

Index: AFR 27/6123/2017

28 April 2017

**AMNESTY
INTERNATIONAL**



HUMAN RIGHTS PRIORITIES FOR THE NEW GAMBIAN GOVERNMENT

1. GUARANTEE FREEDOM OF EXPRESSION

- a) Urgently repeal and bring in conformity with international and regional human rights obligations impermissibly restrictive laws on the right to freedom of expression. These include the offences of **sedition** (section 52), **criminal libel** (section 178), **“spreading false information”** (sections 59 and 181A), **giving false information to a public servant** (section 114) in the Criminal Code, and the amendment of the Information and Communication Act of 2013 that includes **copyright of online expression** (section 173A);
- b) Remove the broad powers given to national security agencies to “monitor, intercept and store communications” under the **Information and Communications Act 2009** (section 138) and introduce necessary safeguards such as being subject to judicial oversight and the possibility to effectively challenge the lawfulness of these measures before a court; and generally uphold the rights to privacy and freedom of expression.
- c) Ensure that opposition groups and dissenting voices have equal access to State media;

2. GUARANTEE FREEDOM OF ASSEMBLY

- a) Repeal and bring in conformity with international and regional human rights obligations impermissible restrictive laws on the rights to freedom of assembly and association, including the offence of holding a procession without a permit under the **Public Order Act** (s 5(5)(a) and (b)) and the offence of **unlawful assembly** under the Criminal Code (section 69);
- b) Publicly instruct the security forces to avoid the use of force to disperse peaceful gatherings, even where the police believe that the organizers have not complied with the Public Order Act’s requirement to obtain a permit. Where that is not practicable, security forces should resist such force to the minimum extent necessary.

3. END ARBITRARY ARREST, DETENTION & TORTURE

- a) Publicly instruct the police, army and the National Intelligence Agency (NIA) to end unlawful arrests and detention, incommunicado detention and enforced disappearances and in particular not to detain people beyond the 72-hour period as provided in Gambia’s Constitution;

- b) Ensure that torture is established as an offence in national law and adopt a definition of torture that includes all the elements contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ensure that such offences are properly investigated and made punishable by appropriate penalties which take into account their grave nature;
- c) Amend the Criminal Procedure Code, concerning evidence to be admitted in judicial proceedings, to explicitly exclude any evidence obtained as a result of torture;
- d) Review all cases of detainees currently in detention facilities and release those whose detention is unlawful;
- e) Improve the conditions in prison facilities, such as Mile 2 and Janjanbureh, and reform relevant legislation in line with international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);
- f) Implement alternative measures to imprisonment for female offenders wherever possible, especially for women who are pregnant or have dependents, and ensure female inmates are protected from all forms of gender-based violence;
- g) Train law enforcement officials, military personnel and prison authorities in international human rights law to ensure that national procedures are compliant and that preventive measures to eliminate torture and other ill-treatment are integrated into their respective working methods;
- h) Allow independent national and international human rights monitors access to detention centres, in particular the International Committee of the Red Cross;
- i) Close down unofficial centres of detention and conduct investigations into any previous human rights violations that may have occurred at these sites;
- j) Given the extent of documented human rights violations committed by the National Intelligence Agency (NIA), reform the NIA and ensure its operations meet international human rights standards, including those on transparency and accountability.
- k) Disarm and disband the Jungulers and other semi-official paramilitary groups;
- l) Establish an independent police complaints commission to strengthen police accountability.

4. STRENGTHEN THE JUSTICE SYSTEM

- a) Put in place all necessary measures, including technical assistance and training programmes, to safeguard the independence and impartiality of the judiciary in line with international standards such as the UN Basic Principles on the Independence of the Judiciary;
- b) Reform and improve the National Agency for Legal Aid (NALA) so that it has a robust mandate to operate independently and ensure a sufficient number of qualified lawyers and paralegals that can provide essential services to persons, particularly vulnerable and disadvantaged groups, through all stages of criminal proceedings. Provide necessary support to other civil society organizations providing legal aid and advice,

such as the Gambia Bar Association and Female Lawyers Association Gambia, in order to strengthen and improve access to justice;

- c) Strengthen the office of the Director of Public Prosecutions, including by ensuring adequate human and financial resources, in order to be able to conduct fair trials;
- d) Design a comprehensive judicial policy to identify and eliminate the barriers faced by women and girls in gaining access to justice, provide adequate resources, including legal aid, and set up a mechanism to monitor its implementation;
- e) Expedite the operationalization of the National Human Rights Commission and ensure it can function in an effective and independent manner, with adequate resources, in line with the Principles relating to the Status of National Institutions (The Paris Principles).

5. TAKE STEPS TO ABOLISH THE DEATH PENALTY

- a) Urgently establish an official moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- b) Commute all outstanding death sentences to terms of imprisonment;
- c) Pending full abolition of the death penalty, remove from the law any mandatory imposition of the death penalty;
- d) Abolish the death penalty in law for all crimes.

6. PROTECT AND PROMOTE WOMEN AND GIRLS' RIGHTS

- a) Harmonize national legislation, including the Constitution, the Women's Act and personal laws (sharia law and customary law), by repealing all discriminatory provisions to ensure that women and girls enjoy the same rights as men in all areas of life;
- b) Repeal article 33 (5) (c) of the Constitution, which provides that the prohibition of discrimination does not apply in respect of adoption, marriage, divorce, burial and devolution of property upon death;
- c) Implement effectively section 15 (1) of the Women's Act and increase significantly the use of temporary special measures, including quotas, to ensure women's equal representation in political and public life and any other relevant areas in which women are underrepresented or disadvantaged, such as in education, health and employment;
- d) Effectively implement the Domestic Violence Act and the Sexual Offences Act by adopting the necessary regulations and guidelines, reinforcing reporting mechanisms, allocating adequate resources and strengthening the Victims of Violence Advisory Committee;
- e) Ensure that sex workers have equal access to justice, health care and other public services, and to equal protection under the law, including legal protections against exploitation, harassment and violence;

- f) Amend legislation to decriminalize abortion, removing all punitive measures both to women and girls, and health providers, expand the grounds for legal abortion to cases of rape, incest and severe and fatal foetal impairment, and ensure the availability of safe abortion services and post-abortion care without any barriers.

7. ENSURE NON-DISCRIMINATION

- a) Adopt comprehensive anti-discrimination legislation, in particular prohibiting discrimination on the basis of religion, gender, disability, sexual orientation, ethnicity or tribe and repeal any discriminatory laws;
- b) Ensure that all individuals are protected from harassment or violence by state and non-state actors, regardless of their religion, gender, disability, sexual orientation, ethnicity or tribe.

8. PROTECT AND PROMOTE ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- a) Develop and adequately resource national plans to fully realize the rights to education, health, food, water, housing and sanitation for all, and ensure that everyone has access to the minimum, essential levels of these rights;
- b) Formulate and implement an employment policy with a view to overcome unemployment and underemployment, particularly among women and youth;
- c) Take steps to ensure that all persons, particularly those in rural areas, women and girls, have access to quality health information, goods, and services, including by allocating increased resources to the health sector, training of health extension workers and ensuring provision of adequate and quality medical equipment and supplies to health facilities;
- d) Reduce the high rate of maternal and infant mortality, including by ensuring the availability of comprehensive sexual, reproductive, and child health services, and that that all births are assisted by a skilled birth attendant.

9. FULLY COMPLY WITH INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS

- a) Comply with judgements and orders from the ECOWAS Community Court of Justice in the cases of **Deyda Hydara**, **Ebrima Manneh** and **Musa Saidykhan**;
- b) Fully implement the recommendations made by other UN member states, and accepted by Gambia, during Gambia's Universal Periodic Review (UPR) process in 2015. Consider accepting those recommendations that had been rejected by the previous government;
- c) Fully and effectively implement the recommendations made by UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the UN Special Rapporteur on extrajudicial executions;
- d) Ratify outstanding human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; International Convention for the Protection of All Persons from Enforced

Disappearance; the African Charter on Democracy, Elections and Governance; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and other similar treaties;

- e) Make a declaration pursuant to Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights that would allow direct access for individuals and NGOs to the court;
- f) Extend a standing invitation to all thematic special procedures of the United Nations Human Rights Council and ACHPR.
- g) In considering whether or not to sign or ratify the Malabo Protocol, carefully study and take note of its institutional and legal implications, and support amendments to ensure provisions on immunities meet international standards (46A *bis*), definitions relating to terrorism are more precise (28G) and a full range of civil society organisations and individuals can access the court (30F).

10. END IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

- a) Investigate and prosecute government officials and members of the security services and paramilitary groups implicated in human rights violations, in accordance with international fair trial standards. A prosecutorial strategy under the Ministry of Justice should be developed, after consultations with various civil society and victim groups and learnings from other countries, to determine the type of crimes and individuals who will be the focus of investigations;
- b) Publicly instruct all security forces to suspend from active duty any officer reasonably suspected of involvement in human rights violations, including excessive use of force, arbitrary arrests and torture, until the allegations against them have been independently, thoroughly, impartially and transparently investigated;
- c) Ensure international fair trial standards for all current and future prosecutions. For example, defence rights should be strengthened and programmes put in place for witness protection, including special measures for victims of sexual violence. Consider seeking international technical support where necessary, including forensic expertise;
- d) Ensure that the proposed Truth and Reconciliation Commission (TRC) is well designed, accessible and properly implemented, seeking support to examine different successful international models where possible. Consideration should be given as to how the TRC will work alongside separate prosecutions, including on certain practical issues such as information sharing, exhumations, access to detainees, joint communications, resolving of disputes by independent third parties and outreach events;
- e) In accordance with international law, there should be no amnesties or pardons for crimes under international law before the proposed TRC;
- f) Remove Article 69 of the Constitution (Immunity from civil and criminal proceedings) and repeal the Indemnity (Amendment) Act 2001 which conflicts with Gambia's obligations under international human rights law;

- g) Guarantee victims' participation in any judicial or TRC processes, and further engage the views of victims groups concerning possible forms of reparation. These could include tailored compensation, medical and psychological rehabilitation, establishing victim centered memorials and/or a public apology to victims who suffered human rights violations;
- h) Develop a clear outreach and communications strategy and engage with civil society and victim groups so the public are fully aware of any transitional justice processes and understand the government's strategy and limitations.