

People's Access to Information: West Africa Regional Workshop

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Accra, 19 – 20 January 2009

People's Access to Information and the Constitution of the Republic of the Gambia

Key Provisions

Article 25 of the Constitution of the Republic of the Gambia, 1997 guarantees a list of rights and freedoms, but there is no specific reference to the right to information. Given below is a quick compilation of various constitutional provisions that –

- a) require public authorities and actors to furnish information to an individual or persons directly or
- b) have a bearing on the constitutional imperatives of transparency and accountability.

#	Chapter / Theme / Article
<u>Preamble</u>	
1	<p>The Preamble clearly states that all power emanates from the people who are sovereign. Freedom, justice, good governance, probity and accountability are highlighted as the fundamental values underpinning the Constitution. Participatory democracy is guaranteed. Entrenching good governance, ensuring people's participation in decision-making processes and securing accountability of government institutions and functionaries – all require the creation of information flows to people if the constitutional vision and the guarantees promised are to be realised.</p> <p><i>"...We the people of The Gambia have accomplished a great and historic task. We have had our say on how we should be governed. For this Constitution contains our will and resolve for good governance and a just, secure and prosperous society.</i></p> <p><i>...This Constitution provides for us a fundamental Law, which affirms our commitment to freedom, justice, probity and accountability. It also affirms the principle that all power emanate from the sovereign will of the people.</i></p> <p><i>The fundamental rights and freedoms enshrined in this Constitution will ensure for all time respect for and observance of human rights and fundamental freedoms for all, without distinction as to ethnic considerations, gender, language or religion...This Constitution guarantees participatory democracy that reflects the undiluted choice of the people. The functions of the arms of government have been clearly defined, their independence amply secured with adequate checks and balances to ensure that they all work harmoniously together toward our common good..."</i></p>
<u>Chapter 1: The Republic</u>	
2	<p>Article 1(2) recognises once again that sovereignty resides in the people of the Gambia. People are the masters in a democracy and the functionaries of government are but servants of the people. If this is the basic principle, all laws rules, regulations and practices that create obstacles in the way of people's access to information held by government bodies are violative of the <i>grundnorm</i>. Effective systems and credible processes must be put in place without further delay in order to restore the power of information to people who are its rightful owners.</p> <p><i>"(2) The Sovereignty of The Gambia resides in the people of The Gambia from whom all organs</i></p>

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of government derive their authority and in whose name and for whose welfare and prosperity the powers of government are to be exercised in accordance with this Constitution.”

Chapter 4: Protection of Fundamental [Rights] and [Freedoms]

3 Protection of the right to personal liberty

Under Article 19(2), any person who is arrested or detained by law enforcement authorities has the right to know the reasons for his/her arrest or detention. He must also be informed about his/her right to legal representation.

“(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language that he or she can understand, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner.”

4 Provision to secure protection of the law and fair trial

Article 24(3)(b) guarantees every person charged of a criminal offence to be informed of the nature of offence that he/she stands accused of committing.

“(3) Every person who is charged with a criminal offence—

...

(b) shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged...”

5 Provision to secure protection Of the law And fair play

Article 24(3)(f) guarantees the right of every person under trial to have an interpreter if he/she cannot understand the language in which the trial is being conducted. This assistance will be provided by the State free of cost.

“(3) Every person who is charged with a criminal offence—

...

(f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial of the charge; and, except with his or her own consent, the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impractical and the court has ordered him or her to be removed and the trial to proceed in his or her absence.”

6 Freedom of speech:

Subject to reasonable restrictions, Article 25(1) guarantees every person the right to freedom of speech and expression. For any person in the Gambia to exercise his/her freedom of speech with regard to the policies or actions of government or public bodies access to information about such policies or actions is indispensable. Access to government held information is therefore a precondition for the exercise of the right to free speech. This access must be guaranteed by law if the right to free speech is to be exercised in a meaningful manner.

“(1) Every person shall have the right to—

(a) freedom of speech and expression, which shall include freedom of the press and other media...

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	<p>...</p> <p><i>(4) The freedoms referred to in subsections (1) and (2) shall be exercised subject to the law of The Gambia in so far as that law imposes reasonable restriction on the exercise of the rights and freedoms thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court."</i></p>
7	<p><u>Political rights</u></p> <p>Article 26(1)(a) guarantees every citizen the right to participate in public affairs. In order for citizens to participate in public processes in a meaningful manner they must have access to information about those processes and affairs. A sound legal system should guarantee citizens access to information about public affairs in the Gambia.</p> <p><i>"Every citizen of The Gambia of full age and capacity shall have the right, without unreasonable restrictions-</i></p> <p><i>(a) to take part in the conduct of public affairs, directly or through freely chosen representatives..."</i></p>
8	<p><u>Rights of children</u></p> <p>Article 29 in part creates either a right for children to know the identity of their parents. This is particularly beneficial for children who are abandoned or who go missing from their homes.</p> <p><i>"(1) Children shall have the right from the birth to a name, the right to acquire a nationality and subject to legislation enacted in the best interest of children, to know and be cared for by their parents."</i></p>
9	<p><u>Declaration of a state of public emergency</u></p> <p>Articles 34(1) and (3) places a duty on the President of the Gambia to inform the people about the imposition of a state of public emergency by publishing a declaration to that effect in the Gazette. When the President revokes the emergency a similar publication is required.</p> <p><i>"(1) The President may, at any time, by Proclamation published in the Gazette, declare that-</i></p> <p><i>(a) a state of public emergency exists in the whole or any part of The Gambia;</i></p> <p><i>(b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency....</i></p> <p><i>(3) A declaration made under subsection (1) may at any time be revoked by the President by Proclamation which shall be published in the Gazette."</i></p>
10	<p><u>Persons detained under emergency power</u></p> <p>Article 36(1)(a) recognises the right of every person detained by law enforcement authorities during a state of public emergency of his/her right to be told of the grounds for such detention. Clause (b) of the same Article requires that the spouse, parent or child of the person detained be informed of such detention. Where no such close relation of the detainee can be found, under Clause (c) the law enforcement authorities are required to inform him/her of the same. The detainee has the right to give the name and particulars of any person whom he/she would like to be informed of the fact of the detention.</p>

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	<p><i>“(1) Where a person is detained by virtue of or under any Act of the National Assembly referred to in section 35, the following provisions shall apply-</i></p> <p><i>(a) he or she shall, as soon as reasonably practicable, and in any case not later than twenty four hours after the commencement of the detention, be furnished with a statement in writing specifying in detail the grounds upon which he or she is detained; and the statement shall be read, and, if necessary, interpreted, to the person who is detained in a language which he or she understand...</i></p> <p><i>(b) the spouse, parent, child or other available next-of-kin of the person detained shall be informed by the authority effecting the detention and shall be permitted access to the person concerned at the earliest practicable opportunity, and in any case not later than twenty-four hours after the commencement of the detention...</i></p> <p><i>(c) where none of the persons mentioned in paragraph (b) can be traced or none of them is willing and able to see the person detained, the person who is detained shall be informed of this fact within twenty-four hours of the commencement of the detention and he or she shall be informed of his or her right to name and give particulars of some other person who shall have the same right of access to the person who is detained as any of the persons mentioned in paragraph (b)...</i>”</p>
11	<p><u>Persons detained under emergency power</u></p> <p>Article 36(1)(d) places an obligation on the authority detaining any person during a state of public emergency to inform the people of the Gambia of the details of every person held in such detention and the specific provisions of the law under which he/she has been detained. This information must be published in the Gazette within 14 days</p> <p><i>“(1) Where a person is detained by virtue of or under any Act of the National assemble referred to in section 35, the following provisions shall apply-</i></p> <p>...</p> <p><i>(d) not more than fourteen days after the commencement of his or her detention, the authority which effected the same shall give notice in the Gazette stating that he or she has been detained and giving particulars of the provision of law under which the detention is authorised...</i>”</p>
<p><u>Chapter 5: Representation of the People</u></p>	
12	<p><u>Functions of the Independent Electoral Commission</u></p> <p>Article 43(1)(e) requires the Electoral Commission to collect a full declaration of assets from candidates contesting elections at the time of nomination. It is not clear whether the voters shall have access to this declaration prior to the day of polling or later.</p> <p><i>“(1) Subject to the provisions of this Constitution the Independent Electoral Commission shall be responsible for-</i></p> <p>...</p> <p><i>(e) ensuring that candidate in elections make a full declaration of their assets at the time of nomination.”</i></p>
13	<p><u>Functions of the Independent Electoral Commission</u></p> <p>Article 43(1)(2) requires the Electoral Commission to publicly announce the results of all elections and referenda so that the people are fully aware of the outcomes of such public processes.</p>

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"(2) The Commission shall announce the results of all elections and referenda for which it is responsible."

Chapter 7: National Assembly and Legislation

14 **Sittings of the National Assembly**

Article 98(2) requires that all sittings of the National Assembly shall be open to the public unless decided otherwise. The Government tables the following documents in the National Assembly as required by various provisions of the Constitution:

- annual reports of the Independent Electoral Commission [Article 42(9)];
- annual financial estimates of the Independent Electoral Commission (with or without comments from the President) [Article 44];
- reports from the Secretary of State for the creation of new Seyfo districts [Article 58(2)];
- reports from tribunals established to investigate misconduct of the President [Article 67(3)];
- reports requested of the Vice-President or Secretary of State [Article 77(4)];
- explanatory memoranda accompanying Bills [Article 101(2)];
- receive, review or examine: reports on the activities of the Government and such other reports as are required to be made in accordance with this Constitution [Article 102(a)], proposals for the raising of revenue by the Government [Article 102(b)], and the accounts and expenditure of the Government and other public bodies funded by public moneys and the reports of the Auditor General thereon [Article 101(c)];
- estimates by the Executive of the revenue and expenditure of The Gambia for the following financial year [Article 152];
- estimates of expenditure for the National Audit Office [Article 159(4)];
- annual reports of the Central Bank on its activities and business [Article 162(10)];
- annual reports by the Ombudsman [Article 163(2)(f)];
- annual reports of the Public Service Commission on the performance of its functions [Article 174(6)];
- annual reports of Public Enterprises on their business and operations in the previous year; [Article 175(5)] and
- reports of the Ombudsman on contraventions of Code of Conduct [Article 226].

As these documents are public documents, people ought to be able to access these documents from the Secretariat of the National Assembly.

"(2) unless the National Assembly otherwise directs for good cause, the sittings of the National Assembly shall be open to the public."

15 **The Legislative Power**

Articles 100(6) requires the President to publish in the Gazette the text of all laws

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	<p>passed by the National Assembly after he appends his/her signature to it. Under clause (6) of the same article a law does not come into operation if it has not been publicised in the Gazette.</p> <p><i>“(6) The President shall cause Acts of the National Assembly to be published in the Gazette within thirty days of assent.</i></p> <p><i>(7) No Act of the National Assembly shall come into operation until it has been published in the Gazette, but the Act or some other Act of the National Assembly may provide for the postponement of its coming into force.”</i></p>
16	<p><u>Introduction of Bills and motion</u></p> <p>Article 101(3) requires that all Bills (except where it is urgent) introduced in the National Assembly be published in the Gazette at least 14 days in advance. The Gazette being a public document ought to be accessible to people although the efficacy of this system needs to be tested in reality.</p> <p><i>“(3) No Bill, other than a Bill referred to in sub-section (5), shall be introduced into the National Assembly unless it has been published in the Gazette, and such publication has been made at least fourteen days before the date of its introduction:</i></p> <p><i>Provided that where the President certifies that the enactment of the Bill is required in the public interest as a matter of urgency, the Bill may be introduced notwithstanding that it has not been published fourteen days beforehand, but the Speaker shall, on the introduction of the Bill, cause a vote to be taken in the National Assembly without debate on a motion to give consideration to the Bill notwithstanding that the said period of fourteen days has not expired.”</i></p>
<p><u>Chapter 9: Finance</u></p>	
17	<p><u>Functions of the Auditor General</u></p> <p>Articles 160(1)(c), (d) and (e) elucidate the process regards the tabling and publication of audit reports prepared by the Auditor General of the Gambia. There is an express requirement in the Constitution that all audit reports relating to the accounts of the Government must be published in order to inform the people about the findings.</p> <p><i>“(1) The Auditor General shall-</i></p> <p>...</p> <p><i>(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 enterprises;</i></p> <p><i>(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 National Assembly on the accounts and draw 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;</i></p> <p><i>(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 have been discussed in the National Assembly, cause the same to be published for public information:</i></p> <p><i>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;...”</i></p>

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<u>Chapter 18: Commissions of Inquiry</u>	
18	<u>Commission of Inquiry</u> Article 200(3) requires that all Commissions of Inquiry hold its sittings in public. This implies that any person is entitled to attend the proceedings unless specifically excluded by the presiding Commissioner. <i>“(3) Except as may be ordered by the presiding Commissioner in the interest of public morality, public safety or public order, the proceedings of a Commission of Inquiry shall be held in public: Provided that the presiding Commissioner shall be entitled to exclude any particular person or persons for the preservation of order.”</i>
19	<u>Publication of inquiry report</u> Article 203 requires the President to publish the report of a commission of inquiry along with a statement of action taken, if any. If no action is taken then reasons for not doing so must be given. If the President finds it fit not to publish the report for reasons of national security or for protecting the public interest then a statement to the effect must be published. <i>“On receipt of the report of a commission of Inquiry – (a) the President shall within six months publish the report and his or her comments on the report, together with a statement of any action taken, or the reason for not taking any action, thereon; or (b) where the President refuses to publish the report for reasons of national security or otherwise in the public interest, he or she shall, within six months, publish a statement to that effect.”</i>
20	<u>Freedom and responsibility of the media</u> Subject to Article 209, Articles 207(1) and (3) guarantee the media their independence and the freedom to publish. For the media to publish news about the actions and decisions of the Government it must have access to relevant information. Systems must be created to maintain credible information flows o the media. <i>“207. (1) The freedom and independence of the press and other information media are hereby guaranteed. ... (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. ... 209. The provisions of sections 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.”</i>
<u>Chapter 20: Directive Principles of State Policy</u>	
21	<u>Political and Social objectives</u>

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	<p>Articles 214(5) and 216(5) state that the Government has a duty to foster accountability and transparency at all level of is functioning. In order for this to happen the Government must put in place an effective information access system.</p> <p><i>"214 (5) The Government, with due regard to the principles of an open and democratic society, shall foster accountability and transparency at all levels of government..</i></p> <p><i>216(5) The Government, with due regard to the principles of an open and democratic society, shall foster accountability and transparency at all levels of government.)"</i></p>
<p><u>Chapter 21: Code of Conduct for Public Officers</u></p>	
22	<p><u>Declaration of Assets</u></p> <p>Articles 223(1) and (5) require public officers and the Ombudsman to make a full declaration of all properties, assets and liabilities regularly. It is not clear whether people of the Gambia shall have access to these declarations.</p> <p><i>"(1) A public officer to whom this section applies shall submit to the Ombudsman a written declaration of all property and assets owned by him or her, and of liabilities owed by him or her, whether directly or indirectly-</i></p> <ul style="list-style-type: none"><i>(a) within six months of the coming into force of this Constitution;</i><i>(b) at the end of every two years;</i><i>(c) on ceasing to hold public office.</i> <p>...</p> <p><i>(5) The Ombudsman shall submit his or her declaration of assets to the Finance and Public Accounts Committee of the National Assembly."</i></p>
<p><u>Chapter 22: Amendment of the Constitution</u></p>	
23	<p><u>Alteration of this Constitution</u></p> <p>Articles 226(2)(a) and (4)(a) require that all proposals to amend the Constitution must be published in the Gazette, first, three months in advance and a second time at least then days before they are introduced in the National Assembly.</p> <p><i>(2) Subject to subsection (4), a bill for an Act of the National Assembly under this section shall not passed by the National Assembly or presented to the President for assent unless-</i></p> <ul style="list-style-type: none"><i>(a) before the first reading of the Bill in the National assembly, the Bill is published in at least two issues of the Gazette, the latest publication being not less than three months after the first, and the Bill is introduced into the National Assembly not earlier than ten days after the latest publication...</i> <p>...</p> <p><i>(4) A Bill for an act of the National Assembly altering any of the provisions referred to in subsection (7) shall not be passed by the National Assembly or presented to the President for assent unless-</i></p> <ul style="list-style-type: none"><i>(a) the Bill is published and introduced in the manner required by paragraph (a) of subsection (2)...</i>