

THE GAMBIA

Erosion of human rights safeguards continues

Amnesty International visited the Gambia in January 1996 to talk to government officials about its concerns and to urge them to restore and strengthen human rights safeguards. The delegates had requested meetings with Chairman Yahya Jammeh and members of the Armed Forces Provisional Ruling Council (AFPRC) as well as with other ministers in the government and regretted that only the Minister of Justice was able to meet them. They met a wide range of other people while in the Gambia. This document briefly describes the organization's immediate conclusions and recommendations.

Since July 1994 when Lieutenant (now Captain) Yahya Jammeh seized power in the Gambia, the AFPRC has issued a series of decrees which undermine human rights. In April 1995, Decree 36 (National Goals and Objectives (Amendment) Decree), effectively removed all human rights provisions from the country's laws. Amnesty International is particularly concerned about the erosion of safeguards for political detainees and the reintroduction of the death penalty.

A Court of Appeal decision in July 1995 stated "(N)ow there are no human rights laws in this country". The decision referred to the case of Pa Sallah Jagne who had been Inspector General of Police until the time of his arrest immediately after the July 1994 coup. His lawyer had challenged his detention on several grounds, including the argument that it violated his fundamental human rights. This challenge was unsuccessful and Pa Sallah Jagne remains held under an AFPRC decree allowing for indefinite detention without charge of armed and police personnel, but since March 1995, he has been charged with conspiracy to steal. The Court of Appeal decision referred to the fact that the human rights in the Constitution were revoked by Decree 36 of April 1995. Most of Chapter 3 of the 1970 Constitution which is entitled: "Protection of Fundamental Rights and Freedoms" was specifically retained in the AFPRC's first decree of 29 July 1994 which suspended and modified parts of the Constitution. The one modification to the human rights provisions by that decree was that the rights of assembly and association were removed for the purpose of forming a political party or engaging in any political activities. Amnesty International is calling on the government of the Gambia to restore the operation of all human rights provisions of the Constitution.

Around 12 October 1995, at least 35 alleged supporters of the People's Progressive Party (PPP), the former ruling party, were arrested. The authorities stated that they were arrested for planning a demonstration in support of the return to power of former President Dawda Jawara. The legal basis for their arrest was unclear until 25 October 1995, when Decree 57 was issued which was "...deemed to have come into force on 22nd day of July, 1995". Under this decree detainees may be held without charge for a period of 90 days and the right to challenge the legal basis of their detention is specifically removed. It can apply in a wide range of cases. According to this decree:

"The Minister of Interior may where he is satisfied that the arrest and detention of a person is in the interest of the security, peace, and stability of The Gambia, order the arrest and detention of such person."

This and other decrees have been applied retroactively in order to justify illegal acts taken by the authorities.

These detainees appear to be prisoners of conscience arrested on account of their non-violent political opinions or activities.

Twenty-five of the alleged PPP supporters have been charged with sedition and were released on bail on 12 January 1996 but re-arrested later the same day. They had been granted bail by the magistrate in accordance with the provision of the decree which allows for bail after 90 days in custody. The legal basis for their re-arrest is unclear. A decree was reported to have been issued, dated 10 January, permitting their rearrest. However, this decree was not invoked in court on 12 January by the Deputy Director of Public Prosecutions acting as counsel for the prosecution, which suggests that it had not in fact been issued by that time. Once again a retrospective decree was used to undermine the rule of law.

At least 10 others arrested around 12 October 1995 remain held without charge - again in contravention of the decree which provides for a detainee to be brought before a court within 90 days. It is not clear whether the "10 January" decree may also be applied to these cases. All 35 detainees are held in a disused hangar at Fajara army barracks in Bakau, just outside the capital, Banjul. They have been denied visits by their families and have experienced serious difficulties in gaining access to their lawyers. It is essential that the detainees are promptly transferred to a recognised place of detention and that they are given regular access to their families and to legal representatives and doctors of their choice, in accordance with the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Amnesty International had welcomed the abolition of the death penalty in April 1993 and expressed concern when the AFPRC reintroduced it in August 1995. No death sentences have been passed since its reintroduction. In response to the Amnesty International delegates' expression of concern about its reintroduction, the Minister of Justice, Mr Musa Bittaye, agreed to see whether the reintroduction of the death penalty could be reviewed.

The Gambia has undertaken to protect and promote human rights under the African Charter on Human and Peoples' Rights and the United Nations International Covenant on Civil and Political Rights and the AFPRC is bound by that commitment. The actions of the Gambian authorities in arresting and detaining the alleged PPP supporters, some of whom are still held without charge or trial, are in contravention of the provisions of these treaties.

It is hoped that the protection of human rights will be reinstated in the new draft Constitution which is being reviewed by the AFPRC prior to publication. It was drafted by a Constitutional Review Commission which was instructed by an AFPRC decree to ensure that the draft Constitution contains provisions to guarantee the fundamental rights and freedoms of Gambians, demarcate responsibility between the executive, legislature and the judiciary and create meaningful and viable checks and balances. Amnesty International urges the AFPRC to demonstrate its respect for these undertakings to uphold fundamental rights and take immediate measures to:

- restore the human rights guarantees under the existing Constitution which have been suspended;
- release all those who have been imprisoned solely for their peacefully-held political opinions;
- ensure early and fair trials for all those charged with recognised criminal offences;
- transfer all detainees to recognised places of detention and ensure they are given regular access to their families and to legal representatives and doctors of their choice;
- urgently re-consider the decision taken last year to reinstate the death penalty. To date, no death sentences have been passed or carried out, however, the organization urges that the death penalty should be abolished from the statute books as a sign of a commitment to uphold the right to life.

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