

OPINION No. 14/2009 (REPUBLIC OF THE GAMBIA)

Communication addressed to the Government on 28 May 2009.

Concerning: Chief Ebrima Manneh.

The State is a Party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50. The Human Rights Council assumed the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 6/4 of 28 September 2007. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regrets that the Government has not replied within the 90 day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - I. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - II. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - III. When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the light of the allegations made, notwithstanding that the Government has failed to offer its version of facts and explanations on the circumstances of the case.
5. The case was reported to the Working Group on Arbitrary Detention as summarised below:

6. On 7 July 2006, **Chief Ebrimah Manneh**, citizen of the Republic of the Gambia (“the Gambia”), born on 18 February 1978, usually residing in Lamin Village, the Gambia, a senior reporter for the Banjul-based *Daily Observer* newspaper, was arrested without a warrant at the Banjul offices of the *Daily Observer* by two plain clothes agents of the Gambian National Intelligence Agency. He has since been held *incommunicado* without charge or trial under the authority of the Gambian state security forces, likely with the assistance of the National Intelligence Agency. Mr Manneh has never been offered a reason for his arrest or detention.

7. Mr Manneh’s place of detention is unknown, and he has no contact with the outside world. The Gambian Government has never admitted that it has Mr Manneh in custody. The Gambian National Security Council claimed ignorance of Mr Manneh’s predicament. Other Gambian officials, including Gambian State Police, have publicly denied holding Mr. Manneh. It is believed, however, that he is currently held at Fatoto police station in eastern Gambia. During his detention witnesses have observed Mr Manneh in Gambian custody at various locations. He is known to have been detained in the Mile Two Prison in Banjul. He has also been held in harsh conditions in the remote Fatoto Prison in eastern Gambia. In 2007, he was also observed at the Royal Victorian Teaching Hospital in Banjul in the custody of security forces. After a few hours at the hospital, security forces transferred Mr Manneh to a nearby military clinic in Banjul in order to avoid publicity. A spokesperson for the Royal Victoria Teaching Hospital in Banjul, however, stated that he had “no idea who gets admitted in the hospital.” Mr Manneh was also held at the National Intelligence Agency Headquarters, Kartong police station, Sibanor police station, and Kuntaur police station.

8. The source maintains that substantial evidence suggests that Mr. Manneh is still alive. For instance, the Minority Leader of the Gambian Parliament urged Gambia’s President, on 3 July 2008, to release Mr. Manneh. If he were dead, the Minority Leader likely would not have put his own life at risk by making such a bold demand. Similarly, United States Senator Richard J. Durbin gave a speech in Congress on 30 July 2008 calling on Gambia to release Mr. Manneh. In his address, Senator Durbin lamented the fact that his inquiries to the Gambian Ambassador to the United States had been met with only “shameful silence“.

9. The source reports about claims that Mr. Manneh’s arrest stemmed from his interactions with a reporter of the British Broadcasting Corporation (BBC) who filed a story about an upcoming African Union (AU) Summit in Banjul. The BBC story apparently mentioned the fact that Gambian President Yahya Jammeh attained his position through a coup d’état. Mr. Manneh may have tried to republish this story, qualified by the source as being innocuous, in the *Daily Observer*, at which point the National Intelligence Agency arrested him. Though Mr. Manneh does not know exactly which BBC story may have spurred the arrest, a BBC story of 29 June 2006 is the most likely impetus. It was stated: “The host of this [African Union] meeting, Gambian President Yahya Jammeh, like several of his peers, is a former soldier and coup-maker who later legitimized his rule through an electoral process“. Given the factual nature of the article, Mr. Manneh’s attempts to republish it cannot be

considered harmful or unlawful. According to the source, nevertheless, President Jammeh seemingly opted to arrest and detain Mr. Manneh.

10. The source reports that representatives of local organizations and newspapers covering Mr. Manneh's story put themselves at extreme personal risk. Gambian police arrested a reporter for the *Foroyaa* newspaper while he investigated Mr. Manneh's detention at a police station outside Banjul.

11. Mr. Manneh suffers from serious medical problems, including high blood pressure that he reportedly developed while in detention. Further, Mr. Manneh has been denied access to adequate medical care despite the fleeting visit to a hospital in Banjul described above. Abysmal prison conditions likely aggravate his medical problems.

12. The source further reports that Mr. Manneh has been held in solitary confinement and forced to bear dehumanizing detention conditions, as he has been made to sleep on bare floors in overcrowded cells. The source asserts that such conditions, magnified by his inability to communicate with relatives or colleagues, gravely endanger Mr. Manneh's physical and emotional health.

13. The source also reports that Mr. Manneh is at serious risk of being tortured by agents of the Gambian Government as numerous Gambians allege credible claims of torture at the hands of their Government. The source supports this allegation by referring to the 2007 Country Report on Human Rights on The Gambia of the United States State Department. In this report it is stated that Gambian security forces have tortured defendants with "electrocution, cigarette burns, plastic bags held over people's heads, knife wounds, cold water treatments, and threats of being of shot." The editor of the Gambian newspaper, *The Independent*, alleges that he received "electric shocks ... to his naked body" while detained by Gambian security forces. Mr. Manneh's treatment is part of a wider practice whereby Gambian "[s]ecurity forces harassed and mistreated detainees ... and journalists with impunity."¹ The source reports that some members of the press have been tortured.

14. In addition to violation of the International Covenant on Civil and Political Rights, the source maintains that the detention of Mr. Manneh also violates article 6 of the African Charter of Human and People's Rights (African Charter), preventing deprivations of liberty when not "for reasons and conditions previously laid down by law", and article 19, paragraph 1, of Gambian Constitution with an identical guarantee. According to the source his detention also violates article 9 of the African Charter which guarantees the right of one to "express and disseminate his opinions within the law", and article 7 of the African Charter and article 19, paragraph 5, of the Gambian Constitution, both of which provide for a right to a trial within a reasonable time.

15. The source points out that the case of Chief Ebrimah Manneh has already been the subject of a binding judgment of the Community Court of Justice (CCJ) of the Economic Community of West African States (ECOWAS) on 5 June 2008.² In its

¹ United States State Department, Country Reports on Human Rights, *The Gambia* (2007).

² *Chief Ebrimah Manneh v. The Republic of The Gambia*, ECW/CCJ/JUD/03/08.

decision, the CCJ declared Mr. Manneh's detention to be in violation of international law and demanded that the Gambia immediately release Mr. Manneh from his "unlawful detention" and pay him 100,000 USD in punitive damages. The Government of Gambia never appeared to defend the case in the CCJ and has ignored the ruling. In its judgment, the CCJ recounts credible testimony of eye-witnesses' sightings of Mr. Manneh in detention and found that "[a]ll [of] these facts stand uncontroverted, and they appear credible so the Court accepts them". The source emphasizes that Mr. Manneh's detention cannot be linked to any legal basis, and that highlighting this fact, the CCJ observed that "no criminal offence known to the law of the Republic of Gambia has been leveled against" Mr. Manneh. The CCJ held that "[s]ince [Gambia] has failed to establish that the arrest and detention of the plaintiff was in accord with the provisions of any previously laid down law, the plaintiff is entitled to the restoration of his personal liberty and the security of his person."

16. The source reports that court actions inside the country have been extremely limited, given the alleged inhospitality of Gambian courts to claims of this nature. Mr Manneh's family has been made to suffer extreme economic and emotional hardship since his arrest and detention.

17. Having examined the information received and in the absence of a reply from the Government, the Working Group relies on the credible submission of the source, corroborated by witness evidence outlined in the judgment of the CCJ, that Mr. Manneh is still being detained at the hands of Gambian authorities following his arrest without a warrant on 7 July 2006 by agents of the Gambian intelligence service. Despite the source's own account that various Gambian authorities have publicly denied holding Mr Manneh in custody, the reported and judicially backed eye witnesses' accounts clearly indicate that Mr Manneh was seen in various detention facilities in the country.

18. The Working Group considers that the detention of Mr. Manneh is in contravention of article 9 of the International Covenant on Civil and Political Rights, and in particular of the guarantees that "everyone has the right to freedom and security of person", that "no one shall be subjected to arbitrary arrest or detention", and that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".

19. Beginning with Opinion No. 47/2005³, the Working Group has classified detention at a secret place as arbitrary detention in terms of Category I of the categories applicable to the examination of cases submitted to the Working Group as being devoid of any legal basis. No jurisdiction can allow for incommunicado detention where no reasons for the arrest and detention are put forward to the detainee, where no access to counsel or relatives is granted, no judicial control over the deprivation of liberty is exercised, no charges known to exist in Gambian legislation are laid against the detainee with a view to the conduct of a trial, in short, where no legal procedure established by law whatsoever is followed.

³ A/HRC/4/40/Add.1, p. 41.

20. The detention of Mr. Manneh under such circumstances outside the confines of the law for close to three years has also exposed him to the risk of torture, and other cruel, inhuman or degrading treatment.⁴

21. The Working Group has also considered that secret detention of a person is in itself a violation of the right to a fair trial⁵, where the guilt or innocence of the accused could be established by a competent, independent and impartial tribunal established by law, as required by article 14, paragraph 1, clause 1, of the International Covenant on Civil and Political Rights.

22. Mr Manneh has not had his day in court. He has not even been charged with a criminal offence. He has not been allowed access to a lawyer to prepare his defence. His detention in this case is thus in violation of article 14, paragraph 3 (a), (b) and (c), of the International Covenant on Civil and Political Rights, which require that everyone shall be informed promptly of the nature and cause of the charge against them, to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, as well as to be tried without undue delay. His detention falls within Category III of the categories of arbitrary detention developed by the Working Group.

23. The Working Group further considers that the deprivation of liberty of Mr Manneh results from the peaceful exercise of his fundamental right to freedom of opinion and expression as a newspaper reporter, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Although the latter's paragraph 3, allows the restriction of the right to freedom of opinion and expression in certain circumstances, such circumstances do not present themselves in the case of Mr. Manneh. This right can only be limited when "provided by law" and when "necessary ... for respect of the rights or reputations of others" or "for the protection of national security or of public order (*ordre public*) ...".

24. Detaining a newspaper reporter who sought to republish an article that is critical about the manner in which the President as the Head of State and Head of Government of the day came to power is not necessary to preserve any reputational interest or to protect national security. It has not been argued by the Government and there is no evidence apparent that Mr. Manneh was involved in any subversive activities.

25. Even if censoring the article itself were deemed to be necessary to achieve these ends of protecting the President's reputation or the Gambia's national security, detaining Mr. Manneh completely *incommunicado* without any charge for almost three years can certainly not be considered necessary within the meaning of article 19, paragraph 3, of the International Covenant on Civil and Political Rights. The use of arbitrary detention to restrict press freedom is a particularly invidious violation of civil and political rights. Mr. Manneh's deprivation of liberty thus also falls within Category II of the Working Group's categories.

⁴ Cf. annual report of the Working Group on Arbitrary Detention, E/CN.4/2006/7, p. 19, para. 57.

⁵ Opinion No. 5/2001, E/CN.4/2002/77/Add.1, p. 45, para. 10 (iii).

26. Having reached this conclusion in the case, the Working Group further points out that the Gambia has not complied with the judgment of the CCJ of the ECOWAS of 2008, a copy of which has been made part of the case file, ordering the release of Mr. Manneh and awarding him damages.

27. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Chief Ebrima Manneh is arbitrary, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights. It falls under Categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group.

28. Having rendered this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, which, under the specific circumstances of this case being a particularly serious case of secret detention, are the immediate release of Mr Manneh and adequate reparation to him in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

Adopted on 3 September 2009.