

Mr Thierry Cruvellier

The Editor

Justiceinfo.net

By email: redaction@justiceinfo.net

Date: 16th May 2021

Dear Mr Cruvellier,

Re: Your article titled: ‘When “legal junglers” defend their role under military rule.’

I write to express my profound disappointment at the inaccurate and misleading publications titled: **‘When “legal junglers” defend their role under military rule’** that appeared in your paper on 3rd May 2021 especially those about the learned and distinguished, Mr Fafa Edrissa M’Bai.

The article failed to meet basic journalistic standards. It may help if I spell these out for you.

Breach of Clause 1 (Accuracy) of the Editor’s Code:

The publication has failed to accurately report The Truth, Reconciliation and Reparations Commission (“TRRC”) proceedings of 19th, 20th and 21st April 2021 and has conveyed a false and misleading impression of Mr M’Bai. The article repeated, without qualification, a principal allegation against Mr M’Bai, acknowledged by the Lead Counsel to (“TRRC”) to have been wrong:

‘Here are 24 decrees and every single one of them has an inherent rights violations provision in them. You keep advising them and they kept passing them and you continued without resigning’.

Mr M’Bai’s detailed evidence to the (“TRRC”) pointed out that in fact 18 and not 24 decrees were enacted during his short tenure as Attorney General and Minister of Justice. Of these 10 had some bearing on civil and political rights. The Lead Counsel accepted he had been mistaken but your article makes no mention of this significant error and leaves the incorrect impression that 24 decrees authorised ‘inherent rights violations’ and were all enacted during Mr M’Bai’s 6 months in office.

Mr M'Bai voluntarily appeared before the ("TRRC") to explain his view of how an autocratic and endemically corrupt government came to be overthrown by well-meaning, proclaimed saviours who turned out to become the very thing they had despised and risked their lives to change: Betrayers of the people!

Mr M'Bai did not seek out the unenviable task of being Attorney-General in the aftermath of a military coup but was called upon by others as a distinguished jurist to assist the Nation at a time of crisis. Mr M'Bai's testimony to the ("TRRC") was that he advised the military regime that they had obligations to respect the rights of all people, to respect international human rights laws and to act in accordance with the rule of law.

As a government lawyer, Mr M'Bai provided his best advice that was often not followed by an ill-disciplined Junta. Mr M'Bai recognised that healing requires contrition, and he was bold enough to express regret at that episode of his nation's history. Mr M'Bai came to be deeply troubled at the mistreatment of his fellow Gambians by the Junta and he certainly did not create any laws or decrees that could justify torture or brutality of any kind. In fact, there was on this aspect, little challenge to the explanations he gave.

Your article has ignored important 'facts' and has without any explanation disregarded significant aspects of Mr M'Bai's evidence to the ("TRRC").

Your reporter conveys the false and misleading impression that Mr M'Bai 'participated' with the Junta to facilitate human rights violations. Equally false and misleading is his use of a small segment of Mr M'Bai's BBC interview saying: *'that Mr M'Bai claimed he had a fringe role in the scheme of things-it turns out different in a BBC interview.'* The impression created was that Mr M'Bai was defending all the actions of the Junta and by implication the manner of execution of the decrees. Mr M'Bai had expressly stated in the BBC interview that he was concerned at the early stages into his role that he was often not consulted by members of the AFPRC before certain things were done. Though he had emphasised that his advice must be taken, Mr M'Bai's answers to the BBC explaining the reasons for the military coup and his desire for restoration of the rule of law were turned on their head by the reporter and used to assert falsely that he had a role beyond an advisory one to the Council and Cabinet in the violations of human rights, he was unwilling to admit. Mr M'Bai's responses to questions put to him by the BBC should have been reported for what they were: his explanation of the state of affairs in the Gambia at the time and his desire to guide the transition to restore the rule of law in the country.

One wonders what purpose such inaccurate reporting can possibly serve and whether this is not an attempt to deliberately mislead and misrepresent evidence presented at the ("TRRC") to the Gambian people.

“The legal minds who help entrenched the 1994 -2017 military regime of Yahya Jammeh”

This assertion is sloppy and inaccurate. The military regime lasted from 22 July 1994 until 6 November 1996. Not 2017!

On 29 September 1996, presidential elections were held under a new constitution. Mr Jammeh won with 88% of the votes. From that date until December 2016 the Government in the Gambia was a legitimate civilian government elected in 2001, 2006, 2011. The government was recognised by the international community.

“Qualification of the members of AFPRC – the highest qualified held an ‘A’ Level”

This appears to be an attempt to portray all members of the Junta as a group of lowly educated soldiers and is obviously inaccurate. Any competent reporter would know that there could be no truth in seeking to present such a misleading impression.

The top brass of the AFPRC were highly schooled and literate with significant knowledge and experience of intelligence operations and State security matters. Lt Yahya Jammeh headed the security Unit designated for Pope John Paul when he visited the Gambia in 1992. Lt Jammeh attended Military Police Officers Basic Course at Fort McClellan in the USA from September 1993 to January 1994. Lt Edward Singhateh attended Military training courses in the USA and United Kingdom. Lt Sana Sabally attended military training in leading academies around the world. Lt Sadibou Hydera graduated from the Gambia College and upon joining the Army he attended several military colleges and academies in United States, Turkey, France, Cuba and the United Kingdom. He had served in various United Nations and ECOWAS peace keeping missions. These were bright people who would have been more than a match for any graduate student. (Doesn't mean they had A'Levels!)

Breach of Clause 2 (Honesty) of the Editor's code

The sensational and provocative nature of the article is striking. A responsible, honest reporter with a sense of fairness ought to have listened carefully to the events, taken steps to interview the people involved, sought clarification and comment and tried his best to provide a fair, accurate and balanced story.

Your reporter has ignored facts, ignored acknowledged mistakes, misreported a BBC interview and has failed to speak to Mr M'Bai to clarify any doubts he may have had.

An honest reporter would have noted Mr M'Bai has an exemplary reputation as a staunch advocate against corruption and violations of human rights having previously held the position of Attorney General and Minister of Justice from 1982-1984 in the former Government of Sir Dawda Jawara.

The facts are that Mr M'Bai had declined AFPRC's invitation on three occasions to become the Attorney General and Minister of Justice. It was with considerable reservation that he accepted the offer only after some high standing members of Gambian society pleaded with him to intervene for the sake of the nation to guide the soldiers to restore peaceful order and a democratic government. A notable feature of his testimony was the memorandum of understanding he had signed with the Chairman of the AFPRC, Yahya Jammeh, which stipulated one of his four conditions for accepting their offer of the position of Attorney General and Minister of Justice was that the regime must respect human rights and that the portfolio for human rights must be brought under his ministry.

Mr M'Bai explained how soon after accepting the position, the enormous dilemma of his role dawned upon him when it became a fire fighting exercise to temper the desire of the soldiers for immediate redress by way of accountability against guiding them in a transition towards the restoration of a democratic government.

Mr M'Bai was of course tasked with organising the committee setup to run the transition agenda. The soldiers and the people wanted and demanded accountability of state resources. One of the reasons given by the AFPRC for overthrowing the regime was the scourge of rampant corruption and how it had stifled economic development in the country. The human rights of the wider society were being violated through state capture by a small group of people. As a result, the citizens were denied good health care, good education, clean water, adequate housing, clean environment, and good infrastructure in a small country with a population of about 2 million people. The Nation deserved much better!

The decrees enacted during his tenure were largely aimed at recovery of embezzled state property and resources. The decrees were intended to be short-term corrective measures until the completion of the transition agenda, but they did not contain powers of arrest, eviction or torture of any kind.

Had the reporter taken due care and the time to prepare questions, request interviews of those concerned and spoken with Mr M'Bai all this could have been explained to him.

Promoting hate towards another

The article is likely to promote hate towards Mr M'Bai and Ms Bensouda.

Mr M'Bai and Ms Bensouda's photographs featured prominently in the article. This article has inflamed tensions. There are people who continue to harbour vengeance against Jammeh's 'junglers' most of whom are currently languishing in prison or have fled the jurisdiction. The reporter intemperately places by innuendo both of these high standing and respectable members of society in the same category of personal responsibility as the notorious 'junglers' under Yahya Jammeh who were known for their sadistic murder and torture of political opponents and civilians. This is wholly inappropriate.

The Gambia is trying to emerge from an extremely difficulty chapter in its history. The purpose of the Truth, Reconciliation and Reparations Commission is to open an avenue to reconciliation. Articles of this nature do not advance the course of professional journalism rather they are capable of undermining the good work of the ("TRRC") and destabilise the security of a vulnerable nation.

It is expected that you will correct the misleading impression your article has conveyed about Mr M'Bai.

Yours sincerely,

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