) invite submissions and representations from members of the general public and civil society organisations in particular;
- g) review and revise the election legislation, including subsidiary legislation in the light of findings made in relation to paragraphs (a) to (f) and endeavour to consolidate such legislation in a comprehensive manner; and

prepare a report relating to the work it has undertaken with respect to these Terms of Reference which it shall submit to the Armed Forces Provisional Ruling Council together with the draft electoral legislation within a period of four months from the date of its appointment.

For the purposes of these Terms of Reference, "elections" includes Presidential, Parliamentary, Local Government and Chiefs elections.

Dated this 27th day of February, 1995.

Cpt, YAKA A.J.J. JAMWA
Head of State and Chairman of
the Armed Forces Provisional
Ruling Council

PROPOSED STRUCTURE OF THE ELECTORAL LAW

- 1 General provisions
- 2 Electoral administrative bodies
 - Independent Electoral Commission
 - Returning officers
 - Presiding officers
 - Responsibilities
- 3 Constituencies
 - definitions
- 4 Suffrage
 - qualifications
- 5 Voter registrations
 - procedures
- 6 Political parties
 - registrations
 - party agents
 - rights and responsibilities of parties and agents
 - accreditation of agents
- 7 candidates
 - qualifications
 - nominations
- 8 Campaign
 - ethics
 - code of conduct
- 9 voting
 - procedures
- 10 Counting
 - procedures
- 11 Complaints and appeals
 - procedures
 - time frames
- 12 Electoral Offences
- 13 International observers
 - rights and responsibilities
 - accreditation

