

## Introduction

1. Digital rights including the right to privacy and the right to freedom of opinion and expression online are important issues in The Gambia, and must be reflected in the recommendations made during the third cycle of the UPR in November 2019.
2. In the second cycle of the UPR, The Gambia received 170 recommendations from 61 countries. The Gambia supported six of seventeen recommendations that were categorised as relating to Freedom of Opinion and Expression and/or Freedom of the Press. None of these recommendations explicitly mentioned the online sphere, although all are implicitly relevant.
3. As The Gambia's online population swells, it becomes increasingly important for UPR recommendations to reflect explicitly the need for the rights to freedom of opinion and expression, and to privacy to be protected online as well as offline, in line with the state's obligations under Articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR).

## Updates since the previous UPR Review

4. Since the second cycle review, the number of individuals online in the Gambia has continued to grow. At the time of the second UPR review, in 2014, only 16 in every 100 inhabitants had a mobile broadband subscription, but by 2017, the most recent year ITU data is available for, the figure had reached 27 in every 100. According to Public Utilities and Regulatory Authority (PURA), the state sector regulator, the 2018 rate had swelled to 64 in every 100.<sup>1</sup>
5. Little progress was made on the recommendations received during the second UPR cycle review by the administration of former President Yahya Jammeh. However, since the new administration of Adama Barrow took office in January 2017, the government has made public its intention to review and revise the current regulatory framework for press freedom and freedom of expression.<sup>2 3</sup>
6. In June 2017, the new Attorney General and Justice Minister Abubacarr Tambadou conceded at the Constitutional Court that the charge of "sedition" under a law that had been frequently used to silence journalists and critics under the former regime was unconstitutional.<sup>4</sup>
7. In February 2018, the Economic Community of West African States (ECOWAS) Community Court ruled that Gambian authorities should repeal sections of the Criminal Code on libel

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<sup>1</sup> Public Utilities Regulatory Authority (PURA), Annual Report 2018 (not available online).

<sup>2</sup> The Constitutional Review Commission (CRC) is established by an Act of the National Assembly in June, 2018. The Commission's main functions are to review and analyse the current Constitution, draft a new Constitution for the Republic of The Gambia and prepare a report in relation to the new Constitution. The CRC's website is available online at <https://crc220.org/>. Accessed 26 Mar. 2019.

<sup>3</sup> "CRC — Law Hub Gambia." <https://www.lawhubgambia.com/constitutional-review-commission-act>. Accessed 26 Mar. 2019.

<sup>4</sup> "Gambia: A mixed result as the Supreme Court delivers judgment in ...." 16 May. 2018, <https://www.mediadefence.org/news/gambia-mixed-result-supreme-court-delivers-judgment-important-constitutional-challenges-free>. Accessed 26 Mar. 2019.

(Sections 178 & 179), sedition (Sections 51 & 52), false news (Sections 59 & 181) and false publication on the internet (Section 173).<sup>5</sup> Following this ruling, the government of The Gambia indicated its intention to “honour” the judgement after review by the Ministry of Justice and other relevant authorities.<sup>6</sup>

8. In May 2018, The Gambian Supreme Court in a landmark judgement declared Section 173 of the infamous Information and Communication Act (ICA) 2013 unconstitutional, struck out criminal defamation and narrowed the definition of sedition to apply only to ‘the person of the president’ and ‘administration of justice’ as opposed to initial definition which included “government of The Gambia.”<sup>7</sup>
9. Under the new government, since early 2017, citizens have been largely able to exercise their right to freedom of opinion and expression without state interference and judicial harassment. This includes journalists, human rights defenders, and opposition politicians.
10. This stakeholder submission would like to highlight however that there have been some incidents of arrests and detentions of critics of the current government. For instance, in June 2018, a local journalist and online television presenter, Pa Modou Bojang was detained by personnel of Police Intervention Unit (PIU) at the Brikama Police Station. Bojang who sustained head injuries was arrested while covering an environmental protest in the village of Faraba that turned deadly.<sup>8</sup> He was later released without any charges.

## Freedom of Expression and Opinion

11. Freedom of expression, including for press and other media is guaranteed under Section 25, Chapter IV of the 1997 Constitution of the Gambia.<sup>9</sup>
12. On 22 March 1979, The Gambia acceded to the International Covenant on Civil and Political Rights (ICCPR). It has not yet submitted a report. Article 17 of the ICCPR ensures the right to privacy and Article 19 of the ICCPR guarantees the right to freedom of expression and freedom of opinion.
13. International human rights bodies have affirmed that these rights extend online.
14. Domestically, various laws and regulations restrict freedom of expression. Indeed, Section 178 of the Criminal Code (2014) criminalises defamation and provides for a minimum prison

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<sup>5</sup> "ECOWAS Court directs Gambia 'repeal' media laws - The Point ...." 15 Feb. 2018, <http://thepoint.gm/africa/gambia/article/ecowas-court-directs-gambia-repeal-media-laws>. Accessed 26 Mar. 2019.

<sup>6</sup> "The Gambia Country Report | Freedom on the Net 2018." <https://freedomhouse.org/report/freedom-net/2018/gambia>. Accessed 26 Mar. 2019.

<sup>7</sup> "The Gambia Country Report | Freedom on the Net 2018." <https://freedomhouse.org/report/freedom-net/2018/gambia>. Accessed 26 Mar. 2019.

<sup>8</sup> "Arrested Gambian journalist beaten by PIU personnel - The Point ...." <http://thepoint.gm/africa/gambia/article/arrested-gambian-journalist-beaten-by-piu-personnel-1>. Accessed 26 Mar. 2019.

<sup>9</sup> "CONSTITUTION OF THE REPUBLIC OF THE GAMBIA, 1997 ...." <http://hrlibrary.umn.edu/research/gambia-constitution.pdf>. Accessed 26 Mar. 2019.

sentence of one year in addition to fines of between 50,000 and 250,000 dalasis (approximately USD 1,000 and 5,000). The Code also provides for a penalty of up to five years in prison for individuals convicted of “giving false information to public servants.”<sup>10</sup>

15. In July 2013, legislation governing Information and Communication Technology (ICT) was amended. The amendments to the 2009 Information and Communication Act (ICA) criminalise online dissent: individuals convicted of “criticising, impersonating, or spreading false news about public officials” online, face penalties of up to 15 years in prison and / or fines of up to Gambian Dalasi (GMD) 3 million (USD 100,000) under these provisions.<sup>11 12</sup>
16. The 2013 amendments to the ICA formed part of the then government’s efforts to intimidate citizens, journalists and potential whistle-blowers from seeking legal recourse for human rights violations. Freedom Houses’ 2014 Freedom on the Net report indicates the government introduced the ICA amendments in response to online activism and the growing influence of online media, stemming particularly from the diaspora.<sup>13</sup>
17. Former President Yahya Jammeh, who was renowned for his utter disregard for constitutional rights, stated publicly before his ouster in 2017 that he would “not compromise or sacrifice the peace, security, stability, dignity, and the wellbeing of Gambians for the sake of freedom of expression.”<sup>14</sup>

## Freedom of information and censorship of content

18. The Gambia has no freedom of information law, but the new government is currently part of a civil society led effort to draft a freedom of information bill. Under former President Jammeh, government officials argued that every citizen could access information from the State or any other organ or agency of the State with the exception of information which was likely to be “prejudicial to the security or sovereignty” of the State, or interfere with the right to privacy of another person.<sup>15</sup> However, the Official Secrets (Amendment) Act 2008 prescribes penalties for any unauthorised disclosure, retention, possession or use of official information.
19. Under the Jammeh regime, over 20 websites were blocked, many of which were independent news and opposition websites known for their criticism of the government.<sup>16</sup> These included:

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<sup>10</sup> “Criminal Code.” 9 Oct. 2014, [https://www.hrw.org/sites/default/files/related\\_material/Gambia%20Criminal%20Code%20Act%202014.pdf](https://www.hrw.org/sites/default/files/related_material/Gambia%20Criminal%20Code%20Act%202014.pdf). Accessed 26 Mar. 2019.

<sup>11</sup> Amended Gambia Law Restricts Internet Freedom, <https://cpj.org/2013/07/amended-gambian-media-law-restricts-internet-freed.php>

<sup>12</sup> “Gambia, The | Freedom House.” <https://freedomhouse.org/report/freedom-net/2014/gambia>. Accessed 28 Mar. 2019.

<sup>13</sup> “Gambia, The | Freedom House.” <https://freedomhouse.org/report/freedom-net/2014/gambia>. Accessed 26 Mar. 2019.

<sup>14</sup> Baboucarr Senghore, “President Jammeh meets with the Independent Press,” The Point, March 17, 2011, <http://bit.ly/1R19tOm>.

<sup>15</sup> “ati\_in\_africa\_-\_uganda\_research\_report.doc - The Access Initiative” p.140. [https://accessinitiative.org/sites/default/files/ati\\_in\\_africa\\_-\\_uganda\\_research\\_report.doc](https://accessinitiative.org/sites/default/files/ati_in_africa_-_uganda_research_report.doc). Accessed 28 Mar. 2019.

<sup>16</sup> “Gambia, The | Freedom House.” <https://freedomhouse.org/report/freedom-net/2017/gambia>. Accessed 26 Mar. 2019.

*Jollof News, Gainako, and Freedom Newspaper.*<sup>17</sup>

20. Most of the blocked outlets operated from the diaspora by exiled Gambian activists and journalists who claimed to receive ‘sensitive’ information from insider sources. However, since the new government took office in January 2017, all of the blocked websites are now accessible.

## Right to Equal Access and Opportunity

21. The Information Communications Act (2013) establishes a “universal service access fund,” aimed at financing projects to provide telephone, internet and associated services to rural and underserved parts of the country.
22. The Gambian government maintains a monopoly over the country’s main ICT infrastructure, through Gamtel, the Gambia Telecommunication Company. The company was established in 1990 through an act of parliament and is the single licensed service provider in the country. 99% of its stock is owned by the state, with the remaining 1% owned by the Gambia Port Authority. This monopoly has in the past enabled government to restrict access to the internet and mobile phone services with limited oversight or transparency. Former president Jammeh ordered an internet shutdown, and disabled international calls on the eve of the country’s 2016 elections.<sup>18</sup> Whereas this state-initiated disruption of communications has not been repeated since then, it set a dangerous precedent.
23. In July 2014, the government spearheaded the launch of the country’s first internet exchange point (IXP) to boost the speed, security, and affordability of internet services across the country. However, the cost of internet access remains prohibitively high and beyond the reach of the majority of Gambians, over half of whom live below the poverty line of USD1.5.<sup>19</sup>

## Right to data protection and privacy on the Internet

24. Citizens right to privacy is guaranteed under Section 23 of Gambia’s constitution, which states: “no person shall be subject to interference with the privacy of his or her home, correspondence or communications save as is in accordance with law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights and freedoms of others.”
25. Part XIII of the Information Communication Act (ICA) 2013 is entirely dedicated to the processing of personal data and protection of privacy. Section of 137 of the ICA 2013 states that information and communication service providers shall be authorised to process the

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<sup>17</sup> "US-based online paper inaccessible from Gambia, deliberate blocking ...." 14 Mar. 2008, [https://www.ifex.org/the\\_gambia/2008/03/14/us\\_based\\_online\\_paper\\_inaccessible/](https://www.ifex.org/the_gambia/2008/03/14/us_based_online_paper_inaccessible/). Accessed 26 Mar. 2019.

<sup>18</sup> Despots and Disruptions: Five Dimensions of Internet Shutdowns in Africa, [https://cipesa.org/?wpfb\\_dl=283](https://cipesa.org/?wpfb_dl=283)

<sup>19</sup> Alliance for Affordable Internet, Affordability Report 2018, <https://a4ai.org/affordability-report/report/2018/>

personal data of end-users and subscribers “to the extent required and necessary.”

26. However, the right to privacy and protection of personal data is not fully protected as ICA also provides for interception of communications and surveillance for investigations and law enforcement purposes. The Act confers the Minister with the power to require operators and service providers to undertake interception of communications, without judicial oversight.
27. In December 2015, the previous government unveiled plans to set up a new National Cyber Security Strategy to, among others, monitor cyber threats.<sup>20</sup> Preliminary documents indicated that the strategy addressed personal data protection, electronic transactions, electronic records and signatures, and computer misuse and cybercrime, all of which are currently regulated by ICA 2013.<sup>21</sup> It is unclear whether the new government will further pursue the initiative.
28. Mandatory SIM card and local domain registration is in force in the Gambia.<sup>22</sup> In 2017 and 2018, the regulator, Public Utilities Regulatory Authority (PURA) fined two operators for ‘non-compliance’ with SIM registration regulations.

## Proposed Recommendations

29. In light of The Gambia’s existing record on freedom of opinion and expression, freedom of the press, and the right to privacy online, the submitting organisations call on states to offer the following recommendations to The Gambia:
  - a. In compliance with international standards, as well as the rulings of the Supreme Court and the ECOWAS Community Court, repeal provisions violating freedom of expression under the Criminal Code (2014) and the Information and Communication Act (2013).
  - b. Repeal in its entirety the Official Secrets (Amendment) Act 2008 and enact and implement a right to information law.
  - c. Hasten efforts to provide equal access to technology and communications to all citizens, including disadvantaged and marginalised groups of the population, by removing barriers to access and improving affordability, as well as expanding infrastructure and desisting from internet disruptions.
  - d. Reform the legislation on personal data protection and privacy in order to provide safeguards on the use of personal data and to protect the right to privacy online.

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<sup>20</sup> "Gambia: Building Security in ICT Is Priority to Government - Says ...." 21 Dec. 2015, <https://allafrica.com/stories/201512212126.html>. Accessed 26 Mar. 2019.

<sup>21</sup> "Gambia, The | Freedom House." <https://freedomhouse.org/report/freedom-net/2016/the-gambia>. Accessed 26 Mar. 2019.

<sup>22</sup> "The Gambia Country Report | Freedom on the Net ... - Freedom House." <https://freedomhouse.org/report/freedom-net/2018/gambia>. Accessed 26 Mar. 2019.

