



The Association of Non-Governmental Organisations

# **TANGO Submission for the United Nations Universal Periodic Review 3<sup>rd</sup> Cycle**

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## **1. Introduction**

The Association of NGOs in the Gambia (TANGO) is the premier civil society coalition in the Gambia. In the preparation of this report TANGO convened a number of its members and non-members alike to work together and this is the final product of that collaboration.

## **2. FOLLOW UP TO THE PREVIOUS REVIEW (EXECUTIVE SUMMARY)**

### **a. Equality and non-discrimination (Women, Disabilities, Children, Gender)**

The Gambia either noted or accepted recommendations relating to equality and non-discrimination for women,<sup>1</sup> children<sup>2</sup> and disabilities,<sup>3</sup> while rejecting entirely recommendations related to LGBTI.<sup>4</sup> It is however worth noting that in practice women's representation in power and decision-making institutions remain extremely low. Furthermore, even though the CPRD was ratified in 2015, until today the Gambia has not domesticated the instrument which in effect means the CPRD remains unusable since the country is a monist state. Despite the presence of the Children's Act as amended, the full enforcement of this law remains limited. Children, especially girls continue to face early marriage and FGM.<sup>5</sup>

### **b. Rights to life, liberty and security of the person**

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<sup>1</sup> A/HRC/28/6/Add.1, Recommendations 109.22 – 109.23 (Mali, Thailand).

<sup>2</sup> A/HRC/28/6/Add.1, Recommendations 109.27 – 109.28 (Thailand, Portugal) and 109.24,26 – 109.25 (Uruguay, Portugal and Thailand).

<sup>3</sup> A/HRC/28/6/Add.1, Recommendations 109.37 (Maldives).

<sup>4</sup> A/HRC/28/6/Add.1, (para. 11 and 12) Recommendations 109.49 - 56 (Netherlands, Sweden, Australia, France, United Kingdom, Canada and Germany).

<sup>5</sup> Child marriage highly prevalent in the Gambia, Foroyaa newspaper, 14 February 2015, <http://foroyaa.gm/child-marriage-highly-prevalent-in-the-gambia/>



While the right to life, personal liberty and right not to be tortured are guaranteed in the Gambia Constitution,<sup>6</sup> The Gambia has either noted or largely rejected the main recommendations that protect the right to life<sup>7</sup> and personal liberty including the right not to be tortured<sup>8</sup> and enforced disappearance.<sup>9</sup> The incidence<sup>10</sup> of torture, summary executions and enforced disappearance remain widespread in the country until December 2016. However, since the emergence of democratic dispensation in 2017 the country has placed a moratorium<sup>11</sup> on the death penalty. Most significantly the country sweepingly ratified<sup>12</sup> CAT, ICCPR 2<sup>nd</sup> OP, CED and CMW in 2018.

### **c. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

The Gambia has accepted recommendations to protect human rights.<sup>13</sup> However, freedom of religion, association, assembly and participation in the political life of the country continue to face challenges. In 2015 the government declared<sup>14</sup> the country an 'Islamic republic' while the Ahmadiyya Muslim community continues to face discrimination<sup>15</sup> on account of their belief by the mainstream Muslim religious leaders and members of the community. In multiple situations the government has denied citizens to demonstrate peaceably even though this right is guaranteed in the constitution.<sup>16</sup> The ability of the government to curtail peaceful demonstration was strengthened in November 2018 when the Supreme Court ruled that the much-contested Public Order Act was constitutional.<sup>17</sup> Similarly, there has been instances of arbitrary arrest of citizens<sup>18</sup> for merely expressing their opinion on various issues.

The Gambia has cautiously accepted the recommendation on freedom of expression noting that this would be subject to the laws of the Gambia.<sup>19</sup> Since 2017 the government has largely kept its hands

<sup>6</sup> Constitution of the Gambia, Laws of the Gambia, Vol.1, Chapter 4, Sections 18, 19 and 21 respectively.

<sup>7</sup> A/HRC/28/6/Add.1 (para. 33), Recommendations 109.107 – 109 (Spain, Uruguay and Australia) and (para. 2), Recommendations 109.3 – 7 (Montenegro, Portugal, Rwanda, Angola and Germany)

<sup>8</sup> A/HRC/28/6/Add.1 (para. 3), Recommendations 109.9 – 21 (dozen countries)

<sup>9</sup> A/HRC/28/6/Add.1 (para. 8), Recommendations, 109.31 – 36 (Uruguay, Portugal, Tunisia, Argentina, Ghana and France).

<sup>10</sup> State of Fear Arbitrary Arrests, Torture, and Killings, Human Rights Watch, 2015,

[https://www.hrw.org/sites/default/files/report\\_pdf/gambia0915\\_4up\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/gambia0915_4up_0.pdf)

<sup>11</sup> Reuters News Agency, Gambia announces moratorium on death penalty, February 2018,

<https://www.reuters.com/article/us-gambia-justice/gambia-announces-moratorium-on-death-penalty-idUSKCN1G20V2>

<sup>12</sup> Ratification status of the Gambia,

[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=64&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=64&Lang=EN)

<sup>13</sup> A/HRC/28/6/Add.1 (para. 22), Recommendation 109.85 (Azerbaijan), and (para. 23), Recommendation 109.87 (Egypt), and (para. 22), Recommendation 109.86 (Bangladesh).

<sup>14</sup> The Gambia declared an Islamic republic by President Yahya Jammeh, BBC, 2015,

<https://www.bbc.com/news/world-africa-35082343>

<sup>15</sup> The Gambia 2016 International Religious Freedom Report, International Religious Freedom Report for 2016 United States Department of State • Bureau of Democracy, Human Rights, and Labor,

<https://www.state.gov/documents/organization/268896.pdf>

<sup>16</sup> Constitution of the Gambia, Laws of the Gambia, Vol. 1, Section 25(1)(d)

<sup>17</sup> Ousainou Darboe & 19 Others IGP & 2 ORS, Supreme Court, civil suit 003/2016, Delivered 23rd November 2017, Supreme Court of the Gambia CML, SUIT NO: SC 003/2016

<sup>18</sup> UTG's Dr. Ceesay held in custody, Foroyaa Newspaper, 2018, <http://foroyaa.gm/utgs-dr-cesay-held-in-custody/>

<sup>19</sup> A/HRC/28/6/Add.1 (para. 49), Recommendation 109.140 (Italy).



off of citizens and the media to express themselves freely and openly leading to a marked improvement in the country's freedom of the press ranking.<sup>20</sup> That notwithstanding draconian media laws remain in the laws of the Gambia.

#### **d. Right to education**

The Gambia has accepted recommendations on the right to education in terms of building more classrooms to increase enrolment,<sup>21</sup> improving access and quality of education,<sup>22</sup> providing education to persons with disabilities,<sup>23</sup> intensifying social integration of children and dropouts,<sup>24</sup> and making reforms to reduce illiteracy<sup>25</sup> and strengthen secondary education<sup>26</sup>. While the government responded that it is making efforts to make education available to persons with disability there is no public school in the country serving this category of citizens and mainstream public schools lack the necessary tools and adequately trained personnel to integrate heard of hearing and sight children to access education together with the rest of other children. Furthermore the few non-governmental special needs schools are all centralized within the greater Banjul area.

## **2. INFORMATION ON THE NATIONAL HUMAN RIGHTS FRAMEWORK**

### **a. Equality and non-discrimination (Women, Disabilities, Children, Gender)**

The Constitution of the Gambia guarantees the equality between men and women<sup>27</sup> to civil and political rights and social and economic opportunities. The Constitution further guarantees the right not be discriminated on account of any status.<sup>28</sup> The Children's Act (amended) 2005, Women's Act (amended) 2010, Sexual Offences Act 2013 and Domestic Violence Act 2013 further guarantee the right of women, persons with disabilities and children. The creation of a Ministry for Women, Children and Social Welfare in 2019, which comprises the Women's Bureau and the Department of Social Welfare, serves to strengthen the protection of women, children and persons with disabilities. That notwithstanding the adequate provision of resources and the availability and access to basic social services and facilities to enhance the wellbeing of women, children and persons with disability remains hugely low. Public hospitals and schools are poorly resourced while quality and diversity of services are equally poor.<sup>29</sup>

### **b. Rights to life, liberty and security of the person**

<sup>20</sup> Gambia, 2018 World Press Freedom Index, Reporters Without Borders, <https://rsf.org/en/gambia>

<sup>21</sup> A/HRC/28/6/Add.1 (para. 61), Recommendation 109.164 (Libya).

<sup>22</sup> A/HRC/28/6/Add.1 (para. 61), Recommendation 109.165 (Singapore).

<sup>23</sup> A/HRC/28/6/Add.1 (para. 63), Recommendation 109.169 (South Sudan).

<sup>24</sup> A/HRC/28/6/Add.1 (para. 62), Recommendations 109.168 (DR Congo).

<sup>25</sup> A/HRC/28/6/Add.1 (para. 61), Recommendation 109.167 (Cuba).

<sup>26</sup> A/HRC/28/6/Add.1 (para. 61), Recommendation 109.166, (Venezuela).

<sup>27</sup> Constitution of the Gambia, Laws of the Gambia 2009, Vol. 1, Chapter 4, Section 28

<sup>28</sup> Constitution of the Gambia, Laws of the Gambia 2009, Vol. 1, Chapter 4, Section 33

<sup>29</sup> Health in the Gambia plagued by poor conditions, RFI English, The World and All its Voices, 14 March 2018, <http://en.rfi.fr/20180314-reportage-14-03-18-health-gambia-plagued-poor-conditions>



The right to life, liberty and security of person are guaranteed under the Constitution in sections 18 and 19 respectively.<sup>30</sup> These rights are further guaranteed under various sections of the Constitution that uphold civil, political economic, social and cultural rights and access to opportunities for all citizens. However, there is no definite national mechanism to secure these rights other than through law enforcement and justice delivery system. With an increasing incidence of crime, the police have set up an anti-crime unit to confront the menace which incidentally has been reported to be engaged in heavy-handedness in detecting and preventing crime. Prison conditions remain deplorable<sup>31</sup> while trials going through the court system are usually slow and cumbersome that has caused several people to be sent to remand.

**c. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

The fundamental freedoms of belief, expression, association and assembly are clearly guaranteed in the Constitution.<sup>32</sup> However, the protection of these rights leaves much to be desired. The National Human Rights Commission was established in February 2019 as a human rights mechanism for the country for the first time. Since the new government came to power the President of the Republic and his Minister of Justice as well as the Minister of Interior including the heads of police and intelligence have all spoken favourably about human rights at various times. Yet the necessary security sector and civil service reforms to further strengthen human rights protection have not been done in any meaningful way. The availability and access to basic social services including protection of the environment remains daunting for most citizens leading to various incidents of agitation towards which the state acted with force causing fatalities. In June 2018 three youths in the community of Faraba were gunned down by paramilitary forces as youths staged a protest against a private business mining sand in their locality.<sup>33</sup> Along the coastal towns of Gunjur and Sanyang among others several youths were subjected to arbitrary arrest and detention for protesting against a Chinese fishmeal company causing environmental damage there. Similarly, security forces have employed excessive force in many communities such as Taneneh,<sup>34</sup> Farato<sup>35</sup> and Kanilai<sup>36</sup> among others to quell demonstrations.

**d. Right to Education**

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<sup>30</sup> Constitution of the Gambia, Laws of the Gambia, Vol. 1, Sections 18 and 19 respectively.

<sup>31</sup> World Report 2018, Human Rights Watch, <https://www.hrw.org/world-report/2018/country-chapters/gambia>

<sup>32</sup> Constitution of the Gambia, Laws of the Gambia 2009, Vol. 1, Chapter 4, Sections 25.1(a)(b)(c)(d)(e)

<sup>33</sup> Report of The Faraba Banta Commission of Inquiry into the Events of Monday 18th June 2018 at Faraba Banta, West Coast Region submitted to Pres. Adama Barrow by the Chair of the Commission Emmanuel Daniel Joof on 17 September 2018

<sup>34</sup> Police clash with residents of Taneneh, Foroyaa newspaper, 7 June 2018 <http://foroyaa.gm/clash-between-police-taneneh-villagers-several-arrests-made/>

<sup>35</sup> Compounds demolished in Bafuloto causes riots in Farato, FatuNetwork, 24 May 2017 <http://fatunetwork.net/compounds-demolished-bafuloto-causes-riots-farato-police-clarifies/>

<sup>36</sup> Haruna Jatta's family threatens to sue Government, The Point newspaper, 4 June 2018, <http://thepoint.gm/africa/gambia/article/haruna-jattas-family-threatens-to-sue-govt>



The right to education is guaranteed under the Gambia Constitution.<sup>37</sup> There is a Ministry of Basic and Secondary Education that runs public schools and regulate education services in the country. Generally, facilities and quality of education are poorer in public schools than in private institutions, which are more expensive for most parents hence limiting the enjoyment of the right to education. The Government does not enforce the right to education despite the fact that it has engaged in frantic efforts to raise public awareness and encourage parents to send their children to school. Working conditions for teachers in public schools are dire generally while schools in the rural areas suffer more deplorable conditions than those in the urban areas thus disadvantaging children in poorer communities.

### **3. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

#### **a. Equality and non-discrimination (Women, Disabilities, Children, Gender)**

In practice rights of women, persons with disabilities and children remain poorly protected and underserved. Despite the banning of FGM and early and forced marriages, these practices continue unabated in communities.<sup>38</sup> Furthermore, access to education and healthcare remains a challenge for persons with disabilities.<sup>39</sup> There is no public special needs school for persons with disabilities while public schools are not fully integrated. The only teacher training institution, The Gambia College does not have sign language courses. There is no national sign language and those children with hearing impairment cannot do basic science subjects because of lack of relevant sign language teachers and materials. The representation of women in representative institutions at national and local levels remain low.<sup>40</sup> While the Government is engaged in raising public awareness about the rights of women, children and persons with disabilities the major challenge facing the country is the limited enforcement of policies and laws that guarantee or protect these rights. Meantime there remains draconian provisions criminalizing sexual orientation.<sup>41</sup>

#### **b. Rights to life, liberty and security of the person**

The protection of civil liberties continues to be challenging mainly because of the limited understanding and incorporation of human rights values and standards in the work of law enforcement.<sup>42</sup> Police training programmes do not have human rights education components hence most police officers lack knowledge about human rights principles and standards. Consequently, the incidence of arbitrary arrest and detention prevails. Furthermore, slow progress of trials in the courts and the difficulty in meeting bail conditions have caused large numbers of people being held under custody in overcrowded and subhuman conditions in remand. There is the National Council for Civic Education mandated to educate citizens about the rights and duties. However, this body is largely beset by lack of resources because Government funding to it is usually low.

<sup>37</sup> Constitution of the Gambia, Laws of the Gambia 2009, Vol. 1, Chapter 4, Section 30

<sup>38</sup> My community will continue to practice FGM even if we go to jail, The Point newspaper, 30 October 2018, <http://thepoint.gm/africa/gambia/article/my-community-will-continue-to-practice-fgm-even-if-we-will-go-to-jail>

<sup>39</sup> World overpopulation, 27 February 2018, disability and health, The Point newspaper, <http://thepoint.gm/africa/gambia/article/world-over-population-disability-and-health-2>

<sup>40</sup> Out of 58 National Assembly members only five women are present – three elected and two nominated.

<sup>41</sup> Gambia's anti-gay bill, Amnesty International UK, 2018, <https://www.amnesty.org.uk/gambia-anti-gay-bill>

<sup>42</sup> IHRDA and OHCHR-WARO organise human rights workshop for Gambia Police Force, IHRD website, January 2019 <https://www.ihrda.org/2019/01/ihrda-and-ohchr-war0-organise-human-rights-workshop-for-gambia-police-force/>



**c. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

Due to low awareness about human rights not only among law enforcement agencies but also within the public service as a whole the state's ability to protect fundamental human rights remains challenging. Law enforcement officers are not well trained and equipped in crime detection, interrogation methods and crowd control hence in such instances the tendency to abuse rights has always been high. Furthermore, the State does not provide adequate financial and material resources so as to better equip civil and security institutions to effectively respond to the rights and needs of citizens. There remains a host of draconian laws or provisions<sup>43</sup> in place that infringe human rights, democracy and popular participation. In many instances the Government seeks to suppress rights of citizens especially when it comes to freedom of assembly and speech<sup>44</sup> on the pretext of preserving national security or morality.

**d. Right to education**

The Government has a clear education policy<sup>45</sup> seeking to promote education especially for girls which is gaining huge success. However, the fulfilment of the right in terms of adequate provision of resources, facilities and quality remains a challenge. Furthermore, the needs of children with disabilities are hugely limited as there are no specific public schools to cater for these children while public schools are not adequately integrated.

**4. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

The Association of NGOs in the Gambia (TANGO) calls on the Government of the Gambia to;

**a. Equality and non-discrimination (Women, Disabilities, Children, Gender)**

1. Enact the persons with disability bill into law;
2. Create and implement a national disability policy;
3. Create a national sign language;
4. Create legislation to institute gender quota in politics at the level of the National Assembly and local councils by allocating 30% of seats to women;
5. Establish children's courts, juvenile detention centres and care homes in all administrative regions as required by the Children's Act under sections 68, 212(8) and 124 respectively.
6. Enforce in full the provisions of the Women's Act (amended) 2010, Sexual Offences Act 2013 and the Domestic Violence Act 2013.
7. Create legislation to identify and criminalise marital rape;
8. Decriminalise and protect the right to sexual orientation of citizens.

<sup>43</sup> These laws include the Criminal Code on sedition, Public Order Act, Official Secrets Act as well as the Gambia Constitution

<sup>44</sup> Gambia's intelligence services view social media as a challenge, The Point newspaper, 31 December 2018, <http://thepoint.gm/africa/gambia/article/gambias-intelligence-service-views-social-media-as-a-challenge-1>

<sup>45</sup> Education Sector Policy 2016 – 2030, Accessible, Equitable and Inclusive Quality Education for sustainable Development, January 2016, Ministry of Basic and Secondary Education, Banjul the Gambia



**b. Rights to life, liberty and security of the person**

1. Review Section 18 of the Gambia Constitution to abolish the death penalty;
2. Investigate the actions of the Anti-Crime Unit to bring them in line with human rights norms and standards;
3. Decongest and renovate all prisons and improve living conditions therein in line with international standards;
4. Uphold the right to freedom of assembly and protect citizens to enjoy the right.

**c. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

1. Repeal the Public Order Act to replace it with a new act that is in line with the African Commission Guidelines on Freedom of Assembly and Association in Africa and international standards;
2. Review the Information and Communications Act, the Criminal Code and the Official Secrets Act to remove all provisions that infringe on freedom of expression, association and assembly;
3. Train law enforcement officers on how to manage crowds during peaceful demonstrations;
4. Introduce human rights education in the training programme for armed and security services.

**d. Right to education**

1. Enforce in full Section 30(a) of the Gambia Constitution that guarantees the right to free, compulsory basic education;
2. Provide adequate resources and facilities to cater for the education needs of children with disabilities;
3. Improve the quality and availability of education services throughout the country.