

## GAMBIA

### CCPR A/39/40 (1984)

316. The Committee considered the initial report of the Gambia (CCPR/C/10/Add.7) at its 501<sup>st</sup>, 502<sup>nd</sup> and 506<sup>th</sup> meetings, held on 3 and 5 April 1984 (CCPR/C/SR.501, 502 and 506).

317. The report was introduced by the Solicitor-General of the Gambia, as representative of the State party, who pointed out that the rights and fundamental freedoms provided for in the Covenant were reflected in chapter 3 of his country's Constitution, which could be amended only by a bill approved in a referendum and passed by a two-thirds majority in the House of Representatives. The provisions of chapter 3 could, however, be suspended by the President's proclamation of a state of emergency, but within the limits set by the Constitution itself. Besides, the judiciary in the Gambia had primary responsibility for ensuring respect for human rights and for considering all alleged violations of such rights, as provided for, in particular, by section 28 of the Constitution.

318. The representative also referred to various provisions which guaranteed certain fundamental rights enshrined in the Covenant and emphasized that the constitutional restrictions on the enjoyment of those rights were in conformity with article 5 of the Covenant. He made reference, in particular, to the National Women's Council Act which had been adopted in 1981 and explained that the Council advised the Government on all matters affecting the development and welfare of women. While the death penalty had not yet been abolished in the Gambia, it had been carried out only twice since his country's accession to independence. He drew the Committee's attention to certain provisions of the Prisons Act the purpose of which was to ensure that prisoners were treated with humanity. Under the Criminal Procedure Code, decisions of the lower courts were forwarded once a month for review by the Supreme Court which was empowered to set aside any order or judgement which it considered erroneous. Under that provision, sentences handed down against individuals who, for some reason or other, had not appealed were reviewed by the Supreme Court. Gambian legislation also included a specific procedure applicable to minors which took into account their age and was geared towards their rehabilitation and reformation rather than their punishment.

319. The difficulties which the Gambia had encountered in implementing the provisions of the Covenant must be viewed in the context of the Country's economic situation. The Gambia was a poor, developing country and the exercise of certain rights set forth in the Covenant, such as the legal assistance of the accused and the rehabilitation and vocational training for prisoners, would involve expenditures that would place a heavy burden on the State's financial resources.

320. The representative recalled that important events had recently taken place in the Gambia. On 30 July 1981, a group of Gambians had attempted to overthrow the lawful Government by force and the country had been plunged into chaos. The President of the Republic, exercising the powers vested in him under section 29 of the Constitution, had proclaimed a state of emergency on 2 August 1981. The state of emergency, which had been approved and extended by the House of Representatives, was still in force. Regrettably, because of the chaotic situation prevailing in the country, the Government of the Gambia had not been able to notify other States parties immediately

in accordance with article 4, paragraph 3, of the Covenant, of the provisions from which it had derogated and of the reasons.

321. The Committee was provided with detailed information on special measures taken by Government under the state of emergency, in particular, the emergency powers regulations and the activities of the Special Division of the Supreme Court which had been established to hear cases involving offences committed in an attempt to overthrow the Government and offences defined in the emergency regulations. Statistics of arrest, detentions, releases and trials were quoted. It was also pointed out that even though the state of emergency remained in force, the parliamentary and presidential elections scheduled for May 1982 had been held as planned, with the full participation of all the political parties.

322. Members of the Committee praised the high quality of the report which showed the Gambia's willingness to engage in a dialogue with the Committee and to promote human rights. It was of higher quality than those of certain countries which had considerably more resources; and therefore there should be no question of applying double standards or creating two classes of countries. They also congratulated the representative of the Gambia for his commendable introductory statement which had provided useful background information and which had explained what difficulties the Gambia had encountered in implementing the Covenant. Questions were asked on the progress made in giving effect to the provisions of the charter of human rights drawn up at a conference in the Gambia by the Organization of African Unity and on the composition and functions of the Law Reform Commission which had been set up in 1983 to promote development of the Gambia's statutory and traditional laws. The Commission could play a very important part in promoting human rights and ensuring that the country's laws were compatible with the requirements of the Covenant. It was also asked how widely the Government had made the Covenant available within the country, what had been done to draw the Gambia's accession to the Covenant to the attention of the legal profession, the courts and any authorities responsible for compliance with its terms, and whether translations of the Constitution and the Covenant were available in local languages.

323. With regard to article 1 of the Covenant, members of the Committee wished to receive more information on its implementation with particular reference to the right of peoples to self-determination when the Gambia entered into a confederation with Senegal; whether foreign companies had interests in the Gambia, what share such interests represented in the Country's economy and what the Government's position was with respect to the new international economic order.

324. In connection with article 2 of the Covenant, members of the Committee noted that in order for the provisions of international instruments to become part of the Gambian laws they must be incorporated in the domestic legal system by an act of Parliament, and they asked whether such an act of the Parliament had in fact been passed and, if the Covenant had been incorporated in the legal system, what rank it enjoyed; whether it could be invoked before the courts and whether there was in the country any administrative recourse against violation of civil and political rights. Since the Gambia was a common-law country where various customs were also applied, it was also asked whether the Covenant would prevail over both in the event of a conflict and what role, if any, tribal institutions played in the settlement of civil law disputes. In addition, reference was made to section 13 of the Constitution of Gambia which guaranteed all individuals the rights recognized in the

Covenant without discrimination of any kind and it was asked why sex was not mentioned among the forms of discrimination. Clarification was also requested on the text of section 25 of the Constitution which seemed to leave open the possibility of discrimination against foreigners.

325. With reference to article 3 of the Covenant, statistics were requested on the education of women, their participation in elected bodies, their number in the liberal professions and their representation in the public and private sectors.

326. As regards article 4 of the Covenant, it was noted that section 26 of the Constitution of Gambia appeared to permit derogations from the provisions on protection against discrimination contained in section 25 of the Constitution and it was observed that this derogation was incompatible with the requirements of article 4, paragraph 1, of the Covenant. It was also asked whether the restrictions which had been imposed during the recent uprising remained in effect.

327. Commenting on article 6 of the Covenant, members of the Committee noted that the Constitution of the Gambia referred to persons being deprived of life when it was reasonably justifiable and it was observed that the death penalty should be imposed only in exceptional circumstances. In this connection, it was asked whether the possibility of abolishing capital punishment had been considered by the Gambian authorities and, if so, what steps had been taken in that direction and whether any of the persons who were still under death sentence had been executed. Clarification was also requested on section 14 (2) of the Constitution which gave defence of property as a ground for excusing the use of force resulting in death and on the relationship between presidential prerogatives to commute death sentences and the independence of the Judiciary. In addition, members of the Committee wished to receive information on the birth and death rates, particularly for children, and on the measures taken by the Government in the health field to improve health conditions and to increase life expectancy especially in the villages. It was asked, in this connection, whether abortion was legal in the Gambia.

328. In respect of article 7 of the Covenant, members of the Committee observed that the reservation contained in article 17 of the Constitution of Gambia, relating to punishments that were lawful prior to 1970, required further explanation. It was asked, in particular, whether there had been any derogations to provisions of the Constitution, what specific instructions were given to the representatives of order with regard to the use of force, whether the punishment of whipping a young offender was still applied and, if so, in what cases, and whether the Government had considered the possibility of requiring young offenders to perform community service as an alternative to corporal punishment.

329. Turning to article 9 of the Covenant, members of the Committee asked how long preventive detention could last, whether Gambian law made provision for detaining persons against their will on medical grounds and, if so, what procedure was followed; whether an administrative or a court decision was required or whether the recommendation of medical personnel was sufficient, how the rights of the individual were protected in such cases, whether there was any remedy for persons who had been detained against their will, whether there could be any appeal to a higher authority if a subordinate court ruled that raising of a particular question was “merely frivolous or vexatious”, and whether the compensation provided to persons who had been unlawfully arrested or detained was purely material or whether it was also moral. It was also asked what specific motives must be

proven by the State for detention under section 27 of the Constitution referring to the state of emergency and where the onus of proof laid, whether there were any political prisoners currently being held in the Gambia and what was the fate of the approximately 1,700 persons who had been detained when the state of emergency had been declared and who had not yet been brought to trial.

330. With regard to article 10 of the Covenant, it was asked whether certain detainees were still put in irons at the Mile Two prison, what measures, if any, had been taken or were contemplated for the reformation and social rehabilitation of prisoners and whether the possibility of obtaining technical assistance and advice in this respect had been explored by the Government of the Gambia.

331. As regards article 11 of the Covenant, it was asked whether there were exceptions to the rule that contractual obligations did not carry prison sentences.

332. In connection with article 12 of the Covenant, it was asked on what grounds restrictions could be placed on the right of a person to move freely or to reside in any part of the Gambia.

333. With reference to article 13 of the Covenant, members of the Committee asked whether there was any way for an alien to appeal a court decision to deport him.

334. With respect to article 14 of the Covenant, members of the Committee wished to know whether an accused person could be granted bail if he did not have sufficient means to pay for it, what was the meaning of the provision in section 20 of the Constitution concerning the imposition upon any person charged with a criminal offence of the burden of proving particular facts, and in what circumstances legal representation could be prohibited under the law referred to in another provision of the Constitution. The failure to grant legal assistance to persons facing criminal charges, save those facing charges carrying the death penalty, generally weakened the principle of the right of defence. They asked whether in such cases the trial might proceed with the individual alone defending himself. It was also asked whether the judges of magistrate's courts were lawyers or lay persons and whether they were assisted by assessors, what was the procedure and composition of the courts martial referred to in section 94 of the Constitution, how the Special Chamber of the Supreme Court established to try persons arrested after the attempted coup of 1981 was composed and whether it followed any special procedures which might not be consistent with the provisions of article 14 of the Covenant. With reference to article 15 of the Constitution of Gambia concerning detention pending trial, clarification was requested on the expression "suspicion of his ... being about to commit a criminal offence" which appeared to contradict the principle of the presumption of innocence until proven guilty. In addition, it was asked whether any provision was made in the Gambia for preventive education in order to dissuade young persons from breaking the law and under what circumstances, according to the Gambian Code of Criminal Procedure, it was not possible to appeal to the Supreme Court.

335. With reference to article 15 of the Covenant, it was asked whether the constitutional provisions prohibiting the retroactive enforcement of an act of criminal law had been observed in the case of the dissolution of the association called "Movement for Justice in Africa".

336. In connection with article 16 of the Covenant, it was asked whether under Gambian law life was deemed to begin at conception.

337. With reference to articles 18 and 19 of the Covenant, it was noted that the Constitution provided that no person should be hindered in the enjoyment of his freedom of conscience and expression, except with his own consent. Clarification was requested on the exact scope of that provision. In addition, it was asked which political parties, if any, were still banned, whether there were any daily newspapers, how local radio stations were organized and whether opposition parties had any right to access to the media.

338. With reference to article 20 of the Covenant, members of the Committee asked for clarification of the scope and import of the provisions in section 39 of the Criminal Code prohibiting individuals from aiding, advising or preparing for any war or warlike undertaking.

339. In connection with article 22 of the Covenant, it was asked if the Gambia's trade unions were legal entities in public or in private law, whether there was a single trade union or many, and whether the right to strike or to bargain collectively was the prerogative of trade union organizations as such or was allowed to workers themselves.

340. With respect to articles 23 and 24 of the Covenant, members of the Committee wished to know what was the minimum age laid down by law for marriage in the Gambia, what was the meaning of the term "common maintenance and custody" applied to children of dissolved marriages, whether Gambian law provided for the determination of paternity in cases of children born out of wedlock, whether they had the same rights under the law as legitimate children, what protection was afforded to working mothers and whether women who became pregnant were assured of the right to return to their jobs after they had given birth. Clarification was also requested on the subject of affiliation proceedings.

341. In connection to article 25 of the Covenant, members of the Committee expressed the view that the requirement in section 58 of the Constitution of the Gambia that to qualify to be nominated for election to the House of Representatives an individual had to be able to speak English well enough to take an active part in the proceedings of the House could be prejudicial to members of minority groups.

342. It was also observed that article 57 (b) and 63 of the Constitution relating to the election to the House of Representatives of Chiefs' representative members seemed to be at variance with the right of every citizen to be elected under article 25 of the Covenant. Clarification was requested with regard to section 60 of the Constitution which provided that a person was entitled to vote unless disqualified by Parliament.

343. As regards article 27 of the Covenant, information was requested on the status of ethnic, linguistic and religious minorities which existed in the Gambia. It was asked, in particular, how large they were, whether it was the Government's policy to promote their assimilation and whether the Government planned to ensure to preserve their characteristics.

344. Replying to questions raised by members of the Committee, the representative of the Gambia pointed that although his Government had ratified the African Charter on Human and People's Rights, that instrument was not yet in force because it had not received the necessary number of ratifications. The Law Reform Commission established in 1983 was composed of a judge of the

Court of Appeal, who acted as its Chairman, the President and a member of the Gambian Bar Association and two lay members. Its task was systematically to study the laws of the Gambia with a view to improving and modernizing them and its first subject was the protection of spouses and children following the dissolution of marriage. He assured the Committee that he would bring its views to the attention of the Law Reform Commission and impress upon it the need to scrutinize local law in order to determine whether it was compatible with the requirements of the Covenant.

345. As regards article 1 of the Covenant, the representative stated that in the Confederation of Senegambia, which had been in existence since February 1982, the two States retained their sovereignty and independence but adopted joint defence and monetary policies. Neither the Council of Ministers nor the Parliament of the Confederation, which were purely advisory bodies, could enact laws for the Gambia. He also referred to action taken by his Government at the international level to support the right of peoples, in particular in Palestine, to self-determination and to search for ways to initiate the new international economic order. He explained that the Gambia was an agricultural country which derived most of its foreign exchange from the export of ground-nuts. The country had a mixed economy and the Government had established advisory services to enable entrepreneurs to participate in the economic development of the country.

346. With reference to article 2 of the Covenant, the representative indicated that the legislative action required in the Gambia to incorporate the Covenant in municipal law had not yet been taken and, therefore, the Covenant could not provide the basis for a claim in the courts. Furthermore, under the Law of England Application Act, customary law would apply only to the extent that it was not in conflict with the statutes or contrary to justice. As regards administrative remedies available in his country, he explained that, in recent years, several people had addressed petitions either to the President or to the Ministry of the Interior instead of filing applications to the court. Such petitions had been given immediate attention and, if the parties in question had been wronged, their grievances had been redressed. However, that procedure had not yet become institutionalized and the majority of disputes were resolved by the district tribunals. Besides, the advice of village elders and religious leaders was frequently sought and was heeded. He also pointed out that the provision of article 25 of the Constitution applied to rights, such as the right to vote and to own land, which most countries guaranteed only to their own citizens.

347. Some information was given about the role of women in society. Detailed figures would be provided as soon as possible. As to the compatibility of section 26 of the Constitution with the requirements of article 4 of the Covenant, he clarified that the purpose of section 26 was to deal with the situation which had led to the declaration of a state of emergency, not to deal with any particular social, political, racial or ethnic group. However, it was possible that a particular group might be implicated in events leading to the declaration of a state of emergency.

348. Referring to article 6 of the Covenant, the representative stated that the question of whether force was reasonably justifiable under section 14 (2) of the Constitution was a question of fact to be determined in each case. He also stated that his Government had embarked on a maternal and child health programme and had initiated a primary health care programme for the whole population with the assistance of the international organizations concerned. Abortion was prohibited in the Gambia except in cases where it was necessary in order to save the life of the mother.

349. In respect to article 7 of the Covenant, the representative explained that the Constitution had come into force on 24 April 1970 and the purpose of inserting the date of 23 April 1970 in section 17 (2) was to ensure that a person could not claim that, for example, whipping, which was allowed by the law prior to the coming into force of the Constitution, had, by virtue of the new Constitution, become torture, or cruel, inhuman or degrading treatment or punishment. In this connection, he pointed out that whipping was currently restricted to persons below the age of 18 who could be sentenced to 12 strokes instead of imprisonment.

350. In connection with article 9 of the Covenant, the representative stated that there were no preventive detention laws in his country, although such detention was permissible in a state of public emergency; that the review tribunals had the task to advise the authorities on the need to continue to hold detainees; that compensation for wrongful arrest was always pecuniary and that there were currently no political detainees in the Gambia, nor detainees charged with offences during the state of emergency awaiting trial.

351. Responding to questions raised under articles 10 and 11 of the Covenant, the representative informed the Committee that the President of the Gambia, in a letter dated 24 December 1982, had instructed the Minister of the Interior to abolish the use of leg-irons in prison and that the only situation in which confinement was possible for inability to fulfil a contractual obligation was under the terms of an absconding debtor warrant.

352. In connection with article 13 of the Covenant, he stated that expulsion of aliens was not subject to appeal. Such cases could not be challenged in the courts unless bad faith could be shown or it could be demonstrated that the authority had no jurisdiction in the case.

353. With reference to questions raised under article 14 of the Covenant, the representative stated that the grant of bail in his country did not require any payment to the court and that it was presumed that a person should be afforded the possibility of bail unless he was likely to abscond. He also pointed out that under section 20 (2) (b) of the Constitution, the burden of proof always rested with the prosecution. If, however, a fact emerged during a trial and only the accused could testify to it, then the burden of proof rested with the accused.

354. With regard to legal aid to ensure a fair trial, he explained that from time to time the Bar tried to assist impecunious defendants on a voluntary basis and without payment. The Bar however was quite small and a member might not be available when needed in a particular court. The fact that no counsel was available did not stop the court from hearing a case but it imposed a greater obligation on both the prosecution and the judge to ensure that justice was done. He explained also that there were in the Gambia two kinds of magistrates in the magistrate's courts, namely, first-class magistrates, who had legal training and had been called to the Bar, and lay magistrates with a rudimentary knowledge of the law who represented the majority because of a shortage of trained legal personnel in the country. In addition, he informed the Committee that the Special Division of the Supreme Court had applied ordinary criminal law and ordinary criminal procedure, as amended only to enable the judge to sit alone, without a jury, and to disregard certain technical rules of procedure in so far as it did not result in a miscarriage of justice. All the judges of the Special Division had been recruited from abroad. Moreover he pointed out that secondary school curriculum included civics courses which taught students about their responsibilities in society.

355. In connection with article 15 of the Covenant, the representative stated that the question of whether or not criminal law had been applied retroactively in the case of the Movement for Justice in Africa could have been brought by the defence of that Movement before the Supreme Court, but the defence had not done so and the magistrate's decision had been let to stand.

356. With reference to the questions concerning constitutional provisions relevant to the implementation of articles 18 and 19 of the Covenant, the representative explained that an individual entering into an employment contract might understand that the working hours would prevent him from taking part in religious observances at a specific time but might none the less consent to the restriction. He also stated that no public political organization had ever been banned in the Gambia; that in his country papers were published twice or three times weekly, there were two radio stations, one run by the Government to which the opposition party had access during election campaigns.

357. Referring to the words "warlike undertaking", which were contained in section 39 of the Criminal Code and cited in connection with article 20 of the Covenant, he suggested that, in the absence of any judicial pronouncement in that regard, those words could be interpreted as referring to any act which revealed an unequivocal intention to prepare to engage in war or warlike activities.

358. In connection with article 22 of the Covenant, the representative explained that, under the Trade Unions Act, a trade union was recognized as a legal personality, and there was no restriction on the number of trade unions that could be formed. The right to strike was also recognized under certain conditions.

359. With regard to articles 23 and 24 of the Covenant, the representative explained that the marriageable age in his country was determined by the relevant marriage act, for example by the Civil, Christian or Mohammedan Marriage Act. The responsibility of parents and guardians were regulated by law. Neither customary law nor English law recognized the inheritance rights of illegitimate children. Working women were entitled to three months paid maternity leave either before or after delivery, and could also opt for early retirement for domestic reasons. There was no provision in the law relating to the registration of births covering affiliation proceedings. If the father of a child was not known or if no one acknowledged paternity, the surname of the mother was entered on the birth record.

360. In connection with article 25 of the Covenant, the representative stated that the language requirement for election to the House of Representatives did not constitute discrimination, because English was the official language of the country. Although there were several local languages, none was spoken nation-wide.

361. Replying to questions raised under article 27 of the Covenant, the representative informed the Committee that there no minorities in the Gambia. There were a number of different peoples, but none could be regarded as a minority requiring protection or as a majority seeking to dominate the others. Moreover, through intermarriage the distinction between those people had become blurred over the years.

362. The representative of the Gambia finally stated that other questions which had been asked by members of the Committee would be answered in his Government's next periodic report.



363. The Committee thanked the Government for having sent such a high-level delegation. Members stressed their satisfaction at the excellent exchange of views and said, inter alia, that the Committee had rarely had the benefit of such a clear, concise and well-informed response.

## **CCPR CCPR/CO/75/GMB (2002)\***

1. The Committee considered the situation of civil and political rights under the International Covenant on Civil and Political Rights in The Gambia in the absence of a periodic report at its 2023rd and 2024th meetings, on 15 and 16 July 2002 (CCPR/C/SR.2023 and 2024). At its 2035th meeting, held on 23 July 2002 (CCPR/C/SR.2035), it adopted the following provisional concluding observations pursuant to rule 69A, paragraph 1, of its rules of procedure.

### Introduction

2. The Committee regrets that, in spite of the diplomatic note, dated 22 March 2002, addressed by the Permanent Mission of The Gambia to the Secretary-General of the United Nations, which was confirmed in writing by a further communication, dated 19 June 2002, that a high-level delegation would attend the hearing before the Committee, that delegation failed to appear. The Committee recalls that it had previously agreed to the State party's request for a deferral of consideration of the country situation, in the light of the State party's commitment to send a delegation. In these circumstances, the delegation's last minute indication that it would not be attending the session is a matter of serious concern. The Committee further regrets the State party's failure to honour its reporting obligations under article 40 of the Covenant, and that no report had been submitted to the Committee since April 1983 (CCPR/C/10/Add.7), despite numerous reminders. This failure amounts to a serious breach by the State party of its obligations under article 40 of the Covenant.

### Positive aspect

3. The Committee notes that the State party has facilitated visits by the International Committee of the Red Cross, the African Commission on Human and Peoples' Rights and the latter's Special Rapporteur on Conditions of Detention, to the Mile Two State prison.

Principal subjects of concern and provisional observations

4. While Chapter Four of the Constitution of The Gambia contains various provisions that are compatible with those of the Covenant, the Committee notes that many differences between the provisions of the Constitution and the Covenant remain, in particular in sections 19, 21, and 35. The provisions of articles 10, 11, 13, 16 and 20 of the Covenant do not appear to have equivalent provisions in the Constitution. The Committee is concerned that, generally, the application of the Constitution itself appears to be undermined by several decrees issued by the Armed Forces Provisional Ruling Council (AFPRC), especially Decree No. 36 of April 1995, many of which remain in effect and which contradict both the Constitution and provisions of the Covenant.

The State party should bring its laws into conformity with the provisions of the Covenant.

5. Schedule 2, section 13, of the Constitution in effect grants retroactive immunity to the members of the Armed Forces Provisional Revolutionary Council (AFPRC). This situation is incompatible with article 2 of the Covenant, which enshrines the right to an effective remedy.

The State party should repeal Schedule 2, section 13, of the Constitution.

6. The Committee remains concerned over the adoption of the Indemnity Amendment Act, 2001, which effectively granted immunity from prosecution to members of the security forces who were involved in the break-up of the demonstrations of April 2000 in Banjul and Brikama.

The State party should repeal the 2001 Indemnity Amendment Act, whose provisions are contrary to article 2 of the Covenant, and allow the constitutional challenge to the Act, now before the Gambian courts, to proceed.

7. The Committee expresses concern over allegations about the resort to excessive and sometimes lethal force by the security forces, notably during the break-up of student demonstrations in Banjul, Brikama and other cities in April 2000 and during the presidential electoral campaign in autumn 2001. It is further concerned by reports of a significant number of extrajudicial executions committed by the security forces since 1995.

The State party should investigate allegations of instances of excessive use of force, especially use of lethal force and extrajudicial executions by the security forces, without delay and bring to justice those found responsible for such acts. The security forces must be instructed to act in ways compatible with articles 6 and 7 of the Covenant.

8. In the light of article 6, paragraph 6, of the Covenant, the Committee notes with concern that the death penalty was reintroduced in August 1995, after its abolition in 1993. It appears that Gambian law does not prohibit the death penalty for crimes committed by persons under the age of 18. It is not clear that all crimes presently carrying the death penalty qualify as the “most serious crimes” within the meaning of article 6, paragraph 2. The Committee further notes with concern that several death sentences have been imposed in recent years, although they were apparently not carried out.

The State party should provide to the Committee detailed information on the crimes for which capital punishment may be imposed, the number of death sentences handed down since 1995, and the number of prisoners currently detained on death row.

9. The Committee expresses serious concern over numerous allegations of torture and ill treatment, particularly during periods of incommunicado detention, in violation of articles 7 and 10 of the Covenant.

All allegations of ill-treatment and torture in custody must be investigated promptly by an independent body, and those held to be accountable for such acts should face appropriate sanctions/prosecution.

10. The Committee expresses its concern over the fact that female genital mutilation continues to be practised widely in the State party’s territory, notwithstanding the adoption of the First National Action Plan for the Eradication of Female Genital Mutilation (FGM) in March 1997. The Committee reaffirms that the practice of FGM is contrary to article 7 of the Covenant.

The State party should take prompt legal and educational measures to combat the practice of female genital mutilation. Rather than censoring radio and television broadcasts designed to combat the practice of FGM, such broadcasts should be reinstated and encouraged.

11. According to information brought to the Committee's attention, numerous members of the political opposition, independent journalists and human rights defenders have been subjected to arbitrary arrest and periods of detention of varying length without charges. In many instances these actions have been carried out by the National Intelligence Agency (NIA) in application of decrees issued by the AFPRC that legitimize the practice of detention without trial and charges. The Committee is further informed that NIA continues to practice incommunicado detention. This practice is contrary to article 9 of the Covenant.

The State party should ensure that all those arrested and detained are either properly charged and brought to trial without delay or released. Those who have been subjected to measures of arbitrary arrest and detention should be afforded an appropriate judicial remedy, including compensation.

12. According to information before the Committee, conditions of detention at Mile Two prison are not compatible with article 10 of the Covenant, and certain categories of prisoners, especially political prisoners, are subjected to particularly harsh treatment contrary to article 7 of the Covenant.

The State party should provide detailed information about the conditions of detention in Mile Two prison and ensure that conditions of detention conform to articles 7 and 10 of the Covenant, as well as to the United Nations Standard Minimum Rules for the Treatment of Prisoners.

13. The Committee regrets that it did not have before it the Code of Criminal Procedure. It notes, however, that Decree No. 45 (1995) and Decree No. 66 (1996) of the Armed Forces Provisional Ruling Council (AFPRC), extending the period of detention up to 90 days and which remain in force, are neither compatible with the constitutional provisions governing arrest and detention (sections 19 (2) and (3) of the Constitution), nor with the Covenant (art. 9).

The State party should repeal Decrees Nos. 45 and 66. It is requested to provide information on whether the constitutional provision under which any arrested person must be produced before a judge or judicial officer as soon as possible or within 72 hours of arrest at the latest is in fact consistently applied in practice. The Committee considers that the delay of 72 hours is difficult to reconcile with article 9, paragraph 3, of the Covenant.

14. The Committee notes with concern that detainees who are opposed to the Government and who face criminal charges do not always benefit from all guarantees of a fair trial, and that some have been tried before military courts, for which no constitutional provision exists. It further regrets that, in spite of the constitutional provision for security of tenure of judges, judges have reportedly been removed summarily from office in several instances.

The State party should afford to all those facing criminal charges trials in full conformity with the Covenant. It is invited to guarantee the security of tenure of judges. The State party is further invited to explain the basis for the establishment and operation of military courts, and whether the operation of these military courts is in any way linked to the existence of a state of emergency.

15. The Committee is concerned that the State party has withdrawn the passports of several members of the political opposition to prevent them from leaving the country.

The State party should respect the rights guaranteed under article 12 of the Covenant.

16. The Committee expresses its concern about systemic discrimination against women:

(a) Section 33, subsections 5 (c) and (d) of the Constitution derogate from the general principle of non-discrimination; the girl child is discriminated against in respect of education; women are discriminated against in matters pertaining to divorce, which is only permitted under rare circumstances; there is further discrimination against women in inheritance matters;

(b) The participation of women in political life, and in public and private sector employment, is particularly inadequate, on the basis of the information before the Committee;

(c) There appear to be no appropriate laws to protect women against domestic violence.

The State party should take appropriate measures to ensure that domestic laws (including decrees) and customary law, as well as certain aspects of the Shariah, are interpreted and applied in ways compatible with the provisions of the Covenant. It should ensure the equality of women with men, both in education and employment.

17. The Committee is concerned that the criminalization of abortion, even when pregnancy threatens the life of the mother or results from rape, leads to unsafe abortions, which contributes to a high rate of maternal mortality. The Committee regrets the absence of information from the State party on the provision of health services to women, especially in relation to reproductive health and family planning.

The State party recommends that the law be amended so as to introduce exceptions to the general prohibition of abortions.

18. The Committee remains concerned about the persistence and the extent of the practice of polygamy, and the different ages for marriage between boys and girls.

The State party should ensure that the practice of polygamy is discouraged. It should amend its laws that permit early marriages of boys and girls, at different ages.

19. The Committee considers that legislation passed in May 2002, creating a National Media Commission vested with the power to order the detention of journalists and to impose heavy fines on journalists, is incompatible with articles 9 and 19 of the Covenant. The Commission's procedure for the licensing of journalists is equally incompatible with article 19.

The State party is invited to review the above-mentioned legislation, with a view to bringing it into conformity with the provisions of articles 9 and 19 of the Covenant.

20. While noting the constitutional protection of the right to freedom of expression, the Committee

expresses concern that numerous journalists have been subjected to intimidation, harassment, and occasionally to detention without charges, for having published material critical of the Government. The resort to libel and defamation charges against journalists for similar reasons is equally cause for concern (article 19 of the Covenant).

The State party should guarantee the freedom of expression and opinion of the independent media. Journalists who have been subjected to measures of arbitrary detention should be afforded effective judicial redress and compensation.

21. In the Committee's opinion, the closure of independent radio stations, as well as the possibility, under Decree No. 71 (1996), to impose heavy fines on independent newspapers that do not register annually as required under the 1994 Newspaper Act and pay the registration bond payable pursuant to Decree No. 70 (1996), is indicative of unjustifiable restrictions on freedom of thought and expression and of a pattern of harassment of independent media.

The State party should reconsider the system for registration of independent newspapers and repeal Decrees Nos. 70 and 71, to bring its regulation of the print media into conformity with article 18 and article 19 of the Covenant.

22. The Committee is concerned that the right to freedom of assembly is subject to limitations that go beyond what is permissible under article 21 of the Covenant and that such limitations, including denial of authorization to hold meetings, are targeted in particular at the political opposition to the Government.

The State party should ensure full respect for the provisions of article 21, and should do so on a non-discriminatory basis.

23. While Decree No. 89 (1996), which banned political party activity, was abrogated in July 2001, the Committee notes with concern that political parties opposed to the Government are routinely disadvantaged and discriminated against in their activities, for example by denial or serious limitation of the possibility of radio or television broadcasts.

The State party should treat all political parties equally and provide them with equal opportunities for the pursuit of their legitimate activities, in line with the provisions of articles 25 and 26 of the Covenant.

24. In the light of information on the plurality of ethnic groups, religions and languages in The Gambia, the Committee is concerned over the State party's contention, expressed during the consideration of its initial report, that there were no minorities in The Gambia.

The State party is invited to report on measures taken to implement article 27 of the Covenant.

25. The Committee invites the State party to provide its replies to the concerns raised in the present provisional concluding observations by 31 December 2002. In this regard, the Committee encourages the State party to solicit technical cooperation from the appropriate United Nations

organs, in particular the Office of the United Nations High Commissioner for Human Rights, to assist it in meeting its reporting obligations under the Covenant.

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\* Pursuant to rule 69A, paragraph 3, of its rules of procedure, the Committee decided to make public the provisional concluding observations of The Gambia adopted and transmitted to the State party during its seventy-fifth session.