



Gambia must take immediate steps to address concerns of UN Special Rapporteurs on torture and extra-judicial executions

Amnesty International's written statement to the 28th session of the UN Human Rights Council (2-27 March 2015)

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At its 28th regular session, the UN Human Rights Council (HRC) will consider the report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment on his visit to Gambia,¹ a visit he undertook jointly with the UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 3 to 7 November 2014.²

Amnesty International commends the Special Rapporteurs' efforts in positively engaging the Gambian authorities and larger civil society.

The organisation deplores the government's decision to deny the Rapporteurs access to the Security Wing of Mile 2 prison, where death row prisoners and others sentenced to long prison terms are held. That decision demonstrated again the government's blatant disregard for cooperation in the field of human rights. The Special Rapporteurs note in their Preliminary Findings that this restriction was imposed despite the government's written agreement to the Terms of Reference of the two mandates. Amnesty International is concerned that the government's unwillingness to cooperate with international monitors is in striking contradiction with the government's own commitment made during the Universal Periodic Review (UPR) of Gambia to "continue in its endeavour to promote and protect human rights in the country".³

Over the years, Amnesty International has documented numerous cases of intimidation, arbitrary arrest and detention, torture, enforced disappearance and unlawful killings of journalists, human rights defenders and political activists in Gambia. The Rapporteurs made similar findings. In relation to torture and other ill-treatment specifically, their findings refer to the prevalence of torture. They note that "the nature of the torture is brutal and includes very severe beatings with hard objects or electrical wires; electrocution, asphyxiation by placing a plastic bag over the head and filling it with water and burning with hot liquid. These methods of torture generally occurred over a period of days or even weeks."⁴ The Rapporteurs also expressed concerns about prison conditions and the lack of an effective complaints mechanism to address allegations of torture and other ill-treatment.

¹ A/HRC/28/68/Add.4, not yet published at the time of writing.

² End of visit statement by the Special Rapporteurs, *The Gambia: UN team prevented from completing torture and killing investigations*, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15265&LangID=E#sthash.WXczQgby.dpuf>

³ National report submitted to HRC 2014, paragraph 209, A/HRC/WG.6/20/GMB/1.

⁴ End of visit statement by the Special Rapporteurs, footnote 2.

Amnesty International has on more than one occasion raised with the HRC its serious concerns about the ongoing crackdown against human rights defenders by Gambian authorities. As far back as September 2009, the organisation called for immediate measures to protect representatives of Gambian civil society seeking to engage with the UPR in February 2010. It urged the HRC not to “wait to react only after they have come to grievous harm for advocating better respect for human rights in Gambia.”⁵ In August 2014 Amnesty International once again urged the HRC to pay particular attention to ensuring that human rights defenders, including those who have contributed to the UPR process, would not face reprisals.⁶ The organisation reiterated concerns about the serious danger of reprisals against Gambians seeking to engage with the UPR in a public statement of 16 October 2014.⁷ During the Rapporteurs’ visit, many individuals interviewed by them expressed fear of reprisals.

Amnesty International has received information of recent arrests and torture of a homophobic nature. The organization has recorded that at least eight people, including three women and a 17-year-old boy, were arrested by the country’s National Intelligence Agency (NIA) and Presidential Guards in November 2014 and threatened with torture because of their presumed sexual orientation. All those arrested were detained under investigation for “homosexuality” and were subjected to ill-treatment, such as beating, sensory deprivation and the threat of rape to force them to confess their “crimes”. Amnesty International received information that a further six individuals were reportedly arrested in November and December 2014 on the same grounds;⁸ three of the men arrested are currently facing trial in the High Court of Banjul.

Amnesty International has received information that Gambian law enforcement agencies including the NIA and Presidential Guard have arrested at least 30 persons, including a 16-year-old boy, since the beginning of January after a failed alleged coup attempt in the capital Banjul on 30 December 2014. They are being detained incommunicado and without charge. Eyewitnesses saw family members being taken to the NIA. Security forces have threatened to arrest anyone demanding the release or whereabouts of those arbitrarily detained.⁹

Gambia’s conditional moratorium on executions reinstated in 2012 is insufficient.¹⁰ Although there have been no executions since the execution of nine prisoners in August 2012,¹¹ prisoners continue to be exposed to “death row phenomenon”, which is “a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death”.¹² The executions in 2012, which took place after a 27-year-long moratorium, were carried out without informing the prisoners, their lawyers or families in advance, and the authorities did not return the bodies of the executed to their families for burial. In a media interview in August 2013, President

⁵ See *Amnesty International oral statement on Gambia to the 12th session of the UN HRC, 30 September 2009*, available in AI document: IOR 41/029/2009, October 2009.

⁶ <https://www.amnesty.org/en/documents/AFR27/011/2014/en/> .

⁷ *Gambia: Serious danger of reprisals against Gambians seeking to engage with the UN’s Universal Periodic Review* (AI Index: AFR 27/012/2014), available at: <http://amnesty.org/en/library/info/AFR27/012/2014/en> .

⁸ *Gambia must stop wave of homophobic arrests and torture*, www.amnesty.org/en/news/gambia-must-stop-wave-homophobic-arrests-and-torture-2014-11-18

⁹ *Gambia: Charge or release family members of alleged failed coup plotters*, available at: <https://www.amnesty.org/en/articles/news/2015/01/gambia-charge-or-release-family-members-alleged-failed-coup-plotters/> .

¹⁰ *The Gambia: Conditional moratorium on executions is not enough*, available at: <http://www.amnesty.org/en/news/gambia-death-penalty-moratorium-must-lead-abolition-2012-09-17> .

¹¹ *The Gambia: One year after the arbitrary executions of nine prisoners still no justice* (AI Index: AFR 27/007/2013), available at: <http://amnesty.org/en/library/info/AFR27/007/2013/en> .

¹² See paragraph 42, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 9 August 2012, UN Index: A/67/279.

Jammeh justified the retention of the death penalty as being “divine law” and stated that he would not pardon anybody condemned to death. This would deny the persons sentenced to death their right under international law to seek clemency.¹³

Amnesty International is concerned about the use of arbitrary detention and torture and other ill-treatment against human rights defenders or opponents of the regime. It is also concerned about restrictions to the right to freedom of expression, in particular through successive legislation passed in recent years unnecessarily restricting this right and imposing increased punishments. Offences under this legislation provide for long prison terms and hefty fines for “aggravated homosexuality”, “absconding state officials”, making derogatory statements against public officials, criticizing government officials online, inciting dissatisfaction, instigating violence against the government and acts of public disorder.¹⁴ The amendments made to the Criminal Code in May 2013 include the charge of providing “false information to a public servant” which is broad and subject to abuse by law enforcement authorities, in particular the NIA, likely to result in the detention and interrogation of persons, in particular, journalists and human rights defenders and others who express dissent, all of whom are at risk of torture or ill-treatment during interrogation. The shrinking space allowed for human rights activism and any form of political dissent is a major obstacle to exposing, preventing and addressing the use of torture and other ill-treatment in Gambia.

Amnesty International urges the HRC, its members and observer states to:

- Condemn the Gambian government’s blatant failure to respect the Special Rapporteurs’ Terms of Reference, thereby undermining their investigation;
- To establish an investigation into the circumstances surrounding the December 2014 attempted coup and related human rights violations, including investigations into arrests and other forms of repression.
- Call on Gambia to:
 - Constructively engage with the Special Rapporteurs and act on their recommendations without delay;
 - Desist from reprisals and intimidation against persons cooperating with the UN in the field of human rights;
 - Improve the conditions of detention in all places of detention and ensure that prisoners and detainees have access to medical care, adequate and appropriate food, hygiene and exercise;
 - Investigate all allegations of torture or other ill-treatment and hold to account the individuals responsible;
 - Ensure that information obtained under torture is not allowed in any proceedings;

¹³ See Amnesty International Report 2014/15 entry on Gambia, <https://www.amnesty.org/en/countries/africa/gambia/report-gambia> .

¹⁴ The Criminal Code (2014 amendment) Act, the Information and Communication (2013 amendment) Act and the Criminal Code (2013 amendment) Act. See 1) Amnesty International Report 2014/15 entry on Gambia <https://www.amnesty.org/en/countries/africa/gambia/report-gambia/> ; 2) *Gambia must stop wave of homophobic arrests and torture*, www.amnesty.org/en/news/gambia-must-stop-wave-homophobic-arrests-and-torture-2014-11-18; 3) *Gambia: Amnesty International Submission to the UN Universal Periodic Review*, October – November 2014 available at <https://www.amnesty.org/en/documents/AFR27/006/2014/en/> .

- Establish an independent mechanism that promptly and effectively investigates all allegations of torture or ill-treatment;
- Establish a permanent moratorium on executions, with a view to abolition, commute all death sentences, and ensure that prisoners on death row enjoy fully their right to seek clemency;
- Ensure that all prisoners on death row have access to their lawyers and families;
- Immediately end the policy of continued harassment, intimidation, arbitrary arrest and torture of people due to their perceived sexual orientation and of human rights defenders, journalists, political activists, and their families;
- Repeal legislation that restricts freedom of expression inconsistently with human rights standards, i.e. the Criminal Code (2014) amendment, the Information and Communication (amendment) Act 2013 and the Criminal Code (amendment) Act 2013;
- Comply and implement expediently the judgments of the ECOWAS Court of Justice; and
- Ratify human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, and the African Charter on Democracy, Elections and Governance.