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List of acronyms

| | |
|--------|--|
| CRC | Constitutional Review Commission |
| ECOWAS | Economic Community of West African States |
| GAMES | Gambia Media Support |
| IMS | International Media Support |
| GPU | Gambia Press Union |
| MAJaC | Media Academy for Journalism and Communication |
| MoICI | Ministry of Information and Communication Infrastructure |
| NIA | National Intelligence Agency |
| TRRC | Truth, Reconciliation and Reparations Commission |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| WOJAG | Women Journalists' Association of The Gambia |

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Executive summary

This International Media Support report informs the development of a comprehensive gender-sensitive and international review of best practices regarding the investigation, assessment and responses to threats to underlying national and international legal framework, including laws and jurisprudence in The Gambia. It is the culmination of an innovative approach to hold perpetrators of attacks, killings and disappearances of journalists, media workers and human rights defenders to account and accentuates the importance of robust, collaborative support to combat impunity and protect journalists. The heart of this report recognizes that responding to threats and attacks against journalists means being prepared to scrutinize investigations and the laws that govern them.

Chapter 1 of this analysis identifies that protecting journalists and human rights advocates requires disabling the legal and functional ability of the government and its institutions to mobilize against them. The point of departure of this report therefore recognizes that for most of the past 25 years in The Gambia, the central threats facing journalists and human rights advocates have come from the government itself, with the complicity of institutions like the police, the secret service, the prison system and the Ministry of Justice. Under the leadership of Yahya Jammeh, Gambian society suffered from an ongoing campaign of violence, intimidation and targeted oppression that included forced disappearances, murder, torture, and arbitrary arrests and detention. A brighter light presently shines though as The Gambia has since embarked upon a series of sweeping legal, institutional and societal reform projects after Jammeh was ousted in 2017 that are intended to expose the darkness in its past and ensure that these events are never repeated.

Legislation in The Gambia further enabled the harsh leadership of the Jammeh era. This report exposes the laws that have been used to curtail the freedom of press, speech and assembly and those presently still on the books that endanger or specifically threaten the work of journalists and human rights advocates. Many of these laws have been used to discourage or prosecute anyone who might be seen to be challenging the government or its institutions, namely, laws regarding sedition, the publication or broadcasting that is deemed false and the requirement of governmental pre-approval for assemblies or protests, amongst others.

This chapter additionally recognizes is that governmental institutions such as the police and the Ministry of Justice, or public sector human rights institutions, should also be able to hold the perpetrators of such acts to account. Presently in 2020, The Gambia does not have specialized criminal legislation or criminal justice mechanisms that specifically address the targeting of journalists or human rights advocates. Nor does it have any specific system for detecting threats to journalists or outspoken members of the public.

The final sections of Chapter 1 lay out the existing criminal investigation and prosecution processes in The Gambia alongside the its current state of social and political affairs. In short, it is likely too soon to tell whether police and prosecutors today, under new leadership, will continue to demonstrate a reluctance to investigate and prosecute crimes against journalists and human rights advocates. There remain serious lingering questions and concerns about the sitting government of President Barrow, who expressly committed

to serving a three-year term when Mr. Jammeh was removed from power and has now reneged on that commitment to step down. In many respects, the brutality of Mr. Jammeh's dictatorship still hangs over life in The Gambia, and given the length and severity of his rule, one might naturally expect that the resulting individual and institutional psychology would be hard to shake.

On the other hand, Chapter 2 addresses the existing human rights mechanisms in The Gambia that suggest the greater prospect of an increasingly progressive state that is steadily on its way to ridding reminiscent oppression of the Jammeh era. In addition to ratifying a number of prominent international human rights treaties and other steps on the international front to advance The Gambia's commitment to human rights, the Barrow administration has established several mechanisms within the state to address violations targeted against journalists, media workers and human rights defenders.

Of this machinery, the Truth, Reconciliation and Reparations Commission (TRRC) is the primary establishment currently addressing human rights violations that have occurred in The Gambia. Established in 2018 as an independent institution mandated to conduct research and investigations into human rights violations committed under the Jammeh presidency, the TRRC, in many respects, may already be deemed a remarkable success. As the culmination of its work will set out its findings and make a series of recommendations for societal reform, this presents a remarkable opportunity to implement real and lasting change in The Gambia. Other mechanisms cited presently addressing human rights issues in The Gambia are the National Human Rights Commission, Office of the Ombudsman and accountability within police force "Human Rights Unit".

The final chapter of this report delves into ten specific recommendations to better protect journalists, media workers and human rights advocates in The Gambia. Of these recommendations, the foremost is to pursue a preliminary examination into the creation of a national safety and accountability mechanism. This recommendation advances a multi-stakeholder approach for this implementation, as for such a mechanism to be successful in The Gambia, it would require genuine acceptance and support from the Gambian government, Gambian civil society, and the community of Gambian journalists.

Addressing the particular threats, risks and disadvantages faced by women journalists in the profession is among another priority cited. The adoption of a gender-sensitive approach in the establishment of not only a national safety mechanism, but also by police, prosecutors and media organizations would shed necessary light on the gendered and sexualized threats faced by women that have been overlooked or ignored entirely by Gambian society. The unique and important role of free press and speech should be similarly engrained in those working within the justice system to appreciate the special role of journalism and further instill police and prosecutor's professional responsibilities to thoroughly investigate such offences. Amongst other recommendations enumerated are the amendment or repeal of foreboding legislation, investigating outstanding cases of violence against journalists and human rights defenders and to develop a witness protection mechanism.



Citizens celebrate the arrival of ECOWAS troops after the former President Yahya Jammeh fled the country, in Banjul, The Gambia on 22 January 2017. Yahya Jammeh left The Gambia after agreeing to relinquish power earlier in the day, bringing an end to a political crisis that had gripped the country since his election defeat the month prior. Soldiers track and control vehicles at crossing points. Photo: Xaume Olleros/Anadolu Agency/Getty Images

Introduction: Genuine promise, but potential concern for safety and protection in The Gambia

The Gambia sits at a remarkable time in its history – one that holds genuine promise for lasting transformational change, the fundamental reform of key institutions, and a reformation not just of the legal system but of the country's relationship with rule of law itself.

Under the leadership of Yahya Jammeh from 1994-2017, Gambian society suffered from an ongoing campaign of violence, intimidation and targeted oppression that included forced disappearances, murder, torture, and arbitrary arrests and detention. Throughout this period, President Jammeh ruthlessly suppressed dissent by directing his state security forces and paramilitary "Junglers" to target journalists and human rights advocates. Many journalists and human rights advocates who challenged him were murdered, tortured, threatened, arbitrarily arrested and detained, forced into exile, or made to disappear. Few, if any, of the perpetrators of these offences were ever held to account, and the scale of the violence and the impunity with which it was committed created an ongoing climate of fear for journalists or anyone else who might seemingly challenge Mr. Jammeh's rule.¹ As journalist Lamin Chan described it, under Jammeh "the media was the most persecuted institution".²

In the wake of President Jammeh's ouster in 2017, however, The Gambia has embarked upon a series of sweeping legal, institutional and societal reform projects intended to expose the darkness in its past and ensure that these events are never repeated. Since its launch on 15 October 2018, the Truth, Reconciliation and Reparations Commission (TRRC) has been conducting investigations, taking statements, and holding televised public hearings to investigate and establish a record of the nature, causes, and extent of the human rights abuses that took place across the country between July 1994 and January 2017. In many respects, the TRRC has already been a remarkable success. Since its public hearings began, the process has captivated the country; the hearings, which have been watched widely across

the country on Facebook and YouTube and listened to via local radio, have exposed violence and corruption, prompted confessions from perpetrators, and heralded calls for accountability and systemic change. As the culmination of its work, the TRRC will be producing a comprehensive final report that sets out its findings and makes a series of recommendations for societal reform. The TRRC has a particular mandate to examine the complicity and the failings of key Gambian institutions in the abuses that took place under President Jammeh. This presents a remarkable opportunity to implement real and lasting change.

In parallel with the TRRC, several other key processes have been undertaken since President Jammeh was removed from office:

- The Constitutional Review Commission (CRC) was established by the Gambian National Assembly in June 2018³ with a mandate to lead a constitutional review and to re-draft the Constitution.⁴ The CRC has consulted extensively with the community and with a range of stakeholders across Gambian society. It has also committed itself to gender equality as five of its eleven committee members are women. The CRC presented its Draft Constitution to the government on 30 March 2020.
- The Commission of Inquiry into Corruption was established by President Barrow to examine the financial dealings of former President Jammeh and his associates from July 1994 to January 2017. The Inquiry found that Mr. Jammeh had engaged in extensive corruption and had stolen the equivalent of over 304 million USD from public funds.⁵ The government is collecting and selling certain items of Mr. Jammeh's former assets, in line with the Inquiry's recommendations.⁶ The proceeds of these sales may contribute to reparations for victims of Mr. Jammeh's regime.
- Criminal law review and reforms were undertaken in 2018 and 2019 with the intent to bring Gambian criminal laws into conformity with international standards.⁷ The Gambian Cabinet approved a draft Criminal Offences Bill and a draft Criminal Procedure Bill in November 2019.⁸

3 CRC220.org, online: <https://crc220.org/about-us/>.

4 Republic of The Gambia, Constitution of the Republic of The Gambia, 1997, online: <http://hrlibrary.umn.edu/research/gambia-constitution.pdf>.

5 Yankuba Jallow, "Gambia: 'Janneh' Commission Finds Jammeh Liable for Over U.S. \$304 Million", All Africa (1 April 2019), online: <https://allafrica.com/stories/201904020744.html>. See the Government White Paper Janneh Report at: The Gambia Times, "The Gambia Government White Paper on the Report of the Commission of Inquiry into the Financial Activities of Public Bodies, Enterprises and Offices as Regards Their Dealings With Former President Yahya A.J.J. Jammeh and Connected Matters" (17 April 2020), online: <https://www.thegambiatimes.com/the-gambia-government-white-paper-on-the-report-of-the-commission-of-inquiry-into-the-financial-activities-of-public-bodies-enterprises-and-offices-as-regards-their-dealings-with-former-president-yah/>.

6 Mustapha Darboe, "Gambia: Jammeh's Wealth to go to his Victims", JusticeInfo.Net (21 October 2019), online: <https://www.justiceinfo.net/en/reparations/42679-gambia-jammeh-wealth-victims.html>.

7 United Nations General Assembly, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Gambia (22 August 2019) at 13, online: <https://undocs.org/pdf?symbol=en/A/HRC/WG.6/34/GMB/1>.

8 Republic of The Gambia, Criminal Offences Bill 2019, online: <https://www.thegambiatimes.com/wp-content/uploads/2019/11/Gambia-DRAFT-CRIMINAL-OFFENCES-BILL-2019-OCT-2019-1.pdf>.

1 See for example, Felicity Thompson, State of Fear: Arbitrary Arrests, Torture, and Killings, Human Rights Watch (16 September 2015), online: <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings>.

2 Mustapha Darboe, "Gambia: 'The Media was the Most Persecuted Institution Under Jammeh'", Foundation Hironnelle (15 July 2019), online: <https://www.justiceinfo.net/en/truth-commissions/41925-gambia-the-media-was-the-most-persecuted-institution-under-jammeh.html>.

- Creation and review of media-related legislation was undertaken in 2018 and 2019. Two bills, the Freedom of Information Bill and the Media Services Bill, were drafted in consultation with the Gambia Press Union (GPU). Both were approved by the Gambian Cabinet in November 2019.⁹ The Freedom of Information Bill¹⁰ seeks to promote media freedom and provide access to information for the broader public.¹¹ The Media Services Bill seeks to define and regulate the media sector. However, the Bill has been criticized for giving the Government too much control.¹² The Government also undertook a review of the Information and Communication Act, legislation that has been criticized for granting the Executive broad powers to interfere with broadcasting content.¹³ Changes to the Act have been approved by Cabinet.¹⁴

Alongside these sweeping legal and institutional changes, however, lie a number of significant obstacles to meaningful progress. While the TRRC has shone light onto many of the darkest events that took place under Mr. Jammeh's rule, very few prosecutions have been undertaken to hold the perpetrators of these crimes to account. The few that have been attempted, such as the trial of nine former security officials charged with murder, have been fraught with serious difficulties.¹⁵ Whether further prosecutions will take place, and whether the Gambian legal system is ready and able to handle them, remains an open question.

Finally, there remain serious lingering questions and concerns about the sitting government of President Barrow, who expressly committed to serving a three-year term when Mr. Jammeh was removed from power and has now reneged on that commitment to step down. In many respects, the brutality of Mr. Jammeh's dictatorship still hangs over life in The Gambia, and given the length and severity of his rule, one might naturally ex-

pect that the resulting individual and institutional psychology would be hard to shake. It is also a practical reality that many of the individuals working under the current regime had previously worked for Mr. Jammeh, including government officials and members of the police force.

Over the course of President Barrow's term, a number of troubling human right violations have been committed against journalists and human rights advocates, including:

- March 2017 – Journalist Baboucarr Nani Sey was arrested and detained on charges of organizing a demonstration without a permit.¹⁶
- June 2018 – Police shot live ammunition at protesters who were opposing mining practices in Faraba Banta, killing two people and wounding at least 8 others.¹⁷ After the incident, the government created a Commission of Inquiry, which produced an extensive report.¹⁸ Five police officers were arrested, but President Barrow then unilaterally “discontinued” the prosecution.¹⁹
- January 2020 – Authorities arrested three journalists and closed two radio stations in response to a “3 Years Jotna” (3 years is enough) protest against President Barrow, focused on his decision not to step down after three years in office. Media sources allege that three individuals were killed, which the government denies.²⁰ Authorities closed the radio stations for inciting violence in contradiction to their licenses.²¹ The protest movement was subsequently banned.²²

9 Bakary Ceesay, “Cabinet Approves Freedom of Information Bill, Removes all Gender Discriminatory Laws”, PanAfrican Visions (18 November 2019), online: <https://panafricanvisions.com/2019/11/gambia-cabinet-approves-freedom-of-information-bill-removes-all-gender-discriminatory-laws/>.

10 Republic of The Gambia, Access to Information Bill 2019, online: https://www.law-democracy.org/live/wp-content/uploads/2019/07/Gambia.RTI_CS_Jul19.pdf.

11 United Nations General Assembly, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Gambia (22 August 2019) at 10, 13, online: <https://undocs.org/pdf?symbol=en/A/HRC/WG.6/34/GMB/1>; United Nations Human Rights Committee, Human Rights Committee Examines the State of Civil and Political Rights in The Gambia in Absence of Report (6 July 2018), online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23343&LangID=E>.

12 Dennis Erezi, “Coalition Opposes Legislation on Fake News, Hate Speech in Africa”, The Guardian (27 November 2019), online: <https://guardian.ng/news/coalition-opposes-legislation-on-fake-news-hate-speech-in-africa/>.

13 United Nations General Assembly, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Gambia (22 August 2019) at 13, online: <https://undocs.org/pdf?symbol=en/A/HRC/WG.6/34/GMB/1>; Article 19, Committee to Protect Journalists & Access Now, “Joint Submission to the Universal Periodic Review of the Gambia” (4 April 2019) at 6, online: https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf.

14 Article 19, Committee to Protect Journalists & Access Now, “Joint Submission to the Universal Periodic Review of the Gambia” (4 April 2019) at 6, online: https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf.

15 The prosecution stayed the trial in November 2019 pending the outcome of decisions before the Court of Appeal. See e.g. Yankuba Jallow & Nelson Manneh, “Prosecution Files for Stay of Proceedings in NIA 9 Case”, Foroyaa (5 November 2019), online: <https://foroyaa.net/prosecution-files-for-stay-of-proceedings-in-nia-9-case/>.

16 Article 19, Committee to Protect Journalists & Access Now, “Joint Submission to the Universal Periodic Review of the Gambia” (4 April 2019) at 6, online: https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf.

17 Article 19, Committee to Protect Journalists & Access Now, “Joint Submission to the Universal Periodic Review of the Gambia” (4 April 2019) at 8, online: https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf.

18 The Gambia Times, “The Faraba Banta Commission of Inquiry 1st July to 31st August 2018” (17 January 2019), online: <https://www.thegambiatimes.com/the-faraba-banta-commission-of-inquiry-report/>.

19 Freedom Newspaper, “Gambia: Breaking News: Faraba Banta Commission White Paper Report Indicts PIU Officers for Carrying out Unlawful Shooting Resulting in the Killing of Three Gambian Environmentalists!” (29 November 2018), online: <https://www.freedom-newspaper.com/2018/11/29/gambia-breaking-news-faraba-banta-commission-white-paper-report-indicts-five-piu-officers-for-carrying-out-unlawful-shooting-resulting-in-the-killing-of-three-gambian-environmentalists/>; State House Press Release, “President Barrow Accepts Appeal for the Discontinuance of Faraba Trial” (8 January 2019), online: <https://foroyaa.net/president-barrow-accepts-appeal-for-the-discontinuance-of-faraba-trial/>; Article 19, Committee to Protect Journalists & Access Now, “Joint Submission to the Universal Periodic Review of the Gambia” (4 April 2019) at 30, online: https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf.

20 Article 19, “Gambia: New Regime Crackdown a Chilling Reminder of 22 Years of Repression” (29 January 2020), online: <https://www.article19.org/resources/gambia-new-regime-crackdown-a-chilling-reminder-of-22-years-of-repression/>.

21 Reporters Without Borders, “Three Journalist Arrested, two Radio Stations Closed in Gambia” (27 January 2020), online: <https://rsf.org/en/news/three-journalist-arrested-two-radio-stations-closed-gambia>.

22 Chrispin Mwakideu, “Gambian President Rolls Back Press Freedom, DW (31 January 2020), online: <https://www.dw.com/en/gambian-president-rolls-back-press-freedom/a-52213639>.



Men hang a banner for the inauguration ceremony of Gambian President Adama Barrow prior to his return on 26 January 2017 in Banjul, The Gambia. Barrow had been staying in Senegal after authoritarian ex-President Yahya Jammeh refused to step down following December election results. Photo: Andrew Renneisen/Getty Images

The Gambia sits at a particular moment in history that appears genuinely loaded with promise, and yet also presents ongoing cause for potential concern. As its laws and institutions are being reconfigured, and as it champions human rights in faraway places like Myanmar,²³ its current government and governmental institutions have also shown troubling signs when it comes to defending and perpetuating their own interests – including a willingness to disrupt the rule of law, interfere with the justice system and target those who disagree with them.

²³ Oumar Ba, “This tiny African country got the U.N.’s top court to investigate Myanmar for genocide”, *The Washington Post* (29 January 2020), online: <https://www.washingtonpost.com/politics/2020/01/29/this-tiny-african-country-got-uns-top-court-investigate-myanmar-genocide/>.

Chapter 1:

Existing criminal justice mechanisms to address the targeting of journalists and human rights advocates in The Gambia

An analysis of the potential threats that face journalists and human rights advocates in The Gambia must start from a recognition that for most of the past 25 years, the central threats facing journalists or human rights advocates have come from the government itself, with the complicity of institutions like the police, the secret service, the prison system and the Ministry of Justice. Enacting meaningful change will require changing the law and restricting some of the legal and institutional powers of these institutions to ensure that they cannot and will not be used against journalists, human rights advocates, or other opponents of the sitting government.

At the same time, a robust criminal justice system must also be able to fully and fairly investigate and prosecute the perpetrators of threats or violence against journalists or human rights advocates, whether those perpetrators were acting at the behest of the state or independently of it.

1. Protecting journalists and human rights defenders from the law

a. Laws that threaten or endanger the safety of journalists or human rights advocates

As has been the case in many countries, The Gambia has had a number of laws on the books that endanger or specifically threaten the work of journalists or human rights advocates. Many of these laws have been used to discourage, or prosecute, anyone who might be seen to be challenging the government or its institutions. What follows below is an overview of these laws and a review of their current applicability.

- **Sedition laws** – Sections 51 and 52 of Gambia’s Criminal Code make it a criminal offence to bring into hatred or contempt, or to excite disaffection, against the President, the government, or the administration of justice. These laws have made it a specific

and actionable crime for journalists or human rights advocates not just to oppose the President or ruling government but even to suggest that the public should not be satisfied with their work. As long as they exist, these laws will provide a powerful and dangerous basis to deploy the justice system against journalists or human rights advocates.

- The constitutionality of Gambia's seditious laws was recently challenged in the seminal case *Gambia Press Union v The Attorney General* (May 2018).²⁴ While the court ruled a number of other provisions unconstitutional, it specifically upheld seditious laws in relation to language directed toward the President or the administration of justice.
- This outcome is highly problematic, as this seditious law constitutes a severe impingement on freedom of speech and will enable police and prosecutors to bring criminal charges against journalists or human rights advocates who criticize the President or the legal system. This provision should not be included in the Draft Bill and we hope that it will be omitted (at the time of writing it does not appear to have been included, and comments from the Attorney General have also suggested that it will be removed).²⁵ Nonetheless, the fact that criticism of the President was specifically exempted from a finding of unconstitutionality in this court challenge, and the paucity of the legal reasoning involved, suggests that the Gambian judiciary may still be reluctant to be seen as acting against the interests of the President.
- Parental insult – This proposed law (Bill 107) would have made it a crime for any person to direct "... parental insults to the President, Vice President, Cabinet Ministers, Judicial officers, Members of the National Assembly or any public officer holding a public officer in the exercise of his or her official functions ...". The provision was also written to apply to statements made by individuals (or journalists) outside of The Gambia if they were to subsequently enter the country.
- Shortly after its announcement, the Bill was withdrawn by the Ministry of Justice. Nonetheless, the manner in which it was drawn up, and the fact that it was put forward at all, suggest that vigilance and domestic and international scrutiny will continue to be important to keep such legislation in check.

²⁴ Supreme Court of The Gambia, *Gambia Press Union v The Attorney General*, SC Civil Suit No. 1/2014 (9 May 2018), online: <https://www.lawhubgambia.com/sc-1-2014>.

²⁵ See e.g., Lamin Njie, "Justice Minister Clarifies 'Saaga Ndey' or 'Saaga Bai' Insult Law", The Fatu Network (15 November 2019), online: <https://fatu-network.net/justice-minister-clarifies-saaga-ndey-or-saaga-bai-insult-law/>.

- Defamation (libel) – Sections 178-180 of the Criminal Code made it a criminal offence to publish "defamatory matter," with defamatory matter defined very broadly as "matter likely to injure the reputation of a person by exposing him or her to hatred, contempt or ridicule."
- In the landmark judgment of *Emil Touray and 2 Ors v The Attorney General*²⁶ (May 2018) the Supreme Court of The Gambia struck these sections down as unconstitutional.²⁷
- The draft Criminal Offences Bill does not contain any provisions relating to libel or defamation, so it appears that these will no longer exist as criminal offences.
- False publication and broadcasting – Section 181A of the Criminal Code makes it an offence to "wilfully, negligently or recklessly, or having no reason to believe that it is true, publish or broadcast any information or news which is false in any material." Section 59 makes it an aggravated offence to publish false news "with intent to cause fear and alarm to the public."
 - The draft Criminal Offences Bill will also include a substantially similar provision.
 - Creating a provision of this nature that criminalizes information or news that is deemed "false in any material" gives rise to serious risk of abuse as a mechanism for the state to punish dissent or disagreement.
- Intent to hurt or wound religious feelings – Section 120 of the Criminal Code criminalizes the act of intentionally wounding someone's religious feelings, which includes "uttering, writing any word or making any sounds in the hearing of that person, or making any gesture in the sight of that person, or placing any object in the sight of that person."
 - The draft Criminal Offences Bill will also include a substantially similar provision [s.113].
 - This provision also gives rise to concern from the perspective of journalists or human rights proponents. The concept of "wounding religious feelings" is vague and could be applied by authorities to justify prosecuting journalists or human rights advocates who could be deemed to have wounded the feelings of the subject or of a religious group more broadly. If the intent here is to protect against the promotion of religious animosity or hatred then a higher and more actionable standard like "wilful promotion of hatred" would be much more appropriate.
- Unlawful assembly/protest without a permit – The *Public Order Act* empowers anyone authorized by the President to "direct the conduct of all public processions and prescribe the route by which and the times at which any procession may pass." It also requires anyone who wishes to form a public procession to apply for a license, which may only be granted where the procession is not likely to cause a breach of the peace.
 - The draft Criminal Offences Bill will define an "unlawful assembly" as follows: "When three or more persons assemble with intent to commit an offence, or, being

²⁶ Supreme Court of The Gambia, *Bai Emil Touray and Two Others v The Attorney General*, SC Civil Suit No. 001/2017 (9 May 2018), online: <https://www.lawhubgambia.com/sc-1-2017>.

²⁷ Note that international human rights law has recognized that imprisonment is never an appropriate penalty for defamation. See: General Comment 34 to Article 19 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee.

assembled with intent to carry out some common purpose, conduct themselves in a manner that cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.” [s.62]

- This requirement is especially problematic. It constitutes a serious infringement on both freedom of assembly and freedom of speech, in that it requires governmental pre-approval for assemblies and protests and sanctions a lack of compliance with a criminal sentence. The Gambia has had a particularly troubled recent history, in which police have opened fire on protestors using extreme and unjustified force (see for example the April 2000 Gambian student massacre²⁸ and the Faraba shooting described above). The criminalization of protests contributes to the impunity with which the government and the police use deadly force to break them up.
- **Boycotts** – Section 59A of the Criminal Code allows the government to “designate” a boycott whenever one is conducted, threatened, or likely to be conducted, and is likely to result in violence, intimidation or damage. Once a boycott is designated, furthering a boycott by mouth or by way of publication becomes a criminal offence.
 - The draft Criminal Offences Bill will also include a substantially similar provision [s.57].
 - This provision exerts a severe impingement on freedom of speech in that it provides the government with the power to criminalize any speech about a boycott or any journalistic publication or discussion of a boycott.

b. The Constitutional Review Commission and the Draft Constitution

The Constitutional Review Commission (CRC) was established in June 2018 and tasked to draft a new Constitution for The Gambia. On 30 March 2020, the CRC issued its Draft Constitution, which includes several provisions that should directly benefit journalists and human rights workers:

- *Freedom of Expression* (s.46) – This includes the freedom “to seek, receive or impart information or ideas.” However, the protection for freedom of expression is also restricted on certain grounds, including an “incitement to violence or to break law and order.”
- *Freedom of the Media* (s.47) – The Draft Constitution contains a very progressive provision that specifically addresses freedom of the media, requiring “a free and independent media” in The Gambia and entrenching the following rights:
 - a. the right of natural or juristic persons to own and operate media;
 - b. the freedom of the media to gather, process and transmit news and information without any interference, directly or indirectly;



Members of the media watch for ex-President Yahyah Jammeh prior to his flight leaving the country on 21 January 2017 at Banjul International Airport in Banjul, The Gambia. Jammeh was defeated by the current president, Adama Barrow, ending his 22-year rule. Photo: Andrew Renneisen/Getty Images

- c. protection from control or censorship of news by any person or authority prior to publication; and
- d. protection from the disclosure of sources of information.

These freedoms are restricted on the same grounds as in s.46 and do not apply where there is an “incitement to violence or to break law and order.”

- Section 47(5) specifically dictates that “*the State shall not penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.*”
- Section 132 – The Draft Constitution also directs that the National Assembly may make provision for private prosecutions, which are likely to be relevant in the event that the state refuses to prosecute particular acts. We understand that an implementation committee has now been set up to address this.

The inclusion of these provisions into the Draft Constitution is a positive development. Constitutional protections for these rights and freedoms should help to entrench them as fundamental values and provide a powerful tool with which to challenge problematic or overreaching laws.

²⁸ The Independent, “Gambian Police Open Fire on Student Demonstration” (9 April 2000), online: <https://www.independent.co.uk/news/world/africa/gambian-police-open-fire-on-student-demonstration-282095.html>.

2. Using the justice system to investigate and prosecute perpetrators of violence against journalists or human rights advocates

Murder, physical attacks, attempted or planned attacks, or threats made against journalists or human rights advocates should be rigorously investigated and fairly prosecuted in Gambian courts in accordance with the criminal law. In the specific context of The Gambia, the government and its institutions have been the primary source of violence, threat and intimidation against journalists and human rights workers. As a first step, protecting journalists and human rights advocates means disabling the legal and functional ability of the government and its institutions to mobilize against them. But as a second step, governmental institutions such as the police and the Ministry of Justice, or public sector human rights institutions, should also be able to hold the perpetrators of such acts to account.

The Gambia does not have specialized criminal legislation or criminal justice mechanisms that specifically address the targeting of journalists or human rights advocates. Nor does it have any specific system for detecting threats to journalists or outspoken members of the public. In this respect, it stands in a similar position to most legal systems around the world. However, as we address further below, given the country's recent history of violence and intimidation against journalists and human rights advocates, a more robust and proactive accountability mechanism may be appropriate.

a. Understanding existing criminal investigation and prosecution processes in The Gambia

The Gambia is a common law country that follows the adversarial trial model. The state's investigative powers in criminal matters are exercised primarily by the Gambian Police Force. Several other agencies also have investigative powers, including the National Drug Enforcement Agency, the National Intelligence Agency (NIA), and the Gambian National Guard.

Police have a broad range of powers to conduct an investigation into criminal conduct. A police officer can apply to a judge or magistrate for a warrant to search any property, including private property, if they can establish that probable cause exists to believe the search will find evidence of a crime. The current Constitution also enables searches without a warrant under section 23(2)(b) in certain circumstances. A police officer can arrest and detain a person if they have a reasonable suspicion they committed, or are about to commit, a criminal offence.²⁹ Police have the power to conduct a search incident to the arrest of a suspect, including of the suspect's home or a place of business, where they have a reasonable apprehension that material evidence connected with the commission of an offence may be found there.

To investigate a suspected offence, police can conduct a police station inquiry in which they may question victims or potential witnesses and take witness statements. Police can also interrogate an accused person in accordance with certain basic evidentiary rules, including that the accused should be provided with a standard caution, that a confession should be recorded, and that a confession must be free and voluntary. Once the police station inquiry has been concluded, if the investigating police officer believes

there is sufficient evidence to warrant a criminal prosecution, then he or she can proceed to press charges. The charge sheet, or information, must set out the particulars of one or more criminal offences in clear terms, as well as the trial court that has jurisdiction to hear the case. In The Gambia, the High Courts have unlimited subject matter and territorial jurisdiction to try criminal cases. In practice, the Chief Justice determines which Division will hear a particular criminal case.

With respect to the criminal prosecution of a case, there are three agencies in The Gambia with prosecutorial powers: the Directorate of Public Prosecutions, the National Drug Enforcement Agency, and the police. An additional unit within the Attorney General's office, the Directorate of Special Litigation, also has the ability to institute and prosecute criminal cases.

The Director of Public Prosecutions can institute prosecutions before any court in The Gambia with criminal jurisdiction by filing an indictment that specifies the charges against an accused person and that provides a list of witnesses to be called and a summary of the evidence expected from each witness. The National Drug Enforcement Agency can only institute prosecutions of drug cases in Magistrate Courts. Finally, police can institute prosecutions in a Magistrate Courts or court of summary jurisdiction (lower level courts).

In practice, the significant majority of prosecutions in The Gambia are undertaken by police prosecutors. However, it should be noted that Section 85 of the 1997 Constitution grants the Director of Public Prosecutions the power to take over and either continue or discontinue any criminal proceeding, whether it was instituted by the police or any other institution.

b. The current state of affairs

It is readily apparent that under President Jammeh's rule, neither police nor prosecutors demonstrated the willingness to investigate and prosecute crimes committed against journalists or human rights advocates. High profile cases from that period in which the perpetrators were never held accountable included the following:

- Following a speech by President Jammeh in July 2004 that warned "opposition journalists" would "pay a high price" should they misquote him, specific and related threats were made to the President of the GPU. One week later, attackers targeted BBC Banjul correspondent Ebrima Sillah, dousing his home with gasoline and setting it on fire.
- Later that year, prominent journalist Deyda Hydera, editor of "The Point" and a correspondent for Reporters Without Borders, was repeatedly threatened and then ultimately murdered. In testimony before the TRRC, army officers admitted to carrying out the assassination under orders from President Jammeh.³⁰
- In 2006, Chief Ebrima Manneh, a journalist with the Daily Observer, was arrested and detained for passing unfavorable information about President Jammeh to a BBC

²⁹ Section 19(3) of the existing Constitution; Section 15 (a) of the current *Criminal Procedure Code*.

³⁰ *Deyda Hydera Jr. v The Gambia ECW/CCJ/APP/30/11* (10 June 2014), online: <https://ihirda.uwazi.io/en/document/rex8y8lh2bjgiaufbso6crf6r?page=3>.

reporter.³¹ Although the Economic Community of West African States (ECOWAS) Court issued a ruling requiring his immediate release, Manneh was never released and his fate remains unknown.³²

- Also in 2006, journalist Musa Saïdykhan, the Editor-in-Chief of *The Independent*, was arrested and detained by Gambian police. He was tortured to the point of unconsciousness and left with a broken hand and permanent scars on his back, legs, and arms.³³ The Media Freedom Foundation of West Africa brought a case on his behalf and the ECOWAS court found that The Gambia had violated Saïdykhan's human rights and ordered compensatory damages of 200,000 USD.³⁴
- In 2009, after the publication of a GPU press release criticizing President Jammeh's comments about Deyda Hydara, NIA plainclothes agents arrested the managing editor of *Foroyaa*, Sam Sarr. When reporter Abubakr Saïdy Khan tried to take photographs documenting the arrest, he was also arrested. The NIA also arrested Bai Emil Touray, *Foroyaa*'s Assistant Editor and the GPU's Secretary General, along with four journalists from *The Point*. The journalists were detained and kept incommunicado for three days, brought before a magistrate's court, then remanded for four additional days of detention. The Director of Public Prosecutions later proffered charges of sedition, criminal defamation and conspiracy to commit a felony. After a two-month trial, the journalists were convicted and sentenced to a mandatory term of two-year imprisonment, then released by presidential pardon after 27 days in jail.³⁵

None of the perpetrators of these violations were brought to justice. Not only did police and prosecutors not discharge their duty to hold these perpetrators accountable, they were in many cases complicit in the abuses.

It is too early to tell whether police and prosecutors today, under new leadership, will continue to demonstrate a reluctance to investigate and prosecute crimes against journalists or human rights advocates, and in particular whether they will be reluctant to do so where those individuals have been actively critical of the sitting government. It is also unclear whether they will continue to allow the justice system to be marshalled against journalists and human rights advocates where they are seen to be acting against the government. On the one hand, we should not expect that any criminal justice system would emerge from such a long period of darkness and dysfunction and simply revert to a proactive, functional system. Any such transformation will require structural and institutional change, deliberate work, and extensive training.

31 IFEX, "Musa Saïdykhan and Ebrima Manneh: Justice Subverted by the State" (4 June 2018), online: <https://ifex.org/musa-saidykhan-and-ebrima-manneh-justice-subverted-by-the-state/>.

32 *Chief Ebrima Manneh v the Gambia ECW/CCJ/APP/04/07* (5 June 2008), online: http://www.worldcourts.com/ecowascj/eng/decisions/2008.06.05_Manneh_v_Gambia.htm.

33 IFEX, "Musa Saïdykhan and Ebrima Manneh: Justice Subverted by the State" (4 June 2018), online: <https://ifex.org/musa-saidykhan-and-ebrima-manneh-justice-subverted-by-the-state/>.

34 *Musa Saïdykhan v the Gambia ECW/CCJ/APP/11/07* (16 December 2010), online: <https://ihirda.uwazi.io/ar/document/froaftgl56tn7350qszzd7vi?page=1>.

35 Frontline Defenders, *Bai Emil Touray Testimony* (undated).



A sign for The Gambia's Truth, Reconciliation and Reparations Commission in Banjul, The Gambia. The commission was launched after former Gambian President Yahyah Jammeh was forced into exile in 2017. Dozens of victims and suspected criminals have testified as Gambians have watched the proceedings in real-time. Photo: Danielle Paquette/The Washington Post via Getty Images

As was described above, however, the presidency of Adama Barrow, who took power in 2017, has also been marked by a number of serious violations committed against journalists and protestors. Ensuring that Gambian police will protect journalists or human rights advocates who oppose the government, that they will investigate perpetrators who threaten or attack such individuals on behalf of the government, or that prosecutors will hold such perpetrators to account, raises broad systemic questions that extend beyond the specific ambit of protecting journalists or human rights defenders. Specifically: will police willfully investigate and act in opposition to the government or governmental institutions, or seek to hold perpetrators to account when they acted in support of the government or at its direction? Will prosecutors?

It is one endeavor to draft progressive laws and quite another to comply with them. This was the case in The Gambia before 2017 and it will likely remain the most significant challenge going forward. As such, we believe that developing practical strategies to protect journalists and human rights defenders means pursuing outcomes on multiple levels: advocating for meaningful legal and institutional change, helping to develop local organizations and ongoing practical strategies, and where necessary, bringing international organizations to bear when they need support.

Chapter 2:

Existing human rights mechanisms in The Gambia

Over the course of his presidency, President Barrow's administration has taken a number of significant steps to advance The Gambia's commitment to human rights. In February 2017, the Barrow administration rescinded President Jammeh's application to withdraw from the International Criminal Court.³⁶ In October 2018, the administration deposited a special declaration with the African Court on Human and Peoples' Rights, enabling the Court to receive direct applications regarding The Gambia from non-governmental organizations and individuals.³⁷ In September 2018, the Government ratified three prominent international human rights treaties: 1) the *Second Optional Protocol to the ICCPR*; 2) the *International Convention for the Protection of All Persons from Enforced Disappearances*, and 3) the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.³⁸

President Barrow's administration has also established several human rights mechanisms, outlined below, which have the potential to address human rights violations targeted against journalists, media workers or human rights advocates.

- The TRRC

As addressed above, the TRRC is the primary mechanism currently addressing human rights violations that have occurred in The Gambia. The TRRC's final report, its factual findings, and its recommendations for societal and institutional change, will be of significant importance to journalists and human rights advocates.

36 Aboubacarr Tambadou, "Statement of the Attorney General at the Legal Year 2020", The Point (21 January 2020), online: <http://thepoint.gm/africa/gambia/article/statement-by-the-attorney-general-at-the-legal-year-2020>.

37 Mark Kerksten, "A Special Declaration: Towards a Culture of Accountability in The Gambia?" Justice in Conflict (10 January 2019), online: <https://justiceinconflict.org/2019/01/10/a-special-declaration-towards-a-culture-of-accountability-in-the-gambia/>.

38 Article 19, Committee to Protect Journalists & Access Now, "Joint Submission to the Universal Periodic Review of the Gambia" (4 April 2019), online: https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf.

- The National Human Rights Commission

In December 2017, the National Assembly passed the *National Human Rights Commission (NHRC) Act*. The Act established a Commission with a mandate to promote and protect human rights and to receive, investigate and conduct hearings into complaints from the public and "recommend appropriate redress for a complainant."³⁹ The NHRC has a number of prescribed powers, including the ability to hear a complaint, summon witnesses, and compel the production of documents.⁴⁰

The NHRC does not appear to have the power to prosecute or to impose punishment – the only specific power it has been granted in this respect is the somewhat ambiguously defined ability to "enforce its decisions, including measures to protect the life and safety of an individual."⁴¹

The NHRC appears primarily intended to promote and advocate for human rights in The Gambia and to make recommendations to the government as to how human rights violations should be remedied. While the government is required to respond to an NHRC recommendation within 30 days, the NHRC appears to have little power to enforce penalties or other consequences for its findings without the cooperation and action of other government entities.

The NHRC has only just been created and its role and effectiveness will take time to determine. While the NHRC does not currently have the powers to exercise a prosecutorial or quasi-prosecutorial function, or to compel action from the government, it nonetheless holds the potential to advance the cause of human rights, to bring crimes against human rights advocates or journalists to public attention, and to publicly demand action from the government.

With respect specifically to crimes against journalists, in November 2019 the NHRC publicly condemned an attack on journalists at the Janjangbureh-Lamin Koto ferry crossing by members of President Barrow's youth movement group (Barrow Youth for National Development). In its condemnation, the NHRC emphasized the need for journalists to be able to conduct their work without fear.⁴²

The NHRC has the ability to establish thematic committees, invite experts to participate on those committees, and have these committees produce specialized reports.⁴³ At the time of writing it is not clear whether the NHRC has created a committee to focus on threats or violence against journalists, but such a step would appear to hold some promise as a way to bring increased attention to threats or violence committed against journalists,

39 Republic of the Gambia, National Human Rights Commission Act, 2017, ss.13, 22, online: <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5a841d8ac83025363e3f9827/1518607812133/National+Human+Rights+Commission+Act%2C+2017.pdf>.

40 Republic of the Gambia, National Human Rights Commission Act, 2017, ss.13, online: <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5a841d8ac83025363e3f9827/1518607812133/National+Human+Rights+Commission+Act%2C+2017.pdf>.

41 Republic of the Gambia, National Human Rights Commission Act, 2017, ss. 13(2)(f) online: <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5a841d8ac83025363e3f9827/1518607812133/National+Human+Rights+Commission+Act%2C+2017.pdf>.

42 NHRC Press Release, "Gambia's Human Rights Commission Calls for Respect of Journalists", The Point (28 November 2019), online: <http://thepoint.gm/africa/gambia/article/gambia-human-rights-commission-calls-for-respects-of-journalists>.

43 Republic of the Gambia, National Human Rights Commission Act, 2017, ss.19, online: <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5a841d8ac83025363e3f9827/1518607812133/National+Human+Rights+Commission+Act%2C+2017.pdf>.

and to empower journalists and other civil society participants to become involved in the Commission's process.

Also encouraging is that the NHRC appears to have committed itself to gender equality and to addressing a gender perspective in its work. Two of its five Commissioners are women and the NHRC has made a number of public statements advocating for better representation of women in Gambian society, bringing attention to issues of domestic violence, and speaking to the importance of gender equity.

These are early days in the NHRC's existence and it is not yet clear how effective it will become as an institution. While the NHRC does not yet appear to have produced much in the way of reports or results, it appears early to judge its potential impact or effectiveness.

- The Office of the Ombudsman

The Office of the Ombudsman is an independent public institution that was created by the *Ombudsman Act 1997* with a mandate to promote and protect human rights and support vulnerable groups. The office was empowered to investigate government departments and public bodies and was comprised of three main units: an Investigations Unit, a Human Rights Unit, and an Information and Documentation Unit. The Office of the Ombudsman was first created under the Jammeh regime, but appears to have been fundamentally ineffective in addressing human rights violations, government misconduct, or other governmental shortcomings.

The Draft Constitution (2020) would create the Office of the Ombudsperson as a seemingly new institution, granting the Ombudsperson the power to investigate:

- any conduct in State affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice; and
- complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.⁴⁴

It remains to be seen whether the Office of the Ombudsperson will be more effective in holding government agencies accountable and more receptive to conducting meaningful internal investigations.

- Accountability within the Gambia Police Force and a police "Human Rights Unit"

The Gambia Police Force, which is being renamed under the Draft Constitution to the Gambia Police Service, faces a number of challenges if it is to evolve into a modern and professional institution that promotes and protects human rights. Indeed, given The Gambia's recent history, many people still perceive the police as a threat rather than as a protector of their lives and property.⁴⁵

In January 2020, Attorney General Tambadou announced that the Gambia Police Force had "now established a Human Rights Unit to receive complaints and provide prompt responses to reports of abuse and police brutality."⁴⁶ While this sounded like a potentially encouraging step, a subsequent media report challenged the claim and noted that such a unit was already in existence, having been established in 1993.⁴⁷ According to that report, the unit has existed under several different names and is now known as the Human Rights and Professional Standard Unit. It does not receive support from the police administration or the Ministry of Justice.⁴⁸

There have been reports that the NHRC conducted police trainings "to improve the knowledge gap of police officers on matters relating to the protection and promotion of human rights in the country."⁴⁹ Nonetheless, it appears clear that significantly more progress will be required. At present, it is difficult to have confidence that current police oversight mechanisms are adequate.

While the creation or seeming rejuvenation of several human rights mechanisms appears to be a positive step, the question remains as to whether their existence will translate into tangible practical results. The NHRC shows promise but has limited powers to impose or enforce its findings without broader governmental and institutional cooperation. The newly composed Office of the Ombudsperson appears promising, but its effectiveness remains a very open question.

It remains to be seen whether these human right mechanisms will work effectively as currently constructed, whether they will have access to sufficient resources, expertise and institutional support, and whether they will be willing to meaningfully act where the President, his supporters, or other governmental institutions may have been complicit in violations.

45 See e.g. Momodou Jarju, "Gambia: Police Admit Capacity Gap in Human Rights," FOROYAA Newspaper (Serrekunda), AllAfrica, (4 September 2019), online: <https://allafrica.com/stories/201909050110.html>.

46 Aboubacarr Tambadou, "Statement of the Attorney General at the Legal Year 2020", The Point (21 January 2020), online: <http://thepoint.gm/africa/gambia/article/statement-by-the-attorney-general-at-the-legal-year-2020>.

47 Assan Sallah, "On the Issue of the Human Rights Unit at the Gambia Police Force, is Justice Minister Tambadou Misleading the Public?" Freedom Newspaper (23 January 2020), online: <https://www.freedomnewspaper.com/2020/01/23/on-the-issue-of-the-human-rights-unit-at-the-gambia-police-force-is-justice-minister-tambadou-misleading-the-public/>.

48 Assan Sallah, "On the Issue of the Human Rights Unit at the Gambia Police Force, is Justice Minister Tambadou Misleading the Public?" Freedom Newspaper (23 January 2020), online: <https://www.freedomnewspaper.com/2020/01/23/on-the-issue-of-the-human-rights-unit-at-the-gambia-police-force-is-justice-minister-tambadou-misleading-the-public/>.

49 Momodou Jarju, "Gambia: Police Admit Capacity Gap in Human Rights," FOROYAA Newspaper (Serrekunda), AllAfrica, (4 September 2019), online: <https://allafrica.com/stories/201909050110.html>.

44 Constitutional Review Commission, Draft Constitution (30 March 2020) at para. 223(4), online: <https://crc220.org/wp-content/uploads/2015/12/CRC-FINAL-DRAFT-CONSTITUTION.pdf>.



Supporters of The Gambia's President Adama Barrow await his arrive at Banjul International Airport upon returning to the country from Senegal after the departure of Yahya Jammeh on 26 January 2017. This followed the presidential election that took place on 1 December 2016. Photo: Xaume Olleros/Anadolu Agency/Getty Images

Chapter 3:

Recommendations

1. Pursue a preliminary examination into the creation of a national safety and accountability mechanism.

Given the recent history of The Gambia, in which journalists and human rights defenders have frequently and repeatedly been the target of threats, violence, and targeted acts of intimidation, we recommend that the country give consideration to the creation of an independent mechanism that could provide protection, and pursue accountability, for journalists and human rights advocates. There is a growing precedent for such mechanisms, which have been instituted across a broad range of countries, including Afghanistan, Brazil, Colombia, El Salvador, Guatemala, Honduras, Iraq, Mexico, Pakistan, Serbia and South Sudan.⁵⁰ Consistent with the framework set out in the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, countries can and should create their own mechanisms to address journalist safety, the accountability of those who commit crimes against journalists, or both.

For such a mechanism to be successful in The Gambia, it would require genuine acceptance and support from the Gambian government, Gambian civil society, and the community of Gambian journalists. Even with such support, a national mechanism would almost certainly face a number of practical barriers that would need to be overcome from the outset. These barriers could include, but would not be limited to: (i) difficulties in obtaining and maintaining funding in the context of a broader judicial and governmental system that is already severely under-resourced, (ii) a seeming lack of existing local and community support for such a mechanism, (iii) the potential perceived concern from stakeholders that scarce resources would be better allocated elsewhere, and (iv) a potential lack of support from the sitting government.

A preliminary examination into the feasibility of such a mechanism should identify and consult with a key group of diverse stakeholders from an early stage. Such stakeholders would include local journalism and media organizations, civil society groups (including organizations focused on freedom of expression), a diverse range of individual voices within the journalism community, and key members of the government and the criminal justice sector.⁵¹ Given the particular threats, risks and disadvantages faced by female journalists in the profession, special efforts should be made to consult with organizations and individuals who could speak to the perspective of female journalists and the particular risks they face. As has been emphasized in a number of recent UN reports, and elsewhere

in this report, attacks against women journalists “often take a gender-specific form and the violence and threats are often sexualized.”⁵²

In the Gambian context, certain specific civil society groups, such as the Gambia Press Union, the West Africa Journalists Association, and the Women Journalist Association of The Gambia, would likely have an important role to play. Such consultations should occur not just at the initial consideration stage but at all stages, including as the mechanism is being designed and implemented.

a) Scope of the mechanism

Who should such a mechanism address and what types of acts should it cover? While this report has considered the threats and violence committed against both journalists and human rights advocates, the current institutional context of The Gambia suggests that a particular focus on journalists may be most effective. To begin with, The Gambia has recently established other institutions, including in particular the National Human Rights Commission, with a particular mandate and prescribed powers to review human rights violations. More generally, establishing the mandate of a national mechanism too broadly may detract from its focus and impact, and given the particularly limited capacity of the Gambian state to support any of its justice system institutions, the more focused and streamlined such a mechanism can be, the more success it is likely to achieve.

Another central question that would need to be decided is whether such a mechanism would act as a protective mechanism, an impunity mechanism, or both. In other words, would the mechanism seek to protect journalists by preventing violence from occurring – for example by focusing on threat assessments and threat response? Would it seek to investigate allegations of previous offences and abuses against journalists and work to hold the perpetrators accountable? Or might it pursue both of these aims?

i) Considering a protective mechanism

Given the violence that has occurred against journalists in the past, one can certainly see the value of a protective mechanism with journalists as its specific focus. Such a protective mechanism could consider the applicability and usefulness of a range of potential measures, including protection and relocation programs, hotlines and responsive systems, safety equipment, training for media personnel, and police monitoring.⁵³

In the particular context of The Gambia, however, it is the government, the government’s ardent supporters, and governmental institutions like the police and the secret service that have constituted the largest threat to journalists and human rights advocates. As a result, asking and entrusting another government institution to conduct threat assessments on behalf of these individuals could be fundamentally counterproductive. A new governmental institution would seemingly need to earn a significant amount of trust

50 UNESCO, “National Safety Mechanisms”, online: <https://en.unesco.org/themes/safety-journalists/national-safety-mechanisms>.

51 See e.g. Toby Mendel, *Supporting Freedom of Expression: A Practical Guide to Developing Specialised Safety Mechanisms*, UNESCO & Centre for Law and Democracy (April 2016) at 27, online: https://en.unesco.org/sites/default/files/supporting-freedom-of-expression_guide-safety-mechanisms.pdf.

52 Silvia Chocarro, *The Safety of Women Journalists: Breaking the Cycle of Silence and Violence*, International Media Support (2019) at 12-13, online: https://www.mediasupport.org/wp-content/uploads/2019/10/2871-Gender-safety_FINAL_31.10.19_spreads-1.pdf.

53 See e.g. Toby Mendel, *Supporting Freedom of Expression: A Practical Guide to Developing Specialised Safety Mechanisms*, UNESCO & Centre for Law and Democracy (April 2016) at 27, online: https://en.unesco.org/sites/default/files/supporting-freedom-of-expression_guide-safety-mechanisms.pdf.

before it could discharge such a protection function. This is particularly the case because providing meaningful protection will often require an advance knowledge of where threatened journalists are located, what kinds of work they are doing, and why they would potentially be at risk.

Such considerations are also relevant to the question of where such a mechanism should be housed: within the Ministry of Justice, as part of another government institution like the National Human Rights Commission, or as a civil society mechanism? We address these considerations further below.

ii) Considering an impunity/accountability mechanism

As addressed above, The Gambia does not have any specialized criminal mechanisms in place to address crimes targeted at journalists or human rights advocates. Crimes committed against journalists, like assault, murder, sexual assault, or threats, must be investigated on their specific facts and then charged and prosecuted in court. Since the rule of President Jammeh, governmental institutions like the police and the Ministry of Justice have typically done the government's bidding or turned a blind eye to prosecuting offences that it committed or that were committed on its behalf.

While a separate mechanism to specifically address crimes against journalists or human rights advocates may appear beneficial on its face, there are a number of potential concerns that could be identified with such an approach. To begin with, The Gambia is a country with extremely limited legal resources. At present, it does not appear to have the capacity to prosecute a number of high-profile criminal offenders who are known to have committed extremely serious crimes, including extrajudicial killings, torture, and sexual assault. If the justice system already lacks the capacity to prosecute such criminal cases, does it make sense, and would it be desirable, to empower a new mechanism to focus specifically on accountability for crimes against journalists?

If a large institution with prosecutorial or quasi-prosecutorial powers is not feasible, it may be that a smaller institution with a more specific mandate is preferable – perhaps an entity within the Ministry of Justice, a sub-committee within the NHRC, or a civil society organization.

Depending on its structure and mandate, an accountability mechanism could also serve as the driver and impetus for ongoing legal and structural reforms that would help to advance the cause of journalists and human rights advocates. Such potential reforms might encompass the other recommendations we have identified here, as well as stronger punishments for crimes committed against journalists, the removal of relevant limitation periods, or the creation of civil avenues of redress.⁵⁴

b) Institutional structure and design

Another fundamental question that would need to be expressly considered is where a national mechanism should reside. Should it be created as part of an existing governmental institution or as a new institution unto itself? Or should it exist externally to the government as a civil society organization?

The cost of creating and resourcing an entirely new and separate institution tends to be significant. While that independence could help to empower a mechanism with a distinct and independent voice, that institutional isolation may also reduce its effectiveness. If the focus of the mechanism is primarily to recommend cases for prosecution, housing it within the Ministry of Justice could help significantly to ensure that its recommendations are heard and acted upon. Drawing upon the existing infrastructure of a well-established institution could also enable it to function with a smaller number of people, raising the possibility that the mechanism might still be effective at a substantially smaller scale.

National mechanisms around the world have been structured in different ways, based on their particular needs. The Unidad Nacional de Protección (UNP) in Colombia was created under the Ministry of the Interior. In Nepal, a multi-stakeholder mechanism for the protection of freedom of expression is housed under the National Human Rights Commission. In Mexico, violence connected to organized crime and drug trafficking led to the creation of a special prosecutor's office for crimes against freedom of expression (FEADLE) and a separate Federal Protection Mechanism of Human Rights Defenders and Journalists.⁵⁵

Whereas the principal source of the threat in countries like Colombia and Mexico arises from external third parties – drug cartels and organized crime – threats against journalists and human rights defenders in The Gambia have historically come from the government itself. This suggests that the country may want, and need, to give strong consideration to an institution that exists external to the government or to a dual approach, with an independent and primary civil society based protective mechanism that works closely together with an impunity/accountability mechanism based in The Ministry of Justice. This approach could build on the experiences with the existing structures around Strategic Framework for Media Reform in The Gambia launched in 2017 and born from the multi-stakeholder led Strategy Steering Committee.⁵⁶

In the specific context of Guatemala, given concerns with the ability of a domestic governmental institution to properly fulfill its role, the United Nations and Guatemala signed a treaty-level agreement to establish an independent body called the Comisión Internacional Contra la Impunidad en Guatemala (CICIG) that could support the Public Prosecutor's Office, the police and other state institutions to investigate sensitive cases. Though such cooperation did enable the mechanism to bring significantly more resources to bear on the problem, it also became extremely controversial with the government and was forcibly shut down by Guatemalan President Jimmy Morales.

54 Toby Mendel, *Supporting Freedom of Expression: A Practical Guide to Developing Specialised Safety Mechanisms*, UNESCO & Centre for Law and Democracy (April 2016) at 27, online: https://en.unesco.org/sites/default/files/supporting-freedom-of-expression_guide-safety-mechanisms.pdf.

55 See: Committee to Protect Journalists, *No Excuse: Mexico Must Break Cycle of Impunity in Journalists' Murders* (2017), online: https://cpj.org/reports/cpj_mexico_2017-04-24_English_Web.pdf.

56 Media Foundation for West Africa, "The Gambia: MFWA, Partners Launch Media Reform Strategic Framework" (17 August 2017), online: <https://www.mfwa.org/11010/>.

c) Special consideration of a civil society mechanism

Given The Gambia's history, in which threats to journalists and human rights defenders have come primarily from the government, its supporters or governmental institutions, we would recommend that particular consideration be given to creating a protection and accountability mechanism as a civil society institution, outside of the government. This could be created as a program led by Gambian non-governmental organizations, and with international linkages and support. Ideally, it would also receive financial support from the government.

With respect to threat assessment, a civil society organization may be best positioned to help protect journalists by providing resources and services such as:

- Establishment of a dedicated line of communication to be used in the event of an emergency (a "Helpline")
- Creating and maintaining a Security Handbook for Journalists that includes legal and practical guidance as well as a "speed dial" list of relevant phone numbers to call for assistance, including legal counsel
- Drawing attention to attacks on journalists after they have happened, and demanding accountability and action from the government, the Ministry of Justice, the NHRC, or other stakeholders
- Helping to document acts of violence against journalists, with a particular focus on improving documentation of attacks or violations against women journalists and ensuring that such attacks are not diminished or ignored
- Continuing to develop public awareness and understanding of freedom of expression and the threats facing journalists and human rights defenders in The Gambia

However, the important ongoing work of the Gambia Press Union and other organizations must be supported to secure safety and protection for journalists and media:

- Safety training to journalists and media workers across the industry, including safety training specifically addressing threats facing female journalists
- Access to cybersecurity guidance and auditing mechanisms to ensure secure communications and information storage practices
- Access to appropriate safety and communications equipment where necessary
- Building connections with international organizations that can bring pressure to bear on the government, or governmental institutions, and advocate on behalf of threatened or imprisoned journalists
- Promoting safety and equality for women journalists within the industry and in Gambian society more broadly
- Advocating for necessary legal and institutional reform

The creation of a mechanism led by civil society, however, is not mutually exclusive with the creation of a mechanism within the national government. As noted above, a dual approach led jointly by civil society and the national government may be possible by building from the Strategic Framework for Media Reform in The Gambia.

This initiative was set in motion as the political transition in The Gambia present-

ed an encouraging window of opportunity for the media sector to develop a more positive relationship with the government, particularly with the Ministry of Information and Communication Infrastructure (MoICI). The MoICI cited the media as an important element in their communication strategy and intent to strengthen the sector and maintain amicable relations. During this time, local and international media experts convened for a series of workshops and consultations to draft the comprehensive plan for long-term media reform in The Gambia. We would not argue for placing each of the priorities cited above within these structures, but merely note awareness that there are experiences and structures to build on.

An additional advantage of such a civil sector or dual-led approach may be the potential for relatively swift development at comparatively low cost. A civil society organization initiative along these lines could also draw inspiration and lessons from other non-governmental initiatives, such as the Safety Guidelines developed for journalists in Afghanistan, Editors for Safety in Pakistan, or aspects of the Philippine Plan of Action for the Safety of Journalists.

d) Operational issues

The establishment and successful continuation of any safety or accountability mechanism in The Gambia would need to address a number of fundamental operational issues, including:

- Funding – What are the options for funding? Should such funding be obtained locally, and if so, from governmental institutions, civil society, or both? What about international funding? In either case, how can the mechanism secure funding that is long-term, consistent, and embedded in the institution?
- Administrative – How many staff will be required? Where will they work? What kind of training, outreach, communication, and financial infrastructure will be needed?
- Oversight and monitoring: How will the mechanism's effectiveness be monitored and assessed? If it exercises significant powers, is oversight required? What type, and frequency, of reporting should be expected or required? Will the mechanism operate in accordance with a set of Standard Operating Procedures?⁵⁷

With respect specifically to a safety mechanism, it should be recognized that in many ways an ineffective and under resourced system may be worse than having no system at all. Forcing journalists into situations of compromised security, or revealing their locations and/or identities through a corrupt or ineffective institution, may well be worse than leaving the security of these individuals in their own hands.

57 As a good example, see the recently created *Standard Operating Procedures of the NHRC for The Gambia*, online: <https://www.gm-nhrc.org/download-file/f72e2fca-4cec-11ea-9c16-022a5fa1767e>.

2. Conduct or facilitate outreach with the TRRC to ensure that it specifically addresses crimes against journalists and human rights advocates and that its recommendations address the safety and protection of journalists and human rights advocates.

As was addressed above, the TRRC is in the midst of a truth and reconciliation process that is holding public hearings, taking statements from victims and witnesses, conducting investigations, and engaging in broad community outreach processes. The TRRC has captured and held the attention of the entire country, with its public hearings being watched and listened to by regular citizens on an almost daily basis. It has also recognized and put forward gender perspectives on issues that have traditionally been downplayed or ignored. The TRRC will be producing a comprehensive final report and making recommendations as to required institutional changes to ensure that the many human rights violations that took place under Mr. Jammeh cannot be repeated.

This process, and the upcoming recommendations, represent a significant opportunity to drive important legal and institutional changes and to mobilize public attention and action. We therefore recommend that outreach be conducted with the TRRC: to ensure that it specifically considers freedom of the press and the role of the press, that it specifically takes gender perspectives into account in doing so, that it addresses the harm caused by crimes against journalists and human rights advocates, and that its recommendations address the safety and protection of journalists and human rights advocates going forward.

The TRRC's ongoing public hearings and outreach efforts, and the visibility and likely impact of its upcoming recommendations, also position it extremely well to advance the case for consideration of a safety and/or accountability mechanism, as was addressed above. Outreach should explore the potential for this as well.

3. Gambian criminal laws bearing on journalists and human rights advocates should be amended or repealed to comply with human rights standards and The Gambia's obligations under international human right law.

As was outlined above in Chapter 2, the government should amend its criminal laws to bring them into compliance with international legal standards and to prevent the abuse of such laws against journalists and human rights advocates. In accordance with UN recommendations and international jurisprudence, the criminal law should not be used to sanction journalists for alleged mistakes or perceived impropriety in the conduct of their work. Criminal prosecutions of members of the media, or anyone advocating for their human rights, should only be provided for in exceptional circumstances and where they are very carefully circumscribed to focus on particular harms, as is the case with hate speech or willful incitement to violence.⁵⁸

58 ECtHR, *Gavrilovici v Moldova*, App. 25464/05 (2009), para. 60; see also ECtHR, *Cumpana and Mazare v Romania*, App. 33348/96 (2004), para. 115; ECtHR, *Mahmudov and Agazade v Azerbaijan*, Application No. 38577/04 (2008), para. 50; African Court on Human and Peoples' Rights, *Lohe Issa Konate v Burkina Faso*, App. 004/2013 (2014), paras. 164-165.

In particular:

- Consistent with the 2018 ECOWAS judgment, the government should repeal all laws relating to sedition and publication of false news in the *Criminal Code*.⁵⁹
- The government should repeal Section 120 of the *Criminal Code*, "Intent to Hurt or Wound Religious Feelings," as the provision is overbroad, poorly constructed, and likely to be misused.
- The government should ensure that the Draft Bill criminalizing acts of torture is passed.⁶⁰
- The Boycott laws that appear in s.59A of the *Criminal Code* and s.57 of the Draft Bill should be repealed. By allowing the government to "designate" a boycott and thereby prevent any further discussion or publication, these laws constitute a significant impingement on freedom of speech. They also provide the government with a ready basis to use the justice system against either human rights advocates or the free press.

4. The government should repeal provisions of the Public Order Act and the Draft Bill that criminalize unlawful assembly and require protestors to obtain a license.

The Gambia's recent history has seen public protests against the government lead to acts of extreme violence against human rights defenders. The government's resistance to civilian protests, and its treatment of such gatherings as criminal, has enabled some of the worst violations of freedom of assembly and freedom of speech and has served to perpetuate an institutional culture of excessive force and violence against protestors. These behaviors have been enabled by laws that require governmental pre-approval for gatherings and that sanction a lack of compliance with a criminal sentence.

As such, the provisions of the *Public Order Act* and the Draft Bill [s.62] that bear on unlawful assembly and protesting without a license should be immediately repealed. These provisions constitute a serious infringement on freedom of assembly and freedom of speech and have provided ongoing justification for the state to deploy violence against civilians exercising their free speech rights.

5. The government should repeal or amend non-criminal legislation that promotes a culture of impunity and curtails freedom of expression.

- The *Indemnity (Amendment) Act 2001* should be repealed in order to remove blanket

59 Community Court of Justice of the Economic Community of West African States, *The Federation of African Journalists and Others v The Republic of The Gambia*, Judgment No: ECW/CCJ/JUD/04/18 (13 February 2018), online: http://prod.courtecowas.org/wp-content/uploads/2019/02/ECW_CCJ_JUD_04_18.pdf.

60 Aboubacarr Tambadou, "Statement of the Attorney General at the Legal Year 2020", *The Point* (21 January 2020), online: <http://thepoint.gm/africa/gambia/article/statement-by-the-attorney-general-at-the-legal-year-2020>.

immunities for public officials, in particular because such officials have historically been the perpetrators and facilitators of violence against journalists and human rights defenders in The Gambia.⁶¹ Repealing this provision would likely have both practical and symbolic benefits, as this law not only provides immunity for public officials but also signals that they should be considered beyond sanction or reproach.

- The *Newspaper Act* should be amended so that it no longer provides prohibitive barriers to entry for aspiring media publications or provides the government with a legal tool to inhibit or control the free press.⁶²
- The government should engage with the media community regarding concerns with the *Media Services Bill*, which is set to become law. The government should be prepared to amend, or ultimately repeal, provisions that are not in compliance with international legal standards.

6. Outstanding cases of violence against journalists and human rights advocates must be investigated and prosecuted.

As outlined above, President Jammeh's rule from 1994-2017 was characterized by widespread threats, violence and intimidation directed at journalists and human rights advocates. Many journalists and human rights defenders who challenged Mr. Jammeh or his administration were murdered, tortured, threatened, detained, or made to disappear. Few if any of these perpetrators were ever held to account, and the impunity with which these acts were committed created an ongoing climate of fear that still lingers in the collective memory.

In order to see that justice is done, to send a strong societal message that such perpetrators can no longer act with impunity, and to deter future acts, the perpetrators of these acts should be investigated and prosecuted by the Gambian justice system. Such investigations and prosecutions should include cases like the 2004 murder of Deyda Hydar, the 2006 enforced disappearance of journalist Ebrima Manneh, and the 2006 torture of Musa Saidykhan.⁶³

7. Develop witness protection mechanisms and build towards the establishment of a witness protection agency.

61 United Nations Human Rights Committee, *Concluding Observations on The Gambia in the Absence of its Second Period Report* (30 August 2018), CCPR/C/GMB/CO/2 at para. 24(c), online: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GMB/CO/2&Lang=En.

62 Agi Yorro Jallow, *Delayed Democracy: How Press Freedom Collapsed in Gambia*, AuthorHouse LLC, Bloomington, IN (2013) at 28-29; Committee to Protect Journalists, "Attacks on the Press in 2007 – The Gambia," RefWorld, United Nations Refugee Agency (February 2008), <https://www.refworld.org/docid/47c56772c.html>.

63 See also IFEX, "Musa Saidykhan and Ebrima Manneh: Justice Subverted by the State" (4 June 2018), online: <https://ifex.org/musa-saidykhan-and-ebrima-manneh-justice-subverted-by-the-state/>; Article 19, Committee to Protect Journalists & Access Now, "Joint Submission to the Universal Periodic Review of the Gambia" (4 April 2019), online: https://www.article19.org/wp-content/uploads/2019/11/ARTICLE-19_GAMBIA_UPR34.pdf.

The Gambia does not currently have a Witness Protection Agency. As a result, witnesses or informants in sensitive cases – including certain human rights cases – may be exposed to significant risk as a result of their involvement with the justice system and may be reluctant or unwilling to come forward. This reluctance, and fear, can also significantly impair the ability to successfully prosecute such cases. The establishment of effective witness protection mechanisms, and the ultimate establishment of a witness protection agency, would go a long way towards enhancing the safety of witnesses, and more broadly towards strengthening the rule of law.

It bears noting that establishing a functional witness protection agency will require building a significant amount of trust. Understandably, members of the Gambian public may not initially trust that a government agency will protect them, particularly where they have spoken out against that same government or stand in opposition to it.

Given the current state of the country, however, a witness protection agency would already appear to be necessary for certain high-profile prosecutions to proceed. The potential prosecution of certain perpetrators who acted in concert with the former government, like the Junglers or the NIA, could invite potential retribution by supporters or agitators on behalf of the former government.

In creating witness protection mechanisms, or a witness protection agency, some positive lessons and forward momentum can likely be drawn from the TRRC. Since its creation, the TRRC has worked with international experts, including from the International Criminal Court, to train its investigators and staff members so that they can develop and implement witness protection mechanisms for TRRC investigations and public hearings.⁶⁴

8. International organizations and media groups should bring international support to bear on local Gambian media organizations.

International organizations should be encouraged to offer support to local Gambian media organizations. Such support could include the creation and maintenance of a Security Handbook for Journalists, as addressed in our first recommendation above. Based on input from local Gambian organizations, the guide could address relevant international and national laws that have implications for media workers and provide options, guidance and a list of designated contacts in the event of a threat or arrest by the state. Relationships should also be forged with international organizations and institutions who can help to quickly galvanize international support and focus attention on violations committed against journalists.

Where assistance is desired, international organizations should also assist local media organizations with public sensitization and advocacy efforts. Notable dedication is found in the mandate of Gambia Media Support (GAMES), a Denmark-based international non-governmental organization working for press freedom and media development in The Gambia. For over 15 years, GAMES has supported the GPU and the Media Academy for Journalism and Communication (MAJaC) on advocacy, gender issues and safety.

64 See e.g. The Chronicle, *ICC Trains TRRC Staff, Police Officers on Witness Protection* (26 September 2019), online: <https://www.chronicle.gm/icc-trains-trrc-staff-police-officers-on-witness-protection/>.

This long-term effort has led to the initiation of the Safety Project together with GPU and MAJaC, in combination with an initiative to address sexual harassment and endeavors to support six of GPU's affiliates, one of which is the Women Journalists' Association of The Gambia (WOJAG). Also noteworthy is the International Media Support supported multi-stakeholder anchored committee behind the Strategic Framework for Media Reform in The Gambia. Another more short-term example of engagement is the training session organized by the Foundation Hironnelle in June 2019, which trained Gambian journalists to investigate and report on the work of security and justice institutions.⁶⁵

International organizations should also assist with the creation of resources and programs specific to women journalists. One such example is the "Breaking the Gender Barriers in the Media" project, which was created by the Gambia Press Union and the Women Journalists' Association of The Gambia and was funded by the United Nations Educational, Scientific and Cultural Organization (UNESCO).⁶⁶

9. Guidelines and training should be developed for police officers and prosecutors to address the unique and important role of the free press and the importance of free speech.

For The Gambia to uphold its positive obligations to protect journalists and human rights defenders, it will require police officers and prosecutors who recognize the special role played by journalism and human rights advocacy and who recognize the harms that have resulted in the past when their offices have been misused. We would therefore recommend that guidelines and training be developed for both police and prosecutors to ensure that they understand the Gambia's history in this respect, appreciate the special position occupied by journalists and the unique threats they face, and are aware of their professional responsibilities to thoroughly investigate and prosecute such offences.⁶⁷

10. Police, prosecutors and media organizations should adopt a gender-sensitive approach to the vulnerabilities, risks and barriers faced by female journalists and human rights advocates.

Female journalists can face a number of unique vulnerabilities, risks, and barriers in their work. They are often doubly targeted, both as journalists and as women. Their vulnerabilities can range from a lack of access to certain individuals, institutions or stories, to threatened or actual violence, including in the most serious cases "rape in retaliation for their

work, sexual abuse in captivity or detention, and sexual violence by mobs against journalists covering public events."⁶⁸

Female journalists also face the majority of online abuse perpetuated against journalists, including threats of rape, revenge-porn, doxing, and other threats to their safety.

At present, the Gambian justice system does not adequately adopt or consider a gender perspective in its investigations or prosecutions. As the early stages of the TRRC evidenced, the act of coming forward to speak about vulnerabilities or victimhood can be extremely challenging for women in The Gambia, with a particular stigma often attached to the crime of sexual assault. In many cases, female victimhood, disempowerment or disadvantage, and the challenges, barriers, and gendered and sexualized threats faced by women, are overlooked or ignored entirely.

We therefore recommend, first, that specialized guidelines, training sessions, and where appropriate, special procedures, be developed for police officers and prosecutors. These initiatives should be implemented with the involvement and cooperation of local women's organizations, so that they take proper account of real issues being faced in the particular context of The Gambia. Given the current lack of capacity for training and the development of new procedures, this would appear to be a fertile area for international assistance.

We also recommend that local initiatives be supported to further advance the status and safety of women journalists and media workers. Civil society organizations, like the WOJAG, can take the lead on implementing these programs and would benefit from resources and enhanced support.

There are a number of positive examples from very different international contexts that could help to inform potential strategies in The Gambia, including a nationwide emergency response program for female media workers operated by the Afghan Journalists Safety Committee⁶⁹ and the work of Somali Women Journalists to create a Gender Respect Declaration to address sexual harassment, equal pay, and career opportunities for female journalists.⁷⁰

65 Foundation Hironnelle, "Gambia: Our Journalists Training on Security Sector Reform" (23 July 2019), online: <https://www.hironnelle.org/de/unsere-news/906-gambia-our-training-of-journalists-on-security-sector-reform>.

66 Sheriff Janko, "Harassment Against Female Journalists a Cause of Concern", *The Point* (3 February 2020), online: <http://thepoint.gm/africa/gambia/article/harassment-against-female-journalists-a-cause-of-concern>.

67 *Deyda Hydara Jr. v The Gambia ECW/CCJ/APP/30/11*, 10 June 2014; *Amnesty International and Others v Sudan* (1999) at para. 56; *Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso* (2001) at para. 42.

68 Edison Lanza, Women Journalists and Freedom of Expression: Discrimination and Gender-based Violence by Women Journalists in the Exercise of Their Profession, Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (31 October 2018), CIDH/RELE/INF.20/18 at 25, online: <http://www.oas.org/en/iachr/expression/docs/reports/WomenJournalists.pdf>; Committee to Protect Journalists, "The Silencing Crime: Sexual Violence and Journalists" (7 June 2011), online: <https://cpj.org/reports/2011/06/silencing-crime-sexual-violence-journalists.php>.

69 International Media Support, *Shared responsibility: Safeguarding press freedom in perilous times* (May 2020) at 46, online: <https://www.mediasupport.org/publication/shared-responsibility-safeguarding-press-freedom-in-perilous-times/>.

70 International Media Support, *Shared responsibility: Safeguarding press freedom in perilous times* (May 2020) at 46, online: <https://www.mediasupport.org/publication/shared-responsibility-safeguarding-press-freedom-in-perilous-times/>.

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This International Media Support report explores criminal justice and human rights mechanisms to protect journalists, media workers and human rights advocates in an effort to combat impunity in The Gambia. It is the culmination of an innovative approach to hold perpetrators of attacks, killings and disappearances of those exercising their right to free expression to account and accentuates the importance of robust, collaborative support to protect journalists and the commitment to end impunity.

The heart of this report recognizes that responding to threats and attacks against journalists means being prepared to scrutinize investigations and the laws that govern them.



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