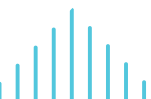





# NATIONAL HUMAN RIGHTS COMMISSION

# 2021 STATE OF HUMAN

# RIGHTS REPORT



 National Secretariat, P. O. Box 2858,  
Serrekunda, Kotu, The Gambia

 (+220) 446 1717 / (+220) 446 1713

 [info@gm-nhrc.org](mailto:info@gm-nhrc.org)

 [www.gm-nhrc.org](http://www.gm-nhrc.org)

 [facebook.com/NHRCGambia](https://facebook.com/NHRCGambia)

 [@NHRCGambia](https://twitter.com/NHRCGambia)

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## ABBREVIATIONS AND ACRONYMS

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<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>AU</b>	African Union
<b>CAT</b>	Convention Against Torture
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CED</b>	Convention on Enforced Disappearance
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil Society Organizations
<b>DLEAG</b>	Drug Law Enforcement Agency-Gambia
<b>FGM</b>	Female Genital Mutilation
<b>GANHRI</b>	Global Alliance of National Human Rights Institutions
<b>GID</b>	Gambia Immigration Department
<b>GPF</b>	Gambia Police Force
<b>GPS</b>	Gambia Prisons Services
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family
<b>IEC</b>	Independent Electoral Commission
<b>NAATIP</b>	National Agency Against Trafficking in Persons
<b>NALA</b>	National Agency for Legal Aid
<b>NANHRI</b>	Network of African National Human Rights Institutions
<b>NEA</b>	National Environment Agency
<b>NHRC</b>	National Human Rights Commission
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>TANGO</b>	The Association of Non-Governmental Organisations
<b>UNDP</b>	United Nations Development Programme
<b>UNODC</b>	United Nations Office on Drugs and Crime

## ACKNOWLEDGEMENT

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The National Human Rights Commission (NHRC) continues to rely on the support and partnership of the State, development partners, and Civil Society in fulfilling its mandate and building a culture of human rights in The Gambia.

We recognise the continued support and encouragement of H.E President Adama Barrow. Profound gratitude and appreciation are also extended to the Government Ministries and institutions, particularly the Ministries of Justice and Finance, for their partnership and support during the reporting year which contributed to the NHRC's effective functioning in line with the Paris Principles.

We appreciate the National Assembly the Honourable Speaker and members of the Standing Committee on Human Rights and Constitutional Matters, for their dedication to the work of the Commission and continuous commitment to a fruitful partnership.

During the reporting period, the NHRC received tremendous technical and financial support from the UNDP- Banjul Office, UN Peace Building Support Office, OHCHR, NANHRI, UNODC, and the British High Commission in The Gambia. Through partnerships with the Gambia Bar Association, the Judiciary, the Gambia Police Force, the Gambia Prison Service, NALA, and TANGO, the Commission was able to initiate stakeholder dialogue on access to justice which identified strategies for the realisation of this right.

The NHRC extends its gratitude to the public for their continued confidence and support in its work. Support from the following Ministries, institutions, and organizations are also acknowledged and appreciated. Their partnership greatly contributed to the successes of our activities and interventions:

- National Assembly Standing Committee on Human Rights and Constitutional Matters
- Global Alliance of National Human Rights Institutions
- The University of The Gambia
- International IDEA
- Truth, Reconciliation and Reparations Commission (TRRC)
- Institute for Human Rights and Development in Africa (IHRDA)
- TANGO
- Gambia Police Force
- Gambia Prisons Services
- Gambia Immigration Department
- CSO Dialogue Platform

We recognise that the list is inexhaustive, but to each of our partners we owe a debt of gratitude and look forward to further building on this relationship in 2022.

# FOREWORD

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The National Human Rights Commission (NHRC) is an independent institution established by the National Human Rights Commission Act 2017 amended in 2020 and guided in its work by the United Nations Principles Relating to the Status of National Human Rights Institutions referred to as the 'Paris Principles'. It is a member of the Network of African National Human Rights Institutions (NANHRI), Network of National Human Rights Institutions- West Africa (NNHRI-WA) and has Observer Status with the African Commission on Human and Peoples' Rights.

The Commission is required by Section 33(2) (a) and (b) of the NHRC Act 2017 to submit an annual State of Human Rights Report to the National Assembly. The Report documents the State's compliance with the human rights treaties it has ratified, the 1997 Constitution and other domestic legislation and the steps taken to protect and fulfil fundamental human rights and freedoms, as well as the human rights complaints the Commission has received and what actions have been taken on them. To this end, the Commission draws the attention of the Government and relevant stakeholders to the state of human rights in the country and recommends appropriate measures to be implemented for the effective promotion, protection, and realization of human rights.

In furtherance of its mandate, the Commission continues to take concrete steps towards laying a solid foundation for the respect, protection, and enjoyment of fundamental human rights and freedoms in the country. Human rights education, the foundation block in the building of a culture of human rights, has been championed through the annual Sir Dawda Kairaba Jawara Human Rights Moot Court Competition and the commissioning of a study on the integration of human right in the basic and secondary education curricula.

The public understands the mandate of the Commission and aggrieved parties are lodging complaints of human rights violations. Technical capacities of duty bearers and rule of law institutions are being enhanced so that they can effectively respect and fulfil the human rights of the people, and speedily respond to the demands of rights holders. Engagements with Civil Society Organisations, including the media, have been intensified and their capacities built on human rights monitoring and reporting. The Commission has monitored all the phases of the 2021 Presidential election and made recommendations to improve compliance with human rights standards and better practices.

In line with its mandate, the Commission stands ready to work with the Government and all stakeholders to ensure respect for human rights and freedoms become enduring ethical standards and by which the performance of all duty bearers would be measured.



# EXECUTIVE SUMMARY

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This Report presents an overview of the state of human rights in The Gambia in 2021. It examines how fundamental human rights and freedoms have been respected by both State and non-State actors, the compatibility of domestic legislation with human rights standards and the State's obligations under ratified regional and international human rights instruments. It also identifies some of the obstacles to the enjoyment of human rights and provides recommendations that the State, as the primary duty bearer, can implement to better guarantee fundamental human rights and freedoms and strengthen the rule of law, good governance, accountability, transparency, and due process.

Specific human rights issues addressed during this reporting period include unlawful detention, the right to political participation, restrictive media laws, denial, or rejection of permits for assembly, discrimination based on "caste," stigma and discrimination based on COVID-19, and trafficking in persons. Specific human rights that have been examined include freedom of expression, right to political participation, freedom of association and peaceful assembly, right to health, the rights of women, children, older persons and persons with disabilities, environmental rights, and economic, social, and cultural rights. The report also discusses the TRRC Report and recommendations and the expected role of the Commission in the monitoring of their implementation.

Through its complaints handling procedures, the NHRC in 2021 received 41 human rights violation complaints, out of which 24 cases were investigated and appropriate remedial and redress actions recommended. Fifteen cases are pending completion at the various stages of the complaint handling process and two complaints meant

for India National Human Rights Institution were mistakenly submitted to the NHRC – Gambia online. Allegations of inhumane treatment committed by law enforcers and unlawful arrests were investigated and recommendations were made to the appropriate State organ.

Issues of caste and decent-based discrimination remain a challenge. This practice, which is predominant in the Upper River Region, especially within the Sarahule communities, continues to be a human rights concern in the country. With support from the British High Commission in The Gambia, the NHRC commissioned a study on the issue to understand its magnitude and effects, and what strategies must be put in place by the State and other key stakeholders to permanently eradicate the practice.

The Commission closely monitored the Presidential election cycle from the registration of voters, submission of nominations, campaign, to the polling day. The observations and recommendations of the Commission were extensively documented in a compendium and shared widely among partners and stakeholders. Despite the post-election period having some clashes between police and civilians resulting in arrests, excessive use of force, and threat of violence, the pre-electoral and electoral periods were generally peaceful. It is hoped that the recommendations would contribute to the strengthening of our electoral system and processes, and greater respect of election-related human rights and freedoms. In response to concerns which threatened the enjoyment of human rights and peaceful co-existence, the Commission had issued press statements which condemned mob justice, religious bigotry and prejudices, tribalism, hate speeches, and political mudslinging and character assassinations.

## Country Report of the Republic of The Gambia

Population	2.5 million <sup>1</sup>
Population Density	245(km <sup>2</sup> )
Population growth	2.96% annually
Fertility rate	4 children to every woman
Life expectancy	62.57 <sup>2</sup>
Socio-Economic indices <sup>3</sup>	
• GDP	\$ 2 Billion
• Inflation	7.0%
• Primary school education	181,513
• Secondary school education	163,155
• Tertiary education	NA
• Literacy level	63.9%
• Health facilities	1175      1489 <sup>4</sup> service delivery points

<sup>1</sup> <https://worldpopulationreview.com/countries/gambia-population> accessed 10 January 2022.

<sup>2</sup> <https://www.macrotrends.net/countries/GMB/gambia/life-expectancy#:~:text=The%20current%20life%20expectancy%20for,a%200.56%25%20increase%20from%202019> accessed 10 January 2022.

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

<sup>4</sup> <https://www.gbosdata.org/topics/health-and-nutrition/distribution-of-health-facilities-by-region> accessed 10 January 2022.

## Ratified Human Rights Instruments

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

<b>1.</b>	<b>Ratified UN human rights instruments</b> <ul style="list-style-type: none"><li>i) Convention on the Prevention and Punishment of the Crime of Genocide 29 Dec 1978 (accession);</li><li>ii) International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 29 Dec 1978 (accession); and Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination;</li><li>iii) International Covenant on Civil and Political Rights (CCPR) 22 Mar 1979 (accession) made a reservation to article 14;</li><li>iv) Optional Protocol to the International Covenant on Civil and Political Rights- (CCPR-OP1);</li><li>v) Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP) (accession) 28 Sept 2018;</li><li>vi) International Covenant on Economic, Social and Cultural Rights (CESCR) 29 Dec 1978 (accession);</li><li>vii) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1 December 1992 (deposited on 16 April 1993);</li><li>viii) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) March 2005;</li></ul>
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- ix) Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) 23 Oct 1985; 28 Sept 2018 (accession);
- x) Convention on the Rights of the Child (CRC); 08 Aug 1990 (ratified);
- xi) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC) 27 September 2019 (accession)
- xii) Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC) 08 Apr 2010 (accession);
- xiii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) 28 Sep 2018 (accession);
- xiv) Convention for the Protection of All Persons from Enforced Disappearance (CED) 28 Sep 2018 (accession);
- xv) Convention on the Rights of Persons with Disabilities (CRPD) 06 Jul 2015 (accession) (deposited on 25 August 2017);
- xvi) Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD) 06 Jul 2015 (accession);
- xvii) ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ratified on the 3 July 2001;

## 2.

### **African Union human rights instruments**

- i) Constitutive Act of The African Union 24 Dec. 2003 (adopted on 9 July 2009)
- ii) Protocol On the Amendments to The Constitutive Act Of The African Union (April 2009);
- iii) African Charter on Human and Peoples' Rights 11 February 1983 (ratified) and made article 34 (6) declaration;
- iv) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa signed, 11 Sept. 2003; ratified, 25 May 2005 (deposited on 6 Sept. 2005);
- v) African Charter on the Rights and Welfare of the Child, ratified 14 Dec 2000 (deposited on 30 March 2001);
- vi) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) signed, 23 Oct. 2009; ratified 27 April 2011 (deposited on 17 August 2011);
- vii) African Youth Charter signed 29 Jan. 2008; ratified 30 April 2009 (deposited on 9 July 2009);
- viii) African Charter on Democracy, Elections, and Governance signed 29 January 2008; ratified 11 June 2018 (deposited on 4th Feb. 2019);
- ix) OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 10 September 1969 (deposited on 16 Mar. 1981);
- x) Protocol to The African Charter on Human And Peoples' Rights on The Establishment Of an African Court on Human And Peoples' Rights 9 June 1998 (deposited on 15 October 1999);

	<ul style="list-style-type: none"> <li data-bbox="386 172 941 296">xi) Protocol on The Statute of The African Court of Justice And Human Rights 2 February 2009 (deposited on the 4 February 2019);</li> <li data-bbox="386 300 941 392">xii) Protocol of The Court of Justice of The African Union 24 December 2003 (deposited on 9 July 2009).</li> </ul>
<p data-bbox="180 435 202 464"><b>3.</b></p>	<p data-bbox="386 427 913 456"><b>ECOWAS human rights instruments Ratified</b></p> <ul style="list-style-type: none"> <li data-bbox="386 459 941 616">i. Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment 1985 (ratified on 4 June 1990);</li> <li data-bbox="386 619 941 775">ii. Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment 1986 (ratified in June 1990);</li> <li data-bbox="386 778 941 967">iii. Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment 1990 (ratified on 9 April 1991);</li> <li data-bbox="386 970 941 1031">iv. Protocol on Community Court of Justice 1991 (ratified on the 26 August 1997);</li> <li data-bbox="386 1034 941 1158">v. The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping, and Security 1990 (ratified on the 24 January 2005);</li> <li data-bbox="386 1161 941 1254">vi. Supplementary Protocol on Democracy and Good Governance 2001 (ratified on 21 August 2005);</li> </ul>

## 1. Institutional Design and Compliance with Regional and International Human Rights Treaties

The Gambia adheres to a common law legal system that does not provide for the direct enforcement and application of international human rights treaties before Gambian courts. Thus, as a State with a dualist legal system, ratified international or regional human rights instruments only become enforceable before the national courts when domesticated through an Act of the National Assembly. In addition to other laws mentioned in section 7 of the 1997 Constitution, the legal system is based on a tri-partite regime that combines the received English Law, which is common law, and principles of equity, customary law, and sharia law in matters of marriage, divorce, and inheritance.<sup>5</sup>

The 1997 Constitution guarantees the rights of all Gambians and people living in The Gambia. Chapter IV of the Constitution is entirely devoted to fundamental rights and freedoms and the judicial remedies available for redressing their violation. The enjoyment of some of these rights is not, however, absolute as restrictions such as those anchored on public safety and health, respect for other people's rights and the law, and derogations during periods of national emergency or times of civil strife are provided in the laws of The Gambia. Specifically, certain fundamental rights may be limited as provided under section 35 of the Constitution.

The Gambia has ratified several international human rights instruments and domesticated some of these into domestic legislation enforceable before the national courts. The High Court of The Gambia which has branches in Kanifing, Bundung, Brikama, and Basse is vested with the jurisdiction to enforce the human rights provisions in

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<sup>5</sup> See section 7 of the 1997 Constitution.



Chapter IV of the Constitution.<sup>6</sup> Decisions from these courts can be appealed against at the Court of Appeal and subsequently to the Supreme Court of The Gambia.

Even though The Gambia is a dualist state, the courts have on occasion relied on international law in delivering judgments. This was seen for example in the case of *Yankuba Touray v The State* (below). It highlights the guidance that international law provides to The Gambia's adjudication and confirms its adherence to the obligation of the state to respect international law regardless of its legal system.

## **2. Respect for the Integrity of the Person including deprivation of life**

Section 18 of the 1997 Constitution guarantees the right to life which includes the prohibition of arbitrary deprivation of life except in the lawful execution of a death sentence imposed by a court of law. In 2017, at the 53rd independence anniversary, President Adama Barrow declared a moratorium on the use of the death penalty which is still being observed. The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty in 2018. In the 2019 Universal Periodic Review (UPR), The Gambia accepted the recommendation to abolish the death penalty.

However, the death penalty remains in the statute books of The Gambia and continues to be passed in judgments where persons are convicted of offences punishable by the death penalty. For instance, on 14 July 2021, Yankuba Touray, a former Minister of Local Government in the early days of Yahya Jammeh's rule was sentenced to death by the High Court in Banjul for the murder of Ousman Koro Ceesay,

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<sup>6</sup> Section 37 of the 1997 Constitution.

who was one-time Finance Minister.<sup>7</sup> In this case, the Court held that section 188 of the Criminal Code which provides that a person convicted of murder shall be sentenced to death still stands as it has not been amended or repealed, and that the Court does not have the discretion to hand a different sentence.<sup>8</sup> The Court adjudged that the sentence shall be executed by hanging.

Similarly, on 29 July 2021, one Saidou Cham was also convicted of murder and sentenced to death by the High Court in Basse. However, in both cases, the executions or death sentences have not yet been carried out and the convicts are behind bars as death row inmates pending further appeals. The phenomenon of ‘death row’ of convicts has been criticised for being degrading and inhumane and on that basis, the imposition of the death penalty is contrary to the human right to dignity.<sup>9</sup> Under section 18(3) of The 1997 Constitution, ‘The National Assembly shall within ten years from the date of the coming into force of this Constitution review the desirability or otherwise of the total abolition of the death penalty in The Gambia.’ This timeline has elapsed but provision has not been reviewed as the state continues to show reluctance to abolish the death penalty.

## Recommendations to the State

1. Enact legislation to repeal the death penalty from the Criminal Code and Criminal Procedure Code in line with the Second Optional Protocol to the International Covenant on Civil and Political Rights which the State has ratified;

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<sup>7</sup> *The State v Yankuba Touray* HC/365/19/CR/067/AO; M. K Darboe ‘Yankuba Touray sentenced to death in Gambia’ *All Africa* <https://allafrica.com/stories/202107160994.html> accessed 16 December 2021.

<sup>8</sup> As above.

<sup>9</sup> Office of the Commissioner for Human Rights ‘Moving away from the Death Penalty: arguments, trends and perspectives’ 128.

2. Commute the death sentences imposed on all inmates to life imprisonment.
3. Include in the next Periodic report to the Human Rights Committee information on the measures adopted by the State to give effect to the Second Optional Protocol to the International Covenant on Civil and Political Rights.
4. Expedite the enactment of the Criminal Code and Criminal Procedure Bills that are currently before the National Assembly.

### **3. Prevention of Enforced Disappearance**

The Gambia ratified the Convention for the Protection of All Persons from Enforced Disappearance (CED) on 28 September 2018. In March 2021, it submitted its initial report on CED to the UN Committee on Enforced Disappearances. The Truth, Reconciliation, and Reparations Commission set up to investigate human rights violations between 1994 and January 2017 revealed several cases of enforced disappearances that occurred during this period.<sup>10</sup>

The report of the Commission has further indicated that the regime of Yaya Jammeh did not only sanction the disappearances but failed to investigate such incidents.<sup>11</sup> To ensure the victims have justice, perpetrators who bear the greatest responsibility must be prosecuted and held to account. The UN has confirmed its commitment to supporting the establishment of hybrid courts to try the perpetrators.<sup>12</sup>

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<sup>10</sup> TRRC Report vol. 12 page 41 et seq.

<sup>11</sup> As above 73.

<sup>12</sup> Human Rights Watch 'Gambia: UN backs hybrid court for Jammeh-era crimes' <https://www.hrw.org/node/380125/printable/print> accessed 31 December 2021.

## Recommendations

1. Implement holistically the recommendations of the TRRC on enforced disappearances embedded in volume 12 of the report.
2. Provide reparations for all victims of enforced disappearances and their relatives, which includes compensation, satisfaction, rehabilitation and guarantees of non-repetition, as provided for in article 24 of the Convention on Enforced Disappearance;
3. Initiate processes to memorialise disappeared victims as part of the implementation of the transitional justice outcome;
4. Establish independent oversight bodies to oversee the functions of all the law enforcement agencies;
5. Introduce, in line with Article 10(3) of the Convention on Enforced Disappearance, an up-to-date register of all persons deprived of their liberty in every place of detention and take steps to maintain centralized registers of all detainees in the country;
6. Take measures to locate all victims of enforced disappearances, including their burial sites to carry out identification of their remains, and ensure that perpetrators are charged accordingly and brought before the courts;
7. Domesticate the CED and ensure its full implementation and enforcement;
8. Provide training for security and justice sector personnel on the phenomenon of and the illegality of enforced disappearances.
9. Continue the exhumation of the remains of victims of enforced disappearance, and if necessary seek international support to carry out this exercise

## **4. Protection against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment**

In 2018, The Gambia ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. However,

the Convention is yet to be domesticated thereby creating a lack of normative basis for the prosecution or punishment of individuals for offences related to torture and inhuman treatment. The Government has presented the Prevention and Prohibition of Torture Bill, 2020 before the National Assembly.<sup>13</sup> However, it is yet to be enacted into law. The importance of the Bill was buttressed by the President of The Gambia at the opening of the Legal Year in February 2021 at which He further promised that it will be approved.<sup>14</sup>

In the 2020 state of human rights report, the NHRC reported the case of the alleged torture of one Ebrima Sanneh by the former commander of the Anti-Crime Unit of the Gambia Police Force. The NHRC led a joint investigation into the matter and recommended that the Inspector General of Police take disciplinary measures against the police commander and consider his redeployment from the Anti-Crime Unit. While Mr. Mboob was removed as head of Anti-Crime Unit as recommended by the Panel and consequently redeployed to the North Bank Region, in July 2021 his reinstatement to the same post by the Inspector General of Police was rumoured by the media much to the disappointment of the Commission and Civil Society actors.

The NHRC also investigated a complaint of alleged human rights violations against the Drug Law Enforcement Agency Gambia (DLEAG) during this reporting year. It was alleged that the complainant was assaulted by members of the DLEAG at Brikama-Ba. He alleged that the officers grabbed him by his private parts and beat him up before tying him to a vehicle and dragging him on a tarred road. The

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<sup>13</sup> K AF Touray 'Government Presents Bill that Prohibits Torture' *Foroya* Newspaper <https://foroyaa.net/government-presents-bill-that-prohibits-torture/>.

<sup>14</sup> PM Cham 'Prevention Against Torture Bill set for approval' *The Point* 1 February 2021 <https://thepoint.gm/africa/gambia/headlines/prevention-against-torture-bill-set-for-approval>

complainant sustained serious injuries and was admitted at Bansang General Hospital for two nights before he was discharged. Once discharged, he was again taken into custody by the officers and detained in a cell for four nights enduring severe pain from laying on the hard floor of the police cell.

The Commission found that the complainant's rights to protection from inhuman treatment and the right to personal liberty guaranteed by sections 21 and 19 respectively of the 1997 Constitution were violated. However, the Commission acknowledges and appreciates the cooperation of DLEAG during the investigation, their acceptance of the recommendations of the investigation as well as the demonstrated willingness to implement same.

Challenges continue to affect the effective protection and enjoyment of the rights against torture, cruel, and inhuman degrading treatment. These include: -

1. The Gambia does not have a law that expressly criminalises torture as such prosecution of perpetrators remains a challenge;
2. Some alleged perpetrators of torture and their accomplices in the previous regime continue to hold senior positions in the Government;
3. Law enforcement officers have limited knowledge of human rights in the execution of their work; and
4. There is the absence of effective remedial mechanisms such as proper and impartial investigation and disciplinary mechanisms in law enforcement that perpetuate the culture of impunity.

## Recommendations

1. The Inspector General of Police to provide all police officers, as soon as is practicable, pocket notebooks for record keeping as well as registers to record the detention and release of all persons under their custody;

2. In collaboration with the Police, the NHRC should support the design and implementation of relevant training on human rights-based approaches to policing and human rights in general, especially for officers of the Anti-Crime Unit;
3. The Office of the Inspector General of Police should continue to work with the NHRC to ensure that the remaining recommendations of the 2020 joint Panel are implemented in early 2022.
4. DLEA-G to implement the recommendations regarding the complaint of human rights violations against its officers in Brikamaba and Bansang.
5. DLEA-G to expedite and finalize the Standard Operating Procedure it is currently developing
6. DLEA-G to review and update its Code of Conduct.
7. DLEA-G to collaborate and partner with the NHRC to provide further training for DLEA-G officers on the arrest and treatment of suspects in accordance with fundamental human rights principles.
8. Enact into law the Prevention and Prohibition of Torture Bill 2020 and ensure its popularization and effective enforcement and implementation;
9. The Gambia Police Force, the Drug Law Enforcement Agency and Gambia Immigration Department to take steps to create mechanisms for the investigation of all complaints of torture against Police and DLEAG officers and to take necessary action against those found culpable.
10. The state through the Ministry of Interior should enhance the capacity of law enforcement agents on human rights and modern human rights-based methods of interrogation and interviewing.
11. Progressively include modern technology such as body cameras in police gear to record encounters between on duty police officers and suspects.

## 5. Right to liberty and access to justice

Section 19 of the 1997 Constitution guarantees the right to liberty. It prohibits arbitrary arrest and detention of individuals and further provides that ‘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’. The section provides for the framework under which arrest and detention are justifiable.

The arrest of Neneh Freda Gomez, Gilbert Manga, and Lamin Sey in October 2021 at Bijilo by members of The Gambia Police Force raised concerns about non-compliance with the provisions of section 19 of the Constitution. The arrests were premised on the refusal of Neneh Freda Gomez, Gibert Manga and Lamin Sey to vacate the premises of the Anti-Crime Unit in Bijilo for which they (the arrested) had shown a court order and title documents indicating that the premises belong to Home of Medical Mission, a foundation that Ms. Gomez represents.<sup>15</sup> The three were detained for several hours and upon being released on bail, they challenged the constitutionality of their arrests and asked for damages against the State. The High Court granted the application and ordered the payment of D100,000 to the applicants for unlawful detention. Following reports of violation of the court order, the NHRC issued a statement requesting the state to respect the order and protect the rights of Ms. Gomez, and Messrs. Manga and Sey.

In another case before the High Court of The Gambia, Mr. Sylvanus Johnson successfully sought a declaration against the Inspector General of Police for unlawful detention. The plaintiff was held in custody beyond the constitutionally required 72 hours, a direct

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<sup>15</sup> <https://foroyaa.net/court-orders-state-to-compensate-neneh-freda-gomez-partners-for-unlawful-arrest-detention/>.



violation of his right to liberty.<sup>16</sup> The Court made a declaration in favour of Mr. Johnson and ordered the IGP to pay compensation of D40,000 for the hardship and distress caused by his illegal detention.

These cases illustrate the disregard for the fundamental protection of the right to liberty under the Constitution and the need for security personnel to operate within the confines of the law. The decisions of the Court are a step in the right direction in instilling a culture of upholding constitutional rights while deterring the Police from constantly detaining suspects beyond the provided period.

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

1. Limited number of courts in most parts of the country;
2. Provision of Legal Aid is limited to capital offences and child offenders;
3. Prolonged detention without trial continues to persist; and
4. Delay in judicial proceedings hinder access to courts in some areas.

### Recommendations

1. The state and its agents should always give effect to court orders;
2. NHRC should train law enforcement officers on the treatment of suspects during arrest and detention;
3. The State should withdraw its reservation to article 14 of the ICCPR;
4. Support and strengthen the provision of legal aid throughout the country to people accused of serious offences;
5. Define and publish minimum wage in order to give effect to section 30(2) of the Legal Aid Act.<sup>17</sup>

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<sup>16</sup> Foroyaa, 2 August, 2021: <https://foroyaa.net/court-asks-police-to-compensate-man-for-unlawful-detention/>

<sup>17</sup> Cap 6:02 vol. 2 Laws of The Gambia.

6. Provide adequate budgetary and technical support to NALA;
7. Decentralize the High Court, Magistrates Courts across the country.

## 6. Right to fair trial and access to justice

Section 24 of the 1997 Constitution guarantees the right to a fair trial. This right entails trial by an independent court or adjudicating authority, the presumption of innocence in criminal cases, the conduct of trial within a reasonable time, the right to legal representation, protection from retrospective law, the right to interpreter where a party so chooses, and the defences of *autre fois acquit/convict*. These elements have been largely respected during the reporting year but concerns have been raised over the unreasonable delays in the disposal of cases.<sup>18</sup> The 2021-2025 Strategic Plan of the Judiciary of The Gambia aims to address these delays by using among other things Computer Aided Transcription System and revamping infrastructure and human resource capacity within the judiciary<sup>19</sup>

The right further guarantees legal aid services where the individual is charged with a capital offence. In 2008, The Gambia enacted the Legal Aid Act (LAA 2008) to enhance access to justice through the provision of state-funded legal aid. The LAA 2008 requires the State to provide legal aid to poor and vulnerable persons in criminal matters and civil suits. Legal aid is also to be provided for all persons charged with offences punishable with death sentence or life imprisonment as required by section 24(3) (d) of the 1997 Constitution. Children in conflict with the law are also entitled to legal aid (section 72 of the Children's Act 2005).

International human rights law guarantees the right to state-sponsored legal aid in criminal cases. For instance, the ICCPR guarantees state-funded legal assistance to indigent accused persons 'where the interest of justice so requires' and the African

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<sup>18</sup> see the Judiciary of The Gambia Strategic Plan 2021-2025 86 available at <https://judiciary.gov.gm/sites/default/files/2021-08/JSP%20Full%20Report.pdf>

<sup>19</sup> see the Judiciary of The Gambia Strategic Plan 2021-2025.

Court on Human and Peoples' Rights has similarly interpreted the right to a fair trial under article 7 of the African Charter to include an obligation on African States to provide state-funded legal aid to indigent accused persons facing serious criminal charges.

The reason for obligating states to provide state-funded legal aid for some defendants in criminal cases is the potential deprivation of liberty and fundamental freedoms due to the imposition of criminal sanctions, especially, long custodial sentences, as a consequence of an unequal contestation between a generally better resourced State and economically disadvantaged accused persons which leads to an unfair justice system. Therefore, the same concept of 'equality of arms' should apply to contestations between individuals and the State concerning fundamental human rights deprivations and in all offences.

The Government of the Gambia should therefore ensure that at a minimum State-funded legal aid is provided for all cases where the interest of justice so requires. In line with the African Commission's Guidelines and Principles on Fair Trial (2003), some of the factors that may be considered to determine 'interest of justice' should include the complexity of the case and the ability of the applicants to adequately represent themselves, the nature of the rights affected, and 'the likely impact of the outcome of the case on the wider community'. In addition to these, it is also recommended that the applicant's membership of a marginalised group such as gender, disability and age should have a favourable inclination towards the grant of state-funded legal aid.

Access to justice in The Gambia continues to be tested following the 2021 voter registration, nomination, and December 4th presidential elections. Following the conclusion of registration, the authority of the Mayoress of Banjul to issue attestation for voter registration was challenged at the High Court by Civil Society Organisations- Gambia Participates, Abdou Aziz Gaye (Councilor of Box Bar Road in Banjul) and the Center for Research and Policy Development.<sup>20</sup>

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<sup>20</sup> NHRC 'Voter registration and monitoring report 2021' 7.

The Applicants, among other things, contended that the Mayoress, unlike the Alkalos and the District Chiefs, does not have the authority to issue attestations and her action contravenes section 12 of the Elections Act. The Applicants sought for the Court to make a declaration that the conduct of the IEC in conferring the Mayor the power to give attestation was ultra vires, an order quashing the decision of the IEC granting the Mayor such powers and an order canceling the attestations given by the Mayor and the voters cards issued under these attestation forms.<sup>21</sup> The Court held that the Mayor acted in contravention of section 12 of the Elections Act and that the decision of the IEC to grant the Mayor power to issue attestation was ultra vires. However, the Court declined to annul the voters' cards already issued by IEC according to attestations given by the Mayoress. The Court reasoned that this could be done by an Elections Revising Court established for that purpose. Even though concerns were raised as to the lack of consequences for the registered voters' cards, the decision of the court was hailed as it renewed hope for access to justice in The Gambia.

Following the rejection of nomination attempts of the Citizen's Alliance and the Gambia Moral Congress, the two parties filed separate cases in the High Court for a declaration that they were unjustly denied the right to contest in the elections. The High Court of The Gambia found in their favour and cleared them to contest in the 2021 presidential elections.<sup>22</sup> All these cases have served as examples of the improved reliance on the Judiciary to address grievances. The United Democratic Party also resorted to the courts to challenge the outcome of the 4th December 2021 elections. Even though the UDP lost the case on procedural flaws, the events demonstrate the accessibility of the courts to promptly deliver justice when called upon.

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<sup>21</sup> Unreported judgment of the High Court *Gambia Participates and Ors. v The Mayor of Banjul and ors* Misc. App. No. HC 380/21/MF/122/F1 delivered on 13th July 2021.

<sup>22</sup> See the unreported judgment of the High Court *Ismaila Ceesay & anor v IEC & anor*. MISC.APPL. NO: HC/682/21/MF/202/F1; TFN 'IEC suffers more humiliation as Mai Fatty too wins' <https://fatunetwork.net/iec-suffers-more-humiliation-as-mai-fatty-too-wins/> accessed 27th December 2021.

## Recommendations to the State

1. Remove filing fees for human rights cases and for applications brought to enforce provisions of the Constitution;
2. Remove cost orders in cases involving poor litigants unless there is a clear frivolous case that is brought without any merit and knowledge on the part of the plaintiff;
3. Introduce mobile courts to areas that do not have courts.

## 7. Freedom of speech and the media

Section 25 of the 1997 Constitution of The Gambia guarantees the right to freedom of expression, including press freedom and freedom of the media. Since 2017, there has been improvements in the media environment, and the notable proliferation of privately-owned and independent news media in The Gambia, including online media.

The National Assembly passed the Access to Information Act on 1st July 2021, and assented to by the President on 8th August 2021. The Act recognizes, for the first time in the history of The Gambia, the right to access public records and information as a fundamental human right. It also provides for the procedures to be in place to access information held by public authorities and public officials. Thus, the Act will allow citizens, journalists, students, and civil society organizations to easily access government data to enhance accountability and transparency.

Compared to previous years, 2021 witnessed a decline in State censorship of the media, particularly violence against journalists. However, sedition remains an offence under the Criminal Code, with a severe penalty including imprisonment term. Criminal defamation and false publication are still punishable under Sections 178 – 179 and 181A of the Criminal Code respectively. The State has still not amended Section 25(4) and 209 of the Constitution, or repealed Section 173A of the Information and Communications Amendment Act 2013 and Sections 51 and 52 of the Criminal Code which criminalises hateful remarks against the President of the Republic despite its acceptance of the recommendations as per the 2019 Universal Periodic Review.

Thus, laws still exist which restrict freedom of expression. Furthermore, the State is still not implementing the United Nations Plan of Action on the Safety of Journalists and the Issues of Impunity.

## Recommendations

1. State to fully implement the United Nations Plan of Action on the Safety of Journalists and the Issues of Impunity.
2. Put in place the infrastructure to enforce the Access to Information Act;
3. Popularize the ATI Act and enforce its provisions;
4. Repeal sections 51-54 of the Criminal Code;
5. Encourage self-regulation of the media; and
6. Fully support the Media Council of The Gambia.

## 8. Freedom of association and assembly

Section 25(d) and (e) of the 1997 Constitution guarantees the right to freedom of association and assembly. The Gambia is also a party to several treaties that protect the right to assembly and association, including the right to protest and/or to form or join a political party. However, the right to freedom of association and assembly continues to be restricted in The Gambia. Section 5 of the Public Order Act (1963) requires every person or group to obtain a permit or licence for public procession or protest from the Inspector General of Police or Governor of a Region. There have been instances when these requests were denied by the Inspector General of Police. A challenge to the constitutionality of this section vis a viz section 25 of the Constitution failed on the grounds that the limitations are in line with section 25 of the Constitution and international human rights standards.<sup>23</sup>

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<sup>23</sup> *Ousainou Darboe & 19 Others IGP & 2 ORS – Unreported judgment of the Supreme Court of The Gambia 23 November, 2017 – Civil Suit No: SC 003/2016*

At a meeting with the Serere community at State House, held on 15th August 2021, the President threatened to restrict political activities after the 4th December 2021 Presidential elections and instructed the Inspector General of Police not to grant permits.<sup>24</sup> The President's speech was condemned by CSOs who reminded the President of the right to peaceful assembly.

While a Statement from the Government's Spokesperson tried to assure the public of the President's strong stance on democracy and freedom of expression,<sup>25</sup> the utterances were roundly condemned by CSOs and human rights defenders.

On 6 December 2021, a day after the official announcement of the results of the Presidential election, officers of the Police Intervention Unit used tear gas and batons to violently disperse a group of UDP supporters who had gathered at their party leader's premises to protest the outcome of the polls.<sup>26</sup> A video of PIU officers rejoicing at how they handled the protesters was later circulated on social media. The action of the Police was condemned by the NHRC and all political party supporters and leaders were urged to maintain the peace and to seek redress through the courts. Despite calls for disciplinary measures against those officers, the Police did not take any concrete actions against those officers.<sup>27</sup>

In response to the long standing controversies surrounding the enjoyment of the right to protest, the NHRC developed an advisory note on the right to freedom of association and assemblies vis-à-vis the Public Order Act and also adapted the Guidelines on Policing Public Assemblies in The Gambia and held a discussion with the GPF.

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<sup>24</sup> Standard Newspaper, 17th August 2021: <https://standard.gm/nhrc-to-engage-barrow-on-his-threats-to-stop-political-activities0/>

<sup>25</sup> Standard Newspaper, 18th August, 2021: <https://standard.gm/barrow-has-no-intention-of-banning-political-activity-govt-spokesman0/>

<sup>26</sup> NHRC Statement on Post-Election Violence dated 7 December 2021.

<sup>27</sup> F.B. Ceessay 'PIU Officer that Threatens to Extermination UDPians not Detained' *The Point* 14 December 2021 available at <https://trumpet.gm/piu-officer-that-threatens-to-extermination-udpian-not-detained/>.

Even though these Guidelines are available for reference, the above incident underlines the need for the police to adhere to the Guidelines and international standards.

### Recommendations

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

## 9. Right to vote and participate

Section 26 and 39 of the 1997 Constitution protect political rights and the right to vote and be registered respectively. To fulfill these rights, the Independent Electoral Commission oversaw successful voter registration, political campaigns, and elections in December 2021. The issuance of attestation proving Gambian nationality and citizenship by Alkalos and the authority to do so culminated in accusations and counter accusations between sympathisers of different political parties as they accused each other of using influence over the Alkalos to register unqualified individuals to boost the numerical advantage of registered followers. The authority of the Mayoress of Banjul to issue an attestation to potential voters was also questioned and eventually challenged before the courts. As seen above, the court held that the Mayoress does not have the authority to issue attestations for voter registration.

There were also instances where the NHRC observed that some individuals were denied registration because their Gambian nationality could not be verified, thus raising the need for the



government to work on regularising the naturalisation procedure for qualified individuals and issuing national documents to citizens. Despite these outlined issues, the processes were hailed for being fair, transparent, and in line with international standards.

The NHRC actively participated in these processes as an observer. The NHRC observed that:

1. There was general compliance with the voter registration and voting procedures.
2. In terms of access, some registration and polling centres were not disability friendly.
3. There were no sign language interpreters present in any of the centres visited, and documentation was not made available in braille form for the visually impaired.
4. There were some discrepancies regarding requirements for registration. While all the other centres visited indicated that an eligible applicant can register at any location, in two centres in Banjul only applicants who were resident, born, or working in the area were allowed to be registered.
5. In all registration and polling centres visited, there were no issues or conflicts between political party agents, IEC Officials, or the public. The atmosphere in all the centres was amicable and peaceful and there was significant public compliance with electoral regulations.
6. Generally, compliance with COVID-19 guidelines was poor. Neither social distancing nor wearing of masks was observed by most of the IEC Officials, political party agents, or the public.
7. Some technical issues, in particular, the malfunctioning of the printers disrupted operations temporarily in many voter registration centres visited.
8. In some centres, some underage applicants acquired attestation from their respective community Alkalos. However, once detected, the registration of the person was denied.
9. Some applicants with invalid documents such as old voters' cards and expired IDs in Lamin Koto were denied Alkalo attestation whereas others were issued attestation.

10. There were more women than men who registered during the registration period.
11. The quality of some of the printed voters' cards in many centres was unsatisfactory. In some centres for instance, the cards display white lines on the pictures of the card owners.
12. Security officers were present at the voter registration and polling centers visited; they maintained a high level of professionalism throughout the 2021 electoral process.

### Recommendations to IEC

1. Ensure that polling and registration centres are spacious, to accommodate applicants in areas with high voter turnout. Centres should also be secured and shielded to avoid disruptions in the registration process due to rain or adverse weather conditions.
2. Make voter registration and polling centres more accessible to the citizens so that they do not have to travel long distances to register.
3. Standardise rules of registration regarding location and ensure they are homogeneously applied throughout.
4. Polling and registration Centres should be strategically located to accommodate persons with disabilities, the elderly, and pregnant and lactating women, to enable them to exercise their right to register and to vote without hindrance.
5. Prior to selecting Registration Centre's locations, election authorities should consult local Organizations for Persons with Disabilities and ensure all registration centres are on the ground level so as not to hinder wheelchair or crutch users. Alternatively, ramps should be made available to ease their movement.
6. Sign language interpreters and translators should be placed at all polling and registration centres where feasible or a team designated to be on standby to assist Registration Centres. Similarly, key documents should be made available in braille for the visually impaired.

7. Use of attestation in cases where potential voters are unable to satisfy eligibility requirements should be strictly limited. Where a person presents an expired national document, s/he should not be issued attestation but rather be encouraged to renew her/his documents. In the future, it may be necessary to limit the use of attestation to exceptional circumstances to prevent its overuse and abuse.
8. Strictly apply COVID-19 or any other health guidelines at all centres and ensure adequate supplies of hand sanitisers and facemasks which are regularly replenished.
9. Provide an adequate number of printers at all centres. In the case of centres with poor quality printing, it is recommended that these cards be replaced. Where this is not possible, the Commission urges IEC to ensure that eligible voters with such cards have access to voting on the election day without difficulty.
10. Enhance the training of voter registration staff to ensure they adequately understand the voter registration procedures, rules, and regulations including the role of observers in the process.
11. Enhance collaboration with relevant stakeholders to conduct widespread voter information campaigns sufficiently ahead of the voter registration process to ensure that citizens are aware of the process and how to actively participate in it.
12. Provide more than one laptop and printer to each voter registration Centre to avoid disruptions due to technical issues.
13. Locate registration centres in sheltered spaces with toilet facilities.
14. Enhance partnership with institutions that are interested in election processes to sensitize law enforcement officials and CSOs on their roles before, during and after elections.
15. On polling days, ensure that people leave stations as soon as they vote.
16. On polling days, provide clear and consistent guidelines to polling officers on the approach to follow regarding the calling of names on the master voter register, whether to

- go by first names or surnames to avoid confusion.
17. Ensure that marbles are of the right sizes to avoid disruption in the voting process.
  18. Ensure that voter education materials such as posters are of good quality, reader-friendly and visible to voters.
  19. Announce changes in the location of the polling stations in advance and provide clear directions to the new location.

### Recommendations to Government

1. Enhance access to immigration services for citizens to acquire their required national documents.
2. Make the issuance of birth certificates compulsory upon birth at all health centres.
3. Provide adequate sensitization especially in the rural areas on the importance of birth registration and issuance of birth certificates.
4. Make the costs charged for acquiring national documents such as IDs and passports affordable to average Gambians.
5. Provide adequate and continuous education and sensitization on the age for voter registration and citizenship requirements across the country, particularly in rural areas.
6. Facilitate the process of naturalization for those who meet the criteria of naturalization and want to naturalize and acquire Gambian nationality.

### Recommendation to Political Parties

1. Give comprehensive training to Party representatives deployed in voter registration centres on the registration procedures and the laws on citizenship.
2. Advise party representatives to be law-abiding and desist from all forms of intimidation of applicants during registration and voting.

## 10. Right to Non-Discrimination and Caste System

Section 20 of the 1997 Constitution of The Gambia protects against slavery and Section 33 recognises the right to non-discrimination, provides for equality before the law, prohibits discriminatory treatment by public functionaries and public authorities. The Constitution also defines discrimination as differential treatment based on analogous systems of inherited status such as race, social origin, birth, or other status. However, ‘caste’ is not explicitly mentioned as one of the prohibited grounds for discrimination.

The task force set up by the NHRC continues to monitor the situation and status of the caste conflicts in the Upper River Region. On the 17 of June 2021, the task force sent a letter to the Permanent Secretary, Ministry of Lands, Regional Government and Religious Affairs urging the Ministry to work with relevant institutions to ensure the applications for development permits pending at the Physical Planning Office in Basse and filed by the members of Gambana Association are approved. Gambana comprises members of the “slave caste” from Diabugu Batapa and Garawol and seek approval for the construction of two mosques after they were stopped by the Police from continuing with their construction works. Furthermore, as part of the Commission’s efforts to address caste-based discrimination in the country in October 2021, the NHRC, with support from the British High Commission, commissioned an in-depth study to better understand the nature of the problem and identify ways to eradicate the discrimination.

### Recommendations

1. Promote dialogue for peaceful co-existence and respect for human rights in communities where caste-based discrimination exists or is prominent.
2. Incorporate an explicit reference to “caste” as one of the grounds of prohibited discrimination in the relevant laws.
3. Use the NHRC study on caste-discrimination to formulate and effectively implement a comprehensive national strategy to eliminate caste-based discrimination.
4. Conduct a national survey on descent and caste-based

discrimination to provide a clear appreciation of the situation in The Gambia and what measures need to be taken to eradicate the practice and what prevailing factors enhance it.

5. Prosecute individuals who commit crimes of caste-based nature or prevent or discourage victims from reporting; and provide adequate compensation for the victims of such crimes;
6. Incorporate human rights into basic and secondary school curricula.

## 11. The TRRC Report and Recommendations

The TRRC ended its public hearings in May 2021 and as per its Act submitted its report to the President on 25 November 2021<sup>28</sup> which contained 427 findings and 218 recommendations. On the 24th of December 2021, the Government, through the Ministry of Justice, held a press conference where the TRRC report was officially launched and copies distributed to relevant institutions, the National Assembly, the United Nations Secretary-General, the Gambia Center for Victims of Human Rights Violations, and other organizations. They were also published on the Ministry's website. Furthermore, in May of 2022, which would be six months following the date of submission of the report to the President, the Government is expected to issue a white paper containing its proposed plan on the implementation of the Commission's report.

The TRRC in its reports touched on various aspects of human rights violations with recommendations on criminal liability for the commission of human rights violations and abuses, reparations, reconciliation, institutional reform, amnesty, memorialization.

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<sup>28</sup> <https://foroyaa.net/trrc-submits-more-copies-of-final-report-to-government/> accessed 31 December 2021

The role of the NHRC in the monitoring of the recommendations was also recognised and was referred to as “*the natural body to monitor implementation of the TRRC recommendations to ensure that Never Again in the history of The Gambia will such human rights violations and abuses occur*”.<sup>29</sup> Following the submission, it now behoves the Government to review these findings and implement the recommendations. The NHRC recognises the reassurance by the Government through the Minister of Justice that victims will be availed of justice and perpetrators bearing the greatest responsibility prosecuted. The NHRC reiterates the need for the Government to holistically implement the recommendations of the report, for justice to be served and for victims to receive reparations where recommended.

### Recommendations

1. Implement the TRRC recommendations in full;
2. Popularise the TRRC recommendations across the country among women, children, and youths;
3. Develop a roadmap for the implementation of the TRRC recommendations.
4. Liaise with stakeholders in the implementation of the recommendations.

## 12. Rights of Persons with Disabilities (PWDs)

The Gambia ratified the Convention on the Rights of Persons with Disabilities (CRDP) in July 2015. On 6th July 2021, the National Assembly passed the Persons with Disabilities Act which domesticated the CRDP. This Act promotes and protects the basic human rights of persons with disabilities and makes provisions for their ‘health care, social support, accessibility, rehabilitation, education and vocational training, communication, employment and work’.<sup>30</sup>

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<sup>29</sup> Truth Reconciliation and Reparations Commissions The Gambia, Report Volume 1 (PART A) Compendium of Findings and Recommendations

<sup>30</sup> Persons with Disabilities Act 2021

In addition to providing full and effective political participation for Persons with Disabilities, the Act also establishes a National Advisory Council and provides for a National Fund for Persons with Disabilities which is expected to be put in place in 2022.<sup>31</sup>

Notwithstanding the passing of the Persons with Disabilities Act 2021, persons with disabilities continue to face discrimination, stigma, exclusion, prejudices and negative stereotypes, and other challenges at all levels of society. Public transportation and buildings remain inaccessible to persons with physical disabilities. Public documents are not in braille form and there are no sign language interpreters at most public events and for television programmes. Their participation and inclusion in decision-making positions and processes remain limited. Currently, there is only one person with disability in the National Assembly who was nominated by the President. There are very few persons with disabilities who occupy positions in the higher echelon of the Civil Service, Judiciary, or public service. The Commission's monitoring of the 2021 Presidential Elections revealed the low participation of persons with disabilities in party structures and decision-making positions in political parties.

The Persons with Disabilities Act has not yet come into force as there is no notice in the Gazette in which the Minister has indicated the date the Act shall come into force as per its Section 1. There is no up-to-date data on persons with disabilities in The Gambia. The last national survey on disabilities was conducted in 1998. The Population and Housing Census 2013 revealed a disability prevalence of 1.2 percent in the Gambia, with 49.3 percent being male and 50.7 percent female. Covid-19 pandemic has exacerbated the challenges faced by persons with disabilities, including their economic wellbeing.

## Recommendations

1. Develop a roadmap to effectively implement and enforce the Persons with Disabilities Act 2021;

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<sup>31</sup> Persons with Disabilities Act 2021



2. Ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination;
3. Ensure voting processes are inclusive and participatory, and voting facilities are disability-friendly;
4. Political parties to integrate PwD's in their party structures and decision-making positions
5. Submit initial report on the CRPD which has been due since 2017;
6. Include Sign Language interpretation in all TV programs;
7. Ensure all public documents are also in braille form and accessible to the visually impaired
8. Conduct a national study on disabilities to inform programmes and activities.

### 13. Rights of Women

The rights of women are protected under the laws of The Gambia. Section 28 of the 1997 Constitution accords women full and equal dignity of the person with men and the right to equal treatment with men including equal opportunities in political, economic and social activities. The Gambia signed and ratified without reservations the Convention on the Elimination of Discrimination against Women in 1993 and is also a party to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. In ensuring they have full effect domestically, the two legal instruments were domesticated into the Women's Act 2010.

The Gambia in 2019 undertook the review of the Constitution and all discriminatory gender laws, including other subsidiary laws, to ensure they are in line with international best practices and the obligations of the State. The review resulted in amendments to Married Women's Property Act, the Women's Act 2010, and the Domestic Violence Act in 2021.<sup>32</sup> Section 33(2) of the Constitution prohibits discrimination on several grounds including gender. However, section 33 (5)(c) subjecting the prohibition of discrimination to personal law remains under the constitution despite discourse regarding its repeal as it goes against the general principle of non-discrimination.

The Gambia National Gender Policy 2010-2020 aimed at advancing gender equality with a focus on women's empowerment, environment and education amongst others is now due to be reviewed and updated. However, the National Human Rights Policy 2021 - 2025, the first of its kind in The Gambia, identified vital areas to be prioritized to advance the rights of women such as improving economic empowerment for women, elimination of all forms of discrimination against women and enhancing gender equity in all spheres including increasing women's representation and participation in decision-making processes.

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<sup>32</sup> <https://www.moj.gm/news/32d60195-b6d5-11ea-837b-025103a708b7>

In its efforts to protect women against all forms of gender-based violence, the Ministry of Gender, Children and Social Welfare, with support from partners such as the UNFPA and ECOWAS Gender Development Center, has established the Shelter for Victims of Domestic Violence located at Bakoteh and a Fistula Rehabilitation Centre in Lower River Region while a Girls Centre to produce sanitary towels was established in Basse. Additionally, to ensure women are financially independent with livelihood skills, the Women Enterprise Fund (WEF) has also been established to strengthen the capacities of 10,000 women and girls in Micro, Small, Medium Enterprises (MSMEs).

The Ministry of Gender, Children and Social Welfare announced in August 2021 that steps are being taken to set up special courts for domestic violence including other forms of violence against women and children to expedite justice for victims of SGBV and prevent the backlog of cases.<sup>33</sup> The Ministry of Justice Sexual and Gender-Based Violence Unit has also conducted sensitization programs in Sintet, Western Region, as well as in Essau and Sabach Njeyen, North Bank Region of The Gambia. The Unit also engaged in radio and television programs to educate the public on issues of SGBV. Despite efforts through legislative and other measures to promote and protect the rights of women, women continue to face discrimination, mostly underpinned by socio-cultural and religious beliefs. FGM, child and forced marriage, inadequate access to education and employment opportunities, remain barriers to the enjoyment of women's rights. Following the release of the Demographic and Health Survey Report 2019-2020, issues persistently affecting women's development were identified as including FGM and sexual violence.<sup>34</sup> Although laws have been put in place to address these issues, they are poorly enforced and implemented.<sup>35</sup> With support from the United Nations Development Programme (UNDP), the NHRC in 2020 conducted a comprehensive study on sexual harassment in the workplace in The Gambia and developed a generic Sexual Harassment in the Workplace Policy for the private and public sector.

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<sup>33</sup> The Point News Paper <https://thepoint.gm/africa/gambia/headlines/special-courts-for-domestic-violence-to-be-established>

<sup>34</sup> <https://standard.gm/fgm-need-for-greater-efforts-as-girls-still-under-threat/>

<sup>35</sup> <https://standard.gm/fgm-need-for-greater-efforts-as-girls-still-under-threat/>

The study confirmed a high rate of sexual harassment cases in the workplace with 74% of workers indicating to have experienced sexual harassment. 80% of women confirmed experiencing Sexual harassment in the last five years compared to 67% of men. Following the report, the Commission in 2021 organised a round table discussion with public and private institutions as part of its advocacy efforts to share the findings of the study and to encourage participants from financial institutions to initiate discussions within their institutions for the adaptation of the generic sexual harassment in the workplace policy. The roundtable further highlighted the corporate responsibility of institutions on sexual harassment and the need for institutions to have policies and processes appropriate to meet their responsibility to respect human rights including the right to a safe and healthy working environment free from sexual harassment and intimidation.

Women's participation in decision-making positions also continues to remain low. While women's representation in the Judiciary is notable, women's representation in the Executive and the National Assembly continues to remain at a minimum, only 4 women serving as Cabinet Ministers out of 19 Ministerial positions and 5 women of 58 National Assembly members.

Although women constitute almost 57% of registered voters and an unprecedented number came out to vote during the 2021 presidential elections, their participation in politics continues to suffer setbacks with limited inclusion of women in prominent decision-making positions in political parties. A case in point is the December 2021 elections which had only one independent woman presidential aspirant. It should be noted that socio-economic, and religious factors continue to inhibit the participation of women in politics.

## Recommendations

1. The Gambia National Gender Policy 2010-2020 should be reviewed and updated.
2. Urgently repeal Section 33 (5) of the Constitution which provides that the prohibition of discrimination does not apply in respect of adoption, marriage, divorce, burial, and devolution of property upon death.
3. Political parties to nominate more women to contest as candidates during local government elections in 2023.
4. Appoint more women in senior management positions in the Public Service, including in State-Owned Enterprises.
5. Enact a comprehensive law that addresses sexual harassment in the workplace and effectively implement and popularise it.
6. Expand access to education, vocational training and credit for women, with adequate indicators and monitoring mechanisms to track changes.
7. Effectively popularize, enforce, and implement legal instruments such as the Women's Act 2010 and the 2015 Amendment, Domestic Violence Act 2013, Sexual Offences Act 2013, and the Children (Amendment) Act 2016.
8. Introduce quota system for women's participation in decision making positions such as Cabinet, National Assembly and Local Government.

## 14. Rights of Older Persons

According to the 2013 Population and Housing Census older persons, defined as persons aged 65 years and over, constituted 3.1% of the population with the highest population recorded in Mansakonko with 4.4 percent.<sup>36</sup> The percentage distribution of older persons according to sex also revealed a higher percentage of older women comprising

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<sup>36</sup> Elderly Report, Census 2013, Gambia Bureau of Statistics, available at: <https://www.gbosdata.org/downloads-file/census-2013-elderly-report-1>.

51.1 percent of the older person population compared to men who constituted 48.9 percent.<sup>37</sup>

The NHRC commends the Government for the support provided to 150 older persons and other vulnerable families to improve their living conditions, with cash transfers through the Family Strengthening program. However, older persons continue to face challenges due to age such as loss of livelihood because of age thereby perpetuating poverty, limited access to health care services including limited consultation in the development of policies and plans affecting them.

Although there are no specific provisions under Chapter 4 of the Constitution protecting the rights of older persons, the Women's Act 2010 provides for special protection for older women. Section 53 of the Act requires the Government to take measures to protect older women and specific measures commensurate with their physical, economic, and social needs.<sup>38</sup> The Act also provides for the state to ensure women's right to dignity and the right to be free from all forms of violence based on age, including sexual abuse and discrimination.<sup>39</sup>

Nonetheless, despite measures in place to protect the rights of older women, the Gambia's National Human Rights Policy 2021- 2025 has revealed limited protections in other areas such as "specialized care, health insurance, social safety net or minimum income support and residential care facilities for older women".<sup>40</sup> To this end one of the priority action areas identified by the National Human Rights Policy to ensure the promotion and protection of the rights of older persons is the need to "mainstream and integrate issues relating to older persons into existing policies and plans, provide safety nets including health services, home-based care, and shelter"<sup>41</sup> amongst others.

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<sup>37</sup> Elderly Report, Census 2013, Gambia Bureau of Statistics, available at: <https://www.gbosdata.org/downloads-file/census-2013-elderly-report-1>.

<sup>38</sup> The Women's Act 2010.

<sup>39</sup> The Women's Act 2010.

<sup>40</sup> National Human Rights Policy and Action Plan 2021-2025.

<sup>41</sup> National Human Rights Policy and Action Plan 2021-2025.

Other critical priority areas recognized include the need to ensure participation of older persons, especially in decision-making processes to increase access to existing services and rights ensuring they are not left behind.<sup>42</sup>

## Recommendations

1. Sign, ratify and domesticate the Protocol to the African Charter on Human and Peoples Rights on the Rights of Older Persons in Africa
2. Enact Laws to protect the rights of Older Persons
3. Provide comprehensive health insurance coverage nationwide for older persons and ensure access, especially for people living in rural Gambia.
4. Ensure that older persons have a significant voice in the formulation of policies. affecting them
5. Identify and support vulnerable families that are caring for older persons.
6. Partner with NGOs that are involved in advocating for the rights of older persons to harmonize efforts for effective human rights-based care and support.
7. Enhance support to the Bakoteh Shelter to cater for the needs of older persons needing care services.

## 15. Rights of the Child

The rights of the child are protected under the Constitution and other subsidiary legislation. Section 29 of the Constitution provides for the right of a child to a name from birth and to acquire a nationality. Additionally, the provision provides for the protection of children under 16 years from economic exploitation and protection of juvenile offenders under lawful custody.

The Gambia is also a party to both international and regional human rights instruments protecting the rights of the child, including the

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<sup>42</sup> National Human Rights Policy and Action Plan 2021-2025.

Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).

The Children's Act 2005, which domesticated the CRC and the ACRWC, protects, amongst other rights, children's rights to health, education, parental care, against all forms of exploitation, trafficking and violence and harmful social and customary practices. The Children's Amendment Act 2016 prohibits child marriage and betrothal, while the Women's Amendment Act 2015 prohibits Female Circumcision.

Children, however, continue to be at risk of FGM, child marriage, violence and exploitation, and other types of abuse. According to the DHS 2019-2020, the prevalence of FGM/C has shown a minor decrease from 75% to 73% from 2013 to 2019. However, the survey equally revealed that 73% of women/girls aged between 15 and 19 had undergone the procedure.<sup>43</sup> In The Gambia, the prevalence rate of FGM was recorded as being the highest in Basse with 97% and the lowest in Kerewan at 42%.<sup>44</sup> Child marriage according to the MICS 2018 continues to remain a challenge with 10.9% of children married before the age of 15 and 34.2% before the age of 18. Although legislative measures exist, enforcement of these laws remains low. As at the end of 2021, no person has been convicted since the passing of the laws prohibiting FGM or child marriage in 2015 and 2016 respectively despite statistics showing that both practices are still ongoing.

In addition, children, especially girls and children with disabilities, continue to be left behind in areas of health and education due to socio-economic barriers and location.<sup>45</sup> The gender parity in the DHS report 2019-2020 has also revealed a higher primary school net attendance ratio of children between the ages of 7-12 with 78% for girls and 70% for boys.

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<sup>43</sup> The Gambia Demographic and Health Survey 2019-2020.

<sup>44</sup> The Gambia Demographic and Health Survey 2019-2020.

<sup>45</sup> The Gambia Demographic and Health Survey 2019-2020.



However, a drop was registered for senior secondary school attendance rate with 50% for girls and 42% for boys. The survey also revealed how socio-economic challenges affect children's school attendance with "65 % of girls in the highest wealth quintile attending Secondary school compared with 32 % of those in the lowest wealth quintile. Similar was recorded for boys with 57% in the highest wealth quintile and 25 % in the lowest quintile".<sup>46</sup>

Sexual abuse and Sexual exploitation of children remains a challenge in the country.<sup>47</sup> Factors perpetuating abuse and sexual exploitation include child marriage commonly practiced despite being prohibited by law, and poverty with children from less privileged homes, street children<sup>48</sup> including children selling in the streets being at risk of exposure.

The Special Rapporteur on the Sale and Exploitation of Children following her visit to The Gambia in 2019 mentioned in her report that sexual exploitation of children in the context of travel and tourism also remains a concern in the Gambia with "tourism being a main source of revenue coupled with poverty and a weak protection system"<sup>49</sup> perpetuating the practice. The report additionally included reports of commercial sexual exploitation of children in the TDA as a concern.<sup>50</sup>

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<sup>46</sup> The Gambia Demographic and Health Survey 2019-2020.

<sup>47</sup> Sexual Exploitation of Children in The Gambia Submission for UPR of the human rights situation in The Gambia- Submitted by Child Protection Alliance (CPA)- The Gambia and ECPAT International

<sup>48</sup> Sexual Exploitation of Children in The Gambia Submission for UPR of the human rights situation in The Gambia- Submitted by Child Protection Alliance (CPA)- The Gambia and ECPAT International

<sup>49</sup> Human Rights Council 46 Session 22 February - 19 March 2021- Visit to the Gambia- Report of the Special Rapporteur on sale and sexual exploitation of children, including prostitution, child pornography and other child sexual abuse material, Maud De Boer-Buquicchio

<sup>50</sup> Human Rights Council 46 Session 22 February - 19 March 2021- Visit to the Gambia- Report of the Special Rapporteur on sale and sexual exploitation of children, including prostitution, child pornography and other child sexual abuse material, Maud De Boer-Buquicchio

Some of the factors hindering reporting of such practices include limited knowledge of existing reporting mechanisms such as the Child helpline, weak law enforcement, prolonged judicial proceedings, deep rooted culture of silence, stigma, and fear of being revictimized.

Furthermore, Children with disabilities face significant barriers in accessing mainstream services. Access to educational structures and facilities, including school infrastructures, remains a significant challenge. With only 3 schools specifically catering for children with disabilities, including visual, hearing, or learning disabilities, and mainstream schools not specifically catering for their needs, poses a significant challenge to access to education and continues to be a risk to them being left behind. The passing of the Disability Act in 2021, is a welcomed endeavor toward achieving effective access to inclusive education.

## Recommendations

1. Raise awareness and develop appropriate responses to the socio-cultural and religious drivers of FGM.
2. Conduct a comprehensive study on the sexual abuse and exploitation of children in The Gambia.
3. Initiate full enforcement and implementation of the laws prohibiting FGM and child marriage as part of its obligation to fulfil the fundamental human rights of girls.
4. Promote girls' awareness of and participation in social, economic, and political life.
5. Create safe spaces and platforms for girls at all levels of society, including in schools, through which they would articulate their concerns and aspirations.
6. Make skills education an integral part of the education curriculum, especially at the primary and secondary levels.
7. Invest in skills training and empowerment, across all the regions of the country, for girls who have become victims of child marriage.

## 16. Trafficking in Persons

The National Human Rights Commission commends the National Agency Against Trafficking in Persons for taking notable steps to combat Trafficking in persons in The Gambia. The Commission recognises the launching of the National Referral Mechanism for vulnerable Migrants, the development of the National plan of Action on Trafficking in Persons 2021-2025, the validation of the Standard Operating Procedure on Trafficking in Persons in 2021 and the amendment of the Labour Bill to incorporate domestic workers and the rights of domestic workers. The NHRC also acknowledges efforts of the Agency to educate law enforcement agencies and security officials on Trafficking in persons following trainings conducted for immigration officers, the Gambia police force and state intelligence officers during the reporting year. Notwithstanding, trafficking in persons continues to remain a challenge in The Gambia. NAATIP has identified challenges to combating trafficking in the Gambia as including reluctance from victims to participate in court proceedings due to stigma, long adjournment of court proceedings causing a delay in the prosecution of cases and limited facilities to accommodate victims of trafficking with only one government facility providing shelter to children, the elderly, and victims of trafficking.

According to the US State Department's Trafficking in Persons Report on The Gambia in 2021, women, girls and some boys are subjected to sex trafficking and forced labor in street vending and domestic work. The Report also included reports of forced labor of Gambian children in neighboring countries such as Mauritania and the recruitment and exploitation of male and female workers in countries such as Lebanon, Kuwait, and the UAE. Allegations of sex tourism through registered charities under the pretense of providing scholarships to children for educational purposes were also reported.<sup>51</sup> The Report placed The Gambia on Tier 2 Watch List for the second year running due to a limited "overall increase in efforts to combat trafficking in persons compared to the previous reporting period".<sup>52</sup> However, despite the

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<sup>51</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/gambia/>.

<sup>52</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/gambia/>.

low conviction rates of traffickers, the Brikama Magistrates' Court during the reporting period convicted three men on one count of acting as an intermediary for trafficking having received money from various individuals to facilitate their journey to the Canary Islands in Spain.<sup>53</sup>

## Recommendations

1. The State should allocate sufficient budgetary allocation and provide technical and other forms of support to NAATIP to enable it to carry out its mandate effectively.
2. Strictly enforce the laws such as the NAATIP Act 2007, Tourism (Amendment) Act 2014, the Children's Act 2005, and the Women's Act 2010 and prosecute alleged offenders.
3. Train Immigration and other law enforcement officers in the detection and investigation of trafficking cases.
4. Intensify efforts towards the prosecution and conviction of offenders

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<sup>53</sup> The Standard 18.06.2021: <https://standard.gm/3-convicted-for-trafficking-people-to-europe0/>.

## 17. The Impact of COVID 19 on Human Rights

Since the outbreak of the pandemic, there has been a wave of stigma, discrimination, and racism globally and The Gambia is no exception.<sup>54</sup> At the time of writing this report, the 408th national COVID 19 situational report since the confirmation of the first COVID 19 case in The Gambia highlighted challenges of the pandemic as including denial, misinformation, stigma, and discrimination against affected families.<sup>55</sup> Stigma against persons who have contracted the virus continues to serve as a barrier to others affected fearing similar treatment. There are also low testing rates, with mainly tourists or travelers coming forward to be tested. Additionally, other challenges include the risk of not benefiting from the support available such as health care, psychosocial support, and relief initiatives, particularly for the vulnerable.

In an assessment conducted by OHCHR in collaboration with UNAIDS and UNDP in 2021 on the effects of COVID 19 on rights and stigma, it was revealed that health care workers particularly experienced stigma and discrimination by their family members or extended family due to the nature of their work as frontline or following recovery from the virus.<sup>56</sup> The stigma suffered was attributed to misinformation and affirms the notion that in some countries, frontline workers risk being ostracized or even attacked due to the nature of their work.<sup>57</sup>

As per the OHCHR COVID 19 guidance, the Government is urged to take quick and concrete actions to address factors that bring about fear and ensure responses to COVID 19 do not leave some members of the public more vulnerable to violence and discrimination.<sup>58</sup> The sharing of factual information, including through awareness campaigns, was identified as a useful means to tackle discrimination,

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<sup>54</sup> OHCHR COVID-19 Guidance.

<sup>55</sup> The Gambia COVID-19 Outbreak Situational Report #408.

<sup>56</sup> Report on Rights Violations, Stigma and Discrimination of Persons Who have Acquired COVID 19.

<sup>57</sup> un\_policy\_brief\_on\_human\_rights\_and\_covid\_23\_april\_2020.pdf.

<sup>58</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>.

misinformation, and fear.<sup>59</sup> Additionally, the UN Secretary General's report on COVID 19, affirmed "human rights as key to shaping the pandemic response, both the public health emergency and the broader impact on people's lives and livelihoods".<sup>60</sup> The principles of equality, non-discrimination, and inclusion were also emphasized as an integral aspect of human rights, especially when addressing issues of stigma and discrimination manifesting during the COVID 19 pandemic.<sup>61</sup>

## 18. Right to health

The right to health, related to and dependent on other rights, is not guaranteed as a fundamental human right under Chapter 4 of the Constitution. Notwithstanding, the Directive Principles of State Policy under Chapter XX of the Constitution "subject to limits of the economic capacity and development of The Gambia, requires the State, amongst other things, to endeavor to facilitate equal access to clean and safe water, adequate health and medical services".<sup>62</sup>

The Gambia is also a party to the ACHPR, the Maputo protocol, the CEDAW, the ACRWC, and the CRC which protect the right to health of both women and children. Equally, Article 12 of the Convention on Economic, Social, and Culture Rights Article 12 recognizes the right to the highest attainable standard of physical and mental health and identified the steps necessary to achieve this right including the reduction of infant and maternal mortality, prevention, treatment and controlling of the outbreak of diseases and creation of conditions which would assure medical service and attention in the event of sickness.

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<sup>59</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>.

<sup>60</sup> file:///C:/Users/Admin/AppData/Local/Temp/un\_policy\_brief\_on\_human\_rights\_and\_covid\_23\_april\_2020.pdf.

<sup>61</sup> file:///C:/Users/Admin/AppData/Local/Temp/un\_policy\_brief\_on\_human\_rights\_and\_covid\_23\_april\_2020.pdf.

<sup>62</sup> 1997 Constitution of the Gambia.

Despite the National Health Policy and Health Master Plan 2007-2020 being out-of-date, the NHRC commends the Government for the proactive steps taken to review and develop a new policy and strategic plan which are at the final stages of their preparation process. Additionally, in a bid to advance the right to health the Ministry of health has taken commendable steps to lead the development of a National Health Insurance Act. The Act passed in 2021 seeks to ensure the attainment of universal health coverage for all citizens.<sup>63</sup> The National Health Insurance Act 2021 amongst other things establishes a National Health Insurance Authority to implement a National Health Insurance Scheme and a national health insurance fund to pay for the cost of health services to members of the scheme.<sup>64</sup> The National Health Insurance Scheme requires annual contributions from every resident in The Gambia with exemptions for persons identified by the Department of Social Welfare as indigent, persons over 65 years, children under 5 years, and pregnant women amongst others.<sup>65</sup>

In The Gambia, issues of mental health continue to remain a concern with limited mental health facilities and mental health professionals available for rehabilitation of persons suffering from mental health conditions. Presently the National Mental Health Policy 2007 is outdated and in need of review and the Mental Health Strategic Plan 2007-2012 is outdated. Although notable steps have been taken to review the outdated “Lunatic Detention Act” which would lead to the development of a Mental Health Bill, it is recommended that necessary steps are taken to accelerate the passing of the Bill towards the full realization of this right. Under the ECSCR, States are obligated to respect, protect, and fulfill the right to health as with other human rights. Under CESCR General Comment 14, in fulfilling the right to health, States are obligated to “ensure appropriate training of doctors and other medical personnel, the provision of a sufficient number of hospitals, clinics, and other related facilities and the promotion and support of the establishment of institutions providing

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<sup>63</sup> <https://standard.gm/govt-introduces-national-health-insurance-bill/>.

<sup>64</sup> National Health Insurance Act 2021

<sup>65</sup> National Health Insurance Act 2021

counseling and mental health services, with due regard to equitable distribution throughout the county”<sup>66</sup>.

According to the DHS 2019 - 2020 between 2013 and 2019-20, despite the “decrease in child mortality from 20 to 15 deaths per 1000 live births, the under-5 mortality rate increased from 54 to 56 deaths per 1,000 live births, the infant mortality rate increased from 34 to 42 deaths per 1,000 live births, and the neonatal mortality rate increased from 22 to 29 deaths per 1,000 live births”<sup>67</sup>. The maternal mortality rate as per the MICS 2018, is 433 per 100,000 live births accounting for 36 percent of death amongst women aged 15-49 years.<sup>68</sup>

In this regard, the NHRC reminds the State of the recommendation accepted by the Gambia following its 3rd UPR cycle calling for the state to work towards reducing the high rate of maternal and infant mortality, including by ensuring the availability of comprehensive sexual, reproductive and child health services, and that all births are assisted by a skilled birth attendant.<sup>69</sup>

## Recommendations

1. Ratify and domesticate the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
2. Submit the State’s long overdue periodic report on the ICESCR
3. Accelerate the passing of the Mental Health Bill
4. Review and update the Mental Health Policy 2007
5. Review and develop an updated Mental Health Strategic Plan
6. Ensure universal access to safe drinking water and adequate sanitation facilities, particularly in the rural areas.

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<sup>66</sup> CESCR General Comment No. 14 The Rights to the Highest Attainable Standard of Health Art. 12.

<sup>67</sup> The Gambia Demographic and Health Survey 2019-2020.

<sup>68</sup> MICS Survey 2018.

<sup>69</sup> UPR of Gambia (The) (the 3rd Cycle- 34th Session) Thematic list of recommendations.



7. Increase allocation to the health sector.
8. Accelerate finalization of revised National Health Policy Framework.
9. Increase efforts in line with SDG 3 to reduce and prevent maternal, child and infant mortality by implementing programs and policies, as well as ensure adequate sexual and reproductive health services.

## 19. Environmental Rights

The Gambia is a party to international and regional conventions towards advancing the right to a healthy environment. As a party to the ICESCR, the Gambia is obliged to take all steps to improve all aspects of the environment and industrial hygiene. It is also obliged, as a party to the African Charter on Human and Peoples Rights, to specifically provide for the right to a general satisfactory environment favourable to development.

The Constitution does not specifically recognise the right to a satisfactory environment. However, there exists a National Environment and Management Act 1994 regarding the control and management of the environment. The Act, in addition to establishing the National Environment Agency responsible for the management of the environment, also confers a duty on persons to maintain a decent environment.

However, the Conflict Development Analysis 2019 has revealed that land and environmental issues are on the rise and create community tensions threatening social cohesion and act as key drivers of instability.<sup>70</sup> Concerns include land ownership, reduction in agricultural land due to climate effects commercial development and land and water pollution from fishmeal companies.<sup>71</sup>

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<sup>70</sup> FINAL 2019 Updated CDA Report 18 July 2019.pdf.

<sup>71</sup> As above.

## Recommendations

1. Recognize the right to a satisfactory environment under the Constitution.
2. Urgently address public concerns on issues relating to environmental pollution or degradation.
3. Adopt measures to prevent pollution and ecological degradation and put in place effective mechanisms for the rehabilitation of sites that have been mined.
4. The Government should develop a National Action Plan for the implementation of the United Nations Guiding Principles on Business and Human Rights.

## 20. Economic, Social and Cultural Rights (ESCR)

The Gambia is a party to the ICESCR and other relevant international and regional human rights instruments advancing economic, social, and cultural rights. Article 2 of ICESCR particularly provides for the progressive realization of economic, social, and cultural rights. The Covenant also acknowledges the constraints due to limits of available resources. However, the Committee on Economic Social and Cultural Rights in General Comment 3 stated that while the full realization of relevant rights may be achieved progressively, States should take deliberate, concrete, and targeted steps toward meeting the obligations recognized in the Covenant. States must not take regressive steps which are in contradiction to the progressive realization principle and constitute a violation of these rights-unless they have been duly justified and weighted against the enjoyment of other economic, social and cultural rights. Regressive steps include all acts of omission or of commission on the part of the State, which deprive people of rights that they used to enjoy.

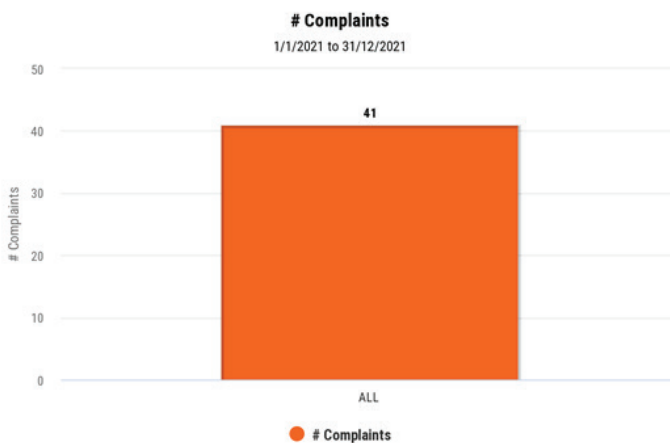
To a lesser extent Economic, Social, and Cultural, Rights, which continues to be progressively realized in The Gambia are enshrined under Chapter 4 of the 1997 Constitution and include the right to basic education, property, amongst others. Enforcement of these rights is provided for under article 37 of the Constitution. Meanwhile, other rights such as the right to food, shelter, clean water, an adequate

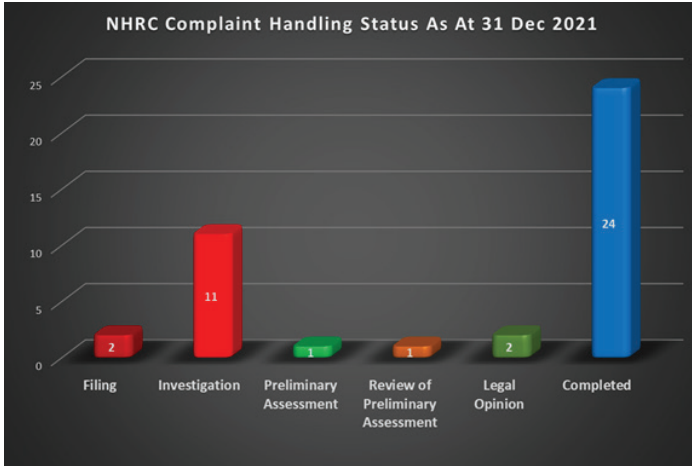
standard of living, and employment are provided for under chapter XX of the Constitution under Directive Principles of State Policy and are non-justiciable.

### Recommendations

1. Include progressive provisions on Economic, Social, and Cultural Rights under Chapter 4 of the Constitution.
2. Approach the eradication of poverty as a human rights issue.
3. Encourage the justiciability of economic, social, and cultural rights;
4. Encourage Government and private sector investment in socio-economic services.

### NHRC CASE / COMPLAINT REGISTER 2021





## BREAKDOWN OF VIOLATION TYPES

Sr.#	Violation Type	Amount
01	Protection of right to personal liberty	3
02	Right to legal redress	2
03	Labour rights	7
04	Right to Religion	1
05	Rape	1
06	Domestic violence	1
07	Environmental rights	1
08	Protection of right to life	1
09	Protection from discrimination	7
10	Right to education	2
11	Rights of women	1
12	Right to marry	1
13	Protection from deprivation of property	1
14	Secure protection of the law and fair trial/play	6
15	Protection from inhuman treatment or torture	8



 **National Secretariat, P. O. Box 2858,  
Serrekunda, Kotu, The Gambia**

 **(+220) 446 1717 / (+220) 446 1713**

 **info@gm-nhrc.org**

 **www.gm-nhrc.org**

 **facebook.com/NHRCGambia**

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