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COUNTRY
REPORT
2021/07

MARCH
2021

REPORT ON CITIZENSHIP LAW: THE GAMBIA

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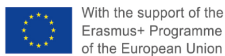
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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School

Report on Citizenship Law: The Gambia
RSCAS/GLOBALCIT-CR 2021/7
March 2021



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Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)

www.eui.eu/RSCAS/Publications/
cadmus.eui.eu

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Report on Citizenship Law The Gambia

Gaye Sowe and Maria Saine

1. Introduction

The Constitution of the Republic of The Gambia, 1997¹ recognises the importance of citizenship by providing for it in Chapter III. In The Gambia, one can be a citizen by birth, by descent, by marriage or by naturalisation. Certain constitutional rights are tied to citizenship. For instance, and similar to almost all jurisdictions, to be eligible to vote and be voted for, one must be a citizen of The Gambia. Further, to be eligible to run for the office of president, one has to be a Gambian citizen by birth. Persons holding dual citizenship are also barred from running for the office of president and cannot hold the position of minister in the government.

This report covers issues of citizenship in The Gambia from pre-independence onwards. Since the emergence of The Gambia as an independent state on 18 February 1965, the issue of citizenship has continued to be linked to various socio-political issues. The report seeks to map the main events and turning points in the narrative of Gambia's changing citizenship regime. The focus will be on the citizenship regime from colonial rule, post-independence and the current debates on citizenship in the country.

Citizenship in The Gambia is deeply influenced by British law on citizenship. It is at the same time being transformed by demographic and political shifts. In recent times, there have been attempts to make changes to the current provisions on citizenship in the 1997 Constitution. One of such propositions is to make provision for automatic citizenship for all persons born in the country regardless of whether their parents are Gambians or not. Another proposed change is to reduce the number of years required for a person married to a Gambian citizen to register for citizenship in the country from 7 years to 5 years.²

This report is organised as follows. The first part sets out the historical background of the legal framework of The Gambia's citizenship regime. It looks at both the colonial history and the constitutional history of The Gambia's citizenship laws. The second part looks at the current citizenship regime. It focuses both on a textual reading of the statutory provisions as well as the legal and political context informing the various and related amendments. The third part looks at the recent and current political debates and reform plans and is followed by the conclusion of the report.

¹ The 1997 Constitution was approved by national referendum on 8 August 1996, and entered into force on 16 January 1997 (Act No. 1 of 1997). Hence it is referred to as the Constitution of The Gambia, 1997.

² Report of the Constitutional Review Commission on the Draft Constitution for the third republic of The Gambia, 30th March 2020.

2. Historical Background

It is undisputed that The Gambian legal system and most of its laws are indelibly marked by colonial rule. The legal regime on citizenship in The Gambia is also unable to escape the trappings of its colonial history. To better understand the citizenship regime of The Gambia, its historical context needs to be looked at. The historical evolution of citizenship law in The Gambia needs to be looked at from two different periods – the period of colonial rule and the post-independence period.

2.1 Pre-colonial and colonial era

Before the establishment of British colonial administration in The Gambia, the inhabitants (i.e. the Mandinka, Fula, Wolof, Jola, Serahuli and Serer etc.) had an indigenous system of administration of justice administering both customary and sharia laws.³ Customary law, which is unwritten, is indigenous to the said tribes and was the only applicable law before the advent of Islam in The Gambia. Sharia law on the other hand was written but it was not indigenous to the people of The Gambia. Both laws (i.e Customary and Sharia), however, applied to the said communities side by side.

By the 15th Century, the area now known as The Gambia started seeing the arrival of Europeans who were involved in trading. This was followed by the arrival of European missionaries. The Portuguese were the first to arrive, followed by the British, French, Dutch and Courlanders (from today's Latvia). The arrival of these Europeans led to the final occupation of the area now referred to The Gambia by the British, and the establishment of the British colonial administration in the last two decades of the 19th Century. At first, the British colonial administration was limited to the crown colony it established at James Island, George Town and Banjulo Island, now referred to as Banjul. The British declared a protectorate over the hinterland when they realised the need to maintain order and abolish slave trade in the hinterland. While The Gambia Colony was administered directly, The Gambia Protectorate was administered by and through traditional representatives of the people. The indigenous and traditional administrative institutions hence served as a link between British colonial administration and the natives of the protectorate.

The colonial administration passed a series of ordinances to strengthen their control of the Colony and the Protectorate. One of such ordinances was the 1894 Protectorate Ordinance which recognised the applicability of customary law and procedure throughout the Protectorate in so far as such was not “repugnant to natural justice, equity and good conscience” nor inconsistent with any written law from the time being in force in the Colony or Protectorate. This ordinance established the Protectorate over the hinterland. The Protectorate was divided into provinces and each province was made up of administrative districts.

While the application of customary law remained limited to the indigenous tribes in the provinces, the application of local colonial legislations and received English law was extended to the provinces following constitutional and political developments.

³ See generally: Flora Ogbuitepu, ‘Guide to Gambian Legal Information’, Hauser Global Law School Program, New York University, 2012 available here: <https://www.nyulawglobal.org/globalex/Gambia.html>; Patience Sonko-Godwin, ‘Ethnic Groups of the Senegambia: A Brief History’, Banjul: Sunrise Publishers, 1988; Patience Sonko-Godwin, ‘Social and Political Structures in the Precolonial Periods (Ethnic Groups of the Senegambian Region)’, Banjul: Sunrise Publishers, 1997; and Fafa Edrissa M’bai, *A Senegambian Insight*, S.I., 1992.

Under the British Nationality Act 1948, indigenous residents of The Gambia were either “citizens of the UK and colonies” (CUKCs), if born in the Colony, or “British protected persons” (BPPs), if born in the Protectorate (unless they had another nationality – such as French, derived from the surrounding former French territories).

2.2 Acquisition of Gambian citizenship at the transition to independence

All the territories within either The Gambia Colony or The Gambia Protectorate before independence formed the new state of The Gambia. The constitution of the newly independent country was promulgated by The Gambia Independence Order, 1965, and came into force on 18 February 1965.⁴

According to section 1(1) of the Independence Constitution, citizenship was automatically attributed at independence to any person (formerly a British CUKC or BPP) with one parent or grandparent born in the country:

Every person who, having been born in The Gambia, is on 17th February 1965 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of The Gambia on 18th February 1965:

Provided that a person shall not become a citizen of The Gambia by virtue of this subsection if neither of his parents nor any of his grandparents was born in The Gambia.

Section 1(2) also provided for automatic attribution to those who had naturalised locally as a CUKC in The Gambia, a procedure available under the British Nationality Act 1948:

Every Person who, on 17th February 1965, is a citizen of United Kingdom and Colonies-

- (a) Having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in The Gambia as a British subject before that Act came into force; or
- (b) Having become such a citizen by virtue of his having been naturalised or registered in The Gambia under that Act, shall become a citizen of The Gambia on 18th February 1965.

Section 2 of the Independence Constitution established rules for certain persons to be registered as citizens as of right by virtue of a connection with The Gambia before independence, including those who were themselves born in The Gambia but who did not have a parent or grandparent born in The Gambia.

2.3 Acquisition and loss of citizenship under the 1965 constitution

Section 3 of The Gambia Independence Constitution of 1965 provided for citizenship for persons born in after independence. A *ius soli* rule was adopted, providing for citizenship to be attributed at birth to any person born in The Gambia. This did not apply if the father was a diplomat or a citizen of a country at war with The Gambia; but this exclusion itself did not apply if the mother was a citizen:

⁴ Constitution of The Gambia, schedule 3 to The Gambia Independence Order, 1965, No. 135.

Every person born in The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth:

Provided that a person shall not become a citizen of The Gambia by virtue of this section if at the time of his birth—

(a) neither of his parents is a citizen of The Gambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to The Gambia; or

(b) his father is a citizen of a country with which The Gambia is at war and the birth occurs in a place then under occupation by that country.

On persons born outside of The Gambia, the Independence Constitution in section 4 stated that the child shall become a citizen of The Gambia if at that time, his father is a citizen of The Gambia and himself born in The Gambia (citizenship by descent). A woman who is married to a Gambian man and was during the time of the subsistence of the marriage a Gambian citizen was entitled to be registered as a citizen of The Gambia.⁵

A person who had acquired citizenship by registration or naturalisation (only) could be deprived of his or her Gambian citizenship if at any time after 17th February 1965, the minister was satisfied that that person had acquired by registration, naturalisation or other voluntary and formal act, other than marriage, the citizenship of any country other than The Gambia.⁶ The minister could also deprive a person of Gambian citizenship if s/he was satisfied that he or she had at any time after 17th February 1965 voluntarily claimed and exercised in a country other than The Gambia any rights available to him under the law of that country, being rights accorded exclusively to its citizens.⁷ The 1965 constitution did not, however, provide for loss of citizenship by those who had been born Gambian citizens, whether by birth in The Gambia or by descent.

The Gambia Nationality and Citizenship Act No.1 of 1965 provided further detail on acquisition of citizenship by registration and naturalisation, and on deprivation of citizenship.

2.4 Acquisition and loss of citizenship under the 1970 constitution

Soon after independence in February 1965, The Gambian head of government and prime minister, Sir Dawda Kairaba Jawara, decided on holding a referendum at which the people of The Gambia would vote on whether the country should be a republic with an executive president or not. The opposition political parties at the time campaigned against the proposed republican constitution, and the measure was defeated by 751 votes at the referendum held in October 1965, barely eight months after the country became independent.

By 1969, the republican issue became a subject of debate once more. The government had drafted another republican constitution, which, after much debate and discussion in and out of Parliament, was approved by the necessary 2/3 majority in Parliament.⁸ This was followed by countrywide campaigns in which the provisions of the new constitution were explained at some length and the various fears expressed by the electorate on the measures put

⁵ Independence Constitution, Section 5.

⁶ Independence Constitution, Section 8(1).

⁷ Independence Constitution, Section 8(2).

⁸ *The Gambia since Independence 1965-1980. 15 Years of Nationhood*, Banjul: Gambia. Information and Broadcasting Services, 1980.

in place to implement certain provisions of the constitution were put to rest was.⁹ In 1970, the republican constitution was promulgated, making The Gambia a republic with an indigenous president as head of state.¹⁰

The citizenship provisions of The Gambia Constitutions of 1965 and 1970 were practically the same. The 1970 Constitution provides that persons born in The Gambia acquired citizenship based on birth in the territory, with the same exceptions.¹¹ Persons born outside of The Gambia became citizens of The Gambia provided that at the time of birth, the person's father was a citizen of The Gambia who himself was born in The Gambia.¹² A woman who was married to a Gambian was allowed to make an application for Gambian citizenship in a manner prescribed by an Act of Parliament. The 1970 Constitution, like the Independence Constitution of 1965, provided only for women that get married or had been married to Gambian men to be able to acquire citizenship.¹³

3. The current citizenship regime

The Gambia adopted its second republican constitution in 1997, approved by a referendum held on the draft in August 1996. The 1997 Constitution establishes the current legal regime for Gambian citizenship.

President Jawara of the People's Progressive Party (PPP) had dominated the political life of The Gambia from 1965 to 1994. A military intervention in the governance of The Gambia began on Friday, 22nd July 1994 in the form of a *coup d'état* led by Yahya Jammeh, which overthrew his government.

After the coup leaders proclaiming themselves as the Armed Forces Provisional Ruling Council on 22nd July 1994, the Council proceeded to make laws in the form of Decrees, which commenced with the promulgation of the AFPRC Establishment Decree.¹⁴ This legalised the members of the Council as the only executive authority with the competence to make laws for The Gambia from 22nd July, 1994. One of the most significant offshoots of the military intervention was the suspension and modification of certain operative provisions and institutions in the 1970 Constitution that were inconsistent with the decrees and regulations that were part of The Gambia's basic laws at the time.¹⁵ Despite the suspension and modification of certain provisions of the 1970 Constitution, several laws of The Gambia remained in force mostly because of the unsuspending provisions of the 1970 Constitution.

The AFPRC appointed a Constitutional Review Commission, which produced a draft constitution, approved by national referendum on 8 August 1996 and enacted in January 1997.¹⁶ The constitution provided for unlimited five-year terms for an elected president: Yahya Jammeh remained in power as President until 2017.

⁹ *The Gambia since Independence 1965-1980. 15 Years of Nationhood.*

¹⁰ Constitution of the Republic of Gambia, Act No.1 of 1970.

¹¹ Constitution of The Gambia 1970, Section 5.

¹² Constitution of The Gambia, 1970, Section 6.

¹³ Constitution of The Gambia, 1970, Section 7.

¹⁴ Decree No. 1 of 1994; The Parliamentary Counsel was C. S. Jallow, QC, formerly Attorney-General of the British Virgin Island, West Indies.

¹⁵ Ousman A. S. Jammeh, *The Constitutional Law of The Gambia, 1965 – 2010.* AuthorHouseUK, 2011

¹⁶ Constitution of The Gambia, Act No. 1 of 1997 (entry into force 16 January 1997).

Chapter III of the 1997 Constitution contains the principal provisions on acquisition and loss of Gambian citizenship. In addition, the Nationality and Citizenship Act, now Cap 16:01 of the Laws of The Gambia, has remained in force since 1966. Section 15 of the 1997 Constitution gives the National Assembly the power to make an Act to provide for provisions on how to acquire Gambian citizenship by persons who are not eligible to become citizens, renunciation by any person of his or her citizenship of The Gambia and in general to give effect to the provisions of the Constitution. The Nationality and Citizenship Act makes provision for these in its section 11 (i.e. deprivation of citizenship of citizenship) and in section 13 (i.e. the effects of renunciation or deprivation of citizenship).

3.1 Modes of acquisition

The different modes of acquiring citizenship under the Constitution and Laws of The Gambia are: by birth, by descent, by marriage and by naturalisation. Section 8 of the 1997 Constitution provides for continuity of citizenship: all those who were citizens at the date the constitution came into force remain so, with the same status as they held before.

3.1.1 Acquisition at birth: citizenship by birth and by descent

Section 9 of the 1997 Constitution provides “every person born in The Gambia after the coming into force of this constitution shall be presumed to be a citizen of The Gambia by birth if at the time of his or her birth, one of his or her parents is a citizen of The Gambia.”

Although section 9 is headed “birth”, the *ius soli* principle of citizenship is not provided for in the current constitution; instead, a *ius sanguinis* regime is established, without discrimination based on the sex of the parent.

Section 10 of the 1997 Constitution deals with the acquisition of citizenship by descent. It caters for people who were not born in The Gambia but whose parents are Gambian citizens. Any person who was born outside the country after the coming into force of the 1997 Constitution is a citizen of The Gambia by descent if at the time of his or her birth, either of his or her parents is a citizen of The Gambia “other than by virtue of this section”. As such, it is important to note that citizenship can only be passed on from one generation to another if born outside of the country.

Both Independence Constitution of 1965 and the 1970 Constitution only recognised patrilineal descent. The 1997 Constitution of The Gambia, however, sought to reframe this gendered provision by providing for equal rights of parents to transmit citizenship to their children. However, restriction on transmission to the second generation born outside of the country remains in place.

The 1997 constitution included a presumption of citizenship for children found in The Gambia believed to be not less than seven years of age.¹⁷ This was removed by a 2001 amendment.¹⁸

¹⁷ Draft Constitution of the Second Republic of The Gambia, section 9, available at <https://www.lawhubgambia.com/draft-1996-constitution>.

¹⁸ Constitution of the Republic of The Gambia, 1997 (Amendment) Act, No.6 of 2001.

3.1.2 Marriage

Section 11 of the 1997 Constitution provides for citizenship by marriage, introducing gender equality for the first time. Persons who are married to Gambian citizens and have been ordinarily resident in The Gambia, since the marriage, for not less than seven years may apply to be registered as Gambian citizens.¹⁹ A person who satisfies this provision can also apply to be registered as a Gambian citizen even if his or her marriage to a Gambian citizen is ended either by annulment, divorce or death.²⁰ The annulment of a marriage of a person who has been registered as a Gambian citizen does not affect the person's status as a citizen of The Gambia. Thus, a person (irrespective of gender) who gets married to a Gambian and registers as a Gambian retains his or her Gambian citizenship even if his or her marriage is annulled.²¹

3.1.3 Naturalisation

Section 12 of the 1997 Constitution deals with citizenship by naturalisation. One can apply to become a naturalised citizen of The Gambia by fulfilling the requirements stipulated in section 12 of the constitution, which states:²²

- (1) Any person who has been ordinarily resident in The Gambia for a continuous period of not less than fifteen years and who satisfies the conditions set out in subsection (2) may apply, in such manner as may be prescribed by or under an Act of the National Assembly, to be naturalised as a citizen of The Gambia
- (2) The conditions referred to in subsection (1) are that the applicant –
 - (a) is of full age and capacity;
 - (b) is of good character;
 - (c) has clearly shown that, if naturalised, he or she intends to continue permanently to reside in The Gambia;
 - (d) is capable of supporting himself or herself and his or her dependants.
- (3) The Minister shall give reasons for any refusal of an application made under this section.
- (4) No person shall be naturalised until he or she has renounced any other citizenship he or she may have and taken an oath of allegiance to The Gambia.

The Gambia Nationality and Citizenship Act of 1965 (sections 3 – 6 and schedule 2) also contains provisions on registration and naturalisation as a citizen, setting out a requirement of only five years' residence for naturalisation and a different list of conditions. However, insofar as these conditions are not the same as those in the 1997 constitution, they must be considered superseded.

¹⁹ Constitution of The Gambia, 1997. Section 11.

²⁰ Constitution of The Gambia, 1997. Section 11.

²¹ Constitution of The Gambia, 1997. Section 11.

²² Constitution of The Gambia, 1997. Section 12

3.2 Deprivation and Loss of Citizenship

The different modalities of loss of citizenship are addressed by section 13 and 14 of the 1997 Constitution and section 10 and 11 of The Gambia Nationality and Citizenship Act.

By an amendment of the 1997 Constitution in 2001, Gambians became eligible to acquire citizenship of another country without losing their Gambian citizenship.²³ This provision explicitly provides for dual citizenship for the first time; but permission to hold another citizenship is restricted to citizens by birth. Section 12(A)(1) states that a citizen who acquires the citizenship of another country may if he or she desires retain his or her Gambian citizenship. Naturalised Gambians, however, are still required to renounce their other nationality under section 12 (4) of the 1997 Constitution. The amendment also provided that an “Act of the National Assembly may make provision for the better implementation of this section”, but no such legislation has been adopted.

Section 13 of the constitution makes provisions for the deprivation of citizenship from a person who has registered or naturalised as a citizen in The Gambia (but not from a person who was born a citizen). The grounds on which deprivation may be ordered are that the person:

- (a) has acquired by registration, naturalisation or any voluntary and formal act (other than marriage) the citizenship of any other country.
- (b) has acquired the citizenship of The Gambia by means of fraud, false representation or the concealment of any material fact;
- (c) has at any time since acquiring citizenship of The Gambia, voluntarily claimed and exercised in a country other than The Gambia any rights available to him or her under the laws of that country, being rights accorded exclusively to that country’s citizens;
- (d) has within seven years after being registered or naturalised been convicted in any country of an offence involving fraud, dishonesty, or moral turpitude;

And, in the case of grounds (c) and (d), that it is not conducive to the public good that he or she should continue to be a citizen of The Gambia.²⁴

The Nationality and Citizenship Act provides significantly wider grounds for deprivation of citizenship than the constitution and has never been updated. However, the additional grounds must be regarded as superseded.

Section 8 of the Act provides for deprivation of citizenship from a citizen by descent, registration or naturalisation (anyone other than a person acquiring citizenship based on birth in The Gambia – as provided under the law in effect in 1965) on grounds that a person has exercised rights in another country that would usually be exercised by citizens of that country (thus, it provides an additional route to prevent a person from holding dual citizenship in case there is no proof of legal acquisition of the other citizenship). Section 9 of the Act provides for deprivation of a citizen “it is not conducive to the public good that person should continue to be a citizen of The Gambia”, and, in case of a citizen by registration or naturalisation, on grounds of fraud; or, in case of a citizen by naturalisation, on grounds of disloyalty, communication with an enemy during war, conviction and sentencing to imprisonment for more than a year, and residence outside the territory for more than seven years. Section 10 of

²³ Act No. 6 of 2001, which amended section 9 and added section 12A (1) in the Constitution to make way for dual citizen and by descent from either parents.

²⁴ Constitution of The Gambia, 1997. Section 13.

the Act provides for deprivation in case a person who has acquired citizenship by registration has been deprived of citizenship elsewhere.

3.2.1 Procedure for deprivation

The 1997 constitution provides significant protections against arbitrary deprivation of citizenship, requiring the minister to make an application to the High Court, rather than leaving the decision with the executive. Before the minister responsible can make such an application, the minister needs to give a notice in writing to the person concerned of the reasons for the application and his or her right to be heard and legally represented at the hearing of the application before a court of law.²⁵ The High Court must then satisfy itself that the conditions for deprivation have been fulfilled, and if so it is the Court that makes an order depriving the person of his or her citizenship.²⁶

The Gambia Nationality and Citizenship Act, however gives the minister responsible the power to order that a person other than a person who is a citizen of The Gambia by birth or by descent be deprived of his or her Gambian citizenship, without the requirement to apply to the High Court.²⁷ This is clearly in conflict with the constitutional procedure, and must be regarded as void.

3.2.2 Recovery of Citizenship

Despite the permission for dual citizenship for citizens by birth established by section 12(A) of the constitution, persons who have lost their Gambian citizenship by birth or descent as a result of the acquisition of the citizenship of another country are only entitled to register as a Gambian citizen after renunciation of the citizenship of the other country.²⁸

4. Current political debates and reform plans

Currently, The Gambia is going through a transitional phase. This phase includes reforms such as drafting a new constitution for a Third Republic, following the removal of President Yahya Jammeh from office in 2017, after mass protests against his alleged re-election in 2016.

4.1 Constitutional Review Commission

In December 2017, the National Assembly of The Gambia passed an Act establishing the Constitutional Review Commission (CRC). This Commission was mandated to come up with a new constitution that would lead The Gambia into a third republic.²⁹ In 2020, the CRC submitted the Final Draft Constitution to the president and it was eventually submitted to the National Assembly. This was after the CRC conducted a country consultation process with The Gambian people. The Bill was however not passed as it did not meet the required $\frac{3}{4}$ majority

²⁵ Constitution of The Gambia, 1997. Section 13.

²⁶ Constitution of The Gambia, 1997, section 13(3)

²⁷ Nationality and Citizenship Act, Cap 16:01, Laws of The Gambia, Vol. 4.

²⁸ Constitution of The Gambia, 1997. Section 14.

²⁹ Constitutional Review Commission Act 2017.

in the National Assembly for it to go through a second and third reading before a referendum is held on the proposed constitution. Several reasons such as the retrospective provision on the introduction of the two-term limit of the office of the president, retirement package for the judges and alleged plagiarism of the Draft Constitution from the Kenyan Constitution as alleged by some members of parliament led to rejection of the Bill in Parliament.³⁰

As of February 2021, there was a possibility of the draft to be re-tabled before the National Assembly; but the two biggest political parties (the United Democratic Party and National Peoples' Party) could not agree on whether the Draft Constitution should be re-submitted to the National Assembly as drafted, or amendments could be made to it before it is sent back to the National Assembly.

4.1 Proposed changes to the citizenship regime

The draft constitution proposed major changes to the citizenship regime of The Gambia including reducing the residency requirement for non-nationals married to Gambians from 7 years to 5 years.³¹ The 15 years requirement for naturalisation remained the same. The other change with regards to naturalisation was the requirement for naturalised citizens to renounce their other citizenship. This was changed to introduce the reciprocity principle providing that citizens of countries that allow Gambians to retain their Gambian citizenship after they naturalise don't have to renounce their other citizenship.³²

Another notable change is there is no longer a distinction between citizenship by birth and citizenship by descent. Persons born in or outside The Gambia to one Gambian parent or grandparent are all Gambian citizens by birth. The 1997 Constitution only provides for the citizenship of persons either of whose parents was a Gambian citizen at the time of their birth, and also created a restriction on transmission to those born outside The Gambia.³³

Children adopted by Gambians can also be registered as Gambian citizens.³⁴ The Draft Constitution also restores the presumption of citizenship for children of unknown parents removed in 2001. Children below 8 years who are found in The Gambia and their parents are not known may also be presumed to be Gambian citizens. The Draft in section 21 also provides for the National Assembly to, inter alia, come up with a law dealing with citizenship of persons born in the country to non-Gambians by a particular date.³⁵

Section 261 of the Draft also proposed the limitation of land ownership rights of non-Gambians citizens by providing that there shall be no interest in or right, or a freehold interest over a land in The Gambia for a person who is not a citizen of The Gambia.³⁶ Persons who are not Gambian citizens may acquire and hold land on the basis of lease tenure only and shall not exceed for more than fifty years, according to the Draft.

The nationwide public opinion poll conducted in 2019 by the International Republican Institute (IRI) on the content of a new Draft Constitution, illustrated that 81% of the people

³⁰ Vanguard, "Gambian lawmakers rejects draft constitution over 3rd- term clause", September 24, 2020. Available at: <https://www.vanguardngr.com/2020/09/gambian-lawmakers-reject-draft-constitution-over-3rd-term-clause/>. Last accessed 16 October 2020.

³¹ Draft Constitution for the Third Republic of The Gambia, 2020. Section 16.

³² Draft Constitution for the Third Republic of The Gambia, 2020. Section 17.

³³ Draft Constitution for the Third Republic of The Gambia, 2020. Section 15.

³⁴ Draft Constitution for the Third Republic of The Gambia, 2020. Section 16.

³⁵ Draft Constitution of the Third Republic of The Gambia, 2020. Section 21.

³⁶ Draft Constitution of the Third Republic of The Gambia, 2020. Section 261.

who participated in the survey strongly agreed that children born in the country of two non-Gambian parents should be given Gambian citizenship.³⁷

In its Report submitted to the President along with the Draft Constitution, the Constitution Review Commission (CRC) gave the following reasons for the non-inclusion of automatic citizenship at birth in the Draft:

The CRC considered the public opinion to grant automatic citizenship to children born in The Gambia to non-Gambian parents. It recognised, however, that this opinion required further consideration. It was considered important that persons granted automatic citizenship at birth could have huge consequences on national resources which, if not properly managed, could lead to potential socio-economic imbalances. This took into account the fact that The Gambia is currently one of the most densely populated countries in Africa with limited resources, considering the population density increase from 130 persons per sq. km of land area in 2000 to 225 persons per sq. km of land area in 2018. Accordingly, the CRC came to the conclusion that this is a subject that requires further study (which the CRC could not properly do having regard to the timeframe within which it had to carry out its assignment) and therefore recommends that the subject be taken up and considered further by the Government and the National Assembly.³⁸

The CRC, however, considered it important that the issue of children born in The Gambia and currently living in the country should be given special consideration in the granting of citizenship and as a result it included section 21 in the Draft. Section 21 of the Draft Constitution provides as follows:

An Act of the National Assembly may make provision for –

- (a) registration as a citizen of The Gambia of a person who, on or before the 31st December, 2019, was born in The Gambia of non-Gambian parents, if the person had, since his or her birth, lived in The Gambia;
- (b) the acquisition of the citizenship of The Gambia by person who are not eligible to become citizens under the provisions of this Chapter;
- (c) the renunciation by any person of his or her citizenship of The Gambia;
- (d) prescribing procedures for the acquisition of citizenship; and
- (e) generally giving effect to the provisions of this Chapter.

4.2 Status of ‘returnees’ to The Gambia

In 2010, former President Yahya Jammeh offered citizenship to all Black African descents in the Diaspora that were willing to resettle in The Gambia.³⁹ This was however made without any legal basis to support it. Since then, more than 100 of them continued to stay in the country

³⁷ Nationwide Public Opinion Poll: The Gambia, International Republican Institute. November 26- 7 December 2019, available at https://www.iri.org/sites/default/files/gmb-19-ns-01-pt_final_forreviewandapproval.pdf.

³⁸ See Report on the Draft Constitution, page 50, paragraph 178, available at <https://crc220.org/wp-content/uploads/2015/12/CRC-FINAL-REPORT-ON-THE-DRAFT-CONSTITUTION.pdf>, last accessed on 2 March 2021.

³⁹ The Chronicle. “Gambia- Lured Into return By Yahya Jammeh, Black Africans Dazed With Rejection of Draft Constitution”. October 12, 2020. Available at: <https://www.chronicle.gm/gambia-lured-into-return-by-yahya-jammeh-black-africans-dazed-with-rejection-of-draft-constitution/>. Last accessed 15 October 2020.

through the Jammeh's pronouncement. With the rejection of the Draft Constitution with contained provisions to enable them to acquire Gambian citizenship, the chances of Black African returnees obtaining Gambian citizenship have vanished for now.⁴⁰

4.3 Action against statelessness

The Gambia has signed and ratified certain international and regional instruments, some of which relate to the right to nationality. In 2009, The Gambia ratified the 1954 Convention relating to Statelessness and in the same year, it also ratified the 1961 Convention on the on the Reduction of Statelessness. Despite the government's efforts to ratify both the 1954 and 61 Conventions, it is yet to domesticate the Conventions to give them the force of law in The Gambia.⁴¹

At the regional level, The Gambia has participated in the adoption by the Economic Community of West African States (ECOWAS) of the Abidjan Declaration on the Eradication of Statelessness, committing to "prevent and reduce statelessness by reforming constitutional, legislative and institutional regimes related to nationality."⁴² In 2017, this declaration was followed up with a meeting by the Ministers of Interior and Justice of the members states of ECOWAS to adopt a Regional Plan of Action to Eradicate Statelessness in West Africa. It is stated in this action plan that:

ECOWAS, in collaboration with UNHCR and the competent institutions of the African Union, will assist Member States by adopting common standards that will guide the reform of nationality legislation of West African States, including inter alia the removal of discriminatory provisions in the transmission of nationality and the inclusion of safeguards against statelessness to ensure that every child acquires a nationality at Birth.⁴³

The plan of action also stated that the "urgent need to obtain more concrete information about the sources of statelessness and the obstacles to acquisition of nationality as well as potential at risk groups."⁴⁴

At the UNHCR High-Level segment on Statelessness held in Geneva in October 2019, The Gambia was among other African states that pledged to develop a determination procedure to identify stateless persons, grant protection status and facilitate appropriate solutions.⁴⁵

⁴⁰ "Black African returnees at crossroads over Gambian citizenship", Pan-African News Agency, 11 October 2020. Available at: https://www.panapress.com/Black-African-returnees-at-cross-a_630663801-lang2-free_news.html. Last accessed 25 February 2020.

⁴¹ The Gambia is a dualist state, as such, foreign treaties and international law must first be received through an Act of the National Assembly before they are binding in The Gambia.

⁴² Abidjan Declaration of Ministers of ECOWAS Member States on the Eradication of Statelessness, 15 February 2015; endorsed by the Communique of the 47th Ordinary Session of the ECOWAS Heads of State, 19 May 2015.

⁴³ Banjul Plan of Action of the Economic Community of West African States (ECOWAS) on the Eradication of Statelessness 2017 – 2024, 9 May 2017, Preamble, and Strategic Objective 1.3.

⁴⁴ Ibid., Strategic Objective 2.

⁴⁵ See UNHCR, Results of the High-Level Segment on Statelessness. Accessed 14/05/2020 via <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

4.4 Identification: Birth registration & introduction of new national biometric ID card

The Gambia Immigration Act came into operation on the 31st January 1965 and established provisions for the control of immigration into and residence in The Gambia, and for connected matters such as issuing of National identity card and passports.

In July 2014, the Economic Community of West African States (ECOWAS) approved the introduction of a new standard- format national biometric identity card in all ECOWAS states by 2017.⁴⁶ These new national identity cards can be used by citizens of the different ECOWAS member states to travel within the West African States. The Gambia, in line with this commitment, started issuing these biometric ID cards in October 2018.

The identity cards issued include the person's biometric data, the person's face, identification number, date of birth and gender, height, date of issue and expiry date, and signature. As July 2020, over two hundred and thirty-two thousand Biometric Identification Cards have been issued to Gambians: 141, 396 were issued to males and 327 to females.⁴⁷ The Minister projected that by the end of 2020, about 200,000 ID cards would be produced.

Most people without proper documentation of citizenship, or who challenges of acquiring proper documentation, are likely to be Gambian citizens under the law but do not have means of proofing their citizenship status under the current system. Strict procedures have been put in place to confirm citizenship in these cases.

In some cases, individuals may not be Gambians under the law but have strong ties with another country like Senegal but are neither Senegalese citizens. This could apply for instance to some who have one or both of their parents as Senegalese citizens. In this case, efforts should be made to provide facilitated naturalisation, by relaxing the usual procedure.

There have also been many complaints from members of the Fula ethnic groups on difficulties they face when they apply for identifications documents including passports. They complained of being "asked for 'further proof' of citizenship, other people were given free passes".⁴⁸

5. Conclusions

This report has sought to provide an overview of the historical events that have shaped the constitutional provisions and legislative landscape relating to citizenship in The Gambia. As with many countries, citizenship in The Gambia has been mainly affected by the history of practices of colonialism and the type of citizenship regime that was in place during the colonial

⁴⁶ Final Communiqué: Forty-Fifth Ordinary Session of the Authority of ECOWAS Heads of State and Government, Accra, Ghana, 10 July 2014.

⁴⁷ "Gambia: Over 232,000 Gambians Issued Biometric ID Cards Since 2018", Foroyaa Newspaper, 1 July 2020 available at <https://allafrica.com/stories/202007020389.html>.

⁴⁸ "GID: Fulas deserved respect", The Standard, July 17, 2018, available at <https://standard.gm/gid-fulas-deserved-respect/>. See also "On The Issue of ID Cards Facing Gambian Fulbe; We Are Not Asking for Preferential Treatment but Respect for Our Fundamental Rights as Citizens", Fulani News Media, <https://fulaninewsmedia.com/on-the-issue-of-id-cards-facing-gambian-fulbe-we-are-not-asking-for-preferential-treatment-but-respect-for-our-fundamental-rights-as-citizens>

period, the continuing legacy of colonial trends into the independence era, and the vision of citizenship adopted by the leaders.

The framers of The Gambian Constitution incorporated a broadly *ius sanguinis* model of citizenship in 1997, with the insertion of notions of descent, marriage and naturalisation into the discourse of citizenship. The Gambia's judiciary track record in playing the role of interpretation and adjudicating matters has been less stellar on this issue than on most other constitutional issues. This makes it necessary for other institutional actors and civil society actors to step in and prevent a situation where the right to citizenship is being cut short. Constitutional stability requires a balance amongst competing groups and their interests, and the current Gambian constitution exhibits a tendency to move towards a constitutional imbalance, especially after the Draft Constitution 2020 by the CRC was rejected at the National Assembly. On the issue of citizenship and other constitutional matters, civil society and academics can play a vital role in raising the profile of these issues.

COUNTRY
REPORT
2021/07

