

DECISION No. 40/1996 (GAMBIA)

Communication addressed to the Government of the Gambia on  
20 February 1996.

Concerning: Jobarteh Manneh and 24 others, Hussainu Njai and  
9 others, on the one hand, and the Gambia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Gambian Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, 35 persons were reportedly arrested around 12 October 1995 and were held at a disused hangar at Fayara army barracks in Bakau, outside the capital. It was alleged that they have been denied visits by their families and have experienced serious difficulties in gaining access to their lawyers. Among the 35 detainees were 25 alleged supporters of the People's Progressive Party (PPP) who were reportedly charged with sedition and released on bail on 12 January 1996, but were rearrested later on the same day. Their names were reported as follows:  
Jobarteh Manneh, Batch Samba Jallow, Mama Jawara (f), Ismaila Jawara, Adama Ceesay (f), Alhaji Mori Kebba Saidykhan, Lang Hawa Sonko, Bakary Camara, Sainey Faye, Omar Bah, Saraney Jatta, Fansu Jawara, Yaya Darboe, Foday Ceesay, Ebrima Sonko, Kosso Taylor (f), Malamin Sonko, Landing Camara, Kebba Tunkara, Lamin Kanaju, Mustapha Dibba, Mustapha Ceesay, Dabo Colley, Mobou Kebbeh and Buna Kebbeh. They had reportedly been granted bail by the magistrate in accordance with the provision of the decree which allows for bail after 90 days in custody. The source reported that the legal basis for their rearrest was unclear. Although a decree was reported to have been issued on 10 January permitting their rearrest, the source affirmed that this decree was not invoked in court on 12 January by the Deputy Director of Public Prosecutions acting as counsel for the prosecution, which suggested that it

had not in fact been issued by that time. The source concluded that a retrospective decree was used to justify illegal acts taken by the authorities.

6. At least 10 other persons who were also reportedly arrested around 12 October 1995 remained held without charge, in contravention of the above-mentioned decree which provides for a detainee to be brought before a court within 90 days. Their names were reported as follows: Hussainu Njai, Alagi Amadi Sabally, Mamadou Cadicham, Omar Jallow, Malang Fatty, Ansumana Fadera, Babucarr Ceesay, Mohamed Lamin Ba, Modou Jammeh and Saidu Wan.

7. It appears from the facts as described above:

(a) With regard to Jobarteh Manneh and 24 others who are alleged supporters of the PPP, the former Party in power: the fact that they were rearrested on 12 January 1996 even though they had just been released on bail several hours earlier after having been kept in custody for 90 days, appears to be arbitrary, since it cannot be linked to any legal basis. In fact, as noted by the source without being challenged by the Government despite the opportunity given to it, the decree of 10 January 1996 which would have permitted the rearrest was not invoked by the Prosecution at the hearing on 12 January 1996; one can only deduce therefore that this decree did not exist at that time and that a decree was used to justify retrospectively illegal acts taken by the authorities;

(b) With regard to Hussainu Njai and nine others, their continued detention beyond the 90-day legal deadline for custody, without being brought before a judge, as provided for by the Gambian law, also cannot be linked to any legal basis.

8. It follows from the above considerations that the detention of all the above-mentioned persons is arbitrary as it cannot be linked to any legal basis (category I of the principles applicable in the consideration of the cases submitted to the Working Group).

9. In the light of the above the Working Group decides:

The detention of the afore-mentioned 35 persons is declared to be arbitrary being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights to which the Gambia is a party, and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of the afore-mentioned 35 persons to be arbitrary, the Working Group requests the Government of the Gambia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 1996.