



Advisory Note on
Mental Health Rights in The Gambia

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LIST OF ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AYC	African Youth Charter
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EFSTH	Edward Francis Small Teaching Hospital
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NHRC	National Human Rights Commission
OHCHR	Office of the High Commissioner for Human Rights
PwDs	Persons with Disabilities
UDHR	Universal Declaration of Human Rights
WHO	World Health Organisation

FOREWORD

This Advisory Note provides a comprehensive overview of the current landscape of mental health services in The Gambia, shedding light on their accessibility, quality, and the guaranteed mental health rights. It serves as the groundwork for emphasizing the critical need for the prompt enactment of the Mental Health Bill, 2019, and the subsequent imperative of its effective implementation and enforcement.

Over time, the awareness and understanding of mental health and its associated illnesses in Gambian society have undergone transformation, evolving continuously since the enactment of the Lunatics Detention Act in 1917, followed by its amendment in 1964. Therefore, the expeditious enactment of the Mental Health Bill 2019 is vital in surmounting barriers to ensuring high-quality mental health care for the people of The Gambia.

This Advisory Note underscores the international and regional obligations of The Gambia in promoting and safeguarding the rights to mental health. Additionally, it emphasizes the interconnectedness of mental health rights with other legislative frameworks, including the 1997 Constitution, Persons with Disabilities Act 2021, Children’s Act 2005, and the Women’s Act 2010, all of which play a crucial role in the context of the right to health and wellbeing.

Furthermore, the Advisory Note accentuates the practical application of human rights principles, such as equality, non-discrimination, inclusiveness, participation, and the principles of co-production with patients and service users. By integrating these principles into mental health practices, The Gambia can foster a more compassionate, equitable, and participatory approach to mental health care.

In conclusion, this Advisory Note acts as a guidepost, illuminating the path towards a more robust mental health framework in The Gambia. Its insights and recommendations aim to catalyse positive change, ensuring that mental health rights are not only recognized but also effectively implemented, ultimately leading to improved well-being for all citizens.



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Emmanuel Danile Joof
Chairperson

BACKGROUND TO THE ADVISORY NOTE

The National Human Rights Commission (Commission) has a broad mandate to promote and protect human rights in The Gambia. In fulfilment of this mandate, the Commission, pursuant to Section 12 of the National Human Rights Commission Act 2017, reviews existing human rights legislation to ensure their compatibility with the Gambia's obligations under treaties in which it is a State Party, undertake studies on all matters concerning human rights, and assist the State in formulating appropriate policies to guarantee human rights.

In line with its monitoring mandate, the Commission in 2021 conducted a monitoring visit to the Edward Francis Small Teaching Hospital *Tanka Tanka* Psychiatric Unit to assess the conditions of the patients receiving care and what challenges the management was facing in providing mental health services in The Gambia. The visit brought to the fore the challenges and gaps that the mental health sector is facing, and the urgent need for the repeal of the Lunatics Detention Act 1917 and the enactment of the Mental Health Bill 2019. Subsequently, the Commission prepared a report highlighting the challenges and the gaps in laws and policies on mental health in The Gambia as well as the conditions in Tanka Tanka.

The development of this Advisory Note on Mental Health Rights is brought about by the findings of Commission's visit to Tanka Tanka, the recommendations of the African Commission on Human and Peoples' Rights in the case of *Purohit and Moore v The Gambia*, and the legal and policy gaps in the right to mental health in The Gambia. It is hoped to guide the Government in the development of the Mental Health Bill in line with

international human rights standards and the strengthening of institutions that provide mental health services in The Gambia.

1.0 INTRODUCTION

The right to health has been defined as the highest attainable standard of physical and mental health which is a fundamental human right indispensable for the exercise of other human rights.¹ Health is described as a state of 'complete physical, mental and social well-being and not merely the absence of disease or infirmity.'² Mental health may be defined as a state of well-being in which an individual realises his or her own abilities, can cope with the normal stresses of life, can work and is able to contribute to his or her community.³

Mental health is not merely a health or medical concern but is also a matter of human rights, dignity, and social justice.⁴ Globally, it is estimated that mental health conditions affect one in four people throughout their lifetime.⁵ In The Gambia, it is estimated that 27,000 people are suffering from a severe mental and/or substance abuse or behavioural disorder and that a further 91,000 Gambians have a mild disorder still requiring treatment.⁶ The Office of the High Commissioner for Human Rights (OHCHR) estimates that globally 'more than 1 in 10 people are living with a mental health condition at any one time.'⁷ Further, the OHCHR indicated that despite these figures,

¹ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 1.

² Constitution of the World Health Organisation (WHO), preamble.

³ www.who.int/mediacentre/factsheets/fs2020/en/. Also, in the case of children and adolescents, mental health refers to 'the capacity to achieve and maintain optimal psychological functioning and well-being'

⁴ Mental Health and Human Rights: Report of the High Commissioner for Human Rights A/HRC/34/32.

⁵ As above.

⁶ The Government of The Gambia 'The Gambia Mental Health Strategic Plan 2017-2022.

⁷ OHCHR <https://www.ohchr.org/en/health/mental-health-and-human-rights> accessed 16 May 2022.

“(...) treatment coverage is unacceptably poor, and especially in low- and middle-income countries. Poor mental health is a predisposing factor for poor physical health and a much-reduced life expectancy. The absence of community-based mental health holistic support in many parts of the world means the only support available is in psychiatric institutions, which are associated with gross human rights violations, such as degrading treatment and abuse, violence, including seclusion, isolation, and restraint, used as punishment and coercion, and many other violations spanning basic civil, cultural, economic, political, and social rights.”⁸

The Gambia, like many other countries, grapples with the consequences of mental health related disorders as persons with mental health problems continue to be discriminated against, stigmatised and isolated. The Service Statistics Report 2020 of the Ministry of Health indicates that the COVID-19 pandemic had adversely impacted mental health in The Gambia as businesses came to a halt and movements got restricted.⁹ This resulted in financial complications, stress, and consequent occurrence of mental disorders. However, drug induced psychosis remains one of the most common forms of mental disorders in The Gambia.¹⁰

Mental health also affects women. Major life transitions such as pregnancy, motherhood and menopause can cause both physical and emotional stresses for women. Negative life experiences – infertility and perinatal loss, poverty, discrimination, violence, unemployment, and isolation – also impact on

⁸ As above.

⁹ Ministry of Health Service Statistics Report 2020.

¹⁰ As above.

women's mental health and wellbeing. Unequal economic and social conditions also contribute to women's higher risk of depression¹¹

Mental health services in The Gambia, especially those provided by traditional healers, do not, by and large, promote and protect the dignity of patients. Furthermore, the legal and normative framework for mental health is outdated and has not undergone any changes since the landmark decision of the African Commission on Human and Peoples' Rights in *Purohit & Moore v The Gambia*. The Mental Health Bill 2019 is not yet submitted to the National Assembly for enactment. Tanka Tanka is the only psychiatric hospital in the country. It is beset with many challenges, including inadequate financial resources and equipment, which seriously affect the provision of rehabilitative and other care services for patients. There is also limited research on mental health in The Gambia which has hampered evidence -based advocacy and programming on mental health.

This Advisory Note is developed to encourage the State and other key stakeholders to, as a matter of urgency, address the challenges in the provision of mental health services and respect, promote, protect, and fulfil the rights of mental health patients. It has thoroughly analysed the legal framework on mental health in The Gambia and makes concrete recommendations to specific duty-bearers for the advancement of mental health services and rights in The Gambia.

¹¹ <https://www.beyondblue.org.au/who-does-it-affect/women/factors-affecting-women#:~:text=Major%20life%20transitions%20such%20as,women's%20mental%20health%20and%20wellbeing.>

2.0 INTERNATIONAL NORMATIVE FRAMEWORKS ON RIGHT TO HEALTH AS THE BASIS FOR THE RECOGNITION OF RIGHT TO MENTAL HEALTH

The Constitution of the World Health Organization (WHO) stipulates that the right to the highest attainable standard of physical and mental health is a fundamental human right indispensable for the exercise of other human rights.¹² The right to health is recognized, either explicitly or implicitly, in several human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹³ the Convention on the Rights of the Child (CRC),¹⁴ the Convention on the Rights of Persons with Disabilities (CRPD),¹⁵ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁶ It is an inclusive right encompassing both timely and appropriate health care and the underlying determinants of health.¹⁷ In the case of mental health, determinants include low socioeconomic status, violence and abuse, adverse childhood experiences, early childhood development and whether there are supportive and tolerant relationships in the family, the workplace, and other settings.¹⁸

The right to health contains freedoms (such as the freedom to control one's health and body and the right to be free from interference, torture and non-consensual medical treatment) and entitlements (such as the right to a health system that provides equality of opportunity for people to enjoy the highest

¹² Preamble Constitution of the WHO.

¹³ ICESCR, art 12.

¹⁴ UN Convention on the Rights of the Child Article 24.

¹⁵ UN CRPD Article 25.

¹⁶ UN CEDAW Arts. 10 (h), 11 (1) (f), 11 (2), 12 and 14 (2) (b).

¹⁷ Mental Health and Human Rights: Report of the United Nations High Commissioner for Human Rights A/HRC/34/32 [6].

¹⁸ Metal Health and Human Rights: Report of the United Nations High Commissioner for Human Rights A/HRC/34/32 [6].

attainable level of health).¹⁹ While, in recognition of resource constraints, the right to health is subject to progressive realization, the freedom element in the right to health is subject to neither progressive realization nor resource availability²⁰ as these freedoms are closely linked to civil and political rights that are not subject to progressive realisation or resource availability for their enjoyment.

The core obligations applicable to the right to health include ensuring the following: right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; access to adequate food and nutrition; access to basic shelter, housing and sanitation; providing access to essential drugs; an equitable distribution of all health facilities, goods and services; and adopting and implementing a national public health strategy and plan of action which address the health concerns of the whole population.²¹ These core obligations apply as much to mental health as to physical health.

In The Gambia, enjoyment of the right to mental health remains a challenge. Currently, persons that are determined to have mental illnesses are kept at the Edward Francis Small Teaching Hospital (EFSTH) Psychiatric Ward commonly known as *Tanka Tanka*. Patients are kept and treated in the facility by health personnel. There is anecdotal evidence that some of the patients admitted at *Tanka Tanka* at the behest of family members are taken there against their will. Such forced institutionalisation violates the right to personal liberty and security, understood as freedom from confinement of the body and freedom from injury to one's bodily or mental integrity, respectively.²² It

¹⁹ As above.

²⁰ As above [7].

²¹ As above.

²² See Human Rights Committee, General Comment No. 35 (2014) on liberty and security of person, para. 3.

amounts to a violation of the right to live free from torture and ill-treatment²³ and the right to personal integrity and bodily autonomy, and protection from exploitation and all forms of violence and abuse. In the same vein, persons who do not have the capacity to make an informed consent regarding their institutionalisation, it is ethical to have family members or the concerned medical practitioner to make the decision in the best interest of the person. The Convention on the Rights of Persons with Disabilities puts an obligation on State Parties to repeal legislation and policies that allow or perpetuate involuntary commitment, including its imposition as a threat, and should provide effective remedies and redress for victims.²⁴

The legal framework for mental health in The Gambia, specifically the Lunatics Detention Act and the Criminal Code do not lay down due process to determine, on an objective basis, the institutionalisation and confinement of persons with mental illness and to secure informed consent before confinement and medication. The Committee on the Rights of Persons with Disabilities has consistently indicated that the institutionalisation and lack of consent denies the patients fair trial rights, amounts to arbitrary detention, and often leads to harsher consequences than criminal sanctions such as indefinite detention in mental health facilities. Due to the status of mental health patients in The Gambia, the African Commission noted with concern the outdated nature of the legal framework affecting persons with mental disability in The Gambia.²⁵

²³ See A/63/175, paras. 47 and 65.

²⁴ See, for example, CRPD/C/CZE/CO/1, para. 33; CRPD/C/DEU/CO/1, para. 34 (c); CRPD/C/KOR/CO/1, para. 32 and A/HRC/30/37, para. 107 (f).

²⁵ *Purohit & Moore v The Gambia* Communication No. 241/2001 (2003).

3.0 Legal Framework Governing the Right to Health in The Gambia

3.1 International and Regional Treaties/Conventions

The right to health is guaranteed under several human rights instruments at the regional and international levels to which The Gambia is a State Party. The definition of health in the Preamble of the WHO Constitution, which was adopted in 1946, seems to have shaped the subsequent recognition of the right to health in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR). According to Article 25 of the UDHR, “everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including... medical care....”

The right to health has received more explicit protection under several international treaties than any other right. Under the ICESCR, for example, Article 12 requires States Parties to the Covenant “to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁶ Similarly, Article 16 of the African Charter on Human and Peoples’ Rights provides that every individual shall have the right to the best attainable state of physical and mental health. In its Guidelines and Principles on Economic, Social and Cultural Rights adopted in 2011, the Working Group on Economic, Social and Cultural Rights of the African Commission made clarifications on the right to health. According to the Working Group’s Guidelines, the right to health does not only mean the right to be healthy but also the right of each person to benefit, without discrimination, from the

²⁶ Article 12 of the International Covenant on Economic Social and Cultural Right; similar content is found in the Principles for the protection of persons with mental illness and the improvement of mental health care Adopted by General Assembly resolution 46/119 of 17 December 1991.

underlying determinants of health, such as freedom from unwanted medical treatments and the fruition of an effective national healthcare system.

Similarly, in its General Comment No. 14 of 2000,²⁷ the United Nations Committee on Economic, Social, and Cultural Rights made comments on Article 12 of the ICESCR which is in *pari materia* with Article 16 of the African Charter. In this specific General Comment, which focuses on the right to the highest attainable standard of health, the Committee made direct clarification that “the right to health is not to be understood as a right to be healthy.”²⁸ It asserts that the right to health contains both ‘freedoms and entitlements’ and should be understood ‘as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health’.

The right to health is also recognized, under article 12.1 of the International Covenant on Economic, Social and Cultural Rights which requires States to recognise the right of everyone to the enjoyment of the best attainable standard of physical and mental health. Article 12(2)(d) indicates that one of the steps that States Parties should take to ensure full realisation of the right to health is ‘the creation of conditions which would assure to all medical services and medical attention in the event of sickness’.

Similarly, Article 24 of the UN Convention on the Rights of the Child (CRC) recognises the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment and rehabilitation of health. However, this right should be progressively attained. There is anecdotal evidence that most of the young people admitted at *Tanka Tanka*

²⁷ General Comment No. 14. Geneva: UN Committee on Economic, Social and Cultural Rights. 2000.

²⁸ As above.

are there because of drugs and substance abuses. Article 33 of the CRC puts an obligation on States Parties to take all appropriate measures, including legislative, administrative, social, and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances. This is a preventive measure to help curb the mental health effects of drug and substance abuse on children.

The Convention on the Rights of Persons with Disabilities (CRPD) under article 25 puts an obligation on States Parties to recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. The Gambia, having signed and ratified the Convention, bears the responsibility of ensuring that the full realisation of all human rights and fundamental freedoms for persons with disabilities in The Gambia without discrimination, including the taking of all appropriate measures to “modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against persons with disabilities”²⁹ The State is further required to prohibit all discrimination based on disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds³⁰

At the regional level, Article 16 of the African Charter on Human and Peoples’ Rights provides that ‘every individual shall have the right to enjoy the best attainable state of physical and mental health.’ States are further obliged ‘to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick’. These generic provisions put an obligation on the State to provide services relevant to health

²⁹ Art.4(1)(b) of the CRPD

³⁰ Art.5(2) of the CRPD

care services and develop their policy and legal frameworks to adequately provide for the wellbeing of their inhabitants.

The African Charter on the Rights and Welfare of the Child provides that 'every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community'.³¹ Article 28 of the Charter also enjoins States Parties to take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties.

Article 16(1) of the African Youth Charter also provides that every young person has the right to enjoy the best attainable state of physical and mental health. Article 16(2) further provides that States should provide rehabilitation for young people abusing drugs to ease their reintegration into society. This provision provides a better alternative to the detention of persons suffering from drug induced mental illnesses as it is often the case in The Gambia.

Principle 8 of the International Conference on Population and Development Programme of Action stipulates that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. It urges States to take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health-care, family planning and sexual health. Reproductive health-care programmes should provide the widest range of services without any form of coercion.³²

³¹ Article 13(1) of the African Charter on the Rights and Welfare of the Child.

³² ICPD Programme of Action Principle 8 page 13

From the above, it can be discerned that The Gambia has series of international and regional obligations to protect the right to mental health and ensure that persons affected are treated humanely and with dignity.

3.2 Nature and Scope of State Obligations in the right to mental health and the best attainable standard of health

Human rights impose three levels of obligations on States, categorised as obligations to respect, to protect and to fulfil the rights concerned. The obligation to respect means refraining from interfering, directly or indirectly, with the enjoyment of the right. The obligation to protect means preventing third parties from interfering with the right. Lastly, the obligation to fulfil means adopting legislative, administrative, budgetary, judicial, promotional, and other measures towards the full realization of the right.

Applying the obligations to respect, protect and fulfil framework to right to mental health

Obligation to respect: The State should refrain from denying or limiting equal access to preventive and curative health services. It should not also adopt discriminatory practices relating to persons suffering from mental health or disability or coercive medical treatment, impose sterilisation or limit people's participation in mental health-related matters.

Obligation to protect: The State must take action to ensure that third parties providing mental-health related services do not limit access to particular groups and privatisation of health sector does not threaten the availability, accessibility, acceptability, and quality of mental health facilities, goods and services. It should also ensure that medical practitioners and other health

professionals meet appropriate standards; harmful social practices do not interfere with access to mental health services; and third parties do not limit peoples' access to mental health-related information.

Obligation to fulfil: The State must adequately recognise the right to mental health in national, political, and legal systems; and ensure appropriate training of medical personnel and sufficient equitably distributed facilities offering mental health services. It should also ensure that mental health services are culturally appropriate, train staff to recognize and respond to the specific needs of vulnerable groups, promote medical research, health education and information campaigns; and undertake promotional actions that create, maintain and restore the health of the population.

3.3 Domestic Laws Regulating The Right To Health

a. The 1997 Constitution

The 1997 Constitution of The Gambia has no specific provision on the right to health under Chapter IV which covers fundamental rights and freedoms. However, in Chapter XX on Directive Principles of State Policy, section 216 (4) provides that it is the obligation of the State to "endeavour to facilitate equal access to clean and safe water, adequate health and medical services, habitable shelter, sufficient food and security to all persons". This specific provision, though, is not justiciable or enforceable in any Court.

b. Persons with Disabilities Act 2021

The Gambia enacted the Persons with Disabilities Act in 2021 to guarantee the rights of persons living with disabilities. The Act makes provisions for the healthcare, social support, accessibility, rehabilitation, education and

vocational training, communication, employment and work protection and promotion of basic rights for persons with disabilities and for connected rights. It domesticates the Convention on the Rights of Persons with Disabilities which The Gambia acceded to in 2015.

. Section 2 of the Act defines 'disability' as 'any state of physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others.' It also defines 'mental disability' as 'a transient or chronic disability that significantly affects how a person feels, thinks, behaves, and interacts with other people but also initiates, develops and sustains mutually satisfying personal relationships.'

Section 28 of the Act provides for the right to health care and rehabilitation for persons with disabilities and imposes an obligation on the State to ensure that basic health and rehabilitation services are available and accessible to persons with disabilities . The Act further provides for the enforcement of a user-friendly environment in health facilities for use by persons with disabilities.³³ Section 30 (a) of the Act imposes an obligation on the State to take preventative measures such as health and environmental education to mitigate risk factors connected with lifestyle and the environment. It further puts an obligation on the State to adopt measures of rehabilitation to help persons with disabilities gain or regain functional ability to enhance participation in social and economic life.³⁴

c. The Lunatics' Detention Act Of 1917

³³ Section 29 (b) of the PwDs Act 2021.

³⁴ Section 31 (a) of the Act.

The Lunatics' Detention Act is the main piece of legislation governing mental health in The Gambia. The Act was enacted in 1917 and further amended in 1918, 1946 and 1964. However, the Act is outdated and does not protect the human rights of people with mental illness. It describes a 'lunatic', as defined in Section 2, as 'an idiot and any other person of unsound mind'. This definition is derogatory and not in line with international human rights standards.

The National Health Policy 2012-2020, developed with the objective of improving access to health in The Gambia, recommended several legal and policy measures to improve mental health in The Gambia. These include enactment of a Mental Health Act, strengthening the case management system, and community involvement. At the expiry of this Policy, these objectives were not achieved. Its successor, the National Health Policy 2021-2030 recognises the inextricable link between mental health and substance abuse and estimates that 3% of Gambians suffer from severe mental illness. The Policy has, as part of its goals, the provision of prevention measures to improve the physical, mental, and social wellbeing of all the people in The Gambia.³⁵ However, there is still no comprehensive legislation on mental health in The Gambia.

d. The Children's Act, 2005

The Children's Act 2005 domesticates the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Section 9 of the Act provides that "every child has the right to enjoy the best attainable state of physical and mental health". Subsection (2) further imposes an obligation on the government, parents, and all stakeholders responsible for the care of children to endeavour to provide the best attainable state of health.

³⁵ National Health Policy 2021-2030 p 13.

e. The Women's Act, 2010

The Women's Act, which is also a domestication of the Convention on the Elimination of All Forms of Discrimination Against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), provides for women's right to health in sections 29-32. Section 29 (1) of the Act guarantees the right of women to the enjoyment to the highest physical, mental, and social well-being, health care and health care services. Section 31 of the Act outlines the Government's obligation to respect and promote the right to health. Section 32 obligates the Government to take all appropriate measures to provide affordable and accessible health care services for women especially in rural areas. This obligation covers the Government's duty to provide mental health services to women, including pre and post-partum and other life cycle related mental health services.

f. Trafficking in Persons Act, 2007

This Act prevents, suppresses, and punishes human trafficking as well as provides for the rehabilitation and reintegration of victims of trafficking. It puts an obligation on State agencies to provide victims of trafficking with legal, psychosocial and health services, including during the period of temporary residency.³⁶ Section 51 imposes an obligation on the Department of Social Welfare to provide temporary basic material support for the care and protection of rescued victims of trafficking, and counselling services to assist in their rehabilitation and reintegration.

³⁶ Section 45(1) (b) of the TIP Act, 2007.

g. Criminal Code and the Criminal Procedure Code

Section 10 of the Criminal Code provides for 'insanity' as a defence to a criminal charge if, at the time of committing the act or omission, the accused, through any disease affecting his or her mind, is incapable of understanding what he or she is doing, or of knowing that he or she ought not to do the act or made the omission'.

The Criminal Procedure Code (CPC) lays down a special procedure where the accused person is of 'unsound' mind. If the Court is of the opinion that the accused is of unsound mind and incapable of making his or her defence, the Court shall record a finding to that effect and postpone further proceedings in the case.³⁷ The CPC further provides that where the accused is certified as capable of making his or her defence at the trial, the person shall be brought before the court and trial will resume.³⁸ A special verdict of 'guilty but insane' will be handed by a court where it is found that an accused person was 'insane' at the time of committing an offence.³⁹ In these circumstances, the person will be sent to *Tanka Tanka* or to such other place as the Court may direct to serve his or her time at the President's pleasure. The consequence of the procedural provisions in the CPC is to the effect that persons with mental illness are not exempted from confinement where they are found to have committed an offence during a period of 'lunacy'.

³⁷ Section 132(2) of the Criminal Procedure Code.

³⁸ Secs. 133 and 134 of the Criminal Procedure Code.

³⁹ Section 136(1) of the Criminal Procedure Code.

4.0 The Case of Purohit & Moore v The Gambia: Where Are We?

In 2003, the African Commission on Human and Peoples' Rights made its decision in the *Purohit & Moore v The Gambia*⁴⁰ communication. It was one of the first cases in which the Commission fleshed out the substantive content of Article 16 of the African Charter on Human and Peoples' Rights. The complaint against the Gambia was brought to the Commission by Purohit and Moore, two mental health advocates. They stated in their communication that the legislative regime on mental health in The Gambia violated the right of patients to enjoy the best attainable state of physical and mental health (Article 16) and the right of persons with disabilities to special measures of protection in keeping with their physical and moral needs under Article 18(4) of the African Charter on Human and Peoples Rights.

the African Commission found the Gambia in violation of articles 2, 3, 5, 7 (1)(a) and (c), 13(1), 16 and 18(4), and strongly urged the Government of The Gambia to:

- a. Repeal the Lunatics Detention Act and replace it with a new legislative regime for mental health compatible with the African Charter on Human and Peoples' Rights and international standards and norms for the protection of mentally ill or disabled persons as soon as possible;
- b. Pending (a), create an expert body to review the cases of all persons detained under the Lunatics Detention Act and make appropriate recommendations for their treatment or release;
- c. Provide adequate medical and material care for persons with mental health disabilities in the territory of The Gambia;
- d. Report back to the African Commission when it submits its next periodic report in terms of Article 62 of the African Charter on measures taken

⁴⁰ Communication No. 241/2001 (2003).

to comply with the recommendations and directions of the African Commission in this decision.

Even though minor efforts in mental health service provision have been done since this decision was made during the 33rd Ordinary Session of the African Commission in Niamey in 2003, substantial parts of the above recommendations have not been complied with. The Gambia has not yet reported on the subject to the African Commission contrary to recommendation (d) above. The Combined Report on the African Charter on Human and Peoples' Rights 1994 -2018 did not provide any specific information on this subject.⁴¹ The Lunatics Detention Act is still in force in The Gambia and there is no mechanism or body created to oversee the recommendations of the *Purohit & Moore* decision.

There exists a Mental Health Bill 2019, which is yet to be submitted to the National Assembly for consideration and passing. It contains progressive provisions which are expected to change the legal landscape positively and drastically for the provision of mental health goods and services, and the treatment of persons with mental health issues,

The closure of the erstwhile *Campama* detention facility and the building of *Tanka Tanka* was one of the few improvements since the *Purohit & Moore* decision. However, this new psychiatric facility also faces financial, technical, and other challenges which hamper the quality of care and services the patients are supposed to receive. There are no regional branches of the *Tanka Tanka*, and thus its services are not decentralised. It is also common to see people with mental disorders in the streets, with no care and support. The

⁴¹ <https://www.lawhubgambia.com/lawhug-net/status-on-the-findings-of-purohit-and-moore-v-the-gambia> accessed 25 March 2022.

State should therefore take the necessary steps to implement the recommendations of the African Commission in the Purohit and Moore vs The Gambia case and improve the status of mental health rights in The Gambia.

5.0 CHALLENGES IN THE PROTECTION OF MENTAL HEALTH IN THE GAMBIA

Mental disorders have been identified as responsible for a large proportion of the global burden of disease despite the prevalence of evidence that these disorders can be successfully treated using evidence-based interventions.⁴² Despite ratification of the Convention on the Rights of Persons with Disabilities, many countries including The Gambia have continued following current practice around treatment, guardianship and containment.⁴³ Treatment and Management of mental health in The Gambia continue to face the following key challenges:

- i. Insufficient investment in infrastructure and human resources in the mental health sector: There is limited infrastructure for mental health treatment in The Gambia. The Polyclinic Mental Health Unit at the Edward Francis Small Teaching Hospital has a single room allocated for outpatient mental health services. The *Tanka Tanka* Psychiatric Hospital is the only in-patient facility in the country which is isolated, highly stigmatised, difficult to access, custodial in nature and has poor living conditions. These prevailing factors continue to affect the provision of services at *Tanka Tanka*, as inadequate numbers of staff, often with insufficient training (especially in human rights), are required to deliver services which are in accordance with human rights standards.

⁴² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5553319/> accessed 19 April 2022.

⁴³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6520533/> accessed 19 April 2022.

- ii. Denial of autonomy and legal capacity of persons with mental disability: Decisions regarding the institutionalisation or admission of patients into Tanka Tanka are made on a case-by-case basis and depending on the nature of the case. However, these decisions are often taken without prior and informed consent of the individuals . As noted by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making and assigning associated duties and obligations to health-care providers.⁴⁴ For consent to be valid, it should be given voluntarily and based on complete information on the nature, consequences, benefits and risks of the treatment, on any harm associated with it and on the availability of alternatives.⁴⁵ Involuntary treatment refers to the administration of medical or therapeutic procedures without the consent of the individual.

- iii. Research and data gaps on mental health in The Gambia: The lack of research and data on mental health further exacerbate the challenges in addressing mental health issues. The data gap on mental health affects not only budget preparations but also advocacy in the area.

- iv. Inadequate human resources for mental health service.

- v. No specific budget allocations for mental health: The primary source of financing of the *Tanka Tanka* unit is subvention from EFSTH and other sources, including grants and donations. These amounts are

⁴⁴ UN General Assembly, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health : note / by the Secretary-General*, 10 August 2009, A/64/272, para 15.

⁴⁵ As above.

significantly lower than what is required to provide efficient services at different levels of care.

- vi. The current mental health legislation, the Lunatics Detention Act 1942, is outdated and does not protect the human rights of people with mental disorders.

Stigmatisation of persons with mental health illness: Persons with mental illnesses are mostly stigmatised and discriminated, and treated with disdain due to their mental conditions. Those who are unfortunate not to be at Tanka Tanka or at home with their relatives sleep on the streets and exposed to the elements and other dangers.

- vii. They are considered and referred to as 'mad' and unfit to make decisions, interact, and comprehend daily routine. These negative societal attitudes towards people with mental health related illnesses and lack of family or community support in managing their conditions compound the dire state of persons with mental health problems.

- viii. Poverty continues to restrict the capacity of families to access mental health treatment for affected persons. According to a report by the African Development Bank Group on The Gambia's Economic Outlook, the poverty rate increased from 48.4% in 2019 to 53.4% in 2022, exacerbated by the COVID-19 pandemic.

6.0 RECOMMENDATIONS TO THE STATE

Recommendations to The Government of The Gambia

1. Invest resources in mental health to align the services provided with human rights standards and with the maximum available resources as provided by the ICESCR. These resources can be directed to:
 - i. Increasing the quality of health care and ensuring availability, accessibility and acceptability of the services provided at all levels. This will include the training, hiring and retention of psychiatrists, social workers for all mental health institutions;
 - ii. improving working conditions for mental health personnel in *Tanka Tanka* and other units;
 - iii. strengthening health workforce training, including human rights-based approach to mental health;
 - iv. ensuring the provision of a full range of support services including formal informal community care;
 - v. achieving equality between mental and physical health services across all domains, including resource allocation, research, and data;
 - vi. emergency mental health services;
 - vii. improved community-based mental health services;

Recommendations to the Ministry of Health

1. Collaborate with the Ministry of Justice, Ministry of Gender, Children and Social Welfare and conduct a comprehensive review of laws and policies relevant to mental health, with a view to bringing them in accordance with our international obligations.⁴⁶

⁴⁶ This is in line with the recommendations of the OHCR.

2. Establish a mental health review tribunal responsible for reviewing all cases before confinement of inmates and assessing the need for any form of curtailment of the liberty of individuals.
3. Ensure that the updated Mental Health Policy adopts and integrates the protection of persons with mental disability from arbitrary deprivation of liberty.
4. Develop a comprehensive National Strategy and Action Plan on mental health.
5. Expedite the tabling before the National Assembly of the new Mental Health Bill and ensure the repeal of the legal framework allowing substituted decision making to provide consent on behalf of persons with disabilities and introduce supported decision-making, ensuring its availability for those who request it.
6. Collaboration with the Ministry of Justice, to develop a Bill incorporating safeguards against deprivation of liberty based on impairment and push for enactment of the Bill by the National Assembly.
7. Include education and awareness-raising programmes in its annual action plans and ensure that transparent and accessible mechanisms for participation are established at community, regional and national levels.
8. Establish a Mental Health Authority responsible for monitoring and evaluating the progress made, challenges and holding practitioners and institutions to account.
9. Ensure equitable access to mental health services by creating regional branches of the EFSTH Psychiatric Ward and consider separate substance abuse treatment centres.
10. Refurbish the *Tanka Tanka* Psychiatric Unit and equip it with the necessary resources to improve the conditions and service delivery.

11. Review and reassess the current Mental Health Bill to ensure it is in line with the 2021- 2030 National Health Policy and international legal instruments governing Mental Health in The Gambia.
12. The Directorate of Planning and Information to be including mental health data on the HMIS/DHIS.
13. Establish a Mental Health Authority responsible for monitoring and evaluating the progress made, challenges and holding practitioners and institutions to account.
14. Establish a Mental Health Research Institute in The Gambia to ensure evidence-based data in dealing with Mental Health issues in The Gambia.

Recommendations to the Ministries of Justice and Health

1. Facilitate the implementation of the ACHPR's recommendations in the *Purohit & Moore* case;
2. Put in place mechanisms to ensure that no person with mental health disabilities is arbitrarily deprived of their liberty based on their impairment including in conjunction with an alleged danger to themselves or to others.

Recommendation to the Ministry of Justice, the Judiciary and the Gambia Prisons Service

1. Have a joint Memorandum of Understanding (MoU) to set guidelines concerning the referral of accused persons or inmates.

Recommendation to the Ministry of Justice

1. Ensure that all relevant laws and policies incorporate the principle of non-discrimination.

Recommendation to the Edward Francis Small Teaching Hospital

1. Establish at the *Tanka Tanka* a mental health emergency unit to cater for outpatients and with a clear referral pathway.

7.0 CONCLUSION

The right to the best attainable mental and physical wellbeing covers the right to mental health. This right is protected by a series of international legal instruments. However, implementation of protective and promotional measures for the realisation of the right to mental health remain neglected and persons with mental health illnesses face varying challenges. The Gambia has its own challenges in this regard despite ratifying some of these legal instruments and having generic protection from discrimination in the law.

The Commission appreciates the efforts of health personnel at the EFSTH and *Tanka Tanka* but maintains that there are still areas that need improvement. A comprehensive approach to addressing the human rights situation of persons with mental health and mental disabilities require the protection of autonomy, agency, and dignity as well as the other human rights guaranteed by, inter alia, the CRPD and ICESCR.⁴⁷

⁴⁷ OHCHR Report [62].