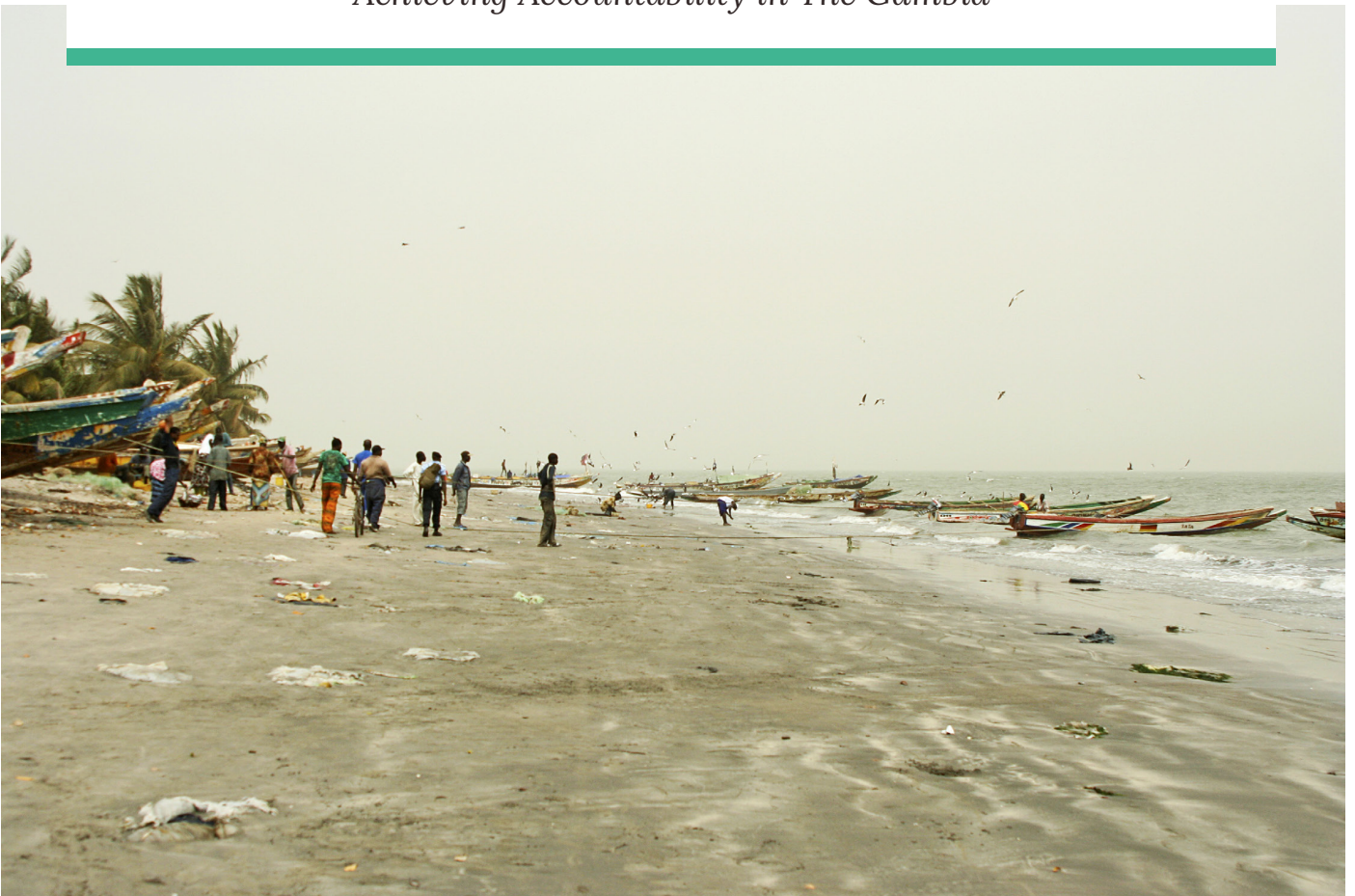




MISSION REPORT OF THE AGJA-WAYAMO DELEGATION TO THE GAMBIA

*Meeting Expectations on the Road to Justice:
Achieving Accountability in The Gambia*



THE GAMBIA | MAY 2018

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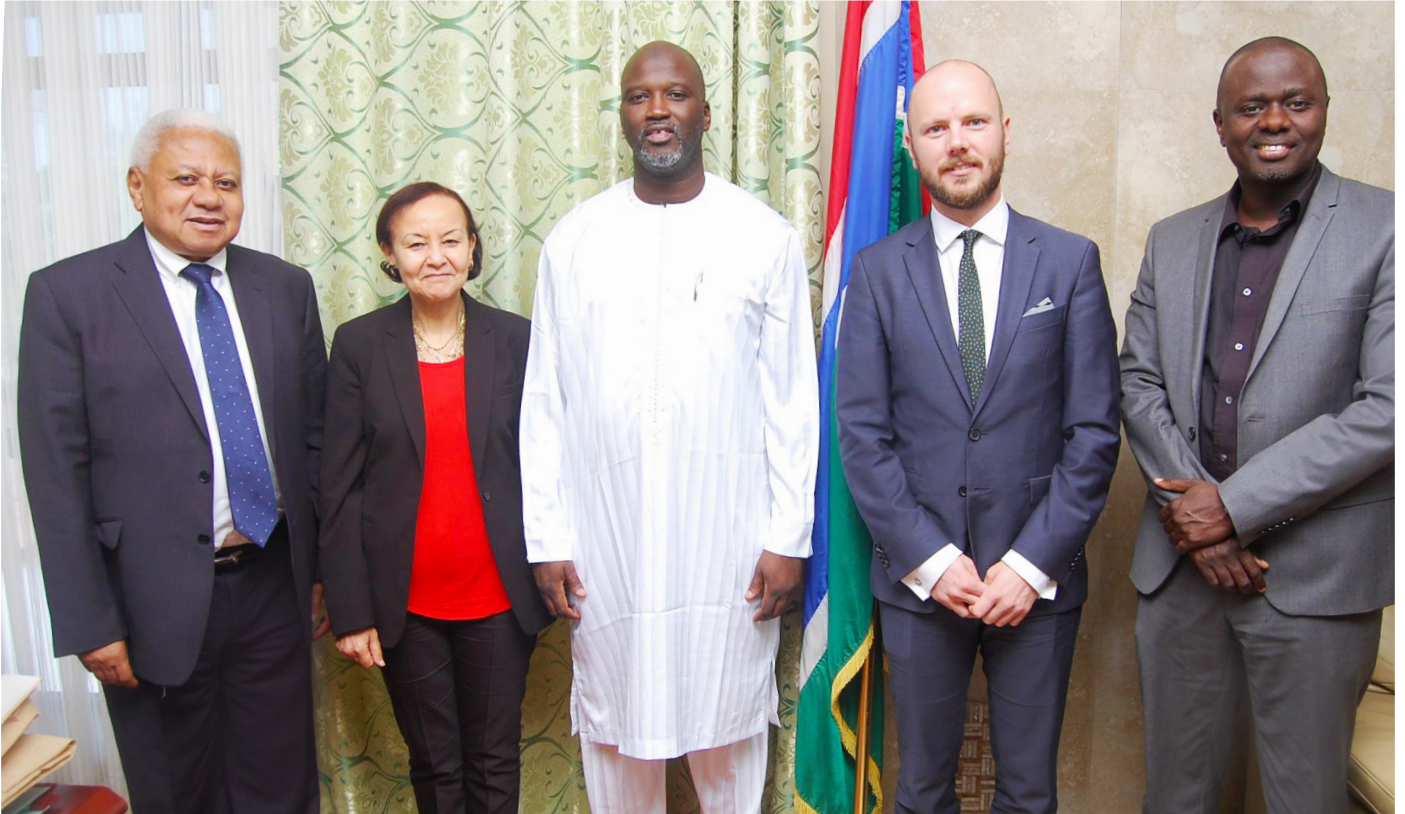
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INTRODUCTION AND BACKGROUND



On 1 December 2016, Gambians went to the polls. Little international attention was paid to the election, in view of the widespread anticipation that President Yahya Jammeh, who had held on to power since his 1994 military *coup d'état*, would win yet another term. After all, Jammeh had, one occasion declared that he might stay in power for a “*billion years*”. To the surprise of local and international observers alike, however, Jammeh lost power to a coalition of opposition parties led by Adama Barrow.

Given Jammeh’s personality and autocratic style of leadership, along with the reality that The Gambia had not hitherto experienced a peaceful transition of power, the fact that Jammeh conceded so readily was perhaps more surprising than Barrow’s electoral victory itself.

It initially appeared that The Gambia would experience a smooth transition from one-man rule to democracy and respect for the rule of law. But on 9 December

2016, Jammeh declared the results of the presidential election null and void due to alleged abnormalities. While the precise causes of Jammeh’s *volte-face* remain unclear, it is notable that prior to his rejection of the election results and his demand for a new presidential poll, senior incoming government officials, including the country’s future Vice President, had publicly suggested that Jammeh would be prosecuted for crimes allegedly perpetrated during his rule.

In the wake of Jammeh’s refusal to relinquish power, the Economic Community of West African States (ECOWAS) launched an initiative to de-escalate tensions, enforce the outcome of the presidential election, and negotiate the transition to democracy. A group of West African leaders, including those of Liberia, Ghana, Nigeria and Sierra Leone, thus engaged directly with Jammeh in multi-track negotiations. Backed by an ECOWAS-led military intervention, these sensitive negotiations ultimately resulted in Jammeh’s stepping down and

his acceptance of exile in Equatorial Guinea. Barrow's subsequent recognition as the nation's democratically elected President and the birth of a new era were met by jubilation and high expectations of what the future would bring.

Jammeh's departure, reportedly along with millions of dollars in cash and a number of luxury items and cars, closed the chapter on autocratic rule in The Gambia and, by the same token, introduced democratic governance to the country. Yet the challenges of re-building the state and its institutions, whilst simultaneously delivering on the promises to promote human rights and achieve justice and accountability for alleged abuses and crimes committed under the old regime, are formidable. After more than two decades of autocracy, the capacity of vital institutions, including law enforcement agencies and the judiciary, is extremely low. Even so, there is immense potential for a democratic state respectful of human rights and the rule of law to be built.

The **Africa Group for Justice and Accountability (AGJA)** and the **Wayamo Foundation** have been engaged in The Gambia since July 2017, when they were requested to make recommendations to the **Minister of Justice, Abubacarr Tambadou**, on the proposed Truth Reconciliation and Reparations Commission. Subsequent to its report and at Minister Tambadou's express invitation, an AGJA/Wayamo fact-finding delegation was sent to the country in late October 2017 to ascertain the nature of the challenges confronting The Gambia's transition and, in particular, with regards to achieving justice and accountability for human rights violations and crimes perpetrated under the former regime. The delegation's efforts have since been described by high-ranking officials as the "*most thorough*" consultative process undertaken in the country since the beginning of its democratic transition.

Through a series of broad consultations with key stakeholders in the transitional process, including members of government, civil society, academia, and the diplomatic community, the delegation sought to understand the challenges and priorities surrounding the achievement of justice and accountability in the country. The delegation was led by **former Tanzanian Chief Justice, Mohamed Chande Othman**, and

included **human rights advocate Fatiha Serour** (Algeria) and **Wayamo Foundation Deputy Director, Mark Kersten** (Canada).

Over four days of consultations, the delegation held meetings with a wide spectrum of interlocutors, ranging from **the country's Vice President, Ministers of Justice and Foreign Affairs, Inspector-General of Police, Speaker** and **members of the National Assembly**, to **representatives from the United Nations Development Programme, United Kingdom, United States** and **European Union embassies, Centre for Victims of Human Rights Violations, University Student Union**, and **Press Union**.

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The visit made the determined and unwavering commitment of Gambian officials and civil society to deliver on the expectations of the Gambian people abundantly clear. It also shed light on the nature and scale of the challenges that this emerging democracy faces in meeting these expectations over the coming months and years.

Based on the delegation's consultations as well as ongoing research on the country's transition conducted at the Wayamo Foundation, this mission report offers a series of recommendations to authorities and officials in The Gambia as they continue to work on achieving justice and accountability and building a state that eagerly and effectively defends the rule of law and human rights. It is also expected that it will inform the work of the Wayamo Foundation, AGJA and other partners interested in further supporting The Gambia's transition process.

What follows is a full report of the delegation's observations, conclusions and recommendations, with a summarised list of the recommendations appended as an Annex.

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Photography: Frans Sellies (2016)

OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS



Building capacity for justice and accountability

During the AGJA-Wayamo delegation's visit, calls for institutional capacity building in post-authoritarian Gambia were heard loudly and clearly by the delegates. The Gambia has the benefit of strong and effective leadership at the most senior levels of its public institutions. **Justice Minister Abubacarr Tambadou** and **Chief Justice Hassan Bubacar Jallow** both come from distinguished careers in the field of international criminal justice. Jallow is the former chief Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) as well as the United Nations Mechanism for International Criminal Tribunals while Tambadou was a lawyer and the special assistant to the Prosecutor of the ICTR from 2012 to 2016. In terms of political will, the government's overall commitment to achieving justice and accountability is commendable. After twenty-two years of autocratic rule during which the country's ministries were often no more than a "rubber stamp", however, The Gambia's institutional capacity is severely weak. The previous government purposefully left the country's public institutions crippled. Many of the brightest young professionals regularly left work in government ministries at a young age due to an absence of career prospects and the inability to conduct their work in an independent and effective manner. This includes the Ministry of Justice where the delegation was informed that the average age of staff currently stands at twenty-four.

There is no doubt that The Gambia is brimming with potential, something that became patently clear during all of the delegation's consultations. With democratically elected officials in place, external donors and agencies are increasingly committed and prepared to fund and invest in programmes at a much more significant scale than in the past. The delegation was repeatedly

AGJA-WAYAMO DELEGATION RECOMMENDATIONS

The AGJA-Wayamo delegation recommends that relevant civil society actors and international donors focus on capacity building for members of the judiciary, justice ministry, and police. Ideally, this would include:

- ▶ Training officials in securing and preserving documentation and evidence of alleged crimes committed during the Jammeh era which could subsequently be used in trials of relevant perpetrators;
- ▶ Building expertise and training investigators and prosecutors on how to build cases of crimes against humanity, torture and enforced disappearances, and in particular, focusing on the collection and use of linkage evidence to establish the systemic nature of the crimes committed;
- ▶ Training judges on how to understand and oversee cases against alleged perpetrators of international crimes; and
- ▶ Training relevant authorities on how to design and implement an effective witness protection programme.

More generally, the delegation additionally recommends mainstreaming a broader understanding of and respect for human rights standards into all agencies of government, including the police and security services.

In the coming months, the AGJA and the Wayamo Foundation will consider how to proceed with a programme which focuses on documentation, training, and capacity building exercises relating to justice and accountability for human rights violations and international crimes in The Gambia.

informed about the promise of The Gambia as a positive case of justice, democracy, and development, an example not only for Africa but also for the world at large. If it is to realise this promise and take advantage of the unique opportunities afforded to it, The Gambia will have to institute a programme of justice and accountability for Jammeh-era abuses, including those that may amount to crimes against humanity.

Investigating and prosecuting human rights abuses and international crimes is difficult at the best of times, let alone for a state emerging from 22 years of authoritarian rule. The Gambia is in need of well-funded, long-term capacity building and expert training, particularly for the judiciary, justice ministry and police force.



Victim participation

Victims' associations and groups play a critical role in galvanising political will and applying pressure on governments to achieve justice for past violations and crimes. Their participation is also essential in

legitimising justice and accountability measures implemented by governments. During its mission, the AGJA-Wayamo delegation met with victims, survivors, and victim representatives who shared their ongoing

concerns about the pace of accountability as well as their aspirations for justice in The Gambia. They struck the delegation as being an impassioned and eloquent group with a significant and central role to play in the new Gambian state.

Building the capacity of Victims' Associations and ensuring that they play a central role in any accountability measures is critical. The delegation noted with appreciation the ongoing efforts of other organizations, including **Human Rights Watch**, to ensure that this is the case.

The delegation recommends that the Gambian Government work closely with the country's Victims' Association and appoint an intermediary focal point tasked with regularly communicating concerns and liaising between the government on the one hand, and victims and their representatives on the other.



Communications and setting expectations

Since the departure of Yahya Jammeh and the emergence of a new, democratic government under President Adama Barrow, public expectations of what can be achieved have been extremely high. It was evident to the delegation that severe resource

constraints and low institutional capacity mean that the average citizen's expectations inevitably exceed what the government is able to achieve, including in relation to justice and accountability. Many interlocutors expressed concern at the government's failure to

communicate with the public on a sufficiently frequent basis and, while this had admittedly changed for the better in recent months, there was still room for improvement.

It is critical that the government pro-actively and regularly communicate with the Gambian public in order to be transparent with its agenda and to manage expectations of the public. Clear and effective communications will ensure a greater management of expectations and reduce the chances of backsliding towards authoritarianism.

The delegation strongly recommends that President Barrow and the Government as a whole ensure that there is regular and clear communication with the Gambian public on matters relating to the justice agenda and ongoing efforts to achieve accountability for Jammeh-era abuses.

Partnerships and co-operation

As mentioned, the delegation met with numerous institutions and actors committed to a new and better Gambian future. This included the **Inspector-General of Police** and his senior staff, as well as representatives of the **Press Union, Student Union, Supreme Court, Ministry of Justice, Office of the Vice President, Victims' Association** and the like. These offices, entities and institutions have the potential for growth and must be strengthened, enhanced, and encouraged in order to foster democratic governance, rule of law and respect for human rights nationwide. They are the bedrock of the new Gambia.

The delegation recommends that these institutions not only entrench themselves as the foundational pillars of a democratic and just Gambia, but also continue to work together and collaborate in a positive, co-operative spirit in defence of the rights of Gambian citizens.

Constitutional review and reform

During a public conference held at the University of The Gambia, delegation member **Mohamed Chande** spoke about his experiences of, and views on, constitutional review and reform. His intervention was eagerly and enthusiastically received by the audience of students, members of the judiciary, and public officials. Attendees insisted that constitutional reform was essential for the new Gambia.

To secure The Gambia's transition and protect the country from reverting to authoritarian rule, the Constitution will need significant reform. With this aim in mind, a **Constitutional Review Commission** is to be created by the National Assembly in the first half of 2018. In putting together a roadmap of constitutional

reforms, the Commission will be tasked with consulting all citizens, whether residing in the country or forming part of the wider Gambian diaspora. It will finish its work and present its findings to the Government within eighteen months.

It is critical that the government pro-actively and regularly communicate with the Gambian public in order to be transparent with its agenda and to manage expectations of the public. Clear and effective communications will ensure a greater management of expectations and reduce the chances of backsliding towards authoritarianism.

The delegation recommends that persons of recognised integrity and credibility be appointed to the Constitutional Review Commission. Commissioners should work with international partners and experts in putting forward a plan of constitutional reforms which will capture and enhance the country's democratic transition and enshrine respect for the basic dignity and rights of all Gambians. Crucially, any process of consultation and reform should be accompanied by efforts to educate citizens about their constitutional rights and the public institutions intended to protect them. Law enforcement and security agencies will also require training to ensure that they fully understand and appreciate the rights of the people they serve under the Constitution.



Photography: David & Cheryl M (2013)

Supporting a free and independent press

The media, and the social media in particular, played a critical role in the transition process. Today, however, there is also a need to rebuild and engender trust in the country's mainstream press. The media should play an essential role, both as an interlocutor between the government and the public, and as a force to ensure that the government is transparent and fulfils its pledges and commitments.

From the delegation's meeting with the **Press Union**, among others, it was evident that there is no shortage of expertise and experience among Gambian journalists. Nevertheless, it is essential that the government help foster a free press, and that any repressive legislation governing the media's independence and ability to work be repealed.

In addition to efforts to build up a core of independent and trustworthy mainstream media, the delegation recommends that specific training be given to ensure that members of the media are conversant with and capable of covering issues pertaining to accountability and transitional justice. It further recommends that the Government ensure that members of the media be granted regular access to, and the right to report on, any justice and accountability mechanisms being implemented. Doing so will provide the wider Gambian public with timely news of key developments.

Reparations

The Gambia's Truth, Reconciliation and Reparations Commission (TRRC) is scheduled to come into operation in summer 2018. It is headed by **Dr. Babah Galleh Jallow**, a respected academic and former editor in chief of The Observer newspaper as well as co-founder of the Independent newspaper. It will take a novel approach to reparations for abuses under the previous regime. The provision of reparations has been made an integral part of its mandate. This runs counter to conventional wisdom surrounding the establishment of truth commissions, which generally advises that the award of reparations be kept separate from truth-telling processes. However, Gambian officials informed the delegation that the design of the TRRC was the product of exhaustive consultations with civil society organisations and experts, and that they are committed to the TRRC's mandate as it currently stands.

Consequently, officials will have to spell out precisely how reparations are to be financed, irrespective of the form that these take (e.g., monetary restitution, return of property, educational benefits, collective reparations,

etc.). This is particularly critical, given the inclusion of reparations in the TRRC's mandate and the ensuing likelihood that victims and survivors will be incentivised to participate in its proceedings as a means of qualifying for compensation of some kind or other. One potential means of funding reparations will be to link the ongoing work of the country's **Commission of Inquiry** which is currently conducting investigations into Jammeh's assets and whether they were obtained illegally.

The delegation thus recommends that the Government clarify how it intends to fund any TRRC-related reparations programme, and that it share these details with the victims and survivors at the earliest possible date.

Linking transitional justice mechanisms

With regards to justice and accountability, the **Government's** current focus is on implementing the Truth Reconciliation and Reparations Commission, which is to be fully operational by mid-2018. As noted above, the TRRC will itself be responsible for recommending reparations, with any such recommendations being binding upon the Government. Furthermore, the TRRC will be vested with the power to grant amnesty and reduce sentences in the case of perpetrators who provide genuine testimony during its proceedings. As these hearings proceed, calls for criminal prosecutions are likely to continue, if not grow. In brief, The Gambia is implementing a number of different mechanisms of transitional justice and accountability, and it is therefore imperative that relevant actors make clear how these various approaches will interact and relate to one another.

The delegation recommends that relevant government officials, working in partnership with the media and civil society organisations, explain how the envisaged transitional justice approaches and accountability mechanisms will relate to and affect one another. This is particularly important when it comes to subsequent criminal prosecutions of perpetrators. Clarifying the links between approaches and mechanisms will help to ensure that public expectations are properly managed.

The delegation recommends that everything possible should be done by the Government to guarantee the due process and fair trial rights of all accused persons in order to avoid any repetition of past abuses, to build trust in the rule of law and the judicial system, and to ensure timely justice for victims and survivors of Jammeh-era crimes.

Ongoing trials

The AGJA-Wayamo delegation was informed of the ongoing trials of nine former national security officials (*“the NIA 9”*) for crimes committed during the Jammeh era, and in particular the torture and murder of activist Solo Sandeng in April 2016. Many of the delegation’s interlocutors expressed concern about the arrest of the NIA 9 and their detention since July 2017, observing that the accused had been detained without the prosecution authorities being prepared for trial. There were also fears that the cases against the accused might be dismissed on purely technical grounds. While the NIA 9 trial continues, it is critically important that the detention and subsequent trial of all suspects accord with the highest standards of due process and the rights of the accused.

Criminal accountability for the former regime

From the earliest days of The Gambia’s transition, there have been public calls for the prosecution of senior figures, including President Jammeh, from the previous government. These have been led by, amongst others, the relatives of individuals forcibly disappeared, victims of torture, survivors of violence against students, and victims of Jammeh’s bogus and extremely harmful HIV programme. President Barrow himself has consistently expressed interest in the eventual prosecution of all those responsible for human rights violations and international crimes.

For both institutional and political security reasons, it is widely acknowledged that the country is not yet prepared to see former President Jammeh extradited from Equatorial Guinea. In addition to capacity building initiatives for the judiciary and police forces, it is likely that further security sector reforms, a key component of The Gambia’s National Plan, will have to be implemented before trials of former senior politicians can take place locally.

Some trials of former officials responsible for abuses are likely to commence within a year. This timeline will permit international partners to help build investigatorial, prosecutorial, and judicial capacities and to ensure that prosecutions do not undermine the country’s transition, nor threaten its stability. It is important to stress that this is in no way intended to endorse some self-serving version of *“peace before justice”*: it is clear to the delegation that government authorities — at the very highest levels — are fully committed to achieving justice and accountability for victims and survivors of Jammeh-era abuses. Beginning with the TRRC, The Gambia is sequencing its approach to justice in a way that will help to establish the facts and collect the type of evidence which can subsequently be used in criminal proceedings. The life-span of the TRRC can further be used to prepare the relevant institutions for prosecutions of alleged senior-level perpetrators of political crimes and human rights violations — including those who may currently be in detention or seeking refuge abroad.



The delegation recommends that the Government regularly and consistently reiterate its interest in prosecuting those most responsible for abuses under the previous regime, irrespective of the office that they once held. It further recommends that the Government express

its commitment to preparing the ground, through capacity building and training, to eventually bring such figures to trial, as well as collect the evidence required for successful prosecutions as and when the opportunity arises.

ANNEX: SUMMARY OF RECOMMENDATIONS



1. Building capacity for justice and accountability

The AGJA-Wayamo delegation recommends that relevant civil society actors and international donors focus on capacity building for members of the judiciary, justice ministry, and police. Ideally, this would include:

- Training officials in securing documentation of alleged crimes during the Jammeh era, which could subsequently be used in trials of perpetrators;
- Building expertise and training investigators and prosecutors on how to build cases of crimes against humanity, torture and enforced disappearances, and in particular, focusing on the collection and use of linkage evidence to establish the systemic nature of the crimes committed;
- Training judges on how to understand and oversee cases against alleged perpetrators of international crimes; and training relevant authorities on how to design and implement an effective witness protection programme.

More generally, the delegation additionally recommends mainstreaming a broader understanding of and respect for human rights standards into all agencies of government, including the police and security services.

In the coming months, the AGJA and the Wayamo Foundation will consider how to proceed with a programme which focuses on documentation, training, and capacity building exercises relating to justice and accountability for human rights violations and international crimes in The Gambia.

2. Victim participation

The delegation recommends that the Gambian Government work closely with the country's Victims' Association and appoint an intermediary focal point tasked with regularly communicating concerns and liaising between the government on the one hand, and victims and their representatives on the other.

3. Communications and setting expectations

The delegation strongly recommends that President Barrow and the Government as a whole ensure that there is regular and clear communication with the Gambian public on matters relating to the justice agenda and ongoing efforts to achieve accountability for Jammeh-era abuses.

4. Partnerships and co-operation

The delegation recommends that these institutions not only entrench themselves as the foundational pillars of a democratic and just Gambia, but also continue to work together and collaborate in a positive, co-operative spirit in defence of the rights of Gambian citizens.

5. Constitutional review and reform

The delegation recommends that persons of recognised integrity and credibility be appointed to the Constitutional Review Commission. Commissioners should work with international partners and experts in putting forward a plan of constitutional reforms which will capture and enhance the country's democratic transition and enshrine respect for the basic dignity and rights of all Gambians. Crucially, any process of consultation and reform should be accompanied by efforts to educate citizens about their constitutional rights and the public institutions intended to protect them. Law enforcement and security agencies will also require training to ensure that they fully understand and appreciate the rights of the people they serve under the Constitution.

6. Supporting a free and independent press

In addition to efforts to build up a core of independent and trustworthy mainstream media, the delegation recommends that specific training be given to ensure that members of the media are conversant with and capable of covering issues pertaining to accountability and transitional justice. It further recommends that the Government ensure that members of the media be granted regular access to, and the right to report on, any justice and accountability mechanisms being implemented. Doing so will provide the wider Gambian public with timely news of key developments.

7. Reparations

The delegation thus recommends that the Government clarify how it intends to fund any TRRC-related reparations programme, and that it share these details with the victims and survivors at the earliest possible date.

8. Linking transitional justice mechanisms

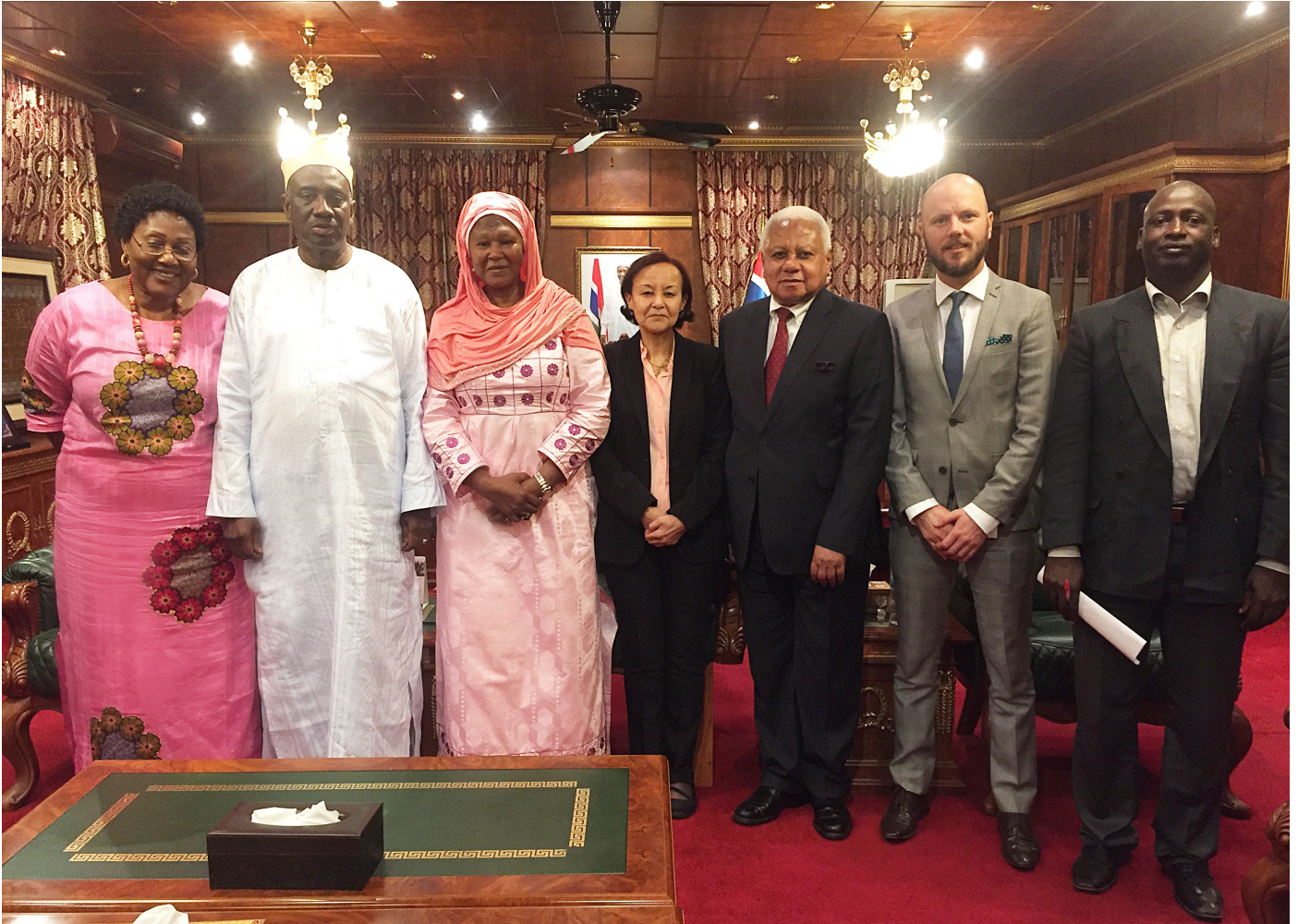
The delegation recommends that relevant government officials, working in partnership with the media and civil society organisations, explain how the envisaged transitional justice approaches and accountability mechanisms will relate to and affect one another. This is particularly important when it comes to subsequent criminal prosecutions of perpetrators. Clarifying the links between approaches and mechanisms will help to ensure that public expectations are properly managed.

9. Ongoing trials

The delegation recommends that everything possible should be done by the Government to guarantee the due process and fair trial rights of all accused persons in order to avoid any repetition of past abuses, to build trust in the rule of law and the judicial system, and to ensure timely justice for victims and survivors of Jammeh-era crimes.

10. Criminal accountability for the former regime

The delegation recommends that the Government regularly and consistently reiterate its interest in prosecuting those most responsible for abuses under the previous regime, irrespective of the office that they once held. It further recommends that the Government express its commitment to preparing the ground, through capacity building and training, to eventually bring such figures to trial, as well as collect the evidence required for successful prosecutions as and when the



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