

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to privacy

Ref.: AL GMB 1/2023

(Please use this reference in your reply)

10 November 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 52/4, 52/9 and 46/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the surveillance, alleged arbitrary arrest of and charges against the human rights defender Mr. Madi Jobarteh.

Mr. **Madi Jobarteh** is a human rights defender who has worked for over 30 years to promote increased accountability and transparency in governance, as well as advocating for the rights of women and girls. In response to threats he received in relation to his human rights work, Mr. Jobarteh spent one year living outside of the Gambia from 2016 – 2017. The former executive director of the Association of Non-Governmental Organizations in the Gambia (TANGO), Mr. Jobarteh is currently serving as the country representative for the Westminster Foundation for Democracy.

Allegations of threats against Mr. Jobarteh by public officials and unknown individuals were previously the subject of a communication to your Excellency's Government by Special Procedures mandate holders, sent on 10 June 2022 (AL GMB 3/2022). We regret that we are yet to receive a response to this communication from your Excellency's Government, particularly given that Mr. Jobarteh has reportedly continued to be subjected to threats since then, as reported below.

According to the information received:

On 2 October 2023, Mr. Jobarteh posted an article he had written on Facebook, in which he responded to a recent speech made by H.E. President Adama Barrow on 29 September 2023. In the article, Mr. Jobarteh expressed particular concern at comments about democracy reportedly made by the President: "the state of democracy in the country has reached an excessive point, with people freely expressing their opinions without accountability." The President's reported speech also included remarks about specific media outlets and he is quoted as saying "no one will be allowed to insult others in the Gambia without facing consequences. Even on radio, if someone calls in and engages in insulting behaviours, we will take appropriate action, including arresting the owner of the radio station. Moreover, on social media, we will put an end to the practice of insulting others. Even if individuals are released on bail by a judge, we will re-arrest them." In his article, Mr. Jobarteh asserted the importance of democracy and respect for the rule of law and human rights.

On 5 October 2023, Mr. Jobarteh's article was published on the news website, The Standard, as an opinion piece under the heading "Adama Barrow's dictatorial wings must be cut!".

On 6 October 2023, Mr. Jobarteh received a phone call from the police, requesting him to come to the office of the police headquarters in Banjul, to which he responded that he could not as he was sick with pneumonia. The police reportedly responded that they would then come to his house instead. Following the call, four officers allegedly from the State Intelligence Unit (SIU) and the Criminal Intelligence Unit (CIU) went to the home of Mr. Jobarteh, in a pickup truck with no license plate and tinted windows.

The officers claimed they wanted to question Mr. Jobarteh about "some of his Facebook posts", but would not specify which ones, and reportedly requested that he go to the police station to be questioned. Mr. Jobarteh repeated that he was ill, and that he was not obligated as it was not a formal request, nor had he committed any crime. The officers reportedly conferred with their supporters and allowed Mr. Jobarteh to remain at home but directed him to report to the police headquarters once he was recovered.

In the days following this, Mr. Jobarteh and his home were reportedly subjected to surveillance by unknown men in a pick-up truck with tinted windows and no license plate, parked a few meters from his house. When Mr. Jobarteh's neighbours would attempt to take photos of the vehicle, it would reportedly move to another area. On one occasion, as Mr. Jobarteh's 10-year-old niece left the house, one of the men reportedly asked her whether he was inside the house. Following this, Mr. Jobarteh called the Police Superintendent, who had led the group of officers that came to the house days before. As the Police Superintendent did not answer, Mr. Jobarteh sent him a text message, requesting for the men to vacate the area. The Police Superintendent reportedly denied knowledge of or having directed officers to carry out the surveillance. Following this conversation, the vehicle left the area.

On the morning of 9 October 2023, five police officers, some of them reportedly armed, forcibly entered Mr. Jobarteh's home, reportedly to arrest him. The police officers reportedly threatened to use violence if Mr. Jobarteh did not go with them. Mr. Jobarteh did not resist arrest and asked that he be allowed to take his medication with him, which the officers refused. As Mr. Jobarteh's mother, sister and daughter attempted to take photos of the arrest, they were reportedly physically assaulted by the officers. The phones of Mr. Jobarteh and his daughter were then confiscated by the officers, with no reason provided.

Mr. Jobarteh was then taken by the police to Jabang Anti-Crime Facility and placed in judicial custody. For 12 hours, Mr. Jobarteh's family had no information of his whereabouts, before they were eventually informed of his situation, and his brother was permitted to see him. Mr. Jobarteh was first permitted to see his lawyer approximately 24 hours after his arrest. Mr. Jobarteh was interrogated by the police, without the presence of his lawyer, during which he was reportedly asked about the aforementioned article he had written. The officers reportedly asked about three phrases from

the article in particular: “a bunch of irresponsible, dangerous and self-delusional gibberish”, “urge all citizens to stand up and speak out” and “the immature rantings of a president”.

Still suffering with pneumonia, Mr. Jobarteh’s condition began to deteriorate, and on 10 October 2023 he was rushed to a clinic in Fajara, where a doctor referred him to a hospital in Westfield, where he was admitted. Mr. Jobarteh was under medical supervision for 24 hours, and ultimately spent two nights in the hospital.

On 12 October 2023, Mr. Jobarteh was discharged from hospital and returned home. He was granted bail due to the expiration of the 72-hour detention limit but was instructed to report to the police on 26 October.

On 26 October 2023, Mr. Jobarteh reported to the office of the Special Investigations Unit at the Police Headquarters in Banjul, as he had been requested to. The police refused to return his and his daughter’s phones, claiming they were required for the investigation, and reportedly asked Mr. Jobarteh to unlock his phone, which he refused to do. Mr. Jobarteh reminded the police officers that the article he had written was accessible online, and so he did not understand the need to access his phone. Mr. Jobarteh’s bail was extended until 9 November.

On 9 November 2023, Mr. Jobarteh reported to the Special Investigations Unit as per the bail requirement. There he was informed by police that he was being charged with seditious intention (Article 51), incitement to violence (article 59B) and false broadcasting and information (article 181A) of the Criminal Code. The phones of Mr. Jobarteh and his daughter were retained by the police, purportedly for the purposes of the investigation, despite Mr. Jobarteh reiterating that the article in question was accessible online. Mr. Jobarteh’s bail was extended until 23 November, when he shall report again to the Special Investigations Unit.

Without prejudging the accuracy of these allegations, we wish to express our concern in relation to the arrest, alleged arbitrary detention of and charges against Mr. Madi Jobarteh, and the surveillance and intimidation that he and his family have reportedly been subjected to by the authorities. It would appear that Mr. Madi Jobarteh has been discriminately targeted for the exercising of his right to freedom of expression by critically responding to the President’s remarks, in the interest of promoting democracy, accountability and transparency in governance. In accordance with international law and standards, individuals exercising the highest public authority, such as heads of state and government, are legitimately subject to criticism and opposition, by virtue of the office they hold. We are further concerned that the arrest, alleged arbitrary detention of and charges against Mr. Madi Jobarteh constitute an escalation in the reported threats and intimidation he was previously subjected to for legitimately exercising his right to freedom of expression, as raised by Special Procedures mandate holders to your Excellency’s Government (AL GMB 3/2022). We are concerned that the charges against Mr. Jobarteh are without legal basis, and do not meet the strict tests of necessity and proportionality as required by international human rights law, and therefore may be viewed an attempt to intimidate Mr. Jobarteh and his family, and prevent him from continuing his legitimate human rights activities, and exercising his right to freedom of expression. We are also concerned by

the President's remarks regarding freedom of expression and certain media outlets in the country.

We are also particularly concerned by the reported surveillance of Mr. Madi Jobarteh, as well as the confiscation of his phone and his daughter's phone, seemingly without legal justification. If proven true, these allegations may constitute a violation of the right to privacy of Mr. Madi Jobarteh and his daughter.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information as to the legal and factual basis for the interrogation, arrest and detention of Mr. Madi Jobarteh.
3. Please provide detailed information as to the legal basis for reported surveillance of Mr. Madi Jobarteh.
4. Please provide detailed information as to the legal and factual justification for confiscating the phone of Mr. Madi Jobarteh and that of his daughter, and the continued confiscation of both, as well as the justification for the need to access the devices.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ana Brian Nougères
Special Rapporteur on the right to privacy

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to refer to articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by The Gambia on 22 March 1979, which guarantee the right to privacy and the right to freedom of opinion and expression.

As per article 19(2), the freedom of expression includes the “right to seek, receive and impart information and ideas of all kind, regardless of frontiers either orally, in writing or in print, in the form of art, or through any other media of his choice”. Intimidation or retaliation of any kind against a person for holding or expressing an opinion, such as an opinion critical of the government, is a violation of article 19(1).

In this connection, we also recall that according to the Human Rights Committee in its general comment no. 34, that whilst article 19(3) provides that limitative restrictions on the right may be permitted, such restrictions must be provided by law and meet the strict tests of necessity and proportionality. Paragraph 3 of article 19 cannot be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19 of the ICCPR. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. The Committee also asserts that circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition (See in particular, the 2021 Joint Declaration on ‘Politicians and Public Officials and Freedom of Expression’¹, published by the Special Rapporteur on freedom of opinion and expression, together with regional mechanisms on freedom of expression, such as the the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information).

In relation to the charges brought against Mr. Jobarteh, we also wish to recall that in its general comment no.34, the Human Rights Committee emphasised that extreme care must be taken by States parties to ensure that treason laws 64 and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.

¹ [Joint-Declaration-2021-Politicians_EN.pdf \(ohchr.org\)](#)

Furthermore, we would like to refer your Excellency's Government to article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation, and that everyone has the right to protection of the law against such interference or attacks.

We also wish to recall that in its general comment no. 17 in relation to article 17, the Human Rights Committee asserted that surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We also wish to refer to articles 6(c), 9 and 12, which state that everyone has the right, individually and in association with others, to study, discuss, form or hold opinions on the observance of all human rights and fundamental freedoms and to draw public attention to these matters; to benefit from an effective remedy and be protected in the event of the violation of these rights; and to participate in peaceful activities against violations of human rights and fundamental freedoms.