

Press freedom and democratic governance in The Gambia: A rights-based approach

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Summary

The article explores the relationship between democratic governance and the free and independent press in The Gambia since the inception of the Gambian First Republic in 1970. It supports the rights-based approach which perceives the issues of democracy, good governance, and a free and independent press as related to the concept of human rights and fundamental freedoms. Put differently, a free and independent press is not only a mirror of good governance, but also one of the essential elements of democratic governance. This article represents a modest contribution to the existing literature on the questions of governance, democracy, press freedom and human rights, with particular reference to The Gambia.

1 Introduction

Press freedom is a prerequisite for the establishment of a functioning democratic system of government and fundamental human rights. Embodied in the principle of freedom of expression, press freedom is a concern and principle of international and national human rights law and a basic norm of civilised behaviour. It is viewed by many as a fundamental necessity for democratic governance. Thus, governments are expected to permit the press, and particularly the private press, to function responsibly without undue obstruction. Press freedom is not only an indispensable pillar of democracy, but it is also important for the long-term sustainability of social and economic development.

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The press has become central to democratic discourse worldwide. The advent of broadcasting dramatically extended the reach, influence and scope of the media. The scale of media operations further increased from the 1980s onward through the use of global satellite communications and fibre optics technology. Our new millennium, therefore, is characterised by a revolution in the media that is bound to reshape society through the increased use of personal computers, the internet and others forms of social media. As the media reveals the democratic culture of a given country, its study is central to the question of democracy, human rights and good governance.

There is a paucity of work on the media and democracy in The Gambia. Bensouda¹ and Johnson² undertook in-depth studies of the history of the media and the law in The Gambia since colonial days. However, these authors did not establish the critical link between press freedom, democracy, good governance, on the one hand, and human rights, on the other. The most ambitious project to study and monitor progress in the practice of democracy and good governance in The Gambia was undertaken by a group of scholars of the University of The Gambia.³ The research team produced a document that touches upon various aspects and dimensions of the governance system in The Gambia. The document discussed issues such as social inclusion in political participation and integral governance, checks and balances in the 1997 Constitution, respect for human rights and the rule of law, and the restrictive nature of the human rights provisions of the 1997 Constitution. However, on the subject of respect for civil and political rights, the document makes only a situational analysis of government's attitude toward the subject. It peripherally addresses the links between good governance, respect for human rights and the autonomy and freedom of the press. Although the section on the media establishes the fact that an independent media is an indispensable element for good governance, the human rights dimension of free media participation in the polity and its significance in the democratisation process is not illuminated.

This article attempts to study the link between democratic governance and press freedom in The Gambia from a human rights perspective. The aim of the article is to contribute to the existing literature on the issues of democracy, human rights, governance and press freedom in the country. In writing this article, the author relied on interviews with media houses, court cases and newspaper publications as well as on a very limited number of books and academic articles.

1 A Bensouda *The law and media in The Gambia* (1998).

2 NG Johnson *The story of the newspaper in The Gambia: An interpretive account of the history and development of newspaper journalism* (2004).

3 F Sulayman *et al Monitoring progress in the practice of good governance in The Gambia: A consultancy report* (2004).

The next section of this article deals with conceptual issues. That is followed by a section on the relevant laws relating to private media practice and press freedom across government's interaction with the independent media. It includes a brief account of the historical development of the private press and a detailed description of the incidents, types and methods of alleged violations of press freedom in the country. The third section of the article addresses the human rights dimension of press freedom in The Gambia. The article concludes with a set of suggestions and recommendations on the way forward for the mutual co-existence between the government and media practitioners as a way of sustaining democracy and human rights.

2 Conceptual issues

The article adopts a rights-based approach to democracy or democratic governance. By the term democracy is understood a political system that adheres to the principles of constitutional rule; respect for human rights and fundamental freedoms, particularly freedom of expression and press freedom; respect for the rule of law; the independence of the judiciary and the legal profession; free and fair participation of multiple political parties in the political life of the state; free and fair elections organised at regular intervals; direct or indirect involvement of the populace in the affairs and political process of their country; the principles of accountability and transparency; and the separation of powers between the three main organs of government.

Governance has three major components, namely, process, content and delivery. Factors such as transparency and accountability are included in the process component, while values such as justice and equity are included in the component of content. The element of delivery ensures that citizens, especially the poorest, have the basic needs and live life with dignity. It needs to be stressed at this juncture that being able to deliver does not, by itself, constitute good governance. There is no doubt that a dictatorship that delivers basic needs to citizens is better than a dictatorship that does not, but this is not enough to constitute good governance.⁴

Good governance, on the other hand, implies an administration that is sensitive and responsive to the needs of the people and is effective in coping with emerging challenges in society by strictly adhering to and implementing the principles of democracy discussed above. For the World Bank, good governance is epitomised by predictable, open and enlightened policy making, a bureaucracy imbued with a professional ethos, an executive arm of government accountable for its actions and a strong civil society participation in public affairs and all

4 H Mander & M Asif *Good governance resource book* (2004) 15.

behaving under the rule of law.⁵ This description of good governance epitomises the democratic principles of transparency, accountability, participation, respect for the rule of law and the separation of powers. The European Union (EU) stresses that⁶

in the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for equitable and sustainable development.

This definition envisages a situation where there are clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in managing and distributing resources and capacity building for elaborating and implementing anti-corruption measures. The government of The Netherlands added the elements of security, decentralisation and the participation of civil society to the EU's definition of good governance. It argues that good governance must allow⁷

a responsible economic and financial management of public and natural resources for the purpose of economic growth, social development and poverty reduction in an equitable and sustainable manner, with the use of clear participatory procedures for public decision making, transparent and accountable institutions, primacy of law in the management and distribution of resources, effective measures to prevent and combat corruption, support for leadership and empowerment of men and women.

These definitions of good governance by the EU and the government of The Netherlands have substantially incorporated the principles and basic characteristics of democratic governance already alluded to.

From an African perspective of governance, article 32 of the African Charter on Democracy, Elections and Governance (African Democracy Charter) outlines eight principles through the operation of which the state in Africa will achieve good political governance. These principles include 'accountable, efficient and effective public administration; strengthening the functioning and effectiveness of parliaments; and an independent judiciary'. Article 33 of the African Democracy Charter highlights the principles of good economic and corporate governance in an expansive way as being inclusive of 'effective public sector management; promoting transparency in public finance management; equitable allocation of the nation's wealth and natural resources; poverty alleviation; and developing tax policies that encourage investment'.

The African approach to the concept of good governance is thus more elaborate than the definitions of the World Bank, the EU and the government of The Netherlands highlighted above. The African Union

⁵ Mander & Asif (n 4 above) 15-16.

⁶ As above.

⁷ As above.

(AU)'s definition recognises the clear distinction between the systemic and the managerial aspects of governance and acknowledges that, in order to ensure governance, the two aspects must both be adequately addressed. The elaborate provisions of the African Democracy Charter have revealed that a huge gap exists between the theory and practice of good governance in many African countries.

However, it is obvious from the exposition of both 'democratic' and 'good governance' that sometimes emphasis is placed on the managerial aspect of governance, while at some point the focus is on the systemic aspect. The former is a characteristic of the definition of good governance, while the latter is a natural outcome of the definition of democratic governance. Whatever the case may be, for the government of the day to be both 'good' and 'democratic', the two aspects of governance (systemic and managerial) must be adequately enforced. In other words, the system within which one governs must be based on the core values of democracy, while the style and manner of managing the resources and affairs of a country are not only transparent, accountable or effective but also equitable, sustainable and responsive to the needs of the people.

3 Law related to press freedom in The Gambia

3.1 The Constitution

The principle of constitutional rule as a core element of a democratic system can be effective only if the constitution enjoys supreme status within the legal and political system of the country. The concept of constitutional supremacy holds that the constitution is the supreme law of the land and all other laws, executive decisions and administrative activities of the government of the day must be in conformity with the constitution, otherwise they are declared null and void by a court of competent jurisdiction. Constitutional supremacy also ensures a more conducive environment for the observance of the rule of law and the independence of the judiciary. This principle has been established in section 4 of the 1997 Constitution of the Second Republic of The Gambia. In 2005 the Supreme Court of The Gambia, in *Sabally v Inspector-General of Police*,⁸ nullified several provisions of the Indemnity (Amendment) Act 2001 for contravening the human rights provisions of the 1997 Constitution of the Republic of The Gambia and article 7 of the African Charter on Human and Peoples' Rights (African Charter), which guarantees the fundamental right of the individual to access the courts of the land.

8 *Sabally v Inspector-General of Police & Others* (2001) 2 GR 883. See also sec 4 of the 1997 Constitution of the Republic of The Gambia; art 7 of the African Charter on Human and Peoples' Rights.

The principle of constitutional supremacy as used here applies only to the relationship between the Constitution of the Second Republic of The Gambia and the ordinary laws of the land. As far as international law is concerned, constitutional supremacy cannot apply the way it is understood and applied in today's perspective of constitutionalism. The Gambian Constitution does not indicate whether the country adheres to a dualist or monist theory of international law. However, recent practice seems to indicate that The Gambia embraces the theory of dualism in the relationship of its domestic law with international law in the sense that a treaty is first ratified and must then be incorporated or legislated into domestic law. The most recent example of this is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol), which was signed on 11 September 2003, ratified on 25 May 2005 and legislated into Gambian law in 2010.⁹ Similarly, the Convention on the Rights of the Child (CRC) was signed on 5 February 1990, ratified on 8 August 1990 and domesticated on 2 August 2005. Furthermore, there is some judicial authority from the country's highest court indicating that in the event of conflict, domestic law shall give way to international law, as substantiated in the case of *Sabally v Inspector-General of Police*. Violating article 7(1)(a) of the African Charter was one of the main reasons the Indemnity Act was invalidated by the Supreme Court of The Gambia. The Court made direct reference to the African Charter and a decision of the African Commission on Human and Peoples' Rights (African Commission) of 1999 as principles of international law, which The Gambia is under an international obligation to respect.¹⁰ In this particular case, the Supreme Court was in a position to enforce that respect.

The framing of section 219 of the Constitution should not be used by The Gambia to evade its international obligations or to lower its responsibility to respect international law. Section 219 of the 1997 Gambian Constitution states as follows:

- The state shall endeavour to ensure that in international relations it
- (a) promotes and protects the interests of The Gambia;
 - (b) seeks the establishment of a just and equitable international economic and social order;
 - (c) fosters respect for international law, treaty obligations and the settlement of international disputes by peaceful means; and
 - (d) is guided by the principles and goals of international and regional organisations of which The Gambia is a signatory.

The expression 'shall endeavour' is as solid and binding as any other obligation because the Constitution uses the terminology 'shall' and not 'may' or 'will'. The expression 'shall' is understood to be binding in legal constitutions unless specifically otherwise indicated. The

⁹ Act 12 of 2010.

¹⁰ *Sabally* (n 8 above).

terminology 'endeavour' might have been used in recognition of the slow or sometimes highly-politicised nature of effecting a country's international obligations such as the processes of signing, ratification and incorporation of international treaty obligations.

In all the cases referred to above the message is very clear, namely, that a country cannot rely on provisions of domestic law to evade its international law obligations.

The Gambia's political system has, since the inception of the First Republic in 1970, to some extent adhered to the democratic principles highlighted above. The country's degree of adherence and commitment to such principles varies from one principle to another and, as the next section shows, the performance of successive governments of the two republics in the area of press freedom has been fluctuating and is sometimes very weak, for several reasons. At this juncture, a brief examination of The Gambia's democratic credentials in the light of the remaining values of a democratic system is undertaken.

Since independence, The Gambia has been governed by written constitutions both under the First and Second Republics. (Between 22 July 1994 and 31 December 1996, The Gambia was under military rule. In that period, the country was governed through decrees that were passed and applied from time to time by the former Armed Forces Provisional Ruling Council (AFPRC)).

The Constitution of the First Republic (1970-1994), which enjoyed supreme status, had 134 articles and its chapter III guaranteed the protection of human rights and fundamental freedoms. The Constitution also had provisions for free participation of multiple political parties in the political life of the state and for holding free and fair elections at regular intervals. Free and fair elections were indeed held after every five years' interval, with the last elections under this Constitution taking place in 1992. The Constitution recognised the doctrine of separation of powers and guaranteed the rule of law and the independence of the judiciary. Article 42 vested the executive powers of The Gambia in the President, while article 56 vested the legislative powers of the country in Parliament, and part I of chapter 8 entrusted the judicial power of the republic to the courts of the land. The country had during this period maintained many legislative enactments passed by the colonial administration and enacted many other laws to support the Constitution in the governance process. All this is true in theory, but in practice the chief executive officer of the nation, like many other African presidents, during this period usurped all other arms of government and became the most powerful man in the country.

Despite that, and as court cases of the period have shown, the judiciary was largely independent and human rights were generally respected and protected. There were many instances in which the executive lost court cases to individuals and private organisations. The courts also invalidated legislative instruments and executive orders for

violating the Constitution. One example is when the Court of Appeal, in its judgment dated 11 May 1981 in the *Momodou Job* decision, invalidated sections 7, 8, 9 and 10 of the Special Criminal Court Act 1979 for violating the constitutional rights of the appellant.¹¹

All that has been said about the nature and extent of formal democratic governance in the First Republic is generally identical with and applicable to the Second Republic. From 1997 onwards, The Gambia has been governed by a written Constitution, defined by section 4 as being the supreme law of the land to which all laws, government policies, executive orders, decisions and all other governance activities should conform. The remaining democratic values of the protection of human rights and fundamental freedoms, observance of the rule of law, the independence of the judiciary, multiple political party participation in the political process of the country, free and fair periodic elections, the doctrine of separation of powers, and transparent and accountable government, are guaranteed by the 1997 Constitution of the Second Republic of The Gambia.¹²

The new Constitution also introduced additional institutions that could only strengthen Gambian democracy under the Second Republic. These include a permanent independent electoral commission, a judicial service commission, the High Court system and the office of the Ombudsman.¹³

3.2 The judiciary

Despite several attempts to intimidate and interfere with the work of the judiciary, the courts have largely asserted their authority and maintained their independence. Recently, the government lost important court battles involving high-profile cases to political opponents and individuals. In June 2005, the High Court, in a highly-controversial murder case filed by the government, acquitted and discharged the main opposition leader, Ousainnou Darboe, and four others who were accused of murdering a supporter of the ruling party in 2000.¹⁴

In July 2003 the High Court in Banjul dismissed another high-profile case brought by the state against six men. In this case, Ebrima Barrow, Momodou Ousman Saho (Dumo), Momodou Marena, Ebrima Yabo, Lieutenant Lallo Jaiteh and Lieutenant Omar Darboe, all accused of treasonable offences and taken to court, were acquitted and accordingly

11 *Momodou Jobe v The Attorney-General* (1984) AC 689. See also *Kaba Jallow v The Attorney-General* 1972 (unreported).

12 Secs 4, 7, 17-38, 60, 139-159, 76, 100 & 120 1997 Constitution of The Gambia.

13 Secs 42-45, 145-148, 131-133 & 163-165 1997 Constitution of The Gambia.

14 AA Senghore 'The judiciary in governance in The Gambia: The quest for autonomy under the Second Republic' (2010) 27 *Journal of Third World Studies* 215-248.

discharged by the High Court.¹⁵ In his ruling, Justice Ahmed O Belgore noted that there was no evidence, direct or circumstantial, linking the accused persons to the case filed against them. There was therefore no ground for the Court to consider any of the counts contained in the information sheet upon which the accused persons were charged and he thus acquitted and discharged them.

In June 2005, the High Court in Banjul dismissed a highly-controversial murder case filed by the government against the main opposition leader, Ousainu Darboe, and others.¹⁶ In this case, the government accused Darboe and his co-accused of murdering a supporter of the ruling party while campaigning for the 2001 presidential elections. Despite the fact that senior politicians within the ruling party wanted to see Darboe and some key members of his party locked up, the High Court did not hesitate to dismiss the case because the prosecution failed to establish a case against them.

In September 2005, leaders of the four opposition parties in the country obtained a crucial victory in an important court case they filed against the state shortly before the 29 September 2005 bye-elections scheduled to be held in four constituencies.¹⁷ The Independent Electoral Commission (IEC) made a decision that it was going to allow voters whose names did not appear on the list of the main register of voters to vote at the bye-election if they came with valid voters' cards. The opposition cried foul and argued that such a practice would not ensure genuine elections and, therefore, took the matter to court. On 28 September 2005, just a day before the bye-elections, the High Court gave a landmark ruling on the practice. While nullifying the practice, the High Court in Banjul held that 'the decision of the first respondent' (the IEC)

will permit holders of voters' cards to vote even if their names do not appear on the register of voters, will not ensure a genuine election and will therefore be an infringement of the right of the applicants herein to stand at a genuine election as guaranteed by section 26(b) of the 1997 Constitution of The Gambia.

Consequently, the Court ruled against the executive. This is because holders of voters' cards, whose names do not appear on the main register of voters, could be holding forged cards and this violates the principle of a genuine election, which in the opinion of the Court is

15 *The State v Messer Ebrima Barrow, Momodou Ousman Saho, Momodou Marraneh, Ebrima Yabo, Lieutenant Lallo Jaiteh & Lieutenant Omar Darboe*, High Court judgment, July 2003, not yet reported (quoted in Senghore (n 14 above) 232).

16 *The State v ANO Ousainou Darbor & Others*, judgment of the High Court, June 2005, not yet reported (also quoted in Senghore (n 14 above) 232).

17 *National Alliance for Democracy and Development v The Independent Electoral Commission*, judgment of the High Court, 2005, not yet reported (quoted in Senghore (n 14 above) 232).

a fundamental right of anyone contesting, voting in or standing for election.

In July 2006, the High Court in Banjul invalidated an executive order issued by the Minister for Local Government and Lands dismissing the Mayor of Banjul, Pa-Sallah Jeng.¹⁸ The High Court ordered that the Mayor be reinstated with immediate effect.

In all these and many other cases that have not been mentioned here, the Gambian judiciary had to take a bold stand to assert its authority and independence to uphold the principles of justice, equity, the rule of law and fair play in the governance process. However, as the next section indicates, the cost of fighting to maintain judicial autonomy and independence in The Gambia has been quite significant.¹⁹

It is against this background that a conclusion is drawn on the independence of the Gambian judiciary over the past years. I am well aware of the heavy criticism from various circles, both at home and abroad, against the Gambian judiciary, particularly in view of the latest judgments handed down by non-Gambian judges in a number of cases, such as *The State v Amadou Scared Janneh*,²⁰ *The State v Lang Tombong Tamba* (the former Chief of Defence Staff of the Gambian armed forces),²¹ and *The State v Ensa Badjie* (the former Inspector-General of Police).²² However, none of those cases has yet fully exhausted local remedies and completed the judicial process. Many are on appeal, either before the Court of Appeal or before the Supreme Court. The only case which has not gone on appeal is that of Dr Scared Janneh who was pardoned by the President after the intervention of American civil rights campaigner, Reverend Jesse Jackson. Further, the current batch of non-Gambian (mainly Nigerian) judges who have occupied and seem to have dominated the Gambian judiciary, and who handed down judgments that attracted heavy criticism against the Gambian judicial system, occurred only in the past four or five years. To conclude that The Gambia's judiciary is not independent or is subject to the executive's manipulation before the final outcome of the appeal processes that have already been started or on the basis of a few controversial judgments, as compared to those cited above, will be an overly-hasty conclusion.

The above discussions seek to establish that, despite serious lapses in the area of press freedom as shown below, The Gambia under the

18 *Pa Sallah Jeng v The Minister of Local Governance and Lands*, High Court judgment, 2006, not yet reported (quoted in Senghore (n 14 above) 232-233).

19 As above.

20 *The State v Amadou Scared Janneh & 2 Others*, High Court judgment, January 2012, not yet reported.

21 *The State v Lang Tombong Tamba and Co*, High Court, July 2010, not yet reported (also quoted in 'Ruling in ex- CDS Tamba and Co case today' *The Point* 19 October 2012).

22 *The State v Ensa Badjie*, High Court judgment 29 July 2011, not yet reported (also quoted in 'Life sentence for Ensa Badjie' *Foroyaa* 1-2 August 2011).

First and Second Republics has been generally governed by law and, therefore, has been largely democratic.

3.3 Press freedom: A fundamental right or a political privilege?

The concepts of press or media freedom, free speech and freedom of information are synonyms that all come down to freedom of expression, which is a fundamental principle of both international and domestic human rights law. Human rights and fundamental freedoms, including freedom of expression, are inherent in a person's humanity and are not created by the legal system. The law's role is to guarantee their promotion and protection by way of providing mechanisms and institutions for their actualisation and enjoyment by all and for them to be remedied in the event of any violation.

In the First Republic, article 22 of the 1970 Constitution guaranteed the right to freedom of expression, which included the right to hold an opinion, and to receive and communicate ideas and information without any interference. Under section 25(1)(a) of the current (1997) Gambian Constitution, '[e]very person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media'. The provisions of the two Constitutions form part of the fundamental law of the land to which all legislative, executive or administrative and judicial activities of the state must conform.

In 1998 the High Court in Banjul quashed a judgment of the Kanifing Magistrate's Court in which an executive order closing down a privately-owned radio station and forfeiting its apparatus to the state was upheld. The High Court viewed the government's action as a serious violation of the appellant's right to freedom of expression in general and press freedom in particular. The High Court then made the following pronouncement:²³

It is an undeniable fact that the quest for knowledge and information through the media has become the hallmark and pattern to healthy democracy in all civilised society throughout the whole world.

This pronouncement has not only confirmed the rights aspect of press freedom, but it has also recognised such freedom as a prerequisite for a genuine democratic system and that an independent and free press has a crucial role to play in the area of seeking and dissemination of knowledge and information as part of the process of democratic governance.

Similarly, the underlined objective of regulating media practice in the form of legislation, as is the case with the Newspaper Act, the Telegraphic Stations Act and even with the defunct Media Commission Act, is to facilitate and protect the work and persons of media practitioners in the country. At the international level, The Gambia,

23 *Baboucarr Gaye v The IGP* (2000) WLR 200.

as a sovereign independent state and a member of the international community of civilised nations, is under an obligation under international law to respect, promote and protect press freedom and freedom of expression in general.

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. In the fundamental laws of the two republics, press freedom has been guaranteed and protected because it is a fundamental human right of the citizens on whose behalf the state exercises sovereignty and jurisdiction.²⁴

Thus, it will be fair to conclude from the above exposition that the state is not and cannot be ignorant of the status of press freedom as of right. In fact, the government of The Gambia and many Gambians continue to argue that the proliferation of privately-owned media houses and independent media organisations in The Gambia is clear evidence of the government's strong commitment to respecting and allowing press freedom and free speech in the country. There are currently a large number of privately-owned print and broadcast media organisations legally and freely operating in The Gambia.²⁵ At this juncture, one can only assume that the Minister was well aware of the fact that press freedom is a fundamental right and that her government is compelled by international law to respect, promote and protect that right.

However, the conclusion that the proliferation of private media houses in The Gambia is a sign of government's commitment to respecting press freedom could be seriously questioned in the light of recent setbacks in the relationship between the independent media and the government of The Gambia. This will be elaborated upon later in this article.

3.4 Specific legal instruments relating to media freedom in The Gambia

The print media in The Gambia is governed by the Newspaper Act of 1944. The registration, printing, publication and distribution of newspapers in The Gambia continue to be governed by the Act ever since the First Republic.²⁶ Section 2 of the Act defines 'newspapers' as

any paper containing and reporting any public news, intelligence or occurrences or any remarks, observations or comments thereon printed and published for sale in The Gambia periodically or in parts or numbers but does not include any such paper published by or under the authority of the government.

24 Sec 25 1997 Constitution of the Republic of The Gambia; art 22 1970 Constitution of the Republic of The Gambia.

25 See para 4.1 below.

26 Secs 3, 4 & 5 The Newspaper Act of 1944.

According to this definition, government-controlled or owned papers are not newspapers. Thus, the Act is intended to govern the privately-owned print papers. Despite a 1990 amendment, the main provisions of the Act remained the same throughout the First Republic. Section 7 of the Act provided for a mandatory registration fee of only 1 000 Dalasis (about US \$40) for anyone who wished to establish a newspaper. Similarly, section 13 imposes a maximum of 1 000 Dalais fine for an offence under the Act.

In 1996 the Armed Forces Provisional Ruling Council (the then military government of Captain Yahya Jammeh which ended the the First Republic in a bloodless *coup* on 22 July 1994), introduced a drastic amendment to the Act. This amendment, known as Decree 71 of the Newspaper Act Amendment 2, 1996, increased the registration fee from D1 000 (Gambian Dalasis) to D100 000 (US \$3 500) for anyone wishing to establish a newspaper. This was a crucial turning point in the relationship between the new military government that had set out to establish the Second Republic and the independent media.

As for the broadcast media, there was no specific legislation regulating private radio and television stations. From the inception of the First Republic until 2005, the privately-owned broadcast media continued to be governed by the provisions of the Telegraphic Stations Act 1913, which was very fairly favourable to the independent broadcast media.

In July 2001 the Gambian Parliament, which was dominated by the ruling party, passed a highly-controversial law, the National Media Commission Act. The press cried foul and argued that the new law was too draconian and that it violated the 1997 Constitution. The government argued that the passage of the new law was a significant gain in the country's democratisation process as it would not only regulate media practice as a profession and a means of communication and expression, but it would also ensure better protection of freedom of the press, including free speech and press freedom in The Gambia.²⁷

The Gambia Press Union then filed a lawsuit before the Supreme Court of The Gambia challenging the constitutionality of the new Act. Among the most controversial clauses of the Act was a provision on annual licensing of journalists, which also gave the Commission powers to renew or not to renew the operating licences of journalists and media houses. Other controversial provisions were the power of the Commission to force journalists to reveal their sources of information; that all decisions of the Commission are not contestable in any local court; that the new regulations would not be applicable to the government-owned or controlled media; and that the composition of the Commission had among its 11 members only two persons with a media background, which included the Director-General of the

27 See generally written comments submitted by Article 19 'Global campaign for free expression on the National Media Commission Act' (2002) 58.

Gambia Radio and Television Services (GRTS).²⁸ Media houses in The Gambia refused repeatedly to comply with different deadlines set by the Commission for their registration.

On 19 October 2004, the state television announced the government's intention to repeal the Act during the November sitting of the National Assembly. During December 2004, the National Assembly finally repealed the National Media Commission Act 2001. The provisions of the Constitution which had provided for the setting up of the Commission were subsequently repealed.²⁹

Repealing the National Media Commission Act did not bring an end to the struggle by authorities to use the law to control the private media. Instead, the National Assembly further amended the Newspaper Act and the Criminal Code Act late in December 2004 and July 2005 respectively. This latest amendment to the Newspaper Act has increased the registration fees of newspaper publishers and managers of broadcasting institutions from D100 000 to D500 000 (about US \$18 000). This increase in a country where the average salary of a civil servant ranges between US \$40 and US \$70 is deemed by many as unfair and unreasonable. It is fair to argue at this juncture that its constitutionality can be challenged successfully before the Supreme Court of The Gambia under whose jurisdiction the interpretation of the Constitution falls. Sections 3 and 4, as amended, have brought broadcasting institutions (radio and television stations) into the jurisdiction of the Newspaper Act.

Like the 1944 Act, the 2004 Act (Amendment) has excluded broadcasting institutions owned or operated by or under the authority of the government from the application of the Act. Similarly, section 7 was amended to include broadcasting stations. Now no person is allowed to operate a broadcasting station or cause it to be operated unless he or she registers in the office of the Registrar General a bond in the sum of D500 000 with such surety or sureties as may be required and approved by the Attorney-General. Section 7(a) cancelled any bond given and executed before coming into effect of the newly-amended Act in the sum of D100 000. Furthermore, the Criminal Code (Amendment) Act 2004 introduced mandatory prison terms for seditious publications, libel and defamation without the option of a fine.³⁰ As for the 2005 amendment of the same law, it provides for a fine of not less than D50 000 and not more than D250 000 or imprisonment of a term of not less than one year or both

28 Johnson (n 2 above) 413-416. See also sec 52 of the National Media Commission Act of 2001 (repealed).

29 Sec 210 1997 Constitution of the Republic of The Gambia.

30 Sec 52 Criminal Code Act 18 of 2004.

fine and imprisonment for anyone who is found guilty of a seditious publication.³¹

Similarly, sections 46 to 52A of the Criminal Code can have restrictive consequences when strictly applied. Section 46, for instance, deals with publications in general, while section 47, on the other hand, deals with the power of the Minister to prohibit the importation of publications that are contrary to the public interest. Section 48 defines offences relating to section 47. According to section 48, a person who imports, publishes, sells, offers for sale, distributes or reproduces prohibited publications or possesses publications the importation of which is prohibited, commits an offence for which, if convicted, he or she could be sentenced to a fine of D1 000 (about US \$35) or a prison term of three years, or a fine of D500 (about US \$18) or one year imprisonment with regard to the possession of a prohibited publication. Another interesting section to briefly look into is section 50 of the Act, which gives power to the Managing Director of Gambia Postal Services Corporation or any other official of the Corporation to be nominated in writing by the Inspector-General of Police to detain, open or examine packages or articles suspected of containing prohibited publications under section 48.

Sections 51 and 52 deal with seditious intention and the penalty for such intention respectively. According to section 5(1), seditious intention includes an intention to bring into hatred, contempt or excite dissatisfaction against the person of the President or against the administration of justice in The Gambia or to raise discontent or dissatisfaction against the inhabitants of The Gambia or to promote feelings of ill-will and hostility between different classes of the population in The Gambia.³²

Other provisions of the Criminal Code that could have a restrictive impact on and the private media are sections 178, 179 and 181A of the Code. Sections 178 and 179 provide elaborate provisions on the definitions of libel and defamatory matters respectively. Section 181A discusses false publication and broadcasting. According to this section, any person who, wilfully or negligently or recklessly or having no reason to believe that it is true, publishes or broadcasts false news, commits an offence punishable on conviction with a minimum fine of D50 000 or a maximum of not more D200 000 or imprisonment for a term of not less than one year. Section 181A further provides that the fact that the person did not know that the information or the news was false is not a defence unless he or she had taken adequate

31 Johnson (n 2 above) 236-238. See also S Conateh 'Press freedom in The Gambia', paper presented at a seminar in Banjul (2000).

32 An offence under sec 51 above carries a minimum fine of D50 000.00 or a minimum prison term of not less than one year. The maximum fine for this offence should not exceed D200 000.00. Sec 52A provides the power of the court to order for the confiscation of a printing machine used to print or produce prohibited publications upon conviction in court.

measures to verify the information. All these provisions of the press laws in The Gambia could be used to control the private media.³³

This brief survey of press laws in The Gambia has shown that neither successive governments of The Gambia nor the people recognise or are necessarily conscious of the rights dimension of press freedom and of the fact that it is a prerequisite for a democratic system. Many human rights activists and media men have argued that the use of restrictive laws by the state to control the private media is one of the main reasons why press freedom is very limited in The Gambia.

4 Freedom of expression in The Gambia in practice

4.1 Profile of the 'independent' media

By 'independent media' reference is made to both the print and broadcast media that are not owned, controlled or in any way influenced by the government of the day or by a political party, a pressure group or any other ideologically-based organisation. To be truly independent, an independent press should be able to distance itself from both the government and the opposition parties.

Currently there are several daily, weekly and bi-weekly publishing tabloids, namely, the *Daily Observer*, *Foroyaa*, *Gambia Info*, *The Independent*, *Point*, *Daily Express*, *Today*, *Voice*, *The Standard* and *Daily News*. The only tabloids that fit into the definition of independent media are *The Independent*, *Today*, *Voice*, *The Standard* and *Daily Express*. However, *The Independent* and *Daily Express* are currently not in circulation. They are serving an indefinite suspension or closure. Despite this, given the status of *The Independent* as the most independent newspaper in the country, this article focuses a lot of attention on that paper. This tabloid took a tougher stance against the government of the day than rival papers and inclined to put greater emphasis on exposing the shortcomings of the government than highlighting its achievements. This argument does not necessarily discredit *The Independent*, as the reason for this attitude might be the absence of vibrant opposition in The Gambia. Similarly, the nature and style of government that governs the Second Republic may be another factor.

The *Daily Observer* is known to be a pro-government newspaper, while *The Point*, though independent, is not critical enough in the way it addresses crucial issues. *Gambia Info* is government-owned while *Foroyaa* is owned, controlled and heavily influenced by the political ideology of its founders. However, it is important at this juncture to consider Nyamnjoh's criticism of the independent press or

33 For more about Gambian press law, see the Information and Communication Act 2009 Cap 74i03, Laws of The Gambia.

newspapers in Africa today. According to him,³⁴ many of the so-called independent press or newspapers are not truly independent, and in some cases they might actually be mouthpieces of opposition parties. While highlighting the shortcomings of the liberal democratic theory for the African media, he argues that the private press have assumed either a partisan, a highly-politicised or a militant role. There is a growing obsession with the politics of belonging, nationality and citizenship. Consequently, identity politics have become central to the political process, even with the media. This criticism by Nyamnjo of the independent press in Africa does not in any way defeat the purpose of this study, which examines the relationship between the independent media and democratic governance in The Gambia, because no matter how the private media are described, the fact that they operate as independent or private media organisations remains a reality of modern-day politics in Africa in general and in The Gambia in particular.

In the period after independence, particularly during the last two and a half decades, the private press in The Gambia has been very vocal about human rights violations and bad governance, but this has not happened without a heavy price both in terms of human and considerable material losses. Media houses, writing and publishing equipment, including a printing press, occasionally were burnt. Private radio stations closed down, and journalists were physically assaulted and in some cases murdered.

In mid-December 2004, unknown assailants murdered a leading and highly vocal journalist from *The Point* newspaper, Deyda Hydera. Hydera, once editor of the newspaper, was shot dead under mysterious circumstances and all investigations into his assassination have been fruitless. Around the same period, the government promulgated the Newspaper Amendment Act 2004 and the Criminal Code Amendment Bill 2004. The newly-amended Acts cancelled all the licences that had been issued previously to the news media and forced them to re-register, while at the same time increasing the cost of a publishing licence five-fold, from 2 600 Euro to 13 000 Euro (US \$3 000 to US \$17 000). It also forced journalists to adopt a strict code of conduct within six months and imposed sanctions on violators of the new law. Reporters Without Borders, after learning that a new press law had been promulgated on 28 December 2004, appealed to the international community to put pressure on the government of The Gambia to stop what it called 'its mounting crackdown on Gambia's independent media'.³⁵

34 FB Nyamnjo *Africa, media, democracy and the politics of belonging* (2005) 235-237.

35 *BBC Focus on Africa* 27 December 2004.

I now move on to highlight some of the problems that were allegedly faced by the former *The Independent* newspaper and some of its shortcomings.

4.2 Case of *The Independent*

The method of using intimidation, physical assault or arbitrary arrest and detention, death threats or arson attacks and assassinations against media practitioners of the independent press in The Gambia, as claimed by the former independent newspaper, is mainly a phenomenon of modern times. *The Independent*, which was believed and considered by many to be the most independent and most critical of all the privately-owned media organisations in The Gambia during that time, has had the biggest share of those incidents of alleged attacks, arrests, detentions and interference with press freedom over recent years.

Since its inception in 1999, the paper complained about many problems with the government of the day. According to *The Independent*, its editors and reporters were repeatedly arrested and detained, beaten up and otherwise physically assaulted. In an exciting brain-storming session, which lasted for more than one hour, between the former editor-in-chief of *The Independent* and some of its senior reporters and the author, the defunct company was unable to provide an exact figure of such incidents. However, with the help of the paper's past issues, which were carefully kept in its archives, we were able to come up with a good picture of the nature and type of incidents the newspaper had been complaining about and the circumstances leading to some of those incidents.³⁶

Registered on 5 July 1999, *The Independent*, a breakaway from the *Daily Observer*, allegedly had suffered more attacks than any other Gambian private media organisation. In September 2003, the newspaper's offices were set on fire by unknown arsonists. The biggest onslaught on the weekly newspaper was the burning down of its printing press in April 2004 by unidentified culprits, leading to damage of around US \$50 000.

The newspaper claimed that in the past, Mondays and Fridays (the days of publication) were considered bad days for journalists at its headquarters as security men would be looming around. The paper had its first onslaught a few days after it started operations. Its staff reporter, NB Daffeh, was arrested and briefly detained by police at the

³⁶ See generally the following issues of the *Independent* newspaper: 23-25 July 1999; 19-22 August 1999; 21-23 & 28-30 July & 27-30 November 2000; also 16-19 & 20-22 July 2001; 17-19 August & 23-25 November 2001; also 13-16 January & 22-25 September 2003; and 16-18 January & 8-11 April 2004; also 24-27 October 2005. This list is not an exhaustive one. Rather, it is only an example of all the issues surveyed, which gave a detailed account of the newspaper's confrontations with the executive.

Bundung police station for investigating a story entitled 'Handicaps deny immigration maltreatment'.

One month later, state security agents allegedly raided the offices of *The Independent* and arrested all six staff present. The agents also ransacked the office and retracted its official registration papers, thus forcing it to close down publication for three weeks. It was accused of defying an order from the Registrar of Companies to not publish the paper.

Exactly 12 months after operations began, *The Independent* experienced its fourth arrest. In these cases of arrests and detentions, the editors and reporters bore the brunt. In June 2000, there was another complaint by *The Independent* that state security agents questioned the nationalities of its founding fathers and proprietors, Baba Galleh Jallow and Alagi Yorro Jallow. The following month, Baba Galleh, chief editor, and a staff reporter, Alagie Mbye, were arrested. In June 2000, Alagie Mbye was threatened by gunmen who dropped a letter at his house.

In July 2001, another reporter was allegedly attacked by a group of soldiers and in August of the same year, another was arrested and detained for three days by the National Intelligence Agency (NIA). In November 2001, a senior reporter of the paper was allegedly arrested and detained for one week, while in January 2003 *The Independent* received death threats from unknown callers. Furthermore, around the middle of the same month Alagi Yorow Jallow received a death threat.

The latest onslaught on the paper allegedly occurred in October 2005 when its former editor-in-chief, Musa Saidu Khan, was arrested by the NIA for inviting President Thabo Mbeki of South Africa to help find a solution to the killing of Deyda Hydar, a former journalist of the *Point* newspaper. The agents conceived this as hypocrisy because the matter was a purely national affair and therefore would not need international involvement. The editor's nationality and that of his wife and parents were questioned before he was finally released.

In 2010 the Court of Justice of the Economic Community of West African States (ECOWAS) held that Mr Saidu Khan's arrest and subsequent detention allegedly by the authorities violated his right to personal liberty and a fair trial as provided for by articles 6 and 7 of the African Charter. These rights are also provided for under sections 19 and 24(3) and (4) respectively of the 1997 Constitution of the Republic of The Gambia. The ECOWAS Court therefore awarded Mr Saidu Khan US \$200 000 as compensation.³⁷

This picture of mistrust, suspicion and intolerance presented by *The Independent* newspaper as having dominated the relationship

37 DAS Kyi & S Hessel 'Steadfast in protest' Annual Report of the Observatory for the Protection of Human Right Defenders (OBS) of the International Federation for Human Rights (FIDH) and World Organisation Against Torture (2011) 84-85.

between the government of the day and the private media represents the views of a small but very vocal minority in academia and other circles.

These complaints of abuse and violation of press freedom made by *The Independent* newspaper against the Second Republic of The Gambia have never been independently verified or proved, nor were they admitted by the government of the day. In fact, critics of *The Independent* totally disagreed with such complaints and describe them as baseless and politically-motivated allegations with the sole objective of tarnishing the image of the government. Some moderate but sound academics and researchers admit that *The Independent* newspaper had suffered from one major shortcoming, namely, that the paper mainly focused its attention on the failures, rather than the positive achievements, of the Jammeh administration. This was perhaps the main reason for the poor relationship that existed between the government and *The Independent*. The paper's critics further argued that despite some lapses of the government of the Second Republic in the area of press freedom, the government in The Gambia has always been largely democratic.³⁸ The country is being governed by a clean and democratically-structured Constitution as the supreme law of the land.³⁹ The Constitution provides in chapter 4 for comprehensive and adequate guarantees of fundamental human rights; it recognises the doctrine of separation of powers; and guarantees an independent judicial system.⁴⁰

The political and governance system of The Gambia under the Second Republic has also incorporated the democratic principles of transparency, accountability and popular participation. Thus, all the essential principles of democratic governance which constitute a democratic system of government in the modern time are not only incorporated into the state, political and governance system of The Gambia, but, most importantly, they are practised on a daily basis in the process of governing the country.⁴¹

4.3 Attacks on other private media houses

The end of 2004 was marked by the tragic killing of a leading editor and veteran journalist, Deyda Hydera. On the night of 16 December, Hydera was driving home from his office when he was shot three times in the head by unidentified gunmen. Hydera was the managing editor and co-owner of *Point* newspaper, an independent bi-weekly

38 Senghore (n 14 above) 215-248.

39 Sec 4 1997 Constitution of the Republic of The Gambia.

40 Ch 4 1997 Constitution of the Republic of The Gambia.

41 Senghore (n 14 above) 215-248. See also AA Senghore 'The contribution of the human rights revolution to the promotion of gender development and equality' unpublished conference paper (2005).

publishing tabloid. He was also a correspondent for Agence-France Press, a former president of the Gambia Press Union and a known critic of administrative malpractice by successive governments in The Gambia. The reason for Mr Hydara's killing is not yet known and his killers are yet to be identified. However, his death came only a day after he and a group of Gambian journalists opposed the passing of the controversial National Media Commission Act already alluded to in this article.

In 2011, in *Deyda Hydara Jr and Others v The Gambia*, this matter was taken to the ECOWAS Court of Justice where it was argued that the state was required to conduct a thorough, rigorous and independent investigation into the untimely death of Hydara. This could be the best way of ascertaining the circumstances of his shooting in 2004, and also of identifying and punishing the actual perpetrators of this barbarous act.

Likewise, on 15 August 2004, Ebrahima Sillah, former BBC Banjul correspondent, suffered an arson attack on his home in Banjul. In the early hours of that day, unidentified armed attackers broke several windows of his home and poured petrol into his living room before setting it on fire. Sillah escaped injury but the fire caused extensive damage to his property. This attack was a serious warning to the independent press in The Gambia as only three days before the attack, the Gambia Press Union received a threatening letter that was thought to have come from a pro-government militia group called The Green Boys. The letter accused the private media in The Gambia of being Western agents bent on sabotaging the development programme of the government of the day. The letter then read that they 'planned to teach a GPU journalist a lesson very soon'. This arson attack, too, was not successfully investigated and the culprits are still at large.⁴²

In 2000 *Radio 1 FM* had its own share of arson attacks. The premises of the station were attacked and burnt down by unknown arsonists who earlier on dropped death threat letters into the private room of one of its programme managers, Alieu Bah.

In 2006, Chief Ebrima Manneh, a reporter of the pro-government *Daily Observer*, was arrested and disappeared under mysterious circumstances. Since his disappearance, Chief Manneh's whereabouts have remained unknown. The Ghana-based media rights NGO, Media Foundation for West Africa, GPU and other media rights organisations continue to show concern about Manneh's unresolved disappearance. However, the government of The Gambia has completely distanced itself from the disappearance of Manneh. On 6 August 2009, the

42 Report of the International Press Institute *World Press Freedom Review* December 2004 31-32.

former Attorney-General and Minister of Justice, Marie Saine Firdawes, told Parliament:⁴³

I have enquired from the Director-General of the NIA, the Inspector-General of Police and the Commissioner of Prisons and to the best of their knowledge, information and belief, Chief Manneh is not in their custody.

What all these alleged series of attacks have established is that there was an atmosphere of mistrust and intolerance hanging over the relationship between the government of The Gambia and the independent media in the country. This overall relationship of mistrust have not only weakened the country's performance in the area of press freedom as an essential ingredient of democratic governance, but it has also seriously weakened and marginalised press freedom as a fundamental human right. Perhaps this explains why the African Editors Forum meeting on 15 October 2005 in Johannesburg, South Africa, placed The Gambia, together with Togo, Côte d'Ivoire, Burkina Faso and Sierra Leone, on top of the list of countries in Africa with deplorable records of press freedom violations.⁴⁴ However, this state of affairs between the government of The Gambia and the private media has changed and the country's performance in the area of press freedom as a principle of democratic governance has improved.

The improvement in the relationship between the state and the private media was dealt a severe blow in 2012 with the unexpected closure of three major independent media organisations by the government. The latest crackdown affected the *Daily News*, *The Standard* and the *Taranga FM* radio station of Sinchu Alagie of the West Coast region of The Gambia. In June and July 2012, three journalists were arrested and subsequently detained and later released. Abdulhamid Adiamah, editor and owner of *Today* newspaper, Lamin Njie, the deputy editor of the *Daily* newspaper, and Sidiq Asemota, a senior legal correspondent with the *Daily Observer* newspaper, were all arrested between June and July 2012 on contempt of court charges while they were reporting court proceedings for their respective media houses. Both Njie and Asemota were pardoned and released,

43 Quoted in Media Alert – West Africa 2009 Annual State of the Media Report 26-27 and 46-47.

44 This conference took note of the current poor relationship between the independent media and the government of The Gambia. Participants noted with particular interest what was described as the deteriorating human rights treatment of media practitioners in the country, particularly the murder of Mr Deyda Hydera, editor and co-founder of the private newspaper *The Point* under mysterious circumstances and the disappearance of Mr Ebrima Manneh, a former journalist of the *Daily Observer*. DAS Kyi & S Hessel 'Steadfast in protest' annual report of the Observatory for the Protection of Human Right Defenders (OBS) of the International Federation for Human Rights (FIDH) and World Organisation Against Torture (2011).

but Adiamah was charged with contempt of court, convicted and sentenced to a fine of D100 000 (about US \$13 215) in June 2012.⁴⁵

In September 2012, two journalists were arrested and detained at the Banjul police headquarters. The two media men, Omar Ceesay of the *Daily News*, who is also the Vice-President of the Gambia Press Union (GPU), and Baboucar Saïdykhan, a freelance journalist, had been 'invited' to the police headquarters in Banjul, where the two allegedly had been detained, in relation to their application for permission to hold a peaceful protest against the latest execution of death row inmates.⁴⁶

The two journalists remained in police custody until 10 September 2012, when they were charged with 'conspiracy to commit felony' after the police had dropped their initial charges of 'incitement to violence'. They were later granted bail in the sum of D250 000 (about US \$27 000).

Article 19 strongly condemns this latest wave of arrests and detentions of journalists of the privately-owned media organisation. It argues that such action amounts to neglecting the very essence of the rights to freedom of expression and peaceful assembly both of which are guaranteed by international human rights conventions, including the African Charter, and the 1997 Constitution of the Republic of The Gambia. Section 25 of the 1997 Constitution has specifically recognised the right of the people to hold peaceful demonstrations. This right is also guaranteed and protected by all the international human rights instruments signed and ratified by The Gambia.

The closing down of these privately-owned media houses represents a serious setback for a long-standing troubled relationship that had just begun to enjoy some significant improvement in recent years.

4.4 Independent broadcast media

Currently about 30 radio stations are legally operating in The Gambia and most of these are privately owned. There are several of them in the greater Banjul area, while others operate in various towns and urban centres in the provinces. These include the stations in Brikama, Kerewan, Farafenni, Sapu, George Town or Janjangburreh and Brikamaba. There are stations in Basse, the provincial centre of the Upper River region, in Jarra Soma, which is a major town in the Lowe

45 See Article 19 'The Gambia: Arresting and detaining court reporters damages public trust in the judiciary' <http://www.article19.org/resources.php/resource/3397/en/the-gambia-arresting-and-detaining-court-reporters-damages-public-trust-in-the-judiciary> (accessed 31 October 2012).

46 'GPU calls on the state to drop charges against journalists' *Foroyaa* 25 September 2012.

River region, Bwiam in the West Coast region and elsewhere in the country.⁴⁷

Some of the private radio stations are temporarily closed down by the authorities. *Citizen FM* and *Sud FM* are among those that are affected and the validity of the move to close the latter is yet to be challenged before the courts. This has been the second time that the former has been closed down by the authorities. About ten years ago *Citizen FM* was closed down by the government but reopened after a High Court ruling to that effect.⁴⁸

Most of the private stations are purely commercial while the rest are community stations sometimes engaging in commercial activities as well. *Radio Syd* was the first independent station to be established, not only in The Gambia but also in the West African region. It was established in 1970, broadcasting 20 hours a day with mainly music programmes in English and the local languages. It also provides tourist information in Swedish.⁴⁹

In 1990, *Radio 1 FM* was established in Serrekunda as an independent commercial radio station. The establishment in 1995 of another privately-owned radio station, *Citizen FM*, by a veteran journalist and a former BBC Banjul correspondent, the late Baboucarr Gaye, was another significant achievement by The Gambia in terms of increasing the privately-owned broadcast media organisations in the country. Like *The Independent* newspaper, *Citizen FM* has had a troubled history with the government of the Second Republic. This is discussed further in the next section.

Given the limited number of privately-owned radio stations in The Gambia during the First Republic, and that private broadcasting only started in the country in the 1970s, the practice of closing down independent radio stations as a method of interference with or obstruction of press freedom, was not as rampant as other methods were. Currently, there are only two significant cases worth mentioning and both have taken place under the Second Republic.

In 1990, *Citizen FM Radio*, belonging to a veteran journalist and a former BBC Banjul correspondent, the late Baboucarr Gaye, was closed down by the state and the proprietor taken to court on charges of operating without a licence contrary to section 5(7) of the Telegraph Stations Act 1913 and regulation 4 made under section 12 of the Act. The Kanifing Magistrate's Court, serving as the court of first instance, convicted Gaye and sentenced him to one month's imprisonment with hard labour with the option to pay D35 000 as fine. The Court

47 Brikama is the provincial capital of the country's West Coast region, while Kerewan is the centre for the northern region. Farafenni is an urban commercial centre in the northern region; George Town or Janjangburreh is the provincial centre of the Central River region, while Sapo is an agricultural training post in the same region.

48 See generally *Baboucarr* (n 23 above).

49 *Europa world yearbook* (1990) 1089-1094.

ordered the radio station forfeited to the state. Gaye appealed to the High Court in Banjul against his conviction and sentence and on 3 July 2000 the High Court reversed the Magistrate's Court's judgment.

In his ruling, the late Justice WG Grante decided that the principal magistrate had erred in law and therefore he quashed the conviction and sentence and the consequential order of forfeiture passed on Gaye. The High Court then ordered the state to restore to Babouccar Gaye his radio apparatus and property which had been forfeited within seven days for the radio to resume its normal operation. The High Court judge in the course of his judgment described freedom of expression not only as a fundamental right but also a basic necessity of a democratic system.

The High Court's ruling in this case is significant for various reasons. It illustrated that the Court was conscious of the rights dimension of independent media practice as a basic principle of a democratic system. It recognised the fact that the work of the media to freely seek and disseminate information was the cornerstone of a democratic country.⁵⁰ The case posed a serious challenge to the independence of the Gambian judiciary because it provided the latter with yet another golden opportunity to assert its authority and correct and check on an increasingly ever-powerful executive.

The second private radio station to be subjected to closure by the authorities was *Sud FM*, which is owned jointly by a group of Senegalese and Gambian entrepreneurs. The station was shut down early in November 2005, and is a subsidiary branch of the Dakar-based *Sud FM*, which the Senegalese government had shut down in October of the same year. The reasons for the closure of Banjul *Sud FM* was not indicated despite the fact that there is a consensus among media practitioners and the radio's audience in Banjul that during its eight years of operation in The Gambia, *Sud FM* had never had any problem with the government and the public at large. The station manager argued that Banjul *Sud FM* never had any problem with the Senegalese President, Mr Abdoulaye Wade, but admitted that the Dakar station could have been closed down for its troubled relationship with the Wade administration.

Nevertheless, the *Sud FM* Banjul station manager thought that the closure of his radio, which happened immediately after the return of president Yahya Jammeh from a single-day official trip to Dakar, could have been the result of an understanding between the two presidents. Whatever reasons there might be, the closure of *Sud FM* in Dakar and Banjul does not only represent a violation of press freedom in the two countries, but also shows the vulnerability of private media organisations in the Senegambia region despite the obligation under

⁵⁰ See generally *Babouccar* (n 23 above).

international law to respect, promote and protect the right to freedom of expression and free speech.⁵¹

The crisis involving the closure of *Sud FM* had by the end of 2012 not yet been resolved. The Gambia Press Union was said to be negotiating with the government to reach a lasting solution to the crisis, but apparently to no avail. Although it was widely predicted that this case may finally go to court for a judicial solution, it seems that all parties have now lost interest in taking legal action for a judicial settlement of the case. Regardless of whether they reach a judicial or an out-of-court settlement, there is a need for all concerned to recognise and emphasise the human rights dimension of press freedom.

The proprietor of *Tangara Radio FM*, Mr Ismaila Ceesay, reported that in August 2012 some operatives from the country's international security organisation, the NIA, visited the radio station and told them that, based on an NIA directive, the radio station was ordered to immediately close down transmission. This is the second time that *Taranga Radio* had been closed down since its establishment in 2009. *Taranga Radio* has been praised frequently by people from all walks of life.

Finally, the government has always been sceptical about the motives and intention of some journalists and often accuse them of being mouthpieces of the opposition. However, in 2010 the government expressed its commitment to review some of the country's press laws to bring them in conformity with The Gambia's international obligations. On 12 November 2010, during the 48th ordinary session of the African Commission in Banjul, the then Attorney-General and Minister of Justice, Edward A Gomez, promised the human rights community that the government will review its laws that are not favourable to press freedom and bring them in line with international standards of free expression.⁵²

5 Conclusion

5.1 A brief analysis of the data presented

Gambian media practitioners, statesmen and intellectuals have always understood and advocated press freedom as a right and not a mere political privilege. Press freedom is a fundamental human right the promotion and protection of which are guaranteed in the Constitution, the ordinary laws of the land and in international human rights conventions to which The Gambia is a signatory.

51 Art 9 Universal Declaration of Human Rights of 1948; art 9 African Charter; art 19 International Covenant on Civil and Political Rights of 1966.

52 Kyi & Hessel (n 37 above) 83.

Despite this, there frequently have been infringements on press freedom in The Gambia, such as unfavourable press laws, a lack of professionalism, and a lack of access to information by reporters. Examples include the amendment of the Newspaper Act by the government to increase registration fees for a private newspaper from D1 000 to D100 000 and finally to D500 000 (from US \$40 to US \$3 500 and finally to US \$18 000). This latest increase in the registration fees of the private media has made it virtually impossible for the vast majority of Gambians to embark upon private media activities.

Despite all sorts of intimidation, violations and abuses of press freedom reported or claimed by *The Independent* and other private media organisations against the government of the day, there has been a proliferation of private media organisations in The Gambia over the past 10 to 15 years. There has been a huge increase both in number and type of private media organisations in the country. If these trends continue for the next 10 years, the country's ranking in terms of performance in the area of press freedom will definitely improve.

The significant increase both in number and type of private media organisations in The Gambia in recent years is a clear indication of a major improvement in the relationship between the independent media and the government. The fact that the vast majority of newspapers are independent and non-patrician clearly indicates that the culture of independent media practice has existed in The Gambia for more than a century and that many of the media practitioners of this period and before were somehow conscious of the human rights nature of independent media practice, particularly that of newspaper journalism. Unlike print media, the majority of broadcast media came into existence during the Second Republic.⁵³

The improvement in the relationship between the Gambian government and the independent media has very recently suffered some serious setbacks after the closure of *Taranga FM* radio, and two privately-owned English language newspapers, the *Daily News* and *The Standard*. These closures of newspapers have left a big gap in the circulation of newspapers in The Gambia.⁵⁴

In September 2012, journalists were charged with enticing violence and conspiracy to commit a felony. The GPU appealed to the government to drop the charges against the two journalists in the interests of national reconciliation, human rights, democracy and the rule of law.

When considering professionalism and the problem of hiding behind the media for political reasons, it is obvious from the style of reporting, headlining and judgmental writing that Gambian media

⁵³ See Johnson (n 2 above) 281-333.

⁵⁴ See 'IPI expresses concern at continued efforts to censor media' *Foroyaa* 25 September 2012.

practitioners are in dire need of training in the techniques and art of journalism. Most of them are taken directly from the classroom to newsrooms, television cameras or to the field to send news reports. Very often newspaper articles are quick to report rumours without any objective and well-researched analysis. Similarly, high-profile court cases involving top politicians, thieves or suspected murderers are common front-page headlines, and because of their inexperience, reporters are usually 'led only by the interest to report and then harvest being plentiful' without regard to quality.⁵⁵

African governments' attitude toward the private press is a source of serious concern, especially the lack of adequate commitment on the African continent to allow press freedom and independent media practice. This is because an independent and free press is the most feared force to the autocratic rulers and arrogant and undemocratic administrators of the modern-day Africa. Politicians are reluctant to allow the media to report incidents of rampant corruption, abuses of power and administrative malpractices, which is a fundamental role for a well-functioning independent free press. This is reflected in statements such as the one made in 1972 by a former Attorney-General and Minister of Justice of the Jawara administration:

We have a mandate to run this country and we will not allow one man with his pen to overthrow an entire government, what explanation we give to the people who gave us the mandate.

The African state is often influenced by an authoritarian theory that lays undue emphasis on loose and open-ended notions of protection of internal security and maintaining law and order to the detriment of press freedom. The question that arises is whether it is practically possible for one person to bring down an entire government with his or her pen. A former Master of the Superior Courts in The Gambia remarked as follows:⁵⁶

Instead of being a detractor or an adversary of government, a free press is an effective forum for public debate, a mechanism that facilitates an invaluable two-way communication between the people and their elected leaders. It is the very catharsis of discontent and an antidote to violence.

This quotation explains the deep-seated scepticism, suspicion and mistrust existing between some members of the government and the private media.

The early development of rights-consciousness in the minds of Gambian media practitioners may be a significant outcome of government's long-standing suspicious attitude to and intolerance

55 See Johnson (n 2 above) 386-406.

56 See Johnson (n 2 above) 281-334. See also AA Senghore 'Africa in a changing world: The major governance crisis in West Africa and the way forward' paper presented at an international conference on 'Africa: The present and the prospects for the future' held in Niamey, Niger, 20-22 December 2008.

of the independent media. It is only natural that when people are suppressed, they become more conscious of their rights and dignity. When The Gambia was placed under military rule in 1994 and throughout the period leading to the inception of the Second Republic, right through to the present day, human rights activism in the country intensified and civil society and rights advocacy organisations increased significantly.⁵⁷

It is important to emphasise that the state can and should allow press freedom without necessarily undermining its authority or even responsibility to maintain law and order and effectively protect its internal security. Likewise, regulating media activity does not necessarily mean a violation of press freedom. In fact, if we are serious about recognising the media as the fourth estate, the Constitution and the other laws of the land should contain elaborate provisions on the composition, functioning, regulations, limitations, privileges as well as immunities and other governing rules of the media. In other words, society must be sensitive to the composition and to the whole question of handling the affairs of the media as it does to that of the judiciary as the third estate. As far as one can see, only people who are well educated in law are part of the judiciary, including both the bar and the bench. Furthermore, the essence of the rule of law is that government, civil society and NGOs and institutions, including private media organisations and individuals, are all subject to the supreme authority of the law so long as the law is reasonable, fair and just.⁵⁸

In the case of The Gambia, the principle of fairness and reasonableness of the law is synonymous with that of constitutionality. In other words, laws aimed at regulating and governing the media must be in conformity with the 1997 Constitution, otherwise such a contravening law will be null and void.⁵⁹ It was for this reason that the repealed National Media Commission Act was viewed by many as draconian and subsequently challenged before the Supreme Court of The Gambia. In 2001 the Supreme Court invalidated several provisions of another controversial Act of Parliament known as the Indemnity (Amendment) Act for contravening the 1997 Constitution of The Gambia and the African Charter.⁶⁰

In 1964 William Dixon Colley, a former editor in Bathurst, was quoted as saying:⁶¹

In a country where people have no facilities to express opinion through the press or the radio, relations between the government and the governed are bound to be strained. Experience has shown that the liberty of the

⁵⁷ See generally Senghore (n 34 above).

⁵⁸ ECS Wade & G Philips *Constitutional and administrative law* (1997).

⁵⁹ Sec 4 1997 Constitution of the Republic of The Gambia.

⁶⁰ See *Sabally v Inspector-General of Police* (n 8 above).

⁶¹ See Johnson (n 2 above) 316.

people is insecure as long as the forces opposed to such liberty remain in power.

Thus, it is this feeling of insecurity that may force the people to revolt either physically or ideologically. Likewise, the advent of the modern international human rights system and the subsequent active involvement by The Gambia in bringing about the global and regional human rights revolution could be another significant contributing factor to the development of rights-consciousness in the minds of Gambian journalists of the post-independent period.

5.2 Recommendations for the future

The way forward for democratic governance and press freedom in The Gambia is for the government, the media and the rest of society to recognise and or take into account that a functioning, responsible and democratic governance system cannot be achieved without a free, efficient and objectively critical independent media. Objectively critical and responsible writing and reporting of events and issues help government see or know about its shortcomings, weaknesses or mistakes and it may therefore correct itself.

The current government is urged to relax the existing press laws and make them favourable to private media practitioners. This measure will definitely strengthen our democratic credentials in the area of press freedom.

For the media to take up its position as the fourth estate and effectively play its role in a democratic governing and nation-building process, it is high time for The Gambia to have a school of journalism of its own or a special department of that sort to be opened within the country's university. Gambian media practitioners should be trained on various aspects of media professionalism. These practitioners should know governance issues, the process of democratisation and democratic governance, human rights issues, the law, not only that part of it relating to the media, but also the general principles of the law and the important role the media has to play in the rocky and rough road to development and nation building. Although the University of The Gambia, which is still in its infancy, has not introduced a degree or even diploma programme in journalism and the country as a whole does not have a school of journalism of any kind, plans are in an advanced stage for the country's national university to introduce a comprehensive BA programme in journalism and mass communication. In the meantime, rudimentary training is necessary to provide a short-term remedy to the problem of a lack of professional training for Gambian journalists. The Gambia Press Union has a critical role to play towards achieving this objective. In 2003, a bold move was taken toward achieving this end with the establishment of the Gambia Media Training Institute through collaborative efforts of the GPU, GRTS, the UNDP, the Gambia

Technical Training Institute and UNESCO'S BREDA Division in Dakar. The training centre 'provided remedial courses covering functional English, communication theory, news writing, radio announcing, communication techniques and technology and computer-assisted reporting'.⁶²

The government of The Gambia takes the credit for the bold initiatives and the Gambia Press Union through its former president, DA Jawo, highly welcomed the move and added that government's efforts to provide the necessary training for journalists will only serve to render them more professional in their compartment and delivery.⁶³

Despite these laudable efforts, the author's visit to the institute and subsequent reading of events taking place there has revealed show that there still a lot to be done as far as the short-term objective of providing a basic and rudimentary training in journalism is concerned.

Finally, it remains important that private media organisations respect the laws of the land, the people's culture and all other norms and standards of responsible journalism. Gambian journalists must abide by the principles of objective, truthful and responsible writing and reporting, namely, responsibility, independence, sincerity, truthfulness, accuracy, impartiality, fair play, freedom of the press and decency. Journalists are human rights defenders and promoters of good governance, and governments across the African continent should continue to respect and abide by their international obligations to guarantee, promote and protect press freedom, human rights and human rights defenders.

62 See Johnson (n 2 above) 386-390.

63 Johnson (n 2 above) 388; *The Gambia News and Report* 2003.