

Joint stakeholder report: Human rights in the digital context in The Gambia

Association for Progressive Communications (APC), an organisation in consultative status with ECOSOC, advocates the strategic use of information and communications technologies to advance human rights. The APC network has 70 organisational members and 41 associates active in 74 countries, including The Gambia.

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I. INTRODUCTION

1. This joint stakeholder report focuses on key issues relating to human rights in the digital context in The Gambia, including digital connectivity and inclusion, freedom of speech and expression online, privacy and data protection, cybersecurity and cybercrime, access to information, and technology-facilitated gender-based violence, particularly its impact on human and women's rights defenders. The report draws on extensive and ongoing monitoring of the situation of human rights online in The Gambia by a number of civil society organisations and a desk review. It also draws on inputs received during a stakeholders' consultation on digital rights in The Gambia, which was organised by Jokkolabs Banjul.
2. This review marks the fourth cycle for The Gambia in the Universal Periodic Review (UPR) mechanism. During the third cycle, the importance of issues relating to freedom of speech and expression, access to information, data privacy and freedom of the press was demonstrated by The Gambia receiving 20 recommendations related to these issues, including 14 relating to free speech and expression (with a focus on the need to amend the Constitution and other legislative provisions which unduly restricted free speech), two recommendations relating to access to information, including to adopt the Freedom of Information Bill, one recommendation relating to data privacy and protection, and three recommendations relating to protecting journalists and human rights defenders from attacks and intimidation.¹
3. Commendably, the government of The Gambia accepted all of these recommendations.²

1. Human Rights Council. (2019). *Report of the Working Group on the Universal Periodic Review: The Gambia*. A/HRC/43/6. <https://www.ohchr.org/en/hr-bodies/upr/gm-index>

2. Ibid.

II. CONTEXT OF THE SITUATION OF HUMAN RIGHTS ONLINE IN THE GAMBIA

4. Overall, the context of human rights online in The Gambia has been steadily improving since 2017, when the dictatorship of Yahya Jammeh ended, and the democratically elected government came into place. There is an improved environment for freedom of expression and increasing citizen participation, both online and offline.³ However, many challenges continue to persist, and these have contributed to The Gambia still being declared only as “Partly Free” by Freedom House, which gives The Gambia a score of 50/100.⁴
5. Since its UPR review during the third cycle, The Gambia has made significant progress towards implementing a number of these recommendations and in improving the context of human rights online. In particular, the passage of the Access to Information Bill in 2021⁵ and the proposed amendments to the Information and Communications Act of 2009 through the Amendment Bill of 2020 are geared towards improving the prevailing legislative framework. The Information and Communications Technology Agency Act of 2019 was also passed, which seeks to advance a data protection policy.⁶
6. Despite these advances, the failure to put in place a new Constitution poses severe obstacles towards promoting and protecting human rights in The Gambia. These provisions inhibit accountability and administration of justice. The Draft Constitution of 2020 developed by the Constitutional Review Commission was rejected by the National Assembly of The Gambia in 2022, despite public support for the new Constitution.⁷
7. The Constitution of 1997, which continues to remain in place, includes several immunity clauses protecting the president, members of the Armed Forces and other government representatives from prosecution in certain cases.⁸ Additionally, The Gambia cannot be fully free and fair with regard to freedom of speech, the right to protest without need of a police permit, and other similar rights, until the Draft Constitution of 2020 comes into effect,⁹ although the 1997 Constitution guarantees freedom of speech and expression, including freedom and independence of the media. It also provides for limitations of these rights in the interest of national security, public order or morality. The draft Constitution of 2020 would have set very stringent conditions on these limitations.¹⁰
8. The inability of the current government to pass a new Constitution, despite it being over seven years since it came to power, is a detriment to the overall rights of Gambians. Further, attacks on and the use of criminal cases to silence journalists and human rights defenders are still noted, though at lower levels under the democratic government.¹¹

3. Paradigm Initiative. (2022). *Londa: Digital Rights and Inclusion in Africa Report 2022*. <https://paradigmhq.org/wp-content/uploads/2023/06/The-Gambia-Londa-2022.pdf>

4. Freedom House. (2024). *Freedom in the World 2024: The Gambia*. <https://freedomhouse.org/country/gambia/freedom-world/2024>

5. International Federation of Journalists. (2021, 26 August). The Gambia: New Law on Access to Information. <https://www.ifj.org/media-centre/news/detail/article/the-gambia-new-law-on-access-to-information>

6. Data Guidance. (2023). *The Gambia: Data Protection Overview*. <https://www.dataguidance.com/notes/gambia-data-protection-overview>

7. sbell, T., & Jaw, S. (2020, 27 January). The Gambia's draft Constitution reflects citizens' preferences for term limits, gender quotas. *Afrobarometer*. https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_r7_dispatchno338_gambias_draft_constitution_reflects_citizen_preferences.pdf

8. Constitution of the Second Republic of Gambia, 1997, Article 69, Second Schedule.

9. The final version of the Draft Constitution of 2020 is available here: <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5e837b8fc031321ec1faf8e1/1585675156697/CRC+-+FINAL+DRAFT+CONSTITUTION.pdf>

10. UNESCO. (2022). *Assessment of Media Development in The Gambia: Based on UNESCO's Media Development Indicators*. <https://unesdoc.unesco.org/ark:/48223/pf0000383608>

11. Please see section IV on Freedom of Speech and Expression below for further details and examples.

III. DIGITAL CONNECTIVITY AND INCLUSION

9. The Gambian government has made achieving digital access and inclusion a national priority. The government's efforts to align The Gambia with digital rights and openness based on best practices have been made possible due to the decoupling of the Ministry of Information, Communication and Infrastructure to become the Ministry of Information as a separate line ministry and a new Ministry of Communications and Digital Economy (MOCDE) created in July 2022. The new Ministry has introduced a number of policies with the aim of creating the right digital environment in The Gambia,¹² and now has several directorates instead of only an ICT directorate. These directorates include Cybersecurity, E-government, Information Communication Technology and Telcom and Postal Services.
10. The five-pillar agenda of the MOCDE (which includes laying a second submarine cable, a tier 4 data centre, a payment gateway, e-government and digital ID) is geared towards achieving digital inclusion in all parts of The Gambia. Plans to improve digital inclusion include linking The Gambia to a second international fibre optic submarine cable¹³ and the adoption of the National Digital ID and Digital Transformation Strategy 2023-2028, which was validated in May 2024.¹⁴ A complete Universal Access and Service Policy has been developed by the MOCDE and is currently at the Ministry of Finance and Economic Planning for planning modalities of its implementation.¹⁵
11. The Gambia has continuously seen an increase in internet penetration rate since the arrival and landing of the African Coast to Europe (ACE) Submarine Cable in December 2012. There still lie huge investment opportunities in the ICT sector, mainly within the domains of access and affordability. The goal of the Recovery Focused National Development Plan (RF-NDP) 2018-2021 was to make digitisation a catalyst for accelerating economic growth, improving efficiency in both the public and private sector and strengthening competitiveness in all sectors of the economy.¹⁶
12. According to DataReportal, internet penetration in The Gambia only reached 33% in 2023.¹⁷ This means that a significant proportion of The Gambia's population remains offline. There are still many remote communities which do not have reliable internet connectivity due to limited coverage and inadequate network infrastructure. Another challenge is the affordability of internet services. While mobile data prices have decreased over the years, they are still expensive for many Gambians, especially those living in poverty. The challenge of The Gambia today is to bring mobile data costs down, with the current cost of 1 GB of mobile data being USD 5. Price reduction in this area will contribute to getting affordable and meaningful connectivity to all in The Gambia, where there is 99% mobile voice coverage.¹⁸

12. See <https://mocde.gov.gm/downloads/>

13. Telecom Review Africa. (2023, 19 September). Gambia's second submarine cable project receives World Bank support. <https://www.telecomreviewafrica.com/en/articles/general-news/3774-gambia-s-second-submarine-cable-project-receives-world-bank-support>

14. UNECA. (2024, 17 May). Validation of The Gambia's National Digital ID and Digital Transformation Strategy. <https://www.uneca.org/stories/validation-of-the-gambia%E2%80%99s-national-digital-id-and-digital-transformation-strategy>

15. Universal Access Service Policy 2020: <https://mocde.gov.gm/wp-content/uploads/2023/10/Universal-Access-Service-Policy-2020.pdf>

16. National Development Plan 2018-2021: <https://gambia.un.org/en/download/53728/98394>; Policy Statement by H.E. Mr Ousman A Bah, Minister of Communication and Digital Economy, The Gambia: https://pp22.itu.int/en/itu_policy_statements/ousman-a-bah-gambia/

17. Kemp, S., (2023, 13 February). Digital 2023: The Gambia. *DataReportal*. <https://datareportal.com/reports/digital-2023-gambia>

18. Paradigm Initiative. (2022). Op. cit.

13. Digital access is also limited by infrastructural challenges and internet outages. There were about six internet outages in the country between 2021 and 2022 as a result of technical challenges. The disruptions were caused by cutting of the broadband cables by road construction projects, interruptions due to the sun affecting the submarine cables when ships brush off on it, and lack of a backup submarine cable to reduce dependency on the ACE Submarine Cable.¹⁹
14. The Gambia's legal framework contains several legislative provisions that directly impact on accessibility of the internet. Concerns remain about the independence and effectiveness of The Gambia's telecommunications regulator, the Public Utilities Regulatory Authority (PURA). Not only does PURA control telecommunications, but also media licences and content, sewerage, power and petroleum. This mandate, according to stakeholders and some PURA officials, is unsustainable and strains the authority's limited resources.²⁰ Through GAMTEL, the Gambia Telecommunication Company, the Gambian government maintains a monopoly on the country's key ICT infrastructure, though it has granted other service providers permission to operate international data links. There is a need to improve the quality of service and promote private sector engagement, ensuring that private interests are aligned with the public interest, so as to ensure sustainable digital inclusion that serves as an equaliser and enabler of rights.
15. The Gambia remains a long way off from achieving full digital inclusion, which will require building human capacity in technology and industry and ensuring that women, youth, children and persons with disabilities are not excluded from using technology due to socioeconomic factors and infrastructural limitations. There is also a need for integrated digital literacy across the board. In making digital literacy possible for all in The Gambia, especially in rural communities, the need for community networks is important. The creation of these networks will be possible with the Universal Access Fund, which has been approved and is currently in the final stages of development (particularly regarding financing) at the Ministry of Finance and Economic Affairs of The Gambia.²¹
16. All stakeholders, especially in the government, must strengthen regulatory efforts, collaborative strategies and a commitment to fortify digital foundations all aimed at nurturing a secure and inclusive digital environment to achieve The Gambia's National Development Plan as well as the UN Sustainable Development Goals.
17. Regulatory frameworks in the country must allow for the diversification of the connectivity providers ecosystem and the coexistence of different economic and organisational models for internet connectivity provision, including community networks and medium and small cooperative service providers or operators. Financing mechanisms for universalisation of connectivity must be designed and implemented to benefit small and community-based actors.

19. Ibid.

20. Freedom House. (2023). *Freedom on the Net 2023: The Gambia*. <https://freedomhouse.org/country/gambia/freedom-net/2023>

21. Universal Access Service Policy 2020: <https://mocde.gov.gm/wp-content/uploads/2023/10/Universal-Access-Service-Policy-2020.pdf>

IV. FREEDOM OF SPEECH AND EXPRESSION ONLINE

Criminalisation of online speech

18. Gambian laws continue to contain provisions which unduly restrict free speech and expression, including specific provisions which were recommended to be repealed in recommendations received by The Gambia during the third cycle of the UPR.²²

These include:

- o Sections 51 and 52 of the Criminal Code, which criminalise sedition, including hateful remarks against the president of the republic or the administration of justice. In February 2018, the ECOWAS Court of Justice ordered that these sections be “immediately repealed and/or amended” in line with the country’s “obligations under international law”.²³ However, in May 2018, the Supreme Court of The Gambia only declared these provisions as partly unconstitutional.²⁴
- o Section 59 and 181A of the Criminal Code, which criminalise the publication of “false information” or “information that causes fear”. These provisions were again ordered to be repealed by the ECOWAS Court for violating international human rights standards, though they were held constitutional by the Supreme Court of The Gambia.²⁵
- o Section 173A of the Information and Communications Act, which deems it an offence to use the internet to “spread false news against the Government or public officials.” This provision was struck down as unconstitutional by the Supreme Court in 2018. While the section was proposed to be repealed in the draft Information and Communications (Amendment) Bill 2020, the bill has not been re-introduced after it failed to pass in the National Assembly.²⁶
- o The Official Secrets Act, 1922, which includes offences with overly broad definitions and has been used to harass journalists.²⁷

19. As noted above, in May 2018, the Supreme Court made several important rulings pertaining to the work of the media. It declared criminal defamation unconstitutional. Sedition, on the other hand, was found to be only partially unconstitutional but continues to be penalised when seditious utterances are made against the president and the judiciary. The court also upheld the provision in the Information and Communications Act of 2009 which makes the spreading of “false news” a criminal offence, despite a judgement of the ECOWAS Court which demanded a repeal of this section.²⁸

20. The Gambian government has so far failed to enact amendments in the law to repeal these problematic provisions and implement the judgments of the ECOWAS Court and

22. Human Rights Council. (2019). *Report of the Working Group on the Universal Periodic Review: The Gambia*, paras 127.28, 127.32, 127.38, 127.44, 127.49, 127.50, 127.52, 127.53, 127.57, 127.58, 127.59, 127.60. A/HRC/43/6. <https://www.ohchr.org/en/hr-bodies/upr/gm-index>.

23. *Federation of African Journalists and Others v. The Gambia* (2018), ECOWAS Community Court of Justice, Judgment No ECW/CCJ/APP/36/15. <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/04/FAJ-and-Others-v-The-Gambia-Judgment.pdf>

24. *Gambia Press Union v. The Attorney General* (2018), Supreme Court of The Gambia. <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/02/Court-Judgment-GPU-and-AG-1.pdf>

25. UNESCO. (2022). *Op. cit.*, *Assessment of Media Development in The Gambia: Based on UNESCO’s Media Development Indicators*, p. 35, <https://unesdoc.unesco.org/ark:/48223/pf0000383608>

26. *Ibid.*

27. *Ibid.*

28. *Gambia Press Union v. The Attorney General* (2018), Supreme Court of The Gambia. <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/02/Court-Judgment-GPU-and-AG-1.pdf>

the Supreme Court. Though bills to amend the Information and Communications Act and the Criminal Code have been introduced in the National Assembly, they are yet to pass. The Criminal Offences Bill 2020, which is currently pending before the National Assembly Standing Committee on Human Rights and Constitutional Matters, aims to remove provisions relating to sedition and criminal defamation.

21. Meanwhile, these laws continue to be used by the government to crack down on journalists and human rights defenders, as demonstrated by the case of Madi Jobarteh, a human rights activist who was arrested in October 2023 and formally charged with “seditious intention, incitement to violence, and false publication and broadcasting” for his campaign for accountability and respect of democratic laws by the government. He has been released on bail and told to report regularly to the police.²⁹ This follows a similar case in June 2020, when Mr. Jobarteh was arrested and charged with false information and broadcasting under section 181A of the Criminal Code for calling on the government to investigate killings by police officers during a Black Lives Matter protest which he had organised. The charges were dropped the following month.³⁰
22. Concerningly, the Gambian government is in fact introducing new legislation to further criminalise online speech. The draft Cybercrime Bill, which was tabled in the National Assembly in March 2024, contains several provisions which do not conform to international human rights standards relating to freedom of speech. The bill includes a number of provisions which would broadly criminalise speech online, including provisions on “false news or information against a person”, “prurient” speech and speech harming the “self-esteem” of public figures.³¹ The introduction of a “false news” provision in the Cybercrime Bill is a direct violation of the decision of the ECOWAS Court in *Federation of African Journalists and Others v. The Gambia*, where the Court held in 2018 that a similar provision on false news in the Gambian Criminal Code violated international human rights law.³²
23. The Bill also contains a criminal prohibition of cyber bullying, through a broadly worded provision with ambiguous language including, for instance, making “derogatory remarks against a person”. Use of such vague and ambiguous language leaves the provisions open to misuse and misinterpretation, particularly to crack down on dissent and muzzle journalists.³³ Additionally, the Bill posits individual criminal responsibility on senior leadership of media houses and civil society organisations for the actions of entities, requiring them to demonstrate that they conducted due diligence of published content.³⁴ The Cybercrime Bill requires significant revision to omit entirely provisions which broadly criminalise free speech such as the one on “false news” and to amend other provisions highlighted above to ensure that the Bill meets international human rights standards.
24. Such cybercrime legislations that are characterised by broad and vague definitions, contrary to the principles of legality, necessity and proportionality, allow for arbitrary or

29. Frontline Defenders. (2023, 14 November). Human Rights Defender Madi Jobarteh charged after being provisionally released. <https://www.frontlinedefenders.org/en/case/human-rights-defender-madi-jobarteh-charged-after-being-provisionally-released>

30. Amnesty International: Demand the Repeal of Repressive Laws in The Gambia. <https://www.amnesty.org/en/petition/demand-the-repeal-of-repressive-laws-in-gambia/>

31. Sections 5 to 8, Cybercrime Bill 2023.

32. *Federation of African Journalists and Others v. The Gambia* (2018), ECOWAS Community Court of Justice, Judgment No ECW/CCJ/APP/36/15. <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/04/FAJ-and-Others-v-The-Gambia-Judgment.pdf>

33. Gambia Press Union. (2024). *Position Paper on the Cybercrime Bill 2023*. <https://www.kerrfatou.com/gambia-press-union-position-paper-on-the-cybercrime-bill-2023/>

34. ARTICLE 19. (2024). *The Gambia Cybercrime Bill 2023: Legal Analysis*. <https://www.article19.org/wp-content/uploads/2024/03/Analysis-the-Gambia-Cybercrime-Bill-2023-26-March-2024.pdf>

discretionary application and result in legal uncertainty, presenting serious dangers to the exercise of fundamental rights due to their criminalising effects which, in turn, deepen inequalities.³⁵ Cybercrime legislation should be used solely for addressing offences that require the use of a computer system – the so called “cyber-dependent” crimes. The extension of cybercrime legislation to cover “cyber-enabled” crimes (traditional offences committed using a computer) is unnecessary and risky to a number of human rights.³⁶

25. Disinformation is a multifaceted and complex issue that requires a holistic approach to identify solutions and preventive actions that build on the strengthening of the other spaces and actors that promote the flow of information, visions and ideas within our societies. Any solutions, in particular policy and regulatory measures, should be built on truly participatory processes and avoid broad criminalisation provisions. Greater caution is needed in the use of criminal sanctions for tackling disinformation, which is often disproportionate, as the United Nations Special Rapporteur on freedom of expression has stated in the past. States should apply the three-part test of legality, necessity and proportionality to any measures taken, considering that attempts to curtail information disorders may significantly impact on freedom of expression and opinion.³⁷

Shutdowns, blocking, censorship and access

26. Online content is not systematically restricted in The Gambia. Freedom House notes that there are no reports of blocking or filtering of websites or apps under the current government.³⁸ The last recorded restrictions on connectivity were on the eve of the presidential election in December 2016. ISPs were ordered to shut down internet services, international calls and SMS messaging across the country in order both to block the exchange of information and news on the campaign and to control and eventually disrupt the process of vote counting and election monitoring. The internet and communications blackout went on for 48 hours.³⁹
27. However, journalists have reported receiving informal requests for content removal and in January 2020, the government suspended two radio stations on the charges of making incendiary statements and inciting violence for reporting on protests calling for President Barrow's resignation.⁴⁰ GAMTEL remains state-controlled and has retained the ability to restrict access to internet content without oversight. There is no process through which site administrators can appeal content-restriction decisions. Experts believe that the former government blocked specific internet protocol (IP) addresses and domain names at the internet gateway level.⁴¹

35. Derechos Digitales and Association for Progressive Communications. (2023). *When protection becomes an excuse for criminalisation: Gender considerations on cybercrime frameworks*. https://www.apc.org/sites/default/files/gender_considerations_on_cybercrime_0.pdf

36. Ibid.

37. Association for Progressive Communications. (2021). *APC policy explainer: Disinformation*. <https://www.apc.org/en/pubs/apc-policy-explainer-disinformation>

38. Freedom House. (2023). Op. cit.

39. UNESCO. (2022). Op. cit.

40. Freedom House. (2023). Op. cit.

41. Freedom House. (2022). *Freedom on the Net 2022: The Gambia*. <https://freedomhouse.org/country/gambia/freedom-net/2022>

V. RIGHT TO PRIVACY, CYBERSECURITY AND CYBERCRIME, AND ACCESS TO INFORMATION

28. The African Union Convention on Cyber Security and Personal Data Protection (known as the Malabo Convention) has been signed and ratified by The Gambia. The Malabo Convention came into force in June 2023, after receiving ratifications by 15 African states. In addition to dealing with cybersecurity, the Malabo Convention recognises the right to privacy and requires countries that have adopted the Convention to establish data protection authorities and ensure that personal data is collected, processed and stored securely. However, The Gambia still has a way to go in ensuring that domestic laws and policy on data protection and cybersecurity are in line with the Malabo Convention and international human rights standards.
29. The Gambia still does not have a comprehensive data protection and privacy law; and there is no data protection authority appointed as required by the Malabo Convention. Though the Information and Communications Technology Act of 2019 seeks to establish and empower an agency focused primarily on the optimum use of information and communication technologies which has some powers on data gathering and assessment, it is not empowered towards comprehensive data protection.⁴² Section 138(1) of the Information and Communications Act allows for state surveillance of communication, without sufficient checks and safeguards. The Information and Communications (Amendment) Bill 2020 sought to add a new section, 138(A), subjecting decisions to intercept personal data to judicial oversight and establishing criteria for such data interception.⁴³ However, given that the Bill failed to pass, no such protections are currently in place.
30. In addition, as highlighted above, the draft Cybercrime Bill which is currently pending before the National Assembly does not comply with international and regional human rights standards. In addition to the provisions criminalising online expression highlighted above, the Bill also includes extensive police and surveillance powers in relation to the offences defined under the law, including wide-ranging search and seizure powers of law enforcement, allowing police to mandate service providers to decrypt content and to use "reasonable force" during seizures.⁴⁴ It also makes the mere possession of digital security tools, without intent to commit any crime, a criminal offence in itself.⁴⁵
31. With regard to access to information, the Access to Information Bill was passed in 2021, which provides for the right to access public records and information held by public authorities and certain private institutions. However, despite the passing of the Bill it is still not operational, as information meant for the public is not readily available and accessible. Many provisions of the Bill are yet to be implemented and contravening legislative provisions, such as parts of the Official Secrets Act, have not yet been revised or scrapped.⁴⁶ This means, for example, that public authorities receiving an access to information request may be wary to disclose information due to concerns of potentially violating the broad provisions of the Official Secrets Act.

42. Data Guidance (2023). Op. cit.

43. UNESCO. (2022). Op. cit.

44. Gambia Press Union. (2024). Op. cit.

45. ARTICLE 19. (2024). Op. cit.

46. UNESCO. (2022). Op. cit.

VI. TECHNOLOGY-FACILITATED GENDER-BASED VIOLENCE AGAINST WOMEN HUMAN RIGHTS DEFENDERS

32. Technology-facilitated gender-based violence (TFGBV)⁴⁷ – such as cyberstalking, online harassment and doxxing, for example – encompasses acts of gender-based violence that are committed, abetted or aggravated, in part or fully, by the use of information and communication technologies (ICTs), such as phones, the internet, social media platforms and email. TFGBV has the same roots as other forms of gender-based violence and is part of the same continuum. Online and offline gender-based violence do not happen in vacuums separate from each other, as women and gender-diverse people’s lives online intersect frequently and in various complex ways with other areas of their lives, and violence in any one domain can often produce harm across other domains.⁴⁸
33. Despite increasing internet penetration in The Gambia, women face increased barriers to access technology and the internet. For instance, according to the Afrobarometer 2021 survey, 10% fewer women own mobile phones as compared to men in The Gambia. Only 11% of women in The Gambia own laptops as opposed to 17% of men; and overall 5% more of men have access to internet in The Gambia as compared to women.⁴⁹ This gender gap in technological access is influenced by several factors, including socio-economic status and educational attainment.⁵⁰ Ensuring equal access to the internet also requires reducing barriers to access the internet for persons with disability. For instance, participation in and access to certain online spaces are limited if they are not disability-friendly.⁵¹
34. With regard to online gender-based violence, a survey conducted in 2019 found that 45.5% of Facebook and Twitter users in The Gambia have experienced some form of online GBV but only 15% of these women have reported the issue.⁵² Gambian women and girls continue to be sexually harassed and threatened through means such as doxxing, trolling, non-consensual sharing of intimate images, and threat of physical violence by their perpetrators, among other forms of online GBV.
35. In addition, survivors, journalists and women human rights defenders who speak out about GBV have reported facing harassment and abuse online for sharing their views. For instance, Bintou Nyabally, a woman who was raped and assaulted by Jammeh’s soldiers,

47. In this submission, we primarily use the term “technology-facilitated gender-based violence” (TFGBV), while many other terms, such as “online gender-based violence” or OGBV, are in use in international human rights spaces. Since our early research in this area, we have understood that technology-related GBV includes a broader scope of harms to be addressed, including violence in so-called “offline” or on-ground lives facilitated by technology, rather than just violence that happens in an online space.

48. Association for Progressive Communications. (2017). *Online gender-based violence: A submission from the Association for Progressive Communications to the United Nations Special Rapporteur on violence against women, its causes and consequences*. https://www.apc.org/sites/default/files/APCSubmission_UNSR_VAW_GBV_0_0.pdf; Association for Progressive Communications. (2023). *Feminist Principles of the Internet: Advocacy brief on violence*. <https://genderit.org/FPI-paper-on-violence>

49. Afrobarometer. (2022). *Summary Survey Round 8: The Gambia*. <https://www.afrobarometer.org/wp-content/uploads/2022/08/Summary-of-Results-Gambia-Afrobarometer-Round-25oct21-final.pdf>

50. UN in The Gambia. (2023, 20 June). Closing the Gender Gap in Technological Access: The Key to Empowering Women in The Gambia. <https://gambia.un.org/en/237227-closing-gender-gap-technological-access-key-empowering-women-gambia>

51. Jeng, M. (2020, 14 March). Making a Feminist Internet: Access and inclusion in feminist movements. *GenderIT*. <https://www.genderit.org/articles/making-feminist-internet-access-and-inclusion-feminist-movements>

52. Internet Without Borders. (2019, 8 March). Online Gender-based violence affects 45% of women on social media in West and Central Africa. <https://internetwithoutborders.org/iwd2019-online-gender-based-violence-affects-45-of-women-on-social-media-in-west-and-central-africa/>

faced extensive harassment and bullying on social media after speaking out about her experiences, and was targeted for GBV.⁵³ Similarly, Khadijah Bokum, a journalist and one of the young women who started the hashtag #SurvivingMelville to report sexual violence allegedly perpetrated by Melville Roberts, a former civil servant and a lawyer in The Gambia, faced abuse online and was further victimised by the media company she worked with, which published biased reporting on the story.⁵⁴

36. In recent months, several human rights defenders have faced abuse and harassment online for advocacy to uphold the law prohibiting female genital mutilation (FGM) in The Gambia in response to a pending bill introduced in the National Assembly which seeks to repeal the anti-FGM law.⁵⁵ The rise of such attacks on female activists online who are advocating for non-removal of the ban is a serious concern, with some attacks also being initiated by Islamic scholars defending the law, and continuing in spite of statements by the National Human Rights Commission in support of the existing law.⁵⁶
37. However, The Gambia still does not have legislative and policy measures in place which address TFGBV and provide access to effective remedies for women and girls affected by TFGBV.⁵⁷ There is low awareness about the existence and forms of TFGBV; and issues relating to TFGBV are not given sufficient attention by law enforcement officers who struggle to understand the impact of TFGBV and the mechanisms through which it is carried out.⁵⁸

53. Jeng, M. (2021, 27 May). Approaching the fight against autocracy with feminist principles of freedom. *Gender IT*. <https://genderit.org/feminist-talk/approaching-fight-against-autocracy-feminist-principles-freedom>

54. Senne, T. (n/d). Kick-Off: How The Gambia is re-thinking Online Gender-based Violence. *Take Back the Tech*. <https://takebackthetech.net/blog/kickoff-how-gambia-rethinking-online-gender-based-violence>

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VII. RECOMMENDATIONS

38. We recommend that the Government of The Gambia take the following measures to uphold human rights in the digital context:

Digital connectivity and conclusion

- Fully implement the Universal Access and Service Policy.
- Create enabling policy and regulatory environments for the development and sustainability of community-led networks. This includes creating simple, affordable licensing and making public funding available for them and other small-scale networks, particularly through the effective use of universal service funds, supporting civic initiatives in small-scale infrastructure, providing training and capacity building for meaningful connectivity and content creation, offering tax incentives, and providing access to financing through microfinance institutions and other hybrid funding mechanisms and business models.
- Implement programmes on early digital rights education and awareness activities, including prioritising digital literacy education in public junior and secondary schools to empower people with skills to navigate the digital space safely and critically.
- Ensure that digital access is inclusive and equitable for all; and address barriers to access technology and the internet for marginalised communities, including rural communities, women and persons with disabilities. For this, the government should establish institutionalised bottom-up participation and multistakeholder decision-making processes to promote inclusive participation of communities in policy making concerning access and digital inclusion.

Freedom of speech and expression online

- Adopt the draft Constitution of 2020 and ensure the new constitutional provisions uphold the right to freedom of speech and expression and that any limitations on this right comply with international and regional human rights standards
- Withdraw and amend the Cybercrime Bill of 2023 to ensure that all provisions comply with international human rights standards relating to free speech and expression; and remove altogether the provisions criminalising online speech contained in sections 5 to 8 of the Cybercrime Bill
- Repeal sections which unduly criminalise free speech including sections 51, 52, 59 and 181A of the Criminal Code.
- Pass the Information and Communications (Amendment) Bill 2020 and repeal section 173A of the Information and Communications Act.
- Withdraw all cases against individuals facing harassment, intimidation and prosecution from state authorities for legitimate expression and dissent against the government.
- Promote healthy information systems that include robust access to public information; plural, accessible and diverse media contexts; independent and qualified journalism; and the possibility of expressing ideas safely to counter disinformation.⁵⁹ This includes encouraging social media platforms to take proactive measures to address disinformation and provide transparency on their algorithms and content moderation policies.
- Ensure that perpetrators of hate speech are held accountable for their actions and that digital platforms are held accountable with regard to hate speech so that social media platforms develop reporting mechanisms and provide clear guidelines for users.

59. Association for Progressive Communications. (2021). Op. cit.

- Work with civil society organisations and community leaders on public awareness campaigns to promote tolerance, inclusivity and respect for diversity.

Right to privacy, cybersecurity and cybercrime, and access to information

- Implement a data protection framework that establishes a data protection authority with complete independence in accordance with the standards in the Malabo Convention.
- Encourage companies operating in The Gambia to implement robust cybersecurity measures to protect personal data and prevent cyberattacks, in line with the government's obligations under the UN Guiding Principles on Business and Human Rights.
- Refrain from using cybersecurity-related laws, policies and practices as a pretext to violate human rights and fundamental freedoms. Rather than balancing rights against security, cybersecurity-related policies must provide security in a way that reinforces human rights.⁶⁰ Amend regulatory provisions such as Section 138 of the Information and Communications Act which permits state surveillance of online content without adequate safeguards
- Fully implement the Access to Information Act, 2021 and amend provisions in other laws which contradict the Access to Information Act, including by repealing the Official Secrets Act.

Technology-facilitated gender-based violence against women human rights defenders

- Adopt measures and policies to prohibit, investigate and prosecute TFGBV. Ensure existing laws on gender-based violence include aspects of TFGBV, and engage with specialists in TFGBV, including civil society organisations, survivors and academics for such law reform.
- Any legislative responses to tackle this issue should be in line with international human rights standards. Legal frameworks should adequately protect women's freedom of expression, privacy and freedom from violence. Any restrictions to freedom of expression as a response to TFGBV must be necessary and proportionate, should not be overly broad or vague in terms of what speech is restricted, and should not over penalise.
- Provide redress and reparation as an effective, efficient and meaningful way of aiding victims of TFGBV and ensuring that justice is achieved. Such measures should include forms of restitution, rehabilitation, satisfaction and guarantees of non-repetition, combining measures that are symbolic and material, individual and collective, depending on the circumstances and the preferences of the victim.
- Train judiciary, lawyers, police and law enforcement officials and frontline workers to ensure their ability to investigate and prosecute perpetrators, and foster public trust in obtaining justice for cases of TFGBV, in conjunction with broader sensitisation on addressing gender-based violence.
- Ensure that online platforms comply with their responsibilities under the UN Guiding Principles on Business and Human Rights. Develop appropriate and effective mechanisms of accountability for social media platforms and other technology companies focused on ensuring company transparency and remediation to ensure that hate speech and gender-based violence is addressed on their platforms, there is appropriate response to such instances, and safeguards and redressal mechanisms are available for those affected.

60. Association for Progressive Communications. (2020). *APC policy explainer: A human rights-based approach to cybersecurity*. <https://www.apc.org/en/pubs/apc-policy-explainer-human-rights-based-approach-cybersecurity>