

CONCLUSION AND RECOMMENDATIONS

As a state party to multiple international human rights treaties, a member state of ECOWAS and the AU, and as host of the ACHPR, Gambia has clear obligations to respect, protect, promote and fulfil the human rights of its people and others resident within its territory. Obligations to respect rights such as the freedom of expression apply at all times, but are brought further into focus during electoral periods.

Numerous human rights violations were committed before the last Presidential elections in 2011, and in the following five years the introduction of repressive laws and use of abusive practices have closed space for free expression even further. This report shows that in Gambia any form of dissent, real or perceived, continues to pose great dangers for journalists, opposition leaders, human rights defenders, activists, civil society organizations, members of the general public and even government officials. The arrest of dozens of opposition members in April and May 2016, and at least one death in custody, gives real reasons to fear a further crackdown in 2016.

The consequences for Gambians, facing a choice between speaking out and being safe, are huge. Some face imprisonment, some self-censor, some choose to leave the country. Between 2012 and the beginning of 2014, the number of Gambians claiming asylum in Europe increased 371%, and ranked third in the list of nationalities claiming asylum in Italy at the end of 2015.¹

The consequences for the regional and international community are also significant. A failure to ensure Gambia observes and complies with its international and regional obligations and commitments, including under the ECOWAS Protocol on Democracy and Good Governance or implementation of three outstanding judgements by the ECOWAS Community Court of Justice, calls into question the authority and credibility of these institutions. A failure to co-operate with the ACHPR, and implement its resolutions and decisions, or UN human rights mechanisms, sends further worrying signals to its partners across the continent and beyond.

Amnesty International calls on the government of Gambia to act with urgency to safeguard the human rights of all Gambians in the run-up to December's elections and far beyond. Amnesty International also calls on the international community to take concrete steps to ensure Gambia complies with its international and regional human rights obligations.

TO THE GOVERNMENT OF GAMBIA FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

¹ African Arguments, *Between a rock and a hard place: Gambians tackle Fortress Europe*, 4 May 2016 available at <http://africanarguments.org/2016/05/04/between-a-rock-and-a-hard-place-gambians-tackle-fortress-europe> (accessed 22 May 2016). See Eurostat for source statistics available at <http://ec.europa.eu/eurostat/data/database> (accessed 22 May 2016).

- Publicly commit to respect, protect and ensure that all Gambians, including journalists, opposition leaders, real or perceived government opponents, and human rights defenders, will be able to freely exercise their right to freedom of expression, association and peaceful assembly without fear of arrest, detention, intimidation or harassment at all times, including during the election period;
- Repeal and bring in conformity with constitutional and international and regional human rights obligations and commitments restrictive laws on freedom of expression, including the offences of sedition (section 52), criminal libel (section 178), "spreading false information" (sections 59 and 181A) in the Criminal Code and the amendment of the Information and Communication Act of 2013 that includes censorship of online expression (section 173A);
- Repeal and bring in conformity with constitutional and international and regional human rights obligations and commitments restrictive laws on 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;
- Publicly instruct the police not to use excessive force, including tear gas and rubber bullets, to disperse peaceful gatherings, including where the police believe that the organizers have not complied with the Public Order Act's requirement to obtain a permit;
- Publicly instruct the Gambia Radio and Television Services to allow equal access to opposition and dissenting voices;
- Immediately lift any blocks on internet and online news sites;
- Reform the broad powers given to national security agencies to "monitor, intercept and store communications" under the Information and Communications Act 2009 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.

ARBITRARY ARREST AND DETENTION

- Immediately and unconditionally release all prisoners of conscience, such as **UDP leader Ousainou Darboe, all UDP members, protestors and bystanders arrested between April-May 2016, Amadou Sanneh, Alhagie Sambou Fatty, Malang Fatty, Imam Sawaneh and Chief Ebrima Manneh;**
- Immediately release all those currently detained unlawfully or charge them with a recognizable criminal offence in a fair trial and without recourse to the death penalty, including political prisoners and victims of enforced disappearance, such as **Imam Colley, Imam Gassama and former Deputy Minister of Agriculture, Ousmane Jammeh.** Grant them immediate access to a lawyer, their families and any needed medical attention;
- Immediately and publicly instruct the police, army and the 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;
- Allow independent national and international human rights monitors access to detention centres, in particular the International Committee of the Red Cross.

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

- Publicly instruct all security forces to suspend from active duty any officer 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;
- Repeal the Indemnity (Amendment) Act 2001 which conflicts with Gambia's obligations under international human rights law;
- Expand the Ombudsman's mandate to include investigations into human rights violations, and provide sufficient resources and capacity to implement this larger mandate;
- Put in place measures to safeguard the independence of the judiciary in line with international standards including the UN Basic Principles on the Independence of the Judiciary;
- 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).

INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS

- Comply with judgements and orders from the ECOWAS Community Court of Justice in the cases of **Deyda Hydera, Ebrima Manneh and Musa Saidykhan**;
- Fully and effectively implement the recommendations made by other UN member states during Gambia's UPR in the UN Human Rights Council (UNHRC) and accepted by Gambia in 2015;
- 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 ;
- 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; and other similar treaties;
- 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;
- Extend a standing invitation to all thematic special procedures of the United Nations Human Rights Council and ACHPR. In particular, invite the UN and ACHPR Special Rapporteurs on freedom of speech and opinion and on the situation of human rights defenders as well as the ACHPR Special Rapporteur on prisons and conditions of detention, to conduct unrestricted visits to Gambia.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Urge Gambia to promptly and fully comply with its state reporting obligation as stipulated under Article 62 of the African Charter on Human and Peoples' Rights and Article 26 of the Protocol on

the Rights of Women in Africa. In particular, urge Gambia to promptly and without further delay submit its 11 overdue state party reports;

- Request Gambia to include in its state party report, submitted pursuant to Article 62 of the African Charter on Human and Peoples' Rights and Article 26 of the Protocol on the Rights of Women in Africa, specific information on the status of implementation of resolutions 134, 145 and 299 issued by the ACHPR in 2008, 2009 and 2015 respectively. Should Gambia fail to comply with the request within a reasonable time, refer Gambia to the African Union Assembly for non-compliance with the resolutions of the ACHPR.

TO ECOWAS AND THE AU

- Publicly call for the immediate and unconditional release of all prisoners of conscience in Gambia;
- Publicly condemn human rights violations in Gambia on a consistent basis, and privately raise concerns with government officials at all levels;
- Discuss the human rights situation in Gambia at the next Authority of Heads of State and Government of ECOWAS and adopt a resolution specifically directing the Gambian authorities to fully implement all outstanding ECOWAS Community Court of Justice decisions with a strong and clear statement on the resulting consequences if they do not comply with the resolution;
- Ensure any election monitors deployed before and during the 2016 elections include a mandate to document and report on human rights violations;
- Establish a joint ECOWAS-AU Independent Commission of Inquiry into the arrests and torture and other ill-treatment of protesters, including UDP members, between April-May 2016;
- Consider the use of the sanctions available under Article 45 (2) of the ECOWAS Protocol on Democracy and Good Governance, namely the suspension of Gambia from all ECOWAS decision-making bodies, and Article 77(iv) of the ECOWAS Revised Treaty.

TO THE INTERNATIONAL COMMUNITY, IN PARTICULAR THE MEMBER STATES OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL, THE EU, USA, UK, DONOR COUNTRIES AND OTHER CONCERNED GOVERNMENTS

- Consistently and publicly condemn serious human rights violations in Gambia, and raise concerns with Gambian government officials at all levels;
- Call for the immediate and unconditional release of all prisoners of conscience in Gambia;
- Review international assistance to Gambia, specifically with respect to the justice and security sector, to ensure that such assistance is not contributing to human rights violations;
- Establish a Special Rapporteur of the UNHRC on the situation of human rights in Gambia mandated to monitor the human rights situation in Gambia, to receive information from relevant

stakeholders pertaining to the human rights situation in the country and to report annually to the Human Rights Council and the General Assembly;

- Put pressure on the Gambian government to fully and effectively comply with the rulings of the ECOWAS Community Court of Justice in the cases of Deyda Hydara, Ebrima Manneh and Musa Saidykhan;
- Press for the implementation of the Human Rights Council recommendations during the 20th UPR and the recommendations contained in the 2015 reports of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the UN Special Rapporteur on extrajudicial executions;
- Call for any election monitors deployed before and during the 2016 elections to document and report on human rights violations and abuses;
- Support human rights and civil society organizations, in Gambia and in exile, working to document human rights abuses, expand freedom of expression and civic education, to provide legal aid and to monitor elections.