

GAMBIA CENTRE FOR VICTIMS

OF HUMAN RIGHTS VIOLATIONS

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**To: Gabriella Habtom, Secretary of the Human Rights Committee,** **ghabtom@ohchr.org**

CC: ccpr@ohchr.org.

**Re: Submission of an alternative report on the country situation in The Gambia to the Human Rights Committee**

**Background:** Under the 22-year rule of Yahya Jammeh, reports of human rights violations and abuses were rife characterized in the form of killings, disappearances, sexual violence, arbitrary arrests and detention, indiscriminate and illegal use of force, acts of torture, cruel, inhuman and degrading treatment amongst others, meted out on citizens and residents in The Gambia.

Under his rule, the enjoyment and exercise of rights and freedoms, including freedom of expression, association and assembly were curtailed and crushed. A number of ordinary citizens, government officials, members of civil society including journalists, were abducted, arrested, illegally detained and imprisoned. Intimidation was used to suppress dissent and preserve the President’s grip on power. Other human rights violations currently registered by the Center concern: corruption and embezzlements of public money, land or property expropriation, forced labor, inadequate HIV treatment and denial of appropriate treatment sometimes resulting in death as well as, to a limited extent persecution of lesbian, gay, bisexual and transgender (LGBT) people.

After the change of regime in 2017, many victims felt their voices were not being heard individually or collectively. As a result thereof, a number of victims and human rights activists foundedthe Gambia Center for Victims of Human Rights Violations (hereinafter referred to as the Victims’ Center), which was registered in April 2017 as a non-profit organization, under the Companies Act 2013, Company Registration No. 2017/C4233.

The first of its kind in the country, the Center provides a platform for the voices of victims to heard, and through the Center, channel their grievances for onward advocacy, engagement and possible redress in collaboration with both governmental and non-governmental bodies engaged in the fight against impunity and for truth and justice. The mission of the Victims’ Centre is to be an advocacy platform for Truth, Justice, Accountability and Reconciliation.

As the Human Rights Committee is examining the situation of the Republic of The Gambia regarding the implementation of civil and political rights, the Victims’ Center would like to highlight the following issues:

**Right to an effective remedy (art. 2)**

The Victims’ Center congratulates the Gambian government for the creation of a Truth, Reconciliation and Reparations Commission (TRRC), established following nationwide consultations on its establishment and for organizing a Stakeholders’ Workshop on transitional justice in June 2018.

The Victims’ Center is however concerned that the establishment of the TRRC is considered a priority over other transitional justice mechanisms. This concern was expressed already in June 2017 by the Working Group on Enforced and Involuntary Disappearances after their mission to The Gambia: “*The WGEID supports the establishment of this mechanism, while stressing that transitional justice measures must be understood in a broader way and that all measures taken in the areas of truth, justice and reparation should be parallel and go hand in hand*”.

Other mechanisms that should be implemented as a matter of priority are the following:

1. **Formulate a prosecutorial strategy for individuals already in custody as well as for those already charged with serious crimes, but set-free.**

Eleven former security officers, including many from the Junglers, the notorious military unit that took its orders directly from former President Jammeh, have been in detention for over a year without being charged.

The Victim Center believes that the judiciary has more incentives to offer to such individuals than the TRRC, which in addition has not started its work and which will release its findings in more than two years from now.

Several of the already detained individuals seem ready to cooperate, as demonstrated by their confessions leaked in the media. Their statements could help secure evidence against higher level perpetrators and help in locating the burial sites of enforced disappeared victims (see below).

* The Standard: [Jungler Reveals Daba, Others Killed, Thrown Into A Well In Foni](http://standard.gm/site/2017/12/29/jungler-reveals-daba-others-killed-thrown-well-foni/) –December 2017

# The Standard: [Junglers Explain How 2 Gambian-Americans Were Killed](http://standard.gm/site/2018/01/05/junglers-explain-2-gambian-americans-killed/), January 2018

# The Standard: [Jungler says he will testify against Jammeh even at ICC](http://standard.gm/site/2018/02/09/jungler-says-will-testify-jammeh-even-icc/), February 2018

Several well-known high level officers of the Jammeh regime have been charged but set free. One of them is David Colley the former Director of the Mile 2 prison, a prison known for its inhumane and deadly detention conditions. In its March 2015report on The Gambia, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez stated that the Mile 2 prison “conditions constitute cruel, inhuman and degrading treatment or punishment”. (para. 101)”. David Colley was charged with murder of Baba Jobe and abuse of office, in March 2018, was briefly detained but set free again.

1. **Enforcement of court orders and judgments**

Background:

* Chief Ebrima Manneh v The Republic of The Gambia (Suit ECW/CCJ/ APP/04/07, judgment ECW/CCJ/JUD/03/08, 5 June 2008): In 2008, the Court held The Gambia responsible for disappearing Ebrima Manneh, a journalist with the Daily Observer and found that Manneh was illegally arrested since 11 July 2006 and kept in detention. The Court also ordered The Gambia to immediately release Manneh and pay damages of $100,000 to Manneh or, in his absence, to his family.
* Musa Saidykhan v The Republic of The Gambia (ECW/CCJ/APP/08/10): In 2010, the Court found that Gambia government agents were responsible for the torture, whilst in detention, of Musa Saidykhan, a former chief editor of The Independent newspaper, who had been arrested on 27 March 2006. He was awarded $200,000 in damages.
* Deyda Hydara v The Republic of The Gambia (ECW/CCJ/APP/30/11): In 2014, the Court found that the Gambian authorities had failed to conduct a proper investigation into the murder of Deyda Hydara, a Gambian journalist and founder of The Point newspaper who was gunned down in a Banjul suburb on December 16, 2004, in a brutal violation of his right to life. The court awarded $50,000 to the family of Deyda Hydara.

The Victims’ Center welcomes the efforts by the new government to establish a timeline to compensate the plaintiffs and notes that it has already started doing so.As of mid-May 2018, information provided to the Victims’ Center by some of the Plaintiffs point to the following:

* The family of the late Deyda Hydara have stated that negotiations with the government resulted in half of the Court ordered damages being paid to the family.
* Similarly, the family of the late Chief Ebrima Manneh have also received half of the damages that were awarded to them.
* That, however, no further payments had since been made to the families as per the timelines agreed for the balance payments to be made.
* With respect to the status of judgment payouts to Musa Saidykhan who is currently out of the country, whilst attempts by the Victims’ Center to continue direct dialogue with him remain futile, the Victims’ Center notes from engagements with the Gambia Press Union that the government had been trying to negotiate a lower settlement with him which he has rejected. During a follow-up meeting with the Office of the Solicitor General, the Victims’ Center was informed that Musa Saidykhan did not agree to be paid in instalments and that he will be paid in full when resources are available.

However, the Gambia Government has failed to comply with the three Court judgments in terms of investigations and prosecutions of possible perpetrators:

* In May 2017, Gambian police prosecutors charged former colonel **Kawsu Camara** and major **Sanna Manjang**, an army deserter, with "murder and conspiracy" over the killing of Deyda Hydara. According to information publically available (testimonies by former junglers and from other insiders) at least eight other individuals were involved in the commission of the crime and several others in its planning and abiding.
* To the Victims’ Center knowledge no investigations is underway in the other two cases.

1. **Offering medical/financial support to victims of past human rights violations**

The Victims’ Center commends the government of The Gambia for recognizing its works since inception by partnering with them through the Ministry of Justice during the Nationwide consultative meeting and also being given a seat in the TRRC technical committee. However, financial support remains lacking. A commission of enquiries was set up by the former government in 2000, to probe into the cases of the April 10 & 11 student’s demonstrators. The commission at the end of its mission produced a report with some recommendations for the then government to implement, which include a medical treatment for victims in sever medical condition, who failed in fulfilling the recommendations in the report.

Since the coming into power by President Barrow’s government, the Victims’ Center made several consultations with different institutions to acquire medical assistance to those victims some of whom are wheel chair user due to their critical conditions, while some are still living with bullets in their systems. As such the Victims’ Center reached out to the embassy of the Republic of Turkey in The Gambia in 2017 which has offered to pay for the medical treatment in Turkey for the April 2000 victims providing that another institution could cover the traveling costs. The Gambia Ports Authorities offered to pay for air tickets for four victims in 2017. The Victims’ Center had several meeting with government ministries such as health, Youths and sports and other departments like the Gambia Port Authority to follow-up on this but one year after that promise was made, the Gambia government has still not provided any air tickets.

The Victims’ Center calls on the government to fulfil its promise as the victims are in poor health conditions and need urgent medical assistance. Recently a victim who suffered from a heart/liver problems due to torture he received while in detention passed away on the 13th of April, 2018 while under admission at the Edward Francis Small Teaching Hospital in the capital city of Banjul.

**Past human rights violations (arts. 2, 6, 7, 9 and 14)**

The Victims’ Center is concerned about the lack of diligence regarding certain well-known high level enablers/perpetrators of the former regime and even more so by the “recycling” of some of them in the new government, notably as advisors to ministers and as ambassadors. The Victims’ Center believe that people who represented the system in senior posts, who opposed activists and media and who played prime roles in the repression, should not return to strategic positions and be entrusted with reforms (that will affect them).

1. **Undertake a vetting of security officers still working within the police, the intelligence agency, the army and the government**

The police, the intelligence agency, and the army were at the heart of most of the human rights violations during Jammeh’s era, especially the intelligence agency.Its name was changed in 2017from National Intelligence Agency (NIA) to State Intelligence Service (SIS)). While there have been some changes at management level, the institution remains the same, including its location. The currentmanagement of the SIS, both the Director and Deputy Director previously served in the NIA and other high level security sector positions under the former regime.

Very recently, one of the victims registered at the center, an Imam who was tortured at the NIA premises, was greeted by an official of the NIA at the Kairaba hotel in Senegambia. He introduced himself explaining that he had been the one torturing him and explained that he is still working at the – now – SIS. He even gave him his business card. This anecdotal example shows that perpetrators are still holding positions in the security sector and feel safe to talk about their past actions.

The Victims’ Center believes that this institution should be dissolved, given that it has not proven useful throughout the years and especially because of the abuses it carried out. Should it be maintained, at least its location should be changed as the current premises should be considered as a crime scene as hundreds of peoplewere tortured there and dozens killed (see below).

1. **Collaborate with the Ghanaian government in the investigation of the murder of more than 50 migrants in 2005**

Background: In July 2005, approximately 44 Ghanaian migrants as well as some 12 other Africans (from Nigeria, Senegal, Togo, and Côte d’Ivoire) were killed in The Gambia. On May 16, 2018, Human Rights Watch and TRIAL International released a report showing that the migrants were murdered by the “Junglers,” a death squad reporting to ex-President Yahya Jammeh, after having been detained by Jammeh’s closest deputies in the army, navy, and police forces. The same day, Ghanaian NGOs, the sole survivor and the families of the victims called on Ghana to re-open its investigation into the case. The Victims’ Center echoed the call during a public press conference on 17 May 2018 and asked the Gambian government to cooperate in any Ghanaian probe.

In an interview with a TV program (Kerr Fatu) on the same day, the spokesperson of the Gambia Government, Demba Jawo, said that they will cooperate with any request from the Ghanaian authorities in relations to unearthing the truth about their nationals killed in the country in 2005.

The Victims’ Center congratulates the Gambian government for stating that it will support the Ghanaian authorities should they decide to re-open the investigation in this case.The prosecution of Yahya Jammeh in Ghana for this crime would be a first and important step toward ending impunity for past crimes committed in The Gambia by the regime of the former president.

1. **Securing and archiving documentary evidence that is key to uncovering the truth about Jammeh-era violations and holding those responsible accountable**

The Victims’ Center is concerned that along with retaining officials of the former regime, the government has not made any efforts to secure and archive documentary and on-site evidence.

As such the archives of the former National Intelligence Agency have not yet been secured and archived. Worse, what was known as one of the torture chambers of the NIA was cleaned-up and repainted in 2017.

In view of the risk that such evidence is tampered with or destroyed, the Victims’ Center urges the government urgently to find a way to secure and archive this material and to begin the process of identifying documents of potentially evidentiary value, notably by requesting technical assistance from international experts.

1. **Allocating appropriate means and effective leadership to the Missing Persons Taskforce**

The Victims’ Center congratulates the government for the creation of a Missing Persons Taskforce in January 2017. However it is concerned that this taskforce has not been given appropriate means to undertake its mandate to receive and document reports of missing and disappeared persons.

One year after its creation, the Missing Persons Taskforce has not proved effective and has not issued any public report about its activities.

1. **Exhumations by the Government**

The Victims’ Center understands that in 2017, the Gambia Crime Management Unit (CMU) conducted a number of exhumations in an effort to identify the remains of individuals who disappeared or were unlawfully killed and share the information with the victims’ families. According to public sources, the CMU conducted at least five exhumations, only two of which resulted in the finding of mortal remains. Reportedly, the locations were identified by the government after tips or direct testimony/evidence from insiders, in particular, Jungler members.

The first publicly reported exhumation took place on 5 March 2017, which led to recovery of Solo Sandeng’s mortal remains near the western coastal village of Tanji. DNA samples were taken from the victim’s family members around the time of the exhumation. However, the government has not provided any conclusive information to the families in relation to the DNA testing. The second exhumation was conducted on 31 March 2017 by the CMU. According to the Police, the three bodies exhumed were those of Lamin Sanneh, Jaja Nyass and Njaga Jagne, killed on 30 December 2014. The bodies were found in a military firing range in Tintinba close to Kanilai. Several members of the press were invited, the exhumation was broadcast live and members of the victims’ families were invited to attend.

In both instances, the government has not officially confirmed to the families the identity of the remains (as a result of DNA testing), thus, further delaying the return of mortal remains to the families.

In April 2017, the CMU conducted at least two additional exhumations, but unfortunately, no mortal remains were found. The Victims’ Center has been informed that the government has ceased all exhumations.

1. **Location of Mortal Remains and Forensic Investigations**

The Victims’ Center understands that in order for any forensic investigation to take place, those searching for the mortal remains must first gather all information on the cases being investigated, including biological information relating to the individuals being sought and details about the presumed location of the mortal remains. The Victims’ Center and other NGOs have been working on collecting information on the individuals who were forcibly disappeared. However, the Victims’ Center has not been able to collect much information on the specific location of the mortal remains, in large part because this information is in the hands of those involved or having witnessed the murders and disposal of bodies. The Victims’ Center believes a number of these perpetrators are currently detained or in custody in The Gambia. However, Victims’ Center is not aware of steps taken by the Government in charging many of these individuals and providing the necessary incentives for these individuals to share information about the location of the disappeared. The Victims’ Center believes that the judiciary has more incentives to offer to such individuals than the TRRC, which in addition has not started its work.

The Victims’ Center also understands that forensic investigation~~s~~ in cases involving the recovery and analysis of skeletal remains is a complex process that requires various experienced scientific specialists and disciplines. We understand that this is due to the fact that the Government currently does not have sufficient forensic specialists, capacity and resources.

In an effort to address the lack of information regarding the location of burial sites of those forcibly disappeared during Yahya Jammeh’s government, the Victims’ Center requests that the following steps be taken by the Government:

1. Provide incentives to those detained and with information about the precise locations of the mortal remains of those forcibly disappeared during Yahya Jammeh’s government;
2. Secure the known or presumed grave sites across The Gambia, by enclosing the areas alleged to hold the grave sites and ensure restricted access to these areas;
3. Coordinate with international forensic specialists to conduct a preliminary evaluation on the current state of Gambia’s forensic capabilities;
4. Conduct an extensive forensic investigation resulting in the exhumation and identification of mortal remains; and
5. Return all mortal remains to the victims’ families.
6. Return of all items that were illegally taken from family members of victims.

**Freedom of opinion and expression, and freedom of association (arts. 19 and 22)**

The Victims’ Center welcomes **the 14 February 2018 landmark decision by the Court of Justice of the Economic Community of West African States (ECOWAS), ruling that the Government of the Gambia must repeal laws on criminal defamation, sedition, and false news.**

The Victims’ Center calls on the government to fulfill its campaign promise **to implement this decision as a priority, and recognize its duty to protect the rights of journalists and the public to speak out freely on issues of public interest.**They include laws banning criticism of officials and laws prohibiting the “publication of false news”. Many journalists were targeted under these laws and several of them has to flee into exile during the Jammeh regime.

The right to peaceful protest should also be enshrined in law, with security forces instructed to avoid the use of force to disperse peaceful gatherings, and offences, such as holding a procession without a permit under the Public Order Act, repealed. Under the previous regime, opposition assemblies were regularly prohibited or dispersed. In April and May 2016, dozens of opposition protestors were arrested after a peaceful demonstration, and in April 2000 thirteen students and a journalist were killed when security forces opened fire on students peacefully protesting.

***Freedom of assembly and right to life – 18 June 2018 events***

On 18 June 2018 members of Gambia’s Police Intervention Unit (PIU), a police paramilitary force, clashed with residents of Faraba Banta, a village 50 kilometers south of the capital, Banjul, after the local population blocked mining-related traffic. Witnesses said protesters threw stones and burnt vehicles and that security forces fired live ammunition, killing two and injuring at least 8 more. Several PIU officers were also injured.

The Gambia Center for Victims of Human Rights Violations, the Victims' Center, wishes to extend its condolences to the families of the victims of the Faraba Banta incident who were shot, killed and injured by members of the PIU.

The Victims' Center is alarmed by the fact that members of the PIU used excessive force when it opened fire on a group of demonstrators who were merely voicing their concerns over issues of interest to them. During the process many innocent civilians that were engaged in exercising their constitutional right of a peaceful demonstration were subject to grave acts of human rights violations by state actors working for and on behalf of The Gambia Government.

Through the actions of the PIU, the Government has clearly failed in its responsibility to protect its citizens who were at the time only exercising their civic rights. The Victims' Center calls on the Government to urgently fulfill its obligations and responsibility to respect and fulfill all human rights for all by ensuring speedy and impartial investigations into the actions by those involved in the shooting incident.

The Victims’ Center calls on the Government to take speedy action so that impunity is not the order of the day and ensure accountability and justice for all the victims.

The Government should provide reparations for the victims, including by ensuring that the injured receive urgent and appropriate medical attention.

While we recognize the role of the PIU and other arms of law enforcement to ensure law and order, the exercise of this duty must however be practiced alongside the principles of proportionality and necessity. The Victims' Center urges the Government to arrange for tailored training, including on human rights for law enforcement officials, to ensure professionalism in the conduct of their policing duties.

The Victims’ Center welcomes the fact the government has announced that a commission will be set-up to investigate the 18 June 2018 events. However the terms of reference of this commission should be revised. Currently the terms of reference of the commission indicate that it is mandated only with this incident and should then recommend measures to prevent a recurrence. But the Faraba issue is more than just a protest by residents and the use of force by the police.

The Faraba incident reflects a deep-seated structural imbalance regarding laws, policies and institutions in terms of the economic, social and cultural rights of communities. It is about the right of communities to their overall environment including land and natural resources and the way and manner private capital access those productive and extractive resources. Hence the Commission must seek to understand how the ownership, management, access and control of these resources are covered by law.

The Victims’ Center calls on the government to revise the terms of reference in order to also cover the issue of civil and political rights and how best could citizens enjoy these rights. In other words the Commission should look at the role of police in maintaining law and order during protests without having to unleash violence on the people. It should therefore look at the capacity of law enforcement in terms of knowledge, skills, tools as well as values.