United Nations

End of visit statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Juan Mendez

The Gambia: UN team prevented from completing torture and killing investigations

Banjul, The Gambia, 7 November 2014

Introduction

The United Nations machinery for Human Rights has over the last 30 years created a number of Special Procedure mandates on various human rights issues. Our mandates deal with extrajudicial, summary or arbitrary executions and torture and other cruel, inhuman and degrading treatment or punishment, respectively. Both mandates typically investigate issues that are considered to be sensitive from a state security perspective. We view country visits as an opportunity to make a constructive contribution towards the greater realisation of two pivotal rights.

Remarkably and encouragingly The Gambia, in its first ever official invitation to UN Special Procedures, invited our mandates to conduct a joint visit, which our mandates have never before undertaken. The visit was originally scheduled to take place in August 2014 but only days before the start of the visit it was cancelled by the Government without explanation.

The visit was rescheduled for 3 to 7 November 2014 and we are grateful to all interlocutors from the executive, administrative and judicial branches of the Government and representatives of the security forces with whom we met. We requested but unfortunately did not receive a meeting with the President. We did meet with the Vice-President's office and high level representatives in the Government. In addition, we met with representatives of international and local non-governmental organizations, the UN and diplomatic community and civil society.

In all our country visits we plan visits to places of detention as this is a core element of our mandates undertaken in accordance with the Terms of Reference for Fact Finding Missions By Special Rapporteurs (Terms of Reference) which *inter alia* include guarantees concerning "access to all prisons, detention centres, and places of interrogation" and "confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty".

During the initial briefing with officials on 4 November 2014, after our arrival, the Terms of Reference were reiterated once again that visits to all places of detention and interrogations would be unrestricted, unaccompanied and unsupervised. Upon arrival at our first port of call, Mile 2 Prison, we were informed that we would be given a guided tour to parts of the prison, and that under no circumstances would we be allowed to visit the Security Wing, where *inter alia* the death row prisoners are held. Immediately thereafter, we met with the Government again, including the Vice-President, and urged the authorities to reconsider their position. The Government officials present at this meeting informed that they were not authorised to allow such unrestricted and unsupervised visits to take place, also beyond Mile 2. The prospect of departing from of the principle of unrestricted access in one country but not in others we have

or will visit, would clearly display double standards and undermine the mandates entrusted by the UN Human Rights Council.

Due to denial of access to the Security Wing of Mile 2 prison to visit those sentenced to lengthy sentences, including the death penalty, an inference must be drawn that denying access to a particular part of a facility means there is something to hide. This incident was in clear violation of the Terms of Reference of any country visit and forced us to suspend this integral part of the visit.

When we asked the Government for the rationale behind exempting the Security Wing from our inspection, we were told that it was due to the serious nature of the crimes committed by those in this section. Some of those detained have appeals pending before the courts and yet their punishment is exacerbated by keeping them in conditions of extreme isolation. This intention to add further cruelty to those who have been placed in this wing has no place in a compassionate society.

The Terms of Reference also guarantee "assurances by the Government that no persons, official or private individuals who have been in contact with the Special Rapporteur […] in the relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings". In light of the Terms of Reference being severely compromised through the denial of access to places of detention, as described above, we asked the Government to reaffirm its commitment not to engage in any reprisals, not least because many of our interlocutors and witnesses interviewed spoke about their fear of such results. We have received assurances from the Government that this and all other aspects of the Terms of Reference will be fully respected as per our earlier agreement.

Today we wish to present to the Government of The Gambia, to civil society and to the international community our preliminary findings on the visit. We will continue to engage with the Government and all relevant stakeholders to receive more information and clarifications before we present our respective final reports on our visit to the UN Human Rights Council in March and June 2015.

Preliminary findings

<u>The Death Penalty</u>

We express concern about the legal framework and existing practices in connection to the imposition of the death penalty, which are not in conformity with international law.

The 1997 Constitution mandates the National Assembly to review the desirability of the death penalty 10 years after its entry into force, with a view towards it possible total abolition. Such review should have taken place in 2007 and is now seven years overdue.

The death penalty was abolished in The Gambia in 1993 and reinstated in 1995. According to the 1997 Constitution, "*As from the coming into force of this Constitution, no court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person*".

The Criminal Code, the Gambia Armed Forces Act and the Anti-Terrorism Act set out a number of offences which are punishable with death, including treason, murder, aiding the enemy, offenses by person in command when in action, offenses relating to security, offenses to prisoner of war, offenses relating to convoys, mutiny with violence and acts of terrorism.

Under the Criminal Procedure Code, the death penalty is mandatory for murder, which prevents judges from considering extenuating circumstances or the imposition of more lenient punishments. Mandatory death penalty for any offense is a clear violation of international law standards. The mandatory death penalty for drug trafficking was abolished in 2011.

We have been informed that in the constitutional challenge brought by Lang Tombong Tamba and his co-defendants, the Supreme Court upheld the sentence for death penalty arguing that Article 18(2) contemplated the death penalty for all crimes involving "violence," understood to include attempted violence or violence that did not result in death. This interpretation violates international human rights norms which mandate that limitations to the right to life be interpreted in the narrowest possible fashion. Plain reading of Article 18 (2) clearly shows that it was formulated with the international standards in mind, requiring violence or the administration of a substance "resulting in the death of another person", not "with the potential of resulting in the death of another person". The review of the appeal is pending.

The Gambia is a party to the International Covenant on Civil and Political Rights (ICCPR), which states that the death penalty may only be reserved "for the most serious crimes." We would like to recall also that the Human Rights Committee has found the imposition of the death penalty for crimes that do not result in loss of life incompatible with the Covenant[1]. Further jurisprudence by the Human Rights Treaty Bodies holds that the "most serious crimes" provisions should be understood as to mean that only the crime of intentional killing may be punishable by death.

Resumption of executions and conditional moratorium

The seemingly arbitrary re-introduction of executions for a couple of days and then its subsequent suspension has shocked the world and tainted the Gambian justice system as deeply arbitrary. After 30 years of no executions, in August 2012 President Yahya Jammeh announced that all existing death sentences would be carried out. On 23 August 2012, nine death row prisoners held at Mile Two Prison were executed allegedly by a firing squad at Mile 2. At the time of the execution, there were 47 inmates in death row. According to available evidence, the death sentences were imposed in violation of major fair trial international standards, including the most serious crimes provisions.

Mr. Malang Sonko, Ms. Tabara Samba, Mr. Buba Yarboe, Mr. Gebe Bah, Mr. Lamin Jarju, Mr. Alieu Bah and Mr. Lamin Jammeh were reportedly executed without exhaustion of their legal appeals. Another prisoner, Mr. Dawda Bojang, had been sentenced in 2007 to life imprisonment but was sentenced to death in 2010 after he appealed to the High Court. At the time of the execution, Mr Bojang had not exhausted his appeal to the Supreme Court. We

[1] CCPR/C/79/Add.25, para. 8

were informed that Mr. Lamin Darboe's death sentence had been commuted to life imprisonment and then reinstated by the Armed Forces Provisional Council in 1995 when Gambia restored the death penalty, in violation of the principles of non-retroactivity of the law and the rule of lenity (the right to benefit from the lighter penalty). He had not exhausted his legal appeals.

According to the information received, none of the cases were brought to the Supreme Court before their execution. As the Constitution provides that appeals in death penalty cases are automatic, the onus was on the authorities to ensure appeals reached the Supreme Court.

We were informed by first-hand sources that Mr Yarboe may have suffered a mental disability and was nonetheless executed, in disregard of international law provisions prohibiting the imposition or execution of the death penalty on a person suffering from any form of mental disorder.

Moreover, information brought to our attention indicates that the trials did not meet other due process safeguards such as the requirement of transparency, as they were carried out in secrecy and without prior notification to the prisoners, their families or their lawyers. Two Senegalese prisoners, Ms Tabara Samba and Mr Gebe Bah, were amongst those executed; however the Senegalese authorities were not informed prior to the executions and there are doubts about whether they received consular assistance from their country. Moreover, the Gambian authorities only confirmed the executions several days after. It was also reported that the bodies of those executed were not returned to their families and that they were not informed of the place of burial.

In October 2012, The Gambia was the subject of a suit before the ECOWAS Court on behalf of all death row prisoners and on behalf of the families of the executed, seeking monetary damages and the return of the deceased prisoners' bodies. The case is still pending.

Prior to these events, the last official execution in the country took place in 1985 and the country was at the forefront in the region's efforts to abolish in law and practice the death penalty, with a moratorium on the death penalty for 27 years and the abolition of capital punishment for drug offences in April 2011. However, the executions undermined these efforts and represented a major step backwards for the country, and for the protection of the right to life in the world as a whole. This happened despite the fact that, during the universal periodic review of the Gambia in the Human Rights Council in 2010, its Government had reaffirmed the moratorium. The international community, and ourselves, reacted at the time with appal and strongly condemned the executions.

In September 2012, a renewed conditional moratorium was put in place dependent on the rise or fall of the crime rate in the country. There does not seem to be any rational basis on which the nine executed were chosen to die and the others would live.

Use of force

The Constitution of the Gambia does not require the existence of an imminent threat of death or serious injury for 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. Conversely, under article 18 of the Constitution, the use of such force is allowed when "reasonably justifiable" for the defense of property, "to effect lawful arrest or prevent the escape of a lawfully detained person, "to

prevent criminal offenses" or in the cases of "riots, insurrection or mutiny". We wish to note that this provision sets the standards for the use of force too low and are incompatible with international law norms.

The legal constraints on the use of force by the National Intelligence Agency – which reports to the President directly – is even less clear than those on the police. We were unable to obtain a copy of their code of conduct. Likewise, it is not clear under what circumstances and conditions the National Drug Enforcement Agency may use force, leaving it open to abuse. It is a requirement of international law that the conditions for the use of force will be set out in law.

There is widespread fear in the country about the unchecked use of force for political purposes and to stifle dissent.

Impunity for extrajudicial executions and enforced disappearances

During our visit, we received reports of extrajudicial executions against those who are deemed to be opponents of the regime, members of security forces, journalists and human rights defenders.

Emblematic cases such as the killing of Deyda Hydara, editor of the Point Newspaper and President of the Gambia Press Union, remain unresolved and no one has been brought to justice for this crime. The ECOWAS Court of Justice found that the Government has failed to conduct a diligent investigation on this case and ordered the payment of compensation to Mr Hydara's family; however, the ruling has not yet been complied with.

The Government has also failed to investigate the death of 44 Ghanaians intercepted by security forces in the Gambia on suspicion of planning to overthrow the government. Reports indicate that they were killed by security forces with machetes, axes and other weapons and determined the responsibility of rogue security officers for these deaths, but no judicial prosecutions followed.

Reports of enforced disappearances were also brought to our attention, such as the abduction and later disappearance of Chief Ebrima Manneh, journalist at the Daily Observer, in July 2006. Although the Government has denied its involvement on the case, the ECOWAS Court of Justice ordered the Government his immediate release and the payment of compensation to his family.

Also in 2006, five security officers were arrested on suspicion of planning a coup and were not seen ever since. The Government indicated that the officers have escaped after a road accident but they were never to be found again. Their disappearance was never investigated.

In light of the time elapsed since these abductions and the lack of information regarding the fate and whereabouts of the concerned individuals, it is feared that some of them may have been subjected to unlawful or extrajudicial killings.

More recently reports emerged regarding the abduction and disappearance US-Gambian citizens Alhaji Mamut Cessay and Ebou Jobe in June 2013. Their fate and whereabouts remains unknown.

We would like to recall the duty of the Government to take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces. Furthermore, the State is under the obligation to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions

Paramilitary groups

During our visit, we have received diverse reports and testimonies about the existence of paramilitary groups in the country associated with the security forces. A group reportedly called the Jungullars or the Junglers has been associated in these reports with arbitrary arrests, detention, torture, enforced disappearances and extrajudicial killings against persons opposed to the regime, journalists and ordinary civilians. Such a unit, if it exists, will clearly be unlawful under international law and expose anyone involved in it to criminal prosecution. A judicial commission should investigate the very serious allegations in this regard.

Public demonstrations and the use of force

In April 2000, 13 students and a journalist were killed and 28 were wounded when security forces opened fire during a peaceful demonstration organized by students. An inquiry set up to investigate the events concluded that the security forces deployed to control the demonstration were responsible for the deaths but the Government subsequently rejected the findings and no one was brought to justice.

According to testimonies received, the climate of fear instigated by this event and the impunity that followed has reduced to a minimum the numbers of demonstrations that have taken place in the country since then.

Article 18 of Gambian constitution allows the use of force in cases of "riot", insurrection or mutiny". However, the Public Order Act sets up the requirement of authorization for the organization of rallies or demonstrations.

Prevalence of torture

Section 21 of the Constitution states no person shall be subject to torture or inhuman degrading punishment or other treatment, however, it has not been criminalized in the national legislation. Based on testimonies received, torture is a consistent practice carried out by the National Intelligence Agency. In cases where there is a real or perceived threat to national security there is corresponding increase in acts of torture and ill-treatment during the detention and arrest process. There was anecdotal evidence that some of these practices were also carried out by the police on persons who had committed common crimes but we are not in a position to comment on this at this time.

We received many testimonies from people who did not want to be identified out of fear for either their own safety or their families. We were able to conduct thorough interviews and conduct forensic examinations. We found the testimonies truthful and were able to substantiate this with physical evidence that is conclusive of torture. A noted independent forensic expert accompanied our team and was able to substantiate the physical evidence with medical examinations and presented a number of cases where the injuries show treatment that amounts to torture (or is consistent with allegations of torture).

The nature of the torture is brutal and includes very severe beatings with hard objects or electrical wires; electrocution, asphyxiation by placing a plastic bag over the head and filling it with water and burning with hot liquid. These methods of torture generally occurred over a period of days or even weeks.

Lack of official registration upon detention

It is crucial that all persons are officially registered from the moment their liberty is deprived. It appears that suspects of "high interest" detained by the NIA are usually not officially registered and held beyond the 72 hour limit, for days or weeks, 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.

In fact there is a two-stage approach to NIA detentions. The agency detains individuals in unofficial places of detention and then they are turned 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.

Lack of accountability regarding investigations

The lack of serious safeguards regarding detention and interrogation give rise to cases of disappearance where there is a real risk of torture or summary execution. In recent cases on disappearances that were communicated to us we can only surmise that torture was used.

We attempted to verify the facts in a number of high profile cases which must be resolved by bringing the perpetrators to justice and ending the suffering of the families. Not knowing the fate of a loved one amounts to cruel and inhuman treatment.

The Government has an obligation to investigate, prosecute and punish every incident of torture and ill-treatment and the obligation to prevent such occurrences. The Government has failed to implement the African Commission on Human and People's Rights (ACHPR) resolution 134 (2008) calling on The Gambia to investigate all allegations of acts of torture in detention and extrajudicial executions and to comply with the decisions of ECOWAS Court of Justice.

We inquired into cases where courts or internal affairs units of the security forces may have dealt with allegations of torture. The Human Rights Unit of the Police, created in 2012, has had only one such case reported to it, and it concluded that the injuries suffered by the complainant were caused by the fact that he resisted arrest. The Ombudsman office, created in 1999, has had only two cases of torture in fifteen years and in both it found against the complainant. We learned 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, it did not amount to the specific intent required for murder. Rather than changing the qualification to manslaughter or some other lesser offense, the Court astonishingly reversed the previous conviction and ordered the release of the two police officers. The death in custody of a person who was obviously mistreated only reinforces a culture of impunity.

We have not heard 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.

Moreover, the Indemnity Act of 2001 provides the President with nearly unfettered powers to ensure impunity.

Role of judiciary and prosecutors

A judiciary that is independent and impartial 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. They have a dual obligation of prevention and accountability.

In the criminal law context, the Gambian legal system follows the adversarial traditions of the common law, but we were surprised to hear that the concept of an adversarial system seems to be applied in such a way that reduces both courts and prosecutors to the static and passive role of deciding cases solely on the evidence that is brought to their attention by the parties to the litigation.

It would be important for judges and prosecutors to take it upon themselves, under a sense of legal obligation, to visit places of detention to locate detainees subject to a petition for habeas corpus relief or for bail; 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; to initiate prosecutions against whomever may be responsible for mistreating an inmate, including the superiors who may have tolerated or condoned that mistreatment; to monitor conditions of detention of persons in pre-trial detention and order improvements as necessary; to order that the judge in charge of the case be notified beforehand of any transfer of detainees; after conviction, to monitor the conditions of execution of the sentence imposed throughout, including prison sentences and death penalties; and more generally to ensure that all aspects of the chain of criminal justice (investigations, detentions, interrogation, arrest and conditions of incarceration) comply with the rule of law.

Arrest and detention powers

The standards for detention and arrest by the police, as spelled out in the law, are in our view consistent in principle with international law: police can conduct an arrest in case of flagrante delicto, of reasonable suspicion of the commission of a crime, and pursuant to an arrest warrant. However, we are concerned that in practice, arrests pursuant to a warrant are the exception and not the rule. 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.

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. Although we have no reason to believe that the police does not generally comply with the obligation to bring a person to court in 72

hours after detention, we have ample evidence that the National Intelligence Agency (NIA) does not comply with this rule. We were told by the Government that the NIA does not conduct arrest other than in exceptional situations and only until the police can receive the suspect. However, we received abundant evidence of persons held in what amounts to clandestine detention for days and even weeks before being brought before a judge. Not surprisingly, the worst cases of torture that we heard happened under those conditions of unofficial detention.

Authorities told us they only detain in "exceptional circumstances" at NIA Headquarters but we have gathered extensive evidence that the NIA detain for a number of days, even up to 63 days, before handing the individual over to the police. Further, in addition to holding detainees at HQ, we heard testimonies about detainees being held in unofficial places of detention.

Forced confessions: evidence obtained under torture

We understand that a "trial within a trial" (voir dire) is opened each time there is a complaint or reason to believe that a statement against interest was not freely made, and that the burden is on the State (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 the exclusionary rule of the Convention Against Torture, a standard also required by customary law. We were assured 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. We did not receive cases in which the "voir dire" resulted in exclusion of confessions obtained under torture or other violations of due process. We continue to search for precedents.

Access to lawyers

It would be important to establish a clear rule that persons must have access to a lawyer from the moment of deprivation of liberty. The National Agency for Legal Aid (NALA) which provides free legal assistance to persons charged with offences that carry the death penalty or life imprisonment (and to all juvenile offenders charged in the Children's Court) should be expanded and its services made available, on a compulsory basis, for all types of offenses.

The result is that most accused do not have access to a lawyer as they cannot afford to pay for one so have no legal representation and have to rely on an "independent witness" when signing a confession. This is inadequate legal protection and meaningless if civil society has a widespread fear of the police system. Use of "independent witness" rather than legal counsel does not protect against forced confessions and instead lends them a veneer of legality.

Forensics

We heard no information about the presence of forensic doctors by the police, the Public Prosecutor's Office nor the Ministry of Justice. The Ministry of Health informed that forensic evidence required by courts into cause of death are handled by pathologists. Even if properly trained as physicians and as specialists in pathology, these doctors perform other

functions in their regular duties and are not trained in forensic medicine as a separate specialty. It appears that there is no specific training in the Istanbul Protocol nor a forensics lab to assist in the determination of cause of death or occurrence of torture. The absence of forensic medical sciences or of any medical doctor trained on the Istanbul Protocol means the fulfilment of State obligations regarding torture is completely undermined.

There is a need for significant investment in the fields of psychiatry and forensic medicine, accompanied by specific training of forensic experts on the assessment of ill-treatment and torture, in line with international standards, including the Istanbul Protocol. In practice, the safeguards against torture do not effectively operate because "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.

Complaint system

The complaint system regarding allegations of torture and ill-treatment, and investigation, prosecution and punishment of perpetrators, with the exception of a very few cases, seems to be in law only as it appears to be the norm, based on the high number of testimonies received, that victims lack faith and/or are afraid to raise allegations of torture or ill-treatment within the police, the Prosecutor's Office or the court due to inaction or fear of reprisal and thus there is no effective complaints mechanism to investigate such allegations. There is a Human Rights Unit within the Police which if well trained could be a good first step but it would not govern complaints addressed to the National Intelligence Agency.

Prison conditions

Since we had to suspend visits to all places of detention we were not able to conduct any visits and assess independently the conditions in any of the prisons or police stations. As we were denied access to all places within the facilities, we were unable to verify reports we had received from several sources of the movement of detainees between various official and non-official prisons.

However, we received testimonies and information on inhumane conditions due to unsanitary conditions, lack of bedding, poor quality of food and lack of adequate access to medical care and medicines.

Two issues in particular were brought to our attention: overcrowding, particularly in the remand section and the practice of solitary confinement in the Security Wing at Mile 2 and in places of unofficial detention.

At the Security Wing of Mile 2, the use of prolonged or indefinite solitary confinement, under a conditional moratorium, causes pain and suffering of a mental nature that is severe and has long-lasting effects. It may even give rise, to the "death row phenomenon" which refers to a combination of circumstances that produces severe mental trauma and physical suffering among prisoners serving death sentences. It constitutes ill-treatment and in the absence of any mitigation of the conditions (visits, reading material, some access to radio or TV), solitary confinement is torture. Testimonies were also received that solitary confinement is imposed on those held in unofficial places of detention.

The Director of Prison Services provided statistics on the level of overcrowding, with Mile 2 being the most severe. (Mile 2 prison: official capacity 450 (582 male inmates - 195 pre-trial, 5 NIA cases); 28 female inmates (8 pre-trial); Jeshwang prison: official capacity 150 (currently 201 inmates and 15 juveniles); Janjangbureh prison: official capacity 50 (currently 88 inmates).

There are efforts to reduce overcrowding by release of persons in unduly prolonged preventive detention (remand). This is mostly done by non-governmental efforts with varied support from courts and prosecutors. 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 remand for months or years. The project resulted in the release of about 18 inmates accused of relatively minor drug-related offenses (e.g., possession of small amounts of cannabis) and possibly a few more released later. This however, is a drop in the bucket in terms of reducing overcrowding. Further efforts, with adequate funding to ensure more active State participation (prisons, prosecutors and courts) in a sustained fashion is needed.

An aggravating factor is that the congested prisons are a direct result of draconian criminal laws regarding lengthy sentences for drug offences. Persons charged with drug offences are subject to lengthy remand periods that exceed any penalty they might eventually receive. There is a need for a systematic review of criminal legislation on drugs and focus of investigation and enforcement, to concentrate on major drug dealers and sellers instead of those at the bottom of the chain.

National Institutions

The Ombudsman's office does not seem to have an interest in addressing issues of violence. The Government has debated for a long time now with the idea of a National Human Rights Commission (NHRC). The draft law establishing it is before the National Assembly. If this is to be an independent and impartial institution, it is certainly worth pursuing and must be established in accordance with the Paris Principles. It could not only become an effective monitoring mechanism but also a mediator between the State and its citizens to begin a genuine dialogue on various human rights that need further development and protection in The Gambia.

Ratification of international treaties:

It is not clear from the laws including, the Constitution, what the process is to ratify international conventions, and what the status of such conventions – and customary international law – is in the domestic system.

The Government must prioritize the formal ratification of the Convention against Torture (CAT) and the Optional Protocol to the Convention against Torture (OPCAT) which will allow a national system of regular prison monitoring by independent experts, and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

Other issues that will be addressed in the final reports

Issues regarding the obligation to protect persons in situations of vulnerability such as the continued practice of female genital mutilation (FGM) on women and girls, violence against

LGBTI persons and threats against journalists and human rights defenders will be addressed in our respective reports.

Concluding remarks

We wish to conclude by reiterating our appreciation to the Government for having invited us to visit the country. We are honoured and hope that our visit leads to the advancement of the protection of human rights in The Gambia. We stand ready to provide technical assistance to the Government in the areas pertaining to our respective mandates as the Government works to improve the legal and infrastructural conditions for the protection of the right to life and guarantees against torture in The Gambia, and to find solutions for some of the challenges raised today that uphold the rule of law, promote accountability for human rights violations and fulfil the right of reparation for victims. If the past is not addressed, one cannot prevent future violations.

We hope the recommendations contained in these preliminary findings and later in our reports to the Human Rights Council will serve as guidance in this endeavour, and we shall continue to monitor their implementation in our future reports.

We hope this first visit to The Gambia can open the door for renewed and strengthened engagement with the United Nations human rights mechanisms as a whole. We invite the Government to consider inviting other Special Procedures to visit the country.

When The Gambia appeared before the Universal Periodic Review at the UN Human Rights Council last week it appeared that a fruitful dialogue on human rights could help The Gambia re-engage with the international community. This was our hope when we committed ourselves to this visit in good faith. While our visit has experienced serious challenges regarding unrestricted access and an overriding atmosphere of apprehension and even fear from many who engaged with us, we welcome the assurances we have received from officials at the highest level that there will be no reprisals and hope that the Government will find our observations helpful for continued engagement on human rights.