Ref: EFSCRJ/PR/015/2025 **PUBLIC STATEMENT** *11th June 2025*

EFSCRJ Raises Issues and concerns about the Criminal Offenses Act 2025

Following its initial tabling before the National Assembly in 2019, we are pleased to learn that the Criminal Offences Act and the Criminal Procedures Act have both been assented to by President Barrow on 28th March 2025. The Criminal Offences Act was a colonial law created in 1933 and amended more than 30 times since then until 2005. Thus, we welcome this development which is part of legal reforms in the country's transitional justice process.

Experts have noted that a criminal code is a comprehensive set of laws that defines crimes, their elements, and the corresponding penalties. It serves as the primary legal document outlining what constitutes criminal behavior, the procedures for prosecution, and the punishments for offenses.

Unfortunately, the British colonialists had used the Criminal Code as it used to be called to restrict, deny, criminalize and punish citizens for the exercise of their rights. Through this erstwhile draconian law, they were able to prevent citizens from demanding representation, accountability and independence. Post-independence governments have also used the Criminal Code to further deny or punish citizens for exercising their right to participate and influence public policy and hold institutions and officials accountable.

Since Independence, the various governments failed to fundamentally transform the Criminal Code so as to remove all obnoxious and draconian provisions such as sedition so as to further empower citizens to become active players in the destiny of the country. Through this law, several citizens were arrested, detained and jailed while abuses by public officials and institutions were left unaddressed. It is in this regard that we commend the Barrow Government for taking the right step in reforming the law to bring it in line with human rights standards.

Notwithstanding, we have several issues and concerns with the new law which we wish to highlight and to demand further amendments. In essence, we have identified a number of provisions which undermine fundamental freedoms, limit accountability and create the possibility for infringements given the immense powers given to the President or Minister.

1. **Section 45 – Inciting to sedition or disobedience to lawful order**

This provision makes it an offense for a person to 'incite' a soldier or police officer to sedition on one hand. On the other hand, it also makes it an offence for a soldier or a police officer to disobey *"any lawful order by a superior officer."*

We find this provision too broad that it potentially undermines free speech on the one hand, and on the other hand it could potentially enable an officer to carry out 'lawful orders' which could constitute human rights violations. We recall the recent clampdown on GALA protesters where police officers sought to crush the protest on the notion that they were carrying out lawful orders when this was the contrary.

+220 7973611 / 9995093 | efscrj@proton.me | Edward Francis Small Centre for Rights and Justice

International human rights law has established that security officers take personal responsibility for their actions, hence the Act should have defined the parameters and standards of a lawful order. Furthermore, individuals could be found liable for comments deemed to incite soldiers or police officers when they are merely expressing their lawful opinions. Such opinions should not be conveniently deemed incitement to security officers much more sedition. A soldier or police officer should take responsibility for his actions, which should not be blamed on another person.

2. **Section 49 – Power to prohibit publications**

This provision, under subsection 1, empowers the minister to prohibit the importation of publications on the basis that they damage public order, health, morals or security. Subsection 2 similarly empowers the president to prohibit the importation of any publication published by any company, firm, institution, or person, either in the Gambia or abroad for the same reasons.

This provision has granted immense power to both the president and the minister with no checks and balances, i.e., there is no judicial review hence both the minister and the president have absolute and unilateral power to prohibit a publication without any constraint. This provision is a direct threat to freedom of opinion and expression as well as academic freedom as expressed in Section 25 of the Constitution.

This provision has all the hallmarks of arbitrariness and abuse of power. It potentially allows the Government to ban any publication which it deems inappropriate. We recall a recent case in the US in 2020 when Pres. Trump attempted to suppress the publication of certain books that he deemed negative about him. Had there been no safeguards such as judicial review first, he would have successfully banned those publications. But because he had no such powers unilaterally, he had to seek a court order, and the Supreme Court ruled against his decision to ban those books. Hence, we hold that the power to prohibit publications in the Gambia should first require a court order so as to prevent abuse of power.

By virtue of our position on Section 49 above, the following provisions, i.e., from sections 50 to 52 are also therefore untenable and should be expunged out of the Act. They serve to interfere with the right to privacy of citizens as guaranteed under Section 23 of the Constitution in terms of non-interference with the correspondence or communications of citizens. They also give undue power to the State without any judicial oversight. Th tendency for abuse of power, hence violation of rights is huge under these provisions.

3. **Sections 50 – Punishments relating to prohibited publications.**

This provision makes it a crime to import, publish, sell, distribute or reproduce in part or whole of a prohibited publication as set out in Section 49.

+220 7973611 / 9995093 | efscrj@proton.me | Edward Francis Small Centre for Rights and Justice

4. **Section 51 – Delivery of prohibited publication to police station or administrative officer**

This provision states that a person to whom a prohibited publication was sent and became aware that the publication was prohibited and fails to deliver the prohibited publication to the police or to an administrative officer commits an offense.

5. **Section 52 Power to examine packages**

The provision empowers the police and postal services to open or examine and impound any package mentioned under Section 50 and even detain any person importing, posting, distributing, or possessing the package.

6. **Section 48 – Interpretation**

This provision defines '*import*,' *publication'* and '*sedition'* in general as mentioned in sections 49 to 52 which result in seditious intention. The section defines '*seditious intention'* as an intention that brings hatred, contempt or disaffection against the person of the president, or unlawful acts to bring about change, or to bring hatred, contempt or disaffection against the administration of justice or to raise discontent or disaffection between Gambians or *"to promote feelings of ill-will and hostility between different classes of the population of The Gambia"*

We find the presence of Section 48 in this Act surprising and utterly concerning given that the Supreme Court had ruled in May 2018 that sedition is only constitutional when it relates to the President and the administration of justice. Thus, the court struck down provisions regarding sedition that extend to the government as unconstitutional. This means criticizing the government as an institution of its officials is not considered seditious. Therefore, we are concerned that sections 49 to 52 which largely deal with criticism of the government remains in this statute.

We wish to therefore advocate for further amendment of the Act to remove sections 48 to 52 altogether. We are of the view that criticism of the president and the administration of justice should be constitutional and not sedition since these institutions and persons holding office in them are not beyond public scrutiny. We consider the whole idea of sedition to be anti-democratic and anti-republican which raises public officials beyond and above citizens who elected and appointed them in the first place.

7. **Section 57 – Wrongfully inducing a designated boycott**

This section gives power to the President to prohibit a boycott. We find this provision to be a threat to fundamental freedoms, democracy and combating corruption. The fact that the President needs no judicial review for his decision further strengthens our concern.

The right to boycott is a fundamental right that citizens use to influence decisions, actions, policies and practices of government, businesses, institutions, and other entities. Boycott is a

+220 7973611 / 9995093 | efscrj@proton.me | Edward Francis Small Centre for Rights and Justice

non-violent peaceful action which forms part of the wider spectrum of freedom of expression intended to protect human rights, protect the environment, address unethical and harmful business practices and combat corruption, among others. Citizens should have the freedom and space to undertake boycott or counter boycott actions. The President should have no powers to prevent or prohibit a boycott in anyway.

8. Section 152 – False Publication and Broadcasting

This provision states that,

"A person who wilfully, negligently or recklessly, or having no reason to believe that it is true, publishes or broadcasts any information or news, in any medium or form, which is false in any material particular commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis and not more than two hundred and fifty thousand dalasis or imprisonment for one year or both."

This provision tantamount to criminalising opinion, infringing freedom of expression and undermining media freedom as well as academic freedom as stipulated in Section 25 of the Constitution. Citizens have a right to express their opinions. This includes other citizens as well as the Government and other entities to equally disagree with that opinion.

This provision further runs counter to Section 207 of the Constitution which guarantees the freedom and independence of the media and also imposes the responsibility on the media to hold the Government accountable on behalf of the people. Furthermore, the Constitution gives the obligation to the public media to carry out divergent and dissenting opinion under Section 208. The Constitution therefore envisages freedom of the press without any infringement on their editorial independence. This provision is therefore an anathema to the Constitution by giving undue power to the State to determine what publication or broadcast is true or false and fit for publication as they case may be.

The State must not be the entity to determine which opinion or news is true or false hence determine what is to be expressed, broadcast or published or not. That responsibility must be left to the marketplace of ideas. It is through broadcasting or publishing information that citizens hold public institutions accountable, combat corruption and demand public services.

Where there is false information about a public institution, that institution reserves the right and duty to issue a rejoinder to refute or clarify. If the false information is about a company or a private citizen, the concerned business or person can either seek legal redress for defamation or issue a rejoinder or ignore.

This provision is usually used by governments to suppress voices and opinions or ideas expressed by journalists, anti-corruption advocates, human rights defenders, political opponents, critics and commentators, academicians and citizens in general thereby limiting efforts at holding the State accountable. EFSCRJ has documented a number of cases in which the president and several minsters have separately threatened to or sued journalists and anti-corruption and human rights activists for defamation on the basis of this law. This provision is not in line with democratic norms and does not augur well for good governance.

+220 7973611 / 9995093 | efscrj@proton.me | Edward Francis Small Centre for Rights and Justice

9. Section 107 – Giving false information, and parental insult to public officers

This provision states that,

1) *A person who gives a public officer an information which he or she knows or believes to be false, intending thereby to cause or knowing it to be likely that he or she will thereby cause such public officer to use the lawful power of such public officer to the injury, prejudice or annoyance of any person commits a misdemeanour.*

2) *A person who directs parental insult to the President, Vice President, a Minister, a member of the National Assembly, a civil servant or any other public officer in the exercise of his or her functions, shall be held liable on summary conviction to a fine of not less than ten thousand dalasis and not more than fifty thousand dalasis or a term of imprisonment of not less than one month and not more than six month or to both fine and imprisonment.*

The Constitution has guaranteed the right of citizens under Section 25(f) to petition the Executive for redress of grievances. Furthermore, Article 125 of the National Assembly Standing Orders grants citizens the right to submit a petition to parliament. Petitions are opinions which when submitted to either the Executive or the Legislature should be subject to review to determine their merits. Where a petition lacks merit, it should be discarded without any punishment to the petitioner.

To punish a petitioner for what is deemed a false petition is to potentially silence citizens and allow abuse and impunity to prevail. During the Jammeh Dictatorship, several citizens landed in court and jail for merely petitioning the Executive as required by the Constitution. Without the ability to petition, it could potentially make citizens resort to taking the law into their own hands to seek redress. Hence Section 107(1) of the Act is in direct violation of the Constitution and the National Assembly Standing Orders, as well as a threat to peace.

Furthermore, while insults and foul language in general should be shunned and discouraged by all as required by our cultures and religions, to criminalize parental insult only against public officials from among the citizenry is discriminatory. Without a clear definition of what constitutes 'parental insult' this provision is as ambiguous as it is arbitrary. Freedom of expression broadly covers expressions that may be offensive but not unlawful in a democracy.

On the other hand, the provision did not cater for a situation where if public officials insult the parents of citizens, they could be held accountable. Recent uncouth remarks by both Minister of Information Dr. Ismaila Ceesay when he sarcastically said, *"no one's father owns this country"* and Ambassador Fatoumatta Jahumpa Ceesay who derogatively described all UDP NAMs and members as "*domi haram*" are a few cases of public officials using foul language against the public.

Thus, the effect of this provision is to shield public officials from what could be genuine criticism, while at the same time unfairly criminalizing citizens for their opinion and criticism of public officials who are left unchecked for their own foul language. We therefore hold that

+220 7973611 / 9995093 | efscrj@proton.me | Edward Francis Small Centre for Rights and Justice

this provision is discriminatory and severely infringes on the right to freedom of expression, freedom of the press and academic freedom, thereby undermining accountability and good governance.

Thus, our position is that Section 107 should be expunged from the Criminal Offences Act as it undermines citizen participation in the building and strengthening of democracy and good governance in the Gambia.

Conclusion

The sovereignty of the Gambia resides in the people of the Gambia from whom the State and all its organs and agents derive their authority and, in whose name, and behalf public institutions and officials perform their functions for the welfare of the citizens. This is the language of Section 1(2) of the Constitution. In this regard, the laws of the Gambia must ensure that rights and duties of citizens are protected in order to engender active citizen participation necessary to ensure good governance and sustainable development.

The Criminal Offences Act is one of the most important laws of the country. Criminal law is essential for a functioning legal system, ensuring justice, order, and protection for society. Without it, laws would be vague, inconsistent, and open to abuse. For that reason, a criminal law must be founded on the pillars of clarity and consistency, constitutionalism, protection of rights, deterrence and checks and balances to ensure justice and maintaining social order in a fair and transparent manner.

The provisions that we have highlighted above with concern undermine the principles and standards upon which a criminal law should be situated upon because they undermine justice, human rights and good governance. We submit these provisions need to be removed from the Criminal Offences Act 2025.

2025 – The Year of Transparency and Accountability

+220 7973611 / 9995093 | efscrj@proton.me | Edward Francis Small Centre for Rights and Justice