

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as First Vice-Chair of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 25/2, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the arbitrary arrest, detention and charges against journalist, Mr. Alhagie Abdoulie Ceesay, as well as severe restrictions on the exercise of the right to freedom of opinion and expression in Gambia.**

Mr. Alhagie Abdoulie Ceesay is a journalist and the managing director of Teranga FM, a community radio station that translates local and international news into local Gambian languages.

Mr. Ceesay was also the subject of Opinion No. 50/2015 of the Working Group on Arbitrary Detention issued on 4 December 2015 and shared with your Excellency's Government on 18 December 2015. In its opinion, the Working Group concluded that the rights of Mr. Ceesay to freedom of opinion and expression under articles 19 of the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) were violated. Also, the Working Group concluded that the breaches of articles 9 and 10 of the UDHR, and articles 9 and 14 of the ICCPR in the case of Mr. Ceesay are of such gravity as to give his deprivation of liberty an arbitrary character. Those conclusions were reached by the members of the Working Group

following a thorough investigation of the information submitted by both parties to the case, namely the source and your Excellency's Government, in accordance with the Working Group's Methods of Work (A/HRC/30/69). Based on that, the Working Group found that the deprivation of liberty of Mr. Ceesay was arbitrary and requested your Excellency's Government to release him immediately. We regret that no response was received from your Excellency's Government.

The Information and Communications Act was the subject of a joint allegation letter dated 16 July 2013 (see A/HRC/25/74, case no. GMB 1/2013) sent by the Special Rapporteur on freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders. Concerns regarding the Information and Communications Act include allegedly disproportionate sanctions on individuals expressing dissenting opinions. We regret that no reply was received from your Excellency's Government and remain concerned with these allegations.

According to information received:

In the case of Mr. Alhagie Abdoulie Ceesay

Since 2010, the authorities have shut down the community radio station, Teranga FM, three times without explanation and National Intelligence Agency ("NIA") officers have repeatedly interrogated staff on several occasions. A ban on the operation of Teranga FM, issued in 2012, was lifted in January 2014.

On 2 July 2015, two plain clothes NIA officers arrested Mr. Alhagie Abdoulie Ceesay by forcing him into a car outside the offices of Teranga FM. The NIA officers did not present a warrant. Mr. Ceesay was transported to an unknown place, where he was detained incommunicado, without access to his family or a lawyer. He was allegedly subjected to torture and degrading treatment. On 13 July 2015, Mr. Ceesay was released near the Banjul International Airport without charge.

On 17 July 2015, plain clothes NIA officers arrested Mr. Ceesay by forcing him into a car on Kairaba Avenue in the Greater Banjul area. The NIA officers did not have a warrant for Mr. Ceesay's arrest and he was transported to the NIA headquarters in Banjul and detained there.

On 20 July 2015, two NIA officers accompanied Mr. Ceesay to his family home, to collect documents and Mr. Ceesay's medication. On 23 July 2015, Mr. Ceesay's family were informed of his whereabouts but were not allowed to visit him. From 17 July to 4 August 2015, Mr. Ceesay did not have access to a lawyer or his family.

On 4 August 2015, Mr. Ceesay was charged in court under section 51(1)(d) of the Criminal Code with “seditious intention” for allegedly distributing pictures that authorities claim were designed to “raise discontent, hatred, or disaffection among the inhabitants of the Gambia.”

On 5 August 2015, Mr. Ceesay was remanded in custody by a judge and transferred to the maximum security wing of Mile II Central Prison. Reportedly, Mr. Ceesay’s health has deteriorated since his detention, and his asthma has worsened. Despite this, he has been denied access to a doctor, as well as visits by his family.

On 11 August, Mr. Ceesay was informed that he was charged with “sedition” and the “publication of false news with intent to cause fear and alarm to the public” under articles 52 and 59 of the Criminal Code. On 24 August 2015, there was a hearing to review Mr. Ceesay’s detention before the High Court and Mr. Ceesay’s lawyers were not informed of the hearing.

On 4 September 2015, Mr. Ceesay’s trial commenced and is ongoing. Mr. Ceesay remains in arbitrary detention.

On the right to freedom of opinion and expression of journalists

It is reported that a number of measures are utilised to restrict the right to freedom of opinion and expression of independent media outlets and journalists in the country. Allegedly, these measures include harassment, intimidation, arrest and attacks in an attempt to intimidate and prevent independent media outlets and journalists from their work.

It is also alleged that criminalisation and a broad interpretation of the law are also used in this context. Sedition laws, the dissemination of false information and defamation are criminal offences, which are used to restrict this fundamental right. The Information and Communications Act also criminalises expression on the internet to spread false news, make derogatory statements, incite dissatisfaction or instigate violence against the government or public officials, with the penalties of up to 15 years imprisonment and fines of 3 million dalasi (approximately U.S. Dollar \$77,000).

We express grave concern for the arbitrary arrest, detention and charges against Mr. Ceesay, reportedly for exercising his right to freedom of expression and his work as a journalist. Serious concern is expressed for the physical and psychological integrity of Mr. Ceesay, who was previously subjected to torture while in detention. Further concern is expressed for his right to a fair trial and due process, particularly as his lawyers have not been fully informed of his court hearings.

We express serious concern for the measures and laws allegedly used to disproportionately restrict the right to freedom of opinion and expression in the country, particularly for journalists and individuals with dissenting opinions.

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the rights to freedom of opinion and expression, as contained in articles 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Gambia on 22 March 1979. In particular, article 19(3) of the ICCPR sets out the requirement that any restrictions of the right to freedom of expression are both necessary and proportionate, and prescribed by law. We would also like to remind your Excellency's Government of the Report of the UN Special Rapporteur on freedom of expression, A/HRC/17/27, which provides criteria for permissible restrictions on the exercise of the right to freedom of expression on the internet.

We would also like to remind your Excellency's Government of the right to a fair trial and due process contained in articles 9 and 14 of the ICCPR and UDHR, respectively.

We also refer to Article 7 of the ICCPR, which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

We would like to remind your Excellency's Government of article XI of the Declaration of Principles on Freedom of Expression in Africa, which calls on states to “take effective measures” to prevent “attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their freedom to expression.” In this regard, we also refer your Excellency's Government to the Human Rights Council Resolution on the safety of journalists (A/HRC/Res/27/5).

We also refer your Excellency's Government to Opinion No. 50/2015 of the Working Group on Arbitrary Detention, issued on 4 December 2015, and shared with your Excellency's Government on 18 December 2015, which found that the deprivation of liberty of Mr. Ceesay as arbitrary and recommended that your Excellency's Government release him immediately. We are concerned that this important Opinion, which has thoroughly reviewed the detention of Mr. Ceesay, has not been complied with to date.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information about the measures your Excellency's Government has undertaken to implement the Opinion of the Working Group, in particular, in regards to its call to release Mr. Ceesay immediately, and to accord him with an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.
3. Please provide information about any measures adopted to ensure the protection of Mr. Ceesay's physical and psychological integrity while in detention, in compliance with international human rights norms and standards.
4. Please provide the details, and where available the results, of any investigations carried out in relation to this case. If no investigations have taken place, or if they have been inconclusive, please explain why.
5. Please provide information about the measures and laws used to regulate the right to freedom of opinion and expression in the country, including sedition and defamation laws, and how they comply with international human rights norms and standards.
6. Please indicate what measures have been taken to ensure that individuals, including journalists and those with dissenting political views, are able to exercise their right to freedom of opinion and expression, and to work in a safe and enabling environment without fear of harassment and criminalisation, in compliance with international norms and standards.

We would appreciate receiving a response as soon as possible. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

José Guevara
First Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment