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MINISTRY OF JUSTICE
MARINA PARADE
BANJUL

Brainstorming Session on "Constitution Building Process and Transitional Justice: Comparative Experiences from Africa"

Banjul, 15 March 2017,

Kairaba Hotel

Concept Note

I- Background.

a- As part of the Technical Assistance Program to Constitution-Building/Revision Processes to the Gambia, **the Africa and West Asia Programme of International IDEA and the Office of the Solicitor General of the Gambia are organizing in Banjul, on 15 March 2017, in partnership with the Department of Political Affairs of the African Union Commission (Cluster on Constitutionalism and Rule of Law of the African Governance Platform), a Brainstorming Session on "Constitution Building Process and Transitional Justice. Comparative Experiences from Africa".**

II- The Problem.

b- Following the defeat of long time President Yahya Jammeh in the December 2016 presidential elections, The Gambia has embarked on a transition to a democratic dispensation. Central to this transition is the constitution making process and a system of transitional justice to address the violations and abuses of human rights by Jammeh's government. Indeed, at the core of the campaign of the main coalition of opposition parties that defeated Jammeh was reforming the constitution to usher in a democratic system.

c- In line with the campaign promises, in December 2017 the government proposed a constitutional Review commission Bill before the National Assembly. The law establishing the Constitutional Review Commission was passed by the Assembly. The Commission is a body tasked with leading the reform process. The Chairperson of the Commission shall be the Chief Justice or a Judge designated by him and other ten members including a vice-chairperson who shall be a legal practitioner. The Law anticipates the writing of a new constitution through a process of widespread consultations that will involve the Gambian public, diaspora, civil society organizations and other stakeholders. When



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finalized, the constitution will be the third, after the independence 1965 constitution, and the current 1997 constitution.

d- While the 1997 constitution was adopted in a referendum, the entire process was dominated by the military junta that overthrew the democratically elected government in 1994. There was little opportunity for meaningful participation of the people. Nor was there effective bargaining and compromise among political elites. Accordingly, the new constitution will be drafted in a context of limited experience in the art of designing a participatory, inclusive, transparent and deliberative constitution. In addition, considering the authoritarian political legacy, newly elected politicians have limited experience in institutional reform and in engaging the public. Indeed, close to 75% of the members of the National Assembly are newcomers to the legislative forum. Similarly, civil society organizations (CSOs) have had limited space and experience in effectively engaging the government as well as in consulting, mediating and channeling public concerns to the relevant state institutions. The importance of building the capacity of Gambian state institutions and CSOs in effectively discharging the tremendous demands of a constitution making process cannot be over emphasized.

e- It is against this backdrop that the Africa and West Asia Programme of International IDEA and the Ministry of Justice of the Gambia are organizing, in partnership with the Department of Political Affairs of the African Union Commission (Cluster on Constitutionalism and Rule of Law of the African Governance Platform), on 15 March 2017, a **Braistorming Session on "Constitution Building Process and Transitional Justice. Comparative Experiences from Africa"**. The Meeting, which is part of the Agenda of the Technical Assistance Mission to be Conducted to the Gambia by International IDEA and the Cluster on Constitutionalism and Rule of Law of the African Governance Platform from 15 March to 17 March 2018, will take Place at the Kairaba Hotel, Banjul.

III- Objectives of the Meeting.

f- The objectives of the Brainstorming Session will be to:

- Assess the status of the constitution reform process in the Gambia– issues and processes



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- Discuss and share experiences from other African Countries on Constitution Building Process and Transitional Justice;
- Map and Establish partnership with Stakeholders to identify needs for Assistance.

IV- Expected Results

g- The Brainstorming Session on “Constitution Building Process and Transitional Justice: Comparative Lessons from Africa” should contribute to a better understanding of the challenges and opportunities of the constitution-building/revision processes in the Gambia. The knowledge sharing and the exchange of ideas about the specific situation and contexts in different countries will contribute to a better, thorough assessment of the overall situation and will allow the participants to define a plan that could serve as the basis for future collaboration with International IDEA and other partners. A Report will capture the principal outcomes of the working session.

V- Participants

h- The Brainstorming Session will bring together close to 50 participants including:

- The Ministry of Justice
- The Judiciary
- National Assembly Members
- Political Party Leaders
- Representatives of IDEA and of the Department of Political Affairs of the African Union Commission
- The Gambia Bar Association
- Civil Society Organisations
- The Security Services
- Experts
- International Organisations



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VI- Format and working languages

i- The working session will be conducted through interactive panels. The working language will be English.