



STATE OF HUMAN RIGHTS IN THE GAMBIA

2020

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ABBREVIATION AND ACRONYMS

ACDHRS	African Centre for Democracy and Human Rights Studies
APRC	Alliance for Patriotic Reorientation and Construction
AU	African Union
AUC	African Union Commission
CAT	Convention Against Torture
CDD	Centre for Democratic Development
CED	Convention on Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHRAJ	Commission on Human Rights and Administrative Justice
CPI	Corruption Perception Index
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
DP	Development Partners
DPA/AUC	Department of Political Affairs of the African Union Commission
EIA	Environmental Impact Assessment
ESC	Economic, Social and Cultural
FGM	Female Genital Mutilation
GAMCOTRAP	Gambia Committee on Traditional Practices
GANHRI	Global Alliance of National Human Rights Institutions
GID	Gambia Immigration Department
GMC	Global Compact for Migration
GPF	Gambia Police Force
GPS	Gambia Prison Services
ICCPR	International Covenant on Civil and Political Rights

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IHRDA	Institute for Human Rights and Development in Africa
IICI	Institute for International Criminal Investigations
IOM	International Organisation for Migration
JLO	Justice, Law and Order
KNCHR	Kenya National Commission for Human Rights
MoBSE	Ministry of Basic and Secondary Education
Mol	Ministry of Interior
MoLGL	Ministry of Local Government and Lands
NAATIP	National Agency Against Trafficking in Persons
NALA	National Agency for Legal Aid
NANHRI	Network of African National Human Rights Institutions
NEA	National Environment Agency
NGOs	Non-Governmental Organisations
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
NNHRIWA	Network of National Human Rights Institutions of West Africa

ACKNOWLEDGEMENT

The achievements of NHRC in 2020 would have been impossible without the support, partnership and encouragement of many individuals and organizations whose commitment to the promotion and protection of human rights and the building of a culture of human rights have sustained us over the year.

We wish to commend the Government of The Gambia for having the foresight to establish the National Human Rights Commission. The singular support and encouragement of H.E Adama Barrow and the Ministers of Justice and Finance and Economic Affairs have been tremendous. They helped us to lay a strong foundation for the establishment of our Secretariat. We are doubly sure that they would continue this commitment, in our quest to live by the standards and criteria for an effective National Human Rights Institution envisaged in the Paris Principles. We are grateful to the National Assembly, in particular the Honourable Speaker and members of the Standing Committee on Human Rights and Constitutional Matters, for its dedication to our cause and continuous commitment to our mutual partnership.

The successes we have registered in our programme implementation could not have been possible without the technical and financial support of the UNDP- Banjul Office, UN Peace Building Support Office, OHCHR WARO Office and NANHRI.

Through partnership with TANGO, we were able to establish the Civil Society Dialogue Platform which serves as an interface between the Commission and Civil Society.

We appreciate the commitment of the former Inspector General of Police, the late Alhaji Mamour Jobe, and his high command to the work of the Commission and their partnership in our training activities

for the Gambia Police Force and the adoption of the Code of Conduct for the Police.

The NHRC would also like to extend its profound gratitude and appreciation to the following Ministries, institutions and organizations for their support, partnership, and encouragement:

- Ministries of Justice, Interior, Local Government and Lands, and Basic and Secondary Education
- The African Union Commission for seconding to us a very seasoned human rights lawyer and expert, Ms Judy Oder, whose commitment to work was unparalleled. We regret her departure this December 2020.
- Global Alliance of National Human Rights Institutions
- Network of African National Human Rights Institutions
- International IDEA
- Constitutional Review Commission
- Truth, Reconciliation and Reparation Commission
- Kenya National Commission for Human Rights
- Institute for Human Rights and Development in Africa
- TANGO Secretariat and Membership
- Gambia Police Force
- Gambia Prisons Services
- Gambia Immigration Department

We recognise that the list is inexhaustive, but to each of our donors and partners we owe a debt of gratitude, are very proud of our relationship and look forward to further building on this relationship in 2021.

FOREWORD

The National Human Rights Commission (NHRC) is an independent National Human Rights Institution established by the NHRC Act 2017 and guided in its work by the United Nations Principles Relating to the Status of National Human Rights Institutions referred to as the ‘Paris Principles’. It is a member of the Global Alliance of National Human Rights Institutions (GANHRI), the Network of African National Human Rights Institutions (NANHRI) as well as the Network of National Human Rights Institutions for West Africa (NNHRI-WA).

Section 33 (2) (a) and (b) of the NHRC Act 2017 requires the NHRC to submit to the National Assembly a report which shall inter alia evaluate the ways in which human rights in The Gambia have been observed and the steps it has taken to protect human rights, with a view to draw the attention of the Government and relevant stakeholders to the state of human rights in the country and what appropriate measures need to be implemented for more effective promotion, protection, and realization of human rights.

With the foregoing, the NHRC presents this Report on the State of Human Rights in The Gambia in the year 2020. The Report summarizes human rights issues in the Gambia ranging from the restriction of rights through emergency powers and regulations under section 34 of the 1997 Constitution of the Gambia; respect of the integrity of the person; civil liberties; freedom of association and assembly; freedom of expression; and rights of women, children and persons with disabilities. The Report also covers the status of implementation of economic, social and cultural rights.

The year 2020 came with peculiar challenges to human rights protection in the Gambia. Firstly, for the first time in the Gambia, a state of public emergency under section 34 of the 1997 Constitution

was invoked in the context of a global pandemic, COVID-19. The restrictions imposed had far reaching consequences on several rights including the rights to assembly, movement, education, political participation, health, employment, food and the rights of vulnerable groups. Secondly, the year also commenced with a tension in the country due to the agitation of The Operation ‘3 Years Jotna’ Movement commonly known as “3 Years Jotna”, and its clash with the security forces over the issue of whether President Adama Barrow should step down after 3 years in power.¹ Even though the tensions led to some pockets of violence, the right to protest, among other forms of civil engagement, featured prominently in the political discourse in the Gambia.

Protests are fundamental features of a functioning democracy and the Gambia Police Force performs the critical role of creating an environment that is conducive for the exercise of the right to protest, while maintaining law and order, and the protection of life and property. Therefore, the year 2020 witnessed a significant interaction between law enforcement and people’s exercise of the right to protest and assembly.

¹ “3 Years Jotna” is an advocacy group in the Gambia, which advocates for the resignation of President Adama Barrow. On the 26 January 2020, the Government of the Gambia declared the group ‘subversive’ and ‘violent’ and therefore banned all its activities.

EXECUTIVE SUMMARY

This Report presents an overview of the state of human rights in the Gambia in 2020, the fundamental human rights and freedoms which were violated or infringed by both State and non-State actors, and compatibility of domestic legislation to human rights standards and the State's obligations under ratified human rights instruments. It also proffers recommendations that the State, as the primary duty bearer, could implement to better guarantee fundamental human rights and freedoms and strengthen the rule of law, good governance, accountability, transparency and due process.

In 2020 the Commission undertook series of initiatives and actions to promote and protect human rights and freedoms. Through its Complaints Handling Procedures, the Commission received 70 human rights violation complaints out of which 13 were found admissible were investigated and appropriate remedial and redress actions recommended. The caste violence in the Upper Region, allegations of torture against law enforcers and the trafficking of young ladies to Lebanon were investigated and recommendations made to the appropriate State organ.

The Commission has utilized its mediation mechanism to resolve contentious issues and broker peace amongst communities. It also issues press statements in response to human rights issues and encouraged the Government to take measures to ameliorate the impact of Covid-19 on vulnerable groups, including persons with disabilities and prisoners.

Awareness creation was carried out to engage and educate the public on the mandate and functions of the Commission, their fundamental human rights and freedoms under domestic and international legal instruments and how to lodge complaints at the Commission.

Training workshops were conducted to enhance the capacity of both State and Non-State Actors in various aspects of human rights within the mandate and functions of the NHRC. Training of trainers on human rights and rule of law were conducted for members of the Gambia Police Force. Specific training workshops were also facilitated for the Commissioners and staff of the NHRC to enhance their knowledge and skills on human rights, the workings of the various UN and AU treaty bodies, as well as the effective functioning of a National Human Rights Institute (NHRI).

Networking and collaboration are essential to the work of the NHRC and for greater promotion and protection of human rights. As a result, enviable partnerships have been established with the National Council for Civic Education, the Civil Society Dialogue Platform and the Gambia Police Force. The great working relationship with the Gambia Police Force has witnessed the adoption of a Code of Conduct for the Gambia Police Force as well as Guidelines for the Policing of Assemblies and Demonstrations.

As part of its advisory role, the NHRC prepared Advisory Notes on the Right to Freedom of Assembly and Association vis-à-vis the Public Order Act, Advisory Note on Sexual Harassment in The Gambia, Advisory Note on the 2020 Final Draft Constitution, Advisory Note on the Election Act 2001 and Advisory Note on Caste and Descent-based Discrimination in The Gambia.

COUNTRY REPORT OF THE REPUBLIC OF THE GAMBIA

Population	2.3 million
Population Distribution	57.8% in urban centers
Population growth	2.9% annually
Fertility rate	5.28
Life expectancy ²	61.1
Socio-Economic indices ³	
• GDP	\$ 1.6 Billion
• Inflation	6.2%
• Primary school education	181,513
• Secondary school education	163,155
• Tertiary education	NA
• Literacy level	63.9%
• Health facilities	1175 service delivery points

RATIFIED HUMAN RIGHTS INSTRUMENTS

Below are list of UN, AU and ECOWAS human rights instruments which have been ratified (or acceded to) by The Gambia:

	<ol style="list-style-type: none"> 1. Ratified UN human rights instruments <ol style="list-style-type: none"> i) Convention on the Prevention and Punishment of the Crime of Genocide. ii) International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. iii) International Covenant on Civil and Political Rights (CCPR). iv) Optional Protocol to the International Covenant on Civil and Political Rights- (CCPR-OP1). v) Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP) vi) International Covenant on Economic, Social and Cultural Rights (CESCR). vii) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
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² WHO Global Health Observatory, May 2017.

³ The Multi-Dimensional Poverty Index (MPI) 2019 used 10 indicators to measure poverty in three dimensions: education, health and living standards. The index which reflects both the incidence of poverty and the average intensity of deprivation estimated that 10.1 per cent of the population lives below the income poverty line \$1.90/day, 32% in severe multi-dimensional poverty and 21.8% vulnerable to multi-dimensional poverty. It is estimated that the national poverty line stands at 48.6.

	<ul style="list-style-type: none"> viii) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP). ix) Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT). x) Convention on the Rights of the Child (CRC). xi) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC) xii) Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC). xiii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). xiv) Convention for the Protection of All Persons from Enforced Disappearance (CED). xv) Convention on the Rights of Persons with Disabilities (CRPD). xvi) Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD). xvii) ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
2.	<p>African Union human rights instruments</p> <ul style="list-style-type: none"> i) Constitutive Act of The African Union ii) Protocol on the Amendments to the Constitutive Act of the African Union. iii) African Charter on Human and Peoples' Rights iv) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. v) African Charter on the Rights and Welfare of the Child. vi) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). vii) African Youth Charter. viii) African Charter on Democracy, Elections and Governance signed 29 January 2008. ix) OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. x) Protocol to The African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. xi) Protocol on the Statute of the African Court of Justice and Human Rights. xii) Protocol of The Court of Justice of the African Union.

3.	<p>ECOWAS human rights instruments ratified:</p> <ul style="list-style-type: none">i. Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment 1985.ii. Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment 1986.iii. Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment 1990.iv. Protocol on Community Court of Justice 1991.v. The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security 1990.vi. Supplementary Protocol on Democracy and Good Governance 2001.
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1. INSTITUTIONAL DESIGN AND COMPLIANCE WITH REGIONAL AND INTERNATIONAL HUMAN RIGHTS TREATIES

The Gambia adheres to a common law legal system which does not provide for the direct application of international human rights treaties in Gambian courts. The legal system is based on the received English Law, which is common law and principles of equity. Thus, as a State with a dualist legal system, ratified international or regional human rights instrument only becomes enforceable when domesticated through an Act of the National Assembly. Customary practices and the Sharia (Muslim law as regards marriage, divorce and inheritance) also form part of the laws of The Gambia by virtue of Section 7 of the Constitution. Judicial powers of The Gambia are vested in the Courts.

The 1997 Constitution guarantees the rights of all Gambians and people living in The Gambia. Chapter 4 of the Constitution is entirely devoted to the fundamental rights and freedoms and the judicial remedies available for redressing their violation. The enjoyment of these rights is not, however, absolutely guaranteed in periods of national emergency or times of civil strife or other forms of conflict. Specifically, certain fundamental rights may be limited as provided under section 35 of the Constitution.

2. ARREST AND DETENTION UNDER THE EMERGENCY POWER REGULATIONS

Section 19 of the 1997 Constitution guarantees the right to personal liberty. It provides that no person shall be arbitrarily arrested or detained except on grounds and in accordance with procedures established by laws. Any person who is arrested is required to be informed of the reasons for his arrest within 3 hours of arrest and should not be held in detention for more than 72 hours without an appearance before a court of competent jurisdiction. During the period under review, there have been incidents of arrest of people for their failure to comply with

COVID 19 regulations made under the Emergency Powers Act. In the month of March 2020, the police arrested four (4) Imams in the Kanifing Municipality, West Coast Region and Lower River Region for violating the COVID 19 restrictions.⁴ In the North Bank Region thirty (30) people were arrested for observing Friday prayers in violation of the COVID 19 regulations. Two hundred and twenty-one (221) more were arrested for similar reasons in July.⁵

Moreover, despite the Commission’s recommendations to decongest the prisons and the efforts of the State in that regard, it remains concerned about overcrowding and the non-observance of the WHO and Ministry of Health guidelines on COVID 19 prevention in Mile II Central, Janjanbureh and Jeshwang Prisons and Police Stations.

Recommendations to the State:

1. Observe WHO and Ministry of Health Guidelines in all detention facilities to contain Covid-19.
2. Expedite the trial process of suspected violators of the emergency power regulations.
3. Consider imposing fines on violators of the Covid 19 regulations instead of imprisonment to minimize transmission of the virus in detention facilities.

⁴ The Government of The Gambia declared state of public emergency for 45 days commencing from the 26 of March 2020.

⁵ Foroyaa ‘221 People Arrested for Violating Curfew Order’ August 2020.

3. RESPECT FOR THE INTEGRITY OF THE PERSON INCLUDING DEPRIVATION OF LIFE

With respect to the enjoyment of the right to life, Section 18 of the Constitution guarantees the right to life which includes the prohibition of arbitrary deprivation of life except in lawful execution of a death sentence imposed by a court of law. In 2017, at the 53rd independence anniversary, President Adama Barrow declared a moratorium on the use of the death penalty which is still being observed. In addition to the limited constitutional safeguard, the Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty in 2018. In the 2019 Universal Periodic Review (UPR) the Gambia accepted the recommendation to abolish the death penalty.

However, on the 25 July 2019, the newspapers reported that one Pap Ibrahim Khalilulaye Thiam was sentenced to death by the High Court in Banjul for the murder of one Fatou Loum. In this case, even though the Court took judicial notice of the moratorium on the death penalty in the Gambia, the Judge contended that section 188 of the Criminal Code which provides that a person convicted of murder shall be sentence to death still stands as it has not been amended or repealed. Similarly, on the 28 October 2020 one Sheikh Hydera was convicted of murder and sentenced to death by the High Court in Banjul. However, in both cases the executions or death sentences have not yet been carried out.

Recommendations to the State

1. Remove the death penalty from the Criminal Code and Criminal Procedure Code in line with the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty which the State ratified.
2. Include in the next State reports to be submitted to the Human Rights Committee information on the measures

adopted by the State to give effect to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

i. Enforced Disappearance

A delegation of the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) visited the Gambia from 12 to 19 June 2017. Following this visit the Gambia ratified the Convention for the Protection of All Persons from Enforced Disappearance (CED) on the 28 September 2018. Despite these efforts, the recent revelations from the Truth, Reconciliation and Reparation Commission suggest a high number of enforced disappearances from 1994-2016. Efforts by the TRRC to establish the whereabouts of disappeared victims are commendable. However, the families of victims have the right to know about the progress and results of any investigation into the enforced disappearances, the fate or the whereabouts of the disappeared persons, the circumstances of the disappearances, and the identities of the perpetrator(s).

It is also commendable that the Government has already taken several steps to search for those who have disappeared. Three burial sites have been already identified in Tanji, Titinba Forest near Bwiam and Yundum Barracks where the remains of some disappeared persons have been exhumed. The exhumation of these bodies is certainly a positive step. There are however some obstacles in the identification of the bodies due to the lack of adequate technical facilities in the Gambia. In addition, there is evidence that a larger number of disappeared persons whose bodies are believed to have been thrown in wells or graves in or around the country are yet to be discovered.

Recommendations to the State

1. Provide full reparation for all victims of enforced disappearances and their relatives, which includes compensation, satisfaction, rehabilitation and guarantees of non-repetition, as provided for in article 24 of the Convention on Enforced Disappearances.
2. Initiate processes to memorialize the disappeared victims as part of the transitional justice process.
3. Establish independent oversight bodies to oversee the functions of all the law enforcement agencies.
4. Introduce, in line with article 10(3) of the Convention on Enforced Disappearance, an up-to-date register of all persons deprived of their liberty in every place of detention and take steps to maintain centralized registers of all detainees in the country.
5. Take every measure possible to locate all victims of enforced disappearances and ensure that perpetrators are charged accordingly and brought before the courts.
6. Domesticate the CED and ensure its full implementation and enforcement; and
7. Submit its initial report to CED, which was due in October 2020.

ii. Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

In 2018 the Gambia ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. However, the Convention is not yet domesticated thereby creating a lack of normative basis for the prosecution or punishment of individuals for offences related to torture and inhuman treatment.

On the 29 April 2020, the TRRC submitted its interim report following a year-long investigation to the Minister of Justice as required by Section 14(1) (a) of the TRRC Act 2017. The report highlighted among other things that the human rights violations that occurred from 1994 to 2016 included allegations of torture by State agents. Even though this report did not fully cover the prevalence of torture from 1994-2016, the testimonies of several witnesses pointed to alleged torture and inhuman and degrading punishment.

Moreover, during the period under review, the NHRC headed a joint investigation into the alleged torture of one Ebrima Sanneh by a former Commander of the Anti-Crime Unit, a branch of the Gambia Police Force. The investigation panel comprised representatives from the Gambia Police Force, the Ministry of Interior, The Association of Non-Governmental Organisations (TANGO) and The Gambia Bar Association. It received testimonies from seventeen (17) witnesses, including the alleged perpetrator. The panel also obtained medical evidence from the Kanifing General Hospital and interviewed the Medical Doctor that treated Ebrima. The premises of the Anti-Crime Unit in Bijilo were visited to assess the scene of the alleged assault and a detailed report has been shared and received by the Inspector General of Police (IGP) and relevant State authorities for implementation.

The panel found that the arrest of Ebrima Sanneh and his colleagues was unwarranted as there was no basis for same. The panel also found that Ebrima Sanneh and his colleagues were subjected to

forced labour while in detention.

Based on the above findings the panel made the following recommendations:

1. The Gambia Police Force pay monetary compensation to Ebrima Sanneh for the wrongfully inflicted pain and suffering.
2. The Inspector General of Police to take disciplinary measures against the police commander and to consider his redeployment from the Anti-Crime Unit.
3. The Inspector General of Police to always ensure that police officers always follow due process in the arrest and detention of suspects.
4. The Inspector General of Police to provide all police officers, as soon as is practicable, pocket notebooks for record keeping as well as registers to record the detention and release of all persons under their custody.
5. The Inspector General of Police to ensure that no detainee under the custody of the Police anywhere is subject to forced labour of any kind; and
6. In collaboration with the Police, NHRC should support in the design and implementation of relevant training on human rights-based approaches to policing and human rights in general, especially for officers of the Anti-Crime Unit.

The Office of the Inspector General of Police has already implemented recommendations 1 and 2, while it is working closely with the NHRC to ensure that the remaining recommendations are implemented by the end of 2021.

Other complaints received by the NHRC included allegations of heavy-handedness and brutality against civilians by Police and Immigration Officers at Brikamaba Police Station, Kerr Mot Hali PIU Post, Police Licensing Department in Banjul and Babun Fatty Immigration Post.

These complaints are currently under investigation.

Challenges in the Protection against torture and other cruel, inhuman and degrading treatment or punishment

- a) The Gambia does not have a law that expressly criminalises torture.
- b) Law enforcement officers have limited knowledge of human rights in law enforcement; and
- c) There is the absence of effective remedial mechanisms in law enforcement which perpetuate the culture of impunity.

Recommendations to the State

1. Enact into law the Prevention and Prohibition of Torture Bill 2020 and ensure its popularization and effective enforcement and implementation.
2. The Gambia Police Force and Gambia Immigration Department to take steps to create a mechanism for the investigation of all complaints of torture against Police and Immigration officers and take necessary actions against those found culpable.
3. Enhance the capacity of law enforcement agents on human rights and human rights-based methods of interrogation and interviewing.

iii. Conditions of Prisons and Detention Facilities

The Gambia currently has 542 inmates in the three major prisons⁶. Out of this number, 261 are on pretrial detention or remanded.⁷ The 2019 UNDP Rapid Prison Assessment Report (August 2019) indicates that there is overcrowding at the Mile II Remand Wing with 11 cells housing 211 males on remand.⁸ The Report further noted that there are more juveniles awaiting trial than those convicted. While these conditions are not new, their continuous existence indicates inadequate budget for the prisons and detention facilities. In both its December 2019 and November 2020 visits to the prisons and detention facilities, NHRC highlighted similar issues. In November 2020, The Commission visited Mile II Central Prison, Jeshwang Prison and Juvenile Wing, Janjangbureh Prison, Basse Police Station, Bansang Police Station, Janjangbureh Police Station, Kaur Police Station, Farafenni Police Station, Soma Police Station, Kalaji Police Station, Bakadaji Police Station and Sibanon Police Station. The visits to the three prisons revealed several challenges including:

1. Overcrowding in the prisons.
2. Lack of proper sanitation facilities.
3. Limited food supply to inmates.
4. Prolonged pre-trial remand.
5. Lack of vehicles for operational and administrative services.
6. Limited access to health services in the prisons; and
7. Limited vocational and training facilities for inmates.

The monitoring of the Police Stations revealed that most Stations have poorly ventilated and tight cells, tight and poor equipped offices, and sanitary facilities in poor conditions. They also lack designated cells for women and children and designated offices for interviews of victims of sexual and gender-based violence, vehicles for operational and other purposes, and inadequate budgetary allocation for the

⁶ NHRC 2020 Prisons and Detention Facilities Visit Report, 24-26 November 2020

⁷ NHRC 2020 Prisons and Detention Facilities Visit Report, 24-26 November 2020.

⁸ See UNDP Rapid Prison Assessment Report August 2019.

feeding of detainees.

On the 20 March 2020, the NHRC issued a press release in which it proffered recommendations to support the monitoring, prevention and control of Covid 19 following the suspension of all court proceedings in The Gambia. The NHRC further urged the Ministry of Justice and the Judiciary to investigate the plight of detainees in police cells, remand prisoners and convicted prisoners in the fight against the spread of Covid-19. It also drew the attention of the relevant authorities to the implications and ramifications the suspension of courts could have on the rights of remand prisoners who were undergoing trial through the court system. Consequently, the NHRC came up with the following recommendations for the consideration of the Ministry of Justice and the Judiciary:

1. That alleged offenders charged with offences that are nonviolent and/or not of a sexual nature be granted bail on lenient conditions.
2. That alleged offenders charged with nonviolent offences and/or crimes that are not of a sexual nature who are already in remand and awaiting trial be released on bail on lenient conditions.
3. That inmates that have committed nonviolent crimes and crimes that are not of a sexual nature and have served three-fourth /75 percent of their sentences be eligible/considered for immediate released to reduce over congestion in our prisons and the spread of the virus.
4. That if the courts are closed for a prolonged period of more than one month, the judiciary should consider instituting Mobile Courts within the premises of Mile 2 Central Prison, Jeshwang Prison and Janjangbureh Prison.

5. That the Ministry of Justice urges the President to exercise his powers as per Section 82 of the 1997 Constitution (the Prerogative of Mercy), especially towards those convicts who are serving time for offences that are non-violent or not of a sexual nature.

In response to these concerns, President Adama Barrow, in the exercise of his Prerogative of Mercy, pardoned one hundred and fifteen (115) prisoners. Seventy-eight (78) of those inmates were from the Mile II Central Prison, twenty-four (24) from Jeshwang prison and thirteen (13) from Janjangbureh prison. While these gestures are commendable, the prisons and detention facilities continue to encounter longstanding challenges.

Following the NHRC 2019 recommendations on the conditions of the prisons and other detention centres, major improvement have been made at the Jeshwang detention facility where new dormitories with bed capacity of 200 were provided through the partnership and support of the United Nations Development Programme (UNDP) and the Gambia Chamber of Commerce and Industry (GCCCI).

Recommendations to the State

1. Develop comprehensive training package for prison officers, for their professional development.
2. Develop and implement effective educational services for inmates and juvenile offenders.
3. Provide specialist care and attention for inmates with psychosocial illness.
4. Build and adequately equip vocational training facilities in all the prisons.
5. Provide recreational facilities in all the prisons.
6. Provide adequate budgetary allocation for the maintenance of the prisons.

7. Renovate existing prisons and, in the long term, build new, modern prison facilities in the regions; (regional satellite prisons) which meet international standards.
8. Construct Female and Juvenile Wings in all the prisons.
9. Improve the quality of food of inmates and hire nutritionist/dietician for all the prisons.
10. Purchase labour saving devices for the prisons.
11. Renovate all the sanitary facilities and toilets in all the prisons and ensure adequate supplies of sanitary materials which are regularly replenished.
12. Upgrade the prison ‘clinics’, provide adequate medical stocks and ensure a medical doctor regularly visit to do medical check-ups on the inmates.
13. Provide storage facilities for medical supplies of the prisons, including the supply of first aid kits and adequate medicine.
14. Provide professional training in nursing to the medics by facilitating their enrolment in one of the nursing training schools in the country.
15. Ministry of Justice, in collaboration with the Judiciary, to set up a committee or technical task force to investigate the issue of overcrowding in the Prisons and come up with strategies and recommendations regarding decongestion and the expeditious disposition of cases.
16. Purchase adequate vehicles, including ambulances, for the operations of the prisons.
17. Ministry of Health to put in place a mechanism which would ensure regular inspection of the prisons.
18. Established well equipped libraries and recreational facilities in the prisons.
19. Carry out massive renovation at the staff quarters of all the prisons.
20. Construct Juvenile Wings in the rural area to minimize the logistical challenges that confront the Police and the Prison authorities in ensuring the rights of children in conflict with the law are protected and respected; and

21. Pay ‘Risk Allowance’ risk allowances to prison officers as are being paid to officers of the other security agencies.

Recommendations regarding Police Stations

1. Ensure new Stations have adequate cells to avoid overcrowding.
2. Renovate the sanitary facilities in all Stations.
3. Ensure all Stations have separate cells for the genders.
4. Provide every Station with functioning vehicles and/or motorcycles for operational and administrative purposes.
5. Provide adequate office equipment and stationery for effective police work.
6. Ensure Stations have separate offices for Gender and Child Welfare Unit.
7. Provide Stations with sufficient budget to adequately cater for the feeding of detainees.
8. Enhance the professional capacity of police officers in data entry and management.
9. Supply all Stations with the relevant laws and materials on human rights and policing; and
10. Ministry of Health to ensure that free medical care is given to detainees with special medical conditions.

iv. Right to liberty and access to justice

Section 19 of the 1997 Constitution guarantees the right to liberty. However, the law provides for circumstances where a person’s right to liberty may be restricted in accordance with the law. Such restrictions featured prominently in 2020 due to the enforcement of the state of emergency regulations. In March 2020 four Imams were arrested in Kanifing Municipality, West Coast and Lover River Regions for violating COVID 19 regulations.⁹

⁹ WANEP Bulletin, April 2020 at p2-3.

Thirty people were arrested in the North Bank region for performing congregational prayers in violation of the emergency regulations. Similar arrests were made throughout the COVID 19 restrictions particularly when curfew was introduced as part of efforts to contain the further spread of the virus.

The NHRC further observed that six soldiers have been in detention since 2017 following their arrest on allegations of being part of Yaya Jammeh’s hit squad responsible for extra-judicial killings. Their continuous detention without trial is not only a violation of the right to liberty but is also deeply concerning to the NHRC which has in fact received a complaint filed by the family members of one of the detainees who was arrested since 2017. Several letters have been sent to the Ministry of Justice to address their continuous detention without trial. The Ministry has indicated in its response that their continuous detention was under review as part of the overall transitional justice process.

The NHRC takes cognizance of the progressive measures taken by the Government of the Gambia to promote access to justice through the provision of legal aid by the National Agency for Legal Aid (NALA) to children in conflict with the law and those charged with offenses carrying life imprisonment or death sentence as well as the rolling out of High Court annexes in various parts of the country. However, NHRC is deeply concerned by NALA’s limited financial, technical and institutional capacity to provide adequate access to justice for persons charged with capital offences.

Equally, the North Bank and Central River Regions do not have High Courts. Cases from this area are heard either in Mansa Konko by a visiting Judge or at the Basse High Court Judge or referred to Banjul. While the Commission notes efforts to decentralize all the major courts across the regions, the decentralization is extremely slow considering the absence of a High Court in at least three of the seven regions of the country.

Recommendations to the State

1. Support and strengthen the provision of legal aid throughout country to persons accused of serious offences.
2. Provide adequate budgetary and technical support to NALA.
3. Enhance access to justice to indigents.
4. Decentralize the High Court across the country; and
5. Train law enforcement officers on the treatment of suspects during arrest and detention.

v. Right to fair trial and access to justice

Section 24 of the 1997 Constitution guarantees the right to fair trial. This right entails the presumption of innocence in criminal cases and trial within a reasonable period. The right further guarantees legal aid services where the individual is charged with a capital offence. Given this limited legal aid, many litigants find it difficult to access justice. In 2008, The Gambia enacted the Legal Aid Act (LAA 2008) to enhance access to justice through the provision of state funded legal aid. The LAA 2008 requires the State to provide legal aid to the poor and vulnerable persons in criminal matters and in civil suits. Legal aid is also to be provided for all persons where such persons are facing the death sentence or life imprisonment as required by section 24(3) (d) of the 1997 Constitution. Children in conflict with the law are also entitled to legal aid (section 72 of the Children’s Act 2005).

The Legal Aid Act 2008 marked an important step in rendering access to justice to the poor and vulnerable groups in The Gambia. However, when The Gambia ratified the ICCPR in 1979, it entered a reservation to legal aid on the grounds that due to financial reasons, free legal assistance for accused persons is limited to persons charged with capital offences. This reservation has still not been removed by the Gambia.

Equally, to extend the provision of legal aid to all cases, section 30 (2) of the LAA 2008 requires the Attorney General to publish a minimum wage standard that will act as a poverty line to give all persons who earn below such amount the right to legal aid for cases they may be involved in, both civil and criminal cases. The Gambia does not have a minimum wage in place.

International human rights law guarantees the right to state sponsored legal aid in criminal cases. For instance, the ICCPR guarantees state funded legal assistance to indigent accused persons ‘where the interest of justice so requires’ and the African Court on Human and Peoples’ Rights has similarly interpreted the right to fair trial under article 7 of the African Charter to include an obligation on African States to provide state funded legal aid to indigent accused persons facing serious criminal charges. The reason for obligating States to provide state funded legal aid for some defendants in criminal cases is the potential deprivation of liberty and fundamental freedoms due to the imposition of criminal sanctions, especially, long custodial sentences, because of an unequal contestation between a generally better resourced State and economically disadvantaged accused persons which leads to an unfair justice system. Therefore, the same concept of ‘equality of arms’ should apply to contestations between individuals and the State concerning fundamental human rights deprivations and in all offences.

The constitutional regime of Gambia should therefore ensure that at a minimum State funded legal aid is provided for all cases where the interest of justice requires. In line with the African Commission’s Guidelines and Principles on Fair Trial (2003), some of the factors that may be considered to determine ‘interest of justice’ should include the complexity of the case and the ability of the applicants to adequately represent themselves, the nature of the rights affected, and ‘the likely impact of the outcome of the case on the wider community’.

In addition to these, it is also recommended that the applicant’s membership of a marginalised group such as gender, disability and age should have a favourable inclination towards the grant of state funded legal aid.

Challenges to the enjoyment of the right to liberty in the Gambia

1. Limited number of courts in some parts of the Gambia.
2. Legal Aid is limited to capital offences.
3. Prolonged detention without trial continues to persist; and
4. Delay in judicial proceedings has hindered access to justice.

Recommendations to the State

1. Remove filing fees for human rights cases for applications brought to enforce provisions of the Constitution.
2. Remove cost orders in cases involving indigenes unless there is a clear frivolous case that is brought without any merit and knowledge on the part of the plaintiff.
3. Remove the reservation entered in the ICCPR regarding provision of legal aid.
4. Decentralize NALA to all the regions in the Gambia.
5. Extend legal aid to all cases that involves indigents; and
6. The Attorney General and Minister of Justice should publish a minimum wage standard in accordance with section 30 (2) of the LAA 2008.
7. Decentralize the High Court to all the regions in the Gambia; and
8. Introduce mobile clinics to areas that do not have courts.

vi. Freedom of speech and the media

Section 25 of the 1997 Constitution of the Gambia guarantees the right to freedom of expression, including press freedom and freedom of the media. There have been improvements in the media environment, and the notable proliferation of privately-owned and independent news media in The Gambia is a testimony. Prior to 2017, the exercise of freedom of speech was often met with violence and persecution.

The NHRC is monitoring the development of the Freedom of Information Bill, 2019. The draft Bill was first presented to the National Assembly in December 2019 by the Ministry of Justice for enactment. The Bill has gone through series of reviews and the most recent review was done by the National Assembly select Committee on Education, Training & ICT in 2020. Even though the Bill gained political support it is not yet enacted. If formally enacted by the National Assembly, it will allow citizens, journalists, students and civil society organizations to easily access government data to enhance accountability and transparency.

In February 2020, following the events of ‘3 Years Jotna’ protest, two media houses were ordered to close transmission by the Government. This matter was mediated by the NHRC which resulted to the lifting of suspension on Home Digital FM and King FM and the dropping of all criminal charges against the leadership of the said radio stations. The establishment of the Media Council of the Gambia in 2018 and the Ethics Panel in July 2020 by the Gambia Press Union with active partnership of the State, to regulate the conduct of media practitioners, is commendable.

Sections 51 and 52 of the Criminal Code also deal with seditious intention and offences, conviction for which carry heavy imprisonment terms.

Sections 178 – 179 and 181A of the Criminal Code punish criminal defamation and false publication, respectively. Therefore, despite the progress made in the media landscape, several restrictive laws continue to pose a threat to freedom of expression and the media.

Recommendations to the State

- a) Repeal sections 51-54 of the Criminal Code.
- b) Encourage self-regulation of the media.
- c) Expedite the enactment of the Freedom of Information Bill 2019 and ensure its popularization and effective implementation and enforcement; and
- d) Fully support the Media Council of the Gambia.

vii. Freedom of association and assembly

Section 25(d) and (e) of the 1997 Constitution guarantees the right to freedom of association and assembly. However, the exercise of this right has often resulted into confrontations between protesters and law enforcement. Under Section 5 of the Public Order Act of 1963, the Inspector General of Police (IGP) or Governor of a Region can deny individuals or groups a permit or licence for public procession or to protest. This discretionary power, mainly exercised by the IGP, serves as a significant limitation to the exercise of the right.

In 2020 the NHRC was alerted to massive arrests by law enforcement officers during a protest by “Operation 3 Years Jotna” (OTYJ) movement on the 26 of January 2020. The group was granted a permit by the IGP which indicated that the procession of the applicants was to commence from the “Y junction” on Bertil Harding Highway that leads to Bakau, towards the Independence Stadium. However, at around 11:00am, violence erupted between police in riot gears and OTYJ protesters leading to the arrests of 137 individuals, including the entire Executive members of the Movement.

Some of the detainees were released but the entire Executive members were arraigned before Kanifing Magistrates Court and charged with three counts of unlawful assembly, rioting after proclamation and destruction of property or structures. The Magistrate, for want of jurisdiction, referred the matter to the Special Criminal Division of the High Court. He also issued a consequential order to remand all accused persons pending hearing in the High Court. All the accused persons, who are now out on bail, are facing trial in the High Court. These events brought to the fore some of the challenges in the regulation of the right to protest.

Madi Jobarteh, a civil rights activist was issued a permit to protest in the ‘Black Lives Matter’ and subsequently charged for false broadcasting. The case was successfully mediated by the NHRC. In response to the controversies surrounding the enjoyment of the right to protest, the NHRC developed an Advisory Note on the Right to Freedom of Association and Assemblies vis-à-vis the Public Order Act, adapted the Guidelines on Policing Public Assemblies in The Gambia and held discussions on the aforementioned documents with the Gambia Police Force.

Recommendations to the State

- a) Amend section 5 of the Public Order Act, from the requirement of permit to only notification.
- b) Review, amend or revise the entire Public Order Act to align its provisions with Gambia’s international human rights obligations; and
- c) Encourage civic engagement around the issue of the right to freedom of association and assembly.
- d) Enhance the capacity of the law enforcement agencies on crowd control and management of public assemblies.
- e) Integrate the ‘Guidelines on Policing Public Assemblies in The Gambia’ in the training curricula of all the law enforcement agencies.

viii. Rights of Persons With Disabilities (PWDs)

The Gambia acceded to the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol on 6th July 2015 in expression of its political will to promote and protect the rights of persons with disabilities. There is also a draft Persons With Disabilities Bill 2020 which seeks to domesticate the Convention. The Bill makes provisions for Persons With Disabilities (PWD) such as rights to equality and non-discrimination, health care, education, accessible information and rehabilitation services; special protection for children with disabilities; accessibility to public places and public transportation; freedom from cruel, inhuman or degrading treatment or punishment; freedom from exploitation, violence and abuse; rights to adequate standard of living and social protection as well as the right to participation in political and public life. The Bill is currently tabled before the National Assembly for enactment.

Challenges

- a) In The Gambia, persons with disabilities face numerous challenges and artificial barriers. Their inherent rights are yet to be fully respected, promoted and protected. They still face challenges in terms of equal opportunities for scholarships and training, including provision of relevant facilities and equipment, as well as in employment.
- b) Persons with Disabilities face difficulties in accessing public buildings and facilities most of which are without ramps, elevators or escalators, thus adversely restricting their freedom of movement.
- c) In terms of access to education and information at workplaces, persons with visual impairment lack accessible facilities such as information braille system, audio tape recorders, large print, etc. to enable them work efficiently and effectively or participate actively in education.
- d) In terms of general access to information, there are no sign language interpreters at workplaces and on television during news broadcast.

- e) Public or commercial transportation are not disability friendly. Commercial drivers are often unwilling to carry wheelchair users because of the added burden of assisting them on board vehicles.

Recommendations to the State

- a) Ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination.
- b) Expedite the enactment of the Persons with Disabilities Bill 2020 and ensure its effective enforcement, implementation and popularisation.
- c) Develop a National Disability Policy and Strategy and ensure its effective implementation.
- d) Take all appropriate measures to eliminate discrimination based on disability by any person, organization or private enterprise.
- e) Undertake or promote research and development of universally designed goods, services, equipment and facilities which should require the minimum possible adaption and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines.
- f) Promote accessible information to PWDs about mobility aids, devices, and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.
- g) Promote the training of professionals and staff working with persons with disabilities.
- h) Provide persons with disabilities, through their organisations, with avenues and opportunities for skills acquisition to enhance their employability or increase their self-reliance.

- i) Make sign language interpretation obligatory for the public television (synchronized television programs) and all public gatherings where speeches or statements would be delivered.
- j) Build more learning facilities for those children with disabilities whose special conditions and needs will make their integration in mainstream education difficult, especially in rural Gambia where no such facility currently exists.
- k) Put in place measures which would facilitate and guarantee the participation of persons with disabilities in national development and discourses.
- l) Sign and ratify the AU Convention on the Rights of Persons with disabilities in Africa and domesticate thereafter.
- m) Popularize and implement the Regional Action Plan on Albinism in Africa adopted by the Executive Council of the AU in July 2019.

ix. Rights of Women

The Gambia is a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Proposal as well as the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. The 1997 Constitution and laws such as the Women’s Act 2010 (and its amendment in 2016), Domestic Violence Act 2013 and the Sexual Offences Act, 2013 have been enacted to promote and protect the rights of women in The Gambia. Under article 28 of the 1997 Constitution (amended in 2002), women in Gambia are accorded equal rights with men.

The 2010-2020 National Gender and Women Empowerment Policy focuses on the critical areas of concern as outlined by the Beijing Platform for Action, including poverty reduction, women’s empowerment, education, and human rights and governance, among others. The Directorate of Gender (formerly called Women’s Bureau), with funding from development partners, has undertaken series of activities ranging from workshops, skills training, capacity building etc. to empower and improve the living condition of women. It has also embarked on vigorous sensitization programmes to encourage women to actively participate in politics and contest in elections. However, women are severely underrepresented in elective bodies at the national and local levels remain. Out of a total of 18 Cabinet Ministers, only 4 are women. Of the 58 parliamentarians, only 6 are women (3 elected and 3 nominated). Women comprise less than 15 per cent of the 144 elected councillors while only one of the eight Local Government Authorities, Banjul City Council, is headed by a woman. There is no woman Seyfo or District Head and less than 8 women village head. Patriarchy and socio-cultural and religious beliefs militate against women’s elections to political positions. Women’s representation in the Judiciary, as Magistrates and Judges, is improving and commendable.

In April 2020, the NHRC was alerted to the threatened forced eviction of women gardeners from Jeshwang Women Garden. From the findings of a preliminary investigation conducted by the NHRC, the situation had already resulted into threats of violence and loss of livelihood on the side of the women gardeners. The Commission’s request for further information from the Ministry of Lands, Regional Government and Religious Affairs on the alleged forced eviction of women gardeners has not been honoured, but the Commission continues to monitor the situation. The UN Basic Principles and Guidelines on Development Based Evictions and Displacement requires States to explore fully all possible alternatives to eviction.

All potentially affected groups, including women, have the right to relevant information, full consultation and participation throughout the entire process, and propose alternatives that authorities should duly consider. Further, the African Commission in Resolution ACHPR/Res.431 (LXV) 2019 encourages States to strengthen community rights over natural resources by establishing multi-sector and gender platforms with full and meaningful participation of small-scale food producers.

Women, including adolescent girls, continue to face all forms of gender-based violence despite the plethora laws in place to protect them. Cases of rape and sexual abuse of children have been reported in the media in the course of 2020. Maternal mortality also remains high; at about 400/100000 live births. Hardly a week or so passes without the report of the death of a woman in, during or after labour being written in the social media. Although there has not been any research or study on the magnitude and forms of sexual harassment in the country, anecdotal evidence points to its prevalence in the workplace. There is no national policy or strategy and comprehensive law on sexual harassment and very few institutions have workplace sexual harassment policy in place.

Challenges

- a) Women are still underrepresented in decision making positions in all sectors.
- b) There is only one government-run shelter which caters for persons in need of safety and protection, including women escaping domestic violence and girls in conflict with the law.
- c) Police officers and social workers are not adequately equipped to respond adequately to victims of gender-based violence.
- d) Many women still consider domestic and gender-based violence as “normal,” and as such do not often seek legal redress or professional assistance.

- e) While there are no legal restrictions which limit women’s access to employment, their low level of education or skills training greatly inhibits their employment in the public and private sectors. Majority of the work force in the informal sector is women.

Recommendations to the State

- a) Effectively popularize, enforce and implement legal instruments such as the Women’s Act 2010, Domestic Violence Act 2013, and Sexual Offences Act 2013.
- b) Expand access to education, vocational training and credit for women, with adequate indicators and monitoring mechanisms to track changes.
- c) Establish more shelters for vulnerable women, especially victims and survivors of gender-based violence.
- d) Appoint more women in senior management positions in the Public Service, including in State Owned Enterprises.
- e) Ratify ILO Convention No. 190 on Violence and Sexual Harassment adopted at the ILO General Assembly in June 2019 and popularise among the populace.
- f) Enact a comprehensive law that addresses sexual harassment in the workplace and effectively implement and popularise it.
- g) Institute measures, including through legislation, for gender quotas in all elective bodies at local and national levels, by allocating a minimum 30 per cent of seats to women.
- h) Accelerate efforts, in line with SDG 3, to drastically reduce incidents of maternal mortality.

x. Rights of Older Persons

In The Gambia, it is estimated that over three percent of The Gambia’s 2.3 million population are above 65 years. This percentage is expected to increase to twelve percent by 2050 with an increase in life expectancy because of The Gambia’s modest growth in its human development profile. Thus, like many developing countries in Sub-Saharan Africa, The Gambia will face incredible challenges in the demands of its ageing population that will require more investment in primary health care and development of robust social security schemes. At present, elderly persons in The Gambia lack systematic/legal protection for specialized care, such as the lack of health insurance, especially for the retired and or unemployed, a social safety net or minimum income support and residential care facilities where needed.

Section 63 of the 2020 Draft Constitution was an attempt to ensure the rights of older persons to “fully participate in the affairs of society, pursue their personal development, live in dignity and respect and be free from abuse; and receive reasonable care and assistance from their family and the State”. Despite providing care for grandchildren and the much-needed household labour and income, older persons, particularly women, largely remain marginalized, vulnerable, and excluded from decision-making processes.

Challenges

1. Common health problems of the older persons include hypertension, stroke, diabetes, heart diseases, trachoma and blindness that often lead to complications and permanent incapacitation.
2. Older persons can hardly afford the costs of travelling to the health facilities at the main health centres or hospitals in the urban areas where they could have access to proper medical treatment.

3. Many older persons live in rural areas where poverty is rife and economic opportunities are limited.
4. Active older persons are engaged in crop farming with no social security, rendering them totally vulnerable.
5. The economic situation of older persons is worsened by the burden of looking after orphans and other vulnerable children left by deceased parents.

Recommendations to the State

1. Sign, ratify and domesticate the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.
2. Review chapter of 4 of the 1997 Constitution to include provisions for the rights and protection of older persons.
3. Provide a comprehensive health insurance coverage countrywide for older persons and ensure access especially for people living in rural Gambia.
4. Ensure that older persons have a significant voice in the formulation of elderly friendly policies.
5. Partner with NGOs that are involved in advocating for the rights of older persons to harmonize efforts for effective human rights-based care and support.
6. Take all necessary measures to eliminate harmful traditional practices including witchcraft accusations, which affect the welfare, health, life and dignity of Older Persons, particularly older women.
7. Identify and support vulnerable families that are caring for older persons.

xi. Rights of the Child

The Gambia has ratified nearly all the child-related international and regional instruments, including the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child. It enacted the Children’s Act in 2005 which is a comprehensive piece of legislation which recognizes children’s civil, legal, social, and economic rights and protects them from all forms of abuse, exploitation, violence and discrimination.

In 2019, the Government established the Ministry for Women, Children and Social Welfare charged with the primary responsibility to coordinate all issues relating to children and their welfare. The Department of Social Welfare has a Childcare Unit which handles children issues ranging from adoption, placement, custody, minors travel documents etc. There is established within the Gambia Police Force, as per the Children’s Act 2005, a specialized Child Welfare Unit responsible for the protection of children, including the investigation of cases involving children in conflict or in contact with the law. The Child Rights Unit of the Ministry of Justice has done a lot of advocacy in the promotion of children’s right and has successfully prosecuted numerous cases. Right to free basic and secondary education has over the years seen increase in the number of children enrolled in school.

There has been a lot of effort to raise awareness of the public on the rights and welfare of children through the media, community outreaches, drama groups, traditional communicators (kanyalengs), etc. Government Agencies like the Women’s Bureau and Department of Social of Welfare, and Civil Society Organizations (CSOs) such as the Child Protection Alliance, Network Against Gender Based Violence, Think Young Women and The Girls Agenda have organized series of trainings on child rights, child protection and gender-based

violence for the Police and other security outfits, Community Child Protection Committees, media practitioners and frontline social workers and child protection stakeholders.

Despite the existence of the Women’s (Amendment) Act 2015 and the Children’s (Amendment) Act 2016, FGM and child marriage are still prevalent. Corporal punishment of children is not expressly prohibited by law in homes and schools. Anecdotal evidence points to the existence of the Sexual Exploitation of Children in Travels and Tourism. The State is yet to accede to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

While there has not been any national study on human trafficking, The Gambia is said to be a source, transit and destination for human trafficking. The USA Department of State ‘Trafficking in Persons Report 2020’ placed The Gambia on Tier 2 Watchlist due to the Government inability to ‘fully meet the minimum standards for the elimination of trafficking’. The Report also indicated that ‘the government did not convict a trafficker for the third consecutive year, victim services remained inadequate overall, and some law enforcement officers allegedly requested bribes to register trafficking complaints.’ The Commission investigated the alleged trafficking of about thirty-eight (38) young ladies to Lebanon and made series of recommendations to the Government on effective strategies to combat trafficking in person in the country.

Recommendations to the State

1. Effectively enforce the Trafficking in Persons Act 2007 and adequately enhance the financial and technical capacity of National Agency Against Trafficking in Persons (NAATIP).
2. Effectively implement the Tourism (Amendment) Act 2014 and prosecute alleged offenders.
3. Raise awareness on and develop appropriate responses to the socio-cultural and religious drivers of FGM.

4. Accede to the Optional Protocol to the Convention on the Rights of the Child on a communication procedure.
5. Conduct a comprehensive study on the sexual abuse and exploitation of children in The Gambia.
6. Prohibit corporal punishment of children in all settings.
7. Initiate full enforcement and implementation of the laws banning FGM and child marriage as part of its obligation to fulfil the fundamental human rights of girls.
8. Prosecute alleged perpetrators of rape, sexual harassment and sexual abuse to end impunity and build confidence in the justice system for many girls and their families who may be reluctant to report such cases.
9. Review the Children’s Act to respond to the specific challenges of enforcement and implementation.
10. Promote girls’ awareness of and participation in social, economic and political life.
11. Create safe spaces and platforms for girls at all levels of society, including in schools, through which they would articulate their concerns and aspirations.
12. Make life skills education an integral part of the education curriculum, especially at the primary and secondary levels.
13. Invest in skills training and empowerment, across all the regions of the country, for girls who have become victims of child marriage.

xii. Economic, Social and Cultural Rights (ESCR)

The Gambia’s 1997 Constitution, which is the supreme law of the land, incorporates a bill of rights with few ESCRs and elaborate National Objectives relevant to ESCRs. The ESCRs in the 1997 Constitution include the right to basic education, property, and the right to join trade unions. Those rights that are expressly guaranteed in Chapter 4 of the Constitution can be enforced through a judicial process in terms of article 37 of the 1997 Constitution. Fundamental rights such as the right to food, shelter, clean water, adequate standard of living and employment only form part of the National Objectives. Although the justiciability of National Objectives has not been tested in the Gambia, they generally indicate a constitutional commitment that cannot be merely disregarded by the government.

Moreover, a reading of article 37(8) of the 1997 Constitution of the Gambia suggests that the rights guaranteed in Chapter 4 are not exhaustive, and do not exclude the enjoyment of other rights, particularly those in the National Objectives. This provision provides that the rights specifically mentioned in Chapter 4 of the Constitution should not be regarded as ‘excluding other rights which may be prescribed by an Act of the National Assembly as inherent in a democracy and intended to secure the freedom and dignity of man.’ Therefore, article 37(8) can arguably become a basis to seek the enjoyment of those rights contained in the Directive Principles of State Policy in S.214-218 of the Constitution as they enhance human dignity and are inherent in a democracy. The National Objectives are framed in terms of only serving as guiding principles in the interpretation, application of the constitution and policy making process of the government. Though they may not engender enforceable legal obligations, these Objectives are useful as constitutional benchmarks to ensure focus on ESCRs.

The National Objectives represents a constitutional commitment in the Gambia if one considers the imports of article 211(a), which provides that the:

‘...the Executive, the Legislature and all other organs of the State in taking policy decisions, making laws and in the administration of the Gambia, shall according to their respective functions be guided by and observe them with a view to achieving by legislation or otherwise the full realisation of these principles.’

Therefore, institutions mandated with the responsibility to interpret or enforce the constitution are required to be guided by the provisions in the National Objectives. This provision at minimum imposes a constitutional commitment on the organs of the state to ensure the realisation of the National Objectives, consistent with fundamental ESCRs of citizens.

In addition to the 1997 Constitution of the Gambia, the Government of the Gambia adopted policies and legislation relevant to the realisation of ESCRs. These include the Women’s Act 2010, the Labour Act 2007 and Children’s Act 2005. All these legislations contain some elements of ESCRs relevant to specific category of individuals.

Beyond legislation, the Gambia has also adopted development policies that should form important components of the overall policy framework for the realization of ESCRs. Such policies consist of a variety of soft laws rather than hard laws that are useful in providing the harmonisation of government policies in line with its ESCRs obligations.

The National Development Plan (NDP) adopted in 2018 for instance outlines an ambitious blueprint on how the current Government intends to transform the Gambia into a modern accountable state based on the foundations of democracy, good governance, and respect for human rights, security and prosperity. The NDP focuses on 8 national priorities including health, education, security and employment.

Although the National Objectives and other provisions contained in Chapter 4 of the 1997 Constitution reflect a commitment to govern the Gambia in accordance with the values of social justice, the enjoyment of ESCRs in the Gambia remains elusive to many Gambians. These constitutional commitments are yet to transform into development for individuals. The Government's spending on ESCRs of citizens over the years through financing of social services has not been impressive. Therefore, focus on ESCRs will lay the foundation for a democratic dispensation anchored on the values of social justice that will represent a major redirection of the country's bleak profile on ESCRs.

Recommendation to the State

1. Reconsider and pass into law the 2020 Draft Constitution which has very progressive provisions on Economic, Social and Cultural rights.

xiii. Right to health

Although the right to health is not guaranteed as a fundamental human right in the 1997 Constitution of The Gambia, Section 216(4) under Chapter XX of the Constitution (Directive Principles of State Policy) urges the State to endeavour to facilitate equal access to adequate health and medical services. However, The Gambia is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Under Article 12 (1) of ICESCR State Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health extends to adequate healthcare, the underlying preconditions for health, and adequate fulfilment of the social determinants of health. Similarly, Article 12 (2) sets out the main directions for State action in fulfilling this right. According to this provision, States must take steps to:

- a. reduce the stillbirth rate and infant mortality for the healthy development of the child.
- b. improve all aspects of environmental and industrial hygiene.
- c. prevent, treat and control epidemic, endemic, occupational and other diseases.
- d. create conditions which would assure to all medical service and medical attention in the event of sickness.

In its General Comment number 14, the Committee on Economic, Social and Cultural Rights has specified that the right to health involves the following elements and State obligations.

- a. **Availability:** States must ensure that functioning public health and healthcare facilities, goods and services are available in sufficient quantity.

The precise nature of these facilities, goods, and services will however depend on numerous factors, including the State party's level of development.

- b. **Accessibility:** health facilities, goods and services must be accessible to everyone. Accessibility in this regard has four overlapping dimensions:
 - 1. Non-discrimination
 - 2. Physical accessibility
 - 3. Economic accessibility (affordability) and
 - 4. Information accessibility (the right to seek, receive and impart information and ideas concerning health issues).

- c. **Acceptability:** all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, sensitive to gender and lifecycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

- d. **Quality:** health facilities, goods and services must be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs, appropriate hospital equipment, safe and portable water. And adequate sanitation.

Thus, the Committee has urged all State Parties to adopt and implement a national public health strategy and plan of action, based on epidemiological evidence, addressing the health concerns of the population. It has also advised that the strategy and plan of action should be devised, and periodically reviewed, based on a participatory and transparent process.

¹⁰ For instance, in 2020 GMD 2,204,893,000 allocated to the health sector is twice less than the 15% of GDP threshold recognised in the Abuja Declaration of 2001.

Whilst the NHRC commend the Government for adopting a National Health Policy and Health Master Plan 2007-2020 and its strides to promote the right to health in the country, the NHRC is concerned with the challenges in the health sector such as the increase in the number of deaths during birth faced by women.

Recommendations to the State

1. Ratify and domesticate the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
2. Ensure universal access to safe drinking water and to adequate sanitation facilities, particularly in the rural areas.
3. Develop and fund national employment programmes.
4. Increase allocation to the health sector.
5. Intensify the implementation of the National Health Policy Framework.
6. Increase efforts to reduce and prevent maternal morbidity and mortality by implementing programs and policies, as well as ensure adequate sexual and reproductive health services.

xiv. Environmental Rights

Environmental degradation caused by mining and factory mills provides a context to examine the role of human rights in supporting environmental goals. Sand and mineral mining has done incredible damage to certain communities in The Gambia. It could be recalled that the Faraba Banta Commission of Enquiry that was set up by the President in July 2018 to investigate the violent incident that led to the deaths, injuries and destruction of properties following clashes by the villagers of Faraba Banta and the Police Intervention Unit, the following recommendations were made:

- a) That a proper Environmental Impact Assessment (EIA) should always be carried out by an independent consultant/s

who is not an employee of the National Environmental Agency (NEA) and or the Geology Department and proper consultation carried out with all the relevant stakeholders in the localities before any sand mining is to be approved and carried out.

- b) The Commission’s findings reveal that proper consultations are not usually carried out with the respective stakeholders in the communities by the licence operators, the NEA and Geological Department. From the discussions with the various stakeholders in Sanyang, Gunjur and Faraba Banta, it appears that the communities are usually informed about mining activities and the construction of factories in their localities only after licences are issued to operators and companies. The total absence of consultations with all the stakeholders in the respective communities have been a source of tension especially given the fact that current VDC members tend to be more educated, environmentally aware and younger than their predecessors and inevitably therefore ask more questions and demand answers from the authorities and prospective mining companies and investors as opposed to the council of elders.
- c) Apart from proper EIA to be conducted before license are issued and mining allowed to be conducted or factories constructed, equally important is for the authorities i.e., NEA and the Geological Department to constantly monitor the licence holders to make sure that they are adhering to the terms and conditions set forth in the licence granted to them especially with regards to environmental degradation and pollution. The Commission was shocked to witness the environmental damage at both Faraba Banta and at Sanyang because of sand mining over the years. It appears that no efforts have been made by the mining companies to level the ground, or somehow rehabilitate the mining area or to mitigate the effects of mining.

- d) There was confrontation in 2018 between the villagers of Gunjur and Sanyang respectively where Fishmeal factories operated by Chinese owned companies were said to be polluting the surrounding areas by the emissions and foul odour from the said factories. The conflict almost erupted into violent confrontation. The issues surrounding environmental pollution if not properly addressed will lead to public unrest and possible violent confrontation. The authorities cannot continue to sweep issues of environmental concerns under the carpet and hope that they will go away. There must be political will on part of the Government to implement these changes.
- e) The use of the Police and PIU Officers to enforce the mining rights of licence holders and investors when there are unresolved conflicts between the communities and the licence holders, is a recipe for violence as was the case in Faraba Banta. Similar incidents of protest against fishmeal companies and sand mining operators are becoming a common occurrence with VDC members, the youth and concerned villagers in Gunjur, Sanyang and other parts of the country protesting, and demanding answers from the authorities. Consultations, dialogue, mediation and consensus should always be the preferred options rather than a show of force which has the potential of escalating into bloody confrontation.
- f) Issues surrounding land ownership and land use are a source for potential conflict in various communities. There are many unresolved conflicts surrounding the private sale and transfer of landed properties and the ownership and use of communal and farmlands. Mr Francis D. Mendy an expert on development and conflict analysis and mitigation in his testimony stated that land issues in Kombo South, namely Gunjur, Sanyang, Teneneh, Tujereng especially where

the system of land borrowing and land lending has been abandoned and rendered meaningless due to the realization of the commercial value of land is causing conflict in the said communities.

However, despite the above recommendations, the Government is yet to fully implement all of them and guarantee non-recurrence.

In April and May 2020, the NHRC received alerts from concerned natives of Gunjur and Sanyany Villages on the effects of indiscriminate sand mining and environmental pollution by sand mining companies and fish meal factories on their communities and livelihoods. The Commission observed that the fish meal factories in the aforementioned communities have polluted the sea and contributed to overfishing while the indiscriminate sand mining has caused serious erosion and severe damages to the women’s gardens in Gunjur. The Commission further observed that the nature of the concerns raised by the natives of the villages suggest a violation of fundamental human rights to their livelihood and the right to food. Equally, the delay from the concerned authorities to respond to their plight may amount to a further violation of their rights.

Recommendations to the State

1. Monitor the activities of licence holders in the mining and mineral sector.
2. Address all concerns of the members of the community on issues relating to environmental pollution.
3. Adopt measures to prevent pollution and ecological degradation and put in place effective mechanisms for the rehabilitation of sites that have been mined; and
4. Operationalise and support the full functioning of the land Commission.

xv. The Impact of Covid 19 on Human Rights

On 11th March 2020, the World Health Organisation (WHO) declared COVID-19 a pandemic and The Gambia confirmed its first case of the disease on 17th March 2020. Sequel to the confirmation of the first case, the President of the Republic of The Gambia, His Excellency Adama Barrow first declared a closure of the air space and land borders and subsequently invoked Section 34 of the 1997 Constitution and made a declaration of a state of public health emergency. This led to the closure of all non-essential work, public places, schools and places of worship, as well as limitation on public gathering and using public transportation. The COVID-19 pandemic and the declaration of state of public health emergency has triggered actions that violate human rights and majority of Gambian were affected as they experienced loss of livelihood due to their businesses severely affected by the crisis, leading to sudden termination or suspension of employment or variation in contractual terms and working conditions, thereby causing economic hardship, and social challenges among employees.

According to reports, women and girls had limited access to sexual and reproductive health services mainly due to diversion of health personnel and materials to emergency services. Similarly, the right to education, freedom of assembly and association and freedom from discrimination and stigmatization of persons who have contracted Covid-19 were hindered.

xvi. The Caste System and Right to Non-Discrimination

Section 33 of the 1997 Constitution provides equality before the law, prohibits discriminatory treatment by public functionaries and public authorities and defines ‘discrimination’ in Section 33(4) to include differential treatment based on analogous systems of inherited status such as race, social origin, birth or other status.

However, ‘caste’ is not explicitly mentioned as one of the prohibited grounds for discrimination.

In 2019 the NHRC was alerted to incidences of caste-based discrimination in the Upper River Region of the Gambia. The NHRC has conducted several fact-finding missions to the villages of Garawol, Diabugu and Koina to understand the magnitude of caste-based discrimination and its propensity to create communal violence. In addition, the NHRC has set up an inter-ministerial task force comprising representatives from different government agencies, CSOs and religious leaders to monitor the situation in the affected areas. The first multi-stakeholder meeting of the Taskforce on the URR Caste System was held on the 3rd of September 2020. The NHRC further organized a Moot Court Competition at the Faculty of Law, University of the Gambia where the hypothetical case was drawn around the issues of caste-based discrimination.

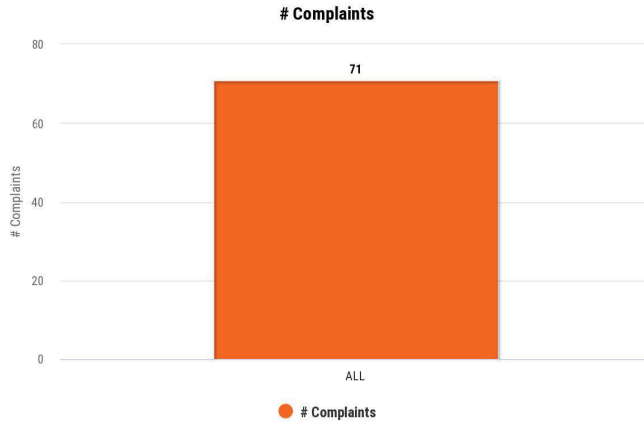
During the missions, the NHRC observed that individuals and groups categorized as belonging to the ‘lower caste’ face lifelong, entrenched and devastating stigma due to the caste system and its resultant discrimination. In some of the communities where the caste system is pervasive, those who belong to the ‘lower caste’ are sometimes subject to dehumanizing and degrading treatment, devalued as people and considered “impure” and “unworthy”. They are sometimes expected, or coerced, to perform certain degrading jobs from which they cannot break free. This discrimination leads to the marginalization of those who belong to the ‘lower caste’ and eventually become a social norm which legitimatizes mistreatment and abuses against affected persons and communities, perpetuating human rights violations against them. Caste-based discrimination equally reinforces existing gender inequalities and disproportionately affects women and children in communities.

¹⁰ Gaye Sowe, Report on the Assessment of the Impact of Covid-19 on Rights and Stigmatization 2020, p. 2.

Recommendations to the State

1. Promote dialogue for peaceful co-existence and respect for human rights in communities where caste-based discrimination exists or is prominent.
2. Incorporate an explicitly reference to “caste” as one of the grounds for prohibited discrimination in the relevant laws.
3. Formulate and effectively implement a comprehensive national strategy to eliminate caste-based discrimination.
4. Conduct a national survey on descent or caste-based discrimination to provide a clear appreciation of the situation in The Gambia and what measures need to be taken to eradicate the practice and what prevailing factors enhance it.
5. Prosecute persons who commit crimes of caste-based nature or prevent or discourage victims from reporting; and provide adequate compensation for the victims of such crimes.

4. CASE / COMPLAINT REGISTER 2020



Sr. #	Alleged Violation Type	Number of complaints
01	Torture, inhumane and degrading treatment, or punishment	7
02	Protection from deprivation of property (Right to Property)	19
03	Labour Rights	15
04	Right to fair trial	4
05	Right to Health	5
06	Freedom of Speech, Assembly, Association and Movement	2
07	Freedom from Discrimination	8
08	Right to liberty and security of the person	13
09	Right to Education	1
10	Protection from Enforced Disappearance	1
11	Sexual and Gender Based Violence	1

5. CONCLUSION

The NHRC acknowledges the positive step taken by the State so far in supporting the work of the transitional justice processes and introducing several Bills such as the Criminal Offences Bill, Prohibition of Torture Bill, International Crimes Bill, Anti-Corruption Bill as well as other various amendments to various laws before the National Assembly as part of its legislative reform agenda.

However, despite the progress achieved by the State in fulfilling its obligation to promote, protect and fulfil its human rights obligations, the NHRC is concerned with the slow pace of the enactment of these Bills and urged the Government to accelerate its efforts and ensure the enactment of all the aforesaid Bill and amend other relevant legislations before the end of 2021.