

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report -

Universal Periodic Review:

GAMBIA

I. BACKGROUND INFORMATION

Gambia is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereafter jointly referred to as the *1951 Convention*). Gambia is also a State party to the *1969 Convention Governing the Specific Aspects of Refugee Problems in Africa* (the *OAU Convention*) and to the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (the *Kampala Convention*). The Gambian Parliament has approved the accession to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*, but Gambia has yet to deposit the instruments of accession with the relevant UN body. Gambia is the home to the African Commission of Human and Peoples Rights and the African Centre for Democracy and Human Rights studies, even though the country is yet to have its own national commission of human rights.

At the close of the year 2013, Gambia had a refugee population of 9,565, most of them (9,025) Senegalese refugees, fleeing from the separatist insurgence in the southern Senegalese region of Casamance. The remainder of the refugee population comes from Liberia (76), Cote D'Ivoire (268), Sierra Leone (135), Togo (21), Congo (21) and other countries (19). There were no pending asylum applications at the close of the year 2013.

Gambia has adopted the *Refugee Act* in 2008, which created the Gambia Commission for Refugees, fully operational since 2012. The *Refugee Act* mandates the refugee commission to conduct the RSD, UNHCR being an observer.

Most of the refugees currently in Gambia were recognized on a prima-facie basis and only a very small percentage of the refugee population went through an individual RSD process. However, following the cessation of the refugee status of the Liberian refugees and the lull in the periodic influx of refugees from Southern Senegal, most of the asylum claims in Gambia are dealt with on an individual basis.

Internal displacement in Gambia is mostly caused by floods, resulting from heavy rains during the rainy season. The displacement in most cases is short-lived, with victims

supported and assisted by, among others, the Government of Gambia, UN agencies, NGOs and private institutions and individuals. The National Disaster Management Agency (NDMA) handles internally displacement cases and works closely with UNHCR and other UN agencies in the country.

II. ACHIEVEMENTS AND BEST PRACTICES

Aside from the unfortunate incident of the arrest, detention and attempted prosecution of five refugee leaders in 2012, for giving false information to a public officer, Gambia has, over the past few years, been steadily improving the protection environment for the persons in need of international protection. Gambia successfully implemented the cessation of refugee status of both Sierra Leonean and Liberian refugees (the former in 2008-2009 and the latter in 2012). In both cases, the Government facilitated the voluntary repatriation and local integration of the refugees who opted for these options. On the other hand, those who were eligible for continued protection were duly processed and their refugee status maintained. It should be noted that out of 325 Liberian refugees who were living in the Gambia at the end of 2012, only 76 are remaining as exempted cases at the end of 2013. The majority have opted for local integration while 48 others were rejected following the exemption procedure. The process of local integration was completed in 2013 and all the adult applicants (of 18 years and above) have been issued with the residence and work permit.

The authorities in Gambia ensure birth registration and issue birth certificates to all children, including the children of persons of concern to UNHCR, born on Gambian territory when parents or relatives approach them to that effect.

During the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011, Gambia pledged to ratify the *1954 Convention relating to the Status of Stateless persons* and the *1961 Convention on the Reduction of Statelessness*. Subsequently, the Gambian parliament, on December 11, 2013, unanimously ratified the 1954 and 1961 Conventions. During the above-mentioned Ministerial event, Gambia also pledged to expedite the full establishment of the refugee board; this entity became operational in 2012.

On 17 December, 2013, the Gambian parliament unanimously passed a bill on sexual violence offences. The bill, which seeks to punish all forms of sexual violence, further enhanced the favorable protection environment for the persons of concern to UNHCR in Gambia. This bill will significantly help in the fight against harmful traditional practices such as female genital mutilation (FGM).

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Local Integration

Even though the Government of Gambia facilitates the local integration of refugees, the residency requirement of the law on naturalization remains a problem for those refugees who wish to take the Gambian nationality. The *naturalization law* does not consider the residency of a refugee in Gambia as a normal residency. Therefore, the 15 years or 7 years (in the event of marriage) residency requirement does not take into consideration the number of years the refugee might have stayed in Gambia. Similarly, access to land, especially for agricultural

purposes, is another impediment to the local integration of refugees. The land tenure in the Gambia is mostly communal and the land owners mostly let their lands to the refugees on seasonal basis, to enable them to farm their crops and then return the land to owners.

Recommendations:

- Amend the *naturalization law* so that the number of years refugees spend in Gambia is taken into account in the residency requirement; and
- Facilitate land access (for both dwelling and agriculture) for refugees who opt to locally integrate in Gambia.

Issue 2: Documentation

Gambia Commission for Refugees is responsible for refugees identity documents (ID) in Gambia. The 2012/2013 Joint Assessment Mission (JAM*) reported near universal coverage (over 96%) in terms of ID card issuance to adult refugees or refugees of 18 years and above. The Government of Gambia is agreeable to UNHCR proposal to introduce biometric refugee ID card and CTD (Convention Travel Document). In Gambia the minimum age for issuance of ID card (including the national ID card) is 18 years. This leaves many refugee minors without any identity document, as many refugee parents do not ensure follow up on the birth registration of their children, despite the continuous sensitization by UNHCR. Also, refugee children who arrived as minors (not born in Gambia) remain without any identity document until adulthood, if they arrived with none.

Recommendations:

- Accelerate the process of introducing biometric refugee ID cards and machine readable Convention Travel Documents for refugees and stateless persons; and
- Ensure issuance of identity documents to refugees below the age of 18, especially those not born in Gambia and who arrived with their parents or are unaccompanied.

Issue 3: Employment conditions

The law does not discriminate against the employment of refugees; however, the expatriate tax imposed on the employment of non-Gambian nationals poses problems for employment of refugees, as it does not make exception for them. The Government did issue residence and work permit to the local integrating refugees but the employers, especially the private sector, are mindful of the expatriate tax that they will have to pay for employing non Gambians, especially when the skill is available locally. Therefore, the advocacy should be for the Government to amend the tax laws to exempt the employers of refugees from the expatriate tax and for the information of the amendment and the exemption to be adequately circulated. This is an advocacy Government is yet to accede to.

Recommendation:

- Refrain from levying the expatriate tax on refugees' employers.

Issue 4: Refugee status determination capacity

Currently, the membership of the refugee Commission and the staff of its Secretariat are mostly drawn from the regular civil servants, who are subject to the regular civil service movements like postings, promotion, re-deployment, external trainings and even assignment

on foreign missions. This frequent movement seriously constrains the efforts at training and conserving the necessary expertise and experience the young commission badly needs.

The UNHCR-proposed internal regulations are to give clarity and better effect to the *Refugee Act*. They were delivered to the authorities in Gambia for consideration and approval, mid 2012. The Ministry of Interior appointed a committee to look at the regulations and the committee later forwarded the regulations to the board of the Refugee Commission for finalization. The board is yet to finalize these regulations.

Recommendations:

- Provide a greater autonomy to the Commission, whereby it will be able to recruit directly for some of its key positions;
- Ensure that civil servants assigned to the Commission and its Secretariat are posted on long term basis and that their eventual withdrawal is planned in such a way that the Commission will have in store some good institutional memory and expertise at all time; and
- Ensure that the authorities help to facilitate the finalization of the proposed document, submitted in August 2012; so that it can serve the purpose it is intended for.

Issue 5: Prevention of statelessness

The Gambian parliament unanimously approved the accession of Gambia to the *1954 Convention relating to the Status of Stateless persons* (1954 Convention) and the *1961 Convention on the Reduction of Statelessness* in December 2013. However, the accession instruments of the two conventions have not yet been deposited.

The Constitution of the Republic of Gambia (1997) and the Gambia Nationality and Citizenship Act (Cap 82, 1965) contain some gaps that may lead to statelessness. The main gaps are lack of provisions for grant of nationality for children born in Gambia who would otherwise be stateless and for grant of nationality for foundlings. Addressing these gaps would ensure compliance with *the Convention on Rights of the Child* as well as with *the 1961 Convention*.

Further, despite the continuous sensitization by UNHCR and its implementing partners, many children born to refugees in Gambia remain unregistered and undocumented. Some refugee parents either neglect or mistakenly believe that having the births of their children registered and obtaining birth certificates for them would automatically confer the Gambian nationality to the children and thereby undermine their acquisition of the nationality of their country of origin. Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such, it serves as a key form of proof of the link between the child and the country of nationality of the parents and/or the country of birth and therefore facilitates acquisition of proof of nationality for the child. In addition to the risk of statelessness, failure to document a person's legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care.

Recommendations:

- Accelerate the deposit of the instruments of accession to the *1954 Convention* and the *1961 Convention* to ensure that the accession process is brought to a successful completion.

- Review and amend the Gambian nationality legislation in order to bring it in line with the international standards on the rights of the child and prevention and reduction of statelessness; and
- Continue sensitizing and encouraging the population in general and refugees in particular, on the need to approach relevant authorities for birth registration in Gambia, regardless of the nationality of the parents.

Issue 6: Sexual and Gender Based Violence

Many of the traditional attitudes and practices remain unfavorable to women and girls. Female genital mutilation (FGM) and related harmful practices like under age/child marriage continued to be practiced widely in the country despite the sustained sensitization efforts of the Government and its UN and NGO partners to eradicate them. In December last year, the National Assembly (Parliament) passed a bill on sexual and gender based offences against women. This legislation seeks to enhance the efforts at putting an end to the negative cultural practices and stereotypes that discriminate against women.

Recommendations:

- Ensure an adequate implementation of the recent bill on sexual and gender based offences against women; and
- Pursue efforts aiming at eradicating SGBV in Gambia.

Issue 7: Trafficking in persons

Human trafficking in the Gambia takes the form of mainly smuggling of the migrant workers to Europe, using the high sea. The sustained efforts on the part of the Government have drastically reduced these smuggling activities in the country. However, a huge number of Gambian youths, mostly young men and male children, continue to be smuggled into Europe by traffickers operating from countries like Libya and Morocco. Gambian youths travel to these countries to use the service of these traffickers.

Recommendation:

- Take all appropriate measures in order to curb the phenomenon of trafficking.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
March 2014**

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies

- Universal Periodic Review:

GAMBIA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Gambia.

Committee on the Elimination of Discrimination against Women

A/60/38(SUPP) paras. 171-220, 33rd Session

22 July 2005

Positive aspects

183. The Committee commends the State party for having incorporated in its Constitution the principle of non-discrimination against women, as well as provisions to accord women equal rights with men in respect of nationality.

Principal areas of concern and recommendations

191. The Committee expresses concern about the persistence of strong patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in society, which are discriminatory against women. The Committee is concerned that the persistence of such discriminatory cultural practices and traditional attitudes perpetuates women's subordination in the family and society and produces serious obstacles to women's enjoyment of their human rights. The Committee regrets that no systematic action has been taken by the State party to modify or eliminate negative harmful cultural practices and stereotypes that discriminate against women.

192. **The Committee urges the State party to view culture as a dynamic aspect of the country's social fabric and life, and subject, therefore, to change. It urges the State party to introduce measures without delay to modify or eliminate negative harmful cultural practices and stereotypes that discriminate against women, in conformity with articles 2 (f) and 5 (a) of the Convention. It urges the State party to undertake such efforts in collaboration with civil society organizations, women's groups and community leaders, as well as teachers and the media. It invites the State party to design and implement comprehensive education and awareness-raising programmes targeting women and men at all levels of society, with a view to creating an enabling environment for the transformation of discriminatory stereotypes and allowing women to exercise their rights under the Convention.**

193. The Committee expresses concern about the lack of legislation, policies and programmes to address violence against women, including domestic violence. The Committee also expresses its concern about the paucity of information and sex-disaggregated data in the report on violence against women. The Committee is further concerned about the lack of social awareness on the issue of violence against women and girls in the country.

194. **The Committee requests the State party to adopt comprehensive measures to address violence against women and girls in accordance with its general recommendation 19. The Committee urges the State party to enact legislation on**

violence against women, including domestic violence, as soon as possible and to ensure that women and girls who are victims of any form of violence have access to immediate means of redress and protection, as well as access to counselling services, and that perpetrators are prosecuted and punished. The Committee calls upon the State party to collect sex-disaggregated data on all forms of violence against women and undertake research into the extent of violence against women and girls, including domestic violence. The Committee requests the State party to provide information in its next report on the laws and policies put in place to address violence against women and the impact of such measures. The Committee recommends the implementation of training for law enforcement officials, the judiciary, health providers, social workers and the general public so as to ensure that they are sensitized to all forms of violence against women and can adequately respond to it. It also recommends the implementation of awareness-raising campaigns, through the media and public education programmes, and working towards a zero-tolerance policy on all forms of violence against women.

195. The Committee expresses concern at the high incidence of female genital mutilation in the country and at the lack of legislation, policies and programmes aimed at eradicating that practice.

196. **The Committee urges the State party to adopt and adequately implement legislation prohibiting female genital mutilation, and to ensure that offenders are adequately prosecuted and punished. It also recommends that the State party develop a plan of action, including public awareness-raising campaigns, targeted at both women and men, with the support of civil society, to eliminate the practice of female genital mutilation.**

197. The Committee expresses concern at the limited information provided in the report on the sexual exploitation and trafficking of women and girls in the Gambia, and on measures taken to combat these phenomena effectively. The Committee is particularly concerned about the phenomenon of sex tourism in the country.

198. **The Committee requests the State party to introduce legislation on the prohibition of trafficking, to implement effectively legislation on the exploitation of the prostitution of women and to prosecute offenders. It recommends that the State party put in place programmes for promoting women's economic independence so as to eliminate their vulnerability to exploitation, and measures for the rehabilitation and social reintegration of women and girls who are victims of exploitation and trafficking. The Committee calls upon the State party to ensure the implementation of the 2003 Tourism Offence Act and to enhance cooperation with tourists' countries of origin aimed at preventing and combating sex tourism. The Committee requests the State party to provide, in its next report, comprehensive information and data on sexual exploitation and trafficking of women and girls, and on measures taken to prevent and combat such activities, including sex tourism.**

Human Rights Committee

CCPR/CO/75/GMB, 81st Session

12 August 2004

10. The Committee expresses its concern over the fact that female genital mutilation continues to be practised widely in the State party's territory, notwithstanding the adoption of the First National Action Plan for the Eradication of Female Genital Mutilation (FGM) in

March 1997. The Committee reaffirms that the practice of FGM is contrary to article 7 of the Covenant.

The State party should take prompt legal and educational measures to combat the practice of female genital mutilation. Rather than censoring radio and television broadcasts designed to combat the practice of FGM, such broadcasts should be reinstated and encouraged.

16. The Committee expresses its concern about systemic discrimination against women: (a) Section 33, subsections 5 (c) and (d) of the Constitution derogate from the general principle of non-discrimination; the girl child is discriminated against in respect of education; women are discriminated against in matters pertaining to divorce, which is only permitted under rare circumstances; there is further discrimination against women in inheritance matters; (b) The participation of women in political life, and in public and private sector employment, is particularly inadequate, on the basis of the information before the Committee; (c) There appear to be no appropriate laws to protect women against domestic violence.

The State party should take appropriate measures to ensure that domestic laws (including decrees) and customary law, as well as certain aspects of the Shariah, are interpreted and applied in ways compatible with the provisions of the Covenant. It should ensure the equality of women with men, both in education and employment.

24. In the light of information on the plurality of ethnic groups, religions and languages in The Gambia, the Committee is concerned over the State party's contention, expressed during the consideration of its initial report, that there were no minorities in The Gambia.

The State party is invited to report on measures taken to implement article 27 of the Covenant.

Committee on the rights of the child

CRC/C/15/Add.165, 28th Session

6 November 2001

Right to an adequate standard of living

52. The Committee is concerned about widespread poverty and the increasingly high numbers of children who do not enjoy the right to an adequate standard of living, including children belonging to poor families, street children, child beggars, refugee and asylum-seeking children, and children living in remote rural communities.

Refugee, asylum-seeking and unaccompanied children

56. The Committee is concerned about the inadequate standards, procedures and policies to guarantee and protect the rights of refugee, asylum-seeking and unaccompanied children, including their access to adequate education, health and other social services.

57. The Committee recommends that the State party take effective legal and other measures to ensure adequate protection of refugee, asylum-seeking and unaccompanied children and implement further policies and programmes to guarantee their access to health, education and social services. The Committee further recommends that the State party introduce training programmes for immigration officers and others involved in the custody, interrogation and treatment of refugee and asylum-seeking children. The Committee encourages the State party to reinforce its cooperation with UNHCR.

ANNEX 2

Universal Periodic Review

A/HRC/14/6, 14th Session

24 March 2010

97. The recommendations formulated during the interactive dialogue have been examined by Gambia and the recommendations listed below enjoy the support of Gambia:

2. Continue the process of strengthening and adapting the national normative framework, particularly by finalizing the texts being prepared with regards to women, asylum and elections (Algeria);

4. Enact legislation on violence against women, including domestic violence (Belarus);

15. Take additional measures to ensure non-discrimination, in particular against women (Cote d'Ivoire);

16. Continue work in areas of discrimination against women and children (Kyrgyzstan);

18. Enhance efforts, both in law and practice, to protect the rights of women, promote gender equality and eliminate discrimination and violence against women (Thailand);

19. Continue efforts to put an end to all negative cultural practices and stereotypes that discriminate against women (Azerbaijan);

29. Continue to promote efforts to fight FGM (Angola);

30. Step up measures to comprehensively address the problem of violence against women, including FGM, by expediting the enactment of the Women's Bill, and by implementing social, educational and legal safeguards and increasing public awareness campaigns to sensitize the community on the issue (Malaysia);

31. Intensify measures to effectively combat child sexual abuse and exploitation (Azerbaijan);

32. Continue to intensify law enforcement efforts against traffickers, incorporate anti-trafficking training into standard police curriculum, increase efforts to rescue trafficking victims, and provide appropriate care to those individuals (United States);

45. Continue to promote the rights of women and children (Djibouti);

46. Give more attention to improving the status of women and children (Algeria);

98. Gambia considers that recommendations listed below are either already implemented or in the process of implementation:

5. To toughen liability for sexual abuse, exploitation and child trafficking (Belarus);

99. The following recommendations will be examined by Gambia that will provide responses in due time. The response of Gambia to these recommendations will be included in the outcome report to be adopted by the Human Rights Council at its 14th session:

10. Fulfil obligation under the Convention on the Elimination of All Forms of Discrimination against Women, by adopting and implementing legislation prohibiting female genital mutilation (Australia);

11. Enact legislation on violence, including domestic violence against women; to take appropriate measures to ensure that domestic laws and customary law, and certain aspects of the Sharia, are applied in ways compatible with the provisions of ICCPR (Norway);

12. In line with the recommendations of the Human Rights Committee with regards to discrimination against women, take measures to ensure that national laws, customary laws and some aspects of Sharia law be interpreted and implemented in accordance with the principle of what most favors the individual (Mexico);

13. Adopt measures and programmes aimed at eliminating discrimination against women (Chile);

14. 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);

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

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

30. Follow-up on the recommendations by CEDAW and HRC with regard to discrimination against women; introduce measures to eliminate cultural practices that discriminate against women (Norway);

31. Adopt measures to protect the rights of certain vulnerable groups of children, in particular, girls, children born out of wedlock, and children with disabilities (Chile);

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

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

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

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

44. 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);

100. The following recommendations did not enjoy the support of Gambia:

1. Guarantee equal treatment and non discrimination of women also with regard to areas concerning personal status, particularly, adoption, marriage, divorce and inheritance according to international human rights standards (Netherlands);

4. Modify the current legislation to eliminate discrimination based on sexual orientation (Chile);

5. Ensure that no forced evictions or restrictions on access to adequate housing are imposed on the basis of sexual orientation (Canada);

6. Ensure non-discrimination in access to adequate housing, and prevent forced evictions, as well as the threat of forced evictions, on the basis of sexual orientation or gender identity (United States);

7. Take action to combat violence based on sexual orientation and gender identity and repeal all provisions criminalizing sexual activity between consenting adults; ensure non-discrimination in access to adequate housing and remedies for forced evictions on the basis of sexual orientation (United Kingdom);

8. Repeal all provisions criminalizing sexual activity between consenting adults (Canada);

9. Decriminalize homosexuality, and take action to combat violence based on sexual orientation and gender identity (Norway);

10. Repeal all provisions of law criminalising sexual activity between consenting adults (United States);

11. Withdraw legislation that criminalizes homosexuality between consenting adults and to prosecute violence directed against persons because of their sexual orientation (Italy);

12. Ensure that all LGBT persons fully and equally enjoy their human rights, in conformity with Gambia's international obligations, and as an immediate step, to repeal the provisions in the Criminal Code that criminalize sexual activity among persons of the same sex (Sweden);

13. Decriminalise same-sex activities in accordance with international human rights standards (Netherlands);

14. With regard to the criminalisation of relations between adults of the same sex, consider harmonising domestic standards with international ones so as to ensure the full exercise of all human rights (Argentina);