The Gambia: Freedom of Expression on Trial

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An International Bar Association Human Rights Institute Report
The Gambia:

Freedom of Expression on Trial

A report on the trial observation of the criminal prosecution of:

Pap Saine (Editor-in-Chief and co-founder of ‘The Point’)
Sam Sarr (Managing Editor of ‘Foroyaa’)
Bai Emil Touray (Secretary-General of the Gambian Press Union and Deputy Editor of ‘Foroyaa’)
Sarata Jabbi Dibba (Vice-President of the Gambian Press Union and Reporter for ‘The Point’)
Pa Modou Faal (Treasurer of the Gambian Press Union and Deputy Editor of ‘The Point’)
Ebrimah Sawaneh (Deputy Editor of ‘The Point’)
Abubacarr Saidy Khan (Reporter for ‘Foroyaa’)

Held before the Banjul High Court before Mr Justice Joseph Wowo between 3 July 2009 and 10 July 2009
Held before the Banjul High Court before Mr Justice Joseph Wowo on 23 July 2009
Held before the Banjul High Court before Mr Justice Emmanuel Fagbenle between 27 July 2009 and 6 August 2009

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Introduction

The principle underpinning the basis of trial observations is the right to a fair and public trial, which can be found in a number of international and regional human rights instruments, including Article 10 of the Universal Declaration of Human Rights, Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 35 of the Statute of the International Court of Justice. The Gambia acceded to the ICCPR in 1979. The right to trial observation is provided for in Article 9(b) of the United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms adopted by the General Assembly in December 1998. The practice of sending trial observers is well established and accepted within the international community. The International Bar Association’s Human Rights Institute (IBAHRI), together with other international, national and regional legal organisations, commonly sends representatives to observe trials. The presence of a trial observer helps to ensure the fair administration of justice, the proper functioning of the court process and that the right to a fair trial is guaranteed.

In July 2009 the IBAHRI became aware of charges being made against seven journalists in the Gambia for alleged sedition and criminal defamation arising out of an article published in response to a televised statement by President Alhaji Yahya Jammeh, in which he rejected any state involvement in the unexplained killing of Mr Deyda Hydara in 2004.1 Due to concerns regarding fair trial standards in the Gambia, the IBAHRI arranged for Mr Paul Richmond (a barrister of England and Wales who has extensive experience in trial observations) to travel to the Gambia as an IBAHRI observer to monitor whether the trial complied with international fair trial standards.

Mr Richmond travelled to the Gambia to monitor and observe the proceedings on 7 July 2009 and left on 10 July 2009. During that time, he attended the court hearing in Bajul on 8 July 2009 and held a number of meetings with various stakeholders (see Annex A). Mr Richmond and the IBAHRI continued to monitor proceedings in the Gambia after his initial observation in-country. Six of the journalists were convicted of all charges on 6 August 2009 and sentenced to two years without the option of a fine. On 3 September 2009 President Jammeh pardoned and released the six journalists.

The IBAHRI is grateful for the funding received from the John D and Catherine T MacArthur Foundation and the Media Legal Defence Initiative which has enabled it to undertake this mission. The IBAHRI would also like to thank its observer for his participation in this mission. The IBAHRI would further like to thank the Banjul-based Institute for Human Rights and Development in Africa (IHRDA) for providing information relating to their observations on the subsequent proceedings to the IBAHRI.

This report focuses on the pre-trial proceedings for the journalists, which took place between 18 June 2009 and 10 July 2009, and the subsequent trial proceedings which took place between 20 July 2009 and 6 August 2009. This report sets out the IBAHRI’s findings on the fairness of these proceedings.

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1 The full text of the article is reproduced in Annex B.
The Republic of the Gambia is situated on the west coast of Africa. One of the smallest countries on the continent, with a population of approximately 1.5 million people, it stretches along a narrow strip of land running from east to west, following the route of the river Gambia. The country’s main sources of income are tourism and the export of peanuts.

The Gambia became independent in 1965 and the first republic was ruled by Dawda Jawara until he lost power in 1994 in a military coup led by Lieutenant Alhaji Yahya Jammeh, head of the Armed Forces Provisional Ruling Council (AFPRC). In July 1994 Alhaji Yahya Jammeh declared himself head of state and banned all political parties and political activities. Elections were held in 1996 and Alhaji Yahya Jammeh was elected president.

After the 1994 coup, the provisions of the 1970 Constitution relating to executive and legislative powers were suspended and the AFPRC ruled by military decree, declaring itself above legal challenge. The new government established a Constitution Review Commission to update the 1970 Constitution. The new Constitution was approved by referendum in August 1996 and became law in January 1997. Under this Constitution, which is still in effect today, the President is head of state, head of the government and Commander-in-Chief of the armed forces. Presidents are elected every five years and there is no limit to the number of terms a president may serve. In 2006, President Alhaji Yahya Jammeh was re-elected for a third five-year term in an election considered partially free and fair.

The judicial system is composed of the Supreme Court, the Court of Appeal, high courts and eight magistrates’ courts. Cadi courts have jurisdiction over Islamic matters of marriage, divorce, land disputes and inheritance where Muslim parties are involved. District chiefs preside over local tribunals that administer customary law at the district level.

Chapter IV of the Gambian Constitution provides for the protection of fundamental rights and freedoms including: the right to life, privacy and personal liberty; protection from slavery and forced labour; protection from torture and inhuman treatment; protection from deprivation of property; protection of the law and a fair trial; freedom of speech, conscience, assembly, association and movement; and protection from discrimination.

The Gambia has ratified most major international human rights treaties, including: the ICCPR and its First Optional Protocol; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention Against Torture, Cruel, Inhuman and Degrading Treatment or Conduct; and the United Nations Convention on the Rights of the Child (UNCRC). The Gambia has also ratified the African Charter on Human and People’s Rights.

4 Ibid.
5 The UN Human Rights Committee last considered the human rights situation in The Gambia on 12 August 2004. See UNHRC, Concluding observations: Gambia, UN Doc. CCPR/CO/75/GMB (12 August 2004). Available online at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.75.GMB.EnOpenDocument [accessed 16 February 2010]. Regarding the ICCPR, the Gambia has made a reservation limiting the availability of free legal aid to those charged with capital crimes due to limited legal capacity.

The IBAHRI has received reports that, in practice, the government’s respect for the human rights of its citizens is poor. Amnesty International reported in November 2008 that ‘fear rules’ in the Gambia and that the human rights situation has worsened since a foiled coup attempt against President Jammeh in 2006. Although the Constitution and law provide for the protection of most human rights, there are problems in many areas. Prison conditions remain poor, resulting in deaths. Arbitrary arrests and detentions, often without warrants, continue. Security forces harass and mistreat detainees, prisoners, opposition members and journalists with impunity. Prisoners can be held incommunicado, face prolonged pre-trial detention, are held without charge, denied access to families and lawyers, and can be tortured and denied due process. The government restricts freedom of speech through intimidation, detention and restrictive legislation. Women experience violence and discrimination, and female genital mutilation remains a problem. Child labour and people trafficking are also problematic.

Speaking on state-owned Gambia Radio and Television Services (GRTS) on 21 September 2009, President Jammeh threatened that: ‘those who want to work with these so-called defenders of human rights, thinking they will be defended by them are wrong. If you want to destabilize the country, sowing confusion and suffering to my people, I will ensure that you are dead.’ President Jammeh continued saying: ‘what I want to make very clear to each of you and these so-called defenders of human rights is that I will never allow anyone to destabilize the country on behalf of the campaign to promote the rights of man.’

In response to the deteriorating human rights situation in the Gambia, the African Commission on Human and Peoples’ Rights (African Commission) issued a resolution at its 7th Extraordinary Session in Dakar, Senegal on 11 October 2009, calling on the African Union to intervene to ensure President Jammeh withdraws the aforementioned threats and to ensure that the Gambia guarantees the safety of members and staff of the African Commission, human rights defenders and journalists.

The IBAHRI sent a fact-finding mission to the Gambia in June 2006, prompted by concerns regarding the status of the rule of law, the independence of the judiciary and the ability of the legal profession to exercise its professional duties freely. The IBAHRI published a report of its findings in August 2006 entitled ‘Under Pressure: a report on the rule of law in the Gambia’. The key findings of the mission relevant to this trial observation include the following:

- The judicial system in the Gambia suffers from neglect, under-investment and a severe lack of resources and infrastructure. While the government claimed to be supportive of the independence of the judiciary in discussions with the IBAHRI delegation, in practice many of its actions undermined judicial independence and the rule of law, and its overall attitude to the judiciary raised grave concerns.

6 See above note 2.
7 See above note 3.
• The IBAHRI had serious concerns regarding a judicial climate in which judges were unable to operate freely for fear of having their contacts terminated, or not renewed, if they delivered politically-unpopular judgments.

• The IBAHRI observed that freedom of expression in the Gambia was limited through restrictive legislation and harassment of journalists, as well as mistreatment of detainees and detention for long periods of time without access to family or legal counsel.
Pre-trial Proceedings

On Monday 8 June 2009, President Jammeh issued a public statement on state-owned GRTS television in which he denied government involvement in the roadside killing of Deyda Hydara, editor and co-founder of the independent daily newspaper ‘The Point’. Mr Hydara was shot dead by unidentified gunmen in December 2004.

On Thursday 11 June 2009, the Gambia Press Union (GPU) published a statement calling the President’s remarks ‘provocative’ and ‘inopportune’. The statement, which appeared in several newspapers and was published on the internet, further called on President Jammeh to acknowledge his government’s responsibility in the murder of Deyda Hydara and to institute a renewed investigation into the unsolved killing (Annex B).

Five days later, on 16 June 2009, seven journalists associated with ‘The Point’ and the opposition daily newspaper ‘Foroyaa’ (‘Freedom’), including three senior executive members of the GPU, were arrested by National Intelligence Agency (NIA) officers. The seven journalists were Mr Ebrima Sawaneh (Deputy Editor of ‘The Point’); Mr Pap Saine (Editor-in-Chief and co-founder of ‘The Point’); Mrs Sarata Jabbi Dibba (Vice-President of the GPU and Reporter for ‘The Point’); Mr Pa Modou Faal (Treasurer of the GPU and Deputy Editor of ‘The Point’); Mr Abubacarr Saidy Khan (Reporter for ‘Foroyaa’); Mr Sam Sarr (Managing Editor of ‘Foroyaa’); and Mr Bai Emil Touray (Secretary-General of the GPU and Deputy Editor of ‘Foroyaa’).

Mr Sam Sarr and Mr Abubacarr Saidy Khan were arrested at around 18.30 within the premises of ‘Foroyaa’. The authorities had arrived in order to arrest Mr Sam Sarr; however, Mr Abubacarr Saidy Khan was also detained after he attempted to photograph the arrest of his managing editor. The remaining journalists were all ordered to report to the NIA Headquarters in Banjul, whereupon they were arrested and detained.

All seven journalists remained in custody at the NIA Headquarters for a period of three days. Initially they were not informed of the reason for their arrest, although NIA officers did however subsequently confront the journalists with the press release. The journalists were not permitted to contact relatives or receive visits from family members and they were not notified of their right to legal assistance. A lawyer, Mr Lamin Camara, who independently sought access to the detainees at the NIA Headquarters was, without reason, denied access on two occasions. Mr Sam Sarr reported that during his three day detention he was invited to prepare a written statement without being orally informed of his right to remain silent. However, after himself requesting that he be cautioned, Mr Sarr was informed of, and able to exercise, his right to remain silent. Of the other journalists, Mr Ebrima Sawaneh, Mr Pap Saine, Mrs Sarata Jabbi Dibba, Mr Pa Modou Faal and Mr Abubacarr Saidy Khan each separately completed signed statements dated 16 June 2009. The statements individually affirm that prior to completion their authors were duly cautioned in the presence of an independent witness. No complaint to the contrary was received by the IBAHRI observer. Mr Bai Emil Touray also completed a signed statement dated 16 June 2009 but its content is limited to an expression of his wish to exercise his right to remain silent (Annex C). None of the journalists were charged with any criminal offence whilst held at the NIA Headquarters.
On Thursday 18 June 2009 the seven journalists were produced before Magistrate Sainabau Wadda, sitting at the Kanifing Magistrates Court. On their way into the courthouse one of the journalists asked a female member of the public to telephone their office, inform their colleagues that they had been taken to court and ask them to arrange for a lawyer to attend. NIA officers reportedly chased the lady and took her mobile telephone from her.

The seven journalists appeared in court without legal representation, whereupon they were formally charged with one count of ‘Conspiracy to Publish a Seditious Publication’ contrary to section 368 of the Criminal Code Cap 10 Vol III Laws of the Gambia 1990, and two counts of ‘Publishing a Seditious Publication’ contrary to section 51(1)(a) read together with section 52(1)(c) of the Criminal Code Cap 10 Vol III Laws of The Gambia 1990. The particulars of the offences, as set out in the Indictment signed by Mr RN Chenge, Director of Public Prosecutions (DPP Chenge), dated 18 June 2009 (Annex D) are as follows:

**Count 1 – Conspiracy to publish seditious publication**

EBRIMA SAWANEH, PAP SAINES, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various websites on the Internet Seditious Publications making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.

**Count 2 – Publishing seditious publication**

EBRIMA SAWANEH, PAP SAINES, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in the Foroyaa Newspaper edition of 12 – 14 June 2009 at page 3 the following seditious publication:

‘Mere statements and or speculations and ridicule, such as the events leading to the death of Deyda Hydara, cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of association and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shorted possible period prove otherwise’ and thereby committed an offence.

**Count 3 – Publishing seditious publication**

EBRIMA SAWANEH, PAP SAINES, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in The Point Newspaper edition of 15 June 2009 at page 7 the following seditious publication:
‘Mere statements and or speculations and ridicule re: the events leading to the death of Deyda Hydara cannot and will not be accepted as exoneration of The Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the statement can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise’ and thereby committed an offence.

After the charges were read, the accused were invited to enter a plea. They informed the Court that they would not enter a plea until they had had access to a lawyer. The Magistrate agreed to defer the arraignment. The seven journalists then applied for bail in person. Bail was refused and all but one accused were remanded into custody to the Mile II State Central Prison outside Banjul to reappear on Monday 22 June 2009. On account of her status as a breast-feeding mother, Mrs Sarata Jabbi Dibba was granted bail on condition of payment of a bail bond of 200,000 dalasis (approximately €5,400) and two Gambian sureties with landed property.

Between Thursday 18 June 2009 and Monday 22 June 2009, Mr Pap Saine, Mr Ebrima Sawaneh and Mr Pa Modou Faal were visited in detention by a lawyer, Mr Momodou Drammell.

On Monday 22 June 2009 the seven journalists appeared before Magistrate Wadda Ceesay sitting at Kanifing Magistrates Court, now represented by Mr Lamin Camara and Mr Edi Risa Sissoho, both practising lawyers and members of the Bar Association of The Gambia. A bail application was made and bail was granted on condition of payment of a bail bond of 200,000 dalasis (approximately €5,400) and two Gambian sureties with landed property. Mrs Sarata Jabbi Dibba’s bail was renewed on the same terms as before. Proceedings were then adjourned until Tuesday 7 July 2009 for pleas to be taken.

Also on Monday 22 June 2009, security personnel outside the courtroom arrested Mr Augustine Kanjia, a journalist for ‘The Point’ who had attended to report on the proceedings. It was alleged that he had taken photographs of the court and of those attending. Mr Kanjia was detained at Serrekunda police station until Wednesday 24 June 2009. On Wednesday 24 June 2009 he was released without charge on police bail in the sum of 50,000 dalasis (approximately €1,350).

Prior to their scheduled re-appearance before the Kanifing Magistrates Court on Tuesday 7 July 2009, the state filed a case against the accused at the Banjul High Court. According to an interview with DPP Chenge, the IBAHRI observer learned that the decision to try the case in the High Court was taken because it was considered that it would be more appropriate for the matter to be tried by a senior judge in view of the international attention that the proceedings had attracted. Accordingly, on Wednesday 1 July 2009, the seven journalists were summoned to appear before the Banjul High Court on Friday 3 July 2009.

On Friday 3 July 2009 the seven journalists appeared before Mr Justice Joseph Wowo sitting at the Banjul High Court (Criminal Division). They were represented by Mr Antouman Gaye, Mr Lamin Camara, Mr Edi Risa Sissoho, Miss Meneh-Cham, Mrs Gaye Coker and Miss Hajul Gaye, all practising lawyers and members of the Bar Association of The Gambia.
At this hearing two further counts were added to the indictment, charging ‘Criminal Defamation’ contrary to Section 178 and punishable by Section 34 of the Criminal Code Cap 10 Vol III Laws of the Gambia 1990 and ‘Conspiracy to commit Criminal Defamation’ contrary to Section 368 of the Criminal Code Cap 10 Vol III Laws of The Gambia 1990. The particulars of the offences, as set out in the Indictment signed by DPP Chenge, dated 26 June 2009 (Annex E), are as follows:

**Count 4 – Conspiracy to commit criminal defamation**

EBRIMA SAWANEH, PAP Saine, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.

**Count 5 – Criminal defamation**

EBRIMA SAWANEH, PAP Saine, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 published in various Newspapers in the Gambia and on various websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.

The accused all refused to enter pleas in relation to the charges before the High Court. Their lawyers argued that because counts 1, 2 and 3 were still pending before the Kanifing Magistrate’s Court, it would be an abuse of the process of the court for the High Court to receive pleas to these charges. DPP Chenge explained that the case had been filed at the Magistrate’s Court in order to avoid the accused persons having to be detained at NIA Headquarters. DPP Chenge further informed the court that the charges at the Magistrate’s Court would be withdrawn shortly.

On the issue of bail, DPP Chenge informed the court that the state opposed bail. Mr Justice Wowo decided to revoke bail in respect of all seven defendants and remanded them into custody at Mile II State Central Prison. Media reports reviewed by the IBAHRI and the IBAHRI observer suggest that the judge did so only because the lawyers for the accused had not filed a written bail application. The matter was then set down for trial before the Banjul High Court on Wednesday 8 July 2009.

Following a protest by the Head of the Bar Association to the Chief Justice, bail was restored to Mrs Sarata Jabbi Dibba late in the afternoon on Friday 3 July 2009.

On Monday 6 July 2009, defence counsel Mr Antouman Gaye, together with Mr Lamin Camara and Ms Hajum Gaye, filed a 14-paragraph bail application with the Banjul High Court. When the matter was heard by Mr Justice Wowo on the same day, DPP Chenge did not oppose the bail application. Mr Justice Wowo granted bail to each defendant conditional on the deposit of a bail bond in the sum of 400,000 dalasis (approximately €10,800), two Gambian sureties with landed property within the Greater Banjul Area, weekly reporting to a local police station and a prohibition on publication with respect to
the matter before the court. These conditions were more onerous than those earlier imposed by the Magistrates Court. By the time the bond was in place, Mr Justice Wowo had already left court for the day and so the release documentation could not be signed. The six remanded journalists therefore finally left Mile II State Central Prison on Tuesday 7 July 2009. Upon their release they proceeded to the office of the judge to finalise their release on bail before later going to the Kanifing Magistrate’s Court in order for the state to withdraw the three charges pending before that Court.

On Wednesday 8 July 2009 the seven journalists returned to the Banjul High Court for trial before Mr Justice Joseph Wowo. Six of the journalists were represented by counsel Mr Antuman Gaye, Mr Lamin Camara, Mr Edi Risa Sissoho, Miss Meneh-Cham, Mrs Coumbeh Gaye-Coker and Miss Hagum Gaye. All counsel represented the six accused jointly. Mr Sam Sarr elected to represent himself in person. The prosecution was represented by DPP Chenge.

Before a full courtroom, the charges were read to the accused. Senior defence counsel Mr Antuman Gaye then rose and submitted that the defence wished to raise preliminary objections to all five counts. DPP Chenge objected to the defence submission on the ground that on the last occasion the matter was adjourned in order for the accused to enter their pleas and any objections should have been filed in writing prior to the hearing. Mr Gaye replied that the last court session had been overtaken by events and cited section 161(A) of the Criminal Procedure Code which states that ‘any objection shall be taken immediately after the charge is read’. Mr Justice Wowo permitted the defence to proceed with its preliminary objections to the indictment.

With regard to counts 1, 2 and 3, counsel submitted that neither the accused nor their representatives had been served with any notice that the Attorney-General had given her consent to the charges. It was submitted that section 53(2) of the Criminal Procedure Code provides in mandatory terms that ‘no person shall be prosecuted for an offence without the written consent of the Attorney-General’. Mr Gaye submitted that counts 4 and 5 were equally defective for the same reason.

Mr Gaye further submitted that counts 4 and 5 were defective as the offence of criminal defamation in section 178 had been amended by the Criminal Procedure (Amendment) Act 2005. Mr Gaye further submitted that counts 4 and 5 were defective because the law requires that the specific criminal defamatory words and the particular websites be particularised so that the defendants may know the charges against them. He further submitted that it was contrary to modern charging practice and unduly oppressive to charge both a substantive offence and an offence of conspiracy in the same indictment and that the prosecution should elect which one of the two alternatives it wished to proceed upon. Mr Gaye cited various case-law in support of his submission. Finally, counsel submitted that the counts were duplicitous as they contained several offences in a single count.

Mr Sam Sarr, representing himself, associated himself with the issues raised by the defence counsel representing his six co-accused. He further drew the attention of the court to the Amendment Act of 2005, which imposes a minimum penalty of 50,000 dalasis and a maximum penalty of 250,000 dalasis or imprisonment of six months. Regarding counts 2 and 3 he submitted that the particulars disclosed offences that were not known to law.

Mr Justice Wowo suggested that since the Attorney-General’s statement of consent was on the court file then this could be served on the defence immediately. The defence refused to accept service, arguing that this was not capable of remedying the underlying defect.
DPP Chenge submitted again that any objection to the indictment should have been filed in writing prior to the court hearing, in order to provide the prosecution with a fair opportunity to respond.

In the circumstances, he argued, it was necessary to apply for an adjournment in order to formulate a response to the preliminary objections raised by the defence. Mr Justice Wowo decided to adjourn the proceedings to Friday 10 July 2009 in order for the prosecution to reply.

On Thursday 9 July 2009, DPP Chenge served an amended indictment on the defence, as permitted by Section 218(1) of the Criminal Procedure Code (Attachment F). Count 1 (Conspiracy to publish seditious publication) remained the same. Count 2 (Publishing seditious publication) added ‘as amended by Section 3 of the Criminal Code (Amendment) Act 2005’ to the statement of offence. The particulars of the offence remained the same. Count 3 (Publishing seditious publication) added ‘as amended by Section 3 of the Criminal Code (Amendment) Act 2005’ to the statement of offence. The particulars of the offence remained the same. Count 4 (Conspiracy to commit criminal defamation) remained the same. Count 5 (Criminal defamation) added ‘as amended by Section 6 of the Criminal Code (Amendment) Act 2005’ to the statement of offence. The particulars of the offence were also amended to read as follows:

**EBRIMA SAWANEH, PAP SAIN, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY** all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in ‘The Point’ Newspaper edition of 15 June 2009 at page 7 the following seditious publication:

‘Mere statements and or speculations and ridicule re: the events leading to the death of Deyda Hydara cannot and will not be accepted as exoneration of The Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the statement can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise’ and thereby committed an offence.

The amended indictment also added a Count 6 charging Criminal defamation contrary to Section 178 of the Criminal Code Cap 10 Vol III Laws of The Gambia 1990 as amended by Section 6 of the Criminal Code (Amendment) Act 2005. The particulars of the offence read as follows:

**EBRIMA SAWANEH, PAP SAIN, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY** all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in the ‘Foroyaa’ Newspaper edition of 12-14 June 2009 at page 3 the following seditious publication:

‘Mere statements and or speculations and ridicule, such as the events leading to the death of Deyda Hydara, cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of
human rights, freedom of association and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise and thereby committed an offence.

On Friday 10 July 2009, the seven journalists returned to the Banjul High Court and pleaded not guilty to all the charges preferred against them. Following their not guilty pleas, the prosecution applied for the case to be heard in camera on account of the fact that the prosecution witnesses scheduled to testify would all be state security agents and their names and identities should not be made public. According to media reports, the defence lawyers did not object to this application. Mr Sam Sarr, representing himself, did object but his objection was overruled and the application hence granted by the presiding Judge, Mr Justice Joseph Wowo. The case was then adjourned to 20 July 2009.

The proceedings received widespread publicity throughout the Gambia, routinely featuring as the lead story in ‘The Point’, ‘Foroyaa’ and ‘The Daily News’ (Annex G).
Subsequent Proceedings

The IBAHRI observer concluded his in-country observation on Thursday 9 July 2009. However, with the assistance of the Banjul-based Institute for Human Rights and Development in Africa (IHRDA), and with reference to independent media reports, the IBAHRI and the IBAHRI observer continued to carefully monitor the ongoing proceedings against the journalists thereafter.

On Friday 10 July 2009 the seven journalists returned to the Banjul High Court and pleaded not guilty to the six counts of criminal defamation, conspiracy and seditious publication preferred against them. Following their not guilty pleas, DPP Chenge applied for the case to be heard in camera on account of the fact that the prosecution witnesses scheduled to testify would all be state security agents and the interests of national security allegedly demanded that their names and identities should not be made public. According to media reports, the defence lawyers representing the accused did not object to this application. Mr Sam Sarr, representing himself, did object. Presiding Judge, Mr Justice Joseph Wowo, ruled that the interests of national security demanded that the testimony of the prosecution witnesses should be heard in camera. The case was then adjourned to 20 July 2009.11

In a letter of appeal to the President of the Gambia, dated 20 July 2009, the African Special Rapporteur on Freedom of Expression and Access to Information in Africa, Commissioner Pansy Tiakula (the Special Rapporteur on Freedom of Expression), expressed her concern that the Government of the Republic of the Gambia was failing in its obligations to protect the right to Freedom of Expression as expressed in Article 9 of the African Charter and other international human rights instruments, to which the Republic of the Gambia is a state party. In particular, the Special Rapporteur on Freedom of Expression expressed her concern at the decision of the High Court on Friday 10 July 2009 to grant DPP Chenge’s request to conduct the trial in camera despite the fact that the charges against the seven journalists revealed no issues of national security. The Special Rapporteur expressed her grave concern that such a state of affairs contravened the provisions of Article 7 of the African Charter which guarantees the right of every individual to a fair trial, and the requirement under the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Principles and Guidelines), which supplements and reinforces the fair trial provisions of the African Charter.12

On Thursday 23 July 2009, defence counsel Antouman Gaye walked out of the courtroom and accused the trial judge of partiality, remarking that he did not have confidence in the judge. Mr Justice Wowo recused himself from the case and was replaced by Mr Justice Emmanuel Fagbenle, a Nigeria-born judge. A full explanation for the recusal was not provided to the public.13

On Monday 27 July 2009 proceedings continued before Mr Justice Emmanuel Fagbenle in open court. On the same day, the State closed its case after calling three witnesses, who were all security agents.

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On Tuesday 28 July 2009 the defence opened their case with a submission of ‘no case to answer’. Abubacarr Saidykhan, who had been arrested on 15 June 2009 together with Mr Sam Sarr, managing editor of the ‘Foroyaa’ newspaper, was acquitted and discharged. According to the Court, Mr Saidykhan had committed no offence when he attempted to photograph the arrest of Mr Sarr, his editor. However, the submission of ‘no case to answer’ was rejected in respect of the remaining six journalists and the defence was asked to open its case.

On Wednesday 29 July 2009 the accused journalists commenced their testimony. Each defendant denied any involvement in criminal activities. Managing editors Mr Pap Saine of ‘The Point’ and Mr Sam Sarr of ‘Foroyaa’ testified before the Court on Thursday 30 July 2009. Both similarly denied the criminal charges against them.14

On Friday 31 July 2009 DPP Chenge addressed the court and invited Mr Justice Emmanuel Fagbenle to convict the journalists on all six counts of criminal defamation and sedition. Upon an application by defence counsel Mr Lamin Camara, the Court then adjourned the case to 3 August 2009 for final submissions from the defence.15

On Monday 3 August 2009 defence counsel Mr Lamin Camara and Mr Sam Sarr, representing himself, both made their final submissions to the Court. Following a six-hour address, the trial judge then announced that he would deliver judgment on Wednesday 5 August 2009.16

On Wednesday 5 August 2009 armed paramilitary officers descended on the High Court amidst fears of protest if the six journalists standing trial were found guilty. According to media reports, members of the public were variously prevented from entering, or removed from, the courthouse. Mr Justice Fagbenle deferred judgment to Thursday 6 August 2009 without further explanation.17

On Thursday 6 August 2009 Mr Justice Fagbenle delivered his judgment. Mr Sam Sarr, Mr Pap Saine, Mr Emil Touray, Mr Ebrima Sawaneh, Mr Pa Modou Faal and Mrs Sarata Jabbi Dibba were all convicted on the six criminal charges of ‘conspiracy, defamation and sedition’. On count 1 they were sentenced to a mandatory jail term of two years without an option of a fine. On count 2 they were sentenced to pay a fine of D250,000 or in default to serve a two-year period of imprisonment. On count 3 they were sentenced to pay a fine of D250,000 or in default to serve a two-year period of imprisonment. On count 4, the six journalists were convicted and sentenced to a two year mandatory jail term without any option of a fine. On counts 5 and 6, Mr Justice Fagbenle convicted and sentenced the six journalists to a mandatory jail term of two years on each count without an option of a fine. All terms of imprisonment were to run concurrently. The journalists were immediately remanded into the custody of Mile II State Central Prison.18

15 Ibid.
On Monday 17 August 2009, defence counsel Mr Lamin Camara filed an appeal at the Court of Appeal against the verdict of the High Court. The appeal asked the Court to overturn the High Court judgment on the ground that the criminal charges on which the journalists were tried and convicted contravened the 1997 Gambian Constitution.19

On 3 September 2009, President Jammeh, acting under Section 82(1) of the Constitution of the Republic of The Gambia 1997, pardoned and released the six journalists after they had served 27 days in prison.20 In a press statement released during the 22 hour GMT news bulletin on the state-owned GRTS, President Jammeh said:

‘Forgiveness [was] in no way a sign of weakness but a true manifestation of a better being. The exercise of freedom of expression does not in any way mean being above the law or immunity from prosecution when they violate the law of the land by infringing on the rights of others, or being disrespectful to others, more so the president. The Government of the Republic of The Gambia guarantees the freedom of expression as well as the dignity and integrity of every citizen who also have the right to revert to the laws whenever their dignity has been infringed by someone in their exercise of freedom of expression.

The Government of the Republic of The Gambia would defend the honour and dignity of every Gambian because that is her responsibility. Therefore the laws of this land would be enforced to the latter no matter who is involved. Journalists are therefore urged to desist from being seditious and to remember that every citizen is accountable for his or her actions under the law and they are no exception.

Finally, let it be very clear that this prerogative pardon is purely based on the sprit of the Holy Month of Ramadan, which is a month of forgiveness and nothing else.’21

Five days after the journalists were released from prison, the family residence of Ndey Tapha Sosseh, President of the GPU, was broken into and ransacked. Nothing was taken from the residence however, leading observers to speculate that NIA agents were behind the ‘burglary’.22

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Evaluation of Fairness

Fair trial standards applicable to the proceedings

National law

As already noted, Chapter IV of the Constitution of the Republic of the Gambia (‘the Constitution’) guarantees the protection of fundamental rights and freedoms. Article 17 of the Constitution provides that every person in the Gambia shall be entitled to the fundamental human rights and freedoms enshrined in Chapter IV, and that these rights and freedoms shall be respected and upheld by all organs of the executive and its agencies, the legislature and, where applicable to them, by all natural and legal persons in the Gambia, and shall be enforceable by the courts. Article 19 of the Constitution guarantees the protection of the right to personal liberty and Article 24 of the Constitution guarantees the protection of the law and a fair trial. Freedom of expression is guaranteed by Article 25(1)(a) of the Constitution. Selected provisions of the Constitution are included at Attachment H.

International law

Universal treaty obligations

The Gambia ratified the ICCPR on 22 March 1979 and it entered into force on 22 June 1979. Article 9 of the ICCPR provides for the right to liberty and security of the person and Article 14 of the ICCPR provides for the right to equality before courts and tribunals and to a fair trial. Article 19 of the ICCPR guarantees the right to freedom of expression.

Regional treaty obligations

Gambia ratified the African Charter on 8 June 1983. Article 6 of the African Charter guarantees the right of every individual to liberty and security of the person. Article 7 guarantees the right to a fair trial. Article 9 provides for the right to freedom of expression. Article 26 imposes a duty on state parties to guarantee the independence of the courts.

United Nations declaratory standards

In evaluating the fairness of the proceedings, the IBAHRI observer has also considered the provisions of the following non-treaty human rights standards:

24 Article 24 should be read in conjunction with Article 120(3) which formally guarantees the independence of the judiciary.
25 The full text of the ICCPR is available online at http://www2.ohchr.org/english/law/ccpr.htm [accessed 16 February 2010].
27 The full text of the ACHPR is available online at http://www.achpr.org/english/_info/charter_en.html [accessed 13 July 2009].
Compliance with fair trial standards

Pre-trial proceedings

Based on his observation of the hearing on 8 July 2009 and subsequent interviews, the IBAHRI observer reports that the pre-trial proceedings in respect of the seven journalists were broadly conducted in accordance with national and international fair trial guarantees. The following points are illustrative.

At no point during the mission was it suggested to the IBAHRI observer that the journalists had been mistreated whilst in custody. The accused journalists were informed of the charges against them as soon as they were produced at the Kanifing Magistrate’s Court. The charges were based on a statutory crime and the accused were provided with information on the factual basis of the charge, as well as the specific law and its provisions.

The accused journalists were able to challenge the lawfulness of their detention. The courts examining the lawfulness of detention acted without delay and ultimately ordered their release.

After their period in custody at the NIA Headquarters, the accused were able to seek the assistance of lawyers, or in one case elect to represent themselves. Those with legal representation were assisted by lawyers of experience and competence commensurate with the nature of the alleged offences.

The lawyers were able to advise and represent their clients in accordance with professional standards, free from intimidation, harassment or improper interference from any quarter. The accused and their legal counsel were afforded adequate time and facilities to prepare a defence, including being

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granted access to all appropriate testimonies and evidence.

The date and location of the hearing observed on 8 July 2009 was well publicised in advance. The hearing was open to the public and a large number of interested persons, including media representatives, were able to observe and report on the proceedings within the courtroom.

During the hearing the accused journalists were afforded an opportunity to state whether they admitted or denied the offence and to challenge the form of the indictment. The lawyers for all parties were able to take an active part in the proceedings, making such representations as they considered appropriate. The presiding judge listened carefully to the submissions and generally was observed to treat all parties to the case equally and fairly.

Subsequent proceedings

Based on reports from the observations of the IHRDA and independent media research, the IBAHRI concludes that parts of the trial proceedings were fair, while others give rise to concern.

The IHRDA reported that the behaviour of Judge Fagbenle throughout the proceedings was relatively reasoned and fair. He gave the defendants and their lawyers opportunity to be heard, especially in the case of Mr Sam Sarr, who was representing himself. However, the IBAHRI concludes that the judgment handed down by Judge Fagbenle was not in accordance with the way the judge conducted the proceedings. The IBAHRI is concerned that the judgment was not well reasoned and called for excessive terms by sentencing the defendants to jail terms without the option of a fine. Given that Mrs Sarata Jabbi Dibba was a breastfeeding mother of a seven month-old baby and that Mr Pap Saine suffered from a heart condition requiring an operation to insert a pacemaker, which could not be performed in the Gambia, the sentence left no room for leniency.

The IBAHRI is concerned that certain portions of the hearings were held in camera, arguably because the state witnesses were all state security agents, and the interests of national security required that their identities not be made public. Article 14 of the ICCPR states that all persons should be entitled to a fair and public proceeding, and that excluding the press and public should only be done so to the extent strictly necessary. The IBAHRI is seriously concerned that excluding the public in this instance was not warranted and had the end effect of limiting the ability of international observers to observe and report on the overall fairness of proceedings.

The IBAHRI has additional concerns regarding the multiple bail applications made by the seven journalists. Article 9(3) of the ICCPR states that while the general rule should not be detention for those awaiting trial, release may be subject to certain conditions to guarantee appearance at trial. The IBAHRI is concerned that bail was revoked by Mr Justice Wowo upon transfer of the case from the Magistrate’s Court to the High Court, upon the technicality of failure to file a written bail application. Moreover, the IBAHRI is concerned that the reinstatement of bail upon much more onerous conditions was not proportionate, especially regarding the prohibition on publication with respect to the ongoing proceedings. This final condition could be viewed as an unwarranted and impermissible restriction on their rights to freedom of expression, as provided for in Article 19 of the ICCPR and Article 9 of the African Charter.
Removal of the case to the High Court raises additional concerns. The explanation for this removal was ostensibly that, given the international attention to the case, the decision was taken that it would be more appropriate for the matter to be tried before a senior judge. The IBAHRI is concerned that no further explanations were given and that the removal was grounded in reasons of public relations and foreign policy, rather than being rooted in law.
Additional concerns relating to compliance with fair trial standards and application of the criminal law in the context of the case

Beyond the conduct of the proceedings themselves, the IBAHRI is concerned that, considered in context, the Gambian authorities failed to fully respect national and international standards relating to arrest and detention and the independence of the judiciary. The IBAHRI is further concerned that the application of criminal law in the context of the case as a whole was, and is, unfair. The IBAHRI considers that the state may be in breach of its international obligations in seeking to criminalise conduct which constitutes a legitimate and peaceful exercise by the journalists of their right to freedom of expression.

Arbitrary arrest and detention

In its most recent concluding observations on the Gambia, adopted in 2004, the UN Human Rights Committee observed:

‘According to information brought to the Committee’s attention, numerous members of the political opposition, independent journalists and human rights defenders have been subjected to arbitrary arrest and periods of detention of varying length without charges. In many instances these actions have been carried out by the National Intelligence Agency (NIA).’

The IBAHRI is concerned that while held at the NIA Headquarters, the seven journalists were subjected to arbitrary arrest and detention in contravention of Article 9 of the ICCPR and Article 6 of the ACHPR. The reasons for this concern are several. The aforementioned treaty provisions provide that any deprivation of liberty must be carried out in accordance with the law. Under Article 19(2) of the Constitution, the journalists had a right under Gambian law to be informed ‘within three hours’ of the reasons for their arrest and their right to consult a legal practitioner. However, on the basis of information received by the IBAHRI and the IBAHRI observer, this constitutional guarantee was not complied with. There appears to have been significant delay in informing the journalists about the reasons for their arrest and they were at no point informed of their right to consult a legal practitioner. The journalists were therefore arguably deprived of their liberty in violation of a procedure established by domestic law. Accordingly they were subjected to arbitrary detention contrary to Article 9(1) of the ICCPR and Article 6 of the ACHPR.

The concept of ‘arbitrariness’ in Article 9(1) of the ICCPR and Article 6 of the ACHPR is not only to be equated with ‘against the law’. The Human Rights Committee has explained that it must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability.

35 UNHRC, Concluding observations: Gambia, UN Doc. CCPR/C/GMB (12 August 2004) at paragraph 11.
36 See eg, Communication No. 770/1997, Gridin v Russian Federation (Views adopted 20 July 2000), in UN Doc. A/55/40 (vol. II), p. 175, paragraph 8.1 – in a case where a person was arrested without a warrant, which was issued more than three days later, contrary to the domestic law that lay down that a warrant must be issued within 72 hours after arrest, the Committee concluded that Article 9(1) had been violated because the author had been ‘deprived of his liberty in violation of a procedure as established by law’.
and due process of law. This means that any remand in custody must not only be lawful, but must also be reasonable and necessary in all the circumstances, for example to prevent flight, interference with evidence or the recurrence of crime. In this regard, the IBAHRI is concerned that the state has not shown that any of these factors were present when the journalists were remanded into custody. Moreover, the prohibition on arbitrariness also means that any detention must not be effected as a means of interfering with other rights and freedoms. For the reasons explained in detail below, the IBAHRI is concerned that the journalists were arrested and detained in order to unjustifiably interfere with their right to freedom of expression.

The delay on the part of the state authorities in informing the journalists about the reason for their arrest also arguably breached Article 9(2) of the ICCPR. Article 9(2) of the ICCPR provides that ‘anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest’. The ACHPR contains no specific provision in this respect, but the African Commission on Human and Peoples’ Rights has held that the right to a fair trial includes, inter alia, the requirement that persons arrested ‘shall be informed at the time of arrest, in a language which they understand of the reason for their arrest’. The African Commission has held that failure or negligence on the part of the security agents of a State Party ‘scrupulously’ to comply with the requirement to submit reasons for arrest is a violation of the right to a fair trial as guaranteed by the African Charter.

The IBAHRI is further concerned that the 72-hour delay in producing the journalists before Kanifing Magistrates Court may also have breached their right to liberty. Article 9(3) of the ICCPR requires that in criminal cases any person arrested or detained must be brought ‘promptly’ before a judge or other officer authorised by law to exercise judicial power. In the view of the Human Rights Committee, delays must not exceed ‘a few days’. The text of the African Charter does not specifically regulate this issue. However, according to Article 7(1)(a) of the Charter, every individual shall have ‘the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force’. The IBAHRI observer notes that the three-day delay in producing the journalists before a court was in accordance with domestic law. Article 19(3)(b) of the Constitution provides that any person who is arrested or detained upon reasonable suspicion of having committed a criminal offence under the laws of the Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within 72 hours. However, the IBAHRI observer would also note that in its last Concluding observations on the Gambia, the UN Human Rights Committee stated: ‘The Committee considers that the delay of 72 hours is difficult to reconcile with article 9, paragraph 3, of the Covenant.’

The IBAHRI is also concerned by the fact that whilst in custody at the NIA Headquarters the journalists were not able to receive visits from either family members or legal representatives. Principle 18 of the

38 Ibid.
39 Ibid paragraph 9.7.
40 The detention of political opponents which violates their right to freedom of expression, has been found by the UN Human Rights Committee and the Inter-American Commission on Human Rights to constitute arbitrary detention contrary to Article 9 of the ICCPR and Article 7 of the ACHR respectively (see Mukong v Cameroon, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994) and Kimel v Argentina, Case 729/00, Report No. 5/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 128 (2004)).
41 See eg, ACHPR, Media Rights Agenda (on behalf of Niran Malaolu) v Nigeria, Communication No. 224/98, decision adopted during the 28th session, 23 October – 6 November 2000, paragraph 43.
42 ACHPR, Huri-Laws (on behalf of the Civil Liberties Organisation) v Nigeria, Communication No. 225/98, decision adopted during the 28th Ordinary Session, 23 October – 6 November 2000, paragraphs 43-44.
43 General Comment 8, paragraph 2; Communication No. 373/1989, Stephens v Jamaica (Views adopted on 18 October 1995) in UN Doc. GAOR, A/51/40 (vol. II) paragraph 9.6).
44 UNHRC, Concluding observations: Gambia, UN Doc. CCPR/C/GMB (12 August 2004), paragraph 13.
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that ‘A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel’. Principle 19 of the Body of Principles provides that ‘A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family…’ The Human Rights Committee has stated in its General Comment No. 20, on Article 7 of the Covenant, that ‘provisions should … be made against incommunicado detention’. It is also clear from jurisprudence that incommunicado detention that interferes with the effective enforcement of the legal guarantees of persons deprived of their liberty is prohibited under international law. The IBAHRI observer also notes that in its most recent concluding observations on the Gambia, the Human Rights Committee stated: ‘The Committee is further informed that NIA continues to practice incommunicado detention. This practice is contrary to article 9 of the Covenant.’

**Limitation upon the independence of the judiciary**

Article 120(3) of the Constitution guarantees the independence of the judiciary and the courts do sometimes demonstrate independence. However, the presidential power to remove a judge in consultation with the Judicial Service Commission (JSC) impedes judicial independence. The IBAHRI previously expressed its concerns regarding political influence over appointments in the Gambia in its 2006 report. In its most recent concluding observations on the Gambia, adopted in 2004, the UN Human Rights Committee commented that:

‘It further regrets that, in spite of the constitutional provision for security of tenure of judges, judges have reportedly been removed summarily from office in several instances. The State party … is invited to guarantee the security of tenure of judges.’

More recently, in 2008, three judges were unconstitutionally removed from office. High Court Mr Justice BY Camara and Mr Justice Haddy Roche were dismissed in July by an order of the President, and Justice Naceesay Sallah-Wadda in September. No official reason was given for the removal of the judges and no consultation took place with the JSC. However, unconfirmed reports have stated that the dismissals were linked to decisions taken by the judges in ‘sensitive’ cases. All three judges were reinstated before the end of the year.

Against this background, and mindful of the fact that the case against the journalists involves allegations of bringing the President into contempt, the IBAHRI is concerned that, contrary to the state’s obligations under Article 120(3) of the Constitution, Article 14(1) of the ICCPR and Article 7(1) of the ACHPR,

45 HRC, General Comment No. 20, paragraph 11.
47 UNHRC, Concluding observations: Gambia, UN Doc. CCPR/C/75/GMB (12 August 2004).
49 See above note 10.
50 UNHRC, Concluding observations: Gambia, 12 August 2004, UN Doc. CCPR/C/75/GMB (Concluding Observations/Comments), paragraph 14.
52 The Human Rights Committee has unambiguously held that ‘the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception’ Communication No. 263/1987, M Gonzales del Rio v Peru (Views adopted on 28 October 1992), UN Doc GAOR, A/48/40 (vol. II), p. 20, para. 5.2).
53 It is the view of the African Commission on Human and Peoples’ Rights that Article 7 ‘should be considered non-derogable’ since it provides ‘minimum protection to citizens’ (ACHPR, Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria, Communication No. 218/98, decision adopted during the 29th Ordinary session, 23 April – 7 May 2001, p. 3).
the various judges presiding over the proceedings in respect of the accused may have laboured under pressure to render decisions favourable to the President, or risk losing their appointments.

Although no definitive examples are available, one may note that despite having been granted bail by the Kanifing Magistrate’s Court on 22 June 2009 on condition of payment of a bail bond of 200,000 dalasis (approximately €5,400), on 3 July 2009 the Banjul High Court remanded the journalists into custody at Mile II State Central Prison. When bail was again granted on 6 July 2009, the High Court granted bail conditional on the deposit of a bail bond in the sum of 400,000 dalasis (approximately €10,800). Not only was this condition considerably more onerous than that imposed by the Magistrate’s Court, it was arguably disproportionate given that the offences for which the accused are charged attract a maximum fine upon conviction of 250,000 dalasis. The IBAHRI is fortified in this concern that the administration of justice in this case may be subject to the potential influence of the political will of the President by the fact that when questioned about his security of tenure by the IBAHRI observer, Mr Justice Wowo declined to comment, remarking instead that this was ‘a personal matter’. This remark reinforces the IBAHRI’s concerns regarding security of tenure as expressed in the 2006 report on the Gambia.54 Furthermore, such a remark can only be seen as lending weight to the suggestion made by certain lawyers for the accused that the Presiding Judge remains in office ‘at the pleasure of the executive’.

Moreover, the IBAHRI is concerned that after an expression of no confidence in Mr Justice Wowo, the case was transferred to Mr Justice Fagbenle by the Chief Justice of the Gambia. The IBAHRI has received reports that Mr Justice Fagbenle normally hears civil cases, not criminal cases. The decision to transfer the case was made without explanation or reason to the stakeholders.

The IBAHRI reminds the President and Government that unless judges are able to exercise their professional duties freely, independently and impartially, and unless the executive and legislature is prepared to ensure this independence, including by guaranteeing that judges have long-term security of tenure in accordance with Principles 11 and 12 of the UN Basic Principles on the Independence of the Judiciary, the rule of law will slowly but steadily be eroded, and with it effective protection of the rights of the individual.

**Interference with freedom of expression**

Article 25(1)(a) of the Gambian Constitution provides for freedom of speech and of the press. Article 19 of the ICCPR states that: ‘Everyone shall have the right to freedom of expression.’ This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.55 Article 9 of the ACHPR provides that every individual shall have the right to receive information and every individual shall have the right to express and disseminate his opinions within the law.

Despite these obligations under national and international law, the government has a record of limiting freedom of expression by exposing journalists to human rights violations, such as unlawful

54 See above note 10.

55 The right to freedom of expression, including freedom of the press, as guaranteed by Article 19 of the ICCPR, may have to be interpreted also in the light of other provisions of the Covenant, such as article 25 concerning the right to take part in the conduct of public affairs. The effective exercise of that right presupposes the free flow of information and ideas between citizens on public and political issues, including a free press and other media which are able to comment on public issues without censorship or restraint (See eg, Communication No. 633/1995, R Gauthier v Canada (Views adopted on 7 April 1999), UN Doc. GAOR, A/54/40 (vol.II)).
arrests and detentions, torture, unfair trials, harassment, assaults, death threats and closures. The IBAHRI has previously expressed its grave concerns over limitations on freedom of expression in the Gambia in its 2006 report.

In its most recent concluding observations on the Gambia, adopted in 2004, the UN Human Rights Committee commented that:

‘While noting the constitutional protection of the right to freedom of expression, the Committee expresses concern that numerous journalists have been subjected to intimidation, harassment, and occasionally to detention without charges, for having published material critical of the Government. The resort to libel and defamation charges against journalists for similar reasons is equally cause for concern (article 19 of the Covenant). The State party should guarantee the freedom of expression and opinion of the independent media. Journalists who have been subjected to measures of arbitrary detention should be afforded effective judicial redress and compensation.’

In their most recent country reports covering 2008, both Amnesty International and the US State Department have continued to document several instances in which the government has harassed journalists who have written articles that it has considered inaccurate and/or investigated cases that it has considered sensitive. Several journalists are also reported to have gone into hiding out of fear of government retaliation. A summary of these cases is included at Annex I. On 24 June 2009 the ACHPR Special Rapporteur on Freedom of Expression and Access to Information in Africa (Special Rapporteur) expressed grave concern ‘about recent information she has received, indicating a deterioration of the situation of Freedom of Expression in the Republic of The Gambia,’ according to a press release issued by the African Commission on Human & Peoples’ Rights. During the 46th Ordinary Session of the African Commission on Human and Peoples’ Rights on 11 November 2009, the Special Rapporteur called the current media situation in the Gambia ‘unacceptable’ and urged President Jammeh to repeal repressive media laws. It is against this background that the criminal proceedings against the seven journalists must be considered.

Beyond the issues already raised, the IBAHRI is seriously concerned that criminal law has been applied at all in the context of the present case. Although Article 19(3) of the Covenant permits the right to freedom of expression to be restricted, such restrictions ‘shall only be such as are provided by law and are necessary … for respect of the right or reputations of others’ or ‘for the protection of national security or of public order (ordre public), or of health or morals’. In other words, to be lawful, restrictions on freedom of expression must comply with the principle of legality and


57 See above note 10.

58 UNHRC, Concluding observations: Gambia, 12 August 2004, UN Doc. CCPR/C/75/GMB (Concluding Observations/Comments), paragraph 20.


62 Also illustrative are the conclusions of the Inter-American Commission on Human Rights regarding ‘desacato’ or contempt laws, finding that laws criminalising speech which does not incite violence are incompatible with guarantees of freedom of expression and thought. See Inter-American Commission on Human Rights, Annual Report 1994 (Ch. 5) available at http://www.cidh.org/annualrep/94eng/chap.5.htm [accessed 16 February 2010].
proportionality and be imposed for one or more of the legitimate purposes enumerated in Article 19(3). The Human Rights Committee has further emphasised that the right to freedom of expression ‘is of paramount importance in any democratic society, and any restriction to the exercise thereof must meet a strict test of justification’.\(^{63,64}\)

International law also considers a person’s situation in society when restricting freedom of expression. The ‘duties and responsibilities’ of a person, as called for in ICCPR Article 19(3), may differ from person to person. A person’s right to protection against defamatory or slanderous speech, therefore, must be analysed in relation to his or her societal duties. For example, in *Lingens v Austria*, the European Court of Human Rights held that a government official accused of holding an ‘accommodating attitude’ towards the Nazis had to endure more criticism as a result of his public position. The Court ruled that public figures must endure more criticism than private persons in order for political debate, essential in democracy, to function properly.\(^{65}\)

Applying these principles, the IBAHRI is of the opinion that the arrest, detention, criminal prosecution and sentencing of the seven journalists cannot be justified as necessary in a democratic society. The GPU’s reaction to President Jammeh’s statement on the death of Deyda Hydara did no more than refer to the Presidential statement as ‘inappropriate’, ‘provocative’ and ‘unfortunate’. It continued by calling for an effective official investigation into the unresolved killing. It brought neither ‘contempt’ nor ‘ridicule’ upon either the President or the Government, but rather made a valuable contribution to an important and legitimate debate of public interest.

Accordingly, the IBAHRI considers that the arrest, detention and prosecution of the journalists cannot be justified as a permissible limitation upon their right to freedom of expression within the terms of Article 19(3) of the Covenant. It follows that the criminal proceedings to which they have been exposed and their subsequent 27 days spent incarcerated may be viewed as constituting a measure of state-sponsored harassment and intimidation designed to punish them for their role in publishing material critical of the President and dissuade them, and their colleagues, from expressing similar criticism in the future.

The IBAHRI urges the prosecuting authorities to comply with their obligations under international law to guarantee the freedom of expression and opinion of the independent media and in all cases going forward.

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\(^{64}\) See also ACHPR, *Media Rights Agenda (on behalf of Mr N Malaolu) v Nigeria*, No. 224/98, decision adopted during the 28th session, 23 October – 6 November 2000: ‘The reasons for possible limitations must be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained’. In particular, ‘a limitation may never have as a consequence that the right itself becomes illusory’ (paragraphs 68-70).

Conclusion

Broadly, the IBAHRI considers that the pre-trial proceedings in respect of the seven journalists were fair. The IBAHRI considers the trial proceedings were fair in most respects, other than the judgment itself.

The IBAHRI is concerned that during the initial three-day period of detention at the Headquarters of the National Intelligence Agency, the accused journalists were subject to arbitrary detention on a number of grounds. Furthermore, the IBAHRI has reservations regarding the extent to which the judiciary in the Gambia can be said to be truly independent.

The IBAHRI is deeply concerned that the charges against the journalists were ever brought at all. In addition, the IBAHRI considers the charges themselves, the conviction and subsequent pardon to be a manifestation of state-sponsored harassment and intimidation of Gambian journalists who had sought to exercise their internationally guaranteed right to non-violent freedom of expression. The IBAHRI is concerned that the charges were brought for political purposes, namely in order to punish the journalists who had sought to criticise the President and also as a means of intimidating them, and their colleagues, into refraining from expressing similar criticism in the future.

The IBAHRI reminds the Gambian Government of its international obligations to guarantee freedom of expression and to allow journalists to perform their professional functions without intimidation, hindrance, harassment or prosecution.  

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Annex A: List of Interviews

Hon Mr Justice Joseph Wowo (Judge of the Banjul High Court (Criminal Division))

Mr RN Chenge (Director of Public Prosecutions)

Ms Amie Bensouda (Head of the Gambia Bar Association)

Mr Antouman Gaye (Lawyer, Member of the Gambia Bar Association)

Mr Lamin Camara (Lawyer, Member of the Gambia Bar Association)

Ms Sheila Keetharuth (Executive Director, Institute for Human Rights and Development in Africa)

Mr Gaye Sowe (Legal Officer, Institute for Human Rights and Development in Africa)

Mr Pap Saine (Editor-in-Chief and co-founder of ‘The Point’ newspaper)

Mr Sam Sarr (Managing Editor of ‘Foroyaa’ newspaper)

Ms Ann Rivington (Lawyer, Member of the Gambia Bar Association)
GPU REACTION TO PRESIDENT JAMMEH’S STATEMENT ON DEYDA HYDARA, FREEDOM OF EXPRESSION

The Gambia Press Union wishes to express its shock and disappointment over the inappropriateness of the provocative statement of the head of state, President Jammeh, on GRTS, Tuesday night in relation to the death of veteran Gambian journalist, the late Deyda Hydara.

It is rather unfortunate and the Union is indeed saddened that the second time the head of state has so chosen to discuss the death of Deyda Hydara; he again, has dwelt on the issue of character assassination and ridicule.

We find it most unfortunate that the champion for the promotion of Gambian and African culture, traditional norms and values, and someone, who claims to have total respect for religion in particular, Islam, President Jammeh finds it appropriate to ridicule and to speak ill of the dead. Such behavior and countenance is most unreligious, un-cultural and certainly discredits traditional African norms and values!

The Union need not remind President Jammeh that it is difficult to presume that the Gambian Government is concerned over the death of Deyda Hydara unless and until the Gambian Government and its relevant security institutions are seen to be determined and resolved to seriously commit themselves in a professional manner to embark on investigating the events that led to the death of our dear colleague and brother.

We also wish to bring to the attention of the head of state that the Government of The Gambia and its relevant Security Apparatus’ have the primary responsibility to ensure the protection of each and every Gambian life and therefore the murder of any Gambian should be an issue of
paramount concern and curbing such a menace a priority. Mere statements and or speculations and ridicule re: the events leading to the death of Deyda Hydara cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise.

We demand an investigation of fact and forensics spearheaded by the Gambia Government. Should the relevant government institutions not have the resources or wherewithal to carry on with the investigations, we at the Gambia Press Union think it is time that you publicly admit that and invite other states and international policing and security institutions such as Interpol, who already have a desk at the Police Headquarters to take over the investigations.

It is almost certain that the trail has gone cold in the past Four and a half years but the main pieces of the puzzle being the bullets which were or should have been retrieved during post mortem and the post mortem report will certainly go a long way in aiding the continuation and or recommencement of the investigations. Motives and related issues can wait for a later date! Right now our preoccupation is that the perpetrators of this murder most foul be brought to book.

Mr. President the venom with which you spoke about the websites with a picture of the slain journalist and the slogan “Who Killed Deyda Hydara” is alarming. We are very much aware that the issue be kept alive and until such a time that his killers are brought to book, this slogan and its accompanying image will remain on the website of the Union and that even then, we will coin a statement fitting to forever haunt the perpetrators of this heinous crime!

The killing of Deyda Hydara, if nothing else, has only strengthened the resolve of true journalists to remain steadfast, truthful and committed to speaking in defense of the weak and the vulnerable.

On a second note, we are quite surprised that you claim there is Freedom of Expression in The Gambia. Mr. President, we beg to differ, the legal environment in particular the Newspaper Amendment Act 2004, the Criminal Code Amendment Act 2004, the Newspaper Registration
Act and the recently passed Communications Bill 2009 make it practically impossible to practice efficiently as a journalist and yet remain within the amits of the law.

The laws notwithstanding, the disappearance of Chief Ebrima Manneh, the continued prolonging of unnecessary court cases of journalists and media practitioners, arbitrary arrests and detention, harassment of Gambian journalists especially the episodes of 2006 leave a lot to be desired re: the state of freedom of expression in The Gambia.

We therefore call on the Gambia Government to respect, promote and defend the rights of journalists, notably by bringing an immediate end to the unnecessary and continued embarrassment and harassment of journalists; to create the enabling environment for the development and full participation of the independent media, the fourth estate, by repealing the current media laws which criminalize media offences amongst a host of other detrimental issues and to pass new and progressive media related laws such as Freedom of Information and Access to Information Acts which amongst other provisions guarantee freedom of the media as stipulated in the regional and international treaties such as Article 19 of the Universal Declaration on Human Rights and Article 9 of the African Charter on Human and Peoples’ Rights to which your Government is signatory.

We also propose, in good faith that your Government seriously look at strategies geared towards engaging and collaborating with the independent media to enhance and strengthen independent media participation and to enable the expansion of the space for divergent views and healthy debate.
That is ok. If he does not other papers will publish.

— On Thu, 6/1/09, wrote:

Date: Thursday, June 11, 2009, 4:50 PM

Ok that's fine. I have no problem with it. Pap says he reached your mail in which you informed him that you will write an issue concerning Osmenah's speech but he said he need to see the statement and consult Sawaneh and others before he can give you space for publication.

— On Thu, 11/6/09, wrote:

Date: Thursday, 11 June, 2009, 5:31 PM

O.K. I think the others have said we can go ahead and I sent you a draft copy so you can comment. Please do so ASAP as we want it in tomorrow's papers. Ask Pap and Sawaneh whether they saw my email requesting for space for tomorrow.

Ndey Tapha

— On Thu, 6/1/09, wrote:

Date: Thursday, June 11, 2009, 4:09 PM

Hello Ndey,

Thanks for asking me your opinion. To me I think we should just ignore him, what God knows is enough, a day will come the truth shall be known, because if we should issue a statement it might led to another living but notwithstanding if the majority says yes it fine we can go ahead.

THANKS SARATA

— On Wed, 10/6/09, wrote:

Date: Wednesday, June 10, 2009, 11:35 AM

Colleagues,

Can you please advice on whether or not we should issue a statement. I find it very offensive that the head of state has no respect for the dead and can even dare to state that we should add a dead man who killed him.

Should you be concerned about security, I can sign it in my name, given that I am out of the country.

Please respond ASAP

Ndey Tapha

— On Tue, 9/6/09, wrote:

Date: Tuesday, June 9, 2009, 2:50 PM

Ndey these are Zammeh's own words.

On the death of Dyda Hydiee former Co-proprietor and publisher of The Point Newspaper in Banjul Jammeh maintained that he had no reason and nothing to do with the death of Dyda: "In order to trace the killers of Dyda investigation must conducted in Senegal where the witnesses of the killing are," he stated.
Colleagues,

Please find attached the GPU's response to the statements made by President Jammeh in relation to Deyda Hydara and the state of press freedom in the country. Please feel free to publish and circulate as widely as possible.

Also don't hesitate to contact me for further info.

Ndye Tapha Sosseh
President
Senior members of the Executive (Secretary General, Vice President, Treasurer of the Gambia Press Union (excluding the President who is currently out of The Gambia) and Pap Seine, Publisher, Ebou Sawang, Editor of the Point Newspaper have were this morning called for NIA (National Intelligence Agency) Questioning. They are still believed to be held for Questioning. I have just spoken to Sam S of Foroyaa Newspaper and he will be keeping me posted on developments. Should you need to contact me this is my mobile no in Bamako (+223) 78 39 479.

Ndey Tapha

--- On Mon, 6/15/09, wrote:

Date: Monday, June 15, 2009, 3:51 PM

hi Baba just to inform you guys as at the time of writing this message Emil TouRAY AND Sarata JABBIE ARE CURRENTLY UNDER DETENTION AT THE NIA IN CONNECTION TO THE press release

--- On Thu, 6/11/09, wrote:
Date: Thursday, June 11, 2009, 10:31 PM

Dear Friends,

On behalf of GPU-USA, I wish to declare our unflinching and unconditional support of the statement issued by the Gambia Press Union, Banjul, regarding Jammeh's cynical remarks about murdered Gambian veteran journalist Deyda Hydara. In a recent ranting on the issue of Mr. Hydara's murder, Jammeh cynically said that those who want to know who murdered Deyda should go ask Deyda. This uncharitable and uncouth statement is further testimony that Jammeh has become so intoxicated with power that he can no longer tell day from night. Regarding investigations into Deyda's brutal murder, the GPU-USA's position is that Jammeh should be held personally responsible unless and until evidence to the contrary is revealed. Below is the statement by GPU-Gambia, which was issued this morning, Thursday, June 11, 2009.

Thank you.
Baba G. Jallow
Secretary General, GPU-USA

GAMBIA PRESS UNION
NO. 5 GARBA JAHUMPA ROAD BAKAU
NEWTOWN
P. O. Box 1440, Banjul, The Gambia

email: gpu@qanet.gm url: www.gambiapressunion.org

Press Release

Thursday, June 11th 2009

GPU REACTION TO PRESIDENT JAMMEH’S STATEMENT ON DEYDA HYDARA, FREEDOM OF EXPRESSION

The Gambia Press Union wishes to express its shock and disappointment over the inappropriateness of the provocative statement of the head of state, President Jammeh, on GRTS, Tuesday night in relation to the death of veteran Gambian journalist, the late Deyda Hydara.

It is rather unfortunate and the Union is indeed saddened that the second time the head of state has so chosen to discuss the death of Deyda Hydara; he again, has dwelt on the issue of character assassination and ridicule.

We find it most unfortunate that the champion for the promotion of Gambian and African culture, traditional norms and values, and someone, who claims to have total respect for religion in particular, Islam, President Jammeh
finds it appropriate to ridicule and to speak ill of the dead. Such behavior and countenance is most unreligious, uncultural and certainly discredits traditional African norms and values!

The Union need not remind President Jammeh that it is difficult to presume that the Gambian Government is concerned over the death of Deyda Hydara unless and until the Gambian Government and its relevant security institutions are seen to be determined and resolved to seriously commit themselves in a professional manner to embark on investigating the events that led to the death of our dear colleague and brother.

We also wish to bring to the attention of the head of state that the Government of The Gambia and its relevant Security Apparatus1 have the primary responsibility to ensure the protection of each and every Gambian life and therefore the murder of any Gambian should be an issue of paramount concern and curbing such a menace a priority. Mere statements and or speculations and ridicule re: the events leading to the death of Deyda Hydara cannot and will not be accepted as exonerations of the Gambian Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise.

We demand an investigation of fact and forensics spearheaded by the Gambian Government. Should the relevant government institutions not have the resources or wherewithal to carry on with the investigations, we at the Gambia Press Union think it is time that you publicly admit that and invite other states and international policing and security institutions such as Interpol, who already have a desk at the Police Headquarters to take over the investigations.

It is almost certain that the trail has gone cold in the past four and a half years but the main pieces of the puzzle being the bullets which were or should have been retrieved during post mortem and the post mortem report will
certainly go a long way in aiding the continuation and or recommencement of the investigations. Motives and related issues can wait for a later date! Right now our preoccupation is that the perpetrators of this murder most foul be brought to book.

Mr. President the venom with which you spoke about the websites with a picture of the slain journalist and the slogan “Who Killed Deyda Hydara” is alarming. We are very much aware that the issue be kept alive and until such a time that his killers are brought to book, this slogan and its accompanying image will remain on the website of the Union and that even then, we will coin a statement fitting to forever haunt the perpetrators of this heinous crime!

The killing of Deyda Hydara, if nothing else, has only strengthened the resolve of true journalists to remain steadfast, truthful and committed to speaking in defense of the weak and the vulnerable.

On a second note, we are quite surprised that you claim there is Freedom of Expression in The Gambia. Mr. President, we beg to differ, the legal environment in particular the Newspaper Amendment Act 2004, the Criminal Code Amendment Act 2004, the Newspaper Registration Act and the recently passed Communications Bill 2009 make it practically impossible to practice efficiently as a journalist and yet remain within the ambit of the law.

The laws notwithstanding, the disappearance of Chief Ebrima Manneh, the continued prolonging of unnecessary court cases of journalists and media practitioners, arbitrary arrests and detention, harassment of Gambian journalists especially the episodes of 2006 leave a lot to be desired re: the state of freedom of expression in The Gambia.

We therefore call on the Gambia Government to respect, promote and defend the rights of journalists, notably by bringing an immediate end to the unnecessary and continued embarrassment and harassment of journalists; to create the enabling environment for the development and full participation of the independent media, the fourth estate, by repealing the current media laws which criminalize media offences amongst a host of other detrimental issues and to pass new and progressive media related laws such as Freedom of Information and Access.
to Information Acts which amongst other provisions guarantee freedom of the media as stipulated in the regional and international treaties such as Article 19 of the Universal Declaration on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights to which your Government is signatory.

We also propose, in good faith that your Government seriously look at strategies geared towards engaging and collaborating with the independent media to enhance and strengthen independent media participation and to enable the expansion of the space for divergent views and healthy debate.
Dear All,

The GPU-USA has just received word from GPU-Gambia that senior members of their executive committee were this morning arrested by the NIA. The arrests are apparently in connection with last week’s GPU-Gambia press release criticizing Jammeh for saying that those who want to know who killed Deyda Hydara should go ask Deyda. Below is the text of the message received by GPU-USA this morning.

Senior members of the Executive (Secretary General, Vice President, Treasurer) of the Gambia Press Union (excluding the President who is currently out of The Gambia) and Pap Saine, Publisher, Ebou Sawanah, Editor of the Point Newspaper were this morning called for NIA (National Intelligence Agency) Questioning. They are still believed to be held for Questioning.

The GPU-USA vehemently condemns this latest bullying of innocent journalists by the Jammeh regime and its thugs at the NIA. We call upon all well meaning and right thinking Gambians and friends of The Gambia to join us in condemning this latest outrage and in calling for the unconditional release of all those arrested.

Signed on behalf of GPU-USA.
Baba G. Jallow
Secretary General
Gambia: Freedom of Expression on Trial

February 2010

[GPU] GPU Executive Called for NIA Questioning

Senior members of the Executive (Secretary General, Vice President, Treasurer) of the Gambia Press Union (including the President who is currently out of The Gambia) and Pap Saine, Publisher, Ebow Sawaneh, Editor of the Point Newspaper have been this morning called for NIA (National Intelligence Agency) Questioning. They are still believed to be held for Questioning. They have just spoken to San Sarr of Foffone Newspaper and he will be keeping me posted on developments.

Should you need to contact me this is my mobile no in Bamako (+223) 78 39 45 75.

Ndye Taua
-- On Mon, 6/15/09, 10:19 AM wrote:

From:
Subject: Re: [GPU] GPU-USA Supports Parent Body Statement
To:
Date: Monday, June 15, 2009, 9:51 PM

Hi Buba,

Just to inform you guys as at the time of writing this message Emil Touray and Sarata Jambie are currently under detention at the NIA in connection to the press release.

-- On Thu, 6/11/09, 10:59 AM wrote:

From:
Subject: [GPU] GPU-USA Supports Parent Body Statement

Date: Thursday, June 11, 2009, 10:51 PM

Dear Friends,

On behalf of GPU-USA, I wish to declare our unshakable and unconditional support of the statement issued by the Gambia Press Union, Banjul, regarding Jammeh's cynical remarks about murdered Gambian veteran journalist Deyda Hydara. In a recent ranting on the issue of Mr. Hydara's murder, Jammeh cynically said that the 6 individuals who want to know who murdered Deyda should go ask Deyda. This uncharitable and untruthful statement is further testament that Jammeh has become so intoxicated with power that he can no longer tell right from wrong. Regarding investigations into Deyda's brutal murder, the GPU-USA's position is that Jammeh should be held personally responsible unless and until evidence to the contrary is revealed. Below is the statement by GPU-Gambia, which was issued this morning, Thursday, June 11, 2009.

Thank you.

Baba G. Jallow
Secretary General, GPU-USA

GAMBIA PRESS UNION

NO. 5 GARBA JAHUMPA ROAD BAKAU NEWTOWN

P. O. Box 1440, Banjul, The Gambia

email: gpw@pae.net.gm url: www.gambiapressunion.org

Press Release

Thursday, June 11th 2009

GPU REACTION TO PRESIDENT JAMMEH'S STATEMENT ON DEYDA HYDARA, FREEDOM OF EXPRESSION

The Gambia Press Union wishes to express its shock and disappointment over the inappropriate nature of the provocative statement of the head of state, President Jammeh, on GRTS, last night in relation to the death of veteran Gambian journalist, the late Deyda Hydara.

It is rather unfortunate and the Union is indeed saddened that the second time the head of state has so chosen to discuss the death of Deyda Hydara, he again, has dwelt on the issue of character assassination and ridicule.

We find it most unfortunate that the champion for the promotion of Gambian and African culture, traditional norms and values, and the media, claims to respect for a statement in religion in particular, Islam, President Jammeh finds it inappropriate to ridicule and to speak ill of the dead. Such behavior and countenance is most unreligious, un-culture and certainly discriminatory traditional African norms and values.

The Union need to remind President Jammeh that it is difficult to presume that the Gambia Government is concerned over the death of Deyda Hydara unless and until the Gambia Government's investigations are determined and resolved to thoroughly commit themselves in a professional manner to embark on investigating the events that led to the death of our dear colleague and brother.

We also wish to bring to the attention of the head of state that the Government of The Gambia and its relevant Security Apparatus have the primary responsibility to ensure the protection of each and every Gambian life and therefore the murder of any Gambian should be an issue of paramount concern and calling such a matter a priority. More statements and or
will coin a statement fitting to forever haunt the perpetrators of this heinous crime!

The killing of Deyda Hydara, if nothing else, has only strengthened the resolve of true journalists to remain steadfast, truthful and committed to speaking in defense of the weak and the vulnerable.

On a second note, we are quite surprised that you claim there is Freedom of Expression in The Gambia. Mr. President, we beg to differ, the legal environment in particular the Newspaper Amendment Act 2004, the Criminal Code Amendment Act 2004, the Newspaper Registration Act and the recently passed Communications Bill 2009 makes it practically impossible to practice efficiently as a journalist and yet remain within the ambit of the law.

The laws notwithstanding, the disappearance of Chief Thium Manneh, the continued prolonging of unnecessary court cases of journalists and media practitioners, arbitrary arrests and detention, harassment of Gambian journalists especially the episodes of 2006 raise a lot to be desired on the state of freedom of expression in The Gambia.

We therefore call on the Gambian Government to respect, promote and defend the rights of journalists, notably by bringing an immediate end to the unnecessary and continued harassment and harassment of journalists; to create the enabling environment for the development and full participation of the independent media, the fourth estate, by repealing the current media laws which criminalize media offences amongst a host of other detrimental issues and to pass new and progressive media related laws such as Freedom of Information and Access to Information Acts which amongst other provisions guarantee freedom of the media as stipulated in the regional and international treaties such as Article 19 of the Universal Declaration on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights which your Government is signatory.

We also propose, in good faith that your Government seriously look at strategies geared towards engaging and collaborating with the independent media to enhance and strengthen independent media participation and to enable the expansion of the space for divergent views and healthy debate.

Sara,

This deals on you guys. However, I have already sent from GPU email as he was at the office with the rest and they edited and sent it.

Let us see what we can do to stop it.

Tapha

-- On Thu, 9/1/09, [Author] wrote

Date: Thursday, June 11, 2009, 5:38 PM

Note: Emil said let me ask you to drop the statement and he will call you tonight.

-- On Thu, 11/6/09, [Author] wrote

Date: Thursday, 11 June, 2009, 6:15 PM

Please just attach. Don't worry about stamping and signature. I will initially send from GPU email.
If you go with don't go to the office tomorrow and should anyone of you be arrested tell them I sent it from the GPU email and I am the only one with the password.
I will email details next and sign off with my name

Best of Luck,

[Author]
Annex C: Cautionary Statements of the Accused dated 16 June 2009
CAUTIONARY STATEMENT

NAME OF PERSON:  

ADDRESS:  

AGE: 37 yrs  

OCCUPATION: Journalists  

I, Pa Modou Faal, having been duly cautioned by  

______________________ in the presence of an independent witness by the name of  

Tijan BAH of Barri  

OF:  

______________________ that I need not say anything unless I wish but whatever I do say will be taken down in writing and may be given as evidence, and speaking in English I made this statement voluntarily and without any force or duress from any person.  

NAME AND ADDRESS:  

SGD.  

______________________  

OR  

{INDEPENDENT WITNESS}  

OR  

{SUSPECT/ACCUSED}  

RTP  

______________________  

______________________  

______________________  

(name and address)  

______________________  

______________________  

6 June 2009  

SUSPECT STATES AS FOLLOWS:

The press release was sent by the CPU president, Ms. Ndeye Faal, to the CPU executive and some members. It was sent to the email box of the CPU executive and Mame Ousmane who was awaiting the announcement by President Jammeh with regards to his TV interview.
CAUTIONARY STATEMENT

NAME OF PERSON: ABURA CAME \( S \) \( A \) \( P \) \( Y \) \( K \) \( H \) \( A \) \( N \)

ADDRESS: BANJUL TOWN \( S \) \( A \) \( M \) \( A \) \( K \) \( A \) \( S \) \( S \) \( M \) \( O \) \( S \) \( \) DATE: 16/16/04

AGE: 25 YEARS OCCUPATION: JOURNALIST

In the presence of an independent witness by the name of EDWARD E. BAH of BANJUL that I need not say anything

UNLESS WISH BUT WHATEVER I DO SAY WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN AS EVIDENCE, AND SPEAKING IN LANGUAGE, I MADE THIS STATEMENT VOLUNTARILY AND WITHOUT ANY FORCE OR DURESS FROM ANY PERSON.

NAME AND SIGN: EDWARD E. BAH (ABURA CAME \( S \) \( A \) \( P \) \( Y \) \( K \) \( H \) \( A \) \( N \))

SGD. 16/16/04 SGD.

OR (INDEPENDENT WITNESS) OR

RTP OR (SUSPECT/ACCUSED) (NAME & SIGN OR RTP)

SUSPECT STATES AS FOLLOWS:

I WAS ARRESTED IN CONNECTION WITH THE ARREST OF MY EDITOR IN CHIEF ON THE 15TH DAY OF JUNE 2009 IN THE EVENING. I AM A PHOTO JOURNALIST, TOOK A PHOTO OF MY EDITOR IN CHIEF SAM SAM AND AS A RESULT OF THAT I WAS ARRESTED AND BROUGHT TO THE NATIONAL WARDEN OF H.E. \( M \). \( I \). \( A \).
I do not have any bad intentions for anyone in this country. I swear that no photo without terrorism that is will become a threat to my security.

ITEMENT RECORDED BY

SIGN... 16/10/09

ACCUSED/SUSPECT

K..........................

\ON..........................

I hereby certify that I witnessed the above recorded cautionary statement of acc/user... which was given voluntarily without force or duress from any person.

SIGN... 16/10/09

Independent witness
CAUTIONARY STATEMENT

NAME OF PERSON: SARATA JABBI DIBBA

ADDRESS: BANJUL

AGE: 26

OCCUPATION: JOURNALIST

I, SARATA JABBI DIBBA, HAVING BEEN DULY CAUTIONED BY

IN THE PRESENCE OF AN

INDEPENDENT WITNESS BY THE NAME OF TIJAN BAH

OF BANJUL, THAT I NEED NOT SAY ANYTHING

UNLESS I WISH BUT WHATEVER I DO SAY WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN AS

EVIDENCE, AND SPEAKING IN ENGLISH LANGUAGE I MADE THIS STATEMENT

VOLUNTARILY AND WITHOUT ANY FORCE OR DURES FROM ANY PERSON.

NAME AND SIGNED: THA BAH

SDG. 20931 16/06/09

OR (INDEPENDENT WITNESS) OR (SUSPECT/ACCUSED)

RTP

SGD.

RTP 16-06-09

SUSPECT STATES AS FOLLOWS:

The Gambia Press Union’s President, Ndey Tapha Sosseh, sent me an email, informing me the she wrote a press release on President Jammeh’s statement on the death of Debra Iya. I and she asked my opinion as the vice president. I then advise her to drop it because it may lead to something, she replied and told me that she has inform the others about it. I then told her that email. I then told her that email. She will call the Secretary General to GPU assigned me to tell her to drop it and I will call her. That night, I then signed out from the
I went home and did not check my mail and I don't go to the office until on Monday the 15th of June 2009. I was called by one Ebrima Drammeh who told me that I was needed at the NIA office for clarification of some points concerning the press release that was published on newspapers by the GPU. Then I went and was questioned and told them all that I knew about it, and they asked me to open my email box which I did.

IEMENT RECORDED BY

ACUSED/SUSPECT

I hereby certify that I witnessed the above recorded cautionary statement of the accused, which was given voluntarily without any force or duress from any person.

Independent witness
CAUTIONARY STATEMENT

NAME OF PERSON: Pap Saine
ADDRESS: The Gambia Newspaper
AGE: 53
OCCUPATION: Journalist

I, Pap Saine, having been duly cautioned by

INDEPENDENT WITNESS BY THE NAME OF: Tijani E. Bally
OF: Banjul Phone 9342811

THAT I NEED NOT SAY ANYTHING
UNLESS I WISH BUT WHATEVER I DO SAY WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN AS
EVIDENCE, AND SPEAKING IN ENGLISH LANGUAGE I MADE THIS STATEMENT
VOLUNTARILY AND WITHOUT ANY FORCE OR DURESS FROM ANY PERSON.

NAME AND

SGD. (20 Oct 2007) 06/57

OR

{INDEPENDENT WITNESS} OR {SUSPECT/ACUSED}

RTP

SUSPECT STATES AS FOLLOWS:

"It was Thursday June 10 around 5pm that Sanda Jabri Dubu, First Vice President of C.P.U., informed me that the President of C.P.U. Nyeye Tafofa sought to be requested a space for publicication, but she did not elaborate.

Friday June 11, 2009 I went to my box but I could not retrieve the email sent by Nyeye Tafofa. It came as spam.

This Friday I read the publication
Through Forayaa and I had an idea of the press release. The Sunday Times included my name among others as a legal entity. The press release mentions the use of my name, and the executive editor of the newspaper, Mrs. Ndi, said to me, 'We had little press release since I was satisfied about the text.' I authorised the publication.

IEMENT RECORDED BY

AE...Myself

K...P.P. SAMO

ON

I hereby certify that I witnessed the above recorded cautionary statement of act/accused, which was given voluntarily without force or duress from any person.

Sign...

Independent witness
CAUTIONARY STATEMENT

NAME OF PERSON: EBRIMA SAWANH
ADDRESS: WELINGARA
AGE: 37
OCCUPATION: JOURNALIST

HAVING BEEN DULY CAUTIONED BY
IN THE PRESENCE OF AN

INDEPENDENT WITNESS BY THE NAME OF TUYAM BAII
OF BANJUL, THAT I NEED NOT SAY ANYTHING UNLESS I WISH BUT WHATEVER I DO SAY WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN AS EVIDENCE, AND SPEAKING IN ENGLISH LANGUAGE I MADE THIS STATEMENT VOLUNTARILY AND WITHOUT ANY FORCE OR DURESS FROM ANY PERSON.

NAME AND SGD. NAME AND SGD.
TESEAN E. BAII. EBRIMA SAWANH
OR (INDEPENDENT WITNESS) OR {SUSPECT/ACCUSED}
RTP

RTP

SUSPECT STATES AS FOLLOWS:

It was on Sunday June 15th 2009 when I reached at the print newspaper office that Mr. pap Saine the publisher and editor asked if anybody has a received an email from Iidency Taphe Sosseh GFF president in relation to a complaint. There Mr. Pa Modou Taal replied that he has it in his email and it was there that he downloaded it. After reading the content pap Saine the publisher allowed it to be published. However Thursday 11th June that pap Saine told me that Sarata Jabbi has told him that Ngay Taphe said she is going to send an email.
The Gambia: Freedom of Expression on Trial

February 2010

Sign. Independent witness

K. SAMANET

I certify that I witnessed the above recorded cautionary statement of the accused, which was given voluntarily, but any fear or duress from any person.

JEMETE RECORDERED BY

ACCUSED SUSECT

16-06-09
CAUTIONARY STATEMENT

NAME OF PERSON  BAI EMIL TOURAY
ADDRESS  GPO
AGE  35          OCCUPATION  JOURNALIST

I, BAI EMIL TOURAY HAVING BEEN DURY CAUTIONED BY

_____________________________ IN THE PRESENCE OF AN

INDEPENDENT WITNESS BY THE NAME OF  SOMEONE THEY CALLED TUSAN BAH

OF  BANSUL THAT I NEED NOT SAY ANYTHING

UNLESS WISH BUT WHATEVER I DO SAY WILL BE TAKEN DOWN IN
WRITING AND MAY BE GIVEN AS EVIDENCE, AND SPEAKING IN  ENGLISH
LANGUAGE, I MADE THIS STATEMENT VOLUNTARILY AND WITHOUT ANY
FORCE OR DURESS FROM ANY PERSON.

NAME AND  

SGD.  BAI EMIL TOURAY

OR  (INDEPENDENT WITNESS) OR  

RTP  ___________ OR  (SUSPECT/ACCUSED)

(NAME& SIGN OR RTP)

SUSPECT STATES AS FOLLOWS:

_____________________________

POSTERITY,  

_____________________________
Annex D: Indictment dated 18 June 2009
IN THE MAGISTRATE COURT OF THE GAMBIA
HOLDING AT KANIFING
CRIMINAL CASE NO. .........

BETWEEN:

THE STATE .......................................... COMPLAINANT

AND

1. EBRIMA SAWANEH .................. ACCUSED PERSONS
2. PAP SAINÉ
3. SARATA JABBI DIBBA
4. PA MODOU FAAL
5. ABUBACARR SAIDY KHAN
6. SAM SARR
7. BAI EMIL TOURAY

CHARGE

COUNT ONE

STATEMENT OF OFFENCE


PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various websites on the Internet Seditious Publications making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.
COUNT TWO

STATEMENT OF OFFENCE

Publishing Seditious Publication contrary to section 51 (1) (a) read together with section 52 (1) (c) of the Criminal Code Cap 10 Vol. III Laws of The Gambia 1990.

PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MÓDOU FAAL, ABUBACARR SAIĐY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in the Foroyaa Newspaper edition of 12 – 14 June 2009 at page 3 the following seditious publication:-

"Mere statements and or speculations and ridicule, such as the events leading to the death of Deyda Hydara, cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise" and thereby committed an offence.

COUNT THREE

STATEMENT OF OFFENCE

Publishing Seditious Publication contrary to section 51 (1) (a) read together with section 52 (1) (c) of the Criminal Code Cap 10 Vol. III Laws of The Gambia 1990.

PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MÓDOU FAAL, ABUBACARR SAIĐY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in The Point Newspaper edition of 15 June 2009 at page 7 the following seditious publication:-
"Mere statements and or speculations and ridicule re: the events leading to the death of Doyda Hydara cannot and will not be accepted as exoneration of The Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the statement can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise and thereby committed an offence.

Dated this ........ day of ............... 2009

..............................
R. N. Chenge
Director of Public Prosecutions
Ministry of Justice
Marina Parade
Banjul
IN THE HIGH COURT OF THE GAMBIA
HOLDEN AT BANJUL
CRIMINAL CASE NO. ..............

BETWEEN:

THE STATE ........................................ COMPLAINANT

AND

8. EBRIMA SAWANEH .................. ACCUSED PERSONS
9. PAP SAINE
10. SARATA JABBI DIBBA
11. PA MODOU FAAL
12. ABUBACARR SAIDY KHAN
13. SAM SARR
14. BAI EMIL TOURAY

INFORMATION, SUMMARY OF EVIDENCE, LIST OF WITNESSES
AND LIST OF EXHIBITS

FILED THIS 26TH DAY OF DATE
20........ AT O' CLOCK
IN THE
REGISTRAR

R.N CHENG
DIRECTOR OF PUBLIC PROSECUTIONS
MINISTRY OF JUSTICE
MARINA PARADE
BANJUL
Annex E: Indictment dated 26 June 2009
IN THE HIGH COURT OF THE GAMBIA

HOLDEN AT BANJUL

CRIMINAL CASE NO. .................

BETWEEN:

THE STATE ........................................ COMPLAINANT

AND

1. EBRIMA SAWANEH ............... ACCUSED PERSONS
2. PAP SAINÉ
3. SARATA JABBI DIBBA
4. PA MODOU FAAL
5. ABUBACARR SAIDY KHAN
6. SAM SARR
7. BAI EMIL TOURAY

This Honourable Court is informed by the Hon. Attorney General that Ebrima Sawañeh, Pap Sainé, Sarata Jabbi-Dibba, Pa Modou Faal, Abubacarr Saidykhan, Sam Sarr and Bai Emil Touray are charged with the following offences.

COUNT ONE

STATEMENT OF OFFENCE


PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various websites on the Internet Seditious Publications making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.
COUNT TWO

STATEMENT OF OFFENCE

Publishing Seditious Publication contrary to section 51 (1) (a) read together with section 52 (1) (c) of the Criminal Code Cap 10 Vol. III Laws of The Gambia 1990.

PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in the Foroyaa Newspaper edition of 12 – 14 June 2009 at page 3 the following seditious publication:-

"Mere statements and or speculations and ridicule, such as the events leading to the death of Deyda Hydara, cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise" and thereby committed an offence.

COUNT THREE

STATEMENT OF OFFENCE

Publishing Seditious Publication contrary to section 51 (1) (a) read together with section 52 (1) (c) of the Criminal Code Cap 10 Vol. III Laws of The Gambia 1990.

PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in The Point Newspaper edition of 15 June 2009 at page 7 the following seditious publication:-
"Mere statements and or speculations and ridicule re: the events leading to the death of Deyda Hydara cannot and will not be accepted as exonerations of The Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the statement can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise and thereby committed an offence.

COUNT FOUR

STATEMENT OF OFFENCE


PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINE, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.

COUNT FIVE

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 published in various Newspapers in the Gambia and on various websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.

Dated this .......... day of .................. 2009


............................

R. N. Chenge
Director of Public Prosecutions
Ministry of Justice
Marina Parade
Banjul
LIST OF WITNESSES

1. Alhagie Ousman S. Tamba
2. Jalamang Janko
3. Baboucarr Sillah
4. An N.I.A Officer
SUMMARY OF EVIDENCE

1. ALHAGIE OUSMAN S. TAMBA: Witness is a Civil Servant. He will state that on Monday the 15th June while on duty he received information from Head Quarters for the arrest of the 6th accused person Sam Sarr and the circumstances leading to the arrest of the 5th accused.

2. JALAMANG JANKO: Witness is a security Officer attached to the Office of The President. He will state that on Monday 15th June 2009 around 6:30 pm he was informed by the Officer Commanding Bundung Station that the 6th accused person should be arrested and how the arrest was effected.

3. BABOUBARR SALLAH: Witness is a security Officer attached to the Office of The President. He will state that on Monday 15th June 2009 around 6:30 pm he was informed by the Officer Commanding Bundung Station that the 6th accused person should be arrested and how the arrest was effected.

4. AN N.I.A OFFICER: He will tender statements of accused persons and the offending publications and other documents.

5. TIJAN E. BAH: He will state that he was the independent witness in the obtaining of cautionary statements of all the accused persons. He will inform the court of the impression he got when he read the publications.
LIST OF EXHIBITS

3. Cautionary Statements of accused persons
4. Email correspondence
STATEMENT

I happen on Monday, 15th June 2009, while on duty instruction came from headquarter that Mr. Sama San of Foroyaa news paper should be arrested and taken to the headquarter.

After the instruction a team was organised headed by me and we went to Foroyaa headquarter where he was seen and arrested.

While on the procession another journalist came out and started to take our picture, then he was also arrested, who is later known to be Abubacarr Saidy Khan a journalist. All were taken to the Foroyaa reporter and jail were taken to thepictures with the camera and detention. 

Alla Ousman S. Tambor
NAME: JALAMANG JANKO
AGA: ADULT
OCCUPATION: SECURITY (OFFICE OF THE PRESIDENT)
ADDRESS: 10 MARINA PARADE
DATE: 15TH JUNE 2009

It happens on Monday 15th of June 2009 around 06:30pm, when I was called by my officer commanding Bundung that he received a called from our authorities that one Sam Sarr, editor of Faroyaa newspaper should be arrested. When I arrived in his resident at Churchill’s town I met him in his house teaching a number of children, then I introduced myself to him that he is needed at the N.I.A. headquarter in Banjul. But he immediately told me that he is not going unless he is arrested, I them called my O/C Bundung who came and then told him again that please lets go it’s just an invitation, but Mr. Sarr refused, then the O/C told him that you are under arrest. While I was coming out of his house, going towards the car one man claimed to be a journalist stood just close to me taking my picture with his digital Camera, my boss O/C Bundung saw him and took his camera from him and was also arrested too. Then he and Mr. Sarr were boarded to the head quarters for questioning.

Sign:................................
Annex F: Indictment dated 9 July 2009
IN THE HIGH COURT OF THE GAMBIA  
HOLDEN AT BANJUL  
CRIMINAL CASE NO. HC/293/09/CR/062/AO

BETWEEN:

THE STATE .................................................. COMPLAINANT

AND

1. EBRIMA SAWANEH .................... ACCUSED PERSONS  
2. PAP SAIN  
3. SARATA JABBI DIBBA  
4. PA MODOU FAAL  
5. ABUBACARR SAIDY KHAN  
6. SAM SARR  
7. BAI EMIL TOURAY

This Honourable Court is informed by the Hon. Attorney General that Ebrima Sawaneh, Pap Saine, Sarata Jabbi-Dibba, Pa Modou Faal, Abubacarr Saidykhan, Sam Sarr and Bai Emil Touray are charged with the following offences.

COUNT ONE

STATEMENT OF OFFENCE


PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAIN, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various websites on the Internet Seditious Publications making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.
COUNT TWO

STATEMENT OF OFFENCE


PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in the Foroyaa Newspaper edition of 12 – 14 June 2009 at page 3 the following seditious publication:-

"Mere statements and or speculations and ridicule, such as the events leading to the death of Deyda Hydara, cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise" and thereby committed an offence.

COUNT THREE

STATEMENT OF OFFENCE


PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the
Government of the Republic of The Gambia as established by law caused to be published in The Point Newspaper edition of 15 June 2009 at page 7 the following seditious publication:-

"Mere statements and or speculations and ridicule re: the events leading to the death of Deyda Hydara cannot and will not be accepted as exoneration of The Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the statement can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise and thereby committed an offence.

COUNT FOUR

STATEMENT OF OFFENCE


PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of The Gambia Press Union (GPU) sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the Murder of one Deyda Hydara with intent to bring the said President and Government into contempt and ridicule and thereby committed an offence.

COUNT FIVE

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in The Point Newspaper edition of 15 June 2009 at page 7 the following seditious publication:-

"Mere statements and or speculations and ridicule re: the events leading to the death of Deyda Hydara cannot and will not be accepted as exoneration of The Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the statement can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise and thereby committed an offence.

COUNT SIX

STATEMENT OF OFFENCE


EBRIMA SAWANEH, PAP SAINÉ, SARATA JABBI DIBBA, PA MODOU FAAL, ABUBACARR SAIDY KHAN, SAM SARR and BAI EMIL TOURAY all members of the Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of The Gambia as established by law caused to be published in the Foroyaa Newspaper edition of 12 – 14 June 2009 at page 3 the following seditious publication:-

"Mere statements and or speculations and ridicule, such as the events leading to the death of Deyda Hydara, cannot and will not be accepted as exoneration of the Gambia Government, neither by the Union, international journalist associations, the Hydara family or other interested parties. The death of any Gambian, more so one who was most vocal on issues of human rights, freedom of expression and the development of the country
in general, even if it meant clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, reasonably, factually and forensically, and within the shortest possible period prove otherwise” and thereby committed an offence.

Dated this .......... day of ...................... 2009

........................................
R. N. Chenge
Director of Public Prosecutions
Ministry of Justice
Marina Parade
Banjul
IN THE HIGH COURT OF THE GAMBIA
HOLDEN AT BANJUL
CRIMINAL CASE NO. HC/293/09/CR/062/AO

BETWEEN:

THE STATE ............................................. COMPLAINANT

AND

8. EBRIMA SAWANEH ................... ACCUSED PERSONS
9. PAP SAINTE
10. SARATA JABBI DIBBA
11. PA MODOU FAAL
12. ABUBACARR SAIDY KHAN
13. SAM SARR
14. BAI EMIL TOURAY

AMENDED CHARGE SHEET

R.N CHENG
DIRECTOR OF PUBLIC PROSECUTIONS
MINISTRY OF JUSTICE
MARINA PARADE
BANJUL
Annex G: Selected press coverage of the pre-trial proceedings
International Concerns On
The Plight Of Gambian Journalists

Finance Sensitises NGOs On Aid
ECOWAS Small Arms, Light Weapons
Alleged FF.Camp Attacker To
Mount Witness Box
New Chief Justice
Assures The Bar
SOS Celebrates Birth Of
Hermann Gmeiner
‘Journalists Publish
Mistakes On Front Page’
PM Indira Ghandi
The Unhindered Flow Of Information In Gambia

In the wake of the false publication case against Today newspaper, we expressed concern about the hostile legal environment under which the Gambian press operates. One major problem highlighted is the near absence of access to officials one should have information from. This situation prevails even though some government institutions have press officers in place. Our comment then was that "The official press officers have proven to be quite ineffective. Either because they have a fear of losing their jobs, or they do not know how important they are as a link with media, with all media. They normally will not initiate contact or confirm a report that may already be making the rounds in town. A number of times, a promise to call back never materialises, and further follow-up calls would meet with a non-functioning phone line, possibly a deliberate act on the part of the one reliable contact one has on hand at the time."

The question is, what is an editor to do with a hot story under such circumstances and faced with a rapidly approaching printing dead line as well as lack of information about whether one's competition may be coming out with the story. In case that happens and the story is in order, one risks losing the day's market to the competition for that story. Normally reliable sources may be sourced but they are as shown in the Today case, not always reliable. In fact, as shown in the case of the Independent newspaper earlier, even when an identical name makes an editor point to the wrong person or personality as the one named in the story, the situation is still intractable.

Best practices tend to be the best means out of such situations. We commend the resort to having press officers in the institutions of government. These should be former journalists or people who should be given training/exposure to media work. That way they will prove their worth on the job. In more developed societies, these normally give regular press briefings either on daily basis at a fixed time or even more than once a day. At such briefings they deny or confirm or reply that they would check for an answer for later release. These officers are also available on person to person basis throughout the day. One practice is to provide off the record information to put an end to speculations, but purely for background purposes. In these situations, the media are able to assign their journalists on full-time basis to particular beats such as the presidency, the legislature, the various courts of the country as well as ministries, e.g. defence, foreign affairs, interior, finance/treasury, education and so on. The journalists concerned become experts in the given fields of their assignment. There they develop relationships of trust and confidentiality with sources who are actual insiders. In some cases, the journalists will refuse to divulge their sources of information. In terms of their ethics, such an act will be unprofessional and endangers the flow of information to the public through the media. Top officials being what they are, they quite often will rather sit tight on information of a sensitive nature than release it. However, lower down the line, an assistant, or even a secretary or some other insider will be au fait with the information in question and will tell the journalist or provide some hints to him or her (the so-called "tips"). Clearly, if journalists fail to protect such sources of information, they will find themselves with nothing to report as such sources will no longer be available.

Gunjur Gets A Radio Station

Gunjur Radio fondly called Janneh Koto FM, that started broadcasting on Frequency Modulation 101.1 since 19 May 2008 has been finally launched on Friday 15 May 2009, at its premises in Gunjur Village.

The radio is established by Seedy Ali Janneh, a Gambian with the support of his nephew, Buba Barrow, all of whom are based in Germany.

Mr Janneh is an "AB level" holder in mass communication with a huge experience in the field of broadcasting.

Speaking at the official inauguration ceremony, Seedy Ali Janneh, Proprietor of the radio station, thanked the government of The Gambia for approving his license. He said the station will be on air to give information to not only the people of Gunjur, but to the entire Gambian population and the people of Senegal in a bid to educate, inform and entertain them.

The media, he said, is one of the fastest ways to develop this country. He promised to use the radio to satisfy the audience with so many programmes.
Special Rapporteur On Information Is ‘Gravely Concerned’ About Gambian Press

"The Special Rapporteur on Freedom of Expression and Access to Information in Africa, is gravely concerned about recent information she has received, indicating a deterioration of the situation of Freedom of Expression in the Republic of The Gambia.

The Special Rapporteur has again been informed, that on 22 May 2009, President Jammeh, whilst addressing a rally in Kanifing (Municipality), cautioned Baba Leigh, the Imam of Kanifing Mosque and an outspoken critic of the administration, to desist from publicly criticising his Presidency or face the risk of imprisonment and warned that any media practitioners who reported any remarks made by the Imam would face legal action.

The Special Rapporteur has also been informed that Mr. Abdul Hamid Adiamoh, Managing Editor of Today Newspaper, was arrested on 10 June 2009, on charges of false publication and broadcasting, contrary to Section 121 (A) of the Criminal Code. This was allegedly in connection with a story published by his paper, which reported the sacking of the Minister of Justice, Marie Saine-Firdaus and the Minister of Lands, Ismaila Sambou along with the Speaker of the House and the Chief Justice by President Jammeh, on 9 June 2009. According to reports, despite the subsequent issuing of a retraction in his paper on the following day, that is, 11 June 2009, and the letters of apology sent to both Ministers and to the President, he was on 16 June 2009 convicted and sentenced to a fine of 50,000 Dalasis and in default, six months imprisonment, by a Kanifing Magistrates Court.

The Special Rapporteur has also received reports, that in another incident, Ms Sarata Jabbi-Dibba, Mr Emil Touray and Mr. Pa Modou Faal, First Vice President, Secretary General and Treasurer respectively of the Gambia Press Union, were arrested on 15 June 2009 by members of the National Intelligence Agency (NIA), in connection with a Press Release recently issued by the Gambia Press Union, criticising comments made by President Jammeh on the stalled investigations into the 2004 killing of Deyda Hydara, co-founder and Editor of the Point Newspaper. She is concerned about information reaching her, that four other staff of independent newspapers: Mr Fap Saine, Co-publisher and Managing Editor and Mr Ebrima Sawaneh, News Editor of the independent newspaper, The Point, Mr Sam Sarr, the Editor and Mr Saidy Khan, a Reporter with the independent newspaper Foroyaa, have all been arrested in connection with the publication of the said Press Release.

The Special Rapporteur is seriously concerned that all seven journalists were on 18 June 2009, charged before the Kanifing Magistrates Court with three counts of seditious publication and that with the exception of Ms Jabbi-Dibba, who was granted bail to the amount of 200,000 Dalasis, but was not given the time to prepare her bail bond, the bail applications brought on behalf of all six remaining journalists, including Mr Emil Touray and Pa Modou Faal, who suffer serious medical conditions, was denied. She is also concerned about the fact that on 18 June, members of the NIA arrested an eighth journalist, Mr Abba Gibba, Assistant News Editor The Point, at the offices of the Newspaper, after questioning employees about its continued operation, despite the detention of senior staff members.

The Special Rapporteur is particularly disturbed by reports that all these journalists have since their arrest, been denied access to their family members and in particular to their lawyer.

The Special Rapporteur is gravely concerned, that if indeed all these reports are accurate, the Government of the Republic of The Gambia would be failing in its obligations to protect the right to Freedom of Expression as provided in Article 9 of the African Charter on Human and Peoples’ Rights (the African Charter) and the Declaration of Principles on Freedom of Expression in Africa (the Declaration) which supplements the provisions of the African Charter. Such a state of affairs would also be contrary to other international human rights instruments.

Republic of the Gambia is a State Party.

The Special Rapporteur has therefore expressed her concern in a written letter to the President of The Gambia, urging him to direct the immediate and unconditional release of all eight journalists including Mr. Halifa Sallah and requesting for his comments on all the above alleged violations of the right to Freedom of Expression. In her letter, she also reiterated to the Government of The Gambia, her appeal to all Member States to bring their media laws in conformity with Freedom of Expression standards in general and the Declaration in particular, by repealing laws relating to criminal defamation and amending any existing defamation laws in conformity with Principle XII of the Declaration.

The Special Rapporteur welcomes the verbal invitation extended to her mandate during the recently concluded 46th Ordinary Session of the African Commission in Banjul, to conduct a promotional mission to The Gambia in August 2009. She eagerly awaits an official invitation from the Government of The Gambia to conduct this mission. She firmly believes that such mission, will provide a unique opportunity to engage in constructive dialogue on the above mentioned reports as well as on human rights issues in the Republic of The Gambia, in her dual capacity as Special Rapporteur on Freedom of Expression and Access to Information in Africa and the Member of the African Commission on Human and Peoples’ Rights, responsible for the promotion and protection of human rights in The Gambia."
Women In Media And Others Against Arrests

The Inter Africa Network for Women, Media, Gender and Development (FAMEDEV) and Radio Alternative Voice for Gambians (Radio AVG), a Dakar-based online radio that covers activities in The Gambia, have joined rights and media groups in strongly condemning the mass arrest of media practitioners, gatekeepers and members of the executive of the Gambia Press Union (GPU) in The Gambia.

On Monday, June 15, seven journalists including newspaper editors and executive members of the Gambian Press Union (GPU), were arrested and detained by members of the National Intelligence Agency (NIA) and held without charges or access by their families and lawyers. Those detained were: the First Vice President, Sarata Jabbie Dibba who is a nursing mother with a six-month-old infant, the Secretary General, Emil Touray, the Treasurer Pa Modou Faal, the Editor and Deputy Editor of the Point newspaper, Pap Saine and Ebrima Sawaneh respectively, and the Editor-in-Chief and a reporter of Foroyaa newspaper, Sam Sarr and Abubacarr Saiduhye.

They were all arrested in connection with a press release issued by the GPU in reaction to a state television interview in which President Yahya Jammeh vilified Deyda Hydara, the murdered Editor of the Point newspaper and made ... comments about the state of press freedom in The Gambia. This latest action is another manifestation of the heavy-handedness and intolerance of the Jammeh regime towards journalists and media practitioners in the country. Over the past few years, The Gambia has proved to be one of the most volatile countries to practise as an independent journalist. Media practitioners, mainly local journalists have been threatened, arrested, detained... and forced to flee the country. Private radio stations and newspapers have been closed down ...

We strongly call upon the authorities to release all the detained journalists with immediate effect. We fear for the safety and security of our colleagues and therefore call on national, sub-regional and international bodies and organisations to exert more pressure on the regime in the interest of press freedom, freedom of expression, human rights, democracy and the rule of law.

We urge all foreign companies and nationals with business interests in The Gambia to not just care about their business ventures and interests but also conscientiously consider and raise concerns on human rights issues in the country as a priority. We call on them to put pressure on the ruling government to respect the rights and dignity of its citizens.

We reiterate our solidarity and unflinching support for our colleagues of the Gambia Press Union (GPU) and all media practitioners and journalists in The Gambia in these challenging times (Contd. on page 15).

US Sponsored ‘Topical Symposium’ Ends

By Wally Bah

A one-day workshop on the Opening of the Topical Symposium, organised by the US Embassy in partnership with ACSS Outreach Programme, ended on June 18th 2009 at the Kairaba Beach Hotel.

The workshop centred on national security strategy development and priorities and the media and military security development and priorities.

In his opening statement, the US Ambassador, Barry L. Wells disclosed that since its establishment in 1999, the Africa Centre for Strategic Studies, through the US Embassy, has funded the participation of more than 60 Gambian civilians and military officers in seminars held in both the United States and Africa.

According to him, participation in regular African Centre for Strategic Studies seminars, such as the Next Generation of African Military Leaders Course and Senior Leaders Seminar, as well as in special courses such as those dealing with security challenges of small arms and light weapons proliferation in Africa, the ECOWAS Strategic Level Workshops, the African Defence Attaché Course, the Health and Security Topical Seminar, Maritime Safety and Security, Managing Security Resources in Africa and the West Ministerial Symposium, has helped create a strong cadre of highly knowledgeable and experienced professionals in both the military and the civil services of The Gambia.

He stated that “You have also created a core of enlightened officials who are aware of the key security and strategic issues facing West Africa and the continent in general”.

“As we can see from the audience here, ACSS alumni occupies key positions in the Gambian general and civil services,” he added.

Wells pointed to the Chief of Defence Staff, Major-General Lang Tombong Tamba, the Deputy CDS Colonel Masanneh Kinteh and the Chiefs of Army, Navy and the National Guards, all of whom were present at the occasion, for having participated in the ACSS’ programmes.

The Permanent Secretary at the Ministry of Defence, Mr. Joseph Jassey, who is the Principal Government Contact for ACSS Programme, is himself an alumnus, he stated, noting that they hoped this chapter would be a unique vehicle to promote discussion of regional and national security issues, and the exchange of ideas and perspectives on these issues.

The Deputy Director and Communications Manager of ACSS, Mr. David Sims, said in coordination with their African partners, they had decided to identify and analyse current and likely future security challenges, and to address it at strategic levels.

Sims also gave an overview of the relations and roles of the media, noting that they are neither an enemy nor a friend.

“They are a conduit and a filter, between us and the public,” he concluded.
African Editors Express Shock at Arrests

The South African based African Editors Forum (TAEF) has joined its voice to the chorus of voices condemning the recent arrest of journalists in The Gambia. We reproduce below the full text of their press release:

The African Editors Forum is shocked at the behaviour of The Gambian government which has been detaining journalists almost every day since the beginning of June. The detention spree was sparked by comments made by President Yahya Jammeh on May 22, in which he made disparaging remarks about continuing concern for the failed investigation into the death of Gambian journalist Deyda Hydara. Hydara was killed by what is believed to be government security agents in 2004.

A statement issued by the Gambian Press Union criticizing Jammeh’s comments was reported on by a number of newspapers, resulting in those editors and journalists who carried the story being rounded up and detained. TAEF condemns this behavior and aligns itself with the statement by The Special Rapporteur on Freedom of Expression, Advocate Pansy Tlakula, calling on the Gambian government to begin honouring its obligations in terms of the African Commission on Human and People’s Rights. Gambian media has been operating under a strict regime of censorship, characterized by harassment, intimidation and detention as well as disappearances of journalists. Many journalists now live outside the country.

In particular we wish to draw attention to the following:
The arrest of Ms Sara Jabbie-Dibba, Mr Emil Touray and Mr Pa Modou Faal, First-Vice President, Secretary General and Treasurer respectively of the Gambia Press Union, on 15 June 2009, by members of the National Intelligence Agency (NIA). This was in connection with a media statement recently issued by the Gambian Press Union, criticising comments made by President Jammeh on the stalled investigations into the 2004 killing of Deyda.

GPU President Ndeyapha Sonseh

Hydara, co-founder and Editor of the Point Newspaper. Four other staff members of independent newspapers: Mr Pap Saleh, Co-publisher and Managing Editor and Mr Ebrima Sawaneh, News Editor of the independent newspaper, The Point, Mr Sam Sarr, the Editor and Mr Sainey Khan, a Reporter with the independent newspaper Foroyaa, were all arrested on 15 June 2009, for publishing the GPU statement.

All seven were granted bail on a second appearance in court on Monday. We call for the dropping of the charges.

The arrest of yet another reporter, Augustine Kanja, outside court where the seven were appearing on Monday, and the barring of media, relatives and the general public from attending the bail applications.

Information that on 22 May 2009, President Jammeh, whilst addressing a rally in Kanifing, cautioned the Imam of Kanifing, Baha Leigh, who is an outspoken critic of the President’s administration, to desist from publicly criticising his Presidency or face the risk of imprisonment.

President Jammeh reportedly warned that any media practitioners who reported any remarks made by the Imam would face legal action.

The arrest of Mr Abdul Hamid Adiamoh, Managing Editor of Today Newspaper, on 10 June 2009, on charges of false publication and broadcasting, contrary to Section 181 (A) of the Criminal Code. This was allegedly in connection with a story published by Today Newspaper, relating to alleged sacking of a number of ministers. The story was later retracted and an apology tendered. Adiamoh was however charged and sentenced to six months imprisonment or a fine.

The “disappearance” of Daily Observer journalist, Chief Ebrima Manneh, since June 7, 2006. Manneh was allegedly picked up at his office by plain clothes security officials. He has not been seen since and government has denied knowledge of his whereabouts, although he was apparently treated at a hospital for an ailment in July 2007. His case was taken to the Community Court of Justice of the Economic Community of West African States (ECOWAS), in Abuja, Nigeria. The Gambian government boycotted the case but the court however found that Manneh was detained by The Gambian police and ordered his release and compensation but nothing has happened.

A resolution by The African Commission on Human and Peoples’ Rights, in November last year which condemned violations of Freedom of Expression and harassment and intimidation of journalists in The Gambia.

TAEF further calls on the African Union Commission through its Chairperson Jean Ping, to intervene and ensure that The Gambian dictatorship lives up to its commitments to the AU.

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THE GAMBIA NEWS AND REPORT MAGAZINE
Journalists Remanded Again

The Banjul High Court presided over by Justice Joseph Wowo on Friday 3rd July 2009 remanded the journalists who are charged with five counts ranging from seditious publication to criminal defamation.

Justice Wowo ordered the accused persons to be remanded in custody at the mile II state central prison pending their lawyer filing a formal bail application before the court.

Meanwhile Sarata Jibba-Dibba, a breast feeding mother was later granted bail with the same bail conditions granted to her earlier by the Kanifing Magistrates’ Court.

At the high court proceeding on Friday, Senior counsel Antuman Gaye who represent the 1st, 2nd, 3rd, 4th, 5th, and the 7th accused persons told the court that his client are not take their plea in all the charges.

The 6th accused person, Sam Sarr who represented himself also told the court that he is not taken plea to all the charges. He said the position taken by the accused persons was a legal issue.

Senior counsel Gaye added that counts, 1, 2, and 3 are all pending at the Magistrates court and amount to an abuse of the court process.

He said he had checked at the Kanifing Magistrates’ Court before coming to court and it was not withdrawn, adding that the subject matter at the Kanifing Magistrates’ Court cannot be the same subject matter at the high court. He disclosed that the accused did not take pleas at the Magistrate court, but where granted bail.

The Director of Public Prosecution, R.N Chenge, said filing a case at the Magistrate court was to avoid the accused persons been detained at the NIA and that was the reason why the case was filed at the Magistrate court.

He said at the Magistrate court the plea was not taken.

DPP Chenge further told the court that at the Magistrate court was only holding charges that would be withdrawn.

Justice Joseph Wowo later ordered the defense counsel of the accused persons to file a formal application for any objection.

The case was adjourned to 8th July 2009.
Les Journalistes en Détention, Libérés Sous Caution

La Cour Suprême de Banjul, sous la présidence du procureur Joseph Wowo a accordé la liberté sous caution aux journalistes détenus : Pap Saine, Ebrima Sawaneh, Sam Sarr, Pa Modou Faal, Bai Emil Touray, et Abubacarr Saidy-Khan, tous poursuivis pour cinq chefs d’accusation allant de la publication séditieuse à la diffamation.

Ce développement est intervenu suivant l’introduction par l’avocat de la défense, d’une demande formelle de libération sous caution au tribunal, à laquelle le directeur du ministère public a dit qu’il ne s’oppose pas à la motion introduite par l’avocat de la défense.

Les conditions de la liberté sont les suivantes : D400,000 et deux garanties gambiennes pour chacun ; la garanties doit avoir une propriété foncière dans la zone de la Grande Banjul ; les accusées ne doivent pas commettre les mêmes fautes alors en liberté provisoire ; que les personnes accusées doivent se présenter au commissariat de police le plus proche chaque semaine jusqu’à nouvelle ordre.
The 7 Journalists To Appear in High Court Today

As Pending Case in Kanifing, withdrawn

By Fabakary B. Ceesay
The six Gambian journalists that were remanded in custody by Justice Joseph Wowo of the Banjul High Court on Friday, 3 July, have been granted bail on Monday, 6 July, by the same judge. They will today, 8 July, appear before the same court to answer to a five count criminal charges against them by the State. The seventh journalist has been on bail since Friday, due to her status as a lactating mother. She will also appear alongside her media colleagues.

The seven journalists, Mr. Sam Sarr, Pap Saine, Emil Touray, Ebrima Sawaneh, Abubacarr Saidykhan, Mrs. Sarata Jabbie Dibba and Pa Modou Faal, were all arrested on Monday, 15 June. All except Mrs. Jabbie Dibba were put incommunicado for three days and rushed to court without a
The 7 Journalists To Appear in High Court Today

As Pending Case In Kanifing, withdrawn

From page 1

legal representative. The seven journalists were arraigned in court on Thursday, 18 June, and charged with three counts of Conspiracy to publish seditious publication and publishing seditious publication. The ruling on their bail applications was deferred by Magistrate Sainabou Wadda Ceesaay of the Kanifing Magistrates Court and they were then remanded. Mrs. Jabbi Dibba was given a bail bond of D200,000, with two Gambian sureties with landed properties.

On Monday, 22 June, Magistrate Wadda Ceesaay granted the six journalists bail with the same conditions as that of Mrs. Dibba. They were asked to appear in court on Tuesday, 7 July, to take their pleas to the charges. However, prior to the 7 July case at Kanifing Magistrates' Court, the matter took a U-turn when the State filed another case at the High Court on Friday, 3 July, with the same three charges in the lower court together with two new additional charges. The additional charges relate to defamation against the person of the president and the state. They refused to take their pleas to the charges. The lawyer argued that three of the charges are pending at the Kanifing Magistrates' Court and that they could not take their pleas to the same charges at the High Court. Defence Lawyer Gaye argued that until the charges at the Kanifing court negotiations took place.

On Monday, 6 July, the defence counsel, Mr. Antounm Gaye, the lead counsel together with Lamin S. Camara and Madam Hajum Gaye, filed a 14 paragraph bail application supported by the third accused person Mrs. Sarata Jabbi Dibba. Mr. Gaye told the court that they would rely on at the 14 points of the application. The Director of Public Prosecutions (DPP), R. N. Cherge did not oppose the bail application, but argued that the accused persons should not commit the alleged offences again while on bail. He added that if they commit the said offences again, they should be remanded.

Defence Counsel Gaye objected to that and argued that DPP was taking as if the alleged offences are true. He said, "Nobody knows whether the said offences are committed yet. We are saying we did not commit any offence."

Justice Wambo, in his ruling, said "Upon listening to counsel for the applicant, Mr. A.A.B. Gaye, and that of the State counsel, DPP R. N. Chenge, who said he is not opposing the application for bail, the court will therefore grant bail to the applicants on the following terms: Deposit a D400,000, 000.00 bond with the Registrar of the Court. 2. Two Gambian sureties, each for the applicants and they must have landed properties within the Greater Banjul area. 3. The applicants shall not publish anything whatsoever that would relate to the alleged publication pending bail. 4. The applicants shall report to the nearest police station to their residence once every week until further notice."

However, by the time the bail preparation process was completed, Justice Wambo had already closed for the day and so the bond could not be signed for the release of the seven journalists. However, it was on Tuesday, 7 July, that the 6 remanded journalists walked out of the Mile 2 prison, at exactly 10:40 am, and headed to the office of the judge to finalize their release on bail. They later went to Kanifing Magistrates' Court for the State to withdraw the pending three charges before the said court. They will appear at the High Court today to answer to the five charges against them.

The charges against the seven journalists are, "Conspiracy to publish seditious publication, contrary to section 368 of the criminal code". The particulars of offence states, "Ebrima Savanehe, Pap Saine, Sarata Jabbi Dibba, Pa Modou Fall, Abubacarr Saliykhan, Sam Sarr and Ba Emile Toury, all members of the Gambia Press Union (GPU) sometimes in the month of June 2009, conspired amongst themselves and others not at large to publish in various newspapers in the Gambia and on various websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the murder of One Deyda Hydara with intent to bring to the said President and the Government into contempt and ridicule and thereby committed an offence."

Count two, publishing seditious publication contrary to section 511(1)(a) read together with section 512(1)(c) of the criminal code. "The particulars of offence states, the seven accused persons, "All members of Gambia Press Union (GPU) with intent to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of the Republic of Gambia as established by law caused to be published in the Foroyaa newspaper edition of 12-14 June, 2009, at page 3 the following seditious publications," as thus, "Mere statements leading to the death of Deyda Hydara, cannot be accepted as exonerations of the Gambia government, neither by the union, international journalist associations, the Hydra Family or other interested parties. The death of Deyda Gambia, someone who was vocal on issues of human rights, freedom of expression and the development of the country in general, even if it means clashing with the powers that be, can only be deemed suspicious until such a time that the state can logically, factually and forensically, and with the shortest possible period prove otherwise" and thereby committed an offence.

However both count two and three are the same with the particulars of offence, except the phrase, "the Point newspaper edition of 15 June 2009 at page 7."

Count four "Conspiracy to commit criminal defamation contrary to section 368 of the Criminal Code" and Count Five states "criminal defamation contrary to section 176 and punishable by section 34 of the criminal code."

The particulars of offence for Count Four are that the accused persons sometime in the month of June 2009 conspired amongst themselves and others now at large to publish in various Newspapers in the Gambia and on various Websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the murder of One Deyda Hydara with intent to bring to the said President and the Government into contempt and ridicule and thereby committed an offence.

The particulars of offence for Count Five are that the accused persons sometime in the month of June 2009 published in various Newspapers in the Gambia and on various Websites on the Internet defamatory statements making innuendoes that the President of the Republic of the Gambia and the Government of the Gambia are responsible for the murder of One Deyda Hydara with intent to bring to the said President and the Government into contempt and ridicule and thereby committed an offence.

The ordeal of the seven journalists started when Foroyaa and Point newspapers published the statement issued by the Gambia Press Union (GPU) in relation to the statement made by President Yahya Jammeh on the assassination of journalist Deyda Hydara in an exclusive interview with GRTS, which was re-broadcast on three different occasions.
In 7 Journalists Sedition trial
Defence Counsel Objects to Charges

By Lamin Njie & Saikou Ceesay

The trial of the seven Gambian journalists which was adjourned to Wednesday 8th July 2009 for them to take their plea did not end up in that way before Justice Joseph Wurro of the High Court in Banjul yesterday. When the court clerk called the case before a full-packed court room, Antouman Gaye, the lead defense lawyer for all the accused persons except Sam Sarr Managing Editor of Foyosha Newspaper, informed the Court that his clients are not going to take their plea and that they the (defense) are taking a preliminary objection to all the five court charges. Submitting further, Counsel Gaye told the Court (Contd on page 6)
In 7 Journalists' Sedition Trial
Defence Counsel Objects to Charges

Court that With regards to Counts 1, 2 and 3, neither the defense nor the accused persons have been served with any notice that the Attorney General has given her consent for the charges to be dropped. “We have not been served with any consent of the Attorney General. We are not aware of it,” Gaye told the Court. For counts 4 and 5, counsel Gaye further submitted that both counts are equally deceptive.

“Another fundamentally objection we are making is that all these counts are wrong.

The law requires to particularize defamatory words and in this case they are not particularized to know exactly what charges,” he said.

Counsel Gaye later objected to Count two and three saying both counts are charging more than one offence. An accused person must know the reasons of the charges before coming to court he submitted.

Sam Sarr, the Managing Editor of Foroyaa Newspaper who is representing himself also told the court that he entirely associates himself with the objections raised by the lead defense counsel of the six other accused journalists. Mr Sarr further submitted that in counts two and three the particulars of offense disclose an offense not known to the law.

At this juncture, Richards N. Chenge, the Director of Public Prosecutions applied for a short adjournment to reply to the objections raised by the defense. The presiding judge justice Joseph Wowo then adjourned the matter to the 10th July, 2009 (tomorrow) for continuation of trial.

The US ambassador to the Gambia Barry Wells was among the large crowd that witnessed yesterday’s proceedings.

It could be recalled that the seven journalists remanded by the High court on Friday July 3, were granted bail on Monday July 6 after the defense counsel Antouman Gaye filed an application before the trial judge Joseph Wowo of the Banjul High court for their release.

Subsequent to granting them bail, Justice Wowo announced that the accused persons should meet a bail condition of four hundred thousand dalasis (D400,000) with two Gambian sureties with landed properties within the Greater Banjul Area a condition which was met by family members of each of the accused. Justice Wowo was supposed to sign the bail bond for the accused on Tuesday July 7, 2009 at his office in the High.

However, Sarata Jabbie-Dibba a nursing mother was granted bail on Friday July 3, 2009 after spending sometime in remand.

The accused journalists subsequently remanded are: Pap Saine, Managing Editor of the Point Newspaper, and Ebirama Sanah, News Editor of The Point Newspaper. Sam Sarr Managing Editor of the Foroyaa Newspaper, Emil Touray Secretary General Gambia Press Union, Pa Modou Faal Treasurer and Abubacarr Saidy, a reporter with the Foroyaa Newspaper.

They were first arraigned before Magistrate Sainabou Wadda-Ceesay of the Kanifing Magistrates’ Court on Thursday June 18, 2009 and were not represented by a defense counsel. They were then ordered to be remanded on that same Thursday June 18, 2009 at the State Central Prisons Mile II upon refusal to take their plea in court to the three counts of seditious publication.

They later appeared in the high court on 3rd July, 2009 to answer to two new additional charges of “criminal defamation” bringing the charges to five in total.
In Seven Journalists’ Case
Defence Raises Objections To Charges

(Turn to page 3)
In Seven Journalists’ Case
Defence Raises
Objections To Charges

By Soury Camara

The seven journalists: Ebrima Sawaneh, Pap Saine, Pa Modou Faal, Sarata Jabbi Dibba, Ebrima Saidykhin, Sam Sarr and Bai Emile Touray, who are charged with five-count charges ranging from seditious publications, conspiracy to publish seditious publications and criminal defamation, yesterday 8th July 2009, appeared before Justice Joseph Wowo of the High Court. The charges were read to the accused in a congested and chock-full courtroom, the defence objected to all the five counts.

The leading defence counsel Antuman Gaye, stood up to make a series of objections regarding the taking of pleas by the accused persons, except for Sam Sarr who is representing himself.

Defence counsel Antuman Gaye made the objections upon court’s reading of the first count for the accused persons to take their pleas. He argued that the defence team was submitting a preliminary objection to all the charges preferred against their clients.

This pronouncement of the Director of Public Prosecution, Richard N. Chengo to object to the defence’s submission. Submitting further, he said, in the last objection the matter was adjourned for the accused to enter their plea.

But the defence counsel, led by senior counsel Antuman Gaye informed that the last court’s session was over taken by events and subsequently cited Section 161 (A) of the Criminal Procedure Code “that the right time of making objections in court concerning the charge is at plea taking,” arguing further that it was the right time.

Submitting further, with regards to count 1, 2 and 3, the counsel submitted that neither the accused nor their counsel were served with any notice by the Attorney-General, even as her consent of withdrawing those charges from the subsidiary courts.

Still buttressing defects in the process of serving the defence counsel, senior counsel Gaye, therefore quoted Section 33 subsection (3) of the Criminal Procedure Code that “any person cannot be prosecuted without the consent of the Attorney-General, and thus he submitted that there is no amendment to this section,” counsel Gaye submitted.

In line with count 4 and 5, “I submitted in respect to count four and five are equally defects” he submitted.

Defence counsel further pointed out defects in the offences brought in count 4 and 5, arguing that criminal defamation and as in section 174 have been amended. He submitted that any person charged with printing and publishing or otherwise should not be charged with defamation, that libel and henceforth count 4 and 5, is defected by Section 34.

While submitting still on count 4 and 5, in line with conspiracy and criminal defamation, according to the lead counsel Antuman Gaye, are mutual charges and the law requires the specific criminal defamatory words and the particular website.

He further submitted that there is a substantive offence that is against the modern trend in criminal offences, which he referred to as oppression on the charges.

Leading counsel Gaye quoted several authorities, including the law report of Ghana in line with count 2 that publishing with seditious intentions is duplicitous and to that effect is carrying several charges that the accused persons must know precisely of what brought them to court.

The six accused person, Sam Sarr who represented himself, associated himself with the issues raised by defence counsel representing the six accused persons.

He further drew the attention of the court to the Amendment Act of 2005, which imposes a minimum penalty of D50,000 and a maximum penalty of D250,000 or both a fine and imprisonment of six months.

Regarding his position on count 2 and 3, he said, the particulars of offences disclosed an offence not known in law.

The Director of Public Prosecution Richard N. Chengo applied for short adjournment to reply to the preliminary objections raised by the defence.

The court attempted to serve the defence with the fiat in court, but defence counsel refused on the ground that accepting it would be counter productive to their objections.

The presiding Justice Wowo said “this court is here to do justice to both sides.” In reaction, defence counsel Antuman Gaye retorted “well this is what we expect.”

The case was adjourned to tomorrow Friday 10th July 2009, for DPP to reply to the preliminary objections raised by the defence.

Antuman Gaye, Lamin S Camara, Nor Artuk, Chogun, Coundbeh Gaye-Coker and Hagu Kam Gaye represented the accused persons.
Annex H: Selected provisions of the Constitution

Article 17 – Fundamental rights and freedoms

(1) The fundamental human rights and freedoms enshrined in this Chapter shall be respected and upheld by all organs of the executive and its agencies, the legislature and, where applicable to them, by all natural and legal persons in The Gambia, and shall be enforceable by the courts in accordance with this Constitution.

(2) Every person in The Gambia, whatever his or her race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest.

Article 19 – Protection of the right to personal liberty

(1) Every person shall have the right to liberty and security of the person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as established by law.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language he or she understands, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner.

(3) Any person who is arrested or detained –

(a) for the purpose of bringing him or her before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the laws of The Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within seventy-two hours.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not thereafter be further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) Any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including, in particular, such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting.
Article 24 – Provisions to secure protection of the law and fair play

(1) Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or for the determination of the existence or extent of any civil right or obligation, shall be independent and impartial; and

(a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or

(b) where proceedings are commenced for the determination or the existence of any civil right or obligation, the case shall be afforded a fair hearing within a reasonable time.

(2) All proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any other authority, including the announcement of the decision of the court or other authority, shall be held in public: Provided that the court or other authority may, to such extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or interlocutory civil proceedings, or to such extent as it may be empowered or required by law to do so in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings persons other than the parties thereto and their legal representatives.

(3) Every person who is charged with a criminal offence –

(a) shall be presumed innocent until he or she is proved, or has pleaded, guilty;

(b) shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his or her defence;

(d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice; Provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the expense of the state;

(e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial of the charge; and, except with his or her own consent, the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impractical and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

(4) When a person is tried for any criminal offence, the accused person or any person authorised by him or her in that behalf shall, if he or she requires and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time, and in any event within thirty days
after the end of the trial, a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) No person shall be charged with or held to be guilty of a criminal offence on account of any act or omission which did not at the time it took place constitute such an offence, and no penalty shall be imposed for any criminal offence which is more severe in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(6) No person who shows that he or she has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other offence of which he or she could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal or revision proceedings relating to the conviction or acquittal: Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial or conviction of the member under service law, but any court so trying such a member and convicting him or her shall, in sentencing him or her to any punishment, take into account any punishment awarded him under service law.

(7) No person shall be tried for a criminal offence if he or she shows he or she has been pardoned for that offence.

(8) No person charged with a criminal offence shall be compelled to give evidence at the trial.

(9) A person charged with a criminal offence in the High Court shall have the right to elect to be tried by a jury.

(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

   (a) subsection (3)(a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

   (b) subsection (3)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds.

**Article 25 – Freedom of speech, conscience, assembly, association and**

(1) Every person shall have the right to –

   (a) freedom of speech and expression, which include freedom of the press and other media;

   ...

**Article 120 - The Courts and the Judicial Power**

...

(3) In the exercise of their judicial functions, the courts, the judges and other holders of judicial office shall be independent and shall be subject only to this Constitution and the law and, save as provided in this Chapter, shall not be subject to the control or direction of any other person or authority.
Annex I: Selected other cases of harassment and intimidation of journalists

Journalist Lamin Fatty of ‘The Independent’ newspaper, who in June 2007 was convicted for publishing ‘false news’ and fined 50,000 dalasi, went into exile early in 2008. He appealed his conviction and the appeal was pending in the courts at year’s end.

On 17 July 2008, Abdul Hamid Adiamoh, the proprietor and managing editor of ‘Today’ newspaper, was arrested following the publication of a story about school children who skipped classes to salvage scrap metal to sell. On 20 August 2008 he was charged with publication with seditious intent, and was ordered to cease publication. Adiamoh pleaded guilty to a charge of failure to renew his business licence, and on 17 September 2008 he was sentenced to a fine of 10,000 dalasi or six months in prison. The fine was paid and the business licence was renewed which allowed the newspaper to resume publication. The trial on the charge of publication with seditious intent was ongoing at year’s end.

On 18 August 2008, Fatou Jaw Manneh, a US-based Gambian journalist, was convicted on charges of sedition. She was sentenced to four years’ imprisonment with hard labour, but was allowed to pay a fine of 250,000 Dalasis in lieu of imprisonment. Her family and friends paid the fine. Manneh had been arrested at Banjul airport in March 2007. She was held for six days (beyond the 72-hour legal limit) before being charged with four sedition-related offences based on remarks she made during a 2005 interview with an online newspaper. Following her conviction she left the country.

On 9 and 10 September 2008, Fabakary Ceesay, of ‘Foroyaa’ newspaper, claimed that he was asked by the inspector general of police to report to police headquarters or face severe consequences. Ceesay stated the police chief was displeased with a report published in Foroyaa on 8 September 2008 about the detention of a suspect for one month without charge.

In the first six months of 2009, Pap Saine, Editor-in-Chief and co-founder of ‘The Point’ newspaper, was subject to four separate prosecutions. The first, based upon a charge of ‘false publication’, ended with the prosecution withdrawing the charge following a constitutional challenge. In the second, Pap Saine’s nationality was challenged by Gambian state authorities. The trial ended following a successful submission of no case to answer by his lawyers. The third prosecution involves a further charge of ‘false publication’, this time in the High Court. However, the court papers have to date not been served. The fourth prosecution forms the contents of this report.

Abdul Hamid Adiamoh, Managing Editor of ‘Today’ newspaper, was arrested on 10 June 2009 on charges of false publication and broadcasting, allegedly in connection with a story published by his paper which reported the sackings of the Minister of Justice, Marie Saine-Firdaus and the Minister of Lands, Ismaila Sambou, along with the Speaker of the House and the Chief Justice by President Jammeh, on 9 June 2009. Despite the subsequent issuing of a retraction in his paper on the following day, that is 11 June 2009, and the letters of apology sent to both Ministers and to the President, he was on 16 June 2009 convicted and sentenced to a fine of 50,000 Dalasi, and, in default, to serve six months imprisonment, by a Kanifing Magistrates’ Court.
Several journalists were arrested and detained without charge for longer than the 72 hours allowed by Gambian law, including journalists Dida Halake, Sam Obi, and Abdulgafari Oladimeji.

At least two journalists – Momodou Justice Darboe and Lamin Fatty – left the country following intimidation by the NIA and other government personnel.

Journalists Yahya Dampha, Omar Bah, Pa Ousman Darboe, Musa Saidykhan, and Sulayman Makalo, previously in hiding in other West African countries, were granted asylum in Europe and the US.

Journalist Mam Cest Ceesay was released in February [what year?] after being held for four months without charge.

The ‘Independent’ newspaper’s premises remained under police surveillance and did not open for a second consecutive year.