

Executive Summary

- 1 **Media Foundation for West Africa (MFWA)** is a regional, independent NGO based in Accra, Ghana. Established in 1997, the MFWA is the preeminent media development and freedom of expression advocacy organisation in West Africa with national partner organisations in all 16 countries of the region. The MFWA aims to promote and defend the right to freedom of expression of all persons, particularly the media and human rights defenders in West Africa (Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo).
- 2 **Gambia Press Union** is the umbrella trade union and professional body for media professionals in The Gambia, legally registered in 1979. The GPU works in the areas of welfare of media professionals, media development, freedom of expression and access to information rights advocacy. The GPU has in four decades of its existence evolved into a leading prominent national media and labour rights organisation of international repute. The Union has a growing membership of more than five hundred media professionals and an expanding network of affiliates and partners at national and international level.
- 3 **IFEX** (established 1992) is the global network of 116 organisations working to promote and defend the right to freedom of expression and information in over 60 countries worldwide. Through its local members, IFEX supports awareness raising, campaigning and advocacy on a range of issues related to freedom of expression and information in The Gambia.
4. The Gambia Press Union (GPU), Media Foundation for West Africa (The MFWA) and IFEX would like to express its concern on three issues: Ongoing Violations of Freedom of Expression and Opinion; Continued Existence of Repressive Freedom of Expression Legislation; and Judicial Procedures and Non-Compliance with Court Rulings.
5. For over 22 years, The Gambia under former President Yahya Jammeh witnessed a deterioration of freedom of expression and freedom of assembly rights.
6. In the 2010 review, the Gambia REJECTED¹ all of the recommendations specifically addressing issues of media freedoms, freedom of expression,

¹ Responses to Recommendations, Gambia Review in the Working Group: 10 February 2010
Adoption in the Plenary: 11 June 2010 UPR-Info, https://www.upr-info.org/sites/default/files/document/gambia/session_7_-_february_2010/recommendationstogambia2010.pdf, June 2010

freedom of information, safety of journalists and impunity for crimes against journalists. Eleven similar recommendations were made in 2014 and they were all simply NOTED.

7. In December 2016, Yahya Jammeh lost power to the coalition party led by current President Adama Barrow.
8. Upon assuming power, the new government promised comprehensive media reforms, including implementation of the recommendations brought before the previous reviews. So far, though, there has been no significant step taken by the new government to improve the legal environment for the enjoyment of media and freedom of expression rights.
9. The right to freedom of speech and expression including the freedom of the press as well as the independence of the press is guaranteed by the 1997 Constitution of the Republic of The Gambia in Sections 24, 207, 208, 209 and 210.²
10. Existing alongside the 1997 Constitution is the Criminal Code which has provisions dealing with sedition, libel, defamation and false publication and broadcasting. These are found in Sections 52,59,180, 181A,178,179 of the Criminal Code of The Gambia. Section 173A of the Information and Communication (Amendment) Act, 2013 dealing with internet-related offences makes it an offence to spread false news.
11. Apart from the Constitution, The Gambia is a party to the United Nations General Assembly Resolution 217A (III)A (the Universal Declaration of Human Rights). The Gambia has also ratified the International Covenant on Civil and Political Rights (ICCPR). The Gambia is also a party to the African Charter on Human and Peoples' Rights of 1986 commonly referred to as the Banjul Charter.³

² The Constitution of The Gambia

https://www.ecoi.net/en/file/local/1233356/1504_1217425853_constitution-of-the-republic-of-the-gambia.pdf

³ African (Banjul) Charter On Human And Peoples' Rights, ACHPR,

http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf, 1986

Ongoing Violations of Freedom of Expression and Opinion

12. During the Gambia's second cycle UPR, several recommendations to protect freedom of expression by ceasing and punishing acts of violence, harassment, intimidation and detention of journalists and human rights defenders were NOTED by the State.
13. Following the assumption of office by the new government, the conditions of freedom of expression and opinion have improved and generally journalists and citizens are free to express themselves without fear of being arrested or prosecuted.⁴
14. However, the change of government has so far not brought the total transformation on issues of media freedom, freedom of expression and freedom of information that was anticipated. There has been a number of freedom of expression violations recorded since the new government assumed office.
15. Police officers and politicians in particular have recently ramped up violent attacks on media professionals⁵. More than a dozen media practitioners have come under violent attack in under two years of the new government.
16. Impunity, the hallmark of the previous government's attitude towards press freedom violations, remains commonplace. This threatens not only the fragile press freedom environment and the safety of journalists, but also the country's treasured peace.

Attacks on media professionals

- Barely a month after the new government was sworn in, the Gambia media was greeted with an incident that would characterise life as a media professional under the new regime. On March 4, 2017, Kebba Jeffang⁶, a reporter of Foroyaa Newspaper came under physical and verbal assault from supporters of three of the six political parties that formed the coalition government.
- Two months later – in May 2017 - two more journalists, freelancer Abdoulie John and Alagie Manneh, a reporter for Standard

⁴ One year after Jammeh: Is Adama Barrow's government keeping its promises? IFEX, https://ifex.org/the_gambia/2017/12/01/anniversary-election-jammeh-barrow/, December 1, 2017.

⁵ GPU Calls For Police Investigation On Journalist Assault, Foroyaa Newspaper, <http://foroyaa.gm/gpu-calls-for-police-investigation-on-journalist-assault/>, September 28, 2018.

⁶ The Gambia: Reporter Assaulted for Asking Harmless Question, MFWA, <http://www.mfwa.org/the-gambia-reporter-assaulted-for-asking-harmless-question/ March 7, 2017>.

newspaper, were rough-handled by former Alliance for Patriotic Order and Reconstruction (APRC) supporters and police, respectively, during nominations for National Assembly elections.

- In September 2017, Mustapha Jallow of Foroyaa newspaper was violently attacked by police whilst covering a non-violent protest by vendors at the Serrekunda market.
 - On June 18, 2018, Journalist Pa Modou Bojang was violently assaulted by personnel of the Police Intervention Unit (PIU) at Faraba Village, Kombo East. This occurred during clashes between police and villagers over mining activity.⁷
 - On August 3, 2018, the GRTS News Crew covering the funeral proceedings of Asombi Bojang, the mother of exiled ex-president, Yahya Jammeh, came under attack at the village of Bujinga in Foni. Journalists Louis Mendy and Modou Ceesay, who were assigned to provide news coverage for the public broadcaster, came under a string of intense verbal assault, allegedly, by former ruling APRC security and supporters. Ceesay was violently attacked, forcing the crew to run for their lives.⁸
 - In September 2018, Babucarr Manga, a cameraman for a web-based TV, EyeAfrica, was assaulted by PIU personnel for filming a public protest by some aggrieved teachers.
17. To date, none of the perpetrators of these attacks against journalists and media professionals have been held accountable. Continued impunity for such violations poses a grave threat to free expression improvements in the post-dictatorship era.

Attacks on freedom of speech and assembly

18. Other forms of attacks on both offline and online expression, especially political speech, have also continued under the new government.

⁷ GPU condemns assault on journalist Pa Modou Bojang by police, Gambia Press Union, <http://www.gambiapressunion.org/gpu-condemns-assault-journalist-pa-modou-bojang-police/>, June 8, 2018

⁸ GPU Condemns Attack on GRTS News Crew by APRC Security and Supporters <http://www.mfwa.org/partner-highlights/gpu-condemns-attack-on-grts-news-crew-by-arpc-security-and-supporters/>, August 5, 2018

- On June 18, residents of Faraba village near the capital Banjul went on a demonstration to protest against the sand winning activities of a private firm in their community. The Police Intervention Unit (PIU), which was deployed to control the crowd, clashed with the protesters and started firing live bullets. In the process, two people were fatally hit by live bullets while seven others were injured.⁹
- In February 2018, a political science lecturer at the University of The Gambia (UTG), Dr Ismaila Ceesay was arrested and detained by the police in Banjul for newspaper comments attributed to him stating that “the presence of the regional forces in the country will not prevent long-term security risks if the president does not win the trust of the army.”¹⁰
- In August 2017, the leader of opposition Gambia Democratic Congress (GDC), Mamma Kandeh, was invited for questioning at the Police Headquarters in Banjul for newspaper comments attributed to him claiming that the government of President Adama Barrow was corrupt.¹¹
- In June 2017, a political activist, Omar Touray, was arrested and detained for saying in a WhatsApp audio that President Adama Barrow and then foreign affairs minister Ousainou Darboe were hypocrites and liars. He was mistreated and later prosecuted.¹²
- In February 2017, Fatou Badjie was arrested and detained by police. She was accused of insulting President Adama Barrow. She was later prosecuted and eventually remanded at the notorious Mile Two Prisons. The case was subsequently discontinued following public backlash.¹³

⁹ Police Kill Two Protesters, Brutalise Journalist, MFWA, <http://www.mfwa.org/country-highlights/police-kill-two-protesters-brutalise-journalist/>, June 20, 2018

¹⁰ MFWA Condemns Detention of Critic of President Barrow, MFWA, <http://www.mfwa.org/mfwa-condemns-detention-of-critic-of-president-barrow/>, February 1, 2018

¹¹ Gambia: Police Question Mamma Kandeh, AllAfrica.com, <https://allafrica.com/stories/201708110872.html> August 11, 2017

¹² Political Activist Arrest for WhatsApp Audio Criticising Gambian President, MFWA, <http://www.mfwa.org/political-activist-arrest-for-whatsapp-audio-criticising-gambian-president/>, June 10, 2017

¹³ Charges Dropped Against Single Mother Accused Of ‘Insulting’ President Barrow, Fatunetwork, <http://fatunetwork.net/charges-dropped-single-mother-accused-insulting-president-barrow/>, April 3, 2017

Continued Existence of Repressive Freedom of Expression Legislations

19. In the second cycle UPR, The Gambian government was encouraged to implement several recommendations to improve the freedom of expression situation by creating an enabling legal environment in the country.
20. The previous government NOTED nearly all the recommendations related to freedom of expression, assembly and opinion. However, recommendations to abolish all legal provisions limiting freedom of expression and freedom of the press, and to take all necessary measures to facilitate the work of human rights defenders, journalists and civil society, were ignored as the state continued to breach its international obligations to protect and respect human rights.
21. The following laws remain in place and have negative implications on the enjoyment of freedom of expression and opinion, specifically for media practice:

The Criminal Code

The Criminal Code of The Gambia has provisions dealing with sedition, libel, defamatory matter and false publication and broadcasting. These are contained in Sections 52,59, 180, 181, 178, 179 of the Criminal Code.

- Sedition: Sections 51 and 52 of the Criminal Code criminalises any expression that brings hatred against the president or administration of justice. The punishment is a minimum prison term of one year and/or a fine not exceeding two hundred and fifty thousand Dalasis (approx. US\$5,000), while the seditious publication shall be forfeited to the State.
- False News and False Publication and Broadcasting: Sections 59 and 181, respectively, of the Criminal Code criminalise the publication of any material that is deemed false and causes fear. A person found guilty is liable on conviction to a fine of no less than fifty thousand Dalasis and no more than two hundred and fifty thousand Dalasis (approx. US\$5,000), imprisonment for a term of no less than one year, or both fine and imprisonment.
- The maintenance and enforcement of heavy penalties associated with the provisions on False News and Publication of False News, together with the provision on Sedition in the Criminal Code, amount to restrictions that do not fall within the scope of acceptable limitations set out in Section 25 (4) and 209 of The

Gambian Constitution of 1997, Article 19 (3) of the ICCPR, and Article 27 (2) of the African Charter.

- These restrictive provisions are not explicitly stated by the law, as they are couched in vague and imprecise language and depend on the subjective emotions of the persons reading the publications.
- The provisions also fail to pursue any legitimate aim set out under Section 25 (4) and 209 of the Constitution or under international law. The Human Rights Committee (HRC) in its General Comment 34, UN DOC. CCPR/C/GC/34 (2011) in paragraph 22 states “restrictions (of freedom of expression) must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they were predicated.”
- It was further stated in paragraph 35 as follows: “When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”
- The penalties for sedition and false news are severe and cannot be said to be the least intrusive measures available, considering the fact that the rights at stake are the right to freedom of speech and expression and the right of a free and independent media.

Information and Communications Act (Amendment Act) 2013

- Section 173A provides for internet related offences and prohibits the spread of false news against the Government or public officials as well as caricature, abuse or making derogating statements against the person or character of public officials.
- Section 173 (A)(1)(a) and (c) of the Information and Communication (Amendment) Act, 2013 together with the harsh sanction provision under subsection (2) of Section 173A create a strict liability regime. The traditional defences to defamation such as truth, justification, qualified privileged or fair comment cannot be used by the person charged with the offence under paragraphs (a) and (c) of Section 173A Subsection.
- Subsection (2) of Section 173A states, “A person who commits an offence under sub-section (1) is liable on conviction to a fine of

three million Dalasis (approx. US\$60,000) or imprisonment for fifteen years or to both the fine and imprisonment.”

- Under common law of libel, which forms part of the laws of The Gambia, proof of the truth of published material is a complete defence for statements of facts. However, Section 173A (1) (a) and (c) of the Information and Communications Act (Amendment Act) 2013 leaves it open for one to be punished for true statements deemed to be derogatory, false or insulting.
- Internet surveillance and monitoring: Section 138 of the Information and Communications Act (Amendment Act) 2013 also gives powers to security agencies to intercept communication without any public or judicial oversight.

Children’s Act

- Section 61 criminalises publication of any material that exposes the identity of children who are the victims or perpetrators of a crime. The punishment is up to three years imprisonment.

22. The continued existence of these laws and their use creates a chilling effect on free speech and media rights.
23. During the second UPR, the state was urged to “review the amendments to the Criminal Code in the area of “false information”, in order to guarantee respect for freedom of the media and freedom of expression (Portugal).
24. This has partially been implemented, as in 2018, The Gambian Supreme Court ruled in a suit filed by the Gambia Press Union that section 173 of the ICA which deals with False Publication on the Internet; sections 178 and 179, which deals with criminal defamation; and part of section 51(a) which concerns the government were unconstitutional. However, in the same case, the Court held that all other provisions on sedition as contained in sections 51 and 52 of the Criminal Code and the provision on false news as contained in section 59 and section 181 of the criminal code is constitutional. ¹⁴

¹⁴ 201805 Judgment GPU and ors v. AG_0, The Supreme Court of The Gambia, http://www.mfwa.org/wp-content/uploads/2019/03/201805-Judgment-GPU-and-ors-v.-AG_0.pdf, May 9, 2018

Justice Minister Maintains Law On of False News Can Still Be Applied As GPU Launches Review of Media Laws, <http://foroyaa.gm/justice-minister-maintains-law-on-of-false-news-can-still-be-applied-as-gpu-launches-review-of-media-laws/>

25. This contradicts an ECOWAS court ruling¹⁵ that found that those laws violate freedom of expression as a human right.
26. While the government cannot be faulted for the ruling of the Supreme Court¹⁶, which is currently largely deemed independent in its current form; and also gave a ruling based on the Constitution of The Gambia, we are concerned that the government defended the provisions that criminalise false news during the litigation.
27. While the government is not actively implementing the problematic provisions in the Constitution, Criminal Code, Information and Communications Act and other pieces of legislations such as Official Secrets Act, Children's Act, Women's Act, Sexual Offences Act, Domestic Violence Act, Terrorism Offences Act continue to pose a threat to the enjoyment of freedom of expression and opinion.
28. We commend the government for establishing the National Media Law Review Committee, to review all existing media laws that are inimical to freedom of expression.
29. The government has also set up a parallel criminal justice reform committee "to reform the criminal laws of The Gambia in line with best international practices". However, there seems to be no tangible reforms made since it was established.
30. While these are laudable initiatives, the government's position on false news provisions by their defence of restrictive media laws in the case filed by the Gambia Press Union at the Supreme Court are of great concern.
31. The government has also been slow in processes towards the passage of progressive legislations such as the Right to Information and Broadcasting Law.

High Taxation and financial obligations on Media Practice

32. The Newspaper and Broadcasting Stations Act 1944, Chapter 74.04, Volume 12 of the Laws of The Gambia provides for the filing of an affidavit under Section 3, and Section 7 makes provision of a bond of five hundred

¹⁵ UPDATE: ECOWAS Court delivers landmark decision in one of our strategic cases challenging the laws used to silence and intimidate journalists in the Gambia, Media Legal Defence Initiative, <https://www.mediadefence.org/news/update-ecowas-court-delivers-landmark-decision-one-our-strategic-cases-challenging-laws-used>, March 23, 2018

¹⁶ Major Boost for Digital Rights in The Gambia, MFWA, <http://www.mfwa.org/issues-in-focus/major-boost-for-digital-rights-in-the-gambia/>, May 16, 2018

thousand Dalasis (approximately US\$ 10,000) with a surety or sureties mandatory before approval for operations of the newspaper or radio station can be permitted by the State.

33. This licensing regime gives wide discretion to the Registrar General to accept a request for registration, to refuse, or to cancel registration. The amount for the bond is also considered exorbitant and an obstacle to operations of the print media in the Gambia.
34. This is compounded by the issue of high taxes put in place by the former government to suppress the viability of the media industry. Financial obligations of media outlets such as the Valued Added Tax (VAT) on the sale of newspapers; exorbitant broadcast license fees; and taxes on imported printing newspaper materials, pose serious challenges to media sustainability in the country.
35. In June 2017, the Gambia Revenue Authority closed down the Daily Observer,¹⁷ which was the most read newspaper (and widely considered the mouthpiece of former President Jammeh) for years of non-payment of taxes. The newspaper resumed operations for two weeks and was shutdown again in August following their inability to pay the outstanding taxes of over US\$ 360,000.
36. While the newspaper may have defaulted over the years under favour of political patronage during Jammeh's Presidency, and not necessarily because of the burden of heavy taxes, there are many smaller newspapers and radio stations (including community-based ones) that continue to pay the high taxes and are struggling to survive.
37. Attacks on freedom of expression and opinion, high taxes, and other legally-binding financial obligations of media in The Gambia have the potential of reversing all the gains made by the country in the post-dictatorship period. The issues highlighted have serious implications for the enjoyment of freedom of expression (offline and online), freedom of association, and for media independence, sustainability and plurality.¹⁸

¹⁷ Pro-Jammeh Newspaper Closed Down, MFWA, <http://www.mfwa.org/pro-jammeh-newspaper-closed/>, June 14, 2017

¹⁸ GPU Welcomes Lifting Of Education Levy On Print Media, Foroyaa Newspaper, <http://foroyaa.gm/gpu-welcomes-lifting-of-education-levy-on-print-media/>, February 1, 2019

Judicial Procedures and Non-Compliance with Court rulings

38. While there has been restoration of the independence of the Courts, (and by extension, the judiciary) and security agencies, there are still incidents of abuses in the system which may not have necessarily been sanctioned by the government.
39. While there are no indications that the government has been interfering with the work of the security agencies and the judiciary, there appears to be some level of impunity in how the police operate, echoing the Jammeh-era approach to police oversight. This can be seen in how the police have in some cases arrested peaceful demonstrators or activists who have criticised President Barrow.¹⁹
40. In the last UPR, the government was urged to “Demonstrate its commitment to freedom of expression, including by members of the press, by allowing the United Nations unfettered access to complete its investigation of the death of journalist Deyda Hydera in 2004 and the disappearance of journalist Ebrima Manneh in 2006 (United States of America)”.
41. We commend the government for opening investigations into the murder of Deyda Hydera and the disappearance of Ebrima Manneh. However, no investigation has been opened in the case of Musa Saidykhan.
42. We also commend the government for complying with the ECOWAS judgement on the disappearance of journalist Chief Ebrima Manneh, and murdered journalist Deyda Hydera by granting full compensation to the surviving families.
43. However, it has yet to pay the compensation awarded by the ECOWAS Court to tortured journalist Musa Saidykhan. The government has also not paid compensation to journalists Fatou Camara, Fatou Jaw Manneh, Alhagie Jobe and Lamin Fatty, whose rights were violated by the implementation of repressive media laws, as ordered by the ECOWAS Court of Justice.²⁰

¹⁹ MFWA Condemns Detention of Critic of President Barrow, MFWA, <http://www.mfwa.org/mfwa-condemns-detention-of-critic-of-president-barrow/>, February 1, 2018

²⁰ In The Community Court Of Justice Of The Economic Community Of West African States Holden At Abuja, Nigeria. Suit No: ECW/CCJ/APP/36/15, Judgment No: ECW/CCJ/JUD/04/18. Between Federation of African Journalists; Fatou Camara; Fatou Jaw Manneh; Alhagie Jobe; Lamin Fatty VRS The Republic of The Gambia http://prod.courtecowas.org/wp-content/uploads/2019/02/ECW_CCJ_JUD_04_18.pdf, February 13, 2018

Recommendations

The Media Foundation for West Africa, Gambia Press Union, and IFEX appeals to the UPR Working Group to urge the government of The Gambia to fulfill its obligations under international law to protect the right to freedom of expression by observing the following recommendations:

Constitutional and Legal Framework

- Adhere to the recent ECOWAS court ruling and repeal all repressive laws still on the books that criminalize speech and are onerous to the free exchange of ideas. These include: Section 51, 52, 59, 181A of the Criminal Code; Section 173A of the Information and Communication (Amendment) Act, 2013; and Sections 3 and 7 of the Newspaper And Broadcasting Stations Act 1944, which relates to provision of a bond and sureties, as well as the penalty provisions under said Act in so far as they relate to the bond.
- Ensure media and freedom of expression legislation contained within the Constitution conforms to international best standards, as outlined under Article 19 of the ICCPR.
- Amend relevant laws so that the protection of privacy and reputation does not involve the use of Criminal sanctions, and instead, remains in the domain of common law for civil remedies to be pursued.
- Remove obstacles to a sustainably functioning and pluralistic media industry by reducing exorbitant taxes, removing the VAT on the sale of newspapers, reducing the broadcast license fee, and eliminating the tax on imported printing materials.
- Initiate and support processes to pass progressive laws such as the Right to Information Law, Broadcasting Law (including the legal transformation of the state broadcaster into a public service broadcaster) to enhance citizens' enjoyment of freedom of expression and access to public information.
- Implement the rulings of the ECOWAS Court in the cases of Musa Saidykhan and Fatou Camara, Fatou Jaw Manneh, Alhagie Jobe and Lamin Fatty by fully paying the compensation ordered by the Court.

Safety of Journalists

- End impunity for long-standing cases of attacks against journalists by conducting thorough and independent investigations into the disappearance of Chief Ebrima Manneh, the torture of Musa Saidykhan, and the murder of Deyda Hydera.
- Take positive measures to prevent attacks on media practitioners, and where attacks occur, investigate in a thorough and transparent manner, ensure that perpetrators are held accountable, and that victims have access to adequate remedies. The recent attacks on journalists Pa Modou Bojang, Baboucarr Manga, Louis Mendy and Modou Ceesay should be an immediate priority in this regard.
- Develop and implement a National Mechanism on the Safety of Journalists in line with UNESCO's Action Plan on the Safety of Journalists and the UNESCO-AU Initiative on National Mechanism on Safety of Journalists.
- Re-orient and retrain police and other security agencies on their responsibility to respect and protect the right to free expression and assembly of citizens during demonstrations and other gatherings.
- Hold security forces accountable for abuses through internal and external mechanisms, such as supporting criminal investigations into police brutality. In line with this, there should be an independent body that would investigate police brutality against journalists, activists, citizens etc who exercise their freedom of expression and freedom of assembly rights.

On Freedom of Speech Offline and Online

- Sensitise security forces on respecting and protecting freedom of expression democracy, and development.
- Ensure state security agents and officials put a stop to attacks, arrests and intimidation of people, including political opponents for the exercise their freedom of expression rights both offline and online.