



Defending freedom of expressions and information access

UPR PRE-SESSIONS, GENEVA, SWITZERLAND - 9th OCTOBER 2019

Introduction

ARTICLE 19 welcomes the opportunity to provide a statement at the Pre-Sessions of the Universal Periodic Review on the right to freedom of assembly and association and the setting up of Transitional Justice Mechanisms & National Human Rights Institutions in The Gambia.

ARTICLE 19 is an international human rights organisation in consultative status with the Economic and Social Council, advocating for the right to freedom of expression and access to information worldwide. Founded in 1987 and headquartered in London, with satellite offices in New York and Washington DC, as well as regional offices in Brazil, Mexico, Senegal, Kenya, Tunisia, Bangladesh and Myanmar. The West African office in Senegal, established in 2010, has maintained a focus on The Gambia for many years.

Our submission examines three issues:

I. Freedom of Peaceful Assembly and Association

- The right to protest and or hold peaceful demonstrations
- Registration of NGOs

II. Transitional Justice Mechanisms

- Reform of Media Laws

III. Establishment of National Human Rights Institutions

- The Commission of Enquiry into Jammeh's Financial Dealings (Jannah Commission).
- Truth Reconciliation & Reparations Commission-TRRC
- National Human Rights Commission
- Constitutional Review Commission

I. Freedom of Peaceful Assembly and Association

a) The right to protest and or hold peaceful demonstrations

The government accepted recommendations to ensure the rights to freedom of peaceful assembly and association.

The Public Order Act, at section 5, requires permission from the police to hold assemblies, a requirement that the Supreme Court recently upheld the Constitutionality of, notwithstanding international standards pointing towards this practice as contrary to Article 21 of the ICCPR. The Public Order Act also imposes offences against people exercising their right to freedom of peaceful assembly, including Section 167, which prohibits

disturbing “the peace by quarrelling or attempting to quarrel or by using any insolent, scurrilous or abusive term of reproach.” Persons convicted face fines of up to 25,000 Dalasis (648 USD) and/or a five-year term of imprisonment.

ARTICLE 19 is concerned by the degree to which Article 18 of the Constitution, Sections 15(a) and 72 of the Criminal Code, as well as the Indemnity Act (above), enable the unlawful use of force in the context of assemblies, and impunity for such acts.

- On 18 June 2018, The Gambia’s Police Intervention Unit (PIU), a police paramilitary force, fired live ammunition at demonstrators in Faraba Banta, killing two people, Bakary Kujabi and Ismaila Bah, and wounding at least eight others. The President ordered a cessation to mining activities, and initial investigations led to the arrest of five police officers and suspensions of others. However, after establishing a five-person Commission of Inquiry, which reported on 17 September 2018, President Barrow ordered all charges to be dropped, seemingly on the request of the community concerned. The report of the Commission of Inquiry has not been made public, and it is unclear what steps are being taken to ensure recommendations are implemented.
- The arrest and unlawful detention of rap musician and activist Ali Cham (alias Killa Ace along with 36 others (On August 8th 2019) in custody, over their alleged involvement in July protest. The police prosecutors pressed eight charges against the accused persons, ranging from arson, unlawful assembly, and wilful damage to properties and prohibition of conduct conducive to breach of peace.
- On Saturday 15 June 2019, at a rally in Brikama The government made open threats¹ against a group of Gambians “**Operation Three years jotna**”(meaning **three years mandate is up**) who have expressed an intention to hold peaceful demonstrations in December 2019 to protest against “president Adama Barrow’s plans to stay in power for five years, according to them contrary to the letter and spirit of the Coalition MOU and his campaign pledges to the Gambian people.

Recommendation

- Engage in comprehensive reforms to laws limiting the right to freedom of peaceful assembly to bring them into compliance with international human rights law, in particular the Public Order Act (repealing Sections 5 and 167), repealing Sections 15(A) and 72 of the Criminal Code, and the Indemnity Act.
- Make public the Commission of Inquiry’s report into the killing of demonstrators at Faraba Banta, to allow a full and open discussion on its recommendations, including to take action to ensure perpetrators of any crimes are held accountable, and to ensure that the use of force by law enforcement is placed on a legal footing consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The Right to Association

¹ The Interior Minister, Mr. Ebrima Mballow, was unequivocal that the Government had imported “Hot Water Cannon” vehicles in preparation for those who plan to “stir up trouble” in December in the name of “Operation Three Years Jotna”; and that the Government would not hesitate to spray hot water on such “trouble makers.”

In relation to the right to freedom of association, Decree 81 (1996), establishing the NGO Affairs Agency, and an onerous procedure for civil society organisations to register with the government, allowing a range of benefits for registration, but also close scrutiny of activities. In 2017, the NGO Affairs Agency was moved from under the office of the President to the Ministry of Local Government. While this was positive, it does not address the defects with Decree 81 (1996) or bring it into compliance with Article 22 of the ICCPR.

ARTICLE 19 notes that the right to freedom of association is guaranteed under Article 25(1)(e) of the Constitution, including the right to form and join associations, though it is subject to the same limitations as the right to freedom of expression, through Article 25(4).

Recommendation

- Reform or replace Decree 81 (1996) on NGOs to bring it into compliance with international human rights law, in particular Article 22 of the ICCPR.
- In relation to the right to freedom of association, the government of The Gambia should be encouraged through the CRC to make revisions in line with Article 22 of the ICCPR.
- ARTICLE 19 urges the NGO Affairs Agency to act quickly and revise the mode of its operations to ensure civil society organisations operate without undue hindrance

II. Transitional Justice Mechanisms

Since the new government took office in January 2017, ARTICLE 19 West Africa and other stakeholders have been in discussions with the Ministry of Justice and the Ministry of Information and Communication Infrastructure (MOICI) on urgent reform of the Gambia's media laws, as well as supporting efforts to enact an Access to Information Act. These reforms if materialised and effectively implemented, will greatly improve the situation for the rights to peaceful Assembly & Association, freedom of expression, access to information, and freedom of association in the country.

ARTICLE 19 currently assisting victims of Human Rights violation to be heard and to access justice.

Recommendation

- The Government is urged to recognize the unique circumstances of victims of HR violations and to take steps in ensuring that victims have access to justice

III. Establishment of key Institutions that guaranty freedom of expression and related rights in the transitional process

Following the change in government, important efforts have been undertaken towards ensuring that light is shed on past human rights violations, and institutions put in place to prevent the recurrence of such human rights violations in the future.

ARTICLE 19 notes with appreciation the peaceful transition of power in the in January 2017 after 22 years under an authoritarian regime, from July 1994 to January 2017. ARTICLE 19 further welcomes the measures taken by the State to deal with the abuses of the past, and to reinstate democratic institutions in the country. the progress made with establishing a Truth, Reconciliation and Reparation Commission, the appointment of a Constitution Reform Commission to review the Law, to establish a National Human Rights Commission legislative and sectoral reform processes, including in the judicial, law enforcement and security sectors.

a) The Commission of Enquiry into Jammehs Financial Dealings (Janneh Commission)

In July 2017 the government of The Gambia established a Commission of Inquiry to act on the financial activities of public bodies, enterprises and offices as regards to their dealings with the country's former President, Yahya Jammeh. Following submissions of the commission to the head of state earlier this year, President Barrow seems to have delayed making public the commission' report and when he did sometime in September 2019 the recommendations that were adhered to were cherry- picked.

- The government rejected the recommendation to dismiss chief protocol Alagie Ceesay following findings by the commission of his involvement in misappropriation of public funds by during the former regime.

b) Truth Reconciliation & Reparations Commission-TRRC

Following its establishment in December 2017 legislation, the Truth, Reconciliation, and Reparations Commission (TRRC) conducted its first Town Hall meeting on 22nd September 2018, following delays in the appointment of commissioners. The TRRC getting to work is an important milestone for The Gambia; only with full transparency and accountability can the Gambia come to terms with its past, restore confidence in its institutions and make sure that these violations do not happen again. To maximize its effectiveness, the TRRC should take on board recommendations from the UN Human Rights Committee, and also the UN Working Group on Enforced or Involuntary Disappearances.

- The release of four members of former president Jammeh's hit squad "junglers" who testified before the TRRC owning up to acts of extra judicial killings, torture etc by the Government through the Attorney General.
- The granting of "immunity" to alleged perpetrators who have testified before the commission.

Recommendation

- The government should ensure complete independence of the commission by allowing it to execute its mandate independently.
- Government should refrain from interfering with the commission and or its witnesses.
- The government should adhere to any subsequent recommendations of the commission in holding perpetrators accountable for their actions.

c) National Human Rights Commission

On 13 December 2017, the National Assembly passed the National Human Rights Commission (NHRC) Act. The President assented to it on 13 January 2018. The NHRC Act establishes a Commission for the promotion and protection of human rights in The Gambia, requiring at least two of five commissioners to be women. The NHRC is authorised to investigate and consider complaints of human rights violations in The Gambia, including violations by private persons and entities.

Recommendation

- Ensure the sustainability of funding to, and independence of, the TRRC and the NHRC, and ensure that information on their activities and progress is actively disseminated in all parts of the country, including through radio and television broadcasts.

d) Constitutional Review Commission

The government is committed to a Constitutional reform process. The Constitutional Review Commission (CRC), established as per the Constitutional Review Commission Act (Act no. 7) of December 2017, is tasked with reviewing the current Constitution with the view to drafting a new Constitution and publishing a report explaining the draft. The CRC commenced public consultations in October 2018, to continue to June 2019, and has released a background “issues” paper to guide the substance of those discussions, including with specific questions on fundamental rights and freedoms. ARTICLE 19 has submitted recommendations to the CRC as part of this exercise.

Recommendations

- Ensure complete independence of the established Human Rights Institution through non-interference by the state to allow for proper execution of the commissions mandate.
- While supporting the independence of the CRC and its work, the Government must fully commit to ensuring the new Constitution fully guarantees the rights to freedom of opinion and expression, access to information, association and assembly, as well as media independence, including for broadcast media, fully in line with international human rights law, in particular its obligations under Article 19(3) of the ICCPR.
- The 1997 Constitution does not guarantee in specific terms a right of access to information, and it is hoped that the CRC will recommend the specific inclusion of this right in their anticipated proposals for Constitutional reforms.

Thank you