



CTI TECHNICAL WORKSHOP

IMPROVING IMPLEMENTATION OF THE UN CONVENTION AGAINST TORTURE:
STRENGTHENING COMPLAINTS, INVESTIGATIONS AND PROSECUTION
MECHANISMS

THE GAMBIA
TUESDAY 25-THURSDAY 27 OCTOBER 2022
WORKSHOP REPORT

In partnership with

REDRESS

Ending torture, seeking justice for survivors

INTRODUCTION

1. On 25-27 October 2022, the Convention against Torture Initiative (CTI), in partnership with REDRESS, and in collaboration with the Ministry of Justice and Attorney General's Chambers of The Gambia (MoJ) held a Technical Workshop entitled: "Improving Implementation of the UN Convention against Torture: Strengthening complaints, investigations and prosecution mechanisms", in Serekunda, The Gambia.
2. The Workshop included technical sessions on the definition and criminalisation of torture and non-derogability; effective complaints and investigations mechanisms; and the prosecution of torture. Over two and a half days, speakers and participants discussed the legislative, policy and regulatory frameworks on the prohibition of torture in The Gambia, reflected on legal gaps and practical challenges which may hinder effective investigations and prosecutions for torture and other ill-treatment in the State, and identified proposals which may increase the State's capacity to adequately investigate and ensure accountability for instances of torture and other ill-treatment moving forward. In addition to legal, political, and institutional reforms, participants also identified specific practices which they intend to use in their own roles, and actions that they could take forward as agents of change within their own agencies to strengthen the anti-torture framework in The Gambia. Participants also identified areas in which further technical support would be welcome in their ongoing efforts in the fight against torture.
3. The Workshop was attended by 14 senior level participants from the Ministry of Justice, the High Court, the Gambia Police Force, the Drug Law Enforcement Agency, the Armed Forces, the State Intelligence Services, and the Prisons Service.
4. The Workshop featured a mix of knowledge-based sessions with practical case study scenarios on complaints, investigations, and prosecutions of torture. Each session included time for small break-out groups during which participants were able to discuss issues and challenges presented to them during the session and engage directly with participating experts and colleagues from different Government agencies. The workshop was facilitated by experts in the African region, and CTI and REDRESS staff (in alphabetical order by last name): Julie Bardeche, Legal Advisor at REDRESS; Laura Blanco, Legal Officer at CTI; Edmund Foley, Director of Programs, at the Institute for Human Rights and Development in Africa (IHRDA); Chris Gitari, Vice-Chair of the International Commission of Jurists, Kenya (ICJ Kenya); Holly Huxtable, Legal Officer at REDRESS; and Renata Politi, Legal Officer at REDRESS.
5. Opening remarks were delivered by the Hon. Hussein Thomasi, Solicitor-General of The Gambia, who noted the important steps against torture which have already been taken at the national level following the ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 2018, including

the draft Prevention and Prohibition of Torture Bill – currently pending in Parliament – and the establishment of a Paris Principles-compliant National Human Rights Commission mandated to receive complaints of human rights violations. The Hon. Solicitor-General stressed the need for The Gambia to adopt additional measures to effectively implement UNCAT obligations in law and practice, including the importance of increasing the capacity of State officials on international anti-torture standards.

6. Opening remarks were delivered via pre-recorded message by H.E. Ambassador Emmanuel Kwame Asiedu Antwi, Permanent Representative of Ghana to the United Nations and other international organisations in Geneva, as a CTI Core State Ambassador. The Workshop was brought to a close by Mr. Gibril Lowe, Deputy Permanent Secretary at the Ministry of Interior of The Gambia, who delivered remarks on behalf of Hon. Seyaka Sonko, Minister of Interior of The Gambia, highlighting the timeliness of the Workshop in building the capacity of security services to ensure adherence to human rights standards.
7. Following the Chatham House Rule of non-attribution, this report provides a summary of the discussions, including proposals identified on the way forward.

WORKSHOP SESSIONS AND KEY FINDINGS

Introduction to the UN Convention against Torture: Definition and criminalisation of torture and non-derogability

8. The initial substantive sessions of the Workshop provided an overview of, and interactive discussions on, States' main obligations under UNCAT, with a particular focus on the definition and criminalisation of torture, how it differs from other cruel, inhuman or degrading treatment (hereinafter 'other ill-treatment'), and the absolute status and non-derogability of the prohibition of torture. It was acknowledged that while The Gambia has indeed ratified UNCAT, there remains scope to improve incorporation of anti-torture standards into the domestic legal framework and its effective implementation in practice to ensure full compliance with UNCAT obligations.
9. Participants noted that while cases of torture and other human rights violations perpetrated during the previous regime of Yahya Jammeh have been investigated and documented by the Truth, Reconciliation and Reparations Commission (TRRC), criminal prosecutions for torture would not be possible under the current legal framework. This continues to form the basis of ongoing discussions relating to the establishment of a hybrid tribunal between The Gambia and the Economic Community of West African States (ECOWAS) with jurisdiction to prosecute torture and crimes against humanity. In this context, some concerns were noted regarding the State's capacity to deal with current and future acts of torture and other human rights violations due to the significant financial and human resources needing to be allocated. Discussions were also devoted to the challenges of implementing institutional reform and police and law enforcement

vetting as a means of dealing with past atrocities, also in view of officials from the previous regime who continue to hold public office. Kenya's experiences with police vetting were shared as a positive practice, which included passing a regulation that includes both employment and transitional vetting.¹

10. A detailed discussion on the elements of the definition of torture provided for in UNCAT raised issues related to the difficulty of (i) assessing the threshold of the severity of pain or suffering necessary to constitute torture, and (ii) distinguishing torture from other ill-treatment – particularly stressing that people may have different levels of resilience. It was then noted the importance of considering the sex, age, and state of health of the victim, physical and mental effects, as well as the duration of the ill-treatment. On this note, issues related to current prison conditions in The Gambia were shared, particularly that material conditions of detention may in some cases potentially amount to other ill-treatment.
11. Whilst the understanding of torture for the purpose of extracting confessions or information, or to punish the victim or a third person, was clear, the discriminatory purpose of torture was less familiar. Nonetheless, its relevance to the Gambian context was acknowledged, not least because of instances of violence which may amount to torture on grounds of ethnicity, gender, or religion. On this note, concerns were raised regarding legal, cultural, and social barriers which may foment and hinder appropriate accountability for sexual and gender-based violence in The Gambia. Therefore, the importance of incorporating the discriminatory element to a national definition of torture was noted as one of the necessary steps to address such violations.
12. Regarding challenges shared, it was noted that a lack of training, awareness-raising and understanding of the definition of torture under UNCAT – particularly the four elements of severity of the physical or mental pain or suffering, intent, specific purpose, and involvement of a public official – are one of the key factors hindering relevant actors from identifying cases of torture in their day-to-day work. Such lack of knowledge is compounded by the fact that torture is currently not criminalised as a separate offence in national law. Police and other law enforcement investigators, prosecutors, and judges are therefore not familiar with the offence and often acts amounting to torture are prosecuted under different offences, such as assault.
13. While the accountability of State officials for acts of torture did not raise any debate, questions were raised related to State responsibility for acts of torture perpetrated by non-State actors (NSAs). This prompted a discussion on issues related to State responsibility when NSAs exercise control over a specific territory, as opposed to a general obligation of due diligence to prevent, investigate, prosecute and punish instances of torture when State officials have reasonable grounds to believe that such acts are being committed by NSAs or private actors. The latter was identified as most

¹ For more information on transitional vetting, see: Daniel Blocq, Alexander Mayer-Rieckh and Roger Duthie, "Reflections and Recommendations for Transitional Vetting", ICTJ policy brief, June 2020, available at: https://www.ictj.org/sites/default/files/ICTJ_Policy_Kenya_Police_Vetting_Web.pdf.

relevant to the Gambian context.

14. Lastly, while the absolute status and non-derogability of the prohibition of torture is commonly accepted, an analysis of case studies on counterterrorism, use of force during peaceful demonstrations, discriminatory violence, arbitrary arrests and conditions of detention, shed light on practical issues in the Gambian context which could undermine respect for the absolute nature of the prohibition of torture. In particular, participants from law enforcement shared the difficulty of assessing and respecting, in practice, the limits of non-coercive methods of interviewing in counterterrorism cases, and some concerns were raised regarding the capacity of investigators to deal with such cases due to a lack of rules and guidelines to regulate questioning and investigations. Difficulty and possible lack of capacity of State authorities to appropriately police peaceful assemblies and demonstrations with no recourse to excessive use of force or “crowd-control” methods or dispersion where needed was also underscored. Finally, there also seemed to be different understandings as to what elements would be indicative of an arbitrary arrest, especially when based on discrimination or during peaceful demonstrations, and regarding possible discriminatory motives behind poor conditions of detention.

15. In light of the issues discussed throughout these sessions, the following recommendations were highlighted as key priorities:

 **Sensitisation and capacity-building** to police and law enforcement agencies, particularly on issues relating to the exclusion of illegally obtained evidence, and on investigative interviewing. Implementing training of trainers for lawyers of security sector departments was also seen as a good practice.

 Developing **training tools and guidelines** for investigations that can be used in ongoing and targeted training. A **technical manual** containing good practices and guidance on effective investigations into torture and other ill-treatment was seen as a useful tool to be shared across police and other law enforcement and security agencies.

 Pursuing a **change of culture, mindset and habits** that brings superior officers on board, and enables junior officers to model their supervisors’ behaviour and not act on orders.

 **Enhanced collaboration amongst relevant agencies** in The Gambia and a clearer understanding of their duties as they relate to reporting torture.

The draft Prevention and Prohibition of Torture Bill

16. The third session of the Workshop invited participants to examine the current draft of the Prevention and Prohibition of Torture Bill (hereinafter ‘the Bill’) which is currently pending before the National Assembly, and to consider its compliance with UNCAT. Developed within the context of the National Development Plan of 2018-2021 towards

promoting and upholding good governance in The Gambia, the objective of the Bill is to provide a legal framework for the prohibition, prevention, and punishment of torture, and to establish a duty to report all forms of torture and other ill-treatment.

17. The session featured in-depth discussions and analysis of the current provisions of the draft Bill, identifying good practices and areas of improvement for greater compliance with UNCAT. Among the topics discussed included the definition of “victim” under the Bill; recommended penalties for the offence of torture; what courts should exercise jurisdiction over the offence of torture; modes of liability for the commission of torture; and issues relating to requirements for complaints and prosecutions. Participants also discussed victims’ participation in proceedings and highlighted the need for psychosocial support to be provided to victims. In this regard, there are several related pieces of legislation under consideration.
18. Furthermore, reflecting on the torture definition included in the Bill, participants welcomed the possibility of adopting a wider definition of torture than that of Article 1 of UNCAT. Particularly, it was noted that making the definition of torture applicable to private actors may be relevant to effectively encompass instances of torture in the context of The Gambia.
19. It is understood that there may still be scope to amend the current draft Bill as it might have to be re-opened for discussion, presenting a key opportunity for further technical support to ensure compliance with UNCAT.

Effective complaints and investigation mechanisms

20. The fourth session introduced participants to the international standards on effective complaints and investigations of torture and to review the existing complaints and investigations framework and mechanisms in The Gambia.
21. In terms of effective complaints, issues discussed included the need to provide for effective complaints procedures in law, to make them known and accessible, to ensure prompt processing of complaints and record keeping, as well as sensitising relevant actors on the special needs of persons in situations of particular vulnerability, such as children, the elderly, LGBTIQ+ persons and persons with disabilities. In relation to effective investigations, discussions related to ensuring promptness, thoroughness, impartiality, participation of victims and survivors, transparency, and the protection of victims and witnesses followed.
22. Participants further shared that the National Human Rights Commission (NHRC) provides for an independent body to which complaints can be lodged and which has a duty to investigate, resolve complaints and conduct unannounced visits to places of detention. It was also noted that several internal complaints and investigation mechanisms exist within

various State agencies. For instance, under the Prisons Act, which is currently under review, the Prisons Service has a human rights department and the Prison Service Chief Officer is responsible for receiving complaints by inmates. On the other hand, participants pointed out that there is no specialised unit within The Gambia Police Force, neither an independent police oversight body tasked with investigating allegations of torture. It was noted that in practice, victims and survivors would need to report the case to the police station with jurisdiction. On this note, experts highlighted the lack of independence associated with complaints being lodged against officers within the same body to which the complaint relates. Participants discussed the challenges that this may present to individuals who may fear reporting under these circumstances.

23. Participants also discussed in detail a wide range of practical measures that could be put in place to ensure that any complaints procedures are widely known and accessible in line with international obligations, including the following:

Increasing awareness-raising on the right to complain, as currently, information on rights is not provided in a systematic way. Further efforts were deemed necessary in order to ensure that victims, witnesses, the general population, and particularly detainees, are aware of relevant avenues for complaints.

Displaying posters with clear icons explaining rights to prisoners and detainees in prisons and other places of detention was seen as a good practice, given that prisons do not have phones that inmates can use, and there is a lack of interpreters who are available to assist individuals to make complaints, particularly for foreigners accused of drug-related crimes.

Other suggestions included **publishing user-friendly guides with practical information** on how to access complaint mechanisms and how such mechanisms work, which could be disseminated broadly with the general public, as well as **launching hotlines** and **toll-free numbers** for victims to report torture.

24. Relating to investigations specifically, participants highlighted the following challenges:

- 🎯 Investigations are costly and financial constraints experienced by government agencies often hinder the ability to conduct effective investigations. It was further stressed that when evidence is concealed, investigators cannot do a thorough job with the resources they have and often feel discouraged.
- 🎯 Lack of technical experts to assist with some investigations.
- 🎯 Distrust towards State authorities. Many victims do not feel comfortable lodging complaints, as they fear reprisals against them or their family and feel unprotected if they

provide information to the police as part of an investigation. This issue was identified as being particularly relevant in the context of protests, where protesters are often treated as “enemies”, and where it was noted the importance of establishing dialogue between protesters and law enforcement agencies. **Education and awareness-raising** about the **right to protest** was highlighted as crucial.

25. As in previous sessions, the need for **sensitisation and capacity-building** of relevant State authorities on effective investigations and protection of victims and witnesses was also stressed. It was noted that it would have been useful to have participants from the NHRC attending the Workshop and in future similar initiatives to discuss the procedures and processes in place to deal with cases brought to the Commission, including the NHRC’s Rules of Procedure on Complaints Handling.

Effective prosecutions and barriers to accountability

26. The fifth session was dedicated to effective prosecutions and barriers to accountability. Also discussed was the importance of ensuring that adequate legislation is in place to enable prosecutions, including through the criminalisation of torture, the provision for universal jurisdiction over the offence of torture and providing for witness and victim protection.
27. The findings of the Truth Reconciliation and Reparation Commission (TRRC)² were discussed, particularly relating to recommendations for prosecution of public officials involved in torture during the Jammeh regime, which the Gambian Government accepted. Participants discussed the difficulty of conducting prosecutions of torture, given the lack of an offence of torture in Gambian criminal law, which prompted discussions around the potential establishment of a hybrid tribunal between The Gambia and the Economic Community of West African States (ECOWAS) to try Jammeh-era crimes, including torture, as well as other possible legal avenues. Different ways to prosecute torture under customary international law, international criminal law and under UNCAT were discussed, as well as how to develop a prosecutorial strategy. High-priority cases were recommended, involving prosecution of senior perpetrators who have committed, ordered, or orchestrated egregious crimes, particularly in aggravating circumstances.
28. The discussion then turned to prosecution of torture in present day Gambia and fulfilling the duty to prosecute under Article 7 of UNCAT. Through practical case studies led by experts, participants discussed the legislative, administrative, judicial, and other measures that will make prosecution of torture possible.

 The **impartiality and independence of investigations** was highlighted as an essential feature allowing for proper referral of cases and to initiate prosecutions, as well as the collaboration between investigators and prosecutors.

² The TRRC submitted its final report on 25 November 2021, comprising 17 volumes. On 25 May 2022 the Government issued a White Paper setting out decisions on the findings and recommendations of the TRRC report.

Kenya’s experiences, prosecution strategy and anti-torture legal framework relating to investigations and prosecutions was presented as a case study. Building on Kenya’s experiences, particular emphasis was made on the fact that several national bodies might have competence to investigate torture in parallel (in Kenya, for example, both the Kenya National Human Rights Commission and the Independent Police Oversight Authority (IPOA) can receive complaints and investigate torture, although IPOA has a primary

 **Capacity-building on investigations and prosecutions** of torture, including how to build a case file and develop charge sheets for the crime of torture, and how to prosecute cases of torture under the upcoming draft Bill were highlighted.

Exploring the current situation in The Gambia: Identifying key challenges and implementation gaps

29. The final sessions of the Workshop were dedicated to discussing the key challenges and implementation gaps that had arisen during discussions in previous sessions. Participants were tasked with identifying the challenges, possible ways of overcoming them, and which would be the relevant agency or institution responsible for taking action. Also discussed was whether priority would be given short-term, medium-term or long-term.

30. The following table provides an overview of the main priorities identified:

ISSUE/PROPOSAL	WAY FORWARD	RELEVANT AGENCY
<i>Increasing collaboration amongst agencies</i>	Coordinating responses in certain areas of UNCAT implementation. Opportunities to meet with representatives of different agencies were noted as uncommon and beneficial.	Ministry of Justice
<i>Securing additional financial resources for the implementation of UNCAT</i>	Securing funding and international technical assistance to allow for capacity-building of police officers, prosecutors, and other State authorities, as well as to ensure training on non-coercive questioning of suspects, witnesses and victims for effective criminal investigations.	Ministry of Interior

<p><i>Building a forensic lab</i></p>	<p>Building a well-equipped forensic lab, as well as training of qualified technicians to staff it.</p>	<p>Different agencies/institutions conducting investigations</p>
<p><i>Increasing capacity of medical personnel involved in the investigation and documentation of torture</i></p>	<p>Capacity-building on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) addressed to medical personnel.</p>	<p>Different agencies/institutions conducting investigations</p>
<p><i>Enhancing witness and victim protection</i></p>	<p>Developing strong witness and victim protection schemes both in legislation and practice.</p> <p>Priority should be given to enacting a Witness and Victim Protection law, which is currently lacking, and then creating an agency. Prosecutors, judges, and other relevant actors are to be sensitised to existing mechanisms of protection available.</p>	<p>Ministry of Justice</p>
<p><i>Determine how to pursue prosecutions for crimes of torture committed before 2018</i></p>	<p>Continuing discussions regarding the creation of a hybrid tribunal, including technical support to build an effective prosecutorial strategy to address past atrocities.</p>	<p>Ministry of Justice</p>
<p><i>Establish the offence of torture in national criminal law</i></p>	<p>Ensuring that the Prevention and Prohibition of Torture Bill is amended to fully comply with The Gambia's obligations under UNCAT. For example, by including the discriminatory purpose in the definition of torture, ensuring that the definition of victim is not</p>	<p>Ministry of Justice & National Assembly</p>

	<p>restricted in scope, and possibly adopting a wider definition of torture to include acts committed by private actors.</p>	
<p><i>Strengthening victims' rights and victim participation</i></p>	<p>No need for a specific law but victim impact statements should be used to enhance victim participation in investigations and prosecutions.</p> <p>There is also a need to sensitise key actors on the rights of victims and ensuring that prosecutors inform victims of their rights. Issuance of practice directions by the Chief Justice was discussed as a possible measure to be taken.</p>	<p>Ministry of Justice & Different agencies/institutions conducting investigations</p>
<p><i>Improve the process of complaints and investigations</i></p>	<p>Building the capacity of the NHRC to receive complaints and investigate allegations of torture, including possibly through issuing relevant guidelines.</p> <p>Considering the creation of an independent oversight body to receive complaints and investigate allegations was also discussed.</p>	<p>National Human Rights Commission & other agencies</p>
<p><i>Build the capacity of the Legislative Drafting section within the MoJ</i></p>	<p>Improving human resources and building the capacity of the Legislative Drafting Department of the MoJ, as well as of National Assembly members on legislative drafting techniques and issues which are being legislated on, including the benefits and importance of the draft Prevention and Prohibition of Torture Bill.</p>	<p>Ministry of Justice</p>

<p><i>Capacity building on UNCAT</i></p>	<p>Requests were made related to further workshops/capacity-building sessions to sensitise relevant actors on State's obligations under UNCAT, especially for police, law enforcement and other security agencies.</p> <p>Training on torture prevention for the Gambia Police Force was particularly requested, noting financial constraints in the Force's ability to fund it.</p>	<p>Various agencies, including MoJ</p>
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