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**Written Submission to the Human Rights Committee on the Occasion of the Review of the Report of The Gambia Under the International Covenant on Civil and Political Rights**

**Submitted by: Media Foundation For West Africa (MFWA)**

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**Introduction**

For over 22 years, The Gambia under former President Yahya Jammeh witnessed a deterioration of freedom of expression and freedom of assembly rights. In December 2016, Yahya Jammeh lost power to the coalition party led by current President Adama Barrow. During its campaigns and shortly after assuming power, the coalition government expressed its commitment to promoting freedom of expression and other human rights in The Gambia. It has proceeded to deliver on this commitment by actively engaging media and civil society. This has been demonstrated by the government’s introduction of press briefings and easy accessibility of state officials including the President himself. The government has also been involved in civil society advocacy for improvement in freedom of expression conditions. Examples include its joint project with the Gambia Press Union, Media Foundation for West Africa, Gambia Media Support and International Media Support on media reform.

The Media Foundation for West Africa would like to express its concern on four issues: Transitional Measures; Freedom of Expression and Opinion Conditions; Existence of Inimical Freedom of Expression Legislation; Judicial Procedures and Non-Compliance of Court Rulings (specifically the cases of Chief Ebrima Manneh, Deyda Hydara and Musa Saidykhan).

**Transitional Measures**

The Gambian government has described its mission in this area as two-fold: to deal with past human rights violations and to establish “a new and resilient architecture to uphold the highest standards of respect for human rights, the rule of law, and justice”.[[1]](#footnote-1)

On January 13, 2018, the government established a Truth, Reconciliation, and Reparations Committee (TRRC) to document the abuses of the Jammeh regime and, where appropriate, offer reparations or prosecute.

Further, after several promises to do so, the Gambia National Assembly has established a Constitutional Review Commission, with the goal of drafting a constitution that will ensure government accountability and "*guarantee the full participation of the citizens in the political, social, economic and cultural activities of the country and ensure that the basic human rights of the citizens are respected."*. But it has also been slow to get started, with its eleven members not being sworn in until June 4, 2018.[[2]](#footnote-2) In its LOI reply, the government also indicated that in December 2017, it established a National Human Rights Commission, as required by the Paris Principles. However, its secretariat has not yet been set up nor have its Commissioners been appointed.

**Judicial Procedures and Non-Compliance of Court rulings**

While there has been restoration of the independence of the Courts (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.

While there are 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, having not completely been weaned off the Jammeh-era mindset. This can be seen in how the police have in some cases arrested [peaceful demonstrators](http://www.kerr-fatou.com/gunjur-policd-crackdown-stops-planned-protest-against-golden-lead/) or [activists](http://www.mfwa.org/mfwa-condemns-detention-of-critic-of-president-barrow/) who have criticised President Barrow.

It is therefore critical that the police and other security agencies be given reorientation and re-trained on their responsibility of respecting and protecting human rights of citizens.

Regarding impunity, the government has initiated processes to address some human rights violations committed under the previous government. Nine officers of former National Intelligence Agency (NIA) are currently on trial for the death of political leader Solo Sandeng. In May 2017, a Magistrates’ court issued a warrant for the arrest of a Former Army Commander, Kawsu Camara, and Major Sanna Manjang, an alleged assassin (popularly referred to as jungler) of former President Yahya Jammeh. However, very little has been heard of the progress made in these cases.

On the longstanding issue of non-compliance with the ECOWAS Court rulings in the specific cases of disappeared journalist Chief Ebrima Manneh, murdered journalist Deyda Hydara and tortured Musa Saidykhan, some progress has been made. The government has as at April this year, paid 50% of the reparations awarded by the ECOWAS court in the cases of Chief Ebrima Manneh and Deyda Hydara, with a promise of paying the rest at the end of the year (2018). The government is however yet to pay any amount to Musa Saidykhan, contrary to what has been reported in their LOI reply. There is also a stalement in negotiations with Musah Saidykhan, as the government has proposed to pay about US$21,000 of the US$200,000 compensation the court awarded to the journalist.

**Freedom of Expression and Opinion Conditions**

Following the assumption of office of 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.

However, the continuous existence of provisions on media practice in the Constitution and other pieces of legislation such as the 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.

Also, the issue of high taxes such as VAT on the sale of newspapers; exorbitant broadcast licence fees; taxes on imported printing materials pose serious challenge of media sustainability in the country.

In August 2017, the Gambia Revenue Authority closed down the Daily Observer, which was the most read newspaper (and widely considered the mouthpiece of former President Jammeh) for years of non-payment of taxes. While the newspaper may have defaulted over the years under favour of political patronage during Jammeh’s Presidency, and not necessarily because of the heavy taxes, there are many smaller newspapers that continue to pay the high taxes and are struggling to survive.

Media independence, sustainability and plurality are at risk due to these taxes.

**Continued Existence of Repressive Legislations**

The Gambian Supreme Court recently declared as unconstitutional the law on False Publication on the Internet and some criminal penalties for libel and sedition. But in the same case, the Court held the Information and Communication Act and its laws against false publication/broadcasting, and sedition against the President himself (not the government as an institution), to be constitutional; contradicting a [recent ECOWAS court ruling](https://www.mediadefence.org/news/update-ecowas-court-delivers-landmark-decision-one-our-strategic-cases-challenging-laws-used) that found that those laws violate freedom of expression and human rights.

While the MFWA cannot fault the government for the ruling of the Supreme Court which is currently largely independent; and also gave a ruling based on the Constitution of The Gambia, we are concerned that the government defended these laws during the litigation.

The continuous existence of these inimical laws in the law books of The Gambia threaten the enjoyment of freedom of expression, access to information and other human rights and goes against Article 19 of the ICCPR and the ruling of the ECOWAS Court.

The government has established the National Media Law Review Committee, to "review all existing media laws that are inimical to freedom of expression. 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". While these are laudable initiatives, the MFWA believes the government’s position on these provisions as evidenced by their defence of restrictive media laws in the recent case at the Supreme Court has resulted in some level of doubt in the outcome of these processes.

**Recommendations**

The Media Foundation for West Africa is appealing to the Committee to, as part of its recommendations, urge the government of The Gambia to fulfill its obligations under the International Covenant on Civil and Political Rights by observing the following:

* In drafting its new constitution, The Gambia should consider including language from the standard international treaties/conventions that promote and respect freedom of expression.
* Adhere to the recent ECOWAS court ruling and repeal all repressive laws still on their books that are onerous to the free exchange of ideas necessary to a free society.[[3]](#footnote-3)
* Bring media and freedom of expression legislation in the Constitution to conform to international best standards such as the ICCPR.
* Repeal the Information and Communication Act.
* Revise/amend to decriminalise sections of the Criminal Code pertaining to False News and Publication, and Sedition against the President.
* Revise/amend to decriminalise the Official Secrets Act, Children’s Act, Women’s Act, Sexual Offences Act, Domestic Violence Act, Terrorism Offences Act (whose provisions on media practice creates a chilling effect on free speech and media rights)
* Initiate processes to pass progressive laws such as 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 ruling of the ECOWAS in the case of Musa Saidykhan by fully paying the compensation ordered by the Court.
* Conduct thorough investigations into the disappearance of Chief Ebrima Manneh, the torture of Musa Saidykhan, and the ongoing case against the nine NIA officials implicated in the death of Deyda Hydara.
* Reduction in taxes on media; removal of VAT on the sale of newspapers; reduction in broadcast licence fee; removal of tax on imported printing materials.
* Establish and attach a centralised, multilingual (in the local dialects) press office to the Truth, Reconciliation and Reparations Committee (TRRC), in recognizing the important role the media will play in the success of TRRC and to ensure that complicated issues arising out of the work of the Commission are effectively communicated to the public.
1. The Gambia. (2018). *Replies of The Gambia to the list of issues* (pp. 2). [↑](#footnote-ref-1)
2. Jeffang, K. (2018). Gambia: Constitutional Review Commissioners Sworn-in. Retrieved from http://allafrica.com/stories/201806050854.html [↑](#footnote-ref-2)
3. ECOWAS Court delivers landmark decision.... (2018). Retrieved from https://www.mediadefence.org/news/update-ecowas-court-delivers-landmark-decision-one-our-strategic-cases-challenging-laws-used [↑](#footnote-ref-3)