

UNIVERSAL PERIODIC REVIEW OF GAMBIA

SUBMISSION ON BEHALF OF THE GAMBIAN CIVIL SOCIETY COALITION ON NATIONAL AND INTERNATIONAL LAW

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1. FOLLOW UP TO THE PREVIOUS REVIEW

In its previous review in 2010, Gambia accepted a number of recommendations including the following:

- **To improve the justice system and to strengthen its independence (recommendations 97.33 (Sudan) and 99.44-45 (Netherlands and Ghana):**

There is absolute lack of independence of the judiciary in The Gambia characterized by the frequent arbitrary hiring and firing of chief justices, judges and magistrates by the President. For example, in June 2013, Justice Joseph Wowo from Nigeria was appointed Chief Justice only to be sacked one month later by President Jammeh, and replaced by Ghanaian-born Justice Mabel Yamoah Agyemang. About seven months later, Agyemang herself was also sacked in February 2014, and another Nigerian-born judge Emmanuel Fagbenle appointed in her place. This was the third sacking¹ in the reporting period 2010-2014. Judicial appointments and sackings are done without the due process as enshrined in Section 141² of the Constitution. Apart from chief justices, also judges, magistrates, court officials and lawyers have been fired, arrested, detained, and harassed by state security officials³.

Often statements by President Jammeh on ongoing court cases, in particular that of former Government officials, such as former Secretary General Njogu Bah and former Justice Minister Lamin Jobarteh, determine judgements in favour of the Executive. During the trial, President Jammeh stated: *"I will never forgive them. I will make sure that they are tried and convicted."*

Due to the arbitrary nature of appointments and dismissal of judicial officers, the judiciary has come under increasing influence from the Executive to the point that judges and magistrates are compelled to decide cases in favour of the regime. In almost all cases in which the State has an interest, such as the arrest, trial and conviction of the National Treasurer of the main opposition United Democratic Party (UDP), Mr. Amadou Sanneh in 2013, judges and magistrates are either forced to deny bail or

¹ Sacked Chief Justices – Raymond Sock, Joseph Wowo and Mabel Agyemang

² Section 141 – Tenure of Office of Judges

³ 3 Moses Richards, LK Mboge, MaNyima Bojang legal practitioners were arrested and tried; Badou Conteh, Kebba Sanyang and Amie Bensouda were arrested and detained together with other Court officials including the Principal Register of the High Court Mariama Ceesay.

impose heavy custodial sentences. Sanneh was denied bail several times during the trial and then sentenced to five years for sedition.

- **To fight impunity (recommendations 87.22 (Cote d'Ivoire) and 87.34 (Germany))**

There has been an increase in arbitrary arrests and detentions, enforced disappearances as well as extra judicial killings. Scores of human rights defenders, journalists, civil servants, political party supporters, security personnel, business people and common citizens have been victims of arrests and detention without due process mainly perpetrated by the National Intelligence Agency (NIA). Section 19 of the Constitution stipulates that the police have authority to arrest and detain, and requires that persons arrested must be told within 3 hours the reasons of the arrest, and cannot be detained for more than 72 hours without being granted bail or released unconditionally.

In 2012, Imam Baba Leigh, a leading human rights defender was arrested and held incommunicado for five months during which he was subjected to severe torture. He was released and paraded before national television to apologize to the president, while top government officials and leading imams jeered at him for being too vocal. The imam was later to win the maiden edition of the Pan-African Human Rights Defenders Award in May 2013.

In December 2013, a UDP party official Lasana Jobarteh was arrested and detained incommunicado for 9 days only to be released and charged with 'broadcasting on Skype using iPod'. The arrest and charge followed a major UDP rally in Talinding and Brikama towns where Jobarteh facilitated the live broadcast of the events over online Gambian radio stations based in the US and UK.

Similarly, Kemo Ceesay, a senior official of the Ministry of Energy, remains under detention for several months without access to his family, lawyers and colleagues.

Also Court orders based on writs of *habeas corpus* to release detained individuals or bring them to Court are generally ignored. In cases where detainees have been tortured, even where *voire dire* is held and evidence proves that statements were taken under duress, the Courts disregard such evidence and the trials continue.

These violations mark a significant departure from the commitment of the government *vis-a-vis* the above recommendations.

- **Freedom of expression, freedom of speech, freedom of the press (recommendations 100.16-21 (Italy, Canada, Mexico, Chile, Germany, USA), 10.23-24 (Netherlands, Australia), 100.26 (Spain), and 100.29-30 (France, Sweden)):**

The government of the Gambia rejected no less than 11 recommendations to protect freedom of expression and freedom of speech. Infamous pieces of legislation like the False Publication on the Internet⁴, an amendment of the National Information and Communications Act (2009) in April 2013, criminalise the giving of information on the Internet. Also, in April 2013, Section 114 of the Criminal Code of The Gambia was amended to further expand the definition of 'public officer' to include the President and Vice President, and National Assembly members in the section dealing "giving of false information to a public officer", thus severely criminalizing free speech, and limiting the right of citizens to petition the government.

⁴ False Publication on The Internet – 15 Year Prison Term or 3 Million GMD fine

Consequently, since 2010 numerous journalists⁵ and common citizens continue to be arbitrarily arrested, detained and tried on charges of sedition, and false news publication.

In 2012, The Standard Newspaper, Daily News and Teranga FM were closed, although two of them were reopened in January 2014.

- **Moratorium on executions, abolition of the death penalty (recommendations 99.32-35 (Brazil, Spain, Italy, Argentina))**

The Gambia had noted that a moratorium on the death penalty was already in place since 1985. However, in 2012 nine inmates were executed. The president said the executions would temporarily stop because of appeals from the public, but emphasised that, "what happens next will be dictated by either declining violent crime rate, in which case the moratorium will be indefinite, or an increase in violent crime rate, in which case the moratorium will be lifted automatically." Thus the commitment of The Gambia to abolish the death penalty remains far-fetched.

2. THE NATIONAL HUMAN RIGHTS FRAMEWORK

Chapter 4 of the Constitution is entitled '*Fundamental Rights and Freedoms*' and recognizes a number of key civil and political rights. However, the Constitution does not mention several economic and social rights, such as the right to health, housing, employment and social security. Rather in Section 221 on '*Directive Principles of State Policy*', a number of social and economic rights have been listed as objectives which the state will pursue. But Section 221 also indicates that these "principles shall not confer legal rights or be enforceable in any court."

Furthermore, over the reporting period the Gambia has created a series of laws or made amendments to existing laws that effectively erode the rights and freedoms enshrined in the Constitution. In April 2013, the government introduced amendments to Sections 114 and 167 of the Criminal Code, restricting freedom of speech and association, as well as criminalizing LGBT issues including '*men who dress like women*', and male sex work. Further amendments to Section 114 of the Criminal Code expand the definition of public officer/servant to include the President, the Vice President and National Assembly members, intended to further curtail freedom of speech and limit the ability of citizens to hold the government to account through the right to petition the Executive under Section 25 of the Constitution.

Existing laws such as the Newspaper Act 2004, the Public Order Act and other sections of the Criminal Code on false news publication and sedition, all restrict freedom of speech and freedom of association despite these rights being set out in the Constitution.

There is currently no national human rights institution in the Gambia. There is an Ombudsman, however, the institution is subjected to control by the executive. Contrary to Section 164 on the appointment and tenure of office of the Ombudsman, the president appoints and fires the Ombudsman arbitrarily. Furthermore, the office of the Ombudsman continues to be beset with financial constraints thus limiting its capacity to function effectively.

The Gambia continues to fail in its reporting obligations to the international treaty monitoring bodies for many rounds.⁶

⁵ Musa Sherrif Jan 2014, Sainey Marenah Jan 2014, Alhajie Jobe 2013, Lamin Njie, Abdul Hamid Adiamoh, Sidik Asemota, 2012, Dodou Sanneh 2011, Nanama Keita 2011,

⁶ Reports are currently outstanding on the following treaties:

The country is yet to ratify the Optional Protocols to the ICCPR⁷ and CRC, CEDAW and CESCR. While the government claimed to ratify the Convention against Torture and the Convention on the Rights of Persons with Disability, yet there is no official confirmation from the UN that these had been done.

Similarly the country is yet to submit a written standing invitation to the thematic special procedures. The government has also failed to invite special procedures who requested visits such as the:

- Special Rapporteur on summary executions (requested Sept.2012)
- Special Rapporteur on torture (requested in 2006, reminder in 2007)
- Special Rapporteur on education (requested in 2007)
- Special Rapporteur on sale of children, child prostitution and child pornography (requested in 2009)

3. THE HUMAN RIGHTS SITUATION ON THE GROUND

Rule of law undermined and widespread impunity

The fundamental challenge facing the Gambia is the total personalization of the state by the Head of State. While the Constitution of the Gambia guarantees the separation of powers and the rule of law, the Executive branch of the Government, in particular President Jammeh, consistently disregards constitutional processes and procedures in almost all aspects of state administration. For example, the Constitution provides that the Chief Justice of the Gambia can only be appointed by the president in consultation with the Judicial Service Commission with approval of the National Assembly, yet the president has on no occasion followed this procedure in the appointment of chief justices. Furthermore, the Constitution also sets a clear set of procedures for the removal of a judge, which have never been followed in the Gambia. From 2012 to 2014, the country had four chief justices appointed and/or sacked without regard for the rule of law.

In light of the total control and manipulation of the judiciary, access to justice in the Gambia has become a major challenge for many citizens. This is particularly prevalent in cases, which involve perceived and real opponents of the regime, including members of the armed and security services. Since 2006, scores of senior police and military officers, including the former Chief of Defence Staff Lang Tombong Jatta, former Director General of the National Intelligence Agency Bo Badgie and former Chief of Navy Staff Sarjo Fofana have been arrested and charged with treason and then sentenced to death even when the general view was that the evidence provided did not clearly point to a planned coup. Similarly, several top officials of the regime, including the former Secretary General Njogu Bah, former Solicitor General Pa Harry Jammeh, and former Justice Minister Lamin Jobarteh have been summarily sentenced for abuse of office among other charges, even when they testified in court that they were acting on the orders of the president.

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1. CCPR-International Covenant on Civil and Political Rights
 2. CEDAW-Convention on the Elimination of All Forms of Discrimination against Women
 3. CERD-International Convention on the Elimination of All Forms of Racial Discrimination
 4. CESCR-International Covenant on Economic, Social and Cultural Rights
 5. CRC-Convention on the Rights of the Child
 6. CRC-OP-SC-Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

⁷ First OP was signed but not the second one.

By disregarding the rule of law and personalizing state institutions and processes, the president has created various units within the overall security sector, which are entirely answerable to him alone. Within the NIA for example, squads generally referred to as 'Black Black', or 'Junglers', have been associated with arbitrary arrests, detention, torture and enforced disappearance of victims. Also within the police, the president has created the 'Operation No Compromise' as well as 'Operation Bulldozer' units in May 2012, which have been used to conduct arbitrary arrest and detention of common citizens, business people and other perceived and real opponents of the regime. In 2013, these units conducted widespread arrest and detention of small-scale business operators in Banjul and Serre Kunda allegedly for failure to pay taxes. Several of these business people lost huge amounts of cash and other materials while many had their stalls closed without a court order.

These actions have created a culture of impunity, which has injected a climate of fear and uncertainty in the society. There is no system of accountability, which could restrain the state. Even when the ECOWAS Community Court of Justice ruled in favour of journalist Chief Ebrima Manneh, for the government to produce and compensate him, the government responded with total disregard. The effect of these actions has seriously curtailed access to justice in the Gambia. With the effective control of state institutions and processes, President Jammeh has been able to influence even the National Assembly to enact laws and make changes to the Constitution, which give him sweeping powers.

The Death Penalty

Section 18(1) of the Constitution guarantees the right to life. Sub-section 2 goes further to indicate that the death penalty can only be imposed by a court of law on a person who has caused the loss of the life of at least one person through the use of violence or administration of a toxic substance. However, in Sub-section 3, the Constitution creates the proviso that:

"The National Assembly shall within ten years from the date of the coming into force of this Constitution review the desirability or otherwise of the total abolition of the death penalty in The Gambia."

Since the Constitution came into force in 1997, the National Assembly has not acted on Section 18(3), yet the courts have imposed death sentences on tens of Gambians, among whom nine were summarily executed in 2012 without adherence of the rule of law in the administration of the death penalty. Following local and international outcry, the President said he would halt executions but would resume if there was an increase in violent crime.

The human rights situation in the Gambia is therefore quite dire. There are no institutions and processes which can protect human rights while Gambians lack any means of holding public institutions and officials to account for their decisions and actions. This is quite simply because all relevant institutions and processes for the protection of human rights are completely controlled by the president.

4. RECOMMENDATIONS FOR ACTION BY GAMBIA

We call on the government of The Gambia to:

1. Conduct a complete legal review and reform to ensure that all Gambian laws are in conformity with international standards
2. Repeal laws that inhibit fundamental rights and freedoms particularly:

- a. Decriminalize media offences by repealing these sections in the Criminal Code in protection of freedom of expression and the media:
 - i. Section 47 and 48 on the prohibition of the importation of publications
 - ii. Section 51 and 52 on sedition
 - iii. Section 60 on the defamation of 'foreign princes' and ambassadors
 - iv. Section 114 on freedom of speech and association
 - v. Section 167 on discrimination
 - vi. Section 178 on criminal defamation
 - vii. Section 181A on false news publication and broadcasting
 - b. Review the Newspaper Act 2004 to bring it in line with Chapter 4 of the Gambia Constitution and Article 19 of both the UDHR and ICCPR by either drastically reducing or totally removing the exorbitant fee for operating a newspaper
 - c. Review the Information and Communications Act 2009 to bring it in line with Chapter 4 of the Gambia Constitution and international human rights standards and in particular reverse the amendments relating to the use of the internet
 - d. Review the Public Order Act to bring it in line with Section 25 of the Gambia Constitution and international human rights standards by ensuring the freedom of citizens to peaceably demonstrate without having to first obtain a police permit
3. Investigate all cases of arbitrary arrest, detention, enforced disappearance, torture and murder of journalists, human rights defenders, political actors, security personnel, and common citizens as well as cases of arson against media houses and bring those responsible to justice
 4. Create a national human rights institution in line with the Paris Principles;
 5. Ratify all outstanding international human rights instruments including the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Status of Refugees;
 6. Immediately prepare and submit overdue periodic reports to the treaty monitoring bodies
1. Immediately issue a standing invitation to the special procedures and facilitate a visit by the Special Rapporteurs of freedom of expression; torture; extrajudicial executions and on judges and lawyers;
 2. Respect and protect the independence and freedom of the legislature and the judiciary and other state institutions to enable them to function without interference; to respect the constitutional provisions on the appointment and removal of judicial officers, and to refrain from making statements on on-going court cases especially those involving senior government officials, senior military officers and opposition members.
 3. Halt interference with state institutions and processes but allow the rule of law to prevail in all affairs of the state and society
 4. Combat corruption by creating a permanent anti-corruption agency.
 5. Immediately resume the moratorium on executions and urge the National Assembly to act on Section 18 of the constitution on the desirability or not of the death penalty, and actually abolish the death penalty.

6. Recognize the economic, social and cultural rights of citizens by ensuring that the right to health, housing, food and health and clean environment are placed in Chapter 4 of the constitution to be made justiciable.