



ADF INTERNATIONAL

*ECOSOC Special Consultative Status (2010)*

UNIVERSAL PERIODIC REVIEW - THIRD CYCLE

**Submission to the 34<sup>nd</sup> session of the Human Rights  
Council's Universal Periodic Review Working Group**

**March 2019, Geneva, Switzerland**

**GAMBIA**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States, and ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report explains why the Gambia should continue to take steps to protect and promote religious freedom and why it should reaffirm that every human being has an inherent right to life and resist calls to liberalize access to abortion because no right to abortion exists under international law. It also deals with the issue of high levels of maternal mortality and morbidity in the Gambia.

### a) Freedom of Religion

3. The Gambian Constitution creates a secular republic and ensures protections for religious freedom. First, the Constitution prohibits the National Assembly from passing any bill 'to establish any religion as a state religion.'<sup>1</sup> The document also provides that 'every person in the Gambia, whatever his or her religion shall be entitled to the fundamental human rights and freedoms of the individual contained in this chapter, but subject to respect for the rights and freedoms of others and for the public interest.'<sup>2</sup> It further protects, for every person, the 'freedom to practice any religion and to manifest such practice,'<sup>3</sup> and prohibits discrimination on the basis of religion.<sup>4</sup>
4. The Gambia has significantly increased application of and respect for these constitutional provisions in recent years, both in law and in practice. Under the new leadership of President Adama Barrow, the Gambia has taken important steps to protect and promote religious freedom.<sup>5</sup> In January 2017, President Barrow overturned former president Jammeh's decree establishing that the Gambia was an Islamic state, instead declaring the Gambia a secular state in accordance with its Constitution.<sup>6</sup> President Barrow has taken action to lead progress in religious freedom through the appointment of a Special Advisor on Religious and Traditional Affairs and has included members of different faith backgrounds in his cabinet.<sup>7</sup> Since taking office, President Barrow has also made numerous statements affirming the government's commitment to religious freedom. In August 2017, on the occasion of a meeting with Archbishop Benjamin Ndiaye of the Catholic Diocese of Senegal, he stressed the importance of

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<sup>1</sup> Constitution of The Republic of The Gambia, Ch. VII, Part 3(1)(b).

<sup>2</sup> *Ibid.*, Chapter III, Part 17(2).

<sup>3</sup> *Ibid.*, Chapter III, Part 25(1)(c).

<sup>4</sup> *Ibid.*, Chapter III, Part 33.

<sup>5</sup> Satang Nabaneh, *Constitutionnet*, 'New Gambia and the Remaking of the Constitution', 16 March 2017, available at: <http://constitutionnet.org/news/new-gambia-and-remaking-constitution>.

<sup>6</sup> *Worldwatch Monitor*, 'Gambia No Longer an Islamic Republic', 30 January 2017, available at: <https://www.worldwatchmonitor.org/coe/gambia-no-longer-an-islamic-republic/>.

<sup>7</sup> Pa Modou Cham, *The Point*, 'Presidential Adviser on Religion Urges Religious Leaders to Preach Peace', 15 March 2018, available at: <http://thepoint.gm/africa/gambia/article/presidential-adviser-on-religion-urges-religious-leaders-to-preach-peace>; *Jollofnews*, 'Gambia: President Barrow Renews Calls For Religious Tolerance', 17 August 2017, available at: <https://jollofnews.com/2017/08/17/gambia-president-barrow-renews-calls-for-religious-tolerance/>.

religious tolerance and peace.<sup>8</sup> More recently in July 2018, President Barrow explained that ‘All religions are equal in this country,’ and ‘We do not discriminate against any one religion because they are all part of my family: the Gambian family.’<sup>9</sup>

5. The Gambia is a party to the International Covenant on Civil and Political Rights (ICCPR).<sup>10</sup> Article 18 of the ICCPR states, ‘No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice,’ and that ‘freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.’<sup>11</sup> This right can only be limited for the sake of national security and public health and morals, and mere preference for or hostility toward on the part of the government towards religion is not sufficient justification for limiting this fundamental human right guaranteed under international law. The Gambian government should redouble its commitment to guarantee that this right is fully enjoyed by everyone without fear of violence, harassment or discrimination.

## b) Right to Life

8. Abortion is illegal in the Gambia. Section 140 of the 1934 Criminal Code makes the procurement of an abortion a felony and imposes a sentence of imprisonment of 14 years.<sup>12</sup> Sections 141 and 142 also impose prison sentences for women who procure their own abortion and persons who supply the drugs or instruments for an abortion.<sup>13</sup> Additionally, Section 198 imposes a life sentence for the crime of child destruction, or the killing of a child capable of being born alive.<sup>14</sup> Section 199 of the same Code clarifies that pregnancy for 28 weeks is *prima facie* evidence that the child is capable of being born alive.<sup>15</sup>
9. Section 198 provides an exception when the performance of an abortion was in good faith for the sole purpose of preserving the life of the mother.<sup>16</sup> This exception is echoed in Section 30 of the Women’s Act of 2010, which provides every women ‘the right to a medical abortion, where the continued pregnancy endangers the life of the

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<sup>8</sup> *Foroyaa*, President Barrow Welcomes Archbishop Benjamin Ndiaye of Dakar Urges Continued Peaceful Coexistence Between Christians and Muslims’, 17 August 2017, available at: <http://foroyaa.gm/president-barrow-welcomes-archbishop-benjamin-ndiaye-of-dakar-urges-continued-peaceful-coexistence-between-christians-and-muslims/>.

<sup>9</sup> Amadou Jallow, *Jollofnews*, ‘President Barrow: All Religions are Equal in The Gambia, 24 July 2018, available at: <https://jollofnews.com/2018/07/24/president-barrow-all-religions-are-equal-in-the-gambia/>.

<sup>10</sup> *United Nations Human Rights*, ‘Status of Ratification Interactive Dashboard,’ available at: <http://indicators.ohchr.org/>.

<sup>11</sup> International Covenant on Civil and Political Rights, Article 18(2), (3), 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>12</sup> Criminal Code of 1934, § 140, Laws of Gambia Chapter 37, available at: [http://www.ilo.org/dyn/natlex/docs/SERIAL/75289/78254/F1250512308/GMB75289%20pp%201221\\_1251.pdf](http://www.ilo.org/dyn/natlex/docs/SERIAL/75289/78254/F1250512308/GMB75289%20pp%201221_1251.pdf).

<sup>13</sup> *Ibid.* at §§ 141–42.

<sup>14</sup> *Ibid.* at § 198.

<sup>15</sup> *Ibid.* at § 199.

<sup>16</sup> *Ibid.* at § 198.

mother or the life of the foetus.<sup>17</sup> The state of health must, however, be confirmed by 'a registered medical practitioner who possesses the necessary expertise in the field.'<sup>18</sup>

10. The Gambia has received pressure from groups seeking to promote the liberalization of abortion. Much of this pressure is a result of the Gambia's ratification of the regional Maputo Protocol, which calls for the expanded legalisation of abortion 'in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother.'<sup>19</sup> This pressure, however, is illegitimate, as the provisions of the Maputo Protocol interfere with the right to life, which is firmly grounded in international law.
11. A so-called international 'right to abortion' is incompatible with various provisions of international human rights treaties, in particular provisions on the right to life. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life.'<sup>20</sup> The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.
12. Although the ICCPR allows the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states that the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.'<sup>21</sup> This clause must be understood as recognizing the unborn child's distinct identity from the mother and protecting the unborn child's right to life.
13. The *travaux préparatoires* of the ICCPR explicitly state, 'the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.'<sup>22</sup> Similarly, other early UN texts note that the intention of the paragraph 'was inspired by humanitarian considerations and by consideration for the interests of the unborn child.'<sup>23</sup>
14. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.'
15. Article 1 of the CRC defines a child as 'every human being below the age of eighteen years.' This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of 'child' attaches. Moreover, Article 6 of the CRC holds that 'States Parties recognize that every child has the inherent right to life. States Parties

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<sup>17</sup> Women's Act of 2010 (Act No. 12/2010) § 30(1), available at:

<http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90619/115464/F-1335047347/GMB90619.pdf>.

<sup>18</sup> *Ibid.* at § 30(2).

<sup>19</sup> African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Article 15(2)(c), 11 July 2003, available at: <http://www.achpr.org/instruments/women-protocol/>.

<sup>20</sup> International Covenant on Civil and Political Rights, Article 6 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>21</sup> *Ibid.* at Article 6(5).

<sup>22</sup> A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

<sup>23</sup> A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

shall ensure to the maximum extent possible the survival and development of the child.’ Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

### c) Maternal Health

16. Maternal mortality has improved in the past two decades but still poses a serious problem in the Gambia. From 1990 to 2015, the maternal mortality ratio decreased 31%, from 1030 deaths per 100,000 lives births to 706.<sup>24</sup> Every maternal death is a tragedy. It devastates the woman’s family, in particular the woman’s children, and affects the entire community socially and economically. The high number of maternal deaths in The Gambia must be seen as an urgent human rights priority.
17. This high maternal mortality ratio is due to the poor quality of healthcare, lack of trained medical professionals, inadequate healthcare facilities, and poor infrastructure.<sup>25</sup> For example, only 57% of deliveries in the Gambia are conducted by a skilled healthcare professional, most often a nurse or midwife, and only 7% are attended by a doctor.<sup>26</sup> A 2016 study on maternal mortality in The Gambia found that ‘only one in five women with obstetric emergencies reports to a medical facility for assistance’ and that ‘there is a gross unmet need for emergency obstetric care, especially in public facilities.’<sup>27</sup>
18. As required by the Maputo Protocol Article 14(2), the Gambia must take steps to ‘provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas,’ and ‘establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding.’<sup>28</sup> Additionally, in line with paragraph 8.25 of the Programme of Action for the International Conference on Population and Development, the Gambia must focus on introducing measures to avoid recourse to abortion by way of investing in social and economic development and by providing women with support throughout and after pregnancy.

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<sup>24</sup> WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division, ‘Trends in Maternal Mortality: 1990 to 2015’, 2015, available at:

<https://data.worldbank.org/indicator/SH.STA.MMRT?locations=GM>.

<sup>25</sup> Camilla Smaadal, *ScienceNordic*, ‘Dramatic Drop in Maternal Mortality in Gambia’, 14 October 2014, available at: <http://sciencenordic.com/dramatic-drop-maternal-mortality-gambia>.

<sup>26</sup> The Gambia Bureau of Statistics (GBOS) and ICF International, ‘The Gambia Demographic and Health Survey 2013,’ pg. 99, 2013, available at: <https://dhsprogram.com/pubs/pdf/FR289/FR289.pdf>.

<sup>27</sup> M. Lowe, D.R. Chen, & S.L. Huang, ‘Social and Cultural Factors Affecting Maternal Health in Rural Gambia: An Exploratory Qualitative Study’, 2016, available at: <https://www.ncbi.nlm.nih.gov/pubmed/27661617>.

<sup>28</sup> African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Article 14(2), 11 July 2003, available at: <http://www.achpr.org/instruments/women-protocol/>.

## Recommendations

19. In light of the aforementioned, ADF International suggests the following recommendations be made to the Gambia:

- (a) Continue its efforts to respect, protect and promote the full enjoyment of the right to freedom of religion or belief in the country;
- (b) Foster an environment of religious harmony and cooperation, and do not allow discrimination against individuals or communities on the basis of their denominational affiliation;
- (c) Affirm that there is no international human right to abortion and that the right to life applies from conception until natural death, and as such that the unborn child has the right to protection of his or her life at all points;
- (d) Resist calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn;
- (e) Recognize that the liberalization of abortion laws is not required under international law, and that international law instead requires the protection of the right to life at all stages;
- (f) Recognize that the legalization of abortion in a country with high levels of maternal mortality and morbidity and problems with access to proper health care does not make pregnancy and childbirth any safer; and
- (g) Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health, with a focus on safely getting mothers and babies through pregnancy and childbirth, and with a special focus on improving health-care access for women from poor and/or rural backgrounds.



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