

Joint  
submission to the Universal Periodic Review of  
the Gambia by ARTICLE 19, Access Now and the  
Committee to Protect Journalists

**For consideration at the 34<sup>th</sup> session of the  
Working Group in November 2019**

**4 April 2019**

## Introduction

1. ARTICLE 19, Access Now, and the Committee to Protect Journalists, welcome this opportunity to contribute to the third cycle of The Gambia's Universal Periodic Review (UPR). This submission examines the following freedom of expression priorities:
  - Ratification of core international human rights law conventions, and cooperation with international and regional human rights mechanisms;
  - Constitutional safeguards and reform processes;
  - Media freedoms and legislative limitations on free expression
  - Access to information
  - Freedom of peaceful assembly and association;
  - Creation of independent human rights institutions and transitional justice mechanisms.
2. During its second UPR cycle in 2014, the Gambia did not accept a significant number of recommendations that specifically called for legal and institutional reforms to protect freedom of expression, as well as recommendations pertaining to cases of individuals persecuted for the exercise of their rights.<sup>1</sup> Nevertheless, a number of broader recommendations were accepted and form the basis of this review, including recommendations to:
  - Improve the situation of freedom of expression in accordance with international standards, including through cooperation with international and regional human rights bodies;<sup>2</sup>
  - Ensure a favourable environment in law and in practice for the activities of journalists, human rights defenders and other civil society actors and refrain from harassment and intimidation against them;<sup>3</sup>
  - Accelerate the progress of consultations and ensure that the National Human Rights Institution functions in accordance with the Paris Principles.<sup>4</sup>
3. The period under review has witnessed significant political changes. Landmark democratic elections in 2016 resulted in a political and constitutional crisis when President Yahya Jammeh refused to relinquish his 22-year repressive grip on power to opposition candidate and victor Adama Barrow. Following robust engagement from regional and international actors, Jammeh left the country, allowing for a peaceful transfer of power in January 2017.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Gambia Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by The Gambia, 24<sup>th</sup> March 2015.

<sup>2</sup> *Ibid.*, see, for example: recommendations 109.140, and 109.141

<sup>3</sup> *Ibid.*, see, for example: recommendations 109.142 - 109.144, 109.145, and 109.147

<sup>4</sup> Recommendation 109.69–109.79

4. The government of Adama Barrow has ushered in a period of optimism, with the initial release of political prisoners, the return of journalists who had long been in exile, and robust commitments to break with the past, and ensure a new approach to governance underpinned by respect for human rights and supported by legal reforms. These were among the reasons the Gambia was identified as the biggest global advancer on freedom of expression in ARTICLE 19's 2018 global report, which examined progress on respect for freedom of expression across five different metrics.<sup>5</sup>
5. While these commitments are welcome, we note that progress since the beginning of 2017 has been slow, with many of the necessary legal and institutional reforms to safeguard freedom of expression in the Gambia still outstanding, and mechanisms to support transitional justice still requiring support. Entering its Third Cycle under the Universal Periodic Review should therefore be seen as a crucial moment for the Gambia to reinvigorate its reform agenda, including by accepting specific recommendations to protect freedom of expression.

### **Ratification of core international human rights law conventions, and cooperation with international and regional human rights mechanisms**

6. The Gambia has made progress in signing and ratifying numerous core international human rights treaties since the change of government in 2017.<sup>6</sup> Notwithstanding resistance from the previous administration during the last UPR, the government ratified in September 2018 the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, the International Convention for the Protection of All Persons from Enforced Disappearances, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2018, the Gambia also engaged with the Human Rights Committee in its periodic review, notwithstanding the absence of a State report.<sup>7</sup>
7. At the same time, we are disappointed that the Gambia has not yet joined the 120 Member States and 1 non-Member Observer States that have issued standing invitations to UN special procedures. A visit request from the UN special rapporteur on freedom of opinion and expression, made in February 2017, for example, has so far not been accepted.
8. At the regional level, the Gambia also made a declaration under article 34 (6) of the Protocol allowing NGOs to directly access the African Court.<sup>8</sup> Equally, Gambia has recently submitted its period report under Article 62 of the African Charter on Human and People Rights, after 25 years of non-compliance, with 22 outstanding reports.
9. We also recognize limited progress made to implement decisions of the ECOWAS Court of Justice that relate to impunity for crimes against journalists,<sup>9</sup> notwithstanding a failure to accept specific recommendations on these cases during the last UPR.<sup>10</sup>
10. The families of journalist Deyda Hydara, killed in 2004, and the families of journalist Ebrima Manneh, subject to an enforced disappearance in 2006 have received some compensation following negotiations with the new government. In relation to the Hydara case, investigations

<sup>5</sup> "The Expression Agenda Report, 2017 – 2018, the State of Freedom of Expression Around the World", ARTICLE 19, 2018. At page 55; available at: [https://www.article19.org/wp-content/uploads/2018/12/XPA-Report\\_A19.pdf](https://www.article19.org/wp-content/uploads/2018/12/XPA-Report_A19.pdf)

<sup>6</sup> Status of ratifications available at <http://indicators.ohchr.org/> (accessed 2 April 2019)

<sup>7</sup> Human Rights Committee, Concluding Observations on the Gambia in the absence of its second periodic report, CCPR/C/GMB/CO/2, 30 August 2018; available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GMB/CO/2&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GMB/CO/2&Lang=En)

<sup>8</sup> <http://fr.african-court.org/index.php/news/press-releases/item/134-la-gambie-devient-le-neuvieme-pays-a-permettre-aux-ong-et-aux-individus-de-saisir-directement-la-cour-africaine>

<sup>9</sup> *Ebrima Manneh vs The Gambia*, ECW/CCJ/JUD/03/08, 2008; *Musa Saidykhan vs The Gambia*, ECW/CCJ/JUD/08/10, 2010; and, *Deyda Hydara Jr. and Ismaila Hydara vs The Gambia*, ECW/CCJ/APP/30/11, 2014.

<sup>10</sup> Report of the Working Group, *op. cit.*, Recommendations 109.134, 109.148 (both noted)

have led to arrest warrants being issued in May 2017 for two security officials, former Army Commander Kawsu Camara and Major Sanna Manjang. At the same time, however, impunity persists in the cases of Manneh and Saidykhan, with proposed compensation not matched with investigations to identify and hold perpetrators accountable. The ECOWAS Court of Justice judgments therefore remain only partially implemented, and further action is needed to ensure justice in each case. The recent decision of ECOWAS court is yet to be implemented.<sup>11</sup>

### Recommendations

Finalise the comprehensive reforms to ensure that all national laws and practices comply with Gambia's obligations under international human rights law, in particular following the recent ratification of core human rights treaties;

- Issue a standing invitation to all UN special procedures, and respond positively to the February 2017 request for a country visit from the Special Rapporteur on freedom of opinion and expression.
- Continue making progress in implementing ECOWAS Court of Justice decisions on ending impunity for crimes against journalists, in particular by ensuring persons responsible for the 2004 murder of Deyda Hydera, the 2006 enforced disappearance of Ebrima Manneh, and 2006 torture in custody of Musa Saidykhan, are brought to justice and implement the decision of the ECOWAS court decision of 2018 on the case concerning Fatou Camara, Fatou Jaw Manneh, Alhagie Jobe, and Lamin Fatty, who were arrested and tortured by the previous government under the harsh media laws.

### **Constitutional safeguards and reform processes**

11. The Gambian Constitution of 1997<sup>12</sup> provides limited protection to freedom of expression and related rights in Article 25(1)(a):

*“Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media... freedom to assemble and demonstrate peaceably and without arms; freedom of association, which shall include freedom to form and join associations...”*

12. Limitations on the Constitutional right to freedom of expression are set out in Section 25(4), affording the State greater discretion to limit the right to freedom of expression than permitted by Article 19(3) of the ICCPR. In particular, it requires that limitations through national law be “reasonable”, seemingly diluting the standard of what is “necessary in a democratic society.” The permissible aims of such restrictions also differ from the exhaustive numeration listed in Article 19(3) of the ICCPR, including, in addition to national security, “the sovereignty and integrity of The Gambia”, as well as “public decency.”
13. Further guarantees to media freedom and independence are given through Chapter XIX, Sections 207- 208, with limitations set out in Section 209, and Section 210 providing the basis for a National Media Commission. The guarantee for media independence set out in Section 207 is undermined by the broad basis for limitations in Section 209, as they may be restricted by law on a standard of “reasonableness”, rather than “necessity”, as set out in Article 19(3) of the ICCPR. Section 208, while affording “fair opportunities” for dissent, also gives recognition to the legitimacy of State-owned media, which is paradoxical to media independence, and would be better replaced with guarantees for the establishment of a truly independent public service broadcaster.

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<sup>11</sup> <https://www.article19.org/resources/gambia-respect-ecowas-court-ruling-rights-journalists/>

<sup>12</sup> <http://assembly.gov.gm/wp-content/uploads/2016/12/CONSTITUTION-OF-THE-GAMBIA-1997.pdf>

Similarly, Section 210 could provide greater protections for the independence of the National Media Commission, and limit its scope to the broadcast sector.

14. The Human Rights Committee, in its 2018 review of the Gambia, expressed concern that the Bill of Rights in The Gambia's 1997 Constitution did not adequately enshrine the protections of the ICCPR, urging that this be addressed by the newly established Constitutional Review Commission.<sup>13</sup> While the Committee did not elaborate on the freedom of expression guarantees in the Constitution, they expressed concern that, notwithstanding political proclamations to ensure greater rights compliance, the Constitution still provides for the death penalty,<sup>14</sup> and also allows for excessive use of force in response to persons exercising their rights to freedom of peaceful assembly.<sup>15</sup> They also complained that provisions on the derogation of rights during a state of emergency, in Article 35(2) were too broad.<sup>16</sup>
15. The government is committed to a Constitutional reform process. The Constitutional Review Commission (CRC), established as per the Constitutional Review Commission Act (Act no. 7) of December 2017, is tasked with reviewing the current Constitution with the view to drafting a new Constitution and publishing a report explaining the draft. The CRC commenced public consultations in October 2018, to continue to June 2019, and has released a background "issues" paper to guide the substance of those discussions, including with specific questions on fundamental rights and freedoms.<sup>17</sup> ARTICLE 19 has submitted recommendations to the CRC as part of this exercise.

#### Recommendation

- While supporting the independence of the CRC and its work, the Government must fully commit to ensuring the new Constitution fully guarantees the rights to freedom of opinion and expression, access to information, association and assembly, as well as media independence, including for broadcast media, fully in line with international human rights law, in particular its obligations under Article 19(3) of the ICCPR.

#### **Media freedom and legislative limitations on free expression**

16. During its last UPR, Gambia accepted recommendations to promote and guarantee freedom of expression in compliance with international standards, including to promote media freedom and freedom for journalists and human rights defenders,<sup>18</sup> but rejected more specific recommendations to amend restrictive laws, including the Criminal Code and Information and Communication Act.<sup>19</sup>
17. Since the 2017 change in government, a number of exiled journalists have returned to the Gambia, media outlets banned under the previous regime have been reinstated, such as the previously shuttered *The Daily News*, and new media outlets have been established.<sup>20</sup> State House has also committed to holding press briefings every two weeks, but this positive practice has stopped. Recently, a controversial and unconventional policy requiring journalists covering the presidency to be screened by the State Intelligence Services.<sup>21</sup> Following criticism, it was dropped early this month<sup>22</sup>.

<sup>13</sup> Human Rights Committee, Concluding Observations on the Gambia, *op. cit.*, at para 7 – 8.

<sup>14</sup> *Ibid.*, at paras 27 – 28.

<sup>15</sup> *Ibid.*, at paras 29 – 30.

<sup>16</sup> *Ibid.*, at paras 19 – 20.

<sup>17</sup> "Possible Areas for Constitutional Reform", CRC, in particular Issue 2; available at: <http://197.231.128.20/crc/wp-content/uploads/2015/12/CRC-Issues-Document-October-2018.pdf>

<sup>18</sup> Report of the Working Group, *op. cit.*, at recommendations 109.140 – 109.145, 109.147

<sup>19</sup> *Ibid.*, at recommendations, 109.57 – 109.63, 109.146,

<sup>20</sup> "The Expression Agenda Report, 2017 – 2018, the State of Freedom of Expression Around the World", ARTICLE 19, 2018.

<sup>21</sup> It has replaced the National Intelligence Agency known for committing serious human rights abuses during the Jammeh era

<sup>22</sup> <http://thepoint.gm/africa/gambia/article/gpu-communicue-on-state-house-new-press-accreditation-policy>

18. Notwithstanding delays to implementing the abovementioned ECOWAS Community Court judgments, the government has displayed a willingness to engage in further institutional and legal reforms. These reforms are urgent, as the legal apparatus that enabled censorship under the previous regime is still in place, making the situation for the media precarious.
19. In January 2018, the Ministry of Information and Communications Infrastructure (MOICI), with technical support from ARTICLE 19 West Africa and in collaboration with the Gambia Press Union, formed a National Media Law Committee to advance the agenda for the reform of media laws and other legislation impacting freedom of expression. The Committee, which included members from the media, civil society, the National Assembly, government officials, regulatory bodies, and other consultants, completed its work in May 2018, issuing a number of recommendations to MOICI and to the Ministry of Justice (MOJ).
20. The Committee recommended the repeal of Section 173A of the Information and Communications Act 2009 (as amended 2013), which introduced 15-year prison terms and fines of 3 million Dalasis (approximately 100,000 USD) to any individual convicted of using the Internet to “spread false news or make derogatory statements, incite dissatisfaction, or instigate violence against the government or public officials,” as well as the repeal of provisions on criminal defamation (Section 178 of the Criminal Code) and sedition (Section 52 of the Criminal Code).
21. These recommendations find support in a 9 May 2018 decision of the Gambian Supreme Court, which ruled that Section 173A and the criminal prohibition on defamation were unconstitutional, and that the law on sedition was partly unconstitutional, as it relates to the Government and public officials, but not in relation to the President.<sup>23</sup> However, ARTICLE 19 is disappointed the Supreme Court did not go further, as required by a February 2018 ruling of the ECOWAS Court of Justice concerning the arbitrary arrest and detention of four journalists under the previous regime.<sup>24</sup> In that decision, in addition to finding a violation of the journalists’ rights, the ECOWAS Court of Justice specified that each of these laws, including the law on sedition, must be repealed.
22. The Gambia Criminal Code, last revised in 2013<sup>25</sup> to increase various penalties, including online is the source of many restrictions on freedom of expression that do not comply with international human rights law, and it is essential that any reform agenda to support media freedom includes the decriminalisation of sedition and defamation.<sup>26</sup> Priorities for repeal include among others:
  - **Sedition:** Section 51 of the Criminal Code defines seditious intention as an “intention to bring into hatred or contempt or to ‘excite disaffection’ against the President, his government and the judiciary”. Section 52 criminalises the publication and distribution of seditious material as well as the mere uttering of seditious words. This provision has been amended several times (2004; 2005; and 2011) with a view to further muzzle expression by providing for harsher fines and prison terms. Under the Criminal Code Amendment Act the offence of seditious publication is now punishable with a fine between 50,000 (US\$1,293) and 250,000 Dalasis (US\$6,475). Section 51 is designed to restrict criticism of the government and public officials, which is not a legitimate purpose for limiting the right to freedom of expression under Article 19(3) of the ICCPR.

<sup>23</sup> Supreme Court of the Gambia, *Bai Emil Touray and Two Others vs. The Attorney General I*, SC Civil Suit No. 1/2014, 9 May 2018.

<sup>24</sup> ECOWAS Court of Justice, *Federation of Africa Journalists v. the Republic of The Gambia*, 14 February 2018, ECW/CCJ/JUD/04/18

<sup>25</sup> [https://www.refworld.org/publisher\\_ART19,,GMB,519dd98e4,0.html](https://www.refworld.org/publisher_ART19,,GMB,519dd98e4,0.html)

<sup>26</sup> “The Gambia: Analysis of Selected Laws on Media – Overview”, April 2012, ARTICLE 19, (*nb this analysis predates the 2013 reforms*); available at: <https://www.article19.org/data/files/medialibrary/3043/12-04-17-LA-gambia.pdf>

- **Libel:** Section 178 of the Criminal Code provides for the offence of libel, which is punishable by a minimum term of one-year imprisonment and/or a fine between 50,000 (US\$1,293) and 250,000 Dalasis (US\$6,475). Under Section 178, publication with intent to defame, or defamatory statements of “any means” are criminalised. Section 180 further provides that a ‘defamatory meaning’ need not be directly or entirely expressed for libel to take place. Section 60 punishes offence to defame ‘foreign princes,’ including ambassadors and other foreign ‘dignitaries’. Criminal defamation laws are not necessary in a democratic society.
- **False News/false information:** Section 181A makes “false publication and broadcasting” an offence criminalises the “negligent” dissemination of false news or information with a punishment of 5 years’ imprisonment and/or a fine of 50,000 Dalasis (1293 USD). In April 2013, amendments passed by the National Assembly increased sanctions for “giving false information to public servants” (Section 114) from 6 months imprisonment and/or a fine of 500 Dalasis (US\$13) to imprisonment of up to five years or a fine of 50,000 Gambian Dalasis (US\$1,293). Section 114 has been used to intimidate journalists and whistle-blowers: those who report wrongdoings or arbitrary treatment to public officials have been subsequently charged.

23. The necessity of legal reforms to secure media freedom was underscored with the arrest and detention of journalist Baboucarr Nani Sey on a variety of fabricated charges, including organizing a demonstration without a permit. In March 2017, journalist Kebba Jeffang was also beaten by supporters of the ruling coalition, although authorities apologised for this attack. In the view of ARTICLE 19, repeal of the Indemnity (Amendment) Act 2001 is necessary to remove blanket immunities for public officials, and ensure any future attacks on journalists are fully investigated.<sup>27</sup>

24. In relation to issues of media regulation more broadly, ARTICLE 19 remains concerned that the current framework undermines media independence. While the establishment of the Independent Media Commission of the Gambia has been proposed, it must be accompanied by legal reforms to the Information and Communications Act, in particular Chapter IV, to remove powers of the Executive branch to interfere with broadcasting content. Any broadcast content regulation must be undertaken by an independent body, in line with international human rights law standards. In turn, the Newspaper and Broadcasting Stations Act 1994 (as amended in 2004) must be repealed. To fully ensure media independence, the state-run Gambian Radio Television Services should be transformed into a public service broadcaster. The Newspaper (Amendment) Act 1994 should be repealed, in particular for its requirement that new entrants to the media market register and pay a bond.

#### Recommendations

- Finalize a comprehensive reform agenda for laws restricting media freedom and freedom of expression, in line with the recommendations of the National Media Law Committee, transparently and with the full and effective participation of civil society, and submit this to the National Assembly without delay the draft Media law that provides for an independent regulation;
- Repeal Section 173A of the Information and Communications Act 2009 (as amended 2013);
- Reform the Criminal Code to fully protect media freedom and freedom of expression, in particular by decriminalising sedition and defamation, ensuring that individuals’ reputational interests can only be safeguarded through civil litigation, in conformity with international human rights law;
- Repeal the Indemnity (Amendment) Act 2001;
- Ensure media independence, including through reforms to Chapter IV of the Information and Communications Act 2009 and the repeal of the Newspaper and Broadcasting Stations Act 1994 (as amended in 2004), in particular to ensure that broadcast content regulation is within the competence of an independent regulatory body applying standards in compliance with international human rights standards, and ensure the establishment of an independent public

<sup>27</sup> HR Committee Concluding Observations, *op. cit.*, at para 24(c).



service broadcaster and the transformation of the Gambia Television Services (GRTS) into a public service broadcaster.

## **Access to Information**

25. During its last UPR, the Gambia rejected a recommendation to guarantee the freedom of information.<sup>28</sup> The delay in enacting legislation to protect the right of access to information was lamented by the HR Committee in 2018, who also encouraged that the enactment of legislation be expedited.<sup>29</sup> Enacting access to information legislation is also a key indicator under Goal 16 of Agenda 2030 for Sustainable Development.<sup>30</sup>
26. The 1997 Constitution does not guarantee in specific terms a right of access to information, and it is hoped that the CRC will recommend the specific inclusion of this right in their anticipated proposals for Constitutional reforms.
27. ARTICLE 19 is currently working with The Ministry of Information and Communications Infrastructure and the Ministry of Justice to support the enactment of an Access to Information law along other laws. However, coordination between ministries and stakeholders and the capacity within government is causing delays, preventing a draft from being presented to the National Assembly. It is also necessary that laws incompatible with the right of access to information, including the Official Secrets Act of 1922, be fully revised so that they do not inhibit moves toward greater transparency and good governance.

## **Recommendations**

- Expedite, in a fully transparent manner, the presentation of an Access to Information Bill to the National Assembly, ensuring its swift passage into law, and ensure the fully implementation of the law alongside a public information campaign to increase awareness of individuals' rights under the law;
- Review and reform legislation providing for government secrecy, such as the Official Secrets Act 1922, to bring it in line with international human rights standards.

## **Freedom of Peaceful Assembly and Association**

28. During its last UPR, the government accepted recommendations to ensure the rights to freedom of peaceful assembly and association.<sup>31</sup>
29. The Public Order Act, at section 5, requires permission from the police to hold assemblies, a requirement that the Supreme Court recently upheld the Constitutionality of, notwithstanding international standards pointing towards this practice as contrary to Article 21 of the ICCPR. The HR Committee has encouraged the provision to be revised.<sup>32</sup> The Public Order Act also imposes offences that can be abused against people exercising their right to freedom of peaceful assembly, including Section 167, which prohibits disturbing "the peace by quarrelling or attempting to quarrel or by using any insolent, scurrilous or abusive term of reproach." Persons convicted face fines of upto 25,000 Dalasis (648 USD) and/or a five-year term of imprisonment.

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<sup>28</sup> Report of the Working Group, *op. cit.*, recommendation 109.64

<sup>29</sup> HR Committee, *op. cit.*, at para 40(d).

<sup>30</sup> Target 16.10 and Indicator 16.10.2, Sustainable Development Goals; available at: <https://sustainabledevelopment.un.org/sdg16>

<sup>31</sup> Report of the Working Group, *op. cit.*, at recommendation 109.147

<sup>32</sup> HR Committee Concluding Observations, *op. cit.*, at para 42.

30. The HR Committee raised specific concerns with the degree to which Article 18 of the Constitution, Sections 15(a) and 72 of the Criminal Code, as well as the Indemnity Act (above), enable the unlawful use of force in the context of assemblies, and impunity for such acts.<sup>33</sup> On 18 June 2018, police fired live ammunition at demonstrators in Faraba Banta, killing two people, Bakary Kujabi and Ismaila Bah, and wounding at least eight others. The President ordered a cessation to mining activities, and initial investigations led to the arrest of five police officers and suspensions of others.<sup>34</sup> However, after establishing a five-person Commission of Inquiry, which reported on 17 September 2018, President Barrow ordered all charges to be dropped, seemingly on the request of the community concerned. The report of the Commission of Inquiry has not been made public, and it is unclear what steps are being taken to ensure recommendations are implemented.
31. In relation to the right to freedom of association, Decree 81 (1996), establishing the NGO Affairs Agency, and an onerous procedure for civil society organisations to register with the government, allowing a range of benefits for registration, but also close scrutiny of activities. In 2017, the NGO Affairs Agency was moved from under the office of the President to the Ministry of Local Government. While this was positive, it does not address the defects with Decree 81 (1996) or bring it into compliance with Article 22 of the ICCPR.

#### Recommendations

- Engage in comprehensive reforms to laws limiting the right to freedom of peaceful assembly to bring them into compliance with international human rights law, in particular the Public Order Act (repealing Sections 5 and 167), repealing Sections 15(A) and 72 of the Criminal Code, and the Indemnity Act.
- Make public the Commission of Inquiry's report into the killing of demonstrators at Faraba Banta, to allow a full and open discussion on its recommendations, including to take action to ensure perpetrators of any crimes are held accountable, and to ensure that the use of force by law enforcement is placed on a legal footing consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Reform or replace Decree 81 (1996) on NGOs to bring it into compliance with international human rights law, in particular Article 22 of the ICCPR.

#### **Internet access and connectivity**

32. According to the International Telecommunications Union's Information and Communications Technology Development 2017 Index, 18.5% of individuals in Gambia have access to the internet, a marginal increase from 16% in 2016,<sup>35</sup> trailing behind an average of 20% on the continent.<sup>36</sup> About 96% of the population is covered by a mobile cellular network, making it one of the highest mobile phone penetration rates in Africa<sup>37</sup> Most Gambians access the internet via mobile devices, with less than 2 percent of users subscribing to fixed-broadband services. With regards to internet speed, Gambia ranks 158th out of 177 countries on fixed broadband.<sup>38</sup>
33. As more people gain access to the internet in Gambia, it is all the more important for the government to protect the right to access the internet.<sup>39</sup> However, in November 2016, on the eve

<sup>33</sup> *Ibid.*, at 29 - 30.

<sup>34</sup> Gambia : Police Open Fire on Protestors Two Shot Dead, 18 June 2018, Foroyaa Newspaper; available at : <https://allafrica.com/stories/201806190460.html>

<sup>35</sup> ICT Development Index 2017, The Gambia, <https://www.itu.int/net4/itu-d/di/2017/index.html#di2017economytab&GMB>.

<sup>36</sup> ICT Development Index 2017, The Gambia - Africa Comparison, <https://www.itu.int/net4/itu-d/di/2017/index.html#di2017comparison-tab>.

<sup>37</sup> Alliance for Affordable Internet, Gambia Statistics 2017, [https://a4ai.org/affordability-report/data/?\\_year=2017&indicator=ITU\\_G&country=GMB](https://a4ai.org/affordability-report/data/?_year=2017&indicator=ITU_G&country=GMB).

<sup>38</sup> Freedom on the Net 2018 Report, The Gambia, <https://freedomhouse.org/report/freedom-net/2018/gambia>.

<sup>39</sup> Deji Olukotun, "Gambia shuts down internet on eve of elections", November 30, 2016, <https://www.accessnow.org/gambia-shuts-internet-eve-elections/>.



of a presidential election, the previous administration shut down the internet and suspended all international phone calls. The shutdown lasted for over 48 hours, initiated by then-president Yahyah Jammeh, ostensibly to stem the spread of false information.<sup>40</sup>

34. Although there have been no records of internet shutdowns since the 2016 election, there have been other threats to the freedom of expression online in Gambia. The new government has initiated prosecutions of individuals for their online activity.<sup>41</sup> In 2018, Ismaila Ceesay, a political analyst who had been critical of the Barrow administration, was arrested and later released due to comments he made to a newspaper, which were published both in print and online.<sup>42</sup> Furthermore, a group of soldiers, reportedly still loyal to the previous president, were tried for treason in 2018 in relation to WhatsApp messages.<sup>43</sup> The trial process has been opaque, with the nature of the allegations against the soldiers still unclear.

#### Recommendations

- Prohibit in law the intentional disruption of telecommunications networks, applications and services, as a disproportionate restriction on the right to freedom of expression;
- Ensure full protection to all human rights online, including freedom of expression and privacy, and safeguard against arbitrary arrests and/or prosecutions of individuals for exercising their rights online.

#### **Establishment of key Institutions that guaranty freedom of expression and related rights in the transitional process**

35. Following the change in government, important efforts have been undertaken towards ensuring that light is shed on past human rights violations, and institutions put in place to prevent the recurrence of such human rights violations in the future.

36. Following its establishment in December 2017 legislation, the Truth, Reconciliation, and Reparations Commission (TRRC) conducted its first Town Hall meeting on 22<sup>nd</sup> September 2018, following delays in the appointment of commissioners. The TRRC getting to work is an important milestone for The Gambia; only with full transparency and accountability can the Gambia come to terms with its past, restore confidence in its institutions and make sure that these violations do not happen again. To maximize its effectiveness, the TRRC should take on board recommendations from the UN Human Rights Committee,<sup>44</sup> and also the UN Working Group on Enforced or Involuntary Disappearances.<sup>45</sup>

37. On 13 December 2017, the National Assembly passed the National Human Rights Commission (NHRC) Act. The President assented to it on 13 January 2018.<sup>46</sup> The NHRC Act establishes a Commission for the promotion and protection of human rights in The Gambia, requiring at least two of five commissioners to be women. The NHRC is authorised to investigate and consider complaints of human rights violations in The Gambia, including violations by private persons and entities.

#### Recommendations

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<sup>40</sup> Open Observatory of Network Interference, "The Gambia: Internet Shutdown during 2016 Presidential Election", December 9, 2016, <https://ooni.torproject.org/post/gambia-internet-shutdown/>.

<sup>41</sup> Freedom on the Net 2018 Report, The Gambia, <https://freedomhouse.org/report/freedom-net/2018/gambia>.

<sup>42</sup> Freedom Newspaper, "GAMBIA: Statement on the Arrest of Dr. Ismaila Ceesay", February 1, 2018, <https://www.freedomnewspaper.com/2018/02/01/gambia-statement-arrest-dr-ismaila-ceesay/>.

<sup>43</sup> Freedom on the Net 2018 Report, The Gambia, <https://freedomhouse.org/report/freedom-net/2018/gambia>.

<sup>44</sup> HR Committee, Concluding Observations, *op. cit.* at para 23.

<sup>45</sup> Report of the Working Group on Enforced or Involuntary Disappearances on its mission to the Gambia, A/HRC/39/46/Add.1, 27 August 2018; available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/46/Add.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/46/Add.1)

<sup>46</sup> Available at: <https://www.lawhubgambia.com/national-human-rights-act>.

- Ensure the sustainability of funding to, and independence of, the TRRC and the NHRC, and ensure that information on their activities and progress is actively disseminated in all parts of the country, including through radio and television broadcasts.