



International Covenant on Civil and Political Rights

Distr.: General
11 December 2017

Original: English
English, French and Spanish only

Human Rights Committee

List of issues in the absence of the second periodic report of The Gambia*, **

Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

1. Please provide information on steps taken by the new Government to ensure the protection of human rights in accordance with the Covenant and any transitional measures taken on the legislative, policy and institutional level to bring about legal and policy reform. In this context, what are the priority areas where the new Government intends to take steps?
2. Please state the extent to which the provisions of the Covenant have been invoked in the State party's domestic courts. Please provide information on efforts to harmonize statutory, customary and Islamic laws with the Constitution and efforts to give effect to the provisions of the Covenant, including training of judges, prosecutors and lawyers regarding the rights protected under the Covenant.
3. Please provide information on the measures taken to improve access to judicial remedies by addressing the backlog in the domestic courts. Furthermore, please describe the measures taken to address the recurring failures to enforce court orders and judgments related to human rights, including those issued by the Court of Justice of the Economic Community of West African States in the cases of *Musa Saïdykhan v. The Republic of The Gambia* (suit No. ECW/CCIIAPP/11107) and *Chief Ebrima Manneh v. The Republic of The Gambia* (suit No. ECW/CCJ/JUD/03/08).
4. According to information before the Committee, a bill on the establishment of a national human rights commission was validated by key stakeholders with the support of the Commonwealth Secretariat on 22 August 2013. Please provide information on the status of this bill, which seeks to establish a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please also provide information on steps taken to establish, as a standing government structure (ministerial, interministerial or institutionally separate), a national mechanism for reporting and follow-up that is mandated to coordinate and prepare reports for submission to and engage with international and regional human rights mechanisms.

Past human rights violations (arts. 2, 6, 7, 9 and 14)

5. Please indicate whether the State party intends to establish a mechanism to address the human rights violations, especially torture, enforced disappearances, extrajudicial

* Adopted by the Committee at its 121st session (16 October–10 November 2017).

** The second periodic report of the Gambia was due on 21 June 1985.



killings and arbitrary arrests and detentions, which were committed during the previous regime and to provide reparations to victims. What steps have been taken to repeal: (a) Schedule 2, section 13, of the Constitution which grants retroactive immunity to members of the Armed Forces Provisional Revolutionary Council; and (b) the Indemnity Amendment Act, 2001, which effectively grants immunity from prosecution to members of the security forces.

State of emergency and counter-terrorism measures (arts. 4, 7 and 9)

6. Please explain the steps being taken to ensure that article 35 (2) of the Constitution, which provides for derogation from rights during states of emergency that are not allowed under the Covenant, fully complies with article 4 (2) of the Covenant. Please provide information on the state of emergency declared on 17 January 2017, in particular whether it is still in force and if the State party intends to revoke it. Please also indicate all measures undertaken to document all violations of human rights under the Covenant related to the emergency situation and the steps being taken to investigate and redress violations of rights that were not suspended.

7. Please provide information on the definition of terrorism under the Anti-Terrorism Act of 2002 and the cases brought on charges of terrorism and their outcome, including the sentences imposed. Please also provide information on the legal safeguards in place for persons suspected of, or charged with, terrorism or related crimes.

Non-discrimination, equality between men and women (arts. 2, 3, 25 and 26)

8. Please provide information on the measures taken to improve: (a) women's status in the political, economic and social life of the country; (b) the percentage of women employed in decision-making positions both in the private and public sectors; and (c) literacy and school enrolment rates for women and girls. Please indicate the specific steps taken to eliminate persistent adverse cultural norms, practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men.

9. Please respond to information that issues relating to marriage, divorce, inheritance, marital property, adoption, burial and devolution of property upon death are regulated by sharia or customary law, which contain provisions that discriminate against women. What steps are being taken to repeal such provisions, which are reported to have been codified in the Women's Act, 2010? What measures have been taken to eliminate the harmful practices of child marriage and levirate as well as to outlaw polygamy? Please also indicate the minimum age for marriage for boys and girls.

Right to life (art. 6)

10. Please describe the steps taken to address cases of enforced disappearance and extrajudicial killing allegedly committed by the security forces, including the National Intelligence Agency and the National Drug Enforcement Agency as well as paramilitary squads, including those referred to as "Black Black" or "Junglers", who, among others, targeted political dissidents and journalists. Please provide detailed information on: (a) the number of investigations launched against the alleged perpetrators; (b) the type of charges brought against them; (c) the number of cases dismissed and the reasons for their dismissal; (d) the number of perpetrators who have been convicted and the nature of the sentences; and (e) whether victims have been adequately compensated and/or rehabilitated.

11. Does the new Government plan to bring article 18 of the Constitution, which allows a great measure of discretion in the use of force by law enforcement officials, into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials? Please provide information regarding the other legal standards applied in the State party for the appropriate use of force and firearms by law enforcement

officials and the source of those standards in domestic law. What progress has been made in the revision of the “Code of Conduct for the Ministry of the Interior and Security Services under the Purview of the Ministry”? Please explain what steps the State party has taken to ensure that such standards are respected by law enforcement and security personnel in practice.

12. Information before the Committee indicates that notwithstanding a de facto moratorium that had been in place when the death penalty was reintroduced in 1995, the State party executed nine inmates on death row at Mile Two State prison in August 2012. Information also indicates that a conditional moratorium was announced in September 2012, and that the death penalty may be imposed for crimes not involving intentional killing and is in some cases mandatory. Is there currently an official moratorium in place on the death penalty? Please indicate whether the State party intends to abolish the death penalty and accede to the Second Optional Protocol to the Covenant. Furthermore, please provide statistical data on the number of individuals on death row, the type of offences they committed and whether the death penalty was mandatory for those offences.

Violence against women, including domestic violence (arts. 3, 6, 7, 14 and 26)

13. Following the enactment of the Domestic Violence Act and the Sexual Offences Act in December 2013, please explain the concrete steps taken to address the problem of violence against women, including domestic violence, in the State party. Please provide information on: (a) the number of complaints lodged by victims of such violence; (b) the number of persons prosecuted and convicted; (c) measures taken to provide rehabilitation and reparation to victims; (d) the number of temporary restraining orders issued and violated; and (e) the number of shelters available to victims of such violence. Please also indicate if the State party provides special training programmes designed for law enforcement officials on the handling of female victims of violence, including domestic violence.

14. According to information before the Committee, female genital mutilation is widespread in the State party and about 80 per cent of women and girls between the ages of 15 and 19 have undergone the procedure. Following the adoption of the Women’s Amendment Act of 2015, which prohibits female genital mutilation, please indicate the concrete steps taken to eliminate the practice and provide information on: (a) the number of complaints lodged against alleged perpetrators; (b) the number of persons prosecuted and convicted; and (c) the nature of the sanctions imposed and measures to rehabilitate victims. Please provide an update on the case before the Mansankonko High Court in the Lower River region in which Sunkaru Darboe and Saffiatou Darboe were charged with various criminal offences when a five-month-old child died from the effects of female genital mutilation in Kiang West.

Termination of pregnancy

15. Please provide updated data on the rates of infant and maternal mortality, disaggregated by cause of death, and information on measures taken to reduce these phenomena. Please provide information on the specific measures being taken to revise legislation which criminalizes abortion except when the life or health of the pregnant woman is at risk. Please also provide data on the extent to which the restrictive legal regime on abortion contributes to the high maternal mortality rate in the State party. Please report on awareness-raising efforts and steps taken to ensure that men, women and adolescents in all parts of the State party have access to contraceptives and to sexual and reproductive health education and services.

Prohibition of torture and cruel, inhuman or degrading treatment; liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)

16. Please provide information on the release of political prisoners after the new Government took office. Please provide information on the measures taken to amend the Criminal Code (Act No. 25 of 1933) to include torture as a criminal offence. Please also provide information on other specific measures taken to prevent and punish the persistent acts of torture occurring in places of deprivation of liberty. What measures have been taken to address the rampant use of prolonged detention without trial, incommunicado detention and ill-treatment as well as the high numbers of deaths in custody? Please describe the measures taken to provide training to police and prison officers on the prevention and prohibition of torture. Please also provide disaggregated statistical data on the number of criminal prosecutions and disciplinary measures taken against law enforcement officials who are alleged to have committed acts of torture and ill-treatment.

17. Please explain the measures taken to prevent unlawful or arbitrary arrests by the police and other law enforcement officials, particularly the National Intelligence Agency. Please state the remedies available to victims of unlawful or arbitrary arrest and the measures taken to ensure that arrested persons are promptly brought before a judge.

18. Please provide information on measures taken to address the alleged inhuman conditions of detention, overcrowding and lack of appropriate health and sanitation services in the State party's prisons, particularly in Mile Two State prison. What steps have been taken to ensure that juveniles on remand are separated from adults, in line with the Covenant and international standards? Please also provide information on the degree to which independent monitoring groups have access to prisons and detention centres, and on the State party's plans to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Elimination of slavery and servitude (art. 8)

19. Information before the Committee indicates that the State party remains a source and a destination country for human trafficking, particularly for purposes of sexual exploitation and forced labour. Please indicate the impact that the implementation of the Trafficking in Persons Act, 2007, as amended in 2010, the Children's Act, 2005 and the Tourism Offences Act, 2003 have had in combating trafficking in persons, particularly in the protection of children from sex tourists. Please provide statistical information on the prevalence of human trafficking and forced labour disaggregated by gender, age and country of origin of the victims; the number of complaints, investigations, prosecutions, convictions and punishments; and the number of victims who have received assistance in the form of reparation and rehabilitation. Please state the steps taken to formulate procedures for the identification of victims of trafficking and to employ counter-trafficking measures, including training programmes for authorities in the National Agency against Trafficking in Persons, and to raise public awareness.

20. According to information before the Committee, during President Jammeh's term in office, the Secretary-General in the Office of the President issued a circular to all civil servants instructing all heads of departments, ministries and State-owned enterprises to take their staff to the President's home village in Kanilai to work on his farm. Please provide information on measures taken to compensate those individuals who were subjected to forced labour at the former President's farm.

Refugees and asylum seekers (art. 13)

21. Please provide information on the progress made to establish transit centres for refugees and asylum seekers as well as to provide adequate resources to the Gambia Commission on Refugees. Please provide an update on the treatment of refugees who fled from the conflict in the province of Casamance in Senegal.

Independence of the judiciary and the right to a fair trial (art. 14)

22. Information before the Committee indicates that a system of contract judges – up to the level of Chief Justice – has long been followed whereby judges are brought from abroad and employed on the basis of contracts which are renewable at the pleasure of the Government, thus undermining the independence of the judiciary. Has this system been abolished by the new Government and, if not, are there plans to do so? There are reports of rampant corruption and executive interference in the judiciary and that judges and magistrates have been arrested, detained or threatened with dismissal because they issued orders considered to be unfavourable to the Government. Please provide information on specific measures taken to guarantee the independence and impartiality of the judiciary, including ensuring that rules relating to appointment and removal of judges are in line with the Basic Principles on the Independence of the Judiciary. What specific measures are being taken to: (a) address the lack of judges and to clear the huge backlog of cases; (b) combat corruption in the judiciary; and (c) address the lack of material resources to run the courts? What is the status of the Judges Remuneration Allowances and Other Benefits Bill, 2014, which reportedly seeks to make provision for the terms and conditions of service of judges and, therefore, to guarantee tenure of office?

23. Please explain the measures taken to ensure that suspects in criminal cases have access to a lawyer during the initial stages of detention and that accused persons, including those facing a capital murder charge, benefit from legal aid through the National Agency for Legal Aid. Please respond to reports that lawyers have been subjected to arrest, detention and harassment in the State party. What measures are in place to ensure that lawyers can provide legal services without being subjected to intimidation and harassment by law enforcement officials?

24. Please clarify whether decisions taken by *cadi* courts, including the *Cadi Appeals Panel*, which are in charge of applying *sharia*, can be reviewed by ordinary courts. What mechanisms are in place to ensure the free consent of the parties, in particular women, to the adjudication of their cases by *cadi* courts? What measures are being taken to review decisions rendered by military courts against persons accused of crimes against national security in proceedings which allegedly did not comply with due process and fair trial guarantees?

Freedom of opinion and expression, and freedom of association (arts. 19 and 22)

25. According to information before the Committee, journalists and human rights defenders have been subjected to arrest, detention and harassment by law enforcement officials. Furthermore, due to legislation that restricts freedom of expression, journalists engage in self-censorship, *inter alia* to avoid criminal defamation suits. Please provide information on measures taken to guarantee in practice the right to freedom of expression. In particular, please state the measures taken to: (a) revise the Criminal Code (Amendment) Act, 2013 and the Information and Communication (Amendment) Act, 2013, which created new online offences including spreading “false news” about the Government or public officials; and (b) revise the 2004 amendments to the Newspaper Act, which introduced exorbitant registration fees and bonds for media organizations.

26. Please provide information on measures taken to revise the 1996 decree on non-governmental organizations which, *inter alia*, imposes a cumbersome registration process and requires non-governmental organizations to submit budgets and work programmes to the Government. What measures have been taken to reconsider the decision to place the supervision of non-governmental organizations under the Office of the President, which resulted in increased restrictions on their activities?

Measures for the protection of minors (art. 24)

27. Please provide information on the concrete measures taken to address the problem of non-registration of children at birth, which leaves a high percentage of children, especially in rural areas, without birth certificates. Please provide information on the concrete measures taken to address obstacles to the registration of birth of children born out of wedlock, often resulting from the stigmatization faced by single mothers.

Participation in public life (art. 25)

28. Please provide information on measures being taken to ensure that elections are transparent and fair. Please specify the steps that have been taken to ensure that the Independent Electoral Commission is free from executive interference and enjoys financial autonomy. Please provide information on the role and status of opposition political parties.

Non-discrimination against lesbian, gay, bisexual, transgender and intersex persons (arts. 2 and 26)

29. Please provide updated information on the State party's efforts to decriminalize same-sex relationships by repealing sections 144–147 of the Criminal Code, 1965, as amended in 2005. Please also describe measures taken to deal with stereotypes in society with regard to homosexuality, which is largely considered to be taboo and repugnant to cultural values, and to protect lesbian, gay, bisexual, transgender and intersex individuals from arbitrary arrest and violence. Please provide an update on the measures taken to adopt a comprehensive equality and non-discrimination law that expands the grounds for protection against discrimination to include sexual orientation and gender identity.

Dissemination of information on the Covenant (art. 2)

30. Please provide information on the steps taken to disseminate information on the Covenant.
