

**REPORT ON STATE OF COMPLIANCE WITH
INTERNATIONAL MINIMUM STANDARDS OF HUMAN
RIGHTS BY THE GAMBIA UNDER THE UNIVERSAL
PERIODIC REVIEW MECHANISM, THIRD CYCLE**



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**SUBMISSION BY THE NATIONAL HUMAN RIGHTS
COMMISSION OF THE GAMBIA**

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THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC) IN BRIEF

The NHRC is a permanent, independent body established in December 2017 by an Act of the National Assembly of The Gambia with mandate to promote and protect human rights and fundamental freedoms in The Gambia, investigate human rights violations and provide redress and remedial actions to victims.

INTRODUCTION

The present submission is the first report of the NHRC to the Human Rights Council. Its scope is limited to specific recommendations made in the Report of the Working Group on the Universal Periodic Review- Gambia (December 2014) relating to ratification of international legal instruments and human rights of specific categories of people, namely women, children, persons with disabilities, LGBTI, the prisons etc.

REVIEW OF THE STATE OF IMPLEMENTATION OF THE SECOND CYCLE RECOMMENDATIONS

A: STATUS OF RATIFICATION/DOMESTICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The Gambia has ratified or acceded to the following key UN human rights instruments since the 2014 review: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment; Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; Convention for the Protection of All Persons from Enforced Disappearance; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;¹ and Convention on the Rights of Person with Disabilities and its Optional protocol.² However, the State has not yet ratified the Optional Protocol on the Convention Against Torture, Inhuman and Degrading Treatment. As a country with a dualist legal system, international human rights legal instruments are not recognized as part of the laws of The Gambia unless they are domesticated.³ Most of these now ratified treaties are yet to be enacted into domestic legislations.

Recommendations

1. Ratify the Optional Protocol of the Convention Against Torture.
2. Abolish the death penalty by removing it from the Constitution
3. Harmonize and domesticate all the ratified international legal instruments to make the rights therein justiciable and enforceable.

¹ Ratified by the Gambia on 28 September 2018

² Acceded to by The Gambia on 6 July 2015

³ Section 7 of the 1997 Constitution of The Gambia

4. Amend S.7 of the Constitution to include international legal instruments as part of the laws of the Gambia
5. Establish and strengthen the National Mechanism for Reporting and Follow-up (NMRF)
6. Enact into law the Disability Bill and formulate and implement a Disability Policy without further delay;

B: ESTABLISHMENT OF THE NATIONAL HUMAN RIGHTS COMMISSION

The State accepted all the recommendations relating to the acceleration of the establishment of the National Human Rights Commission, in full compliance with the Paris Principles.⁴ In 2018, the Human Rights Committee noted its regret at the delay in the appointment of the members of the National Human Rights Commission and the establishment of its Secretariat.⁵ Furthermore, it urged the State to expeditiously appoint its members, set up the Secretariat, ensure its independence and effective functioning in full compliance with the Paris Principles and provide it with significant financial and human resources to carry its mandates.⁶

In December 2017, the National Assembly of The Gambia passed into law the National Human Rights Commission Act 2017 which was assented to by the President in January 2018. The Act establishes the National Human Rights Commission. The members of the Commission were sworn in on 14 February 2019.⁷ The tenure of office of the members is three years, renewable for another and final term.⁸ In pursuance of its mandate, the National Human Rights Commission will proactively engage The Government of the Gambia, as the primary duty bearer, and collaborate with strategic partners to follow-up recommendations, and monitor procedures and practices of human rights mechanisms.

While the National Human Rights Commission is now established, and its five members appointed and sworn into office, an assessment of the tasks and challenges ahead suggests that the 3-year term and the current level of resources allocated to the Commission will not be sufficient for the fulfilment of its mandate.

Recommendations

1. Amend the National Human Rights Commission Act 2017 and make the tenure of office of the members a minimum of 5 years, renewable for another 5 years, in line with the norm for most National Human Rights Institutions in Africa.
2. Allocate adequate resources to the NHRC, in line with the Paris Principles, to enable it to effectively carry out its mandate.

⁴ Human Rights Council, “Report of the Working Group on the Universal Periodic Review-Gambia-Addendum”, A/HRC/28/6/Add.1, 24 March 2015, (Para. 22). See, Recommendations 109.69 (India), 109.70 (Tunisia), 109.71 (Niger), 109.72 (Gabon), 109.73 (Chile), 109.74 (Nicaragua), 109.75 (Portugal), 109.76 (Rwanda), 109.77 (Burkina Faso), 109.78 (Egypt), 109.79 (Sudan), 109.80 (Djibouti)

⁵ Human Rights Committee, ‘Concluding observations on the Gambia in the absence of its second periodic report’ CCPR/C/GMB/CO/2. 20 August 2018, p. 10.

⁶ *ibid*

⁷ <https://www.grts.gm/featured/pres-barrow-presides-over-swearing-in-ceremony-of-national-human-rights-commission/>

⁸ Section 6 of the National Human Rights Commission Act 2017

3. Issue a standing invitation to the United Nations Human Rights Special Procedures.

C: RIGHTS OF WOMEN

The Gambia accepted recommendations relating to strengthening implementation of policies and programmes for the empowerment of women in social and political life;⁹ eradication of discrimination against women,¹⁰ and prevention of sexual and gender-based violence¹¹.

In spite of the existence of plethora of laws and government's efforts to promote the economic, social and political leadership of women, gender inequality remains a major problem. Women and girls in The Gambia continue to face challenges in the enjoyment of their rights. They still face discrimination, most of which are underpinned by socio-cultural and religious beliefs. FGM, child marriage, high maternal mortality,¹² weak enforcement of laws, poor representation in elective bodies, inadequate access to education and employment opportunities, amongst others, severely restrict women's full enjoyment of their human rights in The Gambia.

Recommendations

1. Institute measures, including through legislation, for gender quota in all elective bodies at local and national levels, by allocating a minimum 30 per cent of seats to women,
2. Accelerate effort, in line with SDG 3, to reduce drastically, incidents of maternal mortality,
3. Effectively enforce and implement the Domestic Violence Act 2013, Sexual Offences Act 2013 and Women's Act 2010,
4. Establish shelters for victims of domestic and sexual violence,
5. Mainstream gender in government's sectoral policy, particularly, implementation of gender affirmative actions,
6. Expand access to education, vocational training and credit for women, with adequate indicators and monitoring mechanisms to track progress.

D: RIGHTS OF PERSONS WITH DISABILITIES

The 1997 Constitution of The Gambia recognizes the rights of persons with disabilities¹³ and recognizes the equality of all persons before the law.¹⁴ The State also accepted recommendations

⁹ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.81 (Malaysia) and 109.84 (Algeria);

¹⁰ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.97-109.100 (Italy, Spain, United States of America, Argentina)

¹¹ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.21-109-124 (Rwanda, Montenegro, Botswana, Chile)

¹² DHS (2013), 433/100,000 live births

¹³ Section 31 of the 1997 Constitution of the Gambia

¹⁴ Section 33 of the 1997 Constitution of the Gambia

related to the ratification of the Convention on the Rights of Persons with Disabilities¹⁵ and enactment of the Disability Bill into law.¹⁶ In 2015 the Gambia acceded to the United Nation's Convention on the Rights of Persons with Disabilities and its Optional Protocol. However, the Disability Bill is not yet enacted into law. Persons with disabilities still face discrimination in the society and are encumbered with some of the following: below average or limited access to social services and facilities, limited access to public infrastructure and transportation, most of which do not take into consideration the peculiar nature of persons with disabilities, unemployment, lack of political participation, poor access to credit facilities and insufficient rehabilitation centres.¹⁷

Recommendations

1. Enact the Disability Bill into law and provide adequate financial and technical resources for its implementation and enforcement.
2. Develop and implement a National Disability Policy.
3. Institute measures, including through legislation, to make all public buildings and facilities accessible to persons with disabilities.

E: RIGHTS OF CHILDREN AND THEIR PROTECTION FROM ALL FORMS OF ABUSE, DISCRIMINATION, VIOLENCE AND RIGHTS VIOLATIONS

The State noted most of the recommendations made regarding the protection of children, such as acceding to the Optional Protocol to the Convention on the Rights of the Child on a communication procedure;¹⁸ enacting law to prevent and prohibit female genital mutilation¹⁹; and legal prohibition of child marriage.²⁰ It, however, rejected the recommendation to make 18 years as the minimum legal age for marriage.²¹

In 2015, the Government amended the Women's Act 2010 to prohibit FGM,²² while in 2016 it legally prohibited child marriage and set 18 years as the legal age for marriage.²³ In March 2019,

¹⁵ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.37 – 109.42 (Maldives, Tunisia, Slovakia, Portugal, Mauritania, Germany)

¹⁶ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.69-109.80 (series of countries)

¹⁷ See, Satang Nabaneh 'Country report: The Gambia' (2018) 6 *African Disability Rights Yearbook* pp. 232-248. Available at: <http://doi.org/10.29053/2413-7138/2018/v6a11>.

¹⁸ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.27 (Thailand); 109.28 (Portugal)

¹⁹ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.43-109.48; 109.83; 109.113-109.120 (series of countries).

²⁰ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.65 (Central Africa Republic) and 109.139 (Canada)

²¹ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.137 (Sierra Leone); 109.138 (Togo)

²² Women's (Amendment) Act 2015

²³ Children (Amendment) Act 2016

the Government created the Ministry of Women, Children and Social Welfare to strengthen the protection of the rights and welfare of women, children and other vulnerable members of the society.²⁴

However, FGM prevalence among girls aged 15-19 is 76 per cent.²⁵ About nine percent of female children are married before the age of 15 and 30 percent of Gambian girls have been married or in a union before the age of 18.²⁶ Corporal punishment is only prohibited as a measure of punishment by the court.²⁷ The Gambia remains a source and destination country of children subjected to trafficking for sexual purposes.²⁸ The State has not yet acceded to the Optional Protocol to the Convention on the Rights of the Child on a communication procedure.

Recommendations

1. Effectively enforce and implement the legal provisions which prohibit FGM and child marriage.
2. Raise awareness on and develop appropriate responses to the socio-cultural and religious drivers of FGM
3. Accede to the Optional Protocol to the Convention on the Rights of the Child on a communication procedure.
4. Legislate against the online sexual exploitation and grooming of children.
5. Prohibit corporal punishment of children in all settings.

F. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural rights are not enforceable as stand-alone rights under the 1997 Constitution of the Gambia.²⁹ Most of these rights remain in the realm of “progressive realisation”. The UN Committee on Economic, Social and Cultural Rights also made recommendations to the State with regards to fulfilling the people’s economic, social and cultural rights.³⁰

Poverty is high, with 48.1 per cent of the population living in poverty; only 79.4 per cent of rural households have access to improved drinking water and literacy rate of male and female is 61.8 per cent and 41.6 per cent respectively.³¹ Unemployment is high at about 35.2 percent.³² Corruption is widespread, with the Gambia ranked 93 out of 175 countries on the 2018

²⁴ <http://foroyaa.gm/fatou-kinteh-appointed-minister-for-women-affairs/>

²⁵ www.unfpa.org/data/fgm/GM

²⁶ UNICEF. (2018, March). *Global databases: Child Marriage*. New York: UNICEF

²⁷ Section 220(9) of the Children’s Act 2005

²⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on the initial report of The Gambia*, 20 March 2015, E/C.12/GMB/CO/1

²⁹ Section 211 of the 1997 Constitution of The Gambia

³⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations on the initial report of the Gambia*, 20 March 2015, E/C.12/GMB/CO/1.

³¹ Integrated Household Survey 2015/16 (GBoS)

³² Gambia Labour Force Survey Report (2018)

Corruption Perception Index of Transparency International.³³ Corruption has the resultant effect of negatively impacting the enjoyment of economic and social rights. Though there is access to basic social services and facilities, public hospitals and schools are inadequately funded and quality services are equally poor.³⁴ Nonetheless, the Government has increased the salaries of its civil servants by 50 per cent across the board, an initiative already being implemented in 2019.³⁵

Recommendations

1. Include in the new Constitution a guarantee and justiciability of all economic and social rights in conformity with existing treaty obligations
2. Enact the Anti-Corruption Commission Act and establish the Anti-Corruption Commission
3. Ensure universal access to safe drinking water and to adequate sanitation facilities, particularly in the rural areas.
4. Develop and fund national employment programmes.

G. PROTECTION OF SPECIFIC FUNDAMENTAL HUMAN RIGHTS: FREEDOM OF EXPRESSION, EXTRA-JUDICIAL KILLINGS, PRISON CONDITIONS, VIOLENCE AGAINST LGBTI

The 1997 Constitution guarantees the right to life, personal liberty and protection against torture.³⁶ Nonetheless, torture, extra-judicial killings and enforced disappearances were rampant in the country until December 2016.³⁷ There are on-going reforms in the Security Sector; and the Justice, Law and Order Sector. The Gambia either noted or outright rejected the recommendations related to placing of moratorium on the death penalty with a view to abolishing it eventually,³⁸ ratification of the Convention Against Torture³⁹ and prevention of enforced disappearances.⁴⁰ It also rejected all the recommendations related to protection of Lesbians, Gays, Bi-sexual and Transgender (LGBT) in the Gambia.⁴¹ The State accepted the recommendation to improve the conditions of prisoners.⁴² Regarding guaranteeing the right to

³³ <https://tradingeconomics.com/gambia/corruption-rank>

³⁴ 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>

³⁵ Budget Speech 2019 (page 33)

³⁶ Section 21 of the 1997 Constitution of The Gambia

³⁷ Human Rights Watch (2015(, www.hrw.org/sites/default/files/report-pdf/gambia

³⁸ Human Rights Council, “Report of the Working Group on the Universal Periodic Review-Gambia-Addendum”, A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.101-109.109 (Italy, Mexico, Brazil, Costa Rica, France, Togo, Spain, Uruguay, Australia)

³⁹ Human Rights Council, “Report of the Working Group on the Universal Periodic Review-Gambia-Addendum”, A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.9-.109.21 (many countries)

⁴⁰ Human Rights Council, “Report of the Working Group on the Universal Periodic Review-Gambia-Addendum”, A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.31-109.36 (Uruguay, Portugal, Tunisia, France, Argentina, Ghana)

⁴¹ Human Rights Council, “Report of the Working Group on the Universal Periodic Review-Gambia-Addendum”, A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.49-109.56 (many countries)

⁴² Human Rights Council, “Report of the Working Group on the Universal Periodic Review-Gambia-Addendum”, A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.111 and 109.112 (Djibouti and Slovakia)

freedom of expression, the State accepted the recommendations on the condition that it would subject it to the laws of the land.⁴³ The Human Rights Committee also made recommendations to the State with regards to protecting and fulfilling the rights of people.⁴⁴

There is now a moratorium on the death penalty.⁴⁵ Prison conditions remain deplorable⁴⁶ and due to the cumbersome criminal justice system, many people are on remand. While there has not been any State public ridiculing of LGBTI since 2017, sexual orientation and same sex relationship remain criminalised. People's right to free expression and media freedom are now largely respected but there is no Legislation which guarantees the right to access information.

Recommendations

1. Provide continuous training on human rights for members of the security forces, prosecutors and the Judiciary.
2. Provide continuous awareness raising on human rights to the public, including traditional, religious and opinion leaders
3. Include human rights norms in the Rules of Engagement for the Police Intervention Unit and the military
4. Expedite reforms in the Security Sector; and the Justice, Law and Order Sector.
5. Decriminalise same sex relationship between consenting adults.
6. Improve prison conditions and facilities, including food, sanitation and medical care for inmates.
7. Enact an Access to Information Act to foster transparency and openness in Government

⁴³ Human Rights Council, "Report of the Working Group on the Universal Periodic Review-Gambia-Addendum", A/HRC/28/6/Add.1, 24 March 2015, Recommendations 109.140 and 109.141 (Italy and Sweden)

⁴⁴ Human Rights Committee, Concluding observations on the Gambia in the absence of its second periodic report, 20 August 2018, CCPR/C/GMB/CO/2. 10

⁴⁵ Reuters New Agency (February, 2018), www.reuters.com/articles/us-gambia-justice/gambia-announces-moratorium-on-the-death-penalty

⁴⁶ World Report 2018, Human Rights Watch, <https://www.hrw.org/world-report/2018/country-chapters/gambia>