

Gambia

Summary

International observers are hopeful that human rights, media freedoms, and civil liberties in Gambia will improve now that the 22-year dictatorship of Yahya Jammeh ended in January 2017. However, while the newly inaugurated government of Adama Barrow has hinted at plans to amend draconian restrictions of freedoms, no meaningful legislation has yet been introduced.

Expectations have been further dampened by the suspension and arrest of a legal adviser who allegedly blew the whistle over the lack of any serious reforms taking place at his agency in post-Jammeh Gambia¹ and of continued violations of freedom of the press and speech.

Whistleblowing protections are limited to provisions in the Labour Act that disallows disciplinary action or termination for making a complaint against the employer. Department of Labour officers are engaged to investigate claims of legal violations, but no channels are set out for the lodging of complaints.

Gambia's Constitution provides “a fundamental law, which affirms our commitment to freedom, justice, probity and accountability.”² Freedom of “speech and expression, which include freedom of the press and other media” are specifically guaranteed.³ However, restrictive media and secrecy laws contradict the Constitution and have resulted in Freedom House ranking the Gambian press as “not free.”

Legal and Policy Framework

The 2007 Labour Act notes that “the filing of a complaint or the participation in proceedings against an employer involving alleged violation of any laws, regulations or collective agreements” does not constitute valid grounds for dismissal or disciplinary action.⁴ In the event of a dispute, it falls on the employer to prove that a dismissal was justified.⁵ When a complaint of unfair dismissal is found by the tribunal to be “well founded,” the Industrial Tribunal may order reinstatement of the employee and/or “award such compensation as the Tribunal considers just and equitable⁶,” based on the “loss sustained by the employee in consequence of the dismissal.”⁷

The Act prohibits the victimization of employees for “anything done in pursuance” of the administration of the Act⁸, and notes that employers shall “grant an employee every opportunity and necessary facilities for communicating freely” with officers of the

¹ The Point, *Whistleblower Badjie subject of gov't investigation*, <http://thepoint.gm/africa/gambia/article/whistleblower-badjie-subject-of-govt-investigation>

² Constitution of the Second Republic of the Gambia

³ Constitution of the Second Republic of the Gambia

⁴ Labour Act 2007, Article 83 (2)(g)

⁵ Labour Act 2007, Article 90

⁶ Labour Act 2007, Article 92 (2)(a),(b)

⁷ Labour Act 2007, Article 92 (5)

⁸ Labour Act 2007, Article 11

Department of Labour responsible for investigating alleged breaches of the Act.⁹ Officers are obliged to “treat as absolutely confidential the source of any complaint” and refrain from informing the employer that an inspection was made “in consequence of a complaint”.¹⁰

There are no further legal protections for whistleblowers.

Legal, Legislative, and Policy Gaps

Gambia’s whistleblowing protections are extremely limited. There is no evidence that any reforms are planned, despite calls from the media and civil society to implement comprehensive whistleblowing legislation. President Adama has not indicated that such legislation is a priority, despite his rhetoric of transparency and reform.

National Security Exemptions

According to Gambian press sources, the Official Secrets Act was originally introduced in 1922 by the British Colonial administration to prevent unauthorized disclosure of official documents and information. The law was amended in April 2008 and it became illegal to publish or communicate “any secret official code, word, sketch, plan, article, note or other document” which may be useful to an enemy. The Jammeh government also increased the penalties for the offenses of disclosure of official information and set a minimum sentence of 30 years and a maximum term of life imprisonment. Journalists reporting on security issues run the risk of contravening the Official Secrets Act without any criminal intent.¹¹ Furthermore, the Public Security Act can be invoked to compel journalists to reveal their sources or face a heavy fine or jail time.¹²

Laws and Policies Governing Press and Speech

In June 2017, President Adama Barrow declared that the press is “already free” under the new regime and that his cabinet was in the process of amending media laws.¹³ However, restrictive media laws remain in place. Seditious¹⁴, defamation¹⁵ and the publication of false news¹⁶ all remain offenses under the Criminal Code, and each is punishable by a prison term of “not less than one year,” and/or a fine. In 2013, knowingly providing false information to

⁹ Labour Act 2007, Article 10 (a)

¹⁰ Labour Act 2007, Article 12 (2)

¹¹ The Point, *What is Justice?*, <http://thepoint.gm/africa/gambia/article/what-is-justice>

¹² Media Sustainability Index, The Gambia, 2012 <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-africa-2012-the-gambia.pdf>

¹³ Africa News, *The press is already free*¹ – Gambian president asserts during second media meeting, <http://www.africanews.com/2017/07/28/the-press-is-already-free-gambian-president-asserts-during-second-media-meeting/>

¹⁴ Criminal Code, Article 52

¹⁵ Criminal Code, Article 179

¹⁶ Criminal Code, Article 181A

a civil servant became punishable by up to five years in prison,¹⁷¹⁸ having previously been a misdemeanor punishable by 6 months in prison.¹⁹

Despite claims to the contrary, the Barrow administration has overseen notable violations of press freedoms. In June 2017, a journalist named Baboucarr Sey was arrested and detained for several days after organizing a press conference to discuss protests over the sale of a community football field to a property developer with close ties to Barrow.²⁰ In February 2017, Fatou Badjie, a single mother who was accused of making “rude comments” about Barrow, also was arrested. Both Sey and Badjie have been released on bail, with prosecution pending.²¹

In addition, the 2009 Information and Communications Act was amended in 2013 to provide for a 15-year prison term and a fine for anyone convicted of using the internet to spread false news, make derogatory statements, incite dissatisfaction, or instigate violence against the government or public officials.²² The then-Information and Communications Minister, Nana Grey-Johnson, is reported to have justified the amendment by claiming that “some Gambians had tried to set the people and security officials against the government...by inciting the people to engage in unpatriotic behavior, spreading false news and engaging in criminal defamation against government officials”.²³

Freedom House rates press freedoms in Gambia as “partly free” in the 2018 *Freedom of the Press* index, noting that “Gambia was ruled for over two decades by President Jammeh, who mounted a bloodless coup in 1994 and consistently violated political rights and civil liberties. The 2016 election resulted in a surprise victory for opposition candidate Adama Barrow. Fundamental freedoms, including the rights of assembly, association, and speech improved thereafter, but the rule of law is unconsolidated.” Gambia received a Press Freedom Score of 41 out of 100, with 100 being the worst, representing a rise of 46 spots in just the last two years. Many international observers are confident that Barrow will continue to implement constitutional freedoms and civil liberties. Similarly, Reporters without Borders ranks Gambia 122 out of 180 countries in its 2018 World Press Freedom Index, an improvement of 21 places since 2016.

Whistleblower cases

The 2017 detention of a legal adviser to the National Intelligence Agency (NIA) accused of breaking the country’s secrecy laws has garnered a great deal of media attention, as it is the

¹⁷ Article 19, *The Gambia: ARTICLE 19 condemns new attacks on freedom of expression*, <https://www.article19.org/resources.php/resource/3712/en/the-gambia:-article-19-condemns-new-attacks-on-freedom-of-expression>

¹⁸ While not available online, this amendment was widely reported in the media

¹⁹ Criminal Code, Article 114

²⁰ Mamos TV, *Opinion: The Case of Baboucarr Sey is about Our Economic and Social Rights*, <https://www.mamostv.com/opinion-case-baboucarr-sey-economic-social-rights/>

²¹ Sunu Gambia, *Fatou Badjie, a mother arrested for abusing president Barrow*, <http://www.sunugambia.com/fatou-badjie-a-mother-arrested-for-abusing-president-barrow/>

²² While the amendment is widely reported, it is not available online

²³ Panapress, *Gambia's Information, Communications Act amended*, <http://www.panapress.com/Gambia-s-information,-Communications-Act-amended--12-875861-42-lang2-index.html>

first of its kind in the post-Jammeh era and is seen to be indicative of how the Barrow government may treat whistleblowers and dissidents. Angered by the alleged lack of meaningful reform under the Barrow administration, Bubacarr A.M.O Badjie accused the agency of having a workforce that is 60% “functionally illiterate” and claimed that the “usefulness of such people as NIA agents is very insignificant”.²⁴ In a letter to Barrow which he also provided to the media, Badjie also claimed that a large percentage of the staff had close ties to Jammeh’s family and were recruited into the agency by past and present directors. Reports claim that Badjie had his employment terminated and was arrested in June 2017 by NIA agents (recently renamed the State Intelligence Service and having theoretically been stripped of arresting powers), who allege that Badjie’s claims “constitute violations of the official secrets and code of conduct binding on all active and serving officers of this intelligence service.”²⁵

Relevant legislation

List of laws (titles only) pertaining to:

- Constitution of the Second Republic of The Gambia, (1996)
- Labour Act, 2007
- Information and Communications Act, 2009
- Criminal Code, 1933
- Official Secrets Act, 1922 (not available online)
- Public Security Act (not available online)

Organizations of Interest

A Gambian journalist living abroad notes that while an Amnesty International officer was previously available to handle complaints of corruption and human rights violations, he fled Gambia after being subjected to persecution and corruption at the hands of the Jammeh government. Amnesty International’s office in Senegal retains limited operations in The Gambia. The journalist notes that the only available channels for whistleblowers now are online Gambian media outlets papers based in the Diaspora, and thus beyond the reach of the authorities. The following organizations are media outlets to whom information can be disclosed anonymously.

Jollofnews

An online pan-Africanist newspaper working to promote successful integration at the continental level. JollofNews.com covers news on both The Gambia and Senegal and beyond, including corruption and human right violations.

Contact person and title (if known): Not available

Address: Not available

Tel: Not available

²⁴ Jollof News, *Gambia: Whistleblower In Trouble For Washing The Dirty Linen Of Spy Agency In Public*, <https://jollofnews.com/2017/06/10/gambia-whistleblower-in-trouble-for-washing-the-dirty-linen-of-spy-agency-in-public/>

²⁵ SMBC News, *Gambia’s intelligence services arrest legal advisor*,

<https://gambia.smbcgo.com/2017/06/10/gambias-intelligence-services-arrest-legal-advisor/>

Fax: Not available
website: <https://jollofnews.com/>
E-mail: editor@jollofnews.com

Freedom Newspaper

An online Gambian US-based newspaper, staffed by media professionals committed in promoting free press, democracy, rule of law, and good governance on the African continent and beyond.

website: <http://www.freedomnewspaper.com/freedom-np/contact-us/>

USA:

Contact person and title (if known): Not available

Address: Based in North Carolina, USA

Tel: +1 919-749-6319

Fax: Not available

E-mail: panderrymbai@gmail.com, editor@freedomnewspaper.com,

The Gambia:

Contact person and title (if known): James Peters

Address: Based in Banjul

Tel: Not available

Fax: Not available

E-mail: freedomnewspaper1@gmail.com

The Gambia Echo

The Gambia Echo is a legally registered pro-democracy online newspaper in Raleigh, North Carolina, USA for the “unfettered dissemination of credible news; informing, educating, and entertaining a broad spectrum of readership across the African Diaspora”.

Contact person and title (if known): Not available

Address: 7407 Sandy Creek Drive, Raleigh , NC 27615 USA

Tel: +1 (919) 637-0643

Fax: Not available

website: thegambiaecho.com

E-mail: editor@thegambiaecho.com, egsankara@yahoo.com

Further information

Freedom House rates The Gambia as “not free” in its 2017 Freedom in the World index.²⁶ The report highlights violence around the 2016 elections – including the death by torture of an opposition member, Solo Sandeng, in state custody following his participation in a peaceful demonstration for electoral reform and lengthy sentences handed to opposition leaders their participation in protests demanding transparency about the fate of Mr. Sandeng.

Keeping Score: How Gambia’s Whistleblower Protection Laws Compare to International Standards

²⁶ Freedom House, *Freedom in the World, The Gambia, 2017*

The following standards for whistleblower laws are derived from guidelines developed by the OECD, Council of Europe, Government Accountability Project, Blueprint for Free Speech and Transparency International.

Key

1= *National law is recognized as consistent with international standards*

2 = *National law is partially recognized as consistent with international standards*

3 = *No national law or national law is not recognized as consistent with international standards*

| | Standard | Public Sector | Private Sector |
|-----|--|----------------------|-----------------------|
| 1. | A broad range of organisations and workplaces are covered | 2 | 2 |
| 2. | A broad range of offenses may be reported as whistleblowing | 3 | 3 |
| 3. | The definition of who may qualify as a whistleblower is broad | 2 | 2 |
| 4. | A range of disclosure channels to report internally or to regulators is in place | 3 | 3 |
| 5. | People who make disclosures to external organizations, the media or the public are protected | 3 | 3 |
| 6. | The threshold for protection is a reasonable belief that the information disclosed is true | 3 | 3 |
| 7. | There are opportunities and protections for anonymous disclosures | 3 | 3 |
| 8. | Whistleblower confidentiality is protected unless expressly waived | 2 | 2 |
| 9. | Organizations are required to establish internal disclosure procedures | 3 | 3 |
| 10. | Whistleblowers are protected from a broad range of retaliatory acts | 3 | 3 |

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|-----|--|---|---|
| 11. | Victimized whistleblowers have access to a full range of remedies and compensation | 2 | 2 |
| 12. | Those who retaliate against a whistleblower are subject to sanctions | 3 | 3 |
| 13. | A whistleblower oversight or regulatory agency has been designated | 3 | 3 |
| 14. | Whistleblower laws are administered and reviewed transparently | 3 | 3 |