

- **UNIVERSAL PERIODIC REVIEW OF THE GAMBIA**

- *Submission on behalf of*
  - *Gambia Human Rights Network (GHRN)*
  - *20th session of the UPR Working Group, OCTOBER-NOVEMBER 2014*

## **1. FOLLOW UP TO THE PREVIOUS REVIEW**

### **Extrajudicial executions, enforced disappearances and unlawful arrests**

Eight recommendations relating to alleged cases of extrajudicial executions, enforced disappearances and unlawful arrests were made to The Gambia. These recommendations called for investigations into such allegations, accountability for the perpetrators, and a national mechanism to prevent abuses from occurring in the future.

Unlawful arrests of journalists, religious and political leaders, human rights defenders, persons suspected of homosexual behavior, and civil servants, and their detention well beyond the constitutionally-stipulated time limits, have actually increased since The Gambia's first UPR in 2010. No serious investigations have so far been conducted into any of the reported cases, and neither have any perpetrators been brought to justice for the crimes. In addition, no effective mechanism is in place to prevent such abuses.

### **Independence of the judiciary**

Two recommendations were made to The Gambia calling for the strengthening of the independence of the judiciary. The judiciary has been plagued by the frequent hiring and firing of judges by the President over the past four years, which invariably has had an impact on its independence from the executive. Judges have been dismissed while hearing cases, causing delays and presenting difficulties for colleagues assuming the cases.

The fact that judges serve at the will of the President has undermined trust in their impartiality particularly in politically-sensitive cases. Acquittals in cases where the President had a pronounced interest are extremely rare. The lack of tenure of judges, backlog of cases in the courts, and excessive sentences in politically-related cases have marred public confidence in the judiciary.

The absence of thorough and independent investigations into allegations of human rights abuses such as unlawful arrests, detentions, and torture; unfair trials; disappearances; and extrajudicial killings, have served to further erode public trust in the justice system as a whole. Judges lack security of tenure and appear to act in accordance with executive dictates for fear of having their contracts unilaterally and abruptly terminated by the President. As a consequence fewer Gambians seek redress through the courts in matters where the President and/or State are deemed to have an interest.

### **Prison conditions**

The Gambia accepted four recommendations on improving prison conditions and allowing access for independent organizations.

Reports by human rights organizations indicate that prison conditions have worsened since the 2010 review including high mortality rates, inadequate access to healthcare, and frequent denial of basic

visitation rights. Independent organizations, such as the International Committee of the Red Cross and Amnesty International, are still denied access to prisons and detention centers in The Gambia to determine if they meet international standards.

### **Women's Rights**

Thirty recommendations were made to The Gambia concerning women's rights. The recommendations mostly related to eliminating discrimination against women, including through domesticating international law, and combating female genital mutilation (FGM).

Despite the government's acceptance of many of these recommendations, actual progress remains quite minimal. This is especially so in attempts to combat FGM, where the government has done nothing to pass legislation to end the practice.

## **2. THE NATIONAL HUMAN RIGHTS FRAMEWORK**

Even with the existence of constitutional provisions that promote and protect basic freedoms, laws exist that criminalize defamation, severely penalize citizens for providing information to public officials, and punish individuals engaged in the dissemination of information critical of the government through digital media. There is a considerable variance between The Gambia's national laws and the government's policies and practices.

The Gambia is yet to ratify the Convention Against Torture (CAT), Optional Protocol of the Convention Against Torture (OPCAT), the Convention on Forced Disappearances, and the International Covenant on Civil and Political Rights (ICCPR).

National bodies such as the judiciary, the Ombudsman, and the Public Service Commission (PSC) lack institutional independence resulting in their ineffectiveness and the loss of public confidence in the State. The Office of the Ombudsman was created in 1998 "to democratize and harmonize the relationship between government and citizens." The PSC, on the other hand, was set up by a constitutional provision "to maintain an effective and efficient civil service by ensuring that persons who meet the criteria for jobs are recruited, trained, and disciplined in an open, fair and impartial manner."

## **3. THE HUMAN RIGHTS SITUATION ON THE GROUND**

### **Freedom of Expression**

Freedom of expression continues to be highly restricted, which has led to self-censorship by journalists. As a consequence, radio stations - traditionally the greatest source of information for the populace - restrict themselves to music and sports programming out of fear of being shut down by the government for venturing into matters deemed political in nature.

The State continues to stifle freedom of expression through new legislation and cracking down on dissent. Human rights defenders and members of the public filing complaints to government authorities face severe penalties if the information they provide is considered by the government as false or inconvenient. As a result the public are now extremely reluctant to speak out about any misconduct or inaction by government officials.

For example, former information minister Dr. Amadou Scattered Janneh and three others were arrested in June 2011 for printing and distributing t-shirts, following which Janneh was sentenced to life imprisonment in January 2012. The t-shirts were printed by Coalition for Change - The Gambia (CCG) with the inscription "End Dictatorship Now!"

New legislation has recently been passed to further stifle freedom of expression and crackdown on dissent. The Criminal Code (Amendment) Act 2013 and the Information and Communication (Amendment) Act 2013 introduce a 15-year jail term and a fine of about US\$100,000 for any individual convicted of using the internet to spread “false news or make derogatory statements, incite dissatisfaction, or instigate violence” against the government or public officials. The penalties apply to individuals living in the country or abroad.

In another case, Lansana Jobarteh of the opposition United Democratic Party (UDP) was arrested and charged with broadcasting without a license, contrary to the Information and Communication Act. The accusation was that on 14<sup>th</sup> and 15<sup>th</sup> December 2013, while attending UDP political rallies at diverse places, Jobarteh talked on Skype and gave information abroad without a broadcasting license, thereby committing an offense. He remained in custody as his case dragged on in the courts.

Fatou Camara, a renowned TV personality and former director of press for the Gambian Government was also arrested and detained incommunicado for 25 days in September 2013, accused of spreading false news on the internet and defaming the President. Fatou was alleged to have provided information to an online newspaper. She denied the charges during a court hearing on 11 October 2013. She subsequently fled the country that same month while on bail.

Media outlets are subject to closure without warning or due process when they are critical of the government. The Daily News and The Standard newspapers were closed immediately after reporting on the 2012 executions of nine inmates. The executions were carried out without prior warning and attracted substantial international attention. Taranga FM radio station was also closed without due process in 2012 after translating news stories including opinions critical of the government into local languages. While the ban on The Standard and Taranga FM was lifted by the President on 31 December 2013, The Daily News remains closed. Many websites critical of the government remain inaccessible in the Gambia. These cases illustrate the extent of the restriction on freedom of expression experienced by Gambians.

### **Arrests of journalists**

Journalists continue to face the brunt of the state's power as they attempt to exercise their right to freedom of expression. For instance, Musa Sheriff and Sainey MK Marenah were arrested on 13 January 2014 and are being prosecuted for reporting the defection of ruling, Alliance for Patriotic Re-orientation and Construction (APRC) members to the opposition, United Democratic Party (UDP). If convicted, they would face sentences of up to two years in prison. They were released on bail after pleading not guilty to charges of “publication of false news with intent to cause fear and alarm to the public” and “conspiracy to commit felony.”

### **Extrajudicial executions, enforced disappearances, and unlawful arrests**

Unlawful arrests, where people are detained beyond the constitutionally-prescribed period without charge or release, extrajudicial executions and enforced disappearances have become common practice in The Gambia. Detainees are often kept incommunicado.

For example, Imam Baba Leigh was arrested on 3 December 2012 after referring to the August 2012 executions of nine death row inmates by the Gambian government as “un-Islamic”. He was tortured and kept in solitary confinement for more than 5 months and released on 10 May 2013 without ever being charged in court.

### **Independence and effectiveness of the judicial system**

Serious concerns remain about the lack of independence and the ineffectiveness of the judicial system. Many former members of the judicial system are currently serving jail time. Judges and magistrates are targeted for dismissal or criminal prosecution when their judgments are perceived as a threat to the current regime. On December 3, 2012, prominent lawyer and President of the Gambia Bar Association, Amie Bensouda, was arrested by the National Intelligence Agency. She was trying to obtain previous court judgments on land matters for a World Bank project. She was held incommunicado for two days before being released. Four court officials were also arrested in connection with the case, accused of illegally providing information to Ms. Bensouda.

As a consequence of this constant threat of imprisonment, current members of the judicial system face undue pressure to always side with the government and this has had a chilling effect on their independence and performance.

### **Prison Conditions**

Overcrowding, lack of medical attention, inadequate food provision, and facilities which are not fit for purpose have resulted in a high death rate. Health conditions are very poor. The medical facilities in the central prison are under-resourced and the staff are poorly trained. Political prisoners are frequently denied access to healthcare. Even when prisoners are admitted to hospital, prison officers do not allow families to access patients. When families bring medicine and food items, prison guards often prevent them from delivering these supplies to prisoners.

Deaths of those in custody resulting from treatable diseases are common. For instance, two death row prisoners died in September 2012 due to neglect. Reports quoting former inmates indicate that on average a prisoner dies every month from amongst the approximately 150 inmates at the Confinement Wing of Mile 2 Prison. There is reportedly a high number of inmates with mental health problems who do not receive specialist attention.

Two or three people are forced to share a mattress as cells and buildings are overcrowded. Perceived enemies of the President are subjected to harsher treatment such as exposing them to unhealthy environments and long periods of solitary confinement.

There is a frequent denial of basic visitation rights. Independent organizations are denied access to prisons and detention centers to ensure they meet minimum international standards.

There is no opportunity for rehabilitation. Prison officials carry out their custodial functions with virtually no regard for reform as a means of reducing recidivism.

Finally, there is no effective complaints mechanism in place for prisoners to raise concerns about their conditions. Former inmates report that while the Prison Complaints Commission occasionally visits the prison facilities, the prisoners' concerns are not addressed, even when presented in writing. In October 2011 several prisoners in the Confinement Wing of Mile 2 Central Prison went on hunger strike in protest at overcrowding, poor hygiene conditions, poor diet, restrictions on family visits, denial of access to the media and failure of prison staff to comply with medical recommendations of doctors.

### **Death Penalty**

Despite being abolitionist in practice for nearly a quarter century, the Gambian government, without prior notification to the inmates or their family members, executed nine death row inmates on 23 August 2012. One of the executed death row prisoners, Abubacar Yarbo, had mental health problems. The executions were carried out without due process and some of those executed had not exhausted all legal appeals. The corpses are yet to be returned to family members of the executed prisoners.

The government has also not taken any steps, even though the Gambian constitution requires it, to hold a referendum on the desirability or otherwise of the abolition of the death penalty.

### **Women and Children's Rights**

Despite having ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which spells out recommendations for State Parties to pass legislation prohibiting harmful traditional practices, no action has been taken by the Gambia Government and the practice of female genital mutilation (FGM) remains widespread.

Women continue to face discrimination both in law and practice. Laws on domestic violence are not enforced, maternal mortality is high, and women are not adequately represented in decision making at both local and national government levels. Women enjoy fewer opportunities for education and employment than men, according to experts.

There is no law against early or forced marriage and the practice is widespread in The Gambia.

## **4. Recommendations for action by the Government of The Gambia**

### **Freedom of expression**

- Engage in a comprehensive media law reform by repealing all draconian laws, especially the criminal defamation, false news and sedition provisions to comply with the Declaration of Principles of Freedom of Expression in Africa.
- Grant access to the Special Rapporteur on Freedom of Expression / Access to Information in Africa to The Gambia and proceed on a fact finding mission and dialogue with all stakeholders.
- Cooperate with international and regional human rights bodies to improve the situation of freedom of expression and human rights generally in The Gambia.

### **Extrajudicial executions, enforced disappearances, and unlawful arrests**

- Immediately cease arbitrary arrest, detention and intimidation of journalists, human rights defenders and others.
- Ensure that all human rights violations committed by the police, the army and the National Intelligence Agency are investigated and that those responsible are brought to justice.
- Conduct independent and effective investigations into all cases of ill-treatment, torture, and extrajudicial execution.
- Comply with The Gambia's obligations under the African Charter, the UN Convention Against Torture, and the Convention for the Protection of All Persons from Enforced Disappearances, in particular through the criminalization of these offenses in their national legislation in accordance with international standards.
- Provide victims with the right to a remedy and full reparation, including rehabilitation, restitution, compensation, just satisfaction and guarantees of non-repetition.
- Carry out training of key stakeholders, bearing in mind international law standards and in particular the Istanbul Protocol on the Investigation and Documentation of Torture and other Ill-treatment.
- Guarantee that all human rights defenders in The Gambia are able to carry out their legitimate activities without fear of reprisals and free of all restrictions including judicial and police harassment and persecution.

## **Judiciary**

- Follow constitutional guidelines in the hiring and firing of judges to guarantee their impartiality.
- Step up efforts to permit lawyers to perform their professional duties without intimidation, arrest, harassment or interference.
- Immediately cease all interference by public officials, including the President, in the judicial process, such as issuing statements that may be detrimental to ongoing cases.
- Guarantee the tenure of judges

## **Prison Conditions**

- Allow independent organizations access to all detention centers.
- Reform the Prison Act to ensure that prisoners have adequate visitation rights.
- Address prison overcrowding by pardoning all political prisoners now.
- Institute measures to ensure that prisoners get access to medicines and qualified doctors.
- Improve both the quality and quantity of food available to prisoners.
- Transfer prisoners with mental health issues to appropriate medical facilities for treatment.

## **Death Penalty**

- Establish a permanent moratorium on the death penalty.
- Ensure that death row inmates are allowed to exhaust all legal options before any decision is made on execution.
- Release the bodies of the nine death row inmates executed in August 2012 to their relatives.
- Begin the process to review the desirability or otherwise of the death penalty, as per the 1997 Constitution.

## **Women and Children's Rights**

- Pass laws which prohibit cutting of the female genital.
- Enact laws to ban forced and early marriages.
- Enforce the Domestic Violence and the Child Labour acts.
- Raise awareness on the effects of female genital mutilation.
- Develop policies to give women access to quality healthcare.
- Develop programs to combat poverty, and infant and maternal mortality.
- Protect women from sexual exploitation through sensitization and prosecution of offenders.
- Enact and implement laws to ensure equality of rights and opportunities for women.
- Devise and implement measures to guarantee security of employment for women.

## **Ratification of International Instruments**

- Ratify the Convention Against Torture, as signed by The Gambia on 23 October 1985, and its Optional Protocol.
- Ratify the UN Convention on Enforced Disappearances.

## **Ombudsman and National Human Rights Commission**

- Ensure the independence of the Ombudsman, Public Service Commission, and the National Human Rights Commission to enable these national bodies to carry out their mandated work effectively, with full independence from the executive.
- Ensure that the National Human Rights Commission is established and operates according to the Paris Principles.