



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November-4 December 2015

#### Opinion No. 50/2015 concerning Alhagie Abdoulie Ceesay (Gambia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 27 August 2015 the Working Group transmitted a communication to the Government of the Gambia concerning Alhagie Abdoulie Ceesay. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) 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);

(b) 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);

(c) 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);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);



(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## **Submissions**

### *Communication from the source*

4. Alhagie Abdoulie Ceesay, 22-years-old, is a national of the Gambia. He is the managing director of a private radio station, Teranga FM, based in Sinchu Alagie, West Coast region, the Gambia. Mr. Ceesay resides in Sinchu Alagie village, Kombo North, West Coast region.

5. According to the source, on 2 July 2015, Mr. Ceesay was arrested near the Teranga FM radio station by two officers from the National Intelligence Agency. The two officers were in plain clothes and did not present any arrest warrant at the time of the arrest. Mr. Ceesay was taken to an unknown place. The authorities who arrested him refused to disclose any information on the reasons for the arrest. Until his release on 13 July, Mr. Ceesay was held incommunicado and had no access to his family or any lawyer.

6. On the night of 17 July 2015, Mr. Ceesay was again arrested, in Kairaba Avenue, in the Serrekunda neighbourhood, Greater Banjul area. He was forced into a car by several officers from the National Intelligence Agency in plain clothes, only one of them in police uniform. Mr. Ceesay was arrested without a warrant and detained at the Agency headquarters in Banjul, which was reportedly not an official place of detention.

7. On 20 July 2015, two National Intelligence Agency officers escorted Mr. Ceesay to his family house to pick up documents and his medication. On 23 July 2015, a person associated with Mr. Ceesay tried to visit him at the Agency headquarters. The person was told that Mr. Ceesay was detained there but that he was not allowed to visit him. Until 4 August 2015, Mr. Ceesay was not allowed to receive any visits from his family or any lawyer.

8. On 4 August 2015, Mr. Ceesay was brought before the Magistrate's Court and initially charged with seditious intention, in violation of section 51 (1) (d) of the Criminal Code. At the court, he managed to speak to his lawyer for a few minutes. Mr. Ceesay's lawyer submitted an application for bail, which was denied on the following day. Mr. Ceesay was detained at the Gambia police force headquarters.

9. On 5 August 2015, during the second hearing, Mr. Ceesay was remanded in custody by a judge. He was subsequently transferred to the Mile 2 central prison and kept in the maximum security wing there.

10. On 11 August 2015, while in prison, Mr. Ceesay received a copy of a letter from the Attorney General to the High Court indicating that he was charged with sedition, based on section 52 (a) and (c) of the Criminal Code; and publication of false news with intent to cause fear and alarm to the public, in violation of section 59 (1) of the Code.

11. On 18 August 2015 Mr. Ceesay was brought before the High Court regarding his bail application. On 19 August 2015, the bail application was rejected.

12. On 24 August 2015, a hearing on Mr. Ceesay's case was held before the High Court. However, Mr. Ceesay's lawyer was not informed about the court hearing. Coincidentally, she was at the court on the same day so she managed to represent him.

13. Concern has been raised that Mr. Ceesay was subjected to torture during his detention, including during the first period of detention between 2 and 13 July 2015.

14. The source submits that the detention of Mr. Ceesay falls under categories I, II and III of the categories relating to arbitrary detention.

15. From 2 to 13 July 2015 (12 days), Mr. Ceesay was held in an unknown location without access to his family or a lawyer. Between 18 July and 4 August 2015 (18 days), he was detained at the National Intelligence Agency headquarters, which is not an official place of detention. The source indicates that, under section 19 (3) of the Constitution of the Gambia, any person who is arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the law of the Gambia and who is not released shall be brought without undue delay before a court in any event within 72 hours. Consequently, the source submits that the detention of Mr. Ceesay between 5 and 13 July (9 days) and from 21 July to 4 August (15 days) was without any legal basis. The source argues that the detention of Mr. Ceesay during those two periods falls under category I given that there is no legal basis to justify the deprivation of liberty.

16. The source also submits that the arrest and detention of Mr. Ceesay appear to relate to his profession as a journalist and result from the exercise of his right to freedom of opinion and expression, as guaranteed by articles 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. Thus the deprivation of liberty is arbitrary and falls under category II.

17. The source further submits that Mr. Ceesay has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. The source argues that Mr. Ceesay was arrested twice without a warrant. He had been detained without charge and denied access to a lawyer until 4 August 2015 when he was brought before a court. In addition, his lawyer was not informed of the date of the court hearing which took place on 24 August 2015.

#### *Response from the Government*

18. A communication was sent to the Government of the Gambia on 27 August 2015. The Government then had 60 days to respond as stated in the communication, but by 27 October 2015 no response had been received from the Government. This did not come as a surprise because the Gambia seems to have developed a practice of non-cooperation with the special procedures: the Special Rapporteur on the situation of human rights defenders recently regretted the failure of the Gambia to provide any substantive response to urgent appeals issued (see A/HRC/25/55/Add.3, para. 162); and serious obstacles in the course of a joint country visit of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment and punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions in November 2014 brought the mission to an early end.<sup>1</sup>

<sup>1</sup> See press release dated 7 November 2014, available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15267&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15267&LangID=E). It is worth recalling that in August 2014 the Government had already unilaterally postponed that same mission. See also press release dated 12 August 2014, available from [www.un.org/apps/news/story.asp?NewsID=48473#.Vm9jjoTmxGh](http://www.un.org/apps/news/story.asp?NewsID=48473#.Vm9jjoTmxGh).

**Discussion**

19. Paragraph 16 of the methods of work (A/HRC/30/69) of the Working Group reads as follows: “Even if no reply has been received upon expiry of the time limit set, the Working Group may render an opinion on the basis of all the information it has obtained”. This provision means that the lack of response by a State does not prevent the Working Group from issuing an opinion. However, such silence does not mean that everything in the source should be considered as established. The Working Group must assess the *prima facie* reliability of the information provided by the source.

20. In the present case, the information submitted by the source is detailed and coherent. In addition, the source has provided judicial documents from the Gambia which fully corroborate the facts as reported. Moreover, those facts are also confirmed by various other sources in the public domain. Finally the allegations coincide with a pattern of abuses occurring in the Gambia which have been presented to the Human Rights Council in various processes.<sup>2</sup>

21. The failure of the Government to respond means that the Gambia has opted not to rebut the *prima facie* reliable information received from the source and the Working Group can only trust the source and proceeds on that basis. The Working Group therefore considers the facts as reported in the communication sent to the Government as established.

22. The main argument of the source is that this case is one of arbitrary detention under category II. The status of Mr. Ceesay as a journalist is not in dispute. The accusation against him is based on what he does as a journalist, exercising his right to freedom of expression and opinion protected in articles 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. The Working Group is therefore of the view that this argument must succeed. It is also concerned by the crime of sedition, which is used to deny the enjoyment of freedoms. The Government should reconsider its interpretation of that crime. The Working Group is available to assist the Government in that regard, as it has always done for other Member States, through the constructive dialogue that a country visit permits.

23. The source argues that the current situation meets the requirements of category I. In this category, as stated in paragraph 2 above, there is no legal basis for the detention. In this case, on two separate occasions, Mr. Ceesay was arrested without any notification of the charges against him for a period lasting beyond the 72 hours permitted in the domestic framework. Both of these instances were in violation of articles 9 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Working Group is of the view that this case does indeed fall within category I.

24. The source finally argues that there are elements that should lead to the conclusion that the case falls under category III of arbitrary detention. Indeed the facts are that, on various occasions during his detention, Mr. Ceesay was not allowed to see any lawyer. This is in violation of his right to a fair trial, which includes the benefits of legal assistance and representation as provided in principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. In addition, there have been instances of failure to notify his lawyer of the charges against him or the court schedule, and it was only by accident that the lawyer managed to attend a hearing. All criminal justice systems guarantee

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<sup>2</sup> See, among others, CCPR/CO/75/GMB, paras. 11 and 19-20; joint urgent appeal sent by special procedures (JUA 18/12/2012), case No. GMB 2/2012; A/HRC/WG.6/20/GMB/3, especially paras. 11, 14, 44-45, 53-55, 59, 79-82; A/HRC/WG.6/20/GMB/2, especially paras. 43-45; A/HRC/28/NGO/157; A/HRC/28/NGO/170.

the fundamental right of accused persons to a fair trial (art. 10 of the Universal Declaration of Human Rights and art. 14 of the International Covenant on Civil and Political Rights) and failure in that regard negatively taints the overall process. The Working Group is therefore of the view that this constitutes a case of arbitrary detention under category III.

25. There is universal prohibition against incommunicado detention and detention in places other than those dedicated to detention. Additionally, there is a presumption that they lead to the practice of torture in violation of article 7 of the International Covenant on Civil and Political Rights.<sup>3</sup> In this case, Mr. Ceesay was in incommunicado detention from 2 to 13 July 2015 while from 18 July to 4 August 2015 he was detained at the Gambia police headquarters, which is not a place of detention. The risk of torture and mistreatment alleged by the source is extremely likely, and should be further investigated through the appropriate special procedures.

### Disposition

26. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Alhagie Abdoulie Ceesay is arbitrary and falls within categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

27. Consequent upon the opinion rendered, the Working Group requests the Government of the Gambia to take, without delay, the steps necessary to remedy the situation of Mr. Ceesay. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be the immediate release of Mr. Ceesay, the provision of an enforceable right to compensation and better protection of freedom of opinion and expression.

28. Finally, the Working Group considers it appropriate, in accordance with article 33 (a) of its methods of work, to refer the allegation of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 4 December 2015]

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<sup>3</sup> See paragraph 11 of general comment No. 20 (1992) on the prohibition of torture or other cruel, degrading treatment or punishment, in which the Human Rights Committee states that provisions should also be made against incommunicado detention; communication No. 440/1990, *El-Megreisi v. Libyan Arab Jamahiriya*, Views adopted on 23 March 1994; communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994; and communication No. 577/1994, *Polay Campos v. Peru*, Views adopted on 6 November 1997. See also CCPR/CO/84/SYR, in which the Committee recommended that the Syrian Arab Republic “stop the use of incommunicado detention”; CCPR/C/USA/CO/3/Rev.1, in which the Committee considered the practice of incommunicado detention and recommended that the United States of America “immediately cease its practice of secret detention”; CCPR/C/IRN/CO/3, in which the Committee recommended that the State “eliminate incommunicado detention, taking due care to ensure compliance in practice”; and CCPR/C/AGO/CO/1, in which the Committee recommended that Angola take “appropriate measures to ensure that no one under its jurisdiction is subject to arbitrary arrest or detention and incommunicado detention, in line with the relevant provisions of the Covenant”.