



TRUTH,
RECONCILIATION
AND REPARATIONS
COMMISSION

THE GAMBIA

REPORT

VOLUME 15

**INSTITUTIONAL HEARINGS:
JUSTICE SECTOR ENTITIES**

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OVERVIEW

Justice is the cornerstone of every democratic society without it, societies are very likely to wallow in strife and conflict. For this reason, almost all societies established a system through which individuals' rights and responsibilities are examined, adjudicated upon and addressed. The people in democratic societies would mainly depend on the justice system to vindicate their rights. For that to work effectively, it is imperative that the system works independently from interference from all quarters, including the executive. The justice sector institutions in The Gambia are provided for in the 1997 Constitution.

LEGAL FRAMEWORK

1. NATIONAL LAWS

A. 1997 CONSTITUTION OF THE GAMBIA

1. The 1997 Constitution of The Gambia provides for the establishment of an independent judiciary. It also addresses the appointment, conditions of service and termination of appointments of judges and other judicial officers. The Constitution also provides for certain important offices, including: (1) The Office of The Attorney General and (2) Director of Public Prosecution. The important function of the Attorney General as the Principal Legal Advisor to government is clearly spelt out in the Constitution as well as the role and responsibility of the Director of Public Prosecution (DPP). The Constitution also made the Decrees enacted by the Armed Forces Provisional Ruling Council (AFPRC) part of the laws of The Gambia. In addition, procedures that should be followed to amend any provision under the Constitution have been provided in the Constitution. Currently, the Constitution is the supreme law of The Gambia and it supersedes any other law that is enacted in The Gambia.

B. ACTS OF THE NATIONAL ASSEMBLY

2. The provisions of the Constitution dealing with State institutions are non-exhaustive. There are Acts of the National Assembly that have been enacted to complement the provisions of the Constitution. These include;
 - **National Intelligence Agency Decree (No.45)**, Volume IV, Cap 17:03, Laws of The Gambia 2009 established the NIA as an Intelligence Agency to obtain, investigate and take necessary action to protect the State from any security threat. The NIA have been given wide powers under this Decree which should not fall under their mandate.
 - **Police Act**, Volume IV, Cap 18:0, Laws of The Gambia 2009 establishes the Gambia Police Force which is mandated to ensure law and order in The Gambia and for the protection of life and property.
 - **Prisons Act**, Volume IV, Cap 20:01, Laws of The Gambia 2009 establishes the Gambia Prison Department and it also designates the three main prisons that are available in The Gambia.

- **Criminal Code**, Volume IV, Cap 10:01, Laws of The Gambia 2009 contains almost all the acts, actions or omissions that have been criminalized in The Gambia. It is the main statute book dealing with criminal offences in The Gambia and the **Criminal Procedure Code**, Volume III, Cap 11:01, Laws of The Gambia 1990 provides for the procedures that should be followed in prosecuting and defending criminal offences in The Gambia.
- **Economic Crimes (Specified Offence) Act**, Cap 13:07 Laws of The Gambia 1990 regulates offences relating to economic crimes in The Gambia.
- **Indemnity Act**, Cap 23:01 Laws of The Gambia 1990, an act to indemnify the government and its agents for acts and omission done during the period of a public emergency.

3. INTERNATIONAL INSTRUMENTS

The Gambia is a party to several major international instruments. They have different levels of application. Some signed, others signed and ratified and some signed, ratified and domesticated. Amongst the instruments ratified includes the: (a) **International Covenant on Civil and Political Rights (ICCPR)** in 1979¹ (b) **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the (c) **Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)** were ratified in 1979 and 2018 respectively. The Gambia also adopted the (d) **Universal Declaration on Human Rights** which promotes the respect and protection of the rights and freedoms of all human beings. The Gambia ratified the (e) Rome Statute of the International Criminal Court (ICC) in 2004 which established an International Criminal Court to investigate and prosecute aggression, crimes against humanity, genocide and war crimes.

4. REGIONAL INSTRUMENTS

- a) The Gambia is a signatory to the **African Charter on Human and Peoples' Rights - ACHPR (1983)**. This Charter is also known as the 'Banjul Charter' and is the primary human rights instrument in Africa. It is paramount in the Human Rights Development of The Gambia as it represents the aspirations of the African people². At the time of its adoption, only three countries in Africa embraced the concept of multi-party democracy. These countries were The Gambia, Senegal and Botswana³. The Gambia has also signed and ratified the **Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998/2004)**, **Protocol on the African Human Rights Court**, **Protocol on the Statute of the African Court of Justice and Human Rights**.

1 This made a reservation under Article 14 (3) (d) that free legal assistance in The Gambia will only be provided in capital offences due to financial constraints.
 2 The headquarters of the African Commission on Human and Peoples' Rights is situated in The Gambia.
 3 Darnace Torou, 'An Overview of Progress of Human Rights in Africa', <<http://witness.peace.ca/afstrugglehumanrights.htm>>.

- b) **The Gambia is a signatory to the 1975, Economic Community of West African States (ECOWAS), Treaty (Revised 1993) and the Protocol on Free Movement, Residence and Establishment and other ECOWAS protocols.** *These instruments place an obligation on Member States to enact local legislations and develop policies aimed at the realization of the aims of the treaties. The Gambia, has harmonised most of the provisions of the Community instruments in to national legislation and policies.*

5. In spite of The Gambia's adoption of all these international and regional instruments and domestic laws aimed at ensuring justice in the country, justice sector institutions suffered significantly from interference by former President Yahya Jammeh during his 22-year rule. He used justice sector institutions to strengthen his grip on power and entrench his dictatorship. He achieved this by direct interference in the work of key justice sector institutions such as the Judiciary, Attorney General Chambers and Ministry of Justice, Gambia Police Force, Prisons and the National Intelligence Agency (NIA). Yahya Jammeh consistently carried out politically motivated constitutional amendments to entrench himself in power. At the same time, the National Assembly which he controlled, consistently passed laws pursuant to his agenda to persecute and crush political opponents, dissenting voices and those perceived to present threats to his power. To achieve his overriding objective of self-perpetuation Yahya Jammeh systematically used legal mechanisms: constitutional and statutory law in interfering with the work of important justice sector institutions to victimize the population, from senior civil servants, Judges, Ministers, Permanent Secretaries, political opponents, members of his own party, the media, students and the public at large. In so doing he strategically appointed judicial officers, police, NIA and other key decision makers in major justice sector institutions to do his bidding.
6. The use of punitive laws to persecute political opponents and individuals perceived to be threats to **Yahya Jammeh's** power, interest or agenda was normalized under him. He did this by heavily using the criminal justice system to further his objectives through routine malicious prosecutions under the Criminal Code. Public officials and opposition members were often charged with providing false information to a public officer, sedition, inciting violence, public disorder, economic crimes, abuse of office and negligence of official duties, amongst many other.
7. **Yahya Jammeh** used the Ministry of Justice, particularly the office of the Director of Public Prosecutions, to target political opponents or persons perceived as threats to his power. This culminated in direct and coercive political interference with investigations and judicial processes by way of unlawful directives, intimidation and other undue influences.
8. When public officials and opposition members appear before the courts, often in cases where there is absence of sufficient evidence to prosecute in the first place, it became common place for judges and magistrates to impose unrealistic and onerous bail conditions implicitly to deny bail. Ironically, the very courts tasked with delivering justice routinely and blatantly disregarded well established legal principles and procedures. Over time, these deviations compromised and undermined the independence and neutrality of the Judiciary and ultimately, the public lost faith and confidence in the administration of justice and in the latter's capacity to deliver justice as an independent arbiter.

9. **Yahya Jammeh's** greed and push for controlling almost every sector, including the economic sector, was ever present. He interfered with and manipulated the Office of the Sheriff of the High Court to gain undue influence and unfairness in successfully bidding and purchasing properties and other valuable goods and materials sold by the Sheriff in the execution of judgments. **Yahya Jammeh** used this mechanism to buy premium land and property at fractions of their true market value, as means to grab land and property to amass wealth. For instance, in the sale of the Mahoney Estate in Wellington Street (one of the busiest streets in Banjul), a property which went through probate and was being advertised, the Sheriff himself purchased the property for the former President in his personal capacity, disregarding the fact that he was the Sheriff of The Gambia at the time⁴.
10. The phenomena of compliant judicial officers rendering decisions in **Yahya Jammeh's** favour and bribing witnesses to secure criminal convictions against political opponents and public officials who have fallen out of favour was not uncommon.⁵
11. **Yahya Jammeh's** orders through official and un-official directives for officials to execute plans and carry out certain duties and exercise powers that are favourable to his agenda and inimical to the fair administration of justice, democracy, and transparency, became customary practice, in particular, during the latter years of his dictatorship. These practices undermined the independence and integrity of justice sector institutions because the lines between acting for and in the best interests of Gambians and preserving the sole interests of Jammeh, which gradually entrenched his dictatorship, became blurred and officials began to predominantly pursue Jammeh's aims and objectives of consolidating power. As it were, this state driven agenda was a departure from international norms and standards and ultimately weakened major justice sector institutions.
12. For **Yahya Jammeh**, the state meant a completely different concept. He and the state were synonymous, he epitomized the state. His highjack of the state and its institutions transfused the country into a security vampire state. A vampire state as the name implies includes states that are: *"typically run by a cabal of criminally-minded military or civilian regimes whose primary objective is to use the state and its repressive structures to suck the blood, or vital economic resources of a country. This mafia-like regime has little to no oversight since the state and its institutions, and especially its civil and bureaucratic structures had been reconfigured primarily to serve the economic and security interests of those in power"*.⁶ Abdoulaye Saine went on further to say: *"In the end, all branches of government and machinery of state had been gutted, and their roles subsumed under the Office of the President (Yahya Jammeh) and State House. It was from this vital and strategic location that decisions were made about disbursements of financial assistance, humanitarian aid, etc. In fact, Jammeh had almost totally destroyed the state and its institutions, including the civil service, which in earnest became a shadow of its past- considering that Gambia's civil service was once a source of national pride, especially after independence. Left at the helm were Jammeh and his cabal to perform state functions, or what were left of them and few dared speak out for fear of reprisal"*.⁷

4 Testimony of BA57, 28th April 2021

5 Testimony of Omar Cham, 11th January 2021 lines 866-953

6 Abdoulaye Saine, Ph.D., COMMISSIONED REPORT TO THE GAMBIA'S TRUTH RECONCILIATION AND REPARATION COMMISSION: 1994-2017, page 39, paragraph 107.

7 Abdoulaye Saine, Ph.D., COMMISSIONED REPORT TO THE GAMBIA'S TRUTH RECONCILIATION AND REPARATION COMMISSION: 1994-2017, page 41, paragraph 111.

13. The Commission heard testimonies from different witnesses about who how **Yahya Jammeh** interfered in the work of the Judiciary in matters that he had interests, thus disturbing the very sanctity of the principle of the independence and impartiality of Judges and Magistrates in the delivery and administration of justice, justly and fairly, according to law. State Law Officers were used to prosecute political opponents even where there is lack of evidence justifying a prosecution. Police Officers unlawfully arrested and detained individuals on executive directives. Members of the security and armed forces engaged in extra-judicial killings and enforced disappearances.
14. The actions of **Yahya Jammeh** led to the decline of the effectiveness of important public institutions such as the Judiciary and Ministry of Justice. The principle of the rule of law, of which good governance is essential in every democratic society, was disregarded and citizens' rights were violated, leading to a terrible human rights record in The Gambia.⁸
15. In December 2016, Gambians voted **Yahya Jammeh** out of power and ended his 22 years of brutal dictatorship. As part of the transition agenda to reconstruct the country and rebuild public institutions. The Gambia set up a transitional justice process. This report seeks to establish how **Yahya Jammeh** used or abused, manipulated and interfered with the justice sector institutions to perpetuate himself in power and to serve his personal interest.

INTERFERENCE WITH THE JUDICIARY

16. The independence of the Judiciary is a well-known concept in every democratic society. It reinforces the doctrine of the separation of powers. Section 120 (3) of the 1997 Constitution provides that *"in the exercise of their judicial functions, the courts, the Judges and other holders of judicial office shall be independent and shall be subject only to this Constitution and the law and, save as provided in this Chapter, shall not be subject to the control or direction of any other person or authority"*. Therefore, the Constitution is explicit on the issue of impartiality of Judges and judicial officers in exercising their judicial powers and functions. Further, because of the role judicial officer's play in the fair dispensation of justice, the Constitution seeks to shield them from external interference and influence when carrying out their duties.
17. Section 120 (4) of the 1997 Constitution places an obligation on the Government and all its departments and agencies to assist in the protection of the independence of the Judiciary. Section 120 (4) states that *"the Government and all departments and agencies of the Government shall accord such assistance to the courts as the courts may reasonably require to protect their independence, dignity and effectiveness"*. For there to be genuine independence of the Judiciary, government must respect the separation of powers in order to ensure that the three organs of state operate independently of each other. This system promotes a culture of accountability and transparency and well mechanised checks and balances regime. *"The systematic human rights violations in The Gambia from 1994 to January 2017, did not spare the Judiciary of The Gambia. Judges and Magistrates were frequently and unconstitutionally*

8 University of Pennsylvania, Preliminary Working Report Presented to the International Development and Law Organization: Access to Justice in The Gambia – September 2019, < <https://witness.law.upenn.edu/live/files/9725-working-report-access-to-justicegambia>> accessed 8th June 2021.

removed from office without adherence to constitutional procedure. The Executive branch of Government being dissatisfied with judicial pronouncements being made in court often resulted in the filing of bogus and frivolous charges against Judges and Magistrates in order to intimidate, humiliate and persecute them for their decisions”.⁹

APPOINTMENTS OF JUDGES AND OTHER JUDICIAL OFFICERS

18. Pursuant to section 138 (2) of the 1997 Constitution of the Republic of The Gambia, the President is the appointing authority for (i) the Chief Justice on consultation with the Judicial Commission and (ii) Judges on the recommendation of the Judicial Service Commission. Section 139 of the 1997 Constitution states the qualification for appointment as a Judge.¹⁰ Generally, these are locally appointed judges appointed on long term contracts. Second, technical assistant judges who are seconded to the Gambia on short term basis. These were of two types: (a) Judges appointed by Commonwealth Fund for Technical Cooperation (CFTC) and drawn from judges from commonwealth countries often on renewable short-term contracts of two years. (b). Judges seconded to The Gambian Judiciary from individual states through bilateral arrangements mainly from Nigeria based on renewable short-term contracts. (d) Individuals who are appointed as judges not from any of the foregoing arrangements. Typically, these are legal practitioners who come to The Gambia looking for greener pastures and for some reason or another, managed to get hired as judges on short term contracts. These categories of judges are often called ‘mercenary judge’. **Borry Touray**, a senior legal practitioner told the Commission that the phenomena was not exclusive to non- Gambian judges: “mercenary Judges were Judges who were appointed on contract by the government, I am not referring to the foreign elements of the Mercenary Judges but there were Gambians who failed the expectation of the profession, Gambian Judges. He buttressed his point by mentioning: “three matters which I personally handled and they were all been handled by one single person and I would write his name for you”.¹¹ **Neneh Cham**, a senior legal practitioner categorised ‘mercenary Judges’ as those that “ were hired to secure conviction and imprisonment in selected cases”.¹²
19. The Commission received evidence that the procedures for appointment of judges were not always adhered to. For the ‘mercenary judges’ in particular, they were not subjected to the requisite high standard of scrutiny necessary to ensure that they met the necessary educational, skills, experience and character requirements for appointment as judges. Whereas judges appointed under the other categories, there was the possibility of thorough vetting by their national institutions. The same does not apply to ‘mercenary judges. Judges who were sent on technical assistance from the Commonwealth for the most part dispensed justice impartially. However, judges appointed under the bilateral arrangements and the ‘mercenary judges’ were prone to be very compliant and did everything possible to ensure extensions of their contracts including by succumbing to the wishes of the executive or their superiors. “An example is **Justice Paul** who was known to be close to the former President

9 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICIARY, page 1.
 10 Constitution of the Republic of The Gambia-1997, Part 4, Section 138 (2).
 11 Testimony of Mr. Borry S. Touray, 8th April 2021, page 37, lines 669 to 674.
 12 Testimony of Ms. Neneh M.C Cham, 30th March 2021, page 36, lines 852 to 853.

and it is even rumored that he joined the former President in his hometown, Kanilai. One famous case he tried is the case of **Baba Jobe** which was believed to be politically motivated. He convicted **Baba Jobe** to nine (9) years imprisonment. There were also other Judges who were imposing onerous bail conditions on accused persons, one such case is the case of **Hon. Halifa Sallah...**”¹³

TERMINATION OF JUDGES

20. Section 141 (4) to (9) of the 1997 Constitution provides the procedure for removal of Judges, “a judge may only be removed from office for inability to perform his or her functions whether arising from infirmity of body or mind or for misconduct. A notice is given to the Speaker of the National Assembly, signed by not less than one half of the voting members of the National Assembly, to put forward a motion that the ability of the judge to exercise his functions should be investigated. If the motion is adopted following a majority of not less than two-thirds of all the members, the National Assembly appoints a tribunal to investigate the allegations. The tribunal comprises of three individuals, one of which shall have held high judicial office. Proceedings are held in camera and a judge appearing before the tribunal has the right to appear and be legally represented. The tribunal presents its report to the National Assembly and if the National Assembly finds that the allegations are substantiated then it may by a two-thirds majority resolve that the judge be removed from office”.¹⁴ In addition to these provisions, section 141 (2) (c) of the 1997 Constitution also grants the power to the President in consultation with the Judicial Service Commission (JSC) to terminate the appointment of a judge. Section 141 (2) (c) states “subject to the provisions of this section, a judge of a Superior Court may have his or her appointment terminated by the President in consultation with the Judicial Service Commission”.
21. **Hon. Justice Ebrima Jaiteh** and **Omar Jabang**, a Judge of the High Court of The Gambia and Magistrate of the subordinate Courts respectively, presented a position paper on behalf of the Judiciary to the Commission articulating the experiences of the Judiciary under Jammeh. They provided the following examples of executive interference with the judiciary during the relevant period. According to Justice **Ebrima Jaiteh**, section 141 (2) is contingent on the application of section 141 and therefore subsection 2 cannot be used without applying the provisions under subsection 141. However, section 141 (2) (c) was used by Yahya Jammeh to control Judges during his regime without following proper procedure. Consultation with the Judicial Service Commission was extremely rare if at all as provided by the said provision. Magistrate **Omar Jabang** states that “in a serious democracy the Ex-President would have been impeached under s.67 (1) (a) of the 1997 Constitution for wilful violation of the provisions of the constitution”.¹⁵

(a) PURPORTED DISMISSAL OF THEN SUPREME COURT JUDGE- HON. JUSTICE HASSAN B. JALLOW

22. **Hon. Justice Hassan B. Jallow**, the current Chief Justice of The Gambia, while serving as Judge of the Supreme Court of The Gambia in 2003, received a termination letter from the Ministry of Justice in 2003 following a judgment he delivered in the case of **Sabally v**

13 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mE19o>> accessed 07th/06/21.
 14 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICIARY.
 15 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICAIRY.

Inspector General of Police and Others Supreme Court civil¹⁶ ref no 2/2001, 5 December 2001 in which he held that the retroactive application of the Indemnity Act against the actions of the security officers on April 10th and 11th was null and void. **Justice Jallow** responded by challenging the validity of the order to terminate his appointment and instead resigned. His wife, a high-ranking civil servant at the time, was also terminated with immediate effect without any reasons being advanced.¹⁷

DISMISSAL OF CHIEF JUSTICE CHOWAN

23. **Chief Justice Ali Nawaz Chowhan** (a Pakistani) was dismissed in June 2015, without an official announcement and given 48 hours to leave the country. Chowan had served just 14 months under **Yahya Jammeh**.

SUMMARY DISMISSAL OF HON. JUSTICE GIBOU JAMMEH AND JUSTICE RAYMOND SOCK

24. **Hon. Justice Gibou Jammeh** and **Justice Raymond Sock** were summarily dismissed as Supreme Court Judges following *the case of Lieutenant General Lang Tombong Tamba v The State and Sarjo Fofana v The State [Consolidated Criminal Appeal No. 003/2013] where the Supreme Court delivered a unanimous decision and subsequently upheld part of the sentences of the convicts and acquitted and discharged one of the Convict and set aside other convictions. Following the pronouncement of the judgment of the Supreme Court in the case of Lang Tombong Tamba (supra), the presiding Justices of the Supreme Court were summarily and unconstitutionally removed from office by an order of former President Yahya Jammeh and no official reason was given for the removal of the Judges and no consultation took place with the JSC*.¹⁸

UNLAWFUL DISMISSAL OF COURT OF APPEAL JUDGE, NA CEESAY SALLA WADDA

25. **Justice Na Ceesay Salla-Wadda** was terminated as a Judge of the Court of Appeal of The Gambia in 2016 for expressing her opinion in a meeting of Court of Appeal Judges convened by the then President of the Court of Appeal regarding the issue of bail for **Ousainou Darboe** and other UDP supporters who were being prosecuted at the High Court following the Solo Sandeng incident. In that meeting, **Justice Salla-Wadda** made it categorically clear that since the offences were bailable and taking into account the principle of the presumption of bail in favour of the accused in applicable cases such as Mr. Darboe's, she urged that the consideration ought to be what bail conditions the court should impose as opposed to rejection of the bail application. Eventually, she was excluded from the panel of Court of Appeal Judges who proceeded to reject same. A few days afterwards, Hon. Justice Salla-Wadda was informed of her termination by the Judicial Service Commission without advancing any reasons. Her termination did not follow the procedure laid down in the constitution.

TERMINATION OF APPOINTMENT OF JUSTICE HADDY ROCHE

26. Justice Haddy Roche, currently a Judge of the Court of Appeal, served both as a Magistrate and Judge of the High Court. Her appointment as a Judge was terminated twice because she delivered rendered decisions that were adverse to the state and in typical **Yahya Jammeh** style, he reacted by removal her. Before that, her benefits and entitlements such as official vehicles were taken away from her.

DISMISSAL OF MAGISTRATE BORRY TOURAY

27. While trying to carry out his duties and responsibilities as a Magistrate in accordance with the law and with independence and impartiality, **Borry Touray** was seen as an opponent of the APRC government and he was threatened, harassed, transferred from one court to another and dismissed on two occasions.

OTHER PUNISHMENTS BY THE EXECUTIVE ON JUDICIAL STAFF

EFFORTS TO FRUSTRATE HIGH COURT JUDGE - JUSTICE MARY MAM YASSIN SEY

28. Judges like **Justice Mam Yassin Sey** who refused to be swayed by the former government by granting bail in bailable offences even for capital offences was victimized. Due to her uncompromising stance her deserved elevation to the Court of Appeal was ignored on three occasions. Justice Mam Yassin Sey lamented the constant and unwarranted political interference in the judiciary when she served as a judge of the High Court between 1998 and 2003. In 2001, she was subjected to indirect victimisation after granting bail to students arrested and detained in relation to the 2000 student protests. In 2003, government's under-hand actions intensified when her water and electricity supplies at home were disconnected. Only a few days after depriving her access to basic utilities, her security guards were unceremoniously withdrawn without any prior notification. These were deliberate and vindictive tactics by government to frustrate her. With termination not an improbable outcome considering her treatment at the time, she resigned in 2003 to preserve her integrity and soon thereafter left the jurisdiction.

PROSECUTION OF JUSTICE AMINA SAHO CEESAY

29. Justice **Amina Saho Ceesay** together with Justices **Ngui Mboob Janneh** and **Saffiatou Njie** were arrested at a time when they held judicial positions. They applied for bail as the charges were bailable offences but due to interference by **Chief Justice Agim**, the bail application was denied. The presiding magistrate **Emmanuel Nkia** told the Commission that the **Chief Justice Agim** called him and told him that **Yahya Jammeh** was closely monitoring the case and told him not to joke with the issue of bail as the accused persons were a flight risk. This instilled fear in him and as a result, he remanded three of the accused persons in custody. In his statement to the Commission, **Justice Nkia** clearly stated that had it not been the interference of **Chief Justice Agim**, he would have granted bail to the accused persons. **Justice Amina Saho Ceesay** was arrested, charged, prosecuted and detained whilst she was six months pregnant.

16 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICAIRY.

17 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICAIRY

18 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICIARY.

ARREST AND DETENTION OF MAGISTRATE OMAR JABANG, MAGISTRATE EBRIMA JAITEH

30. **Justice Ebrima Jaiteh** appeared before the Commission and explained his personal experiences that as members of the bench, he was arrested and detained at the Police Headquarters in Banjul for striking out a case of political interest for lack of jurisdiction. Principal Magistrate **Omar Jabang** told the Commission how he was arrested and detained at the Police Headquarters for acquitting and discharging one **Yusupha Saïdy**, who was accused of obtaining money by false pretense.¹⁹
31. **Cherno Marenah**, a former Solicitor General and Legal Secretary, testified to the Commission about executive interference in the Judiciary. He also spoke about this issue when he stated that certain Magistrates including Magistrate **Abeke, Kayodeh** and **Alagbeh** who were not sent on technical assistance by their governments were *“notoriously known for bending all known rules of procedure or imposing outrageous sentences”*.²⁰ However, some Magistrates refused to be intimidated by **Yahya Jammeh**. Such magistrates or judges often did not get away with this. In response, **Yahya Jammeh** would impose punitive measures against them, ranging from reprimand, intimidation, bribery, arbitrary arrest, unlawful detention, deportation or unfair dismissal or termination from the service. **Cherno Marenah** also informed the Commission that he heard **Jammeh** saying that *“he did not believe in the independence of the Judiciary because he pays the Judiciary as such they cannot be independent”*.²¹ **Cherno Marenah**, in terms of the reaction of the Bar during this period, said that some courts were boycotted and press statements condemning some of these actions were issued.²² The law vesting the President with the powers to remove Judges with little oversight and protective mechanisms against the latter, abusing this authority was an affront to the independence of the Judiciary and the principle of the separation of powers. Excessive power was granted to the Executive in comparison with the Judiciary. This significantly affected the security of tenure of Judges. This constitutional procedural weakness in removal of judicial officers was arbitrarily used by the former **President Yahya Jammeh**. On the independence of the Judiciary **Amie Bensouda** a senior legal practitioner also stated that there was no security of tenure for Judges since section 141(c) of the 1997 Constitution vests the President the power to dismiss Judges.
33. **Neneh Cham**, legal practitioner, told the Commission that there were no *prima facie* evidence and this was clear in some cases however, charges will be proffered even in light of lack of evidence that would reasonably sustain a conviction. In these cases, the norm was for the police and the State to charge even though they are almost certain that the courts will acquit the accused person. *“For example, the case of Babou Janha and Alagie Nying who were tried before the court martial when there was no prima facie case”*.²³ The only evidence before the court was their confessionary statements which were successfully challenged because they did not comply with the relevant provisions the Evidence Act regarding the admissibility of confessions in court. Even though the court rejected the confessionary

19 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICIARY, page 5-27.
 20 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.
 21 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21. Lines 821-831
 22 Testimony of Cherno Marenah , 25th March 2021, lines 789-796
 23 Testimony of Ms. Neneh M.C Cham, 30th March 2021, page 26, lines 605 to 608.

statements and thus there was no evidence against the accused persons, they were nevertheless convicted of concealment of treason. *“In case of Hamidou Sowe, the prosecution promised to drop the charges but they later decided to continue with the prosecution, the trial took seven (7) years four (4) months before he was convicted and during all this time he was detained at the Mile II prisons”*.²⁴ In the Gambia Press Union (GPU) Executive case, **Bai Emil Touray** and others were all convicted even after the Judge decided that there was no *prima facie* evidence against them. The court however based their conviction on basis that they failed to cooperate with the NIA investigations. These convictions manifest the lack of impartiality of some Judges in delivering justice especially in matters involving **Jammeh’s** political opponents.

34. **Borry Touray**, was appointed a First Class Magistrate during the military transition. He confirmed executive interference in the Judiciary during the military era in the two year transition period. However, in his experience, such interferences were limited to cases involving senior security and police personnel. During that time, there was little interference in ordinary civil matters or criminal cases. The Decrees introduced by the AFPRC suspended certain provisions of the 1970 Constitution and according to **Borry Touray** that *“the stage was set for imposition of dictatorship from the very beginning”*.²⁵ There was no room for one to exercise his or her right to liberty as it was difficult for lawyers to apply for bail and the seventy-two (72) hour time limit applicable to detained individuals were violated.
35. **Borry Touray** referred to the case of **IGP v. Pa Sallah Jeng, Ebrima Chongan and Kebba Dibba** who were denied bail pursuant to Decree No. 3 which applied to security personnel. Mr. Touray took over the case after fifty-two adjournments without the prosecution making any progress in the case and on the next adjourned date, **Lamin A.M.S Jobarteh**, prosecutor, appeared in court without a witness to proceed and the defence lawyers for the dismissal of the case for lack of diligent prosecution. *“So, by the time Mr. Jobarteh realized that something momentous was taking place in court it was almost late. So, they thought was going to adjourned the matter again, for ruling, I insisted that I was going to deliver the ruling the same day. So, I went into my chambers whilst I was writing my ruling a whole truck load of soldiers were deployed in Banjul Magistrates’ Court, it was like a Military Camp. Some of them in fact entered right inside the court room under the roof of the court. They were all armed. All of them were armed, they were not in fact with riot gear, they came heavily armed”*.²⁶
36. **Borry Touray** said that he sent the soldiers out of his court and proceeded to delivering his ruling on the matter. *“I dismissed the case and then made an order for the accused persons to be remanded because at that time, they were security detainees under the Decrees that they have enacted and the detention orders that were issued”*.²⁷ *“... there was a basis for their further detention under the dispensation that was prevailing at the time. Because these three gentlemen were already detained under Decree No. 3, the state Security Detention of Armed and Police Personnel Decree, I do not necessarily agree with the contents of the Decree as it was and I also do not share the opinion that I do not have power to release them because in later cases people were arrested under the same law and detained, their names were published under detention orders and I went ahead to grant them bail. My only*

24 Testimony of Ms. Neneh M.C Cham, 30th March 2021, page 28, lines 671 to 674.
 25 Testimony of Mr. Borry S. Touray, 8th April 2021, page 12, lines 202 to 203.
 26 Testimony of Borry S. Touray, 8th April 2021, page 18, lines 305 to 310.
 27 Testimony of Borry S. Touray, 8th April 2021, page 20, lines 351 to 353.

difficulty was a procedural one. The issue came before the court and it was determined, there was an appeal against it and the High Court affirmed the decision of the lower court. If that procedure had not been followed, I was definitely going to release them”.²⁸

37. For this reason, **Borry Touray** could not overturn the judgment of a superior court because the Magistrate Court had earlier declined jurisdiction to grant bail since the accused persons were detained under Decree No. 3 and their names were published under the Decree as persons who posed a security threat to country and the High Court affirmed this decision. Following this ruling, “I was dismissed as a Magistrate by the Personnel Management Office” says **Borry Touray**. He stated that he was informed by the Chief Justice at the time, **Justice Alghali** that the “*Judicial Service Commission was not involved in it at all*”.²⁹ He was reinstated and transferred to Mansakonko as a travelling Magistrate. As a travelling Magistrate, he granted bail to **Kemesseng Jammeh, Siaka Sonko, Sainy Sabally, Pa Jenung Sanyang** and **Malick Secka**, all **UDP** Supporters in Farrafeni. These accused persons were arrested pursuant to a Decree that was passed by the AFPRC Junta. **Borry Touray** further testified that after the change of government in 2016 he challenged his dismissal before the High Court and the Court declared the dismissal was unconstitutional. This is a clear precedent for interference in the judicial system by way of unlawful dismissal.
38. **Lamin K. Mboge (Lamin Mboge)**, a First Class Magistrate at the time of the 1994 *coup d’etat* testified to the Commission, that following the military takeover, he presided over the case involving the **Foroya Newspaper** in which **Hon. Khalifa Sallah** and **Hon. Sidia Jatta** were charged with violations under Decree No.4 which placed a ban on all newspaper publications. Despite there being a clear violation of Decree No. 4, **Lamin Mboge** stated that he convicted the accused persons and imposed a suspended sentence. During that period, **Lamin Mboge** said that the atmosphere in the country was very tense with soldiers parading in court causing fear and intimidation. Following **Lamin Mboge’s** judgment in the above case, he was transferred from Banjul Magistrates’ Court to Brikama Magistrates’ Court and he linked this to the Junta’s dissatisfaction with his decision. It is his belief that the AFPRC had expected imposition of a custodial sentence.

POLITICIZATION OF THE JUDICIAL PROCESS

39. After the transition to civilian rule, the APRC government did not only meddle in individual civil and political cases but members of their party assumed that they were above criminal prosecution or civil litigation. **Borry Touray** said that the July 22nd Movement “*enjoyed an absolute air of impunity*”.³⁰ “*Apart from the cabinet that was lawfully constituted, there was an invisible cabinet of July 22nd Members*”.³¹ During his time as a travelling Magistrate, **Lamin Touray** also testified that he presided over a case in Farafenni involving one **Tapha Dibba** from Farafenni, “*Tapha was a member of July 22nd and APRC. So, he has attacked the uncle but that time the uncle had a long sickness and was just recovering. When the uncle realized that this situation was getting out of hand, he left the compound and Tapha met him in the streets and assaulted him there. After assaulted him, he went to the police and informed the police, Tapha himself. He said “this man from the UDP came to my house and I assaulted him”. He told the police that he assaulted the man but because I do not*

²⁸ Testimony of Borry S. Touray, 8th April 2021, page 20-21, lines 356 to 366.

²⁹ Testimony of Mr. Borry S. Touray, 8th April 2021, page 24, lines 432 to 433.

³⁰ Testimony of Mr. Borry S. Touray, 8th April 2021, page 51, lines 933 to 934.

³¹ Testimony of Mr. Borry S. Touray, 8th April 2021, page 51, lines 938 to 939.

belong to the same party with him, I want you to charge him and if you do not charge him, I will call the Inspector General and tell him that he must tell his officers in Farafenni to charge the uncle. FRI (the IGP) was not interested also in knowing the truth of the matter he directly instructed Inspector Secka to charge the uncle”.³² According to **Borry Touray**, IGP, **FRI Jammeh** was known for arresting and detaining opposition sympathisers. During his prosecution, **Tapha Dibba** confessed assaulting the accused person and it was on those grounds that **Borry Touray** made an order for Tapha to be present in every sitting. Following this order, two Cabinet members, **Major Bojang**, Minister of Interior and **Lamin Kaba Bajo**, Minister for Local Government, were sent to Farafenni to investigate the matter.

40. Mr. **Lamin K. Mboge** also testified to the Commission, that during his time as a Magistrate at the Basse Magistrates’ Court, he came in contact with the July 22nd Movement, a group of young men and women who tried to promote the objectives of the APRC and working as a militant group. **Lamin Mboge** said that while serving in Basse, he came across a case file involving the July 22nd Movement and a member of the Movement, one **Mawdo Gari** acted as a surety for one Senegalese national who was charged with murder. However, the accused person was never arraigned before a Court and he was not within the jurisdiction. **Lamin Mboge** then decided to summon the sureties in court to produce the accused person or be ordered to forfeit their bail bond. “*... the Regional Chairman late Banta Camara insisted that that man cannot be found and so the case should be closed and then the report came from Basse to the State House and the Press Secretary at the State House was also from the URR, he’s called Batata Juwara. And through them they were able to file reports at the court through the Master of the High Court so that they can get me transferred from Basse and that was a real difficult test because I also insisted on forfeiting the bond to the State. But whilst on the proceeding, I receive the transfer from the High Court through the Governor’s Office that I have been transferred to Banjul Magistrates’ Court...*”³³ Following his encounter with the July 22nd Movement in Basse, **Mr. Mboge** said that series of allegations including misappropriation of funds were made against him to the Master of the High Court, **Ousman Jammeh**, from the 22nd July Movement and this subsequently led to his suspension and termination from the Judiciary.
41. **Emmanuel Daniel Joof**, current Chairman of the National Human Rights Commission (NHRC) testified at the Commission, that he was appointed as a Magistrate from 1997 to 1999 and that he was the travelling Magistrate responsible for the Lower River Region and the North Bank Region at the time. During this period, the atmosphere of the country was very political. The witness narrated a case he presided over in 1998 at Farrafeni in which four men were charged with disorderly conduct. “*The prosecution witnesses were APRC party militants claiming that they were in a public transport when they heard the accused persons saying that the former President Yahya Jammeh was not fit to rule the country because he was not well educated enough. Having listened to the prosecution and their witnesses, it appeared that these were politically motivated charges. The accused persons were acquitted and discharged as the evidence presented did not speak to any crime.*”³⁴ The judgment in the above case attracted a lot of media attention and soon thereafter, he was informed by a colleague that the APRC government were offended with the judgment. Even in those early days, **Yahya Jammeh** felt entitled to Judges and Magistrates reaching decisions in favour of

³² Testimony of Mr. Borry S. Touray, 8th April 2021, page 32, lines 574 to 584.

³³ Testimony of Mr. Lamin K. Mboge, 30th March 2021, page 14, line 282 to 290.

³⁴ Statement of Mr. Emmanuel Joof to the TRRC, 19th May 2020, page 2, paragraph 7.

the State hence when decisions went against the State or his political interests, he was swift to sanction such judicial officers.

42. According to **Emmanuel Joof**, he also presided over a civil case at Mansakonko “in which the Chief of Kwenila was a Defendant in a case where he was sued for seizing the land of one Chenado Ceesay of Njoro Angaleh and prevented him from harvesting his crops which ended up rotting. In fact, the Chief at the time used to refer to himself as the APRC Chief. Judgment was entered against the Chief and he was ordered to compensate the Plaintiff Mr. Chanado Ceesay for his loss. When the Chief refused to pay, a Judgement Debtor’s Summons was issued, and he was threatened with imprisonment. He eventually paid. He however threatened me with deportation.”³⁵ (The Chief erroneously believed that Emmanuel was non-Gambian. Subsequently the case file was requested by the Judiciary.
43. **Borry. S. Touray**, informed the Commission that despite the wrongful prosecution of so many innocent individuals, being a member of the APRC inherently served as a shield against malicious prosecution. He said that “there were people who had their own individual issues. They were involved in criminal behavior and when they were charged, they used politics as a cover. They joined partisan politics and lobbied to become APRC MPs to get impunity so that they would not be prosecuted. I will give you a case in point, Churchill Baldeh, appropriated funds in Action Aid, the matter was reported to the Police in Bansang, it was thoroughly investigated. There was evidence against him, he was charged by the Police. When the file reached the Ministry of Justice, they compromised, and his name was removed after. I will give you another case Wandy Darboe, a Chief in Bureng, Dumboto, Lower River Region. He misappropriated lots of funds from assistance that was being given to Dumboto Village by a twin village from the United Kingdom. He misappropriated a lot of resources that were sent. One Abdoulie Colley also a civil servant and a cousin brother of Wandy stood up with some of his friends and reported the matter to the Police, it was investigated and there was evidence against Wandy. Wandy used membership of the July 22nd as Churchill did and compromised the case at the level of the Ministry of Justice”.³⁶

CASES IN WHICH JAMMEH HAD SUFFICIENT INTEREST.

44. **Borry Touray** further gave evidence of how “mercenary Judges” ruled unjustly in cases in which the former President had an interest. He mentioned three matters which he personally handled and which were all presided over by the same judge.³⁷ These were
- (i) In 2003, a case involving Iraqi nationals were brought before the High Court. **Borry Touray** filed a habeas corpus application for his clients to be produced, however the ruling was never delivered by a Gambian Judge. The Iraqi nationals were wanted by the U.S government following the bombing of the World Trade Centre and they were arbitrarily arrested and unlawfully detained by state agents and subsequently transferred to Guantanamo Bay. **Borry Touray** revealed that the government of The Gambia received two satellites in compensation for their assistance. (ii) Another was the case of **Lamin Waa Juwara** who was an opposition member. **Borry Touray** filed a certificate of urgency at the Court of Appeal so that the matter would be expedited. However, even with that, a ruling was not delivered until after **Mr Juwara** had already served his six months sentence.

35 Statement of Mr. Emmanuel Joof to the TRRC, 19th May 2020, page 2, paragraph 10.

36 Testimony of Mr. Borry S. Touray, 8th April 2021, page 55 to 56, lines 1011 to 1029.

37 Testimony of Mr. Borry S. Touray, 8th April 2021, page 37, lines 669 to 674.

- (iii) As for the case of **Aba Sanyang** who wanted to contest the Parliamentary seat for Foni (Jammeh’s own constituency), he was arrested and taken to court before the nomination. The same Judge who presided in the above cases refused to deliver the bail ruling until after nominations were over so as to prevent **Aba Sanyang** from being nominated. According to **Borry Touray**, these cases show that contrary to popular belief, mercenary Judges were not only foreign Judges but also some Gambian Judges.

45. **Borry Touray** narrated to the Commission that while serving in the Basse Magistrates’ Court, twenty-four individuals including members of the United Democratic Party (UDP) and the party itself as a body, were charged with murder. **Borry Touray** informed the Commission that “when you charge a corporate personality you can only do so in relation to corporate matters for instance where there is negligence on the part of a body corporate and it has resulted to damage or where for instance fraud has been perpetrated by a corporate body but a matter pertaining to individual liability such as Murder that is not within the corporate responsibility of a company or registered body. That was just a clear and the highest degree of manifestation of vendetta against the UDP as a political entity”.³⁸
46. **Borry Touray’s** jurisdiction to hear the matter was ousted by an amendment that was made to the applicable law, he refused to make an order to remand the accused persons at the Mile II Prisons as anticipated by the former government. “I have a power to transfer it to the court having jurisdiction and that was the power that I exercised and I referred the matter to the Chief Justice in Chambers to sit over the issue of bail and I expressly ordered that the Accused Persons be escorted under the command of the Officer Commanding Police, Basse Division and I also further ordered that they be taken to Banjul Police Station to be detained there overnight. I further ordered him to bring them before the Chief Justice in Chambers the following morning. And I further ordered that on no account should they be detained in Mile II Prison or in another location other than Banjul Police because I knew that they would not have been tortured in Banjul Police and the general public would have had access to them at any time of the day or night. So, the following day I was sacked again”.³⁹
47. **Neneh Cham** told the Commission stated that there was no separation of powers between the Executive and the Judiciary as Jammeh interfered with the Judiciary. Amongst the Judges, there were **Honourable Justice Sanji Monageng, Honourable Justice Nkemdilim Izuako, Honourable Justice Ahmad Belgore, Honourable Justice Tahirr** and **Honourable Justice Kabalata** from **Zimbabwe**, who were exemplary members of the Bench and who asserted their impartiality and independence when dealing with criminal cases. Ms. Cham testified that there was no security of tenure for Judges other than the Commonwealth Judges and Judges on technical assistance and that was why they were easily dismissed by **Yahya Jammeh**. The Commonwealth Judges’ contracts were not renewed by the Government in some instances leading to the termination of their services. That was the case of **Justice Sanji Monageng, Justice Izuako** and **Justice Chowhan**. The nature of the contracts of the Commonwealth Judges meant that they were able to exercise a greater deal of impartiality and independence in the discharge of their duties than some of the Judges on technical assistance who, because of the nature of their contracts, were less insulated from Jammeh’s indiscretions. She cited the case of The Gambia Press Union to buttress her point. The case was assigned to Justice Wowo and Justice Fagbenle. “..... Justice Wowo was visibly hostile

38 Testimony of Mr. Borry S. Touray, 8th April 2021, page 76, lines 1409 to 1415.

39 Testimony of Mr. Borry S. Touray, 8th April 2021, page 79, lines 1470 to 1480.

to the defence and he would overrule every objection made by the defence without allowing them the courtesy to hear the objections to the end. He also insisted that all the prosecution witnesses will be heard in camera. The direction of the case was certainly clear. Then it was transferred to Justice Emmanuel Fagbenle ... he convicted all the Accused Persons in the end and imposed a custodial sentence on one Sarata Jabbie, a breastfeeding woman and Pap Saine who was ill”.⁴⁰

48. **Sheriff Marie Tambadou**, a former President of the Gambia Bar Association (GBA) told the Commission that the GBA condemned the interference of Jammeh in the Judiciary because the Bar had a responsibility to ensure the independence of the Judiciary and rule of law. As a result of executive interference in judicial spheres, the GBA boycotted the courts of Justice Paul and Justice Fagbenle and the GBA wrote to the Nigerian Bar Association to complain about the conduct of these two Judges. According to him some of the Judges were termed as “*mercenary judges*” because they were always making decisions in favour of Jammeh and at the detriment of justice and the rule of law. **Mr. Tambadou** said that over time, some Judges appointed by Jammeh lacked the high degrees of competence and capabilities required of Judges and this trend worsened. He disclosed that individuals lacking the requisite qualifications were employed as Magistrates and Judges. Several Justices were also sacked including **Chief Justice Abdou Karim Savage**, **Chief Justice Chowhan**, **Justice Hassan B. Jallow** and other Justices of the Supreme Court, **Justice Gibou Janneh** and **Justice Raymond Sock**. **Justice Janneh** and **Justice Sock** were sacked because of a ruling they gave in support of the Review Application to reduce the sentences of **Lang Tombong Tamba & Ors** from death to life imprisonment. Even though **Justice Chowhan** did not support the application, the fact that the majority of Supreme Court Judges did, it did not spare him from sacking for his inability to exercise control over the other Judges to refuse the application. According to **Sheriff Tambadou**, one **Henny Moussa** was convicted by **Magistrate Nkea** but at the time of delivering the judgment told the former that “*his hands were tied, it’s either Uncle Henny or him*”.⁴¹
49. Justice sector institutions also deliberately refused complying with court orders. The refusal to obey court orders was a frequent occurrence in cases where court grants bail but the accused person will remain in state custody, even after families have satisfied bail conditions by entering recognizance as ordered by court. This occurred in the case of **Omar Ndow**, former Managing Director of Gamtel, **Abdoulie Jobe**, former Managing Director of NAWEC and more recently **Sirra Wally Ndow**, former Minister of Energy and Petroleum, **Fafa Sanyang** in 2016. These individuals were released on bail and later rearrested and detained at the NIA. On the instructions of the State, some of the accused persons were denied bail outright. In addition, another indirect way of ensuring an accused person remains in custody was the imposition of onerous bail conditions that are almost impossible to satisfy. This was a common practice in cases where Jammeh had sufficient interest.
50. In private practice, **Lamin K. Mboge** represented one **Hamdi Sowe** from Ndofan a herdsman who supplied cattle to **Yahya Jammeh**. “*But after two (2) successful transactions, the third time according to my client, the President gave some money up to one point three (1, 300, 000) or four million (4, 000, 000) but it is more than one million Dalasis (1, 000, 000) and gave it to his direct aids he mentioned two names; Solo Bojang and Pa Bojang,*

⁴⁰ Testimony of Ms. Neneh M.C Cham, 30th March 2021, page 33 to 35, lines 798 to 841.

⁴¹ Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 44, lines 972 to 973.

but the money never reached my client”.⁴² Therefore, since he did not deliver any cattle to **Yahya Jammeh**, he was arrested and refused bail. During the trial, all the key witnesses refused to come and testify in Court. For the failure of the key witnesses to testify, Magistrate **Emmanuel Nkea** indicated that he was going to acquit and discharge the accused person. However, he was dismissed before he could deliver the judgment. However, **Emmanuel Nkea** was reinstated a month later and he convicted and sentenced the accused person to four years imprisonment.

51. Mr. Mboge also represented Mr. Njogu Bah in the case of **The State V. Pa Harry Jammeh (former Solicitor General), Lamin A.M.S Jobarteh (former Attorney General & Minister for Justice) and Njogu Bah (former Secretary General)** where the accused persons were charged with economic crimes and abuse of office for directing the arrest and prosecution of Justice Wowo, former Chief Justice of The Gambia who had dual citizenship; Nigerian and American. Mr. Mboge states that he was informed by his client **Njogu Bah** that the directive to arrest and prosecute **Justice Wowo** came from Jammeh. Upon receiving the instructions from the latter, he (Bah) wrote down the instructions in his diary which was tendered in evidence but it was neither marked admitted nor rejected. **Lamin Mboge** stated that his client was later convicted by **Justice Emmanuel Nkea** on the evidence of a single witness statement which was not tendered through the maker of the statement. According to **Lamin Mboge**, **Yahya Jammeh** ordered the arrest and prosecution of **Justice Wowo**. On his arrest there was international diplomatic pressure on Yhaya Jammeh because of **Wowo’s** American citizenship. **Yahya Jammeh** tried to extricate himself by making **Njogu Bah** a scapegoat.
52. **BC 43** testified before the Commission that whilst in Mansakonko as a Magistrate there was a case involving the Youth Development Enterprise, a company established and operated by the late Baba Jobe that was charged with theft. The witness states that he received words that Mr. Baba Jobe said that he should not preside over the case but he ignored those remarks. In 2005, whilst he was Principal Magistrate at Kanifing Magistrates’ Court there was a case involving the extradition of **Junking Bayo** to the United Kingdom. During the pendency of the case, **Emmanuel Agim**, then DPP and later Chief Justice, informed the court that the government wanted **Junkung Bayo** to be extradited. At the end of the case, he passed a decision that the alleged offence committed did not warrant an extradition.
53. During the tenure of **Justice Agim** as Chief Justice, **BC 43** testified before the Commission that he represented **Ousman Bun Sanneh** and Ors. All the offences they were charged with wereailable, however when he filed a bail application, the case went before **Justice Amadi** and he denied them bail. They were detained for more than two years during the pendency of the trial. **Justice Agim** was not employed by the Government of Nigeria. He was a private legal practitioner in Nigeria when he was recruited and brought to The Gambia on technical assistance. According to the witness, **Justice Amadi** and **Ikpala** came to The Gambia as Magistrates, however after only 5-6 months, they were elevated as High Court Judges. When **Agim** was Chief Justice, many of the Nigerian Judges received instructions from him and there are strong assertions that he even occasionally wrote judgments for some Judges, and those decisions all inevitably were in favour of Jammeh or the state.⁴³ The witness also stated that the Nigerian Judges, prosecutors and lawyers formed some sort of a cabal. They used to

⁴² Testimony of Mr. Lamin K. Mboge, 30th March 2021, page 18, line 369 to 373.

⁴³ Testimony of BC 43 before the TRRC.

meet at the house of **Justice Wowo** and in some instances, he, as Chief Justice, even referred clients to the Nigerian lawyers because they were the only one the Nigerian Judges will not decide against. Some of these lawyers include, Emmanuel Chime, **Christopher Mene** and Uzoma Achigbue. Mr. Salieu Taal observed that *“the era of AGIMJ was the beginning of the darkest period in terms of the erosion of judicial independence and that of the office of the Attorney General who was essentially his prodigy. The line between the AG’s chambers and the Judiciary was essentially blurred during AGIM’s time; they worked together to ensure the desired outcomes were obtained in cases the “State had an interest in” code word for Jammeh’s interest”*.⁴⁴

54. **Patrick Gomez**, now a Senior State Counsel at the Attorney General’s Chambers and Ministry of Justice, previously served as a First-Class Magistrate at the Kanifing Magistrates’ Court as well as Essau, Farafenni and Mansakonko testified that he presided over both civil and criminal cases. He stated that in March 2015, during court sittings he was instructed by His Worship Sheriff **Tabally**, then Principal Magistrate at Kanifing to transfer the case of **IGP V Mustapha Njie** to the High Court as this was not unusual in cases where the Magistrate lacks jurisdiction to hear a matter. Mr. Gomez stated that he decided to proceed with the case concerning fatal shooting by security officers after the parties indicated to court and his belief that he had powers to preside over the case. Mr. Gomez also stated that he refused to grant bail to the accused person for his own personal safety because the incident attracted the public interest.

55. During the proceedings, the accused person pleaded guilty to the motor traffic offences but not guilty to the charge of rash or negligent driving causing death. He adjourned sentencing to the following day. Mr. Gomez further stated that this was risky because it later became clear that Jammeh had an interest in the case and it happened at a period when there was no independence in the Judiciary and the Magistrates were reprimanded for certain decisions they rendered. The accused was convicted and sentenced to a fine only in respect of the motor traffic offences. A letter dated 15th March 2015 from office of the President under the direction of **Yahya Jammeh** giving instructions that the case of **IGP V Mustapha Njie** be determined swiftly and without any adjournments was shown to Mr. Gomez during his testimony. His response was that *“the accused person was acquitted on the main count of RASH AND OR NEGLIGENT DRIVING CAUSING DEATH. From the evidence adduced I arrived at the decision that the military patrol team used unreasonable force by shooting at a fleeing vehicle. Thus, holding that the patrol team was responsible for the death of the victim (YA BINTA JARJU) and not the driver”*.⁴⁵ Mr. Gomez was subsequently summoned by the **Chief Justice Emmanuel Fagbenle** who appeared to be very furious and even blamed him for delivering an erroneous judgment and he stated that the **‘Ex-President was demanding for answers**.⁴⁶ As a result, **Patrick Gomez** was transferred from Kanifing Court to the provinces as a travelling Magistrate. This was done to stop him from presiding over matters that the Chief Justice had an interest. *“It was prevalent in the previous government where Attorney Generals would come over to the Judiciary to lodge complaints on behalf of the Executive to the Chief Justice who would summon Judges and Magistrates to his Chambers to challenge them on their decisions. The Attorney Generals in the past government often told the Chief Justice what to do and indirectly controlled the Judiciary. The State resented*

44 Statement of Mr. Salieu Taal to TRRC, page 8.

45 Statement of Mr. Patrick Gomez to TRRC, page 3.

46 Statement of Mr. Patrick Gomez to TRRC, page 4.

and repressed any Judge who was independent and would be treated shabbily. Judges who were independent in their work were receiving death threats from government agents for giving judgments against government wishes. Judges and Magistrates had to leave the bench because of several attempts on their lives due to their independent decisions”.⁴⁷

56. **Patrick Gomez** mentioned that the Office of the Chief Justice should be independent as guaranteed under the 1997 Constitution. According to him the office of the Chief Justice during the time of Justice **Emmanuel Fagbenle** was not independent and there was great deal of interference by the Executive. Magistrates were arrested and detained in relation to judicial decisions made. An example was *“His Worship Ebrima Jaiteh (as he then was) who was arrested and detained in relation to a case he struck out, this was a case that the Government had an interest in at the time”*.⁴⁸ *“His Worship Omar Jabang was also arrested and detained at the serious crime for a similar incident. When Jabang was arrested, I recall going to the police station to visit him. I met him at the serious crime unit at the Banjul Police Headquarters. He was arrested and detained based on an Executive order and the reason for his arrest was that he struck out a criminal matter”*.⁴⁹ He told the Commission that His Worship **Abdoulie Fatty**, during his time as Magistrate, also received an Executive directive concerning a case in his court.

57. However, when Magistrate **Ebrima Jaiteh** (as he then was) was arrested and detained at the police headquarters in Banjul, the Magistrates convened an emergency meeting to discuss the issue. In that meeting, it was resolved that they should meet the Chief Justice and to condemn the incident. According to **Patrick Gomez**, when they met the Chief Justice **Emmanuel Fagbenle** in his office, the Magistrates raised serious concerns and condemned the arrest of **Ebrima Jaiteh**. The Chief Justice in his response warned the Magistrates to be cautious, adding that they should consider the interests of the Executive and even made a proverb statement that *“if a child finds himself in a pool of crocodiles, who will dip his hand to save the child”*. The following year, Mr. Gomez resigned from the Bench after a series of encounters with the Judiciary’s hierarchy over some of his decisions.

58. Describing the different forms of interference from the Executive, **Patrick Gomez** said that *“during the former regime, Executive interference can be categorized in three types. First you have the direct form of interference, and a typical example is the Executive directives, arrest and subsequent detention of judicial officers; second is the indirect form of interference and a typical example is when your superiors are given command or directives to act in a certain manner, example is the sacking of a magistrate upon receipt of Executive directive to do so; and third, the perceived interference, and a typical example is when a magistrate is assigned a case and the file is one that attracts government interest, example a Minister who is sacked and prosecuted”*.⁵⁰

59. **Samsideen Conteh** was appointed a First Class Magistrate in 2012. While serving as a travelling Magistrate for Janjanbureh, Kaur and Kuntaur, he presided over a case involving the Governor of CRR, **Ganyie Touray**. *“The person was accused of giving false information to the Office of the President. I believe he wrote a letter to the former President that is*

47 CHRONICLE OF INCIDENCE OF ABUSES EXPERIENCED BY THE JUDICIARY.

48 Testimony of Mr. Patrick Gomez, 3rd May 2021, < https://witness.youtube.com/watch?v=3K3AS85_kPg&t=432s> accessed 16th/06/21.

49 Statement of Mr. Patrick Gomez to TRRC, page 7.

50 Statement of Mr. Patrick Gomez to TRRC, page 8.

Yahya Jammeh about the Governor".⁵¹ Mr. Conteh transferred the case to Banjul because Janjanbureh lacked the jurisdiction to hear the matter. **Ganyie Touray** was not pleased with that decision and reported the Magistrate to the Chief Justice and as a result, he was transferred to Farrafeni and Essau.

60. In November 2014, **Samsideen Conteh** was posted to the Banjul Magistrates' Court where he presided over the case of *The State V. Sait Matty Jow & Ors*, the accused persons in the said case were conducting Gallup Polls Study to gather information on the status of The Gambia on rule of law, good governance, democracy and human rights. However, former President Jammeh was not pleased with this information getting out considering the human rights situation in the country at the time, so they were arrested and charged with conspiracy to commit a misdemeanor; failure to register a business; and disobedience of statutory duty. **Samsideen Conteh** narrated that when these accused person persons were brought before him and the issue of bail arose, he received a call from the then Master of the High Court **Buba Jawo** who tried to bring up a conversation surrounding the bail of these accused persons as such **Samsideen Conteh** then realized that the government had an interest in the case and this pre-empted him setting the bail of the two accused persons who were foreigners at five million dalasis (D5,000,000). Upon taking a guilty plea, the foreign nationals were convicted and a fine of fifteen thousand dalasis (D15,000) was imposed on them, **Sait Maty Jow** maintained his plea of not guilty and he was acquitted and discharged upon his lawyer making a no case submission application. Following this ruling, **Samsideen Conteh** was dismissed by the former President and his scholarship revoked and the whole situation was traumatic.
61. **BA57** revealed that as the Sheriff of the High Court of the Gambia he was responsible for the execution of orders and judgments emanating from all courts of the Gambia and further selling properties that were attached for judgment. He stated the procedure for attachment of property by court order to be; *"a grace period of one month is usually set aside for the judgment debtor to settle the judgment sum; and once the grace period has elapsed the property is advertised for sale which is conducted by the bailiffs"*.⁵² **BA57** stated that the former President bought properties long before he became Sheriff and he the former President usually got notice from the newspapers of the sale of a particular property and in most cases, he will send Amadou Samba (businessman and close associate of **Yahya Jammeh**) to come and purchase the property for him. He stated that he handled a lot of the sale and purchase of the properties of the former President 'which he referred to him in his personal capacity although he was appointed as the Sheriff of The Gambia at the time'.⁵³
62. **Salieu Taal**, current President of the GBA, narrated his first encounter with the former President when he was serving as Head of Legal for Guaranty Trust Bank, the Bank obtained a judgment against Youth Development enterprise and sought to execute the judgment in which two mortgaged properties belonging to **Baba Jobe** were forfeited to the Bank. However, whilst the Bank was executing the judgment, the former President declared that, *"whatever belong to Baba Jobe, belonged to him"*⁵⁴. Mr. Taal stated that they subsequently received a letter from the Office of the President stating that the one of the properties was **his** and the Bank should desist from interfering with the property. The Bank thereafter lost

51 Testimony of Mr. Samsideen Conteh, 5th May 2021, page 98, line 439 to 441.

52 Testimony of BA57 before the TRRC.

53 Testimony of BA57 before the TRRC.

54 Testimony of Mr. Salieu Taal, 6th April 2021, page 8, line 141.

the property to the former President. The Executive Director and the Head of Finance of the bank were also arrested and detained at the NIA premises.

63. **BA57** further revealed that when he was a Magistrate at the Kanifing Magistrates' Court, he presided over a case of armed robbery by a gang which was led by **Soriba Conde**⁵⁵ who was convicted. When he was Sheriff, a group of convicts from Mile II visited him with Ben Jammeh, former IGP at his office to inform him that **Ensa Badjie** (Jesus) was the leader of their gang and since he was the Magistrate who presided over the previous case, they wanted him to deal with the matter. He took statements of the convicts but later advised the former President that the matter should be forwarded to the relevant authority. During his time as a Magistrate, **BA57** presided over a case involving the former President's top drivers in which the accused person was convicted and sentenced to a fine. The former President was apparently not happy with this decision as such he ordered for the transfer of **BA57** to Mansakonko through an Executive directive. **BA57** also testified that the former President usually calls upon the Chief Justice, Justice Agim to complain about certain cases, Judges and Magistrates and the witness stated in his own words that the former Ex-President *"wanted judgment to be delivered in favor of the State or in his own favor"*.⁵⁶ Therefore, wherein a judgment is not delivered in his favor, the Judge or Magistrate will be dismissed. Magistrate **Nkea** was amongst the Magistrates that were dismissed for giving a judgment not in favor of the State and this was also highlighted by **Lamin K. Mboge**. **BA57** also stated that the former President has on many occasions given directives for Justice Janneh to be dismissed. He further stated that during the Jammeh era some Chief Justices including **Justice Agim** ensured that the panel of the Supreme Court Judges were made up of Justices he could convince and control. There is overwhelming evidence showing that the former President Yahya Jammeh, interfered in the affairs of the Judiciary at a very high level.

INTERFERENCE WITH THE ATTORNEY GENERAL'S CHAMBERS AND MINISTRY OF JUSTICE

64. The importance of the Office of the Attorney General's Chambers and Ministry of Justice cannot be overemphasized as provided under the 1997 Constitution of the Gambia, this office is epicentre of laws and rules in any society. The services of this office should be geared towards the protection and the promotion of the rule of law, good governance and justice delivery.⁵⁷ Section 72 (2) of the 1997 Constitution of the Republic of The Gambia states thus, *"the Attorney General shall be the principal legal adviser to the Government and shall have the right of audience in all courts in The Gambia"*.
65. **Mama Fatima Singhateh** in her testimony before the Commission laid out her responsibilities as Attorney General and Minister of Justice in the Jammeh regime. **Mama Fatima Singhateh** stated that she was *"a Cabinet Minister and the Principal Legal Adviser to Government, my responsibilities included providing advice and policy guidance when requested. I was also head of Chambers and the Ministry, and provided overall supervision to the different department heads"*.⁵⁸ She further stated that with regards to the office of

55 TRRC witness, testified at the Commission on the 11th June 2020

56 Testimony of BA57 before the TRRC.

57 <https://witness.devex.com/organizations/attorney-general-s-chambers-and-ministry-of-justice-gambia-155068>, accessed 20th June 2021.

58 Testimony of Ms. Mama Fatima Singhateh 29th April 2021, <https://witness.youtube.com/watch?v=witness_ZkMPDgnRw> accessed 11th/06/21.

the Minister for Justice, the Minister was responsible for the Ministry of Justice, oversees the various departments within the Ministry and also serves as an oversight to National Agency against Trafficking in Persons, Alternative Dispute Resolution Secretariat, Law Reform Commission, National Agency for Legal Aid and so on. The Minister of Justice also serves as the link between the Executive and the Judiciary, therefore any bill that has to be tabled before Parliament will be tabled by the Minister. Any issue that the Chief Justice wanted to communicate to the Executive shall be done through the Minister of Justice. The Attorney General on the other hand is the head of chambers which consist of State lawyers that prosecute and defend the State.

66. In addition to the provision in the 1997 Constitution, detailing the responsibility of the AG and Minister of Justice, section 71 (2) also details the eligibility criteria for the Attorney General. It states that the AG *'shall be a legal practitioner with at least five years standing at the Gambian bar'*, therefore it is surprising that such an individual who should be an expert in justice delivery will receive instructions to prosecute from a lay person (the former President). The former President however perceived himself to be knowledgeable on legal matters. **BA57** indicated that the Ex-President considered himself a lawyer and narrated that when he was at the Ministry of Justice, there were directives issued by the former President in the form of written letters; signed by the Secretary General or his representative; and worded, *"this is an Executive directive..."* giving instructions to either prosecute individuals with the offence of abuse of office, giving false information to a public servant or neglect of official duties and so on. These letters are either directed to the Solicitor General or to the Attorney General copying the Solicitor General.
67. It was the norm during the **Yahya Jammeh** era to receive Executive Directives from the former President to prosecute government officials that he wanted to punish and in the words of witness **BA57**: *'the Attorney General had no choice, if you receive a directive from the former President, you must prosecute'*.⁵⁹ The witness also stated that the Ministry of Justice danced to the tune of the former President and in essence, ended up mal-functioning as they operated on his wishes and not based on the law. Under former President **Yahya Jammeh**, individuals were persecuted under his directive without proper evidence; criminal proceedings were initiated *"against individuals who did not commit acts or omissions that were punishable by the law"*⁶⁰; and cases with no merit were instituted.
68. **Lamin AMS Jobarteh**, former AG and Minister for Justice (2012 to 2014) told the Commission that he was a *'ceremonial Minister of Justice'* because the former President was totally in control of the affairs of the Ministry. He explained how the former President showed no regard for his Ministers and in some instances, he will even insult and disgrace them. He further testified that the whole cabinet was afraid of the former President and he was well known for manufacturing bizarre stories about talking to devils and possessing certain spiritual powers. **Lamin A.M.S Jobarteh** denied that the Ministers during the Jammeh regime created and entrenched a dictatorship. In his words *"if you say we were all fearful of him, I will agree. If you say that he is treacherous, I will agree. And if you say he is capable of doing anything to anybody, I will also agree but to defy his instructions, I do not know of any Minister who would dare do that"*.⁶¹ It is clear from this statement that the

59 Testimony of BA57 before the TRRC.

60 Section 3 of the Criminal Code Cap 10:01 Laws of The Gambia 2009.

61 Testimony of Mr. Lamin A.M.S Jobarteh, 11th February 2021, page 22, line 388 to 391.

persons who occupied top government positions and who were expected to guide and advise the former President slept on their responsibility to enforce the law and to protect the interest of the Gambian people.

69. **Lamin A.M.S Jobarteh** stated that despite the fear to defy or oppose the former President there were few instances he advised him on the law, in the case involving **Mam Sait Njie** he informed the former President that the arrest and detention of **Mam Sait Njie** was unlawful because all the judgments pertaining to his case (a land case) were in his favor and none have been appealed against. Following this conversation, the former President instructed for the release of **Mam Sait Njie**. This is a clear abuse of power since this instruction did not amount to a Presidential Pardon and although the 1997 Constitution of The Gambia under section 82 (2) grants the President the power to pardon an individual for an offence, these instructions did not fall under such provision and as such was not made under the purview of the law.
70. On the 24th August 2012, The Gambia witnessed a historic event that marked the execution of nine death row inmates. Considering the gravity of taking one's life, there are clear set procedures in every society which ensures its lawfulness and transparency. Bearing this in mind, it is with utmost dismay that in 2012, the procedures as provided under section 250 to 253 of the Criminal Procedure Code were not followed. Before the executions were carried out, the Former President met The Gambia Muslim Elders who pleaded with him not to go ahead with the executions and this was his respond, *"belie walie talie sumako deffut dina naan sangara ma leka mbam"*⁶² which translated to him *"swearing that he would eat pork or drink alcohol if he fails to ensure that these inmates were executed"*. According to **Lamin A.M.S Jobarteh** who served as the AG and Minister for Justice at the time, he received the following instructions from the Ex-President, *"now, I recalled when he asked that the warrant be prepared and he said to go and consult with the then Chief Justice and after the preparation of the warrant, Ousman Sonko the then Minister of Interior should sign and I told him no any execution that should be approve by him"*.⁶³ **Lamin A.M.S Jobarteh** also revealed that the Attorney General never forwarded any report or recommendations from the Judges who passed those sentence nor did he prepare a report or give any advice to be sent to the President concerning the executions as provided under section 253 of the Criminal Code, in fact he even stated that he was not part of the process and he did not want to be part of the process.⁶⁴ **Lamin A.M.S Jobarteh** also claims that the warrant of execution which stated that a meeting was held at AG's Chambers in which the AG made a recommendation for the execution was fabricated. The place and time of the execution was also not publicized as required under section 253 of the Criminal Code.
71. There were some AG's who refused to be used by the former President. An example is Attorney General then **Alagie Marong Borry Touray** recalls the Brikama Mosque saga when **AG Marong** refused to comply with instructions to charge the Imam of the Mosque. He said: *"I remember the case involving the Imam of Brikama Karamo Touray that was an empty file, they wanted Mr. Marong to justify pressing of charges against him and he refused. And when these people discovered that it was pressure that was going to be the yard stick for pressing charges against innocent people, majority of them left the Ministry"*

62 Testimony of Mr. Lamin A.M.S Jobarteh, 11th February 2021, page 43, line 779 to 780.

63 Testimony of Mr. Lamin A.M.S Jobarteh, 11th February 2021, page 43, line 783 to 786.

64 Testimony of Mr. Lamin A.M.S Jobarteh, 11th February 2021, page 45, line 831 to 835.

*of Justice and this was what created a gap in the Ministry of Justice which was later filled by Nigerians”.*⁶⁵

72. **Cherno Marenah** opined that the problem is partly due to the fusion of the functions of Attorney General and Minister of Justice. The Attorney General also wearing the cap of Minister of Justice will take directions from the president which are often politically motivated. Yet, as Attorney General, she or he is required to dispassionately look at the issues based solely on legal consideration. He observed that *“the fusion of the two roles certainly lead to political exigent decisions over legal considerations in some cases. Certainly, where the two roles are separate with adequate guarantee of independence, this will help in differentiating legal matters from political issues”*.⁶⁶ In many countries including the United Kingdom, the role of Attorney General is separated from that of the Minister of Justice and these positions are occupied by two different individuals. In addition to the above, subjecting the DPP to the direction and control of the Attorney General poses another problem. *“It still leaves the possibility of political considerations being taken in what should be passed purely on legal considerations”*

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION (DPP)

73. The Office of the Director of Public Prosecution (DPP) under the Attorney General’s Chambers and Ministry of Justice is responsible for the prosecution of criminal offenders. This office is mandated under section 85 (1) of the 1997 Constitution to:
- (a) *to initiate and undertake criminal proceedings against any person before any court for an offence against the law of The Gambia; (b) to take over and continue any criminal proceeding that has been instituted by any other person or authority; and (c) to discontinue, at any stage before judgment is delivered, any criminal proceeding instituted or undertaken by himself or herself or any other person or authority.*

The exercise of the function of the DPP are subject to the direction and control of the Attorney General. Functions are subject to the approval of the Attorney General pursuant to the aforesaid section of the 1997 Constitution. The provisions of section 85 (1) (a) clearly states that criminal proceeding should only be undertaken for an offence against the laws of The Gambia. As such, politically motivated prosecutions would amount to malicious prosecution which ought not to be allowed in a democratic society. Therefore, any prosecution that is undertaken for political gains will be a clear violation of the provisions of the 1997 Constitution.

74. The 22-year rule of former President **Yahya Jammeh** was characterized by his interference with the office of the DPP. During this period, **Yahya Jammeh** ordered or instigated several politically motivated prosecutions. The evidence obtained by the Commission shows that the former President **Yahya Jammeh** sent instructions to persecute individuals to the office of the DPP through the Attorney General. The 1996 Draft Constitution provided for an independent office of the DPP however as early as the year 1996, **Yahya Jammeh** envisaged a government in which he will use the office of the DPP as a tool to oppress his opponents and as such did not want it to be independent, so this provision was not included in the Final Draft of the 1996 Constitution.

65 Testimony of Mr. Borry S. Touray, 8th April 2021, page 35, lines 633 to 638.

66 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

75. There’s the case of **Ebrima Jatta**, former Director of lands who was charged with abuse of office through an Executive directive sent by the former President. A letter dated 17th January 2013 emanated from the Office of the President and addressed to the Solicitor General to exonerate Mrs Amie Bensouda and to charge and prosecute **Justice Wowo**. The current Vice President of The Gambia. **Dr. Isatou Touray** was also prosecuted through an Executive Directive. When these directives were received, the NIA, GPF or the Drug Law Enforcement Agency (DLEAG) carried out investigations in these cases. BA57 also indicated that there were Executive directives being sent to the Judiciary for the dismissal of a particular Judge or Magistrate. **Yahya Jammeh** was also ready to eliminate any person who wanted to go against him and in such instances, they might be arbitrarily arrested, unlawfully detained, arraigned on trumped-up charges or worst killed. One example is **Ben Jammeh**, former IGP, Director of NIA and DLEAG who was harassed, arrested, prosecuted and run out of the country. **Joseph Henry Joof**, a former Attorney General and Minister for Justice during the Jammeh government stated before the Commission that in 1986, during the First Republic, when he joined the Attorney General’s Chambers and Ministry of Justice as a State Counsel, he was not aware of any form of interference by the Executive in the office of the DPP. However, the situation was clearly different during the **Yahya Jammeh** era.

76. **Cherno Marenah** informed the Commission that the *“Office of the DPP asked very little questions with regards to issues that had some political interest and with regards to whether to initiate a prosecution or not. Therefore, in some cases decision to prosecute was not entirely a legal one, if for instance Jammeh was adamant that someone should be prosecuted, he will give instructions to the Attorney General which will be passed to the DPP who will not stand their ground to really argue strong legal basis as long as they’ve got a signal that this was a case that the president was interested in. Generally, these directives will be oral directives, it is very rare to find a written directive”*.⁶⁷

77. **Mama Fatima Singhateh** differed from the other witnesses. She detailed out the process that is followed before the prosecution of cases by the Ministry of Justice. *“The Police arrests and investigates the crime, thereafter they compile the file and evidence and send it to the Ministry of Justice, Office of the DPP for opinion. State Counsel at the Office of the DPP will write an opinion and make recommendations for prosecution, this file will later be sent to the DPP for approval. Sometimes the case file will be forward to the Attorney General through the Solicitor General”*.⁶⁸ The Witness assumes that the Office of the DPP is independent although section 85 of the 1997 Constitution subjects the exercise of the duties of the DPP to the approval of the Attorney General. The procedure laid out by **Mama Fatima Singhateh** should be the normal procedure that should be adopted by the office of the DPP. However, it is rather unfortunate that this was not the reality on the ground as directives were received from the former President to prosecute certain individuals as a matter of routine. The Commission have received evidence which reveals that Executive directives were sent from the Office of the President to the Attorney General’s Chambers and Ministry of Justice and the **Mama Fatima Singhateh** accepted this fact. By a letter dated 24th March 2015 and addressed to the Attorney General, the former President instructed the Attorney General to *“rectify an error in respect to charges in relation to one Desimone Sambou and that the appropriate charges should be proffered”*.⁶⁹ This evidence shows the

67 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

68 Testimony of Ms. Mama Fatima Singhateh 29th April 2021, < https://witness.youtube.com/watch?v=witness_ZkMPDgnRw> accessed 11th/06/21.

69 Letter dated 24th March 2015, addressed to the Attorney General and Minister for Justice from the Office of the President.

interference of the former President in the prosecution of persons contrary to the suggestions of **Mama Fatima Singhateh**.

78. **Cherno Marenah** highlighted that during the Jammeh Regime, the Office of the DPP was used by the former President to persecute individuals and his actions warranted the introduction of new provisions in the Draft Constitution 2020 to separate the Office of the DPP from the Ministry of Justice (MOJ). The Witness further highlighted that in his view, the major factor that has made the Office of the DPP prone to abuse is the occupation of that Office by Non-Gambian's. He further informed the Commission, that the position of DPP was never occupied by a Gambian during the Jammeh era from July 1994 to January 2017. These foreign DPP's and prosecutors were "willing to engage in any kind of prosecution, notwithstanding the ethical considerations of some of the charges simply because they did not belong to the society whose citizens were the subject of these prosecutions, there was also little empathy towards the people who were being charged before the courts".⁷⁰
79. The actions of these foreign prosecutors also contributed to the high attrition rate of State Counsel at the Ministry of Justice (MOJ) as most of the Gambian Lawyers working at MOJ will either avoid the Criminal Division or they will resign. Another factor which contributed to the high attrition rate of lawyers at the Ministry was the low remuneration compared to what a lawyer can earn in private practice. To attract Gambians to the Office of the DPP the former Attorney General **Abubacarr Tambadou**, in the new Government that took over in 2017, refused to employ a non-Gambian as a DPP. However, the position has not been filled since then although it was advertised twice according to the witness and the position now attracts all the benefits of a Judge of the Court of Appeal.
80. During the public hearing of **Mama Fatima Singhateh** on the 29th day of April 2021, Deputy Lead Counsel of the TRRC, detailed the following events that occurred in The Gambia during **Mama Fatima Singhateh's** tenure as AG and Minister of Justice. These were: (i) The Gambia was declared an Islamic State; (ii) The Gambia withdrew from the International Criminal Court; (iii) during the December 2014 failed coup d'état most of the alleged coupist were arrested; series of unlawful detentions; (iv) series of laws that violated human rights were passed; (v) poor Human Rights record; denial of UN Special Rapporteurs to access the prisons; (vi) Gambia's reporting obligations under international law were not adhered to. **Mama Fatima Singhateh** did not take any responsibility for the above statement insisting that she gave the necessary legal advice. The Commission notes that the Human Rights record during tenure of Mama Fatima Singhateh as Attorney General was at its lowest it had ever been.

USE OF THE MINISTRY OF JUSTICE TO CREATE INSTRUMENTS OF OPPRESSION AND DRACONIAN DECREES

"We have to find another blueprint; we have to examine all our laws and remove those provisions that enabled Yahya Jammeh to trample even after the transition on our rights".⁷¹

Amie N.D Bensouda
Senior Legal Practitioner

70 Testimony of Mr. Cherno Marenah, 25th March 2021, <<https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

71 Testimony of Ms. Amie Bensouda, 27th April 2021, <https://witness.youtube.com/watch?v=YtpsW8O9Z_A> accessed 10th/06/21.

81. Decrees are "rules made at the discretion of a person or a group in authority".⁷² Decree No. 1 was promulgated in July 1994 following the *coup d'état*, establishing the Armed Forces Provisional Ruling Council (AFPRC) and suspending the 1970 Constitution⁷³. **Amie N.D. Bensouda**, former Solicitor General who very briefly acted as Attorney General told the Commission that "unlike 1981, there was no resistance to the coup. The Gambian people had seemingly accepted the new de-facto Government of The Gambia. All Ministers including my Attorney General and Minister for Justice, Hassan B. Jallow, were in detention. There was no authority from the Government as we knew it in charge. There was to be no rescue from Senegal. The unlikely coup had succeeded. The military led by the Junta were fully in charge of the country and its administration".⁷⁴
82. **Amie Bensouda** revealed that in a meeting with **Yahya Jammeh**, the Chairman of the junta, he accused the Ministers of the previous Government of corruption hence the *coup* to restore accountability and transparency. **Amie Bensouda** said that the Chairman enquired about Decrees, adding that "he knew that military governments ruled by Decrees and wanted to know how they should proceed to make them. I told him that the Ministry had a Drafting Department whose job was to draft laws on the instructions of the Government. He wanted a Decree to cover the overthrow of Government and the establishment of the ARPFC to replace the Executive and legislature. At the end of the meeting his instructions were that the Ministry should send the Secretary General a Draft Decree".⁷⁵
83. **Amie Bensouda** stated that the Ministry of Justice drafted Decree No. 1 of 29 July 1994 which retrospectively established by the AFPRC, suspended parts of the 1970 Constitution and vested the power in AFPRC to make laws. The provisions of the 1970 Constitution regarding Parliament as an organ of government were also suspended. During this period, the former Ministers and most of the senior military officers were unlawfully detained amid. In terms of the effect of the newly introduced Decrees on the administration and dispensation of justice and whether Decree No.1 ousted the jurisdiction of the courts from enforcing fundamental rights and freedoms of citizens, **Amie Bensouda** denied this position. In terms of supremacy, Decree No. 1 was supreme to the 1970 Constitution because section 4 of Decree No. 1 states that "notwithstanding anything contained in this Decree, the provisions of the Constitution of the Republic of The Gambia 1970 that are not suspended by this Decree shall apply in so far as they do not conflict with any provision of this Decree or any other Decree".⁷⁶
84. Notwithstanding **Amie Bensouda's** position, section 5 of Decree No. 1 provides that "the validity of this or any other Decree shall not be questioned in any court of law".⁷⁷ In essence therefore, despite **Amie Bensouda's** denials, the decrees significantly limited the powers of courts in the exercise of judicial functions. **Amie Bensouda** to the Commission that Decree No. 1 did not pave the way for Decree No. 30. Decree No, 30 went further than the former by suspending the fundamental human rights and freedoms provisions in the 1970 Constitution.

72 Testimony of Ms. Amie Bensouda, 27th April 2021, <https://witness.youtube.com/watch?v=YtpsW8O9Z_A> accessed 10th/06/21.

73 Law Hub Gambia, <https://witness.lawhubgambia.com/1994-Decree> accessed 21st June 2021.

74 Statement of Mrs Amie Bensouda to the TRRC, page 3.

75 Statement of Mrs Amie Bensouda to the TRRC, page 3.

76 The Constitution of the Republic of The Gambia (Suspension and Modification) Decree 1994, Decree No. 1 of 29th July 1994.

77 The Constitution of the Republic of The Gambia (Suspension and Modification) Decree 1994, Decree No. 1 of 29th July 1994.

According to her testimony, during her tenure as acting Attorney General and Ministry of Justice, only Decrees No. 1 to Decree No. 6 were promulgated and these Decrees were for the purpose of stabilising the country.⁷⁸

85. According to the **Amie Bensouda** “no Decree gave the soldiers any power. Decree No. 3 tried to put a framework for persons that were detained”.⁷⁹ She added that “military governments do not need legitimization, their authority flows from their bonds, they have taken over the country and they are de-facto in charge of the country against our will. Legitimization can only be done through a Constitution; Decrees do not legitimize any action of the military government all it can do is to give it a structure or put in place a framework”.⁸⁰ **Amie Bensouda** stated that Decree No. 3 ensured that detentions were made through a detention order. However, this Decree did not give power to anyone to torture individuals that were detained despite having retroactive effects. She added that the “Decree assumes that all detentions will comply with the fundamental human rights provisions”.⁸¹ Decree No. 3 also provided for detentions to be reviewed every six months as a safeguard measure.
86. **Amie Bensouda** told the Commission that Decree No. 4, dated 10 August 1994, suspended all political activities. This was in response to media publications by the **FOROYAA** Newspaper. “In August the editors of Foroyaa, **Halifa Sallah** and **Sidia Jatta**, were arrested and charged under Decree No 4 with publishing illegally, on the grounds that their newspaper was associated with a banned political party”.⁸²
87. Decree No. 5 was passed to give the AFPRC the power to appoint military officials as Local Government Authorities.
88. Following the detention of former Ministers, Decree No. 6 was passed, amending Decree No. 4, providing for the release of the detained Ministers and to be placed on house arrest. The witness denied that Decree no.6 enabled the military to torture. **Omar A. Jallow (O.J Jallow)**, a former Minister, testified to been tortured during his house arrest. When O.J Jallow gave an interview to the media, the Junta accused him of contravening provisions of Decree No. 4 (4) which states that “no person shall engage in any political propaganda by means of a newspaper publication or in any other media form for spreading the ideas or ideology of any political party”.⁸³
89. Even though **Amie Bensouda** strongly holds the view that the drafting of the Decrees by the Ministry of Justice was to ensure continuity in the governance structure of the country in the aftermath of the change of status quo, the Decrees were used by the AFPRC to persecute members of the PPP administration, including ex-Ministers and senior civil servants, journalists and senior security officers.
90. However, the retroactivity of the Decree No. 1, was aimed at remedying an act which was illegal and unlawful and treasonous. The unconstitutional removal of a democratic government through the barrel of the gun was given legality under Decree No. 1. In addition, the Decrees

78 Testimony of Amie Bensouda, 27 April 2021, Line 789 to 795
 79 Testimony of Ms. Amie Bensouda, 27th April 2021, <https://witness.youtube.com/watch?v=YtpsW8O9Z_A> accessed 10th/06/21.
 80 Testimony of Ms. Amie Bensouda, 27th April 2021, <https://witness.youtube.com/watch?v=YtpsW8O9Z_A> accessed 10th/06/21.
 81 Testimony of Ms. Amie Bensouda, 27th April 2021, <https://witness.youtube.com/watch?v=YtpsW8O9Z_A> accessed 10th/06/21.
 82 John A. Wiseman, ‘Military rule in The Gambia: an interim assessment’, page 924, <<https://library.fes.de/libalt/journals/swetsfulltext/11220651.pdf>> accessed 21st June 2021.
 83 Political Activities (Suspension) Decree, 1994, Decree No. 4 of 4th August 1994.

gave the AFPRC junta unlimited powers to make laws, the validity of which courts lacked jurisdiction to question. This phenomenon was an abrogation of well-established standards and practices and an assault on the principle of the separation of powers.

91. Weeks following the military takeover witnessed sackings and detentions of senior civil servants, leaving the system in utter chaos. **Amie Bensouda** stated that on 20th March 1995, she was retired from her position as Solicitor General and Legal Secretary after a frosty relationship with the junta. She admitted that “there were horrific human rights violations, but these were not enabled by the Ministry of Justice”.⁸⁴ She reiterated that various Commissions of Inquiry were set up and used as instruments to violate the rights of Gambians and many of their findings lacked merit, citing the **Alghali, Paul** and **Singhateh** Commissions as examples. According to **Amie Bensouda**, the following Decrees “set the stage for the gross violation of rights:
- Decree No. 13 & 45 (3rd November 1994 & 3rd July 1995) establishing the National Intelligence Agency (NIA).
 - Decree No. 16 Economic Crime (Specified Offences) (25th November 1994) which introduced the concept of “economic crime” for the first time into our laws and removed the protection afforded by section 20 (4) of the Constitution which prevented the retroactive application of criminal law; and sections 22(2), 175(a) to 175D and 238 of the Criminal Procedure Code.
 - Decree No. 25 – (23rd December 1994) – Public Assets and Properties (Recovery Decree) which amended Decree 11 and ousted the review jurisdiction of the courts in relation to the Commission of Inquiry.
 - Decree No.26 allowing the Vice Chairman to detain armed and police personnel indefinitely.
 - Decree 30 (29th March 1994) which suspended Chapter III of the 1970 Constitution on fundamental human rights and also declared that the validity of a Decree cannot be questioned in any court of law.
 - Decree No. 43 (14th June 1995) which amended Decree 4 and allowed for the detention of former members of the armed and police forces.
 - Decree No. 52 (10th August 1995) – Restoring the death penalty.
 - Decree No. 70 & 71 (14th February 1996) amending the Newspapers Act and increasing the bond to be deposited to D100,000 for the publication of a newspaper & the penalty of D100,000.
 - Decree No. 77 (29th March 1996) forfeiting the assets of President Jawara without publishing the Commission Report”.⁸⁵

84 Testimony of Ms. Amie Bensouda, 27th April 2021, <https://witness.youtube.com/watch?v=YtpsW8O9Z_A> accessed 10th/06/21.
 85 Statement of Mrs Amie Bensouda to the TRRC, page 10.

92. From the above, it is clear that by the time **Amie Bensouda** was relieved from her role as solicitor general and legal secretary, 29 decrees had already been promulgated. Going by her own admission, at least 5 of those decrees contributed to setting the “stage for the gross violation of rights” carried out by the Junta. It is evident that **Amie Bensouda** and those members of staff at the Ministry of Justice who participated in the drafting of these decree had full knowledge that the decree were susceptible to rights violations. Indeed, the language of these degrees including the ouster clauses therein make clear the possibility of their use for rights violations.⁸⁶
93. Section 7 (c) of the 1997 constitution provides that all Decrees passed by the AFPRC form part of the laws of the Gambia in addition to the Constitution itself.
94. As the first Attorney General of the military regime, twenty-three Decrees were passed during the tenure of **Fafa Edrissa M’bai**. However, **Fafa M’bai** denied any personal responsibility for any of the Decrees that were drafted during his time however, in his capacity as principal legal adviser to government at the time, he accepts responsibility for the promulgation of the Decrees even though he insisted he advised against most of them. He stated that *“Yes, I didn’t make the Decrees and I didn’t draft the Decrees, my role as Attorney General was to be the Legal Adviser”*.⁸⁷
95. He reiterated that he *“did not draft any one of those Decrees and where issues relating to Decrees arose, I always made it a point to advise against abuses and violations of human rights for the interest of the nation, I did my best efforts to guide the AFPRC but such efforts were frustrated early on when they realized that the good deeds I was trying to achieve for the nation were against their personal interest, in particular self-perpetuation. I accept even at the beginning they genuinely did hold the good intention for the nation, this did not last long and as such I did not also last long with them”*.⁸⁸
96. During **Fafa Mbai’s** term in office, **Decree No. 11, The Public Assets and Properties Recovery Decree, dated 10th November 1994**, was passed targeting the most senior officials in the Public Sector, accusing them of living beyond their means. This Decree was used to forcibly evict senior civil servants from their homes as well as the unlawful seizure and confiscation of property. This caused so many families extreme pain and suffering and unjustifiable disruption to peoples’ lives, in particular former government officials. **Fafa M’bai** stated that this Decree was intended to ensure that Ministers and top government officials declared their assets, but he agreed that its practical application was wrong. The fact that this Decree expressly lists the names of individuals it was applicable to arguably reveals the Junta’s intention was *ab initio* to directly target former Ministers and senior officials in the previous administration, especially members of the PPP. Decree No. 14 amended Decree No. 11 by now granting the Attorney General the power to amend the Schedule of the Decree containing the names of the individuals the Decree should apply to. **Fafa M’bai** contended that he did not utilise this provision.

⁸⁶ For example, Section 8 of Decree No 3 which rendered valuable evidence inadmissible in court, which would in any regular court be properly admitted in evidence.

⁸⁷ Testimony of Mr. Fafa Edrissa M’bai, 19th April 2021, page 61, line 1392 to 1401.

⁸⁸ Testimony of Mr. Fafa Edrissa M’bai, 19th April 2021, page 85 to 86, line 1932 to 1939.

97. **Decree No. 15, 25th November 1994, Freezing of Assets and Other Properties Decree** was also passed to grant power to the AFPRC junta to freeze the assets of certain individuals without any judicial proceedings or inquiry. **Decree No. 16** introduced the Economic Crimes Decree which contained draconian provisions that were used widely and consistently used to harass, arrest, persecute and detain Ministers, senior civil servants and opponents of Jammeh during his entire 22 year rule. The Decree allows the detention of individuals for up to thirty (30) days before arraignment before a court of law. This provision is inconsistent with section 19 of the 1997 Constitution which states that a person who is arrested and detained should be arraigned before a court of competent jurisdiction with 72 hours. The Decree is and against all known rules of natural justice and right to liberty. Decree 25, (15) (a) ousted the jurisdiction of the courts to entertain any action challenging the actions made pursuant to this Decree. It states that *“No court shall have jurisdiction to entertain any action or proceeding whatsoever for the purpose of questioning any decision, finding conclusion or order or proceeding of a commission made under this Decree”*.⁸⁹ *“And for the avoidance of doubt, it shall not be lawful for any court to entertain any application for an order or writ in the nature of habeas corpus, certiorari mandamus in prohibition, quo warranto injunction or declaration”*.⁹⁰ This Decree essentially deprived individuals the power to approach the court to challenge decisions and actions of the junta, thus interfering with fundamental rights to justice. According to **Fafa M’bai**, he was also affected by this Decree, adding that *“when the Alghali Commission made those findings against me that I owed a tax liability of over one point five million Dalasi (1.5 Million Dalasi). I instituted a suit in the Supreme now High Court and Justice Addio was the Presiding Judge, exactly relied on that Provision to say that he cannot hear my case that his jurisdiction was ousted by the Decree...”*.⁹¹
98. The Commission notes that **Fafa Mbai** tried to extricate himself from responsibility for the decrees because he did not physically draft them. The Commission reiterates the fact **that Fafa Mbai** was attorney general and minister of justice and had supervisory authority over parliament council at The Ministry of Justice who, among others, had the responsibility to draft the decrees. In addition, **Fafa Mbai** was the interface between the council of the AFPRC (the body that mandated the drafting of the decrees) and the Ministry of Justice (the institution that drafted the decrees). As such, in spite of **Fafa Mbai’s** denial, it is abundantly clear that **Amie Bensouda** and he **Fafa Mbai**, among others are responsible not only for the drafting of the decrees but also for creating an environment where rights abuses could occur with impunity. These individuals new fully well that the Decrees they drafted were most likely to be used in a manner that will violate the rights of the citizenry.
99. **Mama Fatima Singhateh** on the other hand told testified before the Commission that she is not aware of any laws that were used to persecute Civil Servants, she further stated that the laws that are used by the prosecutors at the Attorney General’s Chambers are enacted as laws and there are reasoning and rationale behind every law that is enacted by Parliament. Mama testified as though the Ministry of Justice under her supervision functions as prescribed bed in Law book when as a matter of fact to worked under the direction of **Yahya Jammeh**.

⁸⁹ Testimony of Mr. Fafa Edrissa M’bai, 20th April 2021, page 21, line 442 to 445.

⁹⁰ Testimony of Mr. Fafa Edrissa M’bai, 20th April 2021, page 21, line 450 to 453.

⁹¹ Testimony of Mr. Fafa Edrissa M’bai, 20th April 2021, page 21, line 457 to 461.

INTERFERENCE WITH THE GAMBIA POLICE FORCE (GPF)

100. The police are one of the most important institutions for maintaining law and order. Their existence is indispensable in a democratic society. **Although the police are one of the justice sector institutions, the Commission did not hold a specific public hearing on how the police was used as an instrument to violate the rights of the Gambian people. However, the commission was able to review the various testimonies of the witnesses with a view to distil relevant information/evidence on how the police also contributed to perfecting and entrenching Yahya Jammeh's dictatorship by becoming an instrument of oppression and rights violations.**
101. Section 4 of the Police Act 1965 provides that the general duties of the police include: *“the preservation of law and order, the protection of property, the prevention and detection of crime, the apprehension of offenders and the due enforcement of all laws and regulations with which they are charged”*.
102. During the 22-year dictatorship, former President, **Yahya Jammeh** also used the police as another tool to violate the rights of the people. These rights violations included arbitrary arrests, unlawful detention, deprivation of bail, fabrication of evidence and excessive use of force and/torture. In cases in which the former President **Yahya Jammeh** was interested, he would often give orders or directives to the police to implement outcomes that he desired. In such instances, the primary consideration is not necessarily that there are reasonable grounds to believe that the person has committed an offence but that former President **Yahya Jammeh** gave directives to carry out the arrest and/detentions. The following paragraphs catalogue examples of violations known to have committed during this period.

ARBITRARY ARREST AND UNLAWFUL DETENTIONS

103. On the issue of arrests and detention, **section 19 (3) of the 1997 Constitution which provides, “any person who is arrested or detained- (a) for the purpose of bringing him or her before a court in execution of the order of a court, or; (b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the Laws of The Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within seventy-two hours”**. The 1997 Constitution explicitly states that no person who has been arrested should be detained for more than seventy-two (72) hours. When the 72 hours lapses, the detainee should either be released or brought before a court of law to be tried. Under Jammeh, the Police were also known for re-arresting individuals after they had been granted bail or acquitted by court and filing new charges against them. Yahya Jammeh's government has frequently used the police to violate the rights of Gambians either through arbitrary arrest or unlawful detention or both.
104. In her testimony before the commission, **Neneh Cham**, identified 4 categories of clients whose rights were abused by the police. These categories are political offenders; persons charged with treason; cases in which **Yahya Jammeh** had interest and cases involving civil servants.⁹² In such instances, these clients will be detained beyond the seventy-two (72) hour time limit provided under section 19 of the 1997 Constitution. One similar factor in all these cases is the involvement of Jammeh. She stressed that Police Officers often told her that *“the*

*orders were coming from the top”*⁹³ and cited the case of **Lamin Tunkara**, who was arrested with some West Africa migrants, however, upon a court order for his release, the security officers refused to release him. The Police or Prisons officers were of the impression that these individuals were detained on the orders of Jammeh and for them to remain in detention and therefore, they lacked the power release them.

105. **Neneh M.C Cham** testified about her experiences defending clients and the human rights violations during that period. She narrated that she had encountered some resistance from the Police when it came to providing information regarding certain clients or even having access to clients detained by the Police. These clients fall under four categories: political offenders; persons charged with treason; cases in which **Yahya Jammeh** had interest and cases involving civil servants.⁹⁴ In such instances, these clients will be detained beyond the seventy-two (72) hour time limit provided under section 19 of the 1997 Constitution. One similar factor in all these cases is the involvement of **Yahya Jammeh**. She stressed that Police Officers often told her that *“the orders were coming from the top”*⁹⁵ and cited the case of **Lamin Tunkara**, who was arrested with some West Africa migrants, however, upon a court order for his release, the security officers refused to release him. The Police or Prisons officers were of the impression that these individuals were detained on the orders of Jammeh and for them to remain in detention and therefore, they lacked the power release them.
106. One **Babucarr Ceesay** and **Abubacarr Saidykhan** were invited by the Police on the 6th of September 2016 to collect a permit they had requested. However, upon their arrival at Police Headquarters in Banjul, they were arrested and detained for four (4) days. They were transferred to different stations every night for interrogation.⁹⁶
107. In 1995 following the PPP demonstrations, about 70 PPP supporters were arrested at the Fajara Barracks, NIA headquarters and the police headquarters. **Lamin AMS Jobarteh** former AG and Minister of justice said he was at the time part of the police force and asked to write an opinion on the case. He opined that *“there is not sufficient evidence on the file to warrant a prosecution”*⁹⁷ he was subsequently fired from his job on the belief that he was biased in favour of political opponents of Jammeh.

DENIAL OF BAIL

108. **Patrick Gomez** also testified that it was usually the norm for Police Prosecutors to *arraign an accused person* court shortly before closing times because at such times, it would be difficult for lawyers to be able to make it to court. This method was used to deprive accused persons legal representation so that the likelihood of court refusing bail and remanding them in prisons was high.
109. According to **Neneh Cham**, the officers also used continuous investigation techniques as a justification to refuse bail. Generally, in cases where Jammeh had no interest, the suspects were either released or arraigned before a Court within the 72 hour time limit but in cases in which Jammeh had interest, the police did not need any justification to deny bail. The police used several techniques to circumvent the rule for granting bail. These include: a.) arranging

92 Testimony of Ms. Neneh M.C Cham, 30th March 2021, pages 4-5, lines 73-77.

93 Testimony of Ms. Neneh M.C Cham, 30th March 2021, page 5, lines 83.

94 Testimony of Ms. Neneh M.C Cham, 30th March 2021, pages 4-5, lines 73-77.

95 Testimony of Ms. Neneh M.C Cham, 30th March 2021, page 5, lines 83.

96 <https://witness.fidh.org/en/region/Africa/gambia/The-Gambia-arbitrary-arrest-and-12175>, accessed 16th/06/21.

97 Testimony of Mr. Lamin A.M.S Jobarteh, 11th February 2021, page 21, line 368 to 369.

- suspect before a magistrate at closing times, b.) re-arresting a person already granted bail on a different charge, c.) placing the suspect on a holding charge which is not bailable. d.) granting unreasonable/unattainable bail conditions
110. **Neneh Cham** also told the Commission that Police Prosecutors used holding charges to indirectly give themselves time and sometimes they even charge in the wrong court, mostly in the Magistrates' Court to secure remand until proper charges were brought before the High Court.
111. The Commission has received evidence that unreasonable bail conditions have oftentimes been imposed ostensibly to deny a person bail. These include for instance the requirement "to have a former retired General as a surety when it is clear that there were none in the country at that time or a serving Permanent Secretary, when it is clear that none will be willing to serve as surety".
112. In addition to the above tactics, the government had taken steps to ensure that bail would not be available in many cases in which Jammeh was interested. The Criminal Procedure Code (CPC) under section 99 (1) was amended by Act no. 2 of 2002 to include offences punishable with life imprisonment to be non bailable. **Joseph Joof** stated that this amendment was necessary to make offences that were punishable by death or life imprisonment not bailable. **Joseph Joof** also stated that this amendment was necessary to ensure that the suspects and accused persons do not abscond the jurisdiction especially in murder and rape cases. The reality is offences that attract the punishment of death or life imprisonment go beyond murder and rape. **Yahya Jammeh** used this provision as a tool to ensure that political offenders, especially those accused of treason were denied bail. However, in reality, this provision was used as an instrument to deny individuals bail who were charged with offences such as concealment of treason which attracts life imprisonment as punishment.
113. There was also little or no security of tenure in The Gambia Police Force (GPF) under Jammeh. He acted as the Alpha and Omega and gave himself the power to dismiss senior police officers as he pleased. Mr. Lamin A.M.S. Jobarteh stated that Jammeh would give orders such as that: "*all the officers from the Commissioner all the way down at the Kairaba Police Station must be fired*".⁹⁸ "Nobody questioned it, the IGP pleaded and all of a sudden, he asked me: "AG, what is your opinion?". The Minister of Interior was present at the time and I responded that: "*my opinion is, whatever may have happened, no matter how negligent they maybe, I think they should be forgiven and the reason I gave was that several of them had been trained and if they are dismissed to have a replacement for all of them may not be easy and waste of resources may also be involved*".⁹⁹ -----
---- at that point in time "*the British High Commission in The Gambia had offered the Gambia Government a package to be able to maintain the image and integrity and standards at the police by offering training opportunities to the police. The large number of police officers who were trained to be able to continue the good work of the police following any change of government were all dismissed from the service*".¹⁰⁰ He also revealed that the best cops of the GGPF were dismissed during the tenure of IGP **FRI Jammeh**.

98 Testimony of Mr. Lamin A.M.S Jobarteh, 11th February 2021, page 39, line 711 to 715.
99 Testimony of Lamin AMS Jobarteh, 11th February 2021, page 39, line 711-715
100 Testimony of Mr. Borry S. Touray, 8th April 2021, page 33, lines 600 to 607.

114. It was the norm that **Yahya Jammeh** would hire and fire police officers at all levels, at his own will and caprices. He would also humiliate and embarrass senior police officers so as to secure the compliance of another officer. This shows that the mass dismissal of senior police officers was used as a tactic to ensure that a fortress was created within the Police Force for the execution of Jammeh's objectives. That was why officers who sought to work according to their conscience and oath of duty, were often seen as threats and victimized.

DENIAL OF POLITICAL RIGHTS

115. Evidence before the Commission also reveals The GPF is also mandated under section 5 of the Public Order Act to issue permits for public processions. Freedom of assembly is a fundamental human right that is guaranteed to every citizen of The Gambia under section 25 (1) (d) of the 1997 Constitution. While it is necessary to ensure that this right does not interfere with the rights of others, however, any restriction to this right should be reasonable and proportionate. Under **Yahya Jammeh**, the Police almost always denied permits to individuals to exercise their right to assemble, contravening the very rationale of the Public Order Act. The denial of these permits was principally used to deny opposition members space to protest. This led to suppressing their constitutional rights.
116. The Judiciary also worked as a partner to the police in reinforcing the denial of the right to freedom of assembly oftentimes when Jammeh's political opponents participated in processions without permit, the Judiciary is there to deal with such persons by way of trying and convicting them. The law that was used to persecute political opponents was the Public Order Act in dealing with procession permits. Often, permits would be denied and people would be arrested and charged for unlawful assembly, citing the case of **Femi Peters, Lamin Sonko & Others, Ousainou Darboe & Others and Modou Sarr & Others** as major cases dealing with this issue.¹⁰¹ **Femi Peters** was the first politician to be sent to jail for one year in 2010 charged under the Public Order Act for holding a **political rally in Banjul without a permit**. In 2016 **Ousainou Darboe** and co were arrested, tried and jailed for holding a procession without a permit. **Lang Sanneh Jobarteh** was also charged with broadcasting without license by streaming a political rally through the Skype platform.

THE USE OF LEGISLATIVE PROVISIONS TO OPPRESS INDIVIDUALS

"The difference between the Jammeh of 30th November 2016 and the Jammeh of 2nd December 2016 is the people. The Gambian people both old and new stood up and defended the Constitution and the election results. Therefore, the attitude of a leader is determined by the attitude of the people".¹⁰²

- Mr. Chernoh Marenah

Former Solicitor General and Legal Secretary

101 Statement of Ms. Neneh M.C Cham to TRRC, 29TH March 2021, page 12.
102 Testimony of Mr. Chernoh Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

117. This evidence reveals how certain provisions of the Criminal Code and the Economic Crimes Decree were used by **Yahya Jammeh** to entrench himself into power. **Cherno Marenah** presented to the Commission the legislations that were passed by **Yahya Jammeh** to oppress and violate the rights of the citizens, especially public servants. He said that although most of these laws were enacted for legitimate purposes, but for **Yahya Jammeh's** selfishness and pursuit of self-perpetuation, he used these laws to push his personal agenda.¹⁰³
118. He cited three (3) legislations that were well known mechanisms used by **Yahya Jammeh** to oppress individuals especially public officials. Two out of the three were provisions under the Criminal Code dealing with: (i) the offence of Giving False Information to a Public Servant; (ii) and the Offence of Abuse of Office and Neglect of Official Duty. According to **Cherno Marenah** “*the Criminal Code is a pre-independence legislation following its coming into force in 1933, therefore the above provisions were not introduced by the former President*”.¹⁰⁴ The third legislation being the Economic Crimes Decree No. 16 of 1994 was an AFPRC Decree that was in force from 1994 to 1996 and it became part of the laws of The Gambia by virtue of section 7 of the 1997 Constitution, which recognizes all the AFPRC Decrees as part of the laws of The Gambia.
119. The offence of Giving False Information was mostly used against whistleblowers, according to **Cherno Marenah**. This provision has been in the Criminal Code since it came into force in 1933 to “*.....guard against people who will spread information to Public Servants on the basis of which they will take an action or omit to take an action to the prejudice of a third part or the State. For example, a person working in a Department who exposes a particular wrongdoing of a person within that Department or people who presented petitions to the President complaining about the conduct of certain Public Officers or complaining about their own victimization within the Public Service*”.¹⁰⁵ The purpose of this provision was to curtail the spread of false information, however, Jammeh exploited it to victimise individuals.
120. This led to a rise in the number of cases dealing with the offence of Giving False Information to a Public Servant, however some Lawyers regarded a charge under this provision as defective because pursuant to the Constitution, “*.....the definition of a Public Servant expressly excluded the President, therefore if you present a petition to the President you cannot be charged with giving false information to a Public Servant, this led to the acquittal of people in certain cases*”.¹⁰⁶ Due to the lacuna in the law, **Yahya Jammeh** amended section 114 of the Criminal Code in 2013 by substituting the word ‘Public Servant’ with ‘Public Official’. This was intended to catch individuals who sent petitions to the President. **Cherno Marenah** stated that “*the case involving the Former Justice Minister Lamin A.M.S Jobarteh, the former Solicitor General Pa Harry Jammeh and the former Secretary General Njogou Bah who were charged with giving false information to a Public Servant with regards to a Report that was given by a former Chief Justice, Justice Wowo. The evidence in the case revolved around oral instructions they received from the former President which he denied and as such they*

103 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

104 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

105 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

106 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

were all convicted and sent to prison”.¹⁰⁷ The misuse of this provision created fear amongst individuals against reporting issues and how it was used to persecute individuals. **Neneh Cham** referred to the “*case of IGP vs. Nanama Keita who was charged because of a petition he made to the former President complaining about financial malpractice at the Observer Newspaper. Another case is the case of Amie Sey who was prosecuted because she asked for help from the former President to sponsor her twin girls to take the grade 9 examination. She was prosecuted because they claimed that she said girls pay school fees which they do not*”.¹⁰⁸

121. The application of Neglect of Official Duty is limited to Public Servants only. It states that “*a person employed in the public service who willfully neglects to perform a duty which he or she is bound either by common law or by Act to perform, provided that the discharge of the duty is not attended with greatest danger then a person of ordinary courage might be expected to face commits a misdemeanor*”. **Cherno Marenah** informed the Commission that the offence of neglect of official duties was used as a tool by **Yahya Jammeh** to charge public officials who commit “*.... even the slightest of administrative lapses which should have been dealt with administratively*”.¹⁰⁹ This led to numerous public servants being charged under this provision and cited the case of the former Secretary General and head of the civil service, **Ousman Jammeh**, who was charged with the offence of neglect of official duty for failing to ensure that the salary of one **Serign Cham**, a former Permanent Secretary at the Ministry of Finance was stopped after his employment was terminated.
122. The Ministry of Justice decided in this new regime to adopt two approaches to address these provisions. These include undertaking a comprehensive review and redrafting of the Criminal Code and the Criminal Procedure Code in line with our international obligations and also considering that the provisions that are susceptible to abuse. A policy was adopted to stop all charges relating to giving false information to public servants, abuse of office and negligence of official duties unless it was absolutely necessary, pending the coming into force of the new law. This policy was adopted considering the harmful effect these provisions had on public servants under Jammeh. The Criminal Offences Bill also adequately provides for whistle blower protection as found in other progressive societies.¹¹⁰
123. The Economic Crimes Decree which is an AFPRC Decree was later converted into the Economic Crimes (Specified Offence) Act Cap 13:07 Laws of The Gambia. **Cherno Marenah** stated that in his view, “*the intent of the Economic Crimes Decree was to deal with persons who will sabotage the economy or cause heavy losses to the State coffers. However, it was used by the Ex. President as time went on for even the slightest of financial losses which arose from an act or omission of a public officer as long as he was out of favor with the Ex-President*”.¹¹¹ This law was used by **Yahya Jammeh** to punish his opponents and since it was a Decree, it never went through any legislative scrutiny and the law was used by prosecutors based on the instruction of **Yahya Jammeh** to detain individuals at the Mile 2 Central Prisons. Since the Decree only provides for trial before the High Court, it was used

107 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

108 Testimony of Ms. Neneh M.C Cham, 30th March 2021, page 41 to 42, lines 995 to 1027.

109 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

110 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

111 Testimony of Mr. Cherno Marenah, 25th March 2021, < <https://witness.youtube.com/watch?v=i4Bsv3mEI9o>> accessed 07th/06/21.

as a mechanism to deny individuals bail by initiating a charge under the Economic Crimes Act before the Magistrate Court, a Court without the jurisdiction to hear the matter or grant bail to the accused person. Therefore, the Magistrate was left with little room to manoeuvre and to remand the accused person in prison pending the proper charges being filed before the High Court. However, there were instances where the Magistrates granted bail to the accused persons and one such Magistrate was His Worship **Omar Jabang**. The Economic Crimes Act also provides for trial in absentia, a mechanism used by Jammeh to try members of the PPP who were in exile. Section 4 of the Act authorizes detention for up to thirty (30) days before being brought before a court of law. This provision clearly contravenes section 19 of the 1997 Constitution which states that a person who is arrested and detained should be arraigned before a court of competent jurisdiction within 72 hours.

123. **Gaye Sowe**, the Executive Director of the Institute for Human Rights and Development in Africa highlighted that the Economic Crimes a draconian law. The Crime Code Act further contained provisions equally the same as the Economic Crimes Decree. Further the Criminal procedure code was amended to make it difficult for persons charged with corruption to get bail. The Commission received evidence that while **Yahya Jammeh** prepared to use these Decrees against his opponents and any person, he thought to be a treat to him, he was infact the principal perpetrator of economic crimes in the country, in view of the plunder and pillage of the national resources he carried out during the 22 years of his regime.

124. **Amie Bensouda** remarked that **Yahya Jammeh** began to exploit The Gambia as early as August 1995. Speaking of the Junta, she observed that “... they on a massive scale deprived Gambians of resources needed for their development, degraded the environment, set the country back 22 years and deepened our poverty. These included:

- *The direct theft and appropriation of cash from Central bank accounts and other government accounts;*
- *Direct theft from parastatals;*
- *Massive deforestation of the country for his private benefit;*
- *The depletion of our sand resources for his benefit;*
- *Substantial allocation of public land to himself;*
- *The appropriation of land from private individuals;*
- *The allocation to himself of property forfeited through the Commissions;*
- *The appropriation of government grants to himself;*
- *The discretionary termination of government contracts for his private benefit resulting in massive awards of damages against the state, which the government has paid;*
- *The abuse of procurement rules for the benefit of himself and his associates”.*¹¹²

124. **Neneh Cham** corroborated other testimonies of the Economic Crimes under (Specified Offences) Act being used to persecute individuals and referred to **Pa Sallah Jeng** who was charged with economic crimes for not returning per diem after he was acquitted by Justice Monageng. “*Ousman Jammeh, a former Secretary General during the Jammeh regime was charged with the offence of Economic Crime and he was arraigned before the Magistrate in Banjul Magistrates’ Court. The court does not have jurisdiction to hear matters pertaining to Economic Crime. Nonetheless, he was convicted, even when the court did not have jurisdiction*”.¹¹³

¹¹² Statement of Mrs Amie Bensouda to the TRRC, page 13 & 14.

¹¹³ Testimony of Mr. Borry S. Touray, 8th April 2021, page 108-109, line 2031 to 2034.

BC 43 revealed that it was quite normal during the **Yahya Jammeh** era for a petition to be written against a lawyer for representing a client. On one occasion, he stated one **Ousman Jallow** at the NIA obtained his statement on a particular case he was handling. In a case relating to land in Farato Bojang Kunda, a petition was written against the witness and his colleague for the manner in which they dealt with the case. A panel was set up to carry out an investigation, however before the panel concluded their investigations, there was the change of government. The witness also reiterated that it was very difficult for private lawyers to practice in The Gambia at the time due to the prevailing climate and as such most lawyers declined instructions in relation to matters involving the state.

125. Amongst the concept of the effective implementation of the rule of law principle in a society is the ‘equality before the law’. Article 7 of the Universal Declaration of Human Rights (UDHR) states: “all are equal before the law and are entitled without any discrimination to equal protection of the law”. However, under Yahya Jammeh’s dictatorial rule, this principle was far- fetched and consistently violated.

INCONSISTENCIES BETWEEN THE 1996 DRAFT CONSTITUTION AND THE 1997 CONSTITUTION

“It would be difficult to conclude that the 1997 Constitution reflected the aspirations of Gambians because many significant provisions proposed by the Constitutional Review Commission were either amended or deleted all together to serve the interests of the junta”.

-Mr. Gaye Sowe
Executive Director of IHRDA

126. **Gaye Sowe**, the Executive Director of the Institute for Human Rights and Development in Africa (IHRDA), a specialist in International Human Rights Law and Constitutional Law presented an expert paper on the Constitutional development of the 1997 Constitution of the Republic of the Gambia; the consistencies between the 1996 Draft Constitution that was presented by the Constitutional Review Commission (CRC) and the Revised Draft Constitution that went to referendum and later adopted as the 1997 Constitution of The Gambia and the subsequent amendments that were made to the 1997 Constitution. According to **Gaye Sowe**, following the 22nd July 1994 *coup d’etat*, the 1970 Constitution was suspended by the military junta who began governing by Decrees. Mr. Sowe stated that “**the Decrees passed by the AFPRC were made supreme and unquestionable before any court of law**”.¹¹⁴ To restore the Gambia to civilian rule, the AFPRC passed Decree 33 to set up a Constitution Review Commission mandating it to consult the people of The Gambia.

127. A Draft Constitution was submitted to the AFPRC for consideration and a referendum. Jammeh used this draft constitution as his most important legal tool to engineer his grip on power. This is evident in the significant and profound changes that the AFPRC surreptitiously made on the draft constitution before the Referendum. These changes contributed greatly to disempowering the citizenry by granting the executive and the President in particular all the leverage to carry out the abuses that he was able to do during this period. The distinctions

¹¹⁴ Testimony of Mr. Gaye Sowe, 1st April 2021, < <https://witness.youtube.com/watch?v=Jwti9krllGI>> accessed 09th/06/21.

between the 1996 Draft Constitution and the Revised Draft Constitution some of which are discussed below shows that the people of The Gambia were blindsided into accepting a Constitution that did not reflect their wishes and aspirations but instead those of Jammeh and his cohort and according to the witness, **Gaye Sowe**: *“the 1997 Constitution grants the President the powers of an absolute monarch”*.¹¹⁵

128: Some of the changes in the 1996 Draft Constitution include:

- i. *The preamble of the 1996 Draft Constitution was changed by adding the following statement: “the sovereign people of The Gambia therefore endorsed the change of government of 22nd July 1994 to rectify such evils.”¹¹⁶ This meant that the Gambian people accepted and supported the 1994 coup d’état by the AFPRC and for the stated reason.*
- ii. *Section 7 (c) of the 1996 Draft was a saving provision for the existing laws under the 1970 Constitution, however this was changed to include the Decrees passed by the AFPRC.*
- iii. *The appointment of Ministers, the Independent Election Commission Chairman, Judges, Auditor General, Ombudsman and Deputy Ombudsman, Board of Directors of the Central Bank, Members of the Public Service Commission, Inspector General of Police, Director General of Prisons, Chief of Defense Staff and Commander of the Army and the Navy should be confirmed by Parliament to ensure that they were screened, and the right individuals were appointed. However, these provisions were removed by the AFPRC and these appointments were only subject to the approval of the President.*
- iv. *To enable the people to elect their vice president, the 1996 Draft Constitution provided for the position of: “a running mate, meaning that the Vice President should also be elected, this will ensure that the President will not be able to sack the Vice President. This gives the people a say as to who their President and Vice President should be and to ensure that the Vice President have a security of tenure. Also, in the event, that the President is removed from office a person who was chosen and vetted by the people can take over. This will also reduce the power of the President.”¹¹⁷ This provision was removed from the Draft Constitution.*
- v. *Term limits were also provided for in the 1996 Draft Constitution under section 63 (3) which stated that “no person shall hold office as President for more than two terms of five years each, whether or not such terms are consecutive.”¹¹⁸ This provision was entrenched to ensure that it could only be amended through a referendum. However, this provision did not make it to the Revised Draft Constitution that was adopted during the referendum in 1997. The removal of this provision made it possible for Jammeh to entrench himself into office for 22 years.*

- vi. *The position of “an independent Office of the DPP who will not be answerable to the Attorney General or anyone”¹¹⁹ was also removed. This provision would have made it difficult for the President to interfere with the prosecutorial power of the Office of the DPP.*
- vii. *Section 54 of the 1996 Draft Constitution provide for membership to Parliament. This section provided for: “60 members of Parliament 20 of whom are to be elected in accordance with the principle of proportional representation provided for in section 54 of the 1996 Draft. Under section 93 the Speaker and Deputy Speakers were to be elected from elected members of Parliament and they couldn’t come from the same political party.”¹²⁰ The 1997 Constitution provided that where one was removed from his or her political party, he/she will lose their seat in Parliament and **Yahya Jammeh** used this provision to dismiss nominated and elected members of Parliament by removing them from his party.*
- viii. *1996 Draft Constitution provided a registered voter with the power to challenge the validity of the election of a President of The Gambia. However, the phrase ‘registered voter’ was changed to registered political party or an independent candidate who contested in the election.¹²¹ The right given to registered voters under the 1996 Draft is necessary in any democratic society to ensure that they have the right to challenge the validity of the election of a President. This right was limited by the AFPRC so that only registered political parties or independents that contested an election could challenge its outcome.*
- ix. *The 1996 Draft also provided for the independence of the Judicial Service Commission (JSC) by stating that “the JSC shall not be subject to the direction or control of any person or authority.”¹²² In addition, the 1996 Draft also provided for security of tenure of Judges. There were clear set criteria for the removal of a Judge, however, a new provision was introduced to give power to the President to terminate the appointment of a Judge. This provision questions the independence of the Judiciary and the provision was utilized by the Jammeh to terminate the services of so many Judges.*
- x. *The 1996 Draft Constitution did not also contain any immunity clauses, these provisions which grants immunity to the AFPRC officials and the Government was inserted in the Revised Draft Constitution and the provisions were also made unamendable.*

129. These amendments to the Draft 1996 Constitution of The Gambia helped to create a dictatorship in The Gambia. They also undermined the viability and credibility of the 1997 Constitution as the supreme law of the land, embodying the aspirations of the Gambian people.

115 Testimony of Mr. Gaye Sowe, 1st April 2021, < <https://witness.youtube.com/watch?v=Jwti9krllGI>> accessed 09th/06/21.
 116 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 3.
 117 Testimony of Mr. Gaye Sowe, 1st April 2021, < <https://witness.youtube.com/watch?v=Jwti9krllGI>> accessed 09th/06/21.
 118 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 3.

119 Testimony of Mr. Gaye Sowe, 1st April 2021, < <https://witness.youtube.com/watch?v=Jwti9krllGI>> accessed 09th/06/21.
 120 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 4.
 121 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 4.
 122 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 4.

AMENDMENTS TO THE 1997 CONSTITUTION DURING THE JAMMEH ERA

130. Former President Yahya Jammeh had little regard and respect for the laws of The Gambia as he always violated provisions of the 1997 Constitution and Acts of Parliament. **BA57** informed the Commission that **Yahya Jammeh** on so many occasions contravened relevant provisions of the Constitution e.g. in the appointment of Ministers (Secretary of State). The 1997 Constitution Section 71 (2) among other provisions state that “a person shall not be qualified to be appointed or hold the office of a Secretary of State if, he or she is a he or she holds the citizenship or nationality of any country other than The Gambia....” Nonetheless the President went ahead and appointed persons with dual nationality to Ministerial positions.
131. A major amendment that was made to the 1997 Constitution was the insertion of the word “*secular*” in section 1 (1) in 2001. This section was entrenched pursuant to section 226 (4) and therefore, the laid down procedural requirements ought to have been followed, not least a referendum. This process was not followed in 2001 and the Supreme Court declared the process and the purported amendment unconstitutional. The attempt to amend section 1 was challenged by **Kemesseng Jammeh** at the Supreme Court. In the case of **Jammeh V Attorney General** “*the Supreme Court held that the purported amendment to section 1 (1) “was null and void and of no effect, by reason of non-compliance with the provisions of section 226 (4) of the Constitution, which, required inter alia, the holding of a referendum on the Bill before it was passed by the National Assembly and presented to and assented by the President”. Although this decision was delivered in November 2001, the amendments made to section 1 (1) were retained in the reprinted copies of the Constitution which were published in 2002.*”¹²³ Despite the judgment of the Supreme Court and the revision of the Constitution in 2009, the word ‘secular’ still remained under section 1 (1) of the 1997 Constitution with a footnote referencing the judgment of the Supreme Court in the case of *Jammeh v Attorney General* above.
132. **Joseph Henry Joof** was the AG and Minister of Justice who tabled the amendment of section 1 of the 1997 Constitution to include the word ‘secular’. He told the Commission that this was done for the following reason: “*I think the idea was there was a clear indication of people coming in with extremist views and intolerance was growing in The Gambia and we felt that it was important or opportune to nip it in the bud because The Gambia has always enjoyed peaceful coexistence among its various groups of people and we saw what was happening in other countries where extremism had taken hold*”.¹²⁴ **Joseph Joof** explained that the Republican status under Section 1 of the 1997 Constitution was not entrenched because section 226 (4) of the 1997 Constitution only covers the sovereignty of The Gambia.
133. In 2015, the former President **Yahya Jammeh** declared The Gambia an Islamic State. This was in contravention of Section 100 (2) of the Constitution that clearly forbids the National Assembly from passing laws that makes The Gambia a one-party State or a one religion State. As the National Assembly is the supreme law-making authority and not the Executive this made it unconstitutional. The Constitution (Section 25 b)¹²⁵ also provides

for the right to practice any religion. With reference to the unconstitutionality of declaring The Gambia an Islamic State, **Mama Fatima Singhateh** stated that in her capacity as the Attorney General, she wrote an opinion dated 8th February 2016 on how the Republic of The Gambia can be made an Islamic State. She further stated that her opinion contains “*research on the comparative analysis of other Islamic State; she also suggested that we maintain the name ‘Republic of The Gambia’; the need to hold a referendum to get the approval of the people of The Gambia; the fulfilment of the constitutional requirement on the amendment of an entrenched clause; and the promotion of equality on all genders and people before the law*”.¹²⁶ A letter dated 15th February 2016 in response to her opinion was sent to her office through the office of the Secretary General stating that: the name Islamic Republic of The Gambia will be maintained and the State will have all the attributes of an Islamic State within five (5) years and that there will be no referendum to determine this issue. The letter further stated that the Constitution should therefore be amended by the Ministry of Justice to reflect this reality.¹²⁷

134. Following this letter, a taskforce was to be set up to determine the feasibility of practically transforming The Gambia into an Islamic State. Even though section 100 of the 1997 Constitution clearly states that the National Assembly cannot pass laws making The Gambia a one religion state, this provision was disregarded. As Attorney General and Minister of Justice and the chief legal adviser to government, **Mama Fatima Singhateh** should have highlighted that even the National Assembly lacked the powers to enact a law that seeks to make The Gambia a one religion state. In addition, the decision by **Yahya Jammeh** to carry through his plan without a prior referendum was illegal and worrisome. It therefore follows that any action taken in support of that was also illegal and tantamount to a subversion of the constitution.
135. The procedure for the election of Chiefs and Alkalolu by election as contained in Section 58 (1) of the 1997 Constitution was contravened by **Yahya Jammeh** who appointed **Kebba Fanta Komma** as the Chief of Sami District. The appointment was challenged in the case of **Jabbi v. Kebba Fanta Komma and Ors; Civil Appeal No. 4 of 2000 [GR 1997-2011]** and the Supreme Court held that the said appointment was in violation of section 58 (1). This provision was later amended in 2001 to give the President the power to appoint Chiefs.
136. According to **Joseph Joof**, the amendment of section 58 (1) and 59 (1) of the 1997 Constitution was made to give the President power to appoint Chiefs and Alkalos and he tabled this amendment before the National Assembly to grant every Gambian the right to be a Chief or Alkalo since it was based on lineage at the time. However, the amendment to this section gave **Yahya Jammeh** the power to interfere in the traditional ways of electing Chiefs and Alkalos in The Gambia, thereby creating disputes in various communities across the country.
137. **Yahya Jammeh** further sanctioned the amendment of the 1997 Constitution to give himself power to be involved in business ventures.
138. Section 48 (3) of the 1997 Constitution provides that election to the office of President shall be by absolute majority. The section states that “*no person shall be elected as President on a first ballot unless the votes cast in his or her favor at the election are more than fifty*

123 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 6.

124 Testimony of Mr. Joseph WITNESS. Joof, 26th April 2021, page 39, lines 861 to 865.

125 1997 Constitution of The Gambia, Section 25 b, Freedom of Speech, Conscience, Assembly, Association & Movement

126 Testimony of Ms. Mama Fatima Singhateh 29th April 2021, <https://witness.youtube.com/watch?v=witness_ZkMPDgnRw> accessed 11th/06/21.

127 Testimony of Ms. Mama Fatima Singhateh 29th April 2021, <https://witness.youtube.com/watch?v=witness_ZkMPDgnRw> accessed 11th/06/21.

- percent of the total number of votes validly cast at that election”.¹²⁸ This was changed from absolute majority to simple majority by Act No.12 of 2003 and thus, altering the requirement for election to the office of the President based on the highest number of votes received by a presidential candidate. **Joseph Joof** stated that this amendment was done “to ensure that the security of The Gambia was intact and the high tension and emotions which were prevailing at the time and dangerous for a small country like ours were diffused and it did that after the amendment”.¹²⁹ The 1997 Constitution was further amended by Act No.12 of 2003 to include the election of unopposed candidates to the office of the President. The original 1997 Constitution under section 63 (2) also states that “an elected president shall be sworn into office on the day the incumbents term expires, however this provision was changed in 2001 to sixty days after the elections, further in 2006 this provision was also to reflect the wordings of the 1997 Constitution”.¹³⁰
139. The 1997 Constitution provides that the number of Ministers appointed by the President including the Attorney General should not exceed 15. Act No.3 of 2009 was enacted to give discretion to the President to appoint as many ministers as he deems necessary. This enlarged the power of the president to play political patronage with the granting of ministerial appointments.
140. Gaye Sowe provided in his written statement that “Act No. 6 of 2001 amends section 131 of the 1997 Constitution by providing that the High Court shall be constituted by a single judge. This is a clear contravention of section 24 (9) of the Constitution which is entrenched and specifically provides for the right to elect to be tried by a jury”.¹³¹ Section 196 of the 1997 Constitution was also amended in 2006 to give power to the President to dissolve Parliament.
141. According to Gaye Sowe the 1997 Constitution states that “the National Assembly cannot amend these provisions.”¹³² However, in the recent case of **The State v. Yankuba Touray** the Supreme Court of the Gambia held that no such immunity against prosecution for crimes committed exists.

AMENDMENT TO ACTS OF THE NATIONAL ASSEMBLY JAMMEH AND THE LEGAL PRACTITIONERS OF THE GAMBIA

“For the people of The Gambia, this is a wakeup call. This is a very small country, the President who was here was made by us, everything he did he could not achieve on his own, we should be wary of that and we should be careful of that.

If The Gambia is good it is good for all of us but if it goes to the dogs what happened would happen again”.¹³³

-*Sheriff Marie Tambadou*
Senior Legal Practitioner

128 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 7.
129 Testimony of Mr. Joseph WITNESS. Joof, 26th April 2021, page 62, lines 1381 to 1383.
130 Testimony of Mr. Gaye Sowe, 1st April 2021, < <https://witness.youtube.com/watch?v=Jwti9krllGI>> accessed 09th/06/21.
131 See the Statement submitted to the TRRC by Mr. Gaye Sowe, page 7. In response to the Landing Sanneh case
132 Testimony of Mr. Gaye Sowe, 1st April 2021, < <https://witness.youtube.com/watch?v=Jwti9krllGI>> accessed 09th/06/21.
133 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 59, lines 1328 to 1332.

142. **Yahya Jammeh** has had a very frosty relationship with the Gambia Bar Association from the day he took overpower in July 1994. **Sheriff Marie Tambadou**, a senior legal practitioner and a former President of the Gambia Bar Association, testified that the GBA was “set up set up primarily to protect and promote the standards, integrity and welfare of its members by ensuring the independence of lawyers and the Judiciary; to promote the observance and the adherence to the rule of law; and to promote and uphold the human rights and fundamental freedoms of people as provided in our Constitution, the Universal Declaration of the United Nation and the African Charter.”¹³⁴ **Sheriff Tambadou** further stated that during the **Sir Dawda Jawara** era (First Republic), the GBA did not have any incident with the Government to his knowledge and this was because the Government had respect for rule of law and human rights. Cases were being taken against the Government and it did not cause any rift. He said former President **Sir Dawda Jawara** was also recognized as a “champion for human rights and democracy in Africa”.¹³⁵
143. **Sheriff Tambadou** narrated his first encounters with Jammeh in the Magistrate Courts before the 1994 *coup d’état* in which the latter showed “utter disrespect and disobedience” to the Magistrate when he was asked to appear before the court unarmed. and his disapproval of the Jawara regime. Following, the 1994 *coup d’état*, the GBA under the Presidency of Surahata B. S. Janneh made a press release condemning the coup and demanding an immediate return to constitutional rule.¹³⁶ The AFPRC Junta did not respond to the call, therefore the Bar resorted to boycotting the courts and the 1994 Legal Year. The junta did not take this lightly hence the strained relationship and the targeting of members of the Bar in the subsequent years.
144. In subsequent years, Jammeh started targeting and persecuting lawyers who he believed to be opponents or who were representing or defending his opponents, as well as members of the Bench. Magistrate **Sulayman Batchilly’s** appointment was Magistrate was terminated unceremoniously. The Magistrates and Judges who were upholding the law and delivering judgments in accordance with the law and not necessarily favourable to the state were dismissed. These include **Borry Touray, Gaye Sowe, Yukase Darboe and B. Camara** and some senior Judges.¹³⁷
145. The tensions between the Bar and **Yahya Jammeh** were high and GBA made some efforts to meet **Jammeh** to explain the role of lawyers and the GBA so as to improve relations. According to **Sheriff Tambadou**, when they were finally granted audience, they were informed at the last minute that they will be received by the Vice President **Isatou Njie-Saidy** instead of the President himself. Interestingly, the Vice President invited members of the security force to be present at the said meeting. During the meeting, it was clear that the Executive did not understand the functions of the lawyers especially defence lawyers because they claimed that the lawyers were against the government because they always took cases against the government. During this period, public confidence in the GBA was very low because the people expected the GBA to “follow up with condemnation in the wanton arrest of politicians and civil servants. although we had a duty to maintain and promote the rule of law and respect for human rights, we believe that it was the choice

134 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 7, lines 122 to 130.
135 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 8, lines 150.
136 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 10, lines 192 to 194.
137 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 12, lines 241 to 242.

- of the people to engage lawyers to represent them”.¹³⁸ This continued until after Mrs Amie Bensouda became the President of the GBA when she adopted a different approach to repair the uneasy relationship between the GBA and government. However, he stated that there was no mending fences with Jammeh because *“the former President considered the Bar his sworn enemy”*.¹³⁹
146. **Sheriff Tambadou** opined that: *“the atmosphere and environment for the practice of law during the Jammeh regime was very challenging and risky. From 1997 to 2016, the Jammeh regime systematically harassed and did everything possible to intimidate lawyers with the view to controlling the profession or rendering them ineffective. The repressive government routinely violated the rights of the citizenry particularly those who dared stand up to them including the press. The lawyers had the unenviable job of defending the rights of persons routinely charged or detained by the state. This further aggravated the already strained relationship between the bar and the Jammeh-led government”*.¹⁴⁰
147. When **Mr. Tambadou** became President of the GBA in January 2010, the already strained relationship between the GBA and Government had further deteriorated. He said that *“there were so many arrests of lawyers and dismissal of judicial officers and on each occasion the Bar had to take a stance, we had to protest and I continued several efforts”*.¹⁴¹ Many efforts were made to seek the audience with Jammeh but all attempts failed. During the 22-year rule of Jammeh, the GBA only met with him once. Lawyers were also called upon and questioned about their work, *“in the case of Guaranty Trust Bank v Youth Development Enterprise & Baba Jobe in which the bank sought to enforce a mortgage and judgment was delivered in their favor and they got an order to sell the property at Kotu of Baba Jobe by private treaty in execution of the judgment. I was invited by the NIA as Counsel for the plaintiff and questioned me on why the property was being sold because it belonged to the Ex-President”*.¹⁴² **Sheriff Tambadou** revealed that it was during this case that he realized that there were NIA officers who were also covertly working as judicial officers. There were also lawyers that were arrested and detained for representing clients in cases that Jammeh had interest in and these lawyers include, **Badou Conteh, Lamin Ceesay, Mary Samba, Kebba Sanyang** and **Moses B Johnson-Richards**. In the case of **Baba Jobe**, both his Counsels, **Ousman Sillah** and **Mr. Mai Fatty** had attempts on their lives during the pendency of the trial. **Baba Jobe** was also not released from prisons after serving his term of imprisonment and he was thereafter killed by **Yahya Jammeh’s** Junglers by suffocation.
148. During his time as the GBA President, **Mr. Tambadou** said that his life and his wives were threatened because it was believed that he was supporting Commonwealth Judges. These Judges were well known for their impartiality and independence in discharging their duties. **Sheriff Tambadou** named **Justice Izuako** as an example of a Judge who gave judgments and made decisions based on facts of a case and the law. However, he said that **Justice Agim** managed to lead a campaign which ended the services of the Commonwealth Judges and began the phenomenon of granting local appointment to Nigerian Judges. Chief **Justice Agim** did not have a good relationship with the GBA during his term. *“The arrest, charge, trial of Moses Richards was considered very serious by the Bar. It tried to erode the basis*
- on which lawyers practiced their profession. **Mr. Richards** was arrested and tried simply because he wrote a letter based on instructions received from his client. All lawyers act on instructions received from clients, and we considered an attack on one for writing a letter following instructions received was an attack on all the lawyers. This was a matter that the GBA took very seriously and were determined to fight”.¹⁴³
149. Following the charge and conviction of **Moses Richards** in 2011 for giving false information to a public servant and sedition, the GBA issued a press release and later met with the Chief Justice whom they asked to resign. They also met the Solicitor General to demand for the release of **Mr. Richards**. The GBA also decided to boycott the courts including the court of Magistrate **Alagbeh** who convicted **Mr. Richards**. The GBA also tried to hold protests but were denied access by the Inspector General of Police. The case of **Moses Richards** set the precedent for other lawyers to be arrested and detained including **Mrs. Bensouda, Lamin K. Mboge** and others. All these created an atmosphere of fear within the GBA and the loss of confidence in the justice system by the lawyers.
150. In 2012, a Tax Commission was set in which most of the persons of interest were lawyers. Even though the Chairman of the said Tax Commission, **Mama Fatima Singhateh** denied that the Commission was set up to target lawyers. Evidence before the Commission supports that proposition. **Fafa M’bai** informed the Commission that: *“In 2012, a Commission of Inquiry into Tax Evasion and Other Corrupt Practices in The Gambia between 1990 and 2012 was setup. The Commission at the conclusion of its enquiries made adverse findings against me for the sum D1, 574,665.8. I instituted an appeal against the said findings in The Gambia Court of Appeal on 5 July, 2012. On the 17 May, 2016, the Attorney General and Minister of Justice conceded that the conclusions and findings made against me by the Tax Commission ought not to have been so made. The Court of Appeal accordingly set aside the said findings of the Commission against me and further ordered that the deed of title to my 45 Kairaba Avenue property which I had deposited with the Court as security for the stay of execution be returned to me and it was”*.¹⁴⁴ **Mr. M’bai** stated that the fines of the Tax Commission were not sent to the Gambia Revenue Authority but rather they were used by **Yahya Jammeh** for his own personal gains.
- 151: **Lamin K. Mboge** narrated to the Commission incidents when the former government made attempts on his life on several occasions following his representation of suspects in the 2006 and 2009 attempted coups. He also claimed that **Yahya Jammeh** sent security officials to tamper with his vehicle on three occasions and in 2016 they succeeded in causing a serious accident in which he nearly lost his life. He stated that *“This truck was driving at a speed of not less than 8 kilometers and my driver was also rushing to catch up with the 9 O’ Clock case I have. Now due to a sudden break in front of him he swerved on the left I was sitting on the passenger side and in a flash of a second this truck was over my head the noise was so much that is like a bomb and all you could hear was that he is dead, he is dead but the tire of the truck climb over the tire of my vehicle and that is why the truck could not climb over me. But due to the speed of truck it had to drag my vehicle up to almost 10 meters from the scene dragging pushing my car like that up to a fence and that is where the driver could stop his truck. But I could see the bumper of the truck over my head that is how serious the accident was”*.¹⁴⁵

138 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 14, lines 292 to 293.

139 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 15, lines 311 to 312.

140 Statement of Mr. Salieu Taal to TRRC, page 4.

141 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 16, lines 336 to 338.

142 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 21 to 22, lines 455 to 465.

143 Statement of Sheriff M. Tambadou to the TRRC, pages 3 to 4.

144 Statement of Mr. Fafa Edrissa M’bai to TRRC, page 18.

145 Testimony of Mr. Lamin K. Mboge, 31st March 2021, page 22 to 23, line 480 to 488.

152. **Lamin Mboge** reached this conclusion when he was imprisoned in 2010 at Mile 2 Central Prison and one ‘**Bai Lowe**’ (Jungler) narrated to him that the accident involving **Mai Fatty** was a set up by a group of individuals including Junglers and that they were behind the accident. As **Lamin Mboge’s** accident involved a van and a truck, he concluded his accident was also orchestrated by **Yahya Jammeh**. However, evidence before the Commission with regards this claim is inconclusive. The fact that the Junglers may have orchestrated **Mai Fatty’s** accident does not necessarily mean that they also tampered with **Lamin Mboge’s** vehicle in the accident that he described. Furthermore, the facts described by **Lamin Mboge** do not disclose any plan or clear intention to deliberately hit his vehicle. On the contrary, the facts disclose a simple accident in which both drivers were driving recklessly, as such the suggestion that the accident was preconceived is farfetched.
153. **Yahya Jammeh** had a dislike for lawyers, that notwithstanding, he knew that he needed to work with some of them to achieve his objectives. Witness **BA57** revealed to the Commission that there were members of the GBA who used to advise **Jammeh**.
154. In 2010, Lawyer **Lamin Mboge** was arrested and detained at Mile 2 Central Prison. In order to secure his release from detention, he entered a deal to give his support to **Yahya Jammeh** in exchange. Soon after his release, Lawyer **Lamin Mboge** set up the law society which became a rival association to the Gambia Bar Association. Even though **Mr Mboge** opined that he set up the rival bar association for several other legitimate reasons, it is clear that this action was precipitated by his desire to demonstrate support for **Yahya Jammeh** in exchange with a favourable solution to his legal troubles. **Yahya Jammeh** had used such divide and rule tactics in the past to make inroads into the activities of groups he considered opposed to him. After the event of April 10-11 2000, being dissatisfied with the actions of the Gambia Students Union (GAMSU) who organized a demonstration against his government, **Yahya Jammeh** engineered the creation of another student’s union called NAPSA and disbanded GAMSU. The Law Society and the Gambia Bar Association still operate in parallel as rival bar associations.
156. Throughout the currency of his regime, **Yahya Jammeh** used state security agents to harass lawyers and other legal practitioners. **Salieu Taal** testified before the Commission that in 2006 while serving the GBA under the Presidency of **Amie Bensouda**, the GBA held series of meetings to discuss the unlawful detention of **Mariam Jack Denton**. They held meetings with the National Assembly Members, the Vice President of The Gambia and even wrote a letter to the AG and Minister for Justice. However, all the officials they met said the issue was ‘*above their pay grade*’.¹⁴⁶ **Mariam Jack Denton** was detained for one hundred and eleven (111) days without access to legal representation. Mr. Taal further testified that, “*in January 2006, my senior, Lawyer Antouman Gaye was unlawfully detained on the orders of Justice Paul over a civil matter. He was remanded for four (4) days at Mile 2 and bearing in mind that this was Justice Paul who came to Gambia as a hustler*”.¹⁴⁷ Mr. **Antouman Gaye** was also arrested by security officers within the High Court premises in March 2006 and detained for seven (7) days. Mr. **Taal** also informed the Commission that he received information that **Jammeh** ordered **Sheikh Tijan Hydera** while he was AG to lock up Lawyer **Antouman Gaye**. In his words, “*so Jammeh came up to him ----- And he said, “you are not doing your job I told you, I want you to lock up Antouman Gaye” and somebody else*

146 Testimony of Mr. Salieu Taal, 6th April 2021, page 18, line 368.

147 Testimony of Mr. Salieu Taal, 6th April 2021, page 24, line 511 to 514.

I forgot the person’s name “make sure you lock him” and that is when the ball started rolling. I want to put that on record”.¹⁴⁸

157. Following **Mr. Gaye’s** arrest, the GBA decided to boycott the courts and they also asked for the resignation of **Justice Brobbery**, the Chief Justice at the time. Legal Practitioner **Mary Samba** was arrested and detained in 2005 whilst she was pregnant for representing **Harris Supermarket**, a supermarket that **Yahya Jammeh** ordered should be closed. “*Lamin Ceesay and Badou Conteh were detained over a land transaction as lawyers for the purchaser and vendor respectively. Unfortunately for them, the President also wanted to purchase the property and did not take it too kindly that the property was sold to someone else*”¹⁴⁹. “*Mrs. Amie Bensouda was arrested and detained at the Police Station Headquarters for 3 days without any charges. Mrs Bensouda was contracted as a consultant by the World Bank to undertake the Land Governance Framework for the Government of The Gambia. As part of her assignment, Mrs. Bensouda’s office requested information/data about land litigation from the registry of the High Court and was asked by the office of the Chief Justice to make a written request which she did. The acting Chief Justice at time, Justice Wowo used the said request to file a complaint against Mrs. Bensouda with the National Intelligence Agency accusing her of engaging in activities that undermined the administration of justice*”.¹⁵⁰ It is clear from this evidence that certain Judges sought **Yahya Jammeh’s** recognition by taking actions in his favour. The Commission also received information that individuals lobbied to be Judges during **Yahya Jammeh’s** time.
158. **Salieu Taal** testified that **Yahya Jammeh** introduced various schemes to infiltrate the GBA and to cause disunity between lawyers. As such, he inserted individuals in the GBA that reported every move of the association to him. **Yahya Jammeh** and also engineered the setting up of a rival bar association through Justice Agim, Chief Justice at the time and Legal Practitioner **Lamin Mboge**. **Salieu Taal** reiterated that the relationship between the GBA and the judiciary was at its lowest during the time of Chief Justice **Agim**. “*I mean Justice Fagbenle took it to the lowest of low unlike Agim as crafty he was clever he was sinister; but he knew how to operate in the background. I think he had more capacities than Fagbenle. Fagbenle was openly partisan; I recall there was when Jammeh decided to pull Gambia out of the commonwealth. There was a big march that was organized at McCarthy Square and Fagbenle bought “ashoobi” to the Judiciary and I think sent a memo directing judges and judicial staff to adorn in “ashoobi” and go and show solidarity*”.¹⁵¹

JAMMEH’S ATTACKS ON HUMAN RIGHTS DEFENDERS

“Our recent history is too fresh in our minds for us to have a nonchalant attitude towards human rights. Those who govern us (the Executive and its agents), those who are governed (the public) and those who aspire to govern us (political parties and their supporters) must believe in the principles of human rights and not just pay lip service to its ideals”.¹⁵²

**- Mr. Emmanuel Daniel Joof
Chairman NHRC**

148 Testimony of Mr. Salieu Taal, 7th April 2021, page 8 to 9, line 169 to 175.

149 Statement of Mr. Salieu Taal to TRRC, page 5.

150 Amnesty International Public Statement AI Index : AFR 27/015/2012 dated 21 December 2012).

151 Testimony of Mr. Salieu Taal, 7th April 2021, page 6, line 415 to 421.

152 Statement of Mr. Emmanuel Joof to the TRRC, 19th May 2020, page 13.

159. **Amie Bensouda** acted very briefly as AG and Minister when the Military Junta took over in July 1994 for two weeks. She explained that before the Military Junta took over in July 1994, the country was in good shape following the near collapse of the economy in 1984. With the help of the International Monetary Fund and the World Bank, the Economic Recovery Programme was introduced to stabilize the economy and projects were introduced to improve the public sectors. *According to the witness, “during this time The Gambia was well respected, we were the Capital of Human Rights in Africa. President Jawara insisted on the respect of human rights and we were home to the African Commission”.*¹⁵³
160. **Fafa M’bai** testified that his term in office as AG and Minister of Justice was short-lived due to the human rights violations perpetrated by the Junta. **Fafa Mbai** told the Commission that he was sacked by the Junta because he was consistently advising them against committing human rights violations. At the time, the Junta had arrested public servants such as **Pa Cham** (Former Managing Director, Gambia Ports Authority (GPA) and **Alhajie Abou Denton** (former, Accountant General) amongst others, **Kenneth Best** (proprietor of the Daily Observer) as well as former politicians of the PPP including **Omar Amadou Jallow** (OJ) and others.
161. The above-mentioned events among many others show clearly, the little tolerance that the Jammeh regime had for human rights, human rights defenders and lawyers.
161. **Emmanuel Daniel Joof**, current Chairman of the National Human Rights Commission (NHRC)¹⁵⁴ with two decades experience in human rights activism outlined the relationship between the **Yahya Jammeh** administration and the human rights defenders. In 1999, **Emmanuel Daniel Joof** resigned as Magistrate and was later appointed as the Legal Officer and Head of Banjul branch of the regional NGO, the African Society of International and Comparative Law (ASICL). The objective of ASICL was to “*promote the advancement of public education in the field of law and civil liberties in Africa; protection of individual liberties; raise standards in administration of justice; provide a comprehensive legal aid system in African countries that it operated*”.¹⁵⁵ He said that he conducted a weekly TV programme on GRTS called “human rights education with ASICL” and a legal aid clinic was also established to provide free legal advice to poor litigants or complainants. These initiatives were supported by the Ministry of Justice. The legal aid clinic later collaborated with Action Aid, in which paralegals were trained and sent to the provinces to conduct legal aid clinics thereby expanding access to justice. The human rights approach that was adopted by ASICL in collaboration with Amnesty International and the Coalition of Human Rights Defenders was seen by **Yahya Jammeh** as undermining his dictatorial agenda. Notwithstanding the constraints faced by the human rights activists, they made good progress. **The “ASICL Office later became a “Human Rights Complaint Office” where people who felt that their rights have been abused, or have been victimized, families of those who were unlawfully arrested and detained etc. will come to give information and to seek redress.**
162. He further informed the Commission that “*The Coalition of Human Rights Defenders was created as an umbrella Organization comprising of all those who were working in the areas*

153 Testimony of Ms. Amie Bensouda, 27th April 2021, <https://witness.youtube.com/watch?v=YtpsW8O9Z_A> accessed 10th/06/21.

154 The NHRC is one of the Transitional Justice Mechanisms that was created through an Act of the National Assembly (the National Human Rights Commission Act 2017).

155 Testimony of Mr. Emmanuel D. Joof, 20th May 2021, <https://witness.youtube.com/watch?v=dUTdgWzqfNk> accessed 17th/06/21.

*of human rights but could not effectively do so at the level of their respective offices because of the different mandates their offices had and sometimes they did not want to compromise the independence of their office’s neutrality or have their offices put on the spotlight by the authorities”.*¹⁵⁶ The functions of the Coalition included raising awareness, petitioning the Executive, capacity building for senior level officers, observing elections and presenting reports to the Independent Electoral Commission and such related activities. Following April 10th and 11th 2000 student protests, when security forces gunned down and killed twelve (14) students, the Coalition decided to convene an emergency meeting to discuss the incident. The actions of the security officers were defended by the then Attorney General and Minister of Justice **Pap Che Yassin Secka** and the Vice President **Isatou Njie Saidy**. The Coalition thereafter held a press conference condemning the actions of the government and demanding that the perpetrators be accountable and victims compensated. The Coalition also requested that the government set up an independent Commission of Inquiry. The Coalition also filed a habeas corpus application before the courts to produce the students that were arrested and detained. **Justice Mam Yassin Sey**, then a High Court Judge, granted the application and ordered the release of the students. This decision by Justice Sey infuriated Jammeh’s administration and it was the beginning of her troubles with the authorities as articulated in her own testimony.

163. Following the setting up of the Commission of Inquiry and the subsequent submission of its findings and recommendations, the government passed the Indemnity Act indemnifying the security officers with regards their actions during the student protests. In the preceding years, “*the human rights situation gradually deteriorated, with the assassination attempt on the life of Lawyer Ousman Sillah; the assassination of Deyda Hydara; the burning of media houses; the unlawful detention and torture of many; the plundering of the economy; his phony HIV/AIDS treatments; his witch hunting exercises; self-acquirement of titles such as Sheikh, Professor and Nasiruddin and his near crowning of himself as king; his usurpation of the Judiciary and appointment of mainly Nigerian mercenary Judges; his detention and torture of Imam Baba Leigh; and the public abuse and humiliation of many Gambian, the list goes on*”.¹⁵⁷ The human rights defenders were subjected to persistent harassment, arrests, detention and prosecution by **Yahya Jammeh’s** government. **Yahya Jammeh** was incensed by the activities of the human rights defenders. He saw them thorns in the flesh and called them such unflattering names such as “*illegitimate sons of the Africa*” and “*double donkeys*”

164. This mindset of the **Yahya Jammeh** government is clearly elucidated in the following statement made by **Mama Fatima Singhateh**, in 2014 in an interview with New Africa Magazine, regarding the human rights situation in The Gambia. She said: “*the message is that we support human rights, we promote and protect everybody’s rights, but unfortunately what we hear about in the press is the rights of those who commit offences – the criminals who commit murder. When we punish them, all we hear about is those people who are fighting for the rights of the murderers. What about the rights of their victims?*”¹⁵⁸ This statement shows the government position against persons who are alleged to have committed a crime against the government i.e. they should not have their rights respected or protected. It must be recognized that all peoples have rights irrespective of who they are, be it victims or perpetrators.

156 Statement of Mr. Emmanuel Joof to the TRRC, 19th May 2020, page 5, paragraph 26.

157 Statement of Mr. Emmanuel Joof to the TRRC, 19th May 2020, page 9, paragraph 49.

158 New Africa Magazine, ‘Human rights comes with responsibility’, 08/05/14, <<https://newafricanmagazine.com/4363/>> accessed 11th/06/21.

165. Attesting to the human rights situation in The Gambia during the **Yahya Jammeh** regime, **Fatou Jagne Senghore** of Article 19, narrated the following incidents to the Commission. (i) That in 1998, Article 19 wrote a report on the closure of Citizen FM by the government without following due process. In 1999 the “government introduced a draft to set up a media commission to restrict the operations of the journalist and ensure that they register through a body that was not independent”.¹⁵⁹ (ii) The Gambia Press Union (GPU) also tried to challenge the National Media Commission (NMC) Bill, which sought to control the establishment of media institutions, before the Supreme Court. “During the first IFEX meeting in Dakar in September 2002, the GPU under the leadership of Demba Jawo and Pa Nderry Mbai the then SG mobilized support from IFEX to adopt a resolution on the draft NMC. As a member of the Council, I represented ARTICLE 19 during the close door discussions and put the case forward and advocated for more support from The Gambia. In 2004, we analyzed the NMC Bill and supported the GPU and Journalists like Deyda Hydara (killed in December 2004), Demba Jawo, Alagi Yorro Jallow and Swaebou Conateh who challenged it before the Supreme Court”.¹⁶⁰ This Bill was later withdrawn by the government from parliament. “Besides the direct attacks on the media, opposition leaders, citizens were also targeted. In addition, problematic legislation have been used to further muzzle and suppress freedom of expression. These include the Criminal Code (Amendment) Bill 2004, which widens the definition of libel and expands the class of actions, or expressions that attract criminal liability, and the Newspaper Amendment Act 2004, which imposes exorbitant fees for registration of media outlets. The provisions on seditious and treasons have also been constantly used to reduce or silence critics and legitimize imprisonment. Between 2005 and 2013 other laws were passed to tighten the space”.¹⁶¹ With these developments, Article 19 wrote a letter to Jammeh informing him that the amendments made in the Criminal Code were excessive and it would infringe upon the work of journalists.
166. In addition, Article 19 also published and shared legal analysis with government and issued press statements. They commemorated the deaths of **Ebrima ‘Chief’ Manneh** and **Deyda Hydara**. Article 19 further held meetings with the Ministry of Justice to remind the government of its obligations to respect and promote media laws. “From 2003 to 2016, I have addressed our concerns and engaged the government through the Ministry of Justice. From 2003 and later, I met the AG Sheikh Tijan Hydara on the media law. In 2009, after the arrests of politicians and journalists including Halifa Sallah and Pap Saine [after] the witch hunting [exercise], I met the Solicitor General Awa Bah, along with the President of the GPU Ndey Tapha Sosseh to raise concerns over freedom of speech and the persecutions of journalists. In October 2011, with a delegation of African journalists and free expression organizations, we held a meeting with Edward Gomez on the state of freedom of expression and the arrests of activists. In October 2012, I held a meeting with the Lamin Jobarteh in Cote d’Ivoire during the ACHPR session after the executions of the nine (9) inmates and subsequent arrest of journalists. In October 2016, I met Mama Fatima Singhateh in her office to raise the question of the political detainees, the harsh sentences against them and the killing of Solo Sandeng”.¹⁶² From 2006 to 2016, over 140 journalists went into exile persecution. Thousands of **Yahya Jammeh’s** political opponents and senior government

159 Testimony of Mrs Fatou Jagne Senghore, 6th May 2021, < <https://witness.youtube.com/watch?v=9y-F1HU6jk4>> accessed 30th/06/21.

160 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 4.

161 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 3.

162 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 8.

official also left the country because of the human rights situation in the country. “With other partners such as CAPREC¹⁶³, hundreds of victims received support, counseling, and medical care, for many years they provided relief to journalists, politicians, security and other victims persecuted. In many instances, they supported the resettlement of refugees in Senegal. ARTICLE 19 and CAPREC have worked together on many of the cases to complement each other’s expertise”.¹⁶⁴ There were instances in which individuals were scared to return to The Gambia to attend burial ceremonies because of the fear of arrests and unlawful detention. Bodies of dissidents who passed away outside the country were refused repatriation for burial on home soil.

167. **Emmanuel Joof** revealed that he was arraigned before the Kanifing Magistrates’ Court for an alleged traffic offence that occurred in January 1999 when he was a Travelling Magistrate at the Lower River region and the North Bank Region. This was seen as a victimisation of **Emmanuel Joof** because of his work as a Human Rights Defender. The case was dismissed by Principal Magistrate **Haddy Roche**, now **Justice Roche** of the Court of Appeal, who incidentally also became a victim of the system herself. The Prosecutor claimed that he was given instructions to prosecute **Emmanuel Joof** which reinforces the argument that this was a malicious prosecution. According to **Emmanuel Joof**, he later found out that it was the then AG and Minister for Justice, **Joseph Joof** who gave instructions for his prosecution. He also said that his car tyres were also compromised on one occasion. In August 2002, he left the jurisdiction following his appointment with the Office of the High Commissioner for Refugees in Sudan as Refugee Status Determination Lawyer and Repatriation Officer. Most of the members of the Human Rights Defenders Coalition also left the country. Foundation for Legal Aid, Research and Empowerment (FLARE) was established upon his return to The Gambia. The functions of FLARE included awareness raising and advocacy to change some of the draconian laws. In 2016, members of the Coalition and other concerned Gambians came together to support the change of leadership from a dictatorial regime to a democracy where the rule of law and good governance will be respected.
168. **BC 43** informed the Commission that he was invited to the State House and informed by Jammeh of his appointment as AG and Minister of Justice. However, when he received this information, he raised concerns about the human rights situation in the country and he was reassured that his advice will be heeded to since he was the chief legal advisor to government. However, this was not the reality as **Yahya Jammeh** rejected most of his advice. The witness stated that when he assumed office the prosecution of suspects charged with certain serious crimes was ongoing. So as Attorney General he ensured that “**those who were not taken to court and were detained without legal opinion were released**”.¹⁶⁵ He stated that initially his request to release the prisoners were not welcomed but subsequently **Yahya Jammeh** agreed and a letter was sent to Director General of the prisons directing the release of the detainees.
169. Furthermore, nine (9) engineers from the Ministry of Works were also detained for a month following an allegation that they were taking bribes from contractors for government

163 The African Centre for the Prevention and Resolution of Conflicts (CAPREC) is an NGO focused on fighting against all forms of violence and on defending and promoting, alone or with other organisations, all principles mentioned in the Universal Declaration of Human Rights. Created in Senegal, caprec.org/en/about-caprec/action

164 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 9.

165 Testimony of BC 43 before the TRRC.

contracts, even upon the receipt of legal opinions from the Ministry of Justice stating that there was no case, Jammeh was still adamant on their detention. **Omar Ndow**, a former Managing Director of Gamtel (The Gambia Telecommunications Company Ltd), who had signed contracts for organizations within Gamtel was arrested and charged with economic crimes and detained for more than a month. The witness stated that the constitutional provision that suspects should not be detained for more than 72 hours was just in the books. The witness added that Jammeh will issue orders for arrests and will also give directives for the continuous unlawful detention of individuals. As for **Omar Ndow**, a report was received from the Central Bank of The Gambia stating that the government tends to benefit from these contracts but even this did not lead to his release. **Alieu Momar Njie**¹⁶⁶ (current IEC Chairman) was also arrested and charged with economic crimes on allegations that he caused economic loss to The Gambia. He was acquitted and discharged on an application of a no case to answer submission made by his lawyer. However, he was later rearrested on the same issue. It was a norm in The Gambia during the **Yahya Jammeh** era for accused persons to be granted bail and bail bonds executed by their sureties but they will still be rearrested after their release on court bail. There was no redress with the courts because the Judges that should hear applications for orders of prerogative writs were receiving instructions from Jammeh. There was no prospect of getting justice in cases that were presided by certain Nigerian Judges.

170. **BC 43**, represented a Police Officer charged with abuse of office and aiding and abetting the escape of a prisoner. He and his co-accused were acquitted and discharged by Court, however he was dismissed from the Police Force before he was charged. According to the witness, if a civil servant was arrested, it was not uncommon to be dismissed even before the conclusion of investigations and sometimes even before prosecution. **Aba Gibba**, the Director of Planning at the Kerewan Area Council was arrested and detained for an alleged offence relating to the distribution of canteens that were built in Farrafeni. The case was mentioned in Banjul and he was granted bail and then the case was transferred to Farrafeni. **Aba Gibba** was dismissed before he was even arraigned before court. **BC 43** decided to send a letter for the reinstatement of **Mr. Gibba** and when this letter reached **Yahya Jammeh**, he ordered that **BC 43** withdraw his letter or he would be arrested. As this was never communicated to him, he sent another letter for the reinstatement of **Mr. Gibba**. Jammeh ordered his arrest and detention and torture.
171. “On February 28, 2015, the African Commission on Human and Peoples’ Rights (ACHPR) adopted a resolution on the deteriorating rights situation in Gambia and called on the government to invite the commission to conduct a fact-finding mission into events after the December 2014 attempted coup. Gambia has not submitted reports on implementing the ACHPR Charter for two decades, with 10 reports outstanding, and has not authorized ACHPR fact-finding missions”.¹⁶⁷ It was also a norm during the **Yahya Jammeh** regime for the State to refuse to fulfil its obligations under international law to report the human rights situation of the country as required under the Universal Periodic Reporting guidelines.¹⁶⁸

166 Sacked mayor of Kanifing Municipal Council (KMC), Mr. Alieu Momar Njie, was the Mayor of Kanifing Municipal Council and the Chief Commissioner of the Gambia Scouts Association, appeared before Principal Magistrate, Moses Richards on Monday 24 September.

167 Human Rights Watch, ‘State of Fear, Arbitrary Arrests, Torture, and Killings’, < <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings>>, accessed 30th/06/21.

168 Yahya Jammeh said the Gambia should also be writing to ask about the human rights of other countries.

APRIL 10TH AND 11TH STUDENT PROTESTS

172. In 2000, following the April 10th and 11th student protests, **Joseph H. Joof** was appointed as a member of the Commission of Inquiry to look into the events of April 10th and 11th. He claimed that there was no interference by the Executive in the proceedings before the Commission of Inquiry. He also stated that during the hearings, they called lots of witnesses including both students and security officers and the evidence revealed that the orders to shoot the students came ‘*from above*’.¹⁶⁹ However, the evidence before them was not sufficient to hold anyone liable for giving the order of the shooting. He also stated that following the findings of the Commission of Inquiry that the security officers were deployed and they fired live bullets at students and some were killed and some injured, they made recommendations that the perpetrators should be held liable before the courts and the victims compensated. The executive was not satisfied with the recommendations because Jammeh’s position was that the students were to blame. The Indemnity Act of 1982 was amended so that the security forces would not be held accountable for their action. According to **Joseph H. Joof**, Act No. 5 of 2001 which amended the Indemnity Act 1982, did not indemnify the security officers of their actions during the April 10th and 11th incident because the provisions of the Act only apply during public emergencies and the events of April 10th and 11th was not declared a public emergency.
173. **Fatou Jagne Senghore** told the Commission that the defining moment during her human rights career was the April 10th and 11th 2000 protests in which school students were killed and injured by security forces. She stated that on the 11th April, she and some of her colleagues issued a statement condemning the actions of the security forces and thereafter the coalition of human rights defenders was formed. “*The fear of many affected families and the indifference of opinion leaders that followed such a sad incidence made me realize how important the challenges of working in human rights in the Gambia were, but it had increased my resolve to stand up and defend human rights. With a group of colleagues, we created a coalition of human rights defenders to support the victims and their families and to hold the government to account. We tried to support the victims, raised concerns on the state of affairs and got involved in some of the court cases*”.¹⁷⁰ Following this incident, the government decided to pass the Indemnity Act to indemnify the actions of the security officers although a Commission of Inquiry was set up which recommended prosecution of the perpetrators. “*During that time, a lot of pressure was on Judges and lawyers and human rights organizations. A case in point, one of our colleagues, Muhamed Lamin Sillah, the spokesperson of our coalition was arbitrarily arrested, detained and maltreated. His case dragged and was later brought before a judge*”¹⁷¹. He subsequently left the Country after his release”.¹⁷² There was the case of **Shyngle Nyassi** who was a member of the opposition and he was arrested for expressing his opinion and denied bail. **Momodou Dumo Saho** was also accused of treason and the Coalition of Human Rights Defenders took up his case.

HIGHLIGHTS OF EX-PRESIDENT JAMMEH’S REGIME

174. **BA57** revealed that under Jammeh, there were two parallel systems of government in The Gambia, the legitimate government that was elected into office with the President as the

169 Testimony of Mr. Joseph WITNESS. Joof, 26th April 2021, page 12, lines 253.

170 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 2.

171 [BBC News | AFRICA | Gambian rights activist released](#)

172 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 2.

head of the Executive, followed by the Vice President, Cabinet Ministers and Civil Servants on the one hand and contrastingly on the other side, a pseudo government which was in actually more powerful than the legitimate government people voted in and one only knew of the real existence of this secondary regime when one falls out of favour or on the bad side of Jammeh. The witness in his word stated, “*many atimes when Yahya Jammeh leaves the jurisdiction of The Gambia, the Vice President is not Isatou Njie Saidu, it is usually General Sulayman Badjie. Isatou Nje-Saidu is there outwardly as Vice President but in actual facts the country is being run by General Sulayman Badjie and Yahya Jammeh. The personnel involved are usually some Cabinet Ministers, marabouts, junglers and so on and they’re mostly effective during the night*”.¹⁷³ The witness also stated that **Yahya Jammeh** had a wide and effective network and he posted his people everywhere, placing NIA officers in different offices, homes and jurisdictions and this was how he got access to information from everywhere and he used such information to harass and persecute persons. **BA57** also stated that there were members of the GBA that used to advise **Yahya Jammeh** on legal matters. He also said that there was a link between the NIA and the Junglers because when he was arrested one of the security officers came and informed him that ‘*they’re coming for you tonight, you have to be strong*’,¹⁷⁴ and the Director General of NIA and all the officers knew that the Junglers will be present at the NIA to torture certain detainees.

175. **BA57** also stated that he had a conversation with **Solomon Jammeh**, a member of the Junglers at the time, who informed him that Jammeh instructed them to commit certain inhumane atrocities like killings and tortures. **Yahya Jammeh** also had lots of marabouts who assisted him spiritually to terrorise the population. **BA57** stated that one of **Yahya Jammeh’s** marabouts **Abdou Nyang**, visited him in his office and informed him that **Yahya Jammeh** gave him names of certain individuals to check their degree of loyalty to him. The witness also confirmed that Jammeh personally directed the prosecution of certain individuals based on the advice of these marabouts. The Green Boys and Girls were also a part of this ‘special government’ and they acted with impunity strengthening **Yahya Jammeh’s** political agenda by brutalising people. **BA57** also stated that he received information that Jammeh himself was a part of the Junglers and in some cases, such as those of **Lang Tombong Tamba** and **Landing Sanneh**, he personally participated in their tortures.
176. **Yahya Jammeh** was also engaged in illicit drug trafficking with some Venezuelans who were caught with about three tons of drugs and vast sums of money. They were arrested, prosecuted and convicted and **BA57** states that when he met them in prison, they made it clear that Jammeh was the head of the West African Cartel in this illegal narcotics enterprise. This was a big scandal for The Gambia and the whole international community received information that The Gambia was a transit point for trafficking drugs and **Yahya Jammeh** was covertly and that was why he sacrificed the Venezuelans who were prosecuted and convicted. **BA57** states that during a meeting at the State House when the drug issue came up, Jammeh suggested that the drugs should be sold.
177. **BA57** revealed that **Yahya Jammeh** ensured that concoctions that have been prepared by his marabouts were poured in the National Water and Electricity Company (NAWEC) tanks for the whole population to drink in pursuit of his self-aggrandizement and perpetuation in

173 Testimony of BA57 before the TRRC.
174 Testimony of BA57 before the TRRC.

power. During his cultural festival events, he also gives these concoctions to the cows, sheep and goats that were later slaughtered, cooked and the food was distributed to attendees.

178. According to this witness, **Yahya Jammeh’s** ambition to remain in power outweighed all other considerations and he would go to any length to achieve this aim. He used poisonous substances to kill some of his opponents. **BA57** also states that **Solomon Jammeh** told him that the poison came from Ukraine. **BA57** states that Solomon Jammeh informed him that he went to visit Jammeh and the latter offered him some food and money and they had a good laugh. Subsequently, he fell ill. According to the witness, **Solomon Jammeh’s** sickness lasted a long time and he eventually passed away. The witness said that it was highly likely that this poison was also used to kill **Famara Jatta, Wilson Jatta, Solomon Jammeh, Musa Jammeh, Samba Bah, Tumbul Tamba, and probably Alagie Modou Sanyang**,¹⁷⁵ as the circumstances surrounding all the above deaths were suspicious and characteristically similar in nature as being part of a systematic operation.
179. According to **BA57**, Jammeh also had lots of female friends, known as ‘protocol girls’ who he invites to his events or travels with them and entice them with lots of money. He also picks up girls on the highway and invite them over to Kanilai or State House and sometimes against their will. He claims that Jammeh had affairs with married security officers, female ministers, female cleaners and some random women. One **Mariama Camara**, an Army Officer who was married, was allegedly impregnated by **Yahya Jammeh** and she was later found dead with her husband in suspicious circumstances.
180. **BA57** narrated that he was informed by **Ben Jammeh** and **Solomon Jammeh** that a container full of money was sent by Sani Abacha from Nigeria. The container was received at the Airport and it was later transferred to NIA and then Kanilai. **BA57** also claimed that Jammeh was also benefiting from the Liberian civil war and it was even rumoured that Jammeh was using some of the vehicles of **Charles Taylor** and he and his wife frequently visited the Gambia at the time. **BA57** also states that he had received information that **Yahya Jammeh** was a ‘cultist’ and as such babies were being sacrificed and buried alive on his instructions. The witness said that he heard that a baby was buried in front of the Mile II prisons and at the State House as well. **Yahya Jammeh** was also engaged in several businesses and did his activities without receiving any advice from the Attorney General’s Chambers and Ministry of Justice regarding the legality or otherwise of the President being involved in business.

POLITICAL IMPASSE

“The first truth that must be recognize is that the freedom Gambians enjoy today is not given to us by any leader, politicians, or group of politicians. it be on record that the Gambian people though the ballot box voted for change and reasserted their rights and sovereignty as citizens.

I want to thank the Gambian people for finally deciding to use their vote on December 1st to dismantle a 22 years old dictatorship. We are here today because Gambians decided for change, Gambians decided to restore our dignity and sovereignty and as people this is a starting point of our conversation on a road to rebuilding our nation. A country that is founded on democratic values of tolerance, love for country, respect for rule of law and justice”.

Mr. Salieu Taal
President of the GBA

175 Testimony of BA57 before the TRRC.

181. During the political impasse **Mama Fatima Singhateh** denied that Jammeh had the intention to subvert the sovereign will of the people when he denied the election results of 1st December 2016 after conceding earlier. Prior to the 2016 presidential elections, **Fatou Jagne Senghore** mobilized her team who held various meetings with political parties, CSO's, media institutions and other individuals to discuss the issue of the election and the likelihood of forming a coalition. *“During the campaign, I worked with Gambians based in Dakar to provide support to the coalition, I hosted their delegation and facilitated access to local and international media among others. During the coalition talks, I held mediation to help keep the unity before the elections. I provided briefings to most international media visiting Gambia during the elections and also supported the coalition to access the Senegalese and international media few days leading to the polls as access to local media was limited. When the Coalition won, I facilitated most of the first interviews with Senegalese media and may others”*.¹⁷⁶ It was clear at this point that the Gambian people were ready for change and that they were fed up with the system of tyranny.
182. Following **Yahya Jammeh's** announcement rejecting the election results, the GBA came together to condemn Jammeh's change of position. **Shierff Tambadou**, elected as the Interim President of the GBA during this period, the Bar convened an emergency general meeting at Coco Ocean on 14th December 2016. After the meeting, the GBA held a press conference and delivered a powerful statement condemning the actions of Jammeh. *“After the GBA Press Statement, we reached out to the Pan African Lawyers Union (PALU) who were very instrumental in getting the majority of African Bar Associations to issue statements of solidarity which got the attention of the African Union and ECOWAS”*.¹⁷⁷
183. **Fatou Jagne Senghore**, along with her colleagues ensured that the narrative that the election was won freely, fairly and peacefully should be broadcast across the region. *“Mamadou Ibra Kane of TFM organised a special Edition that night in which I agreed to participate and facilitate contact for President Barrow to be called. Mankeur Ndiaye, former Senegalese Minister of foreign affairs was also on the programme, he rejected the position of Jammeh and reiterated that ECOWAS will not accept the plans to reverse the results, I was invited to give our perspective and expand on that. It was agreed to call President Barrow to give his positions. Ndey Tapha [Sosseh] and I managed with the support of Demba [Jawo] and Aisha [Darbo] to get him in the programme, after he hesitated a bit, stating that he wanted to wait till the next day but, in the end, he agreed to speak, the first intervention was not persuasive, I further convinced him after he hesitated a bit and guided him to reframe his message and got him back in the programme with a firmer tune. His message changed the narrative and headlines of the news in Senegal that night as his tone was more reassuring and media amplified his condemnation of the decision by Jammeh. From there, the marathon started I did the morning edition on RFI and other interview international news channels. Most of us were on the different media across the country to ensure we send a clear the message”*.¹⁷⁸
184. **Yahya Jammeh** also tried to challenge the election results before the Supreme Court by filing a petition. However, the Supreme Court panel was not fully constituted and this created the difficulty of mobilising a full panel of Supreme Court Judges to hear his petition. **Fatou Jagne Senghore** stated that they also tried to send communications to Judges in Nigeria and Sierra Leone to send Judges to hear **Yahya Jammeh's** petition. **Salieu Taal** stated, “we

176 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 9.
177 Statement of Mr. Salieu Taal to TRRC, page 10.
178 Statement of Mrs Fatou Jagne Senghore to the TRRC, page 10.

further used our contacts and provided a dossier that ensured that the Nigerian Government did not send Judges to the Gambia during the political impasse as Jammeh's last option was to challenge the validity of the election but had not provided funds to empanel the Supreme Court for over 18 months”.¹⁷⁹ *“We also asked for the resignation of the [Chief] Justice Fagbenle”*.¹⁸⁰ **Yahya Jammeh** went further to lock down the IEC, however following some enquiries, the safety of the IEC officials were confirmed.

185. **BC 43** further revealed that Jammeh offered to reinstate him on several occasions and during the time of the political impasse, Yahya Jammeh sent delegations to convince him to join his legal team to file a petition challenging the December 2016 election results. **BC 43** was offered millions of Dalasis to join **Yahya Jammeh's** legal team but he refused and decided to leave the Gambia for his safety.
186. In addition, **Yahya Jammeh** imposed a state of emergency provisions under the 1997 Constitution to suppress the movement of people and to instill fear in the citizenry. **Yahya Jammeh** also tried to use the Constitution pursuant to section 63 (6) of the 1997 Constitution to extend the term of the National Assembly members with the deliberate intension of implicitly extending his own term in office. This was a desperate attempt by **Yahya Jammeh** and his APRC National Assembly members to stage a constitutional coup by subverting the sovereign will of Gambians who by a majority voted him out, in order to prolong **Yahya Jammeh's** presidency.
186. **Salieu Taal** stated that, *“recognizing the moment and sense of solidarity of Gambians, I initiated the movement #GambiaHasDecided with some friends to amplify the voices of the citizenry using different media – social media, T-shirts, billboards”*.¹⁸¹ As a result of this initiative, **Salieu Taal** was targeted and he received information that **Yahya Jammeh** ordered for his arrest hence he left Gambia for Senegal where he continued his activism up until the inauguration ceremony.
187. Legal and other procedures were laid in place to ensure that the President elect, **Adama Barrow**, was sworn in at the Gambian embassy in Dakar, Senegal. This was significant because **Adama Barrow**, who was taken out of the country by ECOWAS for his safety, could not have been sworn in The Gambia where **Yahya Jammeh** was holding out and adamant that he was not going to vacate the seat. However, as the Gambian embassy in Senegal was under international law a jurisdiction of Gambia, a decision was made that the swearing in ceremony in the embassy would legally suffice. **Fatou Jagne Senghore** highlighted the paramount importance of this historic moment in the political landscape of The Gambia. **Sheriff Tambadou** also highlighted the events of 19th January in which he, acting as the interim President of the GBA, sworn in **President Adama Barrow** in the Gambian embassy in Dakar, Senegal in the following terms *“I believe it is after the swearing in ceremony when he took the Oath of Office that President Barrow had the legitimacy to rally international support, to call for assistance. He was therefore vested with power of Commander in Chief of The Gambia Armed Forces, that is why he addressed them directly and gave them orders, that facilitated the rest”*.¹⁸² He described the 22-year rule of **Yahya Jammeh** as ‘terrorism’ because the people lived in the state of constant fear, lawyers were targeted by **Yahya Jammeh** for merely representing their clients and there was no confidence in the dispensation of justice by the Judiciary.

179 Statement of Mr. Salieu Taal to TRRC, page 10.
180 Letter dated 13th of December 2016 asking for Justice Fagbenle to resign.
181 Statement of Mr. Salieu Taal to TRRC, page 10.
182 Testimony of Mr. Sheriff Marie Tambadou, 29th March 2021, page 55, lines 1224 to 1228.

FINDINGS

THE COMMISSION FINDS AS FOLLOWS:

188. That the former President, **Yahya Jammeh** abused his authority under Section 141 (2) (c) of the 1997 Constitution of The Gambia to appoint and terminate the appointment of judges by (a) appointing judges without the necessary screening to determine their suitability and qualification for appointment as judges; (b) appointing judges without consultation with the Judicial Services Commission as required by law and (c) terminating the appointment of judges whom he believed were not working in his interest in total disregard of established procedures.
189. That the former President **Yahya Jammeh** established a system of appointing unqualified and un-vetted non-Gambians to judicial positions “mercenary judges” on short term contracts so that they would be beholden to him, they would in turn become compliant judicial officers who would deliver favourable rulings in matters of interest to him.
190. That it was mostly judicial officers appointed by former President **Yahya Jammeh** on short term contracts who were complaint to his demands as compared to their counterparts seconded to The Gambia by the Commonwealth. The Commonwealth Judges have demonstrated integrity and decorum expected of judges sometimes with severe consequences.
191. That former President **Yahya Jammeh** interfered with the Judiciary by giving directions to the Chief Justice on his desired outcomes on cases of interest to him and to which judge certain cases may be assigned to.
192. That former President **Yahya Jammeh** had complete control of the Judiciary to the extent that he ensured that government officials could defy court orders considered unfavorable to the former President with impunity.
193. Under our Constitutional arrangements the functions /powers of the Attorney General and Minister of Justice are wielded by one and the same person. During the **Yahya Jammeh** era, political considerations outweighed legal imperatives in decisions of the Attorney General.
194. The execution of the nine death row inmates in August 2012, and the manner in which it was carried out procedurally was unlawful, as it was not conducted in accordance with provisions laid down under the Criminal Code. The Commission further finds that the Attorney General and Minister of Justice, **Lamin A.M.S Jobarteh** participated in organizing the executions of nine death row inmates, the without paying due regard to the law and without ensuring that the necessary safeguards were adhered to. Even in the face of these blatant violations the erstwhile Attorney General and Minister of Justice on several occasions publicly defended these unlawful executions.
195. **Amie Bensouda** and **Fafa Mbai** by virtue of their positions as Solicitor General and Attorney General and Ministers of Justice respectively contributed to the drafting of some of the

draconian Decrees for the Junta. These Decrees were used by the Junta to violate the rights of Gambians. Including especially, Decrees No. 2 & 3 which were used by the AFPRC to retrospectively legitimize the arrest of both security personnel and civilians; Decree No. 4 which was used to violate the political rights of individuals and the right to freedom of speech and expression and Decree No. 11, 14, and 15 which were used to target officials of the **Sir Dawda Kairaba Jawara’s** government and to seize their properties of individuals. The Decrees were saved by Section 7 (c) of the 1997 Constitution of the Gambia. These decrees have no place in the laws of a democratic society.

196. The Former President **Yahya Jammeh** used three laws to attack public servants he perceived were not acting in his interest. These include the section criminalizing abuse of office and neglect of official duty. The second giving false information to a Public Servant and the third the Economic Crimes Decree. The President used these laws as weapons to punish his opponents unfairly.
197. That in dealing with the human rights violations of April 10th and 11th 2000, the National Assembly and then President directed the amendment the Indemnity Act of 1982. This amendment extended the application of the Act to the security and public officers who were responsible for the deaths, torture, physical and sexual abuse of the students during the demonstration. The effect of this law is intended to shield the President and his subordinates from responsibility for these massive human rights violations. These indemnity laws are not permissible in a democratic society as they are contrary to customary international law.
198. The former President **Yahya Jammeh** saw The Gambia Bar Association (GBA) as a threat to his plans to entrench himself in power. Consequently, he tried to weaken the Association by encouraging the setting up of a rival group. This interference rendered both groups less effective in their efforts to hold the government accountable to upholding human rights and freedoms and respect for the rule of law. He also targeted individual lawyers who he believed were working against his interests and subjected them to gross human rights violations.
199. That during the 22 years of the Jammeh regime, Human Rights Defenders, journalists, were targeted, arrested, detained for long periods without access to lawyers or the courts and subjected to gross human rights violations to the extent some of them left the country for fear of further/being persecuted. The Gambia was not fulfilling its Universal Periodic Review obligations during this time and Special Rapporteurs were denied access to the Mile II prisons.
200. The termination of **Justice Na Ceesay Sallah-Wadda** in 2016 was unlawful as it did not follow due process. Her reappointment in 2017 instead of reinstatement significantly impacted her standing in terms of seniority in the Court of Appeal. This is serious injustice considering her long service both at the Ministry of Justice and the Judiciary. **Justice Sallah-Wadda’s** 25 years-service accrued benefits in terms of seniority was wiped out by the termination and the reappointment as opposed to reinstatement did not restore her to the position, she would have been had the termination not occurred.
201. The extension of the term of Parliament by the National Assembly members in January 2017 was an implicit attempt to extend the term of Jammeh’s presidency. The extension was

aimed at subverting the sovereign will of Gambians who voted **Yahya Jammeh** out in the December election and this was akin to a constitutional *coup d'état*. Notwithstanding, since the Commission did not inquire into the role of **Mama Fatima Singhateh** in Parliament's attempts to usurp the democratic will of the people and in the absence of sufficient evidence relating to this issue, the Commission is unable to make conclusive findings against her.

RECOMMENDATIONS

THE COMMISSION RECOMMENDS THAT:

202. Section 141 (2) (c) of the 1997 Constitution which grants power to the President to dismiss Judges should be repealed as this provision encourages interference by the executive in the Judiciary. This will also ensure that there is security of tenure for Judges.
203. The Constitutional provisions on the qualification for appointment of Judges should be adhered to and an independent committee should be set up and supervised by the Judicial Service Commission to screen candidates for the appointment of Judges
204. Guidelines regulating the appointment of foreign judges should also be introduced.
205. The government should undertake to at all times respect the Constitutional provisions on judicial independence and the principles of separation of powers as enshrined in the Constitution of The Gambia.
206. **Justice Agim, Justice Fagbenle, Justice Wowo, Justice Paul, Justice Nkea, Justice Ikpala, Justice Amadi, Justice Abeke, Justice Kayodeh, Justice Alagbeh** as they were then known and all judges who fall under the realms of 'mercenary judges' should be banned from holding any public office in The Gambia.
207. The government should review the law on refusal to obey court orders by public officials with a view to putting in place a more stringent regime that would ensure compliance.
208. The government should study the implications of the fusion of the two positions of Attorney General and Minister of Justice and consider the potential benefits of separating the two functions for more effective administration of justice.
209. In view of the conduct of the former Attorney General and Minister of Justice, **Lamin A.M.S Jobarteh** in the unlawful execution of the 9 Mile 2 death row inmates, the General Legal Council should petition **Lamin A.M.S Jobarteh**, interrogate his conduct and revoke his practising licence.
210. The government should study the subsisting Decrees saved by Section 7 (c) of the 1997 Constitution with a view to repealing those Decrees that are antithetical to a democratic society.

211. The 1997 Constitution is deeply flawed due to the number of amendments that were made to the original and needs to be replaced with one that meets the aspirations of The Gambian people.
212. The retroactive effect of the Indemnity Act should be repealed.
213. The government should put in place institutional arrangements that would ensure greater access to justice by all citizens in the country especially those in the rural areas.
214. Justice Na Ceesay Salla-Wadda should be reinstated and her reinstatement be back dated to 2017. The reinstatement should substitute the reappointment. Reinstatement will be in line the rules of restitution and this is consistent with natural justice and fairness and taking into account her long standing service in the justice sector both as State Counsel and Judge.

