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NEARLY 5 YEARS AFTER JAMMEH'S REGIME ENDED, OPPRESSIVE LAWS REMAIN UNTOUCHED

The National Assembly debuted its third ordinary session in 2021 on 6 September and is expected to be in session until 30 September. This session is a rare opportunity to make significant changes before the presidential election in December. After President Adama Barrow assumed power following the election in 2016, he vowed to carry out critical reforms to reverse the repression which characterized the government of former President Yahya Jammeh. Nearly five years later, Gambia legislative landscape has barely changed.

An Amnesty International delegation went on mission in Gambia from 30 May to 9 June 2021 and interviewed 29 individuals and civil society organizations but was unable to meet with members of the National Assembly despite a request to do so. Amnesty International analyzed some of the laws used to repress human rights defenders during Yahya Jammeh's regime and noted recent incidents of human rights violations using those still existing laws.

FREEDOM OF EXPRESSION

Although protection of the right to freedom of expression has improved since 2016, oppressive laws are still on the statute books. On 14 February 2018, the Court of Justice of the Economic Community of West African States (ECOWAS) gave a judgment asking the government to repeal or amend all criminal laws on libel, sedition and false news for Gambia to be in line with its obligations under international human rights law.¹ However, most of those laws used to oppress human rights defenders, activists, journalists and civil society groups during Jammeh's regime are still in force.

In May 2018, the Supreme Court declared section 173A of the Information and Communications Act of 2009 as amended in 2013 unconstitutional.² The provision inflicted a 15-year prison term and a fine of three million dalasi (about \$58,651) to anyone convicted of using the internet to impersonate any public official, spread false news, incite dissatisfaction, or make derogatory statements against the government or public officials. However, other problematic provisions in the Act remain. Section 138 gives national security agencies, investigating authorities and the Public Utilities Regulatory Authority (PURA) the powers to intercept communications for surveillance purposes without effective judicial oversight.³ In addition, the Minister of Information and Communication Infrastructure also benefits from extensive powers with no effective judicial oversight under sections 7(2), 22, 23, 27, 215, 226, 230, 232-236.⁴

In the same decision, the Supreme Court also struck down criminal defamation making it a civil offense and narrowed the definition of sedition to apply to 'the person of the president' and 'administration of justice' while the initial definition also included the "government of The Gambia."⁵

As it stands, the current criminal code still contains several clauses restricting the right to freedom of expression. Section 51 still criminalizes sedition as related to the president and section 52 provides for stiff penalties including imprisonment.⁶ Section 52A makes provision for confiscation of publications and printing machines while section 59 creates the vague offence of publishing false news with intent to "cause fear and alarm to the public".⁷ The importation of seditious publications is barred under sections 47 and 48⁸, while publications regarding a foreign leader or ambassador with the intent to disturb peace between The Gambia and another nation is criminalized under section 60.⁹ Section 181A provides for harsh penalties, one year and/or a fine between 50,000 dalasi and 250,000 dalasi, for publishing information that is false.¹⁰ The "Criminal Code (Amendment) Act, 2013" which broadened the definition of public servant to include the president, vice president, ministers and members of the National Assembly, and

1 The Community Court of Justice of the Economic Community of West African States, *Federation of African Journalists (FAJ) and others v. The Republic of The Gambia*, ECW/CCJ/JUD/04/18, 13 February 2018, globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/04/FAJ-and-Others-v-The-Gambia-Judgment.pdf

2 The Supreme Court of The Gambia, *Gambia Press Union and others v. Attorney General*, SC Civil Suit No: 1/2014, 9 May 2018, globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/02/Court-Judgment-GPU-and-AG-1.pdf

3 Gambia, Information and Communications Act, 2009, www.pura.gm/wp-content/uploads/2018/01/IC-Info-Comms-Act-2009.pdf, Chapter II, Section 138(1)

4 Gambia, Information and Communications Act, 2009, www.pura.gm/wp-content/uploads/2018/01/IC-Info-Comms-Act-2009.pdf, Chapter II, Sections 7(2), 22, 23, 27, Chapter III, section 215, Chapter IV, sections 226, 230, 232-236

5 The Supreme Court of The Gambia, *Gambia Press Union and others v. Attorney General*, SC Civil Suit No: 1/2014, 9 May 2018, globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/02/Court-Judgment-GPU-and-AG-1.pdf, paras 71(c)-71(d)

6 Gambia, Criminal Code Act, 1933, www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=75289, sections 51-52

7 Gambia, Criminal Code Act, 1933, www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=75289, sections 52A and 59

8 Gambia, Criminal Code Act, 1933, www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=75289, sections 47 and 48

9 Gambia, Criminal Code Act, 1933, www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=75289, section 60

10 Gambia, Criminal Code (Amendment) Act, 2004, section 181A

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increased punishment for providing false information to a public servant from six months to five years imprisonment and/or a fine of 50,000 dalasi (about \$977), up from 500 dalasi (about \$10) has not been repealed.¹¹

These vague and overly broad provisions allow for abuse and may curtail the freedom of speech of journalists and human rights defenders. The rights to freedom of expression, peaceful assembly and association are guaranteed under section 25 of the Gambian Constitution, articles 9, 10 and 11 of the African Charter on Human and Peoples' Rights ratified by Gambia in 1983, and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Gambia in 1979.

“The laws still allow the environment to be hostile to journalists¹²” the Gambia Press Union told Amnesty International.

Attacks against journalists are not as widespread as it was the case under the government of former president Yahya Jammeh, but recent events demonstrate how those archaic laws can be used to muzzle dissenting voices.

On 31 January 2018 a lecturer at the University of Gambia was detained and charged under 59b of the Criminal Code before being released the next day after he gave an interview during which he claimed that long-term security will not be restored if the president does not win the trust of the Gambian army. On 26 January 2020, the police closed local radio stations King FM and Home Digital FM after they covered a protest that was violently repressed by the police. Police arrested and charged the stations' owners and managers with broadcasting incendiary messages and inciting violence. Although the charges were eventually dismissed, their broadcasting licenses were suspended for one month. On 30 June 2020, human rights defender Madi Jobarteh was arrested and charged with false information and broadcasting under section 181A of the Criminal Code after he stated during a Black Lives Matter protest he had organized that the government failed to investigate the killings of three Gambian citizens by police officers. The charges were dropped the following month.

“Changing the laws should be the start. More attacks on journalists are feared as we are coming close to the elections. The country is being increasingly polarized. Especially because attacks are not investigated.” “In the last four years, we recorded more than 15 cases of assaults from police and supporters of political parties. Not a single one of those cases was prosecuted,” The Gambia Press Union noted.¹³

As Gambia is coming near another presidential election, we call on the government to urgently amend or repeal repressive laws restricting human rights including the right to freedom of expression.

11 Gambia, Criminal Code (Amendment) Act, 2013; Amnesty International, *Gambia: Principal act raises serious human rights concerns* (Index: AFR 27/003/2013), 7 May 2013, www.amnesty.org/en/documents/afr27/003/2013/en/

12 Interview in person with a member of the Gambia Press Union, Gambia, 2 June 2021

13 Interview in person with a member of the Gambia Press Union, Gambia, 2 June 2021

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THE RIGHT TO INFORMATION

Amnesty International welcomes the enactment of the Access to Information Law on 1 July 2021, signed by the president on 25 August. The bill was born in 2019 from a collaborative effort between civil society and the government. Journalists welcomed the law as it highlights transparency and will help the public to access information which was impossible under the previous government.

FREEDOM OF ASSEMBLY

Section 5 of the Public Order Act requiring permission to protest remains in force.¹⁴ The section gives too much discretion to the Inspector General (IG) of the police to deny protests with no review mechanism. Over the past five years, this provision was used to restrict peaceful protests. In 2017, The #OccupyWestfield group was denied permission to protest against the electricity and water crisis. In January 2020, the police responded with excessive force when Three Years Jotna, a group advocating for President Barrow to resign, allegedly deviated from approved route while protesting. The authorities then banned the movement and arrested four members of the organization. In May 2021, the attorney general withdrew criminal charges against them. The next month, the inspector general of police denied permit to a pro-Barrow group, Gambia For 5 Years and Peace Building, to protest against a decision of the electoral commission to allow the mayor of Banjul to issue attestations to voters.

“The Public Order Act has a huge bearing on peaceful protests and assembly. They arrest people protesting peacefully without permission of the IG ; they randomly refuse permits; there have been various discussions about it, but it is not moving,” a member of an international organisation working on human rights in Gambia stated.¹⁵

As the country approaches the presidential elections, it is essential that the rights to freedom of expression and peaceful assembly be fully respected, protected, promoted and fulfilled. Amnesty International calls for the repeal of section 5 of the Public Order Act as it impermissibly restricts the right to freedom of peaceful assembly.

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

The National Human Rights Commission (NHRC) was established by an act of the National Assembly in 2017 and became operational in 2019. The NHRC has the power to “receive and hear complaints from the public on human rights violations, recommend appropriate remedial actions to the government and seeks appropriate remedial actions on behalf of victims.” Amnesty International welcomes the establishment of the NHRC as an important step towards fighting impunity. The Commission’s independence is crucial for it to carry on being effective and impartial.

However, despite many efforts of civil society and the international community, the government failed to pass a new constitution. The current constitution contains several immunity clauses, which inhibit accountability and the administration of justice. Article 69 of the Constitution not only provides immunity to the president from civil and criminal proceedings while holding office, but also full civil immunity and limited jurisdiction over criminal proceedings after the president has vacated the office.¹⁶ Section 13 of the Second Schedule of the Constitution gives blanket immunity to members of the Armed Forces Provisional

14 Gambia, Public Order Act, 1961, [www.rightofassembly.info/assets/downloads/1961_Public_Order_Act_of_The_Gambia_\(as_amended\).pdf](http://www.rightofassembly.info/assets/downloads/1961_Public_Order_Act_of_The_Gambia_(as_amended).pdf), section 5

15 Interview in person with a member of an international human rights organization, Gambia, 8 June 2021

16 Gambia, Constitution of the Second Republic of Gambia, 1997, www.aripo.org/wp-content/uploads/2018/12/ConstitutionofGambia.pdf, section 69

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Ruling Council and individuals appointed by them, as well as any members of the government or individuals involved in the coup d'état of 1994.¹⁷

Moreover, the Indemnity Act of 2001 gives the president the power to shield from prosecution any person for any act committed or any failure to act during an unlawful assembly or other emergency situations.¹⁸ The act allows security officers accused of excessive use of force during demonstrations to be indemnified. It violates the right to an effective remedy for victims of human rights violations as provided under article 2.3 of the ICCPR.

The Truth, Reconciliation and Reparations Commission (TRRC) was launched in October 2018 to look into alleged human rights violations during the 22-year rule of Yahya Jammeh. The last public session ended on 28 May 2021. In total, 392 witnesses testified, 229 of whom were victims. The TRRC is set to submit its final report to the government on 30 September 2021. The establishment of the TRRC is an important step in the fight against impunity. However, civil society expressed concern that members of Jammeh's regime who admitted to their crimes during the hearings are still in the security apparatus. In addition, there are concerns that the TRRC recommendations will not be implemented. Amnesty International recalls that any process of reconciliation should not hinder accountability for crimes committed. Alleged perpetrators of violence must be prosecuted for their crimes.

ARBITRARY ARRESTS, DETENTION AND TORTURE

"Presidents change, but the system is there," a Gambian journalist said to Amnesty International¹⁹.

The National Intelligence Services was renamed the State Intelligence Services but reforms in the security sector have been lacking. Indeed, civil society complains about a lack of significant reforms and proper training in the security sector.

The Prevention and Prohibition of Torture Bill has been pending at the National Assembly since last year. Gambia should ensure that torture and other ill-treatment is established as an offence in national law and adopt a definition of torture that includes all the elements contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Gambia in 2018. The government should ensure that such offences are promptly, thoroughly and effectively investigated and made punishable by appropriate penalties which take into account their grave nature.

DEATH PENALTY

Gambia parliament rejected the draft Constitution bill in September last year, which would have abolished the death penalty. Earlier this year, an ex-junta member closed to the former regime was sentenced to death for the murder of former finance minister. Amnesty International recalls that the authorities committed to abolish the death penalty²⁰ and has ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty in 2018. Amnesty International calls on the government to fulfill its promise and abolish the death penalty in law and in practice.

17 Gambia, Constitution of the Second Republic of Gambia, 1997, www.aripo.org/wp-content/uploads/2018/12/ConstitutionofGambia.pdf, Schedule 2, section 13

18 Gambia, Indemnity (amendment) Act, 2001

19 Interview in person with a Gambian journalist, 2 June 2021

20 Amnesty International, "Gambia: 22 death sentences commuted to life imprisonment, a welcome step towards abolition", 9 May 2019, www.amnesty.org/en/latest/press-release/2019/05/gambia-death-sentences-commuted-to-life-imprisonment/

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