



European Union
Election Observation Mission

The GAMBIA 2021

Final Report



Presidential Election

4 December 2021



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LIST OF ACRONYMS

APRC	Alliance for Patriotic Reorientation and Construction
AU	African Union
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CRPD	UN Convention on the Rights of Persons with Disabilities
ECOWAS	Economic Community of West African States
EOM	Election Observation Mission
EU	European Union
GDC	Gambia Democratic Congress
GPU	Gambian Journalists Union
GRTS	Gambia Radio and Television Services
ICCPR	UN International Covenant on Civil and Political Rights and its Optional Protocols
IEC	Independent Election Commission
IGP	Inspector General of Police
IPC	Inter Party Committee
NA	National Assembly
NAM	'No to Alliance Movement'
NCCE	National Council for Civic Education
NHRC	National Human Rights Commission
NPP	National People's Party
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Cooperation in Europe
PAG	Peace Ambassadors Gambia
PDOIS	People's Democratic Organisation for Independence and Socialism
PURA	Public Utilities Regulatory Authority
PwD	Persons with Disabilities
SC	Supreme Court
TRRC	Truth Reconciliation and Reparations Commission
UDP	United Democratic Party
UN	United Nations
UNCAC	UN Convention against Corruption
UNDP	UN Development Programme
WANEP	West Africa Network for Peace
WFD	Westminster Foundation for Democracy

I. EXECUTIVE SUMMARY

After 22 years of dictatorship, the 4 December 2021 presidential election was the first, fully contested presidential race since former president Yahya Jammeh's departure in January 2017. The election took place in a competitive and vibrant campaign environment, with all candidates meeting with voters throughout the country to convey their messages. It was characterised by a growing democratic tendency, including a strengthened judiciary and increased ability for citizens to express themselves. Important shortcomings remain, however, and there has been a delay in the realisation of fundamental reform.

The main contestants were the incumbent, Adama Barrow, leader of the recently formed National People's Party (NPP), and Ousainou Darboe, leader of the United Democratic Party (UDP), whose party had the highest number of National Assembly (NA) seats and mayors/chairpersons in regional municipal councils. Mamma Kandeh was another candidate with significant support, whose Gambia Democratic Congress (GDC) represented the third most popular party based on the 2017 parliamentary election results. The former ruling Alliance for Patriotic Reorientation and Construction's (APRC) party leadership did not nominate a candidate, entering an alliance with the incumbent. The decision caused a split within the party; an APRC faction, 'No to Alliance Movement' (NAM) backed by former president Jammeh joined forces with the GDC leader close to the election.

The Gambia has acceded to most key international and regional standards. The legal framework provides a minimal basis for conducting democratic elections. Nevertheless, numerous gaps and ambiguities in this framework, coupled with limited accessibility to legal texts creates uncertainty and reduces transparency. With comprehensive constitutional and electoral reform not yet having materialised, significant reforms are crucial (i.e., in the areas of challenges to candidate nomination, campaign finance and political accountability, women's participation). Restrictions on fundamental rights as well as arcane laws are inconsistent with international and regional standards.

The duties of the Independent Electoral Commission (IEC) are broad while the capacity of the institution is very modest. Structural reform is required, particularly in the creation of legal and gender divisions within the institution. Improvements in communication and transparency are recommended to facilitate better engagement with stakeholders. Importantly, the independence of the IEC is not protected under present constitutional arrangements. Legal reform is required to comply with regional and international standards.

Biometric voter registration, for which a photograph and both thumbprints were recorded, took place from 29 May to 11 July, prior to the EU Election Observation Mission (EOM) observation. Registration figures were disaggregated by gender and age for the first time. Women comprised 57 per cent of registrants while young people between 18 and 35 comprised 58 per cent. Registration was conducted within the 53 NA constituencies. Huge differences exist between numbers of voters registered per constituency, ranging from the smallest at 3,784 to the largest at 60,740. The diaspora was not included, despite a 2021 Supreme Court ruling upholding the obligation of the IEC to register them.

The IEC announced that just 6 nominations had been accepted; the other 15 aspirants had been rejected. There had been a brief period of public scrutiny during which objections to candidacies could be made by voters. Interested parties, however, were granted access for just five minutes. This exercise was not meaningful, as voters did not have a real opportunity to scrutinise the documentation and gather the information required to make grounded objections.

The presidential election took place in a competitive and vibrant campaign environment. Throughout the campaign, freedoms were largely respected, and the campaign was peaceful without serious

incidents of violence. Overall, the campaigning was issue-based, although highly personalised. Throughout the country, campaigns met with voters extensively at large rallies in towns, down to small meetings at the village level. Women took an active part, although they were rarely in leadership positions.

The distribution of goods and misuse of state resources impacted negatively on the campaign. The distribution of various goods was directly observed by the EU EOM at several rallies held by the incumbent's party. There were also widespread allegations of distributions of money through village chiefs (alkalos) reported to EU EOM observers. If true, these practices are in breach of the IEC code however no action was observed to have been taken by its representatives. In addition, the EU EOM directly observed instances of misuse of state resources. Overall, the campaign costs were very high, with the NPP spending far more on political publicity than any other campaign. Lack of campaign finance regulation added to an unlevel playing field.

Political party and campaign finance remain largely unregulated. The overall lack of transparency and accountability of campaign resources and expenditures disadvantaged candidates with less financial resources. It also limited voters' ability to make a fully informed choice. The inequity of access and spending in terms of political finance led to an unlevel playing field between contestants.

The constitution and the legal framework, overall, significantly limit freedom of expression. However, on the ground, interlocutors confirmed that the ability to speak freely has considerably improved since 2017 and Gambians without fear discussed openly their political preferences throughout the campaign period. The allocation of broadcasting licences to business holdings threatens a diversity of views in the long run. The Gambia Radio and Television Services (GRTS) covered the campaign in line with its obligations. Commercial TV, however, displayed significant bias towards the incumbent, granting him undue advantage.

The legal framework also unduly restricts freedom of expression online and does not guarantee a genuine independence of the Public Utilities Regulatory Authority (PURA), who is the regulator for the ICT sector. Privacy and personal data are not protected. The 2021 Access to Information Act, if properly implemented, will broaden the scope of information that government institutions, including the IEC, must publish online. Such enhanced transparency should reduce adverse effects of disinformation.

Facebook, with some half a million users, was the prime discussion forum on the election and shaped the political discourse online and offline. False information and divisive tribal rhetoric migrated between Facebook and WhatsApp. Facebook did too little, too late to effectively counter damaging practices on the platform. Consequently, disinformation confused voters and tribal rhetoric as such shrank the space for fact-based debate. Positively, national fact-checking and investigative online journalism helped identify disinformation for voters to make an informed choice, thus enhancing transparency.

Women were active throughout the process, although their role in the presidential race was limited. None of the presidential candidates was female, while one woman aspiring to nomination did not qualify. Despite some legislative progress, further affirmative action is needed to address barriers to political participation for marginalised groups, including women, youth, and persons with disabilities (PwD).

On election day, voter turnout was extremely high, reaching 89 per cent, during a polling day which was calm across the country. The overall performance of polling staff was assessed as very good in almost two-thirds of EU EOM observations. Polling and counting were observed to be technically well administered, while the transparency of the process was assessed as high. Proce-

dures, particularly for counting and collation, were not well elaborated and were not always completely followed. Candidate agents were present in all polling stations visited, while citizen observers also participated visibly. More than a third of polling stations visited were not assessed as accessible to persons of limited mobility.

The election results announced verbally by the IEC chairperson on national media were: Barrow, 457,519; Darboe, 238,252; Faal, 17,206; Jammeh, 8,252; Kandeh, 105,902; and Sallah, 32,435. No results were published on the IEC website. Candidate agents were present and signed collation sheets at all levels. At the national level, final results were signed only by representatives of the NPP and the PDOIS on 5 December.

The Supreme Court adjudicates any election petition challenging the presidential election results within 30 days. One petition was filed by UDP against the election of Barrow on the grounds of widespread irregularities affecting the result, which was rejected on procedural grounds on 28 December. Although no formal dispute resolution mechanism applies for all stages of the process, electoral cases filed on rejections of nomination were treated as a priority by the High Court. While electoral offences are listed in the Elections Act, they are, nevertheless, not sufficiently prosecuted to act as an effective deterrent.

Priority Recommendations

The EU EOM has made 20 recommendations for improving the way elections are organised, managed, and conducted in The Gambia. They include seven priority recommendations:

- 1. Make essential changes in the electoral legal framework. Bring the Draft Elections Act in line with international standards. Streamline provisions of the Draft Constitution and the Draft Elections Act as well with other Acts relevant to the conduct of elections.***
- 2. Increase IEC capacity and transparency in critical areas, including the establishment of specialised divisions (legal, gender) within the IEC.***
- 3. The IEC should publish the complete presidential election results, disaggregated by polling station, on its website without delay. In all future elections, disaggregated results should be released during the tabulation process.***
- 4. Legal provisions should be made for continuous registration and updating of the voter register to allow for the removal of deceased voters, inclusion of citizens who will turn 18 prior to the elections, and transfer of place of registration for people who have moved.***
- 5. Bring the legal framework, including the Constitution, the Criminal Code and the Information and Communications Act, in line with the country's international and regional commitments on freedom of expression.***
- 6. Introduce a detailed and comprehensive complaints procedure throughout the electoral process with reasonable time limits for adjudication, regulating matters such as format and venue, including for the implementation of the Code on Election Campaign Ethics.***
- 7. Formalise clear and coherent procedures for polling, counting, result transfer, and collation, in conjunction with the introduction of improved security measures of result and collation forms.***

I. INTRODUCTION

The European Union (EU) deployed an Election Observation Mission (EOM) to observe the 4 December 2021 presidential election in The Gambia following an invitation from the IEC. The EU EOM was present from 27 October to 24 December 2021. The mission's mandate was to observe all aspects of the electoral process and assess the extent to which the elections complied with regional and international commitments for elections, as well as with national legislation. The EU EOM comprised a core team of 16 experts based in Banjul and 16 long-term observers deployed to all areas of the country.

For the election day on 4 December, the EU EOM deployed 16 additional locally recruited short-term observers to monitor polling, counting and collation of results. In total, the EU EOM deployed 40 observers from 17 EU member states, as well as from partner countries Canada, Norway, and Switzerland.

The EU EOM is independent in its findings and conclusions under the leadership of the Chief Observer, Norbert Neuser, former Member of the European Parliament. The mission followed an established methodology and adhered to the "Declaration of Principles for International Election Observation", endorsed under United Nations auspices in October 2005, now espoused by over 50 organisations.

II. POLITICAL BACKGROUND

The election victory of Adama Barrow in 2016 brought an end to the 22 years of former president Yahya Jammeh's and his Alliance for Patriotic Reorientation and Construction's (APRC) dictatorship. The outcome of the 2016 polls opened the path for a democratic transition. Barrow, a former executive member of the United Democratic Party (UDP), contested the 2016 election as an independent candidate, nominated by the 2016 Coalition of seven opposition parties. Four months later, the coalition political parties succeeded to win a constitutionally important two-thirds majority in the 2017 NA elections. The main opposition parties in 2017, the APRC and the Gambia Democratic Congress (GDC), won 10 of 53 seats. Also, the former member of the 2016 Coalition the People's Democratic Organisation for Independence and Socialism (PDOIS) did not join the ruling coalition and its four elected parliamentarians went to the opposition.

Several leaders of the coalition parties became members of the Barrow's cabinet including the leader of the UDP, Ousainou Darboe, who served as Minister of Foreign Affairs and since 2018 as Vice-President. The UDP's decision not to select the president as party leader and potential presidential candidate for the next election created tensions within the UDP and the coalition. Tensions among coalition partners increased, after President Barrow's refusal to step down after three years in office, a condition agreed to by the 2016 Coalition and his rescinding on his promise not to run in the next election. This decision generated public protests organised by the 'Three Years JOTNA Movement'. The tensions resulted in the demise of the Coalition and subsequently Ousainou Darboe was dismissed from his post in March 2019. President Barrow then formed his own National People's Party (NPP), attracting many UDP members and several high-profile politicians from other smaller parties. At the same time, expected reforms did not happen and many members of Jammeh's administration kept their executive positions.

Since 2017, several legal reforms were initiated by the government to re-establish the rule of law and human rights, as well as to mark the transition from dictatorial rule to a democratic state. The progress made on a new Draft Constitution came however to a halt when the NA failed to secure

the required majority vote over disagreements regarding the retroactive application of a presidential term limit and limitations to the scope of executive powers. The Truth Reconciliation and Reparations Commission (TRRC) was established in 2018 to investigate and impartially report on the extent of human rights violations committed by and under the previous regime and that allowed the reconciliation process to begin. TRRC hearings were public, an important element that enabled citizens to hear directly what had transpired under the previous regime. Despite having been finalised, the TRRC's report had not been published before the 2021 presidential election.

In this election, the main contenders were the incumbent, Adama Barrow (NPP) and Ousainou Darboe (UDP), whose party has the highest number of seats in the NA and mayors/chairpersons in regional municipal councils. The other candidates were Mamma Kandeh, whose GDC represents the third most popular party based on the 2017 election results; the PDOIS leader, Halifa Sallah; Essa Faal, a recognised former TRRC lead counsel; and Abdoulie Jammeh, chairperson of the recently formed the National Unity Party (NUP). The former ruling APRC party did not nominate a candidate, entering into an alliance with the incumbent's party in September 2021. The decision caused a split within the APRC and a faction 'No to Alliance Movement' (NAM) backed by former president Jammeh joined forces with the GDC leader close to the election.

The Gambian diaspora (some 200,000) plays an important role in the country's political and economic life; all registered parties claimed to have some support coming from their chapters abroad.

III. IMPLEMENTATION OF PREVIOUS EU EOM RECOMMENDATIONS

Although the EU EOM made 31 concrete recommendations in 2017, few were implemented after 2017 elections.

The 2017 EU EOM made 31 recommendations for the consideration of national authorities, most of which were relevant for the 2021 presidential election. Of those recommendations, only a few were implemented after the 2017 parliamentary elections.

This included partial implementation of recommendation 7, which had several components, regarding the training of IEC polling staff observed by the EU EOM as having become more participatory. Recommendation 10 on the improvement of the office and communications infrastructure of the IEC has largely been implemented, with several regional offices renovated and IT equipment enhanced in all offices. Completion of renovation of regional offices is anticipated within the coming months.

Recommendations 14 and 15 on voter education and information were implemented in significant measure, through the work of the NCCE and civil society. The second element of recommendation 12 to establish a new voter register was largely given effect. Recommendation 25, on the enhancement of the capacity of community radio stations, was partially implemented due to financial state support during the Covid pandemic and journalistic training provided by the Gambian Press Union (GPU).

As well, recommendation 26 on mandatory quotas and affirmative action for gender equality, which also focused on introducing women's participation in political party structures and on candidates' lists, has been partially implemented with the 2021 amendment of the Women's Act.

The remainder of recommendations were not implemented, although a large-scale constitutional and electoral reform process was conducted over the past years. Nevertheless, this reform process did not come to fruition and, thus, most past recommendations remain unaddressed.

These include five recommendations concerning legal reforms (1-5). A priority recommendation was that the rules for the registration of political parties should be revised. Requirements to register a political party were deemed and remain excessive, although from 9 political parties active in 2017, there are now 18 parties registered. The recommendation that suspension of voting rights be proportionate to offences committed (disqualification of all prisoners), involves revision of the Elections Act and has not been implemented. Two recommendations suggested amendments to the Constitution; given that no constitutional review has taken place, these recommendations have not been implemented. To provide a level playing field, a moratorium on the executive announcing public works during the campaign was also not implemented.

Five recommendations (6 – 10) were advanced in the sphere of election administration. The first priority recommendation (6), to strengthen the institutional independence of the IEC, including through revision of the method of appointment, would have required constitutional change, and has not been implemented. The second priority recommendation (7), had several components. It has not been implemented regarding the introduction of regulations to establish procedures for polling, counting, collation and result transfer or the enhancement of security measures for same. A recommendation (8) on increasing the transparency of the IEC through various innovations has not been implemented, nor has the recommendation (9) on the introduction of a robust results management system and the publication of polling station results.

The priority recommendation on constituency delimitation (11), which requires legislative change, has also not been implemented. Inequalities between constituencies are now even greater than in 2017.

Two recommendations were made in the sphere of voter registration. While a new voter register was compiled, the elements of the recommendation requiring legislative change, to facilitate transfer of voters and updating of the register on an ongoing basis were not implemented. The recommendation on duty certificates (13), which refers principally to NA elections, requires legislative change, which has not been enacted.

The previous EU EOM made four recommendations within the area of political parties and campaigning, two in relation to regulation of campaign finance and another two recommendations targeted the capacity of political parties and institutionalisation of the Inter Party Committee (IPC). While the two recommendations on campaign finance (16 and 17) were not implemented (one relating to the introduction of ceilings on donations and expenditures and a priority recommendation on either establishing an oversight body or vesting the IEC with this role), progress has been made in the areas of institutionalisation of the IPC and capacity building of political parties. The IPC has been more active and played a role in mediating in case of inter party dispute and in signing the Code of Conduct for political parties.

Another recommendation in the sphere of political parties dealt with capacity building. The substance of the recommendation was that political parties, as well as members of the NA, would benefit from the establishment of capacity building programmes. This has begun to happen, with the Commonwealth Parliamentary Association, International IDEA, the Westminster Foundation for Democracy, and the International Republican Institute. The European Parliament has facilitated study visits for staff and members of the NA to the parliament in Brussels. While more support for political parties is needed, particularly to promote the advancement of women, this recommendation has been partially implemented.

Six recommendations were made (20-25) referring to the media environment. The recommendations to bring the legal framework into line with regional and international standards on freedom of expression, including the establishment of an independent broadcasting regulatory body and the transformation of the state broadcaster into an independent public service broadcaster (20-23),

have not been implemented. In a welcome development, a pre-election debate was held, which was facilitated by civil society. In the future, an independent, public service broadcaster should facilitate an all-inclusive debate. (24). The recommendation on adoption of an Access to Information Act was fully implemented.

A recommendation for revision of disqualification from voting on the grounds of ‘unsound mind’ and ‘lunacy’ (27) would require constitutional and legal reform; it remains therefore unaddressed. The recommendation for the use of Braille labels on ballot drums and voter education in consultation with PwD has also not been implemented.

Revision of the Code on Election Campaign Ethics Order was recommended (28) to include complaints’ procedures and relative sanctions, but nothing has been done to this end by the IEC. Other recommendations including a priority recommendation on detailed complaints’ procedures, revision of the rules to challenge nomination of candidates and possibility of appealing such IEC decisions to the courts (29) as well as a last one on adjudication of election petitions and removal of security for costs deposit (30 and 31), remain unaddressed, although some could have been implemented by introducing subsidiary legislation. Revision of electoral dispute resolution has also not been considered.

IV. LEGAL FRAMEWORK

A legal framework requiring significant reforms to address legislative gaps, restrictions, and legal uncertainties.

International Principles and Commitments

The Gambia is a state party to major international and regional treaties containing principles and commitments for the conduct of democratic elections. These include the UN International Covenant on Civil and Political Rights and its Optional Protocols (ICCPR), the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the UN Convention against Corruption (UNCAC 1).

As a member state of the African Union and ECOWAS, The Gambia is committed to the African Charter on Human and People’s Rights (Banjul Charter), the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, the African Charter on Democracy, Elections and Governance (ratified in 2018), the ECOWAS Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. Some of the principles established in these international and regional treaty commitments have yet to be incorporated into domestic law. The Gambia re-joined the Commonwealth in 2018 after having withdrawn in 2013.

Constitutional Human Rights

Freedoms of expression, assembly, and association are enshrined in the Constitution. Greater discretion is, however, allowed for legal restrictions beyond the limits set out in international standards.¹ Legal provisions pertaining to freedom of expression, assembly and association are overly restrictive and not in line with international standards.

¹ Pursuant to section 25(4) of the Constitution, legal restrictions on the freedoms of expression, assembly and association may be “reasonable”, while Articles 19, 21, 22 of the [ICCPR](#) require limitations to be “necessary in a

Following a 2018 ECOWAS judgment,² the constitutionality of sections of the Criminal Code on sedition, false publication and defamation was recently challenged in the Supreme Court (SC), which declared the provision on “false news” online as well as criminalised libel unconstitutional. The court upheld other provisions as ‘reasonable and necessary in a democratic society’.³ Section 5 of the Public Order Act requires a permit from the Inspector General of Police (IGP) before anyone can exercise the right to freedom of assembly, a restriction upheld as reasonably justifiable by the SC.⁴ In 2015, the requirements for political party registration were expanded and deemed by the 2017 EU EOM to unreasonably limit the freedom of association, at odds with international and regional commitments.⁵ The SC, in a recent judgment, considered the constitutionality of these amendments and only repealed the residency requirement.⁶

Revise the legal requirements for registration of political parties and specify criteria for de-registration.

Significant constitutional and legislative review efforts were made in past years yet, despite their acknowledged inclusiveness, the necessary legal reforms did not materialise. This included a review of the Constitution, a process initiated in June 2018 but halted at the NA in September 2020 due to a lack of political consensus. An Elections Bill drafted in 2020 remains tabled before the NA and remains to be enacted. A positive development was the passing of the ‘Access to Information Act’ and the ‘Persons with Disabilities Act’ in July 2021, which enhance transparency and accountability as well as participation and accessibility, respectively.

Electoral Legislation

The legal framework provides a minimal basis for conducting democratic elections, although there are critical gaps, restrictions, and legal uncertainties that require significant reforms. The 2021 presidential election was held under the provisions of the 1997 Constitution and the Elections Act (Cap. 3:01), as amended up to 2017, that make up the core of the national legal framework. Various aspects of elections are also regulated by other laws, including the Public Order Act (Cap. 22:01) and the Criminal Code, as well as subsidiary legislation in the form of regulations, rules, and orders.⁷ These subsidiary elements are without clear appeal procedures or sanctioning mechanisms and are variably applied. Many areas of the election law are poorly regulated, with little or no subsidiary legislation to guide the interpretation of the existing legal provisions. The IEC may issue rules to further regulate matters pertaining to elections and in line with regional standards no

democratic society”. Furthermore, permissible aims of restrictions include “the sovereignty and integrity of The Gambia” and “public decency” in addition to “national security”, “public order”, and “public health or morals”, as the only permitted purposes specified in the ICCPR.

² Judgment No: ECW/CCJ/JUD/04/18, requesting The Gambia to immediately repeal and/or amend the relevant sections of the Criminal Code and of the Information and Communications (Amendment) Act of 2013 in line with its obligations under international law especially Article 1 of the African Charter on Human and Peoples Rights, the ICCPR and the ECOWAS Revised Treaty.

³ Federation of African Journalism & ORS v The Republic of The Gambia, ECW/CCJ/APP/36/15, ECW/CCJ/JUD/04/14; constitutionality was challenged in the cases of Gambia Press Union and 2 Ors v. The Attorney General Civil Suit No. SC 1/2014; Bai Emil Touray and 2 Ors v. the Attorney General Civil Suit No. SC 001/2017; Bai Emil Touray and anor v. the Attorney General SCCA 001/2021. Please see Media section.

⁴ In Ousainou Darboe & 19 Ors v. Inspector General of Police & 2 Ors the Supreme Court unanimously held that the restrictions imposed on the grounds set out in section 25(4) of the Constitution read in conjunction with section 5 of the Public Order Act were reasonably justifiable in a democratic society.

⁵ Article 22.1, ICCPR and article 10(1), Banjul Charter provide that every individual shall have the right to free association.

⁶ *Bakary Bunja Dabo & others v. AG & IEC* Supreme Court, 17 March 2021, SC 001/2020.

⁷ Code of Election Campaign Ethics, Election Petition Rules, Media Rules, Covid-19 Orders and Regulations, 2020.

significant change to the rules can be made within six months before elections (except with the consent of a majority of political actors).⁸

Priority recommendation: Make essential changes in the electoral legal framework. Review the Draft Elections Act. Streamline provisions of the Draft Constitution and the Draft Elections Act as well with other Acts relevant to the conduct of elections.

The legal framework remains largely unchanged since the 2016 election, except for a reduction in the presidential candidacy fee and a lifting of the age limit for presidential candidates, provisions amended in 2017. Several provisions of the Elections Act of 1996 are ambiguous, contradictory, or incoherently drafted, and therefore, problematic as to their enforcement or have been rendered obsolete with the introduction of the 1997 Constitution.⁹ Pending comprehensive constitutional or legal reform, previously identified shortcomings by EU missions remain. The EU EOM noted limited awareness of the law and the legal avenues available amongst interlocutors. Frequency of amendments, lack of codified texts, unavailability of legislation online, and the absence of any official law database limit access and increase uncertainty of stakeholders as to the content and application of the law.¹⁰

Create a legal database publicly accessible including online codified texts of the laws and caselaw.

Campaign Finance

Political and campaign finance are largely unregulated. Regulations on campaign donations and spending by candidates are virtually non-existent. Parties and candidates may receive financial contributions from various sources. Anonymous donations are not banned while the Elections Act expressly prohibits from foreign and corporate sources. Any contributions to contestants do not have to go through the banking system or a dedicated bank account and there are no reporting or disclosure obligations. No ceilings apply on donations or campaign expenditures. No public funding is available to political parties while the latter are required to publish their annual audited accounts and declare to the IEC or the public their revenues, assets, and their sources only. Whereas this could enhance transparency and accountability, there is no publication requirement or sanctioning of illicit campaign funding.¹¹ Scattered provisions on corrupt practices and prohibitions of use of state resources are to be found in the Elections Act and the Criminal Code.

Establish a legal framework and independent oversight body to regulate and oversee political / campaign finance to enhance transparency and accountability. Introduce periodic auditing, reporting, and publishing obligations for political parties, and rules for contestants during electoral periods (ceilings on donations, expenditures, interim and final reporting, etc.).

⁸ As per section 134(3) inserted by the Elections (Amendment) Act, 2015. Article 2(1), ECOWAS Protocol on Democracy and Good Governance ‘No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of political actors.

⁹ Second Schedule of the Constitution provides that as of its coming into force any matter regulated by a pre-existing law (or Decree) shall have effect with such modifications, adaptations, qualifications, or exceptions as may be necessary to bring it to conformity with the Constitution.

¹⁰ This need is now further underlined by the recent enactment of the Access to Information Act, which provides for the duty to create, organise and maintain information in a manner which facilitates access to information for the public.

¹¹ Article 19.2 [ICCPR](#) ‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’ and article 7.3 of [UNCAC 1](#) ‘Each State Party shall also consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties’.

The Gambia ratified the UN Convention against Corruption (UNCAC 1) in 2015, and an anticipated Anti-Corruption Bill was undergoing legislative scrutiny at the time of writing. The lack of both comprehensive legal provisions and of an oversight body mandated with clear monitoring and enforcement fell short of restraining the undue impact of money in the electoral process and ensuring a level playing field amongst contestants.¹²

Electoral System

The Gambia is a constitutional republic with all sovereign power vested in the people, with a presidential system of government. The president is the head of state, head of government and commander-in-chief of the armed forces. The Constitution provides for genuine, periodic elections, conducted by secret ballot, through universal and equal suffrage. The president is elected by direct vote for a five-year term, without term limits, through a simple majority system. A constitutional amendment in 2003 replaced the absolute majority system (two-round system) and removed the two-term limit to holding presidential office. Presidential elections must take place three months before the expiry of the incumbent president's term.¹³

The country is divided into 7 administrative regions, 53 constituencies and 120 wards. The Constitution foresees the establishment of a Boundaries Commission and requires the enactment of legislation to outline the criteria for the demarcation of constituency boundaries.¹⁴ The Elections Act vests the IEC with the power to define the boundaries of each constituency. A vast discrepancy in the number of voters per constituency was noted by the EU EOM 2017 that fell far short of ensuring the equality of the vote. Although not directly relevant for presidential election, where the country is considered one single nationwide constituency, this discrepancy persists.¹⁵

Registration was conducted within the framework of the 53 constituencies for NA elections. There are huge differences between numbers of voters registered per constituency, with the smallest constituency, Niamina Dankunku in Central River Region, having 3,784 registered voters, while the largest, Kombo South in West Coast Region, has 60,740 registered voters. The mean number of voters, if equal, would be 18,134 voters per constituency. The vast deviations between constituencies did not have an impact on the presidential election, as the entire country was a single constituency, but the NA elections in April 2022 will be conducted within these constituencies.

¹² Article 19.2 (as above) and 26, [ICCPR](#) "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law [...] and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; article 6, [UNCAC 1](#) 'Each State Party shall, [...], ensure the existence of a body or bodies, [...] shall grant the body or bodies the necessary independence, [...] to carry out its or their functions effectively and free from any undue influence[...]".

¹³ President Barrow's inauguration took place at the Gambian Embassy in Senegal on 19 January 2017 after which he returned to The Gambia and had his inauguration ceremony in Banjul on 18 February.

¹⁴ Section 50, Constitution and section 9, Elections Act. Such a Commission has never come into existence. An Independent Boundaries and Electoral Commission was foreseen in the Draft Constitution.

¹⁵ Article 25 of the [ICCPR](#), [UN Human Rights Commission, General Comment No. 25](#), paragraph 21: "[...] within the framework of each State's electoral system the vote of one elector should be equal to another. The drawing of electoral boundaries and method of allocating votes should not distort the distribution of voters or discriminate against any group.". Registration was conducted within the framework of the 53 constituencies for NA elections. There are huge differences between numbers of voters registered per constituency, with the smallest constituency, Niamina Dankunku in Central River Region, having 3,784 registered voters, while the largest, Kombo South in West Coast Region, has 60,740 registered voters. The mean number of voters, if equal, would be 18,134 voters per constituency. The vast deviations between constituencies did not have an impact on the presidential election, as the entire country was a single constituency, but the NA elections in April 2022 will be conducted within these constituencies

V. ELECTORAL ADMINISTRATION

Structural and legal reform, as well as improved transparency and communication, required for better election administration.

Structure and Composition of the Election Administration

The IEC is a constitutional body led by a five-member commission. Appointments are made by the president. Consultation with the Judicial Service Commission and the Public Service Commission is mandatory, but the appointments are entirely within the discretion of the president. This appointment process is not inclusive and does not guarantee impartiality and independence. Parliamentary oversight of IEC appointments was proposed in the draft constitution, but this has not been introduced as the draft constitution did not pass the NA; it would be important to take this forward with any renewed effort to review the current Constitution. Removal of commissioners is by the president also, but with a requirement that a tribunal of three superior court judges be appointed to enquire into the matter. The grounds for removal comprise inability to perform the functions of the office due to infirmity; circumstances arising which would have disqualified from appointment; and misconduct, which is not specified. The impugned commissioner may appear personally and with legal representation before the tribunal.

Strengthen the institutional independence of the IEC by establishing an inclusive mechanism for the selection and appointment of the IEC Chairperson and Commissioners and by ensuring the security of tenure of the commissioners.

The IEC Secretariat is modest, with a total of some seventy staff in the national headquarters and seven administrative area offices. The IEC has limited in-house professional capacity, with an important absence of legal staff. Commitments in the Strategic Plan 2020-2024, to create legal and gender divisions, have not been achieved yet. A lawyer is engaged to represent the IEC *ad hoc* in legal disputes.

Priority recommendation: Increase IEC capacity and transparency in critical areas, including the establishment of specialised divisions (legal, gender) within the IEC.

All IEC structures are male dominated and all board members are men. The chief elections officer is male, as are all seven regional elections officers. Of the 140 assistant returning officers hired to oversee polling and counting, only 10 per cent were women. Thus, there is space for significant improvement in complying with the principles of inclusion and the promotion of gender equality in public institutions conducting elections.¹⁶

Administration of the Election

The duties of the IEC are very broad, encompassing voter and political party registration, boundary delimitation, conduct of elections and referenda, candidate nomination, voter education, as well as oversight of campaign behaviour and media fairness.

The electoral legal framework within which the IEC operates is flawed, containing some provisions that are not in line with human rights law and others that have been made redundant by the passage of time. The IEC initiated electoral law reform in 2019. Following national consultations, proposals were submitted to the Ministry of Justice. The Elections Bill 2020 was subsequently

¹⁶ AU Declaration on the Principles Governing Democratic Elections in Africa: paragraphs 2.4.e and 3.c; African Charter on Democracy, Elections and Governance: Art.3 (6); ECOWAS Protocol on Democracy and Good Governance: Art. 2(3).

tabled before the NA but did not reflect all of the IEC proposals. It was not enacted prior to the election and is currently pending before the NA.

There are vast gaps in subsidiary regulation of the electoral process. The law confers the power to make rules on the IEC, including to prescribe procedures. Procedures have not been introduced for the handling of complaints and appeals. There are also insufficient procedures in place for polling, counting, collation and transmission of results. Rules could also have been made to regulate donations received by candidates and political parties. This power remains unused. Obligations on political parties to submit annual audited accounts to the IEC are unenforced, despite the submission being a condition precedent to continued party registration. Powers to oversee and publish advertising invoices for broadcast media are also unused.

There is an observed lack of transparency about the work of the IEC, with minimal information put into the public domain. The preferred means of communication is by press release rather than by press conference. Information on the IEC website is limited, with only voter registration data included in any significant measure. The strategic plan of the organisation is not public. Engagement with political parties, civil society and other stakeholders is limited to briefings, although international partners are invited to regular steering committee meetings within the framework of the ongoing UNDP electoral assistance project. International and regional standards protect the right of access to information as well as transparency of public institutions, standards not well respected by the IEC.

Dissemination of voter information is an IEC obligation. Delivery by the IEC, however, was quite limited, due to financial constraints. Many other actors were active in providing civic and voter education. The National Council for Civic Education, in collaboration with the IEC, and in fulfilment of its legal mandate, conducts programmes throughout the electoral cycle. Many other governmental agencies, such as the National Youth Council, and NGOs such as Activista, have also been active in this sphere.

It is a fundamental requirement of international and regional standards that election management bodies operate within the law. The IEC was found to be acting unlawfully by the High Court in facilitating voter registration attestations by the Mayor of Banjul, despite a clear legal prohibition on the practice. In a case on diaspora voting, the IEC conceded their failure to comply with the constitutional obligation to register Gambians outside the country. In litigation on the procedures for rejection of presidential aspirants, the High Court found that the IEC had violated the Election Act. These decisions, taken together, illustrate flaws in the capacity of the IEC to fulfil their substantial responsibilities.

VI. VOTER REGISTRATION

There was broad social and political consensus that voter registration was well conducted by the IEC; diaspora was not included.

The Right to Vote

The right to vote is guaranteed to all citizens of eighteen years of age. This right is circumscribed, in *prima facie* violation of the ICCPR, for those convicted of certain electoral offences or who have served prison sentences exceeding six months within the last ten years. Prisoners serving a sentence are also deprived of the right to vote.¹⁷ The prison population was 543 on 30 April 2021,

¹⁷ Paragraph 14 of 1996 UNHRC ICCPR General Comment No. 25 to the ICCPR states that grounds for the deprivation of voting rights should be objective and reasonable.

55.6 per cent of whom were pre-trial detainees.¹⁸ While not deprived of voting rights by law, voting was not facilitated for those in detention. Persons of “unsound mind” are also disqualified from voting, in contravention of the Convention on the Rights of Persons with Disabilities,¹⁹ as are holders of dual citizenship.²⁰

Revise the law which disqualifies all prisoners from voting, regardless of the reason for imprisonment, ensuring that the suspension of voting rights is proportionate to the offence committed.

The Elections Act provides that the IEC shall maintain a register of Gambian voters in foreign countries. In March 2021, the Supreme Court declared that “every Gambian, including those residing outside the jurisdiction, is entitled to register for and vote in elections”.²¹ The IEC acknowledged their legal obligation to register Gambians living outside the country but said that fulfilment was dependent upon financial resources. The IEC scheduled diaspora registration for July 2021, but in June announced that citizens overseas must return to the country to register. While there is no international legal obligation to facilitate diaspora voting, this represented a failure to comply with the national legal framework for elections.

Voter Registration Procedures

Registration was possible in the constituency of either birth or residence. Production of an identification document was required, namely a birth certificate, a passport, or a national ID card. Although compulsory, birth registration is far from universal, and many citizens lack legal documents.²² Attestation of identification by traditional authorities is permitted by law in these instances. Such authorities are absent in Banjul. The IEC encouraged the Mayor of Banjul to issue attestations, in clear violation of the law. These attestations were used to register at least 2,000 voters²³. This practice was subsequently found to be unlawful in court proceedings,²⁴ but the voters remained on the register.

Biometric registration, for which a photograph and both thumbprints were recorded, took place from 29 May to 11 July, prior to the EU EOM observation. Registration was mobile, with IEC teams remaining in locations for a week or more. Political parties and civil society actors monitored the process. Some difficulties with faulty equipment and intermittent power supplies were reported, but none of significant impact. There was broad social and political consensus that voter registration was well conducted by the IEC.²⁵

The outcome of the exercise was a voter register containing 962,157 entries. Registration figures were disaggregated by gender and age for the first time. Women greatly outnumbered men, comprising 57 per cent of those registered. The difference was most marked in Upper River Region, where the registered electorate is 61.9 per cent female, with the lowest figure for women, 52.5 per

¹⁸ See Gambia: World Prison Brief, prisonstudies.org.

¹⁹ Ratified by The Gambia in 2015, the Convention was incorporated into domestic law by the Persons with Disabilities Act, 2021.

²¹ The restriction on dual citizenship appears unreasonable, in violation of Article 25 of the ICCPR, interpreted in UNHRC General Comment 25 to the ICCPR, para. 14, which provides that grounds for the deprivation of voting rights should be “objective and reasonable”. This is particularly so given the history of Gambian emigration.

²¹ Bakary Bunja Darboe & Others v AG & IEC, SC 001/2020, Supreme Court of The Gambia, 17 March 2021.

²² See UNICEF: The Gambia, Multiple Indicator Cluster Survey 2018 finds that 57.9% of children under 5 are registered at birth.

²³ Evidence of the Mayor of Banjul before the High Court was that she had issued “more than 2,000” attestations; more precise figures are unavailable.

²⁴ Gambia Participates & Ors v IEC & Ors, HC/380/21/MF/122/FI 13 July 2021.

²⁵ As conveyed by interlocutors and in reports from the National Human Rights Commission, the Ombudsman, the CSO Coalition on Elections and the Elections Watch Project.

cent, registered in Banjul Municipality. Young people, between 18 and 35, comprised 58 per cent of those registered.

Priority recommendation: Legal provisions should be made for continuous registration and updating of the voter register to allow for the removal of deceased voters, inclusion of citizens who will turn 18 prior to the elections, and transfer of place of registration for people who have moved.

VII. REGISTRATION OF CANDIDATES

Six candidates registered to contest the election; IEC found to have violated the law in the case of two unsuccessful aspirants.

To obtain nomination to the office of president, candidates must be thirty years of age and a citizen by birth or descent. Dual citizens are disqualified. Candidates must have been ordinarily resident in the country for the five years immediately preceding the election, have completed senior secondary school education and be proficient in English.²⁶ Persons “of unsound mind” are also disqualified.²⁷ Some of these requirements are not aligned with international law.

Persons compulsorily retired or dismissed from any public office in The Gambia are ineligible; as are persons found guilty of any criminal offence by any court, persons declared bankrupt, as well as persons found liable for misconduct, negligence, corruption or improper behaviour by any commission or committee of inquiry established by law. Members of the disciplined forces and traditional authorities are also ineligible to contest the election.

Nomination requirements, both substantive and procedural, are burdensome. A nomination form must be supported by at least 5,000 registered voters, at least 200 from each administrative area. The Elections Act permits voters to support only a single nomination. Where a voter supports more than one candidate, the nomination paper which is delivered first to the IEC will be valid. Support for a subsequently delivered nomination will be invalid. This approach is not in line with international good practice. Voter registration figures vary across the seven administrative areas. Banjul has the fewest registered voters, at 21,372, with the consequence that, when there are many aspirants, as in this election, 200 signatures may be difficult to obtain.

On 28 October, the IEC announced that 26 people, amongst whom there was 1 woman, intended to contest the election. The candidates comprised 13 independents and 13 political party representatives. The IEC established a nomination schedule from 30 October to 5 November. Five of the initial aspirants withdrew prior to formal nomination. This left 21 candidates to submit their nomination documents to the IEC. A 10,000 GMD (165 EUR) deposit was required, as well as a sworn declaration of assets and a tax clearance certificate. Deposits are forfeit unless candidates secure 20 per cent of the votes cast.

On 6 November, after the close of nominations, the IEC announced that just six nominations had been accepted by the returning officer. The other 15 aspirants were rejected. They were not given any opportunity by the IEC to rectify the defects in their nomination papers. This is despite a provision in the Elections Act that, where a nomination is rejected, a fresh nomination may be

²⁶ UNHRC General Comment 25: Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent.

²⁷ This is in violation of the CRPD and the Persons with Disabilities Act, 2021, section 55.

submitted before the close of the nomination period. Three appealed to the IEC against their disqualification; all were rejected.

The Elections Act permits objections to candidate nominations by registered voters, briefly, immediately upon conclusion of nominations. Grounds for objection include disqualifications revealed in the nomination papers. Public scrutiny of nomination documentation took place at the IEC on 6 November, from 8:00 to 12:00. The scrutiny exercise proved almost meaningless. Sixty-six people were admitted to a roomful of boxes of documents for a period of just five minutes each. Accredited members of the media were not afforded access unless in possession of a voter's card, a requirement not notified to them in advance. They were subject to the five-minute limit, as were citizen election observers. No photography was permitted. This limited scrutiny period did not afford voters an opportunity to gather the information needed to make objections.

The six candidates registered by the IEC to contest the election were Adama Barrow (NPP), Ousainou Darboe (UDP), Essa Faal (independent), Abdoulie Jammeh (NUP), Mamma Kandeh (GDC) and Halifa Sallah (PDOIS).

Three of the unsuccessful aspirants challenged their rejection by the IEC before the High Court (see section on Election Dispute Resolution). Two of them, Ismaila Cessay of the Citizens' Alliance and Mai Fatty of the Gambia Moral Congress, succeeded in their legal claims of unfair procedures of the IEC, violation of the Elections Act and the consequent violation of their right to stand for election.

VIII. CAMPAIGN ENVIRONMENT

Intensive, vibrant, and violence-free campaign, however, inequity of access and spending in terms of political finance led to an unlevel playing field.

The election campaign was intense, vibrant, and competitive. Campaigning activities by some presidential aspirants started several weeks before the official campaign. Five of six registered candidates were touring the country prior to the official nomination, including the president who went on his annual, constitutionally-mandate 'Meet the People Tour' to inaugurate various infrastructure and development projects.²⁸ No obstacles were reported for presidential aspirants to conduct their activities prior to the nomination period. The nomination process itself was used by the presidential aspirants to launch official campaigns. All key candidates gathered large crowds of supporters while delivering their nomination papers to the IEC in the Greater Banjul area. The nomination procession of presidential candidates was livestreamed online by several media houses, thus providing an opportunity for less well-known candidates to introduce themselves and to present their campaign messages.

The official campaign started on 9 November and lasted until 2 December. All candidates were canvassing for votes, but the incumbent and the leader of the UDP dominated the scene. Both leading political parties, the UDP and the NPP, organised a high number of campaign rallies across the country, which attracted up to 15,000 to 20,000 supporters. While the candidates attracted large crowds in cities, regional mobilisers conducted an active grassroots-level campaign in the villages. The rallies organised by the GDC, and Essa Faal also had notable audiences.

²⁸ The president went on tour from 13-30 September. The tour was extensively covered by state media and the State House produce a 30-minutes long documentary on the tour, released and promoted on Facebook at the start of the campaign.

Civil society, with the support from international organisations, arranged for the signing of a Peace Accord by all 18 registered political party representatives at the end of October. On 11 November, all nominated candidates signed a 14-point Code of Conduct. Political parties and their leaders committed to ‘promoting congenial and peaceful atmosphere’.

In addition, the law requires all contestants to respect the Code on Election Campaign Ethics that prescribes a broad catalogue of rules for candidates, political parties, and supporters to follow during the campaign. In the case of a breach of the Code, the IEC may issue a warning to a candidate and even has a power to cancel his or her registration. The IEC Code on Election Campaign Ethics prohibits candidates from insulting or slandering other candidates or using “inflammatory” language, which the Code defines *inter alia* as incitement to insurrection. Furthermore, candidates are prohibited from making speeches that may incite sentiments of a sectional, divisive, religious, ethnic, or regional nature. The Code, which serves as an element of subsidiary legislation, could benefit from more clear definitions of these restrictions. As well, the limitations go beyond the narrowly defined scope of limits to freedom of expression, as defined in international commitments. These prohibitions stifle genuine political debate and result in self-censorship. Breaches of provisions of the Code on Election Campaign Ethics can result in the cancellation of the registration of a political party or the cancellation of the nomination of the candidate; such penalties are disproportionate, and, in view of their potential impact, such provisions should be reconsidered.

Overall, campaign freedoms were broadly respected, and the campaign was peaceful without serious incidents of violence. The IEC, in coordination with candidates’ representatives, prepared a nationwide and regional campaign schedule to avoid simultaneous campaign events held by rival groups. These schedules were seen as necessary by political parties and served their purpose. However, there were a few reports that some parties did not always respect them which caused an overlap and affected other candidates’ campaign plans. Although the scheduling was done with the intention of reducing potential conflicts between campaigns, this represented a burdensome bureaucratic exercise, which limited the ability of candidates to exercise their right to freedom of assembly fully.

The EU EOM observed 45 campaign events across the country throughout the official campaign period. The distribution of various goods during the campaign was a widespread negative phenomenon. The distribution of mainly cooking utensils and milling machines was directly observed at several rallies held by the ruling party. In one case the distribution of goods was reported from an UDP rally. There were also widespread allegations of distributions of money through village chiefs (*alkalos*) reported to EU EOM observers. These illegal practices were also reported by citizen observer groups and media and were in breach of the Elections Act and the IEC Code of Ethics, however no action was taken by the IEC.

The abuse of state resources for campaigning was observed during the election process and provided significant advantage to the incumbent. The EU EOM directly observed instances of abuse of state resources at six NPP rallies, including the use of government’s cars and personnel. In addition, there were cases where the incumbent endorsed new state projects during the campaign period.²⁹ Both main citizen observer groups reported a high number of cases of abuse of state resources.³⁰

²⁹ The most significant case was reported by EU EOM observers from the Kerewan (North Bank Region), where the incumbent donated 1 million *dalasi* for the new hospital during a campaign rally.

³⁰ For instance, Peace Ambassadors Gambia (PAG) reported that in 22 of 53 constituencies, observers witnessed or heard reports of the use of state resources (such as government vehicles) during the campaign.

Introduce an effective oversight and implementation mechanism (including moratoria on public works during the campaign) against the misuse of state resources and public office, including administrative apparatus during the campaign period.

During the campaign period, representatives of political parties and presidential candidates were able to present their programme agendas, although the campaign remained highly personalised.³¹ There were significant efforts organised by broader civil society and several institutions in support of issue-based campaigning, to counter concerns that Gambian politics is defined by ethnic divisions. However, at an NPP rally in Bakau, the NPP's president used tribalistic language, which was criticised by representatives of other political parties and by representative of the IPC.³² Similarly, it was widely reported and transmitted online that the GDC candidate gave the floor to former President Jammeh during some of his campaign rallies, who used offensive language.

Overall, the campaign costs were very high. Political parties/candidates distributed large amounts of various party materials including T-shirts, caps and often provided food for the participants and utilised a highly monetised media and online campaigns. EU EOM observers noted that more party paraphernalia was distributed by the NPP, in comparison to other parties. The NPP also spent far more on publicity than any other campaign. For example, the party signed contracts with some 40 traditional and online media houses and from all political ads placed on the top six non-partisan Facebook news pages, 60 per cent were for the NPP. On the three commercial TV stations (Eye Africa TV, Paradise TV, QTV) monitored by the EU EOM, 83 per cent of supposed paid airtime was purchased by the NPP.

In addition to in-person campaigning, UDP, NPP and Essa Faal strategically used WhatsApp and Facebook to expand their support base. The NPP and UDP had up to 100 WhatsApp groups per region and some 35 symbiotic Facebook pages and groups, each. The UDP pages primarily linked grassroots-level offline and online campaign, while the NPP focused on the paid-for cross-platform promotion of the president and beneficial development programmes completed by the government. The latter obscured the line between governing and campaigning.

With the campaign finance being largely unregulated, with no ceilings on individual donations or expenditure and no public reporting requirements for parties, candidates or service providers, the total expenses and sponsors of presidential campaigns are not known. Such a lack of transparency, accountability, and lack of limitations on campaign spending disadvantaged candidates with less financial means and could have interfered with voters' right to make an informed choice.

IX. MEDIA

Although the ability to speak freely has considerably improved since 2017, the constitution and the legal framework do not provide for the right to freedom of expression.

The Right to Freedom of Expression and the Media Legal Framework

The Constitution provides limited protection for the right to freedom of expression. While Section 25 provides for this freedom, restrictions on the constitutional guarantee, laid out in Section 25(4),

³¹ Former President Jammeh addressed supporters through a live telephone call during the GDC rally on Mamma Kandeh's nomination day. Jammeh attacked the UDP as well as the Mandinka, The Gambia's largest ethnic group, which was widely seen as an attempt to spark tribal tension during the campaign.

³² Mr. Bojang, the NPP's national president and Adama Barrow's presidential advisor, stated at the NPP rally in Bakau on 29 November that "if we lose Adama Barrow, all tribes that are not Mandinka will be sent out of the country".

go beyond limitations as set out in international standards, affording the state greater discretion to limit the right. While restrictions in law may be “reasonable”, ICCPR’s Article 19(3) requires limitations to be “necessary in a democratic society”.³³ Furthermore, undue restrictions include “the sovereignty and integrity of the Gambia” as well as “public decency”, in addition to the legitimate aims of “national security”, “public order” and “public morality”. The exclusively permitted purposes specified in Article 19(3) are “the rights and reputations of others”, “national security”, “public order” and “public health or morals”.

Thus, the legal framework severely undermines freedom of expression. Provisions on sedition, defamation, and the dissemination of ‘false news’ in the Criminal Code and the Information and Communications Act were used against journalists before 2017 and remain in violation of the country’s international and regional commitments.³⁴ As such, they should be immediately repealed. Furthermore, seditious offences in Sections 51 and 52 of the Criminal Code do not comply with the three-part test for assessing restrictions on speech and ultimately criminalise criticism of the government. The current legal framework is, therefore, in urgent need of a thorough overhaul; these elements not being applied is a first step in a process that requires followed up.³⁵

Section 178 criminalises defamation and provides for a minimum term of one year imprisonment, contrary to international commitments. Section 60, in addition, provides for a separate offence, defamation of ‘foreign princes’, hereby granting public figures special protection against defamation. However, public officials are required to tolerate a higher degree of criticism than other individuals.³⁶ Furthermore, the Criminal Code (Section 181A) provides for no less than one year of imprisonment for the dissemination of “false information or news”. In addition, Section 173A of the 2009 Information and Communications Act (as amended in 2013), introduced a 15-year prison term for using the Internet to “spread false news or make derogatory statements, incite dissatisfaction, or instigate violence against the government or public officials”. General prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news”, are incompatible with the three-part test and exert a chilling effect on free speech.³⁷

These legal restrictions have been addressed by regional as well as national courts. On 13 February 2018, the ECOWAS Community Court of Justice ruled to decriminalise sedition, defamation and the dissemination of ‘false news’ in line with international obligations, in a case brought by the Federation of African Journalists and four exiled Gambian journalists.³⁸ Furthermore, the Court ruled that by applying these laws, the human rights of the applicants, including the right to freedom

³³ In addition, Section 207 of the Constitution guarantees the freedom and independence of the media. However, the guarantee is undermined by the requirement in Section 209 limitations to be “reasonable”, instead of “necessary” (Article 19(3) of the [ICCPR](#)).

³⁴ The [2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa](#) by the African Commission on Human and Peoples’ Rights, in Principle 22, calls upon States to repeal laws that criminalise sedition, insult and publication of false news.

³⁵ According to the three-part test, interferences with freedom of expression are legitimate only if they (a) are prescribed by law; (b) pursue a legitimate aim; and (c) are “necessary in a democratic society”. See Article 19(3) of the ICCPR. See also Paragraph 22 of the [2011 UNHRC General Comment No. 34 to the ICCPR](#).

³⁶ See Paragraph 38 and 47 of the [2011 UNHRC General Comment No. 34 to the ICCPR](#).

³⁷ See [2017 Joint declaration on freedom of expression and “fake news”, disinformation and propaganda](#) by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.

³⁸ Since 2005, when a Supplementary Protocol created the human rights jurisdiction of the ECOWAS Community Court of Justice, two decisions were already ruled against The Gambia, both finding the state responsible for the disappearance and torture of journalists.

of expression and the right to freedom from torture, were violated and the journalists awarded damages.

However, on 9 May 2018, the Gambian Supreme Court, in two challenges initiated by the Gambian Press Union (GPU) and three journalists, declared the provision on the dissemination of “false information or news” (Section 181A) as well as all seditious offences in the Criminal Code constitutional, except sedition against the government. Provisions related to criminal defamation as well as Section 173A of the Information and Communications Act were declared unconstitutional. No legal changes have been enacted following the court decisions.

Most recently, on 3 December 2021, the Supreme Court, in a challenge on the constitutionality of Section 60 of the Criminal Code “defamation of foreign princes” clause, declared that criminalisation of defamation of diplomats is necessary “for the promotion and protection of the sovereignty and integrity of the country”. This decision underscores the need for constitutional reform to bring provisions on freedom of speech in line with international and regional standards.

Priority recommendation: Bring the legal framework, including the Constitution, the Criminal Code and the Information and Communications Act, in line with the country’s international and regional commitments on freedom of expression.

In a positive development, the president signed the Access to Information Act in 2021, drafted in cooperation with the GPU, national and international NGOs. This Act addresses a 2017 EU EOM recommendation and is perceived as a step forward by the journalist community. The law provides for the right to access public records and information held by public authorities or by individual and legal entities providing services for them. The law creates an obligation for proactive public disclosure; puts in place a procedure for filing access to information requests; the time limit for public institutions to respond; the grounds for denial and how to appeal against a request being denied.

The Media Environment

Despite continuing legal restrictions, the ability to speak freely has improved considerably since 2017, as reported by EU EOM interlocutors. No citizen has been convicted on the above-mentioned provisions and the number of media outlets has increased significantly.³⁹ Some of the formerly exiled journalists have returned and continued their work in the country. Aside from the state broadcaster, Gambia Radio and Television Services (GRTS), 5 commercial TV and 41 radio stations, as well as 9 Community Radio Stations operate in the country. Several newspapers also publish daily or several times a week.

However, broadcasting licencing and oversight is vested with the executive, the Minister of Information and Communication upon advice of the Public Utilities Regulatory Authority (PURA).⁴⁰ Moreover, PURA’s independence is undermined by the direct appointment of its director general by the president.⁴¹ International and regional commitments on freedom of expression require the appointment process for members of a public broadcast regulatory body to be independent and adequately protected against interference. The process is to be open, transparent and involve the

³⁹ On 30 June 2020, human rights activist Madi Jobarteh was charged under 181A “false publication and broadcasting” of the Criminal Code following an interview in which he denounced the lack of effective investigation into the alleged killing of three citizens between 2017 and 2019.

⁴⁰ See Section 7(2) of the 2009 Information and Communications Act. PURA also regulates transportation, water and electricity services.

⁴¹ See Section 16(1) of the 2001 Public Utilities Regulatory Authority Act.

participation of relevant stakeholders.⁴² Moreover, to meet the country's obligations, the state-run GRTS would need to be transformed into an independent public service broadcaster.⁴³

Establish an independent and public broadcasting licensing regulatory and oversight authority, with the power to examine broadcasting applications and to grant licences, as well as oversee and implement broadcasting legislation.

Transform the GRTS into an independent public service broadcaster (i.e., independent management, financing, and oversight).

EU EOM interlocutors expressed concern that the implementation of primary and secondary legislation by PURA does not sufficiently provide for media pluralism, diversity of content and transparency of ownership. Under international and regional standards, states have a positive obligation to ensure media freedom and pluralism.⁴⁴ In a positive step, secondary legislation *Draft Guidelines on Ownership and Cross-Ownership in the Broadcasting Sector*, were adopted by PURA in 2017.⁴⁵ The Guidelines are aimed to provide for pluralism and diversity of ownership in the broadcasting sector and to prevent undue concentration.⁴⁶ However, in practice, licences have been allocated to business holdings, which include TV, radio stations, mobile providers, and other businesses.⁴⁷ Generally, a limited advertising market leaves media outlets dependent on subsidies and limits the production of news and other editorial content.

In another positive step, PURA adopted *Broadcasting Service Content Regulations* in July 2021. The regulations contain broad provisions on impartiality and balance in news and current affairs programmes. Furthermore, they oblige both the national broadcaster as well as commercial broadcasters to an "objective" and "impartial" coverage of election campaigns. Nevertheless, in practice these regulations are neither monitored nor implemented and stakeholders seem to be unaware of them. Since these regulations provide content obligations on both state and commercial broadcasters and are supposed to be implemented by PURA, they may replace the IEC Elections Media Rules during the election campaign.

Monitor and implement PURA Broadcast Service Content regulations, through a systematic process.

Coverage of the Election Campaign and EU EOM Media Monitoring Findings

The Election Act and supplementing IEC 2016 Elections Media Rules provide contestants with an equal amount of free airtime on state-owned broadcasters and the right to purchase advertising

⁴² See Paragraph 39 of the [2011 UNHRC General Comment No. 34 to the ICCPR](#) and Principle 17 of the [2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa](#) Principle 13 of the [2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa](#) stipulate that "States shall establish public service media governed by a transparently constituted and diverse board adequately protected against undue interference of a political, commercial or other nature." Currently, senior management of GRTS is appointed by the President. See also Paragraph 16 of the 2011 UNHRC General Comment No. 34 to the ICCPR.

⁴⁴ See Paragraph 40 of the [2011 UNHRC General Comment No. 34 on the ICCPR](#) and Principles 11 and 12 of the [2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa](#)

⁴⁵ Section 227 of the 2009 Information and Communications Act obliges PURA to provide for diversity and fair competition in the broadcasting sector. The Guidelines were adopted in reference to Section 227 (e), requiring PURA to "ensure a limitation in cross ownership between broadcasters, signal distribution licensees, newspapers, electronic communication licensees and advertising agents".

⁴⁶ ARTICLE 19 provided a [legal analysis of draft regulatory guidelines on media ownership](#) in July 2017.

⁴⁷ QTV, a commercial TV station with nation-wide coverage, belongs to QGroup, incorporating several business interests. Another licence was allocated to the Africell telecom provider, already operating a radio station.

time in commercial broadcasting. Without explicit reference to news, no advantage should be given to the government by undue coverage of institutional events on state broadcasters.

Candidates, in advertising, are prohibited from criticising competitors and using “inflammatory, defamatory or insulting” language, among other things. These restrictions are insufficiently defined to constitute a legitimate restriction on freedom of speech. As such, they risk undermining genuine and robust debate. The IEC did not conduct a monitoring to implement the Media Rules and no media-related complaints were filed. However, on 12 November, a UDP press release accused the IEC of stifling UDP’s right to criticise the incumbent after a UDP Party Political Broadcast had been rejected by GRTS. According to the IEC, GRTS and the UDP, the case was solved informally and UDP’s advertising was broadcast on GRTS.

EU EOM media monitoring results show that GRTS provided rather balanced news coverage by devoting 21 per cent to Adama Barrow (NPP), 31 per cent to Ousainou Darboe (UDP), 8 per cent to Essa Faal (independent candidate), 12 per cent to Abdoulie Jammeh (NUP), 12 per cent to the Mamma Kandeh (GDC), and 16 per cent to Halifa Sallah (PDOIS).

All news coverage by GRTS was positive or neutral in tone. In contrast, monitored commercial TV stations displayed significant bias towards the incumbent. Eye Africa TV covered the GDC, the independent candidate, NPP, NUP, PDOIS and the UDP by devoting 9, 8, 40, 6, 24 and 13 per cent of news coverage, respectively. Paradise TV devoted 11, 16, 37, 7, 15 and 15 per cent news coverage to the listed candidates. QTV virtually covered only the NPP by devoting 92 per cent of its news coverage to Adama Barrow. The tone of the coverage was predominantly (89 per cent) neutral or positive.

The editorial coverage on monitored state and commercial radio, still considered to be the main source of information, was generally more balanced, with some of the radio stations airing criticism of the incumbent.⁴⁸ Generally, the amount of editorial coverage in broadcasting was comparatively low. Commercial broadcasters reported a dependence on paid content due to a lack of resources to cover all campaign events equally. None of the monitored TV stations distinguished paid advertising clearly from editorial content. Two of the monitored newspapers displayed some balance in their reporting, while another displayed bias (see Annex 2 - Media Monitoring). A debate, organised by a national CSO and supported by international donors, was broadcasted live on 20 November on commercial Paradise TV, several commercial radio stations and online. However, Only Essa Faal and Halifa Sallah, participated in the presidential debate.

X. SOCIAL MEDIA AND DIGITAL RIGHTS

Vigorous and pluralistic online debate was tainted by disinformation and tribal rhetoric, while positively, national fact-checking and investigative online journalism helped voters to make an informed choice and enhanced transparency of the election.

⁴⁸ The state owned GRTS devoted 16 per cent of news, current affairs, and discussion programmes to the GDC – Mamma Kandeh, 16 per cent to independent candidate Essa Faal, 18 per cent to the NPP – Adama Barrow, 15 per cent to the NUP – Abdoulie Jammeh, 16 per cent to the PDOIS – Halifa Sallah and 18 per cent to the UDP – Ousainu Darboe, respectively. King FM covered the GDC, the independent candidate, NPP, NUP, PDOIS and the UDP by devoting 12, 7, 36, 15, 7 and 23 per cent of coverage, respectively. QRadio devoted 14, 13, 34, 13, 13 and 13 per cent of coverage to the listed candidates. Star FM devoted 17, 5, 53, 2, 6 and 18 per cent of coverage to the respective candidates. Taranga FM dedicated 8, 12, 27, 1, 7 and 45 per cent of coverage to the respective candidates. And West Coast Radio devoted 14, 7, 44, 7, 4 and 24 per cent of coverage to these candidates. On King FM, Star FM and Taranga FM 28, 12 and 51 per cent of the above coverage was in a negative tone.

Digital Communications and Social Media Environment

Up to 46 per cent of Gambians are connected to the Internet.⁴⁹ While four mobile operators claim to jointly cover up to 90 per cent of the country's territory, a steady data traffic was observed only along the main roads as well as in Banjul, Kanifing and parts of Brikama, allowing to reach more than a half of all voters.

Most Internet users have basic digital skills, and the overall media literacy level is rather low.⁵⁰ Positively, several civil society organisations are offering digital literacy trainings for media practitioners, and youth activists. Such initiatives foster citizens' resilience to disinformation and war-rant expansion in line with international commitments.⁵¹

Facebook, with some half a million users in The Gambia, was the prime discussion forum on the election and shaped the political discourse online and offline. WhatsApp was instrumental in disseminating the news, campaign messages and in mobilising the electorate, yet it also effectively accelerated the spread of disinformation that fostered political polarisation.⁵² Due to the growing popularity among the youth and given that short videos are handy for sharing as an instant message, TikTok had supplanted Twitter. YouTube and Instagram were other channels to reiterate messages already disseminated on Facebook. The main communication language on Facebook and Twitter was English, while Mandinka and Wolof were the preferred languages for WhatsApp voice messages and TikTok videos.

The top 10 news/infotainment pages and groups on Facebook are the backbone of Gambian social media ecosystem. They have up to 440,000 million followers each, from across the political spectrum. Information posted there was observed to be frequently repeated in the newscasts and discussed during highly popular call-in programmes on community radio stations. Key electoral events were livestreamed on those pages, with short excerpts migrating to WhatsApp. In addition, news pages and groups appeared to hold the IEC to account on transparency issues and, overall, upheld a vigorous and pluralistic debate that is an essential element of a democratic election.

Legal Framework for Digital Rights

The legal framework unduly restricts freedom of expression online. In recent years it has been selectively applied to detain and, in some cases, charge at least six citizens critical of the government and the president.⁵³ After vocal online and offline campaigns, charges were dropped in all cases. Yet, such laws and their intimidatory application conflict with regional and international standards.⁵⁴

⁴⁹ Information provided to the EU EOM by the Public Utilities Authority on 11 November 2021.

⁵⁰ The adult literacy rate is around 50.8 per cent, UNESCO (2015); there is no statistical data on media, digital literacy rate. However, interlocutors from across the board noted that low levels of digital literacy are a problem that needs to be addressed to reduce negative effects of disinformation

⁵¹ [Joint declaration on freedom of expression and “fake news”, disinformation and propaganda](#) by recognised international bodies, s.3: “States should take measures to promote media and digital literacy, including by [...] engaging with civil society and other stakeholders to raise awareness about these issues”.

⁵² On average, Gambians participate in 5-80 WhatsApp groups each, depending on person's social contacts.

⁵³ Those include detentions of a woman in February 2017, of Dr. Ismaila Ceesay in February 2018, of the owner of Home Digital FM, Pa Modou Bojang, and the general manager of King FM, Gibbi Jallow, in January 2020, of rights defender, Madi Jobareth, in June 2020 and repeated arrests of Yankuba Darboe in 2020 and 2021.

⁵⁴ [AU DPFEA](#), (see comment on hyperlink above) Part II, Pr. 22 (2 and 3): “States shall repeal laws that criminalise sedition, insult and publication of false news (and) shall amend criminal laws on defamation and libel in favour of civil sanctions.”

PURA is the regulatory body for the ICT sector. It is governed by a legal framework that allows for government's interference in PURA's operations, including their requests made to mobile operators to block the Internet and/or slow down data transfer. Such a governance structure is at odds with international standards, raising concerns about possible misuse of authority and subsequent infringement on freedom of expression.⁵⁵

The Access to Information Act, if properly implemented, substantially broadens the scope of information that state institutions, including the IEC, must publish online. The still prevailing culture of delayed or incomplete publication of information of public interest online adversely affects public trust and facilitates the spread of disinformation, as demonstrated during the candidate registration and during the immediate post-election period, when no result data was available on IEC website. Civil society continues to advocate for an effective implementation of the Act and carries out online and offline campaigns to introduce the key benefits of this new legislation. Such positive initiatives merit expansion. To achieve full compliance with international standards related to access to information, outdated clauses in the 1922 Official Secrets Act should also be repealed.⁵⁶

The Constitution stipulates protection of privacy and personal data, yet consolidated legislation ensuring full respect for this right is not enacted. In 2019, the government tabled a Data Protection and Privacy Policy Strategy that, among other things, foresaw the establishment of a data protection agency, mandated to issue guidance to various institutions on what personal data can be collected, and to oversee the storage, as well as use of personal data. However, this policy document does not have the status of law, hence compliance with international standards for privacy and data protection is not ensured.⁵⁷

Adopt a privacy and personal data protection law. The law should prescribe an implementation and oversight mechanism that would robustly protect citizens' privacy and personal data online and offline. Such powers should be vested in an independent authority.

Social Media Monitoring Findings⁵⁸

The online campaign discourse was curated by the top 10 news/infotainment pages and groups on Facebook, which daily reached 10 times more unique users than any official page of any presidential candidate. Hence, candidates sought visibility on their newsfeed, while party militants used comment sections of trending posts to discredit rivals and stir discord. Positively, some groups and pages blocked accounts and deleted comments featuring tribal intolerance. They also frequently published articles and opinions calling for a peaceful conduct of the election and a respectful, issue-oriented debate. Such editorial policies were helping to develop the culture of a healthy electoral debate where contending political views coexisted.

⁵⁵ [AU DPFEA](#), Part I, Pr. 9(2): "States shall ensure that any law limiting the rights to freedom of expression and access to information is overseen by an independent body in a manner that is not arbitrary or discriminatory."

⁵⁶ Section 3 of the Act makes publishing "any secret official code, word, sketch, plan, article, note or other document which may be useful to an enemy" an offence punishable with imprisonment.

⁵⁷ [ICCPR](#), art. 17: "No one shall be subjected to arbitrary [...] interference with his privacy." [AU DPFEA](#), Chapter IV, Pr. 42 (8): "Oversight mechanisms for the protection of communication and personal information shall be established by law as independent entities and include human rights and privacy experts."

⁵⁸ The EU EOM consistently monitored an indicative set of more than 200 public Facebook pages/groups and accounts with a nationwide relevance, to capture key campaign trends across various online platforms. Data from those accounts was downloaded using CrowdTangle and later analysed to assess the online election-related content against international and regional standards. The mission also monitored a total of 105 TikTok, Twitter and YouTube accounts that were selected considering the reach and impact of the account on the political agenda. For further details of the methodology employed by the EU EOM are included in the Annex 3 on Social Media Monitoring.

Among the presidential aspirants only the NPP and UDP had a pool of online followers that amounted to a significant vote bank.⁵⁹ Both parties had well-established communication systems with up to 100 WhatsApp groups per region, some 35 symbiotic Facebook pages and groups each, as well as their own online media outlets. Both parties produced short voice messages in local languages at the national level and diffused them through the web of WhatsApp groups mirroring party structures.

Strategies on Facebook differed. UDP pages linked grassroots-level offline and online campaigns and the party's online support gradually increased.⁶⁰ At the same time, the NPP neglected Barrow's official page, instead focused on paid ads, an/the amplification of NPP's media content, and on active commentary of posts on nonpartisan news/infotainment pages and groups. In addition, the NPP also promoted campaigning conducted by both first ladies, who engaged with women and youth groups in swing constituencies in Greater Banjul, Brikama and Foni. Overall, the NPP's social media strategy enabled the party to reach more potential voters outside the already existing support base, than the one of the UDP.

Among other contestants, only Essa Faal used social media strategically. He was also the only one successfully campaigning on TikTok.⁶¹ Unlike the NPP and UDP, Faal had to build his online support base from scratch within a few months. Kandeh's candidacy was primarily promoted through online channels administrated by the APRC faction still supporting Jammeh. However, those activities did not increase his popular online appeal.

Partisan pages on Facebook seeded malicious rumours, tainting candidates' reputations and distorted campaign messages. The UDP had to publicly refute false assertions about Darboe's health and alleged death, plans to expel Senegalese and association with witchcraft, while Faal had to debunk rumours about his religious affiliation and purported wealth. Barrow was frequently ridiculed by partisan accounts. Often disinformation in the form of voice messages and doctored images migrated back and forth from Facebook to WhatsApp, and at times also appeared on TikTok. Such rumours were spread in a coordinated manner each time applying a similar tactic and always aiming at hijacking conversations on nonpartisan news/infotainment groups and pages.⁶² Overall, disinformation and false content confused voters and polarised the campaign.⁶³

Divisive, derogatory speech featured on anonymous pages where party fans exploited tribal sentiments to instil fear of being marginalised if the rival won, mixed with conspiracy theories was also present on NPP's and UDP's media pages and WhatsApp groups, whose members posted such content on nonpartisan discussion groups' newsfeed. Harmful rhetoric was also recorded during the GDC, NPP and UDP rallies and later disproportionately amplified by viral channels.⁶⁴ The most

⁵⁹ Both parties build their online communication on systems already established by the 2016 Coalition.

⁶⁰ For further data analysis see Annex 3 Social media monitoring results.

⁶¹ Essa Faal had a #ChangeYourT-Shirt campaign on TikTok, during which he offered strangers in a party T-shirt to change it for a new one with Faal's logo. Videos had more than 128,000 views, while Faal's account got 240,000 unique reactions.

⁶² First such post was simultaneously shared up to 20 times per hour from up to three in fact anonymous partisan accounts. Further the post was shared on one of the two (or on both) most followed Gambian discussion groups on Facebook (0.35 and 0.14 million followers and members each) with an aim to trigger discussion and keep the post on the top of group's newsfeed. Such posts also were inserted in comment sections of trending news posts on media pages.

⁶³ [ICCP, HRC GC 25](#), para. 19: "Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind."

⁶⁴ A demeaning statement against the Serahule (Soninke) ethnic group was made by Darboe (17 October, Basse): "*They [the Serahules] want to make Adama Barrow and the NPP a Serahuli property. And the truth is, Serahuli people, you did not vote for Adama Barrow in 2016.*" statement as well; by the founder of the Gambia Action Party (GAP) who during the NPP rally (17 November in Baja Kunda) falsely stated: "*Essa Fall is finished because*

offensive language that in the local context was perceived as hate speech was used by former president Jammeh during GDC rallies. While excerpts of those speeches circulated on WhatsApp, nonpartisan Facebook-based media mostly omitted videos with damaging content, instead publishing reports that condemned such speech or proved such statements to be false. Nevertheless, tribal rhetoric as such shrank the space for a fact-based debate, eroding voters' opportunity to make an informed choice.

Harassment and cyber-bullying of female rights activists and journalists was observed and reported to the EU EOM by all female editors-in-chief the mission met with. Most frequently, online attacks followed critical reports about the NPP or UDP and were carried out by aggressive party supporters. While the leadership of the NPP and UDP was aware of those 'character assassination' attempts, no affirmative actions followed. Such a demeaning public framing of women as being unqualified for decision making positions discourage female participation in public and political life.

Facebook did too little too late to effectively counter damaging practices on the platform. Their key transparency tool for political ads (Ad Library Report) had not been introduced. Its capacity to provide content moderation in local languages was very limited and the only fact-checker recognised by Facebook was a Nigerian group without a solid base in The Gambia. Overall, without a timely and robust engagement with a broad range of national stakeholders, including Facebook-based media, civil society organisations active in election observation and national fact-checking, UN Guiding principles on business and human rights could not be abided by.⁶⁵

Formalise cooperation between the IEC, civil society, and main social media platforms to develop an efficient mechanism ensuring transparency of online campaigning, including its financing, and to counter disinformation. Such cooperation should ensure that social media platforms, including Facebook, introduce good practices in The Gambia, such as regular engagement with a broad range of national stakeholders, transparency in political advertising, employment of content moderators, and promptly counter disinformation.

National teams from Factcheck Gambia and The Fact Check Centre in a collaboration with citizen observers, community radio stations and investigative journalists from *Malagen*, debunked false news, flagged tribal language, and prepared fact sheets on key stages of the electoral process. Their findings were published online and shared in some 40 WhatsApp groups. Further, investigative journalists scrutinised candidates' asset declarations, tax records and the incumbent's delivery on previous campaign promises. Such reporting nurtured a culture of accountability of public officials and helped voters to make an informed choice on election day. Overall, fact checking, and investigative journalism fostered transparency, strengthened electoral integrity and are essential for advancing The Gambia's democratisation efforts. Further human and financial investments in such initiatives will ensure their continuation beyond the electoral period.

XI. PARTICIPATION OF WOMEN

Despite legislative efforts, women remain underrepresented in political life and affirmative action is needed to enhance their participation.

he goes against the prophet. He's Ahmadiyya" and by the NPP National president Dembo Bojang (29 November, Bakau) who stated: "Any ethnicity that is not Mandinka, you will all pack up your belongings and leave if we lose Adama Barrow [...]"

⁶⁵ [UN Guiding Principles on Business and Human Rights](#), adopted by the UN HRC in 2011. See also the [Joint declaration on freedom of expression and "fake news", disinformation and propaganda](#), sec. 4 Intermediaries and [Joint declaration on Freedom of Expression and Elections in the Digital Age](#), p.2 a.

The Gambia ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa that guarantees comprehensive rights to women, including taking part in the political process. It has also ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Constitution provides for gender equality through full participation of women in all spheres of society based on equal opportunities and non-discrimination. In addition to the rights guaranteed under the Constitution, women's rights are further protected under the Women's Act enacted in 2010 to incorporate provisions of the CEDAW into national law, which provides for adoption of temporary special measures to accelerate meaningful gender equality.⁶⁶

Women represent over half of the country's population and almost 57 per cent of the electorate. Only 5 of the 58 members of the NA are women, and 3 of these were appointed directly by the president. On the cabinet level, of the 23 ministers 4 are women. None of the IEC members is a woman and all 18 registered political parties are led by men. Despite legislative efforts supporting the participation of women, political parties remain nevertheless overwhelmingly male dominated and have yet to address gender inequality by affirmative action gender policies within their parties, in terms of integrating women into party structures and selecting women as party candidates.

Political parties should comply with the principle of gender equality and achieve fair gender representation in the nomination of women in party leadership positions and as candidates to help increase the level of women's participation in political life.

Amongst the 26 presidential aspirants, only 1 was a woman, and all 6 nominated presidential candidates were men. Although CSOs advocate for strengthening women's rights, and reserved seats for women in the NA were foreseen in the Draft Constitution, no affirmative action has yet been adopted. The gap between the participation of women and men in political life can be attributed to traditional, patriarchal, cultural, and socio-economic barriers, among other things.

XII. PARTICIPATION OF PERSONS WITH DISABILITIES

Intensified efforts and proactive approach needed for meaningful inclusion of PwD.

While The Gambia is yet to sign the 2018 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities, it ratified the CRPD in 2015 and its Optional Protocol. In July 2021, the CRPD was incorporated into domestic legislation with the adoption of the Persons with Disability Act. Under the general protection of fundamental rights and freedoms, the Constitution dedicates a section to the rights of PwD.⁶⁷ The Act dedicates section 55 to participation of PwD in public life, ensuring both accessibility and facilitation, including availability of information throughout the electoral process and the introduction of a quota. The Act guarantees the free expression of PwD by allowing voting assisted by a person of their choice.⁶⁸ Yet, access to presidential candidacy is denied to those of "unsound mind".⁶⁹ The Lunatics Detention Act of 1917, last amended in 1964, dealing with mental health, is obsolete and contrary to the principles

⁶⁶ The Women's Act was lastly amended in 2021 and section 15 now provides for specific quotas, reserved amongst other, in public offices.

⁶⁷ Article 31 provides that the state and society recognise the right of the PwD to respect and human dignity and for their protection against exploitation and discrimination, and that in any judicial proceedings such condition should be considered. Article 33 further recognises the equality of all persons before the law and protects against discrimination, and Article 216(2) provides for the establishment of policies that protect the rights and freedoms of PwD.

⁶⁸ Section 55(4)(vii) which contradicts section 66(10), Elections Act, stipulating that assistance may be offered by the Presiding Officer or other Election Officer.

⁶⁹ Section 90, Constitution.

set out in the African Charter on Human and People's Rights, as, among others, it deprives persons detained in a psychiatric hospital of their right to vote.

There are no provisions in the electoral law mandating the IEC to put in place special measures to promote the participation of PwD. Moreover, no statistical data regarding PwDs was made available during voter registration, to develop a proactive and inclusive approach such as targeted voter education activities and special materials to address PwD needs, such as the use of Braille labels on ballot drums in polling stations to protect secrecy of the vote. Notably, the priority for PwD, the elderly and pregnant women in the queue on Election Day was underlined during the IEC training of polling staff. No voter information, editorial programmes or articles aimed to advance the political participation of PwD were published either on the IEC website or in the media monitored by the EU EOM.⁷⁰ There are no special legal requirements for public or private media to adapt any election related programming for PwD. During the campaign, none of the presidential candidates addressed the needs of PwD in their campaign platforms or employed methods that would effectively reach out to the community.

XIII. CITIZEN AND INTERNATIONAL ELECTION OBSERVATION

Both citizen and international election observation efforts were robust and contributed to a greater transparency and trust in the election.

Several civil society organisations were actively engaged with election observation and successfully recruited and deployed significant numbers of accredited election observers. Domestic observers could only vote at polling stations where they were registered, which to some extent halted the possibility to coordinate deployment among the various groups to cover a higher number of polling stations on election day by citizen observers. There was a good working cooperation between the IEC and observer groups and no problems related to the accreditation of observers were reported.

There were two main citizen observer organisations which observed the election based on a long-term observation methodology, Gambia Participates and Peace Ambassadors Gambia (PAG). Gambia Participates deployed some 460 election day observers and Peace Ambassadors Gambia (PAG) deployed 300 static and 150 mobile election day observers. Both organisations deployed their long-term observers across the country and, positively, published several reports prior to election day on various stages of the election process, including the campaign. Both organisations also held press conferences on and after election day and issued preliminary statements.

A smaller group of observers was accredited under the civil society umbrella, CSO Coalition on Elections. The Coalition deployed some 150 observers on election day. The West Africa Network for Peace (WANEP), which coordinated the activities of the coalition, also monitored the campaign environment regarding incidents of violence.

Several international organisations observed the election, including the African Union, the ECO-WAS, EISA, and the Commonwealth. Particularly the AU and ECOWAS deployed significant numbers of election observers. All four organisations were led by former presidents of African

⁷⁰ Article 21, CRPD calls for providing “information intended for the general public to persons with disabilities in accessible formats [...] appropriate to different kinds of disabilities” and for encouraging “the mass media [...] make their services accessible to persons with disabilities.”

states and held a common press conference after election day. Westminster Foundation for Democracy (WFD) deployed a Thematic Election Assessment Mission and released a post-election day statement.

XIV. ELECTORAL DISPUTES

The electoral dispute resolution does not provide for an effective legal redress and respective legislative provisions lack legal certainty.

Complaints and Appeals

The IEC has extensive jurisdiction to deal with complaints arising at all stages of voter registration, candidate nomination, campaigning, and the technical aspects of the elections. Complaints against the provisional voter register are submitted to the registering officers, collected by the IEC, and dealt with by revising courts established *ad hoc* within the magistrates' courts. During the 2021 election, there were no challenges to the voters' register, which could partially be attributed to public unawareness of the procedures.⁷¹

Nevertheless, a contentious matter that reached the courts was the issuance of attestations to voters with no identification documents by the Mayor of Banjul.⁷² CSOs brought the case against the IEC to the High Court which ruled that the IEC acted *ultra vires* accepting such attestations, a judgment subsequently confirmed by the Court of Appeal, with no practical consequences though to the voters' register, which may only be challenged through the process prescribed in the law.⁷³ In March 2021, within a case brought before the Supreme Court contesting the constitutionality of provisions of the 2015 Elections (Amendment) Act, the court declared that Gambians residing abroad were entitled to register and to vote in public elections and referenda. A subsequent case brought to the High Court requesting the IEC to implement the judgment is – at the time of writing – yet to be decided.

Appeals against the decision of the Returning Officer on nominations may be submitted to the IEC within two days upon announcement of the list of nominated candidates (i.e., 8 November). Three appeals were submitted by rejected aspirants against the decision of the Returning Officer to the IEC and were all dismissed. Subsequently, three cases were brought to the Banjul High Court, challenging the IEC nomination process as breaching the fundamental right to stand for election.⁷⁴ Court proceedings had to be expedited, given the limited timeframe from the nomination until election day.⁷⁵ In the case of Ismaila Ceesay the High Court found that the IEC had violated the Elections Act in the rejection of his nominations, criticising their “dismal failure to comply with the spirit and the letter of the Act” during the process of nomination.⁷⁶ Access to effective and timely remedies is crucial to ensuring candidates' fundamental rights.⁷⁷ Notably, on 26 November

⁷¹ One case brought directly before a Magistrates' Court was dismissed for not having been submitted to the IEC.

⁷² Section 12(2)(e), Elections Act affords this right to traditional leaders (*Alkalos*) or district chiefs (*Seyfos*).

⁷³ By way of challenging the voters' register in a Revising Court.

⁷⁴ Namely, by Joseph Joof (Independent), Ismaila Ceesay (CA) and Mai Ahmed Fatty (GMC) claiming oversights by the IEC in implementing the procedures stipulated in the Elections Act.

⁷⁵ A successful outcome of such a case and a subsequent change in the list of qualified candidates could theoretically cause a postponement of the election.

⁷⁶ *Ismaila Ceesay and Citizens' Alliance v. Independent Electoral Commission and Attorney General* MISC.APP.NO: HC/682/21/202/F1. The Court found the IEC's rejection of the aspirant candidates was *inter alia* in violation of Article 13 of the African (Banjul) Charter of Human and People's Right and drew guidance from ECtHR case of *Soltanov and Others v. Azerbaijan*, 2016.

⁷⁷ Article 2.3, ICCPR; article 17(4), African Charter on Democracy, Elections and Governance; IV.6, AU Declaration on the Principles Governing Democratic Elections in Africa ‘Individual or political parties shall have the right to

and 7 December the IEC appealed the High Court judgments in the cases of Ceessay and Fatty respectively. None of the appeals was heard prior to the end of December.

Revise the rules for objections and appeals to the nomination of candidates; the time-period should be revised and extended in order to allow for effective scrutiny and legal remedy.

The responsibility to resolve complaints under the Code of Campaign Ethics falls on the IEC. Nevertheless, submission, processing, investigation, adjudication, and follow-up action on complaints do not have clearly prescribed timeframes or codified rules indicating the procedures to be followed to ensure stakeholders' awareness and confidence. The EU EOM is aware of two campaign-related complaints to the IEC.⁷⁸ On a regional level, complaints pertaining to campaign schedules or venues were often submitted orally and resolved by IEC regional offices through informal systems of mediation and reconciliation.

Priority recommendation: Introduce a detailed and comprehensive complaints procedure throughout the electoral process with reasonable time limits for adjudication, regulating matters such as format and venue, including for the implementation of the Code on Election Campaign Ethics.

Electoral Offences

Electoral offences related to all stages of the process and of illegal or corrupt practices (bribery, treating, undue influence or personation) as well as respective penalties are listed in the Elections Act. The IEC may *ex officio* institute criminal proceedings for any offence committed under the Elections Act or refer such offence to the Attorney General for prosecution. EU EOM observers reported that individual incidents during the campaign were not treated as election related cases and no criminal proceedings instituted either by the IEC or the police were reported to the mission. Despite allegations in the media on distribution of goods during the campaign, no prosecutions have been reported, undermining the accountability of candidates and political parties for the actions of their supporters. Even though it was not treated as an electoral case, on 8 December, an alleged UDP supporter was arrested by the police for inciting violence and publishing false news on WhatsApp. He was later brought to court and charged with offences implicating significant penalties.⁷⁹

Election Petitions

The renewal of the Supreme Court with the appointment of judges since 2017 and a series of recent court decisions at all levels have strengthened public confidence in the judiciary. In this election, the courts' approach to the rules of standing has facilitated public interest litigation, promoting accountability of public bodies, although judgments have tended to be declaratory.

The Supreme Court has exclusive jurisdiction to determine the validity of presidential election results, which may only be challenged by election petition. The Constitution stipulates that any political party or candidate having participated in the election can challenge the results within 10 days from their announcement (i.e., 15 December). A judgment must be delivered within 30 days.⁸⁰

appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.'

⁷⁸ Namely by NPP and NUP against GDC for violating campaign rules.

⁷⁹ Police arrested Lamin Darboe allegedly a UDP supporter after he released a WhatsApp audio calling for civil war in The Gambia. He was later charged with offenses of the Criminal Code and the Anti-Terrorism Act involving penalties of 10 years of imprisonment or more and pleaded guilty.

⁸⁰ Similar provisions are also included in the Elections Act without specifying the type of election and stipulates a 30-day deadline while offering a broader legal standing.

On 14 December UDP filed a petition against the election of Barrow on the grounds of alleged widespread irregularities affecting the result.⁸¹ The UDP claimed corrupt practices (bribery and inducement) by Barrow and members of NPP during the campaign period, alleged conspiracy between Barrow and the IEC in the appointment of presiding officers, lack of transparency in the counting and transmission of results, irregularities in counting and collation at polling station and constituency level, as well as fraudulent entries of non-Gambians in the voter register. The respondent filed three interim applications for dismissal of the election petition on various procedural grounds.⁸² Following a hearing on 24 December, a ruling was delivered on 28 December, when the hearing of the main petition was scheduled to start, striking out the petition on merely procedural grounds, for failure to comply with the requirement of giving notice of presentation of the petition to the respondent as per rule 11 of the Election Petition Rules.⁸³ The Court held that the petitioner failed to comply with the requirements set in the rules and such failure in cases of that nature is fatal to an election petition.

XV. POLLING, COUNTING AND TABULATION OF RESULTS

All phases of polling day were well administered, in an atmosphere which was peaceful.

Overview of Voting

Polling and counting were well administered, during an election day which was calm across the country. Polling was conducted from 8:00 to 17:00, in a total of 1,554 polling stations, some of which were clustered together in polling centres. Voters could vote only where they were registered and had to show their voter registration card. Voter turnout was extremely high, reaching 89 per cent nationwide. There were long queues throughout the day, with some polling stations required to remain open past closing time to accommodate voters still queuing to vote.

The overall assessment of the opening of polling stations was positive, with 16 of the 17 openings observed assessed as either good or very good. Opening procedures were mostly or completely followed. All essential materials were present. The layout was conducive to voting in most polling stations observed. However, just over one third of polling stations visited were judged to be inaccessible to persons with reduced mobility.

The overall conduct of voting was assessed as good or very good in 119 of the 128 observations undertaken by the EU EOM. The overall performance of polling staff was assessed as very good in almost two-thirds of observations. Difficulties in voting were observed in a small number of polling stations, arising from issues with ballot drum perforations. This resulted in some delays, while adjustments were made to equipment, as well as some compromise of secrecy. There were also some variations in the sounds of bells within polling stations observed, giving rise to a possible undermining of secrecy. While additional polling assistants were allocated to polling centres, to

⁸¹ In breach of sections 116 and 117, Elections Act; section 116(3) stipulates that where a corrupt practice is committed by a candidate elected at an election held the election of the candidate shall be invalid.

⁸² A first application, on the grounds of immunity granted to the president against civil and criminal proceedings article 69, Constitution, which was withdrawn on a later stage, a second, amongst other, on the grounds of filing and serving of the petition beyond the deadlines, joining the IEC as a party to the proceedings by an *ex parte* application etc. and a third on non-compliance to rule 11 of the Election Petition Rules.

⁸³ The Court held that the “Petitioner failed to comply with the requirements in that he did not serve the First Respondent a notice of presentation of the petition and of the nature of the proposed security accompanied by a copy of the petition.” Service of the petition was performed via a court process without a notice.

assist voters in identifying their allocated polling station, voters frequently had difficulty in identifying their polling station.

Transparency of the voting process was very highly assessed. The presence of candidate agents in polling stations enhanced this, with representatives of the governing and opposition parties encountered by the EU EOM in all polling stations visited. The participation of citizen observers was also significant, and they were present in two thirds of polling stations visited. Women comprised less than a quarter of presiding officers in polling stations visited by the EU EOM, while they filled two-thirds of the other roles.

Counting

Counting of votes took place on the spot at polling stations, immediately upon the close of polls. The overall assessment of the counting process was good or very good in 17 of the 19 instances observed. Transparency of counting was assessed positively in all instances. Procedures in the counting, recording and reconciliation of results were not always followed completely or in the correct order. Unused ballot tokens were not counted in a few of the polling stations observed and polling staff did not always cross-check seal numbers with their notes prior to opening the ballot drums. Polling staff, also, did not always count the number of voters who had voted in the voters' lists.

Procedures were underspecified, with limited written guidance provided in a handbook for polling officials. Simple paper forms, without security features, were used to handwrite results. Party and candidate agents signed the Report on the Counting of Votes form in all but one instance observed. There was no evidence of any falsification of results forms observed by the EU EOM. Candidate agents did not always receive copies of polling station results. Neither were results forms always publicly posted, as required by law.

Tabulation of Results

Collation took place at 53 constituency centres. It was accessible in the 20 centres visited, with candidate agents and citizen observers present. Procedures governing the collation and transmission of results were minimal. Written instructions were simply that the assistant returning officers should add up the polling station results in the constituency and hand them over to the regional electoral officer. It was at the discretion of the officials as to how to proceed. No discrepancies were observed between polling station results and the figures included in collation. The conduct of collation was orderly and was assessed as good or very good in 19 of the 20 instances observed. Constituency results were verified by the seven IEC administrative area offices and subsequently at the IEC headquarters.

Results were manually entered on paper spreadsheets at the constituency level. Progress was slow, as presiding officers delivered results in person. Calculations were difficult to observe in the absence of boards or screens to display results. Collated results were subsequently verified at administrative area offices and then delivered to IEC headquarters in person or by fax. Candidate agents were present and signed collation sheets at collation centres. At the national level, final results were signed only by representatives of the NPP and the PDOIS on 5 December, although candidates Faal and Jammeh subsequently acknowledged the results.

Priority recommendation: Formalise clear and coherent procedures for polling, counting, result transfer, and collation, in conjunction with the introduction of improved security measures of result and collation forms.

XVI. RESULTS AND POST-ELECTION ENVIRONMENT

The IEC chairperson declared the results on 5 December 2021 live on GRTS and other accredited media. Figures were given for each of the six candidates, as well as for invalid votes. No figures were given for the number of voters who had voted, or ballot tokens issued or remaining. Upon completion of the constituency announcements, total national figures for the six candidates were announced, without any other figures adduced, such as for invalid votes or for numbers of voters who voted. The results announced verbally were: Barrow, 457,519; Darboe, 238,252; Faal, 17,206; Jammeh, 8,252; Kandeh, 105,902; and Sallah, 32,435.

The law requires that, after the declaration of results, the IEC shall publish the results of the election. There is no time limit for the publication. The IEC had failed to publish results by the end of 2021, long after the period to file election petitions had ended. This effectively denied party agents and citizens the opportunity to scrutinise results and compare the published figures with those in polling station protocols displayed at polling stations. Access to such information is a fundamental right and is also an important element in transparency of the electoral process.

Priority recommendation: The IEC should publish complete presidential election results, disaggregated by polling station, on its website without delay. In all future elections, disaggregated results should be released during the tabulation process.

On 6 December, the day after the IEC announced the results, three presidential candidates, Darboe, Kandeh and Faal, held a joint press conference announcing that they did not accept the results. The following day, Faal changed his position and accepted conceded. Sallah and Jammeh were among the first to accept the results and to congratulate President Barrow. The two main opponents, Darboe and Kandeh, continued to refuse to accept them, citing an inordinate delay on the part of the IEC in announcing the results and several issues raised by their party agents in polling stations and at the IEC. On 14 December, the UDP filed an election petition with the Supreme Court. The GDC did not contest the election in court, however the party declared its support for the UDP petition.

Many opposition supporters appeared surprised by the official results. Their leaders' decision not to accept the results resulted in several protests being staged. There were at least three serious clashes reported by the media mainly between UDP and NPP supporters.⁸⁴ The most serious incident occurred on 6 December when police used force and teargas to disperse the UDP supporters gathered in front of the party's premises as physical damage had been reported. Several people were injured. The National Human Rights Commission (NHRC) condemned the incident and criticised the police, calling upon them to exercise maximal restraint in dispersing crowds and managing assemblies. They also called upon contestants with electoral grievances to seek redress through legal channels. Outside the densely populated areas of Greater Banjul and Brikama, the situation was calm with only one serious incident reported by EU EOM observers in Jarra West. The Gambian Press Union also reported that one journalist was physically assaulted by UDP protesters. Two further journalists were injured and hospitalised.

All key post-election events were live streamed on the top five news/infotainment pages on Facebook. These included press conferences and celebrations, as well as live coverage of police dispersing crowds. While communication on public UDP-leaning Facebook pages decreased, partisan WhatsApp groups diffused disinformation, including incorrect results, false claims related to the UDP's petition to the Supreme Court, and a subsequent call for violent disobedience. Positively,

⁸⁴ On 6 December, there were also two violent incidents in West Bank Region where supporters of NPP and UDP clashed in Brikama town, and another violent incident was reported from Busumbala. Another clash between NPP and UDP supporters was reported by the LTO team in Jarra West in Lower River Region.

national fact-checking organisations promptly de-bunked all false claims, offering a nonpartisan clarification of the actual state of play, while the police arrested the person who allegedly incited violence on WhatsApp. Within a few days, the post-election environment became calm, and supporters of the opposition parties were following the UDP and GDC leadership's calls to desist from violence and wait for the court's decision.

One election petition was filed by UDP challenging the election of Barrow on the grounds of widespread irregularities affecting the result. Upon application by the respondent, the latter was struck out on 28 December on procedural grounds and the case was therefore not heard in the merits. The court held that the petitioner failed to comply with the specific procedural requirements set out in the election petition rules.

XVII. ANNEX 1 – RECOMMENDATIONS

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FAREMWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL /REGIONAL PRINCIPLE / COMMITMENT
LEGAL FRAMEWORK					
1	<p>Significant constitutional and legislative review efforts were made in past years yet, despite their acknowledged inclusiveness, the necessary legal reforms did not materialise. This included review of the Constitution, a process initiated in June 2018 but halted at the National Assembly (NA) in September 2020 due to disagreements on several issues, and an Elections Bill drafted in 2020, yet to be enacted.</p> <p>As no comprehensive constitutional or legal reform took place, previously identified shortcomings by EU missions remain, including revision of the legal provisions on disqualification from voting, rules to challenge candidate nomination, campaign finance regulations.</p>	<p>Priority recommendation: Make essential changes in the electoral legal framework. Review the Draft Elections Act. Streamline provisions of the Draft Constitution and the Draft Elections Act as well with other Acts relevant to the conduct of elections.</p>	<p>i.e., section 49, Constitution; section 98, Elections Act; section 43, 132, Constitution; Second Schedule, Constitution; section 49, Elections Act</p>	<p>National Assembly</p>	<p>Rule of Law Art.2.2, ICCPR: <i>Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.</i> Art.2.3, ICCPR <i>Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;</i></p>
2	<p>The EU EOM noted limited awareness of the law and the legal avenues available amongst interlocutors. Frequency of amendments, lack of codified texts, unavailability online, and the absence of any official law database limit access and increase un-</p>	<p>Create a legal database publicly accessible including online codified texts of the laws and caselaw.</p>	<p>No change to the legal framework required; change the practice in the dissemination of official</p>	<p>National Assembly The Gambian Bar Association</p>	<p>Accessibility to law; Rule of Law Art. 19.2, ICCPR: <i>Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in</i></p>

	<p>certainty of stakeholders as to the content and application of the law.</p>		<p>documents</p>	<p><i>print, in the form of art, or through any other media of his choice.</i></p> <p>Art. 13.1, UNCAC: <i>Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes; (b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary [...].</i></p> <p>Art.19.2, ACDEG: <i>Each State Party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission.</i></p>
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ELECTORAL ADMINISTRATION					
3	<p>The responsibilities of the IEC are very broad, while the institutional capacity is quite limited, with a total staff of just 70 people. Commitments in the IEC Strategic Plan to create legal and gender divisions have not been achieved. The IEC is male dominated. The absence of in-house legal capacity has contributed to breaches of the law by IEC.</p>	<p>Priority recommendation: Increase IEC capacity and transparency in critical areas, including the establishment of specialised divisions (legal, gender) within the IEC.</p>	<p>None is required</p>	<p>IEC National Assembly (for funding)</p>	<p>Right and opportunity to participate in public affairs and hold office ICCPR GC 25, para. 20: <i>An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.</i> African Charter on Democracy, Elections and Governance, Art. 3 <i>State Parties shall implement this Charter in accordance with the following principles: (6) Promotion of gender equality in public and private institutions.</i> AU Declaration on the Principles Governing Democratic Elections in Africa, II.4. (e) <i>Democratic elections should be conducted by impartial, all-inclusive, competent accountable electoral institutions</i></p>
4	<p>Results were announced by the IEC only orally and by constituency, and the overall total figures for candidates nationally. Polling station results were not announced. No results had been published on the website of the IEC by the end of 2021.</p>	<p>Priority recommendation: The IEC should publish complete presidential election results, disaggregated by polling station, on its website without delay. In all future elections, disaggregated results should be released during the tabulation process.</p>	<p>None</p>	<p>IEC</p>	<p>Transparency & Right of Access to Information ICCPR, Art. 19(2): <i>[The right to freedom of expression] shall include freedom to seek, receive and impart information [...] of all kinds.</i> ICCPR, GC 34, para. 19: <i>To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information [...].</i> UNCAC, Art. 10: <i>[E]ach State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, function and decision-making processes, where appropriate.</i></p>

					ECOWAS Protocol on Democracy and Good Governance, Art. 6: <i>The preparation and conduct of elections and the announcement of results shall be done in a transparent manner.</i>
5	All 5 IEC members, including the Chairperson, are directly appointed by the President.	Strengthen the institutional independence of the IEC by establishing an inclusive mechanism for the selection and appointment of the IEC Chairperson and Commissioners and by ensuring the security of tenure of the commissioners.	Amend the Constitution, Article 42(3) and (6); amend the Elections Act	IEC National Assembly	Right and opportunity to participate in public affairs and hold office ICCPR GC 25, para. 20 <i>An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.</i> AU Declaration on the Principles Governing Democratic Elections in Africa, II.4. (e) <i>Democratic elections should be conducted by impartial, all-inclusive, competent accountable electoral institutions.</i>
VOTER REGISTRATION					
6	Voter registration was completed in July 2021, in advance of the presidential election. Legislative change is required to allow for continuous update of the register	Priority recommendation: Legal provisions should be made for continuous registration and updating of the voter register to allow for the removal of deceased voters, inclusion of citizens who will turn 18 prior to the elections, and transfer of place of registration for people who have moved.	Amendment of the Elections Act to allow for correction and updating of the voter register on a continuous basis.	IEC Ministry of Justice National Assembly	Universal Suffrage ICCPR Art. 25 <i>Every citizen shall have the right and opportunity ... without unreasonable restrictions: to vote [...] at genuine periodic elections which shall be by universal and equal suffrage.</i> ICCPR GC 25, para. 11 <i>States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.</i>
7	The right to vote is circumscribed for persons convicted of certain electoral offences or who have served prison sentences within prescribed time periods. Prisoners serving sentences are also deprived of the right to vote.	Revise the law which disqualifies all prisoners from voting, regardless of the reason for imprisonment, ensuring that the suspension of voting	Section 13(b), Elections Act	National Assembly	The Right to Vote ICCPR Art. 25 <i>Every citizen shall have the right and the opportunity ... without unreasonable restrictions: to vote [...] at genuine periodic elections which shall be by universal and equal suffrage.</i>

		rights is proportionate to the offence committed.			ICCPR GC 25, para. 14 <i>The grounds for deprivation [of the right to vote] should be objective and reasonable.</i> ACDEG Art. 4.2 <i>State Parties shall recognise popular participation through universal suffrage as the inalienable right of the people.</i>
REGISTRATION OF CANDIDATES AND POLITICAL PARTIES					
8	In 2015, the requirements for political party registration were expanded and deemed by the previous EU EOM to unreasonably limit the freedom of association, at odds with international and regional commitments. The SC, in a recent judgment, considered the constitutionality of these amendments and only repealed the residency requirement. In addition, the law requires all contestants to respect the Code on Election Campaign Ethics that prescribes a broad catalogue of rules for candidates, political parties, and supporters to follow during the campaign. In the case of a breach of the Code, the IEC may issue a warning to a candidate and even has a power to cancel his or her registration. The responsibility to resolve complaints under the IEC Code of Campaign Ethics falls to the IEC. Nevertheless, submission, processing, investigation, and follow-up action on complaints is not clearly prescribed, and there are no codified rules to ensure stakeholder awareness and confidence.	Revise the legal requirements for registration of political parties and specify criteria for deregistration.	Sections 104, 105, Elections Act; Code on Election Campaign Ethics	IEC National Assembly	<i>The Right to Freedom of Association</i> Art. 22.1, ICCPR: <i>Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.</i> Art. 25, ICCPR: <i>Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;</i> Art.10(1) ACHPR: <i>Every individual shall have the right to free association provided that he abides by the law.</i>
CAMPAIGN ENVIRONMENT					
9	The use of public property during a campaign is prohibited. There are no restrictions on the announcement of or the opening of new projects, which could influence the public.	Introduce an effective oversight and implementation mechanism (including moratoria on public works during the campaign) against the misuse of state resources and public office, includ-	Revision of Section 91 of the Elections Act to extend restrictions on use of public property during campaign period	Government IEC National Assembly	<i>Fairness of Campaign</i> ICCPR GC 25: <i>AU Declaration on the Principles Governing Democratic Elections in Africa IV.9</i>

		ing administrative apparatus during the campaign period.			
CAMPAIGN FINANCE					
10	<p>Political and campaign finance are poorly regulated. Regulations on campaign fundraising and spending by candidates are virtually non-existent. No public funding is available to political parties, and there are no ceilings on donations or campaign expenditures. Donations from foreign and corporate sources are prohibited. Parties and candidates may receive financial contributions from various sources and anonymous donations are not banned. Any contributions to contestants do not have to go through the banking system or a dedicated bank account and there are no reporting or disclosure obligations. Political parties are required to publish their annual audited accounts and declare to the IEC or the public their revenues, assets, and their sources upon request. Candidates are required to deliver a declaration of assets and a tax clearance certificate upon submission of their nomination papers. Whereas this could enhance transparency and accountability, there is no publication requirement or sanctioning of illicit campaign funding. Scattered provisions on corrupt practices and prohibitions of use of state resources are to be found in the Elections Act and the Criminal Code.</p>	<p>Establish a legal framework and independent oversight body to regulate and oversee political / campaign finance to enhance transparency and accountability. Introduce periodic auditing, reporting, and publishing obligations for political parties, and rules for contestants during electoral periods (ceilings on donations, expenditures, interim and final reporting, etc.).</p>	<p>Introduce a new Act.</p> <p>Establish an independent body or confer these duties to an existing institution.</p>	<p>National Assembly</p>	<p>Fairness of Campaign</p> <p>Art.19.2, ICCPR: <i>Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</i></p> <p>Art.26, ICCPR: <i>All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</i></p> <p>Art.25(b), ICCPR: <i>Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.</i></p> <p>ICCPR GC 25, Paragraph 19: <i>In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for</i></p>

					<p><i>election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.</i></p> <p>Art. 7(3), UNCAC 1: <i>Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.</i></p> <p>Art.10(a), AU CPCC: <i>Each State Party shall adopt legislative and other measures to (a) prescribe the use of funds acquired through illegal corrupt services to finance political parties; and (b) incorporate the principle of transparency into funding of political parties.</i></p>
MEDIA					
11	The legal framework severely undermines freedom of expression. Provisions on sedition, criminal defamation, and the dissemination of 'false news' in the Criminal Code and the Information and Communications Act were used against journalists before	Priority recommendation: Bring the legal framework, including the Constitution, the Criminal Code and the	Amend Articles 25(4) and 209 of the Constitution. Repeal Articles 51, 52, 52A, 59, 178, 180, 181	National Assembly	Freedom of Expression & Right to Access to Information Paragraph 47 of the 2011 CCPR General Comment No. 34 to the ICCPR: <i>"States parties should consider the decriminalization of</i>

	2017 and remain in violation of the country's international and regional commitments.	Information and Communications Act, in line with the country's international and regional commitments on freedom of expression.	and 181A of the Criminal Code as well as Article 173A of the Information and Communications Act		<i>defamation, and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."</i> Principle 22 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa: <i>"States shall repeal laws that criminalise sedition, insult and publication of false news."</i>
12	Broadcasting licensing and oversight is vested with the executive, the Minister of Information and Communication upon advice of the Public Utilities Regulatory Authority (PURA). Moreover, PURA's independence is undermined by the direct appointment of its director general by the president.	Establish an independent and public broadcasting licensing regulatory and oversight authority, with the power to examine broadcasting applications and to grant licences, as well as oversee and implement broadcasting legislation.	Amendment to the Information and Communications Act	National Assembly	<i>Freedom of Expression & Right to Access to Information</i> Paragraph 39 of the 2011 CCPR General Comment No. 34 to the ICCPR: <i>"It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses."</i> Principle 17 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa: <i>"A public regulatory authority that exercises powers in the areas of broadcast, telecommunications or Internet infrastructure shall be independent and adequately protected against interference of a political, commercial or other nature. The appointment process for members of a public regulatory body overseeing broadcast, telecommunications or Internet infrastructure shall be independent and adequately protected against interference. The process shall be open, transparent and involve the participation of relevant stakeholders."</i>
13	PURA adopted <i>Broadcasting Service Content Regulations</i> in July 2021. The regulations contain broad provisions on impartiality and balance in news and current affairs programs. Furthermore, they oblige	Monitor and implement PURA Broadcast Service Content regulations, through a systematic	Amendment to the Information and Communications Act	National Assembly PURA	<i>Freedom of Expression & Right to Access to Information</i> Paragraph 14 of the 2011 CCPR General

	<p>both the national broadcaster as well as commercial broadcasters to an “objective” and “impartial” coverage of the election campaign. Nevertheless, in practice these regulations are neither monitored nor implemented and stakeholders seem to be unaware of them.</p>	<p>process.</p>			<p>Comment No. 34 to the ICCPR: “States parties should take particular care to encourage an independent and diverse media.”</p> <p>Principle 12 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa: “States shall develop regulatory environments that encourage media owners and media practitioners to reach agreements to guarantee editorial independence and to prevent commercial and other considerations from influencing media content.”</p> <p>2020 Joint Declaration on Freedom of Expression and Elections in the Digital Age by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media (RFoM) and OAS Special Rapporteur on Freedom of Expression: “States should put in place a regulatory and institutional framework that promotes a free, independent and diverse media, in both the legacy and digital media sectors, which is able to provide voters with access to comprehensive, accurate and reliable information about parties, candidates and the wider electoral process.”</p>
<p>14</p>	<p>Furthermore, as required by the country’s obligations, the state-run GRTS needs to be transformed into an independent public service broadcaster.</p>	<p>Transform the GRTS into an independent public service broadcaster (i.e., independent management, financing, and oversight).</p>	<p>Amendment to the Radio and Television Services Corporation Act</p>	<p>National Assembly</p>	<p>Freedom of opinion and expression</p> <p>Paragraph 16 of the 2011 CCPR General Comment No. 34 to the ICCPR: “States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.”</p> <p>Principle 13 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa: “States shall establish</p>

					<p><i>public service media governed by a transparently constituted and diverse board adequately protected against undue interference of a political, commercial or other nature. The senior management of public service media shall be appointed by and accountable to the board. The editorial independence of public service media shall be guaranteed. Public service media shall be adequately funded in a manner that protects them from undue interference.”</i></p>
SOCIAL MEDIA AND DIGITAL RIGHTS					
15	<p>Privacy and personal data are not protected. The government’s Data Protection and Privacy Policy Strategy foresees establishment of a data protection agency, mandated to issue guidance and to keep an oversight of storage and use of personal data. However, this policy document does not have the status of law. Consequently, citizens data can be misused, including for political gain.</p>	<p>Adopt a privacy and personal data protection law. The law should prescribe an implementation and oversight mechanism that would robustly protect citizens’ privacy and personal data online and offline. Such powers should be vested in an independent authority.</p>	<p>Adopt the data protection legislation</p>	<p>National Assembly</p> <p>Ministry of Information and Communication Technologies</p> <p>Ministry of Justice</p>	<p>Right to privacy ICCPR, article 17: “No one shall be subjected to arbitrary or unlawful interference with his privacy [...] Everyone has the right to the protection of the law against such interference.” DPFEA, Chapter IV, Principle 42 (8): “Oversight mechanisms for the protection of communication and personal information shall be established by law as independent entities and include human rights and privacy experts.” ICCPR, HRC, article 8, GC 16: “The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies should be regulated by law.”</p>
16	<p>Facebook, with some half a million users, was the prime discussion forum on elections and shaped the political discourse in public life. Other social networks primarily reiterated election-related content already disseminated on Facebook. Facebook did too little too late to effectively counter damaging practices on the platform. Their key transparency tool for political ads (Ad Library Report) was not introduced. Its capacity to provide content moderation in local languages was very limited and</p>	<p>Formalise cooperation between the IEC, civil society, and main social media platforms to develop an efficient mechanism ensuring transparency of online campaigning, including its financing, and to counter disin-</p>	<p>No legal changes required</p>	<p>Civil Society Organisations</p> <p>IEC</p> <p>Ministry of Information</p>	<p>Freedom of opinion and expression; Genuine elections that reflect the free expression of the will of voters; Right and opportunity to participate in public affairs; Transparency and access to information ICCPR, HRC GC 25, para. 19: “Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”</p>

	<p>the only fact-checker recognised by Facebook was a Nigerian group without a solid base in The Gambia. Consequently, false content was not marked as such and rhetoric that in local context was perceived as hate speech continued to circulate on the platform. Overall, disinformation confused voters, while tribal rhetoric reduced space for a fact-based debate, a key element to making an informed choice.</p>	<p>formation. Such cooperation should ensure that social media platforms, including Facebook, introduce good practices in The Gambia, such as regular engagement with a broad range of national stakeholders, transparency in political advertising, employment of content moderators, and prompt removal of disinformation.</p>		<p>and Communication Technologies</p>	<p>UN Guiding Principles on Business and Human Rights (HRC, 2011), art. 13: <i>“The responsibility to respect human rights requires that business enterprises [...] seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services [...] even if they have not contributed to those impacts.”</i></p> <p>UN, OSCE, OAS, ACHPR, Joint declaration on Freedom of Expression and “fake news”, Disinformation and Propaganda, para 4: <i>“Intermediaries should [...] review their advertising models to ensure that they do not adversely impact diversity of opinions and ideas.”</i></p> <p>UN, OSCE, OAS, ACHPR, Joint declaration on Freedom of Expression and Elections in the Digital Age, p.2 a (iv): <i>“intermediaries should make a reasonable effort to address dis-, mis- and mal-information and election related spam, including through independent fact-checking and other measures, such as advertisement archives, appropriate content moderation and public alerts.”</i></p>
PARTICIPATION OF WOMEN					
<p>17</p>	<p>Despite legislative efforts supporting the participation of women, political parties remain nevertheless overwhelmingly male dominated and have yet to address gender inequality by affirmative action gender policies within their parties, in terms of integrating women into party structures and selecting women as party candidates.</p>	<p>Political parties should comply with the principle of gender equality and achieve fair gender representation in the nomination of women in party leadership positions and as candidates to help increase the level of women’s participation in political life.</p>	<p>Amend Elections Act Introduce subsidiary legislation</p>	<p>IEC IPC National Assembly</p>	<p>Equal Participation of Women in Political Life Art.2.2, ICCPR: <i>Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.</i></p> <p>Art.3, ICCPR: <i>The States Parties to the present Covenant undertake to ensure the equal</i></p>

				<p><i>right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.</i></p> <p>Art.4.1, CEDAW: <i>Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.</i></p> <p>Art.7(a), CEDAW: <i>States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.</i></p> <p>Art.9(a)(b), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: <i>States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that: a) Women participate without any discrimination in all elections; b) Women are represented equally at all levels with men in all electoral processes.</i></p>
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ELECTORAL DISPUTES					
18	<p>The Elections Act permits objections to candidate nominations by registered voters, briefly, immediately upon conclusion of nominations. Grounds for objection include disqualifications revealed in the nomination papers. Public scrutiny of nomination documentation took place at the IEC on 6 November, from 8:00 to 12:00. The scrutiny exercise proved almost meaningless. Sixty-six people were admitted to a roomful of boxes of documents for a period of just five minutes each. Accredited members of the media were not afforded access unless in possession of a voter's card, a requirement not notified to them in advance. They were subject to the five minutes limit, as were citizen election observers. No photography was permitted. This limited scrutiny period did not afford voters an opportunity to gather the information needed to make objections.</p> <p>On 6 November, after the close of nominations, the IEC announced that just six nominations had been accepted by the returning officer. The other 15 aspirants were rejected. They were not given any opportunity by the IEC to rectify the defects in their nomination papers. This is despite a provision in the Elections Act that, where a nomination is rejected, a fresh nomination may be submitted before the close of the nomination period. Three appealed to the IEC against their disqualification; all were rejected. Appeals against the decision of the Returning Officer on nominations may be submitted to the IEC within two days upon announcement of the list of nominated candidates (i.e., 8 November). Three appeals were submitted by rejected aspirants against the decision of the Returning Officer to the IEC and were all dismissed. Subsequently, three cases were brought to the Banjul High Court, challenging the</p>	<p>Revise the rules for objections and appeals to the nomination of candidates; the time-period should be revised and extended in order to allow for effective scrutiny and legal remedy.</p>	<p>Section 49, Elections Act</p>	<p>National Assembly</p>	<p>Right to Effective Remedy; Right to Stand Art. 2.3, ICCPR: Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; Art. 14.1, ICCPR: All persons shall be equal before the courts and tribunals. [...] Art.26, ICCPR: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Art. 8, UDHR: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Art. 17(2), ACDEG: To this end, State Parties shall: [...] Establish and strengthen national mechanisms that redress election related disputes in a timely manner. IV(6), AU Declaration on the Principles Gov-</p>

	<p>IEC nomination process as breaching the fundamental right to stand for election. Proceedings had to be expedited, given the limited timeframe from the nomination until election day.[...]Access to effective and timely remedies is crucial to ensuring candidates' fundamental rights. Notably, on 26 November and 7 December the IEC appealed the High Court judgments in the cases of Ceesay and Fatty respectively. None of the appeals was heard until the close of the mission.</p>				<p>erning Democratic Elections in Africa: Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.</p>
<p>19</p>	<p>The responsibility to resolve complaints under the Code of Campaign Ethics falls on the IEC. Nevertheless, submission, processing, investigation, adjudication, and follow-up action on complaints do not have clearly prescribed timeframes or codified rules indicating the procedures to be followed to ensure stakeholder awareness and confidence. The EU EOM is aware of two campaign-related complaints to the IEC. On a regional level, complaints pertaining to campaign schedules or venues were often submitted orally and resolved by IEC regional offices through informal systems of mediation and reconciliation.</p>	<p>Priority recommendation: Introduce a detailed and comprehensive complaints procedure throughout the electoral process with reasonable time limits for adjudication, regulating matters such as format and venue, including for the implementation of the Code on Election Campaign Ethics.</p>	<p>Revision of Elections Act</p> <p>Enactment of subsidiary legislation (or revision of Code on Election Campaign Ethics)</p>	<p>IEC</p> <p>National Assembly</p>	<p>Right to Effective Remedy Art. 2.3, ICCPR: Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; Art. 14.1, ICCPR: All persons shall be equal before the courts and tribunals.[...] Art. 8, UDHR: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Art. 17(2), ACDEG: To this end, State Parties shall: [...] Establish and strengthen national mechanisms that redress election related disputes in a timely manner. IV(6), AU Declaration on the Principles Governing Democratic Elections in Africa: <i>Individual or political parties shall have the right</i></p>

					<i>to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.</i>
POLLING, COUNTING AND TABULATION					
20	There is an absence of written IEC procedures for polling, counting, collation and result transfer.	Priority recommendation: Formalise clear and coherent procedures for polling, counting, result transfer, and collation, in conjunction with the introduction of improved security measures of result and collation forms.	IEC to use its power to introduce coherent procedures.	IEC	<p>Transparency UN CAC Art. 7.4 <i>Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.</i> ECOWAS Protocol on Democracy and Good Governance, Art. 6: <i>The preparation and conduct of elections and the announcement of results shall be done in a transparent manner.</i> African Charter on Democracy, Elections and Governance Art.3 (8) <i>State Parties shall implement this Charter in accordance with the following principles: 8. Transparency and fairness in the management of public affairs.</i></p>

XVIII. ANNEX 2 – MEDIA MONITORING FINDINGS

The EU Election Observation Mission monitored a sample of Gambian broadcast and print media outlets with a quantitative and qualitative analysis of their election coverage. The media monitoring was used to assess the amount of time and space allocated to political actors as well as the tone of the coverage.

Monitored media outlets were:

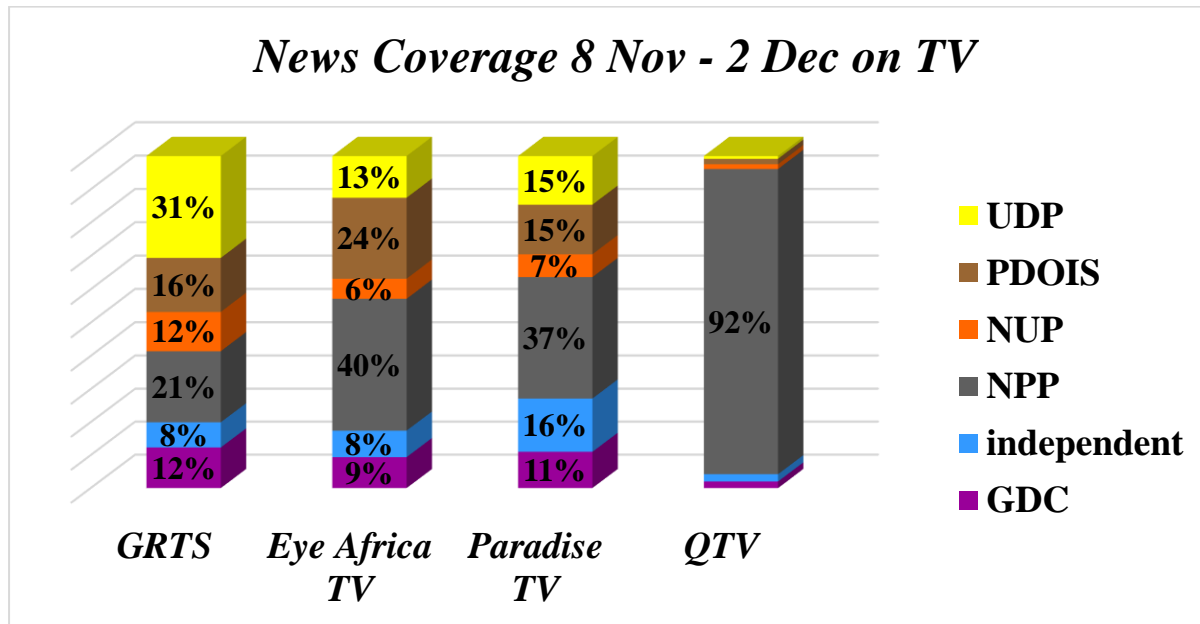
- Four TV stations: the state-owned *Gambia Radio and Television Services (GRTS)*, *Eye Africa TV*, *Paradise TV* and *QTV*. TV stations were monitored daily between 18:00 and 24:00 hours.
- Six radio stations: the state owned *GRTS*, *King FM*, *QRadio*, *Star FM*, *Taranga FM* and *West Coast Radio*. Radio stations were monitored daily between 08:00 and 14:00 hours.
- Three newspapers: *Foroyaa*, *The Point* and *The Standard*.

The media monitoring took place from 08 November 2021 to 02 December 2021.

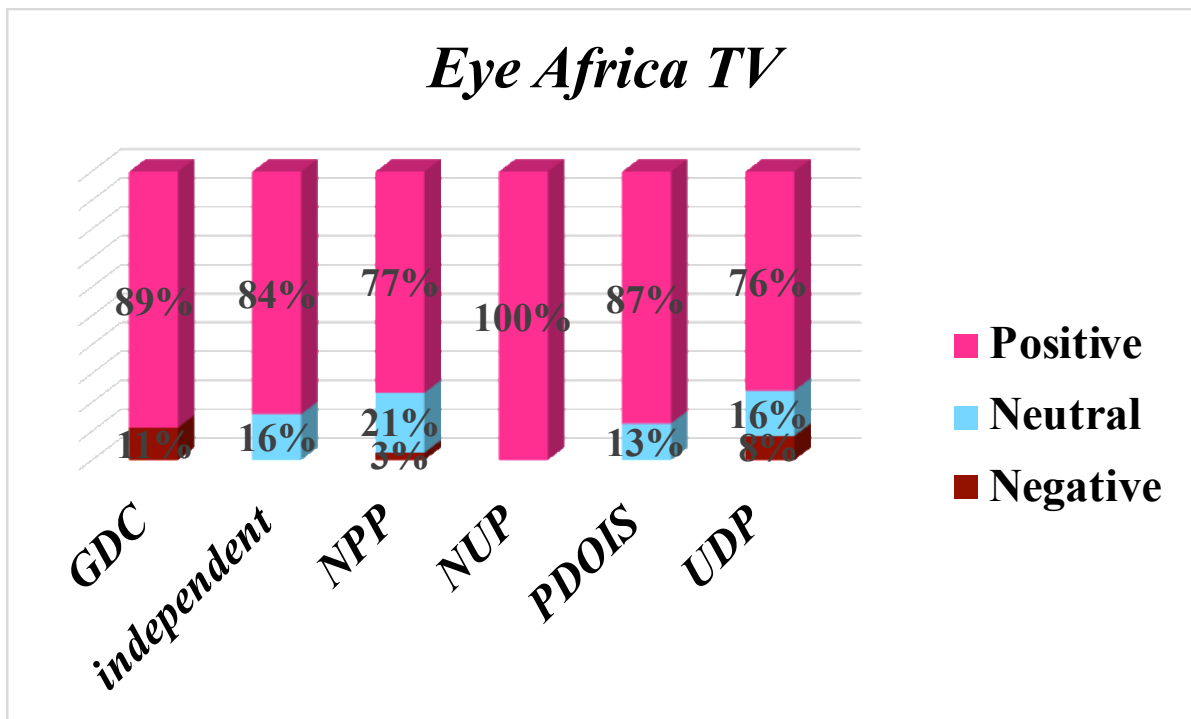
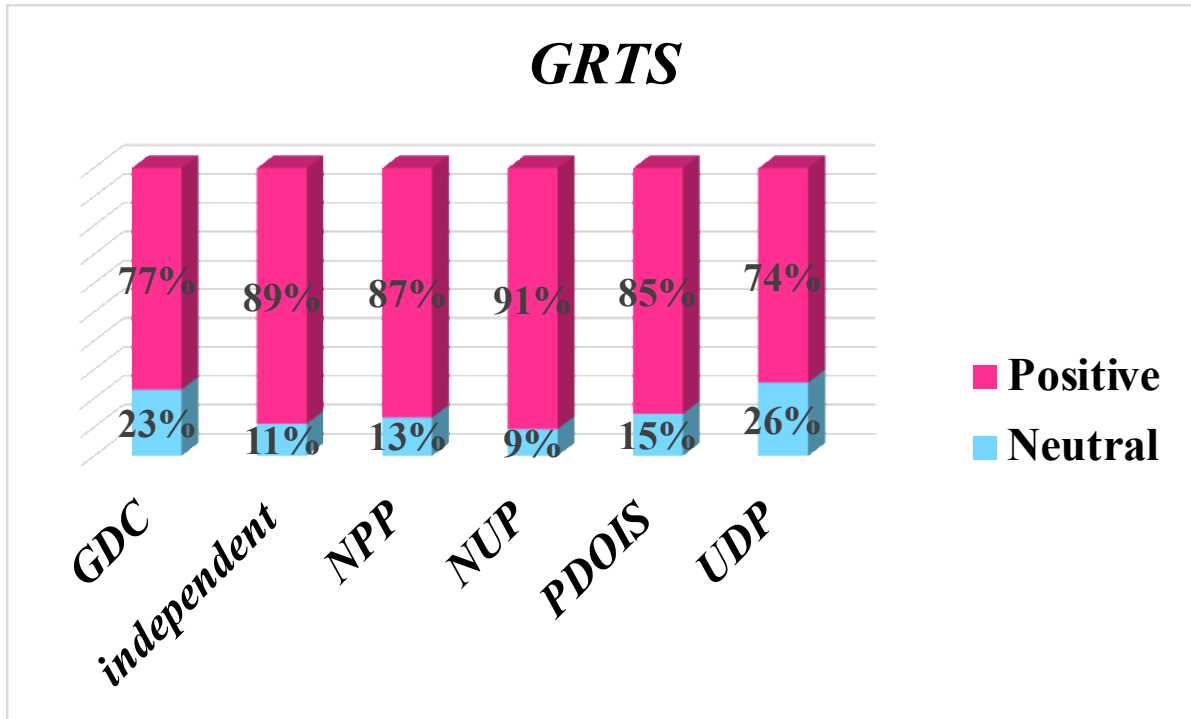
TV STATIONS

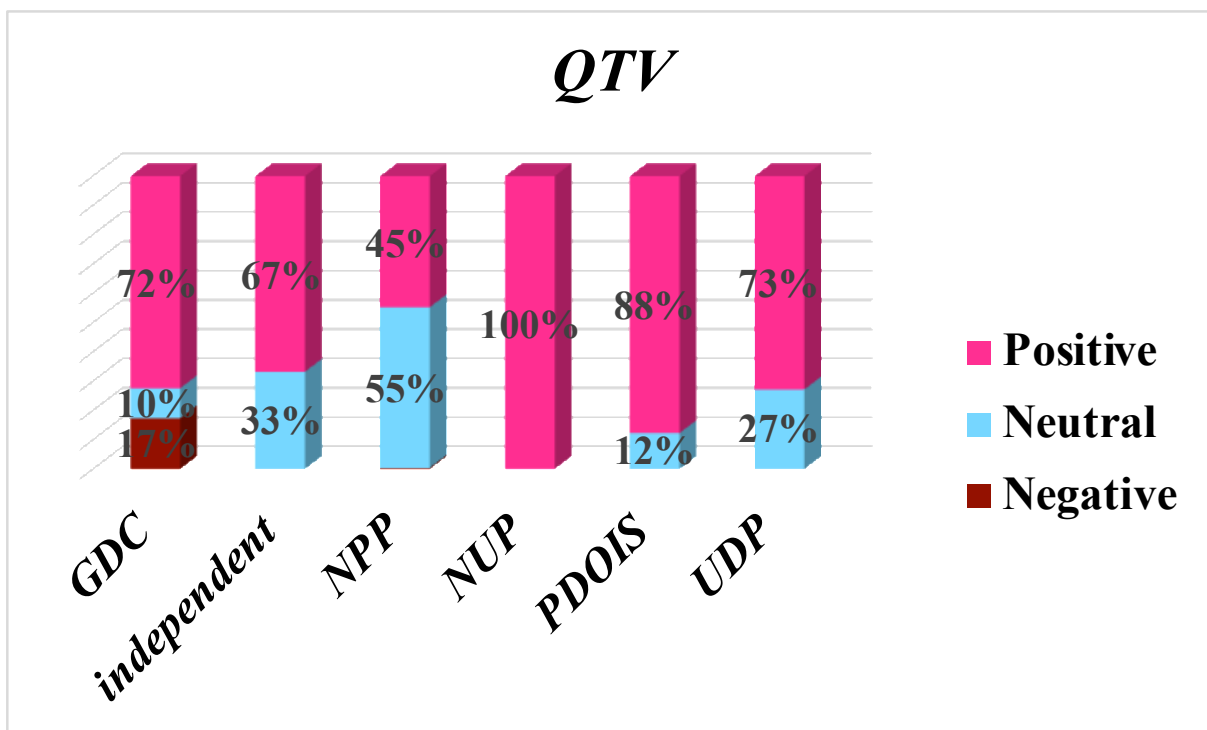
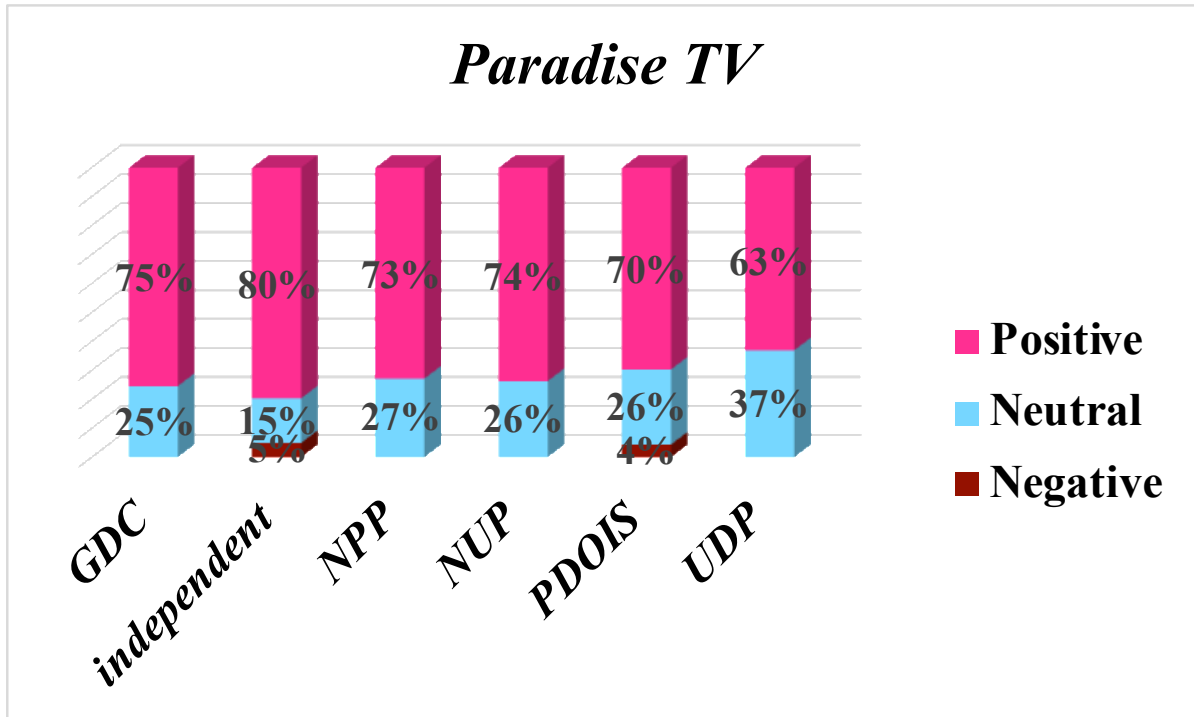
Election Campaign Coverage

The bar charts show the distribution of airtime (in percentage) allotted to each electoral contestant by each TV station.

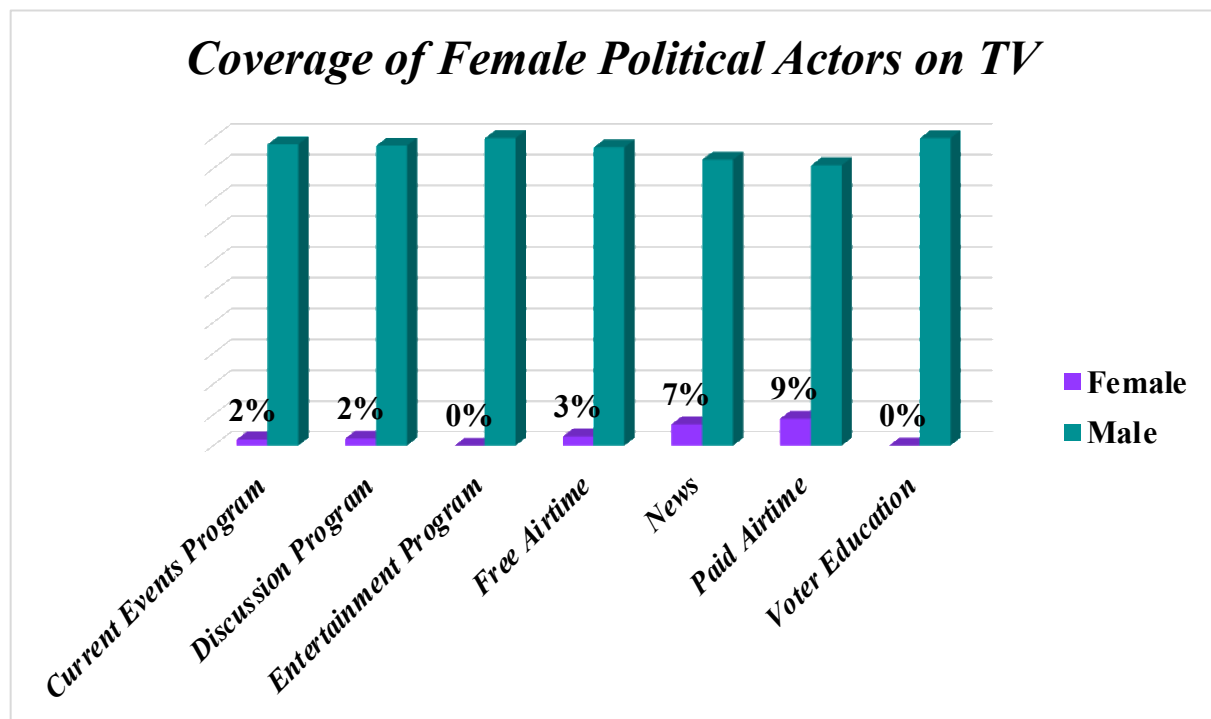
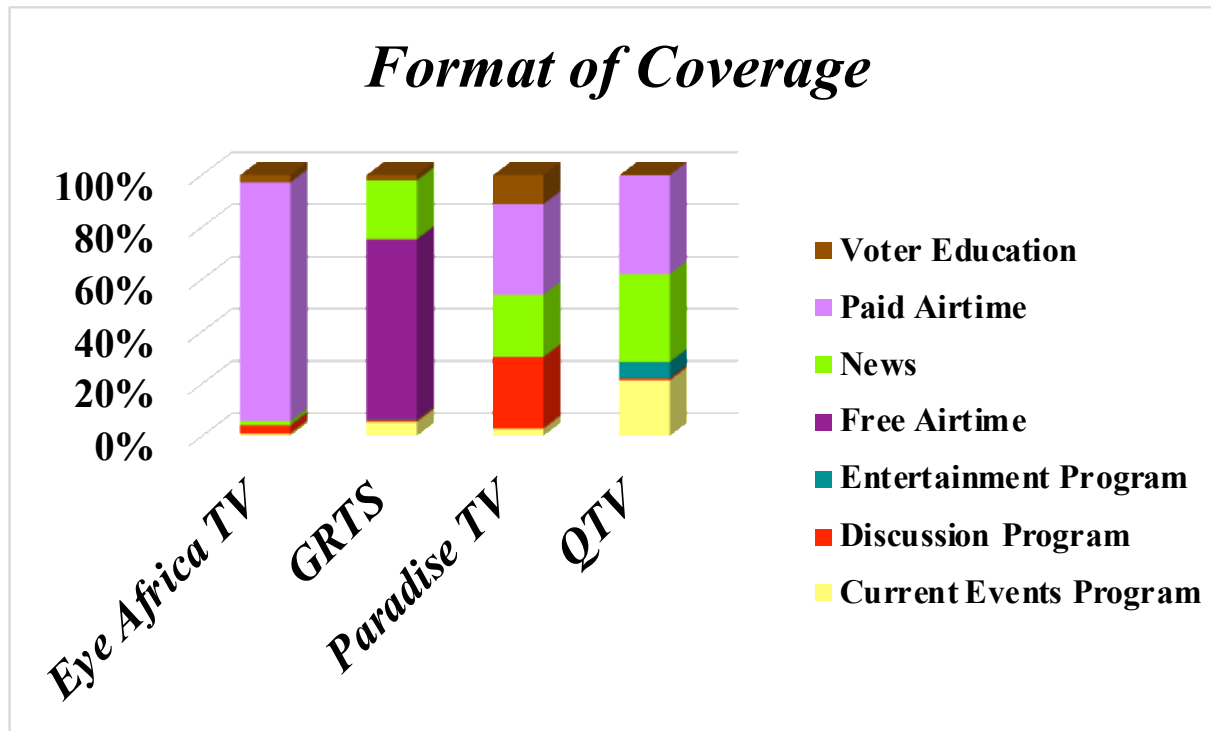


The bar charts below show the tone of the coverage in news (positive, neutral, negative).



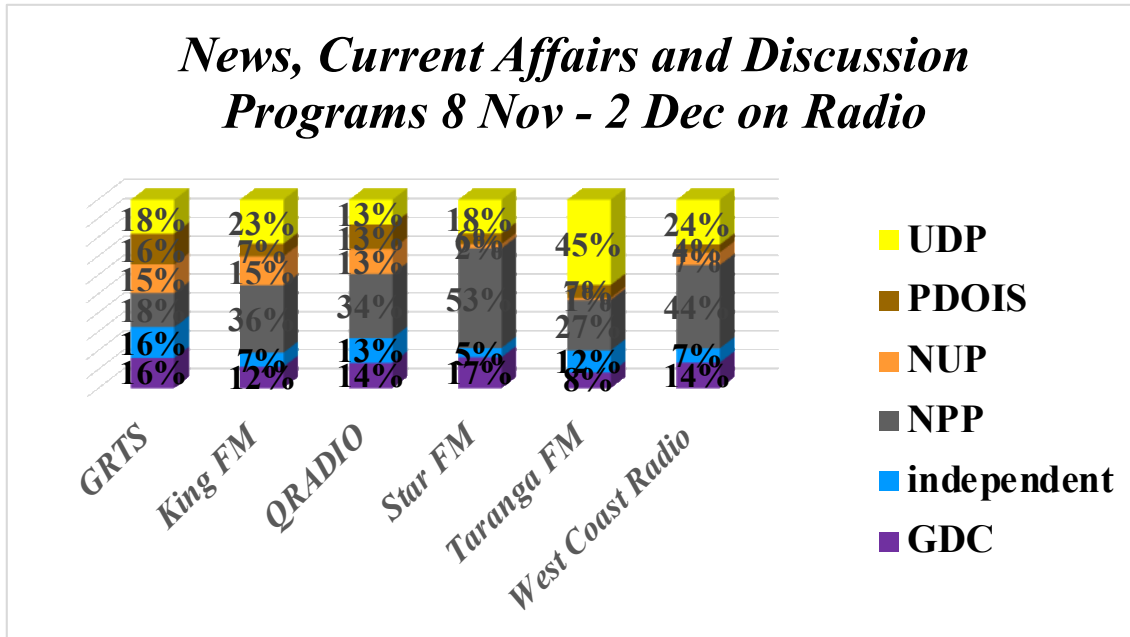


The bar charts below show the format of coverage of political actors.

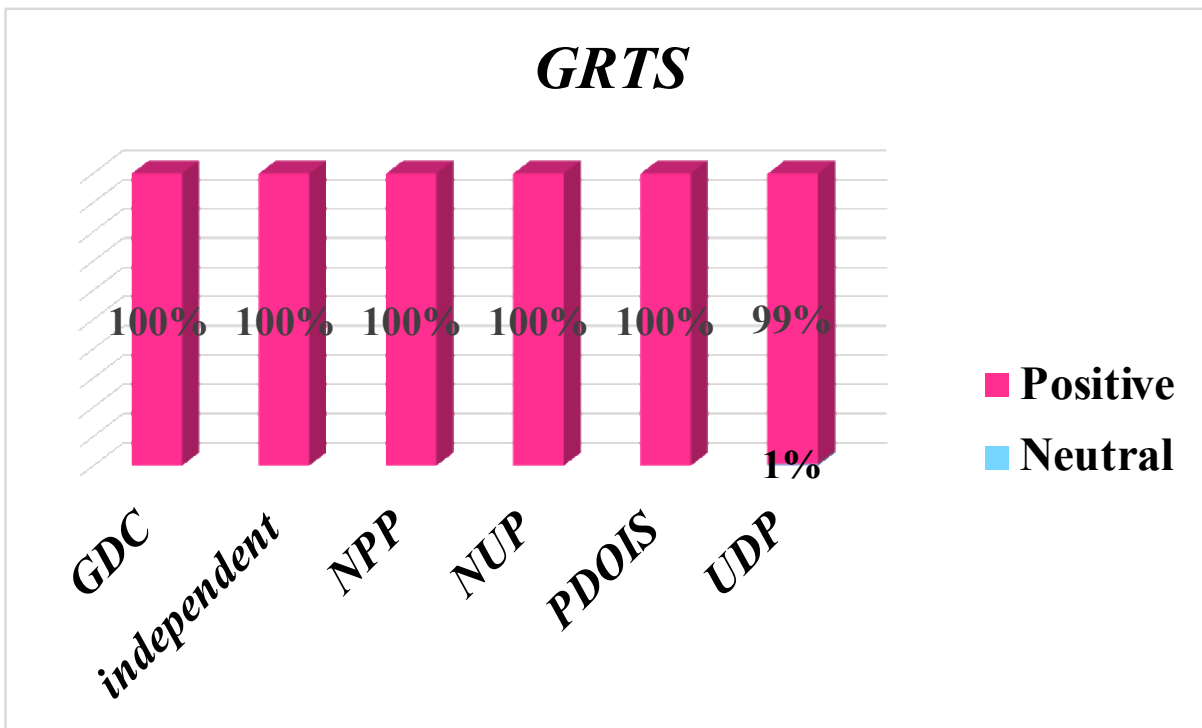


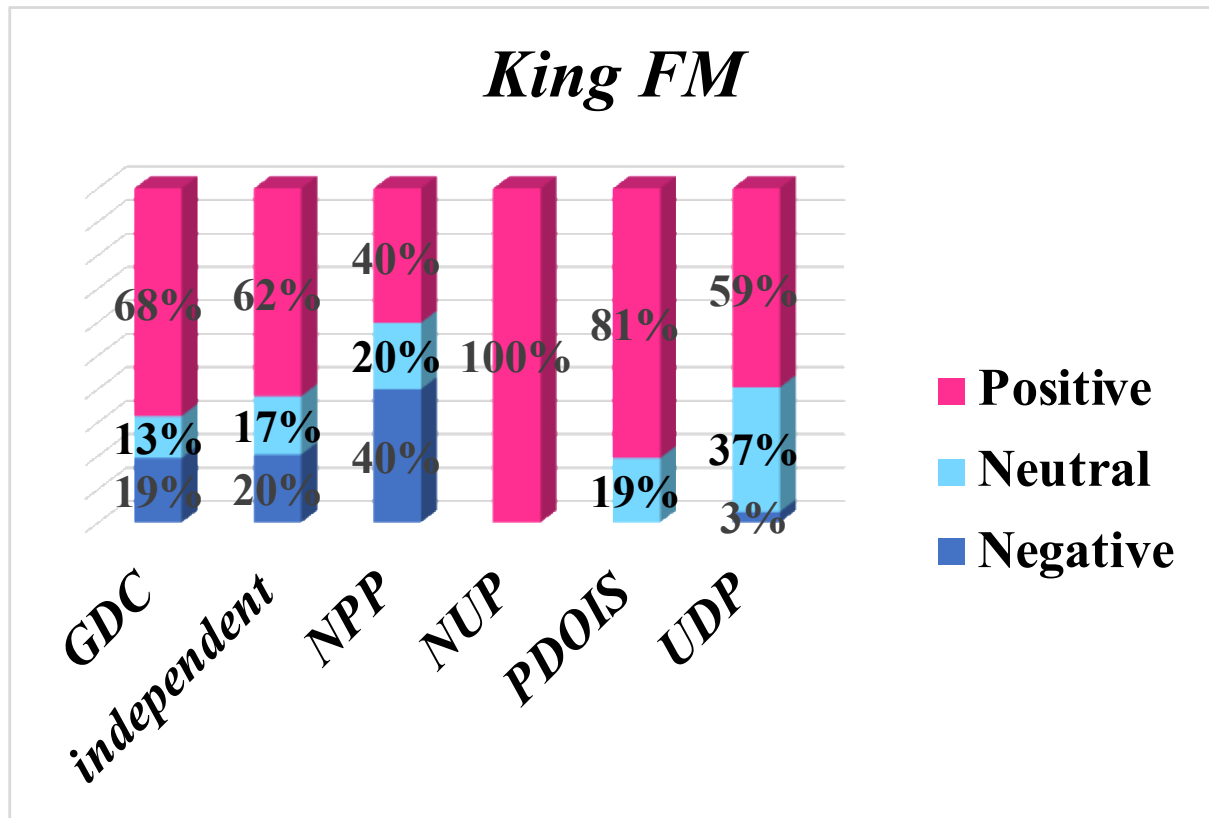
RADIO STATIONS

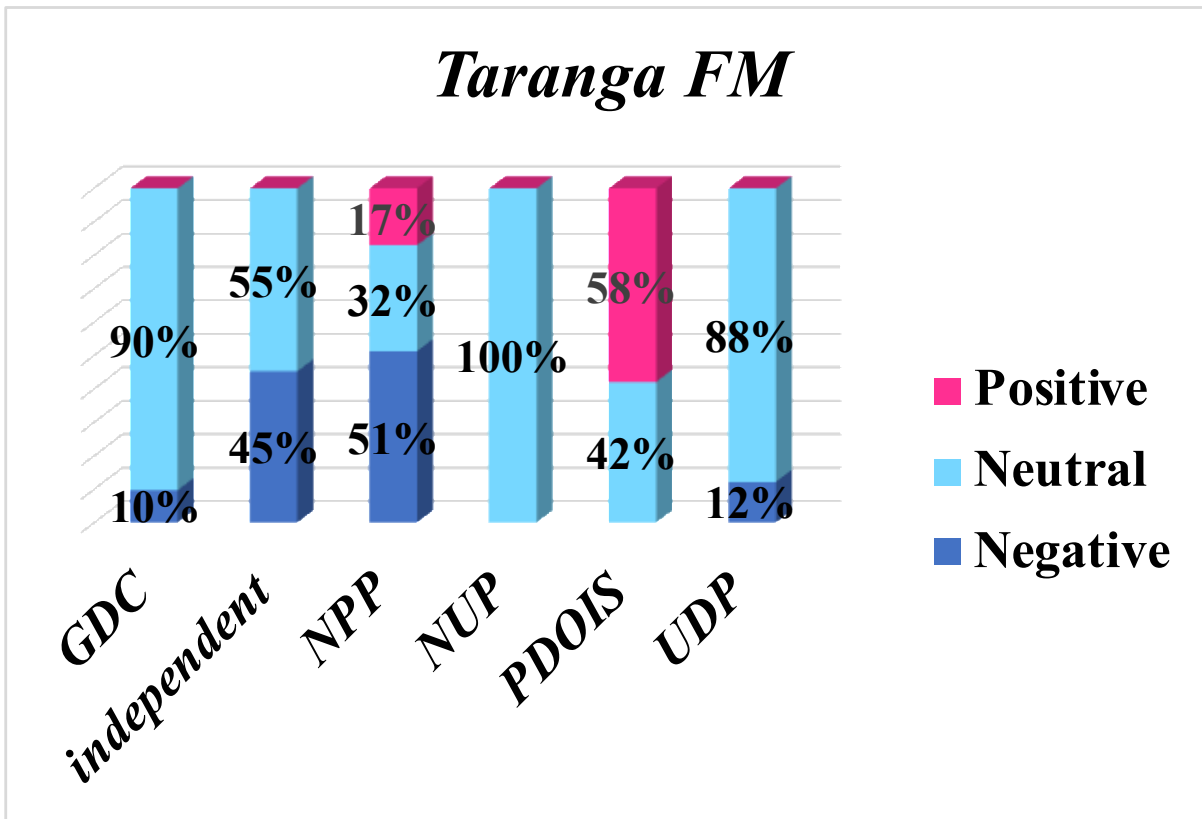
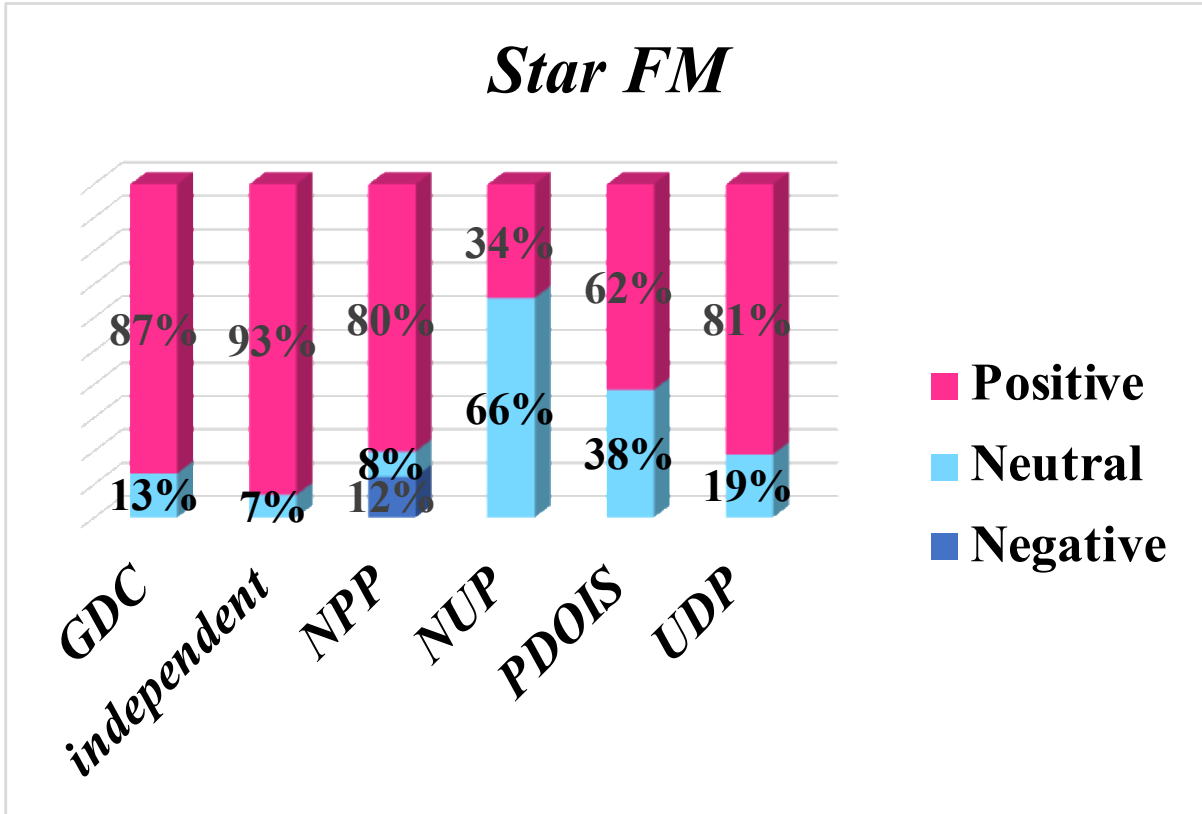
The bar charts show the distribution of airtime (in percentage) allotted to each electoral contestant by each radio station.

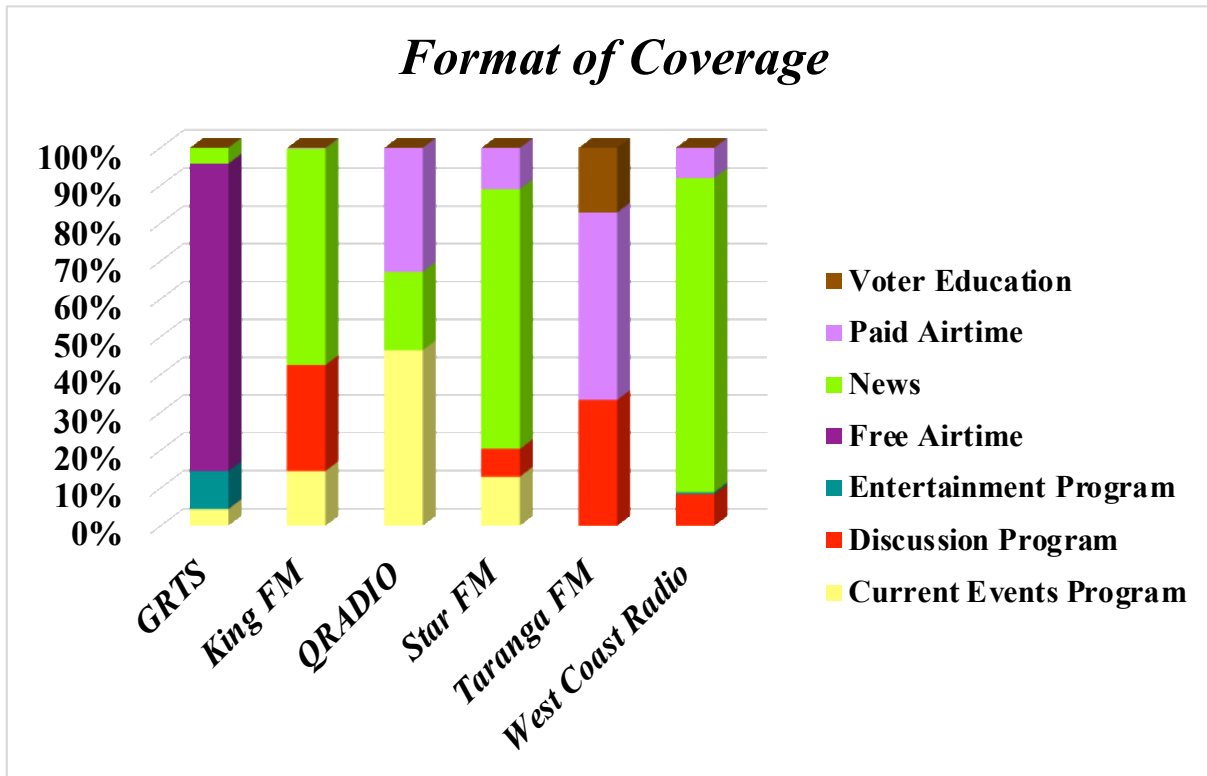
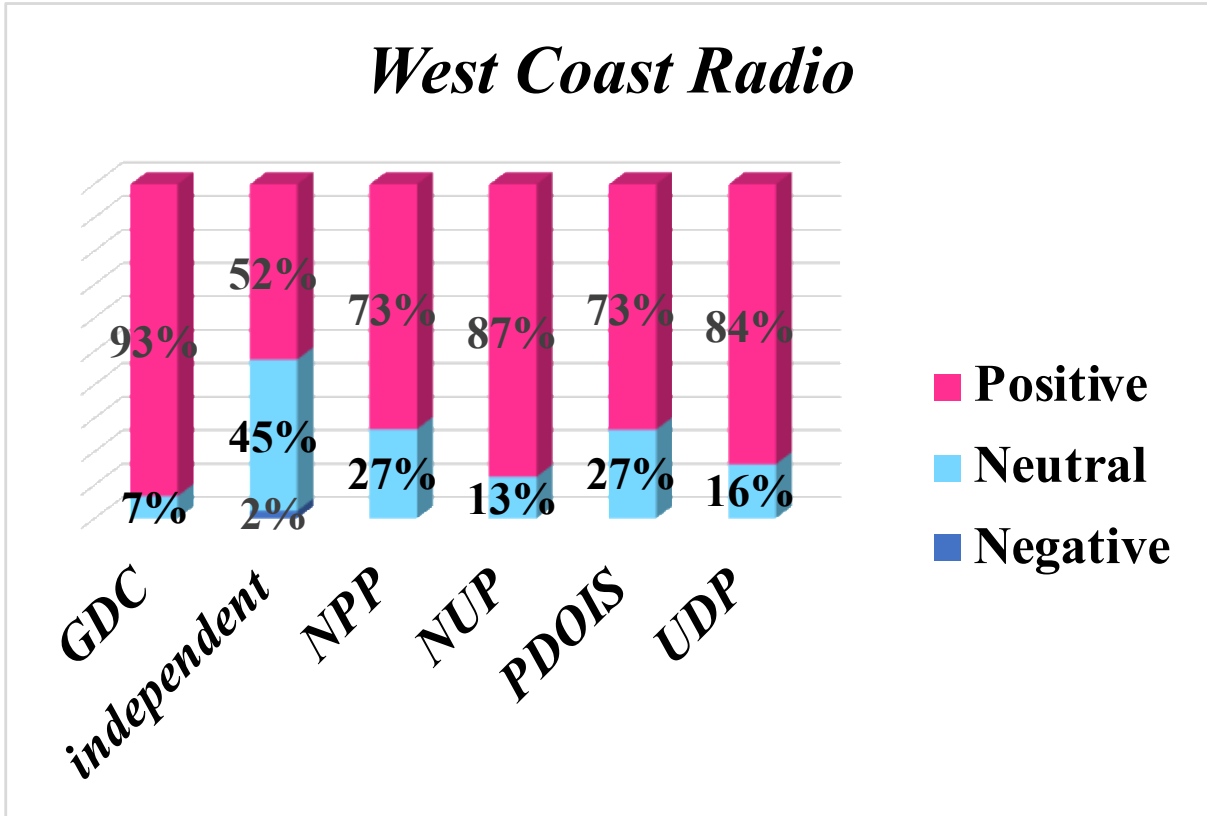


The bar charts below show the tone of the coverage (positive, neutral, negative).

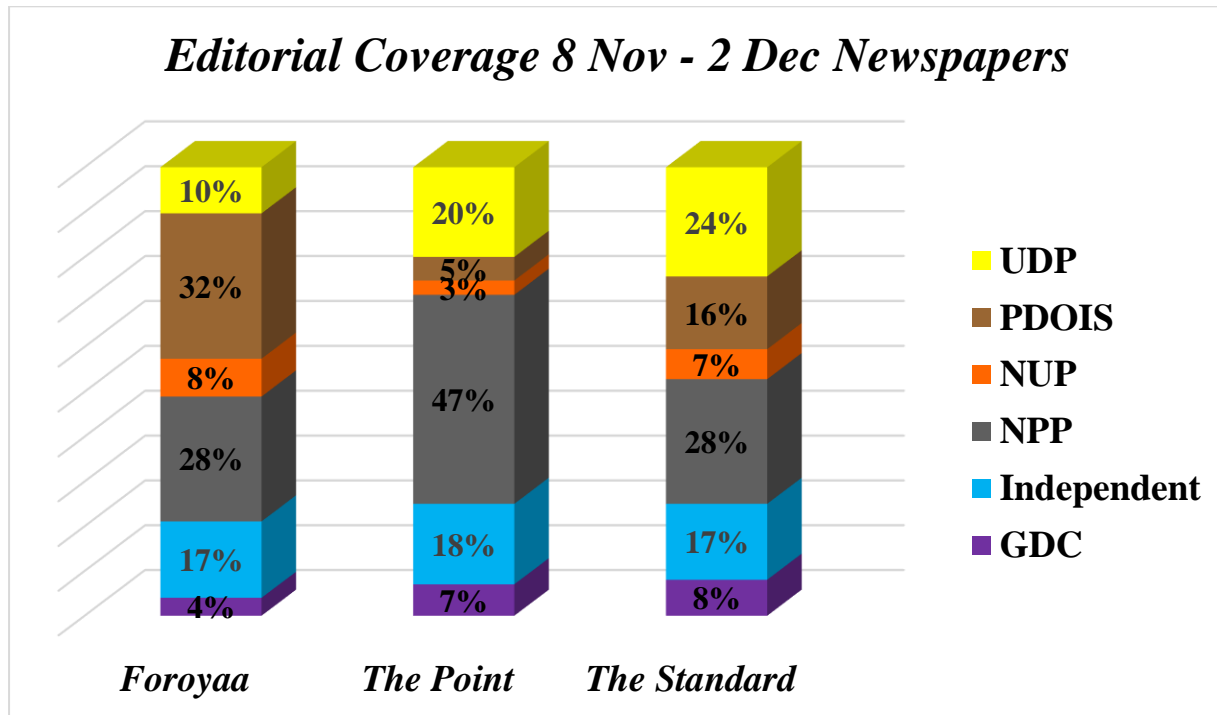




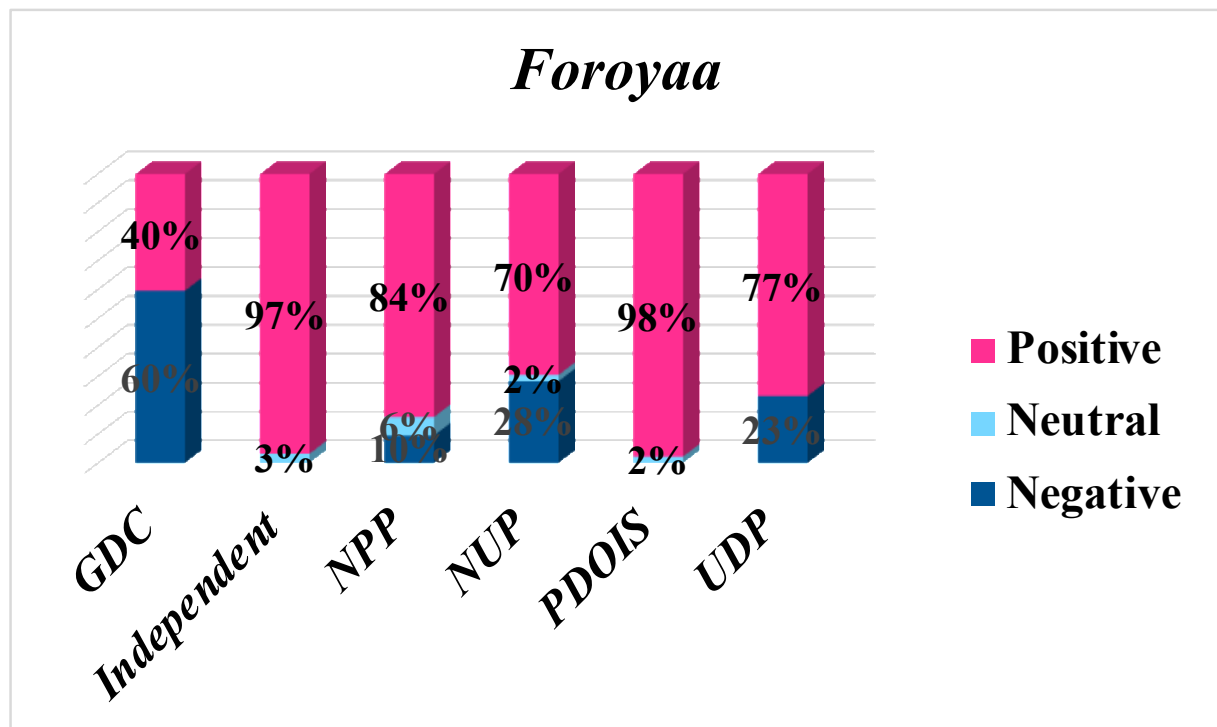




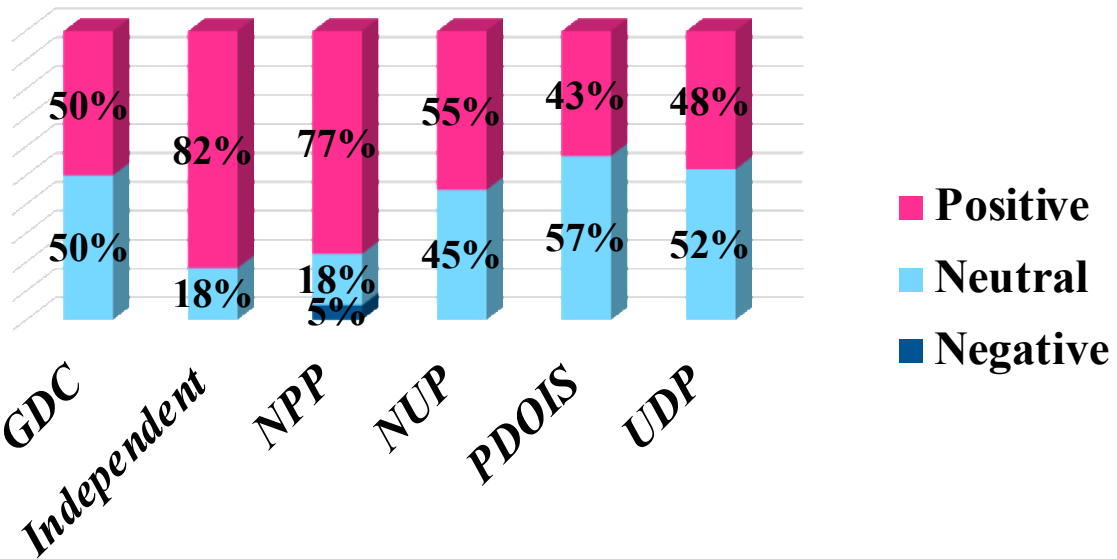
NEWSPAPERS



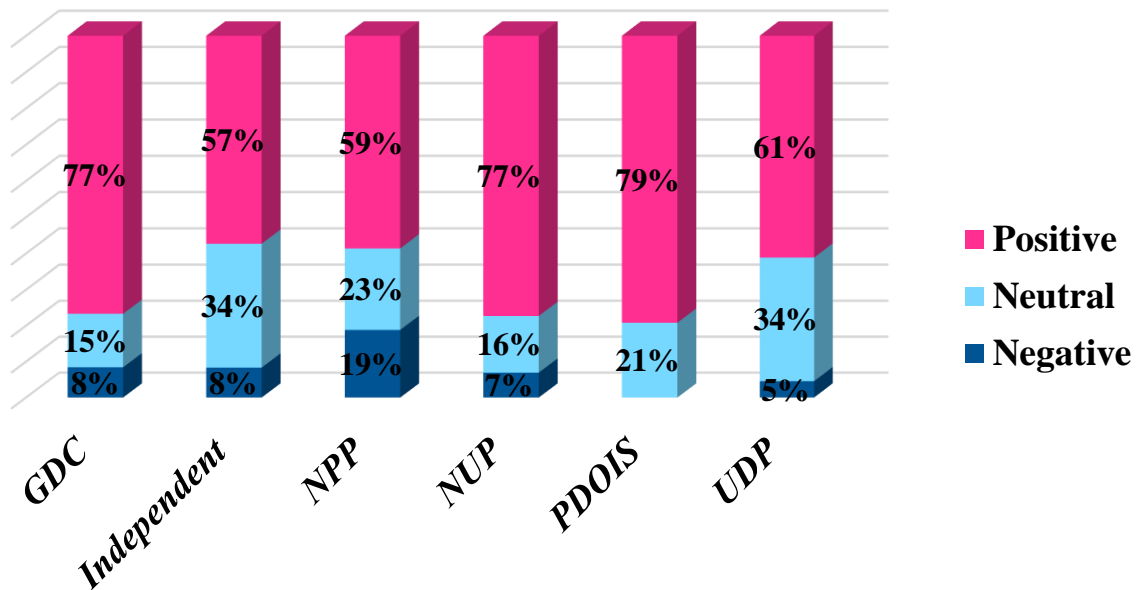
The bar charts below show the tone of the coverage (positive, neutral, negative).



The Point



The Standard

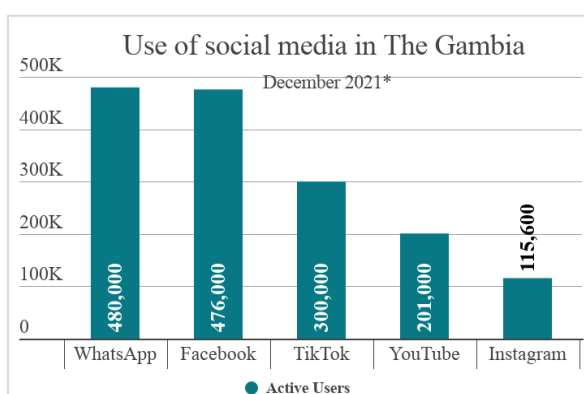


XIX. ANNEX 3 – SOCIAL MEDIA MONITORING FINDINGS

The EU EOM monitored an indicative set of social media accounts, profiles, groups, and pages, with a nationwide and regional relevance, to capture key campaign trends across various online platforms. The selection of accounts and topics the mission followed was made after assessing the prospective impact a certain online content (or processes) might have on political participation and voting rights. Among the social media platforms, only Facebook had the potential to affect the pre-election discourse, hence the communication on this platform was in mission’s monitoring focus. However, considering that TikTok had supplanted Twitter in political relevance, consistent monitoring of political communication on The Gambia’s most followed TikTok accounts was also conducted.

The sample was selected considering:

- The reach and impact of the page/group on the political agenda (number of followers, interaction rate per post, quotation level in traditional media and sum of shares).
- The content of the page (are topics covering social, political, and electoral issues, is the content original or is it primarily re-shared, is the content controversial, etc.).
- Political affiliation of the account, page, or group.
- The dominant language used on the page or by the social media influencer was also considered to obtain a balanced sample of digital content in English, Mandinka, and Wolof.



*Data for the use of WhatsApp and YouTube is an estimate based on the interviews with national stakeholders and calculation, based on the overall national advertising market share per platform.

Monitoring period – from 2 November to 4 December 2021.

The selected sample of Facebook pages/groups/public accounts⁸⁵

NR	CATEGORY	NR. OF PAGES	MAX FOLLOWERS	MIN FOLLOWERS
1	Presidential candidates (official pages)	8	40,396	1,282
2	Political parties (official, national pages)	20	77,396	1,265
3	Regional and unofficial partisan fan pages	113	151,820	1,193
4	Official pages of not-registered presidential aspirants (independents)	5	2,890	3
5	Social media influencers (UDP, NPP or APRC-leaning)	22	93,635	424
	Rights activists and nonpartisan social media influencers	10	184,798	9,232

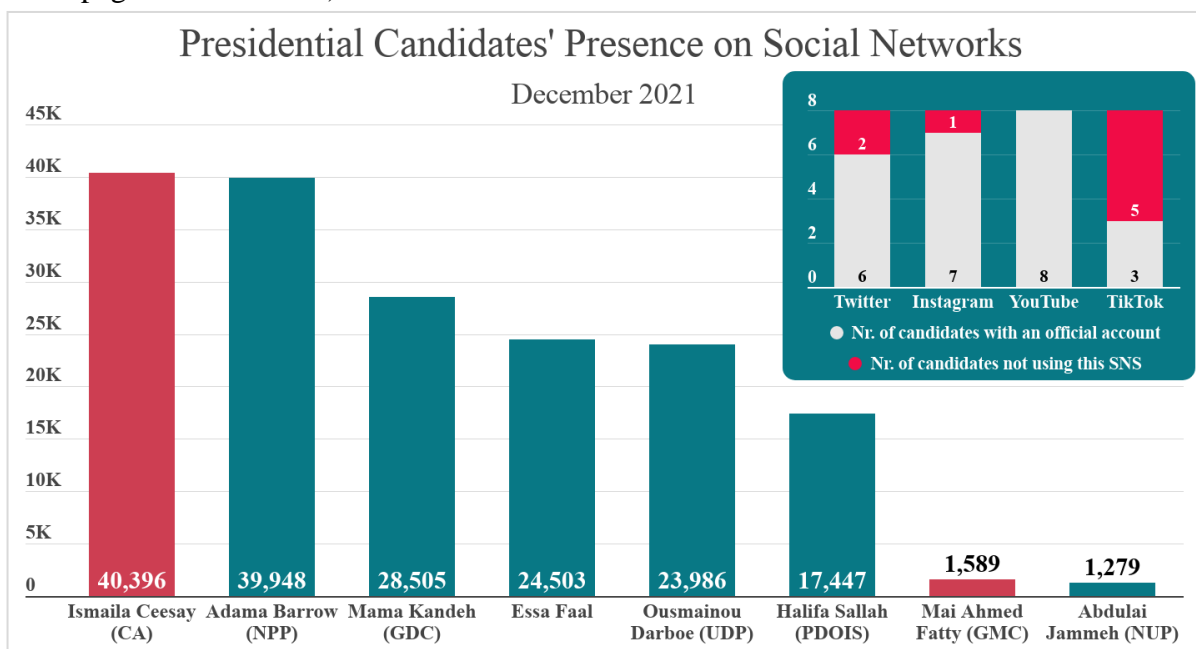
⁸⁵ The sample does not include social media accounts that were observed and assessed during selected case studies. For example, a case study of a fake news page, a case study concerning an election-related incident, etc.

6	News media pages and groups on Facebook	30	444,009	3,449
7	Civil society organisations, including fact-checking	12	9,279	705
8	State and local government institutions	10	77,584	924
9	Mock and party-owned news pages	8	81,330	1,183
TOTAL		238		

The selected sample of accounts on other social networks

N R	SOCIAL NETWORK	NR. OF AC- COUNTS	MAX FOLLOW- ERS	MIN FOL- LOWRS
1	TikTok	23	53,800	1,612
2	YouTube	25	131,000	920
3	Twitter	57	23,448	72
TOTAL		105		

1. Presidential candidates' presence across social media platforms (includes only official pages and accounts)⁸⁶



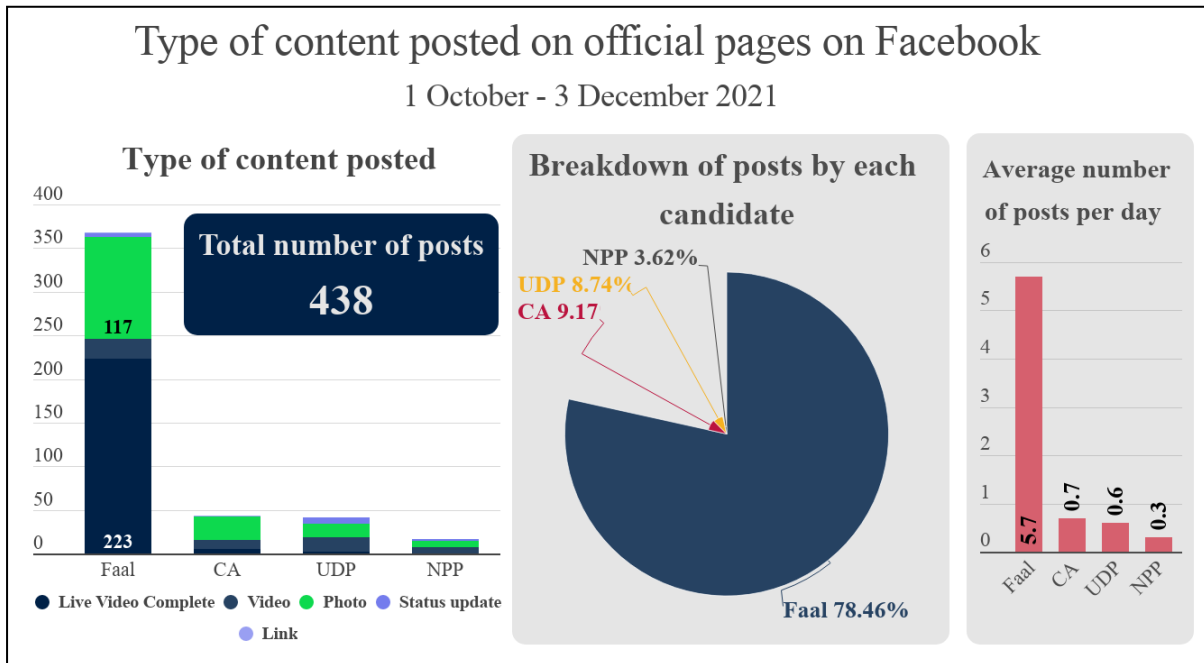
The EU EOM manually coded content posted on all official accounts of presidential candidates. The observation reveals that negative commentary against the opposing candidate (s) or the government was observed

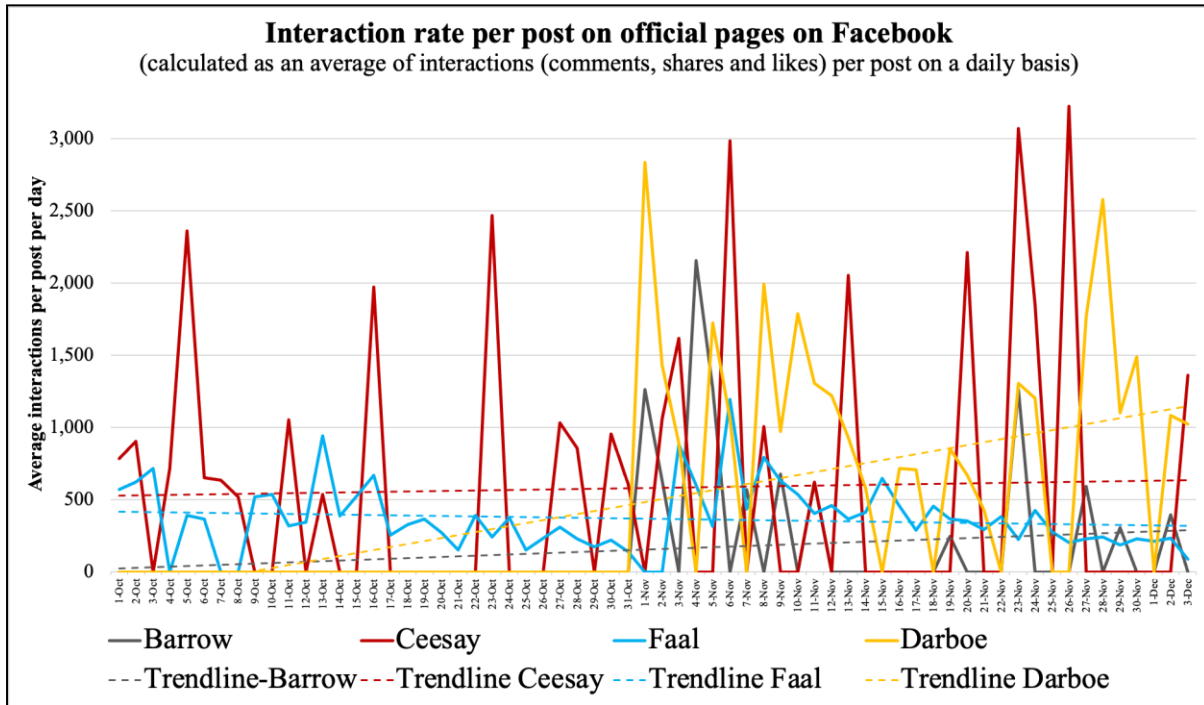
⁸⁶ Dr. Ismaila Ceesay and Mai Ahmed Fatty were challenging the IEC nomination process as breaching the fundamental right to stand for election at Banjul High Court. Litigations were ongoing during the campaign period, while national interlocutors considered Ceesay and Fatty to be important political actors who have the potential to affect the election results, if permitted to stand or if they would choose to endorse another candidate. Hence, their official accounts were included in the sample.

on the official accounts of the UDP and Essa Faal and at times also on the account of the GDC. Negative commentary targeting the UDP, Essa Faal and GDC was shared from NPP-leaning fan pages and accounts or party’s media pages.

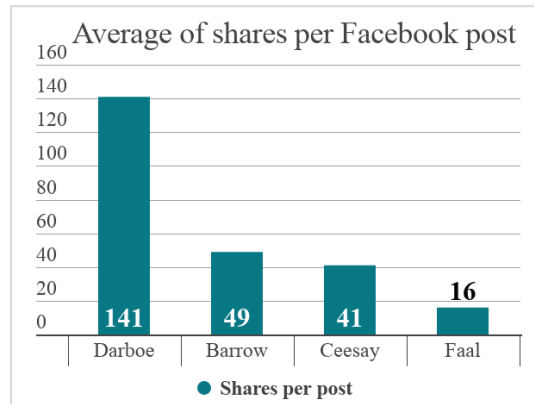
2. Activities observed on official Facebook accounts of presidential candidates representing the NPP and UDP, of Essa Faal and of Dr. Ceesay (CA)

Using the social media listening tool CrowdTangle, the EU EOM extracted historical data on all activities recorded on official Facebook accounts of the NPP and UDP presidential candidates and from the official account of Essa Faal and Dr. Ceesay (CA) from 1 October to 3 December (to include the nomination process and to exclude the election day). The following charts will illustrate the overall activity on those accounts, engagement with the audience and cross-sharing, as well as the relative growth of followers per page. During this period, Faal’s page posted 368 times, Ceesay’s – 43, Darboe’s – 41 and Barrow’s – 17 times.

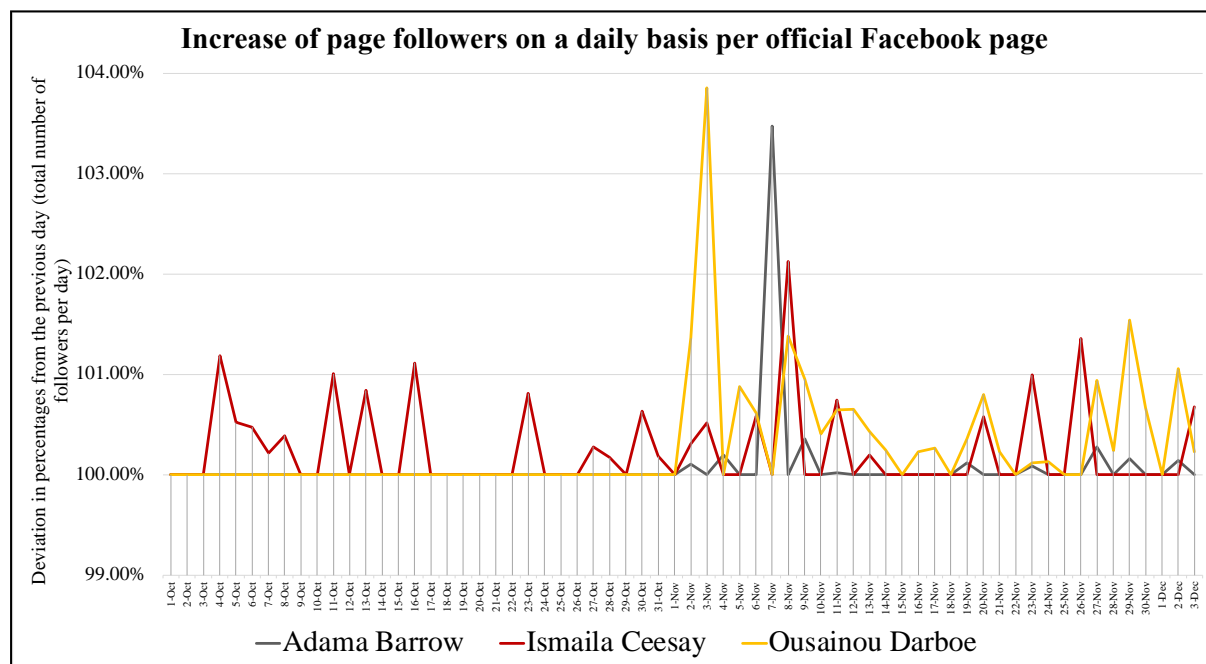




The trendline in the chart above indicates the growth/decrease of interactions with the respective Facebook account. Average users gradually lost interest in Faal’s activities, while spikes around key electoral events on Darboe’s and Ceesay’s accounts, show a steady growing popular appeal from 1 November onwards. High level of shares from Darboe’s page proves that the UDP had a net of interconnected pages mirroring party structures who robustly disseminated messages posted on the central page. The low activity on Barrow’s official account was compensated with high number of paid posts placed on The Gambia’s most followed news and infotainment pages.

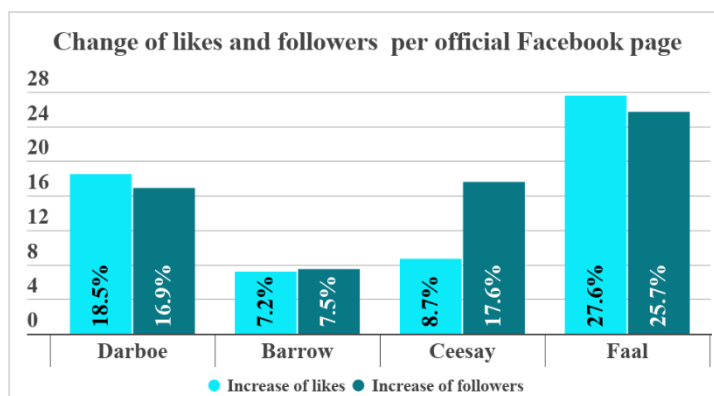


The post with most interactions on Barrow’s page was a campaign photo from 4 November featuring his nomination process (a total of 2,158 interactions); on Darboe’s – a patriotic address to the UDP supporters, illustrated by photos from the large-scale rally in Brikama on 28 November (3,100 interactions); on Ceesay – his birthday on 26 November (4,608 interactions), while for Faal it was a post on 6 November informing about his nomination (2,276 interactions).



The chart illustrates how the number of followers per page changed during the observation period. In the case of Barrow’s page, one unnatural spike was observed, while in the case of Darboe’s and Ceesay’s high spikes are explainable by the electoral event, that is featured in the post. Namely, the spike on Darboe’s page followed his passionate address to the UDP supporters just before the nomination (+3,537 followers within 24h), while the spike on Ceesay’s page marks IEC’s decision to refuse his registration as a candidate and his subsequent promise to bring the case to the court (+600 followers within 24h). At the same time the spike on Barrow’s page marks an advertising photo (+1,305 followers within 24h). Such unnaturally high spike usually indicates a purchase of “likes” and “followers”.

The rapid increase of followers illustrates the genuine public interest in Ceesay’s actions after IEC’s decision not to register him as a candidate, while the substantial growth of likes on Darboe’s page signal mobilisation and expansion of his online support base. The much higher proportional increase of likes and followers on Faal’s page illustrate his efforts to build an online support base from scratch within one month of the official campaign.

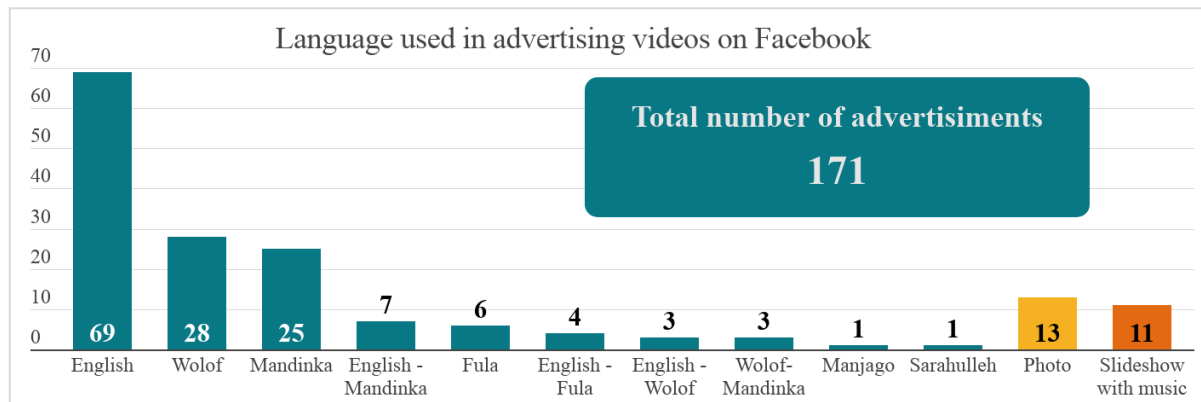
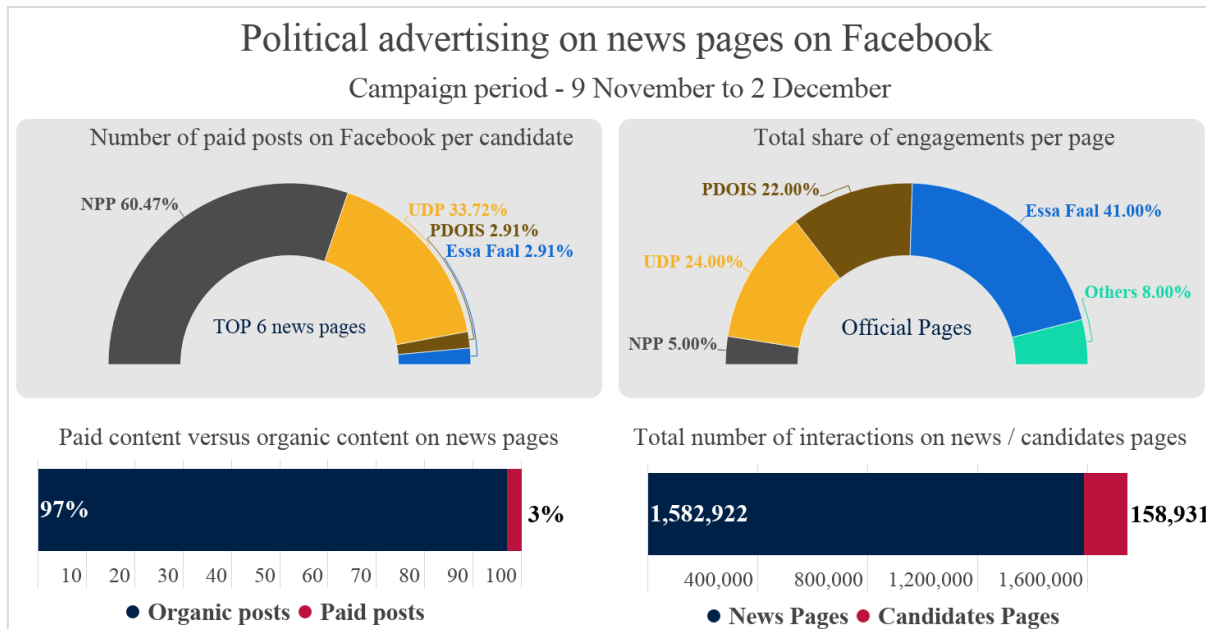


3. Political advertising versus activity on the official page on Facebook

Facebook did not introduce its key transparency tool for political advertising – Ad Library Report - in The Gambia, hence the EU EOM identified six most followed news/infotainment pages that place political advertising and conducted a daily manual monitoring and recording of advertisement placed on those pages.⁸⁷

⁸⁷ The sample includes following Facebook pages: The Fatu Network, Kerr Fatou, Gambian Talents Promotion, Eye Africa TV, Mengbe Kering TV and Paradise TV.

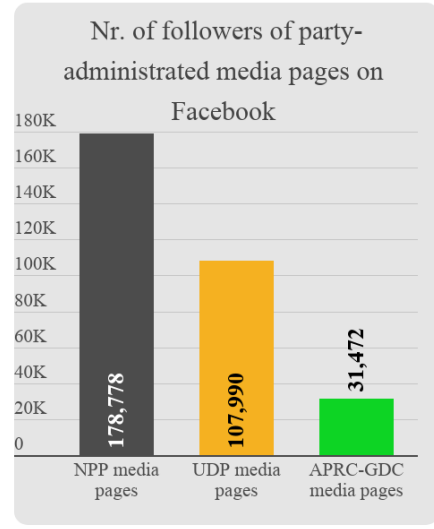
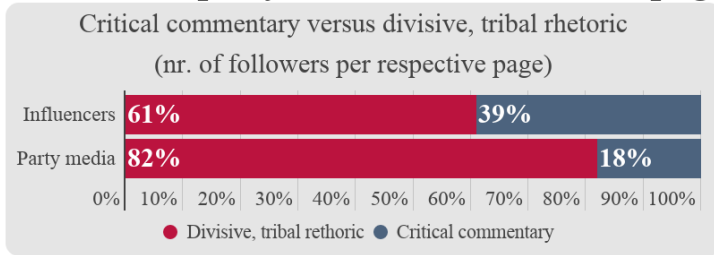
While NPP placed a comparable number of adds on all news pages, the NPP advertised only on four of them.



4. Content and reach of party-leaning social media influencers and party-administrated media pages on Facebook

The chart below illustrates content and potential reach of party-administrated media pages, as well as pages and accounts of partisan social media influencers. Divisive tribal rhetoric on those pages appeared in a form of short videos from rallies and corner meetings, as well as posts or as screenshots of WhatsApp messages circulating in party-leaning groups.

Content and reach of party-leaning social media influencers and party-administrated media pages on Facebook



Nr. of followers of party-leaning influencer pages on Facebook

