Nations Unies A/HRC/28/68/Add.4

Assemblée générale

Distr. générale
16 mars 2015
Français
Original: anglais

Conseil des droits de l'homme
Vingt-huitième session
Point 3 de l'ordre du jour
Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement

Rapport du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, Juan E. Méndez

Additif

Mission en Gambie*, **

Résumé

Le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants s'est rendu en Gambie du 3 au 7 novembre 2014.

Il s'agissait de la toute première visite effectuée dans le pays par un titulaire de mandat au titre des procédures spéciales du Conseil des droits de l'homme; cette visite a toutefois été compromise par le fait que le Gouvernement s'est montré réticent à accorder au Rapporteur spécial la liberté voulue pour circuler et enquêter dans l'ensemble des zones où se trouvaient des centres de détention, alors qu'il avait accepté dans un premier temps les conditions relatives à toutes les visites de titulaires de mandat. Dans le présent rapport, le Rapporteur spécial expose ses principales conclusions et formule des recommandations qui, il l'espère, seront mises à profit par le Gouvernement pour entamer un dialogue constructif avec tous les interlocuteurs pertinents, afin de renforcer les garanties juridiques contre la torture et les mauvais traitements, et d'améliorer les conditions de détention des personnes privées de liberté.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé et est distribué dans la langue originale seulement.

** Soumission tardive.

GE.15-05129 (F) 140415 140415

1505129

Merci de recycler

Annexe

[*Anglais seulement*]

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to the Gambia (3–7 November 2014)

Contents

		Paragraphs	*Page*
I.	Introduction	1–6	3
II.	Legal framework	7–11	4
	A. International level	7–8	4
	B. Regional level	9	4
	C. National level	10–11	4
III.	Assessment of the situation	12–96	5
	A. Practice of torture and ill-treatment	16–38	5
	B. Safeguards and prevention	39–72	9
	C. Conditions of detention	73–87	13
	D. Obligation to protect persons in situations of vulnerability	88–96	16
IV.	Conclusions and recommendations	97–118	18
	A. Conclusions	97–104	18
	B. Recommendations	105–118	18

I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment conducted a joint visit with the Special Rapporteur on extrajudicial, summary or arbitrary executions[1] to the Gambia from 3 to 7 November 2014, at the invitation of the Government. The visit was originally scheduled for August 2014 but was postponed by the Government at the last minute for reasons still unknown.

2. The Special Rapporteur met with the Vice-President of the Gambia, the Minister for Foreign Affairs, the Minister of the Interior, the Attorney-General and Minister for Justice,[2] the Solicitor General and Director of Public Prosecutions, the Director General of the National Intelligence Agency, the Director General of the National Drug Enforcement Agency, the Director General of Prisons, the Inspector General of Police, the Deputy Minister of Health, the Chief Justice of the Supreme Court and High Court judges and the government Ombudsman. He also met with representatives of United Nations agencies, the diplomatic community, non-governmental organizations and civil society.

3. This was the first visit ever by any of the special procedures of the Human Rights Council. However, the Special Rapporteur wishes to express his deep regret over the unwillingness of the Government to grant freedom of movement and inquiry in all areas of detention facilities, in a clear violation of the terms of reference for fact-finding missions by special rapporteurs (E/CN.4/1998/45, annex, appendix V), despite having agreed to those terms in writing just days before the official visit commenced.

4. Owing to the denial by the Government of access to the security wing of Mile 2 Central Prison, the visit cannot be viewed as "fully fledged", since an integral element of the mandate, namely, being allowed unrestricted and unsupervised access to all areas of detention facilities for the purposes of interviewing detainees in private and examining their conditions of detention was denied. Therefore, the Special Rapporteurs suspended their visit to Mile 2 Central Prison and to all other places of detention. However, they decided to continue to meet officials, victims, witnesses and non-governmental sources, as the visit was already well under way. Unrestricted access to detention facilities is an integral part of any official visit undertaken by a special procedures mandate holder. The restrictions imposed on the Special Rapporteur by the Government during the course of this visit were unprecedented since the establishment of the mandate 30 years ago.

5. The Special Rapporteur hopes that, despite this severe setback, a meaningful dialogue can be established with the Government. Many interlocutors, in particular victims, took a great personal risk to meet with the Special Rapporteur. A genuine dialogue between the Government, civil society and the outside world is very much needed for human rights to begin to take hold in the Gambia.

6. The attempted coup d'état on 30 December 2014 and its aftermath illustrate that the Gambia is at a pivotal moment. The President seems poised to further suppress fundamental human rights and retreat into isolation from the country's neighbours, the region and the international community.

[1] See A/HRC/29/37/Add.2.

[2] The Minister for Foreign Affairs and the Attorney-General and Minister for Justice were removed from the Cabinet in January 2015.

II. Legal framework

A. International level

7. The ratification of international human rights treaties by the Gambia is limited[3] and the status of its ratification of a number of treaties is unclear. There is a lack of understanding, even within the Government, of the status of ratification for such conventions and of customary international law in the domestic system. It appears that two treaties,[4] have been approved by the National Assembly but the instruments of ratification have not yet been deposited with the Secretary-General.

8. The State has ratified the Rome Statute of the International Criminal Court and is a party to the Convention on the Prevention and Punishment of the Crime of Genocide.

B. Regional level

9. The Gambia has accepted the jurisdiction of the African Commission on Human and Peoples' Rights, based in Banjul, and the Court of Justice of the Economic Community of West African States (ECOWAS). It has made the declaration under article 34, paragraph 6, of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, in which it accepted the competence of the Court to receive and examine cases from individuals and non-governmental organizations. However, the Government has not complied with the relevant decisions of ECOWAS.[5]

C. National level

10. The Gambia maintains the dualist system of ratifying and domesticating the provisions of human rights instruments before they can be invoked or directly enforced by the courts or other tribunals or administrative authorities. However, the provisions of non-domesticated human rights instruments that are in consonance with the Constitution can be and have been invoked before the courts. Such provisions of the Universal Declaration on Human Rights and the African Charter on Human and Peoples' Rights have been invoked before the High Court of the Gambia.

11. Section 21 of the Constitution of the Gambia states that "no person shall be subject to torture or inhuman degrading punishment or other treatment". However, the offence of torture, as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is not included in the Criminal Code (Act No. 25 of 1933).

[3] See http://indicators.ohchr.org.

[4] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities.

[5] See *Manneh* v. *The Gambia* (2008) African Human Rights Law Reports 171 (ECOWAS 2008), *Hydara et al* v. *The Gambia* (2014) ECW/CCJ/APP/30/11, and *Musa Saidykhan* v. *The Gambia* (2010) ECW/CCJ/APP/11/07.

III. Assessment of the situation

12. In 1965, the Gambia emerged from a colonial past. For the past 20 years, it has been ruled by President Yahya Jammeh. The views of the President dominate and control the lives of the nearly 1.8 million Gambian citizens. The Special Rapporteur observed a layer of fear on the faces and in the voices of many people from civil society with whom he met, and some government officials. In his meetings with government officials, it was evident that all decisions, even by high-level ministers, came from the President's Office. There is no room in Gambian society to discuss civil or political rights. If that is attempted, the standard response is deprivation of liberty with serious risk of torture or ill-treatment.

13. Against this background, the Special Rapporteur did not sense a genuine political will on the part of the Government to engage on human rights issues. A few authorities, however, did appear to welcome the visit as an opportunity to address challenges.

14. Recent events have made the precarious human rights situation in the Gambia even more dire. On 30 December 2014, there was an attempted coup d'état in which at least four insurgents were killed and one insurgent was reportedly injured and detained. In January 2015, it was reported that at least 52 individuals (civilians and military personnel), including family members of the insurgents, were being held and their whereabouts were unknown. They may be in unofficial places of detention and at great risk of being tortured. The Special Rapporteur has received reports that these individuals were picked up by plain-clothes officers, likely belonging to the National Intelligence Agency or other security forces. The President's response to this event suggests that the Gambia may regress further regarding human rights, as the deprivation of personal liberty and the risk of torture, arbitrary detention or enforced disappearance may be on the rise.

15. There is also clearly an imminent financial challenge facing the Gambia. However, this reality is not acknowledged by the Government as an opportunity to open up and accept external assistance in return for engaging not only with the international community but most importantly with its own citizens. Only by doing so can the Gambia move towards becoming a more humane society that does not tolerate abuses or current conditions, which give rise to cruel, inhuman or degrading treatment or punishment, or even torture.

A. Practice of torture and ill-treatment

1. Police force

16. The legal framework governing the work of the Gambia Police Force is composed of the Police Act, the Public Order Act and the Criminal Procedure Code. The Inspector General of Police, under the Ministry of the Interior, is responsible for the preservation of law and order.

17. In law, the standards for arrest and detention by the police in the Gambia are consistent, in principle, with international law: the police can conduct an arrest in cases of *in flagrante delicto* or on reasonable suspicion that a crime has been committed and pursuant to an arrest warrant. However, in practice, arrests pursuant to a warrant are the exception and not the rule.

18. In 2012, the concept of community policing was formally reflected in the creation of the Human Rights Unit. The Special Rapporteur noticed posters that had been put up in official buildings to educate the public and encourage the reporting of rape, torture and extrajudicial killings to the Police Service Commission. However, on the basis of testimonies received by the Special Rapporteur, citizens avoid reporting abuses owing to fear of reprisals, lack of substantive redress and a general mistrust of the police.

19. The "reasonable suspicion" standard is seldom if ever examined to determine whether reasonable grounds for arrest existed, and the evidence obtained pursuant to an otherwise illegal arrest is challenged even less frequently. As a result, the police arrest to investigate, rather than investigate to arrest.

20. The situation on the ground regarding the practice of torture or ill-treatment by the police is one in which abuses, in particular ill-treatment, do occur in some individual cases during arrest or transfer to police stations (the Banjulinding police training centre is also used for detention and interrogation), but the Special Rapporteur did not find evidence that those abuses were part of a widespread pattern or systemic practice.

21. It appears that the police, in some cases, comply with the obligation under section 19, paragraph 3, of the Constitution to bring a person to court within 72 hours of detention. However, on the basis of testimonies and information he examined, the Special Rapporteur found that the National Intelligence Agency did not comply with that rule.

22. The 72-hour time frame before a person is brought before a judge is an invitation to obtain confessions or other evidence by illegal means and is not in line with international standards.[6]

2. National Intelligence Agency

23. The National Intelligence Agency reports directly to the President and is responsible for protecting State security, collecting intelligence and conducting covert investigations. Military decrees enacted prior to the adoption of the Constitution gave the Agency broad powers to detain individuals indefinitely without charge "in the interest of national security". This is inconsistent with the Constitution but has not been subject to judicial challenge.[7] The authorities advised the Special Rapporteur that the Agency had not assumed police functions to arrest, detain or question criminal suspects other than in "exceptional situations" and then only until the police could receive the suspect. Furthermore, the Agency denied the existence of places of detention or holding cells under its jurisdiction.

24. However, testimonies of persons who had been held either at the National Intelligence Agency headquarters or in other "unofficial places of detention" revealed an ongoing practice whereby persons were held incommunicado for many days or weeks in inhumane conditions[8] before being handed over to the police and brought before a judge. One individual was reportedly held for nine weeks and, in a recent case, three perceived homosexuals were held for over six weeks. There are accounts of severe and routine torture of those charged with "aggravated homosexuality" or those considered a "high risk to State security", and of their being held routinely in clandestine detention.

25. The Special Rapporteur found that torture was practised regularly by the National Intelligence Agency. The mistreatment inflicted was normally of a short duration, consisting mainly of physical trauma caused by punches, slapping and blows with objects such as canes or batons and burns.

[6] The Human Rights Committee, in paragraph 33 of its General Comment No. 35 (CCPR/C/GC/35), refers to 48 hours as ordinarily sufficient to transport an individual and prepare for a judicial hearing.

[7] See "The Gambia 2013 human rights report", United States of America Department of State, 2013, p. 8. Available from www.state.gov/documents/organization/220328.pdf.

[8] The Special Rapporteur received consistent reports of detainees being confined to insect-infested cells with no light, no mattress and no access to sanitary facilities, and denied sufficient water or food.

Use of force

26. International law requires that the conditions for the use of force are set out in law. Section 18, paragraph 4, of the Constitution contains a broad standard of "reasonably justifiable" use of force and permits its use for, inter alia, the defence of property and to effect lawful arrest. It does not require the existence of an imminent threat of death or serious injury for the use of lethal force, nor does it require that the force be used only as a last resort to protect life, as prescribed by international law.

27. A "bulldozer" unit comprising several law enforcement units, including a paramilitary unit that reports to the Inspector General of Police, is used to quash civil disturbances and intimidate civil society. In April 2000, security forces opened fire on a student protest, resulting in the death of 13 students, including six minors, and one journalist, and leaving 28 people injured.[9] There has not been a large public demonstration since. The excessive force used by the authorities amounted to ill-treatment and even torture in some cases where the injuries inflicted were severe.

28. The legal constraints on the use of force by the National Intelligence Agency are even less clear than for the police (for whom the Inspector General of Police is reviewing a draft code of conduct). The Special Rapporteur requested but did not obtain a copy of the code of conduct of the Agency. Under the Drug Control Act, the National Drug Enforcement Agency has broad powers to protect State security. The statute of the National Drug Enforcement Agency is vague regarding the circumstances and conditions in which it may use force. The testimonies and information received indicate that the National Drug Enforcement Agency, like the National Intelligence Agency, employs in abusive methods.

Paramilitary forces

29. The Special Rapporteur received diverse reports and testimonies about the existence of paramilitary groups associated with the security forces and under the direct orders of the President. A secret unit reportedly called the Jungullars (also known as "Junglers" or "Black Blacks") is associated with reports of arbitrary arrests, detention, torture, enforced disappearances and extrajudicial killings of persons considered to be opposed to the regime, journalists and ordinary civilians. The methods reportedly used to carry out torture and assassinations include the use of hammers, machetes, ropes, nails, pliers and needles, and of injections into the victim's body.

Prevalence of torture

30. In cases where there is a real or perceived threat to national security, there is a corresponding increase of acts of torture and ill-treatment by the National Intelligence Agency during arrest and detention. There is also anecdotal evidence of mistreatment by the police and other law enforcement bodies, which is more of an isolated, sporadic practice.

31. The Special Rapporteur received many testimonies from people who did not want to be identified out of fear either for their own safety or that of their families. He conducted thorough interviews with those people and arranged for their forensic medical examination by an independent forensic expert.[10] He found the testimonies to be truthful and consistent with others regarding the practices and methods used. He substantiated those findings with physical evidence presented in a number of cases that were consistent with testimonies of beatings by fists or blunt instruments and in which the injuries showed treatment amounting to torture (or consistent with allegations of torture).

[9] Amnesty International letter to the Special Rapporteur, dated 4 August 2014.

[10] Forensic medical report submitted to the Special Rapporteur, 28 November 2014.

32. The methods of torture include very severe beatings with hard objects or electrical wires; electrocution, including in the genital area; asphyxiation by placing a plastic bag over the head and filling it with water; cigarette burns; tying up with ropes; and burning with hot liquid. One victim recounted how he had had to dig his own grave and had been made to believe he would be buried alive.[11] Such torture was generally inflicted over a period of days or even weeks, usually either at National Intelligence Agency headquarters or in other unofficial places of detention.

Death penalty

33. The Special Rapporteur has many concerns regarding the executions of nine persons in 2012.[12] Of particular relevance to his mandate is that one of the individuals was mentally impaired and therefore executed in disregard of international law provisions prohibiting the imposition or performance of the death penalty on a person with a mental or psychosocial disability. The mandatory imposition of the death penalty, for any offence, is a clear violation of international law.[13]

34. In 2012, the President reinstated a conditional moratorium on the death penalty, dependent on the rise or fall of the crime rate. The uncertainty that such a measure presented to those on death row, and to their families, amounts to cruel, inhuman and degrading treatment. Death-row and life-term prisoners are held in solitary confinement in the security wing of Mile 2 Central Prison. They are held in small, overcrowded, dark and poorly ventilated cells and denied educational or recreational activities, except for 10 minutes of exercise per day. As at March 2014, there were at least 43 people on death row who were routinely denied visits by lawyers or family.[14]

2. Prisons service

35. According to the Prisons Act, the overall responsibility for correctional facilities, the implementation of judicial decisions and the treatment of prisoners lies with the Ministry of the Interior.

36. The Special Rapporteur was denied access to the security wing of Mile 2 Central Prison and an inference has to be made that there was something to hide there. The security wing holds "high-security" detainees, in addition to those detainees sentenced to death or to life terms. High-level officials said that no one except a few government authorities had access to the security wing. This isolation is explained by the serious nature of the crimes that the detainees have reportedly committed. Some of those detained in the security wing have judicial appeals pending and must be presumed innocent, while some are awaiting trial and should be in the remand wing. In any event, this extreme isolation is an added layer of cruelty for those serving a sentence.

37. There are three official prisons in the Gambia: Mile 2 Central Prison (which contains a female wing), Jeshwang Prison (which contains a juvenile wing) and Janjanbureh Prison.

[11] Ibid.

[12] See Gambia Human Rights Network, report submitted ahead of the universal periodic review of the Gambia, 2014. Available from http://gainako.com/?p=4785.

[13] Article 6, paragraph 1, of the International Covenant on Civil and Political Rights, and customary law.

[14] See Amnesty International, submission for the universal periodic review of the Gambia, p. 4. Available from www.amnesty.org/en/documents/AFR27/004/2014/en/.

Unofficial places of detention

38. The Special Rapporteur heard testimonies and received corroboration from a number of reliable sources that there were also "unofficial" places of detention in the Gambia, including secret cells at the National Intelligence Agency and the National Drug Enforcement Agency headquarters, and in military barracks, prisons and police stations, particularly in remote areas. He also received numerous testimonies that referred to a "bambidinka", or crocodile pond, which is reportedly a "dungeon" of small, dark and isolated holding cells in the ground, reportedly at Jeshwang Prison and National Intelligence Agency headquarters. The Special Rapporteur also received detailed maps and sketches of unofficial buildings that were used for such purposes, including old forts and warehouses. He was unable to verify their existence independently as he had to suspend visits to detention centres.

B. Safeguards and prevention

Official registration upon deprivation of liberty

39. In accordance with international standards, all persons must be officially registered from the moment their liberty is restricted. It appears that suspects "of high interest" detained by the National Intelligence Agency are usually not officially registered. Instead, they are held in detention beyond the 72-hour limit, for days or weeks, incommunicado, without being brought before a judge and without judicial oversight. Families are not notified until such time as the suspects are transferred to police custody in order to sign confessions. There are accounts that the police also exceed the 72-hour limit in some cases.

40. There is a two-stage approach to National Intelligence Agency detentions. The agency detains individuals in unofficial places of detention during the investigation phase and then turns them over to the police, at which time the formal process of detention and arrest begins. It is precisely before the formal arrest when torture is most prevalent.

Access to a lawyer

41. A fundamental safeguard against torture and ill-treatment is the right of access to a lawyer at all stages of the investigation process and particularly from the moment of apprehension. Section 19, paragraph 2, of the Constitution provides for that right. However, not only are many individuals initially detained incommunicado, but the right to a lawyer is also not effectively exercised as the vast majority of detainees cannot afford a lawyer.

42. The National Agency for Legal Aid was established in 2008 by the Legal Aid Act and launched in 2010. The Act provides for legal aid to be accorded to a person charged with an offence that carries a punishment of death or imprisonment for life and to a child in proceedings in the Children's Court, brought by or on behalf of a child.

43. The Legal Aid Act also provides for legal aid to be accorded to a person desiring "legal representation in any criminal or civil matter earning not more than such minimum wage as the Government may specify". However, this latter provision will only come into force on a date to be determined by the Attorney-General by an order published in the Official Gazette. The scheme is not comprehensive enough to cover all criminal offences, so the vast majority of defendants have no access to legal representation.

44. As a result, confessions made by detained persons are signed by an "independent witness". This is an inadequate legal protection and meaningless as to the voluntary nature of the statement. The use of an "independent witness" rather than legal counsel does not protect against forced confessions but, rather, lends them a veneer of legality.

Confession statements

45. In general, it appears that suspects are informed by the arresting or interrogation officer about their right to a lawyer. However, if a suspect cannot afford a lawyer or the offence is not serious enough to warrant a legal aid lawyer, the National Intelligence Agency or the police proceed to the interrogation stage and "persuade" (using force or intimidation) the individual to give a statement, which, in practice, occurs in the vast majority of cases.

46. Torture in the pretrial period is used to break down the individual and obtain information. In some cases, individuals are severely beaten by men in plain clothes, believed to be from the National Intelligence Agency, specifically to extract confessions. These confessions are routinely submitted and accepted as evidence before the criminal and military courts.

47. The Gambian criminal legal system is based on common law and so a "*voir dire"* (trial within a trial) is conducted each time there is a complaint or reason to believe that a statement against interest was not freely made. The burden is on the prosecution to prove that it was not coerced. After conducting a *voir dire*, the admission of a confession as evidence before the court is at the discretion of the judge. Judicial discretion to admit evidence tainted by torture, of any kind, is a violation of the exclusionary rule laid down in article 15 of the Convention against Torture, a standard also required by customary law.

48. The Solicitor-General and Director of the Prosecutions Office assured the Special Rapporteur that confessions alone were not sufficient evidence for a conviction, as other corroborating evidence was needed. That is a welcome safeguard but insufficient to deter torture in practice. International law obligations require the exclusion of confessions or declarations obtained under duress, and such confessions or declarations should not be part of case records at all. The Special Rapporteur did not receive information on cases where the *voir dire* had excluded confessions obtained under torture, nor did he receive statistics as to whether any official had ever been prosecuted or punished for extracting a confession under torture.

49. The Special Rapporteur was alarmed to learn of the reluctance of doctors to examine patients who have allegedly been tortured, because of the threating situation those doctors would find themselves in if subpoenaed to testify.

Complaints procedure

50. The Inspector General of Police said that there had been no incidents of officers abusing the rights of suspects and that he had only received one complaint in the past year, which could not be substantiated. The Director General of Prisons advised the Special Rapporteur that prisoners and detainees could transmit complaints to the judicial authorities through their lawyer or relatives.

51. The complaints procedure for allegations of torture and ill-treatment, and the investigation, prosecution and punishment of perpetrators seem to exist in law only. On the basis of the high number of testimonies received, the norm appears to be that victims lack trust and are afraid to allege torture or ill-treatment, and do not complain to the Prosecutor's Office, the Prisons Service or the court owing to institutional inaction or out of fear of reprisal. There is no effective complaints mechanism to investigate such allegations.

52. There is a Human Rights Unit within the police, which, if its members were well trained, could be a good first step towards establishing more consistent procedures. It would not, however, govern complaints addressed to the National Intelligence Agency, the National Drug Enforcement Agency, the security forces or the Prisons Service.

Role of the judiciary and prosecutors

53. The Prosecutor's Office and the judiciary must ensure that the progress of a criminal case, from the investigation stage to detention, interrogation, arrest, prosecution and conviction, as well as the conditions of detention, complies with the rule of law.

54. The independence and impartiality of the judiciary is essential to the fulfilment of the most important obligations under international law regarding torture and cruel, inhuman or degrading treatment or punishment, including the ability of the judiciary to make ex officio inquiries, order an investigation into allegations of torture or coercion and ensure that safeguards are upheld. Judges have a dual obligation of prevention and accountability.

55. However, in practice, the Magistrates' Court and the superior courts, namely, the High Court, the Court of Appeal and the Supreme Court, appear to have a passive role of simply processing cases rather than examining how evidence has been obtained. Failure to scrutinize evidence-gathering results in unfair trials and in impunity for torturers.

56. Section 37 of the Constitution provides for the enforcement of the fundamental human rights provisions set out in its chapter IV, which include the prohibition of torture, and the High Court can hear and adjudicate applications and may make such orders, issue such writs and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the fundamental rights provisions, including granting redress.

57. The Judicial Officers Bill on Remuneration, Allowances and Other Benefits is under consideration with a view to enhancing judiciary services regarding tenure and efficiency. The Special Rapporteur doubts that it will go far enough to address the lack of judicial activism and independence resulting from executive interference, which undermines the courts' role of ensuring accountability.

58. Judges and prosecutors should operate under a legal obligation to order medical examinations by forensic doctors who are properly trained in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) as soon as any suspicion of mistreatment arises and to initiate prosecutions against whoever might be responsible for mistreating an inmate, including the superior officers who might have ordered, tolerated or condoned that mistreatment.

Lack of effective investigation of allegations of torture

59. The Special Rapporteur inquired into investigations undertaken by courts or internal affairs units of law enforcement or security forces regarding allegations of torture or ill-treatment, and their results. Only one case had been reported to the Human Rights Unit, which concluded that the injuries suffered by the complainant had been caused by his resisting arrest. Investigations are rarely conducted, and few if any officials are ever prosecuted.

60. The Office of the Ombudsman, created in 1999, has heard only two cases of torture in 15 years and in both it found against the complainant. The Special Rapporteur was informed of a judicial decision in a case in which two policemen were charged with the murder of a person who died while in their custody. The Court found that, although the force applied on the victim had been proven, the specific intent required for murder was not established. Rather than charging the police officers with a lesser offence, such as manslaughter, the Court reversed the previous conviction and ordered their release. The death in custody of a person who was obviously mistreated and this outrageous judicial decision only reinforce the culture of impunity.

61. The Special Rapporteur has not been apprised of a single case in which the paramount obligation of the State to investigate, prosecute and punish every act of torture – a rule of international human rights law that has acquired the status of customary international law – has been fulfilled.

62. Moreover, the Indemnity Act of 2001 provides the President with nearly unfettered powers, perpetuates a culture of impunity and deters victims from seeking redress for human rights violations, including torture.[15]

63. The lack of procedural safeguards and the failure to investigate were further highlighted after the attempted coup d'état. In January 2015, the Special Rapporteur received information about more than 50 cases of forced disappearance,[16] including that of one minor. All the evidence shows that the purpose of unacknowledged detention is to facilitate torture or summary execution, or both. The Special Rapporteur surmises that torture was used in several recent cases reported to him.

Burden of proof, independent medical examinations and forensics

64. The Special Rapporteur notes the absence of routine medical examinations by qualified forensic medical doctors at the police investigation stage, by court order or upon admission to prison.

65. The Special Rapporteur received no information about the presence of forensic doctors in the police force, the Prosecutor's Office or the Ministry of Justice. A representative of the Ministry of Health stated that it had a pathologist and a laboratory, but the Special Rapporteur found that no specific training was provided on the Istanbul Protocol to assist in the determination of cause of death or the occurrence of torture. The lack of forensic medical knowledge or of any medical doctor trained in the Istanbul Protocol undermines the fulfilment of State obligations regarding torture.

66. In practice, the safeguards against torture do not operate effectively because officials claim there is no evidence of torture. Confessions and declarations obtained through torture therefore remain on the record and no serious effort is made to investigate, prosecute or punish perpetrators.

67. The Special Rapporteur received submissions regarding several deaths in custody. They appear mainly to relate to illness, but there are also alleged cases of excessive use of force by prison officials and denial of medical care.[17] The Government did not provide statistics but advised him that all deaths in custody were from natural causes.

Monitoring and inspection of places of detention

68. Prior to commencing the visit, the Special Rapporteur received reports from several sources that detainees were being moved between various official and unofficial prisons. Given that the Special Rapporteur was forced to suspend visits to places of detention, he was unable to verify these reports.

69. In accordance with articles 2 and 16 of the Convention against Torture, the Government is obliged to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment.

[15] See "The Gambia 2012 human rights report", United States Department of State, 2012, p. 4. Available from www.state.gov/documents/organization/204335.pdf.

[16] The West Africa Regional Office of the Office of the United Nations High Commissioner for Human Rights has formally submitted several cases to the relevant special procedures mandate holders.

[17] Amnesty International letter to the Special Rapporteur, dated 4 August 2014.

70. The only monitoring of prisons is conducted by the Visiting Committee (section 22 of the Prisons Act), which mainly comprises several government officials appointed by the Ministry of the Interior. The Visiting Committee is mandated to visit the Mile 2 Central Prison every three months and report on any substandard conditions. The Special Rapporteur did not receive a report of this Committee. Only one non-governmental organization has access to the prisons to provide educational and rehabilitative services. Its access is limited to the general areas; the security wing and solitary confinement cells are off-limits.

National institutions

71. Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and designation of a national preventive mechanism under its article 17 is urgently needed as there is no truly independent and effective monitoring of all places of detention. The Special Rapporteur expresses his concern at the lack of oversight at Mile 2 Central Prison, in the light of overcrowding in the remand wing and the inaccessibility of the security wing, as well as at reports of unofficial places of detention, including at the National Intelligence Agency headquarters.

72. There is currently no national institution that could undertake monitoring. The Office of the Ombudsman claims to have a wide mandate[18] but its titular head has little interest in such a role and claims there is a lack of resources to address issues of excessive use of force, torture or ill-treatment. For a number of years, the Government has debated a plan to establish a national human rights commission. For the 2010 universal periodic review, the Gambia committed itself to developing a draft law to that effect which was elaborated in 2013 but found not to be fully compliant with international standards. A revised draft has still not been tabled at the National Assembly.

C. Conditions of detention

Overcrowding

73. Since the Special Rapporteur was forced to suspend visits to all places of detention, he was unable to assess independently the conditions in any of the prisons or police stations.

74. While the Special Rapporteur was unable to observe directly the extent of overcrowding, the Director of Prison Services admitted that it was indeed a problem and provided statistics[19] on the level of overcrowding. Overcrowding in Mile 2 Central Prison was the most severe as it has an official capacity of 450 but contained a total of 817 inmates (789 male and 28 female). In Jeshwang Prison (official capacity 150), there were 201 adult inmates and 15 juveniles. In Janjangbureh Prison (official capacity 50), there were 88 inmates.

75. Section 19, paragraph 5, of the Constitution requires that if a detainee is not tried within a reasonable time then that person is entitled to be released either unconditionally or on bail. However, in practice, this is not done. It is estimated that 30 per cent of people in

[18] See A/HRC/WG.6/20/GMB/1, para. 129.

[19] Statistics provided on 6 November 2014.

the prison system are held for petty crimes or in pretrial detention for years owing to backlogs and inefficiency in the judicial system.[20]

76. There have been some efforts to reduce overcrowding, mostly by non-governmental groups with varied support from courts and prosecutors. The only strategic effort in this regard was made in 2013, when temporary court dates were set to review cases for those who had been held in prolonged remand, i.e., in pretrial detention for years. The project resulted in the release of about 18 to 25 inmates, mainly accused of minor offenses relating to drug possession. However, this has had no real impact on reducing overcrowding.

77. An aggravating factor is that the congested prisons are a direct result of draconian criminal laws imposing lengthy sentences for drug offences. Persons charged with those offences are subject to lengthy remand periods that exceed any penalty they might eventually receive.

Solitary confinement

78. At the security wing of Mile 2 Central Prison, the use of prolonged or indefinite solitary confinement for prisoners sentenced to death or to life terms causes pain and suffering of a mental nature that is severe and has long-lasting effects. The fate of those sentenced to death is dependent on the conditional moratorium, which gives rise to the "death row phenomenon" – a combination of circumstances producing severe mental trauma and physical suffering among prisoners awaiting the implementation of their death sentences that constitutes ill-treatment. In the absence of any mitigation of the conditions, such as visits, reading material or access to radio or television, solitary confinement is torture.

79. The Special Rapporteur received testimonies that individuals were subjected to solitary confinement in the Bambidinka cell in Janjanbureh Prison, including for prolonged periods of time. Solitary confinement is also imposed on those held in unofficial places of detention for days, weeks or even months. Those places include the National Intelligence Agency headquarters, where it is standard practice for detainees to be isolated for up to 23 hours a day in small, dark underground cells infested with insects and vermin, in excessive heat, and forced to sleep on the floor.

Food

80. Although the Director General of Prisons said that food rations were "obviously enough", the Special Rapporteur received testimonies that they were inadequate, of poor quality and often infested with unwanted particles. The corrupt practices of some prison officers affect prisoners' rations. Food supplied by family members is allowed for those on remand but not for convicted prisoners. According to testimonies received, in unofficial places of detention, both water and food were severely restricted or even denied for periods of time.

Medical care

81. Medical facilities inside the prisons are of poor quality and inmates are often referred to health facilities outside the prisons for medical care. There is no routine screening to counter the high risk of contracting non-communicable diseases as a result of poor diet, or infectious diseases, such as tuberculosis, malaria, hepatitis or HIV. Section 22 of the Prisons Act stipulates that medical personnel are appointed as ex officio medical

[20] See "The Gambia 2013 human rights report", United States of America Department of State, 2013, pp. 8 and 9. Available from www.state.gov/documents/organization/220328.pdf.

officers for the prison when on site and report to the Ministry of the Interior, not to the Ministry of Health.

82. The Director General of Prisons reported that a new medical facility had been built at Mile 2 Central Prison and a doctor had been assigned on a part-time basis to that prison and the Jeswang Prison. However, it was also reported[21] that only a few nurses or medical assistants were present; they were overstretched and so underequipped that even the most basic equipment and medicines were lacking.

83. The Special Rapporteur heard that inmates requiring urgent hospitalization routinely experienced delays or were denied treatment. They are brought to the main hospital only in extreme cases and often too late. While the Government did not provide statistics, the Special Rapporteur was informed that prisoners had died of neglect, from the failure of prison staff to comply with a doctor's orders or from lack of access to health care. No staff focus specifically on mental health. On average, one prisoner dies every month out of the approximately 150 inmates at the confinement wing of Mile 2 Central Prison, and two death row prisoners died in September 2012 because they had been denied health care.[22]

Sanitation, sleeping arrangements, work and education opportunities

84. The Special Rapporteur consistently heard about inhumane conditions due to cells being overcrowded, damp, extremely hot, poorly lit and poorly ventilated. He was advised that inmates often slept on the floor without a mat or blanket. During the summer, temperatures are extremely high and there are no ceiling fans or other measures to reduce the heat. In the rainy season, wet and damp conditions contribute to poor health. Unsanitary conditions are reported, in particular in the remand and the maximum security wings of the Mile 2 Central Prison, where detainees only have access to a bucket and there are no separate toilet facilities.

85. According to the Government, there are educational and vocational training opportunities in the prisons to promote the social rehabilitation of prisoners. However, even in the remand wing of Mile 2 Central Prison, detainees are locked up in their cells for 18 hours a day.[23] In 2013, a library was built at Mile 2 Central Prison. However, such opportunities are not accessible to those considered political prisoners or serving lengthy sentences.

Discipline

86. Section 65 of the Prisons Act sets out the exceptional instances when corporal punishment can be imposed on male prisoners. Corporal punishment should be prohibited under all circumstances.

[21] A delegation of the international community visited Mile 2 Central Prison in July 2014 but was only permitted to access the common areas of the prison and not the cell blocks.

[22] See Gambia Human Rights Network, report submitted ahead of the universal periodic review of the Gambia, 2014. Available from http://gainako.com/?p=4785.

[23] See "Special report: Mile 2 remand wing condition worsens", Fatu Radio Network. Available from www.faturadio.com/index.php?option=com_k2&view=item&id=435:special-report-mile-ii-remand-wing-condition-worsens&lang=en.

Family visits

87. New visiting rooms are being constructed at Mile 2 Central Prison. However, detainees in the security wing, including those on death row[24] and those perceived to be enemies of the President, are subjected to harsher treatment and are denied access to family visits.[25]

D. Obligation to protect persons in situations of vulnerability

Individuals detained in mental health-care facilities

88. Due to the suspension of visits to places of deprivation of liberty, the Special Rapporteur was unable to visit psychiatric centres. During the mission, the Director General of Prisons advised the Special Rapporteur that four individuals were being held under detention orders at Tanka Tanka Mental Home. The Minister for Health stated that a draft disability bill was under consideration.

Children

89. The Gambia has ratified the Convention on the Rights of the Child. The Children's Act 2005 provides child offenders with free legal representation and separation from adults from the pretrial to trial stages. Under the Act, a children's court was established in Kanifing Magistrate Court to hear all juvenile cases (there are plans to establish a children's court in every region)[26] and child welfare units were established in police stations.

90. While section 220, paragraph 9, of the Children's Act 2005 prohibits corporal punishment as a judicial sentence, there is no explicit prohibition of corporal punishment as a disciplinary measure and it is routinely practised in the home and in schools.[27] Neither the Criminal Code nor the Children and Young Persons Act 1949 prohibit corporal punishment, either as a judicial sentence for a crime or as a disciplinary measure in juvenile detention facilities.[28] The Special Rapporteur was unable to visit the juvenile wing at Jeshwang Prison, as visits to places of detention had to be suspended.

Women in detention

91. There is a female wing at Mile 2 Central Prison. According to information that the Special Rapporteur received, the female wing is also kept in very poor, unsanitary conditions, with substandard food and cramped cells. According to reports, young female detainees are removed during the night and returned in the morning, the inference being that the guards and/or male detainees mistreat and rape them. The Government has said there are plans to relocate the female prisoner's wing to a newly expanded area of Jeshwang Prison.

Violence against women and girls

92. The National Women's Council advises the Government on policies and plans aimed at promoting women's rights and works closely with the Vice President, who is also the Minister for Women's Affairs. In order to combat gender-based violence, the Domestic Violence Act and the Sexual Offences Act were enacted in December 2013. However,

[24] Amadou Scattred Janneh, *Standing up against injustice: a memoire*, (XLIBRIS, 2013).

[25] Bakary Samateh, "Gambia: Lang Conteh arraigned, remanded at Mile 2", *All Africa*, 8 July 2014. Available from http://allafrica.com/stories/201407081041.html.

[26] See CRC/C/GMB/2-3, para. 222.

[27] Global Initiative, submission to the Committee on the Rights of the Child, February 2014.

[28] See CRC/C/GMB/2-3, paras. 35, 36 and 92.

female genital mutilation has yet to be prohibited and is still practised in the country, particularly in rural areas. The Government has undertaken a public campaign on female genital mutilation, but the message may not be uniform regarding the need to abolish the practice. A proposed bill on the prohibition of female genital mutilation would criminalize the practice. It should be a priority for the National Assembly.

Violence against lesbian, gay, bisexual, transgender and intersex persons

93. In an overall context of State-sponsored violence against lesbian, gay, bisexual, transgender and intersex persons, the Special Rapporteur is concerned that an amendment to the Criminal Code, signed into law by the President on 9 October 2014, on "aggravated homosexuality" subjects such persons to even greater risk of torture and ill-treatment. The Special Rapporteur received reports that the National Intelligence Agency had sought to arrest and detain individuals believed to be homosexual, including after group round-ups of up to 16 persons, who were subjected to violent attacks, humiliation and arbitrary arrest.[29] At least three individuals have been detained for weeks during "investigations" and are reported to have been tortured.

Threats against journalists and human rights defenders

94. On the basis of meetings and interviews with representatives of civil society, the Special Rapporteur found that there was a State practice of intimidation and serious threats, including death threats, to the physical integrity of journalists and human rights defenders that amounted to cruel, inhuman or degrading treatment or even torture.

Irregular migrants and refugees

95. The Special Rapporteur met with several refugee leaders from Côte d'Ivoire, Liberia and Togo who had been beaten during interrogation at an unofficial detention facility, then arrested and sent to Mile 2 Central Prison for writing a letter to the President about the neglect and deplorable conditions suffered by refugees in the Gambia.[30]

Individuals vulnerable to reprisals

96. The Special Rapporteur observed an atmosphere of apprehension and even genuine fear among many victims, witnesses and interlocutors, who said that meeting with him could result in intimidation or more serious consequences. The Special Rapporteur sought and received from the Government "assurances that no persons, official or private individuals who have been in contact with the Special Rapporteur … in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings".[31] After the visit, the Special Rapporteur received information that some individuals who were no longer living in the Gambia were reportedly being tracked down by government authorities. It was difficult to verify this information, but the Special Rapporteur received information from Senegal concerning one such case that he considered credible.

[29] Press statement by the Office of the United Nations High Commissioner for Human Rights, 20 November 2014. Available from www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/91C731B27611821EC1257D9600438CDB?OpenDocument.

[30] Letter to the President from the Gambia Refugees Community Leadership, 29 April 2011.

[31] E/CN.4/1998/45, annex, appendix V, subpara. (c).

IV. Conclusions and recommendations

A. Conclusions

97. **After decades of repression, intimidation and fear, human rights activism is a weak concept in the Gambia and there are no robust institutions or effective legal mechanisms to counter the broad powers of the law enforcement, intelligence and security forces, which operate without any legal oversight and engage in practices that violate human rights with impunity.**

98. **The practice of torture is prevalent and routine, in particular by the National Intelligence Agency during the initial stages of detention. The Government has not fulfilled its obligation to investigate, prosecute and punish every incident of torture and ill-treatment or its obligation to prevent such occurrences.**

99. **Avoiding arrest is a necessary preoccupation for Gambian citizens**[32] **since the lack of an effective criminal justice system is at the core of many human rights violations. There is no comprehensive and well-resourced legal aid programme; "voluntary" statements are relied on that in fact are coerced; pretrial detention is prolonged owing to inadequate police investigations and the denial of bail; sentencing policies result in excessively lengthy custodial sentences; alternatives to imprisonment are not implemented; and the judiciary lacks the independence to uphold procedural safeguards that are required by international law.**

100. **The lack of accountability is also the result of the absence of even a very basic level of forensic services, which means that medical examinations, if carried out at all, are not conducted by independent forensic specialists but by poorly trained medical personnel.**

101. **International human rights standards are not met in the prison system, resulting in a number of serious violations: overcrowding, inadequate nutrition, insufficient access to medical care, poor sanitation, personal insecurity and an absence of rehabilitation services. These substandard conditions constitute cruel, inhuman and degrading treatment or punishment.**

102. **The Special Rapporteur tried to verify the facts in a number of cases of forced disappearance. Not knowing the fate of a loved one amounts to cruel and inhuman treatment of the relatives.**

103. **Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or a third person amounts to cruel, inhuman or degrading treatment or torture.**

104. **Female genital mutilation constitutes cruel, inhuman and degrading treatment.**

B. Recommendations

105. **In a spirit of engagement, the Special Rapporteur recommends that the Government take decisive steps to implement the recommendations set out below, with appropriate assistance from the international community.**

[32] Mustapha Jallow, "Detention without trial and disappearance without trace", *Foroyaa Newspaper*, 8 July 2014.

106. **With regard to international human rights treaties, the Government should:**

(a) Deposit the instrument with the Secretary-General so that it is formally recognized that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been ratified;

(b) Prioritize the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance.

107. **With regard to the Constitution and legislation, the Government should:**

(a) Incorporate clear provisions into the Constitution and national laws to the effect that the prohibition of torture is absolute and non-derogable, in accordance with article 2, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Take the necessary measures to ensure that torture is established as an offence in national law and adopt a definition of torture that includes all the elements contained in article 1 of the Convention. The Government should also ensure that such offences are made punishable by appropriate penalties that take into account their grave nature, in accordance with article 4.2 of the Convention;

(c) Amend the Criminal Procedure Code concerning evidence to be admitted in judicial proceedings, to bring it into line with the provisions of article 15 of the Convention and to explicitly exclude any evidence obtained as a result of torture;

(d) Review all legal provisions that impede freedom of expression, as they are broad and subject to abuse by law enforcement agencies, in particular the National Intelligence Agency, resulting in the detention and interrogation of persons, in particular journalists, human rights defenders, opposition leaders and even former members of the military or the Government, all of whom are at risk of torture or ill-treatment during interrogation;

(e) Amend section 18, paragraph 4, of the Constitution and all relevant laws to ensure that the powers of all law enforcement and security forces are stipulated and are subject to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(f) Conduct a systematic review of criminal legislation on drug offences and sentencing policies on drug offences and other lesser, non-violent offences with a view to reducing lengthy sentences;

(g) Repeal laws that target and criminalize lesbian, gay, bisexual, transgender and intersex persons and take action to combat violence, threats and intimidation on the basis of sexual orientation and gender identity.

108. **With regard to safeguards and prevention, the Government should:**

(a) Ensure the prompt registration of all persons deprived of their liberty and periodically inspect custody records at police and prison facilities to make sure that they are maintained in accordance with the procedures established by law;

(b) Guarantee detainees the right to a lawyer in all circumstances and without exception and ensure that they have access to a lawyer from the moment of deprivation of liberty and are brought before a magistrate within 48 hours of apprehension;

(c) Ensure that all detained persons are guaranteed the possibility to challenge effectively and expeditiously the lawfulness of their detention by having the National Agency for Legal Aid lawyers and the judiciary visit places of detention to locate detainees who are entitled to habeas corpus relief or bail, especially those held in prolonged pretrial detention;

(d) Financially invest in the National Agency for Legal Aid so that it has a robust capacity to operate independently and a sufficient number of qualified lawyers to provide essential services to persons charged with any offence from the moment of apprehension through all stages of criminal proceedings, including investigation, detention, interrogation, arrest and incarceration, to ensure compliance with the rule of law and to demand improvements as necessary;

(e) Make video recordings of all statements made to law enforcement agencies during the investigation and interrogation processes as standard procedure. Such measures should be considered complementary to the provision of legal representation during all stages of the interrogation process;

(f) Ensure the right of detainees to an independent medical examination;

(g) Ensure that any allegations of torture or ill-treatment are admitted at any stage of the trial and that courts are obliged to launch ex officio investigations whenever there are reasonable grounds to suspect torture or ill-treatment;

(h) Seek technical assistance to strengthen the independence of the judiciary and improve the training of judges so they can have a more effective role in safeguarding detainees' rights at all stages of the proceedings, and be informed of detainee transfers to another detention facility and post-sentencing matters, such as the conditions imposed after sentencing, in particular in cases involving life imprisonment or the death penalty.

109. **With regard to the prompt, thorough and impartial investigation of allegations of torture or ill-treatment, the Government should:**

(a) Establish an effective and independent mechanism that promptly and effectively investigates all allegations of torture or ill-treatment, prosecutes those responsible and, if they are found guilty, imposes administrative and judicial penalties that take into account the grave nature of their acts;

(b) Establish a judicial commission to investigate whether a paramilitary unit is operating in parallel to law enforcement agencies and initiate investigations, prosecutions and convictions, if substantiated;

(c) Investigate all forced disappearance cases, as the fate and whereabouts of each victim must be resolved and the perpetrators must be brought to justice to alleviate the suffering of the families;

(d) Ensure that victims of torture or ill-treatment obtain redress and fair and adequate compensation for violations of their rights, including the means for the fullest rehabilitation possible, establish mechanisms to provide all victims with medical, psychological and social rehabilitation and ensure they are not subject to reprisals;

(e) Ensure that medical staff are able to conduct independent examinations at the time of arrest, upon transfer to another place of detention or upon request, without interference by law enforcement personnel or prosecutors;

(f) Train law enforcement officials, military personnel and prison authorities in international human rights law to ensure that national procedures are compliant and that preventative measures to eliminate torture and ill-treatment are integrated into their respective working methods, and ensure that individuals who engage in freedom of expression, association or peaceful assembly are not targeted through tactics of intimidation, harassment or violence;

(g) Seek investment and technical assistance to establish a specialized training programme for forensic experts on the assessment of ill-treatment and torture, in accordance with international standards, including the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol); and train the prosecution and the judiciary on how to evaluate forensic reports.

110. **With regard to the monitoring and inspection of places of detention, the Government should:**

(a) Take concrete measures to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to create a national system of regular prison monitoring by independent experts and to establish an effective complaints mechanism;

(b) Accelerate the review of the National Human Rights Commission Bill, 2014 that is before the National Assembly to ensure that it will be an independent and impartial institution, established in accordance with the principles relating to the status of national institutions (the Paris Principles);

(c) Accelerate the designation of the National Human Rights Commission as the national mechanism for the prevention of torture, in accordance with article 17 of the Optional Protocol, and request technical assistance to ensure that the Commission, once established, has an independent operating budget and sufficient financial and human resources so it can inspect all places of detention regularly, including pretrial detention. In addition to making unannounced visits, it should provide detailed reports, receive complaints, initiate or promote prosecutions, produce findings and implement recommendations;

(d) Shut down unofficial places of detention, the existence of which violates international law, and allow access by the International Committee of the Red Cross (ICRC) to all places of detention,[33] under terms that are acceptable to the ICRC;

(e) Encourage non-governmental organizations to undertake regular monitoring of places of detention and deliver much-needed medical and educational services, and provide training for law enforcement, health and legal professionals on international human rights standards and on detecting, reporting and preventing torture and ill-treatment.

111. **To address overcrowding in prisons, the Government should:**

(a) Ensure more active State participation, by the Prisons Service, the Prosecutor's Office and the judiciary, to implement a more sustained programme to reduce the levels of overcrowding;

(b) Review the cases of non-violent and low-risk offenders with the aim of releasing them unconditionally or under reasonable conditions so that bail and effective monitoring becomes a standardized practice to reduce the number of remand prisoners;

[33] The International Committee of the Red Cross has been denied access to places of detention in the Gambia since 2006.

(c) Ensure that time spent in custody on remand is taken into account during sentencing;

(d) Provide further training to the judiciary in case management, implement a fast-track system for less serious cases and ensure that all detainees are tried within a reasonable period;

(e) Provide a swift appeal process for the review of convictions and sentences;

(f) Divert some of the funds used for incarceration to support a project to identify low-risk offenders and divert or release them using alternative measures.

112. **With regard to conditions of detention, the Government should:**

(a) Move away from a purely punitive penal system to a more modern approach that includes the reform, rehabilitation and reintegration of inmates, in accordance with international human rights standards;

(b) Recall that, regardless of the level of development of the country, it is obliged to ensure minimum standards of conditions of detention, in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(c) Provide each inmate with the minimum acceptable amount of floor space and cubic quantity of air, a separate bed, adequate sanitary conditions and exercise;

(d) Urgently improve access to and the quality of health care to provide a minimum standard of medical care, and employ a sufficient number of qualified doctors, including for psychiatric and dental care, in addition to medical assistants and nurses;

(e) Establish an independent body under the Ministry of Health to regulate and improve the quantity and quality of prison food and establish a farming programme in prisons to offset food costs and provide better variety and nutrition;

(f) Seek donations from civil society to increase opportunities for education, recreation and training programmes.

113. **With regard to the death penalty, the Government should:**

(a) Declare an official moratorium with a view to the abolition of the death penalty, as the conditional moratorium subjects condemned prisoners to the "death row phenomenon" and constitutes ill-treatment or even torture;

(b) Pending the abolition of the death penalty, remove from the law any mandatory imposition of the death penalty;

(c) Commute all outstanding death sentences to term sentences and ensure that those who had death sentences are allowed visits by their lawyers and family members;

(d) Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

114. **With regard to children, the Government should:**

(a) Expedite the ratification of the Optional Protocols to the Convention on the Rights of the Child;

(b) Explicitly prohibit all forms of corporal punishment without exception and in all settings, including the home, schools and alternative care settings;

(c) Ensure the separation of juveniles on remand from adults, in compliance with international standards;

(d) Provide additional training to the judiciary and officials of the Office of the Attorney-General so that bail other alternatives to detention are considered for children in conflict with the law, and ensure that imprisonment is only used as an exceptional measure.

115. **With regard to women, the Government should:**

(a) Ensure that female inmates are protected from all gender-based violence and sexual harassment;

(b) Uphold the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and implement alternative measures, especially for women who are pregnant or have dependents;

(c) Prohibit the harmful practice of female genital mutilation by urging the National Assembly to pass the Prohibition of Female Genital Mutilation Bill, 2012 and take the necessary steps to ensure that this law, the Domestic Violence Act and the Sexual Offences Act are fully implemented to help eradicate gender-based violence.

116. **With regard to mental care and psychiatric institutions, the Government should:**

(a) Expedite the consultations regarding the draft disability act and ensure that it contains the requisite legal framework to apply the Convention on the Rights of Persons with Disabilities;

(b) Regulate and supervise health-care practices, with a view to preventing ill-treatment, and investigate and prosecute cases of alleged inhumane practices.

117. **With regard to regional and international mechanisms, the Government should:**

(a) Formulate a national action plan to prioritize and implement the recommendations of the universal periodic review;

(b) Implement the present recommendations and those contained in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/29/37/Add.2);

(c) Implement resolutions 134 (2008) and 145 (2009) of the African Commission on Human and People's Rights and comply with and implement expeditiously the judgements of the Court of Justice of the Economic Community of West African States;

(d) Allow unrestricted and full access to the Office of the United Nations High Commissioner for Human Rights if it decides to send an investigation team, as requested by the Government, to assist with the investigation of the Manneh and Hydara cases.

118. **With regard to assistance by regional and international mechanisms, the Government could consider:**

(a) Inviting the Special Rapporteur on Prisons and Conditions of Detention of the African Commission on Human and Peoples' Rights to follow up on the present report;

(b) Extending a standing invitation to the special procedures mandate holders, in particular the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on violence against women, its causes and consequences;

(c) Re-engaging with the European Union, which has not released funds earmarked for projects that involve cooperation with the Government owing to its continued concerns regarding the human rights situation in the Gambia;

(d) Seeking assistance from the Convention Against Torture Initiative [34] regarding the ratification and implementation of the Convention;

(e) Encouraging donations from the international community to support the United Nations Voluntary Fund for Victims of Torture so that it can consider requests for assistance from non-governmental organizations that work to ensure that persons who have been tortured have access to medical care and legal redress.

[34] Launched in 2014 to focus on universal ratification and implementation of the Convention.