



Committee to Protect Journalists

Joint Submission to the Commonwealth Ministerial Action Group on The Gambia **April 2013**

Article 19, Commonwealth Human Rights Initiative and the Committee to Protect Journalists would like to draw the attention of the Commonwealth Ministerial Action Group (CMAG) to the human rights situation in The Gambia.

The Gambia hosts the headquarters of the African Commission on Human and Peoples' Rights but serious and persisting violations of human rights including enforced disappearances, ill-treatment, violence, unlawful arrests and death threats continue to be meted out against human rights defenders, journalists and government critics. The government stands in non-compliance with several institutions of international law, including the UN Working Group on Arbitrary Detentions, the Court of Justice of the Economic Community of West African States (ECOWAS), and its own constitution. Concerns have been raised at the UN Human Rights Council's Universal Periodic Review, and repeatedly expressed by the African Commission on Human and Peoples' Rights. Yet total impunity prevails as the government has shown defiance in complying with its human rights obligations.

The Gambia has also faced severe allegations of extrajudicial killings, torture and enforced disappearances of political opponents, human rights defenders and journalists. The Court of Justice of ECOWAS has taken note of some such incidents in its judgments. In landmark rulings in 2008 and 2010, the Court of Justice found the Gambian government responsible for the arrest and disappearance of missing journalist Ebrima Manneh and the illegal arrest and torture of Musa Saïdykhan, another journalist now living in exile. The Gambia has still not complied with the Court's ruling for compensation to be paid to both journalists and for Ebrima Manneh to be set free.

In August 2012, the State executed nine death row prisoners, following a vow by the President to execute all inmates on death row. Many of the prisoners had been denied their rights to a fair trial, including access to legal representation or an appeals process. International outcry subsequently led the government to declare a conditional moratorium on executions.

Since then, there has been a crackdown on fundamental freedoms with journalists and human rights defenders at an increased risk of violence, harassment, illegal arrests and detention and enforced disappearances by state agents. Three independent news outlets were summarily ordered to cease their operations in response to their coverage.

Outspoken anti-death penalty critic, Imam Baba Leigh has been held in incommunicado detention since his arrest by National Intelligence Agency officers in December 2012. At least two civil society activists, Baboucarr Ceesay and Abubacarr Saïdykhan have received death threats for attempting to hold a peaceful demonstration against the death row executions. Many others report harassment such as journalist Abdoulie John, who has had his private property searched without a warrant, and has been unlawfully arrested and detained twice since December 2012. In addition, both Baboucarr Ceesay and Abdoulie John have had their travel documents confiscated. The Special Rapporteur on Freedom of Expression in Africa recently urged the government to stop intimidation of the journalists and to return their documents.

The inability to report on the country's reality is obstructive to understanding the state of affairs in the country. This pattern of repression reflects a government intolerant of criticism and resistant to protecting fundamental rights and freedoms.

Recommendations

For years the Commonwealth has engaged with The Gambia on issues of human rights. Despite this engagement, serious and persistent violations of Commonwealth values as espoused in the Charter of the Commonwealth prevail.

Given this, we urge CMAG to put The Gambia on its agenda and press upon the country to:

- Take measures to create an enabling environment for civil society space, including safeguarding the rights to freedom of association, assembly and expression;
- Repeal laws and stop practices that hinder media freedom;
- Honour its obligations and protect human rights defenders as espoused in the UN Declaration on Human Rights Defenders and
- Investigate allegations of extra-judicial killings, enforced disappearances, torture, ill-treatment, violence, threats of violence, unlawful arrests and detention and hold perpetrators to account.

Appendix Brief on the situation in The Gambia

Repressive Legislation: Draconian and repressive laws such as the Newspaper Registration Act (2004), Newspaper Amendment Act (2004), Criminal Code Amendment Act (2005), and the Official Secrets Amendment Act (2009) create offences such as sedition, seditious intention, defamation and false publication that are restrictively defined and are used to target real or perceived government critics, human rights defenders and journalists. If convicted for publishing seditious material for instance, a mandatory prison sentence is imposed. These laws continue to inhibit the realisation of rights, particularly freedom of expression and freedom of the press.

Death row executions: In August 2012, nine death row prisoners were killed by a firing squad. Their lawyers and families had received no prior notification about their executions. Given the compromised judicial system, politically motivated trials and absence of due process safeguards, these executions remain significantly concerning. The UN Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions stated that “the executions were carried out in secrecy, away from the public and from the families, and do not meet the requirements of transparency.” The UN High Commissioner for Human Rights and the Commonwealth Secretary-General similarly called on the government to halt plans for subsequent executions. While it is reported that President Jammeh has suspended the execution of death row prisoners, this moratorium is temporary and conditional.

Since the death row executions, there has been a further clampdown on human rights. For example, in September, a BBC journalist, attempting to report on the executions was expelled from the country. Also in September 2012, two civil society activists, Baboucarr Ceesay and Abubacarr Saidykhann, were charged with conspiracy to commit a felony after attempting to seek permission from the authorities to peacefully demonstrate against the death row executions. They were detained and later released on bail. In October after the charges were dropped, they both reported receiving death threats.

Press Freedom: The environment is inimical to press freedom. Repressive laws and intimidation are used to control expression and thus many exercise self-censorship. Radio stations are often searched and issued with arbitrary notices to shut down. Community radio station, Taranga FM, censored thrice before was again ordered to shut down in August 2012. In September 2012, two independent newspapers, The Daily News and The Standard, were visited by state security agents and ordered without explanation to stop publishing immediately. It is reported that their censorship is due to their coverage of the death row executions in August 2012.

Several journalists have reported intimidation, harassment, arbitrary arrests and illegal detention. In 2011 on three separate occasions, executive members of The Gambia Press Union were arrested, detained and questioned without a warrant. They were later released without charges. Journalist Abdoulie John has been repeatedly unlawfully arrested and detained without charge since late 2012.

Enforced disappearances: Political opponents, journalists and human rights defenders are often targets of enforced disappearances. These cases are rarely investigated. State authorities tend to withhold information of detainees in their custody and prevent access by lawyers and relatives. For example, Imam Baba Leigh, who publicly denounced the death row executions, and reported receiving death threats soon after this, has disappeared. It is alleged that he is being held incommunicado in detention without charges since 3 December 2012. Authorities continue to deny any knowledge of his whereabouts and if allegations are true, he remains at grave risk of torture and ill-treatment.

Human Rights Defenders: NGOs are bound by the NGO Code of Conduct that is based on government principles. The NGO Affairs Agency monitors the activities of NGOs to ensure compliance with the Code of Conduct. An NGO must therefore adhere to the government's agenda and this restricts their independence.

Human rights defenders are frequently threatened, intimidated and harassed by the state. A 2011 report by the Observatory for the Protection of Human Rights Defenders, notes that judicial harassment has become a tool used by the regime against activists and critics of the government. This has further eroded public confidence in the credibility of the judicial system. Particularly, as the independence of the judiciary is undermined through interference by the executive. Judicial harassment, arbitrary arrests and detention institutionalise the repression of human rights defenders and are used to stifle activism. In February 2012, for example, four human rights defenders who were peacefully protesting against the regime by wearing and distributing t-shirts were arrested and convicted on sedition and treason charges. After special intervention, one activist's release was authorised in September 2012. One activist has since died in prison, while the other two remain incarcerated.