



Freedom on the Net 2018 - Gambia, The

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Status: Partly Free
Total Score: 55/100 (0 = Best, 100 = Worst)
Population: 2.1 million
Internet Penetration: 18.5%
Bloggers/ICT Users Arrested: Yes
Freedom in the World Status: Partly Free

Key Developments, June 1, 2017 – May 31, 2018

- There were no restrictions on connectivity in The Gambia compared to the previous year (see Restrictions on Connectivity).
- All previously blocked websites and apps have become accessible under the new president (see Blocking and Filtering).
- Self-censorship has decreased, enabling the online information landscape to become more pluralistic (see Media, Diversity, and Content Manipulation).
- In May 2018, the Gambian Supreme Court declared parts of the Information and Communication Act unconstitutional, striking down criminal defamation and narrowing the definition of sedition to apply only to "the person of the president" and "administration of justice" (see Legal Environment).
- Despite improvements in internet freedom, including declines in technical attacks, dubious prosecutions over online activity have continued under the Barrow administration and some violence against journalists has been reported (see Prosecutions and Arrests for Online Activities, and Intimidation and Violence).

Introduction:

Internet freedom in The Gambia improved remarkably in the past year as internet users experienced less restrictions under President Adama Barrow, who came to power following the presidential elections in December 2016.

Since then, conditions for internet and press freedom have improved. All previously blocked websites and communications platforms have become accessible, while independent journalists and netizens working to push the boundaries of free expression from within the country have re-emerged after decades of severe self-censorship or exile.

The new administration has also announced general legal reforms aimed at strengthening individual freedoms. In June 2017, the new attorney general and minister for justice conceded at the Constitutional Court that sedition – a law that had been frequently used to silence journalists and critics under the former

regime – was unconstitutional. In May 2018, the Gambian Supreme Court, in a landmark judgement, declared parts of the infamous ICA unconstitutional. Justices struck down criminal defamation, and narrowed the definition of sedition to apply only to "the person of the president" and "administration of justice." However, the ICA still criminalizes the spread of false news online.

Despite the improvements, Barrow has shown some signs of following his predecessor's footsteps with a few arrests and prosecutions for online activities in the past year. In February 2018, Ismaila Ceesay, a political analyst and political science lecturer who has emerged as a prominent critic of the Barrow administration, was arrested, detained, charged and released for comments he made to a local newspaper, which were published both online and in print. Separately, a group of soldiers stood trial in 2018 for treason in relation to messages in a WhatsApp group; the nature of the allegations against them is unclear, and the trial process has been opaque.

Obstacles to Access:

There were no restrictions on connectivity in The Gambia compared to the previous year, while the telecommunications regulator seemed to carry out its functions more effectively.

Availability and Ease of Access

Access to the internet in The Gambia has expanded marginally, growing from a penetration rate of 17 percent in 2015 to 18 percent in 2016, according to the most recent statistics from the International Telecommunication Union (ITU).^[1] Flagging growth in internet access may be linked to reduced government funding for regional internet cafe and telecenter hubs operated by the public telecommunications company, Gambia Telecommunications Company Limited (Gamtel).^[2]

The Gambia has one of the highest mobile phone penetrations in Africa, with a rate of 140 percent in 2016. Most Gambians access the internet via mobile devices, with less than 2 percent of users subscribing to fixed-broadband services.^[3]

High cost remains one of the primary hindrances to internet access in The Gambia, where up to 48 percent of individuals live in poverty.^[4] The introduction of 3G wireless internet services for mobile has made internet access more accessible, albeit only for a small subset of the population who can afford the data packages.

Limited access to telecommunications services in The Gambia is compounded by a significant urban-rural divide, as well as by interruptions to the power supply. In general, rural areas suffer from poor or virtually nonexistent infrastructure, a lack of affordable electricity, and frequent power cuts.^[5] In addition, network coverage of rural areas has not been an investment priority for most service providers,^[6] making rural provinces in The Gambia some of the most disconnected regions in the world.^[7] Radio still remains the principal mass medium through which most Gambians stay informed.

Restrictions on Connectivity

There were no network shutdowns during this report's coverage period. However, the Gambian government's monopoly over the main telecommunications infrastructure enables it to restrict access to the internet and mobile phone services with little to no oversight or transparency.

The state-owned telecom company, Gamtel, owns the fiber-optic cable that runs across the country and controls the country's connection to the international internet via the ACE (Africa Coast to Europe) submarine cable system. Private telecoms may lease access to the gateway for data services.^[8] In a positive step, the government began liberalizing gateway services in May 2013 by granting international data transmission licenses to private telecom operators.^[9] Details are vague as to how many new licenses had been issued by the end of 2017, but the new administration has expressed willingness to liberalize the sector more.^[10] The government also launched the country's first internet exchange point (IXP) in July 2014 to boost speed, security, and affordability of internet services across the country, though the IXP runs slowly.^[11] As of 2018, no issues of improper government control over the new IXP have been reported.

The authorities last placed restrictions on connectivity on the eve of presidential elections in December 2016, [12] when the authorities ordered ISPs to shut down internet services, international calls, and SMS messaging across the country, ostensibly to disrupt the spread of false information, but actually disrupting the process of vote counting and election monitoring. [13] Lasting for over 48 hours, the communications blackout failed to guarantee the reelection of long-time ruler Yahya Jammeh, who had overseen the shutdown. [14]

ICT Market

The Gambia's information and communication technology (ICT) market is relatively small, with four ISPs – state-owned Gamtel and privately-owned QuantumNet, Netpage, and Airtip [15] – and four mobile phone providers, Gamtel's subsidiary Gamcel, and privately owned Qcell, Africell, and Comium. [16] All mobile providers offer 2G and 3G data service.

The regulation of the telecommunications sector is improving under the new government, albeit slowly. But like many other sectors, businesses must contend with inefficient bureaucracies coupled with nepotistic and preferential practices by government officials. Under former President Jammeh, top regime officials often had working relationships with business entities and investors "across all sectors of the economy," according to local observers. [17] The situation under the new president has been unclear. Registration for internet and mobile phone service providers remains an onerous and expensive process with numerous requirements to fulfill. In addition, corruption among the authorities is rife. [18]

Internet cafe operators must also contend with regulatory obstacles. For example, under an April 2013 directive that remains active in 2018, cybercafé owners are required to register with the regulatory agency for an operating license (in addition to a requisite business license) through an application that requires details of the ISP, the number of computers installed, and services provided. [19] Cybercafés must renew their licenses every year and pay annual renewal fees of US\$20 to the regulatory body or face closure. [20] In September 2013, the regulator issued further guidelines that dictated specific requirements on the physical layout of cybercafés and the signs they must display. [21] Since the regulations came into effect, dozens of cafes have closed down, likely as a result of the economic obstacles imposed by the strict regulations as well as increasing mobile broadband access. [22]

Regulatory Bodies

The telecommunications sector is regulated under the Public Utilities Regulatory Authority Act 2001, which established the Public Utilities Regulatory Authority (PURA) in 2004 to regulate the activities of telecom service providers and other public utilities. [23] The composition of the body does not encourage independence. The president appoints the governing board on the recommendation of the Minister of Finance and Economic Affairs. [24] The new government inaugurated in January 2017 has not signaled any intent to reform PURA as of mid-2018. For years, consumer activists have described PURA as an ineffective regulator that lacks the expertise, equipment, and enforcement power to carry out its mandate. [25]

However, the regulator seemed to carry out its functions more effectively in the past year, though some of its moves threatened to infringe on consumers' rights to privacy. In February 2017, PURA fined two GSM companies (privately owned Africell [26] and state-owned Gamcel) for failure to comply with rules on SIM card registration (see Surveillance, Privacy, and Anonymity). Africell challenged the regulator's decision at the civil division of the Gambia's High Court, but the court ruled against the company. In the meantime, the country's vice president and three government ministers reportedly stepped in to resolve the issue between Africell and PURA, resulting in Africell's eventual compliance with the SIM card registration requirements. [27]

Limits on Content:

All previously blocked websites and apps, including those containing pornography, became accessible when the new president assumed office in late January 2017. Self-censorship has decreased, enabling the online information landscape to become more pluralistic. Digital activism was vibrant.

Blocking and Filtering

There were no reports of content interference under the new administration during this report's coverage period.

Under the former regime, over 20 webpages were blocked,^[28] many of which were independent news and opposition websites known for their criticism of the government,^[29] such as *Gambia Echo*, *Hello Gambia*, *Jollof News*, *Gainako*, and *Freedom Newspaper*.^[30] Most of the blocked outlets were based abroad and operated by exiled Gambian activists and journalists. In a positive step, all blocked websites and apps, including those containing pornography, became accessible when the new president assumed office in late January 2017.^[31]

Social media platforms and communications apps were unrestricted during the coverage period, but were frequently targeted under the previous regime. Apps were last restricted in August 2016, when the authorities blocked the popular communications platforms WhatsApp, Viber, IMO, and Skype.^[32] Analysts believed the blocks came in response to the growing reliance on WhatsApp group messaging among opposition groups and candidates in advance of the December 2016 election.^[33] Tech-savvy Gambians were able to access the blocked apps via virtual private networks (VPNs)^[34] and other proxy servers,^[35] which may have prompted the authorities to later shut down the entire internet on the eve of the election (see Restrictions on Connectivity).

Nonetheless, the apparatus for blocking content remains in place as state control over the country's dominant telecommunications provider, Gamtel, gives the authorities the ability to restrict access to internet content without oversight. Experts believe that the former government blocked specific internet protocol (IP) addresses and domain names at the level of the internet gateway.^[36] Procedures for blocking content also lack transparency. According to former officials, the Jammeh government intentionally avoided issuing written orders for website blockings and internet shutdowns to maintain a degree of plausible deniability.^[37]

Content Removal

Under the former government, websites were routinely required to take down certain content, though the extent of content affected was unknown. Observers often noted a trend of online content "disappearances," supported by accounts from journalists and editors. In general, stories that risked catching the attention of security officials were likely to be removed, either through self-imposed post publication censorship, or as a result of unofficial take-down orders from government officials.

In June 2017, the *Daily Observer*, one of the country's oldest and most widely circulated national dailies, was shut down by the Gambia Revenue Authority (GRA) for tax arrears accumulated over 17 years. The newspaper, including its online version, ceased operations.^[38] The *Daily Observer* was widely considered to be controlled by the Jammeh administration, and there was speculation that its closure had been politically motivated and had come in response to stories critical of the new Barrow administration.

Media, Diversity, and Content Manipulation

As the highly restrictive environment for bloggers and internet users that existed under Jammeh's era has relaxed, the information landscape online has become increasingly pluralistic. Bloggers and internet users are now posting content more openly, while independent journalists and netizens working to push the boundaries of free expression from within the country have re-emerged after decades of severe self-censorship or exile.^[39]

However, social media has seen a proliferation of hate speech, and some topics are still considered taboo, such as issues affecting LGBTI (lesbian, gay, bisexual, transgender, and intersex) people – though they are sometimes discussed online by pseudonymous users. Additionally, some local activists, particularly sympathizers of the former president, post critical content anonymously to evade potential repercussions, given the unchanged regulatory environment.^[40] Recent detentions under the new government, including at

least one in 2017 involving claims of offline defamation against Barrow (see Prosecutions and Arrests for Online Activities), reinforce citizens' unease with speaking freely online.^[41]

Economic sustainability for independent online media outlets remains a serious challenge, despite decreased restrictions on internet freedom under the new president. Under the previous administration, private businesses avoided advertising with critical outlets out of fear of government reprisals.^[42]

There is no concrete evidence that the current and former governments have employed progovernment commentators to manipulate online content, though trolls are present in many online forums and post commentary that appears intended to distort the news and information landscape. In the recent past, the former government had increased its efforts to coopt prominent anti-Jammeh activists, incentivizing them to support the regime through handsome gifts from the president himself.^[43] Under the new administration, some online exchanges between supporters of different political groups have devolved into feuds featuring abuse and insults. These types of political feuds have also engulfed some key partners in the coalition that forms the new administration.^[44]

During elections to local councils in spring of 2018, there was a noticeable increase in content manipulation on all sides of the political divide, including a proliferation of fake news published against particular candidates, and disseminated by opposing party loyalists. While there is no evidence linking these activities directly to political parties, they were largely spearheaded by party members and party youth groups, and detracted from the civility of conversation; in some cases they led to political violence, especially between members of the former ruling APRC party, and the governing United Democratic Party (UDP).^[45] WhatsApp groups were among the most common platforms for spreading misinformation, including distorted videos that smeared politicians.

Digital Activism

Digital activism efforts during the previous presidency were usually small and unsuccessful, mainly due to heavy-handed government repression of criticism and dissent. Most efforts were led by the large diaspora community that was aligned against Jammeh's repressive regime.

However, since the new administration took power and has begun to relax restrictions, there have been several local digital activism efforts that culminated into offline actions. For example, in October 2017, amid an acute power and water shortage across the country and especially within the Greater Banjul Area, the #OccupyWestfield movement emerged to protest the failures of the National Water and Electricity Company (NAWEC).^[46] The protesters were denied a police permit for a public demonstration, but were able to convene a meeting with the minister of interior and presidential security advisor. Following the meeting, a permit was issued for the demonstration, but it was then withdrawn at the eleventh hour. Protesters, however, went ahead with the event, which was dispersed by paramilitary officers in riot gear.

Also, following the detention of prominent political science lecturer Ismaila Ceesay, the hashtag #FreeIsmailaCeesay went viral and within hours, people converged at the police headquarters in Banjul to demand his release.^[47] Ceesay was eventually released and all charges against him were dropped, due in large part to the quick mobilization through digital activism.

Violations of User Rights:

In May, the Gambian Supreme Court declared parts of the infamous ICA unconstitutional, striking down criminal defamation and narrowing the definition of sedition to apply only to "the person of the president" and "administration of justice." Despite improvements in internet freedom, dubious prosecutions over online activity have continued under the Barrow administration and some violence against journalists has been reported. Technical attacks have declined.

Legal Environment

The 1997 Constitution guarantees freedom of speech and press freedom, though fundamental freedoms were severely restricted in practice under the previous administration. Former president Jammeh was known for

his utter disregard for constitutional rights, once stating publicly that he would "not compromise or sacrifice the peace, security, stability, dignity, and the well-being of Gambians for the sake of freedom of expression." [48]

Since coming into power in January 2017, the new administration has announced general legal reforms aimed at strengthening individual freedoms. In June 2017, the new attorney general and minister for justice conceded at the Constitutional Court that sedition – a law that had been frequently used to silence journalists and critics under the former regime – was unconstitutional. [49]

However, officials have yet to completely reform a repressive false news law. The spread of false news online remains a crime under the Information and Communication Act 2013 (ICA), which punishes people for using the internet to criticize, impersonate, or spread false news about public officials with up to 15 years in prison, fines of up to GMD 3 million (about US\$100,000), or both. [50] The Jammeh government introduced the law in response to online activism and the growing influence of critical news outlets, particularly those overseas, according to then blocked news outlet *Gainako*. [51]

In positive step, the Economic Community of West African States (ECOWAS) Community Court ruled in February 2018 that Gambian authorities should repeal criminal prohibitions on libel, sedition, and false news. [52] The Minister of Information subsequently indicated the government's intention to honor the judgement after it is "fully studied" by the Justice Ministry and other relevant authorities. [53] In May, the Gambian Supreme Court, in a landmark judgement, declared parts of the infamous ICA unconstitutional. Justices struck down criminal defamation, and narrowed the definition of sedition to apply only to "the person of the president" and "administration of justice;" the previous definition included the entire government of The Gambia. [54]

Prosecutions and Detentions for Online Activities

Under the former regime, arrests and prosecutions of journalists and others for their online activities were common, and users were often prosecuted on "false information" charges under the ICA. When Jammeh lost the December 2016 election, his government began clamping down even more aggressively on citizens who used social media and communications platforms to mobilize and criticize the government. Several people associated with the #GambiaHasDecided campaign were detained for their role in spreading news about the online campaign. Many were held without charge beyond the legal limit of 72 hours. Those arrested reported being beaten while in detention, [55] while several others fled to neighboring Senegal. [56]

Despite improvements in internet freedom under the new government, dubious prosecutions over online activity have continued. For example, Ismaila Ceesay, a political analyst and political science lecturer who has emerged as a prominent critic of the Barrow administration, was arrested, detained, charged and released in February 2018 for comments he made to a local newspaper, which were published both online and in print. [57] Separately, a group of soldiers stood trial in 2018 for treason in relation to messages in a WhatsApp group; the nature of the allegations against them is unclear, and the trial process has been opaque. [58]

Surveillance, Privacy, and Anonymity

Unchecked surveillance of ICTs remains a concern in The Gambia due to the legal and technological frameworks put in place by the former regime. Article 138 of the 2009 Information and Communications Act gives sweeping powers to national security agencies and investigative authorities to monitor, intercept, and store communications in unspecified circumstances while also giving the regulator, PURA, the authority to "intrude [sic] communication for surveillance purposes," all without judicial oversight. [59] In addition, the law requires service providers to "implement the capability to allow authorized interception of communications." Article 141 also imposes onerous data retention requirements, obliging service providers to retain metadata for three years.

Restrictions on anonymous communication through SIM card and local domain name registration requirements also still exist. [60] In February 2018, PURA fined two GSM companies for noncompliance with SIM registration regulations (see Regulatory Environment).

Observers believe the former government actively monitored and intercepted citizens' communications, particularly the communications of activists and independent journalists who were perceived as threats to national security.^[61] Intercepted phone and email communications were often used as evidence in trials against government critics. However, the scope of the government's technical surveillance capabilities remains unknown, and it is uncertain whether the new government has continued to carry out the same surveillance practices. The level of transparency on communication surveillance remains largely low. The director of the then infamous National Intelligence Agency (NIA) – now the State Intelligence Agency (SIS) – in early 2018 warned that social media may "affect security," prompting some concern about the potential for online surveillance or user restrictions.^[62]

The future of a cybersecurity strategy that could undermine internet freedom is also unclear. In December 2015, the former government unveiled plans to set up a new National Cyber Security Strategy that aimed to establish a Computer Incidence Reporting Team to monitor cyber threats.^[63] Preliminary documents indicated that the strategy addressed personal data protection, electronic transactions, electronic records and signatures, and computer misuse and cybercrime,^[64] all of which are currently regulated by Information Communication Act and provisions in the Criminal Procedure Act. Observers at the time worried that the increased securitization of the internet would have negative repercussions on freedom of expression online. However, given the new administration's challenge of reforming a fragile economy and institutions ruled by a dictatorship for over two decades,^[65] issues such as surveillance and cybersecurity may not be top priorities.

Intimidation and Violence

Under the previous government, violence and property confiscation against Gambian journalists for their independent and critical reporting was a serious risk, and numerous media workers, bloggers, and online journalists fled the country as a result of the unsafe environment for independent voices. Such incidents have decreased under the new regime, and scores of online journalists and activists returned to the country in 2017 following Jammeh's fall from power.

However, some violence against journalists was reported during and beyond the coverage period of this report. At least two journalists covering the local government elections in April 2018 were roughed up by supporters of the former ruling APRC party. Both incidents reportedly happened at the Elections House in Kanifing during the filing of nomination papers by the party's mayoral candidate for the Kanifing Municipality.^[66] In June, another online journalist, Pa Modou Bojang, was beaten by members of the Police Intervention Unit, a paramilitary unit of the Gambia Police Force, while covering a deadly protest in Faraba. Bojang sustained injuries, and said he was detained for hours, and that his digital recorder had been seized.^[67]

More recently, beyond the scope of the coverage period, a journalist from the state broadcaster was beaten by people ostensibly providing security for the APRC while covering the August 2018 funeral proceedings of Yahya Jammeh's late mother. The remains of Asombi Bojang were flown from Equatorial Guinea where she was living. The broadcaster's news crew was first denied access to the airport. They then followed the service to Bujinga, where one of the journalists was assaulted and his camera was reportedly seized.^[68]

Technical Attacks

There were no reported technical attacks against activists, journalists, opposition members, or civil society organizations during the coverage period.

The last reported incidents against government and opposition websites, as well as critical online news outlets, occurred during the 2016 election and subsequent political impasse that reached into early 2017.^[69] A few websites that published election results indicating Jammeh's defeat were hacked to have the results removed, including sites run by a pro-Jammeh newspaper and the electoral commission.^[70] Numerous journalists, bloggers, activists, and internet users separately reported that their social media accounts had been hacked.^[71] Activists suspected that the Jammeh government initiated or supported the attacks in order to counter growing antigovernment sentiment online.^[72]

Notes:

- 1 International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2016," <http://bit.ly/1cblxxY>.
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- 3 International Telecommunication Union, "Fixed (Wired)-Broadband Subscriptions, 2000-2016," <http://bit.ly/1cblxxY>.
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- 14 <https://ooni.torproject.org/post/gambia-internet-shutdown/>
- 15 Access Gambia, "Information Technology in Gambia," accessed August 8, 2014, <http://www.accessgambia.com/information/information-ict.html>.
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- 17 Interviews by Freedom House consultant, January 2017.
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- 19 Public Utilities Regulatory Authority (PURA), "Internet/Cyber Café Registration Form," accessed August 8, 2014, <http://bit.ly/1hsvbjZ>.

20 Modou S. Joof, "PURA tells internet cafes: register or stop operations," *Front Page International* (blog), May 15, 2013, <http://bit.ly/1L1I2o7>.

21 Yaya Bajo, "PURA sets guidelines for internet café operators," *FOROYAA Newspaper*, All Africa, September 19, 2013, <http://bit.ly/1MgiXDv>.

22 Interviews by Freedom House consultant, May 2016

23 PURA, "Pura Act," accessed August 8, 2014, http://pura.gm/index.php?option=com_content&view=article&id=112&Itemid=137.

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