

**STAKEHOLDER REPORT ON THE RIGHTS OF
THE CHILD IN THE GAMBIA**



**UNIVERSAL PERIODIC REVIEW OF THE GAMBIA
20TH SESSION OF THE UPR WORKING GROUP,
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**SUBMISSION BY THE CHILD PROTECTION ALLIANCE
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INTRODUCTION

The Gambia's initial report was reviewed by the Universal Periodic Review (UPR) Working Group of the Human Rights Council in the first cycle of the UPR in 2010 (session 7). The UPR Working Group also made recommendations concerning the rights of children and which enjoyed the support of The Gambia. These recommendations included the rigorous enforcement of legislative instruments that protect and strengthen the rights of the child, elimination of all forms of discrimination against women and girls, ending all negative cultural practices and stereotypes against women, promoting efforts to fight FGM by expediting the enactment of the Women's Bill, intensifying measures to effectively combat child sexual abuse and exploitation, promoting the rights of women and children and improving the status of women and children.¹

The State indicated it would examine the following recommendations of the Working Group² and provide its response at the 14th session of the Human Rights Council: adopting and implementing legislation prohibiting FGM and raising public awareness on the practice, ensuring compatibility between the domestic laws, Sharia law and international legal instruments, taking legal measures to all forms of physical and mental violence against children in all settings, taking measures to eliminate negative harmful cultural practices, enforcing the Children's Act 2005 on corporal punishment, early marriage and sexual exploitation of children.³ On these deferred recommendations, the State reported that it would not at the moment legislate against FGM but would rather engage in continued public awareness on effects of the practice and conduct a national study; laws are already in place to protect children against all forms of violence and abuse and communities and institutions are being sensitised on child protection and alternative discipline practices.⁴

This report highlights the lack of legislation that prohibits corporal punishment in all settings and female genital mutilation of children, the absence of a definitive minimum legal age for marriage and engagement in formal employment and absence of clear legislation on online grooming and sexual exploitation of measures. It also examined the hindrances to the effective monitoring of the implementation of children's rights. We hope that the Working Group and states will raise these issues during the review and make specific recommendations related to them.

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Gambia, paragraphs 97(3), 97(16), 97(18), 97(19), 97(29), 97(30), 97(31), 97(45), and 97(46), A/HRC/14/6/, 24 March 2010

² Human Rights Council, Report of the Working Group on the Universal Periodic Review – Gambia, A/HRC/14/6, 24 March 2010

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Gambia, paragraphs 99(10), 99(11), 99(12), 99(13), 99(14), 99(15), 99(28), 99(29), 99(40), 99(41), 99(43), and 99(44), A/HRC/14/6/, 24 March 2010

⁴ Human Rights Council, Report of the Human Rights Council on its fourteenth session, paragraphs 593 and 594, A/HRC/14/37, 23 October 2012

1. CHILDREN'S RIGHT TO PROTECTION FROM CORPORAL PUNISHMENT

1.1 Review of the state of implementation of the first cycle recommendations

The UPR Working Group made the following recommendations on prohibition of corporal punishment⁵:

"Take legal measures to prohibit all forms of physical and mental violence against children in all settings and to arrange an adequate juvenile justice system (Slovenia)";

"Enforce Gambia's Children's Act of 2005 on issues such as corporal punishment, early marriages, FGM and sexual exploitation of children, as well as the Child Trafficking Law of 2007 (Norway)";

1.2 Corporal punishment is not prohibited in all the settings as yet. The Children's Act 2005 only prohibits the Children's Court from making an order subjecting a child to corporal punishment.⁶

1.3. Corporal punishment is not expressly prohibited in the homes. Parents are only to "ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child"⁷.

1.4 Regarding corporal punishment in care institutions and work places, the Act only obligates a person who has custody of a child to protect him or her from discrimination, violence, abuse and neglect.⁸

1.5 In educational or school setting, corporal punishment is not legally prohibited. Procedures mainly restrict corporal punishment, stipulating its administration only by or in the presence of the head teacher and logging the punishment in a designated book⁹.

A UNICEF Study¹⁰ has shown that children continue to be subject to various forms of violence and abuse, especially in the homes. It is reported that 90.3 per cent of the children aged 2-14 years were subjected to at least one form of psychological or physical punishment by their mothers/caregivers or other household members, while 38.9 per cent of parents/ caregivers believe that in order to raise their children properly, they need to physically punish them.

In 2001, the CRC Committee expressed grave concern regarding the prevalence and acceptance of corporal punishment in schools, families, care and juvenile detention institutions, and as a punishment in the penal system.¹¹ It recommended legislative measures to prohibit all forms of

⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Gambia, paragraphs 99 (15) and 99 (24), A/HRC/14/6, 24 March 2010

⁶ Sec. 220(9) of the Children's Act 2005

⁷ Sec. 22 of the Children's Act 2005

⁸ Sec. 21 of the Children's Act 2003

⁹ Sec. 15 of the Education Regulations of Education Act Cap. 46 Law of The Gambia

¹⁰ UNICEF, "The Gambia Multiple Indicator Cluster Survey" 2010, published in 2013

¹¹ Committee on the Rights of the Child, Concluding Observations on the initial report of The Gambia (CRC/C/15/Add.165) , 06/11/2001.

physical and mental violence, including corporal punishment as a penal sanction within the juvenile justice system, in schools and care institutions, as well as in families.¹²

RECOMMENDATIONS

- The Government of The Gambia should amend the Children's Act 2005 and prohibit corporal punishment against children in all settings.
- The Government of The Gambia should develop a comprehensive, adequately resourced, national strategy or national action plan to promote positive, non-violent disciplinary practices and methods in all settings.

2. CHILDREN'S RIGHT TO PROTECTION FROM FEMALE GENITAL MUTILATION

2.1 Review of the state of implementation of the first cycle recommendations

The UPR Working Group made the following recommendations on prohibition of Female Genital Mutilation¹³:

"Adopt and implement legislation prohibiting Female Genital Mutilation (FGM), and ensure that offenders are prosecuted and punished, and take legal and education measures to combat this practice (Slovenia)";

"Step up efforts to combat all forms of discrimination towards women, in particular, by adopting legislation prohibiting traditional harmful practices, such as (FGM), (Brazil)";

"Following the recommendations of CEDAW, introduce measures to eliminate negative harmful cultural practices and stereotypes that discriminate women (Slovenia)";

"Introduce legislation criminalizing FGM and domestic violence and launch an awareness and education campaign as part of implementing the legislation (Canada)";

"Strengthen its laws to effectively combat FGM (Cote d'Ivoire);

"Take all necessary social, educational and legal measures to eliminate the practise of FGM (Italy)";

2.1 FGM is not legally prohibited in The Gambia. The Children's Act 2005 prohibits harmful social and cultural practices against children, including those practices that are discriminatory on the grounds of sex.¹⁴ However, what constitutes harmful social and cultural practices are not defined in the Act. The Woman's Act 2010 and Domestic Violence Act 2013 do not also prohibit Female Genital Mutilation (FGM).

¹² Committee on the Rights of the Child, Concluding Observations on the initial report of The Gambia (CRC/C/15/Add.165), 06/11/2001.

¹³ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Gambia, paragraphs 99 (14), 99 (28), 99 (29), 99 (40), 99 (41) and 99 (42), A/HRC/14/6, 24 March 2010

¹⁴ Section 19 of the Children's Act 2005

2.2 The prevalence of FGM is still very high in The Gambia. About 76.3 per cent of women aged 15-49 have some form of FGM.¹⁵ 42.4 per cent of women reported that at least one of their living daughters aged 0-14 years has undergone FGM while 64.2 per cent approved FGM.¹⁶ The practice of FGM appears more common in rural areas at 78.1 per cent than in urban areas, 74.6 per cent.¹⁷

2.3 The Women's Bureau, under the Ministry of Women's Affairs, has developed a comprehensive National Plan of Action for Accelerated Abandonment of Female Genital Mutilation/Cutting in The Gambia 2013-2017. However, there is very little political will towards the legal prohibition of FGM as the Government has not made its stance on this harmful practice publicly known. Some religious conservatives are actively encouraging the practice using the state radio.

RECOMMENDATIONS

- The Government of The Gambia should enact a comprehensive law prohibiting the practice of FGM and vigorously enforce any such prohibition.
- The Government of The Gambia should reach out and sensitise the religious conservatives on the negative impact of FGM on women's reproductive and sexual health.

3. PROHIBITION OF CHILD/EARLY MARRIAGE

3.1 Review of the state of implementation of the first cycle recommendations

The UPR Working Group made the following recommendations on prohibition of early or child marriage¹⁸:

"Take further steps to address human rights abuses against women and children, especially domestic violence, forced and early marriages (Sudan)";

"Enforce Gambia's Children's Act of 2005 on issues such as corporal punishment, early marriages, FGM and sexual exploitation of children, as well as the Child Trafficking Law of 2007 (Norway)";

3.2 The 1997 Constitution guarantees the rights to freely consent to marriage and to marry and found a family. These rights are accorded to men and women of full age and capacity and shall be based on the free and full consent of both parties.¹⁹ However, the terms 'full age' and 'capacity' are not defined in the Constitution.

¹⁵ UNICEF-Banjul MICS IV 2010 Report, published in 2013

¹⁶ UNICEF-Banjul MICS IV 2010 Report, published in 2013

¹⁷ UNICEF-Banjul MICS IV 2010 Report, published in 2013

¹⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Gambia, paragraphs 99 (43) and 99 (44), A/HRC/14/6, 24 March 2010

¹⁹ Section 27 of the 1997 Constitution of The Gambia

3.3. Under Section 127 of the Criminal Code, which has been amended by the Children’s Act, 2005, ‘defilement’ of unmarried girls under 18 is a criminal offence.²⁰ However, ‘defilement’ of married girls under 18 years is not an offence, making it acceptable under customary law for girls as young as 13 to be married off without committing a crime.

3.4 The Children's Act defines a 'child' as any person under the age of 18 years.²¹ Section 24 of the Children’s Act stipulates that no child is capable of contracting a valid marriage, and a marriage so contracted is voidable. However, this provision is curtailed or restricted as it subject to personal law. This means, even though child marriage is not encouraged, its consummation will not be regarded as a crime.²²

3.5 There is no provision in the Women’s Act 2010 which stipulates that the minimum age for marriage should be 18 years for both men and women. The Act only prohibits parents and guardians from withdrawing girls from school for the purpose of marriage.²³ The Act provides that no marriage shall take place without the free and full consent of both parties to the marriage and any marriage so contracted will be voidable.²⁴

3.6 Early and forced marriages still happen in practice. About 8.6 per cent of women actually marry before they are 15 years of age while 46.5 per cent are married before 18 years of age.²⁵ This trend is more prominent in rural areas. It is not uncommon to hear of stories of young girls being taken out of school and forced into marriage by their families even though the Women's Act 2010 prohibits such practice.²⁶

RECOMMENDATIONS

- The Government of The Gambia should establish 18 years as the minimum legal age for marriage and ensure all laws comply with this requirement. Additionally, the Government of The Gambia should ensure that this minimum legal age for marriage takes precedence over all other sources of law such as customary and Sharia law.
- The Government of The Gambia should rigorously enforce and implement Section 28 of the Women's Act 2010 which prohibits the withdrawal of girls from school for the purpose of marriage and amend section 36 of the Women’s Act that 'encourages' the registration of marriages to make marriage registration compulsory in line with CEDAW and the African Women’s Protocol.
- The Government of The Gambia should embark on large-scale awareness raising campaigns that promote ending child marriage, targeting every sector of society and at all levels.

4. PROTECTION OF CHILDREN FROM SEXUAL ABUSE AND EXPLOITATION

²⁰ See Schedule (section 241) of the Children’s Act.

²¹ Section 2 of the Children's Act 2005

²² The Children's Act 2005 does not stipulate 18 years as the minimum legal age for marriage

²³ Section 28 of the Women's Act 2010

²⁴ Section 35 of the Women's Act 2010

²⁵ UNICEF-Gambia MICS IV Report 2010

²⁶ Section 28 of the Women's Act 2010

4.1 Review of the state of implementation of the first cycle recommendations

The UPR Working Group made the following recommendations on protection of children from sexual abuse and exploitation²⁷:

"Rigorously enforce legislative instruments that protect and strengthen the rights of the child (Australia)";

"Favourably consider the requests for country visits of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on the right to education (Belarus)";

"Intensify efforts to effectively combat child sexual abuse and exploitation (Azerbaijan)";

4.2 It is difficult to indicate the extent or magnitude of the sexual abuse and exploitation of children in The Gambia as the last national studies were done in 2003.²⁸ The sexual abuse of children is surrounded by social stigma, family pressure or indifference, and a culture of silence that inhibits reporting of cases to the police. The Department of Social Welfare recorded 12 cases of rape involving children in 2012.²⁹

4.4 With regard to the legal framework, although national legal provisions defining and criminalising child prostitution and child trafficking are in compliance with international legal standards, legislation addressing child pornography does not comply with the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC). For instance, the Gambian criminal legislation does not contain a specific definition of child pornography, which is a major loophole. Section 8 of the *Tourism Offences Act 2007*, contains specific provisions addressing child pornography that are weakened by a defence which states that persons having a 'legitimate reason' for the distribution, showing, or possession of the photograph can escape prosecution. This defense is of most concern, especially as the term 'legitimate reason' is not defined by law.

The criminal legislation of The Gambia neither criminalises the mere possession of child pornography nor knowingly accessing child pornography through the use of information and communication technologies as requested by the *Rio de Janeiro Declaration and Call to Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*. In addition, the criminal legislation of The Gambia does not prohibit the online solicitation of children for sexual purposes (online 'grooming').

4.5 Coordination of child protection and prevention services is weak, with most of these services concentrated in the Greater Banjul Area (GBA). Reporting mechanisms are not well known and the only national child hotline (199) is toll free only on one GSM line and is not widely known.

²⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Gambia, paragraphs 97(3), 97(14) and 97(31), , 24 March 2010

²⁸ Study on the Sexual Abuse and Exploitation of Children in The Gambia, UNICEF, December 2003 and Study of Child Sex Tourism in The Gambia, Child Protection Alliance, January 2003

²⁹ Presentation made by Mr. Fallu Sowe, Deputy Director, at the Child Protection in Emergency training held from 11-15 March, 2013

4.6 There are few trained professionals in child protection, and very few child psychologists, counsellors or therapists in child sexual abuse and exploitation. Local government structures are not well-trained regarding child protection legislation and services.

4.7 In recent years, there has been an explosion of digital technologies in The Gambia, with the arrival of 4G mobile phones. Although these present serious child sexual exploitation risks, there is virtually no monitoring, filtering or blocking of websites containing child sexual abuse images. Internet service providers, mobile phone companies and Internet cafes are not obliged to trace and report cases of child sexual exploitation. Except in the Tourism Development Areas, there is little awareness of Commercial Sexual Exploitation of Children (CSEC) risks via digital technologies. Reporting mechanisms are weak and unknown.

RECOMMENDATIONS

- The Government of The Gambia should establish the primacy of child protection legislation over other sources of law such as customary and Sharia law. Additionally, the Government of The Gambia should widely disseminate and educate members of the justice system on child protection laws and the primacy of the Children's Court to hear child protection matters.
- The Government of The Gambia should ensure that the Children's Act 2005 is amended to incorporate a definition of child pornography compliant with Article 2 of the OPSC and the Tourism Offences Act 2003 should be amended to remove subsection 8 (3) of the Act which provides a defence for distributing, showing, or possessing an indecent image of a child for a 'legitimate reason'.
- The Government of The Gambia should ensure that all acts in connection with child pornography, especially the 'grooming' of children, are criminalised. Specifically, to ensure that section 174 of the Information and Communication Act 2009 is amended to criminalise mere possession, not just possession with intent to distribute or show. Additionally, to ensure that section 164 of the Information and Communication Act 2009 is amended to criminalise accessing and viewing child pornography, as recommended by the *Rio de Janeiro Declaration and Call to Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*, not just accessing a computer to distribute, publish, or sell child pornography.
- The Government of The Gambia should ensure financial institutions, Internet Service Providers, GSM operators and Internet cafe owners have a legal obligation to report online sexual violence and exploitation.
- The Government of The Gambia should amend section 49 of the Trafficking in Persons Act 2007 to remove the provision that limits the detention, imprisonment, or prosecution of trafficking victims in connection with their trafficking experience only 'where circumstances so justify'. The said Act 2007 must ensure the protection of all victims for any offences committed in connection with their trafficking experience.

- The Government of The Gambia should ensure that the criminalisation of all forms of sexual exploitation of children, not only in relation to trafficking and prostitution, is given extraterritorial effect. This must be done through legislative reform and by entering into further bilateral and multilateral agreements with other countries, especially countries whose nationalities come as tourists.
- The Government of Gambia should send an invitation to the Special Rapporteur on the sale of children, child prostitution and child pornography to conduct a country visit in the Gambia.

5. ESTABLISHMENT OF A MINIMUM LEGAL AGE FOR ENGAGEMENT IN FORMAL EMPLOYMENT.

5.1 It is difficult to indicate the extent of child labour in The Gambia. However, child labour is prohibited and the minimum age for the engagement of a child in 'light work' is 16 years.³⁰ Light work means work that is unlikely to harm the health and development of the child and not affect the child's attendance at school or the capacity to benefit from schoolwork.

5.2 Children under 16 years are entitled to be protected from economic exploitation and not be employed in or required to perform work that is likely to be hazardous, interfere with their education or harm their health or physical, mental, spiritual, moral or social development.³¹

RECOMMENDATION

- The Government of the Gambia should set a definitive minimum legal age for engagement in formal employment

6. EFFECTIVE COORDINATION OF THE IMPLEMENTATION OF CHILDREN'S RIGHTS LEGAL INSTRUMENTS AND DOMESTIC LAWS AND POLICIES

6.1 Thus, a major problem that inhibits child rights monitoring is the absence of an effective coordination mechanism at the national level, in accordance with the Paris Principles (General Assembly resolution 48/134), to monitor and evaluate progress in the implementation of the CRC and other international legal instruments. We recognised and appreciated the Presidential pronouncement in June 2011 which led to the inclusion of the budget of a Ministry for Children's Welfare. in the 2012 national budget. Unfortunately, this Ministry never became operational or functional. The absence of such a coordination mechanism hinders timely reporting to treaty bodies and makes coordination of children's issues and rights across Ministries and other institutions difficult.

6.2 The CRC Committee recommended the establishment of the National Commission on Children's Rights to ensure the effective coordination of the implementation of the Convention at the national and local levels.³² The Department of Social Welfare is responsible for the welfare

³⁰ Section 43 of the Children's Act 2004 and Section 45 of the Labour Act 2007

³¹ Section 29 (2) of the 1997 Constitution of The Gambia

³² Committee on the Rights of the Child, Concluding Observations on the initial report of The Gambia (CRC/C/15/Add.165), 06/11/2001.

of children.³³ However, it is not necessarily responsible for the coordination of the implementation of legal instruments related to children's rights. Children's issues continue to be fragmented amongst the various Government ministries and departments, with each taking responsibility for only its statutory remit.

RECOMMENDATION

- The Government of The Gambia to establish a functional Ministry that would be responsible for children's welfare and coordination of the implementation of laws and policies relating to children's rights and protection

7. ESTABLISHMENT OF AN INDEPENDENT MECHANISM TO RECEIVE COMPLAINTS OF CHILDREN'S RIGHTS VIOLATIONS

In the Concluding Observations to the Gambia's Initial Report to the CRC, the CRC Committee in 2001, expressed concern regarding the absence of an 'independent monitoring mechanism to receive and investigate individual complaints of violation of the rights of children.' It recommended the establishment of such a mechanism which would be empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner and to address them effectively. Such a mechanism does not exist although the Department for Social Welfare and the Police Child Welfare Unit are currently responsible for receiving and investigating individual complaints of violation of the rights of children

RECOMMENDATION

- The Government of The Gambia to establish an independent monitoring mechanism to receive and investigate individual complaints of violation of the rights of children

CONCLUSION

We, the CPA member organisations who participated in the preparation of this Report, hope that the UPR Working Group will find the information in this report useful when it examines The Gambia's second UPR Report at its Twentieth Session and how far it has implemented the recommendations contained in the 24 March 2010 Report of the Working Group.

³³ Section 66(2) of the Children's Act 2005

ANNEX 1: MEMBER ORGANISATIONS OF THE CHILD PROTECTION ALLIANCE

This report is being submitted on behalf of the following member organisations of the Child Protection Alliance who participated in this process:

1. Child and Community Initiatives for Development (CAID)
2. SOS Children's Villages-The Gambia
3. The Association of Non-Governmental Organisations (TANGO)-The Gambia
4. Education for all Campaign Network-The Gambia (EFANet-The Gambia)
5. Gambia Committee on Traditional Practices (GAMCOTRAP)
6. Gambia Teachers Union (GTU)
7. ChildFund International The Gambia
8. Kids Come First Foundation
9. International Society for Human Rights (ISHR)
10. Peace Ambassadors-The Gambia
11. Abubakarr Siddique Foundation for Needy and Orphan Welfare (AFNOW)
12. Gambia Press Union (GPU)
13. Institute for Social Reformation and Action (ISRA)
14. Nova Scotia Gambia Association (NSGA)
15. Voice of the Young