



UNIVERSAL PERIODIC REVIEW SUBMISSION FOR THE GAMBIA

NGO Submission

New York, March 28, 2019

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The Human Rights Foundation Center for Law and Democracy

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ABOUT HRF

1. The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.
2. We focus our work on the founding ideals of the human rights movement, those most purely represented in the 1948 Universal Declaration of Human Rights and the 1976 International Covenant on Civil and Political Rights.
3. The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of HRF. HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

INTRODUCTION

4. This submission was prepared by HRF for the Universal Periodic Review (UPR) of The Gambia. In this submission, HRF evaluates The Gambia's implementation of recommendations made in the previous UPR, as it relates to the current human rights situation in the country, which is characterized by systematic, widespread, and gross violations of human rights, such as: arbitrary arrests and detention; severe torture and extrajudicial killings committed by security forces; and the ongoing curtailing of the freedom of expression, information, association, and assembly, despite President Adama Barrow's promised reforms.ⁱ

FOLLOW-UP ON THE PREVIOUS REVIEW

5. The most recent UPR of The Gambia by the United Nations Human Rights Council took place on October 28, 2014. The Human Rights Council considered and adopted the outcome of the country's review during its 28th Session, on March 26, 2015.ⁱⁱ A total of 171 recommendations were made to The Gambia, whereby the government accepted only 93 recommendations and noted 78, including 36 rejections.ⁱⁱⁱ

6. Although The Gambia accepted recommendations covering a range of issues and at last ratified both the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance on September 28, 2018,^{iv} it has not made significant progress in implementing numerous other acceptances through total governmental reform. While the government has committed itself to reforming the security sector by replacing heads of various agencies, including intelligence and the police, it has yet failed to begin a broader inspection of these agencies responsible for countless acts of arbitrary abuse and deaths. Further, the Gambian government has failed to amend laws requiring permits for public rallies.^v
7. In the 2014 UPR cycle, stakeholders expressed concern over the high number of extrajudicial killings and incidents of torture, unlawful arrests, and enforced disappearances, and recommended that The Gambia criminalize such offenses. Furthermore, others noted that The Gambia's press laws represent some of the most repressive in Africa, and that additional legal restrictions on access to information had been added since 2010.^{vi}
8. U.N. Member States expressed concern regarding The Gambia's systematic violation of civil and political rights exacerbated by the criminalization of offenses related to the freedom of expression, the enforcement of repressive acts of intimidation and harassment, fear of arbitrary detention, the conduct of security forces which carry out such arbitrary arrests, and the prevailing impunity in the country.
9. Specifically, U.N. Member States expressed concerns about the continuous arbitrary arrest and detention of human rights defenders, journalists, and political opposition members; torture and extrajudicial killings committed by security forces and unlawfully-armed paramilitary groups; and restrictions on civil society actors, activities, and the freedom of expression.^{vii} The U.N. Member States called upon the government of The Gambia to honor its commitments made under international human rights law, investigate allegations of torture, improve detention conditions, and hold accountable the perpetrators of human rights, particularly members of the security forces.

THE GAMBIA'S NATIONAL FRAMEWORK FOR PROTECTING HUMAN RIGHTS

The revised 1997 Constitution of The Republic of The Gambia^{viii} provides a basic framework for protecting the fundamental rights and freedoms of its citizens:

Article 18

- (1) No person shall be deprived of his or her life intentionally except in the execution of a sentence of death imposed by a court of competent jurisdiction in respect of a criminal offence for which the penalty is death under the Laws of The Gambia.

[...]

Article 19

[...]

- (1) No one shall be subjected to arbitrary arrest or detention.
- (2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours...of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner.

[...]

- (5) If any person arrested or detained...is not tried within a reasonable time...he or she shall be released either unconditionally or upon reasonable conditions.

[...]

Article 21

No person shall be subject to torture or inhuman degrading punishment or other treatment.

Article 24

[...]

- (3)(d) Every person who is charged with a criminal offence shall be permitted to defend himself or herself before the court in person or...by a legal representative of his or her own choice.

[...]

Article 25

- (1) Every person shall have the right to (a) freedom of speech and expression, which shall include freedom of the press and other media...; (d) freedom to

assemble and demonstrate peaceably...; (e) freedom of association, which shall include freedom to form and join associations...including political parties.

[....]

ARBITRARY DETENTIONS

10. Although the Gambian Constitution prohibits arbitrary arrest and detention,^{ix} security forces continue to arbitrarily arrest and detain individuals, without trial.
11. Under former President Yahya Jammeh, the National Intelligence Agency (NIA), especially, and the police's Serious Crimes Unit, were frequently complicit in detaining individuals without any evidence of illicit activity, and holding these individuals incommunicado for months or even years.^x Frequently-targeted individuals included journalists, human rights activists, security forces personnel, and members of the LGBT+ community.^{xi} For instance, in November 2016, security agents detained photojournalist Alagie Manka without charge, for merely taking a photograph on a smartphone of supporters of then-President Jammeh.^{xii}
12. The new government has continued the practice of detaining individuals for extended periods of time without being formally charged or provided a fair trial. Ex-military officers were rounded up in 2017 and detained without charge or trial. A November 2017 report^{xiii} indicated that 23 military officers had been detained without charge or trial at military camps throughout The Gambia, for longer than the constitutionally-permitted 72-hour limit.^{xiv} For example, Staff Sergeant Abdoulie Jammeh, a nephew of former dictator Yahya Jammeh, was arbitrarily detained for 28 days between September and October 2017 without charge or trial, and then dismissed from the army.^{xv} Another officer, Lance Corporal Sambujang Bojang, was detained without charge or trial for four months, from July to November 2017, before being charged with treason, along with 11 other officers, for allegedly plotting in a WhatsApp group to overthrow the government.^{xvi}
13. By carrying out arbitrary arrests, detentions, and violations of due process of the law, The Gambia is therefore violating its own domestic law, wherein an arrested individual must be brought before the court within 72 hours.^{xvii}

EXTRAJUDICIAL KILLINGS, TORTURE, AND ILL-TREATMENT

14. Torture and extrajudicial killings—forms of the brutal crackdown on dissent—have had a stalwart presence in The Gambia, particularly during the brutal Jammeh dictatorship era.^{xviii} Hundreds of individuals have been tortured and unlawfully killed by state security forces and paramilitary groups since the 2014 UPR of The Gambia.^{xix} In particular, the National Intelligence Agency (NIA), along with Jammeh’s paramilitary hit-squad known as the “Jungulers,” and armed police units, were most often associated with these abuses.^{xx} While the new government vowed to end the systematic abuses of the Jammeh era, and has taken steps to hold former officials involved in past abuses accountable, its security forces have also been involved in some extrajudicial killings.
15. Frequently used methods of torture have included: psychological abuse, including prolonged solitary confinement, torture and death threats, and mock execution; severe beatings; near-suffocation; rape; electroshock of the genitals; and dripping hot, melted plastic onto bare skin.^{xxi}
16. Torture against activists and leaders of opposition groups has been a commonplace occurrence.^{xxii} For example, on April 14, 2016, security forces arrested Solo Sandeng, a leading organizer of the opposition party—the United Democratic Party—whose crime was leading a peaceful protest to galvanize support for electoral reform in The Gambia.^{xxiii} Sandeng was beaten and tortured at the headquarters of the NIA and subsequently died in state custody, while the Gambian government initially failed to concede his death. Over two months after his arrest, the government officially confirmed Sandeng’s death in custody but named ““shock”” and ““respiratory failure”” as the causes of death.^{xxiv}
17. In December 2018, the new government put on trial former NIA director Yankuba Badjie, and five other Agency officials following the exhumation of Sandeng’s body. They faced charges on, *inter alia*, 25 counts of murder and conspiracy to murder and torture.^{xxv} The government is also cooperating with Swiss authorities’ investigation of former Interior Minister Ousman Sonko, who is being held in Switzerland on allegations of involvement in human rights abuses.^{xxvi}

18. In June 2018, police killed two environmental activists and a resident of Faraba Banta, approximately 50 kilometers south of Banjul, as they partook in a protest against alleged pollution and environmental damage caused by the local Julakay sand mining company. The Inspector General of Police called the deaths “regrettable” and noted that the officers had not been authorized to use firearms to disperse the protest.^{xxvii} Six officers of the police’s Intervention Unit were initially charged with murder,^{xxviii} but in January 2019, the government announced the withdrawal of these charges, citing a request from the community to discontinue the case “to promote true reconciliation.”^{xxix}

FREEDOMS OF PEACEFUL ASSEMBLY, EXPRESSION, AND ACCESS TO INFORMATION

19. With President Barrow’s inauguration on February 18, 2017,^{xxx} the new government made assurances that it would seek to repeal laws restricting the freedom of expression, and throughout 2017, it sought to respect the people’s right to access information.^{xxxi} Some journalists who fled the country during the prior presidential term have even been able to return.^{xxxii} Yet, there were still cases of individuals being arrested and detained for peacefully protesting, assembling, and expressing their opinions, and access to information has been restricted on several occasions.

20. Laws requiring a permit to conduct public rallies persist, thereby contravening the freedom of assembly as established by The Gambia’s Constitution.^{xxxiii} Prior to President Barrow’s election, in April 2016, opposition leader Ousainou Darboe was arrested during a peaceful protest to demand the release of arbitrarily detained (and later killed) activist Solo Sandeng. Darboe was sentenced to three years in prison for leading an authorized demonstration^{xxxiv} and was released in December 2016.^{xxxv} In November 2017, riot police disbanded a peaceful protest against water and electricity shortages after the government authorized and then proscribed it.^{xxxvi}

21. Numerous forms of communication and expression have been curtailed. For example, in August 2016, authorities imposed restrictions on social media networks and mobile communication apps.^{xxxvii} In January 2017, at least six people were detained by NIA agents for wearing or selling t-shirts with a logo of

the #GambiaHasDecided movement.^{xxxviii} Until the same month, various websites known to be critical of former President Jammeh's government, remained blocked in the country.^{xxxix} Furthermore, in February 2018, police detained and interrogated academic Ismaila Ceesay over commentary in a newspaper critical of the government's handling of the army.^{xl}

FREEDOM OF THE PRESS

22. Despite some reforms by the new government, laws relating to the press in The Gambia remain some of the most repressive in all of Africa, and journalists have been punished for performing their duties as members of the press.^{xli} The overwhelming number of press freedom abuses occurred under Jammeh: between 2016 and 2017, authorities repeatedly denied entry to journalists, assaulted and expelled others, and shut down various forms of media in the country.
23. In the months preceding the 2016 presidential election, members of various media outlets were harassed and arrested for reporting on the campaigns. For example, in April 2016, officers arrested and severely beat journalist Mamour Mbenga, from the opposition-aligned *Foroyaa* newspaper, while he was filming an opposition protest; his video equipment was destroyed, and his newspaper story edited to remove any mention of the police's actions.^{xlii} The director of the government-controlled Gambia Radio and Television Service, Momodou Sabally, was dismissed, arrested, and detained, along with journalist colleague Bakary Fatty, in early November 2016, after running a story on opposition groups united behind presidential candidate Adama Barrow.^{xliii} Additionally, in March 2017, militants from a coalition of opposition political parties—the Gambia Moral Congress, National Reconciliation Party, and the United Democratic Party—harassed and physically assaulted Kebba Jeffang, a journalist reporting on a joint press conference of the three parties.^{xliv} The government issued a formal public apology to Jeffang after the incident.^{xlv}
24. Two Al-Jazeera journalists, Zeinebou Mint Erebih and Mohamed Ould Beidar, were also detained and expelled from the country after being denied press accreditation by the authorities in the lead-up to the presidential election on December 1, 2016.^{xlvi} The journalists were able to interview Barrow, however, and in retaliation, the government blocked internet access and compromised The Gambia's telecommunications network for several days in order to block all international calls.^{xlvii} Similarly, on January 16, 2017, seven foreign journalists were de-

nied entry into The Gambia when it was revealed that they intended to report on the inauguration of President-elect Adama Barrow,^{xlviii} and three radio stations were shut down without an explanation.^{xlix}

25. In May 2018, Gambia’s Supreme Court declared criminal penalties for defamation, libel and “false news online” unconstitutional, but upheld the sedition law that protects the president from media criticism, as well as “false publication and broadcasting” as criminal offences.¹

RECOMMENDATIONS

26. HRF calls on the Gambian government to:

- a) Strengthen its commitment to ending impunity for crimes committed by security forces and public officials, both past and present, by bringing these individuals before local courts and cooperating with an independent, transparent investigation into their use of excessive force;
- b) Protect the due process rights of every accused person—including ex-officials—to a fair, speedy, and public trial;
- c) Continue promoting, without reserve, the rights to freedom of expression and association, and ensure that activists, journalists, and opposition groups can operate peacefully within The Gambia without fear of retribution in the form of censorship, harassment, arbitrary detention, and extrajudicial killings, among others;
- d) Continue to implement President Barrow’s democratic reformist agenda (outlined in the 2018-2021 National Development Plan) of restoring rule of law and transforming the security sector by releasing political prisoners and allowing exiles to return to The Gambia;
- e) Ensure that individuals who have been arbitrarily detained absent compelling evidence of criminal conduct, in violation of their rights to the freedom of expression and association, are released,^{li} and that those in detention receive humane treatment in accordance with the Convention Against Torture, which The Gambia ratified on September 28, 2018;^{lii}

- f) Ensure compliance with orders from the Economic Community of West African States (ECOWAS) Community Court of Justice in all arbitrary detention and extrajudicial killing cases;
- g) Cooperate with regional and international human rights mechanisms by allowing the special procedure mandate holders to carry out an independent assessment of the human rights situation in The Gambia and advise the government accordingly;
- h) Allow the African Commission on Human and Peoples' Rights Special Rapporteurs on extrajudicial killings, freedom of expression, and access to information, to conduct unannounced and unobstructed site visits; and
- i) Engage in constructive national dialogue with all ethnic, religious, political, and social groups—particularly opposition groups—in The Gambia in order to generate a sustainable solution to establishing peace within the country.

ⁱ See *Amnesty International Report 2017/2018: The State of the World's Human Rights*, AMNESTY INTERNATIONAL, at 169–170 (2018), available at

<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

ⁱⁱ See *Gambia: Responses to Recommendations & Voluntary Pledges—Second Review, Session 20*, UPR-INFO (Mar. 2015), available at https://www.upr-info.org/sites/default/files/document/gambia/session_20_-_october_2014/recommendations_and_pledges_gambia_2014.pdf.

ⁱⁱⁱ Ibid.

^{iv} See “Ratification Status for Gambia,” UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=64&Lang=EN.

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- ^v *State of Fear: Arbitrary Arrests, Torture, and Killings*, HUMAN RIGHTS WATCH (16 Sept. 2015) [hereinafter *State of Fear*], <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings>.
- ^{vi} Human Rights Council, Working Group on the Universal Periodic Review of the Twenty-Seventh Session, *Report of the Working Group on the Universal Periodic Review: Gambia*, ¶ 8, U.N. Doc. A/HRC/WG.6/20/GMB/3 (31 July 2014), available at https://www.upr-info.org/sites/default/files/document/gambia/session_20_-_october_2014/a_hrc_wg.6_20_gmb_3_e.pdf.
- ^{vii} *Ibid.*, ¶¶ 7, 44–46; Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session: Gambia*, ¶¶ 476, 485 U.N. Doc. A/HRC/28/2 (8 July 2015), available at https://www.upr-info.org/sites/default/files/document/session_20_-_october_2014/a_hrc_28_2.pdf.
- ^{viii} CONSTITUTION (rev. 1997) (The Rep. of The Gambia), available at <http://hrlibrary.umn.edu/research/gambia-constitution.pdf>.
- ^{ix} *Ibid.* art. 19.
- ^x *State of Fear*, *supra* note v.
- ^{xi} *Ibid.*
- ^{xii} *The Gambia: Journalist Arrested for Taking “Unauthorised” Pictures of Ruling Party Supporters*, MEDIA FOUNDATION FOR WEST AFRICA (16 Nov. 2016), <http://www.mfwa.org/the-gambia-journalist-arrested-for-taking-unauthorised-pictures-of-ruling-party-supporters/>.
- ^{xiii} Mustapha Jallow, *2017 in Brief: Security Officers in Detention without Trial*, FOROYAA (5 Nov. 2017), <http://foroyaa.gm/2017-in-brief-security-officers-in-detention-without-trial/>.
- ^{xiv} *Ibid.*; CONSTITUTION, *supra* note viii, art. 19.
- ^{xv} Mustapha Jallow, *Gambia: Former President’s Nephew Released, Dismissed*, ALLAFRICA (15 Nov. 2017), <https://allafrica.com/stories/201711160320.html>.
- ^{xvi} *See*, Kebba Secka, *Gambia: At the Court-Martial - 'Whatsapp' Case Set for Judgment*, ALLAFRICA (14 Mar. 2019), <https://allafrica.com/stories/201903150276.html>.
- ^{xvii} CONSTITUTION, *supra* note viii, art. 19.
- ^{xviii} *State of Fear*, *supra* note v.
- ^{xix} *See, e.g.*, *Ibid.*
- ^{xx} *Ibid.*
- ^{xxi} *Ibid.*
- ^{xxii} *Ibid.*
- ^{xxiii} Nazish Dholakia, *Witness: Beaten to Death in Gambia—Family of Murdered Opposition Leader Speaks Out*, HUMAN RIGHTS WATCH (2 Nov. 2016) <https://www.hrw.org/news/2016/11/02/witness-beaten-death-gambia>.
- ^{xxiv} *Ibid.*
- ^{xxv} Yankuba Jallow and Nelson Manneh, *In the NIA 9 Case: Remains of Late Solo Sandeng’s Body Shown Before High Court*, FOROYAA (11 Dec. 2018), <http://foroyaa.gm/in-the-nia-9-case-remains-of-late-solo-sandengs-body-shown-before-high-court/>.
- ^{xxvi} *Gov’t Will Not Extradite Ousman Sonko: Justice Minister*, THE POINT (7 Aug. 2017), <http://thepoint.gm/africa/gambia/article/govt-will-not-extradite-ousman-sonko-justice-minister>.
- ^{xxvii} *2 Activists Killed in Gambia in Protests Against Sand Mining*, AP NEWS (18 June 2018), <https://www.apnews.com/284262adffd7495494098db6182575bb>.
- ^{xxviii} Yankuba Jallow, *Six PIU Officers Appear in Court Plead on All Counts, Remanded*, FOROYAA (2 July 2018), <http://foroyaa.gm/six-piu-officers-appear-in-court-plead-on-all-counts-remanded/>.
- ^{xxix} Press Release, *President Barrow Accepts Appeal for the Discontinuance of Faraba Trial*, FOROYAA (9 Jan. 2019), <http://foroyaa.gm/president-barrow-accepts-appeal-for-the-discontinuance-of-faraba-trial/>.

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- ^{xxx} *The Gambia: President Barrow Sworn in at Packed Stadium*, BBC NEWS (18 Feb. 2017), <https://www.bbc.com/news/world-africa-39011393>.
- ^{xxxi} *Gambia: Events of 2017 – Freedom of Expression and Assembly*, HUMAN RIGHTS WATCH (2018), <https://www.hrw.org/world-report/2018/country-chapters/gambia>.
- ^{xxxii} *Ibid.*
- ^{xxxiii} *Ibid.*
- ^{xxxiv} *Gambia Opposition Leader Ousainou Darboe Jailed*, BBC NEWS (18 Feb. 2017), <https://www.bbc.com/news/world-africa-36853700>.
- ^{xxxv} *Gambia Opposition Leader Ousainou Darboe Freed on Bail*, BBC NEWS (5 Dec. 2016), <https://www.bbc.com/news/world-africa-38210873>.
- ^{xxxvi} *Gambia: Events of 2017*, *supra* note xxxi.
- ^{xxxvii} *Freedom on the Net 2018: The Gambia*, FREEDOM HOUSE (2018), <https://freedomhouse.org/report/freedom-net/2018/gambia>.
- ^{xxxviii} *Gambia: Arrests, Media Closures as Deadline Nears*, AMNESTY INTERNATIONAL (5 Jan. 2017), <https://www.amnesty.org/en/latest/news/2017/01/gambia-arrests-media-closures-as-deadline-nears/>.
- ^{xxxix} *Freedom on the Net 2018*, *supra* note xxxvii.
- ^{xl} *Police Questions, Detains Dr. Ismaila Ceesay*, THE POINT (1 Feb. 2018), <http://thepoint.gm/africa/gambia/article/police-questions-detains-dr-ismaila-cesay>.
- ^{xli} *Freedom of the Press 2017: The Gambia*, FREEDOM HOUSE (2017), <https://freedomhouse.org/report/freedom-press/2017/gambia>.
- ^{xlii} *Ibid.*
- ^{xliiii} *Ibid.*
- ^{xliv} *Press Release, YJAG Condemns Attack on Journalist Kebba Jeffang*, THE POINT (10 Mar. 2017), <http://thepoint.gm/africa/gambia/article/press-release-yjag-condemns-attack-on-journalist-kebba-jeffang>.
- ^{xlv} *Interior Minister Fatty Apologises to Foroyaa Journalist Jeffang After Supporters' Assault*, THE POINT (14 Mar. 2017), <http://thepoint.gm/africa/gambia/article/interior-minister-fatty-apologises-to-foroyaa-journalist-jeffang-after-supporters-assault>.
- ^{xlvi} *Seven Journalists Denied Entry to Gambia Ahead of Contested Inauguration*, COMMITTEE TO PROTECT JOURNALISTS (18 Jan. 2017), <https://cpj.org/2017/01/seven-journalists-denied-entry-to-gambia-ahead-of-.php>.
- ^{xlvii} *Freedom of the Press 2017*, *supra* note xli.
- ^{xlviii} *Seven Journalists Denied Entry to Gambia*, *supra* note xlvi; *The Gambia: Seven Foreign Journalists Expelled*, MEDIA FOUNDATION OF WEST AFRICA (17 Jan. 2017), <http://www.mfwa.org/the-gambia-seven-foreign-journalists-expelled/>.
- ^{xlix} *Gambia Orders Three Radio Stations to Cease Broadcasting*, COMMITTEE TO PROTECT JOURNALISTS (5 Jan. 2017), <https://cpj.org/2017/01/gambia-orders-three-radio-stations-to-cease-broadc.php>.
- ¹ *Gambia Declares Criminal Defamation Unconstitutional, Keeps Some Laws on Sedition, False News*, COMMITTEE TO PROTECT JOURNALISTS (10 May 2018); *Gambia: Supreme Court Scraps Criminal Defamation, Upheld False Publication*, FRONT PAGE INTERNATIONAL, BLOG (9 May 2018), <https://frontpageinternational.wordpress.com/2018/05/09/gambia-supreme-court-scraps-criminal-defamation-upheld-false-publication-law/#more-3656>.
- ⁱⁱ *Gambia's Road to Democratic Reform*, AFRICA CENTER FOR STRATEGIC STUDIES (24 Apr. 2018), <https://africacenter.org/spotlight/gambia-road-to-democratic-reform/>.
- ⁱⁱⁱ *Historic Step: The Gambia Fulfils Its Promise to Ratify the UN Convention against Torture*, CONVENTION AGAINST TORTURE INITIATIVE (24 Oct. 2018), <https://www.cti2024.org/en/news/historic-step-the-gambia-fulfils-its-promise-to-ratify-the-un-convention-against-torture/>.
