
**Media Foundation for West
Africa**

The Gambia

**Submission to the UN Universal
Periodic Review**

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

February 2010

Executive summary

The human rights situation in The Gambia under the rule of President Yahya Jammeh has been a major concern for media practitioners and free expression advocates across Africa and beyond. Apart from the constant attempts to regulate and restrict private and public media establishments through the enactment of repressive legislation that promote a closed system of government, President Jammeh and his officials have continued to intimidate, harass and persecute media practitioners.

Since 2006, many media practitioners have been subjected to continued harassment, beatings and arbitrary imprisonment. Many have been forced to leave the country for fear for their lives, and some have ‘disappeared’.

In June 2009, the government of Gambia unleashed a spate of attacks on, and arrests of, journalists. Seven (7) Gambian journalists, including three (3) executives of the Gambian Press Union were arrested by members of the National Intelligence Agency (NIA). Their arrests followed the publication in *The Point* and *Foroyaa* newspapers of a press release issued on June 11 by The Gambian Press Union. The Gambian Press Union issued the press release to react to certain comments made by President Jammeh regarding the late Deyda Heydara, an outspoken journalist and critic of the Jammeh government who was murdered in 2004. The journalists were charged on six counts of sedition and criminal defamation before a high court in Banjul. Additionally, on June 22, another journalist, Augustine Kanja, a Sierra Leonean, was arrested at the premises of the Kanifing Magistrate Court while covering proceedings of the trial of the seven journalists and executives of the Gambian Press Union.

The political climate of repression, it ought to be noted, extends beyond the repression of journalists to encompass the society as a whole

Prior to compiling this submission, extensive consultations were held with the under listed institutions/representatives:

1. The executives of The Gambian Press Union
2. Seven journalists arrested, tried and jailed
3. The Defence lawyers of the journalists referred to in point 2
4. The Executive Committee of the Gambia Bar Association
5. The African Commission on Human and Peoples Rights
6. The Institute for Human Rights and Development in Africa (IHRDA)
7. African Centre for Democracy and Human Rights Studies (ACDHRS)
8. The British High Commissioner accredited to The Gambia
9. The United States Ambassador accredited to The Gambia

There were also consultations with a number of rights advocates in the Gambia. All attempts to meet with a representative of the Gambia government proved abortive.

In this submission, **Media Foundation for West Africa** 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, **Media Foundation for West Africa** raises concern over weak institutions, and repressive laws
- Section C highlights **Media Foundation for West Africa’s** concerns about human rights violations in the context of disappearances, arbitrary detentions and harassments and torture of journalists, lack of press freedom, and shut down of independent media houses.
- In section D, **Media Foundation for West Africa** makes a number of recommendations for action by the government. Each section sets out recommendations to address the 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.

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B. Normative and institutional framework of the State

The Gambia Constitution of 1997 contains an entrenched provision that guarantees protection of fundamental human rights and freedoms, including freedom of expression. Instead of enhancing this provision by enacting laws to expand the democratic space, the current government of President Yahya Jammeh has preoccupied itself with enacting repressive laws. Within the past two years the administration has enacted a number of amendments that have resulted in journalists being thrown into jail. The following are some of the repressive provisions:

- Criminal Code (Amendment) Act 2004 further amended in 2005
- S. 51(1) of the Criminal Code creates the offence of ‘Sedition’
- S. 41 of the Criminal Code
- S.3 of the Official Secrets Act making it is an offence for anyone to make a “sketch, plan, model or note” or to publish or communicate “any secret official code, word, sketch, plan, article, note or other document”, which may be useful to an enemy.
- Decree No. 45 establishing the National Intelligence Agency (NIA) Decree and empowering the Minister of Interior or his designate to issue search warrants, authorise interference with correspondence, be it wireless or electronic.

Promotion and protection of human rights on the ground - Report on Violations

Systematically, the 15-year rule of President Yahya Jammeh has subjected the media and citizens to all manner of atrocities. The repressive nature of the regime has left journalists and citizens living in constant fear. The pattern of violations could be attributed to the intolerance of the Gambia authorities to divergent and critical views and the application of repressive laws on the statute books in the Gambia.

Disappearance(s)

Chief Ebrima Manneh, a reporter of the pro-government *Daily Observer*, was arrested on July 7, 2006 at his newspaper’s office by the notoriously feared National Intelligence Agency. Despite credible testimonies from eyewitnesses the government has refused to acknowledge holding him and has not made any effort to find out his whereabouts.

Arrests, Unlawful/Arbitrary Detentions

Arbitrary arrests and detentions have become routine in the lives of Gambians, including journalists. Most of the detained journalists have been held incommunicado for long periods without charge. Those charged are denied fair trial by the courts. Since 1994 there have been as many as ninety one (91) cases of arbitrary arrests and detentions. Sixty-four (64) of these arrests occurred between 1994 and 2006, while the past two years have recorded as many as twenty seven (27) arrests.

The case of Lamin Fatty, a journalist convicted for publishing “false information” is a typical example. Fatty was arrested on April 10, 2006. Until his conviction he was arbitrarily held for 63 days without charge or a court order before being released. He was rearrested and detained briefly when he could not immediately pay the fine imposed on him by the court.

Torture and ill-treatment

Several of the detained journalists have complained that they were tortured while in detention at either the dreaded NIA headquarters or the Mile Two Prison.

Musa Saïdykhan and Madi Ceesay both of the *Independent* newspaper were arrested on March 27, 2006 following a publication on a coup d'état attempt. They were detained for 22 days and seriously tortured by officials of the Presidential Body Guard led by Lieutenant Musa Jammeh, a cousin of President Yahaya Jammeh and Regimental Sergeant Major (RSM) Tamba.

Killings

Two journalists were brutally murdered but to date the administration has not conducted proper investigations to find and punish the perpetrators.

- Five years ago, on December 16, 2004, Deyda Hydera, editor of *The Point* newspaper and an ardent critic of President Jammeh's administration, was shot three times in the head, while returning home from his office. Two female staff of his newspaper who were with him in the car, were shot in their legs.
- Another journalist, Omar Barrow, news editor of the banned *Sud FM* radio station, was on April 10, 2000 shot and killed by security agents, while covering a students' demonstration in the Kanifing suburb of Serrekunda.

D. Institutional Weaknesses

Lack of Judicial independence

The judiciary in The Gambia lacks independence and has become an instrument of the Executive, as President Jammeh dismisses at will judges whom he is not pleased with or who attempt to assert judicial independence. Within the last few years, President Jammeh has dismissed two chief justices with impunity. On June 9, 2009, President Yahya Jammeh, acting under the provisions of Article 141, Subsection 2(c) of the Constitution of the Republic of The Gambia terminated the appointment of Abdou Karim Savage as Chief Justice of the Republic of The Gambia with immediate effect. President Jammeh also under Article 138 Subsections (1) and (2) of the Constitution of the Republic of The Gambia, appointed Justice Emmanuel A. Agim then president of the Gambia Court of Appeal, to the position of Chief Justice of The Republic of The Gambia with immediate effect. Even when the Gambia Bar went to court to challenge the constitutionality of the purported dismissal and the court upheld the challenge, President Jammeh treated the court's decision with disdain and refused to comply with the decision.

One reason of the judiciary's weakness is the appointment of foreign lawyers to key positions in courts. These lawyers have no choice than to give rulings in favour of the government in order to have their contracts renewed. Those who rule in favour of the opposition or civil society members have had their contracts terminated.

For instance, Justice Joseph Wowo and Justice Emmanuel Fagbenle of the High Court, both Nigerian citizens presided over the unfair trial of the seven members of the Gambian Press Union (GPU) and on August 6, 2009 sentenced each to 2 years imprisonment.

A Petrified Bar Association

Gambian and international law recognise the critical role that lawyers play in ensuring citizens right to a fair trial and the proper and effective functioning of the administration of justice. However this is not the practice in the Gambia.

Lawyers in the Gambia are currently operating under challenging conditions due to recurrent incidents of harassment and intimidation which have created a climate of fear in the profession.

Even though the Gambia Bar Association still exists as an autonomous body, the general climate of repression and fear has affected its ability to stand up for the rights of the people. Lawyers who take up their professional duty of defending persons charged with political offences or considered critics of the government easily become targets of the regime's repression. In 2003, a senior lawyer - Mr. Ousman Sillah, the Chairman of the Lawyers' Coalition for Human Rights, was on December 26 shot in the head because he was defending someone who had been charged with treason. Currently, most lawyers dare not take up the defence of citizens in cases perceived to be political. The result is that only a handful of lawyers regularly bear the burden of defending such persons and the perception is created that they are opposition lawyers - a tag which endangers their personal security.

Harassment of Press Union executives resulting in journalists fleeing into exile

A growing number of journalists are fleeing the repression and persecution of the regime. Presently, more than thirty (30) journalists have escaped into exile while those remaining in the country are practicing self-censorship as a means of preventing arrests.

The President of the Gambian Press Union (GPU) Mrs Ndeye Tapha Sosseh is currently forced to live in exile because the security services went to her house to arrest her while she had travelled out of the country.

General Media Repression

With the exception of a couple of vocal and critical media that are the only real restraint on the dictatorship, most media in the Gambia have become voiceless. The regime has targeted the media as the remaining institution that it has not succeeded in totally cowing down. They are therefore bearing the brunt of the regime's repression. Once the media is effectively cowed down, the government can pursue its repression without exposure and with complete impunity. This explains the critical importance of the media in restoring human and democratic rights generally in the Gambia and in particular free expression.

Under flimsy excuses radio stations and newspapers have been shut down or banned from operating. The following are victims of the repression:

- The Independent - 2006
- Sud FM - 2005
- Citizen FM - 2001
- Citizen - 2001

Recommendations for action by the State under review

1. Amend the Criminal Code, the Newspaper Act and all other legislation which infringe press freedom and freedom of expression by repealing sedition and criminal defamation offences.
2. Enforce the ECOWAS Court ruling in the case Chief Ebrima Manneh Vrs. The Gambia by freeing this journalist and paying him US\$100,000 compensation as ordered by the Court.
3. Reopen all media houses arbitrarily closed by the government
4. Set-up independent bodies to investigate the killing of Deyda Hydera and Omar Barrow
5. Ensure the independence of the judiciary by reforming the conditions of appointment and dismissal of judges through security of tenure and by protecting them against any interference from the Executive.