



GAMBIA

FEAR RULES

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INTRODUCTION

This report illustrates how human rights violations in Gambia are perpetrated by the National Intelligence Agency (NIA), army and police against real and perceived opponents of the government on a routine basis. It demonstrates that once people are in the custody of the government, they are susceptible to a whole range of human rights violations including unlawful detention, torture while in detention, unfair trials, enforced disappearance and extrajudicial executions. This report documents human rights violations that have taken place following the March 2006 foiled coup attempt, when at least 63 perceived and real opponents were rounded up. The report also includes human rights violations that have taken place in the post coup period.

The report calls on the Gambian government: to incorporate international human rights law and standards into national law; to cease the use of torture in detention and extra-judicial executions; to release all those detained without charge and to protect the access of all Gambians to a free and impartial judicial system.

The information in this report was gathered during field visits to Gambia in October 2007 and September 2008. Continuous monitoring of events has taken place throughout the year. Due to the high risk of reprisals against those who have spoken to Amnesty International, many of the testimonies in this report are anonymous. Interviews with individuals were often conducted outside Gambia to ensure their safety. In a number of cases Amnesty International was not able to speak directly with those subjected to human rights violations. In October 2007, the Amnesty International researcher and campaigner and a Gambian journalist were arrested, detained and finally released unconditionally after six days without charge, on 14 October 2007.

Gambia, which lies on the west coast of Africa, is one of the smallest countries on the continent, stretching from east to west, and following the route of the river Gambia. This narrow strip of land, with a population of approximately 1.5 million, is surrounded by Senegal. Its main sources of income are tourism and the export of peanuts.

Gambia became independent in 1965 and the first republic was ruled by Dawda Jawara until he lost power in 1994 in a military coup led by Lieutenant Yahya AJJ Jammeh as head of the Armed Forces Provisional Ruling Council (AFPRC). In July 1994 Yahya AJJ Jammeh declared himself head of state and banned all political parties and political activities. Elections were held in 1996 and Yahya AJJ Jammeh was voted in as president. After the 1994 coup, the provisions of the 1970 Constitution relating to executive and legislative powers, were suspended and the AFPRC ruled by military decree, declaring itself above legal challenge. The new government established a Constitution Review Commission to update the 1970 Constitution. The new Constitution was approved by referendum in August 1996 and became law in January 1997. Under this Constitution, which is still in effect today, the President is head of state, head of the government, and Commander-in-Chief of the armed forces. Presidents are elected every five years and there is no limit to the number of terms a President can run.

The Gambian Constitution provides for a participatory democracy, the separation of powers and a National Assembly. Chapter IV of the Constitution provides for the protection of fundamental rights and freedoms including: the right to life, privacy and personal liberty; protection from slavery and forced labour; protection from torture and inhuman treatment; protection from deprivation of property; protection of the law and a fair trial; freedom of speech, conscience, assembly, association and movement; and protection from discrimination.

Gambia has ratified most major international human rights treaties, including: the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention Against Torture, Cruel, Inhuman and Degrading Treatment or Conduct; and the United Nations Convention on the Rights of the Child (UNCRC).

Gambia has also ratified the African Charter on Human and People's Rights (African Charter); the Protocol to the African Charter on the Rights and Welfare of the Child; the Organization of African Unity (OAU) Convention on Specific Aspects of Refugee Problems; and the Protocol to the African Charter on Human and People's Rights.

PART 1

HUMAN RIGHTS VIOLATIONS IN GAMBIA

CHAPTER 1

UNLAWFUL ARREST AND UNLAWFUL DETENTION

“People do whatever they can to avoid getting arrested because once you are arrested you are out of the protection of the law and are subject to all kinds of human rights violations from the police, the army, and the NIA.”

Human rights defender

1. RULES AND REALITY

The 1997 Gambian Constitution Chapter IV Section 19, the ICCPR Article 9, and the African Charter Article 6 guarantee the right of everyone to liberty and security, and the right not to be subjected to arbitrary arrest or detention. An individual may only be deprived of his or her liberty on grounds and according to procedures established by law. Only people authorized to enforce these procedures may carry out arrests, detentions or imprisonments. Under the law the police are under the control of the Secretary of State for the Interior and are responsible for public security. The National Intelligence Agency (NIA) is responsible for protecting state security, collecting intelligence, and conducting covert investigations, and reports directly to the President. Both the police and the NIA have the power of arrest and detention.¹ The

police are responsible for criminal and civil matters and the NIA is in charge of economic crimes and those that impact upon state security. The army are responsible for external security and report to the Secretary of State for Defence. The army are not permitted to arrest and detain people.

In reality the NIA, the police and the army all unlawfully arrest and detain people in Gambia. The law requires that authorities obtain an arrest warrant before arresting a person, however, in practice, warrants, are hardly ever issued. In violation of the Gambian Constitution, detainees are rarely informed of their rights and/or the reason for their arrest or detention. Often people are denied access to a lawyer, and people are rarely charged within the 72 hours mandated by the Constitution.²

People are routinely unlawfully detained in official places of detention such as Mile 2 state central prison, NIA headquarters and police detention centres. Victims of prolonged detention without charge are often held alongside remand and convicted prisoners or those convicted of capital crimes, such as treason and murder, and housed in the maximum security wing of Mile 2 prison. Other official places of detention include: Banjulindinga a police training centre, and in the interior of the country, Jeshwang and Janjanbureh prisons. Others are held in secret and unlawful detention centres, which one human rights defender described, saying: "There are secret detention centres all over the place. People can be detained anywhere." These include: military barracks such as Fort Buling; secret quarters in police stations such as in Bundung; police stations in remote areas such as Sara Ngai and Fatoto; and warehouses such as in Kanilai.

2. MARCH 2006 FOILED COUP PLOT

In the 14 years that President Jammeh has been in power, six foiled coup attempts have been reported: in November 1994, January 1995, November 1996, July 1997, January 2000 and March 2006. Following alleged coup attempts, Amnesty International has observed a dramatic deterioration in the human rights situation and has documented serious human rights violations including unlawful arrests, unlawful detentions, torture while in detention, enforced disappearances, extrajudicial executions and unfair trials.

After the most recent coup attempt in March 2006, the Gambian authorities announced that a coup led by former Chief of Defence Staff, Colonel Ndure Cham, had been discovered and aborted. Three days later the President declared on national radio and television that "any attempt to unconstitutionally overthrow the government would be crushed without mercy" and that he would "set an example that would put an end to the treachery and sabotage."³ Amnesty International estimates that, following this statement, at least 63 and possibly many more civilians and military people were arrested without a warrant and were not told of the reason of their arrest within three hours as mandated by the Gambian Constitution. The bulk of these arrests took place in March and April 2006.

Some of those targeted were arrested as suspected coup plotters, while others, according to

human rights observers, "saw the mass arrest of people as fertile ground for the government to achieve its objective of cracking down on perceived enemies." Some of the government's perceived opponents included human rights defenders – among whom were two lawyers and six journalists, some of whom Amnesty International considered to be prisoners of conscience. Those suspected of being coup plotters were government officials, military and security forces including 13 government employees and their relatives or associates. Of these, at least five held positions in the Cabinet, and six were Members of Parliament from the President's own party. At least four relatives of Ndure Cham, the ex-Chief of Defence accused of masterminding the coup plot, including his wife, were arrested. By the first week in April, 18 army officers and 10 security or ex-security agents were also arrested and held for varying periods.

The NIA, the army and the police arrested people in their homes, at their work and in the streets. In April 2006 Amnesty International was in contact with family members of those arrested who were reported to have been unlawfully detained and held incommunicado or in solitary confinement for weeks at a time, despite the requirement under Gambian law that they should be brought before a court within 72 hours of their arrest. They did not have access to a lawyer. Some of them are alleged to have been tortured and ill-treated while in detention and a number of them disappeared or were reportedly killed.

In the end, 21 of the probable 63 – both civilians and military men – were charged with treason related crimes in May 2006. The 21 included 11 army personnel, five NIA officers, and five civilians, of whom four were members of the government. In the end, however only 15 cases went to trial.

UNLAWFUL DETENTION, TORTURE AND DISAPPEARANCE OF SUSPECTED COUP PLOTTERS

The first series of arrests took place on 22 March 2006 when five men, including the then NIA Director, General Daba Marena, Lieutenant Ebou Lowe, 2nd Lieutenant Alieu Cessay, Regimental Sgt Major Alpha Bah and Staff Sgt Manlafi Corr, were arrested on suspicion of plotting a coup. Initially they were all taken to Mile 2 and held without charge, then, on 6 April 2006, according to government reports, these five men were being transferred to Janjanburu prison in the interior when a road accident occurred and all five men were said to have escaped. There has been no sign of the men since their alleged accident and Amnesty International fears that they have become victims of enforced disappearance or extrajudicially executed.⁴

Ten military personnel, including Capt Bunja Darboe, Capt Yahya Darboe, Wassa Camara, Lieut Pharing Sanyang, Capt Abdou Karim Jah, Lieut Momodou Alieu Bah, Cpl Samba Bah, Babou Janha, Capt Pierre Mendy, and Pte Alhagie Nying and five civilians – Alieu Jobe, Tamsir Jassey, Omar Faal, Demba Dem and Hamadie Sowe – stayed in pre-trial detention for six weeks until they were formally charged on 10 May 2006. All 15 were charged with treason related crimes, including treason, conspiracy to commit treason, and concealment to commit treason, which are all capital and non-bailable offences.

Five (former) NIA officers – Baba Saba Saho, Ngor Secka, former NIA Director Abdoulie

Kujabi, Musa Dibba, Foday Barry, and one army officer, the late Colonel Vincent Jatta – were arrested in connection with the coup on 6 April 2006. Although these six men had initially been arresting coup suspects in late March, by early April 2006 they had themselves become suspects, and were arrested without a warrant and held incommunicado in detention. They all reportedly experienced torture while in detention. After more than one year in detention, charges were dropped and they were released on presidential pardon. Colonel Vincent Jatta died in January 2008, less than six months after his release.

Demba Dem, Member of Parliament originally arrested, charged, and was on trial for treason in connection with the March coup told Amnesty International:

I was arrested on 25 March 2006 at my job by members of the NIA. Initially I was brought to the NIA headquarters but did not stay there long and was brought immediately to the Mile 2 prison and put in the maximum security cell. On the evening of 28 March at around midnight I was escorted by five armed men from the army to the NIA and brought in front of a panel of approximately 30 people, all of whom were from the military police, the NIA, the army and the police. I was asked by the head of the NIA, Musa Jammeh, who was leading the panel, what I knew about the coup plot. I told them that I did not know anything and in fact that I did not know any of the people they were saying were involved in the coup. After they finished questioning me I was brought to the back of the NIA headquarters, handcuffed and a plastic bag was put over my head and I was then beaten up by soldiers from the state house who are also known as the green boys or the drug boys. Even though I could not see them, I knew who they were and in fact they are still in the army today. After they finished beating me up I was brought back to Mile 2.

UNLAWFUL ARREST, DETENTION AND TORTURE OF PERCEIVED OPPONENTS OF THE GOVERNMENT

Human rights defenders, including lawyers and journalists, were also unlawfully arrested, detained and tortured in the wake of the coup. On 28 March 2006 the entire staff of *The Independent* was arrested and the newspaper was closed down. After several hours, all the staff were released, except for the managing editor, Madi Ceesay, and the editor-in-chief, Musa Saidu Khan. Lamin Fatty, a reporter for the paper, was also arrested on 6 April and held for over two months until he was finally charged.⁵ Both Ceesay and Saidu Khan were detained by the NIA, spent more than three weeks in police detention and were later brought to the NIA headquarters where they were held until their release on 22 April 2006. Both men told Amnesty International that they had been tortured while in detention. They were never charged. Saidu Khan told Amnesty International about his unlawful arrest, detention and torture:

On 28 March 2006 the army, with heavy weapons, surrounded my house, and the police arrested me and whisked me into a waiting police Land Rover. I was told by the arresting officer that I was needed at the police station for questioning. The army's presence created a state of fear in my neighbourhood, where a lot of people could be seen in tears. The arresting officer, Mr Ceesay assured my ageing godmother that I would be

interrogated at Serekunda police station and would be back a few hours later. But that was far from the reality. I was driven to a mobile police unit at Kanifing where senior police chiefs kept me outside with a guard and held a meeting. They later asked [for] me only to inform me that the police chief ordered me to be held at the NIA headquarters in Banjul.

Later, two other coup suspects, Alieu Jobe and Tamsir Jasseh, were brought in the cells. And in the evening, I joined Madi Ceesay in one of the offices at the NIA before a green Mercedes Benz arrived to transfer us to Banjul police where officers on duty were asked to put us incommunicado. The Inspector General of Police said these people must be held incommunicado. In the Banjul police station both Ceesay and I shared a cell with 45 others, some of who had been detained without trial or charged for nine years.

A week later, senior police officers called us for a meeting upstairs, saying they were only asked to keep us but they did not know the reasons of our detention. We were returned to the NIA headquarters. Several days later, on 4 April, we were again interrogated by the agency's internal director, Captain Lamin Saine, who promised to liaise with the President's office about our case before drawing conclusions. He felt sympathetic and brought us soap and allowed us to have shower for the first time in several days. We were also given mats to sleep on.

Just as we thought we were in the clear, the torture squad from the President's own office cut short our enjoyment. We were taken to a hideout where we were shackled and subjected to torture. The torture squad led by the President's personal protection officer stripped me naked and administered electric shocks all over my body, including the genitals. I went unconscious for almost 30 minutes.

During the course of their detention, the two editors tried to gain access to a lawyer. Due to the politically sensitive nature of the case and the overall environment of fear associated with defending those seen to be in opposition to the government, no lawyer was prepared to accept their case. Upon their release on 22 April 2006, Saidykhan was unable to obtain medical services he required as a result of the torture he received while in detention. No doctors would treat him for fear of the risk that they might be under for treating someone who needed medical treatment as a consequence of torture and ill-treatment in detention. With no other options, and to escape further harassment, he left Gambia.

Saidykhan could not take the case of his unlawful detention and torture forward in Gambia. In November 2007 the Media Foundation West Africa (MFWA) filed a lawsuit at the Economic Community of West African States (ECOWAS) Community Court of Justice (CCJ)⁶ against the Gambian government, over the illegal detention and torture of Musa Saidykhan in March 2006. In the lawsuit there are claims that electric shocks were administered to his naked body, including his genitals, during his 22-day detention. A date is yet to be fixed for the hearing.

In 2005 Saidykhan attended the African Editors Forum in Johannesburg, where he gave a brief account of press freedom violations, including arbitrary arrests, detentions, deportations, kidnapping, arson attacks and the unsolved murder of Deydra Hydara, the

prominent journalist who was shot dead in 2005. He made a specific appeal to the then President of South Africa, Thabo Mbeki, to put pressure on the government to expedite the investigation into Hydera's unsolved murder. Mbeki told Saidykhan he would engage the Gambian government on some of the issues.

When Saidykhan returned from South Africa in 2005, he was arrested by the NIA but was soon released. He believes that his release was due to pressure exerted on the Gambian government by President Mbeki. Also in 2005, the Gambian government lost the chairmanship of ECOWAS; Saidykhan said he believes that: "the government blames me for losing the chairmanship, yet actually it was due to the government's poor human rights record."

Saidykhan believes that, together with some of the unpopular stories written in *The Independent* and because of his reputation as an outspoken journalist, the government used the chaos of the coup to target him and other staff of the paper and close it down.

ONE STILL REMAINS IN DETENTION

Amnesty International is concerned that, after more than two years, one of the people arrested in connection with the March 2006 foiled coup remains in detention without charge. Alieu Lowe, former head of the government Treasury and nephew of the former Chief of Defence Staff, Ndure Cham, was arrested by the NIA in April 2006 at his residence in Fajjunda. After being in detention for several months without charge, the Attorney General approached Lowe and made a deal with him that if he served as a witness he would reportedly be released. He agreed to this. During the trial he testified about his own ill-treatment and torture in custody and said that he witnessed others being tortured. His testimony was later expunged because the prosecution considered him to be a hostile witness. It seems that, due to his controversial testimony he has not been released from Mile 2, contrary to the agreement reached with the Attorney General. Amnesty International can confirm that Alieu Lowe was in Mile 2 at least six months ago based on the testimony of a former detainee who was there at that time. His family have not had access to him in prison and have not contracted the services of a lawyer.

3. UNLAWFUL ARRESTS AND DETENTIONS CONTINUE IN THE POST COUP PERIOD

Following the March 2006 alleged coup, unlawful arrests and detentions have continued to target journalists, civil servants, security personnel and other perceived opponents of the government. These include Ismaila Bajinka, formally with the NIA, and brother to former presidential bodyguard, Major Khalipha Bajinka, who was accused of being involved in the March 2006 coup plot and fled the country in July 2006 having received information that a warrant had been issued for his arrest. As a result of Khalipha's flight, both Ismaila and Yahya Bajinka, another brother and also an NIA officer, were arrested in July 2006. Yahya was held incommunicado in detention for two weeks and then released without charge. Yahya was then arrested a year later on 7 April 2007 and held for over a year in secret detention. Ismaila's arrest is reported to have been linked to him having helped his brother leave the country; he has been in detention since then and has neither been charged nor had access to a lawyer.

Others that Amnesty International has been closely monitoring include another NIA agent, Kebbe Secka. He was arrested by plain clothes officers in June 2007 and since then has been detained at the maximum security wing at Mile 2. Reportedly he was arrested on suspicion of spying for Senegal. Family sources expressed dismay and concern over the long detention of Secka and said they were concerned about his health, noting that they do not know the reasons for his arrest and subsequent detention. The family said that Secka is yet to be charged and that he is incarcerated at Mile 2.

Amnesty International is aware of many others who remain in detention without charge and calls on the government to release them or charge them with a recognizable crime.⁷

4. OTHER DETAINEES HELD IN MAXIMUM SECURITY CELL WITHOUT CHARGE

Amnesty International can also confirm that there are at least 19 others, both Gambian and other nationalities, including at least seven Senegalese and at least two Nigerians, who have been unlawfully detained without charge and are being held in maximum security cell 5 at Mile 2 prison. The majority were arrested in the last few years but some have been detained for more than 12 years without charge or trial.

Amnesty International is aware of Abdouramani Baldeh from Senegal who has been detained for at least 12 years; Abdoulie Sonko, a Gambian, who has been detained for nine years; Muhammed Gumaneh from Gambia, who has been detained for eight years; Buba Ceesay, a Gambian, who has been detained for seven years; Baba Galleh Jallow, Sambo Doro Bah and Yorro Baldeh, all Gambians, who have been detained for six years; and several Nigerians, including Victor Acka, who has been detained for five years; Pa Samba, a Gambian has been detained for four years; Malick Bah, a Gambian has been detained for two years.

There are at least seven Senegalese men and one Gambian who were arrested in connection with the Casamance armed opposition.⁸ These include: Ismaila Sambou, Siaka Sambou, Ebrima Badjie and Nuha Jammeh, who have been in detention since 2007. They were originally part of a group of 30 men including Alexandra Djibba, former spokesperson of the Movement of Democratic Forces in Casamance (MFDC) and a former ally of President Jammeh, who is being held without charge. Djibba's arrest is linked to a disagreement he had with the President in 2007. In 2007 Djibba's brother raised an alarm about the condition of his brother's health, stating that his eyesight had deteriorated and that he was paralysed. His brother suspected this was due to Djibba having been tortured while in detention. In addition, Dawada Jatta and Sedidat Badjie, both from Senegal, were arrested in 2006 and have been detained for two years.

CHAPTER 2

ENFORCED DISAPPEARANCES

“If you are a threat to the government they just try and make you disappear.”

Human rights defender

Amnesty International is aware of instances in which unlawful detention results in enforced disappearances. According to Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance adopted in 2006:

An enforced disappearance takes place when a person is arrested, detained, abducted or subjected to any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Experience has shown that disappeared persons are often tortured and in constant fear for their lives, removed from the protection of the law, deprived of their rights and at the mercy of their captors. It is a continuing violation which often persists for many years after the initial abduction. If the person is released, they may continue to suffer the consequences for the rest of their life. Many people who have disappeared are never released, and their fate remains unknown. Their families and friends may never discover what has happened to them. It is a violation of the disappeared person and of his or her relatives and friends who, not knowing the fate of their loved one, sometimes wait for years for news that may never come.

1. ECOWAS COURT DEMANDS THAT THE GAMBIAN GOVERNMENT PRODUCE JOURNALIST

Journalists have also been at risk of becoming victims of enforced disappearance, including Chief Ebrima Manneh, a reporter at the government-owned *Daily Observer*, who has not been seen since he was arrested on 11 July by NIA agents at the newspaper's offices. The case of the missing journalist was taken to the ECOWAS CCJ in June 2007 and, in a landmark decision, a year later in June 2008 the court ordered the Gambian government to release him from unlawful detention, dismissing the claim that Manneh was not in their custody.

It is believed that his arrest was in connection with him trying to print a BBC article that was critical of the Gambian government. On 21 February 2007, after pressure from lawyers and family members, the government published a press release denying any involvement in Manneh's arrest and subsequent disappearance, and claiming that they had no knowledge of his whereabouts. However, in July 2007, he was seen at the Royal Victoria Teaching Hospital (RVTH) in the custody of Gambian police, and was reported to be receiving treatment for high blood pressure.

Due to the lack of progress on this case in Gambia, the Media Foundation of West Africa (MFWA) filed an application in the ECOWAS CCJ on 19 June 2007 on behalf of Chief Ebrima Manneh, summoning the government to answer charges over his disappearance. When the hearing started on 16 July 2007 in Abuja, Nigeria, the Gambian government was not represented, and the ruling was postponed until January 2008. In January 2008 the Gambian government again failed to appear, and the case was adjourned until 13 March 2008. In mid-March, although four Gambian state security agents and the Interior Minister were called to testify before the ECOWAS CCJ, again no one appeared. Judgement day was then set for 5 June 2008, and yet again the government failed to turn up. The court ordered the Gambian government to immediately release Chief Ebrima Manneh from unlawful detention without further delay and pay the sum of US\$100,000 in damages. To date the Gambian government has not complied with the order.

Discussions with members of Manneh's family revealed significant distress. His mother claimed she found it hard to enjoy anything because the fate of her son was constantly on her mind. The family also claimed that they felt increasingly isolated from the community because other people are afraid to associate with them. Their anguish was exacerbated by financial difficulties because the family was dependent on Manneh's salary.

A discussion that Amnesty International held with the Solicitor General in September 2008 revealed that the government believed he had been abducted, as it had been claimed that nobody from the government had been involved in his disappearance. But, although the Solicitor General believed he had been abducted, the government had not initiated an investigation to find out who was responsible for his disappearance. Amnesty International also discussed the disappearance of Chief Ebrima Manneh with some National Assembly members, including the Speaker. Their belief was that he is in hiding and that journalists were behind his disappearance, in an attempt to discredit the government.⁹

Amnesty International unequivocally believes that Chief Ebrima Manneh is a victim of enforced disappearance based on information gathered from witnesses who testified at the ECOWAS CCJ. One witness, Ousman Darboe, told Amnesty International that he witnessed Manneh's initial arrest in 2006 and had knowledge that Manneh was being held in various secret detention centres in Gambia.¹⁰ In light of this and the ruling at regional court, Amnesty International calls on the government to abide by the June ruling of the ECOWAS CCJ to produce Chief Ebrima Manneh and pay damages of US\$100,000.

2. OPPOSITION SUPPORTERS AS VICTIMS OF ENFORCED DISAPPEARANCE

In Gambia, opposition politicians and their supporters, when perceived to gain too much power and threaten the status quo, can be at risk of becoming victims of enforced disappearance. Since the 2006 presidential elections Amnesty International has documented at least three people who have become victims of enforced disappearances. In October 2007 Ousman "Rambo" Jatta and Tamba Fofana, the two men previously considered victims of enforced disappearance, were released. Amnesty International remains concerned about Kanyiba Kanyie.

Tamba Fofana, Kanyiba Kanyie, Ousman "Rambo" Jatta, all United Democratic Party (UDP) supporters, the main opposition party to the government, were arrested on 13 September, 18 September and 25 September 2006 respectively. All these arrests are reported to have been linked to the men's political activities and occurred around the period of the presidential election which took place on 23 September 2006.

Tamba Fofana, a school teacher and UDP opposition supporter, was reportedly picked up by soldiers on 13 September and taken to the police on accusations of "anti-state" activities. Throughout his unlawful detention his family had no contact with him and the police denied knowledge of his whereabouts. He had been held in a secret detention centre at the Fototo police station for the majority of the time that he was in the custody of the government until his release on 13 October 2007. Fofana was never presented with an arrest warrant, told what he was being held for or actually charged.

Jatta, a locally elected counsellor for Old Cape Ward in Bakou, was arrested at his office on 25 September by two plain clothes policemen. He was forced to drive his own car to Bakou police station accompanied by the police. For over a year, Jatta was transferred to various secret detention centres and then spent the majority of the time in Sara Ngai police station until his release on 13 October 2007. While in detention, Jatta reported regularly being denied food and water. He suffered from malaria and was denied access to medical treatment. Until his release more than a year later, his family had not had any contact with him. It is reported that his enforced disappearance was connected with his popularity as an opposition politician and that he had reported irregularities in connection with the presidential election. Just three months earlier, in June 2006, Jatta was arrested and

detained in Mile 2 for 13 days until he was charged with using abusive language and threatening the security of the state, reportedly because of a speech that he made at the African Union (AU) summit held in Gambia between 24-25 June 2006. His trial was ongoing when he disappeared on 23 September 2006. His family said that, prior to him being elected a local councillor in 2005, he had never had any problem with the police.

On 18 September Kanyiba Kanyie, an employee of the Christian Children's Fund (CCF), an international non-governmental organization, was arrested by security agents in Foriba, at a APRC political rally where he was carrying out his work for CCF. While at the rally, he was arrested by local police. They took him to the local station and then to Banjul police station where he was questioned by the crime management coordinator. Since his arrest, he has reportedly been moved around to a number of small police stations. However now he is believed to be in Mile 2. It is alleged that his enforced disappearance is also linked to his popularity as an opposition politician. Since his arrest no family members have seen him and the government denies that he is in their custody.

On 17 October 2006, bail was paid for both Jatta and Kanyie, and the High Court ordered the state to release the two men unconditionally.¹¹ The government, through the Ministry of Justice's office, denied that they were holding either of the men. Later that month, on 30 October 2006, the lawyers sent a letter to the Secretary of State of the Interior reminding him that their clients were still in detention. Again the NIA and the police denied any knowledge of the whereabouts of the two men, despite sworn affidavits by people who had seen and heard the police and the NIA arrest them and take them away. On 5 June 2007 the lawyers submitted an application for a writ of habeas corpus¹² to demand that the state release these two men on the grounds that any person arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours of what they are being held for, as stipulated in the Constitution.¹³ The writ cites minutes of a meeting where the Secretary of State for Interior, Baboucarr Jatta, confirms ordering the arrest of both men. The court issued the writ of habeas corpus ordering the Inspector General of Police and the Attorney General in the matter of Ousman "Rambo" Jatta and the Director General of the NIA and the Attorney General in the matter of Kanyiba Kanyie, to produce the men at the court on 7 June 2007. The two respondents in each case were to provide the court with the reasons for the imprisonment and the continued detention. The government did not comply with the High Court's request.

Jatta and Fofana were finally released on 14 October 2007 after two Amnesty International delegates saw Jatta at Sara Ngai police station where he was being held as a "state detainee". In January 2008, several months after his release, Jatta gave a sworn affidavit regarding his unlawful detention which had lasted for over a year. Today Kanyie remains in detention and is considered to be a victim of enforced disappearance.

Amnesty International believes there are at least five other cases of enforced disappearances.

¹⁴

CHAPTER 3

TORTURE AND ILL-TREATMENT IN DETENTION

“I would estimate that approximately 90 per cent of the people who are detained are subject to torture.”

Human rights defender

According to international law, prisoners or detainees are not to be subjected to any hardship or constraint other than that resulting from a deprivation of their liberty. However, in Gambia, torture or ill-treatment in detention are routinely carried out, in violation of the Gambian Constitution Chapter IV Article 21, the International Covenant on Civil and Political Rights Article 7, the Convention against Torture Article 2 (2) and the African Charter Article 5. No one may be subjected to torture or to cruel, inhumane or degrading treatment or punishment. This right is of particular importance to people deprived of their liberty. The prohibition against torture or cruel, inhuman or degrading treatment or punishment includes acts which cause mental as well as physical suffering to a victim.

1. TORTURERS AND METHODS OF TORTURE WHILE IN DETENTION

Under international law, all agents of the state are prohibited from inflicting, instigating or tolerating torture or other cruel, inhumane or degrading treatment or punishment of any person. The fact that they have been ordered to do so by their superiors may not be used as a justification; in fact they are bound by international standards to disobey such orders and to report them. However in Gambia, special units within the NIA (sometimes known as green boys, ninjas or drug boys), as well as the President's personal protection officers, who are under the direct control of the President, members of the army and, at times, the police, are alleged to have tortured detainees. In Gambia torture is used to obtain information, as punishment and to extract confessions that can be used as evidence in a court of law.

According to Amnesty International's sources, during interrogation, detainees have reportedly had their heads covered with plastic bags and their heads put under water for long periods, simulating suffocation. Others have been exposed to electric shocks, including shocks to the genitals, cigarette burns, stabbing with a knife, tying up with ropes and whipping with chains

and leather belts. Former detainee Demba Dem, on trial for treason and later acquitted, told Amnesty International:

I was there for over a year and half and because I was so badly beaten I left the cell often for treatment due to my poor health condition from all the torture. Throughout my detention I was electrocuted, cut with a knife, and constantly beaten. They always brought me to the NIA headquarters when they wanted to electrocute me – they did not do that in Mile 2.

Psychological torture has also been reported. Victims of torture told Amnesty International that they were threatened and shown photographs of mutilated bodies, or actually witnessed people being tortured or killed while being threatened that they would suffer the same fate. Some victims described having to dig their own graves with the understanding that they would be buried alive in them. Editor of *The Independent* Musa Saidykhan told Amnesty International:

During one of the torture sessions, they threatened to bury me alive in the area behind the NIA. They told me all other detainees accused of involvement in the coup had already been killed and buried long since. This later turned out to be a trick to extract information from me.

Principle 1 of *The Principles of Medical Ethics*¹⁵ states that health personnel must provide the same quality of protection and treatment for detained and imprisoned people as is afforded to those who are not in custody. Some doctors have refused to examine patients who have been tortured because of the potentially threatening situation they would find themselves in if they were subpoenaed to testify in a court of law. For example, during the treason trial described in Chapter 5, doctors refused to testify, despite appeals made by defendants' lawyers. Amnesty International has found that doctors are particularly reluctant to testify in court cases against the government. Journalist Musa Saidykhan told Amnesty International about his experience:

Upon release, none of the private clinics I visited in Gambia would conduct a medical examination on me for fear of being reprimanded. One medical expert frankly advised me to go abroad and seek medical support because all health experts had taken a cue from their colleague who was close to being killed for confirming that an alleged coup detainee was tortured until he lost some teeth. The said doctor was threatened and forced to run for his life.

2. IMPACT ON VICTIMS

Journalists in Gambia and family members of victims regularly report to Amnesty International citing detainees who have been treated in the Royal Victoria Teaching Hospital (RVTH) in Banjul as a consequence of the torture and ill-treatment they received in detention. Those undergoing treatment are routinely kept under heavy military or security

escort.

Abdoulie Kujabi, former director of the NIA, was originally arrested on 6 April 2006 in connection with the March 2006 foiled coup, along with four other former NIA members and the late Colonel Vincent Jatta. He reportedly suffered torture while in detention, including being burned with cigarettes and severely beaten. In April 2006 Kujabi was brought to RVTH in a critical physical condition. He reportedly lost an eye as a result of the torture he received in detention. Upon his release in 2007, he left the country.

Yahya Bajinka was arrested in April 2007 due to his association with his brother, Khalipah Bajinka, who fled the country in the wake of the March 2006 coup plot a year earlier, and also because he was overheard criticizing President Jammeh's style of government. Journalists from the opposition newspaper *Foroyya* saw Bajinka on 22 September 2007 at the RVTH in Banjul. The journalists noticed a dramatic decline in his health and suspect that his poor condition was due to the torture and ill-treatment he experienced in detention. As a result, Amnesty International raised concern about the condition of his health in March 2008.¹⁶ Yahya Bajinka was finally released from detention in April 2008 and then fled the country.

Others who Amnesty International spoke to received no medical assistance and are now suffering the physical, psychological and social consequences of torture. As one victim recounted his experience of being tortured, he showed Amnesty International the scars on his back, legs, and arms.¹⁷ Another former victim of torture told Amnesty International:

I was woken up at 2am and for four days was left at the mercy of an eight-member torture squad led by the personal protection officer to the President. Wearing masks, they directed and participated in our three nights of physical, mental and systematic torture session. One was also instrumental in inflicting torture with the use of derogatory language. I should have died as I was tortured into a coma after live electric shocks were administered all over my body, including my genitals. Before this, I was asked to disclose the number of children that I have. I said two. I was told the electric shocks were meant to make me impotent. I have since malfunctioned sexually and now my immune system is down and I am always getting a cold. Handcuffed and stripped naked, bayonets sliced several parts of my body including my left jaw. I still have physical scars on my back, legs, arms and my right hand that was disjointed three times. My jaw and hand were sliced and disjointed to bar me from working. I feel pain all over my body and hardly sleep at night. I am in need of medical attention. Since October 2006 I have been working full time, but due to my deteriorating health condition, I cannot work full time. I am only working part time at the moment because I am in so much pain.

3. DEATHS AS A RESULT OF POOR CONDITIONS IN DETENTION

The harsh conditions of detention in Mile 2 – overcrowding, poor sanitary conditions and foul food – can in themselves be considered a form of cruel, inhumane and degrading treatment. The conditions in the maximum security cell at Mile 2 were considered particularly harsh.

Demba Dem, who was in solitary confinement described the conditions as follows:

Each person is confined to one cell, and the cells are very small with one small window – just big enough to lie in but not really move around. Most people are not allowed to leave their cell for the whole day and so are never exposed to sunlight.

Victims have also provided testimonies of food being withheld, being kept in solitary confinement for long periods without access to daylight, food or exercise, and being subjected to inhumane conditions including mosquito-infested areas where they were exposed to the risk of malaria, and were subsequently refused medical treatment. A former detainee, Musa, 21, who was in Mile 2 for four years told Amnesty International:

Over the period that I was in detention I was often on the verge of death; it was partly due to the torture but also that I contracted cerebral malaria and was denied medical treatment. At one point, when I was on the verge of death, a Cuban doctor treated me and told the guards that I was already dead and that there was no way that I would survive much longer. During the four-year period that I was there, at least 10-20 people died due to the poor conditions that we were all living under.

Amnesty International is aware of at least 19 people¹⁸ who have died while in prison in Mile 2 since 2005. The appalling conditions are believed to have contributed to the large numbers of deaths reported there. In another testimony, a former detainee in Mile 2, Sheriff, 34, told Amnesty International:

The conditions in Mile 2 are unbearable. So many people are dying as a result. In the year and half that I was there, over 50 people died. People are dying every day. It is due to the food mostly. They serve us expired rice and other food that is rotten. So many people are getting beriberi¹⁹ and dying.

CHAPTER 4

UNLAWFUL KILLINGS

“I don’t think the Gambian government sees anything wrong with carrying out extrajudicial executions; it is seen as quickly getting rid of coup plotters and other perceived enemies, especially people whom the President feels have turned against him.”

Human rights defender

Extrajudicial executions are deliberate and unlawful killings carried out by order of a government or with its complicity or acquiescence, and are prohibited by Section 18 of the Gambian Constitution, the ICCPR (Article 6) and the African Charter (Article 4).

Since the government came to power in 1994, unlawful killings have been carried out routinely, mostly against those suspected of plotting coups and other perceived opponents. Soon after the July 1994 coup, another alleged coup took place in November 1994. The response by the new leadership was to extrajudicially execute 14 members of the army who were suspected of being involved. In January 2000, another coup was attempted and aborted; this resulted in the death of the alleged leader of the coup in Banjul which was considered to be an unlawful killing.

1. UNLAWFUL KILLINGS OF STUDENTS IN A PEACEFUL PROTEST

Again in 2000, security forces opened fire on students peacefully protesting against the government's lack of action following the alleged rape of a schoolgirl; 14 students were killed. In response to this incident the National Assembly passed an Indemnity Act which gave the President power to indemnify any person against prosecution for any act committed to quell an unlawful assembly or other emergency situation. It was intended that this law would be backdated in order to give immunity to the security forces responsible for shooting the students.²⁰ However, in 2002 the Supreme Court ruled that the Indemnity Act did not apply to the security forces since it was passed after the incident took place. However no action was subsequently taken to investigate and bring the perpetrators to justice.

2. PROMINENT JOURNALIST VICTIM OF UNLAWFUL KILLING

On 16 December 2005, Deydra Hydera, a prominent journalist, editor of *The Point* newspaper and President of the Gambia Press Union, was shot three times in the head while on his way home from work, and died on the spot. Two of his co-workers, Ida Jagne and Nyansarang Jobe were also in the car and were shot in their legs and critically injured. This was three days after controversial media legislation had been passed, which Hydera had opposed very vocally; it was also the anniversary of the establishment of *The Point* newspaper. The co-owner, Pap Saine, closed down the *The Point* for a month. The murder has remained unsolved since then. The government has made little effort to investigate and has been intolerant of any reminders of the case.

3. THE UNSOLVED KILLINGS OF 50 MIGRANTS IN 2005

In another incident on 23 July 2005, a group of 50 foreigners, including 44 Ghanaians, was intercepted by Gambian security forces in the waters off Gambia while on their way to Europe. It is alleged that they were suspected of being on their way to Gambia to overthrow the government during Gambia's independence day celebrations. According to a Commonwealth Human Rights Initiative (CHRI) report, the men were taken to the Naval Headquarters in Banjul, divided into groups of eight and taken to a site in the farms of Siffoe

in Gambia's Western Division. When they were at the fields, members of security forces reportedly killed the detainees using machetes, axes, knives, sticks and other sharp objects. The bodies were then indiscriminately dumped at various locations, among them the village of Brufu, near Siffoe. Efforts to initiate an investigation have been mired in problems. With no movement on the case by May 2006, and with no progress on the investigation, the CHRI called on the African Commission on Human and People's Rights (ACHPR) to investigate the killings. In July 2007 the Ghanaian Foreign Affairs Legal Bureau Director, Odoi Anim, identified eight Ghanaian bodies; preliminary investigations show they died from shock and trauma. In February 2008 the ECOWAS and the UN formed a team to investigate the killings. The team made a visit to Gambia in September 2008.

4. SUSPECTED EXTRAJUDICIAL EXECUTIONS IN THE CASE OF FIVE ALLEGED COUP PLOTTERS

Reporters from *Foroyya* were dispatched to police stations and border posts throughout the country on hearing that NIA Director General Daba Marena, Lieutenant Ebou Lowe, 2nd Lt Alieu Cessay, Regimental Sgt Major Alpha Bah and Staff Sgt Manlafi Corr were being transferred to Janjanburu in the interior, when a road accident was reported and the men reportedly escaped. The reporters, however, found no evidence of an accident anywhere

On the day of their reported escape, according to an inmate in a neighbouring cell who spoke to Amnesty International, Musa Jammeh, the President's personal protection officer, was in Daba Marena's cell when he said loudly enough for other inmates to hear: "You will not be alive after today," and continued, "When we finish with these people, we will come for you." The inmate told Amnesty International that, as Musa Jammeh left Daba Marena's cell, Daba Marena told him that when he left Mile 2 he would not return alive.

Family members of the detained men have not heard from them since their alleged escape, casting doubt on the truth of the claim that there was either an accident or an escape. No independent investigation has been launched. Amnesty International has had no update on the fate of the five supposed escapees and concludes that they have become victims of enforced disappearance and have possibly been extrajudicially executed.

Since 1994 when the government took power, there have been no investigations nor any effort made to bring perpetrators to justice for the dozens of cases of unlawful killings.

CHAPTER 5

RIGHT TO A FAIR TRIAL

“The law is ineffective in this country. We are simply operating a bunch of kangaroo courts.”

Lawyer

Under Gambian and international law, the rights of people suspected of criminal offences are protected. This protection is designed to apply throughout all phases of detention, from the pre-trial period, to the trial itself and beyond conviction. Specific rights exist to safeguard people during the investigation phase. The presumption of innocence is the right that everyone should be presumed innocent and treated as such until proven otherwise. The right to be presumed innocent applies not only to treatment in court and the evaluation of evidence, but also to treatment before trial. It applies to suspects, before criminal charges are filed prior to trial and carries through until a conviction is confirmed following a final appeal. The right not to be compelled to testify against oneself or confess guilt is rooted in the presumption of innocence. The right of the presumption of innocence requires that judges and juries refrain from prejudging any cases. The presumption of innocence is guaranteed by the Gambian Constitution Chapter IV Article 24 and Article 14(2)(3) of the ICCPR and the African Charter (Article 7).

Torture is prohibited under any circumstances. Article 15 of the Convention Against Torture prohibits any evidence, including confessions by the accused, that is elicited as a result of torture or other cruel, inhuman or degrading treatment, and states that it must not be used in any proceedings except those brought against alleged perpetrators of torture.

The right to trial by a competent, independent and impartial tribunal – this applies to any tribunal that exercises judicial functions, including a military tribunal – is guaranteed in the ICCPR Article 14(1) and Article 26 of the African Charter.

Despite national and international legal obligations which Gambia is party to, the presumption of innocence and other fair trial rights are routinely violated in Gambia, especially in political trials.

1. IRREGULARITIES IN THE TREASON TRIAL AND THE MILITARY COURT MARTIAL

In March and April 2006 Amnesty International released urgent actions²¹ to raise medical concerns for detainees due to fears of torture and ill-treatment while in detention, including 10 military personnel and five civilians who stayed in pre-trial detention for six weeks until they were formally charged on 10 May 2006. All 15 were charged with treason related crimes, including treason, conspiracy to commit treason, and concealment to commit treason, which are all capital and non-bailable offences. Detainees were held in solitary confinement in Mile 2 central prison, and were not granted access to families, or lawyers. The denial of access to their lawyers, in violation of their rights to a fair trial, is particularly grave given that, if found guilty, the death penalty could be imposed. Those held were also reportedly tortured, including being beaten and forced to sign confessions. Throughout their detention, detainees were seen in the hospital by journalists seeking treatment for injuries they had received while in detention. Evidence of torture was also evident when detainees appeared in court with wounds and injuries.

Demba Dem, former Minister of Parliament, a defendant in the treason trial who was acquitted told Amnesty International:

You cannot call these trials fair. There was absolutely no tangible evidence in the trial. It was all based on our written statements that were not actually even written by any of the people accused. In my case the head of the major crimes unit actually wrote out my statement and then forced me to sign it by threatening me with a knife. I was so scared I signed it. This statement was used in the court as evidence. This is what they were doing with everyone.

The trial of the 15 started in June, once the charges were made public. However, there were delays due to the decision to split the trial into two: a trial of four civilians in the High Court, and a trial of 10 army officers in a military court martial.²² The case of Hamadi Sowe, a civilian, was to proceed separately. Once the cases had been split, the trial recessed until October 2006. At this stage, all the accused were represented by lawyers of their choice.

During the 2006-2007 treason trial in the High Court and military court martial, Amnesty International documented significant violations of fair trial standards. Of major concern were: the procedures impinging on the presumption of innocence and the right to be heard by an impartial tribunal; the violation of rights in pre-trial custody and during interrogation; the use of torture to coerce confessions.

Finally, approximately six months later, in April 2007 in the military court martial, Capt Bunja Darboe, Capt Yahya Darboe, Wassa Camara and Second Lieut Pharing Sanyang were found guilty and sentenced to life imprisonment. Capt Abdou Karim Jah, Lieut Momodou Alieu Bah and Cpl Samba Bah were sentenced to 25 years, and LCpl Babou Janha, Capt Pierre Mendy and Pte Alhagie Nying were given 10 years. In August 2007 the High Court found Tamsir Jassey, Alieu Jobe and Omar Faal guilty on three counts of treason, conspiracy to commit treason and concealment of treason, and sentenced them to 20 years imprisonment with hard labour. The fourth accused, Demba Dem, was acquitted due to lack of evidence. In both cases the defence counsel filed appeals, but so far the cases have not moved forward.

2 JUDICIAL INDEPENDENCE?

When the 14 defendants were charged in June 2006, their defence counsel questioned the impartiality and independence of the judge assigned to the case. The judge had been Director of Public Prosecutions for four years prior to his appointment as the High Court judge overseeing the treason trial. Given the sensitivity of the case, the fact that he had been so closely associated with the government immediately prior to this appointment gave the defence teams cause to doubt that he could rule impartially. When no action was taken in response to their concerns, the lawyers withdrew from the case, leaving the defendants temporarily without legal representation.

Former detainee Demba Dem on trial for treason told Amnesty International:

There was a big problem with the judge. At first the judge that they assigned to all the cases was a judge that everyone considered to be a mercenary judge. After the lawyers complained, the case was split. One group was given to the High Court judge from the Commonwealth. The other went to the military court martial. The High Court judge was fair. She was fair until she was threatened by the President with regard to how she should rule in the case. Actually in reality no one in the High Court should have been charged. The military court martial was a kangaroo court. The judge advocate was a mercenary judge. Everyone knew what the outcome of the trial would be before it started. Those army officers were no more guilty than anyone else in the army today.

Once the trials were reconvened in October 2006, the same judge, Justice Akomaye Agim, was appointed by the President to serve as Judge Advocate in the military court martial. The defence teams proceeded with the trial, preferring not to delay the process further; they chose not to protest against this appointment despite their previous doubts about the judge's ability to be independent.

Historically, the deterioration of the judiciary's independence has been due to frequent interference by the executive. This interference was characterized by the President removing and appointing judges at will without consultation with the Judicial Service Commission (JSC).²³ Regarding appointments, Section 138 of the Constitution states that all superior court judges shall be appointed by the President on the recommendation of the JSC. The removal process is set out in 141(4)-(9) and offers some safeguards for judicial independence. However, the presidential power of removal of a judge in consultation with the JSC under Section 141(2)(c) is a serious concern in relation to judicial independence. The International Bar Association's August 2006 report states:

Given the institutional weaknesses and the dominance of presidential appointees on the JSC, the absence of any constitutional safeguards requiring a fair and independent process and the apparent discretion of the President to remove a judge without the agreement of the JSC, this power contains no protection for judicial independence.²⁴

Not only have there been controversial appointments, as in the case of the treason trial and the military court martial highlighted above, but there has also been a history of the removal of judges who hand down impartial and independent decisions. For instance, in 2008 alone, within a three-month period, the President removed three High Court judges without consultation with the JSC. This interference has led to strong reaction from the Gambian Bar Association (GBA), who plan to take the matter to the Supreme Court.

The independence of the judiciary is essential to a fair trial. It means that decision makers can act impartially and in accordance with the law, without interference, pressures or improper influence from other branches of government. It also means that judges are appointed on the basis of their legal expertise. This deliberate attempt to undermine the effectiveness and independence of the judiciary has contributed to a culture of impunity in Gambia.

3. PRE-TRIAL CONFESSIONS UNDER TORTURE

Torture is used routinely in Gambia to force confessions and as punishment. In both the military court martial and the treason trial, significant evidence surfaced to suggest that confessions had been extracted under torture during the pre-trial period, raising concerns about the admissibility of the evidence.

ALLEGED TORTURE IN THE COURSE OF THE MILITARY COURT MARTIAL

In response to these allegations that torture was used to force confessions, the defence counsel highlighted the fact that much of the prosecutor's evidence was based on defendants' pre-trial confessions and demanded that an independent investigation be conducted to determine if in fact torture had been used to extract confessions during the pre-trial phase. However, despite the physical evidence of torture and the testimony of the three military officers that they were tortured under interrogation, the lawyers' request for an independent investigation was turned down by the judge advocate. This resulted in a "trial within a trial" procedure which is meant to test whether the statement obtained by the police from the accused persons when they were being investigated was given voluntarily. This was overseen by the same judge advocate who had ruled that the confessions were voluntary and admissible as evidence. The defence counsel had great concerns about the independence of this procedure and decided that, in the event of their clients being found guilty, this would be grounds for an appeal.

ALLEGED TORTURE IN THE COURSE OF THE TREASON TRIAL

Amnesty International had similar concerns during the course of the treason trial when one of the accused, Alieu Jobe, made a statement to the Investigation Panel during his pre-trial detention claiming that another defendant, Tamsir Jasseh, had aided and escorted Chief of Defence Staff Ndure Cham, prompting Jasseh's arrest. The defence counsel challenged the voluntary nature of Jobe's statement, claiming that it had been obtained illegally under conditions of torture and therefore was inadmissible as evidence. The court agreed with the defence counsel about the involuntary nature of the statement but allowed the statement to be considered in court as evidence, in violation of fair trial standards.

Of great concern to Amnesty International is the fact that the judge acknowledged the use of torture while in detention of those accused of involvement in the alleged coup plot, and not only reportedly allowed the admission of evidence gained under torture but appeared to place great weight on such evidence. Throughout the course of the trial the majority of the accused testified that they had been tortured while in detention. The accused appeared in court with broken limbs and eye trauma. However, there has been no impartial investigation into any of the allegations of torture, and the court has relied heavily on the use of this evidence to determine the guilty judgement.

4. ONE CASE OF TREASON CONTINUES IN THE HIGH COURT

Marabout Hamadie Sowe, one of the civilians being tried for concealment to commit treason was originally charged along with six of the military men in May 2006. However, when the case was divided in October 2006, Sowe's case was split from the others and his trial proceeded separately. In late November 2006, the state counsel, Merley Woods, told the court that they intended to discontinue the case but it was unclear if the charges were formally dropped. Upon hearing this announcement in court, Sowe's lawyer told his family that he would be released soon. However Sowe was not released from detention. Approximately 18 months later, in late May 2008, Sowe's trial for concealment to commit treason reopened and is now continuing. His family has access to him once a month and he has access to a lawyer.

There have been delays in taking the appeal process forward for all those convicted and sentenced in the military court martial and the High Court. Amnesty International will continue to monitor the cases on appeal and the ongoing treason trial of Marabout Hamadie Sowe.

CHAPTER 6

HUMAN RIGHTS VIOLATIONS COMMITTED AGAINST JOURNALISTS AND THE ATTACK ON FREEDOM OF EXPRESSION

“If you are a journalist you are considered a natural enemy of the government and there is a good chance that at some point you will become a victim of a human rights violation.”

Exiled journalist

The Gambian Constitution Chapter IV Article 25 provides for freedom of speech, expression, the press and other media. Article 19 of the ICCPR 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, and each year the space in which the media can operate becomes smaller and more dangerous. The African Charter (Article 9) provides that every individual shall have the right to receive information and every individual shall have the right to express and disseminate his opinions within the law.

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 do their work.

1. JOURNALISTS AS TARGETS OF UNLAWFUL ARRESTS, DETENTION, AND TORTURE

Several journalists have been harassed, threatened, received death threats, and been detained and unlawfully arrested if suspected of providing information to online news sources or foreign journalists or publications. In May 2006, just two months after the March 2006 suspected coup plot, following what Amnesty International fears are signs of an increased crackdown on the media and limitations on freedom of expression, the internet based *Freedom Newspaper* had its website hacked into. A list of what were said to be “informers” was subsequently published in the pro-government paper *The Daily Observer* and many people on that list were arrested, questioned, detained for several days to several weeks, and some were subjected to torture while in detention. Following this, the government blocked the newspaper’s IP address, stating that the website was affecting security issues between Gambia and Senegal. This was the second time in two years that the government had blocked the address.

Journalists arrested by the NIA and brought to Mile 2 included Lamin Cham, the BBC Banjul correspondent. He was allegedly tortured for three days and threatened with death but was finally released on 6 June 2006. After his release he left the country. Malick Mboob, journalist and communications officer at the RVTH, was also arrested and held incommunicado for 139 days. He was reportedly tortured until his release on 9 October 2006. Mboob is still in the country and reporting. Pa Modou Faal, a journalist with the Gambia Radio and Television Service (GRTS) and Liberian Musa Sheriff, of the *News and Report* and now editor of *The Voice*, were also arrested, reportedly subjected to torture for several days and later released.

Human rights violations against journalists have continued in the post-coup period and continued in 2008.²⁵

2. UNFAIR TRIALS AND THE USE OF THE STRICT MEDIA LAWS

Since 2004 journalists and media staff have been working under restrictive media laws which impose criminal penalties on private publications that fail to register and pay each year to renew their licence. These laws are the Newspaper Amendment Act and the Criminal Code Amendment Act 2004. When the Newspaper Amendment Act was first brought in, it required that all print and broadcast media re-register and sign a statement of bond, certifying that they have sufficient funds to pay any penalties that might be imposed by the courts. The Criminal Code Amendment Act sets mandatory prison sentences of six months to three years for owners of media outlets and journalists convicted of publishing defamatory or seditious material. There is also a minimum six-month prison term or hefty fines for publishing or broadcasting false news, and the state may confiscate any publication deemed “seditious”.

The legal restrictions on the media began with The Newspaper Decrees 70 and 71 of 1996, which imposed fines for contravention of the 1944 Newspaper Act. In July 2002 further repressive legislation was imposed in the form of the Media Commission Act. This Commission established a code of conduct for independent media, including setting a standard for content and quality for print and broadcast material, and maintained a registry of all media practitioners and organizations. The Commission was given powers to force journalists to reveal their sources and could issue arrest warrants for journalists who ignored such a summons. The Commission required all journalists and media houses to obtain one-year renewable licences, imposing a minimum fine of 5,000 dalais (US\$225) on those who did not. Journalists who failed to pay the fine could be suspended for nine months, and media organizations could be suspended for three months. The Commission was also given powers to jail journalists for contempt for up to six months. The President signed this repressive legislation in August 2002 and it was inaugurated in 2003.

These two repressive laws have contributed significantly to a climate of self-censorship and fear, discouraging potential publishers from venturing into the newspaper business, mainly due to the strict criteria for starting up and maintaining a newspaper. The financial obligation provided by the Newspaper Act has also been a burden to existing newspapers, as the new Act has raised the required bond five times higher than the 1996 Newspaper Decrees 70 and 71.

Strong criticism came from the media and the human rights community, including the Gambia Press Union (GPU) and private independent newspapers who filed a suit with the Supreme Court challenging the Commission’s constitutionality. The GPU also refused to nominate a member to fill its designated seat on the Commission, protesting that it would not cooperate until its charter was amended. An article critical of this new legislation was written by Deydra Hydara, then co-owner of *The Point* newspaper and Banjul correspondent for Agence France-Press (AFP), and a former president of the GPU. In the end, the legislation governing the Commission was repealed. However the government fought back and the National Assembly passed the Newspaper Amendment Act and the Criminal Code Amendment Act on 13 December 2006. These Acts have been in force since then.

Since the March 2006 coup there have been several cases of journalists falling prey to the restrictive media laws and being required to pay hefty fines to avoid imprisonment. Following the March 2006 coup, along with editor Musa Sadykhan and managing editor Madi Ceesay of *The Independent*,²⁶ reporter Lamin Fatty was arrested on 6 April 2006. His arrest was reportedly for incorrectly reporting that former Interior Minister Samba Bah was among more than 20 people detained in the wake of a purported coup attempt. He was held incommunicado, tortured with electric shocks and had no access to a lawyer. Finally, after being held for almost two months without charge, on 14 May 2006 he was charged with publishing false information according to Section 181A(1) of the Criminal Code Amendment Act of 2004. However he was neither taken to court that day nor allowed to contact a lawyer. Initially he found it difficult to find a lawyer willing to take his case. Finally, in June 2006, he obtained the services of a lawyer and the trial started. Over one year later, on 7 June 2007, Lamin Fatty was found guilty of publishing false information and was offered a choice of being sentenced to one year in prison or paying a fine of 50,000 dalais (US\$1,850). This fine was paid by the Gambian Press Union, enabling Fatty to avoid imprisonment. Six months after his release from detention, after receiving death threats, Fatty fled the country on 14 January 2008. He is currently in hiding.

In February 2008 he filed an appeal through his lawyer. However the appeal trial has suffered significant delays, initially due to mistakes in the actual judgement presented. Further delays are predicted as the judge assigned to the case was Naceesay Sallah Waddah, who was removed from her position on 11 September 2008. The next trial date for Fatty's appeal case was set for 17 October 2008, provided a new judge is assigned to the case. On 17 October the case was adjourned until the new year.

On 29 March 2007 Fatou Jaw Manneh, formerly a reporter with the state-owned Daily Observer, but currently a Gambian with residential status in the United States, was arrested on her arrival at Banjul airport for allegedly writing articles that were considered critical of the government. The charges were linked to a June 2004 interview given to the now-defunct private bi-weekly, *The Independent*, in which Manneh severely criticized Jammeh and his government, according to research carried out by the Committee to Protect Journalists (CPJ). In the article, Manneh wrote: "Jammeh is tearing our beloved country in shreds ... He is a bundle of terror ... Gambians are desperately in need of an alternative to this egoistic frosty imam..." She was detained for six days, in violation of her due process rights, before being charged on four different counts of sedition. At the time that she was charged in April 2007, the CPJ called on the government to drop the charges, stating that the charges criminalized a commentator for expressing her views on issues of public interest.²⁷ Throughout the course of the trial, there was a lack of clarity as to which court had jurisdiction over her case, since she was being charged with writing an article for an online newspaper whilst living in the United States. This caused significant delays to the trial. Finally, more than a year and half later, on 18 August 2008, she was found guilty on all four charges and sentenced to pay a fine of 250,000 dalais (US\$12,000) or four years imprisonment with hard labour. The Gambia Press Union and her family paid the fine and she plans to return to the United States.

The Nigerian publisher and editor of *Today*, a Banjul-based newspaper, Abdulhamid

Adiamoh, was arrested and detained at the police station three times in 2008, on 18 July, 21 July and then again on 16 August, charged with allegedly publishing articles with “seditious intentions”. He was released on bail each time. On 18 September 2008, Adiamoh was convicted and fined US\$5,000 for failing to pay tax. Adiamoh lost his case and has been ordered to stop publishing. He is still fighting the sedition charges.

In a Voice of America article published in August 2008, the president of The Gambian Press Union, Ndey Tapha Sosseh, said that Manneh and Adiamoh’s cases are examples of the ongoing intimidation of journalists in the region. The African head of Reporters Without Borders also said that the Gambian justice system is cracking down on reporters and that: “Fatou Jaw Manneh’s case is just one more case of harassment and personal revenge of President Yahya Jammeh based on the police and the justice system of The Gambia, which is completely in his hands,”²⁸

Amnesty International is concerned that the repressive legislation, combined with the executive’s history of interference in the judiciary and the police is a contributing factor for the lack of freedom of expression in Gambia.

3. FLEEING INTO EXILE AFTER INTIMIDATION AND THREATS

Since March 2006, due to threats, intimidation and violence, at least 10 journalists have fled the country in fear of their life and at least four have been granted political asylum in a third country.

Journalist Yahya Dampha was arrested on 6 October 2007 along with two non-Gambian Amnesty International staff he was travelling with during a field visit. The three were in the regional capital of Basse when they were picked up by two plain clothes men who did not immediately identify themselves. Later it became apparent that they were members of the NIA. The two Amnesty International staff were escorted by NIA to the governor’s house, where were interrogated about their activities in Gambia. After several hours, all three were turned over to the Basse police. The next day the three were escorted by two plain clothes policemen to Banjul police station where they stayed the night. With the assistance of lawyers, all three were released conditionally that night and required to report back to the police on a daily basis. All three were unconditionally released on 12 October 2007. None of them was charged. As soon as the two Amnesty International staff left Gambia, Dampha went into hiding. That same day, on 13 October 2006, Dampha’s family was visited by NIA agents. The following day Dampha left the country for Senegal, fearful of what might happen to him if the NIA found him at home. Still at risk in Senegal after an attempted kidnapping by Gambian NIA, Dampha sought protection from UNHCR and the Senegalese authorities, and was granted asylum in a third country. In April 2008 he was resettled with his family.

On 7 September 2006, Sulyman Makalo, former editor of *The Daily Express* and assistant editor of *The Independent*, fled after receiving information that he had been targeted for arrest by the NIA. He fled to Senegal and then to Ghana; he has since been granted asylum in the United States. In the wake of the 2006 alleged coup, Makalo had been supplying information on conditions of detention to press freedom and rights organizations. But his final encounter with the NIA took place when *The Daily Express* reproduced a statement issued by a coalition of 19 press freedom organizations that were denied a permit to hold a conference in Gambia during the AU summit in June 2006. The coalition then held the conference in Senegal and ended up petitioning the Gambian government about its continued clampdown on human rights, and particularly on press freedom.

Other journalists who have been forced to flee the country since 2006 include: Omar Bah, Momodou Lamin Jaiteh, Momodo Justice Darboe, Pa Ousman Darboe and Sheriff Bojang Jr.²⁹

4. CLOSURES AND A DEPLETED MEDIA

The arrests, detention and torture of three staff of *The Independent* newspaper and its closure following the March 2006 coup attempt is a devastating attack on freedom of expression in Gambia. According to Committee to Project Journalists, the arbitrary closure of *The Independent* has been marked by secrecy and contradiction. On several occasions in late April 2006, senior security officials told staff at the newspaper that they were lifting the ban. Yet police officers present at the premises prevented that from happening and occupied the building.³⁰ To date the office remains closed.

Today, one opposition newspaper and four independent newspapers exist in Gambia, but only three of these operate in practice: *The Voice*, *The Point*, and the opposition *Foroyya*. *The Daily Express* is published approximately once a month and, as of September 2008, the editor of *Today* has been forced to stop publishing due to legal problems. There is one state-owned paper, *The Daily Observer*.

In addition to the state-owned Gambia Radio and Television Service (GRTS), there are seven private and four community radio stations in the country. Two of the seven radio stations – Citizen FM and Sud FM – have been shut down in the last two years for broadcasting critical news bulletins. As a result, apart from GRTS, no radio station broadcasts its own news bulletins. Instead, they all relay GRTS bulletins, which contain government or ruling party information. There are several online newspapers that are based in the United States.

In the last two years *The Independent* has been forced to close, three of its staff have been victims of torture and detention and two of them have been forced to leave the country. There has been a crackdown on the use of the Internet. A judgement that the government ignored in the case of the enforced disappearance of Chief Ebrima Manneh of the *Daily Observer*, combined with the frequent use of the repressive legislation, including convictions of three

journalists, has led to self-censorship among the media community. This has a negative impact on people's right to receive information and ideas of all kinds and as such constitutes a violation of the right to freedom of expression. Since 1994 at least 27 journalists have left the country, more than half of them in the last two years, and at least 10 of them have been granted asylum elsewhere.³¹

CHAPTER 7

ABSENCE OF ADEQUATE REMEDIES

There are no national human rights institutions currently operating in Gambia. There is an Ombudsman's office, which was created in 1997 under the terms of the Gambian Constitution, but this has a very restricted mandate, which does not allow it to investigate human rights cases. Discussions are currently taking place between United Nations Development Programme (UNDP) and the Office of the President to establish a National Human Rights Commission.

Gambia's civil society and human rights community are weak. Significant institutions such as the GBA and the GPU, though once vibrant, have been undermined by threats and the flight of their personnel. Lawyers in general have become increasingly reluctant to take on sensitive cases due to the threat that this might pose to themselves and their families. This leaves few options for those pursuing human rights cases.

On several occasions the government has failed to comply with the timely execution of court orders, which is a critical aspect of the separation of powers and the proper administration of justice. In Gambia the government ignored a court order from the High Court demanding that Kanye Kaniba and Ousman "Rambo" Jatta be released. In the case of journalist Chief Ebrima Manneh, the judgement handed down by the ECOWAS CCJ in June 2008, to release the journalist from detention has not yet been complied with. Other evidence of a threat to the independence of the judiciary is the unconstitutional removal of three High Court judges that took place in 2008. These examples demonstrate an overall threat to the independence of the judiciary, and disrespect for the rule of law and for the overall administration of justice.

The GPU has been particularly hard hit over the past few years. *The Independent* newspaper has closed, another is on the verge of closure and, since 1994 at least 27 journalists have fled the country to find safety abroad. The GPU does, however, play a critically important role, and has provided much needed assistance with fines, which has enabled journalists to avoid prison sentences. More funds are needed to ensure that the work of this wounded institution can continue.

PART 2:

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

Unlawful arrests and detentions take place routinely in Gambia. Individuals are rarely informed of the reason for their arrest. They are often kept in detention without charge longer than the 72 hours specified by Gambian law 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. The deterioration in the human rights situation after the March 2006 foiled coup plot demonstrated that all Gambians are at risk and may be subject to unlawful arrest and detention. Those at risk include real and perceived opponents, people who were close allies of the government before their arrest, as well as government employees, military people, security people, opposition leaders, human rights defenders, journalists, and lawyers.

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 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 the 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.

RECOMMENDATIONS

TO THE GOVERNMENT OF GAMBIA

Amnesty International urges the government to take on a 15 point program:

- Comply with the order handed down by the ECOWAS Community Court of Justice in June 2008 to release Chief Ebrima Manneh from unlawful detention without further delay and pay US\$100,00 in damages.
- Release all those currently being unlawfully detained or charge them with a recognizable criminal offence, including all prisoners of conscience and victims of enforced disappearance.
- Publically condemn all human rights violations against journalists, perceived opponents and opposition politicians, and ensure that all human rights violations are fully investigated. Immediately instruct all the police, army and the NIA to cease committing human rights violations.
- Investigate all cases and allegations of torture and ill-treatment, unlawful arrest and detention, extra-judicial executions, enforced disappearance, and bring to justice suspected perpetrators in line with international standards of fair trial and without recourse to the death penalty.
- Organize full reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for the victims of torture and ill-treatment, unlawful arrest and detention, extrajudicial executions, and enforced disappearances.
- Improve the conditions of detention in Mile 2 state central prison and all other official places of detention and ensure that prisoners and detainees have access to medical care, adequate and appropriate food, hygiene, and exercise.
- Repeal or amend all national legislation that is incompatible with international human rights treaties, including the ICCPR and the African Charter to which Gambia is a state party. In particular, the government must amend or repeal repressive provisions of the Indemnity Act 2001 and the Criminal Code Amendment Act 2004 to extend the definition of libel.
- Ratify the International Convention for Protection of All Persons From Enforced Disappearance and other international instruments that Gambia is not yet a party to.
- Ensure and respect the independence and impartiality of the judiciary as the cornerstone of a state committed to upholding its human rights obligations. Measures should be put in place to ensure that the independence of the judiciary is safeguarded in line with the UN Basic Principles on the Independence of the Judiciary.

- Ensure that all judicial appointments are subject to all constitutional procedures, and oblige the executive to comply with decisions of the Judicial Service Commission.
- Ensure that all Gambians, including journalists, opposition leaders and human rights defenders, have equal access to the protection of the law and that judicial investigations and proceedings against them are conducted in accordance with international law and standards for fair trial.
- Fully cooperate with the UN-ECOWAS joint investigation into the killing of 50 migrants, including 44 Ghanaians, to ensure that investigations can be carried out promptly and without interference to ensure that suspected perpetrators are brought to justice.
- Expedite the development of a National Human Rights Commission that is based on the Paris Principles and is allowed to function in an effective and independent manner.
- Expand the Ombudsman's powers to include investigations of human rights violations and provide this office with the independence and resources to carry out its mandate.
- Issue invitations to the following: the UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, the promotion and protection of the right to freedom of opinion and expression, the independence of judges and lawyers, and on the situation of human rights defenders; the African Commission on Human and People's Rights Special Rapporteur on Human Rights Defenders.

2 TO THE INTERNATIONAL COMMUNITY

ECOWAS and the African Union

- Publicly condemn instances of human rights violations, including arbitrary arrests, torture, extra-judicial executions and enforced disappearances which come to their attention, and address such concerns to Gambian authorities.
- Discuss the human rights situation in Gambia at the next Council of Heads of State and consider how to enforce the ECOWAS Community Court of Justice judgement on Chief Ebrima Manneh against the Gambian government.
- Prioritize the investigation into the killing of the 50 migrants, including the 44 Ghanaians; ensure findings are made public and advocate to ensure that perpetrators are brought to justice.

3 TO THE INTERNATIONAL DONOR COMMUNITY

- Substantially increase funding for civil society and non-governmental human rights organizations, especially the Gambia Bar Association.

- Strongly encourage the government of Gambia to comply with the ruling handed down in the ECOWAS CCJ to release Chief Ebrima Manneh.

- Support the establishment of a joint ECOWAS-AU Independent Commission of Inquiry into suspected cases of enforced disappearance and extrajudicial executions.

APPENDIX 1

SELECTED RELEVANT PROVISIONS OF THE GAMBIAN CONSTITUTION

Chapter IV: Protection of fundamental rights and freedoms

18. Protection of the right to life

(1) No person shall be deprived of his or her life intentionally, except in the execution of a sentence of death imposed by a court of competent jurisdiction in respect of a criminal offence for which the penalty is death under the laws of The Gambia, as they have effect in accordance with subsection (2), and of which he or she has been lawfully convicted.

19. Protection of the right to personal liberty

(1) Every person shall have the right to liberty and security of the person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as established by law.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language he or she understands, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner.

(3) Any person who is arrested or detained –

(a) for the purpose of bringing him or her before a court in execution of the order of a court;

(b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the laws of The Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within seventy-two hours.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not thereafter be further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) Any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including, in particular, such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting.

21. Protection from inhuman treatment

No person shall be subject to torture or inhuman or degrading punishment or other treatment.

24. Provisions to secure protection of the law and fair play

(1) Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or for the determination of the existence or extent of any civil right or obligation, shall be independent and impartial; and

- (a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or
- (b) where proceedings are commenced for the determination or the existence of any civil right or obligation, the case shall be afforded a fair hearing within a reasonable time.

(3) Every person who is charged with a criminal offence –

- (a) shall be presumed innocent until he or she is proved, or has pleaded, guilty;
- (b) shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice;

Provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the expense of the state;

(e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial of the charge; and, except with his or her own consent, the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impractical and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

(7) No person shall be tried for a criminal offence if he or she shows he or she has been pardoned for that offence.

(8) No person charged with a criminal offence shall be compelled to give evidence at the trial.

(9) A person charged with a criminal offence in the High Court shall have the right to elect to be tried by a jury.

25. Freedom of speech, conscience, assembly, association and movement

(1) Every person shall have the right to –

- (a) freedom of speech and expression, which include freedom of the press and other media;
 - (b) freedom of thought, conscience and belief, which shall include academic freedom;
 - (c) freedom to practice any religion and to manifest such practice;
 - (d) freedom to assemble and demonstrate peaceably and without arms;
 - (e) freedom of association, which shall include freedom to form and join associations and unions, including political parties and trade unions;
 - (f) freedom to petition the executive for redress of grievances and to resort to the courts for the protection of his or her rights.
- (2)** Every person lawfully within The Gambia shall have the right to move freely throughout The Gambia, to choose his or her own place of residence within The Gambia, and to leave The Gambia.
- (3)** Every citizen of The Gambia shall have the right to return to The Gambia.
- (4)** The freedoms referred to in subsections (1) and (2) shall be exercised subject to the law of The Gambia in so far as that law imposes reasonable restrictions on the exercise of the rights and freedoms thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court.

APPENDIX 2

CASES OF HUMAN RIGHTS VIOLATIONS IN GAMBIA

Chapter 1 Unlawful arrest and unlawful detention

Other cases of unlawful detention include Marcia Jammeh, Harunna Jammeh and Jisacha Kujabi. Both Marcia and Harunna Jammeh are related to the President. Jisacha Kujabi was originally arrested in 2004, released without charge and then rearrested with Marcia and Harunna Jammeh in 2005. Jisacha Kujabi is alleged to have been involved in the killing of a Nigerian man close to the President. Harunna Jammeh is alleged to be linked to the murder in 2005 of 50 foreign migrants, including 44 Ghanaians. It is alleged that Marcia Jammeh was arrested because of a land dispute with the President. No one has heard from any of them since their arrest, and the government denies that these men are in their custody. Family members of all three men believe that they have been killed.

In April 2006 Momodou Lamin Nyassi and Ndongo Mboob were arrested by members of the NIA in their home village of Bwiam, an area close to the President's village in Kanilai. Although staunch supporters of the ruling APRC party, they attempted to run on an independent ticket in the 1996 parliamentary elections, challenging the incumbent National Assembly member from Foni Kansala. This almost allowed an opposition politician to gain the seat. Following the case, it was reported to Amnesty International by journalists that their arrest and prolonged detention was linked to the defiance they showed in this election. Family members have not seen them since their arrest, however they have made efforts to make their concerns known to the police. The police have denied that the men are in their custody.

Chapter 2 Enforced disappearances

In March 2008 Ebou Jarju, a presidential cook, was arrested in Darsilami, Kkombo East Western region. Upon his arrest, his family were evicted from the State House where they had been living and were sent back to their village. No member of his family has been able to see him since his arrest, and they cannot confirm his exact location, though they believe he is either in Mile 2 or in police detention.

Abdoulie Njie, is an Islamic scholar who was arrested in late March 2006. He has never been charged and the reason for his arrest or detention is unclear.

Sgt Sam Kambai of the Gambia National Army (GNA), who was arrested in 2006, has been in detention for two years without charge. It is alleged that he was supplying military equipment to insurgents from the Casamance region.

Corporal Ebrima Joof, of the GNA, was arrested in July 2007 and has not been seen since. The reason for his arrest and subsequent detention is unclear.

In 2004 Gambian police invited Alfusainey Jammeh, a prison officer and native of Kanilai where the President lives, to the police headquarters. His family have not seen him since then.

Chapter 3 Torture and ill treatment in detention

Since March 2006 at least two people have died soon after their release from detention; Amnesty International suspects that their deaths were linked to poor conditions of detention, the ill-treatment and torture while they were detained.

Col Vincent Jatta was unlawfully detained in connection with the March 2006 coup plot. A Gambian journalist who spoke to him upon his release from detention in June 2006 told Amnesty International that Jatta had told him he had been severely beaten and deprived of food on a regular basis throughout his detention. Jatta said that he felt that his health had deteriorated dramatically. Family members noted a significant decline in his health upon being released from detention. Observers believe that he never fully recovered from the treatment he suffered in detention, and that his death in June 2008 was linked to this treatment.

Lamin Sanneh, former Permanent Secretary of Works and Infrastructure, was arrested in 2007 following a trip to Senegal, for allegedly giving classified state information to the Senegalese government. Lamin Sanneh was detained for five months incommunicado, allegedly tortured by the army and presidential protection officers at Mile 2 prison to obtain a confession, and suffered a fractured spinal cord. He appeared before a court in 2007 and testified about his poor health and the treatment he had received in detention. He was released in 2007 and died shortly afterwards. A post mortem was never carried out to determine the cause of death, however journalists and family members believe his death was linked to the torture and ill treatment he received in detention.

Chapter 6 Human rights violations committed against journalists and the attack on freedom of expression

Journalists as targets of unlawful arrests, detention and torture

On 18 September 2006 Dodou Sanneh, a reporter with GRTS was arrested for allegedly covering the main opposition United Democratic Party (UDP) campaign rallies. He was held by the NIA for several days at an undisclosed location, without access to a lawyer. Sanneh, whose coverage was officially endorsed by the national electoral commission, was fired from his job and then reinstated on 21 September. On 20 November 2006 he was fired again without explanation, and was banned from the GRTS building in Kanifing. Consequently, Sanneh was prohibited from attending a meeting of journalists at GRTS in 2008.

Other related cases include Malik Jones, a reporter for the government-owned GRTS, and Mam Sait Ceesay, former assistant press secretary of the State House and former editor-in-chief of the government-owned Daily Observer, who were both arrested on 8 September 2007 for allegedly passing on harmful information to foreign journalists. They were both detained for more than two weeks before being released on bail. Neither man was ever charged. Jones

returned to his job after his release on 22 September, only to be rearrested on 4 April 2008 by a plain clothes policeman. He was released the next day. Jones was then arrested again on 6 April and released on bail on 7 April. Later he was charged with common assault and breach of the peace, but failed to appear in court. He is believed to have left the country. Ceesay was later charged with publishing "false" information. He was acquitted and discharged due to the lack of evidence against him.

The Daily Express again came under attack when Sam Obi and Abdulgafari Oladimeji, publisher and sports editor of the Daily Express, were unlawfully arrested and detained for publishing articles that the government was unhappy with. They were released on 18 July 2008 without charge.

Articles in newspapers that are deemed offensive to the government, or which are seen to favour the opposition, sometimes result in journalists becoming victims of violent attacks. In December 2006 Nigerian news editor Baron Eloagu (alias) and journalist Abdulgafari Oladimeji, both of the Daily Express, were on separate occasions violently attacked by unknown assailants for allegedly writing "stupid things about the Gambia".

Fleeing into exile after intimidation and threats

Omar Bah, news editor of the government-owned Daily Observer and Secretary General of the Gambia Press Union, was declared a "wanted man" after the government discovered he was the Banjul bureau chief of the Freedom Newspaper. He fled into exile on 29 May 2006 and has been granted asylum in the United States.

On 31 July 2007, Momodou Lamin Jaiteh, Banjul correspondent on the Pan-African News Agency and the Media Foundation of West Africa (MFWA), went into hiding on 31 July 2007 after receiving threatening telephone calls and a visit to his house by plain clothes security agents. He was pursued for giving information to the MFWA about the continued illegal detention without trial of Chief Ebrima Manneh.

On 1 July 2008 Momodo Justice Darboe, a reporter of The Point newspaper, was violently attacked just outside his compound late at night. A stranger was following Darboe to his compound when he jumped on Darboe's back and started beating him. Darboe yelled out and the man ran away. The next day Darboe reported the matter to the police but they did not take it up and he was not asked to make an official statement. He believes that the attackers were members of the NIA and that the attack was linked to the fact that the government suspects him of sending news stories to online newspapers and other international media. When the police did not take the matter seriously, he felt concerned about his safety and went into hiding.

Pa Ousman Darboe of the government-owned Daily Observer left Gambia on 4 November 2007. After serving as principal witness and testifying in Chief Ebrima Manneh's case on 27 November 2007 at the ECOWAS Community Court of Justice in Abuja, he was warned by colleagues back in Gambia that, if he returned, his life would be at risk there. He was later granted asylum in the United States.

Amnesty International has grounds to believe that the government closely monitors the activities of Gambian and foreign journalists who are outside the country. On several occasions journalists deemed to be critical of Gambia or the President have been detained and arrested as soon as they re-entered the country. On 11 March 2006, Gambian journalist

Sheriff Bojang Jr was arrested upon entering Banjul airport. Bojang's arrest and interrogation were connected with his authorship of numerous articles that were critical of the government and of President Yahya Jammeh. As well as being questioned about his relationship with a British diplomat who was declared persona non grata by the Gambian authorities in 2001 for attending an opposition rally, Bojang was asked about protests he had been involved in while studying in the UK, where he believed he was being followed by the NIA. All his travel documents were seized and he was asked to return for further interrogation the next day. Fearing persecution, he fled into exile and has been in hiding ever since.

A Sierra Leonean journalist who had refugee status in Gambia, was arrested on 3 June 2006 at the Gambian-Senegalese border on his return from Guinea, where he had given an interview to The Democrat News on the erosion of press freedom in Gambia. He was detained overnight and then brought to the NIA in Banjul for questioning. At the NIA headquarters he was warned against investigating Gambian affairs and then taken to the back of the NIA headquarters where he met three masked men. He was threatened and beaten, then collapsed and fell unconscious and lost one of his teeth. He was released three days later and was warned to stop writing and to throw away his pen, otherwise he would be deported. Several months later, on 17 October 2006, three plain clothes men, who did not identify themselves but were believed to have been from the NIA, physically attacked the Sierra Leonean journalist in a suburb of Banjul. After the attack, Bah went to the UNHCR in Banjul to report the incident. After one month the UNHCR advised him to leave the country as they said they were in no position to protect him. He and his family went into hiding on 19 January 2007.

GLOSSARY

| | |
|-----------------|--|
| ACHPR | African Commission) on Human and People's Rights |
| ACP | African, Caribbean and Pacific |
| AFP | Agence France-Press |
| AFPRC | Armed Forces Provisional Ruling Council |
| APRC | Alliance for Patriotic Reorientation and Construction |
| African Charter | African Charter on Human and People's Rights |
| AU | African Union |
| CCF | Christian Children's Fund |
| CCJ | Community Court of Justice |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CHRI | Commonwealth Human Rights Initiative |
| CPJ | Committee to Protect Journalists |
| DFID | Department for International Development (UK) |
| ECOWAS | Economic Community of West African States |
| EDF | European Development Fund |
| EU | European Union |
| GBA | Gambian Bar Association |
| GNA | The Gambia National Army |
| GPU | Gambia Press Union |
| GRTS | Gambia Radio and Television Service |
| ICCPR | International Covenant on Civil and Political Rights |
| ICERD | International Convention on the Elimination of All Forms of Racial |

Discrimination

| | |
|--------|--|
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| JSC | Judicial Service Commission |
| MFDC | Mouvement des Forces Démocratiques de Casamance |
| MFWA | Media Foundation of West Africa |
| NADD | National Alliance for Democracy and Development |
| NIA | National Intelligence Agency |
| NRP | National Reconciliation Party |
| OAU | Organisation of African Unity |
| RVTH | Royal Victoria Teaching Hospital in Banjul, Gambia |
| UDHR | Universal Declaration of Human Rights |
| UDP | United Democratic Party |
| UN | United Nations |
| UNCRC | United Nations Convention on the Rights of the Child |
| UNDP | United Nations Development Programme |
| UNHCR | United Nations High Commissioner for Refugees |

ENDNOTES

¹ The government has not formally revoked military decrees that were enacted prior to the 1997 Constitution, which give the NIA and the Secretary of State for the Interior broad powers to detain individuals indefinitely without charge “in the interest of national security”. The Constitution allows decrees to remain in effect unless they are inconsistent with constitutional provisions. These military decrees appeared to be inconsistent with the Constitution, but they have not been judicially challenged.

² For relevant provisions of the Constitution see Appendix 1.

³ Gambia: Alleged coup plot must not be used as excuse to violate citizens' human rights, 13 April 2006 (AI Index: AFR 27/004/2006)

⁴ For more information see Chapter 4 Section 5 on suspected extrajudicial executions.

⁵ Lamin Fatty's story can be found in Chapter 6 Section 2.

⁶ The ECOWAS CCJ, which sits in Nigeria, became operational on 22 August 2002. As a member of ECOWAS, Gambia is subject to the Court's jurisdiction. Although the Court was originally only supposed to take on cases brought by member states, in January 2005 the ECOWAS CCJ adopted an additional protocol to permit individuals to bring cases against member states. The protocol also extended the jurisdiction of the Court to include human rights as well as general principles of international law.

⁷ See Appendix 2 for details of other cases of people in detention without charge.

⁸ Casamance is part of Senegal located between Gambia and Guinea-Bissau. The conflict in the Casamance region of Senegal has gone on for more than 20 years. The two sides – the separatist group MFDC (Mouvement des Forces Démocratiques de Casamance – Movement of Democratic Forces of Casamance) and the Senegalese government – are fighting over the issue of independence for the Casamance region.

⁹ Based on interviews with the Solicitor General and members of the National Assembly in September 2008.

¹⁰ www.cpi.org/Briefings/2008/gambia08/gambia08.html

¹¹ Case files HC390/06/MF131/H4 and HC391/06/MF/132/H4.

¹² A writ of habeas corpus is a mandate ordering that an inmate be brought to court so it can be determined whether that person is imprisoned unlawfully and whether or not they should be released from custody.

¹³ In the High Court of Gambia RC390/06/MF/131/A4 between Ousman Jatta and the Inspector General of the Police, the Attorney General, the Director General of the National Intelligence Agency, 5 June 2007 before Hon Justice Sanji M Monageng, State Council Att AS Umar with Njallow, Defence Counsel Att Ousainou Darboe, Clerk David Gomez.

¹⁴ For other cases of disappearances, see Appendix 2.

¹⁵ *The Principles of Medical Ethics*, The American Psychiatric Association, 1978.
<http://psychiatry.org/MainMenu/EducationCareerDevelopment/Library/EthicsDocuments/Ethics1978Revis>

[ed.aspx](#)

¹⁶ For more information see UA 69/06 AI Index: AFR 27/008/2008, 31 March 2008.

¹⁷ Amnesty International has not been able to substantiate the testimony with medical certificates confirming that the wounds were a result of torture/ill treatment.

¹⁸ Including Modue Sannoe, Malang Kanteh, Yankuba Fofana, Markus Camara, Gibbe Bah, Ibrahim Minteh, Ansumana Manneh, Mohammed Gumani, Fallu Faal, Buba Ceesay, Kebbe Jobe, Lamin Gassama, Ngage Ceesay, Ebrima Jammeh, Kalifa Bajah, Ebrima Badijie, Mohamed Sillah, Mababu Ansel and Malifi Sanyang.

¹⁹ Beriberi is caused by a lack of vitamin B₁. It is found in people whose diet consists mainly of polished white rice, which is very low in Vitamin B₁. The symptoms include weight loss, emotional disturbances, impaired sensory perception and pain in the limbs, and periods of irregular heart rate. Oedema (swelling of the bodily tissues) is common. In advanced cases, the disease may cause heart failure and death.

²⁰ A teacher who had allegedly been assaulted by security forces and sustained injuries during the demonstrations sued the government.

²¹ Find the following urgent actions at <http://www.amnesty.org/en/region/gambia> UA 69/06 AI Index: AFR 27/001/2006 28 March 2006; UA 69/06 AI Index: AFR 27/002/2006, 6 April 2006; UA 69/06 AI Index: AFR 27/003/2006 10 April 2006; AI Index: AFR 27/004/2006 13 April 2006; UA 69/06 AI Index: AFR 27/005/2006, 25 April 2006; UA 69/06 AI Index: AFR 27/006/2006 31 May 2006; UA 69/06 AI Index: AFR 27/007/2006, 4 October 2006.

²² The court martial is composed of a panel of five military officers and a judge advocate. The military officers are not necessarily trained in law.

²³ The Judicial Service Commission consists of the Chief Justice, a judge of a superior court, the Solicitor General, a legal practitioner of at least five-years standing at the Gambia bar, a presidential appointee, and a person nominated by the National Assembly.

²⁴ *Under Pressure: A report on the rule of law in the Gambia*, International Bar Association, 21 August 2006, p28 www.ibanet.org/iba/article.cfm?article=90

²⁵ See Appendix 2 under Human rights violations committed against journalists.

²⁶ See Chapter 1 Section 2 for the detailed story of Saidy Khan's arrest and detention.

²⁷ www.ifex.org/8en/content/view/full/82277

²⁸ www.voanews.com/english/archive/2008-08/2008-08-20-voa61.cfm?CFID=59069189&CFTOKEN=26070960

²⁹ Their full stories can be found in Appendix 2.

³⁰ Committee to Protect Journalists press release, 18 May 2006, *Journalist Continues in Detention Without Charges: Newspaper remains closed, its offices occupied by security forces*.

³¹ Malik Jones, Omar Bah, Sarjo Bayang, Sheriff Bojang Jr, Seedy Ceesay, Lamin NB Daffeh, Ida Jagne, Alagi Yorro Jallow, Baba Galleh Jallow, Cherno Baba Jallow, Mathew K Jallow, Sulayman Makalo, Lamin

Cham, Pa Nderry M'bai, Alagie Mbe, Musa Saikyhan, Ebrima Sankereh, Ebrima Sillah, Alieu Badara Sowe, Bunja Touray, Momodou Musa Touray, Momodu Worrie Bah, Momodu Lamin Taih, Momodu Justice Darboe, Lamin Fatty, Pa Ousman Darboe and Yahya Damfa.



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GAMBIA

FEAR RULES

After a foiled coup attempt in March 2006, at least 59 people were unlawfully arrested and detained. Many were tortured and held in harsh, and even life-threatening, conditions; some were convicted in unfair trials, while others were victims of enforced disappearance or extrajudicial execution.

Since then, against a backdrop of arbitrary unlawful arrests, detentions and other human rights violations, all public protests have ceased in Gambia. Lawyers are reluctant to take on human rights cases for fear of reprisals, and families of the victims are afraid to speak out. The media, for the most part, censors itself in the face of arrests, fines, threats and physical attacks that have been meted out to those accused of criticizing the government.

This report documents the human rights violations that took place during and after the March 2006 attempted coup. It focuses on those who are still in detention and on the restrictions on freedom of expression which have created a culture of silence and fear.

Amnesty International calls on the Gambian government to incorporate international human rights law and standards into national law; to cease the use of torture in detention and extrajudicial executions; to release all those detained without charge; and to protect the access of all Gambians to a free and impartial judicial system.

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