

STUDY
CASTE AND DESCENT-BASED
DISCRIMINATION IN THE GAMBIA

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Contents

PART ONE

List of Acronyms	5
1. Background	6
2. The legal framework on discrimination	12
Domestic laws	12
The 1997 Constitution	12
The Women's Act	14
The Children's Act	14
The Persons with Disabilities Act 2021	15
International Legal framework	15
The UDHR	15
The ICCPR & ICESCR	16
CEDAW	16
CRC	17
CRPD	18
The African Charter on Human and Peoples' Rights	18
The Protocol to the African Charter on human and Peoples' Rights on the Rights of Women (the Maputo Protocol)	18
ACRWC	19
3. Data collected, caste-based and descent-based discrimination	22
Demba Kunda	23
Diabugu Batapa	24
Gambissara	26
Garawol	28
Jahali	32
Koina	32
Numuyel	34
Other respondents	34
Descent-based discrimination	41
4. Contextualizing caste-based and descent-based discrimination in The Gambia	43
5. Other consequential violations.	52

6. Challenges to combatting caste-based and descent-based discrimination	58
7. Conclusion and recommendations.	61
Annexes	63
Caste-based discrimination questions (individuals and FGD)	63
Descent-based discrimination questions (individuals and FGD)	64
Questions for Key Informant Interviews (Institutions)	66

PART TWO: ROAD MAP

1. Introduction	70
2. Points for policymakers	70
1. Why urgent action is needed	74
Recommendations	74
Part A: Thematic recommendations	74
Measures of a general nature	74
Addressing multiple multiple discrimination against women and persons with disabilities who are members of a caste or descent-based communities	75
Segregation	76
Dissemination of hate speech including through the mass media and the Internet	76
Administration of justice	77
Civil and political rights	77
Economic and social rights	78
Right to education	79
Part B: Institutional Recommendations	80
Recommendations for the government	80
Short term	80
Medium-term	80
Long Term	81
Recommendations for the NHRC	83
Short term	83
Medium-term	84
Long term	85
Recommendations for CSOs	86
Short term	86
Medium-term	87
Long term	87

List of Acroynms

ACRWC	African Charter on the Rights and Welfare of the Child.
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women.
CERD	International Committee on the Elimination of Racial Discrimination.
CRC	Convention on the Rights of the Child.
CRPD	Convention on the Rights of Persons with Disabilities.
CRR	Central River Region.
CSOs	Civil Society Organisations.
FGD	Focus Group Discussion.
GPF	Gambia Police Force.
HRC	Human Rights Committee.
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NBR	North Bank Region.
NHRC	National Human Rights Commission
SIC	Supreme Islamic Council.
UDHR	Universal Declaration of Human Rights.
URR	Upper River Region.
VDC	Village Development Committee.

1. Background

The Gambia is home to several ethnic groups with diverse customs and traditions. Customary law forms part of the laws of The Gambia and is protected under the 1997 Constitution of The Gambia (the Constitution). It continues to be an integral part of the legal system of the country. Part of the customary practices in The Gambia includes the recognition of caste divisions within communities and distinctions between original settlers of villages and towns around the country and persons who subsequently settled in these villages and towns. The latter distinction is based on descent. Both distinctions (caste-based and decent-based) can be found in all major ethnic groups, villages, and towns all over the country¹. The predominant castes in The Gambia are the 'nobles', 'griots', 'smiths', 'leatherworkers', and 'slaves'. While the 'nobles' are considered freeborn, the 'slaves' are regarded as descendants of captive slaves, domestic slavery, and the slave trade². The 'nobles' are usually considered to be of the highest social status while the 'slaves' are relegated to the bottom of the social ladder and often face stigma and discrimination.

The caste and descent-based social stratifications of society have existed in Africa for a long time. T. Tamari argues that the caste system has been in the West African region since 1300³. Caste systems have been recognized as a characteristic of the major ethnic groups in The Gambia, including the Mandinka, the Fula, the Wollof, the Sarahule, and the Serer tribes⁴.

Mandinka communities still recognize nobles (foroo), black smiths (numoo), griots (jali), and slaves (jongoo) caste in the societal hierarchy. The division between nobles (rimbeh) and caste people (nyeenyo) still exists in some Fula societies in The Gambia⁵. Similarly, in Wollof societies, the distinctions between nobles (geer), artisans (nyeenyo), griots (gewels), and slaves (jam) continue to be observed⁶. Furthermore, in many communities, intermarriage between persons belonging to different castes is rare.

¹Bubacarr A. Sankanu 'Nobles' versus 'slaves': deep mistrust within Serahulleh communities aggravates caste conflicts https://www.academia.edu/39500329/_NOBLES_VERSUS_SLAVES_DEEP_MISTRUST_WITHIN_SARAHULLEH_COMMUNITIES_AGGRAVATES_CASTE_CONFLICTS_SANKANU accessed 22 January 2022.

²As above.

³T Tamari 'The Development of Caste Systems in West Africa' *Journal of African History* 32 (1991) 221.

⁴As above.

⁵As above 231.

⁶<https://www.accessgambia.com/msite/m-caste-class-structure.html> last accessed 16th November 2021.

Many societies in The Gambia are still influenced by the hierarchical caste structures of the past⁷. The caste system is closely associated with the division of labor and the order is associated with past political power⁸. Human Rights Watch has observed that '[c]aste-based divisions of labor are central to several ethnic groups in many West African countries, including the Fula, Mandinka, and Wolof communities.'⁹ 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".¹⁰

The UN Special Rapporteur on Racism and Caste Discrimination has recommended that States take strict measures against any incitement to discrimination or violence against descent-based communities.¹¹ Since 'discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights',¹² the continued perpetuation of discrimination based on caste in some Gambian communities constitute a violation of the provisions of the Constitution, international and regional human rights treaties ratified by The Gambia.

Victims of caste-based discrimination continue to face structural discrimination, locking them in a persistent and vicious cycle of poverty and marginalization.¹³ This discrimination may also lead to the marginalization of those who belong to the 'lower caste' and eventually becomes a social norm that legitimatises mistreatment and abuses against affected persons and communities, perpetuating human rights violations against them.¹⁴ Further effects of caste-based discrimination can be seen in marriage, labour, socio-economic disparities, access to education, access to land, political representation, and economic and physical retaliation.¹⁵ The failure to put an end to such practice will continue to violate the rights of members of disadvantaged castes.

⁷<https://www.accessgambia.com/msite/m-caste-class-structure.html> last accessed 16th November 2021.

⁸As above.

⁹<https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm> last accessed 16th November 2021.

¹⁰The National Human Rights Commission 'The State of Human Rights Report 2020' p 54.

¹¹A/HRC/17/40 [25]

¹²As above [26].

¹³As above [29].

¹⁴NHRC 'State of human rights report (n 10 above).

¹⁵<https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm> last accessed 16th November 2021.

Since 2018, there have been reports of violence and disturbances in some Sarahule communities in the Upper River Region, between the 'nobles' who consider themselves superior members, and the 'slaves' who are considered inferior members of these communities.¹⁶ Between 27 and 30 October 2019, the NHRC initiated a fact-finding mission into 'the nature and underlying causes which precipitated the caste-based violence in the communities of Diabugu, Koina, and Garawol.'¹⁷ The reports on social media and the preliminary findings of the NHRC investigations and fact-finding missions revealed the existence and perpetuation of caste-based discrimination and violation of rights of persons considered as 'slaves' in villages in the URR, including in Diabugu Batapa, Koina, and Garawol.¹⁸

Chapter IV of the 1997 Constitution of The Gambia protects fundamental human rights and freedoms of persons. It covers a wide range of rights, including rights to liberty, secure protection of the law, right to assembly and association, and freedom from inhuman degrading treatment. Section 33 of the Constitution guarantees the right to equal treatment and non-discrimination. These rights are also protected in several regional and international instruments ratified by The Gambia. However, the National Human Rights Commission has 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 legitimizes 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."¹⁹

¹⁶Gambia: Caste Violence Erupts In URR As Compound Set Ablazed, 10 Sustain Serious Injuries, Mamos TV, May 27, 2019, available at <https://www.mamostv.tv/gambia-caste-violence-erupts-in-urr-as-compound-set-ablazed-10-sustain-serious-injuries/>

Sinera Denounces Caste Base Violence In Sarahuleh Communities, The Voice, November 20, 2018, available at <https://www.voicegambia.com/2018/11/20/sinera-denounces-caste-base-violence-in-sarahuleh-communities/>

¹⁷National Human Rights Commission 'Fact-finding on the caste system in the Upper River Region 27 – 30 October 2019' 2.

¹⁸As above.

¹⁹See State of Human Rights Report (n 10 above) page 55.

The caste system is “a form of social and economic governance that is based on principles and customary rules that:

- a. Involve the division of people into social groups (castes) where assignments of rights are determined by birth, and descent, and they are fixed and hereditary.
- b. The assignment of basic rights among various castes is unequal and hierarchical, with those at the top enjoying most rights and privileges coupled with least duties, and those at the bottom forced to perform most duties considered impure coupled with limited rights.”²⁰

The caste system divides people into unequal and hierarchical social groups with those at the bottom considered ‘lesser human beings’, ‘impure’ and ‘polluting’ to other caste groups.”²¹ Consequently, the doctrine of inequality and discrimination is at the core of the caste system and it “involves massive violations of civil, political, economic, social and cultural rights.”²² Caste-discrimination affects an estimated 260 million people worldwide, the vast majority living in South Asia.²³

In addition to divisions based on caste, there are distinctions based on descent. This distinction places individuals on different strata based on who is considered an original settler of a village or town and those who came afterward. This leads to differential treatment based on descent and consequent denial or restrictions of rights, especially in terms of access to community leadership positions and services.

Human Rights Watch associates the continued practice of caste-based discrimination with the failure of States to strictly implement the anti-discrimination laws found in both domestic and international human rights regimes.²⁴ Since there is an existing legal framework based on which measures can be taken to gradually eradicate this practice, The Gambia should also adopt such measures to ensure the eradication of this form of discrimination.

²⁰International Dalit Solidarity Network ‘What is caste discrimination’ available at <https://idsn.org/caste-discrimination/what-is-caste-discrimination/>, last accessed on 18/11/2021. Even though this article relates specifically with the Dalits (untouchables) of India, persons classified as belonging to a lower caste in The Gambia suffer similar treatment but enjoy their fundamental rights under the Constitution.

²¹Ibid.

²²Ibid.

²³International Dalit Solidarity Network (n 20 above) 2021.

²⁴As above.

The principle of non-discrimination is guaranteed in The Gambia's Constitution and other domestic laws and regional and international treaties ratified by The Gambia. It is fundamental as it unites all human rights by ensuring that they apply to all persons without any unwarranted exceptions.²⁵ Consequently, any unequal treatment that negatively affects other members of society may run contrary to the principle of non-discrimination.

The 1997 Constitution, just like many international human rights instruments, does not include caste as one of the prohibited grounds for discrimination. However, in 2002, the Committee on the Elimination of Racial Discrimination (CERD) adopted General Recommendation 29 in which it held that the term "descent" in article 1(1) of the International Convention on the Elimination of Racial Discrimination (ICERD) covered caste-based discrimination. The CERD strongly affirmed in the General Recommendation that:

...discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.²⁶

The UN Special Rapporteur on Contemporary Forms of Racism has also on several occasions reaffirmed the position of CERD that discrimination on the grounds of caste falls within the scope of existing instruments, including the ICERD:

Since the World Conference against Racism in Durban, the issue of discrimination based on descent has been on the international agenda. Despite the objection of some member States, the main human rights bodies working the subjects of racism and discrimination have stated clearly that prohibition of this type of discrimination falls within the scope of existing instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination.²⁷

²⁵ C.FJ Doebbler 'The principle of non-discrimination in international law' 1.

²⁶ Preamble to General Comment No. 29 of CERD, available at <http://hrlibrary.umn.edu/cerd/genrec29.html>, last accessed on 18/11/2021. CERD has jurisdiction over The Gambia, The Gambia having ratified the ICERD on 29 December, 1978.

²⁷ Statement by Githu Muigai Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at the Durban Review Conference https://www2.ohchr.org/english/issues/racism/rapporteur/docs/SR_racism-Communities_statement.pdf last accessed 29 December 2021.

The Constitution protects all persons (without exceptions) from inhuman and degrading treatment.²⁸ It further recognizes the human dignity of all persons and guarantees equality before the law by providing that “no law shall make any provision which is discriminatory either of itself in its effect” and that “no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.”²⁹

This report examines the current situation of The Gambia in relation to caste-based and descent-based discrimination. It is a product of a desk review of all accessible information on caste-based and descent-based discrimination, face-to-face consultations, interviews, and focus group discussions in several affected communities.

²⁸Section 21 of the Constitution.

²⁹Section 33 of the Constitution.

2. The legal framework on discrimination

The Black's Law Dictionary, 10th Edition defines discrimination as "failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured." There is no specific legislation addressing the growing problems of caste and descent-based discrimination in The Gambia. However, several provisions found in separate human rights instruments offer some opportunities, albeit insufficient, to address some aspects of discrimination on these grounds.

Domestic laws

The 1997 Constitution

The supreme law of The Gambia and a source of legitimacy for all other laws, actions, and inactions of the state and non-state actors, the Constitution contains provisions relevant to the subject of discrimination generally.

Section 33(1) of the Constitution provides that all persons 'shall be equal before the law', while section 33(2) provides that 'subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.' Section 33(3) provides that '[s]ubject to the provisions of subsection (5), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.' This lays the basis for banning caste discrimination. It is, however, important to note that section 33(5) provides for some exceptions to the generality of section 33 to the effect that section 33(2) will not apply in respect of:

adoption, marriage, divorce, burial, devolution of property on death, or other matters of personal law;³⁰

for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.³¹

Section 37 of the Constitution gives persons alleging encroachment on their rights the opportunity to seek redress before the courts.

The generality of section 33 of the 1997 Constitution presents both an opportunity and a challenge in the fight against discrimination based on descent or caste. This is because even though section 33 prohibits discrimination on the stated grounds, it recognizes some exceptions in 33 (5) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; and 'for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.'

This situation provides a constitutional impediment to the fight against caste-based and descent-based discrimination in the communities. A vital first step in efforts to address caste and descent-based discrimination is to harmonise the laws governing discrimination so that good provisions will not be nullified by claw-back clauses in the Constitution. In the absence of these steps, it will be impossible to effectively address the serious human rights violations and discrimination suffered by individuals and groups on grounds of caste and other systems of inherited status.³²

³⁰Section 33(5)(c) of the Constitution.

³¹Section 33(5)(d) of the Constitution.

³²Statement by Mr. Githu Muigai Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at the Durban Review Conference available at https://www2.ohchr.org/english/issues/racism/rapporteur/docs/SR_racism-Communities_statement.pdf, last accessed on 18/11/2021.

³³See the Long Title, Women's Act, 2010.

The Women's Act 2010

This Act was enacted to domesticate the Convention on the Elimination of all Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)³³. It guarantees the right of all women to dignity,³⁴ equality, justice before the law, and equal protection of the law. The Act further imposes an obligation on the Government to 'provide legal aid support to ensure equal protection and promotion of women', 'ensure that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights, and 'take adequate steps to reform existing discriminatory laws and practices to promote and protect the rights of women'.³⁵

The Women's Act further provides that no woman shall be made to suffer any discrimination by reason that she is a woman and that no woman shall be subjected to any disabilities or restrictions to which citizens of The Gambia are generally not made subject.³⁶ The Act further imposes an obligation on the Government 'to promote and protect the rights of women and take positive measures to eliminate all forms of discrimination against women in all its institutions, agencies and organs in line with its international obligations' and 'to eliminate all forms of stereotypes and acts of discrimination which perpetrate or tend to perpetrate gender inequality'.³⁷

The Children's Act 2005

This Act provides that 'the best interests of the child shall be the paramount consideration for any court, institution, person or any other body in determining any question concerning the child'³⁸. It also provides that 'a child shall be given such protection and care as is necessary for his or her well-being'.³⁹ It further provides that no child shall be subjected to any social and cultural practices that affect the welfare, dignity, normal growth, and development of the child and, in particular, those customs and practices that are prejudicial to the health and life of the child; and discriminatory to the child on the grounds of sex or other status must be abandoned.⁴⁰

³⁴Section 4 of the Women's Act.

³⁵Section 7 (4) of the Women's Act.

³⁶Section 9 (1) of the Women's Act.

³⁷Section 14 (1) and (3) (a) of the Women's Act.

³⁸Section 3 (1) of the Children's Act.

³⁹Section 4 (1) of the Children's Act.

⁴⁰Section 19 of the Children's Act.

The Persons with Disabilities Act 2021

This Act guarantees the 'respect for human dignity',⁴¹ 'equality of opportunity',⁴² and 'full and effective inclusion of persons with disabilities in all aspects of society'.⁴³ It further guarantees the right to equality and prohibits all forms of discrimination against persons with disabilities.

International Legal framework

The Gambia is a party to several regional and international treaties that prohibit discrimination on the grounds of descent, race, and other status. These include the African Charter on Human and Peoples' Rights (ACHPR),⁴⁴ African Charter on the Rights and Welfare of the Child (ACRWC)⁴⁵, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁴⁶, the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)⁴⁷, the International Covenant on Civil and Political Rights (ICCPR)⁴⁸, International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁹, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵⁰, Convention on the Rights of the Child (CRC)⁵¹ and the Convention of the Rights of Persons with Disabilities (CRPD)⁵². The Universal Declaration of Human Rights (UDHR) also prohibits discrimination and obliges States to ensure respect for equality of all people.

These instruments not only guarantee equality of treatment but also prohibit discrimination based on several stated grounds.

The UDHR

Article 2 of the UDHR provides that 'Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' Article 7 further provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. All persons are also entitled to equal protection against any discrimination and any incitement to such discrimination.

⁴¹Section 4 (a) of the Persons with Disabilities Act.

⁴²Section 4 (d) of the Persons with Disabilities Act.

⁴³Section 4 (c) of the Persons with Disabilities Act.

⁴⁴Ratified on 8/6/1983.

⁴⁵Ratified on 14/12/2000.

⁴⁶Ratified on 25/5/2005.

⁴⁷Ratified on 22/11/1978.

⁴⁸Ratified on 22/3/1979.

⁴⁹Ratified on 29/12/1978.

⁵⁰Ratified on 16/4/1993.

⁵¹Ratified on 08/08/1990.

⁵²Acceded to on 7/6/2015.

The ICCPR & ICESCR

Article 2 of the ICCPR and article 2 (2) of ICESCR oblige States Parties to both Covenants to guarantee that the rights enunciated in both Covenants will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

CERD

This Convention defines 'racial discrimination' to mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life⁵³. It requires all States Parties to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists" and prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization"⁵⁴.

CEDAW

CEDAW in article 2 provides that:

"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

⁵³Article 1(1) of the Convention.

⁵⁴Article 2 (C) and (d) of CERD.

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.”

CRC

States Parties to the CRC are required to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”⁵⁵ It also obligates States to “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”⁵⁶

⁵⁵Article 2(1) of the CRC

⁵⁶Article 2(2) of the CRC.

CRPD

The CRPD provides in article 5 that:

- “1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”

The Convention further obliges States Parties to “undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.”

The African Charter on Human and Peoples’ Rights

Article 2 of the African Charter provides that “[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status”. The African Charter obliges all States Parties to take all necessary measures to ensure that all forms of discriminatory practices are prohibited.

The Protocol to the African Charter on human and Peoples’ Rights on the Rights of Women (the Maputo Protocol)

The Maputo Protocol provides in article 2 that:

- “1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional, and other measures. In this regard they shall:

- a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
 - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
 - c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
 - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
 - e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.”

ACRWC

The ACRWC provides that:

“Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.”⁵⁷

⁵⁷Article 1 (1) of the ACRWC.

Customs, traditions, cultural or religious practices that are inconsistent with the rights, duties and obligations contained in the Charter are to the extent of such inconsistency be discouraged.⁵⁸

The Charter further obliges States Parties to recognize the rights, freedoms, and duties enshrined therein and “undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.”

In *Legal Resources Foundation v. Zambia*,⁵⁹ the African Commission on Human and Peoples’ Rights (the African Commission) declared the right to equality and the prohibition against discrimination as being ‘essential to the spirit of the African Charter.’⁶⁰ The African Commission emphasized that:

The right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. The right to equality is important for a second reason as equality or the lack of it affects the capacity of one to enjoy many other rights.⁶¹ For example, one who bears the burden of disadvantage because of one’s place of birth or social origin suffers indignity as a human being and as an equal and proud citizen.

The Commission also took note of the fact that in a growing number of African States, these forms of discrimination have caused violence and social and economic instability, which has benefited no one.”⁶²

In the case of *Kenneth Good v Botswana*,⁶³ and later reaffirmed in *Dabakorivhuwa Patriotic Front v the Republic of South Africa*,⁶⁴ the African Commission opined that: a differential treatment is considered a violation of the principles of non-discrimination and equal treatment if:

⁵⁸Article 1 (3) of the ACRWC.

⁵⁹Comm. No. 211/98.

⁶⁰*Malawi African Association v. Mauritania*, 54/91; *Amnesty International v. Mauritania*, 61/91; *Ms. Sarr Diop, Union Interafricaine des Droits de l’Homme and RADDHO v. Mauritania*, 98/93;

⁶¹The African Commission, citing UN Committee on Human Rights General Comment No 18 (XXXVII/1989), pp103-106), for a fuller discussion on non-discrimination in the ICCPR. [Emphasis added]

⁶²Communication 211/98, para. 63.

⁶³Communication No. 313/05, para 219.

⁶⁴Communication No. 335/06, para 113. See also African Court on Human and Peoples’ Rights, Advisory Opinion NO. 001/2018, 04 December 2020, para 67.

- (a) equal cases are treated in a different manner;
- (b) a difference in treatment does not have an objective and reasonable justification; and
- (c) if there is no proportionality between the aim sought and the means employed.

The African Court on Human and Peoples' Rights (African Court) has held in the case of *Actions pour la Protection des Droits de l'Homme (APDH) v Republic of Cote d'Ivoire*,⁶⁵ that "discrimination is a differentiation of persons or situations on the basis of one or several unlawful criterion/criteria".

The Human Rights Committee (HRC) has also noted that the term "discrimination" should be understood to imply:

"any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."⁶⁶

In the case of *Aumeeruddy Cziftra and Others v Mauritius*,⁶⁷ the HRC further held that for a differential treatment to be justified, "sufficient justification for this difference has to be given".

Despite the prohibition of discrimination in The Gambia's Constitution and other domestic laws and regional and international treaties ratified by The Gambia, recent events, especially in several Sarahule communities in the Upper River Region in The Gambia, have brought to light the existence and perpetuation of caste-based and descent-based discrimination in these communities.

⁶⁵Application No. 001/2014, para 147.

⁶⁶Human Rights Committee, General Comment No 18: Non-discrimination (Thirty-seventh session, 1989), para 7. The Human Rights Committee has jurisdiction over The Gambia since The Gambia ratified the First Optional Protocol to the ICCPR on June 9, 1998. This includes the jurisdiction to receive individual petitions from The Gambia.

⁶⁷(2000) AHRLR 3 (HRC 1981) para 9 (2).

3. Data collected, caste-based and descent-based discrimination

The main target of the interviews was the affected Sarahule communities in URR. Interviews were conducted in Diabugu Batapa, Garawol, Koina, Demba Kunda, Gambissara, and Numuyel. The Alkalo of Jahali in the CRR was also interviewed. Some institutions were identified as stakeholders on the subject. In that regard, the Principals/Headteachers of Gambisara Basic Cycle School, Numuyel Upper Basic School, Garawol Basic Cycle School, and Koina Lower Basic School, as well as the police, the Executive Director of Beakanyang, a human rights NGO, the Governor of CRR and the Deputy Governor of URR were interviewed. To assess the situation of caste and descent-related discrimination in other parts of the country, one respondent from each of the following communities were also interviewed: Salikenni(NBR), Boraba(CRR), Pirang(WCR)\, Jahali(CRR), Jenoi(LRR), Bakoteh(KM), and Gambissara(URR). Two respondents from Kerewan, NBR, and the national president of Gambana were also interviewed.

The interviews were predominantly conducted with members of the Sarahule communities in the URR because most of the caste-related disturbances and violence reported in the newspapers and dealt with by the National Human Rights Commission (NHRC) came from these communities.

In all the Sarahule communities visited, the subject of caste-based discrimination was treated with such sensitivity that community members only agreed to participate in the interviews through organized groups depending on whether the respondent was considered a 'noble' or 'slave'. The 'nobles' who were interviewed, mostly gathered at the Alkalo's house or one of his family members while the 'slaves' spoke either through Gambana⁶⁸ representatives or other chosen leaders. Persons approached by the interviewer either declined to speak to the interviewer or referred him to the heads of their communities.

It should also be noted that all but two of the persons interviewed were men. Most Gambian communities are highly patriarchal with women and children always relegated to the background when social issues such as these are discussed. The consultants, on several occasions, requested to speak to women in these communities but were directed to either the Alkalo or other male leaders of the communities. Despite several requests, only one woman in Diabugu Batapa agreed to be interviewed.

⁶⁸Gambana is a Sarahule term which means 'we are equal'. It is a movement set up to fight the concept of slavery in Sarahule communities. It is principally comprised of members of the 'slaves' caste.

From the definitions discussed above, caste and descent-based discrimination can be said to have occurred where a person is treated differently from other persons based on one of the prohibited grounds or due to unfair practice and without any objective and reasonable justification.

During the study, a total of 58 individual respondents were interviewed; 5 Focus Group Discussions were held, and 7 key institution interviews were conducted around the country.⁶⁹ The interviews revealed existing discriminatory practices and threats to protected rights, with members of lower castes as victims. Below are summaries of the issues that came out of the Key Persons Interviews and Focus Group Discussions conducted in the following Communities:

Demba Kunda

Demba Kunda is a Sarahule community situated in Southern URR. Though this village has not experienced caste-based violence, it was identified for this study to interview residents on whether there exist hidden caste and descent-based discrimination since it is in the same region with Garawol, Koina, and Diabugu Batapa and share common traditions

A Focus Group Discussion with five persons revealed the existence of different castes in the community.⁷⁰ Out of the group, four people identified themselves as of 'nobles' heritage and the founding family of the village.⁷¹ One person identified with the 'smith' caste. The 'nobles' acknowledged that the *Alkaloship* is by customary practice vested in the founding Jagana family and that an *Alkalo* can only come from a member of this family as the role is hereditary. This, they emphasised, cannot be changed.

The group explained that the *Alkalo* is the traditional head of the community and settles disputes in the community while the Imam is responsible for all religious-related functions. The Imam is also traditionally from the Conteh family which is also of a 'noble' background. The *Alkalo* is assisted by a group of community elders. The group emphasized the need to respect and maintain these traditional authorities for peace to be sustained.

⁶⁹Interviews were held in Diabugu Batapa, Koina, Garawol, Numuyel, Demba Kunda, Gambissara, Jahali. Selected respondents from Boraba, Faji Kunda, Banjilinding, Bakoteh, Kanifing, Kerewan, and Salikenni were also interviewed.

⁷⁰FGD 5, Demba Kunda, 21 December 2021. This group was comprised of:

Respondent 1.

Respondent 2.

Respondent 3.

Respondent 4.

Respondent 5.

⁷¹FGD 5 above.

The person who identified as a 'smith' indicated that neither he nor his family members suffer any discrimination based on their caste. He, however, stated that he serves as a messenger when the 'nobles' are seeking a woman's hand in marriage, and acts as the village butcher during ceremonies. He also pointed out that there was no intermarriage between members of the noble caste and the 'smiths'. This is also true for leatherworkers, cobblers, and praise-singers.

Although all the respondents denied the existence of any sort of discrimination, it could be deduced from their responses that leadership roles are reserved for select families. That there was no intermarriage between members of different castes and that members of the 'smith' caste are expected to slaughter animals during social occasions and play messenger roles on some occasions.

Asked for recommendations to the Government on the caste issue, respondents suggested that:

- i. Government should ensure respect for traditional roles and authority;
- ii. Government should enforce the laws of the land and punish individuals that bring violence in the communities;
- iii. Fight bribery and corruption within law enforcement.

Diabugu Batapa

Diabugu Batapa is a Sarahule community situated in Sandu, URR. It was one of the hotspots of caste violence in 2018⁷². The clashes, as reported by Foroyaa Newspaper, erupted when members from the 'noble' castes insisted on imposing traditional roles of blowing the village horn for community meetings on a group of 'slaves' who rejected this role and were fined a sum of D2,500⁷³. Some members of the 'slaves' families henceforth rejected this role and the label 'slave'. This resulted in disagreements, the banning of 'slaves' from entering the village mosque, and subsequent violence between 'nobles' and 'slaves'⁷⁴. Following a fact-finding mission into the situation, the NHRC confirmed the reports⁷⁵. Subsequently, the NHRC, community heads, and the Imams from Sandu attempted to mediate between the 'nobles' and the 'slaves' in this community.⁷⁶

⁷²NHRC 'Fact-finding report on the caste system in the Upper River Region 27 – 30 October 2019.

⁷³<https://foroyaa.net/violent-clashes-break-out-in-diabugu/>

⁷⁴As above.

⁷⁵See the NHRC Fact-finding report (n 17 above).

⁷⁶Interview with Respondent 6, 19 December 2021.

In this community, four persons were interviewed and one FGD of seven people was held. Out of the four who were interviewed, three respondents identified as 'nobles' and denied enjoying any privilege based on their caste. The respondents acknowledged that the Alkaloship was reserved for the Drammeh Kunda family but denied the existence of any sort of discrimination against the 'slaves' or any other caste.⁷⁷

The interviewee who identified as a 'slave' indicated that he spends most of the day in the house of a 'noble' family and had not suffered any form of discrimination. He indicated that during naming and marriage ceremonies, he helps those from the 'noble' clan by fetching firewood for them and slaughtering animals. This function is reciprocated by the 'nobles' when he has a ceremony of his own or his family.⁷⁸

The four interviewees all shared the view that the issue of caste was not a problem in Diabugu and, despite earlier incidents of violence, there was peaceful coexistence in the community. The respondents were also of the view that the existing traditions and cultural values should be respected and not disturbed. The respondents acknowledged the division of the community into social strata of 'nobles', 'slaves', and 'smiths' but the 'noble' families did not agree that caste discrimination existed in the community.⁷⁹

A sharp contrast was seen in the responses from a Focus Group Discussion held with the group labelled as 'slaves' in the community.⁸⁰ In this group, all the participants indicated that they were all members of the caste identified as 'slaves'. All members of their families were also referred to as 'slaves' and they do not intermarry with the 'nobles'. The group indicated that for them the label of 'slave' was evil and did not have a place in modern society.

Concerning discrimination towards members of their caste, the group answered that they are considered members of inferior status, denied the dignity of their person, and face numerous forms of discrimination. For example

⁷⁷This was common in the interviews with Respondent 6, Respondent 7, and Respondent 8 at Diabugu on 19 December 2021.

⁷⁸Interview with Respondent 9, 19 December 2021.

⁷⁹As above; interviews with Respondent 6, Respondent 7 and Respondent 8.

⁸⁰FGD 1, Diabugu Batapa, 19 December 2021. This group comprised of the following people:

Respondent 10.
Respondent 11.
Respondent 12.
Respondent 13.
Respondent 14.
Respondent 15.
Respondent 16.
Respondent 17.

- i. They are not allowed to voice their opinions in village decisions;
- ii. They are not allowed to lead prayers;
- iii. Their women are prevented from selling vegetables at the village market;
- iv. They were threatened with denial of burial rites at the village cemetery;
- v. There is no intermarriage with the 'nobles';
- vi. They are expected to drum and dance in ceremonies;
- vii. 'Nobles' face a fine of D5,000 for using farm implements such as tractors that belong to 'slaves' and vice versa;
- viii. In 2019, Respondent 10, categorized as a slave', was dragged out of a mosque for protesting against sitting arrangements that makes 'slaves' sit in back rows during prayers;
- ix. Respondent 11's ('slave') landed property was forcefully taken from him by the 'nobles' without compensation;
- x. They are not allowed to build their mosque;

The group also highlighted that the Government of The Gambia failed to take appropriate measures despite complaints lodged at the Office of the URR Governor. Their application for a permit to build a mosque was also denied and as a result, the building materials they bought were all spoilt.⁸¹ The group further indicated that 'slaves' natives of Diabugu who live in the diaspora continue to face discrimination from members of the 'nobles' caste living abroad. This, they contended, was the case with the contributions of the Diabugu Batapa Diaspora club. Both 'nobles' and 'slaves' contributed to a joint account but only the 'nobles' take the decisions on spending from the fund. When the 'slaves' requested part of the money to build a mosque, this request was denied by the 'nobles'.

Gambissara

A Focus Group Discussion⁸² of four respondents in Gambissara and one interview at the Gambissara Basic Cycle school was conducted.

Gambissara is one of the largest Sarahule settlements in The Gambia. The FGD revealed that the village leadership is with the 'nobles', specifically the Dukureh Kunda family. The title to the Alkaloship of the community is hereditary and can only pass to members of the Dukureh family. The Imam position is reserved for members of the Waggeh, Dukureh, and Tunkara families who are also of 'noble' backgrounds.

⁸¹FGD 1 above.

⁸²FGD 4, Gambissara, 21 December 2021. This group comprised of:
Respondent 18.
Respondent 19.
Respondent 20.
Respondent 21.

The group denied the existence of any discrimination against 'slaves' or any members of other castes, and that there has not been any conflict emanating from the issue. They indicated that the only abuses that have been reported were through social media communications, mostly WhatsApp voice messages of a member of Gambana insulting the 'nobles' and abusive responses from some youths directed to this Gambana member. The group indicated that members of all castes pray together and perform all the work of the community together. They stated that there was no forced labour on anyone and that when there was any dispute, it was usually settled at the level of the Alkalo whose decision was respected by all.

Another native of Gambissara who also holds a senior position in Gambana was interviewed.⁸³ This respondent narrated that in Gambissara, members of his family are considered slaves. He stated that:

- a. There are 'nobles', 'slaves', 'griots' and 'smiths' living together in Gambissara;
- b. Members of different castes contribute equal amounts of money towards village development projects but it is only the nobles are allowed to take decisions on the projects;
- c. There is no intermarriage between members of different castes;
- d. The 'slaves' are expected to do the labour during ceremonies; and
- e. No matter how verse a 'slave' is in the Quran, he cannot be an imam in the village;

The respondent also stated that members of the 'slave' caste face discrimination based on their caste. He further stated that as a member of Gambana, he was involved in the printing and distribution of shirts bearing the Gambana inscription in Gambissara but the community of Gambissara placed a ban on the wearing of those shirts in the village. Persons who were seen wearing these shirts were harassed and forced to remove them. As a result, there were some confrontations. The respondent narrated that his cousin, who was also a sympathizer of the Gambana, was removed from his position in the village health center. Consequently, the matter was reported to the Bakadagi police station and subsequently Basse Police Station. With the intervention of the Governor of URR, people are now free to wear these shirts in Gambissara.

⁸³Respondent 22, Kanifing, 12 February 2022.

The respondent revealed that in Gambissara, there are two factions of 'slaves'. On the one side, some do not object to being called 'slaves' and are willing to carry out menial tasks for the 'nobles'. On the other hand, there are those (including himself) who reject being labelled 'slaves'. Based on these divisions, the 'nobles' now side with the group that agrees to be called "slaves" and further incite them against those that 'rebel against this customary practice'.

When he was asked about possible solutions to the caste disputes, the respondent stated that the anti-discrimination laws of The Gambia should be enforced and perpetrators prosecuted. He further suggested that there should be constant dialogue and mediation between the parties which should be led by the NHRC, the Supreme Islamic Council and the *Sumpo do Kati*⁸⁴ association.

An interview with the Principal of Gambissara Basic Cycle School revealed that although the school had not received any formal complaints of caste discrimination, in 2020, there were reports that some pupils of 'noble' background were refusing to share a desk or sit with children of lower castes. When this came to the attention of the school, the school authorities intervened by ordering a random pairing of the students to mix their sitting arrangements. This was to ensure that all the children were treated equally at the school. The respondent was also of the view that there was a need for sensitization to raise awareness on the ills of caste discrimination and to review the basic education curricula to teach students about equality and non-discrimination.

Garawol

Garawol was one of the communities affected by the caste disputes in 2018.⁸⁵ Like in Diabugu, in 2018, caste-related disputes erupted in Garawol. The NHRC and the media reported the alleged murder of one Haji Yamu by one Bilal Conteh following an altercation on the caste disputes in the community.⁸⁶

Three individual interviews and one FGD of three people were conducted in this village. In the Focus Group Discussion,⁸⁷ all three participants who identified as 'nobles' indicated that since the founding of Garawol in 1882 it has always operated based on traditional and customary practices.

⁸⁴A Serahule association for peace and unity among Sarahule communities.

⁸⁵NHRC Fact finding report (n 17 above) 10.

⁸⁶As above 8.

⁸⁷FGD 3, Garawol, 20 December 2021. The following people were present in this group:

Respondent 24.

Respondent 25.

Respondent 26.

They indicated that all their families were 'nobles' and that they did not intermarry with members of other castes. The Ceesay family of Garawol retains the exclusive right to be the village *Alkalos*.

The FGD participants maintained that the 'nobles' do not discriminate against members of other castes. However, they acknowledged that there was a matter pending in the High Court of The Gambia in Banjul in which the Alkalo of Garawolis was a Defendant. The case was initiated by the 'Gambana' who are seeking a declaration that the Alkalo and the Governor violated their rights to property and religion.

The respondents also narrated that in 2019, a youth was killed during the unrest and the perpetrator was arrested, detained, and subsequently charged. This incident was also reported by the NHRC fact-finding mission, and it confirmed that the suspect was charged with murder. However, the suspect is yet to be convicted. The group accused the Government of complacency in the matter. They argued that on several occasions, the Government sent people (this is understood to include delegations from the NHRC, the Supreme Islamic Council, and other delegations affiliated with the State) to the village but in the end, no action was taken. The group also highlighted that the 'Gambana' community did not respect the 'Alkalos' and that they had refused to pay rates and taxes. The group further disclosed that the 'nobles' face defamatory and disparaging language from 'Gambana' members but did not provide details of this.

The group acknowledged the presence of 'slaves' in the community but was adamant that no one called these groups by such names. They stated that members of 'Gambana' had even written a letter to the *Alkalo* indicating that no one should call them slaves or any such degrading names. Even though the group denied discrimination against the slaves or any other caste members, they acknowledged preventing Gambana members from constructing a mosque in the village due to their refusal to pay rates and taxes to the Alkalo.

According to the group, the Supreme Islamic Council (SIC) sent a delegation to the village to mediate between the parties which yielded positive results. This was put in writing in an agreement dated 6 November 2021.⁸⁸ The agreement was as follows:

1. The community to stop calling and labelling people as 'slaves';
2. The Gambana to be allowed to build a mosque and madrassa in Garawol;
3. Gambana members to pay taxes and other village development fees; and
4. The community to engage members of the Gambana in all village development issues and appoint them in village committee positions

Two members of Gambana were also interviewed together.⁸⁹ The respondents indicated that the community, especially the 'nobles', continued to call them 'slaves', a status they and their families find unacceptable and degrading. The respondents indicated that they suffer discrimination based on their caste as they are not allowed to be Alkalos, Imams, lead prayers, marry members of the 'nobles' castes or hold any leadership position in the village. They also indicated that during prayers, they are expected to occupy the back rows in the mosques and fetch firewood, and slaughter animals during social functions. These, they indicated, violate their rights to equality, dignity, non-discrimination, religion, and participation as enshrined in the Constitution.

Furthermore, they stated that members of the Gambana in Garawol attempted to construct their mosque in the community since they were denied access and permission to pray in the village mosques, but the community barred them from doing so. As a result, members of the Gambana lost over one thousand bags of cement which got spoilt due to the long time they were kept. That the group sought redress from the Gambia Police Force in Fatoto and Basse and filed cases before the High Court of The Gambia in Basse and Banjul. However, they alleged these cases have not proceeded because of repeated adjournments. They also alluded to unconfirmed reports of bribery from the 'nobles' to senior public officials involved in the matter. "There was no help from the government despite the destruction of property", they stated.

The respondents also alleged that even though members of the 'slaves' castes are not allowed to marry the 'nobles', there have been illicit sexual relationships between young men of the 'noble' caste and young ladies of the 'slave' caste which have led to the pregnancies of the ladies and denial of paternity by the young men.

⁸⁸FGD 3, Garawol, 20 December 2021.

⁸⁹Interviews with Respondent 27 and Respondent 28, Garawol, 20 December 2021.

It was narrated that in 2019, some children of the 'slaves' caste were also harassed in the village Arabic schools and as a result, the Gambana built private Arabic schools for their children. The respondents indicated that they only wanted to be treated equally and given equal enjoyment of their rights. They stated that slavery should not exist because it is not supported by the Quran and Hadith. They urged the Government to stop the harassment and discrimination against the Gambana.

An interview was also held with Respondent 29, a businessman who operates a shop at the village square. He indicated that even though he and his family do not identify as 'slaves' the community still refers to them as such and treats them as lower members of society.⁹⁰ He indicated that the positions of Imam, Alkalo, VDC Chairperson, and all other important leadership roles are reserved for the 'nobles'. He indicated that in 2019 when he publicly rejected the label of 'slave', the community harassed him, and some members of the community still boycott his shop. Together with members of the Gambana, their attempt to build a mosque in Garawol was blocked by the Alkalo even though the plan was to build it on a property owned by a Gambana member. The interviewee said that interventions by the Supreme Islamic Council to broker an agreement so that the Gambana can start construction works for the proposed mosque continued to be frustrated by the 'nobles'.

Respondent 29 indicated that members of Gambana were sent away from praying grounds for their stance for equality and rejection of the 'slave' label and as a result, he prays at home. In 2020, his role in the fight against this modern-day slavery saw him summoned to the Basse Police station on two occasions as the 'nobles' tried to get him prosecuted. He recommended that the Government should be firm in dealing with this issue and should enforce equality and non-discrimination laws in The Gambia to ensure peace and stability in the country.

The Principal of Garawol Basic Cycle School indicated that he was posted in Numuyel and Gambissara before he came to Garawol.⁹¹ He confirmed that caste-based divisions are not a problem in Numuyel but observed that the issues were prevalent in Garawol and Gambissara. He indicated that members of these communities take pride in their castes and that the 'slaves' suffered stigma and discrimination based on their status.

⁹⁰Interview with Respondent 30 20 December 2021.

He also stated that members of the 'slaves' caste were denied equal access to leadership roles and were considered lower in the social strata of society. He recommended that the Government should enforce anti-discrimination laws, sensitize society, and review the education curriculum to internalize equality in the minds of the younger generations.

Jahali

The Central River Region has fewer Sarahule villages compared to the Upper River Region. One of the communities identified for the study is Jahali. An interview was conducted with Respondent 31, a 72-year-old farmer.⁹² The respondent identified himself as a member of the 'noble' caste. He indicated that there were members of various castes present in the community and nobles, slaves, smiths, and leatherworkers coexist in harmony in the village. He stated that he does not enjoy any privilege because of his status as a 'noble' and that no group is discriminated against in his community.

The respondent stated that the Alkaloship of the village was reserved for the members of his family as the founders of the village. He indicated that tolerance must be fostered in the affected communities and that mediation efforts must be made by both government and non-government organizations in the affected communities.

Koina

Koina was also one of the communities where the NHRC found major disputes relating to caste-based discrimination.⁹³ An FGD was held with 12 participants, with all but one⁹⁴ identifying as 'nobles'. The FGD participants disclosed that they inherited the caste system from their forefathers and that those rejecting the caste system were trying to subvert the traditions of the community.⁹⁵ They indicated that the Alkaloship was inherited within the founding family of the village (Gumaneh Kunda) and that part of the agenda of those refusing to be called 'slaves' was to change the hereditary nature of the Alkalo position.

⁹²Interview with Respondent 31, Jahali, 6 January 2022.

⁹³NHRC 'Fact finding Report' (n 17 above) 4.

⁹⁴Respondent 32, a VDC member identified as a 'slave' and said that he is happy to be called such.

⁹⁵FGD 2, Koina, 20 December 2021. The following were in attendance:

Respondent 33.

Respondent 34.

Respondent 35.

Respondent 36.

Respondent 37.

Respondent 38.

Respondent 39.

Respondent 40.

Respondent 32.

Respondent 41.

Respondent 42.

Respondent 43.

The group contended that they did not discriminate against any person and that now no one is called a 'slave' by members of the 'nobles' caste. They stated that there are smiths, leather workers, and cobblers as well residing in the village and that each of these castes had their different roles in the community during social ceremonies. The leatherworkers fetch water, the 'slaves' blow the village trumpet and provided entertainment and the smiths served as messengers. According to the group, these social structures are traditional and are being undermined by a few youths.

The information provided by the group was largely contradicted by the responses given by Respondent 44 of Koina Basic Cycle School.⁹⁶ He indicated that even though caste systems exist in the majority of Gambian communities, they are more pronounced in Sarahule communities. He remarked that in Mandinka communities the issue of caste is now more of a joking relationship in which people help each other during ceremonies.

The respondent explained that in Koina, the 'nobles' act as superiors and the 'slaves' as inferior. This complex relationship was seen even in the children of the community as there were reports in 2018 that school children of 'noble' families refused to share desks with other children. The school administration, on receipt of this information, intervened by mixing up the kids and teaching them equality through a 'Peace Club' set up in the school. He stated that customary practices, traditions, and The Gambia's basic education syllabus contribute to the perpetuation of caste divisions and discrimination. He posited that while customs and traditions provide historical justification for caste-related practices the basic education syllabus continues to justify the existence of these divisions. The respondent recommended that there should be a curriculum review, sensitization, and law reform to criminalise caste-based discrimination.

⁹⁶Interview with Respondent 44, Koina, 20 December 2021.

Numuyel

The first interaction with the community members of Numuyel was a Focus Group Discussion with a group of four 'nobles'.⁹⁷ The participants indicated that they all identify as 'nobles' and so are all members of their families. They disclosed that the village of Numuyel comprised nobles, leatherworkers, smiths, and 'slaves'. They, however, indicated that these divisions were mostly of historical significance only and no member of any caste was discriminated against based on their caste. All the community members perform community work together and help one another during naming and marriage ceremonies.

The FGD participants said members of the different castes do not intermarry but there had not been any dispute arising from caste discrimination in the community of Numuyel. They recommended that the Government engage members of communities where the caste system was proving to be troublesome so that people who did not want to be called 'slaves' would not be called such.

A second interview conducted in Numuyel was with an 81-year-old resident of the community, Respondent 49. The respondent indicated that he is called a 'slave' by community members and that he identified as a 'slave'. He indicated that he inherited this title as all his parents were called 'slaves'.⁹⁸ That his parents, who were of a 'noble' background, travelled from Mauritania and settled in Numuyel. However, since his grandfather was not an indigene of the village, he was not allowed to marry the 'nobles'. His grandfather subsequently married someone from the 'slaves' families and since then, all his descendants were considered 'slaves'. He indicated that he serves as a messenger when the 'nobles' are having their ceremonies. According to him, the caste system is deeply entrenched in Sarahule societies but generally, the younger generation tends to reject the title 'slave' in a majority of communities.

Other respondents

Other interviews targeting selected individuals, institutions, and CSOs were also conducted. An interview with Respondent 50, a legal practitioner and native of Boraba in the Central River Region but resident of Banjulinding, West Coast Region, and of 'griot' background revealed that discrimination against members of lower caste was not only limited to the 'slaves' but affected all persons who fall outside of the 'noble' families.⁹⁹

⁹⁷FGD 5, Numuyel 21 December 2021. The following were in attendance:

Respondent 45.

Respondent 46.

Respondent 47.

Respondent 48.

⁹⁸Interview with Respondent 49, Numuyel, 21 December 2021.

⁹⁹Email response from Respondent 50, 15 January, 2022.

He highlighted that he belongs to the 'jali' family and that it was difficult to marry from outside of his family. He cited the example of his younger brother who could not marry a woman because she was from a family considered superior to the 'jali'. Even though the Constitution provides that the right to marry is based on consent, the woman was prevented from marrying the man of her choice. This, he indicated, was a violation of a woman's right to marry the man of her choice.

The respondent stated that the '*jali*' occupy the traditional roles of leading suitors to their in-laws, singing during social occasions, and brokering peace agreements during times of conflict. He recommended legislation to be enacted to proscribe acts of discrimination based on caste or descent, prohibition of separate burial grounds or mosques for different castes, and for a thorough sensitization to be conducted in communities.

The National President of Gambana stated that there are 53 Sarahule villages in The Gambia and that they have received information that in all these villages the caste system exists. The levels of discrimination against members of the lower castes vary from village to village but the situations may all lead to some violence in the future. He indicated that when the Gambana (an association established to promote equality) receives complaints, they first attempt mediation and when that does not work, they report the matter to the police or resort to the courts. He stated that members of the higher caste continue to discriminate against members of lower castes which violates their rights to dignity, liberty, association, and conscience, among others.

He further stated that in Baja Kunda, a 'slave' was threatened with eviction from his home which he lived in for more than fourteen years because he wouldn't accept being called a 'slave'. With the intervention of Gambana, the eviction was stopped. In his native village of Sabi, the respondent stated that he financed the construction of a mosque in 2019 for a 'slave' who, despite his vast knowledge of the Quran and Sharia was denied leading prayers in the village because he is a 'slave'. He stated that for people in the affected communities to live peacefully, there must be justice for the victims of caste-based discrimination. He also recommended for review of the law to include stringent measures against persons who discriminate against members of lower castes.

Another respondent who is active in finding solutions to caste-based discrimination¹⁰⁰ stated that even though he does not identify with any caste, members of his community refer to him as a 'noble'. He stated that he has not suffered any form of discrimination or enjoys any privileges based on his caste status. He indicated that he is involved in some of the efforts to eradicate caste-based discrimination in the Sarahule communities.

He stated that part of the challenges to the fight against caste-based discrimination is the involvement of the government through The Gambia Police Force. The police, he said, take sides and refuse to enforce the law as they should. He alleged that the complaints from Garawol were neglected and the investigations not thoroughly conducted. He further stated that even at the office of the Ombudsman, despite the complaints filed, the evidence and the files were tampered with and the complaints against the police officers were never investigated. Instead, the complaints were referred to the Ministry of Justice referred the file back to the police for investigation. "Nothing came out of these complaints", he remarked.

The Respondent also alleged that the NHRC failed to consider both sides of the disputes in Garawol, Koina, and Diabugu Batapa. This, he stated, affected the credibility of the NHRC fact-finding report and press statements. He argued that the stance of the NHRC was Gambana biased and that the investigations needed to consider the violent nature of the Gambana response in some of the communities. He suggested that those who are content with the status of 'slaves' should be left alone without harassment. He advised that all the parties involved should reconcile and the NHRC, the Supreme Islamic Council, and all stakeholders must take part in the reconciliation efforts.

In addition to the said interviews, there were also interviews with the Deputy Governor of URR, Respondent 52, a native of Gambissara,¹⁰¹ the Governor of CRR, Respondent 53¹⁰², and the Station Officer of Bansang Police Station, Respondent 54.¹⁰³

The Deputy Governor of URR stated that his office was aware of the caste-based disputes in the URR and that they had received complaints of human rights violations from Garawol. He said that upon receipt of the complaint, investigations found that the 'Gambana' wanted to put an end to people being called 'slaves'.

¹⁰⁰Interview with Respondent 51, Retired Islamic Scholar, Bakoteh, 14 February 2022.

¹⁰¹Interview with Respondent 52, Basse, 22 December 2021.

¹⁰²Interview with Respondent 53, Janjangbureh, 6 January 2022.

¹⁰³Interview with Respondent 54, Bansang Police Station, 6 January 2022.

He revealed that there were also members of the 'slaves' caste who were denied entry into mosques in 2019 but this no longer exists. He stated that the office of the Governor conducted some negotiations in Garawol to ensure unity and stability but the lack of agreement on the construction of the mosque by the 'Gambana' continued to threaten peaceful coexistence in the village.

The Deputy Governor stated further that contrary to reports, there were no human rights violations involved and that caste-based discrimination used to exist but not anymore.¹⁰⁴ "Now everyone has a right not to be called a 'slave'", he said.

The response of the Deputy Governor stood at odds with most of the respondents from the 'slave' families and schoolteachers in the affected communities. When he was further asked about the possible solutions to the problem of caste-based discrimination, the Deputy Governor stated that it is difficult for the Government to eradicate the caste system and related disagreements as these are deeply rooted cultural practices and people in the diaspora continued to play vital roles in spreading information about Gambana. He referred to a yet-to-be-decided suit filed at the High Court by members of Gambana in Garawol against the Alkalo of the village and the Chief of Tumana. The Deputy Governor recommended that the Government sensitise people on tolerance and equality.

For his part, the Governor of CRR stated that he had interacted with more than 90% of the communities in CRR but had not received or heard of any complaint of caste-based or descent-based discrimination in the region.¹⁰⁵ His response was similar to that of the Station Officer for Bansang and the Alkalo of Jahali, both in CRR. The Governor believed that the issue of caste was a mere perception of people but not an 'inherent entitlement' as no person is born a noble or slave. Thus, he recommended that all individuals must be treated with respect and equality as human beings, and those who violate the law based on caste should be prosecuted. This, he stated, could be done while respecting the existing cultural values of society.

Respondent 54 indicated that the only time he heard about the caste-based cases was on social media and related to the events that happened in URR. He indicated that their station dealt with many criminal cases within CRR, but no caste-based violence had been reported.

104(note 101 above).

105Interview with Respondent 53, Janjangbureh, 6 January 2022.

He highlighted the need for members of different castes to abandon the restrictions on intermarriage so that there would be family relationships between the different castes.

He recommended that mediation and sensitization efforts should be conducted in the affected areas and that counselling for the victims was important. That these strategies could be followed by prosecutions where perpetrators fail to desist from harassing, assaulting, and intimidating people based on their caste.

Two respondents from Baddibu Salikenni in the North Bank Region were also interviewed on the issue of caste in the village. Salikenni has been hailed for its success in tackling caste-based discrimination and overcoming its perpetuation. One of the respondents who is also a journalist, Respondent 55, stated that even though he could not outright say his family or himself were members of a particular caste, the surname 'Darboe' was usually praised as 'Daboe Jula' which was associated with the foroo (noble) caste in the Mandinka communities.¹⁰⁶ This label, however, does not hold any relevance in the respondent's family or community. Unlike the current experiences in the Sarahule communities, Respondent 55 confirmed that members of different castes in Salikenni intermarry and do all religious and social works together without regard to caste or descent.¹⁰⁷

Respondent 55 stated that he was not aware of any form of discrimination or rights violations of people in the community based on their caste or perceived caste. He remarked that in his community, roles and responsibilities during marriage and naming ceremonies are shared with relatives, praise-singers attend these ceremonies to entertain the gatherings, and the Imam takes the lead role in religious gatherings. Respondent 55 also stated that he was not aware of any measures put in place by the Government to eliminate caste-based discrimination. He emphasized that the traditional caste system in Mandinka and other societies are old socio-political structures that gave way to the current socio-political orders. As such, according to Respondent 55, to move away from caste-based discrimination and stigma, the country must introduce and operate a strong political and civic education programme to enlighten people on the effects of caste-based discrimination.

¹⁰⁶ Email response from Respondent 55, 24 January 2021.

¹⁰⁷As above.

Furthermore, the State must prosecute perpetrators of violence and those who violate the rights of people based on their caste or perceived caste. On the role of the NHRC, the respondent emphasized that the NHRC ‘hasn’t shown to have many teeth’ in terms of enforcement of its findings.¹⁰⁸ Consequently, efforts should be made for NHRC recommendations to be enforced.

Respondent 55’s views were re-echoed by retired Police Officer Respondent 56, a native of Jarra Jenoi now living in Sukuta.¹⁰⁹ He stated that he was not aware of any caste-based discrimination in his community and that he was not enjoying any privilege or experiencing any prejudice based on his caste. According to Respondent 56, the only time one renders services during ceremonies in his community is when one’s cousins are getting married or having naming ceremonies. The cousins volunteer to do the labour and in return get cash and other material rewards.¹¹⁰ He said he was not aware of any intervention from the Government aimed at addressing the caste-related issues.

Two respondents from Kerewan in the NBR were also interviewed. One Youth leader of ‘noble’ background,¹¹¹ stated that he has not experienced any form of discrimination and is not aware of any caste-based discrimination in the region or any measures from the Government to fight discrimination. This can be contrasted with the response from a civil servant from the same village.¹¹² This respondent stated that though people are not openly called ‘slaves’ in Kerewan, caste divisions exist in the community and members of different castes are unlikely to intermarry. He further stated that even though he has held different positions in Kerewan, including Chairperson of the Youth Development Association, and is currently a key adviser to the Alkalo and the Kerewan Youth Development Association, he is still considered a ‘slave’.

On the existence of caste-based discrimination in Kerewan, the respondent stated that ‘the community has two different graveyards, one for the so-called ‘nobles’ and the other for the so-called ‘slaves’. He indicated that he attempted to marry two different ladies at different times but was denied because both ladies belonged to a higher caste. He further stated, “any time I meet those ladies and those who went against my proposal, I felt stigmatized.”

¹⁰⁸As above.

¹⁰⁹Email from Respondent 56, Retired Police Officer, 26 December 2021.

¹¹⁰As above.

¹¹¹WhatsApp response from Respondent 57, Youth Leader, Kerewan 13 February 2022.

¹¹²Interview with Respondent 58, Education Officer, Kerewan 13 February 2022.

The respondent explained that in 2011, he lost the bid to contest for the National Assembly elections, despite having popular support, because many of his community members felt that his 'slave' status is not suitable to run for the seat. As a result, he felt that his right to marry and his right to political participation were violated by the community.

The Respondent also indicated that he did not seek any remedy for these violations, but in collaboration with some Islamic scholars, he is actively involved in community sensitization on the subject. He stated that he is aware of some of the international obligations of The Gambia under several treaties and that the establishment of the NHRC will help in the promotion and protection of human rights in The Gambia. He recommended that there should be a thorough consultation with stakeholders and institutions such as the National Council for Civic Education, the Supreme Islam Council, the Council of Chiefs, the media, and youth leaders to develop viable policies.

Respondent 59 of Beakanyang, a Civil Society Organisation that seeks to educate and empower citizens to know, defend and champion their fundamental human rights and development, was also interviewed.¹¹³ He indicated that he was aware of the caste system in The Gambia and the disputes which took place in some Sarahule communities in URR. He stated that in these communities, persons belonging to the lower castes are not entitled to privileges such as leadership positions. Due to this status quo, violence erupted in these communities.

The Respondent stated that in 2019, Beakanyang received a delegation from the Gambana victim-led Sarahule Association advocating for the abolition of the caste system in the Sarahule communities. The delegation complained that they were being discriminated against based on their so-called 'slave' caste. He enumerated some of the discriminations this Association said its members were subjected to: not allowed to lead congressional prayers; their children being denied access to community schools; some of their people asked to vacate their compounds and leave the villages if they do not want to be called 'slaves', and some commercial vehicles owned by Koina 'noble' families plying the Koina-Banjul Road restricted to carrying only 'nobles'.

¹¹³Email from Respondent 59, 21 January 2022.

According to Respondent 59, the delegation complained that this situation violated their right to non-discrimination, right to property, right to education, and freedom from torture.¹¹⁴ On the question of who was responsible for the violations of these rights, Respondent 59 stated that the 'nobles/freeborn' at home and abroad, wealthy businessmen, and local authorities such as the Chiefs and police are responsible for the violations. Upon receipt of the complaints from the delegation, Beakanyang tried unsuccessfully to settle the disputes using internal peace-building infrastructures within the organization called *Badingbung*- a traditional method of resolving conflicts using respected community leaders including Imams. During these efforts, the victims, mostly the perceived 'slaves' were assured of the protection of their rights, but these assurances were never met as the discrimination continued.

Respondent 59 stated that the Government took some measures to stop the conflict by making some arrests of the 'nobles' and members of Gambana but nothing significant came out of the arrests. Beakanyang also wrote to the Government of The Gambia through the Ministry of Local Government and Lands suggesting a collaboration with the Government to explore holistic measures to address caste-related conflicts but this has not been responded to. Respondent 59 recommended that The Gambia must enact legislation to address caste-based discrimination and the NHRC, National Council for Civic Education as well as all other CSOs must sensitise communities on the need to eradicate the issues related to caste-based discrimination.

Descent-based discrimination

Questionnaires on descent-based discrimination were also sent out to several respondents. One of the respondents, a journalist, indicated that he is of 'warrior' descent and resident in Faji Kunda, but an original settler of Boraba.¹¹⁵ He stated that he does not suffer any discrimination based on descent or enjoy any privileges based on his descent.

¹¹⁴As above.

¹¹⁵Interview with Respondent 60, Faji Kunda, 8 January 2022.

The impact of one's descent on his social status was highlighted in the experiences of Respondent 61, a descendant of the '*Mandingmorry*' (marabouts/imams) family of Pirang.¹¹⁶ He narrated that his family were the original settlers of Pirang in the Kombo East of The Gambia and traditional Imams of that settlement. However, when his parents moved to Brikama *Mansaringsu*, which is the home of the early settlers of Brikama, in the 1940s, his family was considered as '*luntango*' which is the Mandinka word for 'new settlers'. Consequently, growing up in an environment where he was considered a luntango, the respondent faced some disadvantages as his last name showed that he was not an original settler of Brikama. His family generally was considered last when there were instances of benefits to be shared.

Respondent 61 further stated that he was constantly reminded of how his father was not an original settler and that he was given land to settle and farm. Even when he fought with other children outside of his family, he was reminded by elders of the community that even the land he settled in belonged to the original settlers and their descendants as such 'the community belonged to them'. He stated that his family remained 'messengers' in the community who played the traditional role of 'tying the knots' in marriage ceremonies. He recommended for the inclusion of civic education in the school curricula to teach students about the equality of all persons.

¹¹⁶Response from Respondent 61, Washington, 15 January 2021.

4. Contextualizing caste-based and descent-based discrimination in The Gambia

The hierarchical division of a society that places inherent privileges and restrictions by birth runs contrary to the belief that “all human beings are free and equal in dignity and rights” as stated in Article 1 of the Universal Declaration of Human Rights.

Caste is a structure of social stratification that is characterized by the hereditary transmission of a set of practices, often including occupation, ritual practice, and social interaction.¹¹⁷ Discrimination in section 33 of the 1997 Constitution is defined to mean “affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privilege or advantages which are not accorded to persons of another such description.”¹¹⁸ In The Gambia and some other West African Countries such as Senegal, Guinea-Bissau, and Guinea, caste and descent continue to be used as a measure of one’s social position in society and a basis for discrimination.

The prohibited grounds of discrimination in the 1997 Constitution include race, social origin, birth, or other status.¹¹⁹ The inadequacy of the legal framework in addressing caste and descent-based discrimination is not unique to The Gambia. The United Nations has on several occasions considered these inadequacies and suggested alternatives. In that regard, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance specifically referred to the Committee on the Elimination of Racial Discrimination, which concluded at its forty-ninth session, that ‘the situation of the scheduled castes and scheduled tribes fall within the scope of the Convention.’¹²⁰

¹¹⁷M Subedi ‘Some Theoretical Considerations on Caste’ *Dhaulagiri Journal of Sociology and Anthropology* Vol. 7, 2013 51.

¹¹⁸Section 33 (4) of the Constitution.

¹¹⁹Section 33(4) of the 1997 Constitution.

¹²⁰Statement by Mr. Githu Muigai Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance at the Durban Review Conference.

The Special Rapporteur referred to the estimated 250 million people around the world being at risk of violations of civil, political, social, economic, and cultural rights, including violence, marginalization, and discrimination, on the grounds of systems based on inherited status.

In addition, the Committee on the Elimination of all Forms of Racial Discrimination has also stated that discrimination on the grounds of caste constitutes a form of racial discrimination and that “the term ‘descent’ had its meaning and was not to be confused with race or ethnic or national origin”. More broadly, in its General Recommendation No. 29 (2002) concerning discrimination on the grounds of descent, the Human Rights Committee further clarified its position by ‘strongly reaffirming that discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights”.¹²¹

Although the severity and manifestation of caste or descent-based discrimination vary from country to country and even in the same country from region to region (in the case of The Gambia, Sarahule communities in URR have been the most affected), as does the lived experience of the communities affected, CERD in its General Recommendation No. 29 identified the following common features in communities which suffer from discrimination based on caste or descent:

1. Inability or restricted ability to alter inherited status;
2. Socially enforced restrictions on marriage outside the community;
3. Private and public segregation, including in housing and education, access to public spaces, places of worship, and public sources of food and water
4. Subjection to dehumanizing discourses referring to pollution or untouchability;
5. Limitation of freedom to renounce inherited occupations or degrading or hazardous work;
6. Subjection to debt bondage;
7. Generalized lack of respect for human dignity and equality.¹²²

¹²¹Cited by the Special Rapporteur, (n 27 above).

¹²²UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent), 1 November 2002 at para 1., available at: <https://www.refworld.org/docid/4538830511.html> last accessed 29 January 2022.

The data from Diabugu Batapa, Koina, and Garawol reveal the existence of all the above conditions in these communities except for 'subjection to debt bondage'. Caste and analogous systems of inherited status are, at their root, social hierarchies wherein certain groups are branded as inferior based on their birth into a particular social group.¹²³ In these systems, the marginalized status so acquired cannot be removed simply by individual merit or achievement.¹²⁴ The interview with Respondent 29 of Garawol, the FGD in Diabugu Batapa, and the response from Respondent 49 of Numuyel all confirm this position. The 'slave' status is passed through the generations: some people continue to live as 'slaves' to their masters, while others bear the social status because their ancestors were enslaved, but no longer have any ties to their family's traditional masters.¹²⁵

Restrictions on social and economic mobility imposed by the caste and descent-based systems remain in place despite significant changes in the economic structure of countries (including in The Gambia) and communities in which discrimination based on caste or descent is prevalent.¹²⁶ The respondents from both 'slave' and 'noble' families in the Sarahule communities interviewed manifest decent standards of living and are largely at par in terms of livelihoods. Amongst them are people who are educated, travelled, and religious. All these, however, have failed to restrict or wipe out the existing discrimination.

In its General Comment no. 20, the Committee on Economic, Social and Cultural Rights noted that discrimination constitutes any distinction, exclusion, restriction or preference, or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.¹²⁷ Thus, according to the Committee, for States Parties to guarantee that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively.¹²⁸

¹²⁴As above.

¹²⁵Confirmed by Respondent 49, whose ancestors married a 'slave' and all subsequent descendants were automatically considered 'slaves'.

¹²⁶As above.

¹²⁷See paragraphs 1, 2 and 7 of the General Comment. For a similar definition see Article 1, ICERD, Article 1, CEDAW and Article 2, Convention on the Rights of Persons with Disabilities. The Human Rights Committee comes to a similar interpretation in General Comment No. 18, paras. 6 and 7. The Committee has adopted a similar position in previous General Comments.

¹²⁸See paragraph 8 of the General Comment. See also General Comment No. 16 of this Committee.

It is well established that there is a violation of the principles of equality and non-discrimination when a difference in treatment 'has no objective and reasonable justification, that is, if it does not pursue a 'legitimate aim' or if there is no 'reasonable relationship of proportionality' between the means employed and the aim sought to be realized. Thus, the different treatments accorded to members of the lower castes are not reasonably justifiable and the differentiation is not aimed at pursuing a legitimate aim.

Aside from reliance on obsolete practices and traditionally held beliefs of the superiority of 'noble' families over 'slave' families, there is no reason for the difference in treatment of the lower castes. The 'nobles' have consistently denied enjoying privileges because of their castes or discriminating against the 'slaves'. On the other hand, all but two¹²⁹ of the persons labelled as 'slaves' confirmed that they are treated differently because of their caste and that their rights are violated. This difference in treatment is confirmed by the responses of the school Principals in the affected communities. None of the respondents have advanced any legitimate justification for such treatment. The treatments received by the 'slaves' therefore fall within the definition of discrimination.

In *Legal Resources Foundation v. Zambia*, the African Commission noted that "[N]o State Party to the Charter should avoid its responsibilities by recourse to the limitations and "claw-back" clauses in the Charter¹³⁰. This should also apply in the context of the 1997 Constitution so that the recognition of Sharia and Customary law and the claw-back clauses in section 33 of the Constitution cannot be used to derogate from the responsibility of the State to protect rights and prevent discrimination.

There is no requirement to prove intent to discriminate within the African Charter on Human and Peoples' Rights. Once it is shown that a practice or an act unjustifiably discriminates against an individual or a group, there is no need to prove the intention of the perpetrator.

¹³⁰Comm. No. 211/98 at para. 70.

This was affirmed in the case of *Meldrum v the Republic Of Zimbabwe*, where the Commission defined discrimination as:

“[A]ny act which aims at distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms. Article 2 of the African Charter stipulates the principle of non-discrimination, which is essential to the spirit of the African Charter.”

The Gambia should draw inspiration from these instruments and treaty bodies in dealing with caste-based and descent-based discrimination. Consequently, in line with the above, pending any legislation on caste and descent-based discrimination, The Gambia can adopt broad definitions of the existing legal instruments to deal with the practice.

The data from the field suggests that caste and descent-based discrimination continues to be prevalent in The Gambia. Even though members of higher castes such as the ‘nobles’ are reluctant to admit discrimination against and mistreatment of others considered to be from lower castes, the responses from the so-called ‘slaves’, and school heads in the visited communities suggest not only observance of these social divisions but also that these divisions are used as means of oppression and discrimination.

Respondents from ‘slave’ backgrounds in three communities confirmed that because of their social status, they are not allowed to build their mosques, lead prayers as Imams and hold leadership positions in the villages. In Diabugu Batapa, Garawol, and Koina, members of the ‘slaves’ castes were not allowed to attend congregation prayers in community mosques for refusing to accept being called ‘slaves’ and performing tasks that were designated for the ‘slaves’. In all these instances, the discrimination, stigma, and oppression of members of the ‘slave’ caste have real consequences on the lives of the affected groups. It impedes access to religious and social institutions and continues to hinder the marrying of persons from different castes.

¹³¹Communication NO. 294/2004) [2009] ACHPR 98; (3 APRIL 2009). Other relevant standards to this effect include General Comment 20, Committee on Economic, Social and Cultural Rights, para. 7. The General Comment pointed specifically to the similar definitions under Article 1, ICERD, Article 1, CEDAW and Article 2, Convention on the Rights of Persons with Disabilities. The Human Rights Committee comes to a similar interpretation in General Comment No. 18, paras. 6 and 7.

Respondents from both the 'noble' and 'slave' backgrounds in all the communities confirmed that intermarriage between the members of different castes is still not permitted in all the Sarahule villages visited. The deliberate refusal of marriage between members of different castes infringes on the constitutional provision that 'men and women of full age and capacity shall have the right to marry and found a family,¹³² and that 'marriage shall be based on the free and full consent of the intended parties,¹³³. Despite incidents of sexual relationships outside of wedlock between members of different castes in the communities and condoning these, the Sarahule communities visited reject intermarriage between members of different castes.

As seen from the responses, human rights violations could occur in a wide array of areas, including prohibition or limitations on the ability to alter inherited status, socially enforced restrictions on marriage outside the community, and public and private segregation, including in education, access to public spaces and places of worship, and access to public sources of food and water. In Diabugu Batapa, respondents from the 'slaves' confirmed that members from their families are prohibited from entering certain compounds, shops, and the use of public transport belonging to the 'nobles'.¹³⁴ Their women are also denied access to the vegetable markets of the community.

The linkage between caste, descent, and political participation in the communities was laid bare by the responses received in Koina, Garawol, and Diabugu. In all these communities, respondents confirmed that Alkalo and Imam positions are reserved for descendants of the original settlers of these communities who are all 'nobles'. Consequently, political and religious power is indefinitely vested in the nobles and founding settlers. This status quo will not change in affected communities for many years to come since descendants of 'slaves' will remain as such and will not succeed in attempts to gain leadership positions.

¹³²Section 27(1) of the 1997 Constitution.

¹³³Section 27(2) of the 1997 Constitution.

¹³⁴FGD 1, Diabugu Batapa, 19 December 2021.

In Koina, the Alkalo family stated that the 'Gambana' members are attempting to subvert the long-standing traditional practices and culture of the community by sabotaging and undermining the authority of the Alkalo.¹³⁵ This is because it is widely believed in these communities that only descendants of the original settlers are entitled to be the Alkalos of these communities in perpetuity.¹³⁶ Unfortunately, this position seems to find validation in section 59 (2) of the Constitution which provides that the 'Minister shall, in making an appointment (of alkalos) under subsection (1), take into account traditional lines of inheritance.'

In addition to the entrenched customary nature of the caste system, the perceived recognition of slavery in the Quran has exacerbated the difficulty in fighting caste-based discrimination. The 'nobles' in Garawol referred to Islamic practices to support the contention that 'slaves' exist in society and that it is justifiable to treat them as persons of lower status. Since both Sharia and Customary Law are recognized as part of the laws of Gambia, albeit only applicable as personal laws, the 'nobles' are of the view that the caste system and slavery are recognized in Islam. Islamic law is, however, not a proponent of modern-day slavery as many of the verses in the Quran referring to slavery are geared towards freeing and manumission of slaves.¹³⁸

The 'nobles' in the communities of Diabugu, Garawol, and Koina impose fines on 'slaves' who refuse or fail to comply with the roles and responsibilities traditionally imposed on or ascribed to them. They also place embargoes and bans on them regarding access to places of worship. Even though this is not backed by conventional laws, it is imposed by the Alkalos who govern in accordance with customary law.

In its General Comment No.20,¹³⁹ the Committee on Economic, Social and Cultural Rights noted that "discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population."¹⁴⁰

¹³⁵FGD 2, Koina, 20 December 2021.

¹³⁶See Sankanu (n 1 above).

¹³⁷FGD 3, Garawol, 20 December 2021.

¹³⁸Bernard Lewis *Race and Slavery in the Middle East* Oxford University Press. p. 6. The Quran recommends, without requiring, his liberation by purchase or manumission. The freeing of slaves is recommended both for the expiation of sins (IV:92; V:92; LVIII:3) and as an act of simple benevolence (11: 177; XXIV:33; XC:13).

¹³⁹UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, available at: <https://www.refworld.org/docid/4a60961f2.html> (accessed 26 January 2022).

¹⁴⁰As above.

The interview with Respondent 29 in Garawol highlighted the plight of shopkeepers of 'slave' heritage who reject the label of slaves. The community placed an embargo on buying his products even though his products were relatively cheaper than other shopkeepers' in the village.¹⁴¹ The consequence of the embargo led to a loss of income for Respondent 29.

Since discrimination is the failure to treat all persons equally when no reasonable distinction could be found between those favoured and those not favoured, the situations in the communities of Diabugu, Garawol, and Koina reveal cases of caste-based discrimination. In Gambissara, Numuyel, and Demba Kunda, none of the resident respondents acknowledged the existence of caste or descent-based discrimination. The contention of the 'nobles' in the affected areas that they do not require any 'slave' to work without their consent does not excuse the fact that 'slaves' are treated with contempt and denied opportunities to lead, to exercise their religious rights to prayer, equal opportunity to education institutions, and fair treatment.

However, the headteachers/principals of Numuyel and Gambissara who are institutional heads of the respective schools both confirmed incidents of school children from the 'nobles' families refusing to share desks with children from the 'slaves' backgrounds. In Numuyel, Gambissara, and Demba Kunda, even though there are members of different castes, there has not been any open rejection of the label of 'slave'. This does not, however, nullify the possibility of future rejections of the label 'slaves', disagreement, and subsequent violence between these castes erupting in these communities.

Discrimination can be both direct and indirect. 'Direct discrimination involves treating someone less favourably because they possess an attribute such as race, sex, religion compared to someone without that attribute in the same circumstances.'¹⁴² From the field data, it can be seen that the 'slaves' are not only collectively called degrading names but are also prevented from leading prayers, entering mosques, intermarrying with 'nobles', joining some commercial vehicles, and holding leadership positions. All these unjustified acts fall under the description of direct discrimination.

Indirect or subtle discrimination, on the other hand, involves setting a condition or requirement with which those with the attribute are unable to comply with, without a reasonable justification.¹⁴³

¹⁴¹Interview with Respondent 29, Garawol, 20 December 2021.

¹⁴²*Gichuru v Package Insurance Brokers Ltd* [2021] KESC 12 (KLR) [52].

¹⁴³As above [52].

The contrast between direct discrimination and indirect discrimination is that while direct discrimination expressly required a causal link between the less favourable treatment and the protected characteristic, indirect discrimination did not. Instead, it requires a causal link between the provision, criterion, or practice and the disadvantage suffered by the group and the individual¹⁴⁴.

The women from 'slaves' families in the affected Sarahule communities are denied access to the community markets, shops are placed on the embargo, and school-going children are harassed thereby restricting their learning and education in these communities. The results of these treatments put the 'slaves' in disadvantaged positions.

The effects of differential treatment can also be seen on people who are not considered indigenes or original settlers of places they live in.¹⁴⁵ They suffer harassment, stigma, denial of equal treatment, and discrimination. This was clear in the responses from Respondent 61, the FGDs in Diabugu, Numuyel, Garawol, Koina, and the interviews with Respondent 29 and Respondent 49 of Numuyel. In all these instances, it was confirmed that persons who are born to new settlers, smiths, cobblers, and persons of related backgrounds are treated as persons of low status.

¹⁴⁴As above.

¹⁴⁵Interview with Respondent 61.

5. Other consequential violations.

Caste and descent-based discrimination, just like other forms of discrimination, are not only human rights violations but are also major obstacles to achieving the development and enjoyment of other rights. Caste and descent-based discrimination involve gross violation of civil, political, economic, social, and cultural rights. Victims of such discrimination are denied a life of dignity and equality. The denial of the 'slaves' to attend religious congregations of their choice, restriction of movement, prohibition of intermarriage, the labelling of groups with degrading names, destruction of materials, and harassment and intimidation of descendants of 'slaves' even in schools violates several rights of the affected persons or groups. These rights are guaranteed in the 1997 Constitution and other laws and regional and international treaties ratified by The Gambia. The rights include:

- a. ***The Right to Personal Liberty:*** Contrary to section 19(1) of the Constitution, members of Gambana in Koina were seized and tied up by the 'nobles' without any legitimate justification.¹⁴⁶ Section 19(1) of the Constitution provides that 'Every person shall have the right to liberty and security of right to the person. No one shall be subjected to arbitrary, arrest or Personal liberty detention. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.' Similarly, article 6 of the African Charter on Human and Peoples' Rights provides that 'Every individual shall have the right to liberty and the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained'. Similarly, article 9 of the ICCPR also prohibits arbitrary arrest and provides that 'No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.' The capture and arrest of Muhammed Krubally of Koina in 2019 by a group of nobles is a violation of the liberty of the person.

- b. ***Protection from inhuman treatment:*** 'Descent-based discrimination has profound implications for the ability of affected communities to live a life of dignity and enjoy all human rights on equal footing with others.'¹⁴⁷ A majority of the respondents confirmed being called 'slaves' and treated as such by society. Section 21 of the 1997 Constitution provides that 'No person shall be subject to torture or inhuman degrading punishment or other treatment'.

¹⁴⁶NHRC Fact-finding report (n 17 above) page 4.

¹⁴⁷UN Guidance tool on Descent-based discrimination p 15.

The relegation of individuals to the status of slaves, therefore, violates section 21 of the 1997 Constitution. Article 8 of the ICCPR also provides that 'No one shall be subjected to... or cruel, inhuman or degrading treatment or punishment...' The characterization of affected communities as lesser humans to justify the label of 'slave', assigned tasks that are deemed 'unclean' and restricted from leading prayers constitute cruel, inhuman, and degrading treatment.¹⁴⁸ This is exacerbated by the stigma attached to the low status of the 'slaves'.

- c. **Freedom from slavery and servitude:** Section 20 of the 1997 Constitution prohibits slavery. Section 20(2) provides that 'no person shall be required to perform forced labour'. Article 5 of the African Charter provides that 'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman, or degrading punishment, and treatment shall be prohibited. Similarly, article 8 of the International Covenant on Civil and Political Rights prohibits slavery. Under this article, forced labour is prohibited except where it is in service of a lawful prison sentence. Some respondents from Diabugu, Garawol, Gambissara, and Koina indicated that the 'nobles' require them to perform tasks such as slaughtering animals, blowing of village horn, and fetching firewood. Requiring this of individuals runs contrary to these provisions.
- d. **Deprivation of property:** Respondents from Diabugu Batapa and Garawol all confirmed that they were not allowed to construct mosques in properties that belong to individuals classified as 'slaves'. This resulted not only in denial of access to these properties but also in consequential losses of cement and building materials that were bought for construction works in these communities. In Baja Kunda, there were attempts to evict a 'slave' from his house of fourteen years for rejecting the label 'slave'.¹⁴⁹ These are contraventions of section 22 of the 1997 Constitution which provides that:

'No property of any description shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia, except where the following conditions are satisfied:

- (a) the taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any property in such manner as to promote the public benefit; and

¹⁴⁸As above.

¹⁴⁹Interview with Respondent 62.

- (b) the necessity, therefore, is such as to afford reasonable justification of the causing of any hardship that may result to any person having any interest in or right over the property, and
- (c) provision is made by a law applicable to that taking of possession or acquisition-
 - (i) for the prompt payment of adequate compensation; and
 - (ii) securing to any person having an interest in or right over the property, a right of access to a court or other impartial and independent authority for the determination of his or her interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

The denial of the 'slaves' of access and use of their properties does not satisfy any of these conditions. Further, article 14 of the African Charter guarantees the right to property. Deprivation of property is only justified under this article where it is for the interest of the public. The denial of the 'slaves' of using their land for the construction of mosques is a violation of these articles. In Diabugu, the land that was designated for the construction of a mosque by the 'slaves' belonged to a member of this community, but they were denied permission to proceed with the construction by the 'nobles'.¹⁵⁰ This denial is not justifiable under these provisions.

- e. ***Provision to secure protection of the law and fair play:*** Section 24 of the 1997 Constitution is clear on the right to access the law and fair play. Section 24(1) provides that 'Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or the determination of the existence or extent of any civil right or obligation, shall be independent and impartial; and
 - (a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or
 - (b) where proceedings are commenced for the determination or the existence of any civil right or obligation, the case shall be afforded a fair hearing within a reasonable time'.

¹⁵⁰FGD 1, Diabugu Batapa (n 79 above).

Article 7 of the African Charter and article 14 of the ICCPR all protect the right to a fair trial within a reasonable time and equal protection of the law. Despite several reports to the Police, the Governor of URR, and the filing of cases before the courts, there has not been any pronouncement or conviction emanating from these complaints. There have also been allegations that law enforcement and the Office of the Ombudsman have been complacent in dealing with disputes related to the caste-based system.¹⁵¹

- f. ***Freedom of speech, Conscience, assembly, and movement:*** In Diabugu Batapa, Koina, and Garawol, people were denied access to mosques, not allowed to visit some parts of the communities, profess membership of Gambana, and reject 'slavery'. In Sabi, a 'slave' was refused leadership role in prayers just for being a 'slave'. All these run contrary to section 25 of the 1997 Constitution. Article 8 of the African Charter provides that 'Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms. Article 18(1) of the ICCPR provides that 'Everyone shall have the right to freedom of thought, conscience, and religion'. This freedom includes the right to access places of worship and observe the practice of the religion. Thus, the denial of the 'slaves' of access to the mosques is a violation of this right as they are 'measures restricting the exercise of religion'.
- g. ***Right to marry:*** Since marriage is based on consent and choice of persons of full age and capacity, barring people from marrying others solely on the grounds of caste violates section 27 of the 1997 Constitution. Intermarriage can help to dispel the stereotypes and persistent artificial divisions in highly stratified societies. However, in caste and analogous systems, rigid social norms of purity and pollution are often socially enforced through prohibitions on marriage outside the community. In studied areas, strong social barriers hinder marriage between castes. This was seen in the responses from the Sarahule communities, Boraba, and Kerewan. Affected communities may experience violence if they do not conform to social norms associated with their caste, and inter-caste marriages can be frequent flashpoints for conflict. The condemnation, particularly by representatives of dominant castes, can be quite severe, ranging from social ostracism to acts of punitive violence.
- h. ***Right to education:*** Section 30 of the Constitution, section 18 of the Children's Act 2005, article 17 of the African Charter, and article 13 of the ICESCR all protect the right to education.

¹⁵⁰Interview with Respondent 51.

Children in the affected areas face discriminatory attitudes from fellow students and the community as a whole, in particular from “higher caste” members, who perceive education as a threat to village hierarchies and power relations.¹⁵² The consequence of the harassment and stigmatization of school children was their withdrawal from schools in Garawol. This contravenes the rights to education in section 30 of the 1997 Constitution.

- i. **Rights of women:** Women and girls from caste and descent-based communities experience discrimination and human rights abuse on multiple grounds based on their gender, caste, and descent. The intergenerational nature of descent-based discrimination often condemns women to a lifetime of exclusion, marginalization, and disadvantage in every sphere of life. Caste or descent-based discrimination is also used as a social mechanism to maintain affected members’ subordinate positions in society.¹⁵³ In addition to the anti-discrimination clause in section 10 of the Women’s Act 2010, the condition of women in the affected groups has the potential of violating their rights to dignity, protection from violence, access to justice, freedom of expression, right to marry, right to peace, and right to a positive cultural context stipulated in the Women’s Act. The intersection of gender, descent, and/or caste compound the effect of discrimination and other rights violations against women.¹⁵⁴ One of the respondents from Garawol referred to premarital sexual relationships between members of the ‘noble’ castes and the ‘slaves’.¹⁵⁵ This is despite the ban on intermarriage, and women and girls who conceive in these relationships are left to cater for themselves and the children born out of these relationships. Women from affected communities are also often excluded from public and political processes when responses to human rights violations are being designed and implemented.¹⁵⁶ The situation of women and girls from descent-based communities requires special attention, intervention, and protection in multiple areas including but not limited to the right to make informed choices in life, harmful cultural practices, gender-based violence, property rights, ensuring decent work, and ensuring equal access to healthcare, education, and water and sanitation facilities. Even though special questionnaires were developed targeting women from these communities, no woman in any of the villages visited was willing to speak with the Consultant. The Gambia is a highly patriarchal society and women are always relegated to the background when social issues such as these are discussed.

¹⁵²UN Guidance tool on Descent-discrimination p 14.

¹⁵³Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Mission to India (A/HRC/26/38/Add.1) para. 15.

¹⁵⁴UN Guidance tool on descent-discrimination p 17.

¹⁵⁵Interview with Respondent 27.

¹⁵⁶UN Guidance tool on descent-discrimination p 17.

The Gambia is a highly patriarchal society and women are always relegated to the background when social issues such as these are discussed. The subject of caste and descent-based discrimination is also treated as a sensitive issue in most communities. All these factors made it impossible for the consultant to speak to women in these communities despite several attempts. The Government, especially the NHRC, should therefore recognize the intersectionality of different forms of discrimination that may affect women and advocate for their criminalisation.

- j. **Rights of children:** Non-discrimination, the welfare principle in section 3 of the Children's Act 2005, freedom from harmful cultural practices, and the right to education are all violated in the process. This is exacerbated by the fact that castes are inherited and passed through generations. This means that all the caste and descent-based violations suffered by one generation of children will be passed to their offspring, thus continuing the vicious cycle. Section 3(1) of the Children's Act provides that 'the best interest of the child shall be the primary consideration by any court, institution or other body determining any question concerning the child'. Section 19(1) of the Act also provides that 'no child shall be subjected to any social or cultural practices that affect the welfare, dignity, normal growth and development of the child and, in particular, those practices that are discriminatory to the child'. The caste and descent-based discrimination in the communities affect children on multiple levels as they are not excluded from the treatment of 'slaves' where they are born to these families. Caste and descent-based discrimination fall under the prohibited category of harmful practices.
- k. **Rights of persons with disabilities:** Persons with disabilities remain one of the most neglected sections of our society, facing discrimination and stigma, and a lack of access to basic rights. This marginalisation is further aggravated in caste-oppressed communities that are already struggling to own material resources for survival and well-being. Disability and caste are usually not discussed together in The Gambia with work on caste discrimination seen as separate and distinct on its own. Similarly, the understanding of discrimination due to disability in The Gambia does not usually include caste dimensions. Disability literature locates the experience of disability mainly in relation to poverty and rural/urban dichotomies, in the context of access to employment, education, and healthcare, completely ignoring caste. In any event, section 31 of the Constitution protects 'the right of the disabled and handicapped to respect and human dignity shall be recognised by the State and society. Further, the Persons with Disabilities Act, 2020 prohibits discrimination against persons with disabilities. Any discrimination based on caste or descent of a person with disabilities will also be a violation of these provisions.

¹⁵⁷Section 6 Persons with Disabilities Act, 2020.

6. Challenges to combatting caste-based and descent-based discrimination¹⁵⁸

Even though caste and descent-based discrimination has been in existence in The Gambia for centuries, it has just started to surface for public discussion. Combating caste and descent-based discrimination requires a range of interventions, including educational programmes, awareness-raising initiatives, and measures that step out of the formal and legal realm and into social spheres to address and work toward altering deeply rooted systemic, cultural, and social prejudices, customs, beliefs, and traditions.¹⁵⁹ In this regard, it is critical not only to engage affected communities but also dominant communities using different means, including through the media, educational systems, public outreach campaigns, and through faith/secular-based and other organizations.

Since caste or descent-based discrimination has been in existence for centuries and seemed to have been validated by some of our written laws and customs, efforts to eliminate them would be faced with opposition from some quarters. Below are some of the potential challenges in the fight to eliminate these kinds of discrimination¹⁶⁰:

- a) Gaps in legislative provisions¹⁶¹ coupled with weak implementation (impunity for crimes committed against caste and descent-based groups and individuals, slow pace of the court processes) continue to be a challenge in the fight against caste-based and descent-based discrimination. This is evident in the lack of a specific constitutional or legislative provision explicitly prohibiting and punishing these types of discrimination. The responses from the interviews in Diabugu, Koina, and Garawol, the headteachers in these communities, and the Deputy Governor of URR all revealed that there was violence, destruction of property, discrimination, and harassment of individuals but no perpetrator was successfully prosecuted.

¹⁵⁸These challenges are largely based on the ones identified in the United Nation's 'Guidance tool on Descent-based discrimination' available at <https://www.ohchr.org/Documents/Issues/Minorities/GuidanceToolDiscrimination.pdf> last accessed 28 January 2022. The challenges faced in The Gambia are similar and therefore adopted for our context.

¹⁵⁹UN Guidance tool on descent-based discrimination (n 107 above) p 16.

¹⁶⁰The challenges identified are generally inspired by the United Nation's Guidance Tool on descent-based discrimination (2017) but adapted to meet the Gambian domestic context.

¹⁶¹Examples include section 33 of the Constitution which seems to condone certain types on discrimination based on customary law, provisions of the Women's Act which subject some rights to one's personal law and section 59 (2) of the Constitution which provides for appointment of alkalos to be based on traditional lines of inheritance.

- b) Lack of adequate resources and legal aid: Gambian law does not provide legal aid for indigent persons involved in civil disputes. Legal aid at the expense of the State is only available to children and persons charged with offences punishable with death or life imprisonment. This means persons involved in legal disputes related to the caste or descent-based system (irrespective of their economic status) would have to find their lawyers.
- c) Lack of awareness of remedies available to victims of discrimination.
- d) Mistrust of public authorities: Respondents in Garawol and Diabugu alleged that the Gambia Police Force and the courts are compromised.¹⁶² This shows some of the victims might not report a violation to the Police which could lead to the perpetuation of the practice. Mistrust in public authorities might also lead some of the victims to take the law into their own hands and resort to violence. There are no accountability structures and disciplinary penalties for competent authorities who fail to comply with their obligation to take direct action on reported cases of discrimination.
- e) Denial of the existence of caste or descent-based discrimination: Most of the nobles interviewed deny discrimination against lower caste exists but would indicate members of lower caste cannot be alkalos or Imams and are not allowed to intermarry. Some of the members of the lower caste interviewed also denied being discriminated against but would admit they cannot be alkalos or Imams and will not be allowed to marry persons of a higher caste. It would be difficult to effectively address and overcome these issues if the victims and perpetrators remain in denial. One very effective way of addressing a challenge is acknowledging that it exists. The denial also makes it difficult to collect accurate and reliable information on the issue which can have potentially negative consequences if no appropriate actions are taken.
- f) Under-representation of caste or descent-affected communities in the justice and law enforcement system: It is important to ensure that parties to a dispute feel comfortable with the professionals administering and conducting the dispute resolution process. Studies show that individuals involved in dispute-resolution processes feel more comfortable when they share some aspect of their identity with those guiding the process.¹⁶³

¹⁶²See the interviews in Diabugu, Koina and Garawol. Both sides of the conflict expressed mistrust in either the police, the Governor or the courts.

¹⁶³See generally Gary LaFree & Christine Rack, *The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases*, 30 *LAW & Soc'y REV* 767 (1996).

- g) Fear of social boycotts, reprisal, and violence: In Diabugu and Garawol, members of the 'slaves' families faced boycotts, fines, and embargos on their businesses. There were also instances of violence against the persons who rejected the 'slave' label. There were also instances of individuals being banned from entering religious grounds. All these instill fear in people who may want to reject the caste and descent-based establishments.
- h) High rates of illiteracy: illiteracy remains high in the affected communities. As such, victims and perpetrators alike may not be aware of their rights and obligations under the Constitution, other local laws, and regional and international human rights instruments relevant to The Gambia. The low level of training and education in law enforcement exacerbates this challenge as officers sometimes redirect caste-based complaints to local or religious leaders instead of dealing with them.
- i) Economic dependency and unemployment: The reluctance to fight against the status quo for fear of losing their economic support could serve as a disincentive to seek justice. This is made worse by the high rates of unemployment in The Gambia.
- j) Fear Factor: This is another reason as some Police Officers are scared of being labelled or tagged either as supporters of 'nobles' or 'slaves'. Taking URR Serahules for instance, they are affluent and have supported the security sector, including the building of Police stations as well as meeting other needs of the Police necessary for better protection and security. So, the Police may be fearful because any attempt to involve deeply may stop such assistance to either the Police institution or the Police Officer.¹⁶⁴

¹⁶⁴Police Feedback from the validation workshop.

7. Conclusion.

Caste systems are deeply entrenched social structures that continue to be observed in many Gambian communities. There are some communities where caste is used as the basis of discrimination and a barrier to the enjoyment of fundamental rights and freedoms. The Gambian legal framework and international obligations are against discrimination generally and caste-based discrimination specifically. Nonetheless, some communities continue to use caste as a basis for discrimination.

The findings of this study confirm the earlier fact-finding report of the NHRC in 2019. The communities of Diabugu Batapa, Koina, and Garawol all in the URR, continue to be affected by caste-related discrimination and resentment between the lower castes and the upper ones. In Numuyel, Gambissara, Demba Kunda, and Jahali, there has not been any violence or admitted caste-based discrimination from the residents. However, responses from the interviewed Principals suggest that there are underlying tensions that could lead to violence in these communities.

In addition to caste, there is also evidence of descent-based discrimination. The interviews brought to light the prevalence of these practices in communities where the Study was conducted. The literature from both regional and international treaty bodies has made it clear that caste and descent-based discrimination are a violation of fundamental rights.

To overcome the challenges and dangers of caste and descent-based discrimination, several recommendations are made hereunder. The recommendations are divided into two categories-thematic recommendations¹⁶⁵ and institutional recommendations.¹⁶⁶ For each of the target institutions, the recommendations are further grouped in short term (to be implemented immediately), medium term (those that can be implemented in the near future), and long-term (those that will take time to implement).

¹⁶⁵Adopted from CERD General Comment No. 29 and found in the tool kit.

¹⁶⁶These recommendations are adopted from the United Nation's Guidance Tool on Descent-Based Discrimination available at <https://www.ohchr.org/Documents/Issues/Minorities/GuidanceToolDiscrimination.pdf> last accessed 28 January 2022. The recommendations are tailored to meet the domestic needs of The Gambia based on the data and literature reviewed by the consultants.

ANNEXES

Annexes

Caste-based discrimination questions (individuals and FGD)

1. What is your name, gender, and address?
2. How old are you?
3. What is your occupation?
4. Do you or members of your family or community identify with any caste?
5. What is the caste you are identified with?
6. Have you faced any form of stigma or discrimination?
7. Have you benefitted from any advantage or privileges as a result of your belonging to a caste?
8. What form(s) of discrimination or stigma have you faced or suffered based on your membership or perceived membership of a particular caste? please provide the particulars.
9. Has your membership of a particular caste enhanced or restricted your rights as guaranteed in the 1997 Constitution, the Women's Act and the Children's Act, and regional and international human rights instruments relevant to The Gambia?
10. Provide information on the violations referred to in 9. Above.
11. Who is responsible for the said violations and how were your rights impacted?
12. Have you attempted to seek a remedy for the said violations? What did you seek? Were your attempts successful? If the said attempts were successful, please provide details. What happened to your complaint, was it dealt with to your satisfaction?
13. Do you have any traditional roles that you are expected to play during social functions such as marriage, naming, and other related ceremonies? If yes, what are these? If No. are there any members of your community that play traditional roles in these?

14. Do you belong to a vulnerable group ((women, children, persons with disabilities, older persons)? How are your rights impacted? Please elaborate on your response.
15. If the said attempts were not successful, please provide details of the challenges/obstacles you faced.
16. Have you ever received any assistance from Government in dealing with the said violations based on your membership of a caste? Was the said assistance sufficient?
17. Are you aware of the measures put in place by the Government to eliminate discrimination based on membership in a caste?
18. Are these measures put in place by the Government sufficient to protect persons whose rights are violated based on their membership of a caste?
19. What recommendations would you give the Government, as the primary duty bearer, to ensure the elimination of discrimination based on membership of a caste?
20. Are there any opportunities for the promotion and protection of the human rights of marginalized groups that have been presented by the establishment of the National Human Rights Commission?

Descent-based discrimination questions (individuals and FGD)

1. What is your name, gender, and address?
2. How old are you?
3. What is your occupation?
4. Do you or members of your family or community identify with any descent (smith, griot, the original settler, secondary settler, etc)?
5. What is the descent you identify with?
6. Have you faced any form of stigma or discrimination or have you benefitted from any advantage or privileges as a result of your membership of a particular descent?

7. If you suffered discrimination or stigma or you have benefitted from any advantage or privileges based on your membership or perceived membership of a particular descent, please provide the particulars.
8. Has your membership of a particular descent enhanced or restricted your rights as guaranteed in the 1997 Constitution, the Women's Act and the Children's Act, and regional and international human rights instruments relevant to The Gambia?
9. Provide information on the violations referred to in 8. Above. Who is responsible for the said violations and how were your rights impacted?
10. Do you have any traditional roles that you are expected to play during social functions such as marriage, naming, and other related ceremonies? If yes, what are these? If No. are there any members of your community that play traditional roles in these?
11. Do you belong to a vulnerable group ((women, children, persons with disabilities, older persons)? How are your rights impacted? Please elaborate on your response.
12. Have you attempted to seek a remedy for the said violations? What did you seek? Were your attempts successful? If the said attempts were successful, please provide details. What happened to your complaint, was it dealt with to your satisfaction?
13. If the said attempts were not successful, please provide details of the challenges/obstacles you faced.
14. Have you ever received any assistance from Government in dealing with the said violations based on your membership of a descent? Was the said assistance sufficient?
15. Are you aware of any measures put in place by the Government to eliminate discrimination based on membership of a descent? Besides policy pronouncements on equality provided by the 1997 Constitution, none
16. Are these measures put in place by the Government sufficient to protect persons whose rights are violated based on their membership of a descent?

17. What recommendations would you give the Government, as the primary duty bearer, to ensure the elimination of all forms of discrimination including discrimination based on membership of a descent?
18. Are there any opportunities for the promotion and protection of human rights that have been presented by the establishment of the Human Rights Commission?

Questions for Key Informant Interviews (Institutions)

1. What is the name of the institution?
2. What is your institution's mandate or mission?
3. What do you know about the caste system in The Gambia? Please provide details of what you know about the system including giving examples of tribes amongst who it takes place and places and communities where it exists and what it means, especially for persons classified as belonging to a lower caste.
4. Has your institution ever received complaints of discrimination or degrading or ill-treatment from a person or persons or communities who belong to a lower caste? Please provide details by giving information on where the complainant or complainants came from and the nature of their complaint.
5. In your view did the complaint you received disclose violations of any rights guaranteed in The Gambia's Constitution and other laws, especially the right to equality before the law and non-discrimination? Please provide details of rights allegedly violated
6. Who in your view is responsible for the said violations?
7. Did your office try to address the complaints received from the said people or communities? What did you do? Please provide details.
8. Were the complaints dealt with to the satisfaction of the complainants? If not, why not? Please provide details, especially of the challenges faced.
9. Are you aware of measures taken by the Government to address discrimination based on the caste-based system? Please provide details

10. Do you have any recommendations on how caste-based discrimination can be dealt with in The Gambia? In particular, what recommendations would you give the Government, as the primary duty bearer, to ensure the elimination of all forms of discrimination based on membership in a caste?

ROADMAP

ROADMAP TO ADDRESS CASTE AND DESCENT-BASED DISCRIMINATION IN THE GAMBIA

1. Introduction

The legal framework of The Gambia prohibits discrimination. The 1997 Constitution, the Women’s Act 2010, the Persons with Disabilities Act 2021, the Children’s Act 2005, and several international instruments ratified by The Gambia all prohibit discrimination on several grounds. Although “caste” is not mentioned as a specific ground of prohibited discrimination, the Committee on the Elimination of Racial Discrimination (CERD) in General Recommendation 29 on Article 1, Paragraph 1, Convention, recognised that caste-based discrimination falls within the scope of the Convention:

“Strongly reaffirming that discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.”¹

Victims of caste-based discrimination continue to face structural discrimination, locking them in a persistent and vicious cycle of poverty and marginalization. This discrimination may also lead to the marginalisation of those who belong to the ‘lower caste’ and eventually become a social norm that legitimatises mistreatment and abuses against affected persons and communities, perpetuating human rights violations against them. Since 2018, there have been reports of violence and disagreements, especially in some Sarahule communities in the Upper River Region, between members of different castes, more particularly between the so-called ‘nobles’ who consider themselves as superior members and the ‘slaves’ who are considered as inferior members of these communities.

2. Keys Issues for Consideration by Policymakers

- √ Caste and descent-based discrimination remain significant barriers to the enjoyment of the rights to equality, non-discrimination, liberty, religion, education, and justice. Women, children, and persons with disabilities are adversely affected by the enjoyment of these rights.

¹Preamble to General Comment No. 29 of CERD, available at <http://hrlibrary.umn.edu/cerd/genrec29.html>, last accessed on 18/11/2021. CERD has jurisdiction over The Gambia, The Gambia having ratified the ICERD on. 29 December, 1978

- √ Victims of caste-based discrimination face structural discrimination, locking them in a persistent and vicious cycle of poverty and marginalisation. This may also lead to the marginalisation of those who belong to the 'lower caste' and eventually become a social norm that legitimatises mistreatment and abuses against affected persons and communities, perpetuating human rights violations against them.
- √ Caste and descent-based discrimination are strongly bound up with gender inequality. They affect the status and dignity of women, girls, and persons with disabilities; contribute to their exploitation; impede their access to resources, and increase their risk of violence.
- √ The impact of caste and descent-based discrimination need to be made visible in human rights monitoring and reporting so that progress in eradicating them can be tracked. The need for quality data should not delay urgent action to reduce inequalities and protect rights, which can be informed by a wide range of available evidence.
- √ The effectiveness of interventions should be assessed in terms of the level of exclusion and marginalisation addressed, not just the numbers reached. Resources should be directed to the needs of the victims of caste and descent-based discrimination. Law reform, development programmes, and policies should be informed by analysis of caste and descent-based power dynamics and address vulnerabilities associated with social exclusion and marginalisation.
- √ Conditions need to be created for sustained social change, including through public education, public awareness-raising, and broad public participation in efforts to end discriminatory norms and practices.
- √ The Government of The Gambia, the National Human Rights Commission, Civil Society Organisations and society at large have important roles to play in ending caste and descent-based discrimination in The Gambia.
- √ The meaningful participation of affected communities and victims, including the Gambana and other organisations that represent them, in the planning, implementation, and monitoring of actions to eliminate caste and descent-based discrimination is paramount.

1. Why urgent action is needed

Caste and descent-based discrimination fuels violence

Data on caste and descent-based discrimination reveals that the situation is volatile in the communities where the practice exists. The oppression and discrimination against members of lower castes present a risk factor for continued disagreements and violence. It is therefore urgent to act and remedy the situation.

Marginalised people must be prioritised

More attention on caste and descent-based discrimination required because they are a source of some of the most extreme forms of social exclusion and deprivation. The failure to put an end to such practice will continue to violate the rights of lower those belonging to lower castes.

Caste and descent-based discrimination increases vulnerability

Development programmes and policy initiatives are often insufficiently responsive to inequalities and power dynamics associated with these forms of discrimination, or to the needs of affected groups, resulting in some of the most marginalised people being overlooked or even being made more vulnerable in some cases. In the face of increasing risks from population growth and climate change, reducing the vulnerability of socially excluded groups such as members of lower castes should be a priority.

Gender equality and the need for inclusion demand that caste and descent-based discrimination be addressed

Caste discrimination affects women and persons with disabilities disproportionately. Women from lower castes and persons with disabilities face high levels of violence and deprivation in their communities, where caste and gender inequalities are exploited. Public humiliation and violence are frequently used to reinforce caste hierarchies and rules against inter-caste marriage. Power inequalities mean women and girls from lower castes are very vulnerable to

sexual violence, and impunity is common as they face enormous challenges in seeking justice. In many aspects of their lives, women from lower castes may experience other intersecting barriers associated with their caste. Persons with disabilities may also face exacerbated consequences as they experience multiple discrimination.

Discrimination has intergenerational consequences

Entrenched discriminatory social norms and practices have a significant impact on children, the education of young people, confidence, aspirations, and opportunities, and lower caste along with the ability of 'slave' families' to access services and social protection. Ending these practices will take time and requires efforts to challenge discrimination and prejudice wherever they happen and to create the conditions for inclusion and equity.

Data challenges need to be addressed

Estimates of the numbers affected by caste and descent-based discrimination need to be updated. Evidence from the field data suggests that there may be the existence of wider discrimination around the country. The literature also suggests that caste systems are entrenched in all the major ethnic groups in The Gambia, hence the possibility of remnants of discrimination based on caste in all the ethnic groups in all the regions. Social marginalisation and exclusion of members of lower castes may be more persistent and possibly underestimated. In the delivery of national reports and surveys, data disaggregation by caste status for relevant targets, alongside focused surveys or methods of gathering data to reveal specific barriers, such as experiences of discrimination, will help to make these issues visible and inform appropriate actions. The need for more quality data should not prevent urgent action to secure the rights and meet the needs of affected people, based on all available evidence.

Recommendations

Based on the findings, the following recommendations (thematic and institutional) are directed to the Government, National Human Rights Commission, and Civil Society Organisations.

Part A: Thematic recommendations to the Government

Measures of a general nature

- i. Take steps to identify those caste or descent-based communities in The Gambia who suffer from discrimination, especially based on caste and analogous systems of inherited status, and whose existence may be recognized based on various factors including some or all of the following: inability or restricted ability to alter inherited status, socially enforced restrictions on marriage outside the community, private and public segregation including in education, access to public spaces, places of worship; limitation of freedom to renounce inherited occupations or degrading or hazardous work, subjection to dehumanising discourses and generalized lack of respect for their human dignity and equality.
- ii. Consider the incorporation of an explicit prohibition of caste and descent-based discrimination in the Constitution and other laws.
- iii. Review and enact or amend legislation to outlaw all forms of discrimination based on caste or descent in accordance with the Convention on the Elimination of Racial Discrimination.
- iv. Resolutely implement legislation and other measures already in force that prohibit every form of discrimination.
- v. Formulate and put into action a comprehensive national strategy with the participation of members of affected communities, including special measures in accordance with articles 1 and 2 of the Convention on Elimination of Racial Discrimination, to eliminate discrimination against members of descent-based groups;

- vi. Adopt special measures in favour of segregated/discriminated caste and descent-based groups and communities. to ensure they fully enjoy their human rights and fundamental freedoms, particularly access to public functions, employment and education;
- vii. Establish statutory mechanisms, through the strengthening of existing institutions or the creation of specialised institutions, to promote respect for the equal human rights of members of the caste and descent-based communities;
- viii. Educate the general public on the importance of affirmative action programmes to address the situation of victims of caste and descent-based discrimination;
- ix. Encourage dialogue between members of caste and descent-based communities and members of other social groups to foster social cohesion and recognition of the humanity of every person;
- x. Conduct periodic surveys on the reality of descent-based discrimination and provide disaggregated information in periodic reports to the Committee on the Elimination of Racial Discrimination on the geographical distribution and economic and social conditions of descent-based communities, including gender perspective.

Addressing multiple discrimination against women and persons with disabilities who are members of a caste or descent-based communities

- i. All programmes and projects take into account the situation of women and persons with disabilities belonging to caste or descent-based communities, as victims of multiple discrimination;
- ii. Take necessary measures to eliminate multiple discrimination, including caste and descent-based discrimination against women and persons with disabilities, particularly in the areas of personal security, employment, and education;
- iii. Provide disaggregated data for the situation of women and persons with disabilities affected by caste or descent-based discrimination.

Segregation

- i. Monitor and report on trends that give rise to the segregation of caste or descent-based communities and work towards the eradication of the negative consequences resulting from such segregation;
- ii. Undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in education, and employment;
- iii. Secure for everyone the right of access on an equal and non-discriminatory basis to any place or service intended for use by the general public;
- iv. Take steps to promote mixed communities in which members of affected communities are integrated with other members of society and ensure that services to such settlements are accessible on an equal basis for all.

Dissemination of hate speech including through the mass media and the Internet

- i. Take measures against any dissemination of ideas of caste superiority and inferiority or which attempt to justify violence, hatred or discrimination against descent-based communities;
- ii. Take strict measures against any incitement to discrimination or violence against the communities, including through the internet;
- iii. Take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination;

Administration of justice

- i. Take the necessary steps to secure equal access to the justice system for all members of the caste and descent-based communities, including by providing legal aid, facilitating group claims, and encouraging non-governmental organizations to defend community rights;
- ii. Ensure, where relevant, that judicial decisions and official actions take the prohibition of caste and descent-based discrimination fully into account;
- iii. Ensure the prosecution of persons who commit crimes against members of the caste and descent-based communities and the provision of adequate compensation for victims of such crimes;
- iv. members of segregated/discriminated groups in the caste and descent-based communities recruited into the police force and other law enforcement agencies;
- v. Organise training programmes for public officials and law enforcement agencies to prevent injustices based on prejudice against caste and descent-based communities;

Civil and political rights

- i. Ensure that authorities at all levels in the country involve members of the caste and descent-based communities in decisions that affect them;
- ii. Take special and concrete measures to guarantee to members of the caste and descent-based communities the right to participate in elections, to vote and stand for election based on equal and universal suffrage, and to have due representation in Government and legislative bodies;
- iii. Promote awareness among members of the communities on the importance of their active participation in public and political life and eliminate obstacles to such participation;
- iv. Organise training programmes to improve the political policy-making and public administration skills of public officials and political representatives who belong to caste and descent-based communities;

- v. Take steps to identify areas prone to caste and descent-based violence to prevent conflict and the recurrence of such violence;
- vi. Take resolute measures to secure the rights of marriage for members of the caste and descent-based communities who wish to marry outside the community.

Economic and social rights

- i. Elaborate, adopt and implement plans and programmes of economic and social development on an equal and non-discriminatory basis;
- ii. Take substantial and effective measures to eradicate poverty among caste and descent-based communities and combat their social exclusion or marginalization;
- iii. Work with intergovernmental organisations, including international financial institutions, to ensure that development or assistance projects they support take into account the economic and social situation of members of the caste and descent-based communities;
- iv. Take special measures to promote the employment of members of affected communities in the public and private sectors;
- v. Develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labour market;
- vi. Take measures against public bodies, private companies, and other associations that investigate the descent background of applicants for employment;
- vii. Take measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities;
- viii. Ensure equal access to health care and social security services for members of the caste and descent-based communities;

- ix. Involve affected communities in the design and implementation of health programmes and projects;
- x. Take measures to address the special vulnerability of children of caste and descent-based communities to exploitative child labour;
- xi. Take resolute measures to eliminate debt bondage and degrading conditions of labour associated with descent-based discrimination.

Right to education

- i. Ensure that public and private education systems include children of all communities and do not exclude any child based on caste or descent;
- ii. Reduce school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls;
- iii. Combat discrimination by public or private bodies and any harassment of students who are members of caste or descent-based communities;
- iv. Take necessary measures in cooperation with civil society to educate the population as a whole to inculcate a spirit of non-discrimination and respect for the communities subject to caste or descent-based discrimination;
- v. Review all languages in textbooks that convey stereotypes or demeaning images, references, names, or opinions concerning caste and descent-based communities and replace them with images, references, names, and opinions which convey the message of the inherent dignity of all human beings and equality of human rights.

Part B: Institutional Recommendations

Recommendations for the Government

The most effective way to prevent discrimination and violence perpetrated against a specific group of individuals is to ensure, at the national level, respect for human rights, democracy, and the rule of law, with particular attention to the principle of non-discrimination.

Short term

- (a) Take measures to map and identify all communities where descent and caste-based discrimination occur. This would include effective monitoring and documentation of information collected from persons subjected to these kinds of discrimination.
- (b) Ensure all cases of discrimination or violence or denial of rights based on caste are effectively investigated, the perpetrator identified, prosecuted, and punished and victims provided with remedies. Cases that are already before the courts should be expeditiously and judiciously dealt with.
- (c) Work with religious leaders (especially the Supreme Islamic Council and the Christian Council) to continue to engage affected communities on the undesirability and the dangers of perpetuating the said practices.
- (d) Conduct nationwide campaigns on the undesirability and the dangers of perpetuating the said practices.
- (e) Support efforts to ensure protection from violence, especially for women and children from affected communities, and prompt investigation and prosecution of these crimes.

Medium-term

- a) Review existing and proposed legislation for compliance with international standards on non-discrimination in fields ranging from criminal law to legislation in the field of housing, labour, employment, education, health, or media. Laws should include duties spelled out as clearly as possible at national, district, and local levels.

- b) Incorporate an explicit clause prohibiting caste and descent-based discrimination in the Constitution and other relevant laws.
- (c) Enact an over-arching Anti-Discrimination Law.. Currently, no legislation addresses the aggravated discrimination faced by persons from “lower castes” and people at the intersections of other categories as well, such as women and persons with disabilities. The Gambia needs to enact comprehensive anti-discrimination legislation that not only addresses intersectional discrimination but also prohibits discrimination in the areas of education, employment, housing, health, public spaces, and social security among others.
- (d) Adopt a National Policy and Action Plan aimed at combatting and eliminating all forms of discrimination including discrimination based on caste or descent. Local Governments should play an active role in implementing the Policy and Action Plan.
- (e) Provide adequate funding for the implementation of the Policy. Proper coordination of all efforts aimed at combatting these kinds of discrimination should be ensured.
- (f) Hold frequent dialogues with victims and perpetrators of the said practices. Government should work with community leaders, governors, chiefs, teachers, and local governments in carrying out these dialogues.
- (i) Support measures to guarantee an independent oversight and accountability mechanism for the police to ensure that crimes against descent-based community members are properly investigated and prosecuted and that police officer responsible for committing such crimes (including through acts of custodial abuse and torture) are held to account;
- (j) Gather comprehensive data needed on Disability and Caste: Empirical research and data collection are required to understand the full scale and depth of the socioeconomic deprivations by persons with disabilities from a lower caste.

Long Term

- (a) Equip the National Council for Civic Education to enable it to conduct awareness-raising programmes throughout the country, especially in communities where caste and descent-based discrimination are practised.

- (b) Strengthen the capacity of the NHRC, including its capacity to monitor the enjoyment of economic and social rights.
- (c) Initiate extensive review of the curricula for all basic and secondary education schools and to include a comprehensive human rights module. The module should comprehensively deal with non-discrimination, especially on the grounds of caste and descent.
- (d) Train all law enforcement agencies on human rights focusing on the prohibition of discrimination and discriminatory practices and on how to monitor and investigate violations of all human rights including the principle of equality and non-discrimination.
- (e) Develop the capacities of duty-bearers at central and local levels to fulfill their obligations;
- (f) Build capacities for policy analysis and social impact assessment, encourage media freedom, and build the capacities of right-holders to demand their rights.
- (g) Strengthen central and local accountability mechanisms—judicial, quasi-judicial, and administrative. This could include supporting reforms in the machinery of law enforcement including, but not limited to: encouraging the recruitment of enforcement officers, prosecutors, judges, lawyers, and other personnel from affected communities; providing training on the rights of affected communities to all such personnel; reviewing arrest and sentencing practices to address any discriminatory practices, and ensuring legal redress and appropriate compensation for victims.
- (h) An intersectional approach in Policy and Welfare Schemes: Information regarding the socioeconomic demographics of such vulnerable groups is crucial to formulate and implementing meaningful policy reform and welfare programmes. The data on disability and caste or descent should enable policy reform so that welfare measures and schemes of the government are framed from an intersectional perspective.
- (i) Support efforts to increase legal awareness (both among civil society members and in the law enforcement machinery) and improve access to appropriate forums for descent-based communities. Relevant measures in this regard include:

- Supporting the provision of legal aid, facilitation of group claims, and encouragement of non-governmental organizations to defend community rights;
- Organising training programmes for public officials, law enforcement agencies, and members of the judiciary to prevent injustices based on prejudice against descent-based communities;
- Ensuring that outreach and public awareness-raising initiatives include a focus on raising legal awareness for both affected communities and dominant communities alike, including the awareness that caste-based untouchability and segregation practices are a crime.

Recommendations for the NHRC

Short term

- i. Raise public awareness on human rights and the laws which prohibit discrimination and discriminatory practices in the communities of Diabugu, Koina, and Garawol, using the mass media.
- ii. Resume reconciliation meetings in the communities and between the two castes, 'nobles' and "slaves" to prevent further escalation of violence or recurrence.
- iii. Engage in nationwide awareness-raising on the issue of caste and descent-based discrimination. This should include using radio stations, TV stations, newspapers, etc. Town hall meetings, especially in affected communities.
- iv. Put in place mechanisms to deal with complaints of victims of these kinds of discrimination effectively and expeditiously.
- v. Organise training for public officials, law enforcement agencies, and members of the judiciary on human rights standards and mechanisms, including training on measures to prevent and remedy discrimination, such as the use of special measures.
- vi. Create opportunities for dialogue between government actors and caste or descent-based communities.

- vii. Highlight the commemoration of human rights days i.e. International Day for the Elimination of Racial Discrimination, Human Rights Day, and International Women's Day.
- viii. Conduct awareness-raising campaigns to promote the rights of marginalized groups and strengthen advocacy against discrimination.
- ix. Designate a lead at the NHRC on the issue and support inter-agency strategic planning, policy and programmatic work on discrimination based on caste or descent, and the development of a joint action plan/strategy.

Medium-term

- i. Engage relevant stakeholders to devise a comprehensive strategy for the fight against caste and descent-based discrimination.
- ii. Support the review of existing and proposed legislation for compliance with international standards on non-discrimination ranging from criminal law to legislation in the field of housing, labour, employment, education, health, or media. Laws should spell out the duties of the national, district, and local levels authorities.
- iii. Support the enactment of an over-arching Anti-Discrimination Law: Currently, no legislation addresses the aggravated discrimination faced by persons from lower castes and people at the intersections of other categories such as women and persons with disabilities. The Gambia needs to enact comprehensive anti-discrimination legislation that not only addresses intersectional discrimination but also prohibits discrimination in the areas of education, employment, housing, health, public spaces, and social security among others.
- iv. Assist the government in integrating issues concerning caste or descent-based communities into all treaty body reports, the universal periodic review mechanism, and country visits of AU and United Nations Special Rapporteurs.
- v. Consistently raising the issue of caste or descent-based discrimination in their engagement with the Government, especially when this issue is not recognised/ addressed.

- vi. Facilitate the setting up of a specific task force on discrimination based on caste or descent to support focus on the rights of caste and descent-based communities. The task force should work closely with civil society and relevant government coordinating institutions working on this issue.
- vii. Advocate for the availability of comprehensive data on disability and caste: Empirical research and data collection are required to understand the full scale and depth of the socio-economic deprivations by persons with disabilities from a lower caste.

Long term

- i. Systematically monitor the implementation and impact of policies and programmes designed to support caste or descent-based communities.
- ii. Support research and data gathering to inform policy, through the Gambia Bureau of Statistics.
- iii. Encourage consideration of descent-based communities in all national development plans and policies, as well as a review of budget allocations to ensure non-discrimination against segregated/marginalised members of a caste or descent-based communities.
- iv. Assist the Government in establishing competencies on discrimination based on caste or descent in all public institutions (e.g. through designated staff or divisions).
- v. Provide technical support to review existing and proposed legislation, strengthen normative legal frameworks that include explicit prohibitions on descent-based discrimination and support the establishment of mechanisms to implement non-discrimination legislation.
- vi. Provide specialised training to help its staff and others build knowledge and increase their awareness of the situation and rights of communities affected by discrimination based on caste or descent. Training could, for example, be based on the Human Rights-Based Approach (HRBA) and include references to the lived experiences of affected communities. It is also important to ensure that relevant NHRC training materials address these issues.

- vii. Ensure a staff policy for recruitment, training, support, and nurturing of emerging professionals from caste or descent-based communities, women, and men, at the NHRC and nationwide programmes supported by the NHRC, other government institutions, and civil society.
- viii. Offer special training programmes to interns and employees from marginalised groups, including in English language skills, and equal access to advancement in a position. Where there are few qualified candidates, consideration could be given to career support initiatives, and the creation of internship programmes to nurture emerging professionals.
- ix. Include information about caste or descent-based communities, including women and children, in all its reports, including reports to the National Assembly and treaty bodies.
- x. Develop a system that retains institutional knowledge of work that has been done on the issue of caste or descent-based discrimination, including strategies and good practices that proved most effective.

Recommendations for CSOs

Short term

- i. Focus awareness-raising efforts in affected communities.
- ii. Engage traditional and religious leaders to exert influence on their followers to embrace others as equals.
- iii. Map the different dimensions of exclusion and multiple levels of discrimination faced in caste or descent-based communities.
- iv. Highlight the issue on relevant dates (e.g International Day for the Elimination of Racial Discrimination, Human Rights Day, and International Women's Day).
- v. Conduct awareness-raising campaigns to promote the rights of marginalised groups and strengthen advocacy against discrimination.

- vi. Organise training for CSOs, public officials, law enforcement agencies, and members of the judiciary on human rights standards and mechanisms, including training about measures to prevent and remedy discrimination, such as the use of special measures.
- vii. Work with Government agencies, NHRC, and with each other to systematically and in a coordinated manner effectively address the issues of caste and descent-based discrimination. . amongst
- viii. Increase social awareness and encourage discourse on the issue by improving the general lack of qualitative and quantitative literature on the intersections of caste and women and caste and disability in The Gambia.
- ix. Encourage academic and nonacademic studies and discourse to build knowledge and catalyse social and developmental reform.

Medium-term

- i. Lobby for law reform to include anti-caste and descent-based discrimination in the Constitution and for the enactment of a comprehensive over-arching anti-discrimination legislation that addresses the aggravated discrimination faced by persons from lower castes and people at the intersections of other categories as well, such as women and persons with disabilities, etc.
- ii. Carry out regular “scans” of the human rights situation in the country, including the situation of descent-based communities.
- iii. Reveal the extent to which caste or descent-based communities are engaged in caste-based occupations or are denied occupational mobility.
- iv. Consistently raising caste or descent-based discrimination in their engagement with the Government.
- v. Support research and data gathering to inform policy, for example through the Gambia Bureau of Statistics. Empirical research and data collection are required to understand the full scale and depth of the socioeconomic deprivations by persons with disabilities from a lower caste.
- vi. Support for the establishment of local networks in remote areas that can assist victims of caste-based discrimination.

Long term

- i. Monitor any increase and/or decrease in inequality within affected communities, including any increase and/or decrease in segregation practices.
- ii. Institutionalise regular meetings with all institutions in the country with a human rights mandate to draw on the information on emerging trends relevant to caste or descent-based discrimination.
- iii. Incorporate human rights and gender analysis into early warning systems by looking at early warning indicators (discriminatory propaganda, hate crimes, discriminatory displacement, sudden decline in access to food, health, or education, etc).
- iv. Support the design of policies and interventions based on data and evidence.
- v. Support representation of caste or descent-based communities in government institutions, including state administration, local self-government, the judiciary, and the police.
- vi. Target positive measures and tailor policies and programmes necessary to overcome discrimination based on descent.
- vii. Include information about caste or descent-based communities, including women and children, in their reports, especially shadow reports to treaty bodies.
- viii. Systematically monitor the implementation and impact of policies and programmes designed to support caste or descent-based communities.
- ix. Advocate for the inclusion of caste or descent-based communities in all national development plans and policies, as well as a review of budget allocations to ensure non-discrimination within caste or descent-based communities.



AMBASSADE DE FRANCE AU SÉNÉGAL

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