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# GAMBIA PRESS UNION

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## The Gambia

### **GAMBIA PRESS UNION and The Coalition for Human Rights in The Gambia submission to the UN Universal Periodic Review**

Seventh Session of the UPR Working Group, 1 September 2009

#### **B. Normative and institutional framework of the State**

The Constitution of The Gambia 1997, Sections 207 and 208 provide for and guarantee the full and inclusive participation of the independent media, independence of the media and bestows freedom and responsibility on the media to “at all times... uphold the principles, provisions and objectives of This Constitution, and the responsibility and accountability of the Government to the people of The Gambia”.

Further to this, Section 25, sub-sections 1 to 4, explicitly spell out and guarantee rights to

- Freedom of speech
- Freedom of conscience
- Freedom of assembly
- Freedom of association
- Freedom of movement

The Gambia is also signatory to international instruments such as the Universal Declaration of Human Rights, the African Charter on Human and People’s Rights and the Revised ECOWAS Treaty.

Despite the guarantees and provisions for the rights already highlighted in The Gambian Constitution, and the international protocols to which the State is a signatory, state authorities in general and the judiciary in particular, which is empowered to interpret the Constitution and apply it where necessary, refuse to acknowledge and to promote the freedoms guaranteed herein to protect the rights and freedoms of media practitioners in The Gambia.

Media laws such as the Newspaper Registration Act 2004, the Criminal Code Amendment Act 2005, the Official Secrets Amendment Act and the Communications Bill 2009, which all contradict constitutional provisions and international human rights instruments, make it practically impossible for journalists and social commentators to practice their trade without falling foul of the law.

#### **C. Promotion and protection of human rights on the ground**

##### **Introduction**

Media and freedom of expression violations continue to escalate in The Gambia. In the mid 1990s, media practitioners and journalists found to be non-Gambian were deported out of the country. Media houses had armed military surrounding the place and vetting visitors.

However, since the early 2000s, state tactics have been varied and include the use of a wide variety of state actors, including the security, the judiciary and the executive, to entrench violations against the media and impunity for such violations. The non-investigations into the deaths of two media practitioners in 2000 and *Gambia Press Union*

2004, the torture in custody, continued detention, unfair and bogus trials, arbitrary arrests and incommunicado detention of journalists have seen an upward trend since 2004. These are made worse by direct and public executive orders to make sure that “rat pieces” under the “payroll of the West” are “dealt with to the letter”, and security officials and judges wanting to maintain their jobs are encouraged to carry out orders with little consideration for independence of the judiciary or the role of the security in maintaining the peace.

The head of state’s direct and personal attacks on the independent media, interference in judicial processes and tight control of the security is the major contributory factor to the recent and growing violations committed with impunity against media professionals in The Gambia.

### **Repression of the Press**

Media and freedom of expression violations have seen an upward trend with 2006 and 2009 being the worst years’ on record. The most worrisome factor in this climate of press repression is the use of laws and the judiciary to legalise tyranny and perpetuate impunity.

The Criminal Code Amendment Act 2005 and Official Secrets Act, the most cited documents in all media related court cases, both criminalise press related offences. The Criminal Code extends, broadens and to a large extent has no specific definition of “sedition”, “criminal libel” and “defamation”, and punishes offenders with fines ranging from Dalasis 50,000 (US\$2000)<sup>1</sup> to Dalasis 250,000 (US\$10,000). It also gives judges the discretion to impose mandatory prison sentences of a minimum of six months for first time offenders.

On August 6 2009, six journalists, including three senior members of the Gambia Press Union Executive, were charged with six counts of defamation and prison terms and fines of US\$20,000 each. Failure to pay the fines will result in another four year stint in prison. The conviction and sentencing follow a June 12 reaction from the President of The Gambia Press Union (currently a *refugee sur place*), to earlier televised statements by the Gambian head of state, President Yahya Jammeh, on the murder of veteran Gambian Journalist Deyda Hydera on December 16, 2004. In a press release published by The Point and Foroyaa Newspapers, the Union referred to the statements as “insensitive” and called for diligent, forensic and factual investigations into the case. This was deemed seditious and defamatory towards the head of state.

On June 15, Emil Touray, GPU secretary general, Sarata-Jabbi Dibba<sup>2</sup>, vice president and Pa Modou Faal, its treasurer were called for questioning. Later that day, Pap Saine, Publisher of The Point, the paper’s editor, Ebou Sawaneh were also called for questioning. Sam Sarr, editor of Foroyaa Newspaper, was also picked up from his residence/office. Abubakr Saidu Khan, a reporter present at the time, was arrested for taking pictures of his editor’s arrest.

Despite immediate and persistent calls, both local and international, for their release, the group were detained incommunicado until June 19<sup>th</sup> when they appeared before the Kanifing Magistrate’s Court, charged with sedition and sent to the State Central Prisons, Mile Two. Sarata Jabbi-Dibba was granted bail to the tune of Dalasis 200,000 (US\$8,000), two Gambian sureties and two landed properties. All this time, and even whilst appearing in Court, the group refused to take their plea because they were denied access to counsel. On

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<sup>1</sup> At the time of writing this document, the exchange rate Dal.-US\$ was 25-1.

<sup>2</sup> Sarata Jabbi-Dibba, a nursing mother of a seven month old baby, Muhammed Dibba at the time of arrest had to spend days in prison with her baby. The child was later taken from her by State Authorities without her or her husband’s consent and handed over to the SOS Children’s home. Her Lawyers eventually engaged the Authorities and the child is now being cared for by his paternal grandmother.

Monday June 22, they re-appeared in Court and were all granted bail with the same conditions. Due to reappear in Court on July 7<sup>th</sup>, in what can be best described as a trial within a trial, they were brought before Justice Joseph Wowo of the High Court, had new charges of defamation added, their existing bail conditions squashed and sent back to prison.

After a three day stint, they had their bail conditions doubled and were all released on bail. The trial proceeded in camera and with the open bias of the Judge. The group and their lawyers requested the judge to stand down and the Chief Justice to appoint a new judge. In a speedy two week trial, the new judge, Emmanuel Fagbenle, acquitted and discharged Saidy-Khan over “wrong” charges, but warned him to desist from taking pictures of security operations in future.

The trail and subsequent jailing of the six journalists has seen an international outcry and condemnation, including letters to the head of state from the African Commission on Human and People’s Rights Special Rapporteur on Freedom of Expression, international media and human rights groups, the European Union presidency and the United States State Department.

In June 2009, Abdul Hamid Adiamoh, publisher, Today Newspaper, and Edward Carayol, an assistant editor at the paper, were detained by Police for publishing an article on cabinet changes. Carayol was later released and Adiamoh charged with false publication, despite the fact that two errors, he admitted, were retracted in the following edition, and letters of apology were sent to the head of state and the two ministers mentioned who were retained. Such counter measures did not spare him from a three day police detention and a fine of Dalasis 50,000. His paper went out of circulation for two months.

Adiamoh was also put on trial in August 2008, charged with sedition for publishing an article on school children skipping classes to pick and sell scrap metal. The case is still ongoing. Prior to this he was detained at various police stations for spells of two to three days. During this period, his house was ransacked and his wife, a clinical biologist, called a drug peddler. Though an ECOWAS citizen, Adiamoh was asked to produce all his yearly “aliens identity cards”.<sup>3</sup> He produced eight out of the ten he was supposed to have in his possession and was threatened with deportation to Nigeria should he not be able produce the other two.

Whilst on trial for sedition at the Kanifing Magistrate’s Court, Adiamoh also appeared before the Banjul Magistrates Court charged with tax evasion for the period 2006-2007. This is despite the fact that the Today newspaper only started publication in 2007. He was fined Dalasis 10,000.

In February this year, Pap Saine, publisher of The Point Newspaper, was detained by Police for publishing an article on new appointments at the Gambian Embassy in the United States of America. Although the article was factual and the appointments later announced on State television, Saine was charged with “false publication”. He was later acquitted and discharged.

At the same time, Saine was also on a parallel trial, charged with obtaining citizenship by “false pretence”. He was again acquitted and discharged on June 15<sup>th</sup>, the same day. Just as he stepped out of Court, he was called for questioning and detained by the NIA for a three day incommunicado spell.

In August 2008, Fatou Jaw Manneh, a Gambian journalist, resident in the United States of America was found guilty on four counts of sedition and fined a total of Dalasis D250,000 failure to pay which she was to serve a two year prison term. The opinion piece, was an analysis of statements made by President Jammeh.

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<sup>3</sup> Foreign nationals in The Gambia, including ECOWAS citizens, have to register yearly with the Immigration Department and pay a fee of for their yearly aliens identity cards.

Ms Manneh was arrested on March 28, 2007, at the Banjul International Airport, when she flew in to attend the funeral of her late father. She was detained incommunicado for six days and questioned over articles she had authored on-line. Her case saw no end of twists and turns, changing of Courts from Kanifing Magistrates Court to Banjul Magistrates Court, then Brikama and back to Kanifing; failure of Magistrates to show up and missing files. At the time, Ms Manneh, a student with two daughters in the US, had left her children in the care of friends.

In June 2008, Yahya Dampha, a reporter at the Foroyaa newspaper, was granted asylum in Sweden. Prior to this, he was in hiding in Senegal, but had been threatened there by Gambian security agents. His continued harassment by state security agents, follow an arrest alongside Amnesty International officials on 6 October 2007. He was released 6 days later on October 12, but was forced to flee following repeated NIA visits to his home. Even in Dakar, he was visited by Intelligence Agents.

On June 29<sup>th</sup> 2007, Momodou Lamin Jaiteh, correspondent for Pan African News Agency (PANA), fled the country and now lives in self-imposed exile in Dakar. Earlier that day, Jaiteh was questioned by then Managing Director of the Daily Observer and close associate of President Yahya Jammeh, Dr Saja Taal (who was also the MD for Chief Ebrima Manneh at the time of his arrest), over his links with the Media Foundation for West Africa and had several calls from an anonymous number requesting urgent meetings with him to handover a parcel for the MFWA correspondent in Banjul. Later that evening, plain clothes intelligence agents visited his home and asked that he report to the Agency. He fled for fear that he would endure the same fate as Chief Ebrima Manneh.

Since March 11, 2007 Sheriff Bojang Jnr, a student journalist whose exile application in the United Kingdom was turned down, was detained upon arrival at the Banjul International Airport by Intelligence Agents and confronted with online articles he authored whilst away. He was also questioned about his relations with Bharat Joshi, a former Deputy British High Commissioner who was declared persona non grata, and his and his family's political affiliations. Following hours of interrogation by five plainclothes agents and two military personnel, his bags were emptied, passport, press cards, and certificates seized and asked to report to the Serious Crime Unit, Police Headquarters. On the advice of family and friends, he left by road to Dakar. He is currently engaged as a temp in an online radio station in Dakar.

In December 2006, Baron Eloagu and Abdougafar Olademinji of the Daily Express Newspaper were attacked and beaten on two separate occasions; Njameh Bah a reporter of The Point was also attacked and severely beaten.

In September 2006, Dodou Sanneh, a GRTS reporter covering the UDP campaign trail for the presidential elections in September 2006, was recalled from his assignment, arrested, later released and sacked on September 27. His crime was to have commented on the success of the UDP meeting and highlighted the numbers of people who turned out at the party rally. He no longer works as a journalist.

On July 6 2006, Chief Ebrima Manneh, news editor of the Daily Observer was arrested by plain clothes security officers at his place of work. Newspaper reports claim to have spotted him in various Police stations countrywide and in the Royal Victoria Teaching Hospital looking frail; however, the State and Security Officials claim they do not know his whereabouts despite several efforts by the GPU, family members and concerned international and regional organizations. With the support of the MFWA the family took his case to the ECOWAS Community Court of Justice. In June 2008, the Courts ruled in his favour and ordered his immediate release and compensation of US\$100,000. The Gambian Authorities never acknowledged the court proceedings or facilitated the appearance of security officials summoned by the court, and remained mute over the Court decision until March 2006, when the Attorney General and Secretary of

State for Justice told Parliamentarians that the state did not recognise and cannot comply with the Court decision “as the Manneh family and their cohorts did not exhaust local remedies.” The journalist who served as witness to the trial is also in exile and now lives in the United States.

In May 2006 seven journalists, namely Madi Ceesay, former GPU President, Musa Saidy Khan, former GPU vice president, Lamin Cham, then editor at the pro-government Daily Observer, local BBC Stringer and a presenter at the State TV, Sam Obi RFI correspondent and publisher of The Daily Express, Musa Sherrif of The Gambia News and Report, GRTS’ Pa Modou Faal and Malick Mboob, then communications officer at the Royal Victoria Teaching Hospital (RVTH), were arrested and detained for periods ranging from two weeks to five months following a purported coup attempt and the Freedom Newspaper saga.<sup>4</sup> All the journalists who were arrested are said to have been beaten, tortured and some even claim they were ‘faux’ drowned during interrogation by Intelligence Agents. Some of the journalists, including Lamin Cham, an editor at the pro-government Daily Observer, local BBC Stringer and a presenter at the State TV were later relieved of their positions. He currently lives in exile. Sam Obi, RFI correspondent and publisher of The Daily Express also lives in the UK. Musa Saidy Khan now lives in the United States. Malick Mboob spent five months in incommunicado detention at the National Intelligence Agency; despite repeated calls that he was seen within the NIA premises, the state denied any knowledge of his whereabouts. He was later released on October 9, 2006. Musa Saidy Khan has lodged a complaint of torture at the ECOWAS Community Court of Justice. The trial though ongoing had the Attorney General and Minister of Justice tell the Community Court this year that in this instance, the Gambian Authorities does not recognise the Court’s Authorities as local remedies were not exhausted. It is interesting to note that none of the journalists arrested/detained during this period were charged or appeared before a court of law.

Juldeh Sowe, a receptionist/freelance reporter at The Independent Newspaper was arrested on April 25. He was later released without charge.

On April 10<sup>th</sup> 2006, Lamin Fatty, a reporter for the Independent Newspaper was arrested by the NIA from home and detained at the NIA headquarters in Banjul for 63 days. He was charged with false publication on June 12, 2006 and later fine D50,000, failure to pay which he was to serve a year in prison. The Union paid the fine. Although appealing the Courts decision, Lamin Fatty says he fears for his life, due to his decision to challenge the Courts. He now lives in exile in Dakar. Since March 2006, The Independent Newspaper premises closed and were sealed off by Police. No explanation was given. The move effectively rendered staff of the paper redundant; personal belongings and equipment all remain within the property.

#### **D. Recommendations for action by the State under review**

##### **The Gambia Press Union calls on the Gambia Government to:**

- Respect, promote and defend the rights of journalists, notably by bringing an immediate end to the unnecessary and continued embarrassment and harassment of journalists;
- Create the enabling legal environment for the development and full participation of the independent media by repealing the current media related laws and to decriminalize media offences;
- Refrain from using Executive powers to give Judicial directives where media cases are in Court;

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<sup>4</sup> Freedom Newspaper is an online journal based in the US, the paper claims it was hacked into. Many of the arrested journalists at the time also claim also claim they were questioned on their links with the paper.

- Incorporate the provisions of international media and freedom of expression standards into domestic law and pass new and progressive media related laws such as Freedom of Information and Access to Information Acts;
- Promote and strengthen independent media participation;
- Respect all ECOWAS protocols, including adherence to the recent ruling by the ECOWAS Community Court with regard to the disappearance of Gambian journalist, Chief Ebrima Manneh.

**Appendix:**

[www.gambiapressunion.org](http://www.gambiapressunion.org)

[www.mediahelpingmedia.org](http://www.mediahelpingmedia.org)

[www.ifj.org](http://www.ifj.org)

[www.amnesty.org](http://www.amnesty.org)

[www.cpj.org](http://www.cpj.org)

[www.rsf.org](http://www.rsf.org)

[www.foroyaa.gm](http://www.foroyaa.gm)

[www.thepoint.gm](http://www.thepoint.gm)

Gambia Fear Rules, Amnesty International, Ind. No. AFR 27/003/2008