



GAMBIA

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 20TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2014

FOLLOW UP TO THE PREVIOUS REVIEW

Since Gambia's first Universal Periodic Review (UPR) in 2010, the human rights situation in the country has deteriorated. The government continues to stifle freedom of expression and commit other human rights violations with impunity.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Of the recommendations that were accepted in 2010, the government has ratified the Convention on the Rights of Persons with Disabilities in 2013,¹ and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.² However, the government has not ratified other equally important international human rights treaties,³ including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it committed to do in 2010.

TREATY BODIES AND UN SPECIAL PROCEDURES

The government has submitted overdue reports to the Committee on Economic, Social and Cultural Rights in 2012, the Committee on the Elimination of Discrimination against Women in 2012 and the Committee on the Rights of the Child 2011. However, it failed to submit other overdue reports, including to the Human Rights Committee, despite the commitments made at the review in 2010.⁴

ARBITRARY EXECUTIONS AND DEATH PENALTY

Despite its acceptance of the recommendation to "fight resolutely against the practice of arbitrary or summary executions"⁵ and to consider moving towards the abolition of the death penalty,⁶ the government executed nine death row inmates in 2012. These were the first executions in the country in nearly 30 years.⁷

Following the 2012 executions, the President declared a "conditional" moratorium dependant on the rise or fall of the crime rate.⁸ The review of the desirability of the death penalty in Gambia by the National Assembly, mandated in the 1997 Constitution, is now seven years overdue.⁹

The government passed the Drugs Control (amendment) Act 2011, which replaced the death penalty with life imprisonment for possession of more than 250g of cocaine or heroin. However, the death penalty remains a punishment for crimes of murder, terrorism and treason.¹⁰

In October 2012, the Supreme Court interpreted Article 18(2) of the 1997 Constitution to mean that "the administration of toxic substance that must result in death" and not the offence involving violence. It further held that violence "does not have to be actualised; it is sufficient if violence is intended."¹¹ This interpretation seems to broaden the scope of application of the death penalty in Gambia.

FREEDOM OF EXPRESSION AND HUMAN RIGHTS DEFENDERS

During its first UPR, the government rejected key recommendations to promote and protect the rights to freedom of expression and to take concrete measures to protect human rights defenders and journalists.¹² In 2013, the National Assembly passed the Criminal Code (amendment) Act and the Information and Communication (amendment) Act, both

of which further restrict the right to freedom of expression.

The government has also failed to abide by its commitment to avoid unlawful arrests and detention.¹³ Over the last four years, Amnesty International has documented many cases of arbitrary arrest and detention of scores of human rights defenders and journalists solely for peacefully exercising their right to freedom of expression.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Human rights are guaranteed under the Gambian Constitution and the various international and regional human rights treaties ratified by Gambia. In practice, however, human rights are often violated with impunity and President Jammeh has on several occasions denounced human rights as a “Western notion”.¹⁴

A draft law was developed in the period under review to establish a national human rights institution. However, several international observers have expressed concerns about its lack of independence and little progress has been made in bringing the draft law in line with the Paris Principles.

The National Assembly has also passed domestic legislation which restricts the right to freedom of expression, including:

- The Criminal Code (amendment) Act 2013 which broadens definitions of offences and places harsher punishments on acts of public disorder, such as “hurling abusive insults” or “singing abusive songs” and giving false information to a public servant. It also criminalizes expression through the choice of clothing, particularly men who dress as women.
- The Information and Communication (amendment) Act 2013 which allows the imposition of penalties of up to 15 years’ imprisonment and hefty fines for criticizing government officials online. It also targets people who spread “false news” about the government or public officials, caricature or make derogatory statements against public officials, or incite dissatisfaction or violence against the government.

THE HUMAN RIGHTS SITUATION ON THE GROUND

In November 2011, President Jammeh was declared the winner of the presidential elections, continuing his 19-year rule. His government tolerates no dissent. Human rights defenders, journalists, and political opponents face intimidation, harassment, death threats, arbitrary arrest, detention, torture and ill-treatment and enforced disappearance.

Most civil society or media bodies practice self-censorship in a pervading climate of fear.

Human rights defenders told Amnesty International they would not take part in the UPR process of Gambia for fear of reprisals.

FREEDOM OF EXPRESSION

The government regularly closes down media outlets deemed critical of government policies.¹⁵ In 2011 and 2012, the independent radio station, *Teranga FM*, was shut down three times. In 2012, two newspapers, *The Standard* and *Daily News*, were ordered to suspend their activities. No court order or document was issued and the editors were given no explanation.¹⁶

Several journalists have been arrested and detained without charge. Even after their release, the security forces continue to withhold their passports, documents or equipment pending investigations without specifying the details or duration of those investigations. Efforts by journalists to retrieve their documents have failed, and several have had their freedom of movement restricted because the lack of identity documents prevents them from leaving the country.

- Journalists Musa Sheriff and Sainey M.K. Marenah were arrested on 13 January 2014, following an article in *The Voice* newspaper on the defection of youth supporters from the ruling party to the opposition. They were released on 16 January, but continue to face charges of “conspiracy to commit misdemeanour” and “false publication”.¹⁷
- Abdoulie John, a freelance journalist, was arrested by the National Intelligence Agency (NIA) on 7 January 2013 on unspecified grounds and released on bail three days later. The NIA confiscated his passport, laptop computer and flash drive and he has to report to them until he grants them access to his emails. The NIA had earlier detained Abdoulie John overnight on 9 December 2012.

HUMAN RIGHTS DEFENDERS

Human rights defenders face harassment and intimidation, are arrested and detained, subjected to enforced disappearance or forced into exile. The government has publically accused human rights defenders as “foreign agents” spreading “nothing but lies”.¹⁸ The President has also repeatedly criticized human rights defenders for promoting and protecting the rights of sexual minorities.¹⁹

- On 7 September 2012, human rights defenders and journalists Baboucarr Ceesay and Abubacarr Saidykhan were arbitrarily arrested, detained for several days and charged with sedition after applying to the police for a permit to demonstrate peacefully against the use of the death penalty. The charges were subsequently dropped, but they continued to receive death threats.
- On 11 October 2010, women’s rights defenders Dr Isatou Touray and Amie Bojang Sissoho were arrested by security personnel and charged with theft. Both work for the Gambia Committee on Traditional Practices Affecting the Health of Women and Children.²⁰ Their organization has been targeted in the past. Both women were released on 20 October 2010 and acquitted in November 2012.

ARBITRARY ARREST AND DETENTION

The NIA and the police routinely carry out arbitrary arrests. Individuals are often held without charge and beyond the 72-hour time limit within which a suspect must be brought before a court, in violation of the Constitution.

- On 7 June 2011, Dr Amadou Scattered Janneh was arrested for being in possession of T-shirts which featured the slogan “End Dictatorship Now”. Dr Janneh was sentenced to life imprisonment with hard labour after being convicted of treason. He was released and expelled from the country in 2012.
- On 19 September 2011, Moses Richards, a lawyer and former High Court judge, was convicted of “giving false information to a public servant” and “sedition” and sentenced to two and a half years’ imprisonment with hard labour. He was released in October 2011 under a presidential pardon.

INDEPENDENCE OF THE JUDICIARY

The independence of the judiciary remains compromised due to frequent interference by the executive, including by removing and appointing judges and senior staff in the judiciary without consultation with the Judicial Service Commission. In 2013, the government dismissed three chief justices. Section 138 of the Constitution states that all superior court judges shall be appointed by the President on the recommendation of the Judicial Service Commission and Section 141 sets out safeguards for judicial independence in the removal process.

PRISON CONDITIONS

Access to detention centres is limited. The International Committee of the Red Cross has been denied access since 2006.²¹ Former inmates report poor conditions and overcrowding. Several deaths in custody have been reported, including that of two death row prisoners in October 2012, Abba Hydera and Sulayman Ceesay.

The DEATH PENALTY

On 23 August 2012, nine death row prisoners were executed by firing squad. No prior notification was given to the prisoners, or to their families, lawyers or the diplomatic representatives in the case of foreign nationals.²² The authorities did not confirm the executions until several days later. At least three of them had not exhausted their legal appeals.

As of March, at least 43 people remain on death row. Prisoners on death row are routinely denied visits by lawyers, family or friends.

ENFORCED DISAPPEARANCES

The government uses enforced disappearance to instill fear among human rights defenders, journalists, opposition party members and former security force personnel. Investigations into enforced disappearances are rarely carried out and the perpetrators are not brought to justice.

- Alhaji Mamut Ceesay and Ebou Jobe were subjected to enforced disappearance in June 2013. They were reportedly arrested because of materials posted on Facebook criticizing the regime. Several individuals have reported seeing them in a detention center and that they appeared to have been tortured.
- Prominent Muslim cleric and human rights defender, Imam Baba Leigh, was subjected to torture and enforced disappearance in 2012. He had publicly condemned the government's use of the death penalty. He was released following a presidential pardon in 2013. No one has been held accountable for his disappearance and torture.

TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment are regularly used in Gambia. Amnesty International has received consistent reports that people have been tortured or otherwise ill-treated in order to extract "confessions" which are used in court.

- General Omar Mbye, a death row inmate convicted for treason in 2010 alongside six others, was reportedly tortured in March 2013. Prison officials accused him of using a mobile phone to contact people outside the prison. Following his torture, he was allegedly kept in solitary confinement for six months and denied medical treatment. No investigation has been carried out into his allegations of torture.
- In 2013, three opposition party members, Amadou Sanneh, Malang Fatty and Alhagie Sambou Fatty, were tortured and forced to confess to crimes on national TV following their arrest for writing a letter of support for a political party member who was claiming asylum abroad due to persecution in Gambia.

LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) RIGHTS

President Jammeh has made numerous public statements attacking LGBTI rights, including at the UN General Assembly in 2013.²³ In February 2014, he stated "we will fight these vermins called homosexuals or gays the same way we are fighting malaria-causing mosquitoes; if not more aggressively."²⁴

In 2012, 18 men and two women perceived to be lesbian, gay, bisexual or transgender, were arrested during a raid on a nightclub. They were charged with attempting to commit "unnatural acts" and "conspiracy to commit felony". Their pictures and names were displayed in the newspapers. The charges against them were eventually dropped due to lack of evidence.²⁵

IMPUNITY

Officers of the NIA, the police force, and the military regularly commit human rights violations with no repercussions.

The government has made no progress in implementing the Economic Community of West African States (ECOWAS) Court of Justice judgments in the cases of journalists Ebrima Manneh²⁶ and Musa Saidu Khan.²⁷ Musa Saidu Khan alleged that he was tortured after state security agents raided the newspaper *The Independent* in 2006, shut it down and imprisoned its staff. After his release, Musa Saidu Khan fled to Senegal. Ebrima Manneh of the *Daily Observer* was arrested in 2006. As of March 2014, the government and police officials continue to deny that he is in custody.

The government has consistently failed to implement resolutions from the African Commission on Human and Peoples' Rights, calling on Gambia to investigate all allegations of acts of torture in detention and extrajudicial executions and to comply with the decisions of the ECOWAS Court of Justice.²⁸

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Gambia to:

Freedom of expression, association and assembly:

- Repeal legislation that does not comply with international and regional human rights law, in particular the Information and Communication (amendment) Act 2013 and Criminal Code (amendment) Act 2013;
- Refrain from intimidating or harassing human rights defenders and explicitly recognize the legitimacy of their human rights work;
- Ensure that all Gambians, including journalists, opposition leaders, real or perceived government opponents, and human rights defenders are able to freely exercise their right to expression, association, and peaceful assembly without fear of arrest, detention, intimidation or harassment.

Arbitrary arrest and detention:

- Immediately and unconditionally release all prisoners of conscience;
- Release all those currently detained unlawfully or charge them with a recognizable criminal offence in a fair trial;
- Immediately instruct the police, army and the National Intelligence Agency to cease unlawful arrests and detention;
- Allow independent human rights monitors access to centres of detention;
- Improve the conditions of detention in all places of detention and ensure that prisoners and detainees have access to medical care, adequate and appropriate food, hygiene, and exercise.

Independence and impartiality of the judiciary:

- Put in place measures to safeguard the independence of the judiciary in line with the UN Basic Principles on the Independence of the Judiciary;
- Ensure that all judicial appointments and dismissals are subject to all relevant constitutional procedures, and oblige the executive to comply with decisions of the Judicial Service Commission.

Impunity for human rights violations:

- Investigate all allegations of torture or other ill-treatment and hold the individuals suspected to be responsible to account. Any information obtained under torture must not be allowed in a court of law;
- Fully and effectively implement the judgments of the Economic Community Of West African States Court of Justice and the resolutions on the human rights situation in Gambia by African Commission on Human and Peoples' Rights;
- Submit all overdue reports to the Human Rights Committee and other treaty bodies;
- Establish a National Human Rights Institution complying with the Paris Principles;
- Extend a standing invitation to the UN Special Procedures and accept existing requests for access, in particular the UN Special Rapporteur on torture and the UN Special Rapporteur on extrajudicial executions;
- Ratify outstanding human rights treaties, including the Convention against Torture and its Optional Protocol and International Convention for the Protection of All Persons from Enforced Disappearance.

The death penalty:

- Conduct the overdue review of the desirability of the use of the death penalty as per the 1997 Constitution;
- Establish a permanent moratorium on executions, with a view to abolition, in line with resolutions of the UN General Assembly, and commute all death sentences to terms of imprisonment;

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolition of the death penalty;
- Pending abolition, remove from the law any mandatory imposition of the death penalty and provision for capital punishment for crimes which do not meet the threshold of “most serious crimes” under international and Constitutional law;
- Ensure that all of those on death row are aware of their rights, including the right to appeal to the Supreme Court, and provide legal aid for those who cannot afford legal representation;
- Release, if requested by the family, the bodies of those executed or make known the site of burial and allow reasonable access to that site;
- Allow lawyers and families of those on death row access to the prison to visit their relatives.

Rights of LGBTI individuals:

- Promote human rights for all, regardless of their sexual orientation, and refrain from making threatening, intimidating, or discriminatory remarks against LGBTI rights;
- Amend laws which criminalize consensual same sex sexual conduct and a persons’ right to freedom of expression through clothing.

¹ Report of the Working Group on the Universal Periodic Review, A/HRC/14/6 para 99, Recommendations 1-2 (Nigeria, Niger) and 4-5 (Argentina, Spain)

² A/HRC/14/6 para 98, Recommendation 2 (Brazil), Recommendation 4 (Turkey); para 99, Recommendation 1-4 (Nigeria, Niger, Slovakia, Argentina)

³ A/HRC/14/6 para 99, Recommendations 1-8 (Nigeria, Niger, Slovakia, Argentina, Spain, Chile, DRC). Gambia also failed to ratify the following international human rights treaties: the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; the International Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol to the Convention on the Elimination of Discrimination Against Women; the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights; the International Convention on the Rights of All Migrant Workers and Their Families; the Optional Protocol to the Convention Against Torture; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict. It is not clear if Gambia has signed and ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

⁴ A/HRC/14/6 para 97, Recommendation 7-12 (Algeria, United Kingdom, Azerbaijan, Djibouti, Niger, Mauritius); para 99, Recommendations 21-22 (Norway, Hungary), accepted at the 14th Session of the Human Rights Council. Gambia also failed to submit its report to the Committee on the Elimination of Racial Discrimination.

⁵ A/HRC/14/6 para 97, Recommendation 22 (Côte d’Ivoire)

⁶ A/HRC/14/6 para 99, Recommendations 32-35 (Brazil, Spain, Italy, Argentina)

⁷ During the adoption of their first UPR, the government responded to recommendations on the death penalty by saying “there was already a moratorium on the death penalty since 1995, when it was reintroduced; all prisoners sentenced to death were serving life imprisonment terms and none had been executed. However, it does not intend to abolish the death penalty, now or any time soon. It was a punishment meant for very serious crimes only, with adequate guarantees for the application of due process.” A/HRC/14/37 para 600, p. 138.

⁸ A/HRC/14/6 para 99, Recommendation 32 (Brazil)

⁹ A/HRC/14/6 para 99, Recommendation 34 (Italy). Article 18 of the 1997 Constitution provides that: “ (3) 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.”

¹⁰ Anti-Terrorism Act 2002 (as amended by the Anti-Terrorism Amendment Act 2008) Article 3, Criminal Code 1933 (as amended through to 2009), Article 35

¹¹ Badjie et al. v. State, [2012] SC Criminal Appeal 1-7/2011

¹² A/HRC/14/6 para 100, Recommendations 15-30 (Australia, Italy, Canada, Mexico, Germany, United States, United Kingdom, Netherlands, Spain, Norway, France and Sweden). The Gambian authorities argued that recommendations 99.48 (Guarantee the full legitimacy and protection for human rights defenders in accordance with the United Nations Declaration on Human Rights Defenders. Those arrested should be with no delays be brought to fair and proper trials, or released – Slovakia) and 99.49 (Guarantee the free exercise of activities of human rights defenders – France) were already implemented. It considered that the “allegation of lack of protection of human rights defenders was unfounded.” A/HRC/14/37 para 604, p. 139.

¹³ A/HRC/14/6 para 97, Recommendation 23 (Germany)

¹⁴ “This has proven our belief and conviction that the West are only interested in the protection of Freedom of the Press and expression only where it concerns their criminal agents bent on causing instability in Africa and the Third World but disguised as journalists and human rights campaigners and not a genuine protection of the Freedom of the Press worldwide.” Gambia Government Position on Major International Issues (December 2010);

“We must stay away from the immoral and satanic ways of life being promoted by some global powers in the name of human rights and freedom. “ Statement by President Yahya Jammeh on the occasion of Tobaski (October 2013); “I am not going to change that philosophy overnight because of foreign influence tagged to the bait of aid that is conditioned on the acceptance of alien cultures like homosexuality and unbridled freedoms that are not in line with our religious and cultural beliefs. Yes we will guarantee the rights of all Gambians within the framework of our established traditions and cultural norms. Yet the guaranteeing of such rights is sacrosanct only to the extent that they do not trespass onto the rights of others or the general welfare of our society.” Statement of President Yahya Jammeh on the occasion of the New Year (December 2013)

“My Government places a high premium on national security and this sacred national interest will never be sacrificed on the altar of satanic and ungodly international standards that continue to promote the evil Agenda of the world powers that are today playing god to Africa and the third world. (...) Therefore the coercive and dictatorial pressures by some foreign powers aimed at imposing on us their ungodly and decadent cultures like homosexuality and unbridled freedoms that endanger the peace and welfare of the majority, will never be accepted in this country.” Statement by President Yahya Jammeh on the occasion of the Gambia’s 49th Independence anniversary (18th February 2014).

“Today, after fighting for our freedom and liberating our continent, we are being prescribed a religion -DEMOCRACY, HUMAN RIGHTS and GOOD GOVERNANCE ° by descendants of the same colonial powers. Present day Africans cannot be hoodwinked anymore and we are determined to defend our independence and dignity, and take control of our own natural resources at any cost and by any means necessary.” Statement of President Yahya Jammeh at the 68th Session of the United Nations General Assembly (September 2013)

¹⁵ “If a journalist causes an offence, we will detain and prosecute him. They are not better than other Gambians. They, [the detractors] know that the quickest way to destabilise a country is to use the media and those newspapers that are being closed, we are going to keep them closed because now that they are talking about it they will remain closed. That is my message to them.” Press Office of the State House, “*The Gambia is a sovereign State*”, *President Jammeh tells EU*, January 2013

¹⁶ *Teranga FM* and *The Standard* reopened in 2013. *The Daily News* remains closed.

¹⁷ Musa Sheriff and Sainey M.K. Marenah were arrested on 13 January 2014 in Serekunda in relation to an article published in the Gambian newspaper *The Voice* on 9 December 2013. The article reported on the defection of youth supporters of the ruling Alliance for Patriotic Re-Oriented and Construction (APRC) party to the opposition United Democratic Party (UDP). They were released on bail on 16 January but continue to face charges of “conspiracy to commit misdemeanour” and “false publication”.

¹⁸ “Gambians will realize that in both the UK & US facilities have been created for so called Gambians to set up organizations and media facilities to spread nothing but lies against The Gambia by making false, outrageous, and unfounded statements about the state of human rights in The Gambia.” The Government’s position on the relentless smear campaign against The Gambia (October 2013).

¹⁹ “In fact, promoting Homo Sexuality and imposing it on weaker or poorer nations is a declaration of war on both Religions and Human Existence. For Muslims, this is a Declaration of WAR ON ISLAM, A Declaration of WAR AGAINST ALLAH, A Declaration OF WAR on HUMAN EXISTENCE - For which Every True Believer must be ready to lay down your life to defend ISLAM, FIGHTING THE CAUSE OF ALLAH and Defend HUMAN EXISTENCE. These satanic and decadent powers that promote such UNGODLY and Satanic behaviour in the name of Freedom and Human rights would fail just like the crusaders failed to stop Islam. The crusaders failed because true Muslims stood up to them. These Homosexuals Promoting Powers would fail miserably because all true believers, Muslims and Christians are standing up to them.” Statement of President Yahya Jammeh on the occasion of the 19th Anniversary Celebrations of the 22nd July Revolution (July 2013)

In October 2013, President Jammeh called on the Gambian people to “slaughter [their own] evil urges towards the ways of Satan and his accomplices in all their shapes and colour”, urging the population to “stay away from the immoral and satanic ways of life being promoted by the same global powers in the name of human rights and freedom.” Statement by President Yahya Jammeh on the occasion of Tobaski (October 2013)

²⁰ The Gambia Committee on Traditional Practices Affecting the Health of Women and Children Gambian is civil society organization based in Gambian and working for the promotion and protection of the rights of women and children.

²¹ ICRC Dakar – Regional Delegation, Annual Report 2012

²² The prisoners who were executed included seven Gambian men, one Senegalese man and one Senegalese woman.

²³ “Thus, banditry, drug trafficking or its illicit use, homosexuality, murder, terrorism and other subversive activities against either the State or the people will not be tolerated, and Government will take whatever legal action is necessary to expunge these deadly and heinous acts from the country. (...) All those guilty of serious crimes and are condemned will face the full force of the law. All punishments prescribed by law will be maintained in the country to ensure that criminals get what they deserve: that is, that those who kill are killed, and those who deserve to be put away from society are put away according to the dictates of the law. By the middle of next month, all the death sentences would have been carried out to the letter.” Statement of President Yahya Jammeh on the occasion of Eid-UI-Fitr (August 2012)

“Those who promote homosexuality want to put an end to human existence, it is becoming an epidemic and we Muslims and Africans will fight to end this behaviour. We want a brighter future for humanity and the continuous existence of humanity on this planet,” Statement of President Yahya Jammeh at the 68th Session of the United Nations General Assembly (September 2013)

²⁴ Statement by President Yahya Jammeh on the occasion of the Gambia’s 49th Independence anniversary (February 2014)

²⁵ Many of the individuals fled Gambia following harassment, death threats, and discrimination.

²⁶ Chief Ebrima Manneh v. Republic of The Gambia (2008)

²⁷ Musa Saidykhan v. Republic of The Gambia (2010)

²⁸ Recent resolutions include: Resolution on the Deteriorating Human Rights Situation in the Republic of The Gambia (Resolution No. ACHPR/res. 145 2008); Resolution on the Human Rights Situation in the Republic of The Gambia (Resolution No. ACHPR/Res. 134 2008)