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## A CASE FOR CONSTITUTIONAL GUARANTEES FOR FREEDOM OF THE MEDIA IN THE GAMBIA

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### 1 Introduction

Freedom of the media or freedom of the press forms an essential component of the right to freedom of expression and serves as ‘the foundation stone for every free and democratic society’.<sup>1</sup> But the fundamental human right has not enjoyed adequate constitutional protection in The Gambia from independence through the dictatorship era up to the ‘New Gambia’.

The post-independence constitutions, including the 1970 Republican Constitution, have failed to provide acceptable standards of broad constitutional protections to freedom of expression – of speech and of the press. The rights have been restricted with laws and practices in order to undermine accountable and transparent governance based on the rule of law, participatory democracy, human rights and justice.<sup>2</sup> The laws that criminalised speech, inherited from colonial-era suppression and subjugation, continued to be enforced against citizens. Journalists and political and human rights activists, in particular, were prosecuted and some were jailed for speech related offences that would otherwise be considered a normal exercise of civic rights. Freedom of expression, arguably, became the first casualty and the most brutalised throughout the 22-year reign by former President Jammeh. In his 22 years, there were more than 100 cases of arbitrary arrests and detention of journalists.<sup>3</sup>

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1 UN Human Rights Committee (HRC), General Comment 34: Article 19: Freedoms of opinion and expression, 12 September 2011, UN Doc CCPR/C/GC/34 (2011) <https://www.refworld.org/docid/4ed34b562.html> (accessed 5 June 2019).

2 See S Nabaneh ‘The Gambia: Commentary’ in R Wolfrum, R Grote & C Fombad (eds) *Constitutions of Countries of the World* (2017) 13-19.

3 Committee to Protect Journalists ‘Attacks on the press in 2006 – The Gambia’ (2007) <https://www.refworld.org/docid/47c56739c.html> (accessed 6 June 2019).

Three journalists were killed in the line of duty and dozens were subjected to alleged torture by security forces.<sup>4</sup> There were 13 incidents of arbitrary closure of media houses while more than 120 media professionals have gone into exile.<sup>5</sup>

The change of government in 2017 and the on-going democratic transition has brought about some degree of respite on the legal and political stranglehold on civic and political rights. Journalists and citizens are free to ask tough questions, publicly discuss issues that were once abominable. Citizens are increasingly vocal in their demand for improvement of democracy and service delivery. Yet, The Gambia still criminalises speech at a time when a significant number of countries around the world have taken bold and giant steps to repeal those undemocratic laws.

This chapter takes a careful and critical study of the behaviour of The Gambia's post-independence governments towards freedom of the media through the constitutions they established and the laws they promulgated and enforced. The chapter exposes the inadequacies of the 1970 and 1997 Constitutions as well as the Draft 2020 Constitution with regards to their articulation of the promotion and protection of media freedoms. The chapter also elaborates on the vital role of the press and made a case for broad constitutional guarantees for media freedoms in order to facilitate a press culture that efficiently delivers a transparent, accountable and participatory governance system, a safeguard for political stability and inclusive and sustainable development.

## **2 Press freedom in The Gambia: An overview**

The Gambia has witnessed a proliferation of media houses across all types of media over the past decades.<sup>6</sup> The number of print media publications currently stands at six and about the same number of newspapers either folded up or closed temporarily, mainly for financial reasons. Radio stations – private, commercial and community – remain the most important source of news for a population where production capacity of newspapers is weak, the majority of the people are too poor to buy newspapers and nearly half of the population are not versed in

4 As above.

5 Doha Centre for Media Freedoms 'Perils of being in exile: The plight of Gambian exiled journalists' (2013) [https://www.dc4mf.org/wp-content/uploads/2013/09/plight\\_of\\_gambian\\_exiled\\_journalists\\_0.pdf](https://www.dc4mf.org/wp-content/uploads/2013/09/plight_of_gambian_exiled_journalists_0.pdf) (accessed 9 June 2019).

6 Gambia Press Union 'State of Press freedom in The Gambia: Combined report 2017-2019' (2019) (File in possession of authors).

English, the medium of communication for all the newspapers.<sup>7</sup> The online media industry, previously a Diaspora-based phenomenon, is gaining momentum in the local media landscape as an important source of credible news and information.<sup>8</sup> There are multitudes of social media platforms – some of them previously blocked – which allow Gambians to freely talk to one another, express views on legitimate public issues and seek to influence public policy.<sup>9</sup> After more than two decades of monopoly by the state-owned television, the country now boasts three new television stations and two more are expected to go on air by the end of the year.<sup>10</sup>

The environment for freedom of expression deteriorated sharply following the military overthrow of the First Republic in 1994.<sup>11</sup> No sooner than the junta occupied the State House, they began to crackdown on human rights. Gambians from a wide range of professional backgrounds and ordinary citizens were eventually victimised for exercising their right to freedom of expression.<sup>12</sup> Security personnel, civil servants and journalists were prosecuted under these laws and were mostly convicted by the courts. Decrees were rolled out, banning political activities. New anti-speech laws were passed, and a record number of amendments were made to the colonial-era laws that criminalised speech with more draconian penalties and overbroad definitions.<sup>13</sup> This included the Official Secrets Act, which contains provisions that conflict with the right of the media to report freely when it relates to national security issues. Under section 3, it is an offence for anyone to make a ‘sketch, plan, model or note’ or to publish or communicate ‘any secret official code, word, sketch, plan, article, note or other document’ which may be useful to an enemy. Journalists reporting on security issues run the risk of contravening the Official Secrets Act without any criminal intention on their part.

Then junta chairman, later president, Yahya Jammeh, set the tone for what was to come when he described human rights defenders and

7 As above.

8 As above.

9 As above.

10 As above.

11 AY Jallow *Delayed democracy: How press freedom collapsed in The Gambia* (2013).

12 Gambia Press Union (GPU) ‘Submission to the Truth Reconciliation and Reparations Commission on attacks on press freedom, 1994 to 2017’ (9 July 2019) unpublished (File in possession of authors).

13 Article 19 ‘Gambia: Analysis of Selected Laws on Media’ (April 2012) <https://www.article19.org/data/files/medialibrary/3034/12-04-17-LA-gambia.pdf> (accessed 4 June 2019).

journalists as 'illegitimate sons of Africa'.<sup>14</sup> His disdain and hatred towards press freedom in display, he called on people not to buy newspapers so that the journalists 'will starve to death' and vowed to hang journalists using the law; send them to jail until they are 'old and useless'; and 'release them so that they can be destitute'.<sup>15</sup> During his regime, numerous media houses were shut down by an executive order.<sup>16</sup> For instance, in 1998, after constant attacks on *Citizen FM*, a private radio station popular for its news programmes in local languages, the government shut down the radio and forfeited its apparatus to the state.<sup>17</sup> The magistrates' court in Kanifing, in a suit filed by the radio station against the state, ruled that the actions of the state were lawful. However, following an appeal by the media house, the High Court overturned the judgment.<sup>18</sup> The government, however, refused to implement the judgment. *Citizen FM* and its sister newspaper publication, *New Citizen*, remained shut down.<sup>19</sup> The owner, Baboucarr Gaye, one of the country's most prominent journalists of his time, has died. Several other publications suffered a similar fate. In 2005, security agents stormed the offices of *The Independent*, highly critical of the government and shut it down.<sup>20</sup> This was after many attacks, including alleged arrest and torture of staff and arson attacks on the premises of the newspaper. *The Standard Newspaper* was shut down by the state soon after its birth in 2010.<sup>21</sup> It was allowed to resume operations on the orders of then president, Yahya Jammeh and in 2012, the paper was again ordered to cease operations. *The Standard* has since 2014 been back on the news stands as one of the leading papers. *Taranga FM*, a community radio station was closed down at least four times between 2009 and 2012 for review of newspapers in local languages.<sup>22</sup> Other private media outlets, namely, *Sud FM*, *The Daily News*, *Paradise FM*, *Daily Observer* and *Afri Radio*, were all at one point ordered to cease operations.<sup>23</sup> It is worth noting that

14 Jallow (n 11).

15 Committee to Protect Journalists 'Attacks on the Press in 2006 – The Gambia' (February 2007) <https://www.refworld.org/docid/47c56739c.html> (accessed 5 July 2022).

16 Gambia Press Union (n 12).

17 AA Senghore 'Press freedom and democratic governance in The Gambia, a rights-based approach' (2012) 12 *African Human Right Laws Journal* 508.

18 Article 19 'Freedom of expression still under threat the Case of Citizen FM' (June 1999) as cited in S Nabaneh & G Sowe 'The Gambia: The state of liberal democracy' in R Albert et al (eds) *The I-CONNECT-Clough Center 2018 Global Review of Constitutional Law* (2019) 15.

19 Gambia Press Union (n 12).

20 As above.

21 As above.

22 As above.

23 As above.

unlike *Citizen FM*, none of the other media outlets shut down on executive orders challenged their arbitrary closure in the courts.<sup>24</sup> The culture of disregard for the rule of law and excessive powers placed in the hands of the executive might explain the reluctance of media outlets to seek judicial redress against an apparent arbitrary decision.

The press in The Gambia, both in times of democracy and in times of dictatorship, have constantly fought and demanded for its freedom towards a society based on the principles of rule of law, human rights, and good and inclusive governance. Unlike many African countries where the route to independence was characterised by violence, the independence of The Gambia was fought in the pages of the newspapers. This explains why the majority of colonial-era political leaders were journalists and their kind of public-spirited journalism continued well into the First Republic and to some extent, the Second Republic. In the case of the latter, the price paid was heavy. Three journalists have been killed and many others were tortured and maimed. Arbitrary arrests and detention of journalists became a disturbing norm.<sup>25</sup> Even more disturbing is that the courts have become a tool of suppression of freedom of expression, rather than the guarantor of democracy, using colonial-era laws of suppression and subjugation.<sup>26</sup>

It must be noted at this point that even under dictatorship, some degree of freedom of expression existed in the country. According to Senghore:<sup>27</sup>

Gambian media practitioners, legal and judicial experts, opposition politicians and intellectuals of the post-independence era have always perceived and considered private media practice and press freedom as matters of right and not mere political privilege.

Freedom of the media goes beyond the right of the journalist to publish. It entails the corresponding right of the public to receive the information that the journalist publishes.<sup>28</sup>

24 As above.

25 Gambia Press Union (n 6) 6.

26 Gambia Press Union (n 12).

27 AA Senghore 'Press freedom and democratic governance in The Gambia: A rights-based approach' (2012) 12 *African Human Right Laws Journal* 508.

28 General Comment 34 (n 1) para 13.

### **3 Constitutional frameworks on freedom of the media**

#### **3.1 The 1970 Constitution**

The Republican Constitution of 1970 broadly recognises the right to freedom of expression. Section 22, mentioned above, guarantees freedom to hold opinion and receive and communicate ideas and information whether to the public or any person.<sup>29</sup> It can be argued that the right to communicate ideas and information implies a discreet guarantee for press freedom. What is clear is that the framers of the Constitution did not accord to the press any right, privilege or protection than any ordinary person enjoys. In essence, the 1970 Constitution did not expressly recognise press freedom, nor did it guarantee the freedom and independence of the media.

#### **3.2 The 1997 Constitution**

The 1997 Constitution ushered in the Second Republic, bringing an end to the junta that forcefully seized power three years before, in 1994. It provides entrenched protection for fundamental rights and freedoms under Chapter IV, including the right to freedom of expression. Section 25(1)(a) provides that every person shall have the right to ‘freedom of speech and expression, which shall include freedom of the press and other media’.<sup>30</sup>

The 1997 Constitution is more generous in its recognition of press freedom as a distinct right under freedom of expression. Section 25(1)(a) states that ‘everyone shall have the right to freedom of speech and expression, which shall include, freedom of the press and other information media’.<sup>31</sup>

This framing is a landmark in the development of media law and policy in the country. Section 25 is an entrenched provision under Chapter 4, which deals with fundamental human rights. Besides, it is the first time in post-independence Gambia that a constitutional provision specifically recognises press freedom as a distinct right. By adding ‘other information media’, the provision not only covers journalists, but other types of printed and broadcast materials such as books and films are substantially, if not adequately, covered.

<sup>29</sup> Section 22 of the 1970 Constitution.

<sup>30</sup> Section 25 of the 1997 Constitution.

<sup>31</sup> Section 25(4) of the 1997 Constitution.

A further reading into the 1997 Constitution reveals a more profound articulation of the degree of the constitutional protection for the freedom and responsibility of the press. Section 207, in particular, provides a strong protection to the 'the freedom and independence of the press and other information media'.<sup>32</sup> It also obligates the press to serve as watchdogs, guaranteeing that the press 'shall at all times be free to uphold the principles and objectives of [the] constitution and the responsibility and accountability of government to the people of The Gambia'.<sup>33</sup> In addition, section 208, which is dealt with in a subsequent section, obligates all state-owned media to provide divergent views and dissenting opinions.

### 3.3 Constitutionalised understandings of media freedom

#### 3.3.1 *Freedom to gather and disseminate news and information*

This principle recognises the right of the press to gather and disseminate news and information to be accorded explicit and exceptional constitutional guarantee. It can be further explained to mean that journalists should have limited access to events closed to the public and documents denied to others. Moreover, information requests placed by journalists should be processed more speedily. Furthermore, no one – particularly the government – should dictate to a journalist what to print or broadcast.

As explained above, the framers of both the 1970 and 1997 Constitutions were economical in articulating constitutional protection for media freedoms and other freedom of expression rights. Even though the 1997 Constitution is a great improvement from the 1970 Constitution, it is still not clear whether the right of the journalists to gather and disseminate news and information is implicit in sections 25 and 207. It can be argued that the duty to hold the government accountable to the public, arrogated to the press by section 207, implies freedom of reporting. However, experience and hindsight suggest otherwise. In practice – in times of dictatorship and democracy – journalists and other information media professionals have been singled out and denied access to important public events and offices simply because they are journalists. Even though the press enjoys a privileged status in society in the constitutional arrangement, it can be argued that, from legal point of view, its activities, such as right to gather news and freedom of reporting, do not enjoy similar legal guarantees.

32 Section 207(1) of the 1997 Constitution.

33 Section 207(3) of the 1997 Constitution.



### **3.3.2 Protection of journalists**

Just as the framers of the Constitution failed to unambiguously guarantee freedom of reporting, there are no specific laws protecting journalists against attacks. It is a matter of international debate whether this is necessary.<sup>34</sup> Generally, criminal and civil laws protect citizens from any form of violent attacks as well as journalists. However, given the history and the persistent attacks of journalists with attendant impunity, it makes a lot of sense for a special constitutional protection for journalists against assaults. Where the Constitution gives journalists a preferred position in the constitutional arrangement, which it already does, it should go further to protect them against violence. The argument against this venture takes for granted for rights of a class of professionals whose work is directly linked to fundamental rights of citizens. It also ignores the reality of the constant attacks on media professionals across the world, in democracies and dictatorships alike. No other group of people is violently attacked or faces the risk of violent attack or is a target of violent attack as journalists.

In 2018 alone, an estimated number of 94 journalists and media workers died in targeted killings, bomb attacks and crossfire incidents, according to International Federation of Journalists.<sup>35</sup> In The Gambia, of more than 48 cases of violent attacks on journalists recorded in two decades, including three killings, none was properly investigated or prosecuted.<sup>36</sup> These were evident in 2019 during the media related testimonies by six journalists before the Truth and Reconciliation and Reparations Commission (TRRC), established in 2017 mandated with investigating and documenting the nature, causes and extent of violations and abuses of human rights committed during the period July 1994 to January 2017.<sup>37</sup> In 2019, Saikou Jammeh, former secretary general of the Gambia Press Union (GPU) testified before the Commission that over 140 incidents of arrests involving journalists occurred under the military dictatorship. This means that a journalist was arrested at least every

34 P Fletcher 'Proposed Journalist Protection Act would make assault of reporter a federal crime' *Forbes* 5 February 2018 <https://www.forbes.com/sites/paulfletcher/2018/02/05/journalist-protection-act-would-make-assault-of-reporter-a-federal-crime/-6a747cf533ea> (accessed 17 March 2020).

35 International Federation of Journalists '2018 reverses downward trend in killings of journalists and media staff with 94 victims of violence' 31 December 2018 <https://www.ifj.org/media-centre/news/detail/category/campaign-against-impunity-2018/article/2018-reverses-downward-trend-in-killings-of-journalists-and-media-staff-with-94-victims-of-violence.html> (accessed 17 March 2020).

36 Gambia Press Union (n 6) 6.

37 Truth, Reconciliation and Reparations Commission (TRRC) Act 9 of 2017. See also Nabaneh & Sowe (n 18) 107-108.



two months. These arrests involved over 60 journalists who were either tortured or illegally detained.<sup>38</sup> According to Lamin Cham, the managing editor of *The Standard* newspaper: 'The media was the most persecuted institution under Jammeh'.<sup>39</sup>

Since the new government came to power, an estimated number of ten journalists were assaulted and some injured, by either police or politicians.<sup>40</sup> And every attacker has one motive: to suppress the right of the citizens to receive information. The argument that journalists need no more protection than accorded to ordinary citizens will no doubt gradually lose merit in the face of the constant attacks and the attendant climate of impunity for crimes against journalists.

### 3.3.3 *Protection of information sources*

Protection of information and sources is indivisible to the right, where it exists, of the journalists to gather and disseminate news and information.<sup>41</sup> There are many instances where journalists have been forced to disclose confidential sources.<sup>42</sup> The Gambia currently does not have a law that protects whistle blowers. There have been many other instances where journalists were forced to surrender their notes and gadgets and their information was interfered with.<sup>43</sup> The 1997 Constitution does not have any 'shield provisions' to protect journalists from being forced to disclose confidential sources or surrender unpublished information, even though countries have been enjoined by international and regional human rights instruments and mechanisms to accord limited guarantees for protection of confidential sources of information by journalists.<sup>44</sup>

38 'TRRC Saikou Jammeh' *YouTube* 8 July 2019 [https://www.youtube.com/watch?v=CX1ndKFw\\_6c](https://www.youtube.com/watch?v=CX1ndKFw_6c); See also MK Darboe 'Gambia: "The media was the most persecuted institution under Jammeh"' *JusticeInfo.Net* 15 July 2019 <https://www.justiceinfo.net/en/41925-gambia-the-media-was-the-most-persecuted-institution-under-jammeh.html> (accessed 8 August 2019).

39 As above.

40 Gambia Press Union (n 6).

41 J Peters 'Shield laws and journalist's privilege: The basics every reporter should know' *Columbia Journalism Review* 22 August 2016 [https://www.cjr.org/united\\_states\\_project/journalists\\_privilege\\_shield\\_law\\_primer.php](https://www.cjr.org/united_states_project/journalists_privilege_shield_law_primer.php) (accessed 2 June 2019).

42 Gambia Press Union (n 6) 21.

43 Gambia Press Union (n 12).

44 General Comment 34 (n 1) para 45.

### **3.3.4 Regulation of the media**

Generally, regulation of the media is believed to be essential in upholding the principles of freedom and independence of the media while safeguarding freedom of expression. The debate however continues as regards the best system of regulation for the media – statutory or self-regulation. There are fears – and justifiably so – that government interference in determining how journalism should be conducted leads to media restrictions.<sup>45</sup> There are many instances where governments hide behind regulation to suppress dissent. The other side of the argument is that self-regulatory systems often lack enforcement powers as it relies on the goodwill of media oft headstrong professionals. What is clear, though, is that international standards generally favour self-regulation for the media as the best way to monitor compliance and sanction non-compliance of professional and ethical standards in journalism.<sup>46</sup> In this regard, democracies around the world have, time and again, chosen to err on the side of caution by accepting to err on the side of democracy, rather than putting in place good-intentioned frameworks that could be abused to pave way for undemocratic restrictions to the enjoyment of media and freedom of expression rights.

Regulation of the media in The Gambia is an uneasy subject. Under the Constitution, a statutory regulatory body called the Media Commission was provided for.<sup>47</sup> As a result, in 2002, the government passed the National Media Commission Act (NMCA) to ‘regulate the registration of media houses and to establish the National Media Commission (NMC)’.<sup>48</sup> The intentions of the government were very clearly reflected in what was seen as excessive powers given to the Commission. Among others, the Commission was given powers to annually register journalists and to force journalists to reveal sources of confidential information. The decisions of the Commission were final and could not be challenged even in a court of law. It therefore was not a surprise that the establishment of the Commission triggered widespread local and international outcry.<sup>49</sup>

45 UNESCO ‘The Importance of self-regulation of the media in upholding freedom of expression’ (2011) 11 [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media\\_standards/The%20Importance%20of%20self%20reg%202011.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media_standards/The%20Importance%20of%20self%20reg%202011.pdf) (accessed 5 June 2019).

46 UNESCO ‘Importance of self-regulation of the media in upholding freedom of expression’ (2011) <https://unesdoc.unesco.org/ark:/48223/pf0000191624> (accessed 15 June 2019).

47 This section was repealed in 2004.

48 Nabaneh (n 2) 15.

49 Nabaneh (n 2) 14-16.

The journalists resisted and the then president Yahya Jammeh responded that they 'must comply or do not print or go to hell'.<sup>50</sup> The GPU challenged the constitutionality of the Commission at the Supreme Court of the Gambia.<sup>51</sup> In the end, the National Assembly, in response to growing concerns, repealed the National Media Commission Act as well as the constitutional provision that obligated the setting up of the Commission.<sup>52</sup> The fight was won at a heavy price. Deyda Hydara, a prominent journalist in the forefront of the campaign against the Commission, was shot and killed in 2004.<sup>53</sup>

Currently, there are two different pieces of legislation covering licensing and registration of news and information media outlets. There is the Newspaper Registration Act of 1934 amended in 2013. This previously concerned only private print media, but now requires both private print and broadcast media to provide a bond of half a million dalasis (approximately \$10 000) in registering a media outlet. As noted by Nabaneh:<sup>54</sup>

In response to the growing internet activism that [was] not only highly critical of the government and public officials but also widespread and varied around the world, the National Assembly passed an amendment to the Information Act in April 2013 that provided a 15 year jail term for any person found guilty of using the internet to spread 'false news' about the regime or public officials. The amendment also imposed a fine of D 3 million (approximately USD 86,000) on persons found guilty of publishing 'false news' online against the regime or public officials.

Additionally, the Act provides for the regulation of the broadcast media by a multi-sector regulator, the Public Utilities Regulatory Authority (PURA). Several studies and reviews of media laws, including the one recently commissioned by the government,<sup>55</sup> have found the broadcast licensing and newspaper registration regime in the Gambia, to be inconsistent with acceptable international standards for the regulation of the media for two reasons. First, international law frowns upon special registration requirements for newspapers, as registration under the Companies Act

50 Gambia Press Union (n 12).

51 *Gambia Press Union v National Media Commission* Civil Suit No 5/2005.

52 Currently, sec 207(2) of the 1997 Constitution gives the National Assembly powers to enact laws for the establishment and operation of the press.

53 Gambia Press Union (n 12).

54 Nabaneh (n 2) 18.

55 Article 19 'Gambia: Analysis of selected laws on media' (2012) <https://www.article19.org/data/files/medialibrary/3034/12-04-17-LA-gambia.pdf> (accessed 20 June 2019).

suffices. Moreover, a fee of half a million dalasis bond (approximately \$10 000) is no doubt restrictive in a poor country where more than 60 per cent of the population live below the poverty line. Freedom of expression and press freedom are thus very expensive commodities. Second, the process of registration and licencing is not independent. The Attorney General's Office and Ministry of Justice is responsible for registration under the Newspaper Registration Act, while the Minister for Information and Communication Infrastructure approves licenses for television and radio broadcasting under the Information and Communication Act, 2009. The ministers are political appointees, and the process is done without adequate public oversight. In addition, the broadcast regulator is not properly constituted. The board has no civil society or media representative, and all of them are appointed by the president.

The standards and procedures for media regulation in The Gambia are demonstrably at variance with international standards. The 2003 International Mechanisms for Promoting Freedom of Expression, a Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression, states in clear terms that:<sup>56</sup>

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.

From this principle, it is clear that registration for setting up of print and online media is not absolutely necessary. It is therefore important for the ongoing constitutional building process to take a firm stance on it. The choice, it seems, is between providing constitutional provisions prohibiting any form of registration requirements for print and online media, except for administrative purposes, or regulate it in a way that the process would be independent, transparent, and inclusive.

56 'Joint Declaration on International Mechanisms for Promoting Freedom of Expression' (2006) <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=746&IID=1> (accessed 15 May 2019).

## 4 Limitations to press freedom

### 4.1 Constitutional limitations

The rights and freedoms guaranteed under sections 25(1)(a) and 207 are subject to limitations under sections 25(4) and 209, respectively. While the wording of the provisions under sections 25(1)(a), 207 and 208 appear generally acceptable and adequate, in reality though, the constitutional guarantees for freedom of expression, and in particular its corollary press freedom are limited in scope, somehow problematic in definitions and insufficient in protecting the range of aspects of media freedom that need 'generous and purposive' construction in the Constitution. This is besides the fact that media and freedom of expression rights guaranteed under the Constitution are considerably undermined by claw-back clauses and a bundle of statutes and judicial decisions. Accordingly, even though the Constitution enjoys supremacy status, the courts and law enforcement bodies continue to uphold and defend anti-democratic laws that criminalise speech. The Supreme Court in particular has recently defended the provisions on false news in the penal code and a section of sedition as constitutional and desirable in our democracy.<sup>57</sup> The limitation clause to section 25(1)(a) is section 25(4). This provides that freedom of speech and expression:

[S]hall be exercised subject to the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedoms thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of the Gambia, national security, public order, decency or morality, or in relation to contempt of Court.

The limitations provided under section 25(4) have been criticised as inconsistent with international law and standards of best practice.<sup>58</sup> As a party to the International Covenant on Civil and Political Rights (ICCPR), article 19(3) is applicable. It provides quite categorically that any limitation to freedom of expression – press freedom included – must, among two others (be defined by law and necessary in a democratic state) pursue a legitimate aim of 'respect for the rights and reputations of others, protection of national security, public order and public health and morals'.<sup>59</sup> Less problematic is section 209, which places limitations to

57 *Gambia Press Union v The Attorney General* SC Civil Suit 1/2014.

58 Article 19 of the ICCPR.

59 Article 19(3) of the ICCPR.

the enjoyment of the rights conferred in sections 207 (media freedom and independence) and 208 (independence of state media). Section 209 states that limitations must be 'reasonably required in a democratic society; in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of others'.<sup>60</sup>

The Gambia has over the past half a century instituted and strengthened a number of statutes designed to interfere with and inhibit freedom of expression.<sup>61</sup> The bulk of the existing anti-free speech provisions are found in the criminal code. Seditious libel provisions are dotted in the penal code, criminalising a range of speeches, including criticism of the government, the person of the president, administration of justice, foreign diplomats, and incitement of the military. Like sedition, false news provisions are also largely found in the criminal code and have criminalised publication or broadcasting of false news. In 2013, false news provisions were inserted in the Information and Communication Act, 2009. This Act also allows interception of electronic communications without any public or judicial oversight.<sup>62</sup> The Criminal Code also criminalises defamation and giving false information to a public officer. The Public Order Act, meanwhile, criminalises utterances that are conducive to breach of peace.<sup>63</sup>

In essence, successive post-independence governments, each enjoying an overwhelming majority in parliament, have tinkered with anti-speech laws to suppress freedom of expression. The definitions are broad and punishments harsher than they were during colonial times.

## **4.2 Statutory limitations**

### **4.2.1 Press freedom and false news**

False news provisions are found in the penal code and Information and Communication (Amendment) Act, 2013. Section 59 of the Criminal Code makes criminal any publication or reproduction of statement that causes fear or disturbs public peace while section 181, which deals with false publication and broadcasting, criminalises publication of false news or information. In the Information and Communication (Amendment) Act, section 173 makes it a strict liability offence for anyone to spread false news on the internet against the government or public officials.

60 Section 209 of the 1997 Constitution.

61 For a list of changes to the laws, see Nabaneh (n 2) 15-19.

62 Section 138 of the Information and Communication Act, 2009.

63 Section 9 of the Public Order Act.

In 2006, following a reported abortive *coup d'état*, Lamin Fatty, a reporter for Independent Newspaper, published a list of 23 people who were arrested and detained in connection with the incident.<sup>64</sup> The reporter incorrectly reported Samba Bah, the Secretary of State (Minister) for Interior, was among those arrested and detained. There was, indeed, a Samba Bah, a corporal in the Gambia Armed Forces (GAF), who was arrested. Samba Bah the minister refuted the story and his version, in addition to a correction, was published with due prominence. Yet, Lamin was arrested, detained for more than two months and allegedly tortured. He was later prosecuted and eventually convicted on charges of publication of false news.<sup>65</sup> The court, in its decision, said it was convinced that a publication that contains false news was published by the reporter knowing it was false.<sup>66</sup>

#### 4.2.2 Press freedom and sedition

Section 52 of the Criminal Code (Amendment) Act 2004, as amended in 2005, makes any written or verbal statement that is critical of the government an offence. It provides stiff penalties in the form of fines and imprisonment even for first-time offenders, and in some cases, there is not even an option of a fine.<sup>67</sup> In 2008, a US-based Gambian journalist was arrested at the airport. She was charged with sedition and false news for the following statement:<sup>68</sup>

[President] Jammeh is tearing our beloved country into shreds, he debunked our hopes and became a thorn into every issue that is related to progress in The Gambia, be it social, political and economic. Worst of all, he is a bundle of terror. There is need to speak out. If you look around The Gambia, particularly at the condition people live in, you will see what I mean, that Gambians are desperately in need of an alternative to this egoistic frustrated imam of APRC ...

64 'Journalist Fatty fined 50 000' *Foroyaa* 6 June 2007.

65 As above.

66 As above.

67 Nabaneh (n 2) 16.

68 'Fatou Jaw Manneh's Trial' *Foroyaa* 24 April 2007 <https://allafrica.com/stories/200704230929.html> (accessed 10 June 2019).



After more than a year of trial, she was convicted and sentenced pay a fine of 250 000 in default to serve four years in prison with hard labour. The court, in its decision, says that the statements could cause alarm.<sup>69</sup>

### 4.3 Constitutional court cases

There is a constant and sometimes delicate balancing act between the full enjoyment of the right to freedom of expression and issues of national security and privacy and dignity of others. In The Gambia, from the analysis of attempts and actual instances of curtailment, it is clear that the tension is more between freedom of expression and political power and privileges, rather than other more legitimate grounds for restrictions, and this tension is often resolved in favour of protecting the latter, rather than placing higher value on the former, as is the norm and standard practice in a democracy. The constitutional framework provides very limited guarantees for freedom of expression and the statutory provisions are so overbroad and vague that ‘persons subject to it are unable to predict the legal consequences of their actions’. The UN HRC has enjoined states to establish a direct threat and immediate connection between the expression and the threat in invoking legitimate grounds for restriction of freedom of expression.<sup>70</sup>

In 2018, the Supreme Court delivered two landmark rulings in two separate civil suits filed against the state by the GPU, challenging the constitutionality of the laws of sedition, false news and criminal defamation provisions.<sup>71</sup> In *Bai Emil Touray v The Attorney General (Bai Emil case)*,<sup>72</sup> the Court held that criminal defamation, as contained in the penal code and false news on the internet against government and public officials – a strict liability offence that attracts up for 15 years’ imprisonment – have not met the restrictions set out in the Constitution and therefore declared those laws unconstitutional.

The Court, however, in *Gambia Press Union v the Attorney General (GPU case)*,<sup>73</sup> filed in 2014 ruled that, with regards to sedition, it is legitimate to protect the person of the president, not necessarily the government, from

69 ‘Journalist Fatou Jaw Manneh gets D250 000 fine’ *The Point* 19 August 2008.

70 General Comment 34 (n 1).

71 General Comment 34 (n 1) para 54. For an analysis, see Nabaneh & Sowe (n 18) 109-111.

72 SC Civil Suit 001/2017.

73 SC Civil Suit 1/2014 (9 May 2018).

being unduly distracted by criticisms in order to focus on state affairs. The Court stated that:<sup>74</sup>

[T]he vicissitudes and trappings of the Office of President and as the Office serves first and foremost as the foundation for national cohesions and stability, coupled with the need for the holder of such office to concentrate on State affairs and not to be unduly distracted, it is reasonable that the holder of such Office is protected. This protection is, in the context of The Gambia and the values attributed to such leadership position in the country consider necessary and thus has a legitimate aim.

The Court added that statements touching on the person of the president, other than criticisms or expression of opinion in relation to his or her performance in office, may have negative impact on national security and foreign relations.<sup>75</sup> By this decision, the highest court has apparently limited criticism of the president to his performance in office. Indeed, if a president has an extra marital affair, or he is a wife batterer, that will be a subject of legitimate public interest which in the interpretation of the Supreme Court ruling, might be considered to be out of bounds. Moreover, the Court also ruled that the sedition provision that criminalises 'incitement of hatred' towards the administration of justice pursues a legitimate aim as it does not 'necessarily the judiciary as an institution that may be subject to criticism and critical opinion'.<sup>76</sup> This, in the Court's view, is necessary as it protects the integrity of the 'platform of hope' that in any society is considered sacrosanct.

As confirmed by the Supreme Court, sedition has attracted litigation in a number of commonwealth countries. One such country is Nigeria where the High Court in a landmark ruling stated that:<sup>77</sup>

We are no longer the illiterates or the mob society our colonial masters had in mind when the law [sedition] was promulgated. To retain Section 51 [of the Criminal Code] in its present form, that even if not inconsistent with freedom of expression guaranteed by our constitution, will be a deadly weapon and to be used at will by a corrupt government or tyrant.

Those in public office should not be intolerant to criticism. Where a writer exceeds the bounds, there should be a resort to the law of libel where

74 *GPU case* (n 73) para 52.

75 *GPU case* (n 73) para 54.

76 *GPU case* (n 73) para 56.

77 *Charles Onyango-Obbo and Mujuni Mwenda v Attorney General* (2004) 43 ILM 686 184.

the plaintiff must of necessity put his character and reputation in issue. Criticism is indispensable in a free society.

False news and false publication and broadcasting, as contained in sections 59 and 181 of the Criminal Code<sup>78</sup> were also a subject of litigation in the same case. In the *GPU* case, the Supreme Court ruled that the restrictions are constitutional.<sup>79</sup> The offence is not strict liability and there is a 'get-out-of-jail-free card' if the defendant can prove that he or she has adequate measures to verify what is published. Moreover, a commentary on a set of facts, once it does not cross the boundaries of truthfulness, is unlikely to attract action. What the law seeks to address, in the Court's view, is publication of news or information passed as truth.

False news, like sedition, has been the subject of intense scrutiny by courts and international human rights mechanisms.<sup>80</sup> There is an inclination towards accepting the law as reasonably justified. However, when looked at from a more holistic angle, democracies around the world tend to do away with the law simply because doing so serves the greater good. This is well-articulated in the ruling by the Supreme Court of Uganda, which stated that: 'In order to maintain that benefit [of freedom of expression], a democratic society chooses to tolerate the exercise of the freedom even in respect of demonstrably untrue and alarming statements.'<sup>81</sup>

The Court held that the Constitution should protect expressions that thought by another or others to be false, erroneous, controversial, or unpleasant because there is a greater good in protecting alarming, untrue statements than encouraging self-censorship by criminalising incorrect opinions.<sup>82</sup>

In practical terms, the broadness [of false news] can lead to grave consequences especially affecting the media. Because the section is capable of very wide application, it is bound to frequently place news publishers in doubt as to what is safe to publish and what is not. Some journalists will boldly take the plunge and publish and at the risk of suffering prosecution, and possible

78 Sections 59(1)(2) & 181A (1)(2) of the Criminal Code.

79 *GPU* case (n 73) para 65.

80 NJ Reventlow & A Reventlow "Fake news" highlights much bigger problems at play' *Berkman Klein Center for Internet & Society at Harvard University* 7 February 2017 <https://medium.com/berkman-klein-center/fake-news-highlights-much-bigger-problems-at-play-9e419e4a6f52> (accessed 12 July 2019).

81 *Andrew Mujuni Mwenda v Attorney General*, Consolidated Constitutional Petitions 12 of 2005 & 3 of 2006 (2006), Ugandan Constitutional Court.

82 As above.

imprisonment. Inevitably, however, there will be more cautious who in order to avoid possible prosecution and imprisonment, will abstain from publishing. Needless to say, both the prosecution of those who dare and the abstaining by those who are cautious, are gravely injurious to the freedom of expression and consequently, to democracy.

While courts in democracies around the world, buoyed by the advances made by international and regional human rights instruments and mechanisms, have constantly placed higher value to freedom, the courts in the Gambia appear to even lower the standard of proof in this area. In many rulings, the courts were simply satisfied that publication or utterance was false or was considered bad taste even when there is no 'direct and immediate link' between the expression and the threat or even where no one is harmed by the publication or utterance.

In essence, in seeking to protect the presidency as a foundation of peace and stability; to promote faith in the administration of justice; and to aid the search for truth on matters of legitimate public interest, the courts and politicians and law enforcement bodies have declined to put faith in freedom of expression as an ally even the established link between freedom of expression and the attainment of each of those lofty ideals are inextricable.

## 5 Press freedom: Way forward for The Gambia

In 2017, The Gambia ushered in a new government. President Adama Barrow set in motion a programme for transition to democracy after 22 years of dictatorship under Yahya Jammeh, who came to power in 1994 after overthrowing a democratically elected government. An important requirement of the democratic transition is constitutional reforms as the current 1997 Constitution, called the Jammeh Constitution, is seen as a relic of dictatorship, a tool used by Jammeh to entrench himself in power and violate human rights with impunity.<sup>83</sup>

In 2018, the Constitutional Review Commission Act was passed into law, establishing the Constitution Review Commission (CRC) with the mandate to develop a new constitution that will usher in the third Republic.<sup>84</sup>

83 M Jobarteh 'From dictatorship to a new Constitution in The Gambia: Issues and Concerns' *Constitution.net* 22 January 2018 <https://constitutionnet.org/news/dictatorship-new-constitution-gambia-issues-and-concerns> (accessed 10 June 2019).

84 'Justice Minister presents Constitutional Review Commission Bill' *Foroyaa* 12 December 2017.

But the document produced by the CRC in March 2020, known as the Draft Constitution 2020 has failed to get the threshold required in the National Assembly as lawmakers linked to the current president voted against it among other reasons, the limits it puts on the tenure of the presidency is two-terms.<sup>85</sup> Nonetheless, what was known as the 'People's Constitution' provides guarantees for freedom of expression, freedom of information and freedom of the media. These rights are contained in Chapter 6 which is titled Fundamental Rights and Freedoms. The Chapter, entrenched, is divided into two parts. The first part deals with General Provisions on Fundamental Human Rights and Freedoms. This section recognises and guarantees the inviolability of human rights and provides vital guidance on the implementation, interpretation and enforcement of the human rights guarantees provided in the constitution.<sup>86</sup> The second part spells out the specific rights and freedoms in greater detail.

Media freedoms are catered for in section 47. It contains four sub-sections, dealing with general provisions, protection from any criminal sanctions for expression of opinions, state-owned media and regulation. Section 47(2), which elaborates the rights and freedoms of the press, guarantees the right to own and operate media and to gather and disseminate news and information. It also protects the media from pre-publication censorship and from disclosure of source of confidential information. None of these rights are guaranteed in the 1997 Constitution. And section 47(5) is a bold and daring move: an absolute protection from any attacks from the state for opinions expressed in any media publication.

In essence, the 1970 Constitution broadly recognises the right to freedom of expression but does not guarantee its corollary rights, of press and of information as a distinct human right. The 1997 Constitution, meanwhile, expanded the right to freedom of expression by recognising press freedom as a distinct human right and giving the press a privileged status, but doesn't guarantee any protection for journalistic activities and privileges. The Draft Constitution, in addition to recognising press freedom as a human right, goes as far as providing guarantees for the main journalistic activity of providing news service and the privileges that come with that, but it does not recognise the role of the press in society. The case being made, therefore, is for the new constitution to provide guarantees for the role and functions of the press or confirm the place of the press in the

85 S Nabaneh 'Why The Gambia's quest for a new constitution came unstuck – And what next' *The Conversation* 6 October 2020 <https://theconversation.com/why-the-gambias-quest-for-a-new-constitution-came-unstuck-and-what-next-147118> (accessed 15 November 2020).

86 Sections 30-63 of the 2020 Draft Constitution.

governance architecture as the basis for providing protection for carrying out journalistic functions, which includes but not limited to provision of news service. There are three major shortcomings regarding the provisions in the Draft 2020 Constitution related to press freedom, specifically, state-owned media, media regulation and the limitations of the rights.

## 5.1 State-owned media

There are two state-owned media outlets in the country. The broadcasting outfit is called the Gambia Radio and Television Services. The Governing Board and Director General are appointed by the president without legislative approval or public oversight. *The Gambia Now*, a weekly print publication, is published by the Department of Information Services (DoIS) under the Ministry of Information and Communication Infrastructure (MoICI).

Section 47(4) of the draft provides for state-owned media. Except that it is part of the entrenched provision, this provision is not remarkably different from section 208 of the 1997 Constitution, which guarantees ‘the freedom and independence of the state-owned media’ in a similar fashion.<sup>87</sup> There is a decent attempt in the zero draft where it guarantees ‘the independence and impartiality of state-owned media’, but the safeguards are insufficient. The appointment processes at governing body and senior-level positions do fully not support the independence and impartiality of the institutions. More specifically, section 278 states that the chief executive officer of state-owned enterprises – which includes the state-owned broadcaster, the Gambia Radio and Television Services (GRTS) – will be appointed by the president, subject to confirmation by the National Assembly. This is positive, but in the context of state-owned media, particularly a publicly funded broadcasting outfit, this safeguard falls short of meeting international standards.<sup>88</sup> Section 278 gives excessive discretion to the president to appoint board members of state-owned enterprises, of course, as a usual constitutional nicety, in consultation with the Public Service Commission. International standards require broad-based participation, including involvement of civil society in the appointment processes of the governing bodies of publicly funded media outlets.<sup>89</sup> The constitutional building process should therefore take cognisant of and appreciate the peculiar nature of publicly funded media outlets providing public service function and not cover it in the cloak as

87 Section 208 of the 1997 Constitution.

88 See African Commission on Human and Peoples’ Rights ‘Declaration of Principles of Freedom of Expression in Africa and Access to Information’ (2019).

89 ACHPR (n 88) principle 17(2).

other state-owned enterprises in terms of providing safeguards from state interference.

Moreover, there are legitimate calls for the new constitution to require all state-owned media be turned into public service media.<sup>90</sup> The call is in line with the Declaration of Principles on Freedom of Expression in Africa,<sup>91</sup> which obligates states to transform state-owned broadcasters into public service broadcasters through the legislation rather than the government. This is not just an ideal, it is a particularly important aspect of the media and broader democratic reforms that needed strong backing from the constitutional building process.

## **5.2 Media regulation under the Draft Constitution**

The broadcasting industry is being regulated by Public Utilities Regulatory Authority (PURA), a state-sanctioned multi-sector regulator. With regards to self-regulation, there is a widely circulated industry-wide code of conduct for media professionals. What was lacking was a body to be responsible for monitoring and enforcement of professional and ethical standards. That body has now been put in place – the Media Council of The Gambia, established by the GPU, the umbrella trade union and professional organisation for journalists and other media workers.

Section 47(6) of the draft makes provision for the establishment of an independent media regulator tasked with regulating broadcast and communication services, ensuring fairness and diversity and, problematically, setting media standards.<sup>92</sup> It is important to note that a strong framework operating within a transitional period is particularly critical given the challenges of bias, misinformation and hate speech in an increasingly volatile social and political environment. This is coming from a background of intense bitterness borne out of the longstanding period of authoritarian rule in the country. Post-2016 has therefore brought about the most polarised environment with the proliferation of political parties and presidential aspirants. A high degree of political intolerance and insults have increasingly been exemplified in ethno-religious polarisation including tribal politics that are deeply vicious and violent.<sup>93</sup>

90 See for example sec 278 of the 2020 Draft Constitution.

91 ACHPR (n 88).

92 Sec 45(6)(d) and (e) of the 2020 Draft Constitution.

93 See N Hultin & T Sommerfelt 'Anticipatory tribalism: Accusatory politics in the "New Gambia"' (2020) 58 *The Journal of Modern African Studies* 257-279.



Currently there is a more diverse, robust, and critical media environment under the new Barrow regime. This is evident in increased coverage of civil and political affairs. As a result, citizens can have access to more divergent opinions. However, the rapid fragmentation of the political space carries risks that needs to be addressed such as hate speech and countering fake news and misinformation. For instance, the media should ensure fair and balanced coverage of all political parties, candidates and election reported matters to ensure fair play and guarantee the right to the electorates to obtain accurate and unbiased information about political parties. Throughout the current presidential and legislative mandates, the reform processes initiated have contributed to the democratic process and significant progress has been made in the peace infrastructure of the country. The media contributes to this infrastructure. However, there has been criticism especially of offshore online media by traditional media, international observers, and government officials for unreliable or sensationalist reporting and biased coverage. A European Union (EU) report states:<sup>94</sup>

While [the proliferation of many online newspapers and blogs due to the erosion of the freedom of expression of the traditional print media ... during the former regime of Yahya Jammeh] gave a voice to Gambians ... the industry has also been infiltrated by people who hardly know anything about the ethics of journalism. Some of these people have personal axes to grind and they use their online medium to publish/air stories that are hardly dissected, probed or based on facts.

Notwithstanding the recognition the media can play threaten peaceful and constructive dialogue that exacerbates political, social and ethnic divides, the proposed establishment of an independent media regulator is problematic to the information ecosystem. The formulation of this provision places regulation of editorial content in the hands of a body constituted entirely by the state without sufficient guarantee constitutional safeguards for its independence. The interpretation of section 278 and 279, as regards state-owned media, applies here in the sense that the safeguards are insufficient enough to prevent the state from unduly interfering in the affairs of the body. The regulator has not been named among independent institutions such as National Human Rights Commission (NHRC), which are impressively insulated from state interference.

94 I Noble 'Freedom of expression and media pluralism in The Gambia: Analysis in the context of democratisation and transitional Justice' (2018) 21 [https://media4democracy.eu/wp-content/uploads/2018/02/EUD\\_Report\\_Freedom\\_of\\_Expression\\_Media\\_Pluralism\\_The\\_Gambia\\_Media4Democracy.pdf](https://media4democracy.eu/wp-content/uploads/2018/02/EUD_Report_Freedom_of_Expression_Media_Pluralism_The_Gambia_Media4Democracy.pdf) (accessed 6 July 2022).

The limitations provided for the freedom of the media rights guaranteed in the draft, curiously, are more overly broad, draconian, and intrusive than those provided for in the 1997 Constitution. The issue that rights groups raised concerns about with respect to limitation clauses in the 1997 Constitution is the inclusion of the terms 'sovereignty' and 'integrity' of the state. It is acknowledged that freedom of the media is not absolute, and the exercise carries special duties and responsibilities. But the limitations provided under international law are not open-ended. They are to be narrowly defined to avoid fishing expeditions, interpretative abuse, and disproportionate application.<sup>95</sup> It is clear that a number of the claw-back clauses are vague, which according to international human rights mechanisms,<sup>96</sup> has a chilling effect on freedom of expression and, more specifically, freedom of the media. The overly broad and ambiguous terms used, such as 'vilification of others' and 'incitement to break law and order', are not defined anywhere in the constitution and are, therefore, outside of the parameters within which limitations should be framed. In addition, such terms validate the widely criticised insults laws that the government promised to repeal. It is subject to abuse by a half tolerant and panicky government and stifles democratic participation of an expressive citizenry, and is likely to lead to what amounts to sedition.

## **6 Conclusion**

Now that the constitutional building process has reached a dead-end,<sup>97</sup> options are being discussed. Some seem to favour comprehensive overhaul of the 1997 Constitution, while others prefer to see the 2020 Draft Constitution through. Regardless of what route is adopted, it is essential to recognise the important role of the press in society and its status as the fourth estate in the constitutional arrangement. This should be the basis for guaranteeing media rights and freedoms. The Gambia should make broad and adequate guarantees for freedom of the media. It should provide sufficient guarantees and protection to the right to gather and report news, shield reporters from any interference with their gadgets and protect.

As a country in transition from dictatorship to democracy, The Gambia should ensure that, through the constitution guarantees, the public service status of all public-funded media outlets is protected. These outlets should enjoy independence in terms of financing, governance, and editorial decision-making. Inclusion of the term state media can justify

95 As above.

96 General Comment 34 (n 1).

97 Nabaneh (n 86).

government control. Since there is a self-regulatory Media Council, the Constitution should give it legal underpinning. This is crucial in giving it some legal muscle to strengthen its legitimacy and authority.

The constitutional building process should narrowly and clearly define the limitations on freedom of expression and its corollary rights – of speech, press, and information to prevent interpretative abuse and fishing expeditions by authorities.

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