



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-first session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

THE GAMBIA*

1. The Committee considered the situation of civil and political rights under the International Covenant on Civil and Political Rights in The Gambia in the absence of a periodic report at its 2023rd and 2024th meetings, on 15 and 16 July 2002 (CCPR/C/SR.2023 and 2024). At its 2035th meeting, held on 23 July 2002 (CCPR/C/SR.2035), it adopted the following provisional concluding observations pursuant to rule 69A, paragraph 1, of its rules of procedure.

Introduction

2. The Committee regrets that, in spite of the diplomatic note, dated 22 March 2002, addressed by the Permanent Mission of The Gambia to the Secretary-General of the United Nations, which was confirmed in writing by a further communication, dated 19 June 2002, that a high-level delegation would attend the hearing before the Committee, that delegation failed to appear. The Committee recalls that it had previously agreed to the State party's request for a deferral of consideration of the country situation, in the light of the State party's commitment to send a delegation. In these circumstances, the delegation's last-minute indication that it would not be attending the session is a matter of serious concern. The Committee further regrets the State party's failure to honour its reporting

* Pursuant to rule 69A, paragraph 3, of its rules of procedure, the Committee decided to make public the provisional concluding observations of The Gambia adopted and transmitted to the State party during its seventy-fifth session.

obligations under article 40 of the Covenant, and that no report had been submitted to the Committee since April 1983 (CCPR/C/10/Add.7), despite numerous reminders. This failure amounts to a serious breach by the State party of its obligations under article 40 of the Covenant.

Positive aspect

3. The Committee notes that the State party has facilitated visits by the International Committee of the Red Cross, the African Commission on Human and Peoples' Rights and the latter's Special Rapporteur on Conditions of Detention, to the Mile Two State prison.

Principal subjects of concern and provisional observations

4. While Chapter Four of the Constitution of The Gambia contains various provisions that are compatible with those of the Covenant, the Committee notes that many differences between the provisions of the Constitution and the Covenant remain, in particular in sections 19, 21, and 35. The provisions of articles 10, 11, 13, 16 and 20 of the Covenant do not appear to have equivalent provisions in the Constitution. The Committee is concerned that, generally, the application of the Constitution itself appears to be undermined by several decrees issued by the Armed Forces Provisional Ruling Council (AFPRC), especially Decree No. 36 of April 1995, many of which remain in effect and which contradict both the Constitution and provisions of the Covenant.

The State party should bring its laws into conformity with the provisions of the Covenant.

5. Schedule 2, section 13, of the Constitution in effect grants retroactive immunity to the members of the Armed Forces Provisional Revolutionary Council (AFPRC). This situation is incompatible with article 2 of the Covenant, which enshrines the right to an effective remedy.

The State party should repeal Schedule 2, section 13, of the Constitution.

6. The Committee remains concerned over the adoption of the Indemnity Amendment Act, 2001, which effectively granted immunity from prosecution to members of the security forces who were involved in the break-up of the demonstrations of April 2000 in Banjul and Brikama.

The State party should repeal the 2001 Indemnity Amendment Act, whose provisions are contrary to article 2 of the Covenant, and allow the constitutional challenge to the Act, now before the Gambian courts, to proceed.

7. The Committee expresses concern over allegations about the resort to excessive and sometimes lethal force by the security forces, notably during the break-up of student demonstrations in Banjul, Brikama and other cities in April 2000 and during the presidential electoral campaign in autumn 2001. It is further concerned by reports of a significant number of extrajudicial executions committed by the security forces since 1995.

The State party should investigate allegations of instances of excessive use of force, especially use of lethal force and extrajudicial executions by the security forces, without delay and bring to justice those found responsible for such acts. The security forces must be instructed to act in ways compatible with articles 6 and 7 of the Covenant.

8. In the light of article 6, paragraph 6, of the Covenant, the Committee notes with concern that the death penalty was reintroduced in August 1995, after its abolition in 1993. It appears that Gambian law does not prohibit the death penalty for crimes committed by persons under the age of 18. It is not clear that all crimes presently carrying the death penalty qualify as the “most serious crimes” within the meaning of article 6, paragraph 2. The Committee further notes with concern that several death sentences have been imposed in recent years, although they were apparently not carried out.

The State party should provide to the Committee detailed information on the crimes for which capital punishment may be imposed, the number of death sentences handed down since 1995, and the number of prisoners currently detained on death row.

9. The Committee expresses serious concern over numerous allegations of torture and ill-treatment, particularly during periods of incommunicado detention, in violation of articles 7 and 10 of the Covenant.

All allegations of ill-treatment and torture in custody must be investigated promptly by an independent body, and those held to be accountable for such acts should face appropriate sanctions/prosecution.

10. The Committee expresses its concern over the fact that female genital mutilation continues to be practised widely in the State party’s territory, notwithstanding the adoption of the First National Action Plan for the Eradication of Female Genital Mutilation (FGM) in March 1997. The Committee reaffirms that the practice of FGM is contrary to article 7 of the Covenant.

The State party should take prompt legal and educational measures to combat the practice of female genital mutilation. Rather than censoring radio and television broadcasts designed to combat the practice of FGM, such broadcasts should be reinstated and encouraged.

11. According to information brought to the Committee’s attention, numerous members of the political opposition, independent journalists and human rights defenders have been subjected to arbitrary arrest and periods of detention of varying length without charges. In many instances these actions have been carried out by the National Intelligence Agency (NIA) in application of decrees issued by the AFPRC that legitimize the practice of detention without trial and charges. The Committee is further informed that NIA continues to practice incommunicado detention. This practice is contrary to article 9 of the Covenant.

The State party should ensure that all those arrested and detained are either properly charged and brought to trial without delay or released. Those who have been subjected to measures of arbitrary arrest and detention should be afforded an appropriate judicial remedy, including compensation.

12. According to information before the Committee, conditions of detention at Mile Two prison are not compatible with article 10 of the Covenant, and certain categories of prisoners, especially political prisoners, are subjected to particularly harsh treatment contrary to article 7 of the Covenant.

The State party should provide detailed information about the conditions of detention in Mile Two prison and ensure that conditions of detention conform to articles 7 and 10 of the Covenant, as well as to the United Nations Standard Minimum Rules for the Treatment of Prisoners.

13. The Committee regrets that it did not have before it the Code of Criminal Procedure. It notes, however, that Decree No. 45 (1995) and Decree No. 66 (1996) of the Armed Forces Provisional Ruling Council (AFPRC), extending the period of detention up to 90 days and which remain in force, are neither compatible with the constitutional provisions governing arrest and detention (sections 19 (2) and (3) of the Constitution), nor with the Covenant (art. 9).

The State party should repeal Decrees Nos. 45 and 66. It is requested to provide information on whether the constitutional provision under which any arrested person must be produced before a judge or judicial officer as soon as possible or within 72 hours of arrest at the latest is in fact consistently applied in practice. The Committee considers that the delay of 72 hours is difficult to reconcile with article 9, paragraph 3, of the Covenant.

14. The Committee notes with concern that detainees who are opposed to the Government and who face criminal charges do not always benefit from all guarantees of a fair trial, and that some have been tried before military courts, for which no constitutional provision exists. It further regrets that, in spite of the constitutional provision for security of tenure of judges, judges have reportedly been removed summarily from office in several instances.

The State party should afford to all those facing criminal charges trials in full conformity with the Covenant. It is invited to guarantee the security of tenure of judges. The State party is further invited to explain the basis for the establishment and operation of military courts, and whether the operation of these military courts is in any way linked to the existence of a state of emergency.

15. The Committee is concerned that the State party has withdrawn the passports of several members of the political opposition to prevent them from leaving the country.

The State party should respect the rights guaranteed under article 12 of the Covenant.

16. The Committee expresses its concern about systemic discrimination against women:

(a) Section 33, subsections 5 (c) and (d) of the Constitution derogate from the general principle of non-discrimination; the girl child is discriminated against in respect of education; women are discriminated against in matters pertaining to divorce, which is only permitted under rare circumstances; there is further discrimination against women in inheritance matters;

(b) The participation of women in political life, and in public and private sector employment, is particularly inadequate, on the basis of the information before the Committee;

(c) There appear to be no appropriate laws to protect women against domestic violence.

The State party should take appropriate measures to ensure that domestic laws (including decrees) and customary law, as well as certain aspects of the Shariah, are interpreted and applied in ways compatible with the provisions of the Covenant. It should ensure the equality of women with men, both in education and employment.

17. The Committee is concerned that the criminalization of abortion, even when pregnancy threatens the life of the mother or results from rape, leads to unsafe abortions, which contributes to a high rate of maternal mortality. The Committee regrets the absence of information from the State party on the provision of health services to women, especially in relation to reproductive health and family planning.

The State party recommends that the law be amended so as to introduce exceptions to the general prohibition of abortions.

18. The Committee remains concerned about the persistence and the extent of the practice of polygamy, and the different ages for marriage between boys and girls.

The State party should ensure that the practice of polygamy is discouraged. It should amend its laws that permit early marriages of boys and girls, at different ages.

19. The Committee considers that legislation passed in May 2002, creating a National Media Commission vested with the power to order the detention of journalists and to impose heavy fines on journalists, is incompatible with articles 9 and 19 of the Covenant. The Commission's procedure for the licensing of journalists is equally incompatible with article 19.

The State party is invited to review the above-mentioned legislation, with a view to bringing it into conformity with the provisions of articles 9 and 19 of the Covenant.

20. While noting the constitutional protection of the right to freedom of expression, the Committee expresses concern that numerous journalists have been subjected to intimidation, harassment, and occasionally to detention without charges, for having published material critical of the Government. The resort to libel and defamation charges against journalists for similar reasons is equally cause for concern (article 19 of the Covenant).

The State party should guarantee the freedom of expression and opinion of the independent media. Journalists who have been subjected to measures of arbitrary detention should be afforded effective judicial redress and compensation.

21. In the Committee's opinion, the closure of independent radio stations, as well as the possibility, under Decree No. 71 (1996), to impose heavy fines on independent newspapers that do not register annually as required under the 1994 Newspaper Act and pay the registration bond payable pursuant to Decree No. 70 (1996), is indicative of unjustifiable restrictions on freedom of thought and expression and of a pattern of harassment of independent media.

The State party should reconsider the system for registration of independent newspapers and repeal Decrees Nos. 70 and 71, to bring its regulation of the print media into conformity with article 18 and article 19 of the Covenant.

22. The Committee is concerned that the right to freedom of assembly is subject to limitations that go beyond what is permissible under article 21 of the Covenant and that such limitations, including denial of authorization to hold meetings, are targeted in particular at the political opposition to the Government.

The State party should ensure full respect for the provisions of article 21, and should do so on a non-discriminatory basis.

23. While Decree No. 89 (1996), which banned political party activity, was abrogated in July 2001, the Committee notes with concern that political parties opposed to the Government are routinely disadvantaged and discriminated against in their activities, for example by denial or serious limitation of the possibility of radio or television broadcasts.

The State party should treat all political parties equally and provide them with equal opportunities for the pursuit of their legitimate activities, in line with the provisions of articles 25 and 26 of the Covenant.

24. In the light of information on the plurality of ethnic groups, religions and languages in The Gambia, the Committee is concerned over the State party's contention, expressed during the consideration of its initial report, that there were no minorities in The Gambia.

The State party is invited to report on measures taken to implement article 27 of the Covenant.

25. The Committee invites the State party to provide its replies to the concerns raised in the present provisional concluding observations by 31 December 2002. In this regard, the Committee encourages the State party to solicit technical cooperation from the appropriate United Nations organs, in particular the Office of the United Nations High Commissioner for Human Rights, to assist it in meeting its reporting obligations under the Covenant.
