



**ARTICLE 19 individual submission to the
UN Universal Periodic Review of Gambia**

***For consideration at the 20th session of the UN Working Group
in October - November 2014***

15 March 2014

Executive summary

1. ARTICLE 19 welcomes the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of Gambia. The submission considers Gambia's compliance with its international human rights obligations in respect of the rights to freedom of expression and association. It focuses on:
 - Flaws in the legal framework
 - Attacks against people exercising their right to freedom of expression
2. During its last UPR, Gambia accepted recommendations to improve the climate for freedom of expression in the country. This included a commitment to end impunity in respect of rights violations against journalists, human rights defenders, and opposition politicians. However, 17 other recommendations relating to the right to freedom of expression were rejected by Gambia.
3. Despite committing at its last UPR to address reporting delays to the treaty bodies, Gambia has yet to submit a periodic report to the UN Human Rights Committee regarding its implementation of the International Covenant on Civil and Political Rights (ICCPR), as required by Article 40 of the ICCPR.

a. Flaws in the legal framework

4. Gambia's legal framework does not comply with international standards on the right to freedom of expression, and legislation is frequently abused to violate the freedom of expression rights of all people, in particular media workers and human rights defenders. This includes vague criminal laws that have been extended in their scope, with repressive sanctions for a variety of content-based offences. The enactment of the Internet Law in July 2013 extends the censorship apparatus to online speech.

The Criminal Code

5. The Gambian Criminal Code is fundamentally flawed and incompatible with Gambia's obligations under international and regional human standards on freedom of expression.

6. **Sedition:** Section 51 of the Criminal Code defines seditious intention as an “intention to bring into hatred or contempt or to ‘excite disaffection’ against the President, his government and the judiciary”. Section 52 criminalises the publication and distribution of seditious material as well as the mere uttering of seditious words. This provision has been amended several times (2004; 2005; and 2011) with a view to further muzzle expression by providing for harsher fines and prison terms. Under the Criminal Code Amendment Act the offence of seditious publication is now punishable with a fine between 50,000 (US\$1,293) and 250,000 Dalasis (US\$6,475). Section 51 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 under Article 19(3) of the ICCPR.

7. **Libel:** Section 178 of the Criminal Code provides for the offence of libel, which is punishable by a minimum term of one year imprisonment and/or a fine between 50,000 (US\$1,293) and 250,000 Dalasis (US\$6,475). Under Section 178, publication with intent to defame, or defamatory statements of “any means” are criminalised. Section 180 further provides that a ‘defamatory meaning’ need not be directly or entirely expressed for libel to take place. Section 60 punishes offence to defame ‘foreign princes,’ including ambassadors and other foreign ‘dignitaries’. Criminal defamation laws are not necessary in a democratic society.

8. **False News/false information:** in April 2013, amendments passed by the National Assembly increased sanctions for “giving false information to public servants” (Section 114) from 6 months imprisonment and/or a fine of 500 Dalasis (US\$13) to imprisonment of up to five years or a fine of 50,000 Gambian Dalasis (US\$1,293). Section 114 has been used to intimidate journalists and whistle-blowers: those who report wrongdoings or arbitrary treatment to public officials have been subsequently charged.
 - In July 2011, Nanama Keita, former sports editor of the *Daily Observer* (owned by an affiliate of the President), was arrested and charged under section 114 for complaining about his wrongful dismissal and drawing attention to malpractice at the newspaper.
 - On October 2013, Fatou Camara, a journalist employed by *Gambia Radio and Television Services* (GRTS) and former Director of Press and Public Relations of Gambian State House (the office of the President), was formally accused of spreading false news on the internet and defaming the President of the Republic. She was granted bail against a surety of 5 million Dalasi (US\$153,360) after spending 3 weeks in detention and has since left the country for fear for her life.

9. **Public Order:** Section 167 prohibits disturbing “the peace by quarrelling or attempting to quarrel or by using any insolent, scurrilous or abusive term of reproach.” Under this amendment, perpetrators face a fine of up to 25,000 Dalasis (US\$648), a five year jail sentence, or both.

Media Registration

10. The 2004 amendments to the Newspapers Act (1944) increased registration fees for media from less than US\$3,000 to more than US\$13,000 accompanied by an exorbitant bond as guarantee. The amendments also extended the scope of the Newspapers Act to audiovisual media, further reducing media diversity in Gambia.
11. The Information and Communications Act 2009 places the regulation of the telecommunications and broadcasting sectors under the authority of the Public Utilities Regulation Authority (PURA), a body whose independence is not guaranteed. The ultimate authority in respect of telecommunications and broadcasting licensing is the Minister of Information. The conditions for obtaining a license are opaque and expensive. Private radio stations do not have the right to broadcast independent information on critical issues: they simply pass on the information received from the Government's radio. In April 2013, a PURA order prohibited the provision of dating services and Voice over Internet Protocol (VoIP) services by companies and individuals operating through Internet cafes.

The Internet Law

12. On 5 July 2013, Gambia's National Assembly passed the Information and Communication (Amendment) Act which creates several new offences for online speech that are punishable by a fifteen year jail term and/or a fine of three million Dalasis (approximately US\$77,700).
13. The Act criminalises those who spread "false news" about the government or public officials; caricature or make derogatory statements against public officials; and incite dissatisfaction or instigate violence against the government. The government has justified the amendment as a means to protect the country from chaos and instability. The law is a blatant attempt to restrict the remaining space for Gambians exercise their right to freedom of expression.

b. Attacks against people exercising their freedom of expression rights

14. Cases of violence, intimidation, and harassment against journalists, human rights defenders and others exercising their right to freedom of expression are common and recurring. Such attacks significantly restrict civic space in Gambia and engender a climate of self-censorship.
15. Similar acts of intimidation have been recorded against the judiciary. Such acts undermine judicial independence and the rule of law and foster impunity for attacks on those exercising their freedom of expression rights.

Judicial harassment

16. Gambian authorities continue to use intimidation through arbitrary arrests and detention with the purpose of stifling expression and silencing dissenting voices. High profile individuals have been arrested either without charge or based on dubious charges; detained for longer than the constitution allows without being brought before a court; or released on onerous bail conditions with requirements to report to the security forces on a daily basis, without any evidence or indication that a crime has been committed.

17. The justice system controlled by the Executive does not hesitate to disregard due process in persecuting journalists and individuals who speak out.
18. Court adjournments, lengthy and arbitrary police detentions, harassment and intimidation of lawyers are some the strategies used to put pressure on journalists, political opponents, human rights defenders, and their lawyers. This has forced many journalists into exile.
19. In July 2011 Dr. Amadou Scattered Janneh, former Minister of Information, as well as 7 other people, was prosecuted and sentenced to life imprisonment for distributing t-shirts bearing the slogan "Coalition for Change in The Gambia, End Dictatorship Now". Janneh was released after serving a year in jail due to international pressure. The former President of the Gambian Union Press, N'dey Tapha Sosseh, was sentenced in absentia in connection with the same case. One of their co-accused Michael E Thomas died in prison in 2012.
20. In December 2012, Abdoulie John, *Associated Press* news correspondent and Jollofnews.com publisher was detained twice by the National Intelligence Agency (NIA). The detentions followed a minor argument with a presidency photographer while covering the release hostages in the Casamance conflict (South Senegal). He was subjected to judicial harassment and insecurity which has forced him into exile.
21. In January 2014, Musa Sheriff, editor and owner of the private tri-weekly publication *The Voice*, and reporter Sainey Marenah were arrested by the NIA. The arrest was linked to the December 2013 publication of an article about the defection of 19 members from President Jammeh's Alliance for Patriotic Reorientation and Construction (APRC) to the main opposition, the United Democratic Party (UDP). The APRC denied the defection and subsequent corrections were published on 12 December 2013 by *The Voice*. However, Sheriff and Marenah were arrested, detained, and formally charged before the court. They have been released on bail of 20.000 Dalasis (US\$518) and a Gambian surety. The case is currently pending.
22. Mass Kah, a deliveryman for *Foroyaa*, an opposition paper, was prosecuted for quarrelling with a man when he refused to have a picture of the president pasted on his car and for having said "if you wish, go and paste the photo of president on the sky". He is accused of sedition and his trial, which started in November 2013, is ongoing.
23. On 3 December 2012, prominent lawyer and former President of the Gambia Bar Association, Amie Bensouda, was arrested by the NIA. Amie Bensouda was trying to obtain previous court judgments on land issues from the previous five years for the World Bank project, Land Governance Assessment Framework. She was held incommunicado, without being informed of the reason for her detention, for two days before being released.

Closure of Media houses

24. In August 2012 three private media outlets (*Taranga FM*, *Daily News* and *The Standard*) were forced to close without any judicial order or any clear justification, seemingly by will of the President. Radio Taranga hosted a popular programme which provided a review of newspapers in local languages to dissemination information to members of the public who cannot read. During the night between 14 and 15 August 2012, security agents broke into the radio offices and ordered the station to stop broadcasting without explanation.
25. *The Standard* and the *Daily News* wrote about sensitive political issues, including the execution in August 2012 of 9 prisoners. ARTICLE 19 has received information from a number of sources that the newspapers' coverage of the death penalty debate was the main motivation for their forced closure.
26. On January 1st 2014, the President authorised, with a televised statement, the reopening of two of the media houses, however it has not been possible for these outlets to resume business.

Attacks on Human Rights Defenders

27. NGOs and human rights defenders are under pressure and threatened: consequently, many have decided not to openly address issues related to governance, democracy and human rights. Their freedom of association and assembly is restricted. The few organisations and individuals who attempt to defend human rights are victimised and subjected to judicial harassments and other intimidation.
28. The Gambia Committee on Traditional Practices Affecting the Health of Women and Children (GAMCOTRAP), an association which fights against the still legal practice of female genital mutilation (FGM) has been subject to intimidation and harassment. Dr. Isatou Touray, Executive Director, and Mme Amie Bojang-Sissoho, Programme Coordinator, were arrested in October 2010, charged with theft and subject to imprisonment and judicial harassment. They were subsequently acquitted and released in November 2012.
29. On December 2012, Imam Baba Leigh, a religious leader who works with GAMCOTRAP was detained incommunicado for almost 5 months, for having said that the execution of 9 prisoners in August 2012 was un-Islamic. He was never formally charged at court and on 10 May 2013, appeared on national television stating he had been pardoned by the President, who forgave him for his errors.
30. In September 2012, two journalists Baboucar Ceesay and Abubacar Saidykhan submitted a request to the General Director of the Police for a peaceful demonstration against the August 2012 execution of 9 prisoners. They were arrested when they returned to receive a response to their request. They were detained and prosecuted for instigation to violence and other charges. Baboucar Ceesay's travel documents remain held by the police and Abubacar Saidykhan has left the country for security reasons.

31. In mid-February 2014, 14 opposition youth supporters from the main opposition party, the United Democratic Party (UDP), were charged for holding a meeting without a permit. They continue to undergo judicial harassment and the case is pending before the court.

c. Recommendations

32. In response to these concerns, ARTICLE 19 calls upon UN Member States to put forward specific and strong recommendations to address the dire situation for the right to freedom of expression and assembly in Gambia, namely to:
- Submit written information to the UN Human Rights Committee regarding the steps Gambia has taken to implement the ICCPR
 - Reform domestic legislation, in particular the Criminal Code, the Newspaper Act, and the Internet Law, to protect the right to freedom of expression and media freedoms in line with international standards
 - Repeal criminal defamation provisions, particularly those that protect public officials or offices, the offense of sedition, as well as provisions prohibiting the dissemination of lies
 - Cease attacks, intimidation, arbitrary arrests and detention of people, including journalists and political opponents, exercising their freedom of expression rights;
 - Ensure independent, effective and speedy investigations to violations of the right to freedom of expression committed by officials engaged in law enforcement duties; hold those responsible to account; and provide redress to victims
 - Cooperate with international and regional human rights bodies to improve the situation of freedom of expression and human rights generally in Gambia
 - Create a legislative framework that provides an enabling environment for civil society, including by establishing a presumption in favour of the right to freedom of peaceful assembly.