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**Human Rights Council****Twenty-eighth session**

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Report of the Special Rapporteur on torture and other cruel,  
inhuman or degrading treatment or punishment,  
Juan E. Méndez****Addendum****Mission to The Gambia\* \*\****Summary*

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment undertook a visit to The Gambia from 3 to 7 November 2014.

This was the first visit ever by United Nations Special Procedures but it was compromised due to the Government's unwillingness to grant freedom of movement and inquiry to *all* areas of detention facilities, despite its initial acceptance of the terms of reference for all country visits by mandate holders. This report presents the Rapporteur's main findings and proposes recommendations which he hopes the Government will use to commence a constructive dialogue with all interlocutors to strengthen legal safeguards to prevent torture and ill-treatment and improve the conditions of those deprived of their liberty.

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\*The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

\*\* Late submission.

## Annex

*[English only]*

**Report of the Special Rapporteur on torture and other cruel,  
inhuman or degrading treatment or punishment on his  
mission to The Gambia (3–7 November 2014)**

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## I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, conducted a joint visit with the Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>1</sup> to The Gambia from 3 to 7 November 2014, at the invitation of the Government. The visit was originally scheduled for August 2014 but was postponed by the Government at the last minute for reasons still unknown.

2. The Special Rapporteur met with the Vice-President of The Gambia, the Minister of Foreign Affairs, the Minister of the Interior, the Office of the Attorney-General and Minister of Justice,<sup>2</sup> the Solicitor General and Director of Public Prosecutions, the Director General of the National Intelligence Agency (NIA), the Director General of the National Drug Enforcement Agency (NDEA), the Director General of Prisons, the Inspector General of Police, the Deputy Minister of Health, the Chief Justice of the Supreme Court and High Court Justices and the Office of the Ombudsman. He also met representatives of United Nations agencies, the diplomatic community and non-governmental organizations (NGOs) and civil society.

3. This was the first visit ever by United Nations Special Procedures and the Special Rapporteur but he expresses deep regret over the Government's unwillingness to grant freedom of movement and inquiry to *all* areas of detention facilities, a clear violation of the terms of reference for fact-finding missions by special rapporteurs (E/CN.4/1998/45, annex, appendix V) despite having agreed to these terms, in writing, just days before the official visit commenced.

4. Due to the Government's denial of access to the Security Wing of Mile 2 Central Prison, this cannot be viewed as a "fullfledged" visit since an integral element of the mandate, being allowed unrestricted and unsupervised access to visit *all* areas of detention facilities for the purpose of interviewing detainees in private and to examine their conditions of detention, was denied. Thus, the Special Rapporteurs suspended their visit to Mile 2 Central Prison and to all other places of detention. However, they decided to continue to meet officials, victims, witnesses and non-governmental sources as the visit was already well underway. Unrestricted access to detention facilities is an integral part of any official visit undertaken by a Special Procedures mandate holder. The restrictions imposed on the Special Rapporteur by the Government during the course of this visit are unprecedented since the establishment of the mandate thirty years ago.

5. The Special Rapporteur hopes that, despite this severe setback, a meaningful dialogue can be established with the Government. Many interlocutors, in particular victims, took great personal risk to meet with the Special Rapporteur. A genuine dialogue between the Government, civil society and the outside world is very much needed for human rights to begin to take hold in The Gambia.

6. The attempted coup d'état on 30 December 2014 and its aftermath illustrates that The Gambia is at a pivotal moment. The President seems poised to further suppress fundamental human rights and retreat into isolation from The Gambia's neighbours, the region and the international community.

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<sup>1</sup> A/HRC/29/37/Add.2.

<sup>2</sup> The Minister of Foreign Affairs and the Attorney General and Minister of Justice were removed from the Cabinet in January 2015.

## **II. Legal framework**

### **A. International level**

7. The Gambia's ratification of international human rights treaties is limited<sup>3</sup> and in addition the status of ratification of a number of treaties is unclear. There is a lack of understanding, even within the Government, of the status of the ratification process such conventions and of customary international law in the domestic system. It appears that some treaties<sup>4</sup>, have been approved by the National Assembly but the instruments of ratification have not yet been deposited with the Secretary-General of the United Nations.

8. The State has ratified the Rome Statute of the International Criminal Court and is a party to the Convention on the Prevention and Punishment of the Crime of Genocide. (A/HRC/WG.6/20/GMB/2 pg. 2).

### **B. Regional level**

9. The Gambia has accepted the jurisdiction of the African Commission on Human and Peoples' Rights, which is based in its capital Banjul, and the Court of the Economic Community of West African States (ECOWAS). It has made the declaration under article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, accepting the competence of the Court to receive and examine cases from individuals and NGOs. However, the Government has not complied with ECOWAS' decisions.<sup>5</sup>

### **C. National level**

10. The Gambia maintains the dualist system of ratifying and domesticating the provisions of human rights instruments before they can be invoked, or directly enforced by, the courts or other tribunals or administrative authorities. However, provisions of undomesticated human rights instruments which are in consonance with the Constitution can be and have been invoked before the courts. Such provisions of the Universal Declaration on Human Rights and the African Charter on Human and Peoples' Rights have been invoked before the High Court of The Gambia.

11. Section 21 of the Constitution of The Gambia states that "no person shall be subject to torture or inhuman degrading punishment or other treatment," however, the offence of torture, as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is not included in the Criminal Code (Act No. 25 of 1933).

## **III. Assessment of the situation**

12. In 1965, The Gambia emerged from a colonial past. For the past twenty years it has been ruled by President Yahya Jammeh. The views of the President dominate and control

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<sup>3</sup> <http://indicators.ohchr.org>.

<sup>4</sup> The Convention against Torture and the Convention on the Rights of Persons with Disabilities

<sup>5</sup> *Manneh v The Gambia* (2008) AHRLR 171 (ECOWAS 2008), *Hydara v Gambia* (2014) ECW/CCJ/APP/30/11, *Musa Saïdykhan v Gambia* (2010) ECW/CCJ/APP/11/07.

the lives the nearly 1.8 million Gambian citizens. The Special Rapporteur observed a layer of fear that was visible on the faces and in the voices of many he met from civil society and this even extended to some Government officials. In his meetings with Government officials, it was evident that all decisions, even by high level Ministers, came from the President's Office. There is no room in Gambian society to discuss civil or political rights. If attempted, the standard response is deprivation of liberty with serious risk of torture or ill-treatment.

13. Against this background, the Special Rapporteur did not sense a genuine political will by the Government to engage on human rights issues. A few authorities did appear to welcome the visit as an opportunity to address challenges.

14. Recent events have made the precarious human rights situation in The Gambia even more dire. On 30 December 2014 there was an attempted coup d'état where at least four insurgents were killed and one insurgent was reportedly injured and detained. In early January 2015 it was reported that at least fifty-two individuals (civilian and military personnel), some of them family members of the insurgents, were being held and their whereabouts is unknown; they may be at unofficial places of detention and at great risk of being tortured. The Special Rapporteur has received reports that these individuals were picked up by plain clothes officers, likely by National Intelligence Agency (NIA) or other security forces. The President's response to this event suggests that The Gambia may regress further regarding human rights as deprivation of personal liberty and risk of torture, arbitrary detention or enforced disappearances may be on the rise.

15. There is also clearly an imminent financial challenge facing The Gambia. However, this reality is not acknowledged by the Government as an opportunity to open up and accept external assistance in return for engaging not only with the international community but most importantly with its own citizens. Only by doing so can The Gambia move towards a more humane society that does not tolerate abuses or existing conditions which give rise to cruel, inhuman or degrading treatment or punishment, or even torture.

## **A. Practice of torture and ill-treatment**

### **1. Police Service**

16. The legal framework governing the work of The Gambia Police Force (GPF) is the Police Act, the Public Order Act and the Criminal Procedure Code. The Inspector General of Police (IGP), under the Ministry of Interior, is responsible for the preservation of law and order.

17. In law, the standards for detention and arrest by the police in The Gambia are consistent, in principle, with international law: police can conduct an arrest in cases of flagrante delicto, of reasonable suspicion of the commission of a crime, and pursuant to an arrest warrant. However, in practice, arrests pursuant to a warrant are the exception and not the rule.

18. In 2012, the concept of community policing was formally reflected in the creation of a Human Rights Unit. The Special Rapporteur observed posters in official buildings to educate the public and encourage the reporting of rape, torture and extrajudicial killings to the Police Service Commission. However, based on testimonies received by the Special Rapporteur, citizens avoid reporting abuses due to fear of reprisals, lack of substantive redress, and a general mistrust of the police.

19. The "reasonable suspicion" standard is seldom if ever examined to determine whether reasonable grounds existed, and the evidence obtained pursuant to an otherwise

illegal arrest is challenged even less frequently. As a result, police arrest to investigate, rather than investigate to arrest.

20. The situation on the ground regarding the practice of torture or ill-treatment by the police is one in which abuses, in particular ill-treatment, do occur in some individual cases during arrest or transfer to police stations (the Banjulinding is a police training centre which is also used for detention and interrogation), but the Special Rapporteur did not find evidence that those abuses were part of a widespread pattern or systemic practice.

21. It appears that the police, in some cases, comply with the obligation under Section 19(3) of the Constitution, to bring a person to court within 72 hours after detention. However, based on the testimonies and information examined, the Special Rapporteur finds that the National Intelligence Agency (NIA) does not comply with this rule.

22. The 72 hour time frame before a person is brought before a judge is an invitation to obtain confessions or other evidence by illegal means and is not in line with international standards.<sup>6</sup>

### **The National Intelligence Agency**

23. The National Intelligence Agency reports directly to the President and is responsible for protecting state security, collecting intelligence, and conducting covert investigations. Military decrees enacted prior to the adoption of the Constitution gave the NIA broad powers to detain individuals indefinitely without charge “in the interest of national security.” This is inconsistent with the Constitution but it has not been subject to judicial challenge.<sup>7</sup> The Authorities advised the Special Rapporteur that the NIA has not assumed police functions of arrest, detain or question criminal suspects other than in “exceptional situations” and only until the police can receive the suspect. Further, the NIA denied the existence of places of detention or holding cells under NIA’s jurisdiction.

24. However, testimonies of persons who were held either in NIA Headquarters or in other “unofficial places of detention” reveals an ongoing practice whereby persons are held *incommunicado* for many days or weeks (one individual was reportedly held for nine weeks and, in a recent case, three perceived homosexuals were held for over six weeks) under inhumane conditions<sup>8</sup> before being handed over to the police and brought before a judge. Accounts of torture are severe and routine for those charged with “aggravated homosexuality” or for those considered a “high risk to state security” and are routinely held in clandestine detention.

25. The Special Rapporteur finds there is a regular practice of torture carried out by the NIA. The mistreatment inflicted was normally of short duration, consisting mainly of physical trauma caused by punches, slapping and blows with objects such as canes or batons and burns.

### **Use of Force**

26. International law requires that the conditions for the use of force are set out in law. Section 18(4) of the Constitution contains a broad standard of “reasonably justifiable” use of force and permits, *inter alia*, its use for the defense of property and to effect lawful arrest. It does not require the existence of an imminent threat of death or serious injury for

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<sup>6</sup> Human Rights Committee, “General Comment No.35 – Article 9: Liberty and security of person.” (30 October 2014) refers to the 48-hour standard for promptly bringing a criminal suspect before a judge.

<sup>7</sup> The Gambia 2013 Human Rights Report, US Department of State, pg.8.

<sup>8</sup> The Special Rapporteur received consistent reports of confined cells with no light, no mattress, denied sufficient water or food, infested with insects, no access to sanitary facilities.

the use of lethal force nor does it require that it will be used only as a last resort to protect life, as prescribed by international law.

27. There is a “Bulldozer” Unit which includes several law enforcement units, including a paramilitary unit that reports to the IGP that is used to quash civil disturbances and intimidate civil society. In April 2000, security forces opened fire on a student protest, which resulted in the death of 13 students and 1 journalist (including 6 minors) and 28 injured.<sup>9</sup> There has not been a large public demonstration since. The excessive force used by the authorities resulted in ill-treatment and even amounted to torture, in some cases where the gravity of the injuries was severe.

28. The legal constraints on the use of force by the NIA – is even less clear than those of the police (the ISP is reviewing a draft Code of Conduct). The Special Rapporteur requested, but did not obtain a copy of the NIA’s code of conduct. Under the Drug Control Act, the National Drug Enforcement Agency (NDEA) has broad powers to protect state security. The statute is vague regarding circumstances and conditions when NDEA may use force. The testimonies and information received indicate that the NDEA, like the NIA, engages in abusive methods.

### **Paramilitary Forces**

29. The Special Rapporteur received diverse reports and testimonies about the existence of paramilitary groups associated with the security forces and under the direct orders of the President. A secret unit reportedly called the Jungullars (also known as “Junglers” or “Black Blacks”) is associated with reports of arbitrary arrests, detention, torture, enforced disappearances and extrajudicial killings against persons considered to be opposed to the regime, journalists and ordinary civilians. The methods reportedly used to conduct torture and assassinations is with hammers, machetes, ropes, nails, pliers, needles and syringes injected into the victim’s body.

### **Prevalence of torture**

30. In cases where there is a real or perceived threat to national security there is corresponding increase by the NIA of acts of torture and ill-treatment during the detention and arrest process. There was also anecdotal evidence of mistreatment by the police and other law enforcement which is more of an isolated, sporadic practice.

31. The Special Rapporteur received many testimonies from people who did not want to be identified out of fear for either their own safety or their families. He conducted thorough interviews and forensic medical examinations by an independent forensic expert.<sup>10</sup> He found the testimonies truthful and consistent with other testimonies regarding the practices and methods used and substantiated this with physical evidence presented by a number of cases which were consistent with their testimonies of beatings by fists or blunt instruments and the injuries showed treatment that amounts to torture (or is consistent with allegations of torture).

32. The nature of the torture is brutal and includes very severe beatings with hard objects or electrical wires; electrocution (including to the genital area), asphyxiation by placing a plastic bag over the head and filling it with water, cigarette burns, tying up with ropes, burning with hot liquid and an account by one victim of having to dig his own grave believing he would be buried alive.<sup>11</sup> These methods of torture generally occurred over a

<sup>9</sup> Amnesty International letter to Special Rapporteur 4 August 2014, pg.6.

<sup>10</sup> Forensic Medical Report submitted to the Special Rapporteur, 28 November 2014.

<sup>11</sup> Ibid.

period of days or even weeks, usually either at NIA headquarters or in other unofficial places of detention.

### **Death Penalty**

33. The Special Rapporteur has many concerns regarding the executions of nine persons carried out in 2012. Of particular relevance to his mandate is that one of the individuals executed was mentally impaired and was nonetheless executed, in disregard of international law provisions prohibiting the imposition or execution of the death penalty on a person with a mental or psychosocial disability.<sup>12</sup> The mandatory imposition of the death penalty, for any offence, is a clear violation of international law.<sup>13</sup>

34. In 2012, the President re-instated a conditional moratorium on the death penalty, dependent on the rise or fall of the crime rate. The uncertainty to those on death row and to their families amounts to cruel, inhuman and degrading treatment. Death-row and life term prisoners are held in solitary confinement in the Security Wing of Mile 2 Central Prison. They are held in small, overcrowded, dark and poorly ventilated cells and are denied educational or recreational activities except for 10 minutes of exercise a day. As of March 2014, there were at least 43 people on death row being routinely denied visits by lawyers or family.<sup>14</sup>

## **2. Prisons Service**

35. According to the Prisons Act, the overall responsibility for correctional facilities in The Gambia, for the implementation of judicial decisions and the treatment of prisoners lies with the Ministry of the Interior.

36. The Special Rapporteur was denied access to the Security Wing of Mile 2 Central Prison and an inference has to be made that there was something to hide there. The Security Wing holds “high security” detainees, in addition to those detainees sentenced to death or to life terms. High level officials said that no one except a few Government authorities have access to the Security Wing. This isolation is explained on the basis of the serious nature of the crimes that have reportedly been committed. Some of those detained there have judicial appeals pending and must be presumed innocent and some are awaiting trial and should be in the Remand Wing. In any event, this extreme isolation is an added layer of cruelty, also for those serving a sentence.

37. There are three official prisons in The Gambia: Mile 2 Central Prison (contains a female wing), Jeshwang (contains a juvenile wing) and Janjanbureh Prison.

### **Unofficial Places of Detention**

38. The Special Rapporteur heard testimonies and received corroboration from a number of reliable sources that there are also “unofficial” places of detention in The Gambia. This includes secret cells in military barracks, NIA and NDEA Headquarters, prisons, and police stations, particularly in remote areas. He also received numerous testimonies that referred to a “Bambidinka” or crocodile pond which is reportedly a “dungeon” of small, dark and isolated holding cells in the ground, reportedly at Jeshwang prison and NIA Headquarters. The Special Rapporteur also received detailed maps and sketches of unofficial buildings being used, including old forts and warehouses. He was unable independently to verify their existence as he had to suspend visits to detention centres.

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<sup>12</sup> Gambian Human Rights Network submission to 2 UPR 2014. <http://gainako.com/?p=4785>.

<sup>13</sup> Article 6, paragraph 1, of the ICCPR and customary law.

<sup>14</sup> AFR 27/004/2014, pg.4.

## B. Safeguards and prevention

### Official Registration upon deprivation of liberty

39. In accordance with international standards, all persons must be officially registered from the moment their liberty is restricted. It appears that suspects of “high interest” detained by the NIA are usually not officially registered; they are held beyond the 72 hour limit, for days or weeks, in *incommunicado* detention, without being brought before a judge and without judicial oversight. Families are not notified until such time as the suspects are transferred to police custody in order to sign confessions. There are accounts that the police also exceed the 72 hour limit in some cases.

40. There is a two-stage approach to NIA detentions. The agency detains individuals in unofficial places of detention during the investigation phase and then turns them over to the police upon which the formal process of detention and arrest begins. It is precisely before the formal arrest at which torture is most prevalent.

### Access to a lawyer

41. A fundamental safeguard against torture and ill-treatment is the right of access to a lawyer at all stages of the investigation process and particularly from the moment of apprehension. Article 19(2) of the Constitution provides for that right. However, not only are many individuals initially detained *incommunicado*, the right to a lawyer is not effectively exercised as the vast majority of detainees cannot afford a lawyer.

42. The National Agency for Legal Aid (NALA) was established in 2008 by the Legal Aid Act and launched in 2010. The Act provides for legal aid to be accorded to a person charged with an offence which carries a punishment of death or imprisonment for life and to a child in proceedings in the Children’s Court, brought by or on behalf of a child.

43. The Legal Aid Act also provides for legal aid to be accorded to a person desiring “legal representation in any criminal or civil matter earning not more than such minimum wage as the Government may specify”. However, this latter provision will only come into force on a date to be determined by the Attorney-General by Order published in the Gazette. The scheme is not comprehensive enough to cover all criminal offences, so the vast majority of defendants have no access to legal representation.

44. As a result, confessions made by detained persons are signed by an “independent witness”. This is an inadequate legal protection and meaningless as to the voluntary nature of the statement. Use of “independent witness” rather than legal counsel does not protect against forced confessions but rather lends them a veneer of legality.

### Confession statements

45. In general, it appears suspects are informed by the arresting or interrogation officer about their right to a lawyer. However, if a suspect cannot afford a lawyer or the offence is not serious enough to warrant a legal aid lawyer, the NIA or the police proceed to the interrogation stage and “persuade” (using force or intimidation) the individual to give a statement - which in practice occurs in a vast majority of cases.

46. Torture in the pre-trial period is used to break down the individual and obtain information. In some cases, individuals are severely beaten by men in plain clothes, believed to be from the NIA, specifically to extract confessions. These confessions are routinely submitted and accepted as evidence before the criminal and military courts.

47. The Gambian criminal legal system is based on the common law and so a *voir dire* (trial within a trial) is conducted each time there is a complaint or reason to believe that a statement against interest was not freely made. The burden is on the Prosecution to prove

that it was not coerced. After conducting a *voir dire*, the admission of confessions as evidence before the court is at the discretion of the judge. Judicial discretion to admit evidence tainted by torture, under any standard, is a violation of Article 15 of the exclusionary rule of the Convention against Torture, a standard also required by customary law.

48. The Solicitor-General and Director of Prosecutions Office assured the Special Rapporteur that confessions alone are not sufficient evidence for a conviction, as other corroborating evidence is needed. That is a welcome safeguard but insufficient to deter torture in practice. International law obligations require the exclusion of confessions or declarations obtained under duress and they should not be part of the record of the case at all. The Special Rapporteur did not receive cases where the *voir dire* have excluded confessions obtained under torture nor did he receive statistics as to whether any official has ever been prosecuted and punished for extracting a confession under torture.

49. The Special Rapporteur was also alarmed to learn of doctors' reluctance to examine patients who have allegedly been tortured because of the threatening situation they would find themselves in if subpoenaed to testify.

### **Complaint procedure**

50. The Inspector General of the Police Service said there were no incidents of officers who abuse the rights of suspects; he had only received one complaint in the past year, which could not be substantiated. The Director General of Prisons advised that prisoners and detainees can transmit complaints to judicial authorities through their lawyer or relatives.

51. The complaint procedure for allegations of torture and ill-treatment, and the investigation, prosecution and punishment of perpetrators seems to be in law only. The norm, based on the high number of testimonies received, appears to be that victims lack faith and are afraid to allege torture or ill-treatment, and do not complain to the Prosecutor's Office, the Prisons Service or the court due to institutional inaction or fear of reprisal. There is no effective complaints mechanism to investigate such allegations.

52. There is a Human Rights Unit within the police, which if well trained, could be a good first step to more consistent procedures. It would not, however, govern complaints addressed to the NIA, the NDEA, the security forces or the Prisons Service.

### **Role of judiciary and prosecutors**

53. The Prosecutor's Office and the judiciary must ensure that the progression of a criminal case, from the investigation stage, to detention, interrogation, arrest, prosecution, conviction and conditions of detention complies with the rule of law.

54. The independence and impartiality of the judiciary is essential to the fulfilment of the most important obligations regarding torture and cruel, inhuman or degrading treatment or punishment in international law, including to make *ex officio* inquiries and order the investigation into allegations of torture or coercion and to ensure the safeguards are upheld. Judges have a dual obligation of prevention and accountability.

55. However, in practice, the Magistrate's Court and the superior courts, the High Court, Court of Appeal and the Supreme Court appear to have a passive role of simply processing the case rather than examining how the evidence was obtained. Failure to scrutinize evidence gathering results in unfair trials and in impunity for torturers.

56. Section 37 of the Constitution provides for the enforcement of the fundamental human rights provisions provided in its Chapter IV, which includes the prohibition of torture, and the High Court can hear and adjudicate applications and may make such orders,

issue such writs, and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the fundamental rights provisions, including granting redress.

57. There is Judicial Officers Bill on Remuneration Allowances and Other Benefits under consideration to enhance judiciary services regarding tenure and efficiency. The Special Rapporteur doubts that it will go far enough to address the lack of judicial activism and independence resulting from Executive interference which undermines the court's role to ensure accountability.

58. Judges and prosecutors should operate under a legal obligation to order medical examinations by forensic doctors properly trained by The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the Istanbul Protocol) as soon as any suspicion of mistreatment arises and to initiate prosecutions against whomever may be responsible for mistreating an inmate, including the superiors who may have ordered, tolerated or condoned that mistreatment.

#### **Lack of effective investigation of allegations of torture**

59. The Special Rapporteur inquired into any investigations undertaken by courts or internal affairs units of law enforcement or security forces regarding allegations of torture or ill-treatment and into their results. Only once case has been reported to The Human Rights Unit, and it concluded that the injuries suffered by the complainant were caused by the fact that he resisted arrest. Few if any investigations are ever conducted and officials if ever prosecuted.

60. The Ombudsperson's office, created in 1999, has had only two cases of torture in fifteen years and in both it found against the complainant. The Special Rapporteur was informed of a judicial decision in which two policemen were charged with murder of a person who died under their custody. The Court found that, although the force applied on the victim was proven, the specific intent required for murder was not established. Rather than changing the qualification to manslaughter or some other lesser offense, the Court reversed the previous conviction and ordered the release of the two police officers. The death in custody of a person who was obviously mistreated and this outrageous judicial decision only reinforces a culture of impunity.

61. The Special Rapporteur has not been apprised of a single case in which the paramount obligation of the State to investigate, prosecute and punish every act of torture (a rule of international law that has acquired the status of customary international law) has been fulfilled.

62. Moreover, the Indemnity Act of 2001 provides the President with nearly unfettered powers, perpetuates a culture of impunity and deters victims from seeking redress for human rights violations, including torture.<sup>15</sup>

63. The lack of procedural safeguards and failure to investigate was further highlighted after the attempted coup d'état. In January 2015, the Special Rapporteur received information about more than fifty cases of forced disappearances,<sup>16</sup> including one minor. All evidence shows that the purpose of unacknowledged detention is to facilitate torture or summary execution or both. He surmises that torture was used in several recent cases reported to him.

<sup>15</sup> Country Reports on Human Rights Practices for 2012, United States Department of State on The Gambia, pg.4.

<sup>16</sup> OHCHR-WARO has formally submitted several cases to relevant mandates in Special Procedures.

### **Burden of proof, independent medical examinations and forensics**

64. The Special Rapporteur notes the absence of routine medical examinations by qualified forensic medical doctors at the police investigation stage, by court order or upon admission to prison.

65. The Special Rapporteur received no information about the presence of forensic doctors at the police, the Prosecutor's Office or the Ministry of Justice. The Ministry of Health advised there is a pathologist and a laboratory but the Special Rapporteur found there was no specific training in the Istanbul Protocol to assist in the determination of cause of death or occurrence of torture. The lack of forensic medical sciences or of any medical doctor trained on the Istanbul Protocol undermines the fulfillment of State obligations regarding torture.

66. In practice, the safeguards against torture do not effectively operate because officials claim "there is no evidence" that torture has happened and so the confession or declaration remains on the record and no serious effort is made to investigate, prosecute and punish perpetrators.

67. The Special Rapporteur received submissions regarding several deaths in custody. They appear mainly to relate to illness, but there are also alleged cases of excessive force by prison officials and denial of medical care<sup>17</sup>. The Government did not provide statistics but advised that all deaths in custody were from natural causes.

### **Monitoring and inspection of places of detention**

68. Prior to commencing the visit, the Special Rapporteur received reports from several sources that detainees were being moved between various official and unofficial prisons. As the Special Rapporteur was forced to suspend visits to places of detention he was unable to verify these reports.

69. In accordance with articles 2 and 16 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Government is obliged to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment.

70. The only monitoring of prisons is conducted by the Visiting Committee (Section 22 of the Prisons Act) which is comprised mainly of several Government offices appointed by the Ministry of Interior. The Visiting Committee is mandated to visit the Mile 2 Central Prison every three months and reports on any substandard conditions. The Special Rapporteur did not receive the report of this Committee. There is only one NGO that has access to the prisons to conduct educational and rehabilitative services. Its access is limited to the general areas; the Security Wing and solitary confinement cells are off-limits.

### **National Institutions**

71. Ratification of the Optional Protocol and designation of a national preventive mechanism under article 17 is urgently needed as there is no truly independent and effective monitoring of all places of detention. Concern is expressed at the lack of oversight, in light of overcrowding in the Remand Wing, and inaccessibility of the Security Wing at Mile 2 Central Prison and reports of unofficial places of detention, including at the NIA Headquarters.

72. There is currently no national institution which could undertake monitoring. The Ombudsman's office claims to have a wide mandate<sup>18</sup> but its titular head has little interest

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<sup>17</sup> Amnesty International letter to Special Rapporteur, 4 August 2014, pg.2.

<sup>18</sup> A/HRC/WG.6/20/GMB/1, pg.14.

in such a role and claims a lack of resources to address issues of excessive use of force, torture or ill-treatment. The Government has debated for a number of years a plan to establish a National Human Rights Commission (NHRC). At the 2010 Universal Periodic Review, The Gambia committed to develop a draft law; which was elaborated in 2013 but found to not be fully compliant with international standards. A revised draft has still not been tabled at the National Assembly.

## C. Conditions of detention

### Overcrowding

73. Since the Special Rapporteur was forced to suspend visits to all places of detention he was unable to assess independently the conditions in any of the prisons or police stations.

74. While the Special Rapporteur was unable to directly observe the extent of overcrowding, the Director of Prison Services admitted it indeed was a problem and provided statistics<sup>19</sup> on the level of overcrowding. Mile 2 Central Prison was the most severe as it has an official capacity of 450 and there were 817 inmates in total (789 male and 28 female). In Jeshwang prison (official capacity 150) there were 201 inmates and 15 juveniles. In Janjangbureh prison (official capacity 50) there were 88 inmates.

75. Section 19(5) of the Constitution requires that if a person is not tried within a reasonable time then a detainee is entitled to be released either unconditionally or on bail. However, in practice this is not done. It is estimated that 30% of people in the prison system are held for petty crimes and in pre-trial detention for years due to backlogs and inefficiency in the judicial system.<sup>20</sup>

76. There are some efforts, mostly by non-governmental groups with varied support from courts and prosecutors, to reduce overcrowding. The only strategic effort in this regard happened in 2013 when temporary court dates were set up to review cases for those who have been held in prolonged remand (in pre-trial for years). The project resulted in the release of about 18 to 25 inmates, mainly accused of minor drug-possession. However, this has had no real impact in reducing overcrowding.

77. An aggravating factor is that the congested prisons are a direct result of draconian criminal laws imposing lengthy sentences for drug offences. Persons charged with those offences are subject to lengthy remand periods that exceed any penalty they might eventually receive.

### Solitary Confinement

78. At the Security Wing of Mile 2 Central Prison, the use of prolonged or indefinite solitary confinement of death row and life-term prisoners causes pain and suffering of a mental nature that is severe and has long-lasting effects. Those sentenced to death are under a conditional moratorium, which gives rise, to the “death row phenomenon,” a combination of circumstances that produces severe mental trauma and physical suffering among prisoners awaiting death sentences. It constitutes ill-treatment. In the absence of any mitigation of the conditions (visits, reading material, some access to radio or TV), solitary confinement is torture.

<sup>19</sup> Statistics provided on 6 November 2014.

<sup>20</sup> Country Reports on Human Rights Practices for 2013, United States Department of State on The Gambia, pg.8-9

79. The Special Rapporteur received testimonies that individuals are subjected to solitary confinement in the Bambidinka cell in Janjanbureh Prison, including for prolonged periods of time. Solitary confinement is also imposed on those held in unofficial places of detention for days, weeks or even months. These include the NIA Headquarters, where it is standard practice for detainees to be isolated up to 23 hours a day in small, dark underground cells infested with insects and vermin in the excessive heat, and forced to sleep on the floor.

#### **Food**

80. Although the Director General of Prisons said that rations are “obviously enough”, the Special Rapporteur received testimonies that the food is inadequate, of poor quality and often infested with unwanted particles. Corrupt practices of some prison officers have affected prisoner rations. Food supplied by family members is allowed for those on remand but not for convicted prisoners. According to testimonies received, in unofficial places of detention, water and food were both severely restricted or even denied for periods of time.

#### **Medical care**

81. Medical facilities inside the prisons are of poor quality, and inmates are often referred to health facilities outside the prisons for medical care. There is no routine screening for high risk of contracting non-communicable diseases from poor diets and infectious diseases such as tuberculosis, malaria, hepatitis or HIV. Section 22 of the Prisons Act stipulates that medical personnel are appointed as *ex officio* medical officers for the prison when on site and report to the Ministry of Interior, not to the Ministry of Health.

82. The Director General of Prisons advised that a new medical facility has been built at Mile 2 Central Prison and a doctor is assigned part-time to this prison and the Jeswang Prison. But it has been reported<sup>21</sup> that only a few nurses or medical assistants are present, who are overstretched and so underequipped that even the most basic equipment and medicines are lacking.

83. The Special Rapporteur heard that inmates with health problems requiring urgent hospitalization routinely experience delays or are denied treatment. They are brought to the main hospital only in extreme cases and often too late. While the Government did not provide statistics, the Special Rapporteur was informed that prisoners die of neglect, failure of prison staff to comply with a doctor’s orders or lack of access to health-care. There is no staff specifically focused on mental health. On average, a prisoner dies every month from amongst the approximately 150 inmates at the confinement wing of Mile 2 Central Prison and two death row prisoners died in September 2012 because they were denied health-care.<sup>22</sup>

#### **Sanitation, sleeping arrangements, work and education opportunities**

84. The Special Rapporteur consistently heard about inhumane conditions due to cells being overcrowded, damp, extremely hot and poorly lit and poorly ventilated. He was advised that inmates often sleep on the floor without a mat or blanket. During the summer, temperatures are extremely high, and there are no ceiling fans or other measures to reduce the heat. In the rainy season, wet and damp conditions contribute to poor health. Unsanitary conditions are reported, in particular, in the Remand and the Maximum Security Wing of

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<sup>21</sup> A delegation of the international community visited Mile 2 Central Prison in July 2014 but were only permitted to access the common areas of the prison and not the cell blocks.

<sup>22</sup> GHRN submission to UPR 2014. <http://gainako.com/?p=4785>

the Mile 2 Central Prison where detainees only have access to a bucket and no separate toilet facilities.

85. According to the Government, there are educational and vocational training in the prisons to promote the social rehabilitation of prisoners but even in the Remand Wing of Mile 2 Central Prison, the detainees are locked up in their cells for 18 hours a day<sup>23</sup>. In 2013 a library was built in Mile 2 Central Prison. However, programmes are not accessible to those who are considered political prisoners and those serving lengthy sentences.

#### **Discipline**

86. Section 65 of The Prisons Act provides exceptions for when corporal punishment can be imposed on male prisoners. Corporal punishment should be prohibited under all circumstances.

#### **Family visits**

87. New visiting rooms are being constructed at Mile 2 Central Prison. However, those in the Security Wing, including those on death row<sup>24</sup> and detainees perceived to be enemies of the President, are subjected to harsher treatment and are denied access to family visits.<sup>25</sup>

### **D. Obligation to protect persons in situations of vulnerability**

#### **Individuals detained in mental-health care facilities**

88. Due to the suspension of visits to places of deprivation of liberty, the Special Rapporteur was unable to visit psychiatric centres. At the time of the visit, the Director General of Prisons advised that four individuals were being held under detention orders at Tanka Tanka Mental Home. The Minister of Health advised there is a draft Disability Bill that is currently under consideration.

#### **Children**

89. The Gambia has ratified the Convention on the Rights of the Child. The Children's Act 2005 provides child offenders with free legal representation and separation of children from adults from the pre-trial to trial stage. It establishes one children's court in Kanifing Magistrate Court to hear all juvenile cases (there are plans to establish a children's court in every region)<sup>26</sup> and Child Welfare Units in police stations.

90. While Section 220(7) of the Children's Act 2005 prohibits corporal punishment as a judicial sentence, there is no explicit prohibition of corporal punishment as a disciplinary measure and it is routinely practiced in the home and in schools<sup>27</sup>. Neither the Criminal Code nor the Children and Young Persons Act prohibit corporal punishment as a judicial sentence for a crime nor as a disciplinary measure in juvenile detention facilities.<sup>28</sup> The Special Rapporteur was unable to visit the juvenile wing at Jeshwang Prison, as visits to places of detention had to be suspended.

<sup>23</sup> <http://faturadio.com/index.php/A-special-report-mile-ii-remand-wing-condition-worsen>

<sup>24</sup> Amadou Scattred Janneh, "Standing up against injustice", pg. 104.

<sup>25</sup> <http://allafrica.com/stories/201407081041.html>

<sup>26</sup> CRC/C/GMB/2-3, para 222.

<sup>27</sup> Global Initiative submission to the CRC, February 2014.

<sup>28</sup> CRC/C/GMB/2-3, para. 35-36 and 92.

### **Women in Detention**

91. There is a female wing in Mile 2 Central Prison. According to information the Special Rapporteur received, the female wing is also in very poor, unsanitary conditions, substandard food and cramped cells. Reportedly, young female detainees are removed during the night and returned in the morning with the inference that either the guards and or male detainees mistreat and rape them. The Government has said there are plans to relocate the female prisoner's wing to a newly expanded area of Jeshwang prison.

### **Violence against women and girls**

92. There is a National Women's Council which advises the Government on policies and plans aimed at promoting women's rights and works closely with the Vice President who is also the Minister of Women Affairs. In order to combat gender-based violence, the Domestic Violence Act and the Sexual Offences Act were enacted in December 2013. However, the practice of female genital mutilation (FGM) has yet to be prohibited and is still practiced in the country, particularly in rural areas. The Government has undertaken a public campaign on FGM but the message may not be uniform regarding the need to abolish this practice. There is a proposed Bill on the Prohibition of Female Genital Mutilation that would criminalise FGM. It should be a priority for the National Assembly.

### **Violence against LGBTI persons**

93. In an overall context of State-sponsored violence against LGBTI persons, the Special Rapporteur is concerned that an amendment to the Criminal Code, signed into law by the President on 9 October 2014, on "Aggravated Homosexuality" subjects LGBTI persons to even greater risk of torture and ill-treatment. The Special Rapporteur received reports that the NIA has actively, arrested and detained individuals believed to be homosexual, including group round-ups of up to 16 persons who were subjected to violent attacks, humiliation and arbitrary arrests.<sup>29</sup> At least three individuals have been detained for weeks during "investigations" and are reported to have been tortured.

### **Threats against journalists and human rights defenders**

94. Based on the meetings and interviews with representatives of civil society, the Special Rapporteur found there was a State practice of intimidation and serious threats (including death threats) to the physical integrity of journalists and human rights defenders that amounted to cruel, inhuman or degrading treatment or even torture.

### **Irregular Migrants and Refugees**

95. The Special Rapporteur met with several refugee leaders from Cote d'Ivoire, Liberia and Togo who were beaten during interrogation at an unofficial detention facility and then arrested and sent to Mile 2 Central Prison for writing a letter to the President about the neglect and deplorable conditions suffered by refugees in The Gambia.<sup>30</sup>

### **Individuals vulnerable to reprisals**

96. The Special Rapporteur observed an atmosphere of apprehension and even genuine fear among many victims, witnesses and interlocutors; they said meeting with him could result in intimidation or more serious consequences. The Special Rapporteur sought and received from the Government "assurances" that no persons, official or private individuals

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<sup>29</sup> High Commissioner for Human Rights press statement, 20 November 2014.

<sup>30</sup> Letter to the President from the Gambia Refugees Community Leadership, 29 April 2011.

who have been in contact with the Special Rapporteur [...] in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings.”<sup>31</sup> After the visit, the Special Rapporteur received information that some individuals, who were no longer living in The Gambia, were reportedly being tracked down by Government authorities. It was difficult to verify this information but the Special Rapporteur did receive one case from Senegal which he considered credible.

## **IV. Conclusions and recommendations**

### **A. Conclusions**

97. **After decades of repression, intimidation and fear, human rights activism is a weak concept in The Gambia and there are no robust institutions or effective legal mechanisms to counter the broad powers of law enforcement, intelligence and security forces which operate without any legal oversight and engage in practices that violate human rights with impunity.**

98. **The practice of torture is prevalent and routine, in particular by the NIA during the initial stages of detention. The Government has not fulfilled its obligation to investigate, prosecute and punish every incident of torture and ill-treatment or its obligation to prevent such occurrences.**

99. **Avoiding arrest is a necessary preoccupation for Gambian citizens<sup>32</sup> since the lack of an effective criminal justice system is at the core of many human rights violations. There is no comprehensive and well-resourced legal aid programme; cases rely on “voluntary” statements which are actually coerced; pretrial detention is prolonged owing to inadequate police investigations and the denial of bail; sentencing policies result in excessively lengthy custodial sentences; alternative measures are not implemented; and the judiciary lacks the independence to uphold procedural safeguards that are required by international law.**

100. **The lack of accountability is also the result of the absence of even a very basic level of forensic services, which means that medical examinations, if carried out at all, are not conducted by independent forensic specialists but by poorly trained medical personnel.**

101. **International human rights standards are not met in the prison system and results in a number of serious violations: overcrowding, inadequate nutrition, insufficient access to medical care, poor sanitation, personal insecurity and an absence of rehabilitation services. These substandard conditions constitute cruel, inhuman and degrading treatment or punishment.**

102. **The Special Rapporteur tried to verify the facts in a number of forced cases of disappearance. Not knowing the fate of a loved one amounts to cruel and inhuman treatment of the relatives.**

103. **Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or a third person amounts to cruel, inhuman or degrading treatment or torture.**

<sup>31</sup> Terms of Reference for Fact-Finding Missions by Special Rapporteurs, para. (c).

<sup>32</sup> Mustapha Jallow, July 2014, “Detention Without Trial and Disappearance Without Trace”.

104. Female Genital Mutilation constitutes cruel, inhuman and degrading treatment.

## **B. Recommendations**

105. In a spirit of engagement, the Special Rapporteur recommends that the Government take decisive steps to implement the recommendations set out below, with appropriate assistance from the international community.

106. With regard to international human rights treaties, the Government should:

(a) Deposit the instruments with the Secretary General of the United Nations so that it is formally recognized that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been ratified;

(b) Prioritise the ratification of: the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

107. With regard to the Constitution and legislation the Government should:

(a) Incorporate clear legal provisions into the Constitution and national laws to the effect that the prohibition of torture is absolute and non-derogable, in accordance with article 2, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Take the necessary measures to ensure that torture is established as an offence in national law and adopt a definition of torture that includes all the elements contained in article 1 of the Convention. The Government should also ensure that such offences are made punishable by appropriate penalties which take into account their grave nature, in accordance with article 4.2 of the Convention;

(c) Amend the Criminal Procedure Code, concerning evidence to be admitted in judicial proceedings, to bring it into line with the provisions of article 15 of the Convention to explicitly exclude any evidence obtained as a result of torture;

(d) Review all legal provisions that impede on freedom of expression as they are broad and subject to abuse by law enforcement, in particular the NIA, resulting in the detention and interrogation of persons, in particular, journalists and human rights defenders, opposition leaders, and even former members of the military or Government, all of whom are at risk of torture or ill-treatment during interrogation;

(e) Amend Section 18(4) of the Constitution and all relevant laws to ensure that the powers of all law enforcement and security forces are stipulated and are subject to the UN Basic Principles on the Use of Force and Firearms by Law Officials;

(f) Conduct a systematic review of criminal legislation on drug offences and sentencing policies on drug offences and other lesser, non-violent offences to reduce lengthy sentences;

(g) Repeal laws that target and criminalize LGBTI persons and take action to combat violence, threats and intimidation based on sexual orientation and gender identity.

108. With regard to safeguards and prevention, the Government should:

(a) Ensure prompt registration of all persons deprived of their liberty and periodically inspect custody records at police and prison facilities to make sure that they are maintained in accordance with the procedures established by law;

(b) Guarantee the right to a lawyer in all circumstances and without exception, and ensure that persons have access to a lawyer from the moment of deprivation of liberty and are brought before a magistrate within 48 hours of apprehension;

(c) Ensure that all detained persons are guaranteed the possibility of challenging effectively and expeditiously the lawfulness of their detention by having the National Agency for Legal Aid lawyers (NALA) and the judiciary visit places of detention to locate detainees who are entitled to habeas corpus relief or bail, especially those held in prolonged pre-trial detention;

(d) Financially invest in NALA so it has a robust mandate to operate independently and ensure a sufficient number of qualified lawyers can provide essential services to persons charged with any offence from the moment of apprehension through all stages of criminal proceedings: investigation, detention, interrogation, arrest and conditions of incarceration to ensure compliance with the rule of law and demand improvements as necessary;

(e) Video-record all statements made to law enforcement during the investigation and interrogation period as standard procedure. Such measures should be seen only as complementary to legal representation during all stages of the interrogation process;

(f) Ensure the right to an independent medical examination;

(g) Ensure any allegations of torture and ill-treatment are admitted at any stage of the trial and that courts are obliged to launch *ex officio* investigations whenever there are reasonable grounds to suspect torture or ill-treatment;

(h) Seek technical assistance to strengthen the independence of the judiciary and improve training of judges so they can have a more effective role in safeguarding the detainee's rights at all stages of the proceedings, including being informed of detainee transfers to another detention facility and post-sentencing matters such as the conditions imposed after sentence, in particular in cases involving lengthy sentences of life imprisonment or the death penalty.

109. With regard to prompt, thorough and impartial investigations, the Government should:

(a) Establish an effective and independent mechanism that promptly and effectively investigates all allegations of torture or ill-treatment, prosecutes those responsible and, if they are found guilty, imposes administrative and judicial penalties that take into account the grave nature of their acts;

(b) Establish a judicial commission to investigate whether there is a paramilitary unit and initiate investigations, prosecutions and convictions, if substantiated;

(c) Investigate all forced disappearance cases as the fate and whereabouts of each victim must be resolved and the perpetrators must be brought to justice to alleviate the suffering of the families;

(d) Ensure that victims obtain redress and fair and adequate compensation for violations of their rights, including the means for the fullest rehabilitation possible, establish mechanisms to provide all victims with medical, psychological and social rehabilitation and ensure they are not subject to reprisals;

(e) Ensure that medical staff are able to conduct independent examinations at the time of arrest, upon transfer to another place of detention, or upon request, without interference by law enforcement personnel or prosecutors;

(f) Train law enforcement officials, military personnel and prison authorities in international human rights law to ensure that national procedures are compliant and that preventative measures to eliminate torture and ill-treatment are integrated into their respective working methods and ensure that individuals who engage in freedom of expression, association or peaceful assembly are not targeted through tactics of intimidation, harassment or violence;

(g) Seek investment and technical assistance to establish a specialised training programme for forensic experts on the assessment of ill-treatment and torture, in accordance with international standards, including the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol); and train the prosecution and judiciary on how to evaluate forensic reports.

110. With regard to the monitoring and inspection of places of detention, the Government should:

(a) Take concrete measures to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) which will allow a national system of regular prison monitoring by independent experts and establish an effective complaints mechanism;

(b) Accelerate the review of the National Human Rights Commission Bill, 2014 that is before the National Assembly to ensure that it will be an independent and impartial institution, established in accordance with the Principles relating to the Status of National Institutions (the Paris Principles);

(c) Accelerate the designation of the National Human Rights Commission (NHRC) as the national mechanism for the prevention of torture, in accordance with article 17 of the Optional Protocol and request technical assistance to ensure the NHRC, once established, has an independent operating budget and sufficient financial and human resources so it can inspect all places of detention regularly, including pre-trial detention. In addition to making unannounced visits, it should provide detailed reports, receive complaints, initiate or promote prosecutions, produce findings and implement recommendations;

(d) Shut down unofficial places of detention, a practice which violates international law and allow access by the International Red Cross to *all* places of detention<sup>33</sup>, under terms that are acceptable to the ICRC.

(e) Encourage NGOs to undertake regular monitoring of places of detention and deliver much-needed medical and educational services, and provide training for law enforcement, health and legal professionals on international human rights standards and on detecting, reporting and preventing torture and ill-treatment.

111. To address overcrowding, the Government should:

(a) Ensure more active State participation (by Prisons Service, the Prosecutor's Office and the judiciary) to implement a more sustained programme to reduce the levels of overcrowding;

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<sup>33</sup> The ICRC has been denied access to places of detention since 2006.

(b) Review non-violent and low risk offenders and release unconditionally or under reasonable conditions so that bail and effective monitoring becomes a standardised practice to reduce the number of remand prisoners;

(c) Ensure that time spent in remand custody is taken into account during sentencing;

(d) Provide further training in judicial case management and implement a “fast-track system” for less serious cases and ensure all detainees are tried within a reasonable period;

(e) Provide a swift appeal process for the review of convictions and sentences;

(f) Divert some of the funds used for incarceration to support a project to identify low-risk offenders and divert or release them on alternative-measures.

112. With regard to conditions of detention, the Government should:

(a) Move away from a purely punitive penal system to a more modern approach to the reform, rehabilitation and reintegration of inmates, in accordance with international human rights standards;

(b) Recall that, regardless of the level of development of the country, it is obliged to ensure minimum standards of conditions of detention in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(c) Provide the minimum acceptable amount of floor space and cubic quantity of air per inmate, a separate bed, adequate sanitary conditions and exercise;

(d) Urgently improve access to, and the quality of, health care to provide a minimum standard of medical care, and employ a sufficient number of qualified doctors, including for psychiatric and dental care, in addition to medical assistants and nurses;

(e) Establish an independent body under the Ministry of Health to regulate and improve the quantity and quality of the food and establish a farming programme in prisons to offset food costs and provide better variety and nutrition;

(f) Seek donations from civil society to increase opportunities for education, recreation and training programmes.

113. With regard to the death penalty, the Government should:

(a) Declare an official moratorium with a view towards abolition of the death penalty as the conditional moratorium subjects condemned prisoners to the “death row phenomenon” and constitutes ill-treatment or even torture;

(b) Pending abolition of the death penalty, remove from the law any mandatory imposition of the death penalty;

(c) Commute all outstanding death sentences to term sentences and ensure that those who were on death row are allowed visits by their lawyers and family members;

(d) Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

114. With regard to children, the Government should:

(a) Expedite the ratification of the optional protocols to the Convention on the Rights of the Child;

(b) Explicitly prohibit all forms of corporal punishment without exception and in all settings, including the home, schools and alternative care settings;

(c) Ensure the separation of juveniles on remand from adults, in compliance with international standards;

(d) Provide additional training to the judiciary and the Office of the Attorney-General so that bail and alternative measures for children in conflict with the law are considered, and ensure that imprisonment is only used as an exceptional measure.

115. With regard to women, the Government should:

(a) Ensure that female inmates are protected from all gender-based violence and sexual harassment;

(b) Uphold the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and implement alternative measures, especially for women who are pregnant or have dependents;

(c) Prohibit the harmful practice of FGM by urging the National Assembly to pass the Prohibition of Female Genital Mutilation Bill, 2012 and take the necessary steps to ensure this law, the Domestic Violence Act and Sexual Offences Act are fully implemented to help eradicate gender-based violence.

116. With regard to mental care and psychiatric institutions the Government should:

(a) Expedite the consultations regarding the draft Disability Act so that it contains the requisite legal framework to apply the Convention on the Rights of Persons with Disabilities;

(b) Regulate and supervise health-care practices, with a view to preventing ill-treatment and investigate and prosecute cases of alleged inhumane practices.

117. With regard to regional and international mechanisms, the Government should:

(a) Formulate a National Action Plan to prioritise and implement the recommendations of the Universal Periodic Review;

(b) Implement the recommendations in this report and the report of the Special Rapporteur on Summary Executions;<sup>34</sup>

(c) Implement the resolutions 134 (2008) and 145 (2009) from the African Commission on Human and People's Rights and comply and implement expediently the judgments of the ECOWAS Court of Justice;

(d) Allow unrestricted and full access to the Office of the High Commissioner for Human Rights if the Office decides to send an investigation team, as requested by the Government, to assist with the investigation of the Manneh and Hydera cases.

118. With regard to assistance by regional and international mechanisms, the Government could consider:

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<sup>34</sup> A/HRC/29/37/Add.2.

- (a) Inviting the Special Rapporteur on Prisons and Conditions of Detention of the African Commission on Human and Peoples' Rights to follow up on this report;**
- (b) Extending a standing invitation to the United Nations special procedures mandate holders; in particular the Working Group on Enforced and Involuntary Disappearances; the promotion and protection of the right to freedom of opinion and expression; the situation of human rights defenders; and violence against women;**
- (c) Re-engaging with the European Union which has not released funds earmarked for projects that involve the cooperation with the Government due to continued concerns regarding the human rights situation in The Gambia;**
- (d) Seeking assistance from the Convention Against Torture Initiative (CTI)<sup>35</sup> regarding the ratification and implementation of the Convention;**
- (e) Encouraging donations from the international community to support the United Nations Voluntary Fund for Victims of Torture so that it can consider requests for assistance from NGOs that work to ensure that persons who have been tortured have access to medical care and legal redress.**

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<sup>35</sup> Launched in 2014 to focus on universal ratification and implementation of the Convention.