MEDIA LAW AND JOURNALISM IN POST-COLONIAL AFRICA – THE CASE OF THE GAMBIA

Regulating Press Freedom: A Political Economy of Journalism in The Gambia

by

Sulayman Bah

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ABSTRACT

This dissertation explores how journalists operate under repressive legal and regulatory frameworks, focusing especially on The Gambia, an African country that, like others on the continent, has a contemporary legal and regulatory landscape shaped by its colonial past. It addresses wider issues of debate relating to the political economy of journalism by investigating the relationship media has with state control, ownership and press freedom. Studies from political economy scholars such as McChesney (2008), Sousa and Fidalgo (2011), Murdock and Golding (2000), John and Silberstein-Loeb (2015), Schejter and Yemini (2016) have all recognised how law and regulation can facilitate or impede news production and journalistic responsibilities. However, while political economy analyses of journalism have focused on its regulation, they rarely have a close engagement with the law. To address this gap, I bring approaches from legal research to journalism studies to show how a legal analysis of laws applicable to the practices of journalists in The Gambia can further our understanding of how such instruments are used to control media ownership and suppress press freedom.

To do this, I use an innovative, interdisciplinary methodology that brings tools from the field of law to media and cultural studies, synthesising doctrinal research alongside interviews. Through interviews with Gambian journalists I also explore how they make sense of such laws and find ways to navigate such a repressive legal framework that is inimical to media freedom. From this primary research, I show that the legal and regulatory framework of the media in The Gambia is tied to the country`s colonial heritage. It reveals significant political and economic constraints of The Gambia`s private press, and how the pro-government news media, particularly the state owned enjoys more support and dominance. I find that journalism practice in The Gambia is compounded with political repression and legal uncertainties, where court decisions against journalists are inconsistent with international

human rights standards. I demonstrate that while Gambian journalists struggle to access information, particularly from the government, there was a culture of self-censorship due to fear of legal repression. However, they have also made radical responses through alternative journalism practices in order to evade such a restrictive legal framework.

I argue that the law plays an integral part in shaping the political economy of journalism, particularly in post-colonial countries such as The Gambia. I demonstrate how journalism in The Gambia is entangled in a complex legal framework, which constrains its independence and make the claim for legislative reforms that are consistent with international human rights standards. I show that there needs to be a greater engagement with the law and legal instruments in order to further understand its political economy.

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INTRODUCTION

This study explores how journalists operate under repressive legal and regulatory frameworks, focusing specially on The Gambia, a post-colonial country that has a reputation for jailing journalists. It uses an innovative methodology that seeks to bring legal research methods to media and cultural studies, synthesising doctrinal legal research alongside interviews with Gambian journalists. Typically, academic studies of the political economy of journalism focus on how the media is a result of public policy which is shaped by regulation, but often not how law influences journalism practice and determines press freedom. Therefore, this study shows how a close analysis of jurisprudence relating to journalism practice can further our understanding of the political and economic conditions journalists operate under, particularly those in post-colonial countries that have restrictive and often aggressive regulatory frameworks.

I find that legislations governing the operation of the media in The Gambia are holdover colonial era laws that were not only maintained to repress critical journalism, but tightened to restrict press freedom and limit media pluralism. This, when combined with journalists being arrested have contributed to fear, censorship and self-censorship. I show that through alternative journalism practices and digital technology, Gambian journalists carefully navigate this complex political and legal environment to evade arrest, criminal prosecution and restrictions on media ownership. I argue that the law plays an integral part in influencing and shaping journalistic practices, particularly in post-colonial countries such as The Gambia. I demonstrate how journalism in The Gambia is entangled in a complex legal framework, which constrains its independence and make the claim for legislative reforms that are consistent with international human rights standards.

The basis for this study emerges out of my own experience as a journalist in The Gambia. As a young reporter working for the *Foroyaa Newspaper* in July 2009, I witnessed the trial and sentencing of my Managing Editor with five other journalists who were charged with various counts of sedition and criminal defamation, a case that I discuss in depth in chapter six. As the high court judge read his judgement, which found my editor and fellow journalist guilty of the crimes they were charged with, I was sitting in the public gallery of a fully packed courtroom. It was evident that emotions were high as some defendants and their relatives were in tears. Some members of the private press were agitated to denounce the ruling. For me, this particular trial provoked my interest to study journalism and media law beyond routine journalistic work. In the absence of an undergraduate degree programme in journalism in The Gambia the same year- I relocated to the United Kingdom. Years later, I graduated with Bachelors of Arts with Honours in Media and Communication (Journalism) and a Master of Laws in International Human Rights. The combination of these two disciplines put me on a strong academic footing to start a scholarly journey in researching the law and journalistic practices.

The *Foroyaa Newspaper* I reported for focuses on covering current affairs, opposition politics, injustices, cruelty and tales of human rights and constitutional violations. Although the imprisonment of the paper`s managing editor did not deter the paper from publishing critical views, it had a drastic impact in newsroom practices and discouraged many young reporters in several ways. Some of the experiences I had in the course of journalistic assignments were threats to arrest and- stop and search by state security personnel. It was a very turbulent time when I worked as a professional journalist. Under the rule of President Jammeh (1994 – 2016), there were more than 140 arrests of journalists, while several ended up in court, but not all proceeded to a full hearing (QTV Gambia, July 9, 2019). This was largely because of the regime`s intolerance to dissenting views and opinions. To escape this

oppression, some journalists fled to exile whilst on bail, and several were charged with various media offences in absentia. At least one journalist was arrested every month under President Jammeh`s rule, leading to The Gambia being recognised as one of the top jailers of journalists in the world using criminal laws (Freedom House, 2016, p.2).

The use of media law and regulation seemed to be central to Jammeh's approach to restricting and repressing journalism. As I became a doctoral researcher, as well as a reflexive journalism practitioner, I was keen to contribute to a greater understanding of the legal and regulatory constrains placed on journalism in this and similar territories. Political economists of journalism have had a particularly keen interest in the relationship of regulation, control and ownership. According to McChesney (2008, p.416), "all media systems are the result of explicit government policies, subsidies, grants of rights and regulations". He points out that to have a regulation of the media requires explicit government laws and policies. Accordingly, he links the establishment of media systems in society to government policies, regulation and law. McChesney uses the example of the United States to demonstrate how regulation was used to limit radio ownership and later a law was introduced in 1996 to deregulate and uplift the caps on ownership (ibid, p.419).

Studies such as Ramchand (1990), Sousa and Fidalgo (2011) have all contributed to the debate on how law and regulation can promote or restrict press freedom. For instance, Ramchand (1990, p.132) demonstrates how state regulation in Singapore control the press on the basis that it "acts responsibly to facilitate nation-building and cannot be to serve as the fourth arm of government". For Sousa and Fidalgo (2011, p.283), regulation is expected to raise journalistic standards and contribute to the expansion of public and private media social responsibilities. Price (no year, p.i) argues that "media law governs journalistic behaviour and influences journalistic practice in both positive and negative ways". While Sousa and Fidalgo (2011, p.291) recognise the relevance of constitutional protection for journalistic activities,

other scholars highlight the use of legislations to suppress journalism in Africa (White, 2017; Nyamnjoh, 2005; Schiffrin, 2010). These studies indicate that political economy of journalism is interested in regulation and control but doesn't necessarily analyse or examine the law itself to understand how it affects the practice of journalists. In this regard, my work seeks to conduct an analysis of the law to further our understanding of the political and economic conditions that journalists – particularly those in post-colonial countries – operate under. However, it is not enough to just look at the law, but understand how journalists work under these conditions, hence the need for interviews/cultural studies approach. All these set the context for my research.

My research seeks to explore a central question:

> What is the legal framework for journalism in The Gambia and how do journalists work under these conditions?

To answer this question, I synthesised methods from the field of law with media and cultural studies. I utilised an interdisciplinary data collection technique combining doctrinal legal research and interviews to explore the legal and regulatory framework of the media in The Gambia and how journalists perceived these laws and regulations. My approach to doctrinal legal research involves identifying and analysing legal materials including legislation, case law, regulation and international human rights instruments. I also undertook semi-structured interviews with 15 Gambian journalists to explore the context of news production. To interrogate this data, I used a theoretical framework that incorporate ideas from political economy, media law and press freedom. Through these, I demonstrate how the law was used to control press freedom and media ownership in The Gambia, and how Gambian journalists responded to legal repression and restriction. I argue that the law plays an integral part in shaping journalistic practices, particularly in post-colonial countries such as The Gambia.

In chapter one, I explore the political economy of journalism as the overarching theoretical framework for this research. It provides a conceptual foundation for understanding that law and regulation occupy a central role in media control, ownership and freedom. The chapter engages debates about regulation, control and ownership with special attention to state and statutory regulation. The discussions in this chapter show that political economy scholars have directed special attention to issues of media regulation, control and ownership as fundamental components of capitalism. It explores critical theoretical positions to understand the role of regulation, particularly direct state regulation to media control and ownership. With specific reference to Africa, the chapter explore debates on how media regulation and policies generate media institutions, practices and systems in different African countries. From a critical political economy perspective, the chapter highlights how government ownership and commercial support are crucial factors to media control in Africa.

Chapter two builds on chapter one, and sets out the various theoretical claims of media law, outlining key reasons of why it is used to control journalism including restraining, restricting and repressing the power of the media. It demonstrates that media law can be progressively and retrogressively applied to control journalism as well as highlighting debates surrounding the civil and criminal conception of media law. This is critical to understanding how media offences are punished. The chapter discusses how media law and regulation is particularly used in Africa to abridge press freedom. It elaborates in particular on international legal protection for freedom of expression, which looks at the role of international human rights law as a subject of international norms, values and standards for press freedom. The argument here is to show how an understanding of the law is vital for the political economy of journalism, especially in post-colonial countries with complex and restrictive legislative frameworks.

Chapter three addresses press freedom which is an enduring issue of media law. It outlines how law and regulation promotes press freedom positively to fulfil its social watchdog role or controls it negatively to prevent independent journalism. It explores key theoretical foundations of press freedom including authoritarian, libertarian and social responsibility theories of press freedom. The aforementioned theories remain instrumental for providing theoretical guide for analysing the situation of press freedom in any country. Of importance here are the various regulatory approaches of controls adopted by different countries to demonstrate the most appropriate paradigm of media control and ownership. It argues that the type of media regulation is a direct reflection of society`s social and political system of control. The chapter focuses on press freedom in Africa, and explores how this freedom is influenced by law and regulation. It demonstrates that strict regulatory measures, repressive laws and advertising revenues are amongst the principal means through which press freedom is controlled in Africa.

Chapter four sets out the methodology for this study and outlines the research design within which data are gathered and analysed. It demonstrates that media studies have predominantly focused on traditional methods to researching journalism, which are not suitable to examine the content of law. Having identified the limitations of past studies in researching law and journalism, my research employs a repertoire of interdisciplinary research methods in generating and analysing data. In constructing a suitable methodology, I was influenced by Schrama's (2011, p.150) argument that interdisciplinary legal research is a new road to innovation in contemporary research that is essential to measuring the effectiveness of legal instruments. In this respect, I argue for the adoption of legal methods bringing in news ideas from law to study journalism. I therefore employed doctrinal legal research and interviews synthesising law and media studies, to understand the political and economic conditions of journalism in The Gambia.

Chapter five, the first of the findings chapters, gives context for my research. It provides contextual analysis of the regulatory framework of the media in The Gambia - and gives a brief background of media regulation linked to the colonial period. Its purpose is to set the scene for other chapters, by providing contextual analysis of media law and regulation, ownership, freedom and control in The Gambia. It explores various media legislations and regulations governing the operation of the media in The Gambia. The chapter demonstrates that the origin of repressive and restrictive media legislations in The Gambia is tied to the country`s colonial heritage. It presents a broad picture of the structure of journalism in The Gambia and provides understanding to the three tier system of media ownership in the country. This chapter discusses the relationship between journalists and the Gambian government, especially those working for the private media. It shows that while the pro-government news media is favoured politically and economically, the private media contends with severe restrictions and violent attacks.

In chapter six, the data derived from the doctrinal legal research is presented and analysed. The findings presented in this chapter constitute a major part of the empirical grounding for this research. Through case law analysis, this chapter facilitates understanding to how criminal legislation is used as a mechanism to repress and control critical journalism in The Gambia. This chapter focuses on specific themes and contexts that emerged out of cases in which journalists have been sentenced to jail for criticising the Gambian president. The chapter offers legal analysis to range of cases to demonstrate how legislations and regulatory bodies are used to control media ownership and freedom in The Gambia. It specifically explores the approaches of Gambian courts in determining criminal cases against journalists. I find that the legal framework for freedom of expression and press freedom is inconsistent with constitutional guarantees and international human rights law. The chapter further demonstrates how Gambian courts continued to maintain archaic laws and principles from the

colonial period, which are incompatible with international human rights instruments and constitutional provisions.

Chapter seven discusses the context of journalism practice in The Gambia, through interviews with journalists. The chapter focuses particularly on how journalists operate in the legal and policy framework of the media, and the way they perceive direct government media regulation. The responses of participants to the semi-structured interview questions employed to generate data are thematically presented and analysed. The chapter explores critical issues about professional journalism practice that navigates around a complex regulatory framework of the media. I find that while Gambian journalists have to operate in fear, censorship and self-censorship, they were also resilient and versatile in carrying out their professional journalistic responsibilities.

The dissertation concludes that The Gambia has complex legal and regulatory challenges that suppress press freedom and inconsistent with international human rights standards. This makes it extremely difficult for journalists to work without the threat of imprisonment and heavy fines. It calls for a holistic legal and institutional reform for the future of media freedom in The Gambia. I suggest that journalism studies needs to engage more with the law for a better understanding of political and economic conditions that affect the practice of journalists, indicating that further research needs to be done in other post-colonial countries.

CHAPTER ONE

THE POLITICAL ECONOMY OF JOURNALISM

1.1 Introduction

In the following three chapters, I set out the three main conceptual frameworks for this thesis – the political economy of journalism, media law, and press freedom. In this chapter, I consider how the political economy of journalism conditions has been explored by academics and where the law fits surrounding the debates on regulation and media ownership. This involves looking at diverse factors, especially how regulation influences media ownership, control and freedom. These are principal components of political economy and media law, as I demonstrate in chapter one and two. In a similar vein, the focus of chapter three is on how press freedom is driven by law and regulation. Therefore, I explore these conceptual frameworks to provide understanding to the political and economic conditions of journalism, particularly the role regulation can play in media freedom and ownership.

In this chapter, I begin by exploring the definition of political economy of the media and identified some of the major debates surrounding the field. I show that the meaning of political economy is highly contested with significant work within the Western context that has directed special attention to issues of control and ownership as fundamental components of capitalism. I discuss how Western approach to political economy largely focuses on marketisation and deregulation. Therefore, I consider the need for the global South's post-colonial approach to regulation, particularly the role media ownership can play in this context. The chapter explores the types of regulation, especially statutory and direct state regulation that are critical to media control and ownership. It offers a deeper understanding of how laws and government policies generate media systems and behaviours.

I discuss how the political and economy conditions of journalism can be understood within African context, through direct state regulation and government ownership of media organisations. I also show that media freedom is influenced by economic and commercial arrangements through which African governments control the media in Africa and The Gambia is not an exception. I find that typical studies of the political economy of journalism focus on how the media is a result of public policy which is shaped by regulation. However, an analysis of the law and how it affects journalism practice has not been fully considered, requiring further understanding of the role the law plays in media control, ownership and freedom.

1.2 A Background Discussion of Political Economy of Journalism

The issue of regulation is an important component of academic debate in political economy that constitutes a challenge to media ownership, control and freedom. The formative years of critical study of the political economy of the media began in late 1970s, when the work of Compaine (1979), Garnham (1986), Picard (1989), Alexander et al (1993), Albarron (1996) and Doyle (2002) were published. According to Wasko, Murdock and Sousa (2011, p.3), studies of political economy of the media predominantly focus on microeconomic issues rather than macro-analysis. They see this as primarily focusing on producers and consumers in media markets, which is an important component of capitalism. They trace the creation of media markets to the work of Meehan and Torre (2011), outlining legal and regulatory influences on these markets. Similarly, Garnham (1986, p.201) suggests that much of the work on political economy of the media has focused on the ways in which industrial production and distribution institutions operate in advanced capitalist societies. He notes that it deals with the study of ownership and control of the capitalist press and other forms of media that are interwoven in a capitalist economy. According to him, the capitalist approach of political economy means free markets, free trade and diverse media ownership. He found

that the capitalist model steadily lowers labour costs over time, and characterises the development of political economies of communication over the last century.

In an attempt to define political economy of the media, Mosco (2009, n.pag) identifies the multifaceted nature of the field into two. First, it "concentrates on the social relations, particularly the power relations, governing the production, distribution, and exchange of resources" (ibid, p.32). For him, this is useful to provide understanding of the chain between producers and distributors in the business of media. Second, Mosco believes that political economy is the study of control and survival in social life. He suggests that this is relevant because it widens the meaning of political economy to cover all human activity and organic processes. Further discussion on the definition of political economy of the media can be found in McChesney (2000). For McChesney (ibid, p.109), "it addresses the nature of the relationship between media and communication systems and the broader social structure of society". He notes that this "examines how media and communication systems and content reinforce, challenge or influence existing class and social relations, with a particular interest in how economic factors influence politics and social relations" (ibid.). He points out that the "political economy of communication looks specifically at how ownership, support mechanisms (e.g. advertising) and government policies influence media behaviour and content. This line of inquiry emphasizes structural factors and the labour process in the production, distribution and consumption of communication" (ibid.).

While useful in helping to define political economy of the media, McChesney takes into account the role of the media in society, which is to challenge or reinforce social systems. In this regard, he sees the media as an institution of social and political construction driven by economic factors. He also recognises how government rules and policies influence media content and practices. Therefore, both government regulation and economic factors are central to McChesney`s conception of political economy of the media, which are of particular

interest to my own research. Graham (2007, p.15) is however critical of McChesney`s definition of political economy. He argues that it lacks a theory of value, which appears to presuppose one. For him, McChesney (2000) ignored human value, and separated politics, social structure, social relations, and economic factors. According to Graham (2007), these forms of value are not merely monetary, but also saleable aspect of human activity, otherwise called labour (ibid, p.23).

Graham`s (2007) conception and understanding of political economy is rooted to the adoption of concepts drawn from the following authors: Karl Marx (1973), Dallas Smythe (1981), Roger Silverstone (1999), and Jay Lemke (1995). For instance, he believes that the Marxist theory of value is an essential element of political economy of communication. In his proposition for a coherent theory and method of political economy, he expounds on the idea of value to production at the most fundamental level of consciousness, and the exercise of power on the broadest possible scale before the input of human labour (Graham, 2007, p.25). He argues that this is the current context of political economy of communication. Although Mosco (2009) and McChesney`s (2000) approach to the concept of political economy is slightly different, I find it useful and constructive within the context of political economy of journalism, particularly how power relations determine media production and distribution. Explanations offered by these theorists encompass a comprehensive relation of economic determinism to the production and distribution of journalistic products. Even Graham`s (2007) notion of value, which is associated to the Marxist conception of political economy, is within the framework of market structures. Graham (2007) corroborates Mosco`s definition of political economy, which is about the commodification of the media.

These different definitions with competing sets of discourses appear to offer some similarities to understanding the field as market focused. The literature I discuss here demonstrates how western political economists largely concentrated on the production, distribution and

exchange of mediated communication. Their work addresses marketization of the media and its relationship to global capitalism, supporting Murdock and Sousa's (2011, p.2) argument of how marketization of the media is intrinsically linked to capitalism. These theorists expressly put emphasis on the globalisation of media markets that are as a result of capitalism in North America and Europe, while acknowledging its expansion in places like China. From this perspective, it is clear that these debates are mainly within the Western capitalist context. Although Africa is yet to be recognised as having a high industrial market base, the capitalist notion of political economy is important to this project, especially with the adoption of liberal policies that encourages media diversity in Africa. As I will demonstrate in chapter five, the Gambian media is operating under a liberal economic structure, which is largely profit driven. Of interest here, I argue that laws and regulations have a significant role in media production, distribution and exchange, which shapes journalistic behaviours. Therefore, I place attention on the importance of law and regulation that surround news production and distribution.

For John and Silberstein (2015, p.3), regulation, advertisement and government monopoly are amongst key institutional arrangements that revolve around the process of news production and distribution. Ogola (2011, p.78) sees this as the intersection of various forces that "constrain, enable and generally shape the media". Similarly, Murdock and Golding (2000, p.13) believe that political of the media deals with "array of forces which exercise control over cultural production and distribution limit or liberate the public sphere". Examples of these forces include media rules, regulations, government policies and system of ownership that influence media content and behaviour. Sousa and Fidalgo (2011, p.292) use the specific example of the Portuguese legal framework to demonstrate how it provides for freedom of information and freedom of expression, and outlined the regulatory construct in which Portuguese journalists operate. They argue that "media companies are part of a wider

economic apparatus which is under the scope of national laws and regulatory bodies". They suggest that the state decides the "main rules for the development of technological infrastructures including access to infrastructure and services markets, spectrum allocations" (ibid.). From this perspective, I argue that media activities including production practices are controlled by laws and regulations, as I will demonstrate in this dissertation.

My research contributes to the work of theorists like John and Silberstein-Loeb (2015) who identify configuration of laws among the key issues that facilitates or impedes the production and distribution of news. They further suggest that there are four interplaying elements in the business of journalism. These are technological innovation, business strategy, professional norms, and public policy. I find their example of how public policy affects the political economy of journalism in historical Britain relevant to my own research. In explaining how public policy limited the circulation of radical newspapers in early nineteenth century in Britain, they point out that lawmakers levied high tax rates on the print media and newspaper advertisements, thereby increasing production cost. According to them, this consequently affected journalists in different ways, because newspaper subscriptions barely covered the tax-augmented production costs (ibid, p.11). It also hastens the rise and lack of profit in the business of journalism. This shows how governments exert control on the media, and particularly media plurality. The high taxation meant that not all could produce or publish news, eventually leading to a concentration of the press and limiting radical voices. In chapter seven, I show how the implementation of a similar public policy for the imposition of VAT on newspaper sales and import taxes for printing materials, amongst other issues constraints the development of media pluralism and the dissemination of information in The Gambia. In this cultural economy, all media firms are required to pay income and sales tax, license fees for editors, broadcasters, and Internet service providers.

So far, in this section I have demonstrated that the Western focus on political economy of the media largely concerns the domain of production, distribution and exchange. I also share Graham`s (2007) position who found that the field within the area of mass media structures that are concerned with media ownership and control in political systems. My study focuses on critical issues of political economy which Golding and Murdock (2000, p.13) observe includes ownership of communication institutions, control over their activities and the nature of their relationship with state regulation. In order to show how these issues are driven by power structures, public policies and political environments, in the next section I focus on the contending issues of state and statutory regulation for a deeper understanding of its relationship with control.

1.3 State or Statutory Regulation and the Law

To understand why regulation and law has been conceptualised as one of the political economy forces that constrain journalism and media ownership, attention needs to be given to state or statutory regulation, which has historically constituted a challenged to press freedom. Wasko, Murdock and Sousa (2011, p.283) provides the basis for understanding state-centered regulation by drawing on Black's (2002) "command and control" model. According to them, this model "primarily focused on the economic welfare of consumers in an open market society" (ibid.). For them, the regulatory systems are a way power and control is exercised throughout society. Taking ideas from the work of Silverstone (2004), Wasko et al (2011) identify that regulation in the mass media must be concerned with production, content, critical literacy, as well as, the development of civic sense, which is crucial to citizenship in the 21st Century. While this is useful for understanding the role of regulation in mass communication, it did not address the complex issue of state regulation in controlling press freedom and restricting ownership.

Elaborating on the issue of regulation, Frost (2011, p.208) adopted the ideas of Bertrand (2001) to explain four reasons for the need to regulate journalism in order to ensure it behaves responsibly. These include commercialisation, concentration of ownership, decline of news and silence about inconvenient stories. In doing so, the law is heavily involved in controlling what the media can and cannot do which forms the network of rules that are applied and offers regulatory mechanisms (Feintuck and Varney, 2006, p.30). As I discuss in chapter five, direct government regulation, statutory regulation and a restrictive general legal framework are particularly relevant to The Gambia. Under a system of direct government or statutory regulation, the print and broadcast media are subjected to mandatory registration and licensing requirement through a government department. This has been a long standing tradition in regulating the political economy of journalism. John and Silberstein-Loeb's (2015) work offers a historical discussion of the development of licensing requirement for print journalism, focusing on Britain and America. According to them, "prior to 1688, every book, pamphlet, or newspaper published in England had to be licensed by a government censor prior to its publication" (ibid, p.4). However, they highlight events of the "Glorious Revolution", which is one of the most critical events in British history that brought an end to institutional constraints in the circulation of information leading to deregulation of the press.

Although direct state regulation or statutory regulation of the press has been abolished in most Western democracies, this is still the case in many countries around the world, particularly in post-colonial countries. For example, in Singapore where direct government regulation can be found, it creates a system of licensing requirements that seeks for prior approval of the government before a press can operate (Ramchand, 1990). Ramchand (1990, p.132) points out that the reasons for this is the press "cannot be given total freedom of expression, to ensure that it acts responsibly to facilitate nation-building and cannot serve as the fourth arm of government". However, as my study indicates the media cannot play its role

effectively unless it is independent from government control. Further explaining why the state engages in regulating the media, Feintuck and Varney (2006, p.80) draws on Barendt (1995) whose work has been regularly used to study media law. Reasons for media regulation outlined by Barendt (1995) are similar to Frost (2011). These include frequency allocation for the state to have adequate access to airwaves, diversity and plurality in media output, and the pervasive and intrusive potentials of the media. However, further discussing on the issue of statutory regulation of the press in his recent work, Barendt (2013, p.195) is critical of statutory control arguing that it is inherently wrong, which gives way to governments to carryout amendments to curtail press freedom.

Similar to Barendt (2013) and Ramchand (1990) who are critical of direct state regulation or statutory regulation of the press through licensing, Lahav (1978, p.234) offers a historical discussion of how it has been used as an effective means of controlling all the print media in Israel. Like most former British colonies, Lahav suggests that one facet of Israeli press law is composed of the colonial statutes which were enacted by the British Mandate. According to him, "these statutes conceptualise the press either as an instrument to mobilise public opinion and inform the public of governmental policies or as a nuisance to be strictly controlled by the Government" (ibid, p.233). He identifies three elements of the law that revolve around newspaper registration in Israel including "licensing of the printed media, governmental supervision and regulation of the contents of newspapers, and administrative or penal sanctions to be imposed on the media should either of the first two elements be violated". He points out that a "licence is granted only if the proprietor and editor have fulfilled a series of qualifications. It can be cancelled by an executive order if the newspaper fails to comply with the provisions of the Ordinance" (ibid.). This gives a government minister the power to control press freedom and ownership, an issue I explore in chapter five.

Other scholars such as Berger (2007, p.149) highlights the lack of independence in newspaper registration and licensing process in Africa. For him, the reason why governments maintain a licensing regime is "it gives them direct power over print media, should they decide to use it". He sees this as a legal cover for politically motivated decisions to ban critical individuals from practising as journalists. So far in this section, I have established several reasons why the government control the media through direct regulation or statutory control. Although the discussion here suggests that direct state or statutory regulation has become out-dated in the Western world, it is very much in existence in third world countries like The Gambia. While the literature discussed is important for understanding direct government or statutory regulatory control of newspaper registration and ownership, little has been mentioned about how it affect journalistic practices. A key aspect of my thesis is how journalists perceive direct state media regulation. In chapter seven, I show how the onerous registration requirements for newspapers and licensing for the broadcast media is a barrier for media ownership in The Gambia. I have shown how state and statutory regulation have been explored by academics, but find that legal analysis of how such regulatory mechanisms affect journalism practice has not been fully considered. I now focus on ownership and control which is another important feature of political economy of journalism.

1.4 Media Ownership and Control

The issue of ownership and control has been central to academic debate about the political economy of journalism. McChesney`s (2008) work is particular interesting in this context, which demonstrates that government policies and laws determines media ownership and control. From McChesney`s (2008, p.419) perspective, it can be determined that the deregulation of the media industry in the United States ushered in an era of diversity of media ownership. He discusses the introduction of the 1996 Telecommunications Act that reshaped media ownership in the country, which relaxed ownership regulation to allow more

concentration and capital mobility. Although he is critical of the idea of deregulation because of concentrations, it contributed to the expansion of the radio industry which is dominated by few firms in the United States. Similarly, McQuail et al (2004, p.298)) see regulation as one of the key driving forces of change of media ownership and control in the United States. According to them, the media benefited from deregulation and liberalisation of policies that paved the way for the elimination of competitive barriers in the broadcast, cable and telecommunication industries. This contributed to the removal of restrictions barring newspapers from owning broadcasting stations.

However, as Ali (2015, p.4) points out, "the influence of ownership and control on the media differ from country to country". In an edited collection that attempts to establish media ownership and control around the world, Noam (2016, p.3) identifies the proprietors of large media companies such as Rupert Murdoch in the UK, Silvio Berlusconi in Italy, Telefonica in the United States and several others. He provides understanding to the existence of a powerful large media conglomerates around the world, particularly in Western capitalist societies. Interestingly, this edited collection contains a combination of articles on media ownership in different countries. For example, Schejter and Yemini (2016, p.942) discuss media ownership in Israel, which provides understanding to a mixture of public and private ownership of the media. They observe that "political and state control in the media and telecommunications sectors prevailed until the mid-1960s". They highlight the existence of newspapers owned by political parties that are still in operation, and a government owned television and radio broadcaster. According to them, following the introduction of a telecommunication law in 1982, commercial television and radio broadcasting began. As highlighted earlier in this chapter, McChesney (2008) and McQuail et al (2004) recognise law and regulation as a crucial factor for media ownership, diversity and control. Similar trends were observed with regard to ownership and control in many countries. In The Gambia, for

instance a three tier system of media ownership exists including state, community and private ownership. However, the state enjoyed monopoly of the broadcast media with a single state owned television station under the direct control of the government until 2017, when licensing was granted for the establishment of private owned television stations.

A notable issue to the debate on media ownership is the concept of public or state ownership, which is associated with autocratic regimes (Djankov et al, 2003; Gehlbach and Sonin, 2014). This might not be the case in every country, as the independence of the British Broadcasting Corporation from government manipulation is something rare of most public broadcasters, particularly in Africa. In their comprehensive discussion of media ownership, Djankov et al (2003, p.342) identify two theories of public media ownership. First is the public interest theory also called the Pigouvian, which means government ownership cures market failures, and the other is public choice theory. According to them, public choice theory refers to how "government ownership undermines political and economic freedom". However, they criticise government media ownership, pointing out that "government-owned media outlet would distort and manipulate information to entrench the incumbent politicians" (ibid.). This is the case in The Gambia, where ruling governments use the state media as a propaganda tool for legitimacy and self-perpetuation, an issue I explore in chapter seven. Mosime (2017, p.178) links this system of state media control to colonialism in Africa, as a way to consolidate power.

In their criticism of the public choice theory, Djankov et al (2003, p.342) asserts that government media ownership preclude voters and consumers from making informed decisions, and ultimately undermine both democracy and markets. In contrast, they found that the private and independent media, supply alternative views to the public. For them, this would enable individuals to make political choices based on media pluralism without fear of reprisal from unscrupulous politicians, producers, and promoters. Although Djankov et al

recognised the possibility of the private media serving the governing classes, they assumed that private and independent media ownership is good for democratic decisions. However, the weakness of their position is the failure to consider that, the existence of an independent and private media ownership does not guarantee serving the information needs of the public, as required in a democracy. From my research, I find that in certain cases, such as in The Gambia independent and private media ownership is tolerated when it refrains from covering critical issues against the state. Under such circumstances, it means that the media is not free to disseminate critical, dissenting and divergent views to shape public perceptions and decisions. However, Djankov et al (2003, p.342) believe that "government ownership of the media is greater in countries that are poorer, having greater overall state ownership in the economy". This is partly because poorer countries lack a vibrant private sector to operate independent media houses.

In this section, I have highlighted key studies on media ownership and control globally. It addresses the intertwined nature of law and regulation with media ownership and control. It is evident that the liberalisation of government laws and policies created an atmosphere of media pluralism in many countries. While private ownership and control is dominant in the western world, public ownership remains a critical feature of political economy, particularly in poor post-colonial countries. Therefore, it is also important to explore debates surrounding the political economy of journalism in Africa, particularly on the much contested issue of regulation, control and ownership.

1.5 Political Economy of Journalism in Africa

The political economy of journalism in Africa slightly differs from the Western context in several aspects, especially on regulation, control and ownership. In Western liberal democracies the media operates in a largely deregulated environment, while journalism in Africa remains tightly regulated. As evidenced in the previous section, much of the debates of

political economy in Western democracies are mainly focused on large media concentrations and conglomerations owned by few individuals like Rupert Murdoch and several others who dominates the market economy. In Africa, the contending issues of political economy of journalism is compounded with direct and indirect political control ranging from direct state regulation, control and ownership.

Several scholars point out that the adoption of western liberal concept of market-based economies in Africa has contributed to diverse media ownership and control in Africa (Mosco, 2009; Andriantsoa et al, 2005). I find this problematic in the sense that despite this western influence on Africa`s political and economic paradigms, it is not effectively the case in every African country, especially under authoritarian systems of economic and political governance. Historically, the African media has been dominated by state control and ownership (Andriantsoa et al, 2005). Similarly, studies such as Nyamnjoh (2005), Schiffrin, (2010), Ihechu (2013) and Tumber (2000), demonstrate how state regulation is a powerful tool of controlling journalism and ownership in Africa.

A number of studies have revealed the continued state dominance of media ownership and control in Africa. In Djibouti "the media is entirely state-owned and state-run, both in print and electronic media outlets. Through Radio Television of Djibouti (RTD), the Ministry of Communication and Culture runs two national FM stations and two national AM stations. It also runs the sole national TV station" (Article 19, 2014, p.5). This has raised critical concerns about the lack of media pluralism and diversity in the assessment of media policy and regulation in Djibouti. It is also established that "taxation and business regulation are used to discourage media development, with the state controlling the sole broadcaster, Radio Television of Djibouti" (ibid, p. 23). Although specific to Djibouti, it does have relevance to The Gambia, as I highlight in chapter five how the broadcasting industry has been dominated by the government for decades. Barker (2001, p.17) found that "in countries where the market

is strongly controlled by government interests, the tendency will be for both private and public media to gravitate towards a careful and safe middle ground from a content point of view". Again, this is applicable to The Gambia where both private and government controlled media are cautious in their reporting for fear of legal and financial sanctions.

For Andriantsoa et al (2005), the evolution of economic liberalism and political pluralism in Madagascar is drastically changing the trajectory of dominant state ownership and control. According to them, new communication technologies have triggered rapid growth and increasing private sector involvement in the media industry. They also note that from the late 1990s towards the 21st century, Madagascar liberalised its media laws that allowed the proliferation of private media ownership of radio and television stations, and internet service providers. Although they note that it is not costly to establish a small radio FM station in Madagascar, they point out that only the wealthy have access to such sums of money. They observe that the commercial print makes a marginal profit, whilst the commercial radio is largely unprofitable. My own research found this similar to the Gambian context as the existence of a restrictive regulatory framework, especially under President Jammeh`s rule was a challenge for media pluralism in The Gambia. Meanwhile, Andriantsoa et al (2005) suggest that the growth of the private sector in media ownership contributed to important democratic changes including: the expansion of the political democratic space for multiparty contest, which expanded the political choice for citizens. Media pluralism facilitates competition that brings about changes of power, and contributes to a transparent and open democracy. Connecting this to the public choice theory proposed by Djankov et al (2003) I discussed earlier, it implies that Andriantsoa et al (2005) supports the notion that media pluralism facilitates democratic choices. However, I argue that in a situation where only the wealthy can afford to own and control the media, it will certainly favour only the wealthy candidates, thereby limiting the messages of other modest candidates.

In Kenya, Ogola (2011) discusses how the mainstream news media was controlled by the state on the basis of development journalism. According to Ogola (2011, p.81), this was done directly by state ownership, and indirectly through government control of advertising revenue, noting that the government was the largest advertiser for the media at the time. In this respect, he points out that the "government indirectly supported the mainstream print media by frustrating the alternative news media" (ibid.). He highlights the trend of media control and ownership in Kenya, particularly under President Moi's rule. According to him, President Moi tried to take control of The Nation and The Standard, which are Kenya`s biggest mainstream newspapers. He eventually bought shares in The Standard, and had indirect influence on The Nation through his business associate who was the paper`s principal shareholder. Ogola points out that in Moi`s attempt to have a total control of the newspapers, he established a national newspaper own by his political party to serve as his mouthpiece alongside the Kenyan state broadcaster (ibid, p.83). According to him, Moi`s ruling party bought another publication called the *Kenyan Times* and is evidence of the "mediatisation of the political process" (ibid.). In essence, Moi`s regime seeks to have influence over the political process by owning and controlling the news media. From Ogola`s perspective, government ownership and control of the media is a to exert influence over the electorates by shaping their views about government. Like Ogola, Gehlbach and Sonin (2014) see government media ownership and control in countries like Russia as a way to influence citizens' beliefs about the state of the world.

From this, it would appear that the Kenyan experience under Moi`s government is not too different from what existed in The Gambia under Jammeh`s regime. I demonstrate in chapter five that the ruling government of Jammeh directly and indirectly controlled the *Daily Observer*, the paper with the largest circulation in the country. However, in Kenya, Ogola notes that, this trajectory changed in light of Moi`s government reintroduction of political

pluralism in the 1990s, which resulted to the liberalisation of the media industry. Therefore, the change to a market model triggered development of the news media, and consequently led to the emergence of several new media outlets (ibid, p.84). Despite this policy of liberalisation, he found that media organisations continued to face critical challenges such as "crisis of power, crisis of ownership and crisis of resources" (ibid.). For instance, he points out that in light of an ailing economy media organisations continued to heavily rely on the state for advertisements, thereby compromising media independence.

What this discussion reveals is that public policy and regulation are principal determinants of newspaper ownership and control in Africa. It means that the growth and challenges of the media are a reflection to the types of governments and regulatory regimes across Africa, which varies from country to country. This supports McChesney`s (2003, p.28) position that "all media systems are the direct and indirect result of explicit public policies". In echoing this argument, Hardy (2014, n.pag) posits that "marketisation, the opening up of space for private enterprise, is not the result of autonomous, ' natural ' free markets or the logical outcome of converging technologies, but is constructed by the decisions (or non-decisions) of public authorities". I argue that without progressive government policy directives that encourages free market competition, neither of natural or technological factors is capable of ensuring marketisation.

In another study of the political economy of journalism in Africa, Gunde (2015) offers a slightly different perspective from Ogola (2011) who found that government control of the media in Kenya was to enhance its political objectives. Focusing on Malawi, Gunde (2015, p.73) uses the example of the *Weekend Nation* newspaper to demonstrate that political ownership of the press does not compromised editorial independence. He observes that even though the *Weekend Nation* newspaper was owned by the country`s Vice President Aleke Banda of the ruling United Democratic Front UDF from 1994, instead of serving as the

mouthpiece of the ruling party where its owner serves, as was the norm in Africa, it took a different approach against the regime. He points out that, the Weekend Nation was critical of the regime`s human rights violations, systemic corruption and abuse of financial aid from international partners (ibid, p.77). He notes that when Banda`s party attempted to make an amendment to the country`s constitution that provides for a two-five years term limit for the presidency, opening it up for the president to run for a third term, the *Nation Weekend* vehemently criticised that move (ibid, p.75). Gunde suggests that the political ownership of a newspaper could become risky to the owners' political career. For him, in order to have audiences and generate revenue through advertisement, media ownership should 'delink' their political affiliation from their news media as a business model. He argues that for the press to be profitable commercial enterprise, it must not associate itself with partisan politics.

However, the case of the *Weekend Nation* in Malawi is a rare and unique example of professional journalism consideration over political and commercial interest in Africa. This may not be the practical reality of the political economy of journalism in most parts of Africa. I also argue that Gunde`s model is exceptional in the business of journalism in Africa, and it is weak for not considering its unsuitability in hostile media environments. His model assumes that being critical to government can make the media commercially viable, while maintaining independent journalism. There is no doubt that an independent and critical press stands to fulfil its traditional watchdog role. However, the dominant trend and pattern in Africa is that the private and critical press risks commercial sanctions from governments, and corporate bodies, as noted by Ogola (2011) in the case of Kenya under President Moi. Similarly, Gicheru (2014, p.23) shares this concern as another obstacle to the private newspapers in Africa. He observes that access to advertising revenue whether from private corporations and businesses or from the government, is a hurdle to the private press.

Gicheru suggests that the private media in Africa usually rely on state funded advertisement as their largest source of revenue. He notes that the State uses this as a technique of canvassing partisan political support, while others use threats of advertisement withdrawal to put pressure on the media. According to him, an advertising code would not only ensure that government advertising was done in a fair, non-discriminatory and transparent manner. He points out that it "also serve to insulate the newspaper's editorial independence" (ibid. p.24). He gives Tanzania as an example where in 2010 the ruling party of Chama Cha Mapinduzi placed full page advertisements on both front and back pages of almost all the newspapers in the country to suppress coverage of the opposition activities. He explains that this was done to place opposition stories inside pages to deflect the impact of such stories. However, a key issue in this case is how the newspapers are financially controlled by the government. Whereas such private papers are critical to the ruling elite, they risk being boycotted on advertisement revenue. In a worst case scenario, Gicheru notes that "few newspapers and magazines that dared to be critical of the ruling elite were heavily censored, banned or silenced" (ibid, p.14). In this respect, this dissertation argues that the central claim of Gunde`s model fits in an environment of a free press, and suggest that it is unsuitable under an authoritarian context like The Gambia.

The discussion in this section suggests that direct state regulation, government ownership and commercial support are three key features of journalism control in Africa. These conditions are frowned upon by several scholars, which raise the questions of press freedom and how journalists operate within this context. Although African countries are gradually liberalising their laws and policies to encourage media pluralism, journalism in Africa remain highly regulated through the state or statutory laws. I have also established that the dynamics and ownership trends across several African countries are based on evolving public policies that are critical determinants of the market conditions in Africa.

1.6 Conclusions

The relationship between regulation, ownership and control and how this relationship shapes the nature of journalism in a given society has been well documented by political economists (John and Silberstein, 2015; Murdock and Golding, 2000; Sousa and Fidalgo, 2011). This chapter explored political economy theories to understand how regulation and ownership shapes the nature of journalism in a given society. Beyond colonialism, the history of government-owned media and press regulation in The Gambia can be understood through post-colonial lenses that recognise the political and economic conditions of journalism that are obstacles to press freedom. While these theories can be linked to The Gambian context, they were mitigated by other factors including the growth of the internet and the adoption of Western liberal policies as emerging issues of globalisation. Although, African scholars such as Nyamnjoh (1999, p.16) called for recognition of cultural pluralism by greater mobilization of African concepts, Western definitions, theories and ideas can be applied in post-colonial contexts like The Gambia to understand the political and economic conditions of journalism. Thus, various systems of media control - including direct-state regulation, ownership and the use of advertisement to control media outlets - can be found in The Gambia.

The purpose of this chapter has been to explore the political economy of journalism, particularly in a non-Western context, and the conditions for journalism practices. I began this chapter by focusing on broader foundational debates of political economy in media and communications studies. The discussions have shown the historical development of political economy in communication research and how the field has been defined, highlighting several factors that influence media operation, ownership and control. I established that much of the work of political economists have focused on the Western context of marketisation and deregulation. From this, I determined that there is a need to look at political and economic conditions of journalism from a non-Western context.

I identified state and statutory regulation, government ownership and control amongst key issues of political and economic conditions of journalism in Africa. I explored how communication scholars examined the political economy of the media in Africa, highlighting three features of control and ownership across countries. I have shown how state regulation, ownership and financial control remain influential features of the political economy of journalism in Africa. By exploring studies considered the role regulation plays in media ownership and press freedom, I found that the field is limited in terms of engagement with the law, as it requires an understanding of legal analysis. In this respect, this dissertation offers a deeper interrogation into the political economy of journalism, through a careful study of the law.

CHAPTER TWO

MEDIA LAW

2.1 Introduction

In the first chapter, I focused on the political economy of journalism, particularly on regulation, control and ownership. Academics have studied how law and regulation can restrict or facilitate media ownership and press freedom, but this area of research is still underdeveloped. I propose that a holistic approach is needed that integrates cultural and legal studies to understand issues related to the enforcement of law and regulation that affect media ownership, journalism practices and press freedom. The discussion in the previous chapter demonstrates that political economy cannot be separated with law as the interplay of regulation and government policies generate media behaviours and structures. Therefore, there is a need for media law to engage more ideas around political economy, as it is about control and regulation.

In this chapter, I first explore various theories related to the doctrine of media law to understand existing knowledge in the field and its limitations. It delves into various theoretical claims on the development of media law as a legal discipline and why it is used to control journalism. The discussion probes the various functionalities of media laws and regulations that are multifaceted in journalism practice and media production. The chapter identifies some of the debates surrounding the civil and criminal conceptualisation of media offences, outlining the nature of their enforcements to facilitate understanding to how media offences are punished. It further explores studies on the use of media laws to control journalism in Africa, particularly in post-colonial countries. The chapter explores the notion

of international legal protection for media freedom and examines legal moves which gradually developed in the body of international human rights law. I argue that an understanding of media law is necessary to study the political economy of journalism.

2.2 Media Law as a Legal Discipline

Contemporary scholars and theorists with different viewpoints observe that media law is a diverse growing legal discipline with a variety of functions to media and journalism practice. These include promoting and protecting freedom of expression and media freedom, restricting media freedom for the protection of other rights and in some instances to suppress media freedom, and critical journalism (Quinn, 2018; Smartt, 2006; Dodd and Hanna, 2016). Although there is no agreed adopted definition for the concept, Handzhiyska and Mackay argue that media law is:

> "a branch of law that consists of a system of legal norms that regulate the activities of the mass media. It examines the limits within which media outlets and journalists can operate. Media law, on the one hand, regulates the principles of the dissemination of media products, and, on the other hand, it can affect the format and content of media products" (2017, p.9).

Within this definition are various elements central to this research, as the case law analysis I use later in this dissertation show legal and regulatory control of journalism. Handzhiyska and Mackay`s (2017) definition recognises media law as a legal discipline that is pertinent to the development of law in regulating media activities. They suggest that media law goes beyond the identification of rules and regulations governing media activities, but an important facet of law that needs to be "researched, codified and implemented from the progressive point of view and, taught and promulgated from the educational point of view" (ibid, p.160). In their view, media law must be pursued as a legal discipline to understand

media crimes. Other scholars, such as Tanwer and Sudakaran (2010, p.160), agree that media law is a growing multifaceted legal discipline that deals with a series of legal concepts. For Quinn (2018, p.1), media laws are rules that affect what journalists 'can and cannot publish.' Although Quinn`s assertion of what journalists can and cannot publish is a broad description of the field, however, it means permissible and impermissible legal rules for journalistic publications. These are discussed throughout this work, as I attempt to analyse the legal and regulatory framework of the media in The Gambia and international jurisprudence that permits and restricts media freedom.

In his introduction of a compilation of media law articles, cases and conventions, Price (no year, p.i) acknowledges media law as a growing legal discipline that can be traced to the aftermath of World War II because of concerns for freedom of expression. He argues that this was as a result of the advancement and expansion of communication technology especially radio and television. Significant recent developments in this direction have been convergence of media platforms and growth of social media. He observes that media law is inherently inter-disciplinary that touches on issues central to a society including democratic values, national identity, and the encouragement of creativity (ibid.). According to Price, these issues are "reputation, privacy, the rights of parties, candidates and individuals during elections, the well-being of children, the encouragement of violence in society, and, in a sense, the development of speech and expression" (ibid.). Some of the issues listed are of particular interest to this research since media law is key to balancing the right to freedom of expression and other rights. Other authors draw on extensive range of laws that show awareness of the diverse nature of media law as a discipline, particular in the British context. This includes rules on registration of media organisations, licensing of broadcasting stations, publication, court reporting, defamation, sedition, privacy, and confidentiality and copyright issues (Miller, 2003; Quinn, 2018; Smartt, 2006; Dodd and Hanna, 2016). Media law scholars have

been able to demonstrate that the aforementioned laws are pertinent rules that apply to the daily practical realities of the media and journalism activities. Although these laws are discussed within the British context, they are also available in all common law jurisdictions including The Gambia. A key aspect of my thesis is how journalists operate under these laws and regulations, especially through direct state regulation. My research takes further to understand how some of these laws affect journalism practice, media freedom and ownership in The Gambia.

One of the most important studies often cited in research and teaching media law is that of Dodd and Hanna (2016) who made an extensive examination of laws and regulations that affect journalism practice in the UK. For example, in Chapter 4 of their work, they discuss crime coverage in the UK and raise the need for journalists to be aware of contempt of court laws to avoid risks of libel actions. They mention the ban on the use of audio recorders in British courts as an important example of court reporting restrictions (ibid, p.124). This, they point out is to "prevent witness testimony being broadcast, which for some witnesses would increase the strain of giving evidence" (ibid. p.145). According to them, another reason of the ban is to stop secret recordings in the public gallery by individuals of interest or criminal associates to a case, arguing that such individuals could use recordings to "intimidate or humiliate a prosecution witness or to help dishonest witnesses collude in false corroboration" (ibid.). An important point in Dodd and Hanna`s (2016, p.252) study is that the law on court reporting is designed to restrict the media from causing substantial risk of serious prejudices or impediment to an active case. This means that media law also serves the purpose of preserving the integrity of a legal process, which journalists are bound to respect. What is clear in Dodd and Hanna`s work is that journalists are obliged to practice within the ambits of legally designed rules or face the danger of punishments. As I later discuss in section 2.4 of this chapter, these punishments can be civil or criminal. In his theorisation of the media as a

legal doctrine, Oster (2013, p.58) draws our attention to four distinctive tenets of media law. These are:

1. ‘The media' is to be accepted as a legal institution with specific rights and responsibilities.
2. 'Media freedom' grants protection to persons or companies categorised as 'media' that goes beyond freedom of expression protection afforded to private individuals or non-media entities.
3. 'The media' is to be defined as'a natural or legal person gathering and disseminating to a mass audience information and ideas pertaining to matters of public interest on a periodical basis and according to certain standards of conduct governing the newsgathering and editorial process'.
4. As a consequence, not every person or company that regularly addresses a mass audience-be it a blogger or even a 'traditional' newspaper or magazine-constitutes per se 'media' in a legal sense.

In the argument above demonstrates the important multifaceted function of media law that provides protection to media organisations and individual practitioners such as journalists. However, Oster does not believe that not every publication accessible to a mass audience is legally recognised as a media. He argues that the media as a legal concept stops at the conventional mass media and that media law provides significant protection to the traditional media more than individuals and non-media institutions (ibid, p.68). His justification for this is based on the recognised role of the traditional media for the functioning of democracy, and digging out the truth, through the contestation of ideas (ibid, p.69). Similarly, reinforcing the work of Weaver, Buddenbaum, & Fair (1985), Masum and Desa (2014, p.32) point out that countries “enact laws and frame regulations to keep the media performing their most desired functions, particularly the watchdog role”. Their view aligns with the liberalist perspective

that the media is a marketplace of ideas that can facilitate democratic public debates by laying multiple public opinions. In doing so, the media should be provided with legal protection to fulfil its democratic role.

Unlike Oster`s (2013) conceptualisation of media law, Lesson`s (2008) work demonstrate that law and regulation are also instruments of media suppression. Lesson offers understanding to how taxation and licensing regulations are enforced against the private media in Romania to suppress critical journalism (2008, p.159). According to him, media outlets that owe government taxes results to bias coverage in favour of the government or face closure through the enforcement of regulations. Lesson draws on the example of government regulation of the Romanian media, suggesting that it "has historically controlled important media-related inputs, such as distribution networks for newspapers" (ibid.). I argue that such a situation will deter the media from being critical to power and restrain itself from carrying out its watchdog role. As I demonstrate in chapter six and seven, of my research, media law and regulation are used as instruments of repression against critical journalism.

The studies reviewed here clearly indicate the nature of media law as a legal discipline with a strong relationship to political economy as a form of control. In this section, I established that one of the major limitations of the field is scholars stopped at identifying and describing media law as a complementary form of control that serves as a guideline for ethical journalism and why laws are applied in certain instances, but did not indicate how it influence journalistic practices. This is precisely the gap in knowledge my research aims to address. This section has attempted to address the various claims of media law theorists that laws and regulations governing journalistic practices are either progressively applied to restrain and protect the media, or retrogressively enforced to suppress independent journalism and control media freedom. I have demonstrated that scholars attempted to study media law as a guide for lawful or best practice that controls media and journalism practice. I recognise that one of the

key features of media law is to control the power of the media. The next section looks at these issues in detail.

2.3 Media Power and Media Law

Having already provided the theoretical foundation for media law, this section proceeds to discuss why it is used to restrain media power. The starting point in considering lawfully restraining the power of the media is in Robertson and Nicol's (2008, p.757) work who accepted the idea, outlining the power of the media to "damage reputations by falsehoods, invade privacy and partisan conduct." They suggest that rules that will guide media conduct and also protect other individual or personal rights are necessary in a democracy. Supporting this view, Tanwer and Sudakaran (2010, p.153) argue that balancing individual rights and the collective interest of society is a fundamental concept of contemporary media law. Similarly, contemporary scholars like Barendt (2012, p.59) recognise the role of media law in protecting the reputation of individuals from being ruined by defamatory publications.

In his work on media power, Freedman (2014, p.319) questions the nature of media power, and identified three dimensions of media power and its various elements by focusing on actors, institutions and contexts. He argues that "media power is best conceived as a relationship between different interests engaged in struggles for a range of objectives that include legitimization, influence, control, status and increasingly profit" (ibid.). This explains the complex nature of media power as an important social actor. Within the exercise of media power involves journalism practice that is an influential force in social construct and decision making. This includes conveying and dissemination of information about peoples, institutions and events. Freedman draws our attention to excessive media power on the invasion of privacies in the British phone hacking scandal (ibid, p.322). This led to the establishment of a judicial public enquiry called the Leveson Inquiry, which looked into the culture and ethics of the press in the UK (Fenton, 2016, p.81). Fenton argues that the inquiry revealed a type of

media power that was systematically used by 'headline-hungry journalists' to invade people`s privacy (ibid, p.82). In Fenton`s view, the notion of newspaper deregulation in the UK, led to ownership dominance. This, she argues translated to more revenue for few media groups with "social and political influence" that has adverse effects for ethical journalism and democracy (2016, p.83). These studies clearly indicate the link between media law and debates in political economy.

However, Palmer`s (2001) work offers another perspective on media regulation by focusing on the problem of incitement to violence and hate speech, which are considered as potential destructive powers of the media. His study shows that restraining the power of the media from incitement to violence and hate speech has a long historical context particularly in post-conflict situations. Palmer (ibid. p.197) briefly points out the historical role of the press in aiding atrocities in Germany under Nazi rule. This, he suggests resulted in the promulgation of press laws in post-war Germany that prohibits hate speech and incitement to violence (Ibid, p.200). In contrast to Palmer, Salhani (2006, p.33) provides the basis for understanding the negative and positive powerful role of the media in international conflict by focusing on the war in Kossovo. He found that although the media helped to sway public opinion in favour of international military intervention to stop further bloodshed in the war, it also fuelled the war with inappropriate and inaccurate reports (ibid, p.35). He notes a similar negative role of the media in the Rwandan conflict by inciting ethnic hatred and genocide, "where nearly one million Tutsis were hacked or bludgeoned to death by Hutu militias in just 100 days-a tragedy of genocidal proportions" (ibid, p.37). Conversely, what Palmer and Salhani demonstrate is the need to be cognizant of vital historical realities on the negative power of the media that should be legally restrained. Palmer (2001, p.214, citing Errera, no year), argues that hate speech laws represent "a vehicle by which society can express its

values and the limits of what it will tolerate". This will help to prevent the type of media practices that will present a danger to society.

However, other studies have concluded that media laws are also designed as suppressive measures to restrict the power of the media from conducting its civic and watchdog roles (Okonkwor, 1983; Article 19, 2012; Forster; no year). This is because the media has great potential to raise awareness about corruption and government abuses, which can trigger political changes through voting or unconventional means such as arm struggles. Gunther and Mughan`s (2000, p.402) work associated this form of regulatory control of the media with totalitarian, authoritarian and nondemocratic regimes. They suggest that these types of governments largely fear the power of the media to expose them, and publish facts that can shape democratic decisions, particularly in elections to subvert the legitimacy of nondemocratic regimes. Gunther and Mughan (ibid, p.27) stresses that the media is a powerful persuasive tool that influences transition from authoritarian rule to the consolidation of democracy. Their argument provides an understanding to how a critical and objective media in nondemocratic regimes can facilitate effecting political regime changes. For this reason, laws used to control the media are enforced to curtail the power of the media. My research shows how in The Gambia laws and regulations repress critical journalism, which ultimately limits the ability of the media from holding government to account. It has been demonstrated that one of the main reasons for the suppression of media power is for undemocratic rulers to manipulate the citizenry, and continue clinging onto power (Gunther and Mughan, 2000, p.27). White`s (2017) analysis on the neo-patrimonial control of the press in Africa confirmed the used of repressive laws against the media. He argues that journalists were confronted with autocratic system of governance, which used laws that discouraged the press from informing the public about "corruption and other forms of unjust governance" (ibid, p.21).

Supporting the notion of legal control of media power in Africa, Masanja (2012, p.387) uses the example of Tanzania where the government has the power to "register, deregister, refuse circulation, or ban circulation of a newspaper". This level of regulatory powers could be a potential barrier to critical journalism. Similar to White and Masanja, Okonkwor` (1983, p.59) historical work linked laws that limits the power of the in Africa to British colonial rule. According to him, the British imperial power enacted such laws in their colonies because they misunderstood the expression of divergent views for a ploy to overthrow them. Using Nigeria as an example, he found that the British colonial rulers enacted laws that barred the press from inciting "hatred, disloyalty or violence against the government" (ibid.). He further points out that the post-colonial independent Nigerian government did not only inherit this technique, but was enthusiastic to use it to suppress the power of the media (ibid.). In a similar line of argument, Singh (2015, p.136) argues that in certain instances particularly under autocratic rule, media laws are used to the advantage of government`s against journalists and democratic principles. The discussion here suggests anti-media regulatory techniques, which can limit the power of the media from holding governments accountable to their people. One could argue that several studies have agreed on the idea of using the law to retrogressively restrict the power of the media as a popular phenomenon of autocratic rule. Therefore, I argue that an effective legal framework is essential for the media to fulfil its social responsibility.

In conclusion, the literature in this section explains three main theoretical claims surrounding the issue of restraining media power through law and regulation. First, scholars argue that media laws are designed to restrain the power of the media from violating the rights of others such as the right to reputation. Second, they suggest media laws are developed to restrain the media from inciting violence. Third, media law and regulation is also conceived as a technique of suppressing the power of the media from conducting its social watchdog

responsibility. In the next section, I explore the two main ways of how law and regulation is enforced to supress or restrict the power of the media. This is an important part of the debate for understanding the nature and characteristics of media law and how it is applied to control the media.

2.4 Criminal and Civil Conception of Media Law

Theorists have found that media law is divided into two categories or divisions of crime (Hanna and Dodd, 2016; Quinn, 2018). These include criminal and civil categories of law, which explains the nature of media offences and their various punishments. Quinn (2018, p.11) explains that the criminal division of media law deals with offences that are committed against a whole community, and are prosecuted by the State. A notable example of a criminal media offence is the crime of seditious libel, which is historically linked to protecting rulers from dissenting views (Koffler and Gershman, 1983, p.820). Robertson and Nicol (1992, p.100) confirm that in historical Britain criminal libel law was designed for the purpose of protecting "the great men of the realm" from publications that might agitate the people against them. Similarly, Green (2002, p.37) argues that under the laws of criminal libel, it was forbidden to utter and disseminate stories that will arouse the people against their masters. He points out that the philosophy behind the use of seditious libel was to prevent encouragement of discontent against established orders (ibid, p.36). However, he suggests that seditious libel law is unlikely to be used in a modern society.

Although within the Western context as in Britain libel seditious law has been repealed, this is not the case in contemporary Africa. Several studies indicated that seditious libel laws are still persistently applied by many independent African countries to silence criticism from journalists (Herskovitz, 2018; McCracken, 2012). For example, chapter six of my research shows that the crime of seditious libel is still alive in contemporary Gambia where journalists are charged with criminal the crime for criticising the ruler. The idea of prosecuting media

offences under criminal jurisdiction has drawn a great deal of attention amongst early and contemporary scholars, and press freedom advocates. Key amongst these offences includes sedition, criminal defamation and false news that affect the work of journalists (Robertson and Nicol, 2007; Green, 2002). Studies reveal that the enforcement of these laws often with jail term punishments are repressive measures to dissenting political speech and stifles press freedom in Africa (Okonkwor, 1983; Article 19, 2012; Forster, no year).

Similarly, Passaportis (2004, p.57) points out the negative impact of criminal defamation laws on the news media arguing that it will deter the dissemination of news on critical issues. His argument follows his account of how defamation laws prevented the circulation of news on racial segregation in South Africa. According to him, defamation law prevented the dissemination of the true negative picture of racism, which stalled national political pressure for reforms in South Africa (ibid.). In Quaqua`s (2017) article 'journalism is not a crime', he criticises criminalising media offences suggesting that journalists are treated like criminals when prosecuted for criminal offences. He argues that offences like criminal defamation are kept as weapons against the press. In his view, media offences should be mainly remedied through civil measures, as opposed to criminal. It has been observed that the criminalisation of media offences is inconsistent with democratic standards and principles (Bressers, 2003, p.8). However, Bressers (2003, p.9) further points out that supporters of criminal media laws such as criminal defamation believes that it gives "legal recourse to people victimised by malicious and false statements without jeopardising the ability of responsible journalists to report on the events of the day". This argument seems to be far from the reality as evidence suggests that the enforcement of criminal defamation laws have had a drastic impact on independent journalism. For instance, Bressers cited a Media Law Resource Center report that found prosecutions for criminal defamation offences selective and used as a political weapon (ibid.). The studies discussed here thus far indicate that criminal media offences are

repressive instruments to critical journalism. They are also protective of rulers, especially for authoritarian governments that use it to suppress dissent. My research demonstrates the fact that under criminal law journalists can be convicted to imprisonments can deter the publication of divergent views. I now move on to discuss the civil component of media law to understand why it is used to restrict media freedom.

The idea of considering media offences under civil law gained prominence in the twentieth century, which has been mainly applied in Western liberal democracies (Mitchell, 2014, p.135). The theory behind this is that breaches in relation to media and journalism activities should be treated as civil disputes between individuals, private entities and the media in general (Dodd and Hanna, 2016, p.9). Dodd and Hanna identify several media offences including civil defamation, invasion of privacy and breach of copyright that are all part of tort law, which can be brought to court by individual complainants (ibid.). According to Mitchell (2014, p.352), for instance, defamation has been a focal issue of debates in tort law which is "primarily a crime consisting in an attack on the honour of a person." He argues that this is a civil wrong that made a complainant who has been defamed entitled to claim compensation (ibid.). Justine (2000, p.187) notes that under tort law, acts of media breaches include negligence, misrepresentation and wilful damage arising out of media activity.

In Bressers' (2003, p.8) comparative analysis, he notes that civil penalties such as monetary fines are far more reasonable than criminal sanctions of jail in punishing media offences such as defamation. In other words, in the case of liability to malicious damage done to ones reputation by the media, civil law provides compensation for people victimised by malicious and false publications. Other proponents of tort laws such as Quinn (2018, p.275) points out that they are designed to stop the media from invading people`s privacy, protect journalists sources, protect data and intellectual property. In contrast to Quinn, Karcher's (2009, p.821) offers a different perspective, believing that tort law does not minimise the risk of media

harm to society. He identifies two reasons why tort law such as defamation and privacy does not threaten the media with risk of liability. This, he points out is because either "there is no duty to avoid any risk of harm, or the duties of the press that are imposed under defamation or privacy tort laws contain much more lenient standards of care and are not consistent with the duties imposed under journalism ethics codes and, thus, do not encourage the elimination of such risks" (ibid.).

However, despite making a strong opposition to media laws that threaten journalists with imprisonment, Robertson and Nicol (2007, n-pag) are also concerned about the disadvantage of civil laws to journalism and media practice. They found that these laws "routinely suppressed the publication of important and newsworthy information". According to them, a civil offence like libel that requires journalists to prove the truth against claimants is bias, which put publishers to a disadvantage against wealthy claimants. It is noted that in a defamation lawsuit, a plaintiff may indicate the amount he or she is seeking to be compensated for as a measure of worth to reputation (Masum and Desa, 2014, p.41). Therefore, Masum and Desa (ibid.) opposed the idea of allowing claimants to quantify the monetary value for their claims for general damages which "may be oppressive to the defendant and the public at large, especially the media and unjustifiably stifle freedom of speech". Scholars such as Mbaine (2003, p.37) have found that the inability of the press to pay hefty damages has undoubtedly led to the closure of some newspapers in Africa. For example, he points out that the awarding of 20,000 US Dollars payment of damages to a Ugandan state minister against a local newspaper called '*The Citizen'* weakened the paper, which eventually led to its demise (ibid.). With respect to The Gambia, I argue that the imposition of high monetary fines in defamation cases has been a long standing punishment for media offences, which contributed to the suppression of media freedom.

What the foregoing analysis demonstrates is that while civil law plays an important role in balancing the right to reputation and freedom of expression, it is a highly contested area of punishing media offences. Also it shows that, although opponents of criminal media law embrace the idea of civil remedies as the appropriate legal recourse for media offences, they acknowledged that this can be costly to the media. I have also established that the enforcement of civil penalties against journalists has contributed to the closure of media organisations and muzzles press freedom in The Gambia. In chapter six, I show how criminal and civil offences were used to punish journalists in The Gambia. Inevitably, when talking about media law and journalism in post-colonial Africa, attention needs to be given to the African context to understand how media law is discussed.

2.5 Media Law and Journalism in Africa

As indicated in the previous section, my research has confirmed that there is a fairly comprehensive and well documented body of literature on the legal control of media freedom in Africa. Understanding this phenomenon is one of the main motivations behind this project. As has been differently put by scholars, journalism in Africa has consistently faced legal repression and censorship imposed by post-colonial rulers (Nyamnjoh, 2005; Schriffrin, 2010; White, 2017; Okonkwor, 1983). According to African scholars such as Nyamnjoh (2005, p.70), most legal and regulatory frameworks of the press in Africa are designed to control journalists who are perceived by lawmakers as trouble makers. Nyamnjoh`s comment implies that only African lawmakers are interested in the legal control of African journalism. This might be because lawmakers are primarily responsible for the enactment of laws and regulations that governs journalism. However, I argue that issues concerning media law and regulation in Africa are far more complex that raises variety of debates.

Scriffin`s (2010, p.410) work identifies libel, sedition and licensing requirement laws in African countries including Nigeria and Uganda as political constraints to journalism. He

argues that these laws "contribute to a climate in which the fear of prosecution (or even) violence is always lurking in the background" against journalists (ibid.). He found that one of the problems facing African journalism is the absence of freedom of information laws. In his view, this creates a problem for journalists to access data on government spending, bidding processes and details on infrastructure construction, which makes it difficult to report on corruption. As briefly discussed in section 2.3 of this review, White (2017, p.21) confirms Scriffin`s (2010, p.410) argument that the invocation of laws put journalists in Africa under constant fear of reprisals from leading politicians. He mentions the special situation of Tanzania as an example where laws held over from colonial period are notoriously used to repress journalism (ibid.). In explaining the Tanzanian situation, White notes that:

> "The independence government in Tanzania not only kept the colonial legislation against the press, but in 1968 amended it to include the power of the president to stop publication of any newspaper if it acted, in his opinion, against public policy" (ibid.).

A clear argument in the quote above indicates two issues; one is the inheritance of repressive colonial era legislations that are inimical to press freedom, and two, the tightening of these legislations with additional presidential powers to control the press. This has been a general trend across Africa, as my research shows how the Gambian government under APRC rule not only applied repressive colonial laws against journalists, but promulgated more to suppress media freedom. Similarly, Okonkwor's (1983, p.55) historical analysis on the offence of colonial era sedition laws were enforced in Nigeria even after independence. He found that the Nigerian Supreme Court not only support the retention of sedition provisions in the country`s criminal code, but letting the laws immutable thereby divesting a constitutional guaranteed right to freedom of expression (ibid, p.59). This brings me to the issue of contradictions between constitutional guaranteed rights on freedom of expression and

legislations that limits this right, thereby causing a paradox on media law and regulation in Africa.

Early African writers like Babatunde (1975, p.256) found it fascinating that the very governments African newspapers assisted during the nationalist struggle for independence, made various laws to control the press. This, he points out were happening in countries with constitutionally guaranteed provisions for press freedom (ibid.). As explained above, the inconsistency between liberal constitutions of independent African states and legislations concerning media restrictions could be associated to their colonial legacy. For instance, in a former British colony like Ghana, despite adopting a new constitution in 1992 that provides for media freedom and independence, the law on criminal libel was retained until 2001 when it was abrogated (Nyarko, Mensah and Amoh, 2018, p.15). These theorists found that it was only after the repealing of the law on criminal libel, more newspapers were registered in Ghana. However, they argue that unless the Ghanaian constitution provides for right to information law, its provision on media independence is meaningless. Similar to Nigeria and Ghana, in Swaziland, an Africa country, Rooney (2006, p.61) found that the constitution provides for media freedom, but also anti-media legislations were in existence.

The discussion above raises the question of whether constitutional guarantee for media freedom in Africa is a practical reality. For Jackson and Houghwout (1982, p.16), African constitutions which are often dominated by rulers' personal ambitions proved ineffective. Ogbondah (2002, p.55) corroborates that the constitutional promise for media freedom in Africa has not been fulfilled. He suggests that this is because of lack of political commitment and respect for fundamental laws that are necessary to enhance media freedom in Africa. Tumber (2000, p.252) suggests that the normative theory in post-colonial Africa was a plural, critical and potentially divisive press is an obstacle to national development and nation building. In this regard, political and legislative measures were adopted for the media to

support policies and programmes of governments or face reprisals. As noted earlier, in the case of Tanzania the laws were amended increasing the powers of the President to stop any publication, which is believed to be against public policy. The practical effect on the use of such legislative powers could be unlimited and be used to target independent journalism.

Balule (2008, p.406) extensively examined the application of insult laws in Southern African countries, which contributed to more media violations in countries like Zimbabwe. Similar to the works of previously mentioned theorists, Balule reported that insult laws are archaic secondary legislations that are inconsistent with the principles of constitutions of Southern African countries. According to him, the theory behind the use of insult laws is to protect the honour and dignity of public officials from oral and written publicity that can offend them (ibid, p.407). He concludes that the existence and use of insult laws in Southern African countries "fledgling democracies is hindering the enjoyment of freedom of expression and media, an indispensable component of a democratic setup" (ibid, p.427). His assertion about the use of insult laws relates to the concept of seditious libel under common law, which seeks to protect authorities "against the negative effects of public dissent, criticism and threats to their dignity and authority (Skinner, 2016, p.14).

A number of studies have revealed that official secrecy laws dating back to colonial rule has also been used to restrict information to the media (Nyarko, Mensah and Amoh, 2018; Jallow, 2013). According to Jallow (2013, p.68), the official secret law protects government official documents from the media. However, he argues that the law targets civil servants to refrain from providing information to the media, which also discourages the media from obtaining information from government departments (ibid, p.69). Scholars point out that in African countries like Ghana, the law benefited the ruling class and put the media to a disadvantage (Nyarko, Mensah and Amoh, 2018, p.9). Furthermore, the use of laws to control journalism in Africa has no boundaries. For instance, in The Gambia, even immigration laws

were used to supress critical journalism (Jallow, 2013, p.70). Jallow reveals that immigration laws were enforced to deport several foreign journalists who were critical to the ruling regime. He points out that this has an adverse effect on the country`s media that had heavy reliance on foreign journalists.

However, despite the existence of the range of laws that are used to control journalism in Africa, it would be wrong for one to assume that there are no laws that encourage journalism. Although in Scriffin`s (2010) work Nigeria was mentioned as one of the countries that lacks right to information law, this seems to have changed as a recent study by Adu (2018) found the existence this law. Adu (2018, p.669) indicates that the overarching objective of the RTI law in Nigeria is to "improve access to government data, reduce corruption and expand the frontiers of democracy". This means that journalists are protected by law to solicit access to government information and scrutinise it in line with democratic principles. However, the practical question to ask is whether the Nigerian RTI law is serving purpose. Adu writes that:

> Corruption, human rights abuses, restrictive media, absence of media pluralism, denial of access to information, lack of transparency and accountability continue to undermine the very ideals of Right To Information Law (ibid.).

He found that public institutions are not willing to release information held in government offices (ibid, p.671). This mean the Right to Information Law is merely enacted for formality, but it is practically ineffective. Other authors who argues on the practical failures of Right to Information Law in Africa includes ((Karlekar and Dunham, 2014; Blanton, 2002; Rodríguez, Rossel, 2018; Kirby, 2004).

In summary, the foregoing debate in this section demonstrates the complexities associated with media law and journalism in Africa. The paradox of constitutional guarantee co-existing side-by-side with secondary legislations that suppresses media freedom has become the

reality of African journalism since independence. The discussion in this section emphasises that media laws and regulations in independent African states are largely rooted to colonial rule. It is therefore reasonable to conclude that most African countries retained repressive modified legislations to regulate journalism activities. This section also shows the lack of freedom of information laws in many African countries, and ineffective where it may exists. However, as journalists operate within these complex national laws and regulatory frameworks, most African countries especially The Gambia is bound by the principles of international law that provides for media freedom and forbids the suppression of freedom of expression. The next section focuses on international media law, highlighting its significant role in the promotion of media freedom.

2.6 International Media Law

Magnuson (2010, p.4) provides a basis for understanding international media law as a subject of international norms, values and standards. In his account of the development of international media law, he points out that this began at the end of the Second World War, "when the atrocities perpetrated by the Nazi regime upon its own citizens shocked the conscience of the entire world". As a result, international legal protection for human rights including freedom of speech "started to gain traction in legal circles, leading to a proliferation of international human rights treaties". He identifies variety of international and regional human rights treaties that bears freedom of speech in international law (ibid, p.8). These are: The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, American Convention on Human Rights, and the African Charter on Human and Peoples' Rights. He argues that while each of the aforementioned treaties expresses protection for freedom of speech in a slightly different way, there are some basic concepts to which all ascribe. Moreover, these instruments demonstrate how international law protects freedom of

expression. For example, in his review of the Universal Declaration of Human Rights, he notes that the United Nations General Assembly adopted the Commission's declaration in 1948, which sets out individuals' basic civil and political rights. Amongst the rights highlighted includes free speech which the Universal Declaration provides that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

This becomes the first instrument with the effect of creating universal jurisdiction that recognised the notion of freedom of expression through the media as a human right. Although the declaration was not legally binding, Magnuson (ibid, p.8) explains that it has "an unprecedented level of influence on international norms and state practice", in view of protecting human rights. According to him, many countries incorporated provisions of the UDHR into their constitutions. Similarly, Wallace (2009, p.22) points out that the instrument is an international bill of rights. This suggests that the instrument influence the enactment of media laws at domestic levels, which incorporated the concept of free speech and free press as accepted under international customary law.

Joyce (2010, p.507) analysis offers a comprehensive understanding on the relationship between the media and international law on the prism of human rights. He highlights that the regulation of the media at the international level is as diverse as "human rights, criminal justice, humanitarian law, intellectual property, trade, and telecommunications". However, he points out that international regulation of the media is largely concerned with free expression and deregulatory emphasis (ibid, p.508). Joyce argues that international law recognised the role of journalists and the media in education and formation of public opinion. He distinguishes the role of international media law and regulation into two issues including the good and bad media. On the good, he believes that international media law aims to protect

freedom of expression for the social good, which is recognised as an essential foundation of a democratic society (2010, p.510). He argues that international media law aims to "shelter the media from state interference, so that it can perform its role as public watchdog" (ibid.).

On his notion of bad media, Joyce takes into account the role of international law in restraining the negative potentials of the media such as incitements to violence and genocides (ibid, p.513). Like Magnuson (2010), Joyce found that the media played a crucial role to incite racial hatred to commit genocides under Nazi Germany and in Rwandan. This resulted to the conviction of journalists in both the Nuremberg and International Criminal Tribunal for Rwanda (ICTR) under international criminal law (ibid). Therefore, international law has justified the lawful restraining of the media from propaganda for war, hate speech and incitement (ibid.). This explains why incitement to genocide is a punishable crime under article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide (United Nations, 1951). Another example of punishment for incitement against a journalist under international law is the case of a Rwandan broadcast journalist in the *Prosecutor v. Bikindi (ICTR-01-72)*. In this case, the trial chamber found Bikindi guilty of direct and public incitement through radio to commit genocide (United Nations, 2010).

While almost every study that has been written on international media law focuses on human rights, Keller's (2011, p.115) work provides a broader perspective by exploring European media law on the mixed foundations of economic and human rights law. In his introduction of the Media in European and International Legal Regimes, Keller argues that "while human rights law captures public attention more often, it is Europe's economic laws that set the basic contours and dynamics for media law" (ibid.). This, he points out is based on "the fact that the production and distribution of information and entertainment content in Europe is primarily driven by the pursuit of profit and market share" (ibid.). He highlights the liberal market based principles of free movement and fair competition in European Union law,

which retains “a heavy bias towards the liberty to publish” (ibid, p.116). In his view, the protection of the state and the public from the harmful effects of media content is secondary concerns in European Union law. This is another important area of international media regulation which is beyond the scope of my research. Here, I focus on the field of international human rights law within the African, and especially the Gambia context.

As previously mentioned, the principle of international legal protection for freedom of expression is also cautiously expressed in an important regional treaty like the African Charter. The African Charter provides for the right to receive, express and disseminate information within the law (African Charter, 1981, Art 9). At the African regional level, the idea of free speech and free press was further reaffirmed in the Declaration of Principles on Freedom of Expression in Africa (African Union, 2002). This declaration comprehensively addressed the issue of guaranteeing, promoting and protecting the right to press freedom through legislation and institutional measures (ibid.). To conclude, Magnuson (2010, p.10) stresses that countries that ratified the discussed human rights treaties accepted two obligations: (1) to adopt statutes or other measures necessary to protect the rights guaranteed by the treaty, and (2) to remedy any violations of the rights. This bestowed State responsibility under international law to fulfil its commitment to free speech and free press as human rights undertaken. Eide (1986, p.2) argues that there is significant development of international law in media protection. However, he points out the complexities associated with the implementation of states obligations to protect freedom of expression, suggesting that they are “unattractive to journalists as the results are slow and unspectacular.” Similarly, Magnuson (2010, p.10) acknowledges the problem of enforcement of human rights instruments, which made them lose much of their force. Whilst would agree with Magnuson’s summation, I find this as a prompt to further investigate whether countries adhere to fulfil their obligations under international human rights law.

Therefore, the review in this section indicates that international media law is concerned with two key issues including protecting freedom of expression as a human right, and restraining the negative potentials of the media from inciting violence, genocide and propaganda for war. It is now generally recognised that international media law is an important part of international customary law obliging states with the responsibility to freedom of expression. A key aspect of my thesis addresses how international human rights law can be seen as a guarantee for press freedom in The Gambia. Whilst The Gambia is a signatory to international conventions for the protection of free expression, I argue that this did not have effect as the country maintained criminal media legislations that are opposed to international standards. This will be demonstrated in chapter six where I analysed a number of cases challenging laws that abridged press freedom. Again, much of the focus of academic work on international media law is mainly descriptive, and instructional to journalism, though it emphasises state obligation for the protection of freedom of expression. As I will demonstrate in the next section, much of the academic debate on media law and regulation has put emphasis on the importance of journalists' awareness of the law and how it is instructional to journalism.

2.7 Debates on Journalism and the Law

Several scholars discuss out how the law is instructional to journalism, and why journalists should understand the law (Robertson and Nicol, 2007; Quinn, 2018; Dodd and Hanna, 2016). One issue many of these scholars agreed on is the importance of legal knowledge to journalism practice. According to Robertson and Nicol (2007, n-pag), journalism is an occupation of rights available to all citizens, which cannot be withdrawn by few through any form of mechanisms. However, they acknowledge that it is a right that can be subjected to the rules of law, which is applicable to all those who exercise the right to speaking and writing in public. They argue that "free speech is in practice what remains of speech after the law has

had it say" (ibid.). As discussed earlier in section 2.2 of this chapter, there are clear laid down rules for journalism practice including what can or cannot be covered and various restrictions imposed by law in all countries.

Similar to Robertson and Nicol (2007), Quinn (2018) argues that journalists should be familiar with the law of a legal system they are practising within. This, he stresses is necessary for journalists to know what they can and cannot published. Although Quinn`s work did not offer a critical analysis of how the law affect journalistic practices, it showed how the law in the British legal system is instructional to reporting on critical areas. For instance, his work discusses definitions for common crimes arguing that journalists should be able to distinguish their meanings in writing reports. Another significant area of law Quinn caution journalists against reporting is the crime of defamation. He notes that it is an important legal concept that can affect journalists in any field of work. In his view, the avoidance of being sued for defamation is an important element of the law for journalist hence it can be very expensive to pay defamation damages.

Like Quinn (2018), Robertson and Nicol (2007), Dodd and Hanna (2016, p.3) draws our attention to range of laws that directly apply to journalism practice, especially in the UK. They echo that it is important for journalists to have a sound knowledge of legal matters in performing their watchdog role. They assert that "journalists must know the law, where it comes from, what it says and what it lets them do or stops them doing (ibid. p.4)." An example of the areas their discussion focuses on is reporting on sexual offences, particularly the principle of lifetime anonymity for victims of sexual violence, which is provided by law (ibid, p.127). They caution that any breach could cause considerable distress to victims of sexual violence. For Siebert (1946, p.780) both law and journalism have a common objective to serve society. On this basis, he argues that none can operate as a self-centered unit. He

concludes that law and journalism should develop a mutual respect for the accomplishments and contributions of the other.

The discussion in this section demonstrates that media law scholars gave more attention on the importance of legal knowledge in journalism practice. The work I have discussed so far indicates the need for journalists to follow the dictates of the law, which has been rationalised on different grounds. This again highlights one of the limitations of work on media law as scholars tend to focus on why journalists should obey the law, and not how it influences their practice. To address this gap, I focus on the enforcement of law and regulation that control media ownership and freedom, and repress critical journalism in The Gambia.

2.8 Conclusion

In this chapter, I have offered how media law is conceptualised as a legal discipline. I began by introducing definitions of media law, highlighting its various roles in the process of gathering and disseminating information. It attempted to explore the multifaceted functions of media law as a legal discipline that control journalism activities. I identified academic debates surrounding the two categories of media laws and their difference in terms of punishment against media offences. I have shown how criminal sanctions against journalists are opposed by theorists and international bodies. Whilst there are many reservations on civil penalties against media offences, it strikes a balance for reasonable punishment against media breaches. The review has identified several reasons why media laws and regulations are applied in the daily practical realities of journalism. This includes restraining media power with the object to strike a balance between media freedom and the protection of other rights such as the right to reputation and privacy. The review has also established how governments employed legislations to control the political impact of the media in society.

This chapter has shown that media laws and regulations are used to supress journalism in several African countries. The review demonstrated not just the complexities associated with the enforcement of media laws and regulations, but more significantly the contradiction that exists between laws that designed to protect the media with other laws that are an affront to this principle. I then explored the growth of international human rights law which emerged to protect freedom of expression including media freedom. This established the principle behind state responsibility to protect the right to free speech, and also justify state obligation to restrict this right when it is necessary such as in cases of incitement and genocide. I closed this chapter by focusing on how law and regulation is instructional to journalism. Throughout this chapter, I have shown how the field of media law is often seen a guide for practice than an interrogation of the law itself and how it affects journalistic practice. I argue that there's a need to study the laws using ideas from law and speak to journalists to get their views. Having established that law and regulation plays an important role to ensure positive function of the media and reduce the negative social consequences of journalists' actions and omissions, I now move to explore how it impacts on regulating and controlling press freedom, the object of this study.

CHAPTER THREE

PRESS FREEDOM

3.1 Introduction

In the past two chapters, I have considered how the political economy of journalism has been conceptualised in academic work and have demonstrated it is linked to media law. I have suggested how engaging the law can facilitate understanding issues of regulation and control. In this chapter, I demonstrate that law and regulation plays an integral part for a free and vibrant press in any country. The chapter explores interesting academic work on the role of law and regulation in abridging or protecting the concept of press freedom. I begin by providing a conceptual foundation for understanding press freedom and how this freedom is considered by early and contemporary scholars. It defines and provides a conceptual clarification to press freedom by exploring the key theoretical foundations including authoritarian, libertarian and social responsibility theories of press freedom. I made a critical review of these theories to understand the various approaches of regulatory construct for the freedom of the press and how it fits the African context.

In this chapter, I explore how past studies attempted to understand press freedom in Africa, and how this freedom is influenced by law and regulation. It draws on work that critically evaluates some of the problems confronting African journalism, particularly the tension that exists between African governments and the independent press which has been marked by strict regulatory approaches to control press freedom. It discusses the notion of development journalism and how some African governments misconceived this to mean that the press must be loyal to them and support their developmental programmes. I demonstrate that many

African governments hide behind the notion of developmental journalism to control media freedom through regulatory measures to avoid criticisms. With respect to The Gambia, the discussion highlights several factors such as legal and regulatory complexities that restrict and repress press freedom. In short, the purpose of this chapter is to consider how academic studies have conceptualised press freedom as a matter of positive law, but with little attention to show the law repress journalism practices and impede press freedom.

3.2 Defining Press Freedom

Sousa and Fidalgo`s (2011, p.284) work demonstrate how regulation can be understood to play a negative and positive role in cultural practice. They believe that regulation should not be only regarded in a negative way such as the prevention of harm to others, but also in the positive mode to enhance institutions or companies fulfil basic needs and expectations in the public interest. According to them, the rationale for a free and responsible press developed over the last decade that stresses the importance of negative and positive freedom. In their view, "removing obstacles to the free functioning of the press is only part of the story" (ibid, p.286). The other half obliges the press to fulfil its duties toward citizens and society as a whole, giving a positive content to a free environment. From this perspective, I share Anderson`s (2002, p.430) view that the idea of press freedom is a matter of positive law, which does not always protect the press. For Jones (1940, p.1), press freedom is "the right to publish, without official pre-view or censorship, and without official obstructions, anything the editor and proprietor of a newspaper, periodical or magazine may decide to publish". However, Jones` points out that the press can be subjected to penalties imposed by law including the publication of libel, contempt of court, sedition, obscenity, blasphemy or other non-mailable matter. In contrast to the United States and English speaking countries, Jones believes that authoritarian states set up the censorships of the press. While I agree with Jone`s censorship is associated with authoritarian states, his definition does not take into account the

complex nature of censorship that exists in contemporary English speaking countries like The Gambia. Similar to Jones, Robertson and Nicol (2008, n.pag) define press freedom as the, "degree of freedom from restraint which is essential to enable proprietors, editors and journalists to advance the public interest by publishing the facts and opinions without which a democratic electorate cannot take responsible judgements". They argue that journalists can claim the right to free speech and the right to publish, but cannot claim to be above the law (ibid, p.23). This position aligns with other theorists, such as Frank et al (1962), who caution that press freedom is "not a shield for malice, license, and defamatory statement when published with bad motives for unjustifiable ends" (Frank et al, 1962, p.83).

Similar to Robertson and Nicol's (2008) recognition of the vital role of a free press in enhancing democratic decisions, Sadurski (2011, p.8) outlines three main justifications for freedom of the press including the values of individual autonomy, pursuit of truth and requirements of political democracy. He argues that the principle behind political democracy is for citizens to be free to "receive all information which may affect their choices in the process of collective decision-making and, in particular, in the voting process" (ibid, p.9). For him, the legitimacy of a democratic state is based on the free decisions taken by its citizens regarding all collective action. In this regard, he concludes that all speech related to this collective self-determination by free people must enjoy absolute (or near-absolute) protection. The idea behind absolute protection for press freedom is part of debates surrounding the concept, which has attracted the attention of theorists like Jeffery (1986). He adopts the European Convention on Human Rights definition for press freedom which indicates the right "to receive and impart ideas and information without interference" (ibid, p.199). To examine the issue of press freedom, he questions the extent to which the right should be recognised as absolute. He discusses five benefits of free speech and press freedom which include the following:

1. The accepted wisdom in any society is never complete - and may well be false; and truth is only ascertained through the unrestricted clash of ideas.
2. Freedom of speech is essential to the development of man as a rational being- capable of self-government and social interaction.
3. Freedom of speech is an essential check on the abuse of power.
4. Freedom of speech provides a safety-valve for the release of destructive emotion.
5. Speech is "self-regarding" conduct and its regulation lies outside the proper province of the law.

Jeffery also highlights the disadvantages and dangers of free speech. From this perspective, amongst the disadvantages or dangers include the exposure of abuse of power which he believes may be inimical to larger interests of the state and incite discontent (ibid, p.208). He points out that press freedom maybe largely curtailed to promote its interests and the greater importance of society. He draws our attention to several reasons of interests why press freedom can be restricted. These are "the safeguarding of state security, the maintenance of law and order, the protection of individual privacy and reputation, the promotion of respect for the administration of justice, and, of course, the effective communication of development goals in Third World states" (ibid, p.218). Brunetti and Weder (2003, p.1801) discusses the concept of press freedom from a practical point of view, and argue that it is a necessary powerful tool against government malfeasance. In their assessment of the concept, these theorists argue that focus must not be limited to incidental issues such as censorship, arrests and assassination of journalists (ibid, p.1806). According to them, a comprehensive overall assessment of the news delivery system should be looked at. They draw our attention to four categories of how press freedom is evaluated by Freedom House. These are:

- **Laws and regulations that influence media content:** reflects ‘‘our judgment of the degree of actual impact on press freedom, not simply the ceremonial commitment to press freedom’’. For instance, ‘‘if private broadcast media are owned by government with no dissent allowed, the rating will be 15 (i.e., the worst score)’’ but if ‘‘a government that owns all broadcast media may permit widely pluralist ideas, even active dissent from government positions’’ then the rating will be more favourable.
- **Political influence over media content captures**: ‘‘Political pressure on the content of both privately owned and government media and takes into account the day-to-day conditions in which journalist work’’. It also includes ‘‘threats from organized crime’’ which may lead to self-censorship.
- **Economic influence over media content**: Reflects ‘‘competitive pressures in the private sector that distort reportage as well as economic favouritism or reprisals by government for unwanted press coverage’’.
- **Repressive actions:** Measures actual acts which constitute violations of press freedom. For instance, arrests, murders or suspensions of journalists, physical violence against journalists or facilities, self-censorship, arrests, harassment, expulsion, etc.

These provide a comprehensive understanding to how press freedom is assessed with myriad of factors. Within the context the debates outlined above, my research focuses on laws and regulations that influences press freedom in The Gambia. The analysis above also indicates that whilst scholars did not completely rule out the possibility of restraining the press, they argue for its freedom from restraint in publishing facts and opinions that are important for democracy. Much of the definitions I have discussed here emphasised the value of press freedom in a democratic society, outlining the significant role of law and regulation to

attainment of this freedom. Looking at how press freedom has been defined, I have found that censorship prior to publication is ruled out, but the degree of freedom accorded to the media is determined by law. Bearing in mind the work of Jones (1940) who considered censorship as authoritarian practice, I find it important to discuss the relevant traditional theories of press freedom to my research. This will enable me to locate the Gambian press within the wider theories, concerns and definitions of press freedom, to understand which model fits a post-colonial context like The Gambia.

3.3 Theories of Press Freedom

There are four general theories of press freedom with different meanings attached to the practice of different countries around the world. These scholars identify as the authoritarian, libertarian, social and communist models (Siebert, Peterson and Schramm, 1956). Quoting Siebert et al (l956, p.1–2), Nordenstreng (2006, p.35) explains that these four concepts were formulated in response to the author questioning of why the mass media appear in widely different forms and serve different purposes in different countries? She found that "the press always takes on the form and coloration of the social and political structures within which it operates. Especially, it reflects the system of social control whereby the relations of individuals and institutions are adjusted" (ibid.). For her, this makes a great sense of reasoning about the role of the media in society. She found the four theories useful to contrasting different paradigms of press and society that are not only important theoretical tools, but provided a didactical way of training journalists. Nordenstreng also points out various criticisms of the four theories and argues for a sophisticated new model based on real comparative analysis (ibid, p.38).

Other scholars such as Ibelema, Powell and Self (2000, p.100) also found that hardly any country neatly fit into any of the four traditional theories conceptualised by Siebert et al (1956). They argue that "countries tend more toward one than the other, and elements of all

theories exist or are emerging in every given country and vary from one period to another" (Ibelema, Powell and Self, 2000, p.100). Within the Gambian context, Jallow (2013, p.73) suggests that none of the four traditional models fits the press and government relationship. He points out the problem of theorising the press in The Gambia, and suggests a new hegemony model he believes characterises the press and government relations (ibid, p.75). Other scholars observe that the four theories are analytically inadequate and an oversimplified framing of history (Hallin & Mancini, 2004; Hatchem & Scotton, 2007). This indicates the difficulty of theorising press freedom within the normative theories in any country. Despite this difficulty, my study agrees with Obateru (2017) that the theories remain a useful historical reference point for understanding the link among different media and political systems in the world. I therefore considered the theories adequate as a theoretical lens for this research, which provides a framework for understanding the press and government relation in The Gambia in terms of regulation, control and ownership. I argue that like many other countries, features of different models of the normative theories of the press can be found in The Gambia.

However, I now shift attention to explore and interrogate in greater detail three of the four traditional theories as analytical tool in explaining the press government relation in The Gambia. This is also useful to understanding Jallow`s (2013) proposition of a hegemony model in the case of The Gambia. My research found that the major features of the Gambian media are falls within the authoritarian, liberal and social responsibility principles. I argue that since the communist theory is based on the premise that the state takes a total control of the media and denies private ownership of the press has no bearing in The Gambia, it is therefore necessary to focus on these three theories in this review that are the concepts employed in my analysis.

3.3.1 The Authoritarian Theory of Press Freedom

Siebert et al (1956, p.9) suggest that the authoritarian notion of the press has been the basic doctrine for large areas of the globe in succeeding centuries. This, they found has been consciously or unconsciously adopted in modern times in countries like Japan, Imperial Russia, Germany, Spain, Asia and many South American governments. Explaining the authoritarian theory of the press, they point out that it is another system of social control. Under authoritarian principles, the functions and operations of the press are controlled by society through government (ibid, p.10). Contrary to the libertarian theory, Siebert et al (ibid, p.11) argue that the state is the highest expression of group organisation, which "superseded the individual in a scale of values since without the state the individual was helpless in developing the attributes of a civilised man". This justifies the basis for state intervention in controlling the press. They identify the granting of special permits or patent to publishers, licensing system or censorship and prosecutions before the courts as three main methods of mass media control in societies that adopted the authoritarian theory (ibid, p.22). Within the Gambian context, my research shows that all these techniques are particularly true where a system of licensing for the press exists with prosecution of journalists before the courts for violating criminal media legislations (see chapter 6 and 7). Therefore, the authoritarian theory contains important positions to understand attempts to control the media in The Gambia. As almost every paper that written on press freedom in the Gambia suggests that the media has been subjected to authoritarian control (Noble, 2018; Committee to Protect Journalists, 2002).

Dukalskis' (2017, p.4) offers a comprehensive understanding to the control of the public sphere in contemporary authoritarian regimes whereas the media serves the interest of autocrats in several forms. He argues that "the authoritarian public sphere is characterized by the state's efforts to establish its foundations, delineate its boundaries, and monitor its content" (ibid.). This, he points out is done through the saturation of the public sphere with

messages that legitimises and guards against any unwanted intrusion by potentially dangerous alternative perspectives. In his view, this serves as a strategy for autocrats to maintain a tight grip of power, and legitimise messages that validate their powers, while stifling information that is harmful to their power. For him, at the core of the authoritarian ideology is a public sphere that promotes and legitimise the power of the ruling elites. Using authoritarian countries like North Korea, Buma and China as examples, he identifies two ways of how their governments dominate and manipulates political discourse and information in their media. These are positive and negative techniques of dominating and controlling the public sphere (ibid.).

He highlights that the "positive efforts include crafting and actively disseminating messages legitimating the regime while negative efforts include blocking, censoring, or undermining viewpoints that might be threatening to the state's narrative". This means that authoritarians either participates in shaping the narrative in their favour or employs repressive techniques to discourage the free flow of information that is likely going to expose them to public scrutiny. He found that "authoritarian regimes also censor information they find threatening and create narratives for public consumption that attempt to legitimize their rule" (ibid, p.141). Unlike the libertarian theory of a free press that is required for the functioning of a democracy, the authoritarian media functions as a propaganda machinery for self-perpetuating rule. Dukalskis identifies taxonomy of six elements through which authoritarian governments delimit coverage on acceptable political discussions, and manipulate content. These are to conceal, frame, propagate a sense of inevitability, blame, mythologized origin of legitimacy and promise a land of brighter future through domination (ibid, p.142). For him, this model can facilitate analysis across range of authoritarian contexts. Dukalski`s discussion of the authoritarian public sphere has proved to be particularly useful in the analysis of the relationship between the media and the APRC government in The Gambia, especially on how

the state owned media is controlled to serve as a propaganda mouthpiece for the ruling government.

However, Hein (2017) criticises Dukalski`s model that it made an assumption of ideological unity amongst ruling elites, which may not be the case in all authoritarian states. He further points out that Dukalskis' model does not take into consideration of intra-regime disagreements, which triggers the downfall of authoritarians. Notwithstanding, Dukalski`s conceptualisation of the authoritarian public sphere is noticeable amongst numerous factors in the African context. Similar to his work, Heinrich and Pleines (2018, p.108) describe the authoritarian theory as 'limited freedom' of the media. Their study attempts to understand how the media is operated in three authoritarian states including Azerbaijan, Kazakhstan, and Turkmenistan (ibid. p.105). According to them, media consumption in these countries is "dominated by largely government-controlled TV broadcasting, which is the primary source of information for the vast majority of the populace" (ibid.). While this finding is a reference to the aforementioned countries that are classified as authoritarian regimes, it is remarkably similar to what existed in The Gambia under former President Jammeh`s rule (Janneh, 2013, p.14). Janneh points out that the former ruling Alliance for Patriotic Reorientation and Construction (APRC) monopolised the state media to the extent that it never allowed the emergence of media outlets that could dent its monopoly in the dissemination of information. He reveals that private ownership of television stations was not permitted. This also corroborates Dukalskis (2017) theorisation of the media under authoritarian rule, which is largely controlled to provide information that only favours the ruling regime.

Heinrich and Plaine (ibid, p.105) further explain that independent newspaper circulation in two of these authoritarian countries was restricted to major cities. They suggest that is because of a number of factors including the unaffordability of print media to many people. According to them, there were "logistical, commercial, and political restrictions to country-

wide distribution of newspapers" (ibid.). They observe particularly in Azerbaijan the political opposition was not visible in mass media reporting at all, especially outside its own small print outlet (ibid, p.108). This shows a different perspective of how the media is controlled and restricted under authoritarian rule. What this discussion show is the complex nature of media control in a country ruled by an autocrat. The usual explanation for the media restrictions is to stifle oppositional politics.

Writing in the context of historical authoritarian Spain, Gunther and Mughan (2000, p.30) found that the Franquist regime imposed a control on the press that precluded the development of political pluralism, while his regime continued to enjoy support from the press. They also reveal that television news broadcasts served as a propaganda tool for the regime (ibid, p.37). According to them, the primary objective of dictator Franco`s policy to control the media was to "demobilise and depoliticise Spanish society" (ibid.). This, they argue contributed to making the Spanish people passive and discouraged them from involving into political mobilisation. What the foregoing review suggests is the authoritarian fear of a free press for the civic awareness of the people. It also suggests that authoritarian believes in a centralised system of communication, whereas they can avoid media scrutiny. In the next section, I explore the libertarian model of press freedom to understand how it has been conceptualised.

3.3.2 Libertarian Theory of Press Freedom

The libertarian notion of press freedom is based on the premise that suppression of opinion is wrong and, that the truth can only be ascertain through free flow of marketable ideas (Nicol, Millar and Sharland, 2009; Carrol, 1922). This, scholars argue requires a free press from state or political control (Sadler, 2001 in Franklin, Hogan, and Langley, 2009, p.108). For them, the libertarian idea of the media is to serve as an autonomous fourth arm of government, which serves as a 'watchdog'. Franklin et al (2009) point out that this has a considerable

pedigree dating back to at least the 18th century for journalists and the press to protect the public interest by serving as a 'watchdog' on governments, reporting their policies and activities and thereby making them publicly accountable. Within the fourth estate principle, Oso (2013, p.14) argues that the media is not expected to be subservient to the state or political institutions. For theorists like Nicol, Millar and Sharland (2009, p.2), this is necessary for citizens to understand matters of political concern to meaningfully participate in a democratic process. This offers a link to the role of the press in a democracy, which requires legal protection for press freedom. For a liberal theorist like Johnsen (1936, p.75), press freedom is freedom accorded by the constitution or laws of a state. The United States is an example of a liberal democracy with constitutional protection for press freedom. Frank et al (1962, p.92) illustrates how the Federal Constitution of United States guarantees press freedom from the 1st Amendment which states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Frank et al points out that the idea behind this constitutional provision is to protect basic liberties. They found that several states in the United States adopted similar provisions for freedom of the press (ibid.). They draw on several court cases that demonstrate the relative nature of constitutional guarantee for press freedom and provide in-depth case analysis of how the exercise of the right to free speech is restrained, but remains as a constitutional bulwark against state interference (ibid, p.109). Similarly, in section 5.5.1 of this study, I have highlighted how the Gambian constitution has libertarian features that provide protection for press freedom. However, I find that the constitutional protection for press freedom in The Gambia is paradoxical, as state practice disregards the rules and principles of

the constitution in matters concerning the media. In later chapters, I showed that the Gambian government prefer to enforce secondary legislations to suppress press freedom and media pluralism, rather than constitutional protection (see chapter 6 and 7).

English jurist Sir William Blackstone`s commentaries on liberty of the press offers an understanding to libertarian debates around the idea of legal protection for press freedom (Bird, 2016, p.1). These are used to explain the libertarian notion of press freedom, especially in liberal democracies. Quoting Blackstone, Bird (2016, p.1) points out that press freedom means "'laying no previous restraints upon publications, and not in freedom from censure for criminal matter [seditious libel] when published". He notes that this definition has gained popularity amongst British and American scholars, and the principle was even applied in their court rulings (ibid, p.3). However, he thinks that Blackstone`s notion of press freedom is too narrow and fundamentally flawed. He argues that Blackstone`s claim of a longstanding common law acceptance of his definition of press freedom was false (2016, p.4). Drawing from English literature, Bird discusses that Blackstone`s narrow definition was criticised by other writers, which eventually receded from primary to secondary in English literature. In contrast to other studies, Bird points out that press freedom are not merely limited to "freedom from prior restraint, to the exclusion of freedom from subsequent punishment" (ibid, p.12). According to him, this is inconsistent with liberty of the press that is narrow and supported by a minority. Early scholars such as Carrol (1922, p.29) also draws on another important Blackstone commentary on press freedom, which states:

> "every freeman has an undoubted right to lay what sentiments he pleases before the public, to forbid this is to destroy the freedom of the press, but if he publishes what is unlawful, mischievous, or illegal, he must take the consequences of his own temerity."

The principle within the above commentary is freedom from censorship that does not provide immunity from punishment in case of unlawful or illegal publication. This principle is consistent with Robertson and Nicol`s (2008, n.pag) stand point that the press is not above the law. However, Koltay (2008, p.25) criticises the libertarian model suggesting that freedom from state intervention is a negative freedom. For Oso (2013, p.18) the liberal perspective on press freedom is strongly rooted to capitalism suggesting that "only the rich and powerful could establish media organisations". He points out that commercial consideration are the major deciding factors of media operation under the liberal perspective. He argues that under the libertarian model, the media adopts cost cutting measures, thereby reducing quality news production (ibid, p.19). Criticising the liberal notion of press freedom within the African context, he believes that media ownership is associated with only the rich, businessmen and influential politicians that are part of corporate organisations, having roots in all sectors of the economy. I argue that under such circumstances in most African countries like The Gambia, the media follows its commercial interest rather than pursuing the fourth estate principle.

Gerhardt`s (1992, p.1028) work provides the basis for understanding the liberal approach to freedom of the press, especially in the context of the western world. He poses a very pertinent question on who can society trust, the press, the Supreme Court, or an elected official. He identifies three answers to his questions. First, he found that many liberals believe that the First Amendment of the US constitution guarantees an autonomous press. Thus the liberals trust the press to monitor itself, to check governmental abuse, and to perform in an ethically responsible and professional manner (ibid.). He draws on Justice Hugo Black`s argument, which states "the press exists to serve the governed, not the governors. It is protected so that it can bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government" (ibid.). Second, he argues that to

enforce the values of press freedom embodied in the US constitution, the federal courts can be trusted more than the state (ibid, p.1029). According to him, the "liberals faith in the Supreme Court's capacity to protect the press often accompanies a corresponding distrust in the state's ability to craft even-handed and fair regulation of the press. This distrust stems from a belief that the state censors the press because the press has the power to embarrass the state" (ibid.). Third, he reveals that "liberals trust the state to make balanced laws for the regulation of both economic and noneconomic matters" (ibid.).

Despite criticisms of the libertarian notion of press freedom, it enjoys continuing popularity all over the world (Marr 2004, quoted in Franklin, Hogan, and Langley, 2009, p.108). Within the context of the debates outlined above, I show in this thesis that although there are laws for press freedom in certain African countries it doesn't mean that the press is free due to the use of other laws. In chapter five, I demonstrate that The Gambia is not an exception. I now focus on the social responsibility theory, an important aspect of regulation for the media to perform its responsibilities toward society.

3.3.3 The Social Responsibility Theory

One way of understanding social responsibility theory is in classical liberalism, which assumes that the press has a social responsibility to function for the collective welfare of society (Nerone, in McQuail, 2002). Hesmondhalgh and Toynbee (2008, p.1) list theorists who have contributed to an expansive body of literature on the social responsibility theory of the media including Habermas, Bourdieu, Foucault, Castells, Hall, Butler, Žižek, Laclau, Bauman, Beck, Deleuze, Williams and Giddens. These philosophers and scholars stresses that the media can contribute towards the construction of society on the basis of a common interest. Other liberal philosophers including Rousseau, Locke, Mill and Hobbes spearheaded the social contract theory of the press (Sjovaag; 2010, p.878). For these philosophers, the

press is not just a communicator, but is also a moral and legal partner with right to defend a democratic order in society.

According to Sjovaag (2010), the social contractarian perspective of press freedom is underpinned with a right and responsibility that offer a new way of conceptualising the role of journalism in democracy and the function of journalistic ideology. For him, these are rooted to two functions of journalistic obligations. First, journalism is required to provide information to citizens about governance for their freedom and self-governance. Second, journalism must provide the government with information to make decisions that are sensitive to the public interest (ibid, p.875). Further elaborating on this issue, Sjovaag argues that it offers a link between journalistic social contract, which is founded within the social contract theory of political philosophy. He points out that, "the social contract of the press and journalism's mission in democracy derives its legitimation from republican common good principles" (ibid, p.878). This, he explains is a legitimacy that "in turn rests on the justifications of the liberal tenets of freedom of speech". Sjovaag highlights that regulation plays an influential role for the press to fulfil its social responsibility. He argues that:

> Press state relations are predominantly administered by legal aspects that regulate the exchange of rights and obligations between these two contractual partners. Regulations to ensure plurality and access are positively defined and republican-inspired measures to improve democracy, while laws enforced to ensure the freedom of expression and publication are negatively defined and liberal-inspired to uphold individual freedoms (2010, p.878).

Similarly, Oji (2007, p.415) links the social responsibility of the press to the libertarian notion of press freedom. This, he points out is meant to provide equal opportunity for all to express their views in the media. For other theorists, the social responsibility theory is based

on the premise of having a great “deal of responsibility to the society that nurtures it” (Hiebert, Ungurait and Bohn, 1974, quoted in Oji, 2007, p.415). They note that "where a medium fails to operate in a socially responsible manner, someone (media industry or government) must correct that course of action" (ibid.). McQuail (2000, p.150) identifies five functions of the social responsibility theory. These are:

1. The media have obligation to society, and media ownership is a public trust.
2. News media should be truthful, accurate, fair, objective and relevant.
3. The media should be free, but self-regulated.
4. Media should follow agreed codes of ethics and professional conduct.
5. Under some circumstances, government may need to intervene to safeguard the public.

To put these five functions into a wider perspective, it means that the social responsibility theory is founded on a combination of libertarian and authoritarian principles of press freedom. In this regard, social responsibility theory recognises public and private ownership of the media as a matter of public trust. However, key to the principal goal of the social responsibility theory is for the media to be professional in the discharge of its duties to society. From this perspective, the media is judged by professional and ethical behaviour on neutral grounds for the collective good of society. On McQuail`s argument of government intervention, the emphasis here is under circumstances that poses a danger to the public. This, Oji (2007, p.416) suggests that could be in times of war or when the media threatens national security. Umeogu and Ifeoma (2012, p.157) observe that “the potential of the media could be used not only to fuel conflicts, but rather to encourage peaceful conflict settlement and serve as mediators of peace-building and reconciliation processes”. In essence, social responsibility theory takes into account the irresponsible effects of the media to society.

This relates to Umeogu and Ifeoma`s (2007, p.158) theorisation on the effects of crisis journalism arguing that it contributes to the "loss of brotherly love and unity" in society. They use an example of Christians watching the bombing of Christians by Muslims in the media, arguing that the practical effect will be to lose love for their Muslim neighbours, no matter how close they were. They conclude with a controversial argument that crisis journalism or core objectivity in journalism is one of the biggest threats and challenges facing the information age. In this respect, Umeogu and Ifeoma imply that while the media may serve public interest by objectively reporting on conflicts, it could also endanger social cohesion. Therefore, I argue that the idea behind social responsibility of the press presents a paradox between journalistic principles and the notion of collective societal interest. The literature in this section indicates that in order for the press to perform its social responsibility, it must get a legal backing to enjoy positive freedom. I found that much of the work on social responsibility focuses on the role of regulation to raise journalistic standards for the media to serve society. I consider this a problematic approach because it does not take into consideration the effectiveness of law and regulation for the media to perform its social responsibility. In chapter 7, I demonstrate that despite the available constitutional protection for the Gambian media to hold government to account, journalists were unable to freely carry out this function. This is because of government disregard for laws governing press freedom, and preference of subsidiary legislations that suppresses critical journalism. I recognise that this is one of the key barriers to press freedom in Africa, a focus of my research. These issues are discussed more fully in the next section.

3.4 Press Freedom in Post-Colonial Africa

There is considerable literature on press freedom in Africa, especially after colonial rule. Esipisu and Kariithi (2007) provide comprehensive analysis on the development of the media in Africa which notably have undergone tremendous changes after colonial rule. Quoting

Gouveia (2005, p.4), they found that in many cases African governments that came to power after colonial rule in the name of democracy "abandoned the principles of free media which they had themselves advocated" (ibid, p.57). They draw our attention to two distinctive categories of the African media in the following:

> On one hand there is the example of South Africa whose largely professional media is of a high standard. On the other hand countries like Zimbabwe, Equatorial Guinea and Eritrea have taken deliberate steps to limit all media scrutiny, reportedly expelling foreign journalists, banning international human rights groups, and trying to control Internet access (ibid. p.58).

In this study, I show that The Gambia belongs to the second category of countries that have adopted several measures including legal repression, arrests and detentions to limit media freedom. For early African scholars like Babatunde (1975, p.257), military regimes and one party states in Africa created difficulties for the African press. At the time of writing his article, he notes that no less than 13 African countries were under one form of military rule or another, whilst 14 were one party States. Therefore, in explaining the varying levels of press freedom in Africa, it is important to take into consideration of political and historical factors. According to Jallow (2013, p.17), the African press is characterised with interchangeable libertarian and authoritarian concepts of press freedom. He argues that this is a paradoxical phenomenon, as the adoption of libertarian press is followed by authoritarian policies, which reverts to some form of libertarianism. He suggests that this is as a result of the unstable nature of political regimes in Africa, whereby democratic rule, military regimes and one party state succeeds each other. However, he points out that this was not reflective of all African countries.

Newell (2016, p.104) provides a historical context to the evolution of press freedom in Africa, by associating it to colonial resistance particularly in British West African colonies which includes The Gambia. He points out that although the colonial authorities were assertive to create a hegemonic political order using censorship and propaganda, "African editors and newspaper readers remained vocal, visible, independent and critical within and against the very hegemonies of representation that surrounded them" (ibid, p.114). According to him, the local press facilitated the publication of divergent views against the colonial order and stimulated a culture of debate. He notes that the press was vibrant in criticising the British censorship policy and held government officers to account for perceived abuses of power. Like Newell, Babatunde (1975, p.256) holds the view that the African press was instrumental in the struggle for independence against colonialists, but eventually had little freedom to publish under post-colonial indigenous African governments. For him, this predicament the African press finds itself in after independence is an irony. This is because independence governments reneged on the very principles they fought for against the colonialists.

Obbo (2014, p.328) points out that although press freedom relatively improves in Africa, journalism remains under attack. Using Tanzania as an example, he discusses issues such as the killing and torture of journalists, shutting down of newspapers, and prosecution of journalists, characterises the press and government relation. According to him, a similar situation exists in other African countries such as Uganda, where a record number of journalists face criminal prosecution for offences including sedition, criminal libel and publication of false news (ibid, p.329). Further elaborating on the issue of press freedom in Africa, Babatunde (1975, p.256) concludes that the press in Africa has never been free. According to him, the African press was devitalised because the new governments were anxious to publicise their own activities. As a result, they seized "hitherto independent

privately owned newspapers" (ibid.). He contends that this eroded the newspapers reputation for forthrightness and objectivity, as they were reduced to "sycophantic government megaphones" (ibid.). He found that a number of African governments set up their own newspapers to discredit independent papers and promote the personality of the head of government. In his view, this was not an ideal crusade for press freedom. He also found that the private independent press considered to be embarrassing by the government "were either manipulated to close down or legislated to death" (ibid.).

Chipare (2004, p.39) also observes that contemporary African governments stifle press freedom, as journalists try to hold them accountable to their people. He cites examples where governments have taken actions against journalists across Southern African countries such as Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. According to Chipare, death, assault, detentions and imprisonment characterises the situation of journalists in their relationship with the governments of these countries. Referring to Angola, he claims that "reporting on activities of the president and government officials whether in caricature, print or broadcast is one of the most dangerous assignments for journalists in Angola" (ibid.). Chipare mentions the case of a freelance journalist and the director of a weekly publication who were convicted for defaming, injuring and slandering the country`s president in March 2000. Similarly, in Swaziland, reporting on the King`s private and family life is considered to be disrespectful and a punishable taboo. He found that the State owned and controlled newspaper Swazi Observer was shut down, and another privately owned paper the Guardian of Swaziland was banned for reporting about the country`s monarchs family (ibid, p.40).

Further examining challenges to the concept of press freedom in Africa, scholars identify various issues including political and economic control, obnoxious law, decrees and extra

judicial means of press control (Ifeanyi and Odoh, 2014, p.152). The discussion here suggests that there are many ways the freedom of the press is controlled in Africa. Of relevance to my research are laws and regulations that are used to control the freedom of the press in many African countries. In addition to this, the concept of development journalism is amongst the major strain of controlling press freedom in Africa. The theory behind this is that government can restrict the press to promote peace, national identity and industrial growth (Hanson, 2005: p.402). This result in the adoption of measures designed to taming the press as an integral part of new African government's developmental ideology (Ifeanyi and Odoh, 2014, p.153). I now move on to discuss this issue in greater details.

3.4.1 Development Journalism and Press Freedom

Bourgault (1995, p.173) explains that the theory behind development journalism is for the media to act as an instrument of encouraging and promoting development initiatives. Other theorists suggest that the idea behind development journalism is for the press to play an instrumental role in covering health, agriculture, education, family and rural development with a view towards promoting national development (Duke, Brown, and Talabi, 2017; Bourgault, 1995). Duke et al (2017) further points out that the notion of development journalism is to raise awareness about problems society is facing. Justifying development journalism, they argue that "diligent efforts need to be made to publicize developmental work, so that others may know about it and in the best case scenario draw inspiration from it" (ibid, p.173). Anand (2013, p.200) sees development journalism as a purveyor and catalyst for positive change within the context of developing country like India. Amongst his findings on development journalism is "the potential of influencing the decision-making process and imposing necessary checks and balances in the implementation of state and Centrally-sponsored schemes" (ibid, p.211). He notes that putting disadvantaged rural communities in the news, and gauging the impact of government development initiatives are important

aspects of development journalism. He also found that "development journalism helps journalists exercise their right to know how various developmental plan programmes are being executed and how the taxpayers' money is being spent" (ibid.).

Similar to Anand (2013), scholars like Duke, Brown and Talabi (2017, p.20) suggest that development journalism is to generally serve as a solution to social development. They identify three layers of social needs including the primary, secondary and tertiary needs of the people development journalism should focus on. First, they argue that development journalism should include reporting on food, housing and employment as primary needs. Second, they note reporting on transportation, energy sources and electricity as secondary needs. Third, they point out cultural diversity, recognition and dignity as tertiary needs for social development. They conclude that development journalism should no longer exclusively be focused on the rural areas, given that the idea behind development journalism is to generally serve as a solution to social development.

From a broader context, Romano (2005, n.pag; cited in Xiaoge, 2007, p.11) highlights five main principles of development journalism. First, journalists as nation builders arguing that the news media should contribute towards maintaining social stability, building social harmony and strengthening national economy. Second, journalists as government partners stressing that press freedom should be subjected to the overriding national interests of social, economic and political development priorities. Third, journalists as agents of empowerment, suggesting that journalism should empower the ordinary people to participate in public life and human development, not the elites. Fourth, journalists as watchdogs, pointing out that journalism should check on governments. Fifth, they argue that journalists should act as guardians of transparency. The foregoing analysis shows that development journalism is everything about the social responsibilities of journalists, with a particular focus on monitoring development and government.

However, citing Domatob and Hall (1983), Xiaoge (2007, p.6) argues that most African ruling governments used development journalism to consolidate and perpetuate power by co-opting the media. As rightly put by Bourgault (1995, p.173), African governments hides behind the notion of development journalism as an ideological instrument to have a grip over the press. Using the Nigerian military dictatorship as an example, Obijiofor, Murray, and Singh (2016, p.13) explain that this type of grip on the press exists under authoritarian rule. They found that pre-publication censorship by government leads to the practice of the development journalism genre, which compels journalists to partner with government under the pretext of national development by promoting its vision and policies. For them, this shifts the focus of journalists from reporting on official scandals, to safe topics such as government infrastructural developments.

Discussing development journalism within the South African context, Glenda (2010, p.286) found that after apartheid, the ruling African National Congress (ANC) "tried to create a point de capiton by tying down the meaning of developmental journalism as loyalty to the party, less criticism and a greater focus on the positives, or the good news" (ibid.). He criticises this approach pointing out that development journalism should mean to be educative, informative and holding power to account as required by law and in a democracy (ibid, p.289). Duke, Brown and Talabi (2017, p.16) notes that the media in an African country like Nigeria gives more prominence to reporting on politics and business than development:

> Mainstream media do not give development reporting the place that it warrants in our society. It is often relegated to niche columns, magazines and journals. The few positive issues and developmental projects that are undertaken by the mainstream media are not highlighted enough. The mainstream media pretend to have incorporated development journalism into their daily duties by reporting government

> projects and statements; and views of policy makers in their publications but this is far from it (ibid, p.19).

For them, the practice of development journalism has resulted in the African press giving up its watchdog role, losing their critical edge and becoming "nothing more than another government mouthpiece" (ibid, p.21). Furthermore, a preoccupation with promoting government and the common good can lead to the press losing sight of individual and individual`s human rights. In their view, "development journalism can be equated with one in which the government exercises tight control and prevents freedom of expression, all in the name of noble ends" (ibid.). In later chapters, I show that a similar challenge exists in the Gambia, whereby the state-owned mainstream media is tightly controlled by the government to promote its development project. Opposition views and criticism are also not allowed on the state-owned media, while journalists that refuse to promote development projects of the ruling party are identified as enemies of the state by the government. This echoes Tumber`s (2000, n.pag) assertion that the development theory is intolerant to a plural and critical press.

Ifeanyi and Odoh (2014, p.153) contend that without press freedom, which is a democratic requirement, Africa`s development remains a mirage (ibid, p.153). In their view, the notion of developmental journalism upheld by post-independence African governments can only be supported by a critical and independent press. However, I share Glenda`s (2010) view that development journalism has been used in an un-progressive way against the press. Its core principles earlier discussed in this section has been distorted to mean a loyal press to government, which has been used against freedom of the press in most African countries. In this regard, I argue that development journalism has been used as a working ideology of many African governments to control the freedom of the press. I now shift attention to The Gambia, the main focus of my research.

3.5 Press Freedom in The Gambia

Several studies have perceived the Gambian press as not free that is characterised with criminal prosecutions against journalists, torture, censorship and the promotion of government views in state-run or friendly private media outlets (Noble, 2018; Freedomhouse, 2016; Article 19, 2019). For Jallow (2013, p.37), the Gambian media is a double-edged sword, which remains to be a propaganda tool for the government or an enemy of the government. He argues that while the Gambian constitution guarantees press freedom, in practice this does not exist. He points out that newspaper licensing requirement regulations and military decrees enforced under former President Jammeh`s rule inhibits the concept of press freedom. In his attempt to theories the press government relations in The Gambia, he ruled out the admissibility of any of the traditional four theoretical models of press freedom formulated by Siebert et al (ibid, p.73). Although the Gambian government under Jammeh`s rule has been largely perceived as authoritarian, Jallow suggests that is not the case because the media "is not required by law or necessarily expected to favour government or supports its program and agenda" (ibid.).

This dissertation differs from Jallow`s proposition in the sense that it has a narrow understanding of the authoritarian concept compared to Dukalskis (2017) taxonomy six elements domineering model discussed earlier. Jallow (2013) proposes that the hegemony model provides a better explanatory theory to the press and military government relationship in The Gambia. For instance, he points out that the military government of Yahya Jammeh "uses force to frighten, control and dominate the press into line with its calculated objectives (ibid, p.75). He also mentions the proffering of charges against four independent publishers and editors for violating Section 5 of the Newspaper Act, which requires them to submit their newspapers annual registration documents under the military junta. I argue that this clearly relates to Siebert et al (1956) authoritarian theory that is a system of social control through

which government controls the press. I argue that based on the laws and regulations that exists and are enforced to control the Gambian press is a major character of the authoritarian sphere. Therefore, this thesis agreed on the hegemonic characterisation of the press and government relation in the Gambia, but points out that it's a narrow explanation.

Unlike Jallow (2013), Senghore (2012) provides a different perspective to understanding press freedom in the Gambia by exploring the relationship between democratic governance and the independent press in The Gambia, since the inception of the Gambian First Republic in 1970. For him, the fact that press freedom is provided for by law it is fair to conclude that the state recognises it as a right. I find Senghore`s argument problematic, as there are different legal conditions that unjustifiably restricts freedom of the press. I argue that his position does not take into account the complexity of the entire legal framework of the media in The Gambia. As this dissertation shows, in addition to press freedom laws there are other laws that repudiate the concept of press freedom in The Gambia. Practically, I show that the Gambian government preferentially enforced laws that restrict and repress the independence of the media. Elaborating further on the existence of press freedom in The Gambia, Senghore (ibid, p.519) argues that "the proliferation of privately-owned media houses and independent media organisations in The Gambia is clear evidence of the government's strong commitment to respecting and allowing press freedom and free speech in the country". However, he acknowledges that this is not a reflection of a good relationship between the government and independent media given the prevalent setbacks such as unfavourable press laws, closure of independent media houses, arrests and intimidation of journalists.

Senghore (ibid, p.518) observes that the decision of the High Court in Banjul which quashed the judgement of a magistrate court to close down a privately-owned radio station and the forfeiture of its assets to the state, confirmed and recognised the existence of the right to press freedom in The Gambia, which is protected by institutions that are an integral part of the

country`s democratic governance process. However, my research demonstrates that within the prevailing judicial system of The Gambia, several journalists have been convicted with criminal offences for criticising the President. This raise doubts over the independence of the judiciary, which Senghore attempts to suggest it is independent. Furthermore, Senghore mentions specific legislations such - the Newspaper Act, Telegraphic Stations Act and even the defunct Media Commission Act – which he believes "facilitate and protect the work and persons of media practitioners in the country". However, other studies criticise these legislations and considered them to be inconsistent with international standards for the protection of principles of press freedom (Article 19, 2012; Reporters Without Borders, 2014; Amnesty International, 2008). Contrary to the assumption made by Senghore with regards to the independence of the Gambian judiciary, Amnesty International (2008, p.35) note that "repressive legislation, combined with the executive's history of interference in the judiciary and the police is a contributing factor for the lack of freedom of expression in Gambia".

Noble`s (2018, p.6) work focuses on freedom of expression and media pluralism in The Gambia, by exploring the concept of a free media within a wider context that is vital to democracy. He acknowledges that the 22years authoritarian and dictatorial rule of Yahya Jammeh in The Gambia was characterised with arbitrary arrest, imprisonment, mistreatment, torture, disappearance and death of journalists. According to him, the existences of repressive laws and licensing requirement for the establishment of newspapers have the potential to limit media pluralism in the country (ibid, p.9). He points out that apart from the incidental issues between the media and government in the Gambia, there are other factors including deficiencies in professional skills and, technical and financial resources that affects the media`s capacity. This, he argues will limit its ability to "disseminate accurate information and fulfil their role as watchdogs of political and economic power" (ibid, p.3). Moreover, Human Rights Watch (2015, p.15) observes that in the Gambia, "harassment and criminal

prosecutions of journalists and those who use online forums to criticize the government are facilitated by such draconian legislation". They point out that this violates the right to freedom of expression protected under the Gambian Constitution. Similarly, the International Bar Association (2010, p.10) found that The Gambian government restricts freedom of speech through intimidation, detention and restrictive legislation. Amnesty International (2008) has extensively reported on a wide range of systemic violation of freedom of expression and press freedom in The Gambia. They found that "Journalists and other members of the media are routinely subjected to human rights violations, such as unlawful arrests and detentions, torture, unfair trials, harassment, assaults, death threats and closures, making it extremely difficult to do their work" (ibid, p.31).

As has been pointed out earlier, journalism in Africa faces some common challenges including direct state regulation, legal repression, state ownership and control (Esipisu and Kariithi, 2007; Obbo, 2014; Chipare, 2004). The Gambia is not an exception where studies explicate issues surrounding how law and regulation affects press freedom (Noble, 2018; Jallow, 2013; Senghore, 2012). While some of these studies discuss issues similar to the concerns of my research in interrogating the legal framework for journalism practice in The Gambia, there are areas of departure. As has been discussed in the beginning of this section, Jallow`s (2013) work demonstrates how far the Gambian leader has succeeded in manipulating public opinion to strengthen his home support, by creating a restrictive media environment to independent journalism. However, his work is limited to identifying the legal and institutional restrictions to press freedom in The Gambia, but did not analyse how the law was applied to punish journalists and their response to these challenges.

Similarly, there are significant amounts of reports by international media watch groups, documenting patterns of media repression including arrests, detentions, and imprisonment of journalists in The Gambia (Article 19, 2012; Reporters Without Borders, 2014; Amnesty

International, 2008). In 2014, Reporters Without Borders reported that The Gambia blatantly ignored recommendations for legislative reform for the security of journalist, which are being violated daily. In 2015, Human Rights Watch documented human rights abuses in The Gambia including arbitrary arrest and detention, torture and other ill-treatment, enforced disappearance, and unlawful killing of journalists. According to them, The Gambian government has targeted journalists, apparently to silence criticism and to suppress negative information about the country to the outside world. In 2016, Freedom House reported the persistent stifling of media freedom in The Gambia through a combination of criminal prosecutions, physical intimidation, censorship, and the promotion of government views in state-run or friendly private outlets. This characterises the downward trend of press freedom in The Gambia throughout Jammeh`s rule, until his departure in early 2017. Bearing in mind of all the issues highlighted in these reports, the intention of this thesis is to address how journalists work under such political and economic conditions. This involves exploring the range of adaptive practices of Gambian journalists and examining the legal framework of the media.

Based on the foregoing review, the freedom of the press is far from a reality in The Gambia. The literature highlights various challenges to press freedom in The Gambia. These include the torture, imprisonment and exile of Gambian journalists, and a restrictive and repressive regulatory framework. Despite this, press freedom is a fundamental human right provided for under the Gambian Constitution and international human rights conventions to which The Gambia is a party. What the discussion in this section reveals is various academic contradictions on the concept of press freedom in The Gambia that is largely rooted to an authoritarian system of media control.

3.6 Conclusions

This chapter has reviewed and clarify the concept of press freedom to show how it has been defined, finding that academics have recognised the role of law and regulation in facilitating or impeding the concept. It focused on relevant literature that tracked many of the key works on press freedom, dwelling on the authoritarian, libertarian and social responsibility theories perceived as extremely important for investigating press freedom. Contrasting perspectives on the importance of law and regulation for freedom of the press were highlighted that laid the theoretical ground for the study. The chapter explored various theories on press freedom in Africa which is a central backdrop to this research. It established that the African press is largely characterised by authoritarian and libertarian phenomena's affecting the freedom of the press. I show that the struggle for freedom of the press in Africa is a continuous one from the colonial period to post-independence. The review noted the political volatility of African countries, which contributed to unstable system of governance made it difficult for a free press in Africa.

From this I determined that theories of press freedom do not necessarily take into account laws and regulations particularly around sedition and the like which can be co-opted to punish journalists, as literature on Africa shows. It also shows how the press become the mouth piece of the governments. I established that many African governments have shown intolerance to media freedom for fear of being exposed. This is largely because of the culture of corruption and abuse of power deeply rooted in their system of governance. One of the issues raised in this chapter that affects press freedom in Africa is the notion of developmental journalism, through which the state controls the freedom of the press. The chapter takes a critical look at the state of press freedom in The Gambia which has been facing tremendous challenges. The review established that several studies has perceived the system of rule in The Gambia as authoritarian, particularly under former President Jammeh`s

rule with many cases of attacks on the private media to limit scrutiny. Finally, this chapter concurred with Esipisu and Kariiti`s (no year, p.58) summation that "the dream of a robust, independent, indigenous continent-wide African mass media is still far from becoming reality". I now conclude this chapter by summarising that having introduced political economy of journalism as my overarching theoretical framework for this dissertation; I have shown how law and regulation determines media control, freedom and ownership. This review offers a deeper interrogation into the role of media law, highlighting how it is predominantly instructional to journalism, but does not engage the law to understand how it affects the practice of journalists. Throughout the literature review chapters, I have shown how studies considered media law suppressive to press freedom. I identified the limitations of these studies and offered an interdisciplinary approach to investigate how journalists operate under a repressive legal framework and it's perceived by journalists. This suggests a close attention to law and I now move to discuss how I researched the political economy of journalism in The Gambia using an interdisciplinary approach.

CHAPTER FOUR

RESEARCHING THE MEDIA AND LAW

4.1 Introduction

In the previous chapters, I provided a critical exploration of literature that provides understanding to why media law and regulation controls media freedom, represses critical journalism and restricts media ownership. The literature discusses these issues at length, but rarely has a close engagement with the law to understand how legal instruments are used to restrict media ownership and supress press freedom. In order to address this gap, I argue that using an interdisciplinary approach can be a useful tool to research on the political economy of journalism, while specifically focusing on laws and regulations applicable to the daily practices of journalists. This is important to demonstrate how journalism is shaped by law.

I begin this chapter by presenting the design of the study, outlining the data gained. I then made a critical review of the main traditional methods to researching journalism and how past studies have used them in media studies. This has enabled me to determine that because of the inherent limitations of these approaches, using an interdisciplinary approach of combining cultural and legal research methods is the most appropriate strategy for my study. Finally, the chapter details on the ethical considerations underpinning the research, its limitations and safety issues for participants associated with the study.

4.2 Overview of Study Aim and Design

As stated in the introduction, the overarching objective of this research is to explore how journalists operate within the legal and policy framework of the media in The Gambia. In this respect, the study aims to identify and analyse the legal and regulatory framework of the Gambian media, and examine the way journalists perceive laws and regulations governing operation of journalistic activities in the Gambia. From colonial rule, The Gambia inherited and maintained repressive and restrictive legislations that are used to convict journalists and closed down media organisations. This conflict has been prevalent, particularly under former President Jammeh`s APRC rule from 1994 to 2016. Several studies found that within this period, many journalists have been detained, imprisoned, media outlets coercively shut down and applications for license to operate private broadcast media were denied in The Gambia (Human Rights Institute Report, 2010; Freedom House, 2016; United Nations, 2014; Janneh, 2013). All of these examples demonstrate how complicated journalism practice and media freedom is in The Gambia. Therefore, the principal goal of my research was to gather and analyse legal data such as legislations and jurisprudence concerning the media and journalism practice in The Gambia. I also draw on interviews data to understand how Gambian journalists perceive this legal framework and how it affects their practice. To achieve this aim, the research addresses a central question:

What is the legal framework for journalism in The Gambia and how do journalists work under these conditions?

Specifically, the objectives of this study were as follows:

1. Identify and analyse the legal framework of the Gambian media, and in particular, examine the implications on the enforcement of criminal media legislations to press freedom.

2. Investigate the implication of direct government regulation on media ownership, freedom and independent and critical journalism in The Gambia.

3. Identify and analyse the adoptive practices of Gambian journalists under a repressive and restrictive legal framework of the media.

4. Examine the trends and contradiction of Gambian national media laws to international human rights standards.

5. Identify and critically analyse jurisprudence concerning the enforcement of criminal media legislations and the approaches of Gambian courts in applying the law.

In order to achieve these objectives, I drew on two main data sets including legal and interview materials (see appendix 1). The data sets I presented give an idea of my research design, which has provided an appropriate framework for data collection and analysis. However, before I introduce my research approach in detail, I consider discussing the main traditional methods to researching journalism, in order to frame and situate the appropriateness of my research strategy.

4.3 Methods for Researching Journalism

There are three main traditional ways to researching journalism. These are qualitative, quantitative and combined methodological approaches (Nash, 2013; Hansen and Machin, 2019). According to Nash (2013, p.129), these methodologies are used to study the contemporary challenges of journalism. For Hansen and Machin (2019, p.6), they are the historical dominant methods to researching media and communication. In making choices, I am convinced by Bertrand and Hughes (2005, p.13) position that there is no need for rigidity in the choice of a methodology as between quantitative and qualitative methods in media

research. This allows for more flexibility in carrying out research. They point out that once a researcher is decided on his question or hypothesis, any method which is appropriate is acceptable. Noting the growing inter-disciplinarility of media research, they argue that critical theorist may utilise any method "provided the results of the research can be directed towards improving the social world" (ibid, p.215). Drawing on my background in both media studies and law, I utilised a repertoire of interdisciplinary methods in generating and analysing data to answer my research question (see section 4.6). However, I now move on to briefly discuss the three main traditional normative approaches to researching journalism, and how other theorists have utilised them, and their limitations.

At this point, I begin with quantitative research which is a major recognised approach in communication research. Although this particular technique is not suitable to achieve my research objectives, it has many advantages. According to Riffe, Lacy and Fico (2014, p.7), "the only way to logically assess communication content is through quantitative content analysis". This, they argue is the only information gathering technique that "enables us to illuminate patterns in communication content reliably and validly. And only through the reliable and valid illumination of such patterns can we hope to illuminate content causes or predict content effects" (ibid.). Quantitative research is one of the most recognised techniques used for "the systematic and replicable examination of symbols of communication" (Riff, Lacey and Fico, 2013, p.19). This method has been widely:

> Assigned numeric values according to valid measurement rules, and the analysis of relationships involving those values using statistical methods, to describe the communication, draw inferences about its meaning, or infer from the communication to its context, both of production and consumption (ibid.).

An important point to note here is the use of statistical methods to make a meaning out of them through analysis. However, this approach requires the researcher to empirically generalise, and not just rely on anecdotal evidence. It means that explanations of phenomena, relationships, assumptions, and presumptions are subjected to a system of observation and empirical verification. It enables taking a step-by-step scientific system of problem "identification, hypothesizing of an explanation, and testing of that explanation" (ibid.*).* Riff, Lacey and Fico (2013) make a further case for the use of quantitative research for the "reliability, objectivity, and clarity in description of research procedures". Brennen (2017, p.4) notes that quantitative research is often considered more authentic, important and scientific. Although I share Krippendorff`s (2004) position that quantitative research is one of the most significant techniques in social and communication research, the limitation of this approach is that it primarily focuses on analysing documents and text to quantify content makes it unsuitable for my study. My research involves investigating the relationship between law and journalism practice, by drawing on legal data and the views of journalists on law and regulation that controls their freedom. In this regard, I now consider qualitative research this study employed in data gathering and analysis as part of an interdisciplinary strategy that synthesis legal and cultural study, which seeks to establish how journalists operate in the legal and policy framework of the media in The Gambia.

In contrasts to quantitative research, Brennen (2017, p.4) suggests that qualitative research is one of the most commonly used interdisciplinary, interpretive, political and theoretical research techniques. He notes that its interpretive function is to meaningfully articulate in relation to the subject of enquiry. According to him, qualitative research is the use of languages to understand concepts based on people`s experience within the larger realm of human relationships (ibid.). In this respect, my research is analytical to the experiences of Gambian journalists on how they operate within the legal and policy framework of the media

and the way they perceive media laws of the country. Moreover, Brennen (ibid, p.6) provides a historical understanding to the development of qualitative research into media studies, which he believes emerged as an alternative to quantitative research. He identifies three conceptual elements of research paradigms that are influential to qualitative research methods. These concepts include epistemological, ontological, and methodological assumptions that are interconnected in research traditions.

Brennen also identifies the development of various research paradigms that are influential in media research. These are positivism, post-positivism, critical theories, and constructivism. For him, these provide useful guides to a research with specific values and principles (Ibid, p.8*).* He reveals that the positivists and post-positivists "primarily rely on quantitative methods to test, verify, falsify or reject their research hypothesis" (ibid, p.10). This, he argues the positivists and post-positivists perspectives are rooted or fixated on a singular way of understanding the truth. While the critical theorists and constructivists perspective, which is associated with qualitative research believes in multiple ways of understanding the truth. It means that the critical theories and constructivism rejects permanent standards set by positivists and post-positivists of establishing the truth (Guba and Lincoln, 2003, p.273). In essence, I argue that the critical theorists and constructivists perspective is a dynamic approach that allows flexibility for a researcher to adopt appropriate methods or techniques for the research. Therefore, I am embracing this principle which allowed me to use several qualitative methods in seeking to understand the phenomenon of how journalists operate within the legal and policy framework of the media in The Gambia.

I consider pragmatism a good epistemological justification for this study which employs mixed interdisciplinary qualitative research methods. Creswell (2014, p.11) justifies the pragmatist approach which "opens the door to multiple methods, different worldviews, and different assumptions, as well as different forms of data collection and analysis". By

employing mixed methods, the disadvantages of a single method when used alone are minimised, while the research benefits from the combined advantages of qualitative methods of two research disciplines. In short, whereas I see these paradigms as essential conceptual foundations for media research, my methodological approach feeds through an interdisciplinary response to law and journalism practice. In line with my research objectives, I utilised interviews and doctrinal legal research methods for the purpose of my research. Therefore, I share Brennen`s (2017) view that any of the aforementioned research paradigms that resonates with the objective of my research is useful.

Furthermore, using a combination of quantitative and qualitative methods is well recognised in data gathering and analysis in communication research. This is also referred to as the convergence technique or mixed methods (Hansen and Machin, 2019). For Gray (2014, p.205), it is the 'third methodological movement' which is useful to researching organisations and other areas of the real world. Teddlie and Tashakkori (2009, p.27), describes the mixed methods approach as the "combinations and comparisons of multiple data sources, data collection and analysis procedures, research methods, investigators, and inferences that occurs at the end of a study". Patton (2002, p.247) aptly summarised it as "the use of multiple methods to study a single problem". In other words, it is also referred to as triangulation "whereby qualitative and quantitative results are brought together to explore a research problem from multiple angles to confirm results" (Snelson, 2016, p.9). Theorists suggest that the mixed methods approach is deployed as a technique of combining quantitative and qualitative data from pragmatic knowledge claims or philosophical assumptions (Creswell, 2014; Gray, 2014). Research methods theorists such as Creswell (2014, p.218) have highlighted five potential motivations or benefits of mixed methods. These are:

1. Triangulation - to minimize bias and boost the validity of data.

2. Complementarity - to minimize the weaknesses inherent in individual methods and enhance their strengths.
3. Initiation – to make for the analysis of data from different viewpoints. 4. Development – to use the results of one method to enhance the other.
4. To increase the overall scope of research.

Each of the five points here shows that using mixed methods in studying journalism is far more advantageous to a single methodological approach. In investigating "The Value of Hyperlocal Community News", Williams, Harte and Turner (2014, p.5), concludes that the mixed methods approach is a richer perspective to research. Similarly, in his study of the role of the media in a democracy within the South African context, Glenda (2013, p.43) employed a repertoire of mixed methods including interviews, textual analysis, and critical discourse analysis. He found that "plurality of methods enriches rather than detracts from a study" (ibid, p.40). Also, in studying challenges facing professional journalism in Nigeria through the triangulation of quantitative and qualitative methods, Obateru (2017, p.112) argues that:

> Although the quantitative data provided a general picture of the current state of journalism in Nigeria and the attitude of practicing journalists to professional challenges, it would not have provided the deeper insight and understanding of the situation generated by the interview in which participants were able to provide in-depth and more detailed responses which aided a fuller understanding of the issues.

This shows that the different methodological approaches he took complemented each other in achieving his research aim. He points out that despite the advantage this approach, one of its major limitation is its complexity. However, I need to point out that it is evident all the studies discussed here employed a combination of different methodological backgrounds that are associated with media studies. Therefore, the combination of quantitative and qualitative

research methods is popular amongst media and cultural researchers. However, this method clearly is not suitable for analysing and interpreting legal content. For this reason, I move away from the tradition of combining quantitative and qualitative methods within communication research to employing interdisciplinary methods. I argue that conceptualising legal theory and journalism practice require the adoption of an interdisciplinary approach, combining law and journalism studies.

With the information above in mind, this brings me to the work of Noble (2018, p.5) which focuses on freedom of expression and media pluralism in The Gambia. He employed qualitative methods by using interviews and focus groups. For him, this approach brought to light the tensions between freedom of expression, legislative, political, social and institutional framework. Although, Noble did not specifically state that he has adopted a legal method for his study, I have observed that he has made a descriptive account of the legislative framework governing the media in the Gambia. Here, it raises further questions about his methodological clarity and validity, which stops at identifying specific legislations and did not offer a deeper understanding to how journalists operate under such a legal framework. Off relevance here is the work of Reynolds and Barnett (2006, xvi) who points out that "many researchers in the field of mass communication are studying communications questions that are clearly linked to legal issues, although they would not necessarily associate themselves with communication law."

Like Carter (2017, p.7), I share the view that "scholars frequently choose qualitative methods, not surprisingly including legal analysis of statutes, judicial opinions and historical-legal documents". Taking an interdisciplinary approach, my study aims to reverse this perception by employing doctrinal legal research alongside media studies. This position has value particularly, on some of the issues highlighted here. Although it is not my intention to undermine the quality work of Noble (2018), I find his descriptive account of the legal

framework of the media limited to addressing the tension between law and journalism practice in The Gambia. Instead, I find critically analysing the law drawing on methods from the field of law to be a more productive and insightful exercise that allows for a holistic understanding of the political and economic conditions for Gambian journalists. This has informed the legal analysis in chapter six and demonstrates how the law is interpreted and applied. In this regard, my research attempts to complement his work by using a holistic approach, which I outlined in section 4.4 as interdisciplinary to study the adoptive practices of journalists under a repressive and restrictive regulatory framework of the media in The Gambia. From reviewing the three traditional methods of researching journalism in this section, it is clear that they all exhibit weaknesses in studying the political and economic conditions of journalism, and deemed inappropriate for legal analysis. This suggests the need for an interdisciplinary approach to the study of law and journalism. I argue that this is an innovative approach that serves as a possible solution to the limitations of traditional media research methods. I now move on to outline my interdisciplinary approach and how this can be used to research on media law and journalism.

4.4 An Interdisciplinary Approach to Researching Media and Law

As briefly highlighted earlier, this research employs media and legal research methods in data gathering and analysis. In other words, it employs an interdisciplinary approach and strategy to researching the political and economic of which the media operates in The Gambia. According to Roberts (2017, p.92), interdisciplinary research is the methodological fusion of two or more disciplines or branches of learning in research. For Tobi and Kampen (2017), the idea of an interdisciplinary approach to research is to facilitate the design of interdisciplinary scientific research. They point out that one of the benefits of interdisciplinary research is its suitability for "research projects of different sizes and levels of complexity, and it allows for a range of methods' combinations including case studies" (ibid, p.1). In this context, I find it

suitable for my research bringing ideas of how legal research can be useful to media and cultural studies.

Schrama (2011, p.150) indicates that interdisciplinary legal research is a new road to innovation in contemporary research that is essential to measuring the effectiveness of legal instruments. From this perspective, I find my approach useful to examine the effect of restrictive and repressive legal framework of the media in The Gambia, and how it is controlling to journalism and media ownership. Furthermore, Schrama (ibid, p.151) notes that there are two types of interdisciplinary legal research methods including unilateral and multilateral methods. According to him, to use the unilateral method it means that "a legal researcher aims at carrying out the research starting from a research question based in the legal arena, but making use of the data from another discipline" (ibid.). In this respect, my main research question addresses both legal issues and media studies. Some of my sub-questions specifically relate to legal matters and legal data. Other research sub-questions relate to journalism practice. Schrama (ibid, p.152) explains that the multilateral method in interdisciplinary research means the research involves at least two experts from different disciplines to work together. Although, my research does not involve experts from different fields, this is another important way of integrating experts' knowledge to bridge a gap between two disciplines such as between the media and law. Here, I bring in ideas from my background in law which can be useful to media and cultural research. However, Schrama (ibid.) notes that some of the limitations to interdisciplinary research approach to law are:

1. The issue of how to find your way in and understand another discipline.
2. The risk of picking and choosing and of an incorrect understanding of the other discipline.
3. The difficulties in translating the legal concepts into socio-empirical equivalents.
4. The question how to integrate empirical results within the legal discipline.

Each of these problems presents a challenge to integrating and analysing research findings. It would require understanding the different disciplines with the requisite skills to be able to relate results. In the context of my research, I came from two academic backgrounds of law and journalism couple with a relevant professional experience in journalism practice and legal research that are useful to overcome these challenges. This enabled me to take full advantage of the benefits of the various disciplinary approaches I have discussed above. In hindsight, the discussion here gives a clear background to the interdisciplinary approach I have used in my research. I argue that the adoption of a legal to studying journalism gives the researcher the opportunity to analyse jurisprudence applicable to the daily practice of journalists.

I now give attention to how I used it to collect data and analysed in this study, focusing specifically on the two data sets including legal materials and interviews. In this respect, I suggest that combining doctrinal legal research and semi-structured interviews is an innovative way of researching political economy of journalism, bringing interdisciplinary methodological ideas together. I argue that this will provide a deeper understanding to the object of study, and the legal context Gambian journalists operate in. I now focus on the doctrinal part of the interdisciplinary approach.

4.4.1 Doctrinal Legal Research

According to Burton and Watkins (2018, p.18), in undertaking doctrinal study access to law is very important because legislation and case law are the primary materials of law. Having this in mind, while part of my research objectives is to examine the implications of a repressive and restrictive legal framework to journalism practice, I first explored legislations governing media operation in The Gambia and relevant case laws concerning journalism practice. Before I go into the details of how I used doctrinal research, I first want to unpack the approach to give a better understanding to why it is used. Doctrinal legal research is

commonly used as a process to identify, analyse and synthesise the content of the law (Hutchinson, 2013, p.9 - 11). This method has been considered appropriate for a theoretical critique of the law or empirical study about the law in operation (ibid, p.10). Bearing this in mind, the doctrinal approach has been a useful tool that allowed researchers to "advance mass communication law theory in significant ways" (Carter, 2017, p.17). For example, it has been used as an effective legal method to argue for the extension of free speech in the constitution of America (David, 1998; Ekstrand, 2002). Doctrinal legal research was conducted to identify the limitation of the American constitution on the concept of free speech, and journalistic values online.

Carter (2017, p.17) notes that the doctrinal method is useful to the development of communication theory and the law. But Carter goes on to point out that doctrinal research does not "generally result in development of values and theory, unless it is applied directly to scholarly discussions of theory rather than practical jurisprudence" (ibid, p.23). Therefore, the doctrinal method plays a significant role in legal scholarship. In this regard, as a method specifically intended for legal analysis, it is fundamental to the development of legal and communication research. Therefore, the task of employing doctrinal research in my thesis is not just to present the law, but facilitates understanding of how law relates to theory and practice.

In essence, I drew on the doctrinal legal method to critically evaluate and understand how media law and regulation influence journalistic practices in The Gambia through empirical research. Drawing on Reynolds & Barnett (2006), Carter (2017, p.11) sees the relationship between law and empiricism as difficult, suggesting the need to increase and improve empirical work into media law and policy research, which this project seeks to achieve. The premise of Reynolds and Barnett position for an interdisciplinary research approach within this area is to provide more understanding of the interaction between communication and law

(2006, p.xx). They provide an understanding to interdisciplinary research that merges communication and law, in which they also invited scholars to join. For them, the following three areas are ripe to research in this area:

1. The theoretical and methodological elements that distinguish among law, freedom of expression and communication, and the conceptual approaches needed to bridge these disciplines.
2. The validation or (invalidation) of assumptions about communication embedded in law.
3. The use of social research to identify and examine the impact of law on communication (ibid, p.4).

These three issues are all relevant for the purpose of this study, and are within the scope of my research enquiry. As discussed earlier, part of my research objectives is to examine the impact of criminal media laws of The Gambia and direct state regulation on media freedom and ownership. In doing so, it looks at laws and regulations governing media registration and other criminal media legislations that are enforced against journalists and case law. Mekonnen (2015, p.89), further observes that the doctrinal method is not limited to drawing on primary legal sources, but researcher`s deploying this method are also expected to refer to books, journal articles, commentaries and other secondary sources of law. This position has value particularly considering some of the issues I explore such as reports written by NGO`s and United Nation agencies on the state of press freedom in The Gambia. Furthermore, examining precedent and the explanation of the application of statutes are both important aspects of the doctrinal approach (Carter, 2017, p.10). In chapter six, I have applied this principle demonstrating how the courts of The Gambia approach and interpret laws dealing with media offences by looking at judgements. Similarly, I have examined precedents on international human rights law that are relevant to the Gambian context. This includes

judgments of courts including those in common law jurisdictions, European Court of Human Rights, International Criminal Tribunal on Rwanda and the U.S. Supreme Court. This is in fulfilment of one of my research objectives which is to examine the contradictions between national laws of The Gambia to international human rights standards.

With respect to the international context, Carter (2017, p.23) argues that "a structural approach could be taken to analyze the relationships among state actors, mass media and others as envisioned in international human rights law treaties such as ICCPR." This means looking at the obligations or duties State parties are bound by international law on its relationship with the media. From this perspective, international instruments that protect media freedom The Gambia is a State party to are structurally identified and analysed with other national laws (see chapter six). However, despite the inherent benefits of the doctrinal approach, it has its own limitations. For example, Gilmore (1974, p.12) claims that the method is "rigid, dogmatic, formalistic and close minded." For him, the doctrinal approach is fixated within the tradition of legal research that focuses mainly on law, juristic science and judicial decisions. I argue that Gilmore`s claim is valid within the tradition of examining purely legal questions, but I find it problematic in the context of interdisciplinary research. For the benefit of my research, I share Burton and Watkin`s (2018, p.10) view that the doctrinal legal research method is appropriate for any theoretical critique of the law or empirical study about the law in operation, which my study seeks to achieve. Therefore, because my research questioned the enforcement of media law which is a branch of law, the doctrinal method can be used alongside other media research methods to understand legal issues confronting the media that has been predominantly occupied with traditional media methodologies. There is a gap in research and research methods in studying the media and law, and the mixed methods approach is beneficial to legal and cultural research.

As already stated at the beginning of this section in employing the doctrinal method as a tool for enquiry, the first stage recommended by doctrinal scholars like Dixson (2016, n.pag) is to gather the relevant statutes and case laws. In this respect, I started by creating a database of laws, regulations and court judgements concerning the media and journalism in The Gambia. These include national and international laws and jurisprudence (see table 1, 2 and 3 in section 4.2). In this respect, I generated comprehensive legal data governing media operation and journalism in The Gambia for analysis. A major challenge and limitation of this research was the unavailability of Gambian laws online and the inaccessibility of court records in The Gambia that are not reported. However, international human rights instruments and precedents are available online on many digital legal databases such as HeinOnline and Westlaw. As above, utilising advanced legal research skills I acquired from studying law, I was able to gain access to all the international legal instruments and jurisprudence, especially human rights instruments concerning freedom of expression and press freedom. This includes cases adjudicated in national and transnational courts such as the ECOWAS Community Court of Justice and the European Court of Justice. Also, taking into consideration of Mekonnen`s (2015) proposition that the doctrinal approach includes looking at secondary sources of law, I must point out that the HeinOnline and Westlaw legal databases provide access to useful journal articles, commentaries and books in the area of press freedom and media law.

Furthermore, because my field research period coincided with the outbreak of the Corona Virus as a global health pandemic, I was unable to travel to The Gambia for legal data collection from courts and relevant government institutions. I considered having a data collection assistant in the Gambia, whose primary role was to help facilitate the collection of legal data, and its electronic transmission to me (see appendix six for terms of reference). The experience of the data collection assistant who is a journalist and a law student at the

University of The Gambia was useful to identifying and collecting legislations, regulations and cases in relation to journalism in The Gambia. I realised that the advantage of having someone who mirrors me from a similar journalistic and legal background was necessary to ensure data validity, accuracy and an easy coordination. I ensured that the research rationale was clearly explained to him with his expressed consent. Throughout this period, I have maintained a close contact with him to be in the picture about his daily activities. While he was doing this, I was also carrying out searches in the Economic Community of West African States (ECOWAS) Court digital database for cases in relation to journalism in The Gambia. This is important because my research also questions the impact of the ECOWAS Court rulings on journalism practice in The Gambia. To conclude, I argue that employing the doctrinal legal research method to investigate the influence of law and regulation to media freedom, control and ownership is an innovative approach methodologically and theoretically. I will now present the second approach of my research enquiry, which focuses on interviews with Gambian journalists.

4.4.2 Interviews

According to Johnston (2010, p.189), interviews are a process of gathering in-depth information about a research question from an informant. Bryman (2001, p.263) points out that this is the fullest condition of participating in the mind of another human. Wilson (2012, p.96) has identified four types of interviews a researcher can choose from including structured interviews, semi-structured interviews, and unstructured interviews. For this study, I have conducted semi-structured interviews because it is recommended when using various other methods in a study (May, 2001, p.126). This makes the method quite suitable for my research as it is one of several qualitative methods I am employing to deepen data collection and analysis of the issues raised by my enquiry. An additional advantage of semi-structured interviews is that the interviewer can seek clarification and elaboration on responses as well

as probe the answers, thus permitting dialogue with the respondent (ibid, p.123). Also, Cohen and Crabtree (2006) suggest that semi-structured interviews provide informants the freedom to express their views in their own terms. This, they argue can provide reliable and comparable qualitative data. For my study, face to face video interviews were conducted via Microsoft Teams because of the Corona Virus pandemic. My motivation to use this method includes a number of merits it comes with, as identified by Merrigan and Huston (2009, p.110).

1. Easier to establish a rapport and climate of trust.
2. More difficult for participants to avoid answering any question.
3. Allows for deeper probing and follow-up questions.
4. The researcher can monitor participants' non-verbal reactions.
5. Participants can ask for clarifications of questions they do not understand.

Besides these advantages, scholars such as Babbie (2007) and May (2011) note that personal interviews could possibly put respondents under pressure that affects their answer, and can also lead to apprehension to sensitive questions. However, I was able to mitigate this by explaining to the interviewees that all information will be anonymised before data is collated and be kept in a secured place. They were also informed that the results will be presented in a dissertation in which no individual or their responses can be identified. Also, as the researcher is a well-known journalist provides more confidence for the interviewees to freely discuss issues with him without feeling apprehensive. I have also made further efforts to mitigate the effect of the disadvantages of personal interviews by sending my research précis to all the research participants containing a background explanation of why I am doing this research in a transparent manner. Equally, I have offered interviewees the opportunity to ask questions before starting any interview. This was necessary to clear any doubts, and foster a common understanding with each other about the benefits of conducting the research.

Another methodological challenge of this research is the political situation of The Gambia. Coming from 22years of autocratic rule, politics remain to be a very sensitive subject to discuss in The Gambia, especially when soliciting information from public institutions like courts. However, this did not have a major impact on the research because I have given interviewees the assurance of confidentiality and data protection by giving them consent forms and assured that the content would be anonymised. While I see value in all the methods I employed for this research, interviewing is at the core of answering my overarching research question. A total of 15 interviews took place remotely via MS Teams and also on the phone, and ranged from 23 minutes in duration to over an hour. All were granted anonymity and given code names Participant 1 to 15. I have been careful to remove any identifying details for this purpose including name, gender, and place of employment to avoid jigsaw identification. Participants were selected from pro-government, opposition and other private news media organisations, and five were chosen from each category. This was designed to ensure broad based representation of journalists from different news media organisations of diverse ownership and ideological inclination. Also, since some of my interview questions sought comparison among three eras of journalism practice, a purposive sampling technique was employed. In other words, a minimum of five years professional journalism experience in The Gambia was considered necessary in selecting participants. The rationale for this is to enable journalists to reflect on their practice under the previous governments, the present and make recommendations for the future. Furthermore, in order to gain vital insights to the type of content that gets published, newspaper editors from each of the categories were part of those selected to understand how regulation affects editorial decisions.

Finally, state ministers responsible for government policies who were practising journalists were interviewed to gain understanding of government perception on the legal and policy framework of the media in The Gambia. Interviewing cabinet ministers including past and

present was particularly useful on the subjects of direct government regulation, especially on newspaper registration and licensing requirements. These interviews are designed to enrich the project with real live voices, and minimise potential biases from the researcher who is conversant with issues related to journalism in The Gambia. However, according to Hansen and Machin (2013, p.46), interviews are "time consuming in terms of planning and contacting interviewees." This limitation has been recognised considering the complex nature of my research, and in particular the respondents I targeted as some do not have access to strong internet connection for video calls. However, in situations I experienced poor internet connectivity; I made direct telephone calls to conduct my interviews. According to Wilson (2012, p.97), it is cost effective to use telephone and Skype, which can save travel cost and also provide a certain level of comfort to participants. At the time, this was the most suitable option for me without having to travel to The Gambia. All the interviews took the same semi structured format which allowed for a flexible approach to the interview.

All interviews started with an explanation of the personal career motivation of the participants and their personal experiences as related to journalism in The Gambia (see appendix 2). My experience as a journalist was useful in conducting the interviews as I was able to take notes, highlighting key points for follow-up questions. Despite being conversant with issues related to the political economy of journalism in The Gambia as a reflexive researcher, I tried to avoid bias by being dispassionate in asking questions and encouraging participants to open up as much as possible on the issues raised. A digital recorder was used for recording and data was retained according to Birmingham City University data retention policies. I have also saved all the interviews in a personal onedrive that is accessible to only me.

Following the transcription of each interview, I used Nvivo to begin coding guided by topics of the research questions, bringing out emerging themes. The coding process was done in

sequence, which helped to focus the interviews as issues were gradually distilled. In response to how they operate in the legal and policy framework of the media in The Gambia and their perception of direct state regulation of the media, several words, phrases and concepts stood out from the interviews, which I used as the basis for thematic analysis. Words such as repressive, controlling, controversial, draconian laws, Jammeh laws, fear, censorship, self-censorship, online journalism, *Foroyaa Newspaper*, *Independent Newspaper*, and discourages critical journalism were common themes emerging from the scripts. Comparing the various responses enabled me to grouped common themes that are inter-related into five broad categories for analysis in chapter seven.

4.5 Ethical Considerations

This study conformed to relevant ethical requirements set out by the Birmingham City University`s ethical guidelines, scholarly principles and relevant bodies such as the British Sociological Association. May (2001, p.60) points out that in social research ethical decisions are defined in terms, not just what is right or in the interest of the research project, its sponsors or workers, but about the interests and welfare of research participants. Bearing this in mind, I first applied for ethical approval from the Birmingham City University Faculty of Arts, Design and Media. This was approved following a summary of all potential ethical issues to my research, and how I intend to mitigate them. Taking into consideration of the challenging political and legal context of The Gambia, which is a country believed to be less democratic, I reflected on the way other scholars researched in similar settings. I am influenced to adopt the three ethical principles recommended by Wackenhut (2017, p.242) for researching in a less democratic setting. These are data protection, anonymity of informants, and the associated ‘do no harm’. These are important measures that are necessary for the protection of research participants and their livelihoods in a country like The Gambia that is characterised with an authoritarian system of governance.

First, the ‘do no harm’ principle generally means to ensure the safety of the researcher and other research participants. Wackenhut rightly notes that, this is a foundational sociological principle which discourages undertaking research that compromises professional work or lead to harm (ibid, p.247). Drawing on the work of scholars such as Diener and Crandall (1978), he notes that there are various facets of harm one should refrain from including “physical harm, harm to participants’ development, and loss of self-esteem, stresses and other aspects” (ibid.). The value of this principle to my research is that it enabled me to critically focus on my positionality in relation to my subject of enquiry, as a Gambian journalist who witnessed government hostilities towards the press. I believe that because my personal experience is very close to the subject of enquiry, this alerted me to guard against all forms of emotional attachments, and not in any way imposed my views on participants. In this regard, data collection and analysis was done with high standards of professionalism. I also ensured that research participants some of whom were arrested and tortured were not put under undue pressure or influence by obtaining their full informed consent. Their right to freely participate in the research and withdraw at any point was clearly explained in the consent form. This is also consistent with section 16-18 of the British Sociological Association guidelines that required researcher to fully explain the nature and purpose of the study to participants, and the right to withdraw. In cases where prospective participants indicated that they were not interested in being interviewed or did not respond to interview invitation, I thanked them for their time and refrained from contacting them again to respect their privacy.

Second, with regards to protect the integrity of data, Wackenhut (ibid, p.251) explains that to ensure respondents were neither identified nor identifiable prior to, during and after the research, interview materials like voice recordings should be stored on an encrypted and password protected hard drive, containing no information that would allow the identification of research participants. Having regard to the sensitive and emotive nature of my subject of

enquiry to protect participants, I did this and in compliance with the UK Data Protection Act of 1998 to protect the privacy of personal data of participants. I accomplished this by ensuring that information obtained is stored and handled with integrity and professionalism. In short, I ensured that all interview materials including recordings and transcripts were stored and saved in the University Onedrive that can be accessed by only me.

Third, I made sure that I followed Wackenhut`s third principle of providing anonymity to participants. This is highly recommended when researching in complex political environments whereby respondents risk arrest, torture, execution or losing their job for speaking out. Although, this is highly unlikely to happen in The Gambia under the present government of Adama Barrow, it would have been the case under former President Jammeh`s rule. For instance, in 2014, a political science lecturer of the University of The Gambia was arrested with two other international researchers for their involvement in a poll survey on "good governance and corruption" in The Gambia (Amnesty International, 2014). For this reason, I share Höglund`s (2011, p.114) position that taking into consideration the idiosyncrasies of less- or non-democratic settings is important to the physical or psychological well-being of research participants, and their livelihoods. Arguably, The Gambia remains to be a less democratic country because of several reasons including the maintenance of authoritarian legal instruments. For example, The Gambia Official Secrets Act of 1922 prohibits the media from obtaining information from government departments, which is a punishable offense. I find it necessary to safeguard my research interests, and the interest of all participants by protecting their identity and the information provided.

Although this piece of legislation is barely used against government employees, I still have to consider it in generating data from government employees particularly former and present State ministers who are participants to this research. In addition, they have also taken an oath of secrecy, which forbids them from disclosing sensitive government information. In this

regard, obtaining information from them without offering them anonymity would have been difficult. In short, I have complied with the Birmingham City University ethical principles by ensuring confidentiality, the security and wellbeing of participants, data security, and the anonymity of participants (BCU, 5.4). This is done by removing participants names, place of work, gender and cases some of them were involved.

In discussing the doctrinal section of my research methods, I have identified a data collection assistant who helped to collect legal data for me in The Gambia. I was unable to personally travel to The Gambia, because of the Corona Virus pandemic on international travel restrictions. This raised further ethical consideration with respect to the safety and wellbeing of the data collection. First I was opened and honest to him about the essence of the research, which was clearly explained to him without any deception. It enabled him to make an informed decision whether to accept the role or reject it, but he chooses the former. Consequently, we conducted a risk assessment for him, by looking at the legality of the activity and offering him the opportunity to express any fears or doubts he have. The task given to him was clear that he should only focus on gathering legislation, regulations and jurisprudence that are in public records on the subject of enquiry. Generally, court records are difficult to access in The Gambia. However, on the positive side of mitigating this challenge, he being a journalist and a law student facilitated access to the relevant materials for him without consequences.

4.6 Conclusion

The purpose of this chapter has been to introduce an interdisciplinary approach to researching the political economy of journalism. This approach is a response to the limitations of past studies on the political economy of journalism, such as McChesney (2008), Sousa and Fidalgo (2011), Murdock and Golding (2000) who all recognised the role of regulation in media control, freedom and ownership, but rarely has a close engagement with the law. I also

showed that media studies have predominantly focused on traditional quantitative and qualitative methods to researching journalism, which are not suitable to examine the content of law.

Drawing on the works of Glenda (2013), Obateru (2017), Williams, Harte and Turner (2014) and others, I have demonstrated that the idea of combining methodologies is a popular approach in communication research. I observed that many media studies such as Noble (2018) attempts to address legal issues without associating themselves with law. I argued for the need to move away from this lack of assertiveness and adopt a holistic interdisciplinary approach of synthesising legal and cultural methods to address questions linked to law. I then outlined media and law research methods that can be useful for scholars to investigate journalism, which include interviews and doctrinal legal research.

CHAPTER FIVE

CONTEXTUAL CHAPTER

5.1 Introduction

The purpose of this chapter is to set up the findings chapters of my research into the political economy of journalism in The Gambia. This is the first of three chapters that presents my research findings. In this chapter, I explore the political and economic conditions for journalism in The Gambia, specifically on regulation and media ownership. It is where the research begins with the doctrinal legal analysis. In chapter six, I offered extensive legal analysis of cases, particularly on how law and regulation is used punish journalistic criticisms and control press freedom. Chapter seven highlights the adoption of journalistic practices that are not only conventional, but also sensitive and defiant to a legal and regulatory environment that is restrictive and repressive.

Drawing on my doctrinal legal research, this chapter explores various media legislations, The Gambia`s three national constitutions, consultancy reports of media rights groups including Committee to Protect Journalists, Gambia Press Union, Media Sustainability Index and others that extensively documented to provide contextual analysis of the media in The Gambia. There are several factors affecting media control, ownership and freedom in any country including political and economic, especially in The Gambia where the legal and regulatory framework is one of the critical factors suppressing press freedom. In 2009, the High Court of The Gambia convicted six journalists on charges of sedition and criminal defamation for criticising the country`s President. Following six months of doctrinal legal research, I found that the material judgement of the case was not reported in public records, and therefore not publicly available. However, the Africa Research Bulletin reported the case judgement as follows:

> Six Gambian journalists were each jailed for two years on August 6th after being found guilty of criticising the country's President. The journalists, including *Foroyaa* editor-in-chief Sam Sarr and *The Point* editor-in-chief Pap Saine, were convicted of sedition and defamation for comments critical of President Yahya Jammeh. The case started after the President told state television on June 8th that the government had "no stake" in the 2004 murder of journalist Deyda Hydara and rebuffed persistent speculation of high-level involvement in the killing. Jammeh instead suggested that the investigative reporter's love life had led to his murder by unidentified gunmen. Hydara, the editor and co-founder of *The Point* and the Gambia correspondent for *Agence France-Presse (AFP)*, was gunned down by unidentified gunmen in his car on the outskirts of Banjul on December 16th, 2004. He also worked for Reporters Without Borders (RSF), which advocates freedom of the press (Africa Research Bulletin, 17 September 2009).

Herein lies the frustration of journalists operating in a legal framework where they risks arrest, criminal prosecution and jail term punishment. The report above suggests how criticism of government or the President can result in prosecution and conviction of journalists working in The Gambia. In consequence, my research has been revealing how such a case remains in the minds of journalists, which ultimately affects their practice. This case as I will later analyse in chapter 6 exemplifies legal repression of critical journalism which my research reveals has contributed to fear, and self-censorship on reporting about critical issues such as corruption and human rights violations in The Gambia. These are issues that could have been exposed by independent journalism practice. In essence, as I demonstrate in chapter 6, it has reached a point where Gambian journalists believe that they were faced with two choices; one is to abandon their professional or social watchdog role and

support the status quo as a survival tactic or two being critical to the State and be treated like an enemy of the State.

In other to understand my research context in relation to the political economy of journalism and media law in The Gambia, this chapter seeks answers to the following questions in particular: What is the legal and regulatory framework of the media in The Gambia and what does it mean to practise journalism under a legal framework that is repressive and restrictive? In this respect, this chapter sets the scene for other chapters outlining regulation, ownership, media freedom and control in The Gambia. First, this chapter contextualises journalism practice and the law by presenting a background discussion of the colonial origin of these laws and regulations that are used to control, punish and restrict critical journalism in The Gambia. It also discusses the regulatory framework used by authorities to control the private media.

5.2 The Gambia`s Colonial Background

This dissertation outlines how part of the problems confronting media ownership and professional journalism practice in The Gambia originates from the country`s colonial background. It has been argued that The Gambia "maintained many legislative enactments passed by the colonial administration and enacted many other laws to support the Constitution in the governance process" (Senghore, 2012, p.514). In this respect, a recurring theme throughout my findings is that the colonial era laws succeeding Gambian governments inherited and maintained in the country`s statute books served as repressive and restrictive weapons against the private independent media. In other words, several Gambian journalists have been convicted through the use of colonial era laws such as sedition and criminal defamation. Similarly, statutes that originate from colonial times, such as the Telegraph Stations Act 1913 and the Newspaper Act 1944 have been used as regulatory instruments to restrict media ownership and close down media organisations. For instance, in 1990,

provisions of the Telegraph Stations Act 1913 were enforced to close down a radio station like Citizen FM, convicting the owner for broadcasting without license (Article 19, 1999, p.4).

In addition to the aforementioned acts, The Gambia still maintains other legislations such as the Official Secrets Act of 1922 also enacted during colonial times which forbid obtaining certain information from government departments. Based on my research findings, most of these colonial era legislations are not repealed but amended to tighten media restrictions, particularly under former President Jammeh`s APRC rule. This made it harder for journalists, particularly those working for the private media, to carry out their professional role. Examples of these amendments include the Information and Communication Act 2009, Newspaper (Amendment) Act 2004 and Criminal Code. The provisions of these legal instruments are discussed in detail in the following sections.

At this point, it is now important to offer a brief historical context to The Gambia`s colonial background. This is critical to understanding the country`s colonial trajectory and the origin of legal restrictions to journalism practice. According to Southorn (1943, p.532), The Gambia`s first known contact with its former British colonisers was in 1587. It is believed that Britain`s interest was aroused in The Gambia, when two of its ships returned with a cargo of hides and ivory (ibid). Southorn (ibid, p.532) points out that this was an era of "exploration and expansion and imaginations", which were motivated by "visions of easy money". Accordingly, the first permanent British settlement was established in The Gambia in 1661, which was called St. Andrew's Island, but renamed James Island in honour of the Duke of York (ibid.). There were series of activities including rivalry between the French and the British for trade that preceded the imposition of colonial rule at the end of the slave trade in 1816 (ibid, p.534). To start running the colonial administration, the British adopted a system of indirect rule, laying down a legal framework and delineated The Gambia into a

colony and a protectorate (Ceesay, 2017, p.89). Indirect rule in this context means relying on existing local structures including chiefs and village heads to run the administration of the colony. The subsequent development of the colony and the struggle for independence is outside the scope of this research. To name but a few, the following scholars also suggested by Ceesay (2017) built on an expansive literature on Gambian history and colonial rule: (Gray, 1940; Swindell, 1980; Ceesay, 2014). These scholars have contributed to the debate on the colonial system of administration in The Gambia.

Amongst its four colonies in West Africa, The Gambia is the last British colony to gain independence in 1965. This was preceded with the enactment of the 1964 Independence Act making it official that on and after 18th February, "Her Majesty's Government in the United Kingdom shall have no responsibility for the government of The Gambia" (Independence Act 1964, c93, p.1). This meant that the British government had no further direct involvement in running the affairs of the State of The Gambia. Although The Gambia was to remain under Her Majesty's dominions, this was part of a journey towards national sovereignty. In essence, it marks the end of direct colonial rule, but not indirect colonial influence. This is exemplified by the type of a legal framework in which independent Gambia was born out taking its root from the common law of England. Historically, the common law is also understood as the unwritten law of England including customs, principles and judicial precedents administered by English courts or tribunals (Smith, 1884, p.14). However, the common law now also includes English statute law (William et al, 1912, p.867).

In essence, The Gambian laws are generally based on modified English statutes to suit its national context (U.S. Dep't St, 1990, p.136). Some of these laws that are still enforced in The Gambia in relation to the media include sedition, criminal libel and publication of false news. However, I argue that The Gambia`s colonial background cannot be discussed in isolation with the history of other British colonies in West Africa including Sierra Leone,

Nigeria and Ghana. One specific reason is because at some point, the British colonial Governor in Sierra Leone was also overseeing the colony of The Gambia (Southorn, 1943, p.538). Southorn found that the Governor was "entrusted with the duty of introducing effective government" in The Gambia. He also revealed that the colonial officials were rotating amongst its four West African colonies. From this perspective, one could argue that the shared historical relationship amongst British colonies was influential in determining the similarities in the administration of the colonies and in particular the types of legislations that were adopted to govern including media legislations and regulation.

Generally, scholars agreed that inherited colonial laws have a direct profound impact on media freedom in most former colonies in Africa (Herskovitz, 2018; Okonkwor, 1983; Schiffrin, 2010). This had an indelible mark on the type of regulatory systems put in place in post-colonial rule that determines media control, ownership and freedom. Moreover, there are several underlying political considerations to the reasons behind maintaining and the enforcement of colonial era laws in West Africa. As rightly pointed out by Jallow (2013, p.80), in The Gambia context, the main reason of these laws was primarily "to protect the British crown against dissidents". For Hakim (1997, p.94) the idea behind the enactment of draconian colonial laws by the colonial authorities was to combat the growing communist ideology in West Africa. For example, it is noted that Wallace Johnson from Sierra Leone an active organiser with links to the Soviet Union was arrested and prosecuted in the Gold Coast in 1936 (ibid, p.96). Having being once deported from Nigeria, he was also banned from re-entering the colony of Gold Coast (present day Ghana) (ibid.). In Wallace Johnson`s case, he was charged with unlawfully publishing in a newspaper a seditious writing concerning the Government of the Gold Coast contrary to the Criminal Code of the Colony (Wallace Johnson v. The King, 1936). Consequently, he was found guilty by the Supreme Court of the

Gold Coast Colony and was fined to pay 50L and, in default of payment within fourteen days, was to be imprisoned for three months.

Similarly, it is said that the colonial law on sedition was operative throughout the colonial period in Nigeria (Okonkwor, 1983, p.53). Bearing this in mind, although there is no evidence that the colonialists have ever used these laws against the media or individuals in The Gambia, Edward Francis Small a Gambian nationalist and trade unionist had direct contacts with the likes of Wallace Johnson in the anti-colonial struggle (Hakim, 1997: p.95). This historical connection amongst nationalist movements within the four British colonies in West Africa provides context to the enactment and enforcement of repressive or restrictive press laws in those colonies. Therefore, the colonial context is also important to understanding the nature and types of the current legal frameworks that are in use in Africa even after independence. This is justified by the invocation of similar criminal legislations including sedition, publication of false news and criminal libel by post-colonial African governments to jail journalists (Mbaine, 2003, p.4).

For example, in discussing the case of journalist Issa Konate of Burkina Faso in the African Court and Human Rights, Herskoviz (2018, p.900) argues that "criminal defamation laws in Africa, such as the ones under which Burkina Faso prosecuted Konate are a holdover from colonial times when colonial rulers used them as protection against nationalist movements and uprisings". He points out that "many modem states in Africa maintain similar types of laws such as seditious libel laws and laws against insults toward public institutions or public officials" (ibid.). Again, Konate`s case shows that such laws were not only used in British colonies, but also in French colonies. Balule (2008, p.408), points out that the existence of these colonial era laws is justified to protect the security of new fragile States against threats to democratic institutions. Although former colonies have maintained these offences, they have been repealed in countries like the UK where they come from. In announcing the repeal

of the offences of seditious libel, defamatory libel, obscene libel and sedition in the UK where these laws came from, Ms. Claire Ward the Secretary of State at the Ministry of Justice contends that:

> "Sedition and seditious and defamatory libel are arcane offences from a bygone era when freedom of expression wasn`t seen the right it is today. The existence of these obsolete offences in this country had been used by other countries as a justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom" (Press Gazette, 2010).

The repeal of these laws is believed to have been done following recommendations by the UK`s Law Commission (Robertson and Nicol, 1992, n.pag). Here in the Minister`s comment, the repealing of these laws is premised on two reasons. Firstly, she implies that such laws are incompatible with the right to freedom of expression, which is an important principle protected under international law. Secondly, these laws have been used by non-democratic governments in some countries against the press and those who hold divergent views. This is a popular phenomenon in Africa where journalists are targeted under such laws for politically motivated trials. An example is President Museveni`s regime of Uganda which has used these laws to arrest and prosecute journalists (Mbaine, 2000, p.41). This has a major impact on the work of journalists in particular and press freedom in general, as it induces a culture of fear against the media. To date, laws on sedition, criminal libel and false news serve the purpose of protecting contemporary African rulers, and their governments from public criticism just as it was the case under colonial rule.

Therefore, the development of repressive media legislations in The Gambia is closely tied to the country`s colonial and political history. In addition to the bottlenecks imposed on the media by inherited colonial legislations, it has also affected media ownership in The Gambia.

In short, the legal and regulatory framework of the media emerged out of colonial rule, but whereas the UK has repealed these old common laws, they are amended and tightened to remain in use in countries like The Gambia, to repress critical journalism and control press freedom. The next section discusses media ownership in The Gambia which regulation has been assumed to have profound impact, particularly on registration and licensing requirements.

5.3 Media Ownership

As indicated earlier, the primary focus of this chapter is to provide context to the political economy of journalism in The Gambia and discuss emerging issues shaped by law and regulation. Media ownership is one of the most important controversial issues influenced by direct state regulation of the media in The Gambia, as I will demonstrate in my findings. This section shows the structure of journalism and media ownership in The Gambia. I began this section by providing an overview of the debates surrounding media ownership in The Gambia. It reveals that the print media in The Gambia including newspapers and magazines are largely private owned dating back to the colonial period. However, the broadcast media including radio and television, which came later was monopolised by governments until 2017, when private individuals and companies were allowed to operate television stations. For most of the post-colonial periods, there has been a systematic entrenchment of monopoly over the broadcast media particularly under former President Jammeh`s rule. His former Minister of Information and Communication argues that Jammeh`s ruling Alliance for Patriotic Reorientation and Construction has monopolised the state media, and never allowed the emergence of media outlets that could dent its monopoly in the dissemination of information, and no private ownership of television station was permitted (Janneh, 2013: p.14). This is quite revealing from a government minister whose ministry is given the authority to issue broadcasting licenses under Article 230 of Information and

Communications (Amendment) Act, 2013. I argue this legislation provides the government the authority to curtail ownership of broadcasting stations. Pointing back to the literature review, political economists like Altheide (1984, p.477) identifies three theoretical assumptions on the notion of media hegemony including:

> (1) the socialization and ideology of journalists, (2) the tendency of journalists and their reports to support and perpetuate the status quo, and (3) the negative character of foreign news coverage, especially Third World countries.

Here, I find that the second point has a clear connection to the findings of my research on the working practices of the state owned media, which primarily focuses on promoting government view points, its activities and programmes. My findings revealed that there was a culture of censorship in the state owned media that discourage it from carrying opposing views. Attempts made by the private owned press to hold government to account have created a tension between the government and the private press leading to arrests of journalists and closing down of news media organisations. An example of this tension is the conviction of six Gambian journalists earlier introduced at the beginning of this chapter and as will later provide extensive legal analysis of the case in chapter six. Ultimately, this triggered a struggle for freedom of expression and the press in The Gambia, which set boundaries between the state owned and private media. With regards to state monopoly of television broadcast under former President Jammeh`s APRC rule, I find the Marxist view of hegemony useful to this context. In Marx and Engels (1960) view "the ruling classes who control the economic structures and institutions of society also control its political and primary ideological institutions". From a critical political economy perspective, advertorials and government subventions constitute very important sources of revenue for the media in The Gambia. Therefore, the government is a very powerful institution that controls media ownership and operation in The Gambia. In this regard, the point of drawing from the

Marxist view is that the ruling Gambian leaders who control the government and economic structures of the country were dominant in controlling the biggest media organisations in the country. Here, I share Louw`s (2001, p.6) view from the perspective of critical political economy who argues that elites interferes with media content to serve their goals. This is particularly true in the Gambian state owned media, as I will demonstrate in chapter seven how the Gambian President interferes with content in the state owned public broadcaster.

I now shift my attention to the structure of the media in The Gambia. There exists a three-tier system of media ownership in The Gambia including State owned, private owned and community owned. This is a diverse system of media ownership that does not necessarily translate to the accommodation of divergent views as required in a democratic society. I argue that despite the diversity of media ownership in The Gambia, this did not facilitate the presentation of divergent views, particularly in the broadcast media under Jammeh`s rule. Therefore, the liberal perspective on the principle behind the market place of ideas, which is linked to informed citizenship, cannot be associated to The Gambian context. This concern aligns with observations of scholars like Lewis (2006, p.305) that "despite a plethora of news and information outlets, the levels of knowledge about politics and public affairs in most countries are often low and/or unevenly distributed, generally in favour of more privileged social groups". I share this position because in The Gambia, the state monopolised the broadcast media characterised with a legal and regulatory framework that restricts the activities of the private media. In this respect, the commercial orientation of most Gambian media owners did not allow them to be critical to the status quo through the presentation of divergent views and dissenting opinions. Whilst the state owned media focuses on promoting the interests of the government, the private and community owned media organisations were mainly protective to their businesses. I now move on to discuss the three-tier system of media ownership in The Gambia beginning with state ownership.

5.3.1 State Ownership

Since The Gambia gained independence from Britain in 1965, the State has been a major player in owning and operating media houses in the country. This is made up of both print and broadcasting stations including television and radio. The State owns three main media outlets namely *The Gambia Gazette*, *The Gambia Info*, and *Gambia Radio and Television Service*. The central government controls these media outlets in several ways including through funding and appointment of management team, which will be explained in subsequent chapters. The *Gambia Gazette* which is believed to have been established since 1883 under the British colonial administration has been the government agent that mainly publishes official government information including new laws passed, regulations adopted and national budgetary allocations (Jallow, 2013, p.22). Recognising the importance of the *Gazette*, the 1997 Constitution of The Gambia made it mandatory for Bills to be published in the *Gazette* before introduction to parliament, and after being assented to by the President to become laws (Sec 100, 6-7 and Sec 101, 3).

The Gambia Radio and Television Services (GRTS) - the country`s main public broadcaster started-with the establishment of Radio Gambia in 1962, (Jallow, 2013, p.30). With the addition of the country`s first television station in 1996, it was renamed Gambia Radio and Television Services (GRTS) by an act of parliament in 2004. GRTS provides nationwide TV and radio coverage on terrestrial and satellite transmission. Thus from the outset, the broadcaster has been under the ambit and direct control of the central government. It is controlled through the Ministry of Information and Communication. It has been the only television station that was allowed to operate in The Gambia until 2017 when the country has its first private TV station. This means that there was no competition in the broadcasting sector against GRTS. The broadcaster has been largely criticised for acting like an organ of the government than a public broadcaster, which has been the voice of any government in

power and does not allow alternative political views and facts (Noble, 2018, p.11). Part of the reasons could be as noted by the European Union Election Observer Mission (2017, p.23):

> The legal framework governing the state-run broadcaster does not provide for adequate and sustainable editorial and financial independence. The president appoints the GRTS director general. The broadcaster's annual budget depends on political decisions and the GRTS's employees are public servants. Furthermore, there are broad and vaguely defined, yet legally binding, content obligations that hinder the GRTS ability to offer independent programming.

This raises questions about editorial and financial independence that is not free from political, commercial and other forms of control. However, what becomes obvious is the domination of the ruling party in the broadcaster`s programming content. It is believed to be biased and in favour of any ruling government that come into office (Media Sustainability Index, 2012, p.169). This is because the broadcaster does not cover divergent political views on its news or programming content (ibid). These issues are confirmed in my findings in section 7.2 of the thesis, as my interviews with journalists working for the broadcaster reveals that they do not cover issues involving opposition views or activities. Gehlbach and Sonin (2014, p.165) observe that under such form of control, there is a tendency for mobilization of citizens under direct government control of the media. This, they explain, is the "taking of actions that further some political objective but may not be in citizens' individual best interest" (ibid). In chapter 7, my research reveals that because the government of The Gambia particularly under Jammeh`s APRC is largely perceived to be dictatorial, the state owned media is controlled to advance the objectives of the ruling regime. In this regard, the state owned media in The Gambia was used as a tool to legitimise the status quo by aligning with the government under a misconstrued concept of development journalism. A logic that has been used to promote

government programmes such as laying of foundation stones and inauguration of government projects including roads, schools and hospitals. Therefore, I argue that the state owned media is less focus and less critical on issues like corruption, human rights abuse and extravagant expenditure of taxpayers' money. This has been left to few private media organisations to battle out.

5.3.2 Private Ownership

The second system of media ownership in The Gambia is the private owned, which is largely commercially driven. Since independence, several private media organisations have emerged and disappeared, some forced to close-down and some remain in circulation to date. The Gambia has a relatively small size print media industry predominantly dominated by private ownership. The life span of most private newspapers in The Gambia is usually short lived because of several reasons including forceful shut downs, arson attacks or the inability to survive the market conditions. For example, the *Independent Newspaper* ceased publication in 2006 following multiple arrests of their staffs, and the burning down of the paper`s offices. Similarly, *The Daily Observer* was closed down in 2017 for non-tax compliance. Other smaller privately run publications, such as *The Trumpet* could not sustain printing after its first run. Also, *The Today Newspaper* stopped publishing shortly after its editor Abdul Hamid Adiamoh was fined to pay D100, 000 (approx £2, 000) for contempt of court. Adiamoh was arrested for publishing an article on the criminal trial of a former lecturer at the University of The Gambia (Committee to Protect Journalists, 2012). He was charged with contempt of court for the publication of the article "Counsel sidesteps issues in cross-examination of [vice chancellor of the University of The Gambia] Professor Kah" *(*ibid.*).* Interestingly, despite publishing a public apology when a Magistrate ordered for his appearance before the court to explain why he should not be charged with contempt of court, he was detained for a week and subsequently fined to pay D100,000 or otherwise serve six months in jail *(*ibid.).

Currently, there are only five private owned newspapers publishing in The Gambia: *The Point, Foroyaa, The Standard, The Voice* and *Daily News* (see appendix 3). With the exception of *The Daily Observer* that was closed in 2017, most of the pre-independence and post-independence newspapers are owned by politicians and journalists. Some of the pre-independence newspapers owned by politicians or journalists include *The Gambia Outlook, The Vanguard, The Gambia Echo and The Nation* (Jallow, 2013, p.23 - 25). Also, post-independence newspapers owned by politicians or journalists include *Foroyaa, The Point* and *The Independent.* Furthermore, the aforementioned newspapers that are still publishing have small print circulation of 1,500 – 2,000 copies and with a very limited distribution outside the Greater Banjul area. This is as a result of several factors including lack of financial and material resources, which are major constraints of the print industry in The Gambia. Private media ownership in The Gambia is subject to both political and legal bottlenecks. These issues include high registration fees and licensing approvals that are based on political decisions (see section 7.1.4 of the thesis).

Currently, there are twenty-nine privately owned commercial radio stations in The Gambia (see appendix 3). The majority of these broadcasting stations are located in the urban centres, and particularly in major regional towns that have access to electricity. These stations are mainly run by businessmen for commercial purposes, with the exception of only two stations including *West Coast Radio* and *Paradise FM* that are owned by journalists. Although everyone holding broadcasting license is required by law to present all news and current affairs in factual, accurate, balanced, impartial and non-partisan way, under former President Jammeh`s rule, privately owned radio stations were mainly sports and music based stations that run advertisements for commercial purposes (Information and Communications Act, 2009, sec 238).

This is largely attributed to the culture of fear and reprisals against private radio stations that were translating critical newspaper reports from English to local languages. For example, the following private radio stations including *Citizen FM, Sud FM* and *Teranga FM* were closed down for running critical news and programmes on the State. As a result, radio stations generally stayed away from presenting their own news or covering programmes that are critical of the State. However, some private stations such as *West Coast Radio* rebroadcast news from the public broadcaster, *GRTS*, and the *BBC World Service*. In a report by Media Sustainability Index (2012, p.168), it was observed that the owner of a private station like *West Coast Radio* was quoted saying that "his station will never entertain political programs or, put simply, opposition views, but the radio station would not hesitate to praise the development strides of the government". One could argue that this is because of the prevailing hostile environment towards media organisations that are critical to the government. Nevertheless, despite the change of government in 2017, the trend of clamping down on private radio stations for covering critical programmes continued under the new government of Adama Barrow. For example, most recently two private radio stations including *King FM* and *Home Digital FM* were closed down for covering anti-government protests, which turned into riot. State security personnel entered the radio stations and forcibly closed them down on allegations of incitement to violence. However, the owners were never charged before any court of law on grounds of incitement.

As briefly mentioned above in section 5.3.1, in 2017, The Gambia`s first private terrestrial television station, *Q-TV*, was granted a licence to operate. It is noted that the station is the only TV station owned by a big business called Q Group, which also operates Q-Cell, one of the four mobile network operators in The Gambia (Nobel, 2018, p.18). The number of private TV stations has now increased to five with the addition of *Paradise TV, Star TV, Eye Africa and MTA TV*. Noble (2018, p.18) observed that "there will be stiff competition for audiences

and the advertising revenue to sustain these new outlets". Arguably, this is a significant step towards ending government monopoly of television ownership in The Gambia. It is also interesting to note that this development has created a sharp difference in programming content between these private stations and the public broadcaster. This now offers market audiences variety of views and perspectives on news, current affairs and other interesting programmes. However, the concept of pluralism in television broadcasting is still in infancy and the regulatory body that governs their operation is under the direct control of the state. Commenting on the issue of media ownership in The Gambia, the Media Sustainability Index (2012, p.169) observed that there is no big businesses ownership of the print and broadcast media in The Gambia and further argued that:

> "There is no commercial monopoly in these sectors. The only monopoly is the government ownership and operation of the state television station. There is also business ownership of media houses (print and electronic), which may influence editorial work" (ibid.).

Although his study was published before the emergence of private TV stations like Q-TV owned by a big business, generally, it is still the case that most private media outlets are owned by modest individuals. Notwithstanding, two theoretical issues are raised in the quote above; Firstly, in theoretical terms it means that the media industry in The Gambia is not commercially competitive, but subjected to un-progressive government monopoly especially within the broadcasting sector. This was particularly the case under former President Jammeh`s rule as discussed earlier in section 5.3.1. However, this has now significantly changed with the emergence of three other business and private owned television stations including *QTV, Paradise TV* and *Star TV*. The second issue points to the influence ownership may have on content. In other words, the commercial orientation of media organisations has implications for editorial independence. Within The Gambian context, the type of media

ownership does not stop at influencing content for access to advertorials, but also the behaviour of journalists. Here, McCheshney`s (2008, p.38) analysis of the struggle between owners and progressive journalists to determine the contour of professional journalism is useful. In short, journalists are also categorised on the basis of who they work for, which forms part of their identity construct. Eventually, this may undermine the ability of journalists to criticise the government. These issues are discussed in detail in section 5.4 of this dissertation for an in-depth contextual understanding of journalism structures in The Gambia. I now move to discuss the third tier system of media ownership in The Gambia.

5.3.3 Community-Owned

The concept of community owned broadcasting is valued for providing and exchanging local information in Africa. In The Gambia, there are community-owned broadcasting radios that are mainly operating within local communities across the country. Currently, there are nine community-owned radio stations operating in major regional settlements in The Gambia (see appendix 3). These community broadcasting stations are structured "with governing boards consisting of local dignitaries, traditional and religious leaders, representatives of local government departments and civil society organisations" (Noble, 2018, p.13). According to Noble, their mission is to "inform, educate and entertain with a central focus of programming in a mix of appropriate local languages on development topics such as health, education, agriculture, environment and gender issues" (ibid.). The United Nations Educational, Scientific and Cultural Organisation, UNESCO (2021) observed that:

> Gambians living outside of the capital mostly rely on community radio stations to obtain the information they need, as the stations broadcast in local languages in addition to English. Because the literacy rates in the country are estimated to be between 50 and 60%, and most people are only fluent in regional dialects, the ability

> of community radio stations to broadcast in these languages is essential to delivering their content and building trust with their listeners.

The above captured the importance of community radios in The Gambia, which could serve as powerful instruments of raising civic awareness. To the contrary, apart from relaying news in English and local languages from the public broadcaster, GRTS, community radios also generally stay away from critical political discussions. The challenge of community radios in The Gambia includes sustainability. According to UNESCO (2021), community radio stations in The Gambia "subsist on volunteer personnel and contributions from abroad". Considering that these stations are non-profit organisations that are not officially permitted to derive income from advertising, this makes it difficult for them to acquire adequate funding to fulfil their professional journalistic role. Although officially banned from advertising, it is noted that the broadcasting regulator PURA, unofficially allows the stations to receive payments of up to 50% of their income from advertising (ibid.). Noble (2018, p.15) points out that this challenge must be addressed with a viable sustainable plan that would require an agreement between the government, and private and community radio stations on the financing. It is also noticeable that there is a gap in law on community media financing in The Gambia. In Botswana, for example, the law made it very clear that community broadcasting stations are non-profit entities that derive funding from grants, sponsorship, advertising, or membership fees to serve communities (Mosime, 2007, p.235). Therefore, having a law that clearly outlines the legal bounds for funding of community owned radio stations would be helpful to avoiding loopholes that could attract penalties. Furthermore, I argue that there are structural and political barriers which hinder that capacity of community radio stations to produce quality information.

5.3.4 Online-Owned

The Gambia`s online journalism first emerged out of anti-government struggle by exiled Gambian journalists. There were near to a dozen Gambian online news websites that used to mainly operate outside the country, until a change of government in 2017 when some exiled journalists returned home to set up their online media businesses in the country. Prominent amongst these online media outlets are: *The Fatu Network, Freedom Newspaper, Gainako Newspaper, Kairo News, Shepherds Broadcasting Network, Kibaaro, Eye Africa TV and Kerr Fatou.* Most of these online media outlets are born out of activism and resistance to hegemonic control of the traditional media in The Gambia. This has led to the embracing of digital tools by exiled journalists and citizens to create platforms through which they can report issues that they cannot do inside the country. Scholars such as Soley and Nichols (1987) observed that media restriction generates an environment in which underground communication strategies are nurtured. This is precisely the reason why most Gambians established online news websites and radios to bypass the legal and political restrictions inside the country.

As suggested by Noble (2018, p.20) that the growth of the online news media is as a result of restrictions of reporting and expression under former President Jammeh`s rule. My research findings further confirmed that some of these online news websites and radios became vibrant alternatives to provide dissenting views and opinions about local Gambian politics and governance. Thus, these online platforms are recognised for publishing uncensored reports clandestinely sourced from The Gambia, which enabled them to counter propaganda run on the state controlled media. However, The Gambian online news media is criticised for being unreliable, polemical, sensationalist, and biased (ibid, p.21). This is because the constant adversarial relationship between The Gambia government and the critical press was transferred online. Therefore, the online platforms that are mainly operated by agitated exiles

were on the offensive against the government with little regard for normative journalistic principles and values. Arguably, not many amongst those who publish the online media websites received formal education in journalism. This is confirmed by the interviews I have conducted with most of those who run the online publications.

The relationship between the diasporic online media and the government of The Gambia under Jammeh`s rule has never been cordial (see Chapter Seven). Acting on the proliferation of the online news and radio websites that has become powerful in shaping minds of citizens, the government of The Gambia resorted to arresting online subscribers and suspected sources, and went further to amend the regulatory framework governing the broadcast media, which introduced a 15-year prison term for spreading false news online (Information and Communication Act, 2013). Therefore, it is important to provide context to the relationship between the media and the government of The Gambia. The next section looks into these issues.

5.4 Relationship between the Media and Government in The Gambia

This section provides understanding to the relationship between journalists and the government of The Gambia. Although professional journalism is generally constrained by political and economic conditions in The Gambia, the evidence here suggest that there is a distinction on the level of restrictions based on government and private ownership. This is pertinent to conceptualising my research findings and analysis of the different forms of treatments of journalists in The Gambia. In this section, I argue that Jammeh`s government treatment of journalists is mainly based on two considerations: pro-government and anti-government, especially the private media including independently and opposition owned that faces severe legislative control more than the government owned. As this thesis develops, it becomes clearer how Jammeh`s government used various legislative and violent measures that specifically targets the private media to suppress critical journalism.

In this section, I demonstrate that in The Gambia, journalists working for pro-government media outlets are more favoured in terms of access to government information and resources such as advertisements and material support. These are crucial elements of critical political economy. In fact, in some instances, pro-government media outlets are exempted from legislative controls. While the private media contends with repressive penal codes, high taxation, lack of access to advertising revenue, violent attacks, lack of access to information and a tightened licensing and registration requirements. The debate in this section presents evidence of the challenges to the growth and sustainability of the independent and opposition owned media in The Gambia. In essence, journalists working for the independent and opposition press are more likely to be harmed than those working for the pro-government news media. The section proceeds first with exploring the issue of pro-government media practice in The Gambia.

5.4.1 Pro-government Media

The pro-government is noticeably the dominant category of The Gambian news media particularly under President Jammeh`s APRC rule. Accordingly, as discussed earlier in 5.3.1 the pro-government includes all the State owned and controlled news media such as the *Gambia Radio and Television Services*, *Daily Observer* and *The Gambia Info*. The most notable pro-government newspaper with one of the biggest circulations in The Gambia is the *Daily Observer*. Although the *Daily Observer* is not owned by the State and ownership issues surrounding the paper`s remains unclear, it is believed that the paper is owned by a businessman called Amadou Samba who acts as a proxy to the President of The Gambia. The perplexing issue about the paper is that its managing director is appointed by the President of The Gambia. Moreover, it is the only paper alongside the State broadcaster, GRTS, that are accredited to operate in the President`s office and cover state functions (Media Sustainability Index, 2012, p.165).

The aforementioned pro-government news outlets are primarily concerned with promoting government policies, programmes and viewpoints. Journalists working for these media organisations are subjected to the unitary view of the government, and should show support to government. In other words, dissent from the government line was not to be tolerated in the pro-government news media. This is opposite to the universal value of journalism, which is to hold power to account. In The Gambia, the pro-government media organisations enjoy several advantages over the private media. First, it is observed that "the state and pro-government media and their journalists are favoured in terms of better access to state officials and information" (Media Sustainability Index, 2012, p.165). This was because the pro-government news media is seen to be more supportive to the government and publish only point of views that paint a good picture of the government. Second, it is also noted that the pro-government newspaper like the *Daily Observer*, "has more advertisements from government institutions and government-owned or -controlled entities, whose top management want to secure their positions, and private businesses, who want to carry favour with the government"(ibid, p.168). This means that the pro-government news media was an instrument of manifesting loyalty to the government by institutions to gain recognition. In short, the pro-government news media was under direct and indirect control of political and economic institutions of the state.

Interestingly, the closure of the pro-government *Daily Observer* in 2017 by a court order for non-payment of taxes, suggest that such a paper that was getting enormous financial support from the previous ruling government was spared from the enforcement of tax obligations because of its support for the government. Although journalists working for the pro-government news media are unlikely to be attacked by State security apparatus, I find that this occasionally happens with few elements that are suspected to have gone contrary to their practice. A popular example of this is the arrest of Ebrima Manneh, a reporter with the pro-

government *Daily Observer*. He was arrested by government agents on 11 July 2006, and has not been seen or heard of since (Amnesty International, 2014, p.9). In 2017, Gambian police confirmed that the journalist was killed and thrown in a well (Foroyaa Newspaper, 2017). Several more journalists of the *Daily Observer* were sacked and arrested for suspected of being anti-government. A similar trend exists at the public broadcaster such as the case of a TV presenter, Fatu Camara who was arrested and held incommunicado for nearly a month before being charged for sedition (Amnesty International et'al, 2014, p.15). The discussion above indicates that the pro-government media organisations and their journalists are only expected to support the ruling government and also be treated accordingly. In the next section, I turn to the government and independent media relation in The Gambia, which is opposite to the pro-government.

5.4.2 The Independent Media

In The Gambia, there are independent publications that had different approaches to reporting on the government with a view to fulfil the professional role of journalism. These independent newspapers consisting of daily and bi-weekly publications include *The Standard, Voice, The Point, The Daily News* and formerly *independent Newspaper*. Most of these newspapers tended to take liberal approaches to reporting on the government by criticising some aspects of its policies, but also support or did not challenge the ruling excesses of the regime. Senghore (2013, p.523) observes that the independent media in The Gambia includes the print and broadcast that are "not owned, controlled or in any way influenced by the government of the day or by a political party, a pressure group or any other ideologically-based organisation". Although Senghore`s definition is very broad, I share his conception of an independent media on the basis of ownership. To illustrate this point, because the concept of media independence is contested, I considered to adapt Gicheru`s (2014, p.11) definition of an independent media as "privately owned newspapers which

despite the many constraints that exist, attempt to carry out with varying degrees of sources, their role of keeping watch over the government and holding them to account". This definition suggests that the independence of a newspaper should be determined on the basis of performing its watchdog function without government influence or interference.

However, whereas scholars like Nyamnjoh's (2005, p.237) argues that the African press are not truly independent and serves as mouthpieces for the opposition, which is confirmed by my research in the case of The Gambia. For example, my research revealed that a privately owned newspaper like the *Independent Newspaper* was fighting an opposition battle with the government. In other words, the paper was in constant opposition to the government. This is contrary to Senghore`s (2013, p.524) suggestion that *The Independent Newspaper* was actually independent in practice. I argue that because the pre-eminent role of the media is to serve as a public watchdog, and any media that attempts to put government under scrutiny should be considered independent.

It is worth reiterating at this point that the Gambian private independent media faces many challenges in their efforts to inform the people as required in a democracy. These challenges includes the enforcement of repressive and restrictive legislations against critical journalists (see chapter six and seven), high taxation such as newspaper sales taxes, lack of access to information and advertisement revenue, and coercion including physical attacks on journalists and burning down of independent media houses. Other difficulties journalists working for the private independent press face in The Gambia include human rights violation such as torture, assassinations and unlawful detentions. For example, the ECOWAS Court judgement in *Musa Saidkyhan v. Republic of The Gambia* found that the journalist`s human rights including his human rights to personal liberty and dignity was violated (*Musa Saidykhan v. Republic of The Gambia,* 2010, Para 2). The journalist, who was the Editor of *The Independent Newspaper*, was arrested, held incommunicado for twenty-two (22) days

and severely tortured including electric shocks on his body such as his genitals and a bayonet was used to cut his left jaw (ibid.).

Such issues reflect some of the main concerns relating to The Gambia`s human rights record under former the President Jammeh`s rule. For example, the Gambia Press Union submitted a report under the United Nations Universal Periodic Review Eight Session that claimed number of human rights violations of journalists. These include failure to investigate death of journalists, torture in custody, continued detention, unfair and bogus trials, arbitrary arrests, and incommunicado detentions (Gambia Press Union, 2014, p.1). It is also noted that arbitrary closure is one of the methods used by the government to shut down independent news media organisations (ibid, p.4). This was particularly under former President Jammeh`s rule when several independent news media organisations including *The Independent, New Citizen, Daily News, The Standard, Citizen FM, SUD FM,* and *Teranga FM* were all shut down without any explanation (ibid.). The various issues impinging on the capacity of journalists working for the independent news media in The Gambia have been discussed in the foregoing section. The next section focuses on a related issue that is the opposition media.

5.4.3 The Opposition Media

The Foroyaa Newspaper is the only publication known to be owned and controlled by leaders of an opposition political party in The Gambia. The paper first merged in 1987 as a biweekly mimeographed sponsored by a legally registered socialist party, People`s Democratic Organisation for Independence and Socialism (PDOIS) (U.S. Dep't St, 1990, p.137). The paper is recognised for being vocal in condemning governing parties starting from the first republic of President Jawara`s PPP to Jammeh`s APRC rule. The paper`s mission was twofold: provide information to the public and provide a voice for the party to communicate with public and government. This is partly because the state-owned media exercises restraint and self-censorship in reporting criticisms against the Government. Although the paper is no

longer the official mouthpiece of the People's Democratic Organisation for Independence and Socialism (PDOIS), it clearly promotes the party's leader and his views (Noble, 2018, p.20).

By 2007, the paper became a daily publication which was a milestone achievement considering the constraints the private press faces in The Gambia. The paper regularly publishes accounts about human rights violations, governance, and rule of law and promotes democratic practices. Thus under President Jammeh`s rule, *Foroyaa* was the only newspaper inside the country that reports on issues concerning state security (Media Sustainability Index, 2012, p.167). For instance, *Foroyaa* was the only newspaper that published stories about detention without trial and disappearance without trace of security personnel and civilians. The state-owned media would have supressed these types of stories.

Similar to the challenges of the independent news media discussed in the previous section, *Foroyaa* also struggled to survive political and legal restrictions and repression. Likewise, the paper faced the vicissitudes of the commercial press market. Providing news and critical content, the paper standout for presenting dissenting views and opinions, but was not commercially viable due to low sales. The paper is also denied advertising for its critical stance and refusal to "succumb to the demands of corrupt officials" (Media Sustainability Index, 2012, p.171). For example, Africell, a major cellular company withdrew from advertising with *Foroyaa* when the paper reported a story on the company`s manager involvement in a car accident. Africell tried to force the paper to retract the story, but the paper refused to accept their demands insisting that the story was verified, correct and objective (ibid.). This reveals that *Foroyaa* values and upholds editorial independence, which is a clear demonstration of ethical journalism. It is worth noting that a paper not well resourced will chose professionalism over commercial interest.

Finally, the discussion in this section suggests that journalists working for opposition and independent owned media outlets are more likely to face harm than those working with pro-government media outlets in The Gambia. It shows selective biases of the pro-government news media, and state sanctioned discrimination against the private media. In short, journalist working for the private media are perceived and treated like enemies of the State, while those working for the pro-government media are supported as partners under the pretext of developmental journalism. I now turn to the next section of the chapter which provides a context to the legislative and regulatory framework of the media and journalism practice in The Gambia.

5.5 The Legal and Regulatory Framework of the Media in The Gambia

In this section, I focus on constitutions, legislations and regulation that have shaped media control, ownership and freedom in The Gambia. I argue that despite Gambia`s independence in 1965, its colonial heritage of media regulation has been a constant threat to media freedom. From the first government of President Jawara`s rule, leading to the second government of President Jammeh`s rule, journalism in The Gambia has been under immense regulatory and legislative pressure that restricts the work of journalists. It shows a pattern of rise and fall of press freedom from one system of rule to another. This section draws on the legal and regulatory framework of the media in The Gambia, which other studies believe to be draconian, and induces an environment of self-censorship (European Union, 2017; Noble, 2018).

The section explores laws and regulatory frameworks that over the years have been relied on to prosecute and convict journalists in The Gambia. These sets of laws are also used as registration requirements to license the print and broadcast media, and enforced in some cases to close down media houses. Therefore, it is important to understand the nature and context of the existing laws and regulatory bodies that governs media operation in The Gambia. This

section has two important parts. The first part is a descriptive account of the laws directly governing the work of journalists, while the second part highlights the system of media regulation in The Gambia. I begin by looking at the relevant sections of the Gambian constitution which is the supreme law of the land, in order to understand the restrictions and protection for media freedom in The Gambia.

5.5.1 The Constitutions

To start, I consider it necessary to give a brief historical overview for the provision of media freedom in the constitutional development of The Gambia. Coming from the colonial rule of Britain, The Gambia did not have a codified written Constitution until the country adopted its first Constitution of 1965. This was the first step towards the codification of modern Gambian laws protecting rights and freedoms including "freedom to hold opinions, to receive ideas and information, and to communicate ideas and information without interference" (C. II, S. 20). Although the 1965 Constitution did not explicitly provide for media freedom, it contains the right to receive and communicate ideas which is an integral part of media freedom. The 1965 Constitution also introduced a broad array of restrictions for the purpose of protecting defence, public safety, public order, public morality and or public health. Notably, the Independence Constitution also provided restrictions for protecting reputations, rights and freedoms of other persons including the right to privacy, confidentiality and protection of judicial independence. This means that the Independence Constitution is anchored on a universally accepted principle that strikes a balance between the right to freedom of expression and other aforementioned rights.

However, despite independence, the 1965 Constitution provides for appointment of a Governor General who shall serve as Her Majesty`s representative in The Gambia (C, III, S, 29). This provision suggests that an external authority has vested powers under Gambian laws thereby making the country`s independence questionable. In order to secure full sovereign

independence status, on 24th April 1970, The Gambia adopted a new constitution with the status of a republic (Constitution of The Republic of The Gambia, 1970). The right to freedom of expression and restrictions set out in the 1965 Constitution were reproduced word by word in the 1970 Constitution (C. III, S. 22). This constitution was suspended by a military junta that took over in 1994 and replaced with decrees. Following two years of a military transition rule from 1994 to 1996, The Gambia adopted its third Constitution in 1997 that also provides for the right to freedom of expression and the press and other media. Article 25 (1) (a) of the 1997 Constitution states that "every person shall have the right to "freedom of speech and expression, which shall include freedom of the press and other media". The 1997 Constitution also recognised the social watchdog role of the media in Section 207 (3) that:

> The press and other information media shall at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the Government to the people of The Gambia.

The above provision suggests that the Constitution recognised the importance of the media to scrutinise the actions of government, which is an important doctrine of legal protection for media freedom. This demonstrates that despite the existence of criminal media legislations in The Gambia (see section 5.5.4), it would be wrong to assume that Gambian laws had altogether ignored press freedom and freedom of expression. One could argue that this provision springs from democratic principles, which recognises the role of the media in strengthening democracy and good governance. Arguably, the constitutional provision is also consistent with the liberalists' democratic perspective that considers the media as "intermediaries or transmitters between democratic institutes and the public" (Raeijmaekers and Maeseele, 2015, p.1045). In essence, the media serve as an instrument of promoting

democratic values through the dissemination of ideas between the public and national institutions.

This raises the question whether this constitutional protection in practical terms mean the media is free to perform its watchdog role in The Gambia. Ironically, other studies suggest that in The Gambia, subsidiary legislations including the Criminal Code, which creates offences such as false publication, sedition, libel, or giving false information to a public servant are giving primacy over constitutional protection for free speech and media freedom (Media Sustainability Index, 2012, p.163). As I demonstrate later in chapter 6, the systematic use of these legislations and other regulations to restrict and repress freedom of expression, and media freedom over constitutional and international legal protection for these freedoms become a problematic situation for Gambian journalists. This confirms the suggestion that in Africa the personal ambitions of rulers dominate constitutions, which prove being ineffective (Jackson and Houghwout, 1982, p.16). In consequence, I argue that the use of secondary legislations to protect rulers from media scrutiny in a country like The Gambia becomes clear to the extent that the constitutional protection only exists in text, but not in practice. Also the ambiguities and broader interpretation surrounding limitations imposed by constitutional provisions make it difficult for the media to understand its scope. This brings me to the specific legislations that govern the operation of the press in The Gambia including newspaper registration and broadcasting licensing.

5.5.2 Newspaper (Amendment) Act 2004

In 2004, the colonial era Newspaper Act 1944 was amended by former President Jammeh`s government and adopted the Newspaper (Amendment) Act 2004 which provides for mandatory registration of the print media, and licensing requirement for broadcasting stations (Article 19, 2012, p.11). It is noted that while the 1944 Act applied to only print media, the 2004 Amendment Act was extended to include broadcasting stations (ibid.). Interestingly, the

Act exempted government owned or operated media institutions from the legislation (Section, 14). This means that the Act was specifically designed to target the private independent media. Among other things, the 2004 Amendment Act provided for restrictions on media content and penalties for violation of the law. This included the responsibility of the press to ensure that it is free from blasphemous, seditious, or other libel and false publication criminal offences (Section, 7). The registration requirement introduced under the Act included a mandatory bond fee of five hundred thousand dalasis (Approximately £10,000.00) with surety or sureties that maybe required and approved by the Attorney General (ibid.).

Under section 13 of the Act, failure to comply with the provisions of the Act is a punishable offence carrying a fine of up to two hundred and fifty thousand dalasis (approximately £5000). It further requires licensing approvals by the Minister of Information, which is a politically held position under the control of the President. The Act also provides for the renewal of operational license every three years. The Act obliges newspaper printers and publishers to deliver a copy of their publications every day to the Permanent Secretary under the Ministry of Justice and Registrar-General (Section, 12). Article 19 (2012, p.12), observed that the substantive conditions for the registration of a newspaper in The Gambia are incompatible with international standards. This is because Article 8 of the Declaration of Principles for Freedom of Expression in Africa, which states that "any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression" (African Commission on Human and Peoples' Rights, 2002).

In chapter 7 of my interview analysis, Gambian journalists viewed the introduction of this law as a step towards controlling the private media and making it harder to own a media organisation in The Gambia. Writing about a similar media regulatory system in Singhapore, Ramchand (1990, p.130-147), found that it is an undesirable system for a democratic society. The excessive onerous conditions of newspaper registration are contrary to international

standards. For example, in the US, the print media are incorporated organisations subjected to the same laws applicable to all other business entities (Bekele, 2019, p.219). A similar system exists in many European countries such as in Germany and Austria (ibid.).

5.5.3 Information and Communications (Amendment) Act 2013

Arguably, the Information and Communication Act 2009, which was amended in 2013 is one of the most controversial media legislations promulgated under former President Jammeh`s rule to restructure, develop and regulate the information and communication sectors in The Gambia. Provisions that drew the attention of journalists, scholars and NGOs, since the ICA came into force are the ones on licensing, and regulation of the broadcasting industry, and the penalty it provides for spreading false news online (Article 19, 2012; Noble, 2018; European Union, 2017). For example, the Act introduced 15-year prison term for spreading false news online. The European Union Election Observer Mission to The Gambia (2017, p.22) observed that this Act "induces an environment of self-censorship and equips state actors, most notably the president, with a range of tools to hold a tight grip on traditional and online media outlets as well as citizens".

The Act provides that the licensing body for radio and television is vested with a public authority, which is the Public Utilities Regulatory Authority (PURA). This is a government agency directly accountable to the Minister of Information and Communications, which raises concern about potential abuse of authority and unfair assessment of licensing applications. Article 230 of the Act provides that ''the Minister, on the advice of the Authority, shall issue broadcasting licences in sufficient numbers to meet the public demand for broadcasting services." In addition to that, the Act confers additional powers to the Minister to renew, revoke or suspend a broadcasting license as set out under article 232 to 236 of the Act. This is an unlimited discretionary power in the hands of a political appointee, and the Act does not provide for the right of appeal against his decisions. It means that to

own a broadcasting media is solely dependent on political decisions. However, the organisational and operational autonomy of media regulatory bodies is a recognised international principle. This is reaffirmed in the Declaration of Principles on Freedom of Expression in Africa, which states that:

1 Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2 The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
3 Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body (African Commission on Human and Peoples' Rights, 2002).

This declaration to which The Gambia is a state party provides the duty to adopt legislative or other measures to give effect to these provisions. Therefore, The Gambia should ensure that laws such as the ICA provides for protection against government interference in broadcast media licensing. I now move on to discuss provisions of The Gambia Criminal Code which are crucial elements of media legislation, especially on the repression of critical journalism in The Gambia (see chapter 6).

5.5.4 The Criminal Code

The Criminal Code of The Gambia contains media offences including false publication, sedition and criminal defamation that have a profound impact on journalism and other media

activities in the country. These are the most common offences Gambian journalists have been contending with that places severe restrictions on freedom of expression and press freedom in The Gambia.

5.5.4.1 Publication of False News: Article 59 of the Criminal Code defines false publication as any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false. The punishment for this offence is imprisonment for a term of two years. The Criminal Code does not recognised lack of knowledge as a defence for false publication unless it is proven that reasonable measures were taken to verify the accuracy of the information. Several human rights bodies such as Article 19 (2012) have criticised the enforcement of this provision against Gambian journalists. They observed that criminalising the dissemination of false news is objectionable for three main reasons:

> First, while journalists strive on the quality and accuracy of the information they provide, in an environment where news travels at an incredible pace, facts may be difficult to check. If journalists, or indeed bloggers and other social media users, are faced with the prospect of a prosecution for publishing false information, they are much less likely to share information, including news that is clearly in the public interest. Ultimately, therefore, false news laws can have a serious chilling effect on the free flow of information.
>
> Secondly, facts are not always easily separated from opinions. It would therefore be unfair to criminalise journalists and users of new media for failing to differentiate between the two. Moreover, it is easy enough to see how a ban on false news could be used as a cover for shunning opinions not favoured by the authorities. Equally, whether something is true or false cannot always be confidently established because it

> may depend on prevailing social views or scientific progress. To convict an individual on the back of such vague a notion as 'truth' is therefore unlikely to comply with the requirement of legal certainty under international law.
>
> Thirdly, and in any event, the criminal law, and especially imprisonment, cannot be a proportionate response to the harm caused, if any, by the circulation of false information (ibid, p.17).

Also, Human Rights Watch (2015, p.63) warned that the Gambian law on false publication is "overly broad and vague", which has been used frequently to intimidate and sometimes prosecute and imprison or fine those publishing or saying things critical of the government. They are seriously concerned that journalists, opposition members, civil servants, and student leaders have been arrested and detained on charges of spreading false information.

5.5.4.2 Sedition*:* The Criminal Code also provides for various seditious offences which have been strongly criticised by human rights groups globally. This offence is one of the most serious restrictive and repressive provisions of the Criminal Code that severely affects freedom of expression and media freedom in The Gambia. Section 51 of the Criminal Code states as follows:

(1) A "seditious intention" is an intention:

(a) to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of The Gambia as by law established;
(b) to excite the inhabitants of The Gambia to attempt to procure the alteration, otherwise than by lawful means, of any matter in The Gambia as by law established;

(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in The Gambia;

(d) to raise discontent or disaffection amongst the inhabitants of The Gambia; or

(e) to promote feelings of ill-will and hostility between different classes of the population of The Gambia.

Section 52 of the Criminal Code further detailed out what may constitute an act of sedition. It states that:

(1) Any person who –

(a) Does or attempts to do or makes any preparation to do or conspires with any person to do, any act with a seditious intention;

(b) Utters any seditious words;

(c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

(d) Imports any seditious publication, unless he has no reason to believe that it is seditious;

shall be guilty of an offence and liable for a first offence to a fine not exceeding two thousand dalasis or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and for a subsequent offence to imprisonment for a term not exceeding three years; and any seditious publication shall be forfeited to the State.

In a joint submission to the United Nations Universal Periodic Review (2019, p.5), human rights groups including Accessnow, Article 19 and Committee to Protect Journalists argues that this law is "designed to restrict criticism of the government and public officials, which is not a legitimate purpose for limiting the right to freedom of expression".

5.5.4.3 Criminal Defamation: The Gambian Criminal Code imposes both civil and criminal defamation liability. Similar to the offences discussed above, criminal defamation is another problematic provision, which has been subjected to widespread criticisms. Section 178 of the Criminal Code provides that "any person who, by print, writing, painting, effigy, or other sounds, unlawfully publishes any defamatory matter concerning another person with intent to defame that other person is guilty of the misdemeanour termed libel". Furthermore, Section 179 of the Criminal Code states that "defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade by an injury to his reputation".

These provisions show that the law of defamation in The Gambia is primarily based on out dated common law principles. In The Gambia, the offence has both civil and criminal components whereas a victim of libellous publication can file a criminal suit in a court of law. However, the experience in The Gambia shows that libellous criminal suits are mostly brought by state authorities against media practitioners. Contemporary scholars have pointed out that criminal defamation laws are persistently applied by many African governments to silence criticism from journalists (Herskovitz 2018; McCracken 2012). Quaqua (2017) points out that criminal defamation laws are kept as weapons against the press in Africa. For him, the law on defamation should be considered under civil matters, and not criminal. He expressed concern that in enforcing criminal defamation laws, the State treats journalists as criminals when prosecuting them for criminal offences. The discussions here suggest that national laws of The Gambia that specifically govern the operations of the media in the country provides for the protection of media freedom, at the same time severely restricts critical journalism which creates a dilemma for Gambian journalists. I argue that the direct government regulation and criminal provisions gave the authorities sweeping censorship powers to control media freedom in The Gambia. The next section focuses on international

conventions The Gambia is a state party to that provides for the protection of media freedom. This provides further understanding to Gambia`s commitment to international protection for freedom of expression and media freedom.

5.6 International Treaties and Agreements

The Gambia is a signatory to several legally binding international treaties that guarantees and protect media freedoms. For a start, it worth pointing out that in 1948, the United Nations General Assembly adopted Resolution 217A (III) containing the Universal Declaration of Human Rights, which is the first global instrument that recognised freedom of expression as a human right (UDHR, Article 19). The Universal Declaration provides that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (ibid.). Like most United Nations Member States, The Gambia is bound by the principles of the declaration, which is now part of the customary law of nations. Magnuson (2010, p.278) observed that "while the Declaration was considered nonbinding by some countries when it was adopted it was generally understood as being truly universal". The UDHR has served as a guide and an instrument of defending the right to freedom of expression in cases involving journalists and the media globally. It has been cited in many cases in defence of press freedom in Gambian courts. For instance, as I demonstrate later in chapter six, in *Gambia Press Union v The Attorney General (2018, para 14),* the court recognised that the importance of taking into account of international treaties The Gambia is a signatory.

Moreover, in 1966, the United Nations General Assembly adopted the International Covenant on Civil and Political Rights which also provides for the right to freedom of expression. Unlike the Universal Declaration, the Covenant is a binding instrument that shared the

provisions of the UDHR, but in more elaborate terms on the exercise of the right to free speech. Article 19 of the Covenant states as follows:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

The contents of this provision include right to freedom of expression, various elements of this right and the conditions under which the right to freedom of expression maybe subjected to restrictions. The Gambia ratified the ICCPR on 22 March 1979 and entered into force on 22 June 1979. This instrument becomes legally binding that makes it obligatory for state parties like The Gambia to protect individuals' rights to freedom of expression. The Gambia is also a party to the African Charter on Human and People`s Rights, which is an important regional treaty that provides for freedom of expression as set out in Article 9 of the Charter. The African Charter imposes legal obligations for the protection of human rights on African States parties to the treaty. The African Charter provides for the right to freedom of expression in the following terms:

> (1). every individual shall have the right to receive information. (2). every individual shall have the right to express and disseminate his opinions within the law (Article 9).

Compared to the previously mentioned international instruments, the African Charter seems to be less elaborate on the provision for the right to freedom expression. The ratification of these international treaties allow individuals or organisations to file complaints in courts or the United Nations Human Rights Council against State parties for alleged violation of rights stipulated in these treaties. The foregoing discussion of the various international human rights instruments The Gambia is a state party to shows the country`s treaty obligations for the protection of free speech. As a result, Gambian journalists have been relying on the provisions of these treaties to challenge restrictive and repressive media laws and regulatory systems. One such example is *Federation of African Journalists and others v. Republic of The Gambia*, (see section 6.3). Another case in point is the *Gambia Press Union v. National Media Commission 2005*. In this case, Gambian journalists sought to stop the National Media Commission established by the government regulate the mass media in the country. The journalists strongly argued that the Commission is in breached of international and constitutional rights to freedom of expression (*Gambia Press Union v. National Media Commission 2005, p.1*). This brings me to the regulatory framework of the media in The Gambia.

5.7 The Regulatory Framework

The system of media regulation in The Gambia has been a contentious issue, particularly under former President Jammeh`s rule. This is because under his rule, various regulatory bodies were formed, restructured or dissolved. One amongst them is the controversial National Media Commission, which was established in 2002 by an Act of parliament (National Media Commission Act, 2002). The Act "impose a system of registration and

licensing on both media practitioners and media organisations that places substantive restrictions on who may practise journalism and on the establishment of media outlets" (Article 19 et'al, 2004, p.1). The Act imposed severe penalties including being banned from practising journalism for 12 months or 18 months ban from operating a media outlet for breach of the Commission`s code of conduct (ibid, p.24).

Among other things, the Act "requires journalists to disclose confidential sources of information whenever the Government alleges that the information was provided without authorisation" (ibid, p.37). The Act also provides for annual licensing of journalists, giving the Commission powers to renew or not to renew the operating licences of journalists and media houses (ibid, p.33). However, because of the draconian nature of the Act that is designed to control the media and journalists, The Gambia Press Union with five other journalists challenged the constitutionality of the Act in a lawsuit before the Supreme Court of The Gambia (*Gambia Press Union v. National Media Commission, 2005*). Consequently, government repealed the Act and abolished the Commission before the Supreme Court made a ruling on the case. However, this was replaced with the Newspaper (Amendment) Act 2004, which drastically increased registration fees of newspaper publishers and managers of broadcasting institutions.

In 2001, by an Act of parliament that came into force on 1st February 2002, The Gambia Public Utilities Regulatory Authority (PURA) was established for regulating the provision of public services and licensing for the broadcast media (The Gambia Public Utilities Regulatory Authority Act, 2001). This includes the issuance of broadcasting license for the operation of radio and television stations, which is subject to the provision of the Information Communication Act 2009 that provides for the approval of the Minister of Information. Accordingly, the Information Communication Act 2009 is the relevant law considered in this contextual analysis for the regulation of the broadcast media as previously discussed in

section 5.5.3. In short, the provisions of the ICA are applied by PURA in relation to regulation of the broadcast media and the telecommunication industry in The Gambia.

5.8 Conclusions

This chapter set out to explore the political and economic conditions for journalism in The Gambia, specifically media ownership, law and regulation. In this chapter, I showed how The Gambia`s colonial background is a contributing factor to the system of media regulation in the country. This investigation was undertaken within the context of my research findings that the legal framework of the media in The Gambia is restrictive to media ownership and repressive to independent journalism. This legal conundrum for journalism in The Gambia is tied to the country`s colonial background, as post-colonial ruling regimes maintained colonial era laws and tightened them to control the media. The chapter provided an overview of the media landscape with focus on a three-tier system of media ownership in The Gambia.

The chapter reveals that while the pro-government news media enjoys support from both the public and private sector, the private independent media was contending with political, legal and financial constraints that control its freedom. It gave an overview of laws that restrict independent journalism, but also provides for protection of media freedom. One of the notable observations in this exploration is that criminal media legislations and regulations that impose a system of newspaper registration and broadcast licensing requirements in The Gambia are inconsistent with international norms and standards. The next chapter offers a detailed, critical analysis of legal cases to illustrate the challenges for press freedom with a restrictive regulatory framework for journalism in The Gambia.

CHAPTER SIX

LEGAL DATA ANALYSIS

6.1 Introduction

What I set out below is a case study approach to law, by looking at legal rules found in statutes and cases, which is of course what doctrinal legal research is about. The method is particularly recognised within the common law to study precedents and legal rules (Huchitson and Duncan, 2012). This involves locating the sources of the law and then interpreting and analysing the text. In so doing, this further demonstrates the interdisciplinary nature of my project. This chapter offers extensive legal analysis on several cases about the political economy of journalism in The Gambia, and particularly how law and regulation is used to punish journalistic criticism and control media freedom. The previous chapter explored some of the political and economic conditions for journalism in The Gambia, focusing specifically on issues relating media owners and regulation. It explored what has become a complex and contradictory legal framework that promotes media freedom, but also restricts critical journalism thereby having a chilling effect on freedom of expression and press freedom. Using doctrinal research through an analysis of case law, the aim of this chapter is to facilitate an understanding of how media legislation is repressive to critical journalism and restrictive to media freedom in The Gambia. The sources I consulted include – legislation, case law, law books and journals, media reports and international human rights instruments and jurisprudence to examine the legal control of media freedom in The Gambia. In lieu of certain files being made inaccessible, media reports on incidents involving the government against journalists or the press in The Gambia are obtained to explore the context as useful sources of information for analysis.

Although this chapter will analyse a range of cases as listed in appendix 1, it begins with a focus on the case of the *State v Ebrima Sawaneh et al* (2009), a major judgement of criminal sanctions against journalists in contemporary Gambia, as six were rounded up at once, prosecuted and convicted on several criminal charges. The case exemplifies the tension of a long and protracted history on the use of sedition and criminal defamation laws against journalists in The Gambia. The material facts of this case provide a direct understanding to how criticising the Gambian President could lead a journalist to jail. The case is also helpful for understanding the legal repression of Gambian journalism due to the application of archaic laws and principles. Contextually, the case provides the basis to examine the way the Gambian legal system approaches the crimes of sedition and criminal defamation.

Another context in which these approaches are analysed is by looking at judgements of similar cases in the courts of common law jurisdictions and international courts such as the European Court of Human Rights. In essence, the chapter provides understanding of how other common law jurisdictions apply the principles behind sedition and criminal defamation laws. Similarly, it established the standards adopted by international courts in punishing the crimes of sedition and criminal defamation. This is critical to putting the findings into historical and international context, which helps to show that the approach of the Gambian courts in determining the aforementioned media offences is inconsistent with international standards and several of these subsidiary Gambian laws are incompatible to international treaty obligations. This chapter, therefore, has two major sections. The first section focuses on cases of criminal prosecutions against Gambian journalists. Accordingly, the second section looks at cases that challenges legislation that abridged press freedom espoused by Gambian journalists in both national and international courts against The Gambia Government. From the legal analysis in this chapter, I affirm the need for media studies to engage legal approaches to further our understanding of how law and regulation is used to

control journalism, media ownership and press freedom. I now move to focus on the first section by making a detailed legal analysis of the case of *Sawaneh et'al* and its judgement to show how the law restricts and represses press freedom.

6.2 Repression of Journalism in The Gambia: *State v Ebrima Sawaneh et al (2009)*

In this section, I discuss the case of *State v Ebrima Sawaneh et al (2009),* an important trial that illustrates to how law and regulation is used to repress journalism and control press freedom in The Gambia. On December 16, 2004, Deyda Hydara a prominent Gambian journalist who was also a leading critic of former President Jammeh`s APRC government was murdered on his way from work (*The Guardian*, 2005). At the time of his murder, Hydara was one of the plaintiffs in the case of *Gambia Press Union et al v. National Media Commission et al (2005),* resisting government`s attempt to change press laws that would have severely muzzled Gambian journalism. Since his death, Gambian journalists, international civil society groups and United Nations bodies have repeatedly called for an effective investigation of the killing (Reporters Sans Frontieres, 2014; Human Rights Watch, 2014). As briefly introduced in section 5.1, in response to these calls for justice, in March 2009, seven journalists were arrested and detained. It led to the particular case of the *State v Ebrima Sawaneh et al (2009),* where six journalists were prosecuted and convicted for several counts of sedition and criminal defamation.

The case began with a public statement made by former President Jammeh on the state-owned Gambia Radio and Television Services (GRTS) denying his government involvement in the killing of journalist Deyda Hydara. Jammeh associated Hydara`s murder to a private affair he had with a female colleague. This prompted the publication of a statement from Gambia Press Union describing the President's remarks 'provocative' and 'inopportune', and calling for investigation of Hydara`s murder (Gambia Press Union, 2009). The specific part of the statement that was of interest to the State for prosecution reads:

> Mere statements and or speculations and ridicule, such as the events leading to the death of Deyda Hydara, cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression, and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise (ibid.).

The above statement became the main factor in the indictment against the journalists. Then, the government accused them of publishing on newspapers and internet websites a seditious and defamatory publication making innuendoes that the President and Government of The Gambia are responsible for the murder of Deyda Hydara with the intent to bring them into contempt and ridicule (*State v Ebrima Sawaneh* et al, 2009). Consequently, they were charged with six counts of conspiracy, seditious publication, and criminal defamation. After nearly five months of trial, on Thursday 6 August 2009, Mr Justice Fagbenle of the High Court found all the six journalists guilty on the six criminal charges of conspiracy, defamation and sedition brought against them. Accordingly, the judgement was reported as follows:

> On count 2 they were sentenced to pay a fine of D250,000 or in default to serve a two-year period of imprisonment. On count 3 they were sentenced to pay a fine of D250,000 or in default to serve a two-year period of imprisonment. On count 4, the six journalists were convicted and sentenced to a two year mandatory jail term without any option of a fine. On counts 5 and 6, Mr Justice Fagbenle convicted and sentenced the six journalists to a mandatory jail term of two years on each count

> without an option of a fine. All terms of imprisonment were to run concurrently (International Bar Association, 2010, p19).

At this point it is worth emphasising that the full material judgement of the case was not available. According to the lead lawyer of the defendants, the judge who decided on the case tampered with the case file and destroyed it shortly after delivering the judgement. I argue that this raises doubts over judicial accountability, and agrees with the widely held perception that The Gambian judiciary lacks independence and transparency. In other cases, Western researchers like Hultin (2013, p.46) attributes the difficulty of accessing legal information in The Gambia to infrastructural deficiencies of the government, which includes absence of a reliable law-reporting service. This explains the difficulty of understanding the reasoning behind courts decisions on important cases like *State v Ebrima Sawaneh et al*. Therefore, factors considered by the judge in determining the case are unknown, making it hard to identify and interpret significant points of his decision. I therefore decided to quote from media reports on the judgement for analysis.

At this point, it is important to make clear that all the crimes the journalists were convicted for are contained in The Gambia Criminal Code 1990, as I earlier unpacked its relevant provisions in chapter five. The summary of the above court judgement suggests two types of punishments for the crimes of sedition and criminal defamation in The Gambia. First, is imprisonment by serving a jail term, and, second, is payment of a monetary fine. Notwithstanding, it is evident that substance of the offences committed were determined based on the cited part of the statement issued by the Gambia Press Union. More importantly, the court verdict signalled to journalists what to expect if found guilty for crimes of sedition and criminal defamation in The Gambia. I argue that the judgement in *Sawaneh et'al* raises several legal and journalistic issues that pose challenges to journalism in The Gambia. In pursuit of one of the main objectives of this thesis, I now move on to make doctrinal analysis

of the judgment and provisions of the Criminal Code that are applied in the case to convict the six journalists. This is something significant to understand how such crimes are punished, outlining the principle of liability arising from the case.

6.2.1 Mandatory Jail Term/Imprisonment

As presented in section 6.2, the first key issue arising from the judgement is the imprisonment of the journalists who were found guilty of the offences they were charged with. This resulted in the imposition of a mandatory jail term that led to the deprivation of liberty. I found that the most problematic part of the judgement that has been subjected to widespread criticism is serving a jail term without an option of a fine. For example, the International Bar Association contested that "the judgment was not well reasoned and called for excessive terms by sentencing the defendants to jail terms without the option of a fine" (2010, p.23). This raises serious concerns about how the law was applied and suggests that the conviction was an automatic jail term punishment for the defendants. It is therefore, necessary to examine the extent which the law allows for the imposition of prison terms punishment relating to media offences in The Gambia. However, a critical examination of imposition of prison terms against journalists reveals contrasting positions in international law. Prison sentences for journalists have been severely criticised by scholars such as Berger (2007, p.156) who argues that it is inappropriate and inconsistent with international jurisprudence. For White and Ovey (2010, p.439), it is hard to justify imprisonment as it creates an unacceptable, chilling effect on journalistic freedom of expression.

Arguably, the justification for jail term punishments for those guilty of committing media offences in The Gambia is based on statutory provisions contained in the country`s Criminal Code. In this respect, the Criminal Code provides general principles of criminal liability for offences relating to the work of the media. Specifically, it provides punishment for the crimes of sedition and criminal defamation with a fine or imprisonment (Sec, 52). In this regard, it

important to explore and analyse the relevant sections of the Criminal Code that imposes such restrictions in greater detail in the following sub-sections of this chapter. This provides substantial understanding to key provisions of the Code that provides special protection for the president and government against critical journalism. However, it is worth emphasising that because the crimes the journalists were charged with fall under criminal jurisdiction, Gambian authorities have the power to arrest and detain those accused or suspected of committing criminal offences. It becomes part of their operational procedures to arrest and lock journalists in detention cells like prisoners before a court appearance. Amongst the most recurring condition journalists face whilst in state custody in The Gambia is torture. A United Nations report has shown that in 2006, a journalist working for the private *Independent Newspaper* was "arbitrarily detained for three weeks and tortured by State authorities" (United Nations, 2014, p.8). Several other cases of torture of Gambian journalists whilst under state detention were reported. Amongst them is a BBC correspondent who was arrested in 2006 and tortured for three days before being released (Amnesty International, 2008, p.32). Similarly, a journalist and communications officer at the Royal Victoria Teaching Hospital was arrested and held incommunicado for 139 days and reportedly tortured (ibid.).

It is therefore worth reiterating that *Sawaneh et'al* who were charged with sedition and criminal defamation are offences that seek to protect the president and government from criticisms. Generally, these provisions of the Criminal Code of The Gambia have been subjected to considerable criticism by international press freedom organisations or advocacy groups because it is believed that the code "undermines freedom of expression" (Freedom House, 2016, p.2). This raises critical legal concerns as to whether criminal media legislations enforced in The Gambia are consistent with international human rights law. These issues are discussed in detail in section 6.4.1, as the ECOWAS Community Court ruled that criminal media legislations of The Gambia violate the right to freedom of expression.

What is clear from the judgement is that the case was not considered as a potential violation of international human rights law, which prohibits imprisonment of journalists in the exercise of the right to freedom of expression. To conclude this section, the above discussion suggests that international human rights bodies forbid the application of criminal media laws against journalists and their imprisonment for practicing their profession, and exercising the right to freedom of expression, which could cause a chilling effect on press freedom. In the next section, I look at the issue of monetary fine contained in the judgement as a punishment for the crimes of sedition and criminal defamation in The Gambia.

6.2.2 Monetary Fine

As clearly seen in the judgement in *Sawaneh et'al,* the journalists were each sentenced to pay a fine of D 500,000.00 (approximately £10,000) for two counts of the offences or serve a two year jail term. Although, to an extent, payment of monetary fine is the most favoured way of punishing media offences, but these are also highly criticised. Looking at this in the UK context, international organisations focusing on media freedom have pointed out the impact of large monetary fines against the media. For example, in *Steel and Morris v. the United Kingdom* (the McLibel case), in one of the cases discussed by the Media Legal Defence Initiative and International Press Institute (2015, p.50), it was concluded that "the size of the award of damages had to take into account the resources available to the defendants. Although the sum awarded by the British court was not very large by contemporary standards, it was very substantial when compared to the modest incomes and resources of the ... applicants."

The principle behind this reasoning is that courts must take into account of the impact of large monetary fine against journalists, and "more broadly on freedom of expression and the media in society" (ibid.*)*. This means that Courts must not levy disproportionate monetary fines that could potentially violate other rights such as the right to freedom of expression. It

also means that fines should be reasonable without hindering the ability of media houses to continue operating. Here, it is important to ask whether the fine against *Sawaneh et'al* was disproportionate or not. To answer, it is important to apply the above principle adopted by the British courts, which is essential to understand the heftiness of a fine. In The Gambia, journalists are still paid less than the equivalent of €100 (approximately £80) a month (Noble, 2018, p.19). It is also noted that the newspaper industry has insufficient financial and technical resources to reach higher standards (ibid). Therefore, considering the fine imposed by the court which is equivalent to ten years of the defendants' salary, I argue that was grossly disproportionate against the journalists whose income is far below the fine.

This further raises the question whether *Sawaneh et al* were able to pay the monetary fine. They could not and were faced with the option of serving a two-year jail term punishment. However, since they were to serve a mandatory jail term of two years for count 4, 5 and 6, it makes no sense to pay the monetary fine for count 2 and 3, as the jail term convictions should all be served concurrently. In other cases such as journalist Fatou Jaw Manneh`s, the Gambia Press Union and family helped her to pay a court fine of 250,000 dalais (US$12,000) for being found guilty for the crime of sedition. In case of failure to pay the fine, she would have served four years jail term with hard labour for committing the offence of sedition. In another related case of *Sanna Manneh* the editor of the Torch Newspaper who was charged with libel, despite being acquitted on the first and third counts and cautioned and discharged on the second. It was reported that "the expense involved in fighting the case subsequently forced him to cease publication" (Index on Censorship, 1990, p.48). In this context, I established that the imposition of a large monetary fine against journalists working in poor countries is a way to imprisonment and closing the news media out of business. In order to understand a legal decision, one must look at the interpretation of the law and facts of a case. In the next

section, I discuss legal protection for the president and government contained in the Criminal Code, which is the main premise of the judgement in *Sawaneh et'al*.

6.2.3 Special Protection for the President and Government

The legal analysis in the previous two sections indicates the enforcement of the Criminal Code to impose monetary and jail term punishments against *Sawaneh et'al* for criticising the Gambian President. It is therefore noticeable that the Criminal Code provides for special protection for the president and government against sedition and criminal defamation. In this regard, it is important to understand the extent to which the Criminal Code restricts media freedom, which is one of the objectives of this research. Accomplishing this objective involves analysing provisions of the relevant offences the journalists were charged and convicted for. This will help to rationalise and contextualise the intentions of these legislations within the context of media freedom. In the Gambian Criminal Code, there are two parts to the definitions for the crimes of sedition and criminal defamation as discussed in chapter four. Firstly, under section 51 (1) (a) of the Criminal Code 2005, the provision on sedition serves two purposes: one, is to protect the person of the President, and, two, the Government of the Gambia from any act or conduct that will bring them into hatred or contempt or cause public disaffection towards either or both of them. As a result, section 52 (1) (c) of the Criminal Code prohibits printing, publishing, selling, distributing and reproducing a seditious publication, which is a criminal offence against the State or the president. In short, the Criminal Code provides that whoever, by word or deed brings into hatred or contempt or excite disaffection against the person of the President or the Government of the Gambia is punishable by fine or imprisonment. However, it is contested that hatred and contempt are parts of the elements that constitutes disaffection against the state (Saksena and Srivastava, 2014, p.127).

The Code further criminalises defamation by written words, cartoon, effigy, depiction or any other means. It is also a crime to defame by means of gestures or sounds. These offences are punishable by fine or imprisonment. Accordingly, the court found the justification to convict the six journalists for violating the Criminal Code as charged. The doctrinal legal research reveals that the Criminal Code is very protective of the president and the state and attracts retributive punishments for criticising them. This could also create a climate of fear, which has negative implications for freedom of expression. The idea of protecting public officials and institutions including government from criticisms has been a particular contentious issue in international jurisprudence. An example of this can be found in *Lingens v. Austria* 1986 where the European Court of Human Rights argued for less protection of public officials from criticisms. The court observed that:

> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society. The limits of acceptable criticism are, accordingly, wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed ... and he must consequently display a greater degree of tolerance (*Lingens v. Austria,* 1986, para 42).

The reasoning in this case is very profound for public officials to be open and tolerant to criticism. There are several benefits to this including the success of a democracy, and accountability. Specifically, it is noted because public officials including politicians inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large, they must tolerate criticism. In *Sawaneh et'al,* Gambian authorities did not show tolerance to any criticism of their failure to investigate the

murder of a journalist. Consequently, the Gambian courts went to the extent of punishing journalists for responding to the president`s provocative comments on the murder of their colleague. The European Court on Human Rights has also adopted a similar ground in widening the latitude to criticism against government. *In Castells v. Spain* 1992 the court held that:

> The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.

In light of the international trend of abolishing criminal defamation laws, and especially for criticism against government, it has been observed that "government as an entity should have no standing to bring a case for defamation. The government is an institution, not a person, and as such enjoys no right to a reputation" (Media Legal Defence Initiative and International Press Institute, 2015, p.27). Considering the foregoing comparative and jurisprudence, my research found that Gambian courts application of the Criminal Code to sentence *Sawaneh et'al* is in contradiction to international human rights standards. In other words, the judgement in this case can be argued to be inconsistent with that of the European Court on Human Rights. In this context, the next section seeks to look at the approaches of Gambian courts in deciding on sedition and criminal defamation. This helps to understand the interpretation techniques of the courts, and also provide insights to the principles they adopt in enforcing criminal law against journalists.

6.2.4 Approach of Gambian Courts on Sedition Cases

Again, while the approach of the High Court of The Gambia on sedition in *Sawaneh et'al* is not clear, I believe that it is a relevant contextual issue that can possibly be examined by looking at a similar case decided by the same court. For example, the case of *Janneh et'al* (2012) encompasses jurisprudence on the approach of Gambian courts in determining the crime of sedition. I discovered in the course of legal data collection that it is the only case that has its full judgement accessible to the public. Reasons for this are not clear. In *Janneh et'al* (2012), they were charged with sedition for printing and distributing t-shirts carrying a seditious statement intended to overthrow the Government of The Gambia by unlawful means. To determine the content of the offence of sedition, the High Court applied its own decision in another case of *The State v. Lamin Waa Juwara* (Crim. Case No 7/03) to conclude that:

> "Sedition is a comprehensive term which embraces all those practices, whether by words, deed or writing, which are calculated to disturb the tranquillity of the state and lead ignorant people to endeavour to subvert the government and the laws of the country, and the objects being generally to induce discontent and stir up opposition to the government" (Janneh et'al, 2012, p.31).

In the above explanation given by the court on sedition, I argue that it is a serious offence that relates to treason. Moreover, the court's reasoning suggests that the act of sedition itself has the tendency to incite discontent and opposition to government. This suggests a connection between the crimes of sedition and treason in The Gambia, which means that the crime of sedition can also attract a capital punishment, since treason is punishable to death or life imprisonment (Criminal Code, 2005, Sec 35). This becomes a crucial consideration in the decision of the court in *Janneh et'al* case. In this respect, *Janneh* was sentenced to life imprisonment for treason, and also him and the rest of the accused persons were sentence to

three years imprisonment with hard labour for being found guilty of seditious act. The judgement shows how the law on sedition is severely applied in The Gambia. Bearing in mind of the court`s interpretation of sedition in *Janneh at'el*, the act is expressively linked to opposition to government activities. This is attributable to the reason why some of the most significant cases of sedition in The Gambia involve opposition leaders. These include *the State v. Halifa Sallah (2009)* and *the State v. Lamin Waa Juwara (1995).* Halifa Sallah is the leader of the People`s Democratic Organisation for Independence and Socialism (PDOIS) who was charged with sedition and spying for articles he wrote for the main opposition newspaper *Foroyaa*, exposing the activities of witch doctors accompanied by members of the Gambia National Army, Police and the National Intelligence Agency (NIA) including a group called 'the green boys' (Amnesty International, 2009). Lamin Waa Juwara, also an opposition was charged with sedition for allegedly calling Gambians to overthrow the government (US Department of State, 2004, p.5). The aforementioned cases show a pattern of prosecutions against members of the opposition on charges of sedition in their dealings with the media.

It is worth stating that the law on sedition has been applied against several other Gambian journalists including Fatou Jaw Manneh formerly a reporter with the state controlled *Daily Observer*. She was arrested and prosecuted with sedition for writing a critical article published by *The Independent Newspaper* arguing that President Jammeh "is tearing our beloved country in shreds. He is a bundle of terror … Gambians are desperately in need of an alternative to this egoistic frosty imam" (Amnesty International, 2008, p.34). Consequently, she was sentenced to pay a fine of 250,000 dalais (US$12,000) or serve four years imprisonment with hard labour. Another sedition case that has been recorded against a female television anchor was Fatou Camara. She was working with the state-owned public broadcaster called The Gambia Radio and Television Services (GRTS). However, she fled

into exile before the end of her trial (Reporters Without Borders, 2014, p.3). The relevance of these cases to the *State v Ebrima Sawaneh* case is to show the contextual realities of arrests, prosecutions and punishments for the crime of sedition against Gambian journalists.

Considering the foregoing analysis, I argue that the High Court of The Gambia concluded that the statement issued by the Gambia Press Union, as set out in the particulars of offence have either caused hatred, contempt or disaffection to the President and the Government (see section 6.2). Therefore, the court proceeded to sentence the journalists for calling for an investigation in the killing of their colleague. I now highlight and discuss the two main interpretation methods adopted by common law courts in deciding on sedition cases. This provides context for how Gambian courts apply common law principles in determining sedition.

6.2.5 Standard of Proof in Sedition

The decisions of Gambian courts on cases of sedition have been informed by precedents of common law jurisdictions. It is noted that "common law courts, including the courts of The Gambia, frequently rely on the decisions of other common law courts as a means of interpreting both statute and the common law" (*Gambia Press Union v. National Media Commission, 2005, p.6).* This suggests that the courts interpret legislations and adjudicate cases based on common law principles or standards. The determination of sedition cases is highly contentious and contestable, which has been subjected to criticisms, particularly in common law jurisdictions. For example, criticising seditious convictions in India, a country in the common law jurisdictions, Saksena and Srivastava (2014, p.141) observed that "inciting disaffection against the government would not constitute sedition unless it was accompanied by the direct incitement to violence." It means that inciting disaffection against government without evidence of direct incitement to violence should not be a punishable seditious act. Therefore, direct incitement involves practical actions in the form of threats,

speeches or audio visuals that encourages others to commit crime. This calls for the application of a higher standard of proof or threshold in determining sedition cases, which is essential to safeguarding other civil liberties. Another example is the case of *Boucher v. The King (1951),* which is one of the early cases of sedition in Canada, also part of the common law jurisdiction cited in Davidson et'al (2001, p.8). The Supreme Court of Canada held that:

> The seditious intention upon which a prosecution for seditious libel must be founded is an intention to incite to violence or to create public disturbance or disorder against the sovereign or the institutions of Government. Proof of an intention to promote feelings of ill will and hostility between different classes of subjects do not alone establish a seditious intention. Not only must there be proof of an incitement to violence in this connection, but it must be violence or resistance or defiance for the purpose of disturbing constituted authority, meaning some person or body holding public office or discharging some public function of the state (ibid.).

The reasoning above provides three elements of evidentiary requirements for determining the crime of sedition including intention to incite violence, proof of intention and the act of violence. This is certainly a higher proportionality test to establish the commission of sedition. The principle of the proportionality test in assessing criminal media offences is recommended and adopted by international courts such as the European Court of Human Rights, which states that prison sentences for media offences is only permissible under exceptional circumstances "where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence" (European Court of Human Rights, 2020, p.47).

However, in their analysis on the modern offence of sedition, Saksena and Srivastava (2014, p.142) also found that in determining the content of sedition, courts have also applied the

older standard of proof technique, “which required merely the 'tendency' or 'likelihood' of violence as a consequence of speech”. It is rather a lower threshold requirement which implies the likelihood of causing crime without direct incitement to violence. Bearing this in mind, I found that it is on the basis of the same principle applied in *Janneh at’el* led to their conviction. In *Janneh at’el* , the court stated that the section related to determining sedition requires that the prosecution must proof two elements beyond reasonable doubt; (a) the accused persons uttered words, deed, or writing, and, (b) the words, deed, or writing were calculated to excite disaffection towards the government (*State v. Janneh* et’al, 2012, p31). This means that the prosecution can simply prove a sedition claim by mere utterance of seditious words, deed or writing. In short, the prosecution need only prove that the words or their equivalent words were uttered or written, and need not to prove that the words had or could have had any of the consequences referred to in Section 51 (1) (a) of the Gambian Criminal Code 2005.

Consequently, The Gambia High Court held that the words ‘coalition for change The Gambia, end dictatorship now’, printed on 100 t-shirts were offensive. Thereby concluding that, its immediate and predominant purpose was to excite disaffection towards the government (p.32). Unlike in *Sawaneh et ‘al* where the defendants were all journalists, in *Janneh et’al* only the first accused person who was once the Minister of Information and Communications is a journalist by profession. The rest of the accused persons were political activists. This case highlights the relationship between freedom of expression and oppositional politics, whereas the law on sedition is found to be suppressive to both. However, the case further provides context to the standard of proof required in prosecuting seditious offences that relates to media publication. Based on the analysis of the judgement in *Janneh et’al* and *the State v. Lamin Waa Juwara*, it could be argued that The Gambia High Court followed its own precedent to determine the case of *Ebrima Sawaneh et al.* This is

because courts are bound by their own precedents, except in rare circumstances when a superior court overturned the judgement of a lower court or there is a changed in legislation. Off relevance here, the analysis in this section suggests that Gambian courts have not been applying the proportionality test approach in assessing criminal responsibility concerning media offences, which is the principle recommended by international human rights law courts such as the African Court and the European Court on Human Rights. This has a negative implication for the protection of journalists against criminal sanctions and freedom of expression. I now pay attention to criminal defamation which is part of the offences the journalists were found guilty of committing, and I also examine the approach of the court in interpreting the law for the offence of criminal defamation.

6.2.6 Criminal Defamation

As indicated in section 6.2.1, another context in which *Sawaneh et'al* were convicted was for committing the crime of defamation against the president and government. The crux of this offence is also contained under Chapter XVIII of the Criminal Code (Amendment Act) 2005 that protects the reputation of any person from hatred, contempt or ridicule. In this instance, *Sawaneh et al* (2009) were charged and prosecuted for making a defamatory publication against the President and his government. Interestingly, the section on defamation in the Criminal Code did not specify the punishment for anyone guilty of the crime. However, under section 178 of the Code, the offence is termed as a misdemeanour. It means that it is a minor offence, and the punishment for such offences is expected not to be too harsh. Paradoxically, the fact that *Sawaneh et al* were convicted for criminal defamation to a mandatory jail term of two years without an option of a fine, suggests that the court did not apply a punishment that is considerable to a minor offence. However, it appeared that the High Court applied section 34 of the Criminal Code to convict the journalists, which states that:

> "When in this Code no punishment is specifically provided for any misdemeanour, it shall be punishable with a fine or imprisonment for a term not exceeding two years or with both such fine and imprisonment" (Criminal Code, 2005).

Arguably, the above section of the Code introduces a general principle of punishment for the offence of a misdemeanour that is harsher than the punishment prescribed for other minor offences in the Code. In essence, it left to the courts discretion to impose a maximum sentence of two years or lesser, but cannot be more than two years. As a consequence, I argue that the High Court's decision of finding the journalists guilty on charges of criminal defamation was premised on the original rationale of the offence. This implies that the Court was more concerned about protecting the President and the Government from criticisms, which is the primary goal of these laws. Scholars have pointed out the application of criminal defamation laws in Africa against journalists, which they believe protect leaders from criticisms (Herskovitz, 2018; Iyoha et'al, 2017; and Okonkwor, 1983). As discussed in section 3.3.1 of the literature review, this is associated with an authoritarian system of rule (Gunther and Mughan, 2000, p.402).

As pointed out earlier in section 5.2 of the previous chapter, the source of criminal defamation law in The Gambia is directly linked to British colonial rule from the Statute of Westminster in England (Davidson et al, 2001; Saksena and Siddharta, 2014). It is noted that, this law was imported through colonial rule and applied in British colonies to protect the crown. Although scholars did not agree on the exact time the offence of criminal libel was first promulgated, they suggest that these were times rulers are believed to be above questioning and criticism (Davidson et al, 2001, p.6). In a similar contemporary context, it is believed that these laws have "been used by contemporary governments for reasons that are arguably similar to those of our former oppressive rulers" (Saksena and Siddharta, 2014, p.121). However, the disproportionate use of criminal defamation laws to punish journalist`s

has been a concern to scholars like Herskovitz (2018, p.911). He refers to the decision of the African Court in *Konate' v. Burkina* in which the court held that "the proportionality test must be applied to determine whether criminal punishments for acts such as defamation violate freedom of expression rights under the African Charter or other human rights agreements" (ibid.). Konate' was convicted for defamation, public insult, and contempt of court for publishing articles accusing a local prosecutor of corruption (ibid, p.910). The proportionality test as discussed in the previous section is a technique of determining judicial cases based on a higher standard of proof. In this instance, the approach is required to balance the rights of individuals and the general interest of society for having a free press (ibid, p.911). From this perspective, it is believed that amongst the benefits of a free press to society is to expose corruption and abuse of power (Hacket, 2013, p.16).

Certainly, whether the proportionality test has been applied or not in determining the case of *Sawaneh et'al (2009)* for criminal defamation, international bodies such as the United Nations suggest that imprisonment is never an appropriate punishment for criminal defamation. This is contained in the United Nations General Comment No. 34 which encourages member States to decriminalise defamation laws and its application should only be countenanced in the most serious of cases (United Nations, 2011). For example, incitement to genocide is an indictable offence under international criminal law as in the *Prosecutor v. Bikindi* (ICTR-01-72) before the International Criminal Tribunal on Rwanda. In this case, the trial chamber found Bikindi guilty of direct and public incitement to commit genocide through the media. Amnesty International, commenting on the application of these laws in The Gambia, expressed concern on their repressive nature couple with lack of judicial independence, which is detrimental to freedom of expression (Amnesty International, 2008, p.35). Therefore, I argue that leaving the determination of politically motivated cases to a judiciary that is believed to lack independence may enable a repressive government to

undermine free speech and critical journalism. As pointed out earlier, this feedback to the issue of lack of judicial accountability, especially when a court judgement on a major case likes Sawaneh et al cannot be accessed. Nevertheless, this section shows how criticism of the government or the President can result to prosecution and conviction of journalists working in The Gambia. Issues that need to be explored in the next section are the legal defences available for journalists on crimes of sedition and criminal defamation. This also important to know how these criminal provisions protect press freedom.

6.2.7 Defences for Sedition and Criminal Defamation in The Gambia

One could argue that although Gambian journalists barely benefit from the defences available for the crimes of sedition and criminal defamation, the Criminal Code provides for such defences. This is another important context in which the legislative protection for media freedom can be understood. This is because not every publication that caused an individual to be ridiculed results in liability for defamation. Similarly, not every publication that is critical to the President or his government is seditious. The following are defences for the crimes against sedition and criminal defamation that are set out in the Gambian Criminal Code: Truth, absolute privilege, and conditional privilege.

To start with the Truth, under Gambian law, it is a complete defence to a libel action. The law sets out that once a matter is true and it is for the public interest, it should be published (Criminal Code, 2005, Sec 181). It means that no one should be punished for the disclosure of allegations that are true even if defamatory. This relates to Mill`s theory of freedom of expression as a means to discovering the truth (Grint, 2017, p.365) and aligns with the libertarian notion of press freedom, which believes that the truth can only be ascertained through the marketplace of ideas (Nicol, Millar, and Sharland, 2009; Carrol, 1922). The truth as a defence to libel is a universal legal principle applied in many jurisdictions, particularly in former British colonies. For example, one popular case that influences international

jurisprudence is *New York Times v. Sullivan* (1964) in the U.S. In this case, the U.S. Supreme Court held that courts will only punish defendants if criticisms are made with actual malice and with "knowledge that it was false or with reckless disregard of whether it was false or not" (*New York Times v. Sullivan*, 1964, p.280). This implies that publications that are true and even false but without 'actual malice' is a defence for defamation. In short, if something is true, it cannot be defamatory. Although the *Sullivan* precedent is only legally binding in the United States, it is noted that the judgement has been influential in defamation cases in common law jurisdictions such as England, India and South Africa, also in the Philippines and in Europe (Media Legal Defence Initiative and International Press Institute, 2015, p26). It is noted in the area of human rights that "common law courts take cognisance of accepted international standards, relying on them in an analogous manner to decisions by other national courts as a source of inspiration rather than as binding law" *(Gambia Press Union v. National Media Commission*, 2005, p.6*).*

Taking into consideration of the *Sullivan* principle in the case of *Sawaneh et'al*, the main concern is whether journalists being critical to the Gambian President with regards to his remarks on the murder of their colleague are made with actual malice and not to the public interest. It would certainly be difficult to justify any claim that the statement issued by the journalists was made with actual malice against the president. This is due to the large public outcry nationally and internationally on the murder of journalist Deyda Hydara (Committee to Protect Journalists, 2010). Moreover, it is not clear whether the court has taken into consideration of the truth as a defence in its decision in *Sawaneh et al* (2009), see section 6.3.1 for further analysis in the case of *Gambia Press Union v The Attorney General* (2018), which is another relevant case law that provided interpretations for criminal media offences in The Gambia. Arguably, the mere fact that the *Sawaneh et al* were found guilty for criminal

defamation means that the court did not allow truth or any other defence in deciding on their case.

Absolute privilege is another defence for the offence of defamation as set out in The Gambia Criminal Code (2005, Sec 182). It covers statements made or published by the President, Cabinet, legislature, higher naval or military command, judicial proceedings, and a fair report on anything said or done in Cabinet or the House of Representatives. The defence on the basis of absolute privilege also means absolute protection for legal liability, as the publication of words from any of the aforementioned areas is absolutely immune to prosecution. I argue that for absolute privilege to apply in the case of Sawaneh et al, their report must have been only on the President`s statement, but not a criticism of his statement. Explaining the defence of absolute privilege in the UK context, Hanna and Dodd (2016, p.283), point out that "where it is applicable, is a complete answer and bar to any action of defamation". They however, caution that "while someone speaking on an occasion maybe protected by absolute privilege, this does not mean that a journalist`s report of the comments will also be protected". For Masum and Desa (2014, p.39), this form of defence within the context of the media reports "flows from fair and accurate reporting of official proceedings." This means that unfair and inaccurate reporting is not protected by absolute privileges regardless of the source.

Also, conditional privilege is a defence for the crime of criminal defamation in The Gambia, as set out under section 183 of the Criminal Code 2005. It means that when a defamatory matter is published in good faith, it can serve as defence. In other words, it means when a comment is made without malicious intent. It also indicates a fair comment or honest opinion can be a ground for defence. However, the defence for good faith cannot be allowed if the defamatory matter is untrue, and that it was published without exercising due diligence with intent to injure the person defamed (ibid, Sec 184). I suggest that the above discussion on defences available for the crime of defamation in the Gambia relates to the common law

position on striking a balance between the right to freedom of expression and protection of personal reputations. For example, under English law, the truth, fair comment, absolute and qualified privileges are all defences provided for defamation (Barendt, 2012, p.60).

Despite the existence of the above defences for defamation, they are not available, used or applied for the crime of sedition in The Gambia. Under section 53 of the Criminal Code, prosecution for the charge of sedition is required within six months of the commission of the offence. There are exceptions to this if the offence is committed outside The Gambia or a person leaves The Gambia within the period of six months of committing the offence. The Code further provides that prosecution may begin within six months of the person returns to The Gambia. The Code also provides that no one shall be prosecuted for sedition without the written consent of the Attorney-General. Section 54 of the Criminal Code provides that the uncorroborated evidence of one witness means no one shall be convicted for the offence. Therefore, these are more about procedural requirements for prosecuting sedition than serving the purpose of a defence. In *The State v. Janneh et'al* (2012, p.31), constitutional protection for the right to freedom of expression is relied on for defence against the crime of sedition. This right is not absolute, which is subject to certain limitations (ibid, p.32). These limitations are discussed in section 6.4.2 of this chapter, where I explore the constitutionality of sedition and criminal defamation in two cases espoused by Gambian journalists in the ECOWAS Court of Justice and the Supreme Court of The Gambia. The analysis in this section shows legal repression of journalism in The Gambia through criminal prosecution. In the next section, I present another case showing attempts made by The Gambia government to legally control the private media and how journalists responded to this through the courts.

6.3. Gambia Press Union et al v. National Media Commission et al (2005)

The case of The *Gambia Press Union et al v. National Media Commission et al* (2005) serves as another example of an attempt to limit freedom of the press in The Gambia. The National

Media Commission Act 2002 was held unconstitutional by the Supreme Court of The Gambia. As briefly explained in section 4.7 of this study, this legislation was passed to create a Commission that would establish a code of conduct for the private media, delineate standards for quality and content, and give rulings on complain against journalists and media organisations. Key powers or functions of the Commission are: (1) quasi-judicial powers including compulsory registration of private media organisations and journalists, revoking licenses, issuing arrest warrants for journalists, fining or even sentencing journalists to imprisonment; (2) forcing journalists to reveal their sources and all journalists and media organisations are required to obtain one-year renewable licenses. Consequently, failure to comply with these requirements shall be punishable with a minimum fine of 5,000 dalasis, which was approximately US $225 at the time. Any journalist who refused to pay the fine could be suspended for nine months and any media organisation for three months. The Commission was given the power to imprison journalists for contempt for up to six months.

For these reasons, the Gambia Press Union and four other journalists filed a lawsuit against the National Media Commission, the Secretary of State for Communication, Information and Technology and the Attorney General challenging the constitutionality of the legislation. The claimants contest that the system of regulation provided under the legislation breach international and constitutionally guaranteed rights to freedom of expression. The Supreme Court ruled that the Commission is unconstitutional and made in excess of legislative authority. Although the full judgement of the case was not reported, it was argued in the claimants' submission that freedom of the press is one of the fundamental rights protected by the constitution. This decision not only gave victory to the Gambian private media, but also exposed government intention to control independent journalists beyond constitutional legitimacy. The fact that the Supreme Court declared the Commission unconstitutional presents an unusual angle for judicial independence for the protection press freedom in The

Gambia. However, the decision of the Supreme Court raises the question of why is the National Media Commission unconstitutional.

6.3.1. On the Constitution

Section 210 of the constitution of The Gambia states:

> "An Act of the National assembly shall within one year of the coming into force of this Constitution make provision for the establishment of a National Media Commission to establish a code of conduct for the media of mass communication and information and to endure the impartiality, independence and professionalism of the media which is necessary in a democratic society".

It is clear that the constitution provides for the establishment of the Act. The question is whether the requirements of impartiality, independence and professionalism were satisfied for the establishment of the Commission. The claimants argue that the National Media Commission Act fails to satisfy government obligations under section 210, which cannot be rely on for justification (GPU et al v. NMC et al, 2005, p.13). The claimants maintain that in implementing section 210 of the Constitution, government must do so in a manner which respects the right to freedom of expression and of the media, as guaranteed in section 25 and 207. They argue that "section 210 does not give free rein to the Government to establish the Commission or to provide for a code of conduct in any way it pleases. Rather, the provision must be interpreted and applied consistently with the other provisions of the Constitution". In responding to the claimants, the defendants maintain that it suffices the legislation was in accordance with law. The Supreme Court`s decision to declare the Act unconstitutional suggests that it has interfered with the right to freedom of expression as pointed out by the claimants. In this context, I believe the court did not agree with the defendants submission that the National Media Commission Act serves the purposes of "reasonable restrictions to

freedom of expression as necessary in a democratic society and required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency of morality, or in relation to contempt of court" (ibid.). Legislative issues confronting Gambian journalists were not only challenged in national courts, but also in international courts such as the ECOWAS Court of justice. In the next section, I look at another case espoused by Gambian journalists in collaboration with international journalism organisations, which adds to the struggle against punitive legislations of press freedom.

6.4. Federation of African Journalists et al v. The Republic of The Gambia (2015)

The ECOWAS Court of Justice has been called upon on a number of occasions to decide on issues relating to human rights including freedom of expression and press freedom. The adoption of the 2005 ECOWAS Protocol amongst member states grants the Court to allow complaints from individuals on application for relief for violation of their human rights. Since then, the Court has delivered several judgements on claims of human rights violation against some state parties including Togo and The Gambia. One example described as a "landmark" judgement is the case of *Federation of African Journalists and others V. The Republic of The Gambia* (Federation of African Journalists, 2018). Based on doctrinal legal research, I found that it is the first and main case espoused at the level of the ECOWAS court challenging the enforcement of subsidiary Gambian laws including criminal libel, sedition and false news that are believed to be inconsistent with international human rights law. For this reason, I consider this case for my analysis not only to understand the function of the ECOWAS Court in protecting the right to freedom of expression, but also the compatibility of criminal media legislation of the Gambia to international standards.

Through the application of the principle of international human rights law, the ECOWAS Court has become a strong transnational judicial organ for the protection of free speech and press freedom in the West African region. This is exemplified in *FAJ et'al v. The Gambia*

(2015), which was concerned with the violations of Gambian journalists human rights including right to receive information, expression and disseminate opinion. A central part of the judgement was on the compatibility of Gambian criminal legislations including seditious intention, criminal libel and false news to international human rights law. In its judgment, the ECOWAS Court found that these legislations do not guarantee press freedom, restrictive, vague, and disproportionate. The court decided that the enforcement of these laws is a violation of internationally guaranteed rights. In its elaborative ruling, the court held that:

> These laws do not guarantee a free press within the spirit of the African Charter on Human and Peoples Rights and the International Covenant on Civil and Political (ICCPR). The restrictions and vagueness with which these laws have been framed and the mensrea (seditious intention), makes it difficult to discern with any certainty what constitutes seditious offence. The practice of imposing criminal sanctions on sedition, defamation, libel and false news publication has a chilling effect that may unduly restrict the exercise of freedom of expression of journalists. The application of these laws will amount to a continued violation of the internationally guaranteed rights of the applicants (*FAJ v. The Gambia, 2018, p.47*).

Here, the Court clearly focused on the compatibility of criminal media legislations of The Gambia to provisions of the aforementioned international conventions that provide protection for press freedom. The court made a declaration that "criminal sanctions" imposed against Gambian journalists who were arrested, detained and convicted is "disproportionate and not necessary in a democratic society where freedom of speech is a guaranteed right under the international provisions cited" (ibid.). The ECOWAS Court ultimately ruled that the impugned provisions of the aforementioned legislations put "excessive burden" on Gambian journalists and those who would exercise their right to freedom of expression (ibid). This, the Court argued that "violates the enshrined rights to freedom of speech and expression under

Article 9 of the African Charter, Article 19 of the ICCPR, and Article 19 of the UHDR". As a result, the Court directs that:

> Legislations on sedition, criminal libel, defamation and false news publication of The Gambia be reviewed and decriminalised to be in conformity with the international provisions on freedom of expression and in consonance with the Defendants obligation under Article 1 of the Charter (*FAJ v. The Gambia, 2018, p.47*).

Through the prism of human rights, the above reasoning of the Court suggests that there are a number of good reasons why the Gambia should review and decriminalise laws on seditious intention, criminal defamation and false news publication. The reasoning echoes a broader point of international human rights law and jurisprudence that legal restrictions of the media must be proportionate and necessary in a democratic society. The court concluded that the application of criminal media laws of the Gambia will amount to the violation of internationally guaranteed rights. This implies that the rights of Gambian journalists who were convicted by using such laws were violated. The interest the ECOWAS Court has shown in ensuring that the Gambia repeal its criminal media legislations were evident in the final decision. In its ruling, the Court acknowledged it has no control over the constitutionality of laws of member states which is preserve for domestic constitutional courts, and expressed that it cannot examine the laws of member states in abstracto (ibid: p.31). It means that the court cannot declare laws of member states null and void, but can examine whether or not there are human rights violations in member states. Therefore, only the Supreme Court of the Gambia has jurisdiction to determine the constitutionality of national laws (Constitution, 1997, Sec 126).

The doctrinal analysis reveals that before the ruling of the ECOWAS Court, the Gambia Press Union with other journalists have filled a case at the Supreme Court of the Gambia to

challenge the constitutionality of laws on sedition, criminal defamation and false news, which was not decided until 2018. The next section focuses on that specific case which is central to understanding the constitutionality of these legislation and the limitations imposed on the right to freedom of expression in The Gambia.

6.5 *Gambia Press Union v The Attorney General* (2018) – Relevant Concerns

As I demonstrate in chapter seven, Gambian journalists generally perceived criminal legislations as an affront to critical and independent journalism thereby having a chilling effect on media freedom in the Gambia. As a result, my research found that amongst the things Gambian journalists did to continue operating within the restrictive and repressive legal framework of the media was to challenge the legality of laws considered obnoxious to press freedom through national courts. On 2 September, 2014 by a Writ of Summons, The Gambia Press Union with two other journalists brought the case of *Gambia Press Union v The Attorney General* (2018) before the Supreme Court of the Gambia challenging the constitutionality of very popular sections of the Criminal Code that relates to sedition and publication of false news. The case is entirely concerned with the lawfulness of sedition laws including criminal defamation, and false news. It was for the Gambian Supreme Court to decide their authentic interpretation in respect to freedom of expression guaranteed by the Gambian constitution. The court also looked at the compatibility of these legislations with international human rights standards.

In the Supreme Court decision of the *Gambia Press Union v The Attorney General* (2018), any hopes that the Court would expand the scope of free speech and press freedom by invalidating laws on sedition and false news were dashed away. In the case, the Gambia Press Union relied on the supremacy of the constitution and international human rights treaties that provides for the right to freedom of expression, to challenge the legality of sedition and false news in the Gambian Criminal Code. The most significant direct response of the Supreme

Court was to adopt a judicial restraint approach by strictly adhering to the principles of the statutes, and in consequence upholds their validity, except the part that deals with sedition against the government. The main argument by the Counsel for the Plaintiffs was that sections 52, 59 and 181A of the Criminal Code are inconsistent with the provisions of section 25 (4) of the Gambian Constitution, which provides for reasonable restrictions to rights and freedoms, and section 209 of the Constitution that subject those rights and freedoms to other laws that are necessary in a democratic society. The specific provisions of the aforementioned parts of the Criminal Code are detailed out in the following sub-section of this chapter.

The Supreme Court assessed the *Gambia Press Union* case by raising three critical questions in relation to the central claim of the Counsel for the plaintiffs to make a decision. First, the Court asked whether provisions of the Criminal Code on sedition and false news unreasonably restrict the rights to freedom of expression and the media. If the answer to the first question is in the affirmative, the second question is whether those restrictions are lawful in the sense that they have a legitimate aim provided by law and are necessary in a democratic society. If the answer to the second question is also in the affirmative, and the third question is whether the restrictions are proportionate having regard to the constitutional guarantees of freedom of speech, and the right and freedom of the press. The Supreme Court proceeded to make a decision based on a number of factors to determine whether laws on criminal sedition and false news violate the rights to freedom of expression under the Constitution. The case brings out some interesting interpretation on the constitutionality of these offences, the concept of sedition and false news. In this respect, the court made a decision on the qualified nature of the fundamental rights and freedoms under the Gambian Constitution and international conventions. This highlights the importance of the first theme of the judgement, which is on constitutional protection for freedom of expression and the press.

6.5.1 Constitutional Protection for Free Speech and Press Freedom

I now deal with the judgement on the constitutionality of the provisions of sedition and false publication. First, it is worth pointing out that Section 4 of the Gambian Constitution 1997 states that it is the supreme law of the land and all laws that are inconsistent with the constitution shall be void. This is the premise of the *Gambia Press Union* case that laws on sedition and false news are inconsistent with the provisions of the 1997 Constitution. For this reason, the Press Union contends that the Court should invalidate those laws that are considered to be anti-media freedom and an affront to freedom of expression, which the Constitution guarantees. In short, the specific sections of the Criminal Code the Press Union argue are inconsistent with the Constitution are:

> Section 51 (definition of seditious intention), 52 (offence for committing seditious intention), 52A (power to confiscate printing machine on which seditious material is published), 53 (statutory time limit for initiating prosecution), 54 (required evidence to warrant a conviction), 59 (publishing or reproducing statement, rumour or report likely to cause fear and alarm to the public or to disturb the peace), and 181A (false publication and broadcasting).

The Gambia Press Union argued that the above provisions of the Criminal Code are inconsistent with section 25(1)(a)(b), 207, and 209 of the Gambian Constitution that guarantees freedom of speech including freedom of the press and other media. This is because in the claimants view, the aforementioned provisions of the Criminal Code "amount to an unlawful infringement of constitutional rights." They further argued that "the provisions violate the criteria of sufficient legal certainty and proportionality" (Para, 8). This implies that the relevant provisions of the Criminal Code created a situation of legal uncertainties with regards to constitutional protection for media freedom. It is worth emphasising that the

Claimants contention was that, the aforementioned sections of the Criminal Code unjustifiably interferes, and unlawfully infringe constitutional rights and freedoms.

Therefore, the court needs to distinguish between constitutional rights and limitations imposed by the Criminal Code. To assess whether the interference and infringement complained is a legitimate reason for the court to declare those legislations unconstitutional and void, the Court remarked in hindsight that the right to freedom of expression is not absolute (para, 67). In the interest of national security, public order, decency and morality, the court found laws on sedition in relation to restrictions to the person of the President constitutional and valid. Similarly, the court also upholds the constitutionality for the offence of false news (para, 68). Here, it means that a criminal action may be taken against anyone who exercised the right to freedom of expression beyond the limitation imposed under the Criminal Code and as declared by the Supreme Court. One context in which the court upholds the constitutionality of these provisions is they are reasonably required in a democracy. This is discussed in detail in the following sub-section.

The rationale behind restricting the right to freedom of expression including press freedom has been a longstanding debate in constitutional jurisprudence. While this may well be the case in the Gambian context, the restrictions imposed by the Criminal Code overwhelmingly undermined the supremacy of the constitution. As discussed in detail in Chapter 3, most independent African states have adopted liberal constitutions that guarantee media freedom (Nyarko, Mensah and Amoh, 2018, p.2). These are not blanket freedoms as they are also subject to other laws that are reasonably required in a democratic society. Within the Gambian context, the provisions of the Criminal Code discussed in this section are significant examples of such laws that present a paradox to the concept of media freedom. This is because the GPU case argues that these laws repudiate the concept of legal protection for the media, which is guaranteed by the Constitution. The next section looks at whether laws on

sedition and false news are reasonable or necessary restrictions in a democratic society, which is an important issue contained in the judgement.

6.5.2 Reasonably Required in a Democratic Society

Having heard the Claimants submission that the sedition and false news provisions contained in the Criminal Code are unreasonable, disproportionate or unnecessary in a democratic society, the Supreme Court concluded that:

> The restrictions provided in Section 51(a) of the Criminal Code are reasonable and necessary in a democratic society and required for the purpose of preserving national security, public order and decency, and morality. In that vein, the section is declared constitutional in so far as the restrictions relates to the person of the President only. However, the section is declared unconstitutional in so far as the restrictions relate and extend to the Government (para, 71 – c).

On the complainants' submission that section 51 (b), (c), (d) and (e) of the Criminal Code which specifically concern with seditious intention are unconstitutional, the Court held that these provisions:

> "Are adjudged as reasonable and necessary in a democratic society and required for the purposes set out in sections 25 (4) and 209 of the Constitution and, therefore, intra vires the Constitution and declared valid".

In light of the above judgement, it means that laws on sedition that relates to the President are found to be reasonably required in the Gambia`s democratic dispensation. This reasoning, the court stated is a reasonable restriction on grounds of national security, public order and decency, and morality. The court further clarified that:

> Considering the vicissitudes and trappings of the Office of President and as the Office that serves first and foremost as the fountain for national cohesion and stability, coupled with the need for the holder of such Office to concentrate on State affairs and not to be unduly distracted it is reasonable that the holder of such office is protected. The protection is, in the context of The Gambia and the value attributed to such leadership in this country, considered necessary and thus has a legitimate aim (Para, 52).

As noted earlier in section 5.2.4, this judgement made it clearer that the goal of seditious offence in the Gambian Criminal Code is to cultivate respect for the President, raising the question whether the media can hold the President as the head of the government to account. Transcending the argument on protecting the President, the Court implied that it does not cover "criticisms and other expressions of opinion relative to his or her performance in office" (ibid.). In view of all this, the decision described above appears to suggest that the Gambian courts place high importance in the office of the President. Taking the conviction of *Sawaneh et'al* as an example, it means the Court reached a conclusion that the journalists' criticism of the President for his comment on the murder of their colleague does not falls under criticisms relative to the performance of his office. This does not address the complex issue of criticisms that are acceptable by law.

It can therefore be argued that the press criticism of the President for his government failure to conduct proper investigation in the murder of a journalist was interpreted to be in breach of national security, public order, or decency or morality. It raises further questions to whether the offence of sedition must be determined with reference to the letter and spirit of the Gambian Constitution or exclusively on the Criminal Code. While section 25 and 207 the Constitution clearly guarantees media freedom, it is apparent that the Criminal Code restricts this freedom. Also, this raises the question of how the President will respond to criticisms

that are true and to the public interest, but has the potential of making his or her government unpopular. I argue that the most obvious of a President believed to be an authoritarian ruler would be to control or stifle the media through the formal application of laws.

6.6 Conclusions

In this chapter, I demonstrated that the legal and regulatory framework of the media in The Gambia is compounded with legal uncertainties. I began by offering comprehensive legal analysis of how criminal legislation is used to repress critical journalism and control press freedom in The Gambia. The chapter highlighted how the political repression of journalists escalated to the highest level when six journalists were convicted for criticising the Gambian President. I established that provisions of the Criminal Code adopted from the colonial era accorded special protection for both the President and Government of The Gambia by forbidding any publication that will bring them into hatred or contempt or cause public disaffection. While the legal analysis showed a pattern of sedition and criminal defamation charges against journalists and members of the opposition in The Gambia, the courts did not apply the principle of proportionality test recommended in international jurisprudence to assess and determine criminal liability for media offences. In this chapter, it is noted that while the Gambian Constitution paradoxically provides protection for press freedom and freedom of expression as required in a modern democracy, the Criminal Code is a step backwards to the standards applied during colonial rule.

Through the analysis of several case laws that challenged laws and regulations that abridged press freedom in The Gambia, I noted the contradiction between national and international court rulings. For example, while the ECOWAS regional Court of Justice concluded that the legal restrictions on the freedom of the press in The Gambia are deemed "not necessary in a democratic society", the Supreme Court of The Gambia disagreed in the most part of its ruling in *Gambia Press Union v The Attorney General* that in the Gambian context these

restrictions are necessary. This contradiction between international and national jurisprudence provides further uncertainty with regards to the legal protection for media freedom in The Gambia. From this finding, it is possible to conclude that The Gambian authorities were emboldened to enforce repressive provisions against the media to crack down on critical journalism. The analysis in this chapter demonstrates that leaving the determination of politically motivated cases to a judiciary that is believed to lack independence may enable a repressive government to undermine free speech. Therefore, improvements in the judicial standards of The Gambia are required in order to ensure compliance with international standards for the protection of press freedom. But how do Gambian journalists view the legal and regulation of the media in The Gambia and how do they operate under such a repressive and restrictive culture? These issues are discussed in chapter 7 that presents and analysed responses from the semi-structured interviews with journalists.

CHAPTER SEVEN

INTERVIEWS DATA ANALYSIS

7.1 Introduction

This chapter builds on the previous chapter by discussing the views of journalists to understanding how they perceive and navigate such a controlling legal system. Through doctrinal legal research, the previous chapter focused on critical legal analysis of case laws and legislations concerning media restrictions that imposes criminal sanctions against journalists in The Gambia and controls media freedom. My analysis highlighted the contradictions and incompatibilities of laws that guarantee media freedom with criminal legislations of The Gambia that represses critical and independent journalism. Evidently, the enforcement of subsidiary criminal legislations that disproportionately restrict media freedom suggests that Gambian authorities largely use them to target independent and critical journalism to avoid scrutiny. The pattern of cases reveals tension and conflict between journalists and the authorities in national and international courts. One of the main issues highlighted in chapter six is how Gambian journalists challenge repressive legislatures by suing the government to court.

Chapter Seven builds on this by discussing findings from interviews I conducted with 15 Gambian journalists in 2021. This chapter highlights the adoption of journalistic practices that are not only conventional, but also sensitive and defiant to a legal and regulatory environment that is restrictive and repressive. It raises critical issues about professional journalism practice that navigates around a complex legal and regulatory system of news and content production in The Gambia. This requires an investigation into the professional

context of news production in The Gambia to understand the way journalists practice in The Gambia. In order to explore these issues, I used thematic analysis to examine the views of Gambian journalists. Although some of the interviewees are former and current state ministers, I grouped all research participants under the broad category of journalism because they were either practicing journalists or have returned to the profession when their services ended with the government. Importantly, most of them were either once arrested, prosecuted or have been defendants in some of the cases discussed in Chapter Six. A number of journalists who have never been subjected to arrest and prosecution were also interviewed.

In particular, this chapter seeks to investigate and examine the implications of criminal media legislation discussed in Chapter Six and other subsidiary legislations such as the Information and Communications Act 2013 and the Newspaper (Amendment) Act 2004 to independent or critical journalism in The Gambia. It addresses the following research question: How do Gambian journalists perceive media laws and government media regulation? The answers for this research question are organised under five thematic categories related to journalism in The Gambia. First, it discusses the perspectives of Gambian journalists on media laws and regulations to their practice, which they generally considered repressive and restrictive to independent journalism. Second, the chapter demonstrates that newspaper registration and broadcast licensing requirement legislations imposed serious limitations to media ownership in The Gambia. Third, it discusses how journalists operate under such a legal framework, which induces fear, censorship and self-censorship to their practice. Fourthly, the chapter discusses the significant strives of alternative journalism publications to defy a restrictive and repressive legal framework, taking the role of government watchdog. Finally, it discusses the emergence of online news websites established by exiled journalists to serve as critical alternative sources of information to the traditional mainstream media in The Gambia and evade the law. In light of the political, legal and regulatory constraints, the chapter argues on

the versatility of Gambian journalists on holding power to account. In the next section, I set out how I followed a thematic approach in presenting my research findings.

7.1.2 Thematic Analysis

The thematic analysis of the interviews data commenced using the NVIVO Software for text search and word frequency queries. I analyse the common perception of journalists regarding two main themes: media legislations and government media regulation in The Gambia. Each main theme has generated key words corresponding to the responses gathered after interviewing journalists. The most striking points to emerge from these interviews is that most of the journalists felt that media laws of The Gambia are draconian, repressive and controversial laws that were designed by former President Jammeh to induce an environment of fear, and censorship, which discourages critical and independent journalism. The interviews also suggest that direct government media regulation is restrictive and controlling to media ownership, media independence and pluralism.

Therefore, I have grouped the responses from the journalists into five secondary thematic categories for analysis. These secondary thematic categories include Draconian and Jammeh Media Laws, Restrictive Regulations, Fear, Censorship and Self-censorship, Radical and Alternative Journalism, Online Journalism, and Legislative Response to Online Journalism. These sections examine the discourse of journalists on how they view media laws and regulations, and then how they operate in the context of a repressive and restrictive legal framework. The analysis reflects the complementary nature of my research questions, which provide answers to the main research question on the way journalists operate within the legal and policy framework of the media in The Gambia. In carrying out my analysis, I have adhered to advice sought from research methods literature on less democratic countries to anonymise interview responses using numbers in place of names to protect participants from identification and any potential harm.

7.1.3 Draconian and Jammeh Media Laws

Here, it is worth defining the term draconian to understand the context in which it has been used by participants to describe media laws of The Gambia. According to Batten (2010, p.1), the term draconian has come to be used to refer to any unusually harsh law. Legal scholars such as Makarim (2010, p.135) argues that draconian laws are applied in circumstances of "systemic corruption, abuse of power, selective prosecution and miscarriage of justice". An important question which arises from this point is what might be the circumstances under which draconian laws were used against the media in The Gambia. Among the most recurring explanations for this is as a result of military rule and dictatorship, which most participants mentioned as the reasons. Arguably, The Gambia`s transition from military rule in 1994 to civilian dictatorship between 1996 to 2016 has been characterised with abuse of power, prosecution of journalists and opposition, and systemic corruption (Financieras, 2020, p.1). Jammeh`s rule embarked on the most intense and sustained crackdown on press freedom in the country`s history by using several methods including military decrees, legislations and assaults on journalists to exert control. Participants identified the enforcement of laws on sedition and criminal defamation which carries punishment of longer jail sentences and bigger fines against journalists draconian. Such emotive expressions of their views on these legislations underline their severity. Although The Gambian Constitution has progressive provisions for the protection of media freedom and the country is also a signatory to key international treaties that provides for the protection of media freedom, the preferential enforcement of subsidiary repressive legislations against journalists overshadowed any existing progressive laws that protect their work. This tends to shape the wider perception of journalists about media legislations in The Gambia, which research participants considered "bad and harsh".

Participant 10 links these laws to the military government of former Captain Yahya Jammeh that forcefully took power from 1994 to 1996. The two year military rule in The Gambia was characterised by promulgation and enforcement of draconian decrees aimed at muzzling the press. The most noticeable of these were the infamous Decree 4 of 1994 which forbids and criminalised the publication of political ideas. On 19 August 1994 two editors of the *Foroyaa Newspaper* were arrested, charged and sentenced to three years imprisonment for violating Decree 4 (Amnesty International, 1994). For Participant 10, "the relationship started soaring when the military government started formulating some of those draconian laws to put a rope on the nose of journalists". Although criminal legislations such as sedition and criminal defamation were first promulgated during the colonial era, all these laws are mainly attributed to the military because of two reasons. First, most of the respondents share the concerns of little or no knowledge of the legal and regulatory environment of the media. For instance, Participant 5 explains that "we were reporting but had no idea some of the laws in place, and how it affects our work. So we were basically in the dark". Two important points are contained in this response: First, it implied the low level of journalism education, and second the low training of journalists on laws that directly affect their work in The Gambia.

Participant 3 "was not told about media laws", and told that they "are representing the people, and should speak for them". This position aligns with the observations of journalism scholars like Deuze (2005, p.447) that journalists provide a public service "working as some kind of representative watchdog of the status quo in the name of people, who 'vote with their wallets' for their services by buying a newspaper, watching or listening to a newscast, visiting and returning to a news site". This raises the question of how should journalists serve as representatives of the people. It means presenting plurality of voices including dissenting views through conventional journalism practices. In doing so, I argue that journalists are bound by laws in the jurisdiction in which they operate. Media legal scholars such as

Robertson and Nicol (2007) and Quinn (2018) concurred journalism practice is subjected to laws that journalists must be familiar with, and the legal systems they operate within. This, they argue is necessary to know what to or not publish. In The Gambia, the authorities see critical journalists as enemies, supported by a legal framework that forbids the presentation of critical voices. These responses suggest how some journalists are unconscious of the complex legal environment they operate within, until they get into conflict with the law.

This was the experience of Participant 4 who was charged with two criminal media offences and never had a clue about the existence of these crimes in Gambian laws: "I was [.....] charged […….]. It is the law that Nana brought when he was the Information Minister. When I was charged is when I know about it". There are two points to be noted in their response. First, it suggests insufficient depth of the punitive legislative environment Gambian journalists operates in, which directly affects their practice. Second, it indicates that the ICA 2013 was introduced to the National Assembly of The Gambia to be enacted into law by the then Information Minister Nana Grey Johnson who was once a practising journalist. As discussed in section 7.4.1, Nana`s name was mentioned by several participants suggesting that it was disappointing for a journalist to introduce and defend the ICA 2013, which they believed was designed to repress independent journalism.

As shown in the responses of Participant 4 and 10, the second reason why some journalists did not know about the long term existence of these repressive colonial era laws is because they weren`t used very often against Gambian journalists before Jammeh`s rule. In this context, former President Jammeh`s name emerged as one of the words or names used by most participants in their responses, thereby suggesting that it was under his rule repressive media laws were promulgated and enforced against journalists. Thus even after the two year military transition to civilian rule, Jammeh`s regime continued to promulgate more laws under a direct state regulatory system that constrained the performance of the independent

press. Examples of harsh media laws and regulations enacted under Jammeh are discussed in section 5.5.2 of this thesis. More details are also provided on these laws and regulations in relation to how journalists view them to their practice in the next section. This confirms the findings of scholars such as White (2017, p.21) on the struggle of journalists against repressive legal systems in Africa. Using Tanzania as an example, he found that the independence government not only kept colonial legislations against the press, but introduced more with additional powers to control the media.

Also, the majority of participants attributed the promulgation of "bad" media laws to the Jammeh regime, which they believe were intended to muzzle the independent press. Some of them claimed that the laws were protective to the Jammeh regime under whose rule many journalists were prosecuted and convicted. Participant 4 further associates the challenges of Gambian journalism to the Jammeh rule stating that:

> When Jammeh was here, they were not fair to journalists; this is why those harsh laws were here. It was more of protecting Jammeh`s regime, and get the Gambian people to like him. By writing stuffs [sic] that were only favourable to him. That is what led to the arrest of journalists, harassments and killings of journalists. It get to a point journalists were scared of writing anything against the government at that time.

As discussed earlier, although some of these laws such as sedition and criminal defamation are older than the Jammeh regime and are even maintained after he left power, the responses showed that they are still perceived as his laws. Participant 8 shares a similar opinion that links repressive media laws to the Jammeh era: "the laws were so bad that journalism was relegated to a Jammeh play book affair. You have to dance to his tune as a journalist. It doesn`t matter where you report or else, your media house would be closed, you will be killed or leave the country." To contextualise the respondent`s dramatic or theatrical expression, it

means that journalists were subjected to show support to Jammeh`s government or perish. A common thread in the responses by the journalists was that the laws are as a result of dictatorship that is associated to the Jammeh regime. This is evident in the words of Participant 2 who argued that the laws are "inherited laws from a dictatorship". Participant 7 made a similar remark that the laws have to do with the person of Jammeh who was a dictator. According to Participant 7, those laws are a manifestation of "dictatorial tendencies", because of "insecurities and fear of the people". Participant 7 further argues that Jammeh "wanted to supress the voice of the people", and "the way to do that is to supress the media". This response underscores the theorisation made by scholars like Dukalskis (2017, p.4) who associates stifling information to maintain power to autocratic regimes.

The discussions here suggest that participants generally perceived media legislations of The Gambia as suppressive laws that are designed and enforced by former President Jammeh to curtail press freedom and repress critical journalism. They also see these laws as a manifestation of dictatorial tendencies to muzzle media freedom as a way of denying freedom of expression to the general public. In particular, their views show that the legislations would undermine media freedom to perform the watchdog role of the media, as required in a democracy. I now move on to discuss the corresponding perception of journalists on media regulations in The Gambia.

7.1.4 Response to Government Media Regulation

The debate in this section about direct government media regulation in The Gambia suggests a variety of opinions and perspectives on the subject. However, among the most recurring explanation shared by the majority of participants is the apparent lack of independence, and transparency in newspaper registration and granting of broadcasting licenses in The Gambia. In discussing government media regulation in The Gambia, participants particularly focused

on the mandatory bond requirement for the registration of a newspaper, as set out in the Newspaper (Amendment) Act 2004, (see section 5.5.2 of chapter five). Apart from that, participants also attributed the newspaper regulation to Jammeh`s rule they believe wanted to control and restrict media ownership. At this point, it is also important to point out that the Newspaper (Amendment) Act 2004 is modelled after the Newspaper Act of 1944, which was originally enacted under colonial rule for the compulsory registration of media practitioners in The Gambia (Article 19, 2012). The Act was amended in 2004, which gives the Attorney General power to approve deposition of bonds or sureties required for newspaper registration and license for the broadcast media. Participants believe that the government has used these powers to control the news media.

For Participant 1, the idea of putting licensing approvals under the responsibility of a government minister who is answerable to the President "was one way they were trying to control things from their end". They argue that "the Act, which was reviewed and make the bond requirement harder, was just too much and the entire objective was to control who is going to operate a newspaper in the country. Looking at the atmosphere then, how many people were willing to register, when the law says the government can forfeit your assets anytime you are involved in a legal battle with the government". Here, it is worth explaining the respondent`s concern in relation to the provisions of the Newspaper (Amendment) Act 2004 on the forfeiture of assets to the State. Section 2 of the Act states as follows:

> "The condition of the bond shall be that the proprietor, printer, or publisher of the newspaper or proprietor or operator of the broadcasting station shall pay:
>
> (a) to the State every money penalty which may at any time be imposed on or adjudged against him or her or them against any conviction for printing or publishing in the newspaper or broadcasting from the broadcasting station any

blasphemous or seditious or other libel at any time after the execution of the bond.

(b) all other penalties whatsoever which may be imposed on or adjudged against him or her or them by any court under the provision of this Act or any other law in force in The Gambia in respect of any matter or thing done or omitted to be done by him or her or them after the execution of the bond; and

(c) any damages and costs on any judgement for the plaintiff in any action for libel or other false publication under this Act against the proprietor, printer, publisher or operator, as the case may be, in respect of any libel or false publication printed, published or broadcast in the newspaper or broadcasting station, as the case may be, after the execution of the bond."

Bearing in mind of these provisions of the Act, the respondent`s views showed fear and reluctance to register a newspaper because of the conditions attached to the bond required for the registration of a newspaper and broadcasting stations. This poses a substantial risk for private individuals to get involved in the business of media, particularly under Jammeh`s rule. Also there are corresponding punitive provisions contained in the Criminal Code of The Gambia in which one can lose his/her assets to the State if involved in committing any of the prescribed media offences. For instance, section 52A of the Criminal Code provides for the confiscation of newspaper assets including printing machine and all machines that are used in producing and reproducing a seditious publication. I track the history of media houses forfeiting their properties to the state when found non-compliant with media regulations. For example, in 1990, the Kanifing Magistrate`s Court ordered *Citizen FM Radio* be forfeited to the state for broadcasting without a licence, which was not in compliance with the provisions of the Telegraph Stations Act 1913 (Senghore, 2012, p.532). As already discussed in section 5.2 of chapter five, this Act dates back to the colonial era which one could argue has

influenced the development of post-colonial media regulation. Participant 2 echoes the issue of fulfilling a bond requirement for the registration of a newspaper arguing that:

> "They put in very strong bond requirement, which was at the time was very difficult because some of the publishers have no landed property. And knowing that journalists also always have issues with government, people were not also willing to give their landed properties as a bond for a newspaper to register. It was extremely a very difficult situation for the media. I only came to know about some of these regulatory issues when I became News Editor […….]".

The above response tends to reflect government`s strategic objective of using regulation to restrict media ownership in The Gambia. It confirms Senghore`s (2012, p.521) observation that the increment of registration fees of newspaper publishers and managers of broadcasting institutions from D100 000 to D500 000 (about US $18 000) is "unfair and unreasonable". This, he points out that in The Gambia, "the average salary of a civil servant ranges between US $40 and US $70" (ibid.). Within the context of Senghore`s observation, salaries in The Gambia are very poor to pay for a bond in the event of a liability. Under such circumstances, only the few that are privileged or powerful can establish newspaper`s in The Gambia due to the huge bond requirement. Participant 6 agreed with this line of reasoning arguing that "under Jammeh people were not even attempting to register media houses, because they would not be granted license. The financial cost is also discouraging for people to apply, considering that you have to deposit a bond of half a million. It`s really discouraging." Participant 9 questions the rationality of the bond requirement arguing that "how do you expect newspapers that are struggling to pay taxes and print pay heavy fines. Most newspapers don`t even have printing machines. They go to other places to print. How do you expect people to pay millions for libel".

Article 19 (2012, p.12), an international NGO that runs global campaigns for freedom of expression observed that "the requirement to provide a surety in the exorbitant amount set by the Newspaper (Amendment) Act 2004 is almost certain to have chilling effect on the Gambian media". They argue that such a scheme is "incompatible with international standards for the protection of freedom of expression" (ibid.). What these discussions suggest is that Gambian journalists strongly perceive the press licensing regime controlling and restrictive, which by virtue of institutional arrangements is under the radar of government interference. An important question which arises from this discussion is what regulatory system do Gambian journalists find acceptable. The responses to this question show mainly two different perspectives. Some participants prefer an independent regulator, while others support a system of self-regulation. Participants 1, 6 and 9 agreed that self-regulation will stop government interference and control of the press. For instance, Participant 9 argues that:

> I think self-check is much better. The moment the government interfere, it will take a wrong path. Every government has its own agenda. They don`t want to be criticised and exposed. So if the government regulates the media, they will draw their own agenda. Business of the government should be limited to the Constitution when it comes to the media.

Although Participant 1 also supports self-regulation as "the most ideal system", but cast doubts that it "will be extremely difficult to implement in The Gambia, because of lacking the legal powers to enforce". This shares Kruger's (2009, p.20) point that most self-regulatory systems such as Press Councils are "structured as private associations, without a specific basis in legislation". He further pointed out that "the lack of punitive powers is one of the chief complaints against the system, which has been a subject of debate on self-regulation around the globe (ibid, p.21). For Participants 2, 8 and 4, independent regulation can work for

everyone with ability to strike a balance between media and government interests. Participant 2 further explains:

> I would prefer an independent regulator because that will work for everyone. Governments are not trusted anywhere when it comes to media issues. But if we have an independent regulator whose funds are directly coming from the National Assembly, not even through any minister, and whose members are not appointed by a minister but by professionals supported by the National Assembly. Even there, we need to be careful because we have politicians in the Assembly. That would be extremely very good; for the purpose of credibility it will help us a lot, because it will reduce the tension. If anything goes wrong, it will not be seen as government persecuting the media, but as a truly independent initiative taken in good faith.

The above response indicates trust in the legislative arm of government to constitute an independent regulatory body that will not be under the influence of the executive. However, within The Gambian context, the idea that a regulatory body established by the National Assembly would be an independent regulator is a paradoxical concept. This is because Section 100 of The Gambia`s 1997 Constitution states that "the legislative power of The Gambia shall be exercised by bills passed by the National Assembly and assented to by the President." In essence, it is a constitutional requirement for the President to assent any bill before it becomes law. Therefore, this raises a doubt as to whether a President who evidence suggests that wants to control and restrict the media will support a bill for the establishment of an independent regulatory authority. In fact, through several acts of parliament, Jammeh`s regime has established couple of regulatory bodies with vested interest to control the registration and licensing of the private media. For example, in chapter five, my research shows that in 2001, Gambian parliament passed a law that established the National Media Commission with wide powers for the annual licensing of journalists and media

organisations, to renew or refuse renewal of licenses for journalists and operating media houses, force journalists to reveal their sources, and the Commission`s decisions cannot be challenged in any court of law.

Following a lawsuit by The Gambia Press Union and several other journalists on the constitutionality of the Commission against the government, the Act that established it was repealed in 2004. Another example of statutory body established by an act of parliament to regulate the media in The Gambia is Public Utilities Regulatory Authority (PURA). As already highlighted in section 5.5.3 of chapter five, PURA is given the responsibility to advice the Minister of Information and Communications to issue, renew, revoke or suspend broadcasting licenses. Therefore, the discussion here suggests that the Government of The Gambia is not committed to the establishment of an independent regulatory authority. I therefore, argue that there must be clear political will and commitment from both the executive and the legislature for the establishment of an independent regulator. In supporting the idea of an independent regulator, Participant 8 sees it as a way of preventing conflict of interests from the government and press union. They argue that "government will always be there for their own interest. Likewise, journalists will always be there for themselves. So what we need is a body constituted by civil society with people of integrity, people with knowledge about journalism to lead these institutions with legal knowledge as well. This body should in fact be independent financially". Their perspective reflects the idea that both the government and the media should be accountable to the public.

From the various positions of the participants in this section, their opinions on direct state media regulation are similar, but divided on the type of a regulatory system that is suitable for The Gambia. The analysis in this section indicates that The Gambia`s first regime of President Jawara maintained the colonial era press legislations and regulations. However, the second regime under Jammeh drew inspiration from these laws and regulations, and, made

amendments to tighten requirements for newspaper registration and licensing for broadcasting stations. In short, it means that in The Gambia, prior governmental approval is required for any press activity. The responses also suggest that Jammeh largely benefited from these legislations by controlling what the media writes. This raises the question of how this was possible and how journalists operate within The Gambia`s legal and policy framework of the media.

7.2 Fear, Control, Censorship and Self-Censorship

Having described their perception of media laws and regulations of The Gambia, participants were asked how this affects their practice. Since the study investigates the way journalists operate within the context of a repressive and restrictive legal and regulatory framework in The Gambia, it is necessary to get a picture of how journalists work in such an environment. In response to this question, keywords such as fear, censorship, self-censorship, careful, compromise, abandon, leave, and forced were prominent amongst participants. The majority of journalists identified fear, censorship and self-censorship as the main factors that influence news selection and professional practice. They agreed that the restrictive regulations, criminal legislations, imprisonments and physical attacks against journalists have created the conditions for a cowed media that was not effective in fighting corruption, promoting democracy and human rights.

According to participants 14, there is a tendency amongst journalists to “abandon and compromised” professional journalism practice by not writing reports that are critical to the regime. The environment of fear that created a situation of self-censorship is strongly captured in the words of Participant 8 “it reaches to a point where we the journalists would say there is no story that worth your life”. This aptly highlights the careful approach of journalists in news selection and the tendency to avoid critical stories, particularly those that are against the government. Drawing from a personal experience of being censored,

Participant 8 recounts an editorial decision of refusing to publish a story from an interview with an opposition leader. Participant 8 notes that the opposition leader was talking about "enforced disappearances", which could not be confirmed because the "Police refused to talk about it". The Participant recalls the editor saying "the moment you publish this, tomorrow you will see yourself in Mile 2 [State Central Prison]". Here, this experience raises several issues including censoring the views of an opposition leader who tries to hold the government to account by exposing its abuses.

Although western journalism scholars like Hacket (2013, p.16) point out that one of the roles of the press in a democracy is to expose corruption and abuse of power, arguing that the press should act as a watchdog on government which is the main threat to individual freedoms, it is clear from the quote above that the Gambian press was not free to perform this role. It is evident from the experience of Participant 8 that there was a fear of going to jail for publishing dissenting views. The response further suggests that when it comes to journalistic queries for balancing critical stories, the Gambian authorities do not respond. The rationale for balanced reporting is a core journalistic principle in establishing the truth. Further discussing the importance of balancing stories, scholars such as Williams, Harte and Turner (2014, p.12) points out that "balancing sources is, of course, one of the principal ways in which mainstream professional journalists have performed their commitment to airing a plural range of perspectives on issues of public importance". The important point here is that Gambian journalists are aware of this professional principle, which is required in responsible journalism practice. From a legal standpoint, journalists are expected to offer the opportunity to comment in allegation to show that they behaved responsibly before deciding to publish which is a requirement test for responsible journalism (Barendt, 2012, p.61). This issue extends to upholding ideals of journalism by being a source of reliable and accurate information (McQuail, 2013, p.15). Furthermore, balancing stories also shows commitment

to objectivity as journalists are expected to be "impartial, neutral, objective, fair and credible" (Rosenstiel, 2001).

Moreover, Participant 8 views suggest that in spite of the restrictive context of journalism in the Gambia, attempting to verify stories from the authorities is part of the normative practices of Gambian journalists. Their view supports the assertion that in The Gambia, "there are some credible media houses and journalists who consistently strive to apply professionalism, objectivity, and ethical considerations in their investigation, coverage, and presentation of the news" (Media Sustainability Index, 2012, p.166). It could be argued that under normal circumstances of a free media environment, it would be a matter of editorial judgement to publish the story, which is a subject of public interest. Although, as discussed in section 6.2.8, the law permits the publication of stories that are true and for public interest, Gambian journalists would rather self-censor than try to rely on the law for defence. This can be attributed to fear of retribution from the authorities. Participant 8's experience offers another important link to my legal analysis on sedition laws against journalists and opposition politicians as discussed in section 6.2.5 of the thesis. For Participant 13, only stories that are favourable to the Jammeh regime "to get the Gambian people to like him" are permitted by the country`s public broadcaster. This implies a culture of censoring dissenting views and opinions against the regime. Participant 7 shares a similar opinion on the culture of suppressing opposing views by the public broadcaster:

> It wasn`t said but everyone had a general understanding of our scope and limit, which was created by the former President. We knew the types of stories to take. Stories that do not involve political leaders, and stories that do not involve opposing views to the president. We knew this as journalists even though we were not told. There are instances something would be going on TV, the president will call to say he does not want to see it.

Herein lays the critical issue of media independence to either serve in the public interest or the governors. Their view reveals interference with programming content and suppression of divergent views. This also reveals former President Jammeh`s desire to directly control the media to serve him and avoid scrutiny. This response underscores the point made by scholars like Dukalkis (2017, p.141) that autocrats create a media environment, which legitimises their rule (ibid, p.141). They do that by several means including creating fear and having a control over the media. The discussion here also suggests the way journalists operate in the public broadcaster is opposite to the fourth estate principles of the media. From a liberal democratic standpoint, the idea behind the fourth estate principle is for the media to enjoy autonomy and be no subservient to the state or its political institutions (Oso, 2013, p.14). The idea behind this is for the media to be independent, and be able to hold governments, institutions and politicians to account. However, the responses suggest that the type of control existing in the public broadcaster cannot provide alternative views, nor can it be a social watchdog for the functioning of a democracy. The inability of the state-owned media to perform its watchdog role as a result of political control has been identified by African scholars as one of the biggest challenges of contemporary African journalism. For example, in Nigeria it is suggested that:

> Whatever successes recorded in the performance of the watchdog function by the Nigerian press cannot be shared by the government-owned newspapers, radio and television houses which were more or less government lap-dogs and megaphones … (Nwosu, 1996, p.26).

Whereas it is evident that government owned media promote only government views and suppress critical voices, my research found that a similar control exists even in privately owned Gambian media. This raises the question of how journalists in the private owned media do their work and how inter-relate to the environment of political and legal control to

news content. Participant 8 points out two operational options he considered were the prevailing circumstances of journalism practice. Firstly, they argue that journalists can chose to "write good things about the government and stay in business". Secondly, they point out that journalists can chose to "be critical to the government, and leave the country or face death". The point to note is that many participants believe that this created an ideological categorisation of the private owned media to work as either the "friend or enemy" of the state. According to Participant 2:

> So unfortunately the media in general, especially media practitioners in the private media were always categorised in this group called the 'enemies of the State'. So eventually, it led to arrests, disappearance, enforced disappearance for that matter, detentions without trial and unfortunately some journalists also lost their lives.

Evidently, the journalist pointed out the consequences of being labelled as an enemy of the state. There appeared an understanding from the journalists the ideological perception of the government towards the critical media. Participant 6 echoes that journalists from privately owned independent media "were taken as enemies", which they argue was "cultured in all government working departments". Participant 9 shares the same opinion and links this categorisation to former President Jammeh`s rule. According to them, Jammeh "succeeded in making Gambians believe that journalists are the enemies here and journalists are the trouble makers around the world". In their view, at the time one of the biggest challenges of Gambian journalism was to win the confidence of the people, "because Jammeh controlled the narrative". These views captured former President Jammeh`s discourse of journalists saying that "Journalists are the illegitimate sons of Africa. Citizens should not buy newspapers so that journalists can starve to death" (Jallow, 2014, p.59). From this comment, one could argue that Jammeh has a negative and vitriolic view of journalists. It should also be noted that

Jammeh`s desire is for newspapers to be unable to sale. Arguably, his strategy is to paint a negative picture about journalists for the public to shun them.

The discussions here suggest participants generally agreed that journalists working for the private owned independent media were restricted, and designated as enemies of the state. The outright denial of journalists to access information from the authorities was a common thread of discussion amongst my interviewees. This formed the backdrop for calls to enact the access to information law, which Participants 1, 6, and 8 argues is necessary to access information from government. Various issues impeding the ability of independent journalists to practice professionally and freely have been discussed in the foregoing section. This raises the critical question whether they were cowed to submission by favourably writing about the government or stood against the pressure to perform their watchdog function. These issues are discussed below, which illustrate how journalists navigate the law in order to operate.

7.3 Defiance, Radical and Alternative Journalism

While much of the issues discussed in section 7.2 may read as constituting sufficient reasons for journalists to avoid being critical to the regime, in the contrary, the responses to the question on how journalists operate within the context of a repressive and restrictive environment present a different perspective. Many participants explained the existence of a defiant, radical and critical alternative press that was involved in a protracted struggle against the Jammeh regime. Journalists were unequivocal about the critical alternative approaches taken by mainly *Foroyaa Newspaper* and *The Independent Newspaper* to hold government to account despite the risks associated to doing their work. This confirms Tettey`s (2008, p.2-3) observation that the media in various African countries are known for defying the wrath of their governments, to bring information to the public that will enable them to accurately assess their political leaders and hold them accountable. Here, The Gambia is not an exception to this type of journalism, as several participants observed that the private press in

particular has been very defiant against the restrictive political and legal environment to report on critical issues concerning the government. Over half of the respondents point to the critical approaches of *Foroyaa Newspaper* and *Independent Newspaper* that served as alternatives to other mainstream Medias, especially the dominant pro-government news media. I consider it important to explore the editorial practice of these newspapers.

7.3.1 The Case of *Foroyaa Newspaper*

To understand the critical and alternative approach of the *Foroyaa Newspaper*, I looked at respondents' views about the paper and its approaches in making news within the context of complex legal and institutional constrains discussed earlier. First, Participant 6 observed that "there was a gap of getting information in a dark society", which implies the lack of critical journalistic information in the Gambia. The respondent`s emotive description of The Gambia a "dark society" shows concern about lack of transparency and accountability in the country. In Participant 6's view, "this was a time when *Foroyaa* was the only paper talking about real issues in the country". Here, issues considered to be real include holding the government to account through the production of content relevant to the role of journalism in democracy. In this respect, Participant 6 sees *Foroyaa* as a critical newspaper that reports on "government abuses, unlawful arrests and detentions". These are issues that are not covered by other mainstream media houses, particularly those that are government owned and controlled because of fear of reprisals. Likewise, other private media stayed away from reporting on such critical issues to remain in business. With respect to Participant 6 response, it aligns with observations made by scholars like Fuchs (2010, p.173) that one of the basic characteristics of alternative journalism practice is it expresses the standpoints of the oppressed and dominated groups and individuals, and argues for the advancement of a co-operative society.

Similarly, Harcup (2003, p.371) states that "whereas the mainstream has a tendency to privilege the powerful, alternative media set out to privilege the powerless and the marginal; to offer a perspective from below and to say the unspoken". As discussed in section 7.2, this point resonates with other participants who identified direct government interference and censorship in the state owned and controlled mainstream media with journalistic tradition of promoting only the government and Head of State. Whereas, alternatives like *Foroyaa* focuses more on raising critical voices and dissenting views, than being loyal to the status quo. In this context, Participant 15 elaborates that *Foroyaa Newspaper* has an ideological commitment for the "promotion of democracy, human rights and rule of law" by holding the government to account. In doing so, he explained that "running away or giving-up was never an option for them". They further pointed out the willingness of the editorial board to take responsibility for any report published by the paper. This, they believe is to "sacrifice for young reporters", so that "the APRC regime will not succeed to silence" them. They further explain that:

> We believe that we can challenge the status quo no matter what they do. In the end, we are interested in enlightening Gambians to be conscious of their sovereign rights that no one should take away from them.

Here, the defiance is contained in the phrase "no matter what they do". The respondent is referring to the authorities that neither the legal restriction or repression, nor the physical attacks on journalists can stop the paper from carrying its professional journalistic role. Also, the issue of consciousness of sovereign rights in his response offers a link to the role of the media in a participatory democracy. As McQuail (2013, p.49-51) points out democratic media theory as an alternative is more relevant to societies where there is still a power struggle for basic rights, outlining that such media operates in a positive way in the critical tradition to pursue emancipatory political ends in situations of oppression. From this

perspective, given that *Foroyaa* was established by leaders of a socialist party called the People`s Democratic Organisation for Independence and Socialism (PDOIS) in 1987, I believe that the paper was an important organ for the party`s communication strategy in pursuing their political objectives. This is evident in the paper`s content that frequently carries the party`s leaders views. I argue that since opposition views are not allowed on the state owned or pro-government media, *Foroyaa* served as an alternative medium for opposing views and dissenting opinions.

Another respondent, Participant 2, sees *Foroyaa`s* approach as "very interesting ways of reporting on issues that are linked to so many variables including legality, constitutionality, the conventional aspect, the responsibilities of a State…so reading the newspaper you can have an interesting scope on a number of things". This suggests that *Foroyaa`s* approach takes into account of professional journalism practices, and frequently invokes the law as its guiding tool. Although the majority agreed that *Foroyaa* was a great alternative to the state owned media, Participant 8 argued that "even *Foroyaa* was not spared" from the hostilities of the regime, because reporters of the paper "were forced into exile". In order to continue carrying out its watchdog reporting by focusing on dissenting views, opinions and facts, my research found that *Foroyaa* was also very cautious to the existing legal framework. Participant 14 elaborated by saying:

> I may want to first say that they are very particular about that. He (editor) tested my understanding about the laws. I remember once he offered me the job, that very day he assigned me to court. This was the beginning of my journey on court reporting. So there were some in house training, and they provided the opportunity to understand these laws in practical terms. What they have been doing especially the editor, is very keen on what to take from reporters. Any issue with legal errors or tussles, he is very careful about that. He will not take from reporters, and turns down anything

> ambiguous. That was our guiding point as far as conflict with the law is concerned. So, he has been our defence.

It is evident from the response above that the paper makes vigilant editorial decision on reports before publication. It showed that the paper prepares its reporters to understand the existing laws, and in some instances may not publish reports that could attract criminal sanctions. The response also suggests that, to an extent, the paper was also practising self-censorship by exercising due diligence with respect to the laws. This is captured in the words of Participant 10 a former reporter of the paper, "during our time in *Foroyaa*, we used to have in house training with our editor in chief. He teaches us basic laws that deal with the profession. We try very hard to adhere to those laws and the ethics of journalism". Again, this implies that the paper took precautionary measures by training its reporters to understand the laws governing their practice. The Media Sustainability Index (2012, p.166) has observed that "*Foroyaa* have developed and enforce codes of ethics that are in line with generally accepted international standards. *Foroyaa* regularly organizes in-house training for its reporters on issues of ethics, standards, and reporting techniques to build their capacities". The discussions here suggest *Foroyaa`s* compliance with the laws and journalism ethics, whilst carrying out critical reporting in The Gambia. Despite the generally agreed perception of research participants that the existing legal framework is a barrier to critical and independent journalism, my research found that *Foroyaa Newspaper* was publishing critical content. An important question that arises is how *Foroyaa* journalists were operating in a legal environment that is believed to be hostile to critical journalism?

Firstly, my research found that in certain instances, reporters for the paper do not use their real names on the by-line. Participant 10 explained particular instances his editor decided to publish his stories without using his real name. This, he disclosed was after a failed coup plot staged by members of The Gambia National Army in 2006. The alleged coup plotters were

arrested and detained, but the State issued a press statement explaining that all the detainees escaped from custody in a road accident, while being transferred from one detention centre to another. The government press statement was published by the state owned media and other private news media organisations. According to Participant 10, they were assigned by the *Foroyaa Newspaper* to investigate the reported escape of the security detainees. They explained their experience as follows:

> I was the only reporter (Investigative Journalist) who risked my life during that period to travel from Banjul to Janjanbureh stopping at every police station to ask if there was any road accident reported within their jurisdiction [....] and the answers I got were 'NO'. I took the South Bank from Laminkoto to Banjul the same answers I got from the police. That when I returned to Banjul and went to the police headquarters to meet the police PRO when I told him my finding...contradicts the police press release that Daba Marenah and others escaped while being transferred to Jangjangbureh Prison, the answer I got from the police PRO was "the press release was written at the President`s office and given to the police to sign and issue". I wrote the story and was published on *Foroyaa* with a pen name. The name died when I came into exile.

The response above suggests state cover up and manipulation of the news media to publish the untruth, while the alternative media investigates stories by contacting different sources to gather facts and publish the truth. Thus the risk associated with the work of the alternative media explains why the journalist used a 'pen' name. In short, what is evident from the foregoing discussion is how journalists working for a critical newspaper like *Foroyaa* operate in The Gambia. Additionally, one of the notable observations in the process of making the news by *Foroyaa* is the careful navigation of the law, such as the use of nom de plumes and self-censorship. The argument proceeds to the case of the *Independent Newspaper*.

7.3.2 The Case of *Independent Newspaper*

My research found that the *Independent Newspaper* is notable for its vibrancy of publishing critical reports and views in The Gambia, a characteristic associated with the alternative press. Different from *Foroyaa* and other newspapers that are either owned and controlled by government or registered opposition parties, the *Independent Newspaper* is believed to be independent in ownership and practice (Senghore, 2013, p.524). The paper is established by journalists who have no affiliation to government or opposition parties. In the opinion of several respondents, the paper was not simply being critical to the regime, but also a radical and defiant opposition to government. Participants cited this as part of the reasons they joined the paper. For instance, Participant 1 explained that they were sacked from a pro-government newspaper the *Daily Observer* for running a column that was not "complimentary" to the government. According to them, their column called "The Focus was very critical mostly on government policies and actions" published weekly in the *Daily Observer*. They pointed out that they were sacked from the paper when it had a new buyer who was believed to be a government proxy. They explained that "I was considered anti-government or critique of the government". However, this column was revived at *the Independent Newspaper* with the name 'The Independent Critique'. Again, this explains the intolerance of criticisms against the government on pro-government news media, which are published on an alternative like the *Independent Newspaper*.

For Participant 13, the *Independent* was a platform for "ambitious young journalists, who are highly agitated politically." They see the paper as "a platform to be sort of opposition in one way or the other", and "a natural way of opposing the dictatorship." In this sense, I argue that the paper was not objective and neutral as expected of an independent newspaper. This is confirmed by Participant 9, a reporter and an editor of the *Independent Newspaper* who described their practice as fighting a "war" against the government. They elaborated that:

> It was a declaration of war between the newspaper industry and the government. And this war, the leaders of the war was the Independent Newspaper. They stood loud and clear to express defiance. They threaded within the law in the sense that it will be difficult to use the law against them, because if they write and expose a corrupt undertaking with [inaudible] headlines that would make you want to sink. You cannot do anything about that because the only defence against libel or defamation is truth. If it is true with evidence based on facts, you cannot do anything about that. And that is their defiance. It was literally war between the independent private media and dictatorship.

It is evident from the above discourse of Participant 9 that journalists of the *Independent Newspaper* were radical, defiant and confrontational to the government. The response implies an adversarial relationship, which could be analogies as the pen versus the gun. One could assume that it is because of this relationship, the *Independent`s* printing press was attacked on April 13, 2004, by six armed men (Jallow, 2013, p.62). The paper`s managing editor, explained in his book that the six armed men wearing masks attacked the printing press at 2:00am asking employees to lie on the ground, while one of them set the new printing press on fire (ibid.). Again, in March 2006, there was a raid on the paper, and staffs of its senior management were "arbitrarily arrested and detained" (ibid, p.146). Consequently, the paper couldn`t survive the battle against the government and was closed down in 2006. Moreover, the response provided by Participant 9 also suggests that they believe in the protection of the law against the authorities. Although chapter six of the legal analysis showed that truth is a defence for the crime of criminal defamation, it did not work to the advantage of any journalists facing prosecution in The Gambia. Generally, the data suggests that most Gambian journalists have no confidence in the judicial system of the country, which is part of

the reasons why they took several cases to the ECOWAS regional court. This is partly because the state has successfully prosecuted many journalists.

However, the dilemmas of running such critical alternatives in the Gambia is not only limited to risking legal and political reprisals, but also commercial sanctions from government and private businesses. Some of the respondents, particularly Participant 8, 2 and 6 point to the challenges of running such alternative enterprises in The Gambia. In Participant 8's view, no one likes to advertise with a paper that is critical to government. In their own words:

> I remember in my presence, my editor was told by National Water and Electricity Company that if he continues to report stories against Jammeh, they will not give him adverts. So it was a matter of choice you either operate under those difficult circumstances without funds or you will be unable to pay salaries. So in the long run, even if the paper was not closed, they would not be able to continue to operate. Clearly, government institutions were not even mad to give adverts to us. They will be in trouble. These were the driving factors that forces media owners to succumb to Jammeh`s calling. If you are not closed, you go financially bankrupt. In the end some media houses have to dance to his tune.

Participant 2 reiterates a similar view that this contributed to the "erosion of professional journalism". According to them, because of business interests, the business sector "wouldn`t want to be supporting a programme that is critical of the establishment." Participant 14 argues that "the number one factor is that media houses in this country depend on adverts to survive. If you don`t have adverts you cannot survive, production is expensive. Most of the newspapers did not have a printing machine". These discussions confirm assertions by African scholars such as Ogola (2011) and Gicheru (2014) that access to advertising revenue is a challenge to the private alternative press in Africa. Consequently, this contributed to

weakening the commercial viability of the critical alternative media. In the context of the political economy of the Gambian media, Noble (2008, p.3) argues that lack of financial resources of the Gambian media limits the ability to conduct its watchdog functions. It is also noted that in The Gambia "government rewards loyal media with advertising" (Media Sustainability Index, 2012, p.171). This means that the critical private media is denied advertisements.

Nevertheless, as has been noted earlier in chapter two of this thesis, contrary to the experience of the critical press in the Gambia and other parts of Africa, scholars like Gunde (2015: p.73) finds that in Malawi a critical paper like the *Weekend Nation* had a successful business model that attracted advertising revenue by delinking partisan and political biases from professional journalism. As I have already revealed, the tension between government and the critical media is inherent to their lack of access to advertising revenue. As noted in section 7.2, President Jammeh`s wish is for journalists to be unable to sell their papers, so that they will not have revenue to sustain publication. The fact that the head of government thinks this way, I argue that public institutions would be more reluctant to advertise with the critical media. Another striking point revealed by Participant 6 about the challenges of the alternative media in the Gambia is the sensitive and discouraging societal perception of journalists working for the alternative press. They pointed out the climate of fear amongst even its readers. According to them, they had to hide from their parents that they were working as a journalist for the alternative press, and the parents immediately discouraged them when they know. They explained that:

> It was not only the press doing self-censorship, but even the people at home were afraid to read the papers. At one point I wrote a story about the brother of an immigration officer who was arrested. He told me about the story; I investigated it and published it. So he needed a copy of the publication, when I was giving him a

copy of the paper, he tried as much as possible for me to deliver the paper to him discreetly.

Of significance in the response above is whether the critical alternatives were attracting sales revenue. The response suggests a covert readership of the alternatives which could mean poor sales. To conclude, the debate in this section about critical reporting in The Gambia through alternative journalism practices suggest a variety of opinions and perspectives on the subject. Despite the critical role taken by both *Foroyaa* and the *Independent Newspaper*, they were carefully navigating and operating as required by law. The discussion suggests that whereas the government cannot use the law to stop critical journalism, they clampdown on the media through coercive measures such as the burning down of the *Independent Newspaper*. There was clear attempted subjection of the critical media to be loyal to the regime through boycotting of advertising revenue. Also evident from the foregoing section is what seems to be a punitive state policy against critical journalism by refusing to create an enabling environment for media freedom. As a result, most critical journalists fled into exile that contributed to the proliferation of online news websites to serve as alternatives to the traditional media in the country.

7.3.3 Online Journalism

The focus of this section is on the emergence of online alternatives to bypass and defy stringent government control, as media freedom shrinks in The Gambia. Hyden et al (2001: p.7) point out the role of Africans in the diaspora supplying news and views that contributes to shaping the democratisation process of their countries. In this context, Gambians are not exceptional in using the internet to raise issues that could not be talked about inside The Gambia, due in part no doubt to a media environment where journalist are prosecuted and subject to physical attacks on themselves and their offices. Restrictive registration requirements with huge bonds for registering newspapers coupled with stringent licensing

approval requirements for the broadcast media has seen dozens of online radios and websites established by exiled Gambian journalists and dissidents outside the country, to serve as alternatives to the media inside the country, as discussed in chapter four. This, participants believe was a way of challenging the government by publishing uncomfortable truths, which the media in the country dare not to do.

Prominent amongst the online news websites include *Freedom Newspaper, Gainako, Fatu Network, Kairo News* and *Shepherds Broadcasting Network*. One that was mentioned by several participants they found to be the most critical online media against the government is the *Freedom Newspaper*, which is available on Freedomnewspaper.com. The news website that also runs an online radio was established in 2003 by an exiled Gambian journalist based in North Carolina, United States. It provides its readers with regular news updates on The Gambia, but predominantly focuses on government scandals, politicians, public officials, public institutions and state secrets. Typical of a tabloid journalism website, articles published on the website before the change of government in The Gambia in 2017 were mostly written by a single known author who also runs the website in the U.S. The rest of the stories were mainly written by anonymous authors who used the names Insider or The Soldier. This is not surprising as The Gambia Government was very concerned about the *Freedom Newspaper*, which resulted to the hacking of the website in 2006, and names of the paper`s subscribers were published in the pro-government newspaper *The Daily Observer* (Amnesty International, 2008). A report by Amnesty International on this particular incident revealed that "many people on that list were arrested, questioned, detained for several days to several weeks, and some were subjected to torture while in detention" (ibid.). Furthermore, it is noted that the government also "blocked the newspaper's IP address, stating that the website was affecting security issues between Gambia and Senegal" (ibid.).

Most Participants observed that because the website operates outside the country, this made it free from the controlling and restrictive legal environment in The Gambia. Participant 8 considers the paper as amongst the few online news websites "that reports extensively on issues, not all time accurate anyway, but at least with hard news. Because media houses in the country wouldn`t write those things, they are either arrested or closed down". This indicates the significant role of the website in publishing alternative reports the local media operating inside the country would not risk. Interestingly, Participant 9 who at the time was an editor for the pro-government newspaper *The Daily Observer* in The Gambia was also an anonymous reporter for *Freedom* Newspaper. Following attempts to arrest them failed, they were declared "wanted" by the government after the hacking. According to them:

> They hacked the Freedom Newspaper and found all the emails I was writing to him and declared me wanted. It was a matter of escaping the laws, if I wasn`t killed by the NIA or the Junglers. So it was a combination of both. The laws they could have used against me or the torture and suffering I would have endured. After a month I escaped, a friend of mine (Chief Manneh) was arrested and he died. So I escaped and wrote about all the corruptions on the *Freedom Newspaper*. After Kukoi, I was the only […….] who was declared wanted in that country. So they were putting that on TV and Radio, I was traumatised and scared. I thought about suicide.

There are three points to be noted from the response above. First, despite working for the pro-government *Daily Observer*, the paper with the largest circulation in The Gambia, it is evident that Participant 9 would rather send information to an online newspaper operating outside the country than publishing critical reports in the *Daily Observer*. This shows that the pro-government media was controlled, and would not publish reports that are critical to the government. Second, it is noted that the consequences of being caught reporting for *Freedom Newspaper* might not only be imprisonment, but torture and death. Third, the mere fact of

declaring a journalist wanted like the case of Kukoi who led a rebellion to overthrow a government shows that the government does not take the online media lightly. For example, a female journalist Fatou Jaw Manneh who was living in the U.S was immediately arrested on arrival at the Banjul International Airport and was charged with several criminal counts for being critical to the President online (Article 19, 2014, p.16).

Participant 4, founder of one of the online media platforms pointed out that they started being critical to the government of The Gambia when they fled into exile. According to them, the fact that they were living in the United States, meant they were "safe", and "decided to establish the [name of organisation] to write stories on things that are happening that I could not do in The Gambia. Like I said there was dictatorship and even your family members will warn you to be careful". They further explain that the online publication made it possible to "go after" the regime in The Gambia. According to them, the online media publish critical "facts" the Gambian authorities don`t like. My research found that while the establishment of online enterprises has been a strategy to avoid the repressive laws in The Gambia and report the news, the government was also finding ways to stop or block them. This, some participants believe, is the reason why the government brought the Nana Law, which is the Information and Communications (Amendment) Act 2013. As discussed in section 5.5.3, the Act provides severe punishments for spreading false news on the internet. The interviews response in the context of the Nana Law suggest the policy dimension of the government to stopping journalists running critical online publications, and their sources on the ground from giving them information.

7.3.3.1 The Nana Law – A Legislative Response to Online News Websites

All respondents readily attributed the passing of the Information and Communications (Amendment) Act 2013 (ICA) to Nana Grey Johnson, a journalist and former Minister of Information and Communications. Therefore, I find it appropriate to call it the Nana Law.

This is because Mr. Johnson tabled the Bill before the country`s National Assembly on behalf of the government, and defended its merits and principles to be passed into law. Several participants observed their disappointments for a prominent journalist like Nana to "mastermind" a law that seeks to curtail media freedom. The disappointment in Participant 8 is captured in the following words: "You know before going further, those laws were mastermind by a former journalist. He is now a journalism lecturer at the University of The Gambia. He is the former Information Minister". Participant 4 who were charged under the Nana Law described it as "unfair and too harsh". Again, they too argue that the law was brought in by the former Information Minister "to clampdown on the online independent media". Based on the respondents emphasis of the Minister`s name whom they accused of bringing in the law, it is a clear expression of disappointment that a fellow journalist would orchestrate a law that stifles media freedom. This suggests that expectations were high that because he is from a journalism background, he would be a champion of media freedom, rather than further curtail it. I argue that the Minister`s actions must be viewed within a wider context of a government that shows intolerance to critical journalism. This, evidence suggests, is a government that tried to control the media through the enforcement of laws and regulations, and carrying out physical attacks on journalists as I have shown in my research.

The amendment of the Nana Law is believed to be as a result of the adversarial relationship between the government and exiled journalists, which aims to repress growing dissent on the internet (Article 19 et'al, 2014, p.15). This assertion is confirmed by several participants who suggest that the Nana Law targets to curtail the publication of critical stories against authorities on clandestine online news websites. The ICA provides for the punishment of online speech including spreading of false news about the government or public officials. The offence is punishable by a 15-year prison term, and a fine of up to 3 million Gambian dalasi (Human Rights Watch, 2015, p.63). Despite a change of government, Participant 2 who is

also a journalist and also served as the Information Minister argued there should be both "criminal and civil" punishment against the online media. According to them, "because in this era of social media there is a lot of false information and that has nothing to do with professional journalism. We have seen some radio stations and newspapers go to social media pick up stories publish or broadcast them and make those stories even subject of phone calls." From this perspective, this argument shows the concern authorities have on the online media, which they believe lacks professional orientation.

7.4 Conclusions

In this chapter, I established that the political and economic conditions of journalism in The Gambia induce a culture of fear, censorship and self-censorship. However, the interviews also indicated that Gambian journalists were resilient and versatile in carrying out their professional journalistic responsibilities. The chapter has given context to the research with respect to how journalists operate in a repressive and restrictive, legal and regulatory framework of the media in The Gambia. It presented the legal challenges and regulatory constraints journalists face in The Gambia and how this influences their practice. This was accomplished by examining two broad themes: journalists' perception of the media laws and government media regulation in The Gambia. These themes were explored in interviews with journalists, which carefully generated key words and phrases that are grouped into five secondary themes for rich and diverse analysis of their perspectives. While interviews with journalists indicated their perception of particularly criminal media laws of The Gambia severe and repressive, I have been able to establish that they are general regarded as instruments of dictatorship under former President Jammeh`s rule. I observed that most of the journalists failed to recognise the colonial origin of these laws and how the first post-colonial of government of President Jawara used them in a very rare situation to charge the editor of the *Torch Newspaper* with criminal libel.

While this chapter seems to suggest that Gambian journalists were operating in fear and self-censorship, one of the major findings in this chapter is adoptive practices of alternative journalism that navigated restrictive and repressive laws to keep the public informed on critical matters. The chapter reveals that Gambian journalists are not able to fulfil a key normative journalistic function of balancing reports due to government denial of access to information. Another significant point is that Gambian journalists would rather self-censor than rely on the law that provides for their defence in court. With respect to the regulatory environment, evidence suggests that it is restrictive system of direct government regulation that threaten journalists with punitive measures such as jail terms for committing any media offence, and forfeiture of assets to the state. This can also discourage media diversity and pluralism with the possibility to indirectly control content. Also, the analysis reveals that media regulations give wide discretionary powers to the Minister for issuing and denying licenses, which is undesirable for media freedom. To conclude, this research highlights the complex role of law and regulation to control journalism practice thereby limiting the ability of Gambian journalists to carry out their professional role in society.

CONCLUSION

The dissertation concludes that The Gambia has complex legal and regulatory challenges that suppress press freedom and inconsistent with international human rights standards. My use of a political economy approach, combined with the four theories of press freedom, offers a post-colonial lens on the perspectives of media control, regulation and ownership in a non-Western country like The Gambia. The theoretical frameworks underpinning this study demonstrated how journalism in The Gambia can be better understood through a post-colonial Global South approach. While the *four theories of the press* can serve as a useful lens for comparative research of media systems in different parts of the world (Patterson, 2007), political economy gives a macro and micro perspectives to show the interplay of various forces including regulation and ownership that influence the operation of press systems (McChesney, 2008; McQuail et al, 2004). My study explored these theories on the historical, contemporary and contrasting perspectives to media control and press freedom. It discussed the strengths of the various theories examined and argued that they were considered best suited to achieve the overarching research objectives. These frameworks depict how journalists in The Gambia strive in complex political and economic conditions that constraint their freedom.

Using an innovative interdisciplinary technique of data collection combining legal and media research methods, I identify the main findings of this study on the political economy of journalism in The Gambia. I found that the origin of repressive and restrictive media legislations in The Gambia is tied to the country`s colonial heritage. The study finds that while the pro-government news media enjoys support from both the public and private sector, the private press was contending with political, legal and financial constraints that control its freedom. This is compounded with legal uncertainties as it reveals a pattern of sedition and criminal defamation charges against journalists and members of the opposition in The

Gambia, where the courts did not apply the principle of proportionality test recommended in international jurisprudence to assess and determine criminal liability for media offences. I found that although self-censorship was one of the ways Gambian journalists evaded arrest, they also adopted alternative journalism practices to keep the public informed on critical matters.

I demonstrate how journalism in The Gambia is entangled in a complex legal framework, which constrains its independence and make the claim for legislative reforms that are consistent with international human rights standards. Although there are laws for press freedom, out-dated common laws from The Gambia's colonial past are used as a form of control. This, when combined with the ways in which media ownership is regulated, limits the plurality of voices and prevents the existence of a free press, with pro-government voices being favoured in the state-owned media and some private media organisations. I also found that journalists are finding ways around the law in order to operate and evade possible arrests, such as using aliases or using international locations and online media. The overarching objective of this research has been to develop a critical understanding to how law and regulation affect the practices of journalists working in The Gambia - This is important to show not only how relevant legislations control press freedom, but to also examine the extent to which such legal frameworks comply with international standards.

I began my findings by providing contextual analysis of the legal and regulatory framework of the media. I looked at the structure of journalism in The Gambia and focused on the colonial origin of laws and the system of media ownership. I demonstrated the existence of a plethora of legislations that falls in two categories. First, the Gambian Constitution and international conventions that the country has adopted provide for the protection of free expression and media freedom. Second, The Gambia has archaic provisions such as sedition, criminal defamation and false news in the country`s Criminal Code and other legislations that

potentially stifles the concept of media freedom. When combined, these two sets of laws contradict each other and create legal uncertainty for journalists. I established that many of the laws and regulations that repudiate the concept of media freedom in The Gambia were adopted from its past. Consequently, press laws introduced by successive Gambian rulers were modelled after colonial era laws with the objective to control media ownership and restrict media freedom. In this respect, my research has contributed to the wider debates around the influence of colonial laws and regulations on African journalism (Herskovitz, 2018; Okonkwor, 1983). For example, the analysis shows that legislations such as sedition and criminal defamation were originally promulgated to protect former colonial rulers from criticisms, which is now extended to contemporary African Presidents and governments such as it is in The Gambia. This is in line with the assertion made by Nyamnjoh (2005, p.47-48) that state control of the media in Africa is a colonial legacy.

I also showed that direct state regulation and ownership of the biggest news media organisations remain a critical structural impediment for press freedom in the country. I demonstrated that there are two critical ways in which the state controls the media in The Gambia. First, there is a mandatory bond requirement for registration of the print media and broadcast licensing that is fully under government control and discretion, and second, through public financing. The authority to register or refuse the operation of a media organisation is vested with a government institution directly accountable to a State Minister. This means that the lack of an independent regulatory body remains a dilemma for Gambian journalism. Moreover, all public financed media outlets such as the main national broadcaster Gambia Radio and Television Services (GRTS) which is the biggest in the country remains the mouthpiece of ruling regime`s under strict control of the government. I have shown how the pro-government news organisations are competitively well financed and resourced than the private press. In this respect, I have demonstrated that the independent private media in The

Gambia is not only contending with legal and regulatory constraints, but also a lack of finance and particularly being deprived of advertising revenue. Therefore, The Gambia has political and economic conditions that collectively stifle press freedom and make it extremely difficult for journalists to work without the threat of imprisonment.

As I demonstrated in the subsequent chapter, these issues are compounded with the prevalence of unprofessional practices such as government interference in editorial decisions, propaganda, opened biases and suppression of opposition views. Through a close doctrinal analysis of legal cases and jurisprudence, I gave attention to legal repression and further regulatory control of journalism in The Gambia. In this chapter, I showed how legitimate media criticisms of the President and government can attract a jail term imprisonment and a large monetary fine in The Gambia. To demonstrate this, I focused on the case of Sawaneh et al v The State, which exemplifies the criminal prosecution of journalists with colonial era laws such as sedition and criminal defamation, discussed in chapter six. I set out how Gambian journalists and media organisations challenged these repressive and restrictive legislations in constitutional and international human rights courts. I have shown that several laws and regulations that abridge press freedom as guaranteed by the constitution of The Gambia and international conventions were challenged in constitutional and human rights law courts. I analysed four major case laws which showed the application and enforcement of subsidiary laws by national courts that limit freedom of expression and press freedom, in contrary to the spirit of Gambia`s international obligations uphold by international human rights courts such as the ECOWAS Court of Justice. I found that the imposition of criminal punishments to imprison journalists by the High Court of The Gambia without due consideration of the proportionality test principle required under international law is even more troubling for judicial or extra-judicial forms of coercion against journalists. In short, my research has found that the approach of the Gambian courts in determining media cases is

inconsistent with international human rights standards. It is therefore possible to conclude that The Gambia is not paying sufficient regard to international human rights law and its treaty obligations.

In the last of my findings chapters, I gave attention to the way journalists operate within the legal and policy framework of the media and their perception of direct state regulation. I have shown that criminal prosecution of journalists and banning of media houses in The Gambia led to increasing fear, self-censorship and journalists fleeing the country. These issues contributed to journalists staying away from publishing critical issues due to fear of arrest and jail term punishment. However, the existence of a vibrant private independent alternative press that resisted control by the dictatorial regime of Yahya Jammeh was evident. The research has shown the use of adaptive journalistic practices such as a careful navigation of the laws and nom de plumes in reporting the news. Moreover, the research indicates that a combative alternative online media emerged outside The Gambia in response to the violence perpetrated by the government against the private media inside the country. Evidence shows that The Gambian diasporic online media have immensely contributed to the gathering and distribution of uncensored critical information the media inside the country would not publish for fear of reprisals. This is facilitated through websites and online radio stations created by mainly exiled journalists living in the diaspora.

To this end, my findings offer a holistic view of the legal control of media ownership and journalistic activities evident in The Gambia. I have explored how the law is used to repress critical journalism, restrict media ownership and the way journalists responded to these challenges. The findings echo the debates and fears about the problems of criminalising punishments for media offences and direct state regulation of the media in Africa. My research confirms White`s (2017, p.21) assertion that criminal media legislations discourages the press from informing the “public of the corruption and other forms of unjust governance”.

It provided the evidence supporting the notion that criminalising media offences have hindered the work of journalists as purveyors of information and public watchdogs. Therefore, the political economy of journalism in The Gambia is shaped by the constraints of inherited colonial laws, state and statutory regulation, which are critically to journalism practices, ownership and control.

Original Contribution to Knowledge

While the issue of media control through legislative measures in The Gambia has been considered in the past by scholars such as Noble (2018), Jallow (2013) and Senghore (2012), this thesis provides new empirical evidence on the state of political and economic conditions of journalism in The Gambia. This is done through legal analysis and interviews drawn from the perspective of journalists. The study showed how repressive legislation, some of which were inherited from colonial Britain, is used to stifle press freedom and access to information. It shows how journalists using alternative means such as digital technology operating from the diaspora have created a public sphere in which citizens discussed issues affecting their country. The development of an interdisciplinary approach for understanding the political economy of journalism, particularly under a post-colonial context like The Gambia, is its major contribution to knowledge. This study evidenced that journalism in The Gambia is caught in a complex legal and regulatory environment to operate professionally and adapt to political constraints imposed by post-colonial governments.

The findings provide insight to judicial decisions on media cases to understanding limitations of press freedom in The Gambia and how journalists responded to these challenges. I provide comprehensive understanding to the structure of journalism in The Gambia and present a picture of the relationship between regulation, ownership and control. As explained in Chapter Four, this study also showed that the lack of press freedom in The Gambia has an

impact on academic freedom, as researchers face arrest and restrictions to data collection (Amnesty International, 2014). Former President Jammeh`s authoritarian rule had a very severe response to any form of research such that local and outside scholars could not undertake much field or archival work for fear of harassment (Ceesay, 2019, p.85).

Until a change of government in January 2017, The Gambia remained hostile to researchers and international journalists who reported critically about the country. Almost all the major international human rights research organisations had to rely on remote research methodology and/or secret research missions aimed at uncovering the human rights problems while maintaining the safety and security of sources and interviewees. In short, I bring elements of legal studies to journalism studies in order to understand the political economy of journalism in the Gambia and especially regulation of journalists.

Researching Journalism and the Law

My research has indicated the need to further interrogate the political economy of journalism, with a specific focus on how law and regulation shapes and controls journalism in post-colonial contexts. In order to do this, journalism studies need to further consider legal research methods to understand how the law is interpreted, enforced and functions. In this respect, I am persuaded by the position of Ekecrantz (2007) cited in Wasko et al (2011) who calls for more cross-disciplinary international research involving non-western theories. Law and regulation as methods of control remains a subject of debate by political economy scholars such as Wasko, Murdock and Sousa (2011), McChesney (2000), Frost (2011) and John and Silberstein-Loeb (2015). As I have demonstrated in chapter one, these studies explored the concept of regulation in studying the political economy of journalism, but did not take interest in analysing jurisprudence. This dissertation has attempted to build on these studies by engaging with ideas of media law and how it affects journalism. Scholars like

Quinn (2018), Robertson and Nicol (2007), Dodd and Hanna (2016) have shown how media law is instructional to journalism practice, but did not take interest in exploring how it influences journalism practices and press freedom. In line with communication scholars such as Dukalskis' (2017), (Johnsen (1936) and Frank et al (1962) I recognise that press freedom is accorded by law. However, these studies did not take into account how laws are used to control the press. In this respect, journalism studies need to further consider legal analysis to facilitate deeper understanding of how the law affects journalism and control press freedom.

My background in law and media studies has led to devising an innovative method that allows me to critically analyse the law in order to understand how it functions. This, when combined with interviews, allows for a model on how to analyse the regulation of journalism. It is in response to limitations of media research methods used by other scholars to study journalism and press freedom. I then utilised qualitative interdisciplinary methods including doctrinal legal research and interviews as a suitable strategy for rigorous analysis to adequately interrogate and understand complex issues of how law and regulation controls journalism. The approach allows for a better understanding of the political and economic conditions that affect the practice of journalists. The approach assisted in analysing findings on how the enforcement of statutory provisions influences the professional practices of Gambian journalists.

A major methodological challenge and limitation in adopting this approach was the inaccessibility of court records in The Gambia, which is typical of countries with restrictive legal frameworks. This, when combined with a weak judicial system and the absence of a reliable law-reporting service made carrying out legal research a difficult thing to do in The Gambia. I also recognise Hultin`s (2013, p.46) argument that "the law is an ambiguous and indeterminate thing in The Gambia, as it is elsewhere in Africa". This is with specific regard to the difficulty of obtaining the correct existing laws of The Gambia. In carrying out this

research, I observed that President Jammeh`s APRC government has been persistently amending, repealing and promulgating media legislations and regulations that are scattered into pieces. In the absence of a single set of media legislations, I have come to the conclusion that researching on media laws of The Gambia requires in-depth knowledge of the local legal and political context. Also, due to the ethical sensitivity of some of the journalistic activities I discuss in this dissertation, I had to provide anonymity for the interviewees for their safety. I found that there is a need to further investigate the political economy of journalism in other post-colonial countries that maintains restrictive and repressive legislations.

The Gambia Now

In January 2017, a new coalition government led by President Adama Barrow was elected that promised a new era of hope for freedom of expression and press freedom in The Gambia. At the time of writing this dissertation, President Barrow has been in power for 6 years without significant changes to laws and regulations that systematically restricts press freedom. However, his government passed Access to Information Law 2021 with the continued existence of restrictive and repressive media legislations in The Gambia. There is no clarity as to how long the new NPP government of Adama Barrow would maintain draconian legislations. The adoption of access to information laws in Africa remains a subject of debate. As rightly pointed out by Adu (2018, p.669) in theory, it should "improve access to government data, reduce corruption and expand the frontiers of democracy". However, he found that "the right to information law has contributed little if not nothing to improve the fledgling democracy in Africa (ibid.). From this perspective, I argue that passing a law is not enough unless it is accompanied by a genuine political action to implement it in accordance with the spirit in which it is written. Therefore, more research is required in this field, particularly in The Gambia where other restrictive laws are in place.

Moreover, since data provided evidence that the regulatory framework of the media in The Gambia controls media freedom and ownership, further research on how to make regulatory bodies independent, efficient and consistent with international standards is needed. While this thesis contributes to a body of knowledge on the political economy of journalism, I realised from doing this research one of the issues that prompts further investigation is direct government control of State media. This is with specific regard to legislative and financial control, especially on editorial interference and appointments of directors. The State financed and controlled press Gambia Radio and Television Services (GRTS) should be transformed into a genuinely independent public service broadcaster ensuring both organisational and operational autonomy. My research found that another constraint of the private media in The Gambia is finance; research into new ways they can generate income to operate professionally would be worthy.

Finally, this research has reflected on the post-colonial legal control of the media in The Gambia, especially under former President Jammeh`s APRC rule from 1994 to 2016. As noted earlier, state regulatory control of the media and the criminalisation of media offences remain a structural impediment for media freedom in The Gambia. Therefore, creating an enabling legal framework for freedom of expression and media freedom in The Gambia requires a holistic legal and institutional reform. The move taken by the new administration of President Adama Barrow for the passing of Access to Information Act 2021, demonstrates political commitment for media freedom. However, particular attention needs to be paid on the Criminal Code, Newspaper (Amendment) Act 2004, and Information and Communications (Amendment) Act 2013 to bring these legislations inconformity with the constitutional guarantees and the international human rights standards for the protection of press freedom.

Future Work

While this study is an academic project, as I discussed in the introduction, it is worth reiterating that I undertook this research from the position of a reflexive practicing journalist. As a journalist who had worked in The Gambia, I recognise my positionality in witnessing the weaponisation of laws to supress press freedom. My objective was to show that law and regulation is crucial to the attainment of press freedom. This study takes forward previous studies on journalism and press freedom in The Gambia by offering an understanding of how journalists responded to the political and economic conditions under which they operate. The legal and interviews data sets produced a detailed and comprehensive understanding of media regulation and journalism practice in The Gambia. This study evidenced that journalists in The Gambia are caught in a struggle to operate professionally, which is constrained by law and regulation. The study seeks to contribute to the body of knowledge by shedding light on the legal and political factors that constrains journalism in The Gambia, upon which other researchers could build. It is possible that journalists in countries with holdover colonial legislations, particularly in the Global South are facing similar legal constraints as in The Gambia. Therefore, this thesis calls for further studies in different former colonies to establish this with empirical evidence, using interdisciplinary research approach that allows for a more holistic understanding of journalists and their relationship with legal frameworks, particularly in the Global South.

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APPENDICES

Appendix 1 – Table of Research Design

Data Set	Methodology	Research Objectives
1. Legislations 2. Jurisprudence (Legal Cases) 3. Reports of Judgements	Doctrinal Legal Research	1. Identify and analyse legislations that restricts or promote press freedom in The Gambia. 2. Identify and analyse court decisions on the legal repression of journalism in The Gambia. 3. Identify and analyse legislations that controls media ownership and freedom.
Interviews	Methodology of data collection – semi-structured interviews Methodology of data analysis –	4. To examine the way journalists operate under the legal and policy framework of the media in The Gambia.

	Content/thematic Elements of CDA?	5. To identify journalists perception of Gambian media laws and direct state regulation of the media. 6. To understand the working practices of Gambian journalists under legal repression.

Table of National Legislations and International Instruments

Year	**Legislation or Instrument**
1948	Universal Declaration of Human Rights
1965	Constitution of The Republic of The Gambia
1966	International Covenant on Civil and Political Rights
1970	Constitution of the Republic of The Gambia
1986	African Charter on Human and Peoples' Rights
1990	The Criminal Code of The Gambia
1997	Constitution of the Republic of The Gambia

2001	The Gambia Public Utilities Regulatory Authority Act
2002	National Media Commission Act
2004	Newspaper (Amendment) Act
2013	Information and Communications (Amendment) Act

Table of Legal Cases

Cases	**Texts available**	**Rationale?**
State v Ebrima Sawaneh et al (2009)HC/293/09/CR/062/AO	Media reports of the case quoting the judgement.	This case demonstrates legal repression of journalism in The Gambia.
State v Janneh et al (2012)HC/323/11/CR/101/AO	Judgement	This case provides understanding to the approach of Gambian courts in interpreting and determining the crime of sedition.
Gambia Press Union v National Media Commission (2005)05/2005	The complainants brief	This is a civil suit against the National Media Commission that was established to control journalists and news media

		organisations in The Gambia.
Federation of African Journalists v The Republic of The Gambia (2015)EWC/CCJ/APP/36/15	Judgement	This is the first case espoused at the level of an international regional court that challenged the inconsistency of criminal media laws of The Gambia to international standards.
Gambia Press Union v The Attorney General (2018)1/2014	Judgement	This is the main case that challenged the constitutionality of criminal media laws of The Gambia at the national level.
Castells v. Spain, (*1992), Series A no. 236*	Judgement	This case widens the latitude to criticisms against governments in international jurisprudence.
Lingens v. Austria, (1986) Series A no. 103	Judgement	The reasoning behind this case is useful to understanding less protection for public officials from criticisms in international jurisprudence.
Prosecutor v. Bikindi (ICTR-	Judgement	This case demonstrates

01-72)		understanding to international restrictions to incitement to violence and genocide.
New York Times v. Sullivan, (1964) 376 US 254	Judgement	This case established the truth as a defence for libel in international jurisprudence.

List of Research Participants with Coded Criteria

Participant	**Job Role**	**Interview Duration**
P1	Journalist	34:42
P2	Journalist	1:14.33
P3	Journalist	26:24
P4	Journalist	34:42
P5	Journalist	43:42
P6	Journalist	33:00
P7	Journalist	59:42
P8	Journalist	53:17
P9	Journalist	1:16.42
P10	Journalist	23:55
P11	Journalist	37:40
P12	Journalist	28:50
P13	Journalist	47:16
P14	Journalist	36:20

P15	Journalist	41:00

Appendix 2

GUIDE FOR SEMI STRUCTURED INTERVIEW QUESTIONS

1. Please tell us about your career and motivation as a journalist

2. How would you describe the laws that govern media operations in The Gambia? State and explain how they enhance or quash media freedom?

3. Explain to what extent these laws influence journalism practice in The Gambia?

4. How are you responding to them within your practice?

5. How would you describe international and domestic court judgments in cases concerning Gambian journalists and the media?

6. What would you say are the contemporary issues influencing media control and ownership in The Gambia?

7. After colonial rule, how would you compare journalism under the first, second and the current government?

8. What would you consider to be the ideology of each of these governments towards the media?

9. How would you describe the attitude of these governments towards the independent media?

10. In terms of regulation, what is your view on state media regulation in The Gambia?

Appendix 3

List of Media Organisations in The Gambia

Newspapers

Name	Ownership
1. The Standard Newspaper	Private
2. The Point Newspaper	Private
3. Daily News	Private
4. The Voice Newspaper	Private
5. Foroyaa Newspaper	Private

Television

Name	Ownership
1. GRTS TV	State
2. QTV	Private
3. Star TV	Private
4. Paradise TV	Private
5. Eye Africa	Private
6. MTA TV	Private

Radio Stations

Name	Ownership
1. Brikama Community Radio	Community
2. Farafenni Community Radio	Community
3. Bansang Community Radio	Community
4. Kaira Nyining Community Radio	Community
5. Brikamaba Community Radio	Community
6. Bwiam Community Radio	Community
7. North Bank Community Radio	Community
8. Soma Community Radio	Community
9. Gunjur Radio Janneh Koto	Community
10. City Limits Radio	Private
11. West Coast Radio	Private
12. Kora FM	Private
13. Hilltop Radio	Private
14. Choice FM	Private
15. Taxi FM	Private
16. Capital FM	Private
17. King FM	Private
18. Vibes FM	Private
19. Light FM	Private
20. Niumi FM	Private
21. Senn FM	Private
22. Home Digital FM	Private
23. Taranga FM	Private

24. DHK Radio	Private
25. Fayda One FM	Private
26. Hot FM	Private
27. Al Falaah FM Radio	Private
28. Sky FM	Private
29. AfriRadio	Private
30. Boulundala FM	Private
31. Paradise FM	Private
32. Q Radio	Private
33. GRTS Radio	State
34. Star Radio	Private
35. Dego FM	Private
36. Biz FM	Private
37. Poliso FM	Private

Appendix 4

Interview Cover Letter

INVITATION LETTER

Dear Sir/Madam,

I am a PhD student at Birmingham City University, United Kingdom. My research explores how journalists operate within the legal and policy framework of the media in The Gambia. I am conducting interviews with journalists to help gain further understanding of the legislative restrictions to journalism practice in The Gambia.

My intention is to get an insight into the contemporary challenges of press freedom and the political economy of journalism in The Gambia, Africa and the world at large. Also, my research aims to serve as a reliable contribution to knowledge in media law and journalism.

Would you be willing to have a conversation with me about your experiences as a journalist working in The Gambia? You are assured that the identity of respondents and data provided will be protected with utmost confidentiality. I attach a summary of the project, as well as an interview consent form.

I look forward to hearing from you.

Yours Sincerely

Sulayman Bah

Email: sulayman.bah@mail.bcu.ac.uk Phone: +447426088006

Appendix 5

Example of Consent Form

Consent Form

Faculty of the Arts, Design and Media

Name of study: Media law and Journalism in Post-Colonial Africa: The case of The Gambia.

Name of researcher: Sulayman Bah

Research supervisor/s: Dr Oliver Carter, Dr Dave Harte and Dr Tatiana Tkacukova

Statement	**Please initial if agreed**
I understand the purpose of the research and have had ample opportunities to ask questions about the research.	
I understand that my participation in this research is entirely voluntary and I may withdraw my participation at any point.	
I understand that I may request a break at any point during the interview.	
I understand that the interview will be audio recorded, and the recording will be stored securely at Birmingham City University.	

I understand that the transcripts of the interview/s will be stored securely at Birmingham City University, and will not be shared with anyone other than the researcher and myself.	
I understand that I will be issued with a copy of the transcript, and any amendments I request will be adhered to.	

Please circle your preferred option:

I would like to remain anonymous **YES / NO**

Preferred name to be used:

I hereby authorise (name of researcher) to use the audio recording for their PhD research **YES / NO**

I hereby authorise (name of researcher) to use my words in subsequent research papers, publications and conference papers **YES / NO**

I hereby authorise (researcher) to add the audio recording to the archive at the Library of Birmingham. I understand that the recording will not be made available to the public for fifty years **YES / NO**

Participant signature Date:

Sbah

Researcher signature Date

Appendix 6

DATA COLLECTION AGREEMENT

Start Date: 01/07/2020

End Date: 30/07/2020

The Data Collection Assistant, ……. hereby confirms to enter into an agreement with the Researcher **Sulayman Bah**, to assist with primary data collection in The Gambia.

The purpose of the role is to:

1. Assist in the collection of media legislations, regulations and jurisprudence.
2. Transmit the data collected to the researcher.

I, the undersigned, hereby confirmed that:

1. I have read and understood information about the research as explained by the researcher that it is an academic work conducted by Sulayman Bah, a doctoral student of Birmingham City University.
2. I understand that my role as outlined in this agreement is not that of a co-author or co-researcher, and that I am gathering data for the student for his research analysis.
3. I understand that all knowledge, information and materials gathered through this role will be handled in a confidential manner, and that I will not reveal details about the researchers work.
4. I understand that I can withdraw at any time, but shall be considerate to the researchers work.
5. I understand that I will be remunerated for food, travel expenses, scanning fees, photocopying and internet data.

I agree with the researcher to sign and date this agreement form

…… …….

…….

Name of Data Collection Assistant **Signature** **Date**

…….. **…..……..**

……..

Name of Researcher **Signature** **Date**