



## **EISA Election Observation Mission to the 2021 Presidential Election in The Gambia**

### **Preliminary Statement**

#### **1. Introduction**

At the invitation of the government of the Republic of The Gambia, EISA deployed a short-term election observer (STO) mission to the 04 December 2021 Presidential election in The Gambia.

The mission was composed of 15 international observers from 13 African countries, drawn from Election Management Bodies (EMBs), Civil Society Organisations (CSOs), and academia. The EISA IEOM is led by His Excellency John Dramani Mahama, former president of the Republic of Ghana, deputised by EISA's Executive Director, Baidessou Soukogue and supported by a coordination and technical team. Observer teams were deployed in seven (7) teams to six (6) regions to observe key processes including the electoral campaigns, pre-polling, election day and limited post-election activities.<sup>1</sup> The mission will remain in The Gambia until 09 December 2021.

Since its arrival in The Gambia, the EISA IEOM has interacted with various stakeholders including the Independent Electoral Commission (IEC), The Judiciary (Chief Justice), the Gambia Police Force, presidential candidates, National Human Rights Commission (NHRC), the Gambia Press Union (GPU), Civil Society Organisations (CSOs), West African Network for Peacebuilding (WANEP), and CSO Coalition on Elections. The EISA Mission closely coordinated with other IEOMs in the country.

EISA Mission's assessment of the electoral process is based on the principles and obligations for democratic elections stipulated in the following international benchmarks: the African Union (AU) Declaration on the Principles Governing Democratic Elections; the African Charter on Democracy, Elections and Governance (ACDEG); the Principles for Election Management, Monitoring and Observation (PEMMO); and the legal framework for elections in The Gambia. EISA's observation methodology is guided by the Declaration of Principles for International Observation (DOP) and its attendant code of conduct for observers.

This statement presents a summary of the preliminary findings, conclusions and recommendations of the EISA IEOM. It is being issued when the final results have been announced. The Mission however notes that the final results sheet was only signed by

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<sup>1</sup> The six regions are Banjul, Kanifing Municipal Council (Kanifing), West Coast (Brikama), North Bank (Kerrewan), Central River (Janjanbureh) and Upper River (Basse).

representatives of two candidates. EISA will issue a final report covering the entire electoral process and recommendations for future improvements at a later stage.

## **2. Political environment:**

The 04 December 2021 presidential election was the sixth election to be held since the return to democratic rule following the 1994 military coup and the first in the post Jammeh era. Voters cast their ballots for six presidential candidates, whom were all male.

The Mission notes the constitutional, electoral, institutional, transitional justice and security sector reforms initiated by the government since 2017, and priorities for the government.

Despite progress in initiating reforms, the mission notes that some of these reforms remain outstanding at the time of the 2021 election. Discussions regarding a new Constitution appear to have stalled, and the EISA IEOM also notes that implementation of both security sector reforms, and the recommendations of the Janneh Commission remain unresolved. The delay in submission of the TRRC report to the government has stalled delivery of justice, reparations and overall reconciliation processes for the victims of atrocities allegedly committed by the Jammeh regime.

The Mission applauds progress in the provision and protection of human rights in the country. This was through the establishment of the National Human Rights Commission to promote and protect human rights. An Access to Information law was also enacted in August 2021. In the context of elections, granting the right of access to information enhances transparency in the process.

The pre-electoral environment has been largely peaceful with a few skirmishes reported. However, the Mission did receive reports of an increase in incidences of hate speech along tribal lines in the period preceding the election. While the law provides for freedom of speech, rhetoric from political leaders incited supporters to hostility and violence.

## **3. Legal Framework**

The 2021 presidential election was governed by the Constitution of 1997, as amended in 2001; the Electoral Act of 1996 as amended and other guidelines which include the Code on Election Campaign Ethics and Election petition rules.

The Constitution recognises and guarantees fundamental rights and freedoms necessary for democratic participation of citizens in an electoral process.

The Elections Act makes provisions for all technical aspects of the electoral process including registration of political parties, the registration of voters, nomination of candidates, the conduct of polls, election campaigns and announcement of the results. The Mission therefore acknowledges

that this Act provides for citizen participation, equality in voting by an informed electorate and sufficient basis for the conduct of competitive elections.

The legal framework does not make provision for public funding of political parties and campaigns as anticipated in section III (g) of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa.

#### **4. Electoral System**

The Gambia employs the 'First-Past-The-Post' system (FPTP) with a five-year Presidential mandate.

Elections in The Gambia are conducted using marbles ('ballot tokens'). Each voter receives a marble and places it in a tube on top of a sealed drum (which serves as a ballot box) that corresponds to the candidate the voter is voting for. The drums are painted in different colours corresponding to the party affiliation of the candidate. A picture of the candidate is also affixed to the corresponding drum. According to the IEC and the other stakeholders met by EISA IEOM the system has the advantages of low cost and simplicity, both for understanding how to vote and for votes counting and has extremely low chances of spoilt ballots.

This system of voting is uniquely Gambian, and EISA observers reported that voter's exhibited high levels of confidence in the system and its operation on Election Day. However, the mission notes that such a system faces challenges in the event of a large number of candidates, as provided for under the multi-party structure outlined in the Gambia's legislative framework.

#### **5. Electoral administration**

The Constitution provides for the establishment of an Independent Electoral Commission (IEC) and the procedures for appointments of its members, and it operates within the confines of the Constitution (as amended), Elections Act (as amended) and the Local Government Act 2002 (as amended). The IEC is responsible for the conduct and supervision of all electoral activities.

The members of the Commission are appointed by the President of the Republic in consultation with the Judicial Service Commission and the Public Service Commission as an independent body. Commissioners enjoy security of tenure of office and their appointment may only be removed by the President.

The Mission notes that the IEC enjoys a financial autonomy guaranteed by the Constitution with the funds consisting of monies appropriated to it by the National Assembly.

## **6. Preparedness of the Independent Electoral Commission (IEC)**

The IEC commenced preparations for the presidential election with voter registration using biometric systems, candidate nominations, civic and voter education, campaigns, accreditation of observers among others. The mission notes initial delays in implementation of activities like voter registration, as per the election calendar. This did not ultimately affect the roll out of activities in the pre-election period.

The IEC set up 1554 polling stations, recruited and trained 6078 election staff. It also procured and distributed electoral materials, and monitored campaign activities including ensuring equality in access to and coverage by the public broadcaster.

Four petitions challenging decisions of the IEC during the voter registration and nomination periods were filed in Court prior to the 2021 presidential election. The outcome of the cases as well as failure by the IEC to implement some aspects of the rulings undermines confidence in the IEC's commitment to adhere to the rule of law. As a body created through the Constitution, the IEC should at all times ensure that rulings handed down through court judgements should be respected and implemented in accordance with the law.

## **7. Voter registration:**

The Constitution provides for universal suffrage with citizens who have attained the age of eighteen (18) being eligible to vote. The IEC is responsible for conducting and supervising the registration of voters.

The Commission conducted voter registration from 29 May 2021 to 11 July 2021. On 12 July 2021, the IEC released a provisional voter register with a total of 987,484 registered voters and the register was displayed at the various registration centers from 16 to 29 August 2021. The register was displayed for verification and objections in line with the principles of transparency and access to information in the electoral process. The Mission was informed that no objections and appeals were raised.

The final voter register had a total of 962,157 voters. Of these, 545,318 (56.67%) were female while 416,839 (43.32%) were male. Voters in the 18-35 age bracket comprised 57% of the total registered voters signifying a youthful voter population in The Gambia. There was a total increase of 75,579 (8.5%) in the number of registered voters compared to 2016 when the total registered voters were 886,578.

The Mission noted the positive step by the IEC to segregate the voter register according to gender and different age sets. This allows for targeted interventions in the electoral process to improve participation.

During the voter registration process, the legality and validity of the authority given to the mayor of Banjul to issue attestations for registration purposes was challenged. The court ruled that the

mayor lacked the powers to issue attestations as the act was in contravention of Section 12(2)(e) of the Elections Act. Voters cards that were issued based on the attestations by the mayor were however not annulled. The Mission noted that, while attestation by the various authorities allows for inclusion in the voter registration process, it may be susceptible to manipulation if proper safeguards are not put in place.

The Mission noted that the number of registered voters during a national registration drive for the 2021 election was low. It observed that the 8.5% increase in registered voters over a five-year period was minimal compared to the total population of 2,416,664 and median age of the population which is 17.8.

Section 39 of the Constitution, 1997 provides for the right of every Gambian citizen, even those residing out of the country, to register and to vote. This right has however never been actualized. As a result, the IEC was taken to court over disenfranchisement of the over 200,000 Gambians in diaspora. A Supreme court ruling on 27 January 2021 ruled that they should be allowed to vote, but the IEC did not make provisions for this in the 04 December election.

## **8. Candidate nominations**

In line with the legal provisions, the nomination of presidential candidates was conducted from 30 October to 05 November 2021.<sup>2</sup> A total of twenty-six (26) candidates, thirteen (13) each from political parties and independents presented their nomination papers.

Section 49 of the Elections Act, 2001, as amended provides for scrutiny of the nomination papers by any registered voter. Accordingly, the date for public scrutiny of the nomination papers was 06 November 2021 from 08:00 to 12:00. The Mission was informed that sixty-six (66) voters scrutinised the candidate nomination papers, and three (3) objections were received and dismissed by the Returning Officer.

The IEC validated the nomination of six (6) candidates all of whom were male. Following the nomination, the Commission received and considered three (3) appeals from disqualified candidates which it dismissed. The three candidates challenged IEC's decision in the high court and the Court ruled in favour of the appellants by declaring that the IEC acted in contravention of the Elections Act. The IEC was ordered to receive fresh and additional nomination documents from the candidates. The Commission appealed the High Court's decision on one case which is still pending in court.

For the first time in the history of the country, all the six presidential candidates signed a code of conduct on 11 November 2021. By signing, they pledged their support to peaceful elections in the pre-election, election and post-election periods.

Stakeholders consulted by the EISA Mission expressed concerns about the time allocated to scrutinise the nomination papers before the conclusion of the nomination process, limiting the

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<sup>2</sup> Section 46 of the Constitution, 1997 provides for the determination of the date and conduct of nomination by the IEC

opportunity to verify the bona fides of all contesting candidates. This restricted the right of access to information and ultimately impacted on the transparency of the process. In addition, the period between nomination and start of campaign was two days, further impacting on the right to effective remedy as it did not provide ample time for filing and adjudication of petitions arising from the nomination process.

## **9. Campaigns**

The rights of candidates and political parties to campaign are guaranteed by the Constitution and the Electoral Law and the IEC determines the period, after nominations, for campaigns to be held. Campaigns kicked off on 09 November 2021 and ended on 02 December 2021. Prior to this, the IEC conducted the campaign reconciliation program on 07 and 08 November 2021 together with the candidates' representatives and the police, to avoid any clashes that would arise.

The Mission notes that political parties and candidates generally conducted their campaigns in a peaceful and orderly manner. Candidates complied with the requirements to submit a request to the IEC indicating the date, time and place of holding of the demonstrations and processions. The Mission commends the IEC and the Police for providing sufficient security to all the candidates.

Police officers were visibly present during most campaigns activities and undertook their duties professionally.

The legal framework does not provide for public funding for political parties or campaigning. There are no ceilings on campaign expenditure and disclosure of candidate campaign funding is not mandatory. There is therefore no safeguard against the undue influence of money in Gambian politics.

The EISA IEOM believes that party and campaign finance as well as control of campaign expenditures should be taken into account in the legal reforms, so as to guarantee a level playing field and protect the electoral process from undue funding.

## **10. Media environment**

Freedom of speech and of expression which includes freedom of the press and other media is guaranteed in the constitution. The Mission notes that Gambia's media landscape has diversified since Jammeh's departure. Press freedom is now guaranteed and enforced and the legal framework provides for fair access to the media for all political parties and candidates during the electoral period. The Gambian media landscape is dominated by the state broadcaster, Gambia Radio and Television Services (GRTS), which broadcasts throughout the country.

The Mission commends the equal coverage of campaign activities for all contesting candidates and the overall compliance by the media with the media rules issued by the IEC. GRTS allocated to each of the six (06) candidates, free of charge for airtime, a "Party Political Broadcast" of up to 10 minutes of TV and 10 minutes of radio time (including all languages), during the election

campaign period. The candidates met by the Mission did not raise any complaints about the public broadcaster. Private radio also covered the campaign.

However, there was no provisions for special voting for media personnel on duty on election day. It is important to put in place mechanisms to ensure enfranchisement of all voters in future elections.

### **11. Gender, youth and voters with disability**

The Gambia is a signatory to international and regional human rights conventions that protect and promote the rights of the youth, women and people living with disabilities, all of which provide for equality before the law.

At 1,218,124 million, women in The Gambia comprise 50.41% of the total population<sup>3</sup> and 57% of the total registered voters. Their political participation is however low. None of the six (6) presidential candidates was female and they only comprise 9% of the national assembly.

Similarly, political participation of Persons Living with Disability (PLWD) is low. The Mission noted the passage of the Persons with Disability Bill in July 2021. This is a first step towards protecting their rights and promoting their political participation. The Mission further noted that PLWD were given priority on election day and assistance given to those in need in line with the election procedures.

### **12. Voter education**

Civic and voter education in The Gambia are the mandates of the National Council for Civic Education (NCCE) and IEC, respectively. In implementing their activities, the two institutions collaborated with one another as well as several CSOs.

Voter education strategies included the use of billboards, jingles, radio and television panels as well as social media.

The Mission noted that the average time to process a voter on election day was between 0-3 minutes. This coupled with the limited number of assisted voters and invalid ballots could be indicative of relatively widespread voter education.

### **13. Civil Society Organizations**

The Gambia has a robust civil society which operates in a relatively free space, compared to the previous regime. CSOs actively participated in the electoral process through voter education, peacebuilding, domestic observation and setting up of situation rooms to ensure peaceful elections through data collection, analysis and mitigation, and were able to operate without any

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<sup>33</sup> World Bank 2020 Statistics <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=GM> accessed on 2 November 2021.

undue restrictions. EISA observers reported the presence of domestic observers in most polling stations visited.

#### **14. Election day observations**

The EISA IEOM observed opening and counting procedures in 10 polling stations and voting at 95 polling stations across six (6) regions in the country.

The election was held in a generally calm and peaceful environment with EISA observer's not reporting any incident.

Overall, observers reported that all election day procedures were conducted in line with stipulated procedures.

##### **Opening**

Most polling stations opened on time with no significant delays reported. The polling stations were laid out in an appropriate manner that allowed free flow of voters and guaranteed secrecy of the ballot. All opening procedures including display of empty ballot drums and correct sealing and placement of the boxes, were conducted professionally and observers found the conduct of polling staff to be "very good" and "professional".

##### **Voting**

Voting procedures were adhered to, with polling staff demonstrating a high level of competency and professionalism. The mission notes with satisfaction that election materials were available in sufficient quantities throughout the voting process. There were isolated incidents of voters being turned away for showing up at the wrong polling station, but were then directed to their correct polling station.

Observers reported that over 90% of polling stations visited were accessible to PLWDs further enhancing inclusivity in the process. In two of the polling stations, the ground was not levelled or flattened accordingly thus limiting access to voters with limited mobility. All elderly, pregnant and nursing mothers were given priority at the polling stations

##### **Participation of women**

In as much as there was no female candidate contesting the presidential election, the EISA IEOM observed the participation of women as election officials, party agents and observers in equal basis as men. The Mission however notes the underrepresentation of women in the election administrative structures.

##### **Observers and Party agents**

EISA observers reported that in most polling stations visited, party and candidate agents were present and were well informed about the electoral process and their role in promoting the integrity of the process. However, out of the six contesting parties, the NPP and the UDP are the only



parties that managed to consistently deploy agents at all polling stations where EISA observers were present.

In addition to party agents, the EISA IEOM observed the presence of domestic and international observation groups at most polling places visited, contributing significantly to the overall transparency of the process. Observers and agents adhered to their roles and were able to perform their duties without any restrictions.

### **Security of the ballot**

Security officials were present in all polling stations visited, adhering to their role of safeguarding the elections without interference or any impediment to the free movement of voters.

### **Closing and counting**

EISA observers were present at 10 polling stations at the close of polls. The IEOM reported that the process was peaceful, orderly, efficient and conducted in a transparent manner, free of any irregularities. Polling officials demonstrated adequate knowledge of counting procedures indicating sufficient training conducted by the IEC.

All polling stations closed on time and there were no reports of voters in line at the close of the polls or not being permitted to vote.

Procedures relating to reconciliation of used and unused tokens were adhered to and uniformly and consistently applied at all polling stations visited.

All party agents present received copies of the result sheets which were also posted at the observed polling stations.

## **Recommendations**

### **Government of the Republic of the Gambia**

1. To revisit the constitutional review process in order to address the gaps in the legal framework for elections. These include:
  - To consider the introduction of Presidential term limits.
  - Review the suitability of the current FPTP system and consider a majority system (50%+1) as an alternative.
  - To respond to calls for fundamental reforms of the Elections Act in line with regional and continental standards.
  - To provide for affirmative action to promote the participation and representation of vulnerable and underrepresented groups such as women, youth and People with Disabilities (PWDs).
  - To consider introduction of laws regulating campaign financing.
  - To consider public funding for political parties.

2. To implement the TRRC report recommendations to ensure justice and restitution for the victims of Jammeh's era.
3. To fast-track implementation of Security Sector Reforms and the report of the Anti-corruption commission. To also consider establishment of a permanent Anti-Corruption Commission.

## **IEC**

- To put in place requisite mechanisms to allow for diaspora voting.
- To enhance the capacity of the Commission through setting up and staffing legal and statistics departments in the Commission.

## **Conclusions**

The EISA IEOM commends the people of the Gambia on conducting elections in a peaceful and transparent manner. The mission encourages the country to maintain the good practices observed.

The mission appeals to candidates to maintain peace and use the legally instituted channels to address any grievance that may have.