



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
29 April 2025

Original: English

Committee on Enforced Disappearances

Twenty-eighth session

Summary record of the 516th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 19 March 2025, at 10 a.m.

Chair: Mr. Ravenna (Vice-Chair)

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Mr. Ravenna (Vice-Chair) took the Chair.

The meeting was called to order at 10.05 a.m.

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

Initial report of the Gambia (continued) (CED/C/GMB/1; CED/C/GMB/Q/1; CED/C/GMB/RQ/1)

1. *At the invitation of the Chair, the delegation of the Gambia joined the meeting.*
2. **Mr. de Frouville** (Country Rapporteur) said that he would welcome further information on expulsion procedures in the State Party, including safeguards against the expulsion of persons to States where they faced a risk of being subjected to enforced disappearance, channels for appealing expulsion orders and the suspensive effect of such appeals. An indication as to whether the Gambia planned to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would also be welcome.
3. It would be useful to know whether fundamental legal safeguards, such as access to a lawyer, the right to receive visits from relatives and, in the case of foreign nationals deprived of their liberty, access to consular authorities, were enshrined in national law and adhered to from the outset, irrespective of the place of deprivation of liberty. In that regard, he wondered whether the State Party intended to amend sections 53 and 56 of the Prisons Act, concerning convicted prisoners and remand prisoners, respectively, which did not appear to be in line with article 17 of the Convention, and to include provisions on safeguards for those categories of prisoner in the bill on enforced disappearance.
4. In 2018, the Working Group on Enforced or Involuntary Disappearances had observed that, in the State Party, many people remained in pretrial detention for years, including some whose families did not know that they were detained or did not receive information about them and some foreign nationals who were denied access to consular authorities and prevented from communicating with their families. What was the current situation and did prolonged pretrial detention cause overcrowding in the State Party's prisons?
5. He would be interested to know whether, as it stood, the bill on enforced disappearance prohibited secret detention; what the status was of the bill on criminal procedure, which, once signed into law, would amend the existing Code of Criminal Procedure to make the registration of deprivation of liberty compulsory in all cases; what measures were being taken in the meantime to improve the detainee registration system, including whether there were any plans to centralize existing registers; and how cases of failure to properly maintain registers were handled, including what penalties were imposed. He would also be interested to hear about the situation regarding arbitrary detention in the State Party and about the remedy of habeas corpus, including cases in which it had been used and its effectiveness.
6. Regarding the Access to Information Act of 2021, he would be curious to know whether the independent commission on access to information had been established and, if so, what its structure, mandate and composition were, whether complaints of denial of access to information would be referred to a special mechanism or to the commission, whether any cases of denial of access to information concerning a person deprived of their liberty had been reported, and what penalties were envisaged in such cases.
7. Lastly, he would welcome up-to-date information on any training dispensed on the Convention. The Committee stood ready to take part in any subsequent training for public servants and civil society, including with regard to the concluding observations that the Committee would issue following the interactive dialogue with the State Party.
8. **Ms. Kolaković-Bojović** (Country Rapporteur), noting that victims of past human rights violations, including acts of enforced disappearance, were eligible to receive reparations from the Victim Reparations Commission established under the Victims Reparations Act of 2023 and that some victims had already been awarded reparations by the Truth, Reconciliation and Reparations Commission, said that it would be helpful to know

whether the Act would apply in any future cases of enforced disappearance that might occur, what definitions of “enforced disappearance” and “victim” were used by the two commissions, what procedure victims had to follow to request and obtain reparations from them, what type of reparations were available to victims and within what time frame, and how many victims had already been awarded reparations by either body.

9. In the case of the Victim Reparations Commission, it would be helpful to learn about the professional background of its members and how they were selected, what financial, human and other resources were allocated to the Commission, whether its mandate included the preservation of graves and memorial sites – for instance, the mass graves in Kanilai – and how the various responsibilities vis-à-vis victims of past human rights violations, including acts of enforced disappearance, were divided between the Victim Reparations Commission and the Truth, Reconciliation and Reparations Commission.

10. Bearing in mind the right of family members of disappeared persons to know the truth, she would be grateful to receive information on existing procedures to search for, locate and release disappeared persons and, in the event of death, to identify and return their remains, and on the extent to which the various authorities, including the Special Tribunal for the Gambia, involved family members in their work. She would also be grateful to receive confirmation as to whether the relatives of disappeared persons, especially women and children, could exercise their property, economic and social rights without having to have their loved ones officially declared dead.

11. It would be helpful to know whether the wrongful removal of children would be established as a separate offence, either in the bill on criminal offences, which, once adopted, would amend the current Criminal Code, or in the bill on enforced disappearance; how the system of adoption and other forms of child placement worked; and whether Gambian law provided for mechanisms to review adoptions and, where appropriate, annul them if they were found to have stemmed from an act of enforced disappearance. In a similar vein, she wished to learn more about the registration of newborns, any procedural differences in cases of children born to unmarried or foreign parents, the practice of informal adoption of children by relatives and any measures taken to mitigate the risks of unregistered children’s falling victim to trafficking, sexual abuse or labour exploitation.

12. **Mr. Diop** said that he wished to know whether the relatives of victims of the paramilitary death squad known as “the Junglers” would have to wait until the relevant criminal proceedings had concluded in order to seek reparations, especially since the perpetrators were unlikely to have the means to pay them compensation, an obligation which would ultimately fall to the State. He also wished to know whether Gambian law established a maximum duration of police custody and pretrial detention and whether the State Party had concluded an extradition treaty with Equatorial Guinea in respect of former President Yahya Jammeh.

The meeting was suspended at 10.35 a.m. and resumed at 10.55 a.m.

13. **A representative of the Gambia** said that the Gambian courts, when sentencing non-nationals convicted of a criminal offence, could order their deportation to their countries of origin once they had served their sentence. Non-nationals who had not been convicted of a crime could generally only be deported on the basis of a court order. They had the right to counsel and were entitled to exhaust all avenues of appeal before the deportation order was enforced. Different procedures applied to extraditions.

14. Secret detention was no longer practised in the Gambia and would be expressly prohibited once the bill on enforced disappearance was signed into law. Under section 19 of the Constitution, only a competent authority, such as the police, could deprive a person of their liberty. Arrested persons were to be informed of the reasons for their arrest within three hours and to be brought before a court or released within 72 hours. They could be held for longer than 72 hours only with the authorization of a court. Records of deprivation of liberty were kept at all detention facilities.

15. **A representative of the Gambia** said that all police stations kept two logbooks, one where the details of all complaints received were entered and one where criminal complaints only were recorded. At the end of each day, police stations sent information on the persons

detained, the type of offences involved and the outcomes of any court proceedings to a central statistics unit, which compiled the information that it received and circulated it to all police stations quarterly.

16. **A representative of the Gambia** said that the prisoner records at the country's three prisons had been digitalized using funding from the United Nations Development Programme.

17. **A representative of the Gambia** said that, while a central register had been created for the country's prisons, such a register had not yet been established for police stations, of which there were many. Anyone detained in the Gambia was entitled to consult a lawyer, to receive visits from consular representatives if they were a non-national and to contact others and inform them of their detention.

18. The Gambia intended to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government would consider including penalties for falsifying registers in the bill on enforced disappearance. Falsification of public records was already an offence under the current Criminal Code and the bill on criminal offences. Under section 133 of the Constitution, the High Court was empowered to issue writs of habeas corpus. Thus, it could order the Prison Services or any government agency to produce any person kept in custody for more than 72 hours.

19. Persons whose requests for information under the Access to Information Act were denied could file a complaint with the independent commission on access to information. The commission would then decide whether the information requested could be produced or whether it was covered by an exemption under which such information could not be made public. No decision denying access to information had yet been challenged in court.

20. **A representative of the Gambia** said that training for the Gambia Armed Forces included modules on international human rights law and international humanitarian law. The training modules developed by the National Security Adviser for all the security services likewise addressed human rights.

21. **A representative of the Gambia** said that human rights training was mandatory at the police training school and for all police and law enforcement officers. Training sessions were held at police stations. A train-the-trainers programme was also in place.

22. **A representative of the Gambia** said that the Victim Reparations Commission had a five-year mandate, which could be extended, and was focused on making reparations to victims of human rights violations, including acts of enforced disappearance, that had occurred between 1994 and 2017. Any cases of enforced disappearance that might arise in the future would be addressed under the comprehensive legislation being prepared. The definition of "victim" under the Victims Reparations Act was broad and included persons who had been designated as victims by the Truth, Reconciliation and Reparations Commission, institutions and individuals that had suffered loss or harm as a result of human rights violations committed between July 1994 and January 2017, persons who had suffered loss or harm because they had assisted others who had experienced human rights violations during that period and relatives and dependents of recognized victims.

23. Data on the victims registered by the Truth, Reconciliation and Reparations Commission and the amounts awarded to them as partial reparation could be submitted to the Committee in writing. The Victim Reparations Commission was not bound by the criteria applied by the Truth, Reconciliation and Reparations Commission in making reparations decisions and would re-evaluate those criteria. The Victim Reparations Commission would likewise create a new database of victims. Persons who had not appeared before the Truth, Reconciliation and Reparations Commission were not barred from registering with the Victim Reparations Commission and being recognized by it as victims. The prosecution or conviction of the perpetrators was not a prerequisite for being recognized as a victim.

24. Of the seven members of the Victim Reparations Commission, at least three must be women, two must be victims' representatives, two must be youth representatives and one must be a representative from an organization of persons with disabilities. The members must be citizens of the Gambia and have a deep understanding and knowledge of the human rights violations committed by the former regime. The Chairperson of the Commission must also

hold an undergraduate degree, have 10 years' experience in public administration and finance or related fields and be a proven leader. Members were selected by an independent panel and went through a confirmation process before the National Assembly. Those steps had now been completed, and the members would soon be sworn in. The Government would welcome support from international partners in building their capacity. The Commission's mandate did not include overseeing memorialization processes, which would be the responsibility of a separate multisectoral committee. That committee would be chaired by the National Centre of Arts and Culture and work closely with bodies such as the National Human Rights Commission and the National Records Office.

25. Pending the adoption of the bill on enforced disappearance, victims were protected and their right to participate in investigations and trials guaranteed under existing laws such as the Special Accountability Mechanism Act and the Special Prosecutor's Office Act.

26. The Ministry of Justice administered the property of persons who had died intestate or who were presumed dead and had not drawn up a will. Family members wishing to acquire such property must provide a death certificate or proof of death.

27. The wrongful removal of children was not fully addressed in the bill on criminal offences but would be covered in the bill on enforced disappearance. The Children's Act, which was in large part a domesticated version of the Convention on the Rights of the Child, contained provisions on legal adoption, guardianship and other forms of legal custody. The specialized children's courts located throughout the country were competent to adjudicate on adoption- and guardianship-related matters.

28. Informal adoption was part of the culture and tradition of the Gambia. Although there was no specific legislation regulating such adoption, it was a custom, which was a source of law in the Gambia. It was practised primarily by family members who took in the children of relatives who had passed away or who could not afford to take care of them. However, evidence of legal custody, which could only be obtained from a court, was needed to take a child out of the country.

29. Persons who were not released from custody or brought before a court within 72 hours of their arrest were entitled to compensation, and the courts had recently awarded such compensation. Pretrial detention was not illegal, as it was carried out on the basis of a court order. However, it was true that persons could remain in pretrial detention for lengthy periods. The Government, civil society and a special parliamentary committee carried out regular visits to prisons to identify persons who had remained in pretrial detention for extended periods.

30. The Gambia did not have an extradition treaty with Equatorial Guinea.

31. **Mr. de Frouville** said that he would appreciate confirmation as to whether foreign nationals deprived of their liberty in the Gambia were guaranteed access to consular authorities and had the right to receive protection, advice and legal assistance from them. He wondered whether only detainees could apply to the High Court for a writ of habeas corpus, or whether a third party, such as a relative, could submit an application on their behalf. He would welcome information on cases in which such applications had been lodged with the High Court, particularly since 2017.

32. He would be curious to learn whether the State Party intended to create a database of DNA samples to support efforts to identify disappeared persons. It would also be interesting to know the State Party's position on the decision of the government of Flanders to remove the Gambia from its list of approved countries for international adoptions.

33. **Ms. Kolaković-Bojović** said that she would like to receive further details of the State Party's legislation on compensation for victims of crime, including an indication of how it bridged the gap between the legal framework for the award of compensation to victims of past human rights violations, including acts of enforced disappearance, and the legal framework for the award of compensation to future victims of human rights violations. In the light of the country's political history, the delegation might comment on the appropriateness of the requirement for members of the Victim Reparations Commission to have 10 years' experience in public administration and explain how any potential conflicts of interest that

might arise from appointing former public servants to the Commission would be identified and addressed.

34. She wished to know what other forms of support, in addition to compensation, could be provided by the Victim Reparations Commission, and whether it had a network of staff qualified to provide that support, such as psychologists, family advisers and medical experts. She wondered whether the rights and responsibilities of guardians, particularly in cases where family members were caring for their relatives' children, were regulated by Gambian law.

35. It would be interesting to learn more about the multisectoral committee that would be responsible for overseeing memorialization processes, including an estimated timeline for its establishment. How would the State Party ensure that the new committee and the Victim Reparations Commission coordinated effectively in cases involving individual victims?

36. **Ms. Villa Quintana** said that she would like to know whether the maximum duration of pretrial detention was established in the existing Code of Criminal Procedure. She also wished to know how long it typically took to consider an application for a writ of habeas corpus, to which authority such applications should be submitted and who was responsible for deciding on them. She would be curious to learn how international human rights law and international humanitarian law had been incorporated into the country's legal framework and were applied in daily operations.

37. The delegation might indicate whether the processes for determining the award of reparations to victims of the events that had occurred between July 1994 and January 2017 included a gender perspective; whether any steps had been taken in response to reports received from civil society of numerous cases of long-term detention and which authority was responsible for resolving such cases; and whether persons who could not afford private legal representation had access to legal aid.

38. She wished to know whether the State Party had disseminated the Committee's Guiding Principles for the Search for Disappeared Persons ([CED/C/7](#)) and whether those principles were taken into account in the development of search strategies. She also wished to know whether forensic scientists were involved in the processes of locating disappeared persons, recovering their remains and establishing their identities.

39. **Mr. Diop** said that he would like to know whether a programme had been put in place to protect victims and witnesses involved in future legal proceedings concerning acts of enforced disappearance before the Special Tribunal for the Gambia, whether the findings of the Truth, Reconciliation and Reparations Commission regarding victims and witnesses would be used in those proceedings, and whether individuals identified as victims would lose their victim status if the alleged perpetrators of those acts were not convicted. He wondered whether the State Party might consider adopting a hybrid approach combining aspects of the common law and civil law systems to allow witnesses to be heard before the trials began and thus shorten the proceedings and spare victims unnecessary pain.

40. **Mr. Kanyongolo** said that he would welcome further details of the content of the human rights training provided to the Gambia Armed Forces and the police, including an indication as to whether that training covered the restrictions applicable to the security forces in the context of investigating human rights violations and whether military tribunals had jurisdiction in cases of enforced disappearance.

41. **A representative of the Gambia** said that, under section 37 of the Constitution, any person who alleged that any of the provisions of sections 18–33 or section 36 (5) of the chapter on human rights had been contravened in relation to himself or herself could apply to the High Court for redress. An application for a writ of habeas corpus could be made under that section by persons acting on the detained person's behalf. While he did not have data on the number of applications currently before the High Court to hand, the delegation could determine whether such data were available.

42. The Government was interested in building a DNA database as it moved towards the implementation phase of exhumations. Some exhumations had already been carried out and the remains of persons exhumed were being stored at a teaching hospital morgue. Further exhumations would likely be carried out with the support of the International Committee of the Red Cross, Justice Rapid Response and other partners.

43. He was not privy to the reasons for the decision taken by the government of Flanders to suspend intercountry adoptions of children from the Gambia. In the Gambia, adoption proceedings were handled by the specialized children's courts located throughout the country. Prospective adoptive parents were required to have a clean criminal record, to demonstrate that they had the means to support the child and to obtain the approval of the Department of Social Welfare, which conducted home visits to ensure that the conditions in which the adopted child would be living were adequate and submitted the corresponding reports. The consent of the child's parents was also required if they were still alive. Thus, there were criteria that had to be met before the courts could approve an adoption. Similarly, in the case of international adoptions of Gambian children, the competent authorities in the country of adoption had to prepare a report for review by the Gambian courts showing that the prospective parents were suitable. The adoption policies of the Gambia were in line with international standards and best practices.

44. The gap existing between the legal framework for the award of compensation to victims of past human rights violations and the legal framework for the award of compensation to future victims of human rights violations would be closed by the bills on criminal offences and criminal procedure, which, once passed by the National Assembly, would amend the current Criminal Code and Code of Criminal Procedure, respectively. Those laws were outdated and did not adequately provide for the award of compensation to victims of crime. The Code of Criminal Procedure, once amended, would allow the courts to compensate victims directly.

45. The requirement of 10 years' experience in public administration for appointment to the Victim Reparations Commission applied only to the Chairperson; it did not apply to the other six members. The Victims Reparations Act also contained disqualification clauses. For example, candidates who had committed any kind of human rights violation could not be appointed to the Commission. A robust screening process was in place. The panel responsible for selecting members included victims and members of civil society. The successful candidates then went through a parliamentary confirmation process.

46. The reparations provided for under the Victims Reparations Act included restitution, a mode of reparation which included measures to restore a victim or group of victims to a situation close to the one that they had been in before the violations of their human rights had occurred, satisfaction, compensation, which was monetary in nature, guarantees of non-recurrence and rehabilitation. All forms of reparation would be used by the Victim Reparations Commission as and when appropriate.

47. Concerning the question of informal adoption, the Children's Act afforded effective protections. In addition to parents and guardians, third parties could also take action if they suspected that a child was being abused. That could involve reporting the situation to child protection agencies or taking the matter to court. The Gambia also had an effective network of civil society organizations working in the field of child protection and the police had child protection units. Most police stations had at least one staff member trained in handling gender-based violence, women's rights and the rights of the child. A number of mechanisms for reporting child abuse were in place throughout the country.

48. Memorialization processes were overseen by the multisectoral committee mentioned previously, which had the expertise necessary to discharge its functions. There were currently no plans to introduce legislation on memorialization and reconciliation.

49. According to the current Code of Criminal Procedure, criminal cases could not be adjourned for more than two weeks. The number of times that a case could be adjourned was determined by the courts. A State-appointed lawyer was provided for persons charged with capital offences who could not otherwise afford legal representation. One of the reasons for the postponement of cases was the fact that the courts took witness statements by hand, which was time-consuming and led to backlogs in the justice system. Although efforts had been made to digitalize court procedures, the related processes would continue to be slow until digitalization was fully introduced. If the courts found that persons remanded in custody had been detained for an unreasonable length of time as a result of negligence on the part of the prosecuting authorities, they could decide to dismiss the case.

50. **A representative of the Gambia** said that police officers received public order management training, which covered crowd control, the use of force and arrest and detention, including informing persons taken into custody of their rights, based on a human rights perspective. Training on the rules for the treatment of prisoners was also provided.

51. **A representative of the Gambia** said that section 60 of the Victims Reparations Act provided that the Attorney General and Minister of Justice could introduce regulations to ensure the effective implementation of the Act. Regulations made under the Act must provide for victim-centred and gender sensitive processes.

52. The Government worked with different stakeholders, including the International Committee of the Red Cross and Justice Rapid Response, which were aware of the Guiding Principles for the Search for Disappeared Persons. The Government would make full use of all the resources available from the Committee on Enforced Disappearances.

53. The Special Accountability Mechanism Act, which contained a provision that dealt with victims and witnesses, stated that the Special Prosecutor's Office and the Special Tribunal for the Gambia were to make adequate arrangements for the protection and support of victims and witnesses, in particular vulnerable persons and those at risk of being harmed on account of their interaction with the Special Accountability Mechanism. The Special Prosecutor's Office and the Special Tribunal were to establish adequate victim and witness protection and support units based on international standards and best practices. Gambian legislation thus contained adequate provisions to ensure the protection and participation of victims in proceedings.

54. The findings of the Truth, Reconciliation and Reparations Commission would be used in the judicial proceedings before the Special Tribunal for the Gambia to the extent permitted by the rules of evidence. The standard of evidence in a truth and reconciliation process was quite different from that in a court of law. Findings would be used if they met the standards of admissibility in court. If there were gaps, the Special Prosecutor would be empowered to investigate further to fill them so that the evidence in question could be used in court. The status of a victim remained unchanged, regardless of how a court ruled in relation to an alleged perpetrator.

55. The Special Prosecutor would prepare the cases to be heard by the Special Tribunal for the Gambia before the trials began. As part of its cost-saving strategy, the Government would wait for the Special Prosecutor to inform it that indictments were ready to be filed before operationalizing the Special Tribunal.

56. Lastly, military tribunals did not have jurisdiction in cases of enforced disappearance.

57. **Mr. Kanyongolo** said that, in raising the question about military tribunals, he was asking whether the legislative reforms under way in the Gambia would ensure, in accordance with the Convention, that such tribunals did not have jurisdiction in those cases.

58. **A representative of the Gambia** said that he wished to express his delegation's sincere appreciation for the Committee's constructive engagement and insightful recommendations. The dialogue had provided a valuable platform to reflect on progress made and challenges to be overcome in meeting the country's obligations under the Convention.

59. **The Chair** said that the Committee was grateful to the delegation for its willingness to respond to the Committee's questions and to take part in the interactive dialogue.

The meeting rose at 12.35 p.m.