

Prisoners' Right to Vote in The Gambia: A Need for Legal Reform

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ABSTRACT

Prisoners' voting right in Gambian politics continues to be an undermined issue both in practice and theory since independence. An assessment of this issue in state politics reveals how casual academics and governments approach it. This research assesses the state of a prisoner's right to vote and the urgency for legal reform. It examines the philosophical aspect of rights, and questions why accused persons who are remanded pending a court's final determination are not allowed to exercise their voting rights. The researchers posit the difference between a legal right and a privilege and argue that voting is not a privilege but a civil and political right that defines the extent to which people are identified with a state of which they are citizens. In this study, we used normative legal research by examining and analysing both primary and secondary data that are germane to the subject. We finally submit that The Gambia needs to undergo a legal reform of institutions, and amendment of legal instruments including the electoral laws in order to create indeed a legal framework that guarantees equality before the law.

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1. INTRODUCTION

Gambians experience series of violation of rights [1]. The Gambia is the smallest mainland country in Africa with an area of about 11,000 square kilometres and a population of 2.4 million in 2024 census. Like all other African countries – except Liberia and Ethiopia – it was a victim of colonisation by dint of the Berlin Conference of 1884 – 1885 which marked the apogee of European invasion of Africa. After the country regains its political independence in 1965, it took a paradigm shift in its political framework with certain elements of democratic governance systems. Elections are part of this vital

political shift embraced by the country but since independence, prisoners' political right to vote remains disenfranchised. Despite the change of governments that took place this issue remains untouched. Prior to the 2021 presidential election, the National Human Rights Commission took its position on the right of prisoners to vote and that such disenfranchisement ought to stop [2]. Until now disenfranchisement of prisoners and accused persons who are remanded pending final determination of cases remains is not addressed.

Internationally, policy on prisoners' political right to vote is something that changes gradually without a clear dividing

point as the political pendulum continues to swing from one position to another. This right is relevant to modern democratic process of governance and it is on this basis that this right and many other rights and freedom can realise democratic order [3]. Although the fundamental principles of human rights law are largely comparable and courts in other jurisdictions deal with situations that are startlingly similar, the application of comparative law to human rights cases is still unclear. External human rights resources are cited in an undemocratic, biased, and deceptive manner [4]. In spite of this, the Africa Criminal Justice Reform 2020 revealed that some countries in Africa like Uganda, South Africa, Ghana, Kenya, Zambia and Nigeria grant prisoners the right to vote [5]. Nations like Australia, Belgium, France, Germany and United States have selective restrictions depending on the offence of which one is convicted. On the other hand, some countries completely ban prisoners from exercising their civil and political right to vote while serving their sentences. The Gambia is an epitome of this sect of countries. Criminal disenfranchisement evolved from the prehistoric idea of forfeiture, a form of civil death that was prevalent in prehistoric Greece and Rome and signified dishonour and disgrace. A state's government, as a legal entity in international law, is obligated to protect, advance, uphold, and promote human rights. However, widespread voting rights derogation occurs in The Gambia.

In Gambian governance system in relation to international human rights law, Article 25 of International Covenant on Civil and Political Rights, which The Gambia has ratified, is interpreted and generally commented upon providing that, it recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Irrespective of legal instrument or government that is in force, the Covenant enjoins states to adopt such legislative and other measures as may be necessary to ensure that citizens have an opportunity to enjoy the rights it protects.

Article 25 is sacrosanct to democratic government based on the consent of the people in alignment with the core values of the Covenant. In the words of Thomas Jefferson, to secure these rights of the people, governments are instituted among men, deriving their just powers from the consent of the governed [6]. The primary goal of this study is to demonstrate how national and international legal frameworks see the right to vote for convicts, which The Gambia's election laws violate. This article also determines to assess the reasonability of the derogation of the right of Gambian prisoners to vote in the country's governance system. It takes into consideration some provisions of the International Bill of Human Rights as well as those of national instruments and examines their philosophical underpinnings and the rationale of this derogation as informed by the politics of the State. It points out the illegality of this act and therefore advances to prescribe a way forward that will engender political development based on equality before the law and the right to non-discrimination which are sine qua non of self-realization, democracy and political growth. Human rights are universal, indivisible and inherent, and therefore one is entitled to enjoy them so long as they are alive. These rights ought not to be informed by the long-term settings of the country that have existed for many years, but they ought to be premised on the value of humanity.

In attempting to examine the right of prisoners to vote and the disenfranchisement that still exists in The Gambia, this research uses a normative legal research approach concerning this right. Data are drawn from previous articles and reports on the State's position on human rights and recommendations made. To gain a better understanding of the judiciary's role as the people's final bastion and glimmer of hope, case laws are also analysed. International regulations are also used in this research. Although these reviewed pieces of literature do not point out means of granting prisoners their rights to vote, this article continues from

there to analyse the election Act and suggest a possible antidote to this problem.

Based on this method, the novelty of this research delves into the disenfranchisement of prisoners' voting right in The Gambia through an election Act. Contrary to previously conducted research on human rights in The Gambia, this piece presents a unique exposition of how this violation of right is linked to the state's politics.

2. LITERATURE REVIEW

2.1. *The Right of Prisoners to Vote in The Gambia: A Contentious issue of Governance and Politics*

This piece of work is quite clear about the fact that non-Gambians do not have the political right to vote in The Gambia governance system, but it is equally of a concerned view that the right of Gambians who have attained the voting requirement as provided in the Constitution and internationally recognized instruments is under challenge. It is a right, not a privilege. Privilege, according to the Black's Law Dictionary, is a particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. 'Gambian prisoners' in this article means prisoners who are Gambian citizens and have attained the voting requirements as articulated in the Constitution – a microcosm of the International Bill of human rights. The rights of prisoners are significantly influenced by larger socio-political developments [7]. Here, the unconstitutionality or otherwise of the Election Act is examined. It provides that a person shall not be entitled to have his or her name entered or retained on a register of voters if they are serving imprisonment during an election. Based on the national trend on disenfranchisement of prisoners in The Gambia, it is fitting to aver that denying a person their right to vote in democracy leads to "civil death". This is how this concept of restricting prisoners' right to vote has

metastasized. This is thought to be a violation of another person's fundamental rights [8].

This work does not disregard the provisions of the Constitution which, inter alia, states that every citizen of The Gambia of full age and capacity shall have the right, without unreasonable restrictions, to vote and stand for elections at true periodic elections for public office, whose elections shall be by universal and equal suffrage and be held by secret ballot. It is still in recognition and appreciation of section 39 of Constitution of The Gambia, 1997 which provides that: every citizen of The Gambia being eighteen years or older and is of sound mind shall have the right to vote for elections of a President and members of the National Assembly and shall be entitled to be registered as a voter in a National Assembly constituency for that purpose. Still, on the Constitution, it provides that: all persons shall be equal before the law; subject to the provision of subsection (5), no person shall be treated in a way that is discriminatory by any person acting under any law or in the performance of the functions of any public office or any public authority; subsection (2) shall not apply to any law in so far as that law makes provision for persons who are not citizens of The Gambia or to qualifications for citizenship. It is important to submit that S 13(b) of the Election Act, which is the crux of this paper, is unconstitutional and cognizance of section 4 of the Constitution of The Gambia 1997, any other law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency, be void. It is in this line that I argue that the fact that a Gambian prisoner is convicted of an offence by the law does not mean that all their other human rights shall be obliterated or infringed. Human rights are innate and therefore cannot be ceased based on the politics of the state.

The Gambia has signed and ratified international human rights instruments that uphold the right of citizens to vote and at the same time speak against the violation of individuals' right to vote. The challenging issue here is the disfranchisement of a person who is even yet to be convicted of an alleged

offence. One of the rights that is most acknowledged in international and regional human rights frameworks is the right to political participation [9]. Any accused person undergoing criminal trial is not permitted to vote whilst remanded in the prison, and yet the constitution of The Gambia provides that the innocence of every person who is charged with a criminal offence shall be presumed until their guilt is proved, or they have pleaded guilty. The Gambia has an adversarial system of criminal justice where the innocence of a person is presumed until the contrary is proved. This is a violation of the constitutional right of the citizens as enunciated in the constitution which is the supreme law of the state. This piece reaffirms Article 21 of the Universal Declaration of Human Rights – which is just a declaration but has now attained the status of customary international law – which provides that: everyone has the right to take part in the government of his country, directly or through freely chosen representatives; everyone has the right of equal access to public service in his country; the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by general and equal suffrage and shall be conducted by secret vote or by equivalent free voting process. It further reaffirms Article 25 of the International Covenant on Civil and Political Rights which provides that: every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To participate 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; and
- c) To have access, on general terms of equality, to public service in his country.

2.2. Governance and Human Rights

Governance has three major components, namely, process, content, and delivery. Good governance is an administration that is sensitive to the need of the people and its ability to cope with emerging challenges [10]. This indicates that a government that is not in the interest of its obligations or responsibilities to uphold the rights of its citizens needs a political and administrative shift. The direction of a state's interest in politics at the expense of human rights is one of the ultimate causes of political instability and inhumane treatment by the African political class. Instability is not limited to armed conflicts within a state or between states; it is equal to the dehumanization of the people in very subtle and most often pernicious ways yet detrimental to the core principles of good governance. The African Charter on Democracy, Elections and Governance, which The Gambia has signed, upholds the sacred and core principles of governance and human rights value. In international law, when a state signs an international instrument without ratifying it, the concerned state deals with it per its national procedures. Whereas the right to vote is becoming more widely acknowledged on a national level, it is challenging to discuss such a "right" on an international or African scale. However, it emerges from the rulings of international and regional courts that international human rights law does not support legislation that automatically and without cause deprive people of their right to vote [11].

The human right value of prisoners to vote faces stiff opposition by the government because it contributes to determining who lives in State House. The circumstances of non-existent and limited freedom of prisoners voting right is not consistent and compatible with the human right perspective that prisoners are members of an authentic self-governed community. This democratic disenfranchisement is argued to base on the value of the participation of prisoners in democratic processes [12]. In The Gambia, after Adama Barrow became the president in

December 2016, he granted Ousainou A.N.M. Darboe a prerogative of mercy according to section 82 of the Constitution. The convict is the standard-bearer of the leading opposition party – the United Democratic Party – to the government of the former president, Yahya Jammeh. He was convicted of a criminal offence by the court of law, and it was obvious now that if he was granted the right to vote in the prison during that election he would have voted against the government of Yahya because it is the same government that sent him to jail.

This, therefore, points out the direction of the state towards politics to the detriment of human rights. The government of The Gambia hides behind the anonymity of the laws, but it is basically for the political interest of ruling government. Several justification for disenfranchisement of prisoners have been advanced over the years. This justifications include: (1) it promotes civic responsibility; (2) the perpetrator has gone against the social contract; (3) it is a way of controlling crime; (4) ballot box must be kept clean from people who have violated the law; and (5) allowing prisoners to vote is expensive and not practical. Contrarily, there are those who are opposing the policy of prisoner disenfranchisement. For this latter epoch, the fact that ethnic minorities are sometimes disproportionately represented within prison populations means that disenfranchisement laws can lead to inequality and political disenfranchisement for such groups. In many cases, deprivation of rights automatically results in imprisonment rather than criminal sanctions imposed by courts and can therefore be viewed as unjust punishment. This also applies to prisoners awaiting trials and sentence [13]. These two groups of views on disenfranchisement form contending issues on how many countries hold prisoners in absolute political disarray and contempt.

The Gambian government uses its authority to enforce its anti-franchise laws without regard to the constitution [14]. However, it was included on the agenda of the Constitution Review Commission (CRC)

because the administration has not repealed its policy by ceasing the practice. Of course, the National Assembly distorted the entire agenda of the Constitutional Review Commission as 23 of these lawmakers voted against the draft constitution and 32 voted in for it, but this was insufficient to reach the quorum of two-thirds of members required to move to the “Third Reading in Order” to implement constitutional change through a referendum. Human rights are supposed to play two main functions. Human rights are meant to limit the conduct of political authorities: governments and their various domestic and international agencies and organizations. Governments must respect the human rights of those living under them [15].

3. METHODS

3.1. Type of Research

This work uses normative legal research. Normative legal research is one that engages positive legal norms like laws and regulations. It also uses secondary data like legal and non-legal information obtained from books, journal articles and other materials.

3.2. Data Sources

In this normative legal research, the sources of data are primary and secondary legal materials. The primary legal materials used in this research include the Constitution of The Gambia, 1997, Election Act, International Covenant on Civil and Political Rights, “General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service” among others. For secondary legal materials, sufficient peer reviewed journal articles are sufficiently used.

4. RESULTS AND DISCUSSION

4.1. Voting: A Right or a Privilege?

If voting is a right, why is it that an accused who is remanded pending the ruling of a court is not allowed to exercise their right to vote? As per the constitution, their innocence is presumed until the contrary is proved, or they have pleaded guilty. This is a

fact in issue that the judiciary has not been considering over the years. This shows the extent to which governance in this country has fallen short of legal certainty in terms of law enforcement. Every person who is charged with a criminal offence shall be presumed innocent until he or she is proved or has pleaded guilty. While human rights obligations were initially thought to be mainly negative (to refrain from interfering with individuals' rights enjoyment), both the language in the human rights treaties and the jurisprudence from the human rights courts and committees have confirmed that such an approach is too limited. Indeed, it is now generally accepted that human rights obligations are of both a negative and positive nature, in that states are obliged not only to refrain from violating rights but also to take steps to ensure human rights enjoyment [16]. Therefore, this legal principle challenges the effectiveness of this governance system by not only ensuring that it ceases to interfere with the rights of prisoners to vote but also ensuring that this right is realized. The right of prisoners to vote as a human right ought to be held by human beings, not because of a legal process but just because they are human beings.

While some countries deal with their citizens' right to vote as though it is a privilege, other countries recognize and value the significance of one's right to vote as a human right and not a privilege. Some of these latter countries make voting compulsory, and this is a demonstration that a state does not only have the responsibility to protect this right but to also ensure that it is fulfilled. In Australia, failure to vote results in a fine. The country recognizes this because human rights aim to protect people's essential dignity and ensure fairness of treatment, it is important to ensure that there is a strong focus on the prevention of breaches of human rights occurring. It is being recognized that where a human rights violation has occurred, the law is limited in what it can do to remedy that violation, as it is not easy to amend destruction to a person's dignity once it has been destroyed.

4.2. The Standard of Reasonability

The philosophy of imprisonment is gradually moving from retribution to reformation with the intention and hope of reforming and absorbing prisoners back to society [17]. Section 26 (b) of the Constitution of The Gambia provides that all Gambian citizens that have attained the voting age and capacity shall have the right, without unreasonable restrictions to vote. But the constitution does not provide a litmus test to what is reasonable or otherwise. This is not obviously a feature of the silences of the constitution but suffice it to submit that the modern constitution is quite an intricate political and legal instrument. That is, it yields pressure for amendment when it is very detailed, and it may form an unambiguous framework of authority when it is too general. This leaves the drafters of constitutions with the challenging task of how detailed or otherwise they should be. As per Section 226 (7), it is not an entrenched clause and therefore, its amendment process cannot be complex as it does not need to pass all the tests provided in section 226 (4) which includes principally a national referendum where at least fifty per cent of the persons entitled to participate in the referendum have voted and the bill is supported in the referendum by at least seventy-five per cent of those who voted.

When political circumstances arise, often, they compel constitutions to be written – as in the case of the written constitution [18]. The Gambia, being the smallest mainland country in Africa, regained independence on February 18, 1965, with a constitutional system influenced by Britain as the erstwhile colonial master. So, from 1965 to date, this small country experiences two constitutional changes and now grappling with a third change which is yet to be realized. These constitutions are the Independence Constitution of 1965, the Republican Constitution and the current 1997 Constitution. The British have an impact on both the text and structure of the Independence Constitution. So, it was a constitutional monarchy within the Commonwealth, and this is the main factor

that animated the new government after the country gained the republican status on 24 April 1970 to come up with the Republican Constitution which provided a democratic governance to The Gambia until the country experienced an unconstitutional change of government through a bloodless coup d'état led by the former President, Yahya Jammeh on 22 July 1994. The emergence of the 1994 coup d'état led to the suspension of the 1970 Constitution and written the obituary of the long-surviving democratic dispensation of the late President Sir Dawda Jawara's government. As a result, a new constitution was created in 1996. A constitutional referendum was held on August 8 of that same year, and a presidential election was held in September of that same year. Jammeh – who was the junta of the Armed Forces and Provisional Ruling Council (AFPRC) – emerged as a winner of the 1996 election thereby ushering a civilian rule and the entering into force of the present Constitution on January 16, 1997.

To address the bad governance system, the current government under the leadership of President Adama Barrow established the Constitutional Review Commission, which drafted a new constitution even though this draft constitution was rejected by the parliamentarians during the Second Reading. Yahya Jammeh's government of 1994 to 2016 was recognized by both local and international communities as a dispensation of autocracy.

4.3. Protection from Discrimination

In attempting to assess the unconstitutionality or otherwise of the disenfranchisement of the political right of prisoners of all categories to vote in The Gambia it is quite fitting to make a reflection on what international human rights instruments uphold as regards this right. It is quite sacrosanct to posit that since independence, all the three constitutions of The Gambia have bills of human rights. Suffice it to submit that all the three constitutions are a microcosm of the International Bill of Human rights, and they

all provide for the right to protection from discrimination. The Gambia Independence Order 1965 in section 23 provides for 'Protection from discrimination on the ground of race, etc.', the Constitution of the Republic of The Gambia 1970 provides in section 25 that no law shall make any provision that is discriminatory either of itself or in its effect, and the Constitution of The Gambia 1997 in section 33 provides that all persons shall be equal before the law. The difficulties former inmates and prisoners confront in reintegrating into the society that their incarceration caused them to be cut off from have been studied in academic settings. Prisoners frequently have low expectations for what society will provide for them after they are released from imprisonment [19]. As they struggle with the policy that dehumanizes and villifies at times in what its framers regard as a protective mechanism of the society, those affected and those around them experience the anguish of this collective, which is animated by disenfranchisement in prison.

At the regional level, the African Charter on Human and Peoples' Rights, which is the principal human rights instrument in the African continent, abhors discrimination of any sort and enjoins member states to desist from its practices. At the international level, International Covenant on Civil and Political Rights (ICCPR) provides, inter alia, that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this regard, the law shall prevent any act or omission that is discriminatory and guarantee to all persons equal protection against these acts and omissions. The Gambia has acceded to this instrument on 22 March 1979. According to the Vienna Convention on the Law of Treaties, accession is the acceptance of a state to be legally bound by an instrument after the negotiation of the same instrument is concluded. ICCPR does not recognize any justification for discrimination including the discrimination of prisoners by seizing their political right to vote. This is because

disenfranchisement of prisoners' voting right entails negative implication for both the individual and the state. It involves the state violating international human rights, which may result in a deterioration in its sense of duty toward the rest of the world. For individuals, there is a tendency for them to be in a theatre of discrimination and social exclusion by the community beyond deprivation of liberty which later affect their social readjustment [20].

4.4. Human Right and Politics

Whilst politics is at the centre of national development, a quantum leap in political cohesion and participation of the masses, its incompatibility with human rights has been a subject of scrutiny for many years in Africa and The Gambia is indeed at the centre of this discourse. The discussion of human rights in The Gambia must be anchored to the political history of the country as it indeed happened in most other countries in Africa. This is informed by the nationalism and anti-colonialist movements that have historically existed in the nation. Therefore, the right perspective was quite a sacrosanct means of the struggle for independence. Due to this struggle, several independent constitutions captured the bill of rights. The struggle for human rights remained rhetorical although it is often sacrificed at the altar of ideology, tradition, and institutions. The protection of prisoners' right to vote as a political right and the rule of law are inseparable concepts. Without the protection of this right, a legal state would lose its significance and legitimacy as a state of law, whereas political rights protection in the absence of a legal framework led to tyranny and individual egoism. The state created a policy to prevent and address the purposeful or unintentional violation of human rights through the protection of human rights. The instruments of repression and prevention are both necessary for the protection of political rights. To achieve the purpose of the law and the objective of the state in general (*ius constituendum*), the politics of law can be understood as an effort to reconstruct the law through legal reform or repeal. As a result, the

politics of law should always dynamically follow the development of social dynamics, economic development, and cultural communities [21].

Recent pieces of literature have shown how many scholars have characterized politics negatively in terms of its influence on human rights. I take the opposite view by making an exposition of how politics is significant in ensuring the realization of human rights – particularly the right of prisoners to vote. In his paper, Paul Gready posits that human rights evolved from three revolutionary movements. The first generation of civil and political rights emanated out of the French and American Revolutions at the turn of the eighteenth century. The second generation of economic and social rights was a result of the socialist revolutions of the early twentieth century, whilst the third generation of solidarity rights (the rights to development, health, peace, ownership of the common heritage of mankind, and ecologically balanced environment) sprang from the anti-colonial ideology that resulted in the independence of most of these nations by the 1960s [22]. Of course, Paul Gready's exposition of this is quite known to every human rights puritan.

According to The Gambia, the report shows that people who operate in the political sphere of the government organize and perpetrate most human rights breaches. The following conclusions from human rights reports from 2011 to 2021 are used in this research to establish this fact. I adopt this stance because the previous administration's last five years as well as the present administration's initial five years was marked by a vast array of illegal activities and the international community anticipated a gradual change from authoritarian rule back to a democratic dispensation where human rights are valued. The Gambia 2012 Human Rights Report has it in the Executive Summary that the most serious human rights problems in the country involved the government's interference with the election, torture arrest and detention, and sometimes enforced disappearance of citizens and

execution which occurred as a result of a flawed, problematic and politically charged legal processes. Poor prison conditions and disenfranchisement of prisoners' right to vote are stipulated. The state's politically motivated agencies are characterized in this study by executions, disappearances, and incommunicado confinement. The 2013 Human Rights Report points out various reports of politically motivated disappearances including the arrest of Baba Leigh by the National Intelligence Agency, torture and other cruel, inhuman, or degrading treatment or punishment, loss of an eye of one Amadou Faal (known as Njagga) due to the beatings by prison officers. Arrests against the due process of the law were effected on members of the leading opposition party – the United Democratic Party, the arrest of former Attorney General and Minister of Justice Lamin Jobarteh, former Solicitor General, Pa Harry Jammeh and former Minister of Finance, Mambury Njie who were detained at the NIA headquarters for a month which violates section 19 (3) (b) of the Constitution provides that any person arrested for an alleged offence should be brought to court with seventy-two hours. Disappearances, torture, and other inhumane treatment were all prominent in the 2014, 2015, and 2016 Human Reports, as were arbitrary arrests, ineffective and corrupt judicial systems, and unfair trial practices. This captures a summary of the last five years of an autocratic government.

Then in December 2016 a wave of political change swept across the nation and The Gambia ended the tyranny of the 22-year dictatorship of the former President, Yahya Jammeh and the new government emerges. The year 2017 marks the beginning of the emergence of human rights as the political atmosphere changed. It came with the establishment of the Truth, reconciliation and Reparation Commission (TRRC) to investigate the heinous human rights abuses committed during former President Jammeh's government. According to the 2017 – 2021 Gambia Human Rights Report, there are still some human rights but not as pernicious as

they were during the dictatorial regime. Human rights are at the heart of politics.

4.5. Assessing the judiciary

When a layperson is asked about the structure of government, the Executive, led by the President, and the National Assembly, led by the Speaker, frequently spring to their mind. The judiciary is hardly seen as a crucial part of any government. The High Court has the authority to interpret and uphold rights guaranteed by The Gambia's 1997 Constitution. The judiciary is responsible for administering justice in accordance with the law, thus if this crucial branch of government is not fully investigated, the work will be lacking. Voting right is a *sine qua non* of democratic process and international human rights law. During the twentieth century, constitutional democracy extended voting right to previously excluded groups including women ethnic and racial minorities and the illiterate. An attempt to withdraw this right from these groups will invite political tension and controversy. This kind of tension does not seem to arise lawmakers propose to disenfranchise prisoners. There appears to be no political cost in this, and this makes politicians "tough on crime". Because of this, there is high tendency for courts to consider the constitutionality of legislative ban on the right of prisoners to vote cases [23].

This assessment focuses on the interpretation and enforcement of the constitutional bill of rights provided in sections 18 – 33 and section 36 (5) of the Constitution of The Gambia, 1997. The country's justice system was characterized by mercenary judges, whose reputation was for carrying out the orders of the authoritarian regime of the late president Yahya Jammeh, who is currently living in exile in Equatorial Guinea. The appointment of foreign judges has a significant negative impact on this system. At this stage, it is important to examine the findings of the Truth, Reconciliation and Reparation Commission on the justice sector. Since the court is the last bastion of justice, Jammeh used it to abuse the rights and freedom of the people including the prisoners' rights to vote. The 2016

presidential election that show him ousted from power found the leader of the main opposition in prison. He had for the umpteenth time violated section 141 (2) (c) by terminating the appointments of judges of a Superior Court without consultation with the Judicial Service Commission as required by the constitution. For example, TRRC's findings on the unlawful termination of judges' appointments have it that the termination of Justice Na Ceesay Sallah-Wada in 2016 was unlawful. The judiciary was not independent of the executive between 1994 and 2017 and there was no way that it could serve justice – in accordance with the requirements of international human rights law, including the respect and protection of human rights and freedoms. The emergence of the new government is quite promising as certain rights begin to be enforced by the judiciary.

5. CONCLUSION

The Gambia is at a crossroads pushing away from autocracy towards democratization. This is a critical moment for the state because amidst this push appear a political right violation and it therefore, ought to be addressed. The country needs to

undergo a reformed process in terms of state institutions, and legal instruments including the Election Act to grant prisoners the latitude to vote. Acutely aware that a constitution is both a political and legal instrument, the rights of the prisoners should be recognized by the law to address the silence of the constitution which the Election Act uses to limit the right of prisoners to vote. Providing for this right in the constitution will send an unambiguous message to the country that this right is no longer left at the mercy of the political class but now a conscious decision is made to grant them their right.

As a fundamental human right, the right of prisoners to vote as political right has a nexus with democracy and sovereignty of the people. With a view to realizing this as one of the litmus tests of good governance, The Gambia should reform the Election Act (*ius constitutum*) to become a law (*ius constituendum*) that accommodate prisoners. This can be done through amendment of laws that have direct impact on this problem. Therefore, the government of The Gambia should introduce a law that allows prisoners to vote through a legislative process and this will set the country at the same parapet with other countries that have long recognized this in Africa and the wider world.

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