



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

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Consideration of reports of States parties under article 29 (1)
and additional information under article 29 (4) of the Convention

Replies of the Gambia to the list of issues in relation to its report submitted under article 29 (1) of the Convention*

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* The present document is being issued without formal editing.



Introduction

1. The Government of The Gambia is pleased to submit these written responses to the List of Issues (LoIs) raised by the Committee on Enforced Disappearances (CED) in relation to its initial report under the International Convention for the Protection of All Persons from Enforced Disappearance in 2022. These responses reflect The Gambia's continued commitment to implementing the provisions of the Convention and addressing all forms of enforced disappearance within its jurisdiction.
2. Since the submission of the initial report, The Gambia has taken significant steps to strengthen its legal, institutional, and operational frameworks to prevent, investigate, and address enforced disappearances. The recent establishment of a Special Tribunal, approved by ECOWAS, marks a historic development in our efforts to ensure accountability and justice for victims. This tribunal, along with ongoing legislative reforms and transitional justice initiatives, demonstrates our determination to fulfil both national and international obligations under the Convention.
3. These responses provide updates on measures already undertaken, challenges faced, and planned initiatives to further the objectives of the Convention. The Government of The Gambia remains committed to engaging constructively with the Committee to enhance the implementation of the Convention and to ensure the protection of all persons from enforced disappearance.

I. General information

Reply to paragraph 1 of the list of issues (CED/C/GMB/Q/1)

4. The Gambia is actively working to harmonize its domestic legal framework with the provisions of the Convention. While the Convention has not yet been domesticated, the government has recruited a consultant, with the support of the International Committee of the Red Cross (ICRC), to draft an autonomous bill on enforced disappearances. This bill will incorporate the Convention's requirements, including the definition of enforced disappearance, criminalization, and prevention mechanisms. Additionally, efforts are ongoing to harmonize existing legal provisions, such as the Criminal Code and procedural laws, with the Convention's obligations.

Reply to paragraph 2 of the list of issues

5. Complaints of enforced disappearances are addressed through the National Human Rights Commission (NHRC), which has the mandate to receive, investigate, and address such allegations. For example, the NHRC engaged the State Intelligence Services (SIS) in investigating the disappearance of Mr. Siaka Fatajo. Moreover, the TRRC has provided a comprehensive list of enforced disappearance cases under the Jammeh regime, and the government has pledged to prosecute those responsible through a planned Special Accountability Mechanism. The NHRC, as a statutory body, continues to play a crucial role in safeguarding human rights and preventing enforced disappearances.

Reply to paragraph 3 of the list of issues

6. The Gambia intends to recognize the Committee's competence under Articles 31 and 32 of the Convention to receive and consider individual and inter-State communications. Consultations are ongoing to formalize this decision and ensure that national policies align with these declarations. This demonstrates The Gambia's commitment to transparency and accountability under the Convention.

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

Reply to paragraph 4 of the list of issues

7. No cases of enforced disappearance have been reported since 2017. The government has taken steps to strengthen the institutional framework to prevent recurrence, including the establishment of the NHRC and implementation of the TRRC recommendations. Efforts are also underway to introduce a legal framework that explicitly addresses enforced disappearances.

Reply to paragraph 5 of the list of issues

8. Section 36 of the 1997 Constitution guarantees fundamental rights, including protection against enforced disappearances, even during public emergencies. The forthcoming legislation on enforced disappearances will explicitly reaffirm this right as non-derogable under all circumstances, ensuring full compliance with Article 1 of the Convention.

9. Similarly, the National Human Rights Commission's mandate is to protect and promote human rights, including investigation of enforced disappearance cases in The Gambia. Furthermore, the commission is empowered under section 13 to exercise quasi-judicial powers by hearing complaints, summoning witnesses, examining witnesses on oath, affirmation or otherwise, and compel production of documents among other powers. The exercise of these powers by the commission is administrative in nature.

10. The General Inspectorates of the Security Services are responsible for ensuring that the codes of ethics, discipline, and conduct of the Armed Forces, Police, DLEAG, and National Guards are upheld to ensure law enforcement officials are not engaged in arbitrary arrests, extrajudicial killings or subjecting persons to enforced disappearance. All these legal and administrative measures are put in place to ensure that there are no exceptional circumstances invoked as a justification for enforced disappearance.

Reply to paragraph 6 of the list of issues

11. Enforced disappearance has not yet been codified as a standalone crime. However, the proposed legislation on enforced disappearances will define and criminalize the act in line with international standards. The legislation will provide detailed provisions for the investigation, prosecution, and punishment of this crime, ensuring compliance with Article 4 of the Convention.

Reply to paragraph 7 of the list of issues

12. The proposed draft legislation on enforced disappearances will prescribe severe penalties, including life imprisonment for aggravated cases. These penalties will align with the gravity of the crime and incorporate aggravating and mitigating circumstances, ensuring proportionality and adherence to international human rights standards.

13. However, in the Supreme Court in 2022 in the case of the State v Yankuba Touray where the Accused invoked the amnesty provision in the Constitution held that amnesty cannot apply to Customary international law offences and enforced disappearance is an element of Customary International Offences. Section 19(3) of the TRRC Act states that "Amnesty shall not apply to acts which form part of a crime against humanity"

Reply to paragraph 8 of the list of issues

14. The forthcoming legislation will include provisions to hold superiors criminally responsible for enforced disappearances committed under their command if they knew or

should have known of the acts and failed to prevent them. These provisions will align with Article 6 of the Convention and build on existing frameworks, such as the Prohibition of Torture Act (2023), which establishes similar standards of accountability.

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

Reply to paragraph 9 of the list of issues

15. In The Gambia, grave offenses such as murder are not subject to statutes of limitation, ensuring that justice can be pursued at any time. Similarly, the forthcoming legislation on enforced disappearances will explicitly exclude such crimes from statutes of limitation, reflecting their continuous nature and the state's obligations under the Convention.

Reply to paragraph 10 of the list of issues

16. The draft legislation on enforced disappearances will grant national courts jurisdiction over such crimes, irrespective of where they occur, when:

- The offence is committed within The Gambia;
- The perpetrator is a Gambian national;
- The victim is a Gambian national;
- The offender is present within Gambian territory, ensuring compliance with Article 9 of the Convention;
- This jurisdictional framework will address the transnational nature of enforced disappearances.

Reply to paragraph 11 of the list of issues

17. The independence of The Gambia's judiciary is constitutionally guaranteed under Sections 123, 141, and 142 of the 1997 Constitution. These provisions ensure the security of tenure for judges, protection from undue influence, and the impartiality required for fair trials. Additional training programs are planned for judicial officers to enhance their capacity to handle cases involving enforced disappearances, aligning with the Convention's requirements.

Reply to paragraph 12 of the list of issues

18. The Gambia Police Force is mandated to investigate all criminal cases, including enforced disappearances. Mechanisms such as the NHRC and planned accountability mechanisms under the TRRC recommendations are in place to ensure investigations are thorough and impartial. Efforts to establish a Special Prosecutor's Office and hybrid courts will further enhance the investigation and prosecution of these cases.

Reply to paragraph 13 of the list of issues

19. The Government, in collaboration with ECOWAS, has approved the establishment of a Special Tribunal to investigate and prosecute gross human rights violations committed between July 1994 and January 2017, as recommended by the TRRC. This tribunal, which will combine elements of domestic and international law, will have jurisdiction over enforced disappearances and other international crimes, ensuring accountability for those bearing the greatest responsibility. The tribunal will include Gambian, ECOWAS, and international judges, and will operate independently with full judicial and operational autonomy. It is

expected to serve as a cornerstone of The Gambia's transitional justice process and a model of regional cooperation for addressing grave crimes.

Reply to paragraph 14 of the list of issues

20. The Gambia's extradition framework, governed by the Extradition Act, facilitates cooperation with other states on serious crimes. With the establishment of the Special Tribunal in collaboration with ECOWAS, The Gambia will enhance international and regional cooperation in prosecuting enforced disappearances and other crimes of international concern. The tribunal's flexibility to operate within The Gambia or other Ecowas countries ensures practical and security considerations are met. Additionally, the forthcoming legislation on enforced disappearances will include explicit provisions for cooperation in criminal matters, aligning with Articles 13–15 of the Convention.

Reply to paragraph 15 of the list of issues

21. The Gambia's extradition framework is governed by the Extradition Act Laws of the Gambia 2009, 12:01, which allows for cooperation with other states on crimes of a serious nature. While there is no specific provision on enforced disappearances, the forthcoming legislation will explicitly include provisions for international cooperation in criminal matters related to enforced disappearances, ensuring alignment with Articles 13–15 of the Convention.

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

Reply to paragraph 16 of the list of issues

22. The Gambia's extradition framework is governed by the Extradition Act, which lists offences eligible for extradition. Although enforced disappearance is not yet explicitly included, the planned legislation on enforced disappearances will classify it as an extraditable offence, with requisite mechanisms for processing such cases. The Act prohibits extradition in cases involving political motives, discriminatory practices, or unfair trials, ensuring alignment with Article 16 of the Convention.

Reply to paragraph 17 of the list of issues

23. The 1997 Constitution and Criminal Procedure Code prohibit secret or unofficial detention. All arrests and detentions must be recorded, with detained individuals brought before a magistrate within 72 hours. The proposed legislation on enforced disappearances will strengthen these provisions by explicitly prohibiting secret detention, ensuring compliance with Article 17 of the Convention.

Reply to paragraph 18 of the list of issues

24. The 1997 Constitution (Sections 34–36) permits derogation from certain rights during emergencies but explicitly safeguards against enforced disappearances. Detained individuals must be informed of their rights, allowed access to legal representation, and granted family visitation within 24 hours. These constitutional provisions ensure that enforced disappearances remain prohibited even during emergencies, in line with Article 20 of the Convention.

Reply to paragraph 19 of the list of issues

25. The National Human Rights Commission (NHRC) conducts annual and unannounced visits to detention facilities to monitor compliance with human rights standards. Diaries

documenting detainee details, including time and reason for detention, are maintained in all facilities. The TRRC revealed past violations, such as the alteration of records, which are being addressed to prevent recurrence. The proposed legislation will further empower independent bodies to inspect detention facilities regularly.

Reply to paragraph 20 of the list of issues

26. All places of detention in The Gambia maintain official records, including names, reasons for detention, and movement details. These records are subject to judicial and administrative review. The draft Criminal Procedure Bill proposes enhanced record-keeping requirements to ensure transparency and compliance with Article 17 of the Convention.

Reply to paragraph 21 of the list of issues

27. Section 37 of the 1997 Constitution guarantees the right to challenge unlawful detention in court. Complainants can seek legal remedies, including release orders and compensation for violations. The judiciary has the authority to enforce these remedies, as such was done in the case of Alagie Bora Sissoho vs the Inspector General of Police in 2023. The court awarded the plaintiff compensation for unlawful detention.

Reply to paragraph 22 of the list of issues

28. The Access to Information Act (2021) grants individuals the right to request information, including detention records, subject to privacy and national security exceptions. Families and representatives of detainees can file complaints if access is denied. The forthcoming legislation on enforced disappearances will incorporate explicit provisions to ensure access to information as required under Article 18 of the Convention.

Reply to paragraph 23 of the list of issues

29. A task force on Enforced Disappearance is established under the recommendation of the TRRC, the task force is chaired by the Ministry of Justice and comprised of other institutions from the security sector, civil society, medical personnel, public officials and NHRC. The task force, with the support of ICRC, conducted a five-day training of the Convention for its members and other participants from the police forensic department, medical personnel and Civil Society. The NHRC also conducted a popularization of the convention among victims and other stakeholders in the Lower River Region and Central River Region in 2024. A total of 60 participants attended.

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

Reply to paragraph 24 of the list of issues

30. The draft autonomous legislation on enforced disappearances will align with the definition of victims under Article 24(1) of the Convention, encompassing both direct and indirect victims, including relatives and dependents. The Gambia has passed the Reparations Act 2024, which established a Reparations Commission and Victims Fund. Commissioners for the Reparation Commission have been shortlisted by the National Assembly and awaiting Presidential appointments. The TRRC has already provided partial reparations to some victims, categorized based on the nature of the violations. The Act will ensure that reparations are proportionate to the severity of harm and include both monetary and non-monetary forms of redress.

Reply to paragraph 25 of the list of issues

31. The Gambia recognizes the need for a framework addressing the legal status of disappeared persons and their families. Under existing law, Section 150(1) of the Evidence Act 1994 presumes a person is dead if they have not been seen or heard from for seven years. While this provision allows for the issuance of death certificates, it does not address broader implications for property rights, social welfare, and financial matters. The Reparations Act 2024 provides support for relatives of disappeared persons, including psychosocial assistance, while future legislation on enforced disappearances will address these gaps comprehensively.

Reply to paragraph 26 of the list of issues

32. As part of its transitional justice process, The Gambia is advancing efforts to locate and identify disappeared persons, building on the work of the TRRC. The recent ECOWAS-approved Special Tribunal will complement these efforts by ensuring accountability for those responsible for enforced disappearances. The tribunal's operations will support victim participation and the search for truth. Additionally, the Panel on Missing Persons within the Gambia Police Force continues to identify and exhume remains from unmarked graves, such as those of the November 11 coup plotters and Solo Sandeng. Efforts are underway to establish a national database for genetic data to facilitate identification, alongside plans to strengthen forensic capacity.

VI. Measures to protect children from enforced disappearance (art. 25)**Reply to paragraph 27 of the list of issues**

33. The new law, when enacted, would mirror the provisions of Article 25 of the Convention.