



Joint submission for the Universal Periodic Review (UPR) of the Gambia by ARTICLE 19 Senegal and West Africa, alongside The Gambia Press Union (GPU) and the International Press Institute (IPI)

July 2024

I. Introduction

1. ARTICLE 19 Senegal and West Africa, alongside The Gambia Press Union (GPU) and the International Press Institute (IPI), welcome this opportunity to contribute to the fourth cycle of The Gambia's Universal Periodic Review (UPR).¹ This submission primarily focuses on the right to freedom of expression and opinion, media freedom, safety of journalists, and freedom of peaceful assembly and association.
2. In this context, the report:
 - Assesses the progress on the implementation of supported recommendations from the third cycle on the thematic areas of freedom of expression, media freedom, safety of journalists, and the right to protest;
 - Brings into focus new developments since the previous cycle, including new or proposed laws or policies, directives by relevant authorities, court cases, and administrative conduct, among others; and,
 - Proposes key recommendations to be implemented by The Gambia in full compliance with international human rights standards on freedom of expression.
3. During the third cycle in 2019, the Gambia accepted several recommendations on the above mentioned themes (127.28², 127.32³, 127.33⁴, 127.38⁵, 127.44⁶, 127.49⁷,

¹ ARTICLE 19, established in 1987, is an international human rights organisation which works around the world to protect and promote the right to freedom of expression and information. With an international office in London and other regional offices and programmes, ARTICLE 19 monitors threats to freedom of expression in different regions of the world, as well as national and global trends, develops long-term strategies to address them and advocates for the implementation of the highest standards of freedom of expression, nationally and globally. The Gambia Press Union (GPU) was established in 1979 as the umbrella organisation for media professionals in The Gambia. With trade union and professional pursuits, the Union is mandated to safeguard the welfare of media professionals and promote press freedom. The International Press Institute (IPI), established in 1950, is a global network of editors, media executives and leading journalists who share a common dedication to quality, independent journalism. Together, it promotes the conditions that allow journalism to fulfill its public function, the most important of which is the media's ability to operate free from interference and without fear of retaliation.

² 127.28 Bring national legal provisions into line with international standards on freedom of expression under the International Covenant on Civil and Political Rights, inter alia by repealing section 173A of the Information and Communications Amendment Act (2013), and by amending sections 25 (4) and 209 of the Constitution (Netherlands).

³ 127.32 Urgently review and bring into conformity with international and regional human rights obligations restrictive laws on the right to freedom of expression, including the relevant sections of the Criminal Code (Iceland).

⁴ 127.33 Table and pass the Freedom of Information Bill soonest and continue to amend and ensure that its Information and Communications Act is in line with international best practices, which is linked to sustainable development goal 16 (Saint Kitts and Nevis).

⁵ 127.38 Take further steps to eradicate all draconian laws aimed at stifling freedom of expression and other media laws (Sierra Leone).

⁶ 127.44 Protect the right to freedom of expression by repealing the Seditious Act and the Official Secrets Act (United Kingdom of Great Britain and Northern Ireland).

⁷ 127.49 Protect freedom of expression by ensuring that all provisions of the Information and Communications Act of 2013 are brought into conformity with article 19 of the International Covenant on Civil and Political Rights (Belgium).

127.50⁸, 127.52⁹, 127.53¹⁰, 127.57¹¹, 127.58¹², 127.59¹³, 127.60¹⁴, 127.137¹⁵, 127.138¹⁶, 127.137¹⁷, 127.132¹⁸). While significant progress has been made by The Gambia since the previous review, more efforts should be done. In fact, ARTICLE 19's recent Global Expression Report 2024¹⁹ on the state of freedom of expression classified The Gambia in the "less restricted" category, meaning that efforts should still be made in the area of freedom of expression. The IPI 2023 Africa monitoring report documented 8 cases of press freedom threats and violations in The Gambia.²⁰

II. Freedom of Expression and Freedom of the Press

Repressive laws freedom of expression and the media

4. The Gambia supported 15 recommendations from the previous review in relation to freedom of expression and freedom of the press. Some of these recommendations (127.57²¹, 127.58²², 127.59²³, and 127.28²⁴) specifically called the Gambia to urgently amend and or repeal the repressive provisions of the Criminal Code, the Information

⁸ 127.50 Consider reviewing laws which could unduly restrict freedom of expression (Brazil).

⁹ 127.52 Reform the Criminal Code to protect freedom of the press and freedom of expression (Canada).

¹⁰ 127.53 Modify or repeal the laws that restrict freedom of expression and complete the process of legislative reform in line with the review carried out by the national media law review committee (Chile).

¹¹ 127.57 Amend laws that restrict freedom of expression, including sections 51, 52, 59 and 181A of the Criminal Code (Denmark).

¹² 127.58 Amend or repeal all laws that unduly restrict freedom of expression, both online and offline, and decriminalize press-related offences such as defamation, libel, sedition and the publication of false information, in accordance with international standards (Ireland).

¹³ 127.59 Ensure freedom of expression and press freedom by repealing repressive provisions of the Criminal Code, in particular sections 51 and 52, which criminalize hateful remarks against the President of the Republic or the administration of justice, and sections 59 and 181, which criminalize the publication of "false information" or "information that causes fear" (France).

¹⁴ 127.60 Reform the Criminal Code and the Information and Communications Act to ensure that freedom of expression and freedom of the press are protected (Germany).

¹⁵ 127.137 Fully implement the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity (Namibia);

¹⁶ 127.138 Take additional measures to ensure full respect for freedom of expression and association, in line with international standards, as well as to ensure an enabling environment for human rights defenders and journalists, free from acts of intimidation and reprisals (Uruguay).

¹⁷ 127.137 Fully implement the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity (Namibia).

¹⁸ 127.132 Strengthen transparency and accountability in public affairs, including in a response to the attacks on journalists (Croatia).

¹⁹ ARTICLE 19 Global Report 2024 <https://www.globalexpressionreport.org/regions-subsaharan-africa>.

²⁰ IPI 2023 Africa Monitoring Report <https://ipi.media/ipi-africa-2023-press-freedom-monitoring-report/>.

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and Communications Amendment Act (2013), as well the Constitution. Almost five years later, no visible efforts have been undertaken by the Gambian authorities to implement these recommendations.

5. Articles 46 and 47 of the Constitution of Gambia guarantee freedom of expression, the right to information and emphasise the need for an independent and flourishing press.²⁵ The state of media freedom has somewhat improved under the current regime led by President Adama Barrow and as a result exiled journalists are returning back to the country. However, the legal framework governing the media sector continues to pose real threats for journalists and media professionals. In fact, authorities often rely on draconian laws on sedition, false news, and criminal defamation to crackdown on free speech.
6. Of note are the different provisions in the Gambia Criminal Code that are often used to crackdown on dissent and legitimate forms of expression. For instance, sections 51 and 52 on sedition, section 59 on publishing or reproducing any statement or report likely to cause fear and alarm to the public or to disturb the peace, and 181A on false publication are often used by the authorities to prosecute journalists and individuals. In a case brought by the GPU in 2018,²⁶ the Supreme Court of the Gambia held that sections 52, 52A, 53, 54, 59 and 181A were constitutional in their entirety. In 2018, the Economic Community of West African States also held that the offences of sedition, false news and criminal defamation in The Gambia Criminal Code violated the right to freedom of expression under international law. The Court also declared that the criminal sanctions for sedition, defamation, and false news had “a chilling effect that may unduly restrict the exercise of freedom of expression of journalists”.²⁷
7. Furthermore, our respective organisations have observed a discernible pattern of authorities curtailing free speech, stifling political dissent, and narrowing the civic space within the country. For example:
 - In May 2024, Ebrima Dibba, a political activist and member of the United Democratic Party (UDP), was charged of seditious intention²⁸ under Section 51, subsection 1 of the Criminal Code for allegedly publishing a WhatsApp audio in which he criticised the President. Dibba has been granted bail by a trial magistrate in Banjul in the sum of one hundred thousand Dalasi (\$1,476.01).

²⁵ The constitution of the republic of the gambia, 1997 (as amended to 2018) <https://webapps.ilo.org/dyn/travail/docs/1952/gmb48490.pdf>

²⁶ <https://globalfreedomofexpression.columbia.edu/cases/gambia-press-union-v-attorney-general/>

²⁷ <https://globalfreedomofexpression.columbia.edu/cases/federation-african-journalists-faj-others-v-gambia/>

²⁸ <https://thepoint.gm/africa/gambia/headlines/magistrate-orders-amendment-of-udps-ebriima-dibbas-sedition-charge>

- On 9 October 2023, human rights defender Madi Jobarteh²⁹ was arrested by the Gambia Police Force (GPF) and placed in judicial custody at the Jabang anti-crime facility. Madi was charged for criticising the president and the police over the arrest and detention of comedian Alagie Bora Sisawo, as well as criticism of the president. The criticism was based on statements that the president made against media houses, including that he would order the IGP to detain accused persons granted bail by the courts. He was later released³⁰ on a bail bond of 100,000 Gambian Dalasi (USD 1,470).
 - On 20 September 2023, Bakary Mankajang, the proprietor of the Mankajang Daily media outlet, was apprehended³¹ by Gambian law enforcement over his coverage of fatalities involving the police. Mankajang was subsequently granted bail and formally accused of ‘interference with a witness’ on 23 September 2023.
 - On 15 September 2023, opposition activist Modou Sabally was detained after he published critical remarks on social media about the country’s Police Intervention Unit (PIU). Bayo Sonko, another activist, was also taken into custody³² for threatening a public officer with violence. Both of them have since been released on bail.
 - On 13 August 2023, comedian Alhagie Bora Sisawo was initially arrested³³ after he criticised President Barrow. He was granted bail by the Gambia police force but the bail was revoked on 15 August 2023.
8. Generally, President Barrow portrays the United Democratic Party (UDP), the main opposition political party, as a threat to national security³⁴. He has threatened to arrest individuals who express their opinions, including on social media, and has also threatened the possibility of re-arrest after bail, raising significant concerns about the government’s commitment to safeguarding democratic principles, pluralism and rule of law.

9. Recommendations:

- Urgently repeal or amend provisions of the Criminal Code and the Information and Communications Amendment Act (2013) which were declared unconstitutional by Gambia’s Supreme Court in 2018;
- Decriminalize defamation and sedition in line with international and regional human rights standards; and,

²⁹ <https://www.article19.org/resources/the-gambia-stop-attacks-on-human-rights-defenders-and-journalists/>

³⁰ <https://www.google.com/url?q=https://www.kerrfatou.com/gpu-urges-police-to-drop-charges-against-madi-jobarteh/&sa=D&source=docs&ust=1720174058312114&usg=AOvVaw0OrHefiN7T4bdTljcUrF4I>

³¹ <https://www.ecoi.net/en/document/2100917.html>

³² <https://foroyaa.net/police-release-momodou-sabally-on-bail-over-alleged-social-media-comment/>

³³ <https://gpu.gm/gambia-alert-talk-show-host-rearrested-whereabouts-unknown/>

³⁴ <https://standard.gm/barrow-considers-udp-biggest-threat-to-national-security/>

- Ensure that Articles 46 and 47 of the Constitution, which guarantee the right to freedom of expression and information, are fully implemented and protected.

Attacks on journalists and media professionals

10. While the Gambia supported three main recommendations (127.137³⁵, 127.138³⁶, and 127.132³⁷) dealing with the issues related to the safety of journalists and media workers, journalists still face significant challenges including press freedom threats and violations in the course of their duties. There has been more than 15 incidents³⁸ of physical assault on journalists and media professionals perpetrated either by the police or political party militants in the last six years. Impunity for these attacks continues as no one has been held accountable even when cases are reported to the police.

11. For example:

- On 9 September 2023, in a speech, the President verbally attacked and threatened two media outlets Kerr Fatou and Mengbe Kering and independent journalists. The president also purported that there was democracy in The Gambia which is why these media outlets had been able to remain operational. According to The Gambia Press Union, this was part of a series of attacks by the President targeting media deemed to be expressing dissenting opinions and criticizing the government.³⁹
- On 31 May 2023, Malick D. Cham, a presenter with Jamano Media and Products, was physically assaulted by four security guards⁴⁰ from the ruling National People's Party while attempting to film an altercation involving an NPP politician in Banjul. Pa Ousman Joof, founder of Gambia Talents Television, also faced physical aggression when he tried to document the incident.
- In January 2020, Sankulleh Janko, a reporter for West Africa Democracy Radio (WADR), was attacked by protesters armed with sticks⁴¹. They forcibly took his equipment, including his mobile phone, endangering his safety if not for the intervention of one protester.

³⁵ 127.137 Fully implement the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity (Namibia);

³⁶ 127.138 Take additional measures to ensure full respect for freedom of expression and association, in line with international standards, as well as to ensure an enabling environment for human rights defenders and journalists, free from acts of intimidation and reprisals (Uruguay);

³⁷ 127.132 Strengthen transparency and accountability in public affairs, including in a response to the attacks on journalists (Croatia);

³⁸ <https://www.google.com/url?q=https://www.voicegambia.com/2023/11/03/gpu-renews-call-to-end-impunity-for-crimes-against-journalists/&sa=D&source=docs&ust=1720024654396116&usg=AOvVaw1TIVQptRTT-la97VFqVUhd>

³⁹ <https://gpu.gm/gambia-alert-gambian-president-threatens-press-freedom-freedom-of-expression-democracy/>

⁴⁰ <https://gpu.gm/gpu-condemns-assault-on-journalists-malick-b-cham-and-pa-ousman-joof/>

⁴¹ <https://www.facebook.com/Kerrfatou/posts/gpu-statement-on-arrests-of-journalists-and-closure-of-media-housesthe-past-24-h/2637195356509450/>

- In January 2020, two radio stations (Home Digital FM and King FM) were shutdown⁴² for a month after providing live coverage of protests demanding President Barrow to step down.
- On 26 June 2020, armed personnel from the Police Intervention Unit (PIU) raided Home Digital FM in Brikama,⁴³ ordering the station to cease operations. Manager Pa Modou Bojang was arrested during this incident, alongside four other journalists within a short period.

12. Recommendations:

- Conduct effective, thorough, impartial, prompt and transparent investigations into all incidents of attacks, threats and violence against journalists and media workers and bring perpetrators to justice, ensuring that victims and their families have access to appropriate restitution, compensation, and assistance;
- Support capacity-building, training and awareness-raising in the judiciary and among law enforcement officers and military and security personnel regarding international human rights law obligations and commitments relating to the safety of journalists;
- Promote self-regulation of the media through an independent regulatory authority to oversee the media sector, ensuring it operates free from government interference and political pressure;
- Cease the harassment and intimidation of journalists and independent media; and,
- Create a conducive environment for the media to operate freely and safely.

II. Right to Protest

13. While no specific recommendations has been supported by the Gambia in relation of the right to protest and the freedom of peaceful assembly, holding a protest can be challenged in the country and often require autorisation, which is fundamentally out of line with international human rights standards.

14. Section 5 of the Public Order Act⁴⁴ on the control of processions requires permission from the police to protest. Failure to have authorisation is often a motive for crackdown and repression by security forces. For example:

⁴²<https://www.google.com/url?q=https://www.yahoo.com/news/gambia-admits-shortcomings-lifting-ban-135149729.html&sa=D&source=docs&ust=1719934410492853&usg=AOvVaw336eSnj1qzE1ZdhUzb3FNZ>

⁴³ <https://foroyaa.net/119-arrested-charged-with-various-offences/>

⁴⁴ https://www.icnl.org/research/library/gambia_puborder/ Section 5 : Control of processions

- In June 2021, the Inspector General of Police refused to grant permission⁴⁵ for a demonstration by "Gambia for 5 Years and Peace Building," a group supporting President Barrow. The protest aimed to challenge the electoral commission's decision permitting the mayor of Banjul to issue voter attestations.
- In January 2020, during a demonstration organized by "Three Years Jotna," which called for President Barrow to step down, police used force⁴⁶ after the protesters allegedly strayed from their designated route. Subsequently, the government banned the group and detained four of its members. The Attorney General eventually dropped the charges against them in May 2021.
- On 26 January 2020, police used force to crackdown a protest involving hundreds of opposition activists⁴⁷ calling for President Barrow to honor his campaign pledge to serve only three years. Police arrested 137 activists and banned the 'Three Years is Enough' movement, which the government labeled as "subversive, violent and illegal." The demonstrators were calling on President Barrow to step down after 3 years in power in line with an agreement he made with coalitions partners in 2016.

15. Recommendations:

- Revise Section 5 of the Public Order Act to align with international human rights standards, including by removing the requirement for prior authorisation from the police to hold protests;
- Ensure that the right to peaceful assembly is applied equally to all individuals and groups, regardless of their political affiliation, views, or identity; and,
- Ensure that domestic legislation and procedures are consistent with international obligations and commitments in relation to the use of force and are effectively implemented by officials exercising law enforcement duties, and effective, thorough, impartial, prompt and transparent investigations into all allegations of excessive use of force.

IV. Other Recent Developments

The Truth Reconciliation and Reparations Commission (TRRC) recommendations

16. The government of President Barrow has been undergoing significant reforms focusing on restoring the rule of law, deepening democracy, advancing transitional justice, and transforming the security sector. One notable initiative was the establishment of the

⁴⁵ <https://reliefweb.int/report/gambia/gambia-oppressive-laws-remain-despite-president-s-promises>

⁴⁶ <https://www.africanews.com/2020/01/27/gambia-govt-bans-protests-silences-critical-media/>

⁴⁷ Gambia: New regime crackdown a chilling reminder of 22 years of repression _ <https://www.article19.org/resources/gambia-new-regime-crackdown-a-chilling-reminder-of-22-years-of-repression/>

Truth, Reconciliation, and Reparations Commission (TRRC)⁴⁸ in 2018 to investigate human rights violations committed during the Jammeh regime.

17. After two years of diligent work, the TRRC issued a white paper⁴⁹ with key recommendations, including repealing archaic prison laws, urgently reforming media laws and replacing the existing constitution, replacing them with legislation suitable for a democratic society and in line with international human rights standards.

18. In December 2018, in response to the recommendation for constitutional reform, President Barrow established a Constitutional Review Commission (CRC)⁵⁰ to conduct nationwide consultations, culminating in a constitutional referendum which finally did not take place. The proposed constitution was rejected by the National Assembly in 2020.

19. Recommendations:

- Fully implement the recommendations of the Truth, Reconciliation, and Reparations Commission's white paper, by prioritising the repeal of archaic prison laws and replacing them with legislation that aligns with international human rights law and standards; and,
- Re-engage in the reform of the Constitution and ensure that it reflects the views and aspirations of the citizens.

The Proposed Cybercrime Bill (The Bill 2023)

20. In light of the ongoing international discussions on adopting a Cybercrime Convention, The Gambia is considering enacting a law on cybercrime to address the rising incidents of internet-based criminal activities, cyberwarfare, intellectual property theft, and espionage. The current provisions of the proposed cybercrime bill raise profound human rights concerns and threaten to undermine fundamental rights like media freedom, freedom of expression and the right to privacy.

21. Our respective organisations are gravely concerned that this bill will be used to severely curtail online freedom of expression and suppress dissent. Several provisions within the bill appear poised to facilitate the repression of dissenting voices and infringe upon fundamental human rights.

⁴⁸ <https://www.moj.gm/downloads>

⁴⁹ <https://www.moj.gm/download-file/81d650ed-dc36-11ec-8f4f-025103a708b7>

⁵⁰ <https://www.lawhubgambia.com/constitutional-review-commission>

22. Our concerns are thoroughly documented in various position papers and a comprehensive legal analysis. ARTICLE 19 legal analysis⁵¹ of the bill highlight five key issues:

- The Bill would make an alarming scope of online speech a crime under the guise of combating 'cybercrime'. The majority of proposed offences have nothing to do with cybercrime, apart from having the word 'cyber' or 'computer' attached. Instead they represent a broad effort to criminalise a wide range of speech online, from 'false news' and 'prurient' speech, to causing 'harm' to the 'self-esteem' of political figures.
- The Bill would make media organisations, civil society, and their senior leadership individually criminally liable for stories and investigations. Under the Bill, senior leadership of corporate entities would be individually criminally liable for the actions of entities, and they would have the burden to prove that they actively conducted 'due diligence' of published content.
- The publication of evidence or data in the public interest could be criminalised. The computer crime offences are so broadly worded that they make any 'unauthorised act' in relation to a computer or 'data' a crime. Prima facie, this provision would appear to criminalise a journalist who publishes incriminating text messages, which by its nature would be 'unauthorised' by the official incriminated.
- The Bill would create significant police and surveillance powers that in some cases are subject to no judicial or similar independent oversight. These powers, including preservation and production orders that may be issued at will by law enforcement, are accompanied by gag orders on service providers with no opportunity for appeal.
- The Bill would criminalise digital security and legitimate academic or security research. Other police powers include the ability to force service providers to compel the decryption of content, as well as hold the mere possession of digital security tools, without intent to commit any crime, a criminal offence in itself.

23. Recommendations:

- Significantly and urgently review and amend the proposed cybercrime bill to ensure that it fully aligns with international human rights standards for the right to freedom of expression, particularly Articles 5-8;

⁵¹ The Gambia: Draft cybercrime bill threatens online dissent : <https://www.article19.org/resources/the-gambia-draft-cybercrime-bill-threatens-online-dissent/>

- Address the feedback from civil society stakeholders and journalists to prevent the cybercrime bill from becoming a tool to restrict journalism and other fundamental rights;
- Remove the provision in the draft cybercrime bill that criminalizes the publication of false news, which has a chilling effect on free expression, in accordance with the 2018 Economic Community of West African States' decision.