

GAMBIA PRESS UNION

GAMBIA PRESS UNION submission to the UN Universal Periodic Review

Eight Session of the UPR Working Group, March 2014

1. 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 has also ratified a host of regional and international instruments that guarantee fundamental human rights including the right to freedom of expression. Despite the guarantees and provisions for the rights already highlighted in The Gambian Constitution, and the international protocols to which the State is a party, 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 amended in 2013, 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.

11. Promotion and protection of human rights on the ground

Media and freedom of expression violations continue to escalate in The Gambia since the last United Nations Universal Periodic review of the country in 2010. Since the last UPR of the Gambia in 2010, state tactics have 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 2004, the torture in custody, continued detention, unfair and bogus trials, arbitrary arrests and incommunicado detention of journalists have continued from 2010. 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.

Comment [g1]: How has the judiciary refused to acknowledge and promote these rights? Is it within the judiciary’s mandate to promote?

Comment [g2]: A short sentence on how they contradict the constitution and the said instruments would help

Comment [g3]: Too general. Be specific

Comment [g4]: You need more recent incidents. Even if you refer to these deaths you should make them current issues. You can for example say there was no effective investigation of the deaths and to date the killers have not been identified and prosecuted.

Comment [g5]: When were these remarks made

Comment [g6]: This does not seem to flow with what is just before it

The head of state's direct and personal attacks on the independent media 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.

Comment [g7]: Too general. You need to be specific. How is the interference done

Repression of the Press

Media and freedom of expression violations have seen an upward trend with 2013 being the worst years' on record since the last UPR of The Gambia in 2010. The most worrisome factor in this climate of press repression is the use of laws and the judiciary to legalise tyranny and perpetuate impunity.

Comment [g8]: How

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)1 to Dalasis 250,000 (US\$10,000). It also requires judges to impose mandatory prison sentences of a minimum of six months for first time offenders.

Comment [g9]: There is no discretion here if there is a mandatory jail term

These laws have been further tightened in June 2013, when Gambian parliament passed a new law that imposes a minimum fine of D3, 000, 000 (apprx \$88,235) or fifteen years in jail, or both fine and imprisonment, for media offenders.

Comment [g10]: For what kind of offences

On April 16, 2013, certain provisions in Criminal Code in relation to the media had been amended for the third time in ten years. This latest amendment increases the punishment for providing "false information" to a public servant from 6 months to 5 years imprisonment, and/or a fine of 50,000 dalasi (approx. \$1,300) up from 500 dalasi (approx. \$13). The amendment also broadened the definition of a 'public servant', to include the president, vice-president, ministers and members of the national assembly.

Comment [g11]: What are they?

Comment [g12]: What is this offence about?

On May 9, 2011, Mr Baba Sillah, a reporter with the *Daily News* was arrested and detained for about half an hour at the police headquarters in Banjul. Mr Sillah was assigned to investigate the killing of a drug suspect Cherno Alieu Suwareh, allegedly tortured to death by state anti-drug agents. The reporter's notebook cover was torn by the police who rough-handled him and searched his notebook.

On June 27, 2011, Ahmed Alota, Ex-Executive Director of The Gambia Press Union (GPU) was arrested and detained at the headquarters of the Police Intervention Unit in Serrekunda. On July 1, 2011, Mr Madi S. Njie, the newly-elected first Secretary-General of The Gambia Press Union (GPU) was also arrested. This spate of arrests came in the wake of the GPU electing its new executive members. Neither Alota nor Madi was charged.

Two journalists were -arrested and detained for four days in September, 2012, when they applied for a police permit, in line with the Public Order Act, to hold a peaceful protest against the August-19 execution of nine prisoners by Gambia government. Mr Ceesay, the first vice president of the GPU and Mr Saidykhan, a freelance journalist were jointly charged with "conspiracy to commit felony", "incitement to violence" and "seditious intention".

Comment [g13]: Who?

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They were released on bail and further required to report weekly to the police headquarters before the charges were dropped on the orders of the president. Mr Ceesay was re-arrested on Friday 8 March, 2013, by officers from the National Intelligence Agency (NIA). No reason was given for his arrest even though he was detained over the weekend.

From Dec.9, 2012 to March 2013, Mr Abdoulie John, a Banjul stringer for the US based AP news agency was arrested and detained on two separate occasions by the country's intelligence agency, NIA, for a crime he was never told. Mr John was first put under arrest when he went on an assignment to cover the release of eight Senegalese hostages by MFDC rebels in December. There, he was arrested on the orders of the NIA chief. His laptop was confiscated, screened and kept for two months by state investigators. The NIA still has his passport.

On June 22, 2012, Mr Lamin Njie, deputy editor in chief of *The Daily News* ran a story which claimed that four Gambia Revenue Authority officials standing trial on economic trial had been granted bail. The decision on bail, in fact, was not made. Mr Njie's move to correct the report in the following edition of the tri-weekly newspaper did not spare him from spending three nights, under degrading conditions, at the remand wing of the country's Central Prison on the orders of the presiding judge, who felt that the detention was necessary to 'give a clear warning to him and all other journalists who reported on court proceedings'.

On 10 July 2012, Sidiq Asemota, a reporter with the *Daily Observer* newspaper, also spent a night at the remand wing of the country's Central Prison on the orders of a High Court judge in Banjul. Mr Asemota was arrested for contempt of court in connection with an article he wrote. He apologised in court and was released.

Comment [g14]: EXPLAIN WHAT THE ARTICLE WAS ABOUT

Gambian authorities detained Thomas Fessy, the West Africa correspondent of BBC World News, for several hours at the capital's international airport on September 5, 2012, and ordered him to leave the country within 48 hours. Fessy returned to Senegal on September 7, 2012.

State security agents barred journalist Binta Bah of Daily News from covering an October 15, 2012, hearing of a Supreme Court case of seven prisoners on death row.

A security agent at the court in Banjul, the capital, told Bintah Bah, a blogger and senior court journalist with The Daily News, to leave the premises on orders from the office of the president. Bah had identified herself as a journalist working for the Daily News to the security officer who told her that he has received orders from the presidency that personnel from the Daily News and Standard Newspapers should not be allowed to enter the court.

Bah was covering the court case of Lang Tombong Tamba, Gambia's former chief of defense staff, as well as six others who were convicted of treason and sentenced to death for allegedly plotting a coup in 2009.

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In June 2012, Abdul Hamid Adiamoh, the editor and publisher of Today newspaper, was ordered to pay a fine of D100, 000 (approx US\$3, 000), by the Banjul Magistrates' Court for contempt of court. Mr Adiomoh had spent almost one week in remand. His saga was in connection with an article about an ongoing criminal case in which he analysed the cross-examination of a key witness. His letter of apology published days before the trial was disregarded by the court.

The president in 2011 said that "I don't believe in killing journalist, I believe in locking them up." With the draconian nature of media laws, the state does not hesitate to achieve its ends through the courts.

The cases of Nanama Keita, sports editor with Observer and Dodou Sanneh, a report with the GRTS, though separate are similar. Both were charged with giving false information to a public officer when they petitioned the president, informing his office of their wrongful dismissal by their employers. Mr Keita jumped bail in the middle of his trial while Mr Sanneh was convicted and sentenced to pay a fine of D500.

Following Nanama Keita's escape, Sheriff Bojang, editor of Standard was charged to court on account of forgery for indicating in an attestation that Mr. Keita was his staff. He pleaded guilty and was fined D15, 000. Saikou Ceesay, a reporter of privately-owned Daily News provided surety for Nanama Keita. He was arrested and detained over the weekend before being ordered by the magistrates' court in Banjul to pay the bond of D100, 000.

Arbitrary closure of independent media houses is an option very much available to the government. Two more newspapers and a radio station have joined the four independent media outlets shut down – Independent and New Citizen and Citizen FM and Sud FM. With this threat hanging over, those in the business are operating on a survival mode. Independent news are watered down while radio stations focus on only sports and entertainment.

Comment [g15]: Did this happen after 2010?

Established in 2009 and 2010 respectively, the Daily News and Standard were arbitrary shut down in September 2012. No reason was advanced despite several efforts to solicit them from relevant authorities.

One month before the closure of the Daily News and Standard, a community radio, Teranga FM, suffered its third closure in two years. No reason has been advanced by the government. Teranga FM was the only non state-owned radio broadcasting local news. This was responsible for previous closures, as the government told its management never to review independent newspapers.

Comment [g16]: Is this correct?

It has become a norm rather than an exception that Gambian journalists, in fear for their life, go into exile. It is estimated that more than 20 percent of the journalists' population have fled for their lives. During the period under review, five more journalists have followed suit.

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Pa Malick Faye, the managing director of Daily Observer left the country after he was dismissed from his post. His dismissal came after he quoted the president as saying "[The Execution was hypocritically blown out of proportion](#)".

Fabakary Ceesay, on 12 March 2013, approximately one month after he was forced to go into hiding due to threats, made his way out. Death threats on him intensified after his latest report which catalogued the people who had gone missing or disappeared after their arrest.

Assan Sallah, news editor of Daily Observer, **Abubacarr Saïdykahn**, a freelance journalist and **Nanama Keita**, sports editor of Daily Observer, have all fled in similar circumstances.

Imams **Baba Leigh** and **Ba Kawsu Fofana** were detained – and allegedly tortured - for five months and nine days, respectively. The reasons are still a matter of speculation but both clerics have been mildly critical of some of the actions of the regime, for instance, the execution. Imam Leigh has left for the US for medical treatment after his release, while Imam **Fofana** fled to Senegal where he now lives and preaches.

In 2011, **Mr Amadou Scattred Janneh**, former Communications minister was sentenced to life imprisonment for treason when he printed and distributed T-shirts with the inscription: '...End Dictatorship Now'.

111. 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;
- 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.