



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by the Gambia under article 29 (1) of the Convention*

I. General information

1. With regard to paragraphs 2 and 54 of the State party's report,¹ please indicate whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities. Please also provide information on the status of the process of harmonizing national legislation with the Convention, in particular the legislation mentioned in paragraphs 23, 36, 37, 39, 51 and 53.
2. Concerning paragraphs 31 and 84 of the State party's report, please inform the Committee about the activities undertaken by the National Human Rights Commission in relation to the Convention since it was ratified, in 2018. Please indicate whether the Commission has received any complaints concerning enforced disappearance and, if so, describe the action taken and the results thereof. Please also clarify the roles and responsibilities of the Commission and the Ombudsman's Office with regard to enforced disappearance.
3. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31–32).

II. Definition and criminalization of enforced disappearance (arts. 1–7)

4. In relation to paragraphs 76–77 of the State party's report, please provide up-to-date statistical information, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victim, on the number of disappeared persons in the State party, specifying the date and place of disappearance, how many of those persons have been located, and the number of cases in which there may have been some form of State involvement within the meaning of the definition of enforced disappearance contained in article 2 of the Convention. With respect to paragraph 80 of the report, please indicate whether there exists a database of disappeared persons, including persons disappeared after the end of the Jammeh regime (arts. 1–3).
5. Regarding paragraphs 55 and 160 of the State party's report, please describe the legal and/or administrative measures adopted to ensure that no exceptional circumstances may be invoked as a justification for enforced disappearance. Please also provide information on the rights from which derogation in a state of emergency is not permitted (art. 1).

* Adopted by the Committee at its twenty-second session (28 March–8 April 2022).

¹ [CED/C/GMB/1](#).



6. Concerning paragraphs 51, 53 and 85–86 of the State party’s report, please indicate whether the crime of enforced disappearance will be included in the Criminal Offences Bill (2020) as an autonomous offence and in the International Crimes Bill (2020) as a crime against humanity. If so, please provide information on the proposed wording and penalties for the crime of enforced disappearance in both bills, including any aggravating and mitigating circumstances that may be established (arts. 2, 4, 5 and 7).

7. Given that there is currently no autonomous offence of enforced disappearance in domestic legislation, please: (a) clarify the maximum and minimum penalties provided for in the provisions mentioned in paragraphs 78–79 and 91–96 of the State party’s report, which are invoked to deal with cases of enforced disappearance, indicating whether any of them involve the death penalty; (b) provide information on the possible mitigating or aggravating circumstances, indicating the maximum and minimum penalties that would apply in such cases; and (c) explain how section 19 of the Truth, Reconciliation and Reparations Commission Act, which provides for the possibility of granting amnesties to perpetrators of human rights violations, including enforced disappearance, as well as the immunity provisions in the Indemnity Act and the Constitution, are compatible with the Convention. Please also explain how section 14 (3) of the Truth, Reconciliation and Reparations Commission Act would apply to cases of enforced disappearance (arts. 7 and 24).

8. Regarding paragraphs 88–89 of the State party’s report, please explain how section 23 of the Criminal Code ensures that any person who engages in the conduct described in article 6 (1) (a) and (b) of the Convention is held criminally responsible. Please provide information on the legislation under which no order or instruction from any public authority may be invoked to justify an offence of enforced disappearance and indicate whether the notion of “due obedience” as a criminal law defence has any impact on the effective implementation of this provision. Please also explain how domestic legislation guarantees that a person who refuses to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished, and provide information on any remedies available to subordinates for potential disciplinary measures resulting from such refusal (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

9. With respect to paragraphs 99–100 of the State party’s report, please clarify whether a statute of limitations applies to the offences that may be invoked to deal with cases of enforced disappearance, including as a crime against humanity. If so, please provide information on:

- (a) The term of limitation for starting criminal proceedings;
- (b) The moment when that term of limitation commences;
- (c) The measures taken to guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation (art. 8).

10. In relation to paragraph 102 of the State party’s report, please provide further information on the current legislation establishing the State party’s jurisdiction over the offence of enforced disappearance in the cases provided for in article 9 (1) and (2) of the Convention. Regarding paragraph 103, please explain how section 4 of the Criminal Offences Bill (2020) would apply to cases of enforced disappearance given that, in its current form, it does not provide for the crime of enforced disappearance as an autonomous offence, and clarify whether it would apply to any perpetrator, regardless of his or her nationality or that of the victim and the place where the crime was committed (art. 9).

11. Concerning paragraphs 124–125 and 132–133 of the State party’s report, please:

- (a) Describe the measures taken to guarantee the independence and impartiality of the courts, and to ensure that any person tried for an offence of enforced disappearance benefits from a fair trial;

(b) Clarify whether military authorities are competent under domestic legislation to investigate and/or prosecute alleged cases of enforced disappearance and, if so, provide information on the applicable legislation and on any investigations and/or prosecutions that have been carried out on such cases (art. 11).

12. Please provide up-to-date information, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victim, on: (a) the number of complaints received with regard to enforced disappearance as defined in article 2 of the Convention that were allegedly committed during and after the period 1994–2017; (b) the number of investigations carried out and how many of those were initiated in the absence of an official complaint, specifying the authorities in charge of the investigations; (c) the number of prosecutions; and (d) the penalties imposed on the perpetrators. Please also indicate if any of the complaints refer to cases of enforced disappearance in the context of trafficking or migration (arts. 2, 12 and 24).

13. Please report on the recommendations for prosecution issued by the Truth, Reconciliation and Reparations Commission mentioned in paragraph 131 of the State party's report. Please also report on the results of the investigations of the enforced disappearance and extrajudicial execution, in July 2005, of more than 50 migrants from Ghana and other West African countries by Gambian security forces in the Gambia and across the border in Senegal, and indicate whether the report of the Economic Community of West African States (ECOWAS)/United Nations team mission has been made public and shared with the families of the victims. Please indicate the status of implementation of the judgments issued by the Court of Justice of ECOWAS in the cases of *Chief Ebrimah Manneh v. Republic of the Gambia* in 2008 and *Musa Saidykhan v. Republic of the Gambia* in 2010 (arts. 2, 12 and 24).

14. In relation to paragraphs 80, 126–138, 149 and 199 of the State party's report, please: (a) clarify which authorities are responsible for receiving complaints and investigating cases of alleged enforced disappearance committed before or after the period 1994–2017; and (b) describe the steps taken to ensure that a prompt, thorough and impartial investigation is carried out, including in the absence of an official complaint, and that all authorities in charge of investigating cases of enforced disappearance, including the Truth, Reconciliation and Reparations Commission, have access to all relevant documents and evidence of all relevant State organs, including the archives of the former National Intelligence Agency. In the light of allegations that individuals accused of perpetrating or enabling enforced disappearance continue to work within civil and security services, including in high-ranking positions, please explain how the State party ensures that persons suspected of having been involved in the commission of an offence of enforced disappearance are not in a position to influence the progress of an investigation and that they are excluded from the outset and for the duration of the investigation (arts. 12 and 24).

15. Please provide information, including the applicable legislation, on:

(a) Who can report that a person has been subjected to enforced disappearance and the requirements for doing so;

(b) The remedies available to complainants if the competent authorities refuse to investigate their allegations, besides those mentioned in paragraph 140 of the State party's report;

(c) The mechanisms available for the protection of the persons referred to in article 12 (1) of the Convention, other than victims, witnesses and informants, against ill-treatment or intimidation as a consequence of the complaint or any evidence given;

(d) The steps that victims must take to gain access to protection measures, and whether any persons affected by enforced disappearance have benefited from such measures (art. 12).

IV. Measures to prevent enforced disappearances (arts. 16–23)

16. Regarding paragraphs 158 and 161–164 of the State party's report, and given that there is currently no autonomous offence of enforced disappearance in domestic legislation, please:

- (a) Specify the offences for which an extradition order may be issued and explain how the State party ensures that enforced disappearance is an extraditable offence;
- (b) Provide further information on the mechanisms and criteria applied to the expulsion, return, surrender or extradition of persons to evaluate and verify the risk that a person may be subjected to enforced disappearance;
- (c) Specify the restrictions on extradition under section 7 of the Extradition Act;
- (d) Specify the time frame for appealing a decision authorizing an expulsion, return, surrender or extradition before the Court of Appeal and the Supreme Court and indicate whether the appeal has a suspensive effect (art. 16).

17. Concerning paragraph 165 of the State party's report, please explain how the State party ensures that no one is held in secret detention or in unofficial places of deprivation of liberty and indicate whether the Criminal Procedure Bill foresees to expressly prohibit secret or unofficial detention (art. 17).

18. With respect to paragraphs 160, 165 and 168–169 of the State party's report, please:

- (a) Provide further information on the applicable legislation that guarantees that, from the outset of the deprivation of liberty, any persons deprived of liberty, including persons detained under emergency powers, and regardless of the place of deprivation of liberty, including police detention facilities, health facilities and mental health hospitals, have access to a lawyer, can contact and be visited by their relatives or any other person of their choice and, in the case of foreign nationals, can communicate with their consular authorities, including during the coronavirus disease (COVID-19) pandemic;
- (b) Indicate whether any restrictions may be applied to the above rights and whether there have been complaints regarding failures to observe these rights, and, if so, provide information about the proceedings carried out and their outcome;
- (c) Describe what other means of communication convicted prisoners are afforded during the first three months of their sentence, when they are not allowed visits (art. 17).

19. Please provide information on the visits to places of detention carried out by the National Human Rights Commission and any authorities, institutions and non-governmental organizations other than those mentioned in paragraphs 170–171 and 191 of the State party's report, indicating whether these visits were unannounced. Please also describe the process followed for selecting members of visiting committees (art. 17).

20. Regarding paragraphs 165 and 173 of the State party's report, please provide information on the official registers and/or records of persons deprived of liberty that exist in all places of deprivation of liberty, regardless of its nature, and on the information that they contain. Please describe the measures taken and the applicable legislation to ensure that these registers are duly completed and kept up to date without delay. Please indicate whether there have been any complaints concerning the failure to record a deprivation of liberty or the recording of inaccurate information in registers concerning persons deprived of liberty. If so, please report on the measures taken to ensure that such omissions are not repeated, including any disciplinary proceedings, sanctions and training involving the personnel concerned (arts. 17 and 21–22).

21. In connection to paragraphs 58 and 172 of the State party's report, please clarify who, aside from the person subjected to enforced disappearance, can take proceedings before a court to challenge the lawfulness of a deprivation of liberty in the case of suspected enforced disappearance. Please describe the measures in place to prevent and impose sanctions for delaying or obstructing this remedy, including in the context of the COVID-19 pandemic (arts. 17 and 22).

22. Concerning paragraphs 174–175 and 179–181 of the State party’s report, please:

(a) Describe the provisions in the Access to Information Act that guarantee access to all the information listed in article 18 (1) of the Convention by any person with a legitimate interest;

(b) Describe the restrictions and conditions that may be imposed on access to such information, the means available for appealing against the refusal to disclose such information, and the measures in place to prevent and impose sanctions for delays and obstruction of such appeals, including in the context of the COVID-19 pandemic;

(c) Explain how the State party guarantees the protection of all persons mentioned in article 18 (2) of the Convention (arts. 18, 20 and 22).

23. In relation to paragraph 197 of the State party’s report, please provide further information on any specific training on the Convention, and the content and frequency thereof, provided to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice (art. 23).

V. Measures to protect and guarantee the rights of victims of enforced disappearance (art. 24)

24. Concerning paragraphs 201–202, 204 and 209 of the State party’s report, please describe the steps taken to bring the definition of victim in domestic legislation into line with that contained in article 24 (1) of the Convention. Please provide further information on the reparations policy of the Truth, Reconciliation and Reparations Commission and indicate the number of victims of enforced disappearance currently recognized in the terms of section 2 of the Truth, Reconciliation and Reparations Commission Act and the reparations provided to them. Please also indicate:

(a) The procedures available to victims of enforced disappearance to obtain compensation and full reparation, including the applicable time limits;

(b) The modalities of reparation available to victims;

(c) The authority responsible for granting compensation and/or reparation;

(d) Whether access to compensation and/or reparation is conditional on the existence of a judicial decision;

(e) The measures taken to guarantee the right of victims to know the truth and to ensure that they can participate at all stages of the proceedings and that they are regularly informed about the progress and results of the investigations (art. 24).

25. Please describe the existing procedures to search for, locate and release disappeared persons, and to identify and return their remains in case of death, indicating the time frames, protocols and procedures applied by the relevant authorities. Please provide information on the legal situation in domestic legislation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights. In that regard, please indicate whether a declaration of absence or a declaration of death of the disappeared person is granted in such cases and, if so, please provide information on how long after the disappearance such declarations are issued and on the impact that they may have on the State party’s obligation to continue the search and investigation into a case of enforced disappearance until the fate of the disappeared person has been clarified. Please also explain how the State party ensures that the specific needs of women and children who are relatives of the disappeared are adequately addressed (art. 24).

26. In relation to paragraphs 177–178, 205, 207 and 209 of the State party’s report, please provide information on the progress made in searching for, locating and releasing persons who were disappeared during the period 1994–2017 and, in the event of death, in identifying and returning their remains. In this regard, please clarify: (a) which authorities are involved in the search for disappeared persons and how they coordinate with the authorities in charge

of investigating enforced disappearances; and (b) which authorities, in addition to the Panel on Missing Persons within the police and the Truth, Reconciliation and Reparations Commission's Research and Investigation Unit, are mandated to carry out exhumations and identification work, describing the steps taken to ensure that these institutions, including the Commission, have adequate forensic capacity, technical means and resources to properly carry out their functions. Please indicate whether the State party intends to create a national database to store genetic data on disappeared persons and their relatives for the purpose of searching for disappeared persons and identifying their remains (arts. 12, 19 and 24).

VI. Measures to protect children from enforced disappearance (art. 25)

27. Concerning paragraph 212 of the State party's report, please inform the Committee about the steps taken to criminalize and prevent the conduct described in article 25 (1) of the Convention. Please provide information on the system of adoption or other form of placement of children and indicate whether legal procedures are in place to review and, where appropriate, to annul any adoption, placement or guardianship of children that originated in an enforced disappearance. Please provide information about procedures for the identification of newborn babies at birth (art. 25).
