



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Report submitted by the Gambia under article 29
(1) of the Convention, due in 2021***

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I. Preface

1. The Republic of The Gambia is committed to the progressive realisation of the rights and freedoms of all persons as well as the duties enshrined in the human rights conventions and treaties ratified through the creation of appropriate policy, legislative, judicial, administrative, and budgetary measures.
2. Although the Government of The Gambia is yet to domesticate the Convention on Enforced Disappearances since its ratification in 2018, efforts are being made at all levels to ensure the protection of rights for all persons, notwithstanding.
3. It is against this background that this Initial State Report seeks to highlight the measures adopted so far, the advancements made, and the constraints encountered with regards to torture, arbitrary killings, and enforced disappearances of persons between July 22, 1994, and January 17 2017.
4. In this regard, the Ministry of Justice takes this opportunity to express its appreciation to the Committee on Enforced Disappearances and hopes the Committee will appreciate the progress and determinations being made as initial steps towards the domestication of the Convention against Enforced Disappearances and continue to support to sustain the promotion and protection of human rights in the overall interest of all people in The Gambia.
5. The Government of The Gambia looks forward to the opportunity to engage in a constructive dialogue with the Committee.

II. Process for the preparation of the report

6. The Inter-Ministerial Taskforce on Treaty Body Reporting prepared this report under the Solicitor General & Legal Secretary of the Ministry of Justice's guidance and supervision. A Drafting Team undertook the preparation of the report after conducting extensive consultations with stakeholders in relevant Ministries, Departments, Agencies of Government and Civil Society Organisations to obtain information on the situation on the ground.
7. Despite the challenges posed by the COVID-19 Pandemic, inception and a stakeholder's meetings were organised by the Ministry of Justice between December 2020 and March 2021 in collaboration with the Joint OHCHR-UNDP Transitional Justice and Human Rights Project. At these meetings, members of the Inter-ministerial taskforce, Civil Societies Organisations (CSOs) and other partners reviewed the reporting guidelines and draft report, respectively.
8. In addition, several relevant Institutions and groups had the opportunity to give their opinions on the present document's content. They included: The State Intelligence Services (former National Intelligence Agency), The Gambia Police Force, The National Human Rights Commission. The Truth, Reconciliation and Reparations Commission, The Gambia Armed Forces, The Gambia Prison Services, and Civil Society Organisations, including the Center for Victims of Human Rights Violations and African Network against Extrajudicial Killing and Enforced Disappearance, The Gambia Bar Association, and Female Lawyers Association, Institute for Human Rights Development in Africa (IHRDA), the National Assembly amongst others.
9. A validation workshop was held on Wednesday, March 10, 2021, wherein the final draft report was presented to participants from both Government and CSOs for consideration. Their contributions, suggestions, and recommendations made therein were taken into account in developing the final report for submission to the Committee.

III. Introduction

10. The Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as "the Convention") requires States parties to adopt preventive and repressive measures to ensure that the rights enshrined in the Convention are respected.

11. The Gambia ratified the Convention on September 23 2018, and per article 29, paragraph 1, of the Convention, The Gambia is required to submit to the Committee a report on the measures taken to give effect to its obligations under the Convention. In compliance with this obligation, The Gambia is submitting the present report, which, together with the core document, adheres in both its presentation and its content to the guidelines adopted by the Committee.

12. The report provides information on the historical position before 2017 when the regime of former President Yahya Jammeh was in force and the current state of the law and practices in The Gambia under the current Government of Adama Barrow.

13. Furthermore, the State notes that the Common Core Document submitted in 2012 is due for an update. With support from development partners, the Ministry of Justice is working to ensure that the document is updated before the end of 2021 per paragraph 27 of the harmonised guidelines on the form and content of reports submitted by States to International Human Rights.

A. Dealing with The Past

14. The presentation of The Gambia's initial report on the Convention is done against a particular backdrop and context that must be clearly understood to fully appreciate the magnitude and nature of the challenges that the present administration was confronted with following over two decades of the systematic dismantling of State institutions particularly in governance and the security sector.

15. Ours was a country where fear ruled for over two decades; where families dreaded that midnight knock on their doors which took away their sons and husbands forever; Where civil servants went to work every morning saying goodbye to their families as if it was the last time they would see them ever again because coming back home to them was never a certainty; Where Torture was widespread and routine; where unarmed and defenseless school children were gunned down in broad daylight with impunity; where women under detention were sexually molested, where sexual assault was used as a weapon to break and subjugate them, where enforced disappearances of political opponents, journalists was the order of the day; where summary executions and targeted murder were an option without consequences; where ordinary citizens speak of their leaders only in whispers within the four walls of their bedrooms; and where judges and other judicial officials were summarily dismissed without regard to the law.

16. The former President left behind a legacy that included many of the factors or root causes of conflict perpetrated by State agents; a deeply polarized society based on ethnic and political considerations; ethnic hatred manifested through hateful propaganda targeted at specific ethnic communities; political persecution; impunity for crimes committed, and of course poverty. Too many families had endured unbearable pain; too many loved ones had been disappeared; too many children orphaned; too many people humiliated and shamed in the full glare of their families and their small communities, among many other forms of abuses and public humiliation; crimes committed by a government against the very people it was entrusted to protect.

17. When we reflect on the missed opportunities occasioned by the inexcusable failure to uphold the provisions of this fundamental treaty obligation and all the attendant consequences in terms of the lack of accountability for human rights violations in The Gambia since 1994, we feel saddened that such a vital accountability mechanism was deliberately ignored to the detriment of many in our country.

18. Naturally, with former President Jammeh gone, the public outcry for justice became louder and instant. Families wanted to know the fate and whereabouts of their disappeared loved ones, more victims started to share their stories in the local media, and as the Police started to arrest the most prominent and feared units of the security forces, some perpetrators started to tell it all. As a result, this has led to detailed revelations about the extent of terrifying abuses meted out to Gambians and foreigners alike by some elements of The Gambia's security forces.

19. Consequently, the period immediately following the former President's departure exposed the present Government to its first and most pressing challenge: sustaining the peace in the country amidst a real risk of inter-communal clashes motivated by ethnic and political considerations that had simmered beneath the façade of peaceful co-existence for over two decades. This requires reassuring all sides of the ethnic and political divide that there shall be no witch-hunt against any person or communities for the excesses of the previous regime; while at the same time reassuring victims and their families that justice will be dispensed through due process of law, respect for the rights of all Gambians, and in a fair, transparent, and stable environment; a balance between, on the one hand, fostering social cohesion and encouraging national reconciliation through justice, and on the other hand, the rebuilding of a solid and robust democratic foundation anchored upon respect for the rule of law and human rights.

20. In this regard and over the long term, the Government resolved to improve the country's constitutional, legal and institutional framework in various governance areas to consolidate democracy and align the entire governance architecture with international justice and human rights standards. The Government's priority is to put a new and resilient architecture in place to uphold the highest standards for human rights, justice, and the rule of law.

21. This meant embarking on an ambitious and comprehensive transitional justice process focusing primarily on the following areas:

- Constitutional Review;
- Institutional Reform;
- Security Sector Reform Civil Service Reform;
- Criminal Justice & Media Law Reform;
- Truth Reconciliation and Reparations;
- Addressing Impunity.

B. Update on the Transitional Justice Process

22. We stand firm in our conviction that there cannot be durable peace or economic development without good governance. For us in The Gambia, good governance breeds peace, and it is the fundamental pillar upon which all other successes are built. It provides a conducive and permissive political, social and economic environment that allows, on the one hand, the Government to put in place policies, programs, and strategies that uphold human rights and justice, spur economic growth, and give us the ability to provide essential services to our people, and on the other hand, allows the expression of individual creativity for personal wealth creation. Hence, it is ranked as the priority area in our development blueprint, the National Development Plan (NDP) 2018–2021.

23. Equally, the rights to life, liberty, fair trial, political participation, peaceful assembly, the prohibition of torture or inhuman or degrading treatment, and the prohibition of discrimination and equal protection before the law are all enshrined in the 1997 Constitution of The Gambia, which was reviewed in 2020 and scheduled to undergo a referendum. These rights are currently enforceable in The Gambia courts under a new judiciary rapidly gaining a reputation for impartiality and credibility. While the 1997 Constitution currently enshrines all these rights, we envisage that the draft Constitution 2020 will further strengthen these human rights provisions.

24. Meanwhile, the Government has ensured that everyone in the country enjoys rights as they currently exist within our constitutional and legislative frameworks.

25. We are currently engaged in far-reaching reforms as we transition from dictatorship to democracy. Some of these reform activities are on a short, medium, or long-term basis depending on the nature of the right, the mode of implementation, and the available resources at any given time. Our objective is to ensure a gradual but incremental realisation of the rights enshrined in international human rights instruments ratified by The Gambia as we progress

towards building a modern democratic State anchored upon respect for the rule of law, human rights, and democratic pluralism.

C. Freedom of Expression

26. Nowhere is this positive change more visible than in the area of freedom of expression. In the past, people who rightfully expressed themselves in the State's affairs and or of the former President were subjected to Torture, detention without trial, or made to disappear. However, in 2019, the Organization Reporters Without Borders published its global report on freedom of expression and ranked The Gambia 9th in Africa and 92nd out of 180 countries globally, a jump of 30 spots in stark contrast with our ranking the previous year. This follows other similar recognition of The Gambia's steady but gradual progress in freedom of expression as shown in the annual press freedom index of 2018, in which we were ranked 122 out of 180 countries compared to 145 in 2016 and 143 in 2017. These rankings are but a reflection of the reality on the ground. Within the past two years, there has been a proliferation of private radio stations and newspapers, private television stations, and a host of political discussion programs in which public members are encouraged to call in to express their views about government policies and programs. For instance, there were six private newspapers in the country before 2017, and now we have 11 since the change of Government. There were no private Television stations in the country before 2017, Television licenses have now been issued to Five private TV stations. There are currently Twenty-Six (26) Commercial Radio Stations and Nine (9) Community Radios, and the Government has now lifted the education tax levy on media houses, and media practitioners have now established a self-regulatory council in the country.

27. In addition to the print media, positive results are also recorded concerning electronic media due to the increment in the number of internet users between 2017 to date. As of January 2020, there were 472.5 per thousand internet users in The Gambia. This number represented an increase of 14 thousand (+3.0%) between 2019 and 2020. At the moment, Internet penetration in The Gambia stood at 20% as of January 2020. The increase in internet users has prompted a surge in online media platforms, where political discussions are rife among users. Currently, there are Fifteen (15) recognised online media houses operating on social media, most especially on Facebook and YouTube, enabling participatory political discussions. This is a sharp contrast to what used to prevail in the past as people suspected of disclosing or sharing information with journalists online were subjected to arrest, Torture, and in some cases, made to disappear.

28. Notwithstanding the remarkable progress in freedom of expression, the Government has gone further and embarked on media law reform to remove the draconian laws promulgated by the previous administration and replace them with new laws that facilitate the exercise of the right to freedom of expression. A Freedom of Information Bill is currently before the National Assembly and will hopefully be enacted into law before the end of 2021.

29. Enforced Disappearance before 2017 and now contrasting the present Government and the former President Jammeh's former regime, we are indeed proud to say that in the present Gambia, the fear of Government has all but dissipated. People now freely express themselves without fear of arrest or intimidation. Civil society organisations have been allowed a conducive space to operate freely and grow. Reports of arbitrary arrests by security forces have significantly reduced, and there is no more detention without trial, enforced disappearances, State-sanctioned murder, or torture.

D. Political Interference

30. The Government of The Gambia has set about strengthening existing governance institutions and creating new institutions. In this regard, the Judiciary, the Independent Electoral Commission, and the Police have restored their independence by allowing them to operate without political interference.

E. The National Human Rights Commission

31. For the first time in The Gambia's history, a National Human Rights Commission was set up by an Act of the National Assembly in December 2017 in full compliance with the Paris Principles of independence and autonomy. The Commission is fully functional and mandated to enhance the protection and promotion of human rights, among other things, to monitor, receive, investigate and consider complaints of human rights violations, including enforced Disappearance in The Gambia.

F. The Truth, Reconciliation and Reparations Commission

32. After over two decades of authoritarian rule characterised by gross human rights violations including torture, enforced disappearance, arbitrary arrests, detention without trial, and extrajudicial killings perpetrated by State agents; a deeply polarized society based on ethnic and political considerations; incitement of ethnic hatred through constant and continuous spewing of hateful propaganda targeted at specific ethnic communities; political persecution; impunity for crimes committed in the name of national security, and of course poverty, reconciliation is a critical component of The Gambia's transitional justice process.

33. Within the first year of installation of the current Government, a Truth, Reconciliation and Reparations Commission (TRRC) was established following nationwide consultations on its establishment. The objectives of the TRRC include investigating human rights violations and abuses committed during the past 22 years of former president Jammeh's authoritarian rule, to foster social cohesion and encourage national reconciliation among Gambians, addressing impunity, and also to recognise the rights and dignity of victims through the provision of appropriate Reparations. The TRRC also has the mandate to identify for prosecution those who bear the most significant responsibility for human rights violations committed between July 1994 and January 2017.

G. How is the TRRC dealing with Enforced Disappearance?

34. In line with the Truth, Reconciliation and Reparations Commission (TRRC) Act 2018, the Commission is on course to complete its two-year mandate by the end of June 2021. In January 2020, the TRRC submitted its interim report to the Government, highlighting the Commission's activities during its first year of operations. Although issues of enforced disappearance were not explicitly dealt with during this period, the TRRC has now commenced hearings on specific cases of enforced disappearance, most specifically on the case of more than Fifty West African nationals who were alleged to have been extra-judicially killed by some elements of The Gambia Armed Forces in 2005.

H. Constitutional Reform

35. By our estimation, the 1997 Constitution of the Republic of The Gambia has been amended at least 52 times between 1997 and 2016 with two principal objectives: (i) to entrench the former President in power and (ii) to exclude all others from the political process. Within one year of the installation of the new Government of The Gambia, the Government has established, by an Act of the elected National Assembly, a Constitutional Review Commission (CRC) to undertake a comprehensive constitutional reform process that will deliver a progressive Republican Constitution which shall espouse all the principles of good governance and respect for fundamental human rights and democracy. The CRC's mandate was to draft a new constitution of the Republic of The Gambia based on popular participation through public consultations with all Gambians at home and in the diaspora.

36. In line with its mandate, the Constitutional Review Commission submitted the final draft Constitution in March 2020. The Bill for the promulgation of the new Constitution 2020 was tabled before the National Assembly after the 3-month maturity period stipulated by law, but it failed to pass the two-thirds majority requirement prescribed by the Constitution. In this regard, the Government with International IDEA has embarked on a national consultation

and dialogue with political parties, religious and traditional leaders to find a national consensus to enable the re-tabling of the draft before the end of June 2021.

I. Legislative Reform

37. On the legislative reform process, the advent of the COVID-19 occasioned a delay in enacting several Bills submitted to the National Assembly for enactment in 2020. To complete the legislative reforms embarked on by the Government in 2017, the following Bills, amongst others, are expected to be enacted before the end of 2021:

- Criminal Offences Bill 2020;
- Criminal Procedure Bill 2020;
- Prevention and Prohibition of Torture Bill 2020;
- International Crimes Bill 2020;
- Access to Information Bill 2020.

38. These bills are touching on the protection and promotion of individuals' rights, national crimes and international crimes and accountability, and the promotion of freedom of expression.

39. On security reform, an Office of National Security Adviser has been established and is operational. A National Security Policy, National Security Strategy, and a Security Sector Reform Strategy have all been developed and approved for implementation in 2020. The drafting of the vetting legislative framework is ongoing. As part of the legislative reforms currently embarked upon by the Government in the Security Sector, the National Intelligence Agency (NIA), Gambia Armed Forces, and the Prisons Acts are currently under review to align them with our international legal obligations and best practices.

IV. Information to be included in the treaty-specific document

A. General Legal Framework Under Which Enforced Disappearances are Prohibited

40. As defined in article 2 of the Convention, Enforced Disappearance is not yet treated as a separate criminal offence in The Gambia. Although the provisions of the Convention are yet to be implemented in domestic law, the country's laws are currently being reviewed to that effect. Most of the 1997 Constitution provisions are already in conformity with most of the requirements under the Convention. Nevertheless, complete conformity will require a stand-alone law to be enacted to:

- (i) Classify Enforced Disappearance as an independent criminal offence that excludes any cause for justification; and
- (ii) Set penalties.

41. In the meantime, the resort is made to the following constitutional, criminal, and administrative provisions currently existing in the State.

1. The Constitution

42. Indeed Section 17 of the 1997 Constitution provides that every person in The Gambia, whatever his or her race, colour, gender, language, religion, political or other opinions, national or social origin, property, birth, or another status, shall be entitled to the fundamental human rights and freedoms of the individual but subject to respect for the rights and freedoms of others and the public interest.

43. Section 18 of the Constitution provides that no person shall be deprived of his or her life intentionally except in the execution of a sentence of death imposed by a court of

competent jurisdiction regarding a criminal offence for which the penalty is death under the Laws of The Gambia.

44. Section 19 further provides that no one shall be deprived of liberty except on such grounds and under such procedures as established by law. The same section went on to provide that any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language that he or she can understand, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner. That any person who is arrested or detained to bring him or her before a court in execution of the order of a court or upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the Laws of The Gambia and who is not released, shall be brought without undue delay before a court and in any event, within seventy-two hours.

45. Additionally, Section 21 also provides that no person shall be subject to torture or inhuman, degrading punishment or other treatment. In the same vein, Section 133 provides that the High Court shall have supervisory jurisdiction over all lower courts and adjudicatory authorities in The Gambia, and the exercise of its supervisory jurisdiction, shall have the power to issue directions, orders, writs, including writs of habeas corpus, orders of certiorari, mandamus and prohibition as it may consider appropriate for enforcing its supervisory powers.

2. The Criminal Code

46. Although Enforced Disappearance offence is yet to be domesticated as a national law, the Criminal Code criminalises offences such as murder, abduction, kidnapping, enslavement, wrongful concealment of a kidnapped or abducted person etc. and matters connected to it could be prosecuted as provided in the following sections.

47. Section 235 of the Code provides for kidnapping or abducting to murder, and it states:

A person who kidnaps or abducts another person so that that person may be murdered, or maybe so disposed of as to be put in danger of being murdered, commits a felony, and is liable on conviction to imprisonment for a term of ten years.

48. Section 236 further provides for kidnapping or abducting with intent to confine a person, and it reads:

A person who kidnaps or abducts another person with the intent to cause that person to be secretly and wrongfully confined.

49. Section 237 of the law, as mentioned earlier, provides for kidnapping or abducting to subject a person to grievous harm, slavery amongst others, and it states:

A person who kidnaps or abducts another person so that that person may be subjected, or may be disposed of as to put in danger of being subjected, to grievous harm, or slavery, or the unnatural lust of any person, or knowing it to be likely that the person will be so subjected or disposed of, commits a felony, and is liable on conviction to imprisonment for a term of ten years.

50. Section 238 makes it an offence when a person wrongfully conceals or keeps in confinement kidnapped or abducted persons in the same vein.

51. Furthermore, as part of the Legislative reforms embarked upon by The Gambia Government, a Criminal Offences Bill in 2020 has been drafted and is currently before the National Assembly for enactment. The new Criminal Offences Bill, which is expected to be enacted into law before the end of this year, contains Part XXV entitled "Offences Against Liberty". Moreover, in sections 204 to 212, which deals with the matter, the law provides as follows:

204. Definition of kidnapping from The Gambia; A person who conveys another person beyond the limits of The Gambia without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from The Gambia.

205. Definition of kidnapping from lawful guardianship; A person who takes or entices another person under the age of eighteen years, or any other person of unsound mind, out of the keeping of a lawful guardian of that person without the consent of the guardian, is said to kidnap the minor or person from lawful guardianship.

206. Definition of abduction; A person who by force compels, or by any deceitful means induces, another person to go from any place is said to abduct that person.

207. Punishment for kidnapping; A person who kidnaps another person from The Gambia or lawful guardianship commits a felony and is liable on conviction to imprisonment for seven years.

208. Kidnapping or abducting to murder; A person who kidnaps or abducts another person so that the person may be murdered, or maybe so disposed of as to be put in danger of being murdered, commits a felony and is liable on conviction to imprisonment for a term of ten years.

209. Kidnapping or abducting with intent to confine person; A person who kidnaps or abducts another person with the intent to cause that person to be secretly and wrongfully confined commits a felony and is liable on conviction to imprisonment for seven years.

210. Kidnapping or abducting to subject a person to grievous harm, slavery, etc.: A person who kidnaps or abducts any person-(a) so that the person may be subjected, or maybe so disposed of as to be put in danger of being subjected to grievous harm; or (b) knowing it to be likely that such person will be so subjected or disposed of, commits a felony and is liable to imprisonment for ten years.

211. Wrongfully concealing or keeping in confinement kidnapped or abducted person; A person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines the person, commits a felony and shall be punished on conviction in the same manner as if he or she had kidnapped or abducted that person with the same intention or knowledge, or for the same purpose, as that with or for which he or she conceals or detains the person in confinement.

212. Kidnapping or abducting child under eighteen years with the intent to steal from its person: A person who kidnaps or abducts a child under the age of eighteen years intending to take dishonestly any movable property from the person of a child, commits a felony and is liable on conviction to imprisonment for seven years. International Treaties dealing with enforced disappearances to which the reporting state is a party.

52. In addition to the Convention, The Gambia has signed and ratified the following international human rights treaties:

(a) International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) 1978;

(b) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1990;

(c) Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) 2018;

(d) Convention on the Rights of the Child (CRC) 1990;

(e) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) 2017;

(f) Convention for the Rights of Persons with Disabilities (CRPD) 2015;

(g) First Optional Protocol to the International Covenant on Civil and Political Rights 1988;

(h) Second Optional Protocol to the International Covenant on Civil and Political Rights 2018;

- (i) First Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2019;
- (j) Second Optional protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2010;
- (k) African Charter on Human and Peoples' Rights 1987;
- (l) Protocol to the African Charter on Human and Peoples' Rights;
- (m) African Charter on the Rights and Welfare of the Child 2000;
- (n) The Rome Statute of the International Criminal Court;
- (o) The Four Geneva Conventions of 1949.

53. Most notably among these international treaties is the right to life, right to liberty and security of the person under article 9 of the International Covenant on Civil and Political Rights and articles 4, 5, and 6 of the African Charter on Human and Peoples' Rights), the International Crimes Bill 2020 (*which is currently before the National Assembly and may likely come into force before the end of 2021*), the Rome Statute of the International Criminal Court and the Prevention of Torture Bill 2020.

54. Status of the Convention in the domestic legal order, i.e. concerning the Constitution and the ordinary legislation. In line with Section 7, paragraph a of the 1997 Constitution, Acts of the National Assembly made under the Constitution are recognised as the country's laws. As a result, when the Convention is domesticated into legislation, it shall be fully recognised as a law under the Constitution.

a. How the domestic laws ensure the non-derogability of the prohibition of enforced Disappearance

55. Since The Gambia is yet to domesticate the Convention, there is nothing in the 1997 Constitution to specifically ensure the non-derogability of the prohibition of Enforced Disappearance. As the State is committed to domesticating the Convention, the law would ensure the non-derogability of Enforced Disappearance's prohibition.

b. How the provisions of the Convention can be invoked before and are directly enforced by the Courts or administrative authorities

56. Whilst recognising that the Convention is yet to be domesticated, it is essential to outline what prevails in the meantime. Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicions of his or her having committed or being about to commit an offence, he or she shall not thereafter be further held in custody in connection with those proceedings or that offence save upon the order of a court.

57. Section 19 (5) of the Constitution further provides that if any person arrested or detained as mentioned above is not tried within a reasonable time, then without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or proceedings preliminary to trial. According to Section 19 (5) of the 1997 Constitution, any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or authority on whose behalf that another person was acting.

58. Furthermore, the application of habeas corpus, which serves as a recourse through which a person can report an unlawful detention or imprisonment to a court and request that the court determines if the imprisonment or detention is lawful, is enshrined in Section 133 of the 1997 Constitution of the Republic of The Gambia is also available for families of victims subjected to enforced disappearances.

59. The rule of habeas corpus is based on the premise that even in detention, a person is not without rights; therefore, a prisoner must be released if he or she has been detained without a valid reason in the eyes of the Judiciary, which must be independent of the Legislature and the Executive.

60. Section 133 of the Constitution guarantees that the High Court shall have supervisory jurisdiction over all lower courts and adjudicatory authorities in The Gambia, and in the exercise of its supervisory jurisdiction, shall have the power to issue directions, orders, or writs, including writs of habeas corpus, orders of certiorari, mandamus, and prohibition may be considered appropriate for enforcing its supervisory powers.

61. While the Constitution and Criminal Code guarantees the establishment in law of offences and sentences, it specifies in its different provisions the ways and means that people in The Gambia must use in applying to the Courts if their rights are violated. If the judgment does not satisfy the victim, he or she may appeal to a higher Court.

c. Judicial, Administrative, or other Competent Authorities with jurisdiction/ mandate over matters dealt with in the Convention

62. The judicial, administrative and other competent authorities with jurisdiction in matters covered by the Convention include.

3. The Supreme Court

63. By the provisions of Section 126 of the Constitution, the Supreme Court, being the apex court in The Gambia, is the final court of appeal. It has both appellate and original jurisdiction. However, it does not have original jurisdiction in respect of criminal matters.

4. The Court of Appeal

64. As provided in Section 130 of the Constitution, the Court of Appeal has jurisdiction to hear and determine appeals (both criminal and civil) arising from judgments, decrees, and orders of the High Court, Court Martial.

5. The High Court

65. The High Court has both original, appellate, and supervisory jurisdiction. It has jurisdiction to hear and determine all civil and criminal proceedings as well as to interpret and enforce fundamental rights and freedoms provided in sections 18 to 33 and 36 (5) of the Constitution.

66. Further, it has jurisdiction to hear appeals from subordinate courts. It also has supervisory jurisdiction over all lower courts and adjudicatory authorities in The Gambia. It has powers to issue directions, orders, or writs, including habeas corpus, Order of Certiorari, mandamus, and prohibition as it considers appropriate for enforcing its supervisory powers.

6. The Magistrates' Courts

67. The Magistrates' Courts have the jurisdiction to try any offence under any law except the offence of treason, murder, rape, arson and armed robbery.

7. The Truth Reconciliation & Reparations Commission

68. The Truth Reconciliation and Reparations Commission is mandated to investigate human rights violations and abuses committed by the State between 1994 and January 2017, including the enforced disappearance of persons.

8. The Ombudsman's office

69. An Act of the National Assembly established the Ombudsman's Office, and the Act defines and prescribes the powers, duties, and functions of the Ombudsman and for other connected matters.

70. Section 163 of the 1997 Constitution stipulates the functions and duties of the Ombudsman, and it states:

(a) In the investigation of any action taken by a government department or other authority, or public body, to which the Act applies, being action taken in the exercise of the administrative functions of that department or authority, on a complaint by a member of the

public who claims he or she has suffered injustice in consequence of maladministration, or discrimination on any ground set out in Chapter IV, in connection with such action;

(b) In the investigation, on his or her initiative, of allegations of maladministration, mismanagement or discriminatory practices in any government department, authority, or other public body, to which the Act applies; and

(c) In the investigation of complaints of any failure to observe the code prescribed in Chapter XXI for public officers' conduct;

(d) In the same vein, section 3 of the Ombudsman Act, CAP 7:08, Vol. 2 of the Laws of The Gambia 2009 specifies additional functions of the Ombudsman under the Constitution, and it states:

(i) To investigate complaints of injustice, corruption, abuse of power, maladministration, and unfair treatment of any person by a public officer in the exercise of his or her official duties;

(ii) To investigate complaints concerning the functioning of the Public Service Commission, the administrative and security organs of the State, The Gambia Police Force, and Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of the Force and Service or equal access by all to recruitment to the Force and Service or fair administration concerning them.

9. The National Human Rights Commission

71. An Act of the National Assembly created the National Human Rights Commission in 2017, and its core mandate is to protect and promote human rights, including investigation of enforced disappearance cases in The Gambia. The functions of the NHRC are specified in section 12 of the National Human Rights Commission Act, 2017.

a. Examples of concrete case law where the provisions of the Convention has been enforced

72. There are currently no judicial case laws where the provisions of the Convention have been applied because there is no law on enforced disappearance in place. However, many cases involve violations of individual freedoms, such as arbitrary arrests and detention, murder, etc. In some of these cases, the State has fully complied with the Judgments(from the ECOWAS Court) where compensation was paid to the families of the victims. These include; Deyda Hydara, Chief Ebrima Manneh, Fatou Camara, Fatou Jaw Manneh, Lamin Fatty, and Alajie Jobe, and Musa Saikyhan, who were either victim of wrongful deaths, wrongful arrest, and detention or went missing whilst in State custody.

b. Examples of concrete administrative measures giving effect to the provisions of the Convention

73. In spite of all the legislations stated above, the enforcement of these rights has been a challenge. The former National Intelligence Agency (NIA) was notorious for arbitrary arrests and incommunicado detentions of nationals and non-nationals. However, with the advent of the present Gambia, the Government is regulating detention practices in line with international standards. The Police conduct continuous training in partnership with civil society organisations such as The Association of Non-Governmental Organisation (TANGO) and IHRDA on arrest and detention procedures to combat the old practice.

74. Furthermore, The Gambia Police Force has improved its internal accountability mechanisms by adopting a Code of Conduct and the institution of police complaint systems.

75. In the same vein, the General Inspectorates of the Security Services responsible for ensuring that the codes of ethic, discipline, and conduct of the Armed Forces, Police, NDLEAG, and National Guards are upheld to ensure law enforcement officials are not engaged in arbitrary arrests, extrajudicial killings or subjecting persons to enforced disappearance.

c. Statistical data disaggregated, inter alia by sex, age, and geographical location on the number of complaints of enforced submitted for domestic authorities and the results of the investigations

76. Investigating cases of enforced disappearance is one of the thematic issues the TRRC is mandated to do. In its investigation, the victims, witnesses and informants disclosed that the following persons have disappeared at the instance of the State or agents of the State between 1994 and 2017. Although the Commission is working on conducting a specific hearing on enforced disappearance, the list provided below is a combination of findings from other themes, including unlawful detentions, the killings of West African migrants, November 11, April and 11, the junglers (the former President Jammeh's hit squad amongst others. This list a combination of direct evidence and accumulation of circumstantial evidence showing that the following persons disappeared through the state's direct participation or that the state detention centres was the last point where they were seen (NIA, Police Stations and Prisons) as provided for under article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.¹

77. Annexed to this report is a list of persons who have been subjected to extrajudicial killing or enforced disappearance from 1994 to 2017.

V. Information in relation to each substantive article of the convention

Article 1. Prohibition of Enforced Disappearance

78. The Gambia recognises that the lack of autonomous crime of enforced disappearances in the Penal Legislation creates a situation whereby enforced disappearances are investigated and prosecuted under other crimes (e.g., murder, abduction, or arbitrary deprivation of liberty) which are highly problematic in terms of the specific investigation required from the outset in cases of enforced disappearance. The Gambia recognises that this creates a situation in which suspected perpetrators of such an offence could be acquitted if the standards of proof for the other crimes of which they are accused are not met and as such is committed to working on a comprehensive legal framework that will address the offence of enforced disappearance.

Article 2. Definition of Enforced Disappearance

79. As the State is yet to domesticate the Convention but committed to doing so in the near future, there is currently no precise definition of enforced disappearances in the national legislations. The absence of specific legislation on Enforced Disappearance creates a situation whereby Enforced Disappearance is investigated and prosecuted under other crimes such as the offence of murder as provided for under Section 187 kidnapping abducting persons under Sections 231 to 239 of the Criminal Code.

Article 3. Investigation

80. Despite the absence of national legislation on enforced disappearances, appropriate measures have been taken by the current Government when it took office in January 2017. A Missing Persons Taskforce under the Office of the Inspector General of Police was constituted to receive and document reports of missing and disappeared persons. Additionally,

¹ Article 2 provides that; For this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.'

The Gambia Armed Forces and the Police have also constituted a joint investigations task force to investigate the former hit squad's activities known as the 'Jungle. Further to the above, taking into consideration the grave human rights violations that occurred during the Jammeh regime, as part of the transitional justice program, the Government has established a Truth Reconciliation and Reparations Commission (TRRC) to investigate human rights violations and abuses committed during the past 22 years of former President Jammeh's authoritarian rule to foster social cohesion and encourage national reconciliation among Gambians, to address impunity and also to recognise the rights and dignity of victims through the provision of appropriate Reparations.

The TRRC

81. The Commission is mandated to investigate enforced disappearances, extrajudicial killings with the view to establishing the truth on what happened, provide reparations to victims and recommend for prosecution those who bear the greatest responsibilities. The Commission is set to conclude its investigation in June 2021.

82. Upon completion, the TRRC would submit a report to the President who would state its findings and make recommendations for establishing appropriate preventive mechanisms, including institutional, administrative, and legislative measures that should be taken to prevent the Commission of violations and abuses of human rights. The Commission also has the power to identify and recommend for prosecution persons who bear the most significant responsibility for human rights violations and abuses. Additionally, nine former top officials of the defunct NIA (now State Intelligence Services) are being prosecuted for the death of Ebrima Solo Sandeng, a member of the United Democratic Party (an opposition) who was beaten to death in 2016 whilst in State custody for organising a public protest calling for electoral reforms. The case is currently before the High Court in Banjul and at the defence stage.

83. In the same light, Yankuba Touray, a former member of the Armed Forces Provisional Ruling Council (AFPRC), is currently facing charges of murder for Ousman Koro's death Ceesay, former Finance Minister who was found dead in 1995 under mysterious circumstances. In October 2020, his lawyer applied to the High Court to absolve Mr Touray from prosecution since he was a Junta Member in the defunct AFPRC Government between 1994–1997, that as a junta member Yankuba Touray enjoys immunity from the prosecution for the death of Koro Ceesay under paragraph 13(1) (3) (4) and (5) of the second schedule to the 1997 constitution of The Gambia. Recently, the Supreme Court of The Gambia, in what appears to be a historic decision, unanimously ruled that the former junta and Council member is not entitled to constitutional immunity from prosecution concerning the death of Ousman Koro Ceesay, and the High Court was urged to proceed with the hearing.

84. In the same vein, with the establishment of the National Human Rights Commission in 2017, the Commission is mandated, among other things, to monitor, receive, investigate and consider complaints of human rights violations in The Gambia. It also plays an advisory role to the Government concerning its human rights obligations.

Articles 4. Definition

85. The Gambia is aware of the need to amend its legislation and undertakes to keep the Committee informed in the future of progress made in enacting a law to ensure the full implementation of the Convention's provisions. Indeed, the current Criminal Code and the Criminal Procedure Code have undergone a significant amendment, and the bills relating to them have already been submitted to the National Assembly and may be enacted before the end of 2021. Once enacted into laws, the draft bills will continue to serve as the basis for investigation and prosecution of offences similar to enforced Disappearance pending the domestication of the Convention.

Article 5. Crime against humanity

86. Crimes against humanity are covered under the International Crimes Bill currently before the National Assembly, and it provides under Section 9 as follows;

1. A person who, in The Gambia or elsewhere, commits a crime against humanity commits an offence and is liable on conviction to life imprisonment;
2. For this section, a “crime against humanity” is an act specified in article 7 of the Statute.

87. In the same vein, the Draft Constitution of 2020 maintained the fundamental rights as enshrined in the 1997 Constitution and in so doing, under PART II entitled “Specific Rights and Freedom” reinforced the provisions as follows;

- (a) Section 38: Right to life: A person shall not be deprived of life intentionally;
- (b) Section 39: Protection from Liberty: Every person has the right to liberty and security of the person. No person shall be deprived of their liberty except on such grounds and following such procedures as established by law. An arrested person has the right:
 - (i) To be informed promptly;
 - (ii) In a language that the person understands the reason for the arrest;
 - (iii) The right to remain silent and the consequences of not remaining silent;
 - (iv) To communicate with a legal practitioner of his or her own choice, and to consult his or her legal practitioner confidentially;
 - (v) Not be compelled to make any confession or admission that could be used in evidence against the person;
 - (vi) To be brought before a court as soon as reasonably practicable and not later than forty-eight hours after being arrested or if the forty-eight hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
 - (vii) At the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released or conditionally released.

Article 6. Criminal Responsibility

88. Criminal responsibility as it currently exists under Section 23 of the Criminal Code is as follows;

89. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it, that is to say:

- (a) Every person who does the Act or makes the omission that constitutes the offence;
- (b) Every person who does or omits to do any act to enable or aid another person to commit the offence;
- (c) Every person who aids or abets another person in committing the offence;
- (d) Every person who counsels or procures any other person to commit the offence.

90. Equally, the Criminal Offences Bill presently before the National Assembly has dedicated an entire chapter to general rules as to criminal responsibility and has under section 14(1) (b) highlighted that a person would be criminally responsible for carrying out an unlawful order from a competent authority.

Article 7. Applicable Penalties

91. Since the Convention is yet to be domesticated, resort is made to the sanctions provided for in the national criminal code for acts of enforced disappearance under international standards as well as disciplinary sanctions established for those convicted for enforced disappearance. The maximum sanction is provided for in the national Criminal Code.

92. The Criminal Code criminalises offences like murder, abduction, kidnapping, enslavement, wrongful concealment of a kidnapped or abducted person etc.

93. Section 235 provides for kidnapping or abducting to murder, and it states:

A person who kidnaps or abducts another person so that that person may be murdered, or maybe so disposed of as to be put in danger of being murdered, commits a felony, and is liable on conviction to imprisonment for a term of ten years.

94. Section 236 further provides for kidnapping or abducting with intent to confine a person, and it reads:

A person who kidnaps or abducts another person with the intent to cause that person to be secretly and wrongfully confined commits a felony and is liable on conviction to imprisonment for a term of seven years.

95. Section 237 of the aforesaid law provides for kidnapping or abducting to subject a person to grievous harm, slavery etc., and it states:

A person who kidnaps or abducts another person so that that person may be subjected to, or maybe disposed of as to put in danger of being subjected, to grievous harm, or slavery, or the unnatural lust of any person, or knowing it to be likely that the person will be so subjected or disposed of, commits a felony, and is liable on conviction to imprisonment for a term of ten years.

96. Section 238 makes it an offence when a person wrongfully conceals or keeps in confinement kidnapped or abducted persons in the same vein.

97. The 1997 Constitution of the Republic of The Gambia as specified under Section 19 provides for the protection of the right to personal liberty, and it states that;

Every person shall have the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his or her liberty except on such grounds and following such procedures as are established by law.

98. Any person who is arrested or detained:

(a) To bring him or her before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the Laws of The Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within seventy-two hours.

Article 8. Statute of Limitation

99. As mentioned, there exists no national legislation/statute that explicitly establishes crimes against humanity, including enforced disappearance, and therefore, there is no provision relating to the limitation of time under which the offence should be investigated or prosecuted.

100. However, the Limitation Act, CAP 8:01 Vol.3, Laws of The Gambia 2009, although silent on issues relating to enforced disappearance, provides that no statute of limitations applies for criminal, civil, or administrative actions brought by victims seeking the right to an effective remedy.

Article 9. Jurisdiction

101. Measures taken to establish jurisdiction in the cases contemplated under (a), (b), and (c) of paragraph 1. Examples of cases where (b) and (c) were applied should also be included.

102. The courts are competent to try any offence, including those amounting to enforced disappearance, committed on its territory or onboard aircraft or ships registered in the name of The Gambia, or allegedly perpetrated by one of its nationals, or when the victim is one of its nationals. Therefore, any national of The Gambia who, outside the national territory, commits an act classified as a severe offence punishable under the Law of The Gambia may be prosecuted and tried by the courts of The Gambia. Measures taken to establish jurisdiction in the cases where the alleged offender is present in the reporting State territory and the latter does not extradite him/her. Examples of cases were: (i) extradition was granted, and (ii) extradition was denied.

103. Furthermore, Section 4 of the Draft Criminal Offences Bill 2020 provides that a person who while out of The Gambia commits, or procured another to do or omit to do any act which is an offence both in The Gambia and where he or she is stationed and afterwards comes into The Gambia, he or she is by such coming into The Gambia, liable to be tried and punished, as if he or she had done the Act or made the omission in The Gambia. The Extradition Act regulates the issue of return/extradition of individuals accused of an offence. As of now, there are no established cases of extradition of a person (s) who are alleged to have committed acts of enforced disappearance.

104. Legal provisions, including any treaties, concerning mutual judicial assistance that apply to ensure jurisdiction for acts of enforced disappearances.

105. The Gambia is a party to several conventions and agreements that provide for mutual legal assistance and extradition.

106. Cases involving the offence of enforced disappearance in which mutual assistance was requested by or from the reporting State, including the result of the request.

107. Concerning existing Mutual Legal Assistance, The Gambia is currently supporting Switzerland in the investigation and trial of Mr Ousman Sonko (the former Minister of Interior under President Jammeh who fled to Switzerland in 2017 and got arrested and is presently undergoing a pre-trial investigation into the crimes he committed and assisted in assisted their Commission during his tenure in the office between 2006–2016).

Article 10. Pre-Trial Detention and access to Consular Service

108. Section 19 further provides that no one shall be deprived of liberty except on such grounds and under such procedures as established by law. The same section went on to provide that any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language that he or she can understand, of the reasons for his or her arrest or detention and of his or her right to consult a legal practitioner. That any person who is arrested or detained to bring him or her before a court in execution of the order of a court or upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the Laws of The Gambia and who is not released, shall be brought without undue delay before a court and in any event, within seventy-two hours.

109. Section 24 (1) of the Constitution states:

Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or the determination of the existence or extent of any civil right or obligation, shall be independent and impartial: and

(a) If any person is charged with a criminal offence, then, unless the charge is withdrawn; or

(b) Where proceedings are commenced for the determination or the existence of any civil right or obligation, the case shall be afforded a fair hearing within a reasonable time.

110. In the same vein, Section 24 (3) of the Constitution further states:

Every person who is charged with a criminal offence-

(a) Shall be presumed innocent until he or she is proved or has pleaded guilty;

(b) Shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his or her defence;

(d) Shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice.

111. Provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the expense of the State

112. In practice, foreign nationals suspected of an offence are granted access to diplomatic channels through the Gambia Ministry of Foreign Affairs. After that, the Ministry would contact the Embassy/Consulate of the person under investigation to notify them of the situation of their national and the facts of the alleged case.

Article 11. Obligation to Extradite or Prosecute

113. Gambia does not have a criminal statute that enables national courts to exercise universal jurisdiction over Enforced Disappearance's offence. However, with the draft International Crimes Bill 2020, Section 19 provides that; For jurisdiction, where an alleged offence against sections 8 to 16 was committed outside the territory of The Gambia, proceedings may be brought against a person, if :

(a) The person is a citizen or permanent resident of The Gambia;

(b) The person is employed by The Gambia in a civilian or military capacity;

(c) The person has committed the offence against a citizen or permanent resident of The Gambia; or

(d) The person is, after the Commission of the offence, present in The Gambia.

The competent authorities in charge of the implementation of the various aspects of article 11, cross-referencing with article 16

114. The competent authorities in charge of implementing article 11 are the Attorney General's office, The Ministry of Foreign Affairs, and the IGP. The Office of the Attorney General has powers to initiate criminal proceedings against any person before any court of law in The Gambia through the Director of Public Prosecutions. In the case of extradition, the Ministry of Foreign Affairs would inform the Attorney General of the request of a concerned State, following which the Attorney General's Office would initiate proceedings with support from the Inspector General of Police. Additionally, a resort can be made to the TRRC and or the National Human rights Commission.

115. Measure to ensure the fair trial of the alleged offender at all stages of the proceedings, including the right to legal counsel, the right to be presumed innocent until proven guilty, the right to equality before courts etc.

116. Chapter IV of the 1997 Constitution relates to the protection of fundamental human rights and freedoms. Section 18 of the Constitution protects the right to life of a person. And equally, Section 19 (2) of the 1997 Constitution states:

Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours in a language that he or she understands, of the reasons of his or her arrest or detention and of his or her right to consult a Legal Practitioner.

117. Section 19 (3) (b) further provides that any person who is arrested or detained upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the Laws of The Gambia, and who is not released, shall be brought without undue delay before a court and, in any event, within seventy- two hours”.

118. Section 24 (1) of the Constitution states:

Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or the determination of the existence or extent of any civil right or obligation, shall be independent and impartial: and

(a) If any person is charged with a criminal offence, then, unless the charge is withdrawn; or

(b) Where proceedings are commenced for the determination or the existence of any civil right or obligation, the case shall be afforded a fair hearing within a reasonable time”.

119. In the same vein, Section 24 (3) of the Constitution further states:

Every person who is charged with a criminal offence:

(a) Shall be presumed innocent until he or she is proved or has pleaded guilty;

(b) Shall be informed at the time he or she is charged, in a language which he or she understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his or her defence;

(d) Shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice.

120. This would ensure that arrested persons shall not be held in secret detention centres, and their families, legal representatives, or other persons will be aware of their condition and whereabouts.

121. Provided that where a person is charged with an offence that carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the State’s expense. The State has established a National Agency for Legal Aid services, which currently provides legal aid services to persons charged with murder, treason, rape and armed robbery.

122. Measures to ensure that the standards of evidence required for prosecution and conviction apply equally whether the alleged offender is a national of the State or a foreigner who committed acts of enforced Disappearance abroad.

123. Since there is no national legislation on enforced disappearance, the standard of evidence required in the prosecution and conviction of an alleged offender who committed acts of enforced Disappearance is the same for a national of the State foreigner. Section 24 (3) of the Constitution states that any person charged with a criminal offence is presumed innocent until the contrary is proved. This, therefore, means that the burden of proof in a criminal case lies on the prosecution throughout the case.

124. Information on which authorities are competent to investigate and prosecute those accused of enforced disappearance. In particular, it must be clarified whether, according to domestic law, military authorities would be competent to investigate and prosecute persons accused of enforced disappearance.

125. It is vital to highlight light that the Military Courts do not try civilians. The Military Courts only have jurisdiction over Military officials.

126. Investigation in The Gambia, are carried out purely by security sector agencies such as The Police and the National Intelligence Agency, now referred to as the State Intelligence Services (SIS).

127. Section 3 (e) of the National Intelligence Agency Decree states the Agency shall investigate and obtain information relating to the prevention or detection of severe or economic crimes.

128. Section 17 of the NIA Decree stipulates that after investigations into any matter, the Agency shall, where a prosecution is required, hand over the case docket to the Attorney – General’s Chambers for necessary action.

129. Section 4 of the Police Act, CAP.18:01, Vol. provides for the general duties of the Police, and it states that the Police shall be employed in The Gambia for the preservation of law and order, the protection of property, the prevention and detection of crime, the apprehension of offenders and the due enforcement of all laws and regulations with which they are charged.

130. The Police can investigate all crimes. However, prosecution becomes problematic as enforced disappearance is not criminalized in The Gambia, and so there are no sanctions attached to it. However, a Police Officer has the power under section 28 of the Police Act to conduct in-person any prosecution before a court of summary jurisdiction whether the information or complaint is laid in his or her name or not.

131. The TRRC is looking into crimes of enforced disappearance and will issue its recommendations to the State for prosecution.

132. The National Guard has a judicial function to investigate offences, gather evidence, and prosecute suspects in the appropriate courts. However, they shall carry out their function under the supervision of the Attorney General and per the provisions of the Criminal Procedure Code and all relevant laws.²

133. They are also mandated to report to the Attorney General all matters investigated by them, which may lead to prosecution. (Section 20 of The Gambia Armed Forces Act-Subsidiary Legislation, CAP.19:01

134. Section 27 of The Gambia Armed Forces Act- Subsidiary Legislation stipulates the powers of the Attorney General as being the competent authority to execute all the functions under their regulations.

135. Section 85 of the Constitution states that the Director of Public Prosecutions has power subject to the approval of the Attorney General to initiate and undertake criminal proceedings against any person before any court for an offence against the law of The Gambia, to take over and continue any criminal proceeding that has been instituted by any other person or authority and to discontinue.

Article 12. Reporting and Investigation

The process followed, and the mechanisms used by the relevant authorities to clarify and establish the facts relating to an enforced disappearance

136. The Truth Reconciliation and Reparation Commission (TRRC) is currently the body mandated to investigate cases of enforced disappearance as per the TRRC Act. The TRRC Act provides for the establishment of the historical record of the nature, causes, and extent of violations and abuses of human rights committed during the period July 1994 to January 2017 and to consider the granting of reparations to victims. In addition to the TRRC, the Police are mandated to conduct investigations into missing person reports and or cases of kidnapping or extra-judicial killings of individuals. Furthermore, the NHRC is also mandated to monitor, investigate and report situations and cases of human rights violations, including

² Consultations are being made to have these powers dissolved under the new Gambia Armed Forces bill under review.

enforced disappearance. Likewise, the National Assembly which can also conduct investigations into human rights violations being committed by the State.

Mechanisms available to individuals who allege that a person has been subjected to enforced disappearance

137. The TRRC has a research and investigations unit, which is composed of three sub-units, namely the Statement Taking Unit, the Research Unit, and the Investigation Unit. The functions of the three units intersect to a certain extent, but the statement-taking Unit is typically responsible for taking the statements and information of victims and witnesses. The research unit conducts preliminary research on human rights violations as per the mandate of the Commission, collecting, storing, and retrieving information (including evidence), collaborating with investigators and legal officers to build cases and identify victims and perpetrators. They make use of statements from victims, witnesses, and perpetrators to substantiate their research and produce reports for the use of investigators and other parties and necessary.

138. In addition to the TRRC, there is the NHRC which is mandated to receive, investigate human rights violations, including cases of enforced disappearances.

Access of any complaint to independent and impartial authorities, including information on any discriminatory barriers to the equal status of all persons before the law, and any rules or practices preventing harassment or re-traumatization of victims

139. The TRRC Act provides that the Commission shall be impartial and fair in the performance of its functions; and not be subject to the direction or control of any person or authority. All TRRC employment contracts have impartiality clauses assented to by all employees. TRRC has a victim-centred approach and makes the welfare of victims a priority. The Commission has a victim support unit and allows victims' access to victim support officers without discrimination. It also has a psychosocial unit that gives victims the necessary support.

Remedies available to the complainant in case the competent authorities refuse to investigate his/her case

140. In addition to the TRRC, the remedies available to the complainant in case competent authorities refuse to investigate his or her case is to go to court and seek redress or to file a complaint to the National Human Rights Commission or to the High Court for violation of a right. Additionally, a resort could be made to the ECOWAS Court, the African Court on Human and Peoples' Rights or to the African Commission on Human and Peoples' Rights. The ECOWAS Court has had cause to deliver a number of rulings against The Gambia for violations of human rights. For instance, in 2008, the ECOWAS ordered The Gambia to pay compensation to three Journalists, Ebrima Manneh, US\$100,000 and US\$200,000 to Musa Saidykhan, in 2010 and in 2016 awarded US\$50,000 to the family of Deyda Hydera. The Government of The Gambia has affected these payments between 2018/2019 in compliance with the Court's Judgments.

Mechanisms for the protection of the complainants, their representatives, witnesses, and other persons participating in the investigation, prosecution, and trial, against any kind of intimidation or ill-treatment

141. Sections 34 and 35 of the TRRC Act provide for the protection of informants and witnesses. These sections provide that an informant shall not be subject to civil or criminal proceedings for disclosing a human rights violation or abuse. The Commission shall, if it determines that there is a likelihood that the life or the property of the informant is in danger or is likely to be in danger, issue appropriate directions to safeguard the informant or his or her property. The Commission shall provide appropriate psychosocial support for informants, especially children, and take special measures to ensure the safety, anonymity, and confidentiality of informants, especially children.

142. In the same vein, Section 177 of the draft Criminal Procedure Bill 2020 provides for the protection of witnesses and victims and provides that;

Where in any proceeding, the court deems it necessary to protect the identity of the victim or a witness, the court may take any or all of the following measures:

- (a) Receive evidence by video link;
- (b) Permit the witness to be screened or masked;
- (c) Receive a written deposition of expert evidence; and
- (d) Any other measure that the court considers appropriate in the circumstance.

143. Furthermore, it is provided that witnesses shall not be subject to civil or criminal proceedings for disclosing a human rights violation or abuse. The Commission shall, if it determines that there is a likelihood that the life or the property of the witness is in danger or is likely to be in danger, issue appropriate directions to safeguard the witness or his or her property. The Commission shall provide appropriate psychosocial support for witnesses, especially children testifying before the Commission to avoid endangering or delaying their social reintegration or psychological recovery; and take special measures to ensure the safety, anonymity, and confidentiality of children testifying before the Commission. A witness before the Commission shall be entitled to the same immunities and privileges as if he or she were a witness in proceedings before a High Court.

Information on any office within police forces, prosecutorial or other relevant offices specifically trained to start investigations on cases of alleged enforced disappearance, including information of the power to start investigation ex officio, the budget, and the human resources at their disposal

144. The Gambia Police Force and Gambia Bar Association (GBA) continue to benefit from support from development partners in the area of capacity building programs in the area of promotion and protection of Human Rights. In 2019, both The Gambia Police Force and the GBA benefitted from capacity building training on International Standards and Legal Instruments to fight Against Impunity for Enforced Disappearance and Extra-Judicial Killings in The Gambia. This training, amongst other general training on promoting the human rights of persons, was organized by IHRDA.

Limitations, if any, placed on those authorities which may restrict their access to places of detention where there are grounds to believe that a disappeared person may be present

145. There are no provisions in the TRRC Act limiting the access of authorities to places of detention where there are grounds to believe that a disappeared person may be present. This includes unlimited powers to access any detention center or office without prior notice. The Commission also has the power to use processes to compel the attendance of witnesses.

146. Equally, the National Human Rights Commission has the mandate to investigate, enter into places of detention, and monitor situations of human rights violations.

147. In the same vein, the Ombudsman is also mandated to access detention and prisons to conduct visitations and monitor human rights violations.

Statistical data disaggregated, inter alia by sex, age, and geographical location on the number of complaints of enforced disappearance submitted to the domestic authorities and results of the investigations

148. Statistical Data on the above has been provided in Annex 1 to this Report.

Information on any measures such as administrative disqualifications, provided under domestic legislation, aiming at removing suspects from any posts where they would be in a position to influence the investigations or threaten persons involved in the investigations of cases of enforced disappearance

149. There are no measures such as administrative disqualification in the TRRC Act aiming at removing suspects from posts where they would be in a position to influence investigations etc. However, the Commission has secured several safe houses and established communication channels with the Government to protect witnesses and the integrity of investigations. Section 36 of the TRRC Act provides that a person who threatens or interferes with an informant or witness or willfully obstruct or otherwise interferes with the work of the Commission in the discharge of its functions commits an offence and is liable on conviction to a fine not exceeding one Million Dalasis or to imprisonment not exceeding three years or both a fine and imprisonment.

Article 13. Extradition

150. Schedule 1 of the Extradition Act of 1986 lists the offences of kidnapping, abduction, or false imprisonment. Taking into cognizance the common law system under which the Gambia operates, enforced disappearances may be interpreted as a derivative offence of the umbrella offences of kidnapping, abduction, or false imprisonment. The State recognizes the fact that there is a need to include an express prohibition of enforced disappearances in its legislation and is committed to working towards bringing that into effect.

151. A review of the existing Extradition treaties between The Gambia and other countries shows that no express provision exists for the inclusion of enforced disappearance as an extraditable offence. However, efforts will be made to ensure that a clause is included in such treaties and all future treaties that make such an offence an extraditable offence.

152. As Highlighted earlier, there exists no domestic legislation that defines enforced disappearance and, as such, no provision that qualifies enforced disappearance as a political offence but The Gambia is committed to working towards including this in future legislative reform.

Article 14. Mutual Legal Assistance

153. The Gambia currently has no bilateral treaties with member states to the Convention, specifically covering Cooperation and assistance in matters connected to enforced disappearance. At present, The Gambia relies on the provisions of Article 14 of the Convention for the making and receiving of requests for Mutual Legal Assistance.

154. To date, the Gambia has collaborated with the Swiss authorities in investigations into allegations of a series of crimes, including torture, murder, and enforced disappearance of Mr Solo Sandeng, a politician, as well as several other victims. The Government has collaborated with Swiss authorities in this regard through the provision of documents and other evidence as well as facilitating access to witnesses by Swiss Prosecutors.

155. The Gambia has and continues to collaborate with the United States (although not a Party to the Convention) in the investigation of Michael Sang Correa, a former member of The Gambia Armed forces, who is alleged to have been a member of a much-feared assassin squad known as “the junglers” and said to have participated in a series of crimes including torture and enforced disappearances and other identified persons of interest. Although the investigations did not result in prosecution for enforced disappearances, Michael Correa has been charged with multiple counts of torture by U.S. prosecutors.

Article 15. International Cooperation

156. The Gambia is currently reviewing its bilateral agreements on the subject of Co-operation in criminal matters. It is expected that this review will identify key areas for amendment, amongst which is the mutual assistance relating to the investigation of enforced

disappearances and assistance to victims. It is also expected that this framework will serve as a model for future cooperation agreements.

157. Recently, The Gambia has entered into a bilateral agreement for Co-operation in criminal matters with the Republic of Senegal. This Co-operation has already started bearing fruit. In testimony provided to the Truth Reparations and Reconciliation Commission in 2019, a serving member of The Gambia Armed Forces attested to being witness to the abduction and murder of 2 Gambia nationals then resident in Senegal, Mahawa Cham and Saul Ndow, in 2013. To date, there had been uncertainty about the whereabouts of the above who have not been seen or heard from since a trip by the two the southern region of Senegal, Casamance. Relying on this tip, The Government has requested and secured the Government of Senegal's assistance in the investigations into the alleged disappearance of Mahawa Cham and Saul Ndow by Gambian state agents on Senegalese soil.

Article 16. Non-refoulement

158. The Gambia currently has no law that explicitly prohibits the expulsion, returns (refoulement), surrender, or extradition of a person to a state where there are substantial grounds for believing that he/she might be subject to enforced disappearance. However, as stated above the section 7 of the Extradition Act provides certain broad restrictions and guidelines from a human rights perspective that may be invoked in protecting an individual from extradition.

159. The Gambia has also signed a treaty with Italy which includes a provision that prohibits the extradition to a requesting State if the requested State has reasons to believe that the person sought would be subjected to proceedings which do not ensure the respect of fundamental human rights, or to a cruel, inhuman, degrading treatment, or to any other act or omission infringing his or her rights as contained in Article 14 of the International Covenant on Civil and Political Rights, in the African Charter on Human and Peoples' Rights and/or in the Articles 2-14 of the European Convention on Human Rights.

160. Section 35 of the Constitution provides for the derogation from fundamental human rights during times of emergency. The implementation of this provision might imply that the strict constitutional obligations placed on a state to respect individual and collective rights to freedom of liberty may be set aside, and indeed at first glance, this raises a genuine concern. However, section 35 places certain key restrictions on the exercise of these wide powers, which include, amongst others, an obligation to inform family members of detained individuals and grant the same access within 24 hours of their detention. As a result of this being a constitutional provision, any legislation passed which has the effect of placing a fetter on the implementation of the prohibitions under Article 16 will be null and void.

161. As mentioned above, the Attorney General has statutory power to make an order for extradition. This power is predicated on several conditions, chief amongst which is the existence of an extradition agreement between the requesting State and The Gambia or if the requesting State is a commonwealth country, in which case the Extradition Act will automatically apply. Furthermore, extradition orders may only be made for offences listed under Schedule 1 of the Extradition Act and on the basis that the offence is punishable by at least 12 months of imprisonment. In addition to the above criteria, certain restrictions apply under Section 7 of the Act, which prohibits extradition on a diverse range of human rights grounds which have been covered in detail above.

162. Although decision-making power for extradition rests with the Attorney General, there are several safeguards set out by the Extradition Act. First and foremost, an individual who is the subject of an extradition request must first be committed by a Magistrate before an extradition order can be made by the Attorney General. These proceedings are evidentiary in nature and allow an individual to challenge the grounds of his proposed extradition. Where the Magistrate deems the grounds to be in line with the law, an individual may be committed to await extradition. Inversely, where the evidence presented does not support a case for extradition, the individual may be set free. This ensures that all extradition orders comply with the laid down statutory provisions.

163. In addition to this measure, if an individual is committed by a Magistrate for extradition, said individual may still make an application for habeas corpus to the High Court. For this purpose, a buffer period of 15 days is granted from the date of the committal order within which an individual shall not be extradited. Furthermore, an individual may not be extradited if a habeas corpus application is pending on his or her behalf before the high court. Upon an application for habeas corpus being made, the high court may uphold the committal order or may discharge the individual if reason can be shown that his or her continual committal may be unjust or oppressive.

164. Beyond the High Court, an individual has access to the regular appellate process and may bring an appeal before the Court of Appeal and Supreme Court under the applicable civil procedure rules.

Article 17. Prohibition of Secret Detention

165. Section 14 of the Criminal Procedure Code provides that all persons arrested must be brought to a Police Station. Although there are no express words prohibiting secret or unofficial detention, the various statutes that permit deprivation of liberty, such as the Criminal Procedure Code, Immigration Act, and Drugs Control Act, prescribe detention in one of the facilities of the relevant agency. Due to the absence of clear working prohibiting secret or unofficial detention in the pre-2017 era, there were instances of detention in agency-owned facilities, but which were not officially designated as such and to which there was no public access. The Government is currently reviewing the Criminal Procedure Code. Section 18, that Criminal Procedure Bill currently under review by the National Assembly, makes it mandatory for there to be a recording of arrest at the police station or any agency of arrest and highlights that the information to be taken of the suspect should include the following: the alleged offence; the date and circumstances of his or her arrest; his or her full name, occupation, and residential address; and for identification – his or her height, his or her photograph, his or her full fingerprint impressions, or such other means of his or her identification. The same section also ensures that the process of recording is done within a reasonable time of the arrest. Although this does not expressly address the issue of secret detention, its combined effect with provisions of the Constitution that require access to a lawyer within 3 hours ensures that a person is not held in secret or unofficial detention.

166. Section 19 guarantees the right to personal liberty except for certain grounds provided by law. Under The Gambian law, a series of statutes provide for the lawful deprivation of liberty. These range from security grounds which are most common, to other less common reasons, such as health grounds. Under the various criminal statutes, an individual may be deprived of his liberty if caught in the Act of committing an offence. Under the circumstance, the individual may be arrested and detained by a citizen, Magistrate, or law enforcement officer to bring him or her before a court of law. Provided that an individual deprived of his liberty must be informed of the reasons thereof within three hours, must be given access to his lawyers within 3 hours of arrest, and must be either released or brought before a Court of law within 72 hours.

167. In other instances, an individual who has been charged with an offence before the Courts may be deprived of his/her liberty in the event of a guilty verdict. In this instance, only a duly constituted Court can make an order for deprivation, and such order is subject to the exercise of full rights of appeal.

168. Under the Quarantine Act, an individual deemed to be infected by one of the diseases laid down in the Act may be isolated by the health or sanitary authorities. Furthermore, a Magistrate, Judge, or two Justices of the Peace may, after having received two certificates from medical practitioners as to an individual's state of mind, authorize said person's detention on the Lunatics' Detention Act. In situations of emergency, the Director of Health Services may issue an emergency certificate for the detention of a lunatic.

169. Under Section 53 of the Prisons Act, a convicted prisoner shall be allowed one visit from friends or family after the completion of at least three months (in practice one month) of his or her sentence and thereafter according to progressive stages. A prisoner committed to prison on default of the payment of any sum shall be permitted to receive a 15-minute visit

and to write and receive a letter each week. Section 56 gives all prisoners on remand access to reasonable communication with family, friends, and legal representatives. All visits are except for visits by legal advisers, which take place within sight only, shall take place within sight and sound of a Prison Officer. Foreign prisoners/detainees are given a chance to contact their consular offices or embassies for assistance.

170. Section 20 of the National Human Rights Commission gives a Commissioner, or any such person authorized by the Commission unfettered access to all places of detention. In keeping with its obligations under international instruments, access is also granted to international monitoring missions and special procedures of the U.N. to places of detention and prisons. Other statutory bodies, such as the TRRC, have the power to inspect prisons. Although no specific legislation exists guaranteeing access to prisons for non-governmental organizations, there has been increasing Co-operation between the prison authorities and other local organizations such as the Prisons Fellowship.

171. Under Section 21 of the Prisons Act, certain individuals have been designated as Prison Visitors. Judges of the High Courts and Justices of the Peace who fall under the judicial arm of Government are ex officio Prison Visitors and may when they think fit, enter and inspect any prison under their jurisdiction. Furthermore, section 22 of the Prisons Act establishes Visiting Committees for each prison. Visiting Committees consist of not less than five members and meet once every three months within the precincts of the prison and shall complaints from prisoners. A member of a Visiting Committee may at any time any a prison for which the committee is appointed and shall have free access to every part of the prison. Visiting Committees are independent of the penitentiary administration and report directly to the Minister responsible for the interior.

172. Section 19 of the Constitution guarantees the right to liberty, and any individual may bring an action via means of an originating summons before the High Court on the legality of his or her detention. Furthermore, Section 293 of the Criminal Procedure Code makes provision for the making of habeas corpus applications before the High Court by an interested party to secure the release of an unlawfully detained individual. Under Section 19(6) of the Constitution, any individual unlawfully arrested and/or detained shall be entitled to compensation from the detaining person or from such person on whose authority the latter acts.

173. The Police and Prisons keep diaries at all stations where information of arrested persons is recorded.

Article 18. Information Concerning Persons deprived of liberty

174. The Gambia at the moment does not have any express legislation guaranteeing access to detention and prison registers to interested parties. Parties desirous of such information may obtain the same upon application to a Court of Law. The Gambia is in the process of enacting access to information law. Section 11 of the Access to Information Bill, which is currently before the National Assembly, guarantees the right of every person to access information emanating from a public body. Similarly under section 23 provides restrictions as to who can be refused access to information by an information holder, and these include refusal on the grounds of the information being a threat to public safety, personal information of a third party, National security, confidential and commercial information.

175. As stated above, there is a lacuna in the law governing access to information; as such, there are little protections from ill-treatment and intimidation or sanctions of persons requesting access to information. It is, however, possible to ensure protection via way of other criminal statutes where such sanctions or intimidation are deemed to constitute criminal conduct. Section 76 makes it a criminal offence for an information holder to deny access to information of that nature to a person or obstruct the work of the Commission established to monitor and protect the right to access of information. It is hoped that this legislation shall be enacted during the reporting year and, as such, cure a huge gap in our statute books.

Article 19. Protection of Personal Data

176. The Gambia does not currently have any legislation on the procedures for obtaining and using genetic data at the detention points. Due to the low adoption of advanced technology and cost barriers, advanced genetic data collection is not yet a priority. At the moment, the only genetic data that is collected at detention points are fingerprint information. Upon arrest, the fingerprints of an individual are collected and form part of the case file. This data is confidential and can only be used in the context of a criminal investigation or in the course of criminal proceedings.

177. Although no specific legislation exists on the subject in the course of the ongoing investigation into cases of enforced disappearances under the previous regime, the Government has had to resort to the collection of DNA information. In practice, this information is kept confidential and only used for purposes connected with the search and identification of missing individuals.

178. At the moment, there exists no database for the storage of genetic data. However, a draft bill on Personal Data Protection 2020 is currently under review.

Article 20. Restriction on the Right to Information

179. The restriction on access to such information under Part III of the Access to Information Bill is on the following: personal information of a third party; commercial and confidential information of an information holder or a third party; protection of life, health, safety, and privacy of an individual; national security and defence; international relations; law enforcement; privileged information and documents; academic and examination process; cabinet proceedings; severance and where public interest overrides. The holder of information has the burden of proving that the information he or she is refusing is exempt under the Access to Information Bill.

180. The Bill establishes an independent and autonomous Commission as an oversight mechanism that is only answerable to the National Assembly and has referral powers to the High Court and the Supreme Court. Where a person requests access to information that he or she reasonably believes to be necessary to safeguard the life or liberty of a person and is refused such a request, section 68 guarantees the person a right to apply to the oversight mechanism for review of the decision.

181. In addition to the oversight mechanism, individuals may also resort to the Law Courts for respite in the event of a refusal to disclose. This could be done by way of filing a habeas corpus application which will require the relevant authority to appear before the court and provide the requisite information.

Article 21. Release

182. Information on existing national legislation and practice to ensure reliable verification of the release of persons deprived of their liberty: In respect of the national laws which ensure the reliable verification of persons being released, The Gambia Armed Forces Act – Subsidiary Legislation: provides for a person kept in custody received and kept in close custody should be within twenty-four (24) hours, the officer or man into whose custody that person has been committed shall, as soon as practical after the expiration of that time, should be discharged from custody.

183. Section 65 of The Gambia Armed Forces Act Cap 19:01 Vol. 4 Revised Laws of The Gambia- (Subsidiary Legislation) clearly points out that no one should be kept in custody beyond forty-eight hours without commencing an investigation.

184. Section 65 of The Gambia Armed Forces Act Cap 19:01 Vol. 4 Revised Laws of The Gambia clearly points out that no individual shall be kept in custody beyond seventy-two (72) hours consecutive days without a court-martial being convened if the officer in charge decides to keep the suspect in custody such should be done in writing.

185. The Gambia has taken numerous measures to improve the release of persons deprived of their liberty in ways that permit a reliable verification that they have been released, assuring their physical integrity and their ability to exercise their rights.

186. Section 19 of the 1997 Constitution of the Republic of The Gambia clearly states that no individual shall be held in custody beyond seventy-two (72 hours). If such an individual is detained beyond the stipulated time without a court order, the said individual shall be entitled to compensation.

187. Section 133 of the 1997 Constitution of the Republic of The Gambia gives the High Court the power to issue directions, order, or writs, and this includes writs of habeas corpus. This gives the court the power to order the Prison Services or any government agency to produce any person kept in custody beyond the seventy-two (72) hours as required by law. This law gives the High Court the power to supervise other bodies. The Prisons Act provides for the admission and discharge of persons kept in custody under section 20 of the Prison's Act which clearly states that a prisoner shall not be detained in prison beyond the expiration of the period of imprisonment to which he or she was sentenced by a court. This is a way of making sure no one is detained unlawfully and that prisoners are released on time.

188. Section 17 of the Prisons Act- Subsidiary Legislation states that prisoners should be discharged within a specific time. If such is not done, reasons should be given as to why the person under custody has not been released at the specific time required law.

189. Section 24 of the Prisons Act- Subsidiary Legislation states that friends and relations of the convict may be informed of the day of discharge. They should be informed by the officer in charge of the day and hour when he or she will be discharged from custody.

190. Section 31 of the Prisons Act- Subsidiary legislation clearly states that a prisoner who has earned remission shall be discharged after serving his or her sentence.

191. Section 8 of the TRRC Act, 2017 gives the investigators the power to search detention centres if at any time they believe that a person might be unlawfully detained.

Article 22. Sanctions for Failure to Record and Refusal to Provide Information

Information on the legislation applicable To The guarantee that any person deprived of his or her liberty or any other person with a legitimate interest be entitled to take proceedings before a court

192. The Constitution of the Republic of The Gambia under section 132, gives the court the power to interpret and enforce the fundamental rights enshrined under section 18 to 33 and section 36(5) of the Republic of The Gambia.

193. Section 37 of the Constitution enforcement of protective provisions. This section points out that if any person is deprived of his or her right to liberty. Any person can make an application for the individual to be released.

194. Section 99 of the Criminal Procedure Code states that if in any case an individual is deprived of his liberty, the court is allowed to grant the said individual bail. The bail could make conditional or unconditional. This application can be made by the individual or his or her representative.

195. Section 24 of the 1997 Constitution clearly states that accused persons should be afforded a fair hearing within a reasonable time.

Article 23. Training

196. Information on the existing training programmes or steps is undertaken to establish them, aimed at preventing the above-mentioned persons from becoming involved in cases of enforced disappearances.

197. To prevent acts of torture arbitrary detention, The Gambia Police Force, National Intelligence Agency, and The Gambia Prisons Services, in partnership with human rights organizations such as the Institute for Human Rights and Development in Africa (IHRDA), NHRC, and U.N. Agencies continue to train its officials and senior management on best practice standards on human rights best practices, on extra-judicial killings and enforced disappearances. The Prison Fellowship has also undertaken a nationwide visit to all its detention centres.

198. The police force has also developed a human rights training manual, and Bekanyang, a civil society organization, has also provided human rights learning materials. The NHRC also supported the Police to develop a minimum standard operating manual.

199. The NIA (SIS), since 2017, no longer carries out acts of arrest or detention of persons. Furthermore, The Gambia Police Force has a Human Rights Unit conducting advocacy, monitoring human rights adherence of the force. The Unit also receives complaints of human rights abuses by its officials and currently receives on average of four complaints per day.

Article 24. Rights of Victims

200. How broad the definition of ‘victim’, to include both the disappeared person and any individual who suffered harm as the direct result of the enforced disappearance is reflected in domestic law.

201. Since the Convention is yet to be domesticated, the definition of victim in compliance with the Convention is yet to be domesticated in our national laws. However, Section 2 of the TRRC Act, defines human rights violations to include:

(a) The Commission of acts of torture, unlawful killings, sexual and gender-based violence, enforced disappearances of persons, inhumane and degrading treatment, arbitrary arrest, detention without trial; whether committed in isolation or as part of a crime against humanity; whether committed individually or in concert with others; Truth, Reconciliation, and Reparations Commission Bill, 2017 4;

(b) The ordering, instigation, incitement, aiding and abetting, counselling, or procuring any of the acts under paragraph (a).

202. And under the same section, the Act defines a “**victim**” to include:

(a) Persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss, or substantial impairment of rights:

(i) As a result of a violation or abuse of human rights, or

(ii) As a result of the Commission of a crime;

(b) Persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss, or substantial impairment of rights, as a result of such person intervening to assist persons contemplated in paragraph (a); and

(c) The relatives or dependents of such victims as may be determined by the Commission.

203. The Truth, Reconciliation and Reparations Commissions of The Gambia has been established by the Government of The Gambia to establish an impartial historical record of human rights violations (including enforced disappearances) and abuses committed from July 1994 to January 2017. A component of the work of the Commission is the conduct of statement taking, investigations, research, and a public hearing to facilitate truth-telling. One of the Objectives of the Commission is to establish and make known the fate or whereabouts of disappeared victims.

204. The Statement taking Unit of the TRRC has a standing operating procedure which obliges members of the Unit to not only explain the statement taking protocols before and during their statements are taken but also victims are registered at the Victim Support Office

of the Secretariat where victims are being informed together with the Research and Investigation Unit on the progress of their case.

205. There is no existing DNA database for now, but the Commission has conducted several exhumations where several remains of disappeared persons have been found. Before and during this exhumation process, families of victims are informed of the purpose and steps being undertaken, and their consent is obtained beforehand. At the moment, the Commission is looking for support to identify the remains, after which they will be returned to the families of victims to do a befitting burial and ensure closure.

206. Recognizing that every human being deserves a befitting burial regardless of the circumstances under which they died, The Ministry of Justice, with support from the Justice Rapid Response in 2019, handed over the remains of Lt. Col. Lamin Sanneh, a former presidential guard, and Capts. Njaga Jagne and Alhagie Jaja Nyssa, both former U.S. soldiers of Gambian descent, to their families. The trio were killed during the December 30, 2014, attack on the State House, and the three bodies buried together at a firing range in Tintinto, a small settlement near Jammeh's village Kanilai.

207. The truth commission, in the course of its investigation, has conducted an exhumation exercise that led to the discovery of some human remains at the Yundum Military Barracks and NIA safe house in Tanji. The research and Investigation Unit, with support from the Justice Rapid Response, has located, excavated, and found remains of persons whose family members made a complaint to the Commission. Before and during the exhumation family members of victims are kept informed.

208. The setting up of the TRRC by the Government demonstrates the will of the Executive in addressing enforced disappearance. The TRRC is mandated to make recommendations, and upon receipt of the recommendations, the Government will put mechanisms in place for the recognition of disappeared persons.

209. There is no national database of DNA relevant to identify victims of enforced disappearance, however, there are, and steps are being undertaken to systematically collect ante-mortem data related to persons who disappeared and their relatives:

(i) Currently, genetic materials of the disappeared persons and their relatives are being stored at the main referral hospital in Banjul. The TRRC Act has mandated the Commission to consider the granting of reparations to victims, and in furtherance of this, the Commission has validated a reparations policy that will guide the administration of reparations;

(ii) A CSO, Gambia Centre for Victims of Human Rights Violations created to support victims and families of victims, has been assisting families who are victims of enforced disappearance and other human rights violations.

210. The Centre has registered more than one Thousand victims, and families act as a focal point for victims of enforced disappearance. They worked with the Government during the drafting of the TRRC Act of 2017 and, up to date, have been working closely during consultations, sensitizations, and in drafting the Reparation Regulation for victims. The Government of The Gambia consults the Victims Centres as a representative of families in making decisions and policies that affect them.

Article 25. Children

211. Information on domestic legislation (criminal, civil and administrative) applicable to the wrongful removal of children submitted to enforced disappearance; children whose parents are subjected to enforced disappearance; babies born during the captivity of pregnant mothers subject to enforced disappearance; as well as to the falsification, concealment or destruction of documents attesting the true identity of those children.

212. The State has not yet registered such cases relating to children submitted to enforced disappearance, and our national legislation did not address the same. However, the Children's Act of 2005 addresses the issues dealing with the protection of children.

213. Part IV of the Children's Act creates criminal offences against children ranging from trafficking, exportation, abduction, kidnapping unlawful detention, among others, to name a few. The Act provided for sentences/ punishments, remedies, and compensations. Sections 20, 21, and 22 of the Children's Act 2005 provides for the best interest of the child as a primary consideration. These sections specifically state that the interest of the child is the primary responsibility of the parents, the court, and the foster parents or guidance.

214. Section 29 of the 1997 Constitution of The Republic of The Gambia provides for the right of the child. That the child should have the right to a name, the right to acquire a nationality, and subject to legislation that aims for the best interest of the children, to know and to be cared for by their parents. Review

VI. Conclusion

215. The Government of The Gambia remains committed to its obligations under the Convention. The Government continues to undertake considerable efforts towards provide maximum protection for all. In this light, as part of the ongoing legislative reform, plans are underway to have the Convention domesticated into national law. This will go a long way in ensuring enhanced compliance with its commitments under the Convention as well as facilitate the implementation of recommended measures.
