



REPUBLIC OF THE GAMBIA



National Assembly, New Assembly Building, Reg. Pye Lane
Banjul, The Gambia

REPORT OF THE STANDING COMMITTEE ON HUMAN RIGHTS AND CONSTITUTIONAL MATTERS

ON

THE PREVENTION AND PROHIBITION

OF TORTURE BILL, 2020

INTRODUCTION

Honourable Speaker, I rise to table before this august Assembly, for consideration and adoption, the report of the National Assembly Standing Committee on Human Rights and Constitutional Matters (HRCMC) on the Prevention and Prohibition of Torture Bill, 2020 which was referred to the Committee by the plenary on its sitting of Tuesday 21st July, 2020.

During the process, the Committee had extensive consultation with relevant stakeholders and also made reference to the Criminal Code as well as International Law instruments such as the United Nations Convention on Torture and Other, Cruel, Inhuman or Degrading treatment or Punishment (1987) as well as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975). During consultations, the Committee scrutinised each of the provisions and made the following recommendations as detailed below:

CLAUSE 3 - DEFINITION OF TORTURE:

(1) In this Act, torture means any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person, whether acting in an official or private capacity, for such purposes as-

(a) obtaining information or a confession from the person or any other person;

(b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or

(c) intimidating or coercing the person or any other person to do, or to refrain from doing, any act. [Page 4]

RECOMMENDATIONS

That the word “of” be deleted in subsection 1(b) to be read as “Punishing that person for an act he or she or any other person has committed, or is suspected of having committed or planning to commit; or”

CLAUSE 6 - CIRCUMSTANCES AGGRAVATING TORTURE

Notwithstanding Section 5, where it is proved that at the time of, or immediately before or after the commission of torture, the –

(a) offender uses or threatens to use or used a deadly weapon;

(b) offender uses or used sex as a means of torture;

(c) victim was a person with a disability;

- (d) victim was pregnant or becomes pregnant;
- (e) victim died;
- (f) the victim was subjected to medical experiments;
- (g) victim acquires HIV/AIDS;
- (h) victim was under the age of eighteen years;
- (i) the victim is incapacitated;
- (j) the act of torture is recurring; and
- (k) offender commits any act which court considers aggravating, the offender and any other person jointly connected with the commission of an act of torture is liable, on conviction to life imprisonment. **[Page 5]**

RECOMMENDATION

Add the phrase “**or other communicable diseases**” in subsection (g) to be read as “victim acquires HIV/AIDS or other communicable diseases;”

PART III - OTHER PARTIES TO THE OFFENCE OF TORTURE

CLAUSE 9 - ACCESSORIES TO THE OFFENCE OF TORTURE

- (1) A person who, whether directly or indirectly-
 - (a) procures;
 - (b) aids or abets;
 - (c) finances;
 - (d) solicits;
 - (e) incites;
 - (f) recommends;
 - (g) encourages;
 - (h) harbours;
 - (i) orders; or
 - (j) renders support to;

any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of torture commits an offence

and is liable on conviction to a fine of one hundred thousand dalasis imprisonment for three years, or to both. **[Page 7]**

RECOMMENDATION

The words “or to a term of” to be inserted between the words ‘dalasis and imprisonment’ to now read:

“any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of torture commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or to a term of imprisonment for three years, or to both.”

CLAUSE 14 - CONTROL OVER PRIVATE PROSECUTIONS

(1) Where criminal proceedings have been instituted under this Act, the Director of Public Prosecutions may –

(a) take over and continue the conduct of those proceedings at any stage before the conclusion of the proceedings;

(b) discontinue the prosecution of the proceedings at any stage; and

(c) require the victim or the person reporting the offence—

(i) to give him or her all reasonable information and assistance, and

(ii) to furnish him or her with any documents or other matters.

(2) For the avoidance of doubt, a person other than a Public Prosecutor or a police officer, may institute criminal proceedings for any offence committed under this Act.

(3) This section shall not prejudice the mandate of the National Human Rights Commission to entertain and deal with matters under this Act as cases of human rights cases. **[Page 11]**

RECOMMENDATION

Subsection 3 is to be amended to read:

(3) This section shall not prejudice the mandate of the National Human Rights Commission to entertain and deal with matters under this Act as cases of human rights.

PART VII - MISCELLANEOUS

CLAUSE 20 - CONSENT OF ATTORNEY GENERAL REQUIRED FOR PROSECUTION OF NON-CITIZEN

A person who is not a citizen of The Gambia shall not be prosecuted for an offence under this Act except with the consent of the Attorney General. [Page 13]

RECOMMENDATION

The heading (Marginal note) of this Section be read as; “20. Consent of Attorney General required for prosecution of non-citizen”

CLAUSE 23 - RESTRICTION ON EXTRADITION OR DEPORTATION WHERE A PERSON IS LIKELY TO BE TORTURED

(1) Torture is an extraditable offence.

(2) Notwithstanding sub-section (1) and the provisions of the Extradition Act, a person shall not be extradited or deported from The Gambia to another state if there are substantial grounds to believe that that he or she is likely to be in danger of being subjected to torture.

(3) For the purposes of sub-section (2), it shall be the responsibility of the person alleging the likelihood of being tortured to prove to the court the justification of that belief.

(4) In determining whether there are substantial grounds for believing that a person is likely to be tortured or in danger of being subjected to torture under sub-section (2), the court shall take into account all factors including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the state seeking extradition or deportation of the person.

(5) Where a person is not extradited or deported as a consequence of the provisions of this section, he or she shall be tried in The Gambia. [Page 14]

RECOMMENDATIONS

(2) Notwithstanding sub-section (1) and the provisions of the Extradition Act, a person shall not be extradited or deported from The Gambia to another state if there are substantial grounds to believe that he or she is likely to be in danger of being subjected to torture.

SCHEDULE [Page 15]

(Section 2)

1. Physical acts of torture include —

(a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;

- (b) food deprivation or forcible feeding with spoiled food, animal or human excreta;
- (c) electric shocks;
- (d) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices;
- (e) the submersion of the victim's head in water or water polluted with excrement, urine, vomit or blood;
- (f) being tied or forced to assume a fixed and stressful body position;
- (g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;
- (h) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue;
- (i) dental torture or the forced extraction of the teeth;
- (j) harmful exposure to the elements such as sunlight and extreme cold; or
- (k) the use of plastic bags and other materials placed over the victim's head with the intention to asphyxiate.

2. Mental or psychological acts of torture include —

- (a) blindfolding;
- (b) threatening the victim or his or her family with bodily harm, execution or other wrongful acts;
- (c) confining a victim incommunicado, in a secret detention place or other form of detention;
- (d) confining the victim in a solitary cell or in a cell put up in a public place;
- (e) confining the victim in a solitary cell against his or her will or without prejudice to his or her security;
- (f) prolonged interrogation of the victim so as to deny him or her normal length of sleep or rest;

- (g) maltreating a member of the victim's family;
- (h) witnessing the torture sessions by the victim's family or relatives;
- (i) denial of sleep or rest;
- (j) shame infliction such as stripping the victim naked, parading the victim in a public place, shaving the head of the victim, or putting a mark on the body of the victim against his or her will;

3. Pharmacological torture includes —

- (a) administration of drugs to induce confession or reduce mental competence;
- (b) the use of drugs to induce extreme pain or certain symptoms of diseases; and
- (c) other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.

RECOMMENDATIONS

Sections 2 and 3 of the schedule to amended to read as follows:

2. Mental or psychological acts of torture include —

- (e) confining the victim in a solitary cell against his or her will or with prejudice to his or her security;

3. Pharmacological torture includes —

administration of drugs to induce confession or reduce mental competence;

the use of drugs to induce extreme pain or certain symptoms of diseases;
denial of access to medical treatment;

other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.

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| 1. Salieu Taal | - | Gambia Bar Association |
| 2. Gaye Sowe | - | Expert Witness |
| 3. Abdoulie Fatty | - | Expert Witness |
| 4. Mam Ndemban Jobe | - | UNOHCR |