

**Commonwealth Human Rights Initiative (CHRI) stakeholder submission for the
Universal Periodic Review of the Gambia (2014)
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1. This Universal Periodic Review (UPR) stakeholder submission for the Gambia includes information on the following areas: Cooperation with United Nations (UN) human rights mechanisms, a National Human Rights Institution, freedom of expression, protection of human rights defenders, the death penalty and the criminalisation of same sex sexual conduct.

A. Cooperation with United Nations Human Rights Mechanisms, Core International Human Rights Instruments and their Monitoring Bodies

2. At its first UPR, a number of States made recommendations to the Gambia regarding increasing cooperation with the Special Procedures of the UN Human Rights Council. While the Government did not commit to issuing a standing invitation it did commit to treating with the utmost urgency any request for invitation.
3. Since the last UPR no UN Special Procedure mandate holder has been permitted to undertake a country visit of the Gambia. Currently, visit requests by the Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions; Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Right to Education; and the Sale of Children remain pending.
4. Gambia received multiple recommendations regarding its membership of the core international human rights treaties during its last UPR. In response, the Gambia committed itself to considering these instruments, with a view to ratifying or acceding to them. Despite this commitment Gambia is remains absent from the list of State parties to the Optional Protocol of the Convention against Torture; the Second Optional Protocol to the International Covenant on Civil and Political Rights; the Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Convention on the Rights of Persons with Disabilities. Gambia has signed, but not ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of the Child.
5. The Gambia has a poor record of treaty reporting. At the last UPR the government accepted recommendations on working to improve reporting records and committed itself to accepting technical assistance in this regard. Currently the Gambia has overdue reports for the Human Rights Committee, Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child.

CHRI recommends that the Government of the Gambia:

- a. **immediately extend an open invitation to all special procedures of the UN Human Rights Council and facilitate, without further delay, the visit of all mandate holders whose requests are pending;**
- b. **ratify the core international human rights treaties as a matter of priority; and**
- c. **demonstrate its commitment to the UN human rights mechanisms by complying with its treaty reporting obligations.**

B. National Human Rights Institution

6. The Gambia does not currently have a National Human Rights Institution (NHRI). During its last UPR the Gambia committed itself to looking into the possibility of creating a NHRI and accepting technical assistance from the international and regional community in this regard. The Gambia has complied with that commitment. In May 2012 the Commonwealth organised a national consultative colloquium on the establishment of a NHRI at the request of the government of Gambia. Government departments, law enforcement agencies and human rights defenders participated at the colloquium. The Secretary-General of the Commonwealth further reported that rigorous constructive debate and media coverage were actively

encouraged during the event.¹ CHRI commends the Government for these efforts, but is concerned that Gambia's withdrawal from the Commonwealth, in late 2013, may have stalled the establishment process.

CHRI recommends that the Government of the Gambia establish a fully functional and Paris Principles compliant National Human Rights Institution, prior to its third Universal Periodic Review.

C. Freedom of Expression

7. In the intervening period since the Gambia's first UPR, in which the Government rejected all but one of the 12 recommendations on freedom of expression, the situation regarding media freedom in the country has continued to deteriorate. To the extent that the Economic Community of West African States (ECOWAS) took the decision to refrain from monitoring the presidential elections as a result of a fact-finding mission which revealed: "a picture of intimidation, an unacceptable level of control of the electronic media by the party in power, the lack of neutrality of state and para-statal institutions, and an opposition and electorate cowed by repression and intimidation."²
8. Section 25 of the Gambian Constitution of 1997 guarantees freedom of expression, however, repressive legislation highlighted during the last UPR remains in place and continues to inhibit the practical realisation of this right. Examples of these repressive laws include the Newspaper Registration Act (2004), Newspaper Amendment Act (2004), Criminal Code Amendment Act (2005), and the Official Secrets Amendment Act (2009). Sedition, seditious intention, defamation and false publications are offences under these statutes and are used to target real or perceived government critics, human rights defenders and journalists. Moreover, on the 3rd of July 2013 the Gambian National Assembly amended the Information and Communication Act 2009, creating several new online offences including spreading "false news" about the government or public officials, that caricatures or makes derogatory statements against public officials or that incites dissatisfaction or instigates violence against the government. These offences are punishable with up to 15 years in prison and, or, a fine of 3 million Dalasi.³
9. Journalists met with President Jammeh in March 2011 and urged him to repeal the above mentioned provisions. The President did not agree with the journalists and it is alleged that at the meeting the President expressed his opposition to 'ever' permitting freedom of expression in the Gambia.⁴ Furthermore, on 28 November 2011, Election Day, the President declared that "journalists are less than 1% of the population ... if anybody expects me to allow less than 1% of the population to destroy 99% of the population, you are in the wrong place".⁵
10. CHRI is disappointed to report that persons associated with the media, continue to report incidences of threats, harassment, intimidation, arbitrary arrest and detention and torture by the National Intelligence Agency (NIA). Illustrative examples of harassment against the media since Gambia's last UPR include: In 2011, on three separate occasions, executive members of The Gambia Press Union were arrested, detained and questioned without a warrant for "conspiring with other to overthrow the legally elected government of The Gambia by unlawful means".⁶ The editor of the online news website *Jollof News* has been repeatedly summoned to NIA headquarters and unlawfully arrested and detained without charge since late 2012, in connection with an unspecified investigation. He has been interrogated without his lawyer, in contravention of section 19(2) of the Gambian constitution. Furthermore, his home has been searched and his passport, laptop and flash drive seized. He reports that he was told by the NIA that he would be required to continue reporting to them until he grants them access to his emails.⁷ On 20th of June 2013 a journalist was arrested

¹ Correspondence from the Secretary-General of the Commonwealth to the Director of CHRI dated 2 August 2012.

² ECOWAS statement, 'Presidential Election in The Gambia' 24 November 2011, available at <http://news.ecowas.int/presseshow.php?nb=234&lang=en&annee=2011>, last accessed 15 March 2014.

³ Article 19, 'The Gambia: New internet law furthers government crackdown on free expression', July 2013, available at <http://www.article19.org/resources.php/resource/37152/en/the-gambia--new-internet-law-furthers-government-crackdown-on-free-expression>, last accessed 15 March 2014.

⁴ Committee to Protect Journalists, Press Release, March 23 2011.

⁵ Quoted in the UK Border Agency operational guidance note, May 2012, at para 3.8.9.

⁶ The Gambian Journal, 'Standing by my daughter', July 2011, available at http://gambijournal.blogspot.in/2011_07_01_archive.html last accessed 15 March 2014.

⁷ Joint advocacy letter to President Jammeh, 'Gambia: Harassment of Gambian journalist Abdoulie John', available at <http://www.article19.org/resources.php/resource/3594/en/gambia-harassment-of-gambian-journalist-abdoulie-john>, last accessed 15 March 2014.

and held incommunicado for six days, allegedly for taking photographs of the ex-Attorney general and ex-Solicitor General as they entered the Banjul Magistrates Court.⁸

11. Media censorship and harassment frequently includes searches and arbitrary notices to stop broadcasting. One such example is Teranga FM which was censored thrice before it was again ordered to shut down in August 2012. Teranga FM was also impeded from reporting in the lead up to the 2011 elections due to a NIA injunction. The ban on Teranga FM was only lifted in January 2014 by President Jammeh⁹. In September 2012, two independent newspapers, The Daily News and The Standard, were visited by state security agents and ordered without explanation to stop publishing immediately. It is reported that this action was taken in response to their coverage of the death row executions in August 2012. To date, these organisations remain closed, despite a Presidential press release in January declaring the end to the ban on the Standard. No such Presidential release has been made regarding The Daily News.¹⁰
12. Furthermore, freedom of expression is stifled beyond media censorship. Illustrative examples include: June 2011, four human rights defenders were convicted of treason for printing, possessing or distributing T-shirts with the slogan “Coalition For Change: End Dictatorship now”.¹¹ However, following international intervention three of the group were released in 2012, one of the men died in prison in 2011, allegedly as a result of the inadequate provision of health care.¹²

CHRI recommends that the Government of Gambia:

- a. **immediately bring to an end the harassment of people exercising their right, in accordance with Gambia’s international obligations and constitution, to freedom of expression; and**
- b. **amend all legislation that restricts freedom of expression in contravention of the Gambian Constitution and the ICCPR.**

D. Protection of Human Rights Defenders

13. Decree No. 81 of 1996, the NGO Code of Conduct and a Protocol of Accord regulate the operation of nongovernmental organisations (NGO) in Gambia. In 2010, the responsibility to monitor NGOs and their compliance with these documents was given to the office of the President, through the NGO Affairs Agency.¹³ NGOs frequently face harassment on procedural grounds, for example in 2010, the founder and Programme Director of Africa in Democracy and Good Governance was arrested three times in ten days for allegedly lying about the category of his organisation for registration purposes¹⁴.
14. During the Gambia’s first UPR Gambia received 4 recommendations on the situation of human rights defenders, the majority of which were dismissed by the Government because they were based on ‘unfounded allegations’. However, human rights defenders remain at serious risk in the Gambia. The government stands accused of various examples of extrajudicial killings, torture and enforced disappearances of human rights defenders, journalists and political opponents. The Court of Justice of ECOWAS took note of some such incidents in its 2010 judgment, finding the government responsible in a case of enforced disappearance and torture of another individual. Despite these findings the Government of Gambia has not complied with the Court’s ruling regarding compensation and release of Ebrima Manneh.¹⁵

⁸All Africa, ‘Gambia: Journalist Released by the NIA, Another Missing’ July 2013, available at <http://allafrica.com/stories/201307031210.html> last accessed 15 March 2014.

⁹All Africa, ‘Gambia: Teranga FM Still off Air Management Explains’, 22 January 2014, available at <http://allafrica.com/stories/201401230348.html> last accessed 15 March 2014.

¹⁰All Africa ‘Gambia: Two Banned Media Houses Reopen, Daily News Still Banned’, 3 January 2013, available at <http://allafrica.com/stories/201401061454.html> last accessed 15 March 2014.

¹¹Article 19, CHRI & COJ, ‘Joint Submission to the Commonwealth Ministerial Action Group on the Gambia’, April 2013, available at <http://www.humanrightsinitiative.org/pressrelease/sip/Joint%20Submission%20to%20CMAG%20on%20The%20Gambia%20April%202013.pdf> last accessed 15 March 2014.

¹²Civil Society Association Gambia press release, ‘CSAG Welcomes Release of CCG Contracted Printers, Counters Gambia Government Claims’, available at <http://civilsociety-gambia.org/csag-welcomes-release-of-ccg-contracted-printers-counters-gambia-government-claims/> last accessed 15 March 2014.

¹³FIDH, Gambia, Situation of Human Rights Defender, available at <http://www.fidh.org/en/africa/Gambia/GAMBIA-2010-2011> last accessed 15 March 2014.

¹⁴Ibid

¹⁵CHRI Submission to the Commonwealth Ministerial Action Group on the Gambia, September 2012.

15. Human rights defenders are frequently subjected to enforced disappearances. State authorities are known to withhold information regarding detainees and prevent access by lawyers and relatives. For example, Imam Baba Leigh publicly denounced the death row executions in 2012 and reported receiving death threats soon after, he then disappeared in 2012. It is alleged that he was held incommunicado, without charge, while authorities denied any knowledge of his whereabouts. Baba Leigh was released in 2013 after 5 months and 17 days of detention¹⁶.
16. Threats against human rights defenders, by unidentified individuals, are also a frequent occurrence in the Gambia. For example Abubacarr Saidykhan and Baboucarr Ceesay reported receiving a death threat by email on 25 October: "You choose to live or die...you... want to destroy the image of the APRC government and our affectionate President...I will come with my team of patriotic killers..." This email is reported to have occurred 2 days after charges related to a request to hold a peaceful demonstration against the execution of death row inmates were dropped.¹⁷
17. Other examples of harassment of human rights defenders include property searches without warrants, unlawfully arrest and detention and the confiscation of travel documents.¹⁸ The Special Rapporteur on Freedom of Expression and Access to Information in Africa recently urged the government to stop intimidation of journalists and to return all such documents.¹⁹

CHRI recommends that the Government of Gambia:

- a. **take all necessary steps to ensure the protection of human rights defenders from all forms of violence, retaliation and intimidation, in accordance with the United Nations Declaration on Human Rights Defenders;**
- b. **investigate, and where appropriate hold to account, any person suspected of harassing a human rights defender.**

E. Death Penalty

18. The Gambian Constitution makes provision for the death penalty in cases of aggravated or premeditated murder. During the last UPR Gambia received 5 recommendations regarding abolition of the death penalty, none of which received the support of the Government. The Government did however respond noting that a moratorium on the death penalty has existed since 1995. The moratorium referred to by the Government came to an end in 2012 when the President vowed to execute all inmates on death row. This threat was followed by the execution of nine death row inmates, by firing squad, without prior notification to lawyers or family members. It is reported that some of the prisoners were denied access to legal representation and had not exhausted the appeals process.²⁰ The UN Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions stated that "the executions were carried out in secrecy, away from the public and from the families, and do not meet the requirements of transparency."²¹ The UN High Commissioner for Human Rights²² and the Commonwealth Secretary-General²³ called on the government to halt plans for subsequent executions. Thereafter, the President issued a temporary and conditional moratorium on the death penalty, conditional on falling violent crime rates²⁴.

¹⁶ All Africa, 'Gambia: Imam Baba Leigh's Statement after Release', 27 May 2013, available at <http://allafrica.com/stories/201305280925.html> last accessed 15 March 2014.

¹⁷ *Supra note 11.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Civil Society Associations Gambia, 'Stop execution of Nigerians on Gambia's death row, SERAP tells Jonathan' August 2012, available at <http://civilsociety-gambia.org/stop-execution-of-nigerians-on-gambias-death-row-serap-tells-jonathan/>, last accessed 15 March 2014.

²¹ UN News Centre, 'Independent UN human rights expert urges Gambia to halt stream of executions', 28 August 2012, available at <http://www.un.org/apps/news/story.asp?NewsID=42755&Cr=Death+Penalty&Cr1=#.UyQ-F1DV9Ro> last accessed 15 March 2014.

²² UN News Centre, 'UN human rights chief urges Gambia to impose immediate moratorium on death penalty' 30 August 2012, available at <http://www.un.org/apps/news/story.asp?NewsID=42772&Cr=Human+Rights&Cr1=#.UyQ-kVDV9Ro> last accessed 15 March 2014.

²³ Commonwealth Press Release, 'Commonwealth seriously concerned about Gambian executions', 28 August 2012, available at <http://thecommonwealth.org/media/press-release/commonwealth-seriously-concerned-about-gambian-executions#sthash.3MRtN0FF.dpuf> last accessed 15 March 2014.

²⁴ Amnesty International, 'The Gambia: Conditional moratorium on executions is not enough' available at <http://www.amnesty.org/en/news/gambia-death-penalty-moratorium-must-lead-abolition-2012-09-17> last accessed 15 March 2014.

CHRI recommends that the government of the Gambia should immediately issue a non-conditional moratorium on the use of the death penalty, with a view to ratifying the second optional protocol of the ICCPR.

F. Sexual Orientation and Gender Identity

19. Section 144 of the Criminal Code of 1965, as amended in 2005,²⁵ criminalises carnal knowledge “against the order of nature”, punishable by up to 14 years of imprisonment. This definition was amended in 2005 to specifically include female homosexual acts. Section 147 of the Code also criminalises “any act of gross indecency”, defined as any homosexual act, whether in public or private, and amended to include female homosexual acts, and is punishable by five years imprisonment²⁶. An example of the use of this provision is the charging of 18 men and two women, in April 2012, for allegedly organising an “indecent” dance for tourists, where some men were dressed as women. The accused were held in custody for over a month²⁷ but the charges were dropped in August 2012.²⁸ It was reported that the case was not pursued further for lack of sufficient evidence.
20. During the last UPR the Government rejected all recommendations related to Sexual Orientation and Gender Identity, noting that the Government does not recognise sexual orientation as a universal human right. Subsequently, the Gambian President in April 2012, reiterated his refusal to decriminalise homosexuality in exchange for foreign aid, saying that the country has no “room for gays and lesbians” and “[w]e will rather eat grass”.²⁹ On April 2013 he claimed that “allowing homosexuality means allowing satanic rights. We will not allow gays here.”³⁰
21. Under Article 17 of ICCPR, the Gambia has a responsibility to protect individuals against “arbitrary or unlawful interference” with their “privacy, family, home or correspondence”. Laws banning same-sex conduct have been found by the Human Rights Committee to be in breach of Article 17.³¹ Article 26 affords individuals “effective protection against discrimination on any ground” and the right to “the equal protection of the law”. The Human Rights Committee has held that state parties “should guarantee equal rights to all individuals and protect the right to equality before the law regardless of their sexual orientation”.³² It has also previously held that criminalisation is incompatible with both the right to privacy and equality before the law.³³ The criminalisation of same-sex sexual conduct by the Gambia is therefore incompatible with its obligations under the ICCPR.

CHRI recommends that the Government of the Gambia:

- a. ensure that all LGBT persons fully and equally enjoy their human rights, in conformity with Gambia’s international obligations;**
- b. immediately issue a moratorium on all prosecutions for reason of sexual orientation or gender identity; and**
- c. repeal all provisions in the Criminal Code that criminalise and stigmatise people on the grounds of sexual orientation or gender identity.**

²⁵ Submission by the International Gay and Lesbian Human Rights Commission to the first Universal Periodic Review of The Gambia, 2010, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/GM/IGLHRC_UPR_GMB_S07_2010_InternationalGayandLesbianHumanRightsComm.pdf last accessed 15 March 2014.

²⁶ Criminal Code (Amendment) Act, 2005, The Republic of The Gambia, available at <http://www.ilo.org/dyn/natlex/docs/SERIAL/75299/78264/F1686462058/GMB75299.pdf> last accessed 15 March 2014.

²⁷ Colin Stewart, ‘40 Days in jail for 20 in “homosexual dance”, Erasing 76 Crimes’, 16 May 2012 available at <http://76crimes.com/2012/05/16/40-days-in-jail-without-trial-for-20-in-homosexual-dance/> last accessed 15 March 2014.

²⁸ JollofNews, ‘Gambian Court Frees Alleged Homosexuals’, August 2012, available at <http://www.jollofnews.com/20120801gambian-court-frees-alleged-homosexuals.html> as on 26 August 2012 last accessed 15 March 2014.

²⁹ Agence France-Presse, ‘Gambia president won’t take aid to accept homosexuality’, 23 April 2012 available at <http://www.rawstory.com/rs/2012/04/23/gambia-president-wont-take-aid-to-accept-homosexuality/> last accessed 15 March 2014.

³⁰ ILGA, ‘Gambia’s president says no gays allowed; if caught, “will regret being born”’, 3 April 2013, available at <http://ilga.org/ilga/en/article/o1VLIAB1wR> last accessed 15 March 2014.

³¹ The Human Rights Committee in *Toonen v Australia* held that the criminalisation of same sex conduct was incompatible with a state party’s obligations under Article 17.

³² Human Rights Committee (May 2007) concluding observations of the Human Rights Committee: Chile, U.N. Doc. CCPR/C/CHL/CO/5, paragraph. 16.

³³ Human Rights Committee (May 2007) concluding observations of the Human Rights Committee: Barbados, U.N. Doc. CCPR/C/BRB/CO/3, paragraph.