



The Gambia's Compliance with the African Charter on Human and Peoples' Rights
Report for the 64th Ordinary Session of the African Commission on Human and Peoples' Rights

For the Commission's Examination of the Gambia's 2nd Periodic Report on the Implementation of the African Charter on Human and Peoples' Rights in the Gambia

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prepared by

The Advocates for Human Rights

An NGO with Observer Status at the African Commission on Human and Peoples' Rights since 1991

and

The World Coalition Against the Death Penalty

Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized the Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. The Republic of the Gambia (the Gambia) has been a *de facto* abolitionist State having no reported executions since 2012, and in 2018 President Adama Barrow announced a moratorium on the use of the death penalty and the Gambia subsequently ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (the Second Optional Protocol). The Gambia has not yet amended its Constitution to reflect a formal legal ban on the use of the death penalty.
2. The Gambia has worked to eliminate torture, improve access to the judicial system, and eliminate extra judicial killings, including ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Gambia must continue to work to improve the conditions of detention and to reduce the length of pre-trial detention.

I. THE GAMBIA'S HUMAN RIGHTS COMMITMENTS UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

African Charter on Human and Peoples' Rights

3. Several articles of the African Charter on Human and Peoples' Rights (African Charter) outline the charter's standards in relation individuals right to life, liberty and security of person, freedom from torture or degrading treatment, and the right to due process. The Gambia has committed extrajudicial killings and torture, failed to support basic living conditions in prisons, and not yet formally prohibited the death penalty.
4. Article 3 of the African Charter states, "every individual shall be equal before the law" and "shall be entitled to equal protection of the law."¹ The African Charter, in Article 4, goes on to state "every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."² The death penalty violates the protection of the law and the right to life, without exception, outlined in these two articles. Article 5 prohibits cruel, inhuman or degrading punishment or treatment including arbitrary arrest or detention.³ Article 7 then establishes the right to due process including "the right to appeal to competent national organs," "the right to be presumed innocent until proven guilty," "the right to defense," and "the right to be tried within a reasonable time."⁴ The African Charter emphasizes the equality of all persons, all "shall enjoy the same respect and shall have the same rights."⁵ The Gambia's failure to fully comply with these relevant articles violates the country's commitment to the African Charter.

II. DOMESTIC LEGAL FRAMEWORK

5. The laws of the Gambia contain various legal provisions which include the death penalty. The Constitution of the Gambia provides that the sentence of death imposed by a court of competent jurisdiction in respect of a crime of violence or the administration of any toxic substance resulting in the death of another constitutes an exception to the right to life.⁶ The Criminal Code of the Gambia provides that the Minister of Justice may determine the

manner of execution and issue instructions as to the manner in which sentence of death shall be carried out.⁷ Murder and violence resulting in the death of another are the sole crimes punishable by death under the Constitution of the Gambia.⁸ In 2012, nine individuals were executed by firing squad.⁹ Since then, no executions have taken place.

6. In 2018, President Adama Barrow announced a “moratorium . . . as a first step towards abolition.”¹⁰ The Gambia has not yet amended its Constitution to abolish the death penalty.¹¹ A Constitutional Review Commission has been convened and tasked with producing a revised “progressive Republican Constitution.”¹²
7. The Constitution of the Gambia provides that: “Every person shall have the right to liberty and security of person. No one shall be subjected to arbitrary, arrest or detention [*sic*]. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law”¹³ and “No person shall be subject to torture or inhuman degrading punishment or other treatment.”¹⁴ Despite these provisions, torture is not criminalized under the Criminal Code of the Gambia.

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Acceptance of international norms

8. President Adama Barrow announced a moratorium on the use of the death penalty in the Gambia on 18 February 2018.¹⁵ The Gambia underscored this commendable progress toward abolishing the death penalty by signing and ratifying the Second Optional Protocol.¹⁶
9. The Gambia has made strides by working to eliminate torture and improving access to the judicial system, although further progress is warranted in these areas. Moreover, unlawful detentions and detention conditions remain significant areas of concern.

Extrajudicial, Summary or Arbitrary Executions

10. Despite constitutional protections surrounding the use of the death penalty, during the tenure of President Yahya Jammeh, the National Intelligence Agency (NIA) committed extrajudicial killings without regard for legal proscriptions.¹⁷ These extrajudicial executions ceased when President Barrow assumed the presidency. No extrajudicial killings were reported in the Gambia in 2017.¹⁸
11. In January 2017, ten soldiers were arrested and detained in connection with extrajudicial killings which took place during the tenure of President Yahya Jammeh, and in February 2017, the Gambian government initiated criminal proceedings against nine NIA officers suspected of murdering activist Solo Sandeng.¹⁹
12. To further explore transitional justice regarding these extrajudicial killings, in December 2017 the Gambia established the Truth, Reconciliation and Reparation Commission, which will investigate these atrocities (and others) committed during the Jammeh era.²⁰ On September 28, 2018, the Gambia ratified the Convention for the Protection of All Persons from Enforced Disappearance.²¹

Death Penalty

13. The Constitution of the Republic of the Gambia allows for the execution of persons as authorized by law and imposed by a court, and only if “the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”²²
14. In 2017, three death sentences were handed down, although no executions were carried out that year.²³ At the end of 2017, 23 people were facing death sentences, including six foreign nationals.²⁴
15. After signing the Second Optional Protocol on 20 September 2017, the Gambia imposed a moratorium on the death penalty and, in February 2018, commuted all death sentences to life imprisonment.²⁵ This step was followed by the ratification of the Second Optional Protocol on 28 September 2018.²⁶
16. The Gambia has not formally abolished the death penalty but on 13 December 2017, the Gambia established a Constitutional Review Commission, which is expected to end with a constitutional referendum in 2019.²⁷

Prohibition of Torture and Cruel, Inhuman or Degrading Treatment

17. Although the Constitution prohibits torture and inhuman degrading punishment,²⁸ torture is not included as a criminal offense in the Gambian criminal code.²⁹ Under President Jammeh’s administration, Gambian Security forces employed brutal means of torture.³⁰ President Barrow attempted to curb the powers of the NIA (now the State Intelligence Services) but not all security personnel have been vetted and there has been no systematic review of this agency or the military forces.³¹
18. In practice, torture and inhuman treatment of detained persons are prevalent and routine in the Gambia. In addition, overcrowding, inadequate nutrition, insufficient medical care, poor sanitation, inadequate safety, and an absence of rehabilitation are hallmarks of the prisons of the Gambia.³² The Gambia claims to have made strides with respect to the conditions of detention and claims to be making progress in constructing a new modern prison.³³
19. There were no confirmed reports of government officials employing torture in 2017,³⁴ but the family of one of 12 soldiers (all of whom were arrested in July 2017 in connection with “mutinous and seditious” social media posts in support of former President Jammeh) has alleged that the detained soldier was beaten while being held by the military.³⁵ This alleged incident appears to have been confirmed by the Gambia, which reported that the two officials involved in the case were demoted in rank.³⁶
20. The Gambia ratified the Convention Against Torture on 28 September 2018.³⁷

Conditions of Detention

21. Prison conditions are known for being harsh and life-threatening in the Gambia, especially in Mile Two Prison. Prisoners lack food and medical care and face overcrowding and unsanitary conditions.³⁸ President Barrow has recognized the inhumane conditions that exist at Mile Two Prison, and has granted both the Office of the Ombudsman and local and international NGOs unrestricted access to all detention centers.³⁹

22. The Gambian government addressed overcrowding by pardoning and/or releasing approximately 40 opposition supporters in December 2016 and 250 additional prisoners in February and March 2017.⁴⁰ The Gambia has yet to revise the Prisons Act to ensure compliance with international standards and to facilitate the improvement of prison conditions.⁴¹

Arbitrary Arrest and Detention

23. Although the Constitution requires that arrested persons must be charged or released within 72 hours, there are reports of individuals being arbitrarily arrested and detained for longer than 72 hours without formal charges.⁴²

Administration of Justice & Fair Trial

24. Apart from several instances of authorities failing to honor the 72-hour detention limit, the Gambian judicial system is overburdened and has previously lacked independence. Several inmates have been awaiting trial for years.⁴³ Backlogs also contribute to delays in challenging detentions.⁴⁴ Access to legal aid is limited.⁴⁵ Also, even though many defendants are permitted to meet with lawyers,⁴⁶ it seems that twelve soldiers jailed for “seditious” acts in January 2017 were not provided access to counsel while awaiting trial during 2017.⁴⁷
25. President Barrow’s government reconstituted the Judicial Service Commission,⁴⁸ which recommends appointments of all judges and magistrates and prevents the executive branch from directly influencing the judiciary. In February 2017, President Barrow appointed a new chief justice, who is a former United Nations prosecutor and a Gambian citizen.⁴⁹ President Barrow also appointed 14 superior court judges to help reduce the backlog of criminal cases.⁵⁰ These appointees are also Gambian nationals, as opposed to foreign nationals, a move approved by the Gambian Bar Association.⁵¹

IV. RECOMMENDATIONS

26. This stakeholder report suggests the following recommendations for the Government of the Gambia:
- Amend the Constitution of the Gambia and the Criminal Code of the Gambia to formalize and make permanent the Gambia’s prohibition of the use of the death penalty.
 - Amend the Criminal Code of the Gambia to criminalize torture.
 - Ratify the Optional Protocol to the Convention Against Torture.
 - Adopt domestic legislation implementing the Convention Against Torture and the Optional Protocol to the Convention Against Torture.
 - Improve the conditions of detention in all places of detention and ensure that prisoners and detainees have access to medical care, and adequate and appropriate food, hygiene, and exercise, consistent with the Nelson Mandela Rules.
 - Revise the Prisons Act to ensure that the 72-hour detention limit is respected in all places of detention.

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- ² African Charter of Human and Peoples' Rights, 1986, Art. 4. Also Available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf
- ³ African Charter of Human and Peoples' Rights, 1986, Art. 5. Also Available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf
- ⁴ African Charter of Human and Peoples' Rights, 1986, Art. 7. Also Available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf
- ⁵ African Charter of Human and Peoples' Rights, 1986, Art. 19. Also Available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf
- ⁶ Constitution of the Republic of the Gambia, 1997, reprinted 2002, Ch. 3, § 18. Also available online at: <http://hrlibrary.umn.edu/research/gambia-constitution.pdf> (last visited Feb. 10, 2019).
- ⁷ Gambia Criminal Code, art. 28(1), Act No. 25 of 1933, as amended through to 2009, Laws of The Gambia (2009), Vol. 3, Ch. 10:01; Cornell Center on the Death Penalty Worldwide, "Death Penalty Database: Gambia," accessed Mar. 25, 2019, also available online at: <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Gambia>
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- ¹² Human Rights Council, *List of Issues in the Absence of the Second Periodic Report of The Gambia – Addendum – Replies of the Gambia* (June 11, 2018), U.N. Doc. CCPR/C/GMB/Q/2/Add.1. Also available online at: <https://www.undocs.org/CCPR/C/GMB/Q/2/ADD.1>.
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- ¹⁴ Constitution of the Republic of the Gambia, 1997, reprinted 2002, Ch. 3, § 21. Also available online at: <http://hrlibrary.umn.edu/research/gambia-constitution.pdf> (last visited Feb. 10, 2019).
- ¹⁵ Pap Saine, Aaron Ross and Catherine Evans, *Gambia Announces Moratorium on Death Penalty*, Reuters (Feb. 18, 2018), <https://www.reuters.com/article/us-gambia-justice/gambia-announces-moratorium-on-death-penalty-iduskcn1g20v2> (last visited Feb. 10, 2019); Human Rights Committee *supra* note 14.
- ¹⁶ Ratification Status for Gambia, United Nations Human Rights Office of the High Commissioner, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=64&Lang=EN (last visited Feb. 11, 2019).
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