

UNIVERSAL PERIODIC REVIEW OF GAMBIA

SUBMISSION ON BEHALF OF A GAMBIAN CIVIL SOCIETY COALITION ON CIVIL AND POLITICAL RIGHTS

20TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2014

1. FOLLOW UP TO THE PREVIOUS REVIEW

At the previous review in 2010, Gambia accepted a recommendation to:

A - 5. Accelerate efforts to review the scope and mandate of Ombudsman's institution (Malaysia)

- Four years after accepting this recommendation, no reform of this institution has so far taken place
- The Ombudsman has no power or authority to enforce its recommendation
- The institution still lacks human and financial resources
- There is non-compliance by the government on its recommendations and
- Limited public knowledge on the functions and relevance of the Ombudsman

Gambia also accepted a recommendation to:

A - 13. Cooperate more with the special procedures mandate holders, in order to allow the International community to provide the best possible support in guaranteeing human rights (Burkina Faso)

- The government has so far not demonstrated this commitment in any way. There has been no standing invitation issued to any Special Procedures to the Gambia
- No special procedure mandate holder has been invited to The Gambia for a fact-finding mission. Even where several Special Rapporteurs did send request to visit the country, with some of the requests dating back to 2006, yet the government has not yet responded to these which include:
 1. Special Rapporteur on summary executions (requested Sept.2012)
 2. Special Rapporteur on torture (requested in 2006, reminder in 2007)
 3. Special Rapporteur on education (requested in 2007)
 4. Special Rapporteur on sale of children, child prostitution and child pornography (requested in 2009)
- The AU Special Rapporteur on freedom of expression's several request for a visit to The Gambia has not been responded to.

The Gambia rejected a recommendation to:

R - 16. Promote and guarantee the right to freedom of expression (Italy)

- However, The Gambia cannot reject this recommendation because the right to freedom of speech has been guaranteed in Section 25 (1) (a) in the 1997 Constitution of The Gambia
- Since the last review in 2010, arbitrary arrest, detention, torture, unfair trials, intimidation and

harassment of human rights defenders, journalists, opposition supporters and common citizens continue to be the norm compounded by arbitrary closure of media institutions in The Gambia.

2. THE NATIONAL HUMAN RIGHTS FRAMEWORK

- The Gambia is using the law as an instrument to suppress media freedom and dissent. This is demonstrated by the draconian media laws instituted by the state. These include the laws on sedition, libel, false information, false news and newspaper regulations. These laws run contrary to international standards and the Gambia should repeal them.
- The Gambia honours the fundamental right to free expression as expressed in its Constitution with arbitrarily arrest and detention beyond the constitutionally stipulated 72 hours, harassment and intimidation of journalists, lawyers, women human rights defenders, and other human rights defenders such as religious leaders.
- The Gambia does not honour its commitment to cooperate with international treaty bodies to enhance human rights situation on the ground with several reports to the treaty bodies long overdue.

3. THE HUMAN RIGHTS SITUATION ON THE GROUND

Human rights situation

Regardless of the fact that the Gambian Constitution under Chapter IV guarantees fundamental rights and freedoms of the citizenry, and The Gambia is a signatory to the international standards that equally guarantees human and peoples rights such as the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples' Rights, unlawful arrests and detentions take place routinely in the Gambia.

Individuals are rarely informed of the reason for their arrest contrary to Section 19 on the protection of personal liberty in the Constitution. They are often kept in detention without charge for longer than the 72 hours specified in Section 19 of the Constitution, and rarely have access to a lawyer. Once in the custody of the government, detainees seem to fall beyond the protection of the law and are routinely subjected to further human rights violations, such as unlawful detention, torture, extra-judicial execution, unfair trials or enforced disappearance. Avoiding arrest has become a constant preoccupation for the entire population and it affects every aspect of Gambian life, generating fear and mistrust among the population.

The arbitrary nature with which unlawful arrest and detention are carried out leave very few Gambians free from the risk of becoming victims of human rights violations. Those at risk include real and perceived opponents, people who were close allies of the government before their arrest, as well as government employees, army and security personnel, opposition leaders, human rights defenders, journalists, and lawyers. These arrests and detentions are generally perpetrated by the National Intelligence Agency as well as other unofficial security units personally created by the President from the ranks of the police, army, intelligence and ruling party militants.

Currently, as of March 2014, Kemo Ceesay, a senior official of the Ministry of Energy has been in detention for weeks in incommunicado. Similarly, in December 2013 opposition supporters Lasana

Jobarteh, Solo Sandeng and Amadou Sanneh were subjected to several days of detention, while journalists Sainey K Marenah and Musa Sheriff also suffered same fate for merely reporting defection of ruling party supporters to the opposition in December 2013. There exists at any one-time scores of Gambians under detention but largely unknown to the general public.

In Gambia today, fear rules, and arbitrary arrests, detentions and human rights violations translate into a culture of silence. All public protests have ceased. Self-censorship of the media is the rule rather than the exception, and individuals remain silent even when their human rights are violated. Family members are reluctant to speak out if someone disappears, and they rarely seek legal services or challenge the government through the courts. Human rights organizations are silent, and judges' efforts to exercise their independence are met with sackings. The judiciary has lost its independence and its ability to serve Gambian citizens. Fearful of reprisal against themselves and their families, lawyers are increasingly reluctant to take on sensitive cases, leaving few options for Gambians wishing to exercise their rights.

Freedom of expression

The Gambian Constitution Chapter IV Section 25 provides for freedom of speech, conscience, the press and other media. Article 19 of the International Covenant on Civil and Political Rights, to which The Gambia is a party, ensures that everyone has the right to hold opinions without interference. Further it states that: "Everyone shall have the right to freedom of expression. This right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media."

Despite these obligations under international and national law, freedom of expression has been under attack since 1994, when the President Jammeh first came to power through a military coup.

Since the last UPR of Gambia in 2010, arbitrary closure of media institutions and unfair trails of journalists have intensified with the President continuing hate speech against journalists and human rights defenders who expose the violations, as well as corruption and ineptitude in the government. For example, 3 media houses (Taranga FM radio station, and Daily News and The Standard newspapers) were forced to close by agents of the NIA on the orders of the Office of the President in 2012. Then in January 2014, all of them except the Daily News newspaper were asked to re-open.

In 2011 during a meeting with media chiefs the President said that he 'will not compromise the security of the country at the altar of press freedom'. Shortly after casting his ballot in the presidential election in 2012, the President further stated during an interview with journalists that he will 'not compromise the security of a million people for the security of less than one per cent of the populace', a comment directly referring to journalists.

Journalists and other members of the media are routinely subjected to human rights violations, such as unlawful arrests and detentions, torture, unfair trials, harassment, assaults, death threats and closures, making it extremely difficult to carry out their legitimate work.

There continues to be series of legislation that infringe on freedom of expression and the media in the Gambia. The Newspaper Act 2004 sets an exorbitant fee for operating a media house. In the Criminal Code, various forms of speech and opinion have been criminalized as sedition, which also includes insult, or giving false information to a public officer, or publication of false news as well as

amendments to the National Information and Communication Act. Consequently, several individuals in all walks of life have been victims of arrest and then charged with any of the above offences for merely sending a petition letter to a government institution to express their grievance and seek redress. The effect of these laws is to practically silence citizens for fear of falling out with the law. A culture of silence has ensued which serves to entrench a culture of impunity thus creating a situation where the government is subjected to no form of transparency and accountability.

Hate speech against human rights defenders, gays and the opposition

President Yahya Jammeh has a habit of making hate speech against human rights defenders, gays, opposition members as well as journalists and ethnic groups on a consistent basis. He is on record for describing journalists as *“the illegitimate sons of Africa.”* He has called gays names such as “dogs”, while he referred to opposition members and human rights defenders as *“unpatriotic sons and daughters of the land who are agents of foreign powers bent on destroying the country”*. He has openly and several times stated that he cannot guarantee the security of human rights defenders and journalists in the country. He also said in a televised address to the nation that journalists are less than one percent of the population and, *“we will not compromise the security of 99% of the populace for the freedom of the 1%.”*

4. RECOMMENDATIONS FOR ACTION BY THE GAMBIA

The Ombudsman

- To ensure that the independence and security of tenure of the Ombudsman is protected as guaranteed in the Constitution
- To respect and protect the mandate of the Ombudsman and to ensure that the Ombudsman executes its functions without any interference
- To further protect the independence and effective execution of the mandate of the Ombudsman, the budget of the Ombudsman should be determined by the National Assembly as a statutory body

Freedom of Expression

- To repeal the draconian media legislations infringing freedom of expression and freedom of the press in accordance with universally accepted standards and international human rights obligations
- To decriminalize all speech, opinion and media offences
- To repeal the Newspaper Act 2004 to remove the bond for the operation of a media house and to ensure that operating a media house is free of cost

Hate Speech

- To cease intimidation and hate speech directed at ethnic groups
- To cease making hate speech against journalists and human rights defenders, especially women human rights defenders
- To invite the Special Rapporteur on freedom of expression to visit the Gambia
- To fulfil its reporting obligations by completing all outstanding state reports to the UN treaty bodies
- To investigate all cases of enforced disappearances and murders of citizens, especially the killing of journalists Omar Barrow and Deyda Hydera, as well as to produce the bodies of

disappeared journalists Chief Ebrima Manneh and opposition supporter Kanyiba Kanyi, missing since 2006

- To put an immediate stop to the incidence of arbitrary arrest, detention and torture and to bring to justice all security personnel involved in the torture of citizens