

ADDRESSING PAST HUMAN RIGHTS VIOLATIONS

The Gambia Center for Victims of Human Rights Violations (VC) welcomes the creation of a Truth, Reconciliation and Reparations Commission (TRRC). It is however concerned that other transitional justice mechanisms have been neglected, a concern also expressed by the Working Group on Enforced and Involuntary Disappearances.ⁱ

Other actions that should be implemented as a matter of priority are:

- **Recommendation: Dismiss or suspend accused perpetrators and enablers still working within civil and security services – and on the long-term, establish a vetting of former civil servants.**

The VC is concerned about the lack of diligence regarding certain well-known high-level enablers/perpetrators of the former regime and even more so by the “recycling” of some of them in the new government, notably as, ministers, advisors to ministers and as ambassadors.

- **Recommendation: Dissolve the State Intelligence Service (SIS formerly National Intelligence Agency (NIA)**

The intelligence agency was at the heart of most of the human rights violations during Jammeh’s era. The current management of the SIS, previously served in the NIA and other high-level security sector positions under the former regime. The VC believes that this institution should be dissolved, given the abuses it carried out. Should it be maintained, it should undergo reforms and vetting and its location should be changed as the current premises should be considered as a crime scene.

- **Recommendation: Securing and archiving documentary evidence that is key to uncovering the truth about violations.**

The VC is concerned that along with retaining officials of the former regime, the government has not made any efforts to secure and archive documentary and on-site evidence. For instance, the archives of the former NIA have not yet been secured and archived. Worse, what was known as one of the torture chambers of the NIA was cleaned-up and repainted in 2017. In February 2018, the TRRC visited the NIA/SIS office in Banjul and ordered the agency to stop the renovations of the building and ceased some documents.

- **Recommendation: Formulate a prosecutorial strategy for individuals already in custody as well as for those already charged with serious crimes, but set-free.**

- Several members of the notorious military unit and death squad that took its orders directly from former President Jammeh known as the “Junglers” have been in detention for two years without being charged. Several of the detained individuals seem ready to cooperate, as demonstrated by their confessions leaked in the media.ⁱⁱ Their statements could help secure evidence against higher level perpetrators and help locating burial sites.
- David Colley the former Director of the Mile 2 prison was charged with murder of Baba Jobe and abuse of office in March 2018. He was briefly detained but set free again.

- **Recommendation: Refrain from dropping charges against security officers allegedly involved in human rights violations without objective and independent investigations. Create a small unit, of capable and vetted police officers, to start objective and independent investigations.**

In last months, the government has dropped charges without any explanations other than capacity issues, against several alleged perpetrators:

- In August 2018, four “Junglers” were released from detention. The Defense Staff of the Armed Forces said that “it would be impossible to find evidence linking them to the commission of any offence”.
- On 28 October 2018, the Ministry of Justice announced the withdrawal of charges against several officials from the NIA, who had been accused of participating in the burying of the political activist Solo Sandeng, who died in detention in April 2016. The news was released by Gambian media, without any explanation as to why the charges were dropped.
- On 3 January 2019, a soldier Malick Boye who had been arrested in March 2018 following accusations that he had killed a female soldier in 2011 on the orders of former President Jammeh, was released from prison. Media reported that he had been cleared of being a suspected “Jungler”.ⁱⁱⁱ His involvement in the death of the soldier does not seem to have been investigated.
- On 8 January 2019, the President Barrow announced that he would discontinue prosecution of police officers responsible the death of three demonstrators in June 2018 in the village of Faraba Banta.

- **Recommendation: Build the capacity of the justice system as well as the state prosecutor and find adequate funding and expert support for it.**

The release of the alleged perpetrators is being justified by the country’s lack of capacity and resources by the ministry of Justice.^{iv} The VC is of the opinion that the “capacity-gap” argument is in fact an excuse for a lack of political will. Indeed, the government has shown that it was capable to raise funds and seek international support to put in place a solid and sufficiently funded TRRC in less than a year. It is to noted that following its visit to the Gambia the WGEID warned that “transitional justice mechanisms are not intended to and cannot replace judicial investigations and prosecutions”.

- **Recommendation: Engage proactively with the Ghanaian government to re-open the investigation of the murder of more than 50 migrants in 2005.**

In 2005, approximately 56 migrants, including 44 Ghanaians were killed in The Gambia. In May 2018, Human Rights Watch and TRIAL International released a report showing that the migrants were murdered by the “Junglers”. The same day, Ghanaian NGOs called on Ghana to re-open its investigation into the case. The VC echoed the call during a public press conference on 17 May 2018 and asked the Gambian government to cooperate in any Ghanaian probe.

In an interview with a TV program on the same day, the spokesperson of the Gambia Government said that they will cooperate with any request from the Ghanaian authorities in relations to unearthing the truth about their nationals killed. However, no information was given by the government regarding its engagement and discussions with Ghana on this case so far.

RIGHT TO AN EFFECTIVE REMEDY

- **Recommendation: Fully comply with ECOWAS court orders and judgments.**

The Gambia has been sentenced by the ECOWAS court in three cases, out of which two concerned murdered journalists: Chief Ebrima Manneh^v and Deyda Hydar^{vi}. The VC welcomes the efforts by the government to establish a timeline to compensate the plaintiffs and notes that it has already started doing so. However, it has failed to comply with the Court judgments in terms of investigations and prosecutions of possible perpetrators.

RIGHT TO LIFE – EXCESSIVE USE OF FORCE

- **Recommendation: Conduct investigations into instances of excessive use of force by security personnel and charge those responsible without undue interference.**

Since the fall of the former regime, respect for the right to life has significantly improved. However, two worrisome incidents of excessive use of force took place:

- In June 2017, one person died and at least six were injured when Senegalese peacekeepers fired live ammunition to disperse demonstrators near Jammeh's former residence in Kanilai. The government promised an investigation but at time of writing no report or findings had been published.^{vii}
- On 18 June 2018, the Police Intervention Unit shot three men dead in the Faraba Banta village and injured ten others as the community clashed with law enforcers regarding sand mining activities in the village by a private company.^{viii} On 1 July 2018 President Barrow set up a commission of enquiry to look into the events and six police officers were charged with murder.^{ix} However, on 8 January 2019, the State House reported that President Barrow had decided to discontinue the prosecution against the police officers.^x Following an outcry by civil society, the Justice Minister denied any interference or attempt by the president to discontinue the case.^{xi}

TORTURE IN DETENTION

- **Recommendation: Investigate all allegations of torture in detention and take all necessary measures to domesticate the UN Convention on Torture.**

The government has ratified the UN Convention against torture in September 2017^{xii} and cases of torture have reduced significantly. However:

- In July 2017, the press reported that Lamin Krubally, died in police custody shortly after he was arrested. Police said he died after repeatedly hitting his head against the wall. However, his family said he tortured and left to die alone without any help.^{xiii}
- In December, 2017 the press reported that the lawyer representing 12 soldiers accused of engaging in "mutinous, defamatory, scandalous and unethical acts against the government" told a military court martial that one of his clients had been tortured by investigators of the SIS.^{xiv}

- The same press reported that in August 2017, another defendant, Sambujang Bojang, spent 11 days in hospital where he was treated for injuries on his feet and hands. His family said he was subjected to serious beatings while being questioned by officials of the SIS.^{xv}
- In July 2018, the press reported that the lawyer for Yankuba Badjie, former Director of the NIA, told the Banjul High that his client had been threatened and beaten at the time his cautionary and voluntary statements were obtained.^{xvi}

PRISON CONDITIONS

- **Recommendation: Comply with international standards regarding prison conditions.**

In 2015, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that: “international human rights standards are not met in the prison system, resulting in a number of serious violations (...). These substandard conditions constitute cruel, inhuman and degrading treatment or punishment”.^{xvii}

The situation has not significantly improved under the new government. On 12 October 2018, Madi Jobarteh, human rights activist and member of the national Prison Reform Committee, released a statement expressing his “shock and anger” about what he witnessed at Mile 2 and Jeshwang prisons. He denounced the “stench in the cells and living halls, infested with bed bugs and mosquitoes” and stated that “not only are the physical structures and the environment of the prisons deplorable, but the food that is provided to our prisoners is extremely poor, inadequate and cooked in very unhygienic conditions.”^{xviii}

ADMINISTRATION OF JUSTICE

- **Recommendation: Take measures to review and align the Criminal Code, the Criminal Procedure Code and the Prisons Act with international standard and best practices.**

The Criminal Code, the Criminal Procedure Code and the Prisons Act are outdated and were never subject to thorough review since independence to bring them in line with international standard and best practices. In addition, court cases move at extreme slow pace coupled with expensive legal fees for the average Gambian.

FREEDOM OF OPINION AND EXPRESSION, AND FREEDOM OF ASSOCIATION

- **Recommendation: Repeal laws on criminal defamation, sedition, and false news.**

The VC welcomes the February 2018 decision by the ECOWAS Court that the Government of The Gambia must repeal laws on criminal defamation, sedition, and false news. The VC calls on the government to implement this decision as a priority, and recognize its duty to protect the rights of journalists and the public to speak out freely on issues of public interest.

- **Recommendation: The right to peaceful protest should be enshrined in law.**

The right to peaceful protest should also be enshrined in law, with security forces instructed to avoid the use of force to disperse peaceful gatherings, and offences, such as holding a procession without a permit

under the Public Order Act, repealed. Under the Barrow government, several gathering of civil society actors were denied authorization such as the as "Occupy Westfield" and "Dafa Doy" protests.

HUMAN RIGHTS DEFENDERS AND WHISTLE BLOWER

- **Recommendation: Explicitly recognize the legitimacy of human rights defenders' work and investigate allegations made by them.**
- On 31 January 2018, Political Scientist, Dr. Ismaila Ceesay was unlawful detained by the police for expressing an opinion on national security published by a newspaper. Following strong condemnations of his arrests by human rights activists, charges against Dr. Ceesay were dropped.
- In June 2017, Baboucarr Badjie, a legal adviser of the SIS/NIA sent a letter to President Barrow, which was later leaked, denouncing, amongst other things the fact that the new Director General was tampering with evidence. Mr. Badjie was subsequently transferred to the police and resigned in October 2017, out of protest. The allegations he made were never investigated by the government. On 15 February 2019, the TRRC visited the SIS and confirmed evidence tampering: the cells were repainted including interrogation rooms, where detainees used to be subjected to torture.
- In July 2018, the media published a letter that the Executive Secretary of the Commission of Inquiry into Jammeh's assets & financial activities, had addressed to President Barrow, accusing the lead counsel, Amie Bensouda, of – amongst other things - interfering with the Commission's orders in seizing Jammeh's assets and properties.^{xix} Instead of looking into these allegations, the Minister of Justice sacked Mr. Kurang and denied all the accusations he made.^{xx}

CORRUPTION AND MISPENDING OF PUBLIC FUNDS

- **Recommendation: Adhere to the principle of transparency and accountability regarding public funding.**
- **Recommendation: The government should set up anti-corruption commission to serve as watch dogs to all government institutions. The commission should be given powers to investigate and prosecute anyone found wanting of any form of corruption.**

There have been numerous allegations of corruption of various gravity by the government. For instance:

- In December 2017, it was reported that more than \$740,000 were deposited into the bank account of the first lady's foundation by an undisclosed donor. The money was cashed out hours after it was deposited. News media reported that a Chinese company seeking government contracts in The Gambia transferred the money.^{xxi}
- In February 2018, the Minister of Justice announced that the government decided to restore a contract with a controversial firm to manage its citizens' identity documents, instead of awarding it to a new contractor.^{xxii} The former regime had signed an opaque contract with Semlex Europe SA, a Belgium-based company which has been accused of corruption and money laundering and which is currently under investigations by the Belgian authorities.^{xxiii} According to

the Organized Crime and Corruption Reporting Project the contract appears to be disadvantageous to the Gambian state in several important ways.^{xxiv}

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- ⁱ “The WGEID supports the establishment of this mechanism, while stressing that transitional justice measures must be understood in a broader way and that all measures taken in the areas of truth, justice and reparation should be parallel and go hand in hand”.
- ⁱⁱ See for instance: The Standard: [Jungler Reveals Daba, Others Killed, Thrown Into A Well In Foni](#), December 2017; The Standard: [Junglers Explain How 2 Gambian-Americans Were Killed](#), January 2018 and The Standard: [Jungler says he will testify against Jammeh even at ICC](#), February 2018.
- ⁱⁱⁱ See Foroyaa, [Soldier Accused Of Being Former ‘Jungler’ Released, Reinstated](#), January 3, 2019.
- ^{iv} On October 9th, 2018 the Attorney General and Minister of Justice, Aboubacarr Tambadou, announced in a press conference, that The Gambia is not yet ready to hold trials involving the “Junglers” – arguing that he did “not think this country is yet ready to hold trial of this magnitude”. He has made similar statements on several occasions.
- ^v Chief Ebrima Manneh v The Republic of The Gambia (Suit ECW/CCJ/ APP/04/07, judgment ECW/CCJ/JUD/03/08, June 5, 2008.
- ^{vi} Deyda Hydara v The Republic of The Gambia (ECW/CCJ/APP/30/11).
- ^{vii} All Africa, [Gambia: Ecomig Forces Allegedly Shoot Protesters, Kill One and Injure Nine At Kanilai](#), June 5, 2017; Human Rights Watch, [Gambia: event of 2017](#), 2018.
- ^{viii} The Gambia Times, [Report of the Faraba Banta Commission of Inquiry](#), January 17, 2019.
- ^{ix} Foroyaa, [Justice Minister Promises Prosecution in Faraba Banta Incident](#), November 28, 2018; Foroyaa, [Six PIU Officer Appear in Court Plead on All Counts, Remanded](#), July 2, 2018.
- ^x Foroyaa, [President Barrow Accepts Appeal for the Discontinuance of Faraba Trial](#), January 9, 2019.
- ^{xi} Kerr Fatou, [Discontinuance of trial of Faraba shooters: Justice Minister reacts](#), January 9, 2019.
- ^{xii} Convention Against Torture Initiative, [Historic Step: Gambia fulfils its Promise To Ratify the UN Convention against Torture](#), October 24, 2018.
- ^{xiii} Jollof News, [Gambia Soldier Severely Tortured in Custody](#), December 15, 2017.
- ^{xiv} Gambia New Today, [In the NIA 9 Case Lawyer Chime Alleges Torture of Yankuba Badjie](#), July 26, 2018.
- ^{xv} Gambia New Today, [In the NIA 9 Case Lawyer Chime Alleges Torture of Yankuba Badjie](#), July 26, 2018.
- ^{xvi} Gambia New Today, [In the NIA 9 Case Lawyer Chime Alleges Torture of Yankuba Badjie](#), July 26, 2018.
- ^{xvii} See para. 101 of the 2015 report on [The Gambia by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez \(A/HRC/28/68/Add.4\)](#).
- ^{xviii} Madi Jobarteh, [Conditions at Mile 2 Prison Are Equal to Slave Conditions](#), October 12, 2018.
- ^{xix} Gambia News Today, [Alhagie Kurang’s bombshell petition against Amie Bensouda portrays Bensouda as an alleged greedy and conflicted lawyer, bent on purchasing Jammeh’s assets by any means!](#), July 10, 2018.
- ^{xx} Jollof Media Network, [Alhaji Kurang’s Sacking: Justice Minister Clarifies](#), July 13, 2018.
- ^{xxi} The Gambia Times, [Bribery Allegation Levelled Against the President by Hon. Sanna Jawara](#), October 8, 2018.
- ^{xxii} The Point, [Gambia ‘restores’ ID Cards contract to Semlex](#), February 15, 2018.
- ^{xxiii} The Gambia Times, [Bribery Allegation Levelled Against the President by Hon. Sanna Jawara](#), October 8, 2018.
- ^{xxiv} Organized Crime and Corruption Reporting Project, [The Gambian Government Continues Controversial Contract](#), July 19, 2018.