

1 September 2009

Public

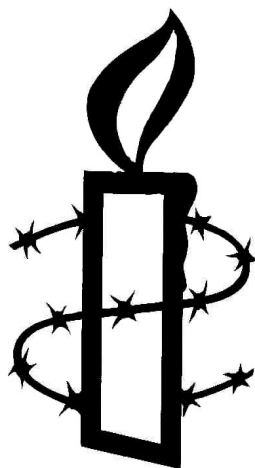
amnesty international

Gambia

Submission to the UN Universal Periodic Review

**Seventh session of the UPR Working Group of the
Human Rights Council**

February 2010



AI Index: AFR 27/006/2009

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concern over restrictions on freedom of the media.
- Section C highlights Amnesty International's concerns about unlawful arrest and detention, enforced disappearance, torture and other ill-treatment, deaths in detention, unlawful killings, unfair trials, and attacks on journalists and human rights defenders.
- In section D, Amnesty International makes a number of recommendations for action by the government to address these areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Gambia

Amnesty International submission to the UN Universal Periodic Review

Seventh session of the UPR Working Group, February 2010

B. Normative and institutional framework of the State

Restrictions on freedom of the media

The Gambian Constitution guarantees, among other rights, freedom of speech. However, 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 *Newspaper Amendment Act, 2004*, requires 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 background to this is that in July 2002 the *Media Commission Act* established a code of conduct for independent media, including a standard for content and quality of print and broadcast material, and set up a registry of all media practitioners and organizations. The Commission was given powers to force journalists to reveal their sources and to issue arrest warrants for journalists who ignored such summons. The Commission required all journalists and media houses to obtain one-year renewable licenses, 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.

In 2002, the Gambia Press Union and private independent newspapers filed a suit with the Supreme Court challenging the Commission’s constitutionality which led to the legislation governing the Commission being repealed. However, in 2006 the National Assembly passed the *Newspaper Amendment Act* and the *Criminal Code Amendment Act*, which in effect reinstate many of the restrictions imposed by the previous legislation on media operating in the country.

C. Promotion and protection of human rights at the national level

Unlawful arrest and detention

Amnesty International has documented cases of unlawful arrest and detention of perceived and real opponents since the March 2006 failed coup attempt. Among them are at least 63 civilians and military personnel who were arrested without a warrant and without being told the reason for their arrest within the three hours mandated by the Gambian Constitution. Most of the arrests took place during March and April 2006. Of those arrested, 21 were charged with treason-related crimes in May 2006 and 15 cases went to trial.

Amnesty International’s research demonstrates that once in custody detainees are at risk of a range of human rights violations. Contrary to guarantees in national legislation, the police, the National Intelligence Agency (NIA) and the army unlawfully arrest and detain people. The law requires that the authorities obtain an arrest warrant before arresting a person, however, in practice; such warrants are hardly ever issued. Detainees are

rarely informed of their rights or the reason for their arrest or detention. They are often denied access to a lawyer and rarely charged within the 72 hours mandated by the Constitution.

People are routinely unlawfully detained in official places of detention, such as the Mile 2 Central Prison, the NIA headquarters and police detention centres. Other official places of detention include Banjulinding, a police training centre, and Jeshwang and Janjanbureh prisons in the interior of the country. Others are held in secret detention centres, as described by a human rights defender interviewed by Amnesty International: "There are secret detention centres all over the place. People can be detained anywhere." Such secret detention centres include Fort Buling and other military barracks, 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.

In March 2009, Amnesty International documented the cases of up to 1,000 people in Gambia who were taken from their villages by "witch doctors" to secret detention centres and forced to drink hallucinogenic concoctions. The liquid they were forced to drink led many to have serious kidney problems; six of them died of kidney failure. These incidents are part of a "witch hunting campaign" to spread terror throughout the country. Eyewitnesses and victims told Amnesty International that the "witch doctors" were accompanied by police, army, National Intelligence Agents, and President Yahya Jammeh's personal protection guards. Some of them were held for up to five days.

Halifa Sallah, a prominent opposition figure who has written about the activities of the "witch doctors" for the main opposition newspaper, *Foroyya*, was arrested at his home on 8 March 2009 and after several days charged with sedition and spying. He was held in Mile 2 Central Prison until his case was dropped. After the situation came to light, the "witch hunting campaign" ceased, but none of those involved has been brought to justice.

Enforced disappearances

Amnesty International has received reports of journalists becoming victims of enforced disappearance. Chief Ebrima Manneh, a reporter at the government-owned *Daily Observer*, was arrested on 11 July 2006 by National Intelligence Agents at the newspaper's offices and has not been seen since. It is believed that his arrest was in connection with his attempt to print a BBC article that was critical of the government. His case was taken to the ECOWAS Community Court of Justice in June 2007 and, in a landmark decision in June 2008, the court ordered the government to release him from unlawful detention, dismissing the government's claim that Manneh was not in their custody. However, Manneh remains disappeared.

Opposition politicians and their supporters are also at risk of becoming victims of enforced disappearance. Following the 2006 presidential elections, Amnesty International documented the disappearance of United People's Party supporters Ousman "Rambo" Jatta, Tamba Fofana, and Kanyiba Kanyie. In October 2007 Ousman "Rambo" Jatta and Tamba Fofana were released; however, Amnesty International remains concerned about the fate of Kanyiba Kanyie.

In another incident in 2006, just days after the alleged coup attempt in March, 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, Second Lieutenant Alieu Cessay, Regimental Sergeant Major Alpha Bah and Staff Sergeant Manalifi Corr had been involved in a road accident while being transferred to Janjanbureh Prison in the interior of the country, and that the men had escaped. The reporters, however, found no evidence that an accident had taken place. Family members of the five men have not heard from them since their alleged escape and no independent investigation has been launched. Amnesty International has received no further update on the fate of the five men who appear to have become victims of enforced disappearance and possible extra judicial execution.

Torture and other ill-treatment in detention

Special units within the NIA (sometimes known as “green boys”, “ninjas” or “drug boys”), as well as the President’s personal protection officers and members of the army and the police, are alleged to have tortured or ill-treated detainees. Torture and other ill-treatment are used to obtain information, as punishment and to extract confessions to use as evidence in court.

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

Deaths in detention

The harsh conditions in Mile 2 Central Prison – overcrowding, poor sanitary conditions and foul food – can in themselves constitute cruel, inhumane or degrading treatment. 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 held in mosquito-infested areas and exposed to the risk of malaria and subsequently refused medical treatment. Amnesty International is aware of at least 20 people who have died in Mile 2 Central Prison since 2005. Based on information available to Amnesty International no investigations have been carried out by the authorities to determine the cause of death of those who died while in detention.

Unlawful killings

On 16 December 2004, Deydra Hydara, a prominent journalist, editor of *The Point* newspaper and president of the Gambia Press Union, was shot three times in the head on his way home from work, and died instantly. Two of his co-workers, Ida Jagne and Nyansarang Jobe, who were also in the car, were critically injured. The attack took place three days after controversial media legislation had been passed, which Hydara had opposed very vocally; it was also the anniversary of the establishment of *The Point* newspaper. After the killing, co-owner Pap Saine closed down the *The Point* for a month. The murder of Hydara remains unsolved and the government has made little effort to investigate.

In another incident on 23 July 2005, a group of 50 foreigners, including 44 Ghanaians, were intercepted by Gambian security forces in the waters off Gambia while on their way to Europe. A number of them were killed upon entry to Gambia allegedly on suspicion of plotting to overthrow the government during Gambia’s Independence Day celebrations. In August 2008, the ECOWAS and the UN formed a team to investigate the killings and in April 2009 submitted their report. The report establishes that the Ghanaians disappeared on Gambian territory and states that the Gambian government is responsible for the deaths and/or disappearances because they took place on Gambian territory. So far the Gambian government has paid a contribution towards the funeral expenses of the six Ghanaian bodies found on their territory; however, no investigations have been carried out to bring those responsible to justice.

Unfair trials

During the 2006-2007 “treason trial” in the High Court and the Military Court, following the alleged coup in March 2006, Amnesty International documented violations of fair trial standards, including infringement on the presumption of innocence and the right to be heard by an impartial tribunal, violation of rights in pre-trial custody and during interrogation, and the use of torture to coerce confessions. In March and April 2006, Amnesty International raised concerns about torture and other ill-treatment of those in detention, including 10 military personnel and five civilians held in pre-trial detention for six weeks until they were formally charged. The detainees were held in solitary confinement in Mile 2 Central Prison, reportedly tortured, including beaten, and forced to sign confessions. The detainees appeared in court with wounds and injuries. When 14 defendants were charged in the “treason trial” in June 2006 their defence counsel questioned the impartiality and independence of the judge assigned to the case, Justice Akomaye Agim of Nigeria. The judge had been Director of Public Prosecutions for four years prior to his appointment as the High Court judge

overseeing the “treason trial”. However, no action was taken in response to their concerns, the lawyers withdrew from the case, leaving the defendants temporarily without legal representation.

When the trials resumed in October 2006, the same judge was appointed by the President to serve as Judge Advocate in the military court martial. On this occasion, the defence teams proceeded with the trial, in order not to further delay the process.

In April 2007, a military court found four of the accused guilty and sentenced them to life imprisonment, four were sentenced to 25 years and the remaining three were given 10 years. In the civilian trial, three were found guilty and sentenced to twenty years of imprisonment with hard labour and one was acquitted. In both cases the defence counsel filed appeals, but so far the cases have not moved forward.

Historically, the independence of the judiciary has been compromised due to frequent interference by the executive, including by removing and appointing judges without consultation with the Judicial Service Commission. Such action contravenes Section 138 of the Constitution which states that all superior court judges shall be appointed by the President on the recommendation of the Judicial Service Commission and Section 141 which sets out safeguards for judicial independence in the removal process.

Attacks on journalists and human rights defenders

Many journalists and human rights defenders have been harassed, threatened (including death threats), and been unlawfully arrested and detained if suspected of providing information to on-line news sources or foreign journalists or publications. Since 1994, at least 29 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.

Journalists have also been subject to unfair trials. On 15 June 2009, nine journalists were detained at national security offices without charge until their first court appearance three days later. Two of them were released without charge and the other seven were charged with sedition. On 22 June they were granted bail of 200,000 dalais (US\$ 7,547) each. They were arrested and charged because they had criticized a statement by the president in a televised speech about the unsolved murder of Deydra Hydara. On 8 August 2009 six of the seven were sentenced to two years imprisonment and a US\$ 10,000 fine. Amnesty International considers the six journalists to be prisoners of conscience and calls for their immediate and unconditional release.

D. Recommendations for action by the State under review

Amnesty International urges the government:

Unlawful arrest and detention

- To comply with the order handed down by the ECOWAS Community Court of Justice in June 2008 to release Chief Ebrima Manneh from detention without further delay and to pay him US\$100,00 in damages;
- To immediately and unconditionally release all prisoners of conscience and to release those unlawfully detained or charge them with a recognizable criminal offence;
- To publically condemn unlawful arrests and detention, torture, enforced disappearances, unlawful killings, and unfair trials against journalists, perceived opponents and opposition politicians, and ensure that all reports of such human rights violations are fully investigated and those responsible brought to justice;

- To immediately instruct the police, army and the NIA to cease unlawfully arresting, detaining, and torturing those in custody.

Deaths, torture and ill-treatment in detention and enforced disappearance

- To investigate all allegations of torture and ill-treatment, 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;
- To guarantee full reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for the victims (or their relatives) of torture and ill-treatment, extrajudicial executions, and enforced disappearances;
- To improve the conditions of detention in the Mile 2 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.
- To ensure that prisoners are held only in officially recognized places of detention and put in place regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

Unfair trials

- To ensure the independence and impartiality of the judiciary, including by putting in place measures to safeguard the independence of the judiciary in line with the UN Basic Principles on the Independence of the Judiciary;
- To ensure that all judicial appointments are subject to all constitutional procedures, and oblige the executive to comply with decisions of the Judicial Service Commission;
- To 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.
- To release the six journalists convicted of sedition in August 2009 immediately and unconditionally.

Appendix: Amnesty International documents for further reference²

Gambia: Fear Rules, AI Index: AFR 27/003/2008, November 2008

Gambia: Government critic arrested. Gambia: Fear of Torture or other ill-treatment possible unfair trial: Halifa Sallah AI Index AFR 27/001/2009, March 2009

Gambia: Hundreds accused of “witchcraft” and poisoned in government campaign, AI Index AFR 27/00/2009 March 2009

Gambia: Seven held incommunicado following criticism of President Prisoners of Conscience/Incommunicado detention, AI Index AFR 27/002/2009, June 2009

Gambia: Amnesty International Demands Freedom for Gambians, AI Index: AFR 27/005/2009, July 2009.

Gambia: Six journalists condemned to two years in Mile 2 prison, AI Index: AFR 27/006/2009, August 2009

² All of these documents are available on Amnesty International’s website: <http://www.amnesty.org/en/region/gambia>