31st Extra-Ordinary Session held virtually from 19 – 25 February 2021


I. INTRODUCTION


3. The African Commission on Human and Peoples’ Rights (the Commission) considered the Report at its 64th Ordinary Session, held from 24 April – 14 May 2019 in Sharm el Sheikh, Arab Republic of Egypt.

4. The Report was presented to the Commission by the Delegation from The Gambia (the Delegation) which comprised the following officials:

   i. Mr. Abubacarr Marie Tambadou – Attorney General and Minister of Justice, (Head of Delegation);
   ii. Mr. Mr Cherno Marenah – Solicitor General and Legal Secretary, Ministry of Justice;
iii. Mr. Bulli Dibba- Permanent Secretary, Ministry of Women, Children and Social Welfare;

iv. Mr. Momodou Lamin Jaiteh - Permanent Secretary, Ministry of Health;

v. Mr. Jerreh Sanyang- Deputy Permanent Secretary, Ministry of Basic & Secondary Education; and

vi. Ms. Bafou Jeng- State Counsel, Ministry of Justice

5. The Report highlights developments which have taken place in the country in the area of promotion and protection of human and peoples' rights, and the legislative, administrative and judicial measures put in place to comply with the country's obligations under the African Charter for the period 1994 to 2018 as well as the Maputo Protocol for the period 2005 to 2014.

6. The Commission appreciates the presentation of the Report by the high-level delegation from The Gambia, and the constructive dialogue that followed the presentation.

7. The present Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern identified in the Report and from information given during the review of the Report.

8. Finally, the Commission makes recommendations to the Republic of The Gambia on measures needed to strengthen the enjoyment of human rights as guaranteed by the African Charter as well as other relevant human rights instruments.

II. POSITIVE ASPECTS

Reporting Obligations

9. The Commission:

i. Welcomes the efforts made by The Gambia in preparing and presenting its report and commends the country for its objectivity in the Report and during the constructive dialogue as well as its commitment to implementing the provisions of Article 62 of the African Charter.

ii. Welcomes the update provided on the level of implementation of the recommendations of the Commission issued pursuant to a Promotion Mission held in 1999.
iii. Welcomes the submission of Initial and Combined Report of The Gambia providing information on the legislative, policy and institutional measures which have been taken to implement the Maputo Protocol.

iv. Also welcomes the representation of relevant stakeholders during the process of preparation of the Reports, including Government Ministries and Agencies, Civil Society Organisations and International Organisations based in The Gambia.

10. The Commission welcomes the ratification by The Gambia of the following regional and international instruments:

i. The African Charter on Democracy. Election and Governance (2018);

ii. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2011);

iii. Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Maputo Protocol) (2005);

iv. The UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (2018);

v. The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (2018);

vi. International Convention for the Protection of All Persons from Enforced Disappearance (2018);

vii. United Nations Treaty on the Prohibition of Nuclear Weapons (2018);

viii. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2018);


xi. UN Convention on the Rights of Persons with Disabilities (2013);

xii. Optional Protocol to the Convention on the Rights of Persons with Disabilities (2013);

xiii. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children(2003);


xv. ILO Convention on the Right to Organise and Collective Bargaining Convention 1949(No.98) (1995); and


Legislative Measures Promoting Human Rights

11. The Commission further commends The Gambia for the enactment of the following laws:
i. Constitutional Review Commission Act 2017;
ii. Truth Reconciliation and Reparations Commission Act 2017;
iv. The Petroleum Exploration and Production Act 2016;
v. Environmental Impact Assessment Regulation 2014;
vi. The Sexual Offences Act 2013;
vii. Domestic Violence Act 2013;
viii. The Women’s Act 2010;
ix. Information and Communications Act 2009;
x. Tourism Offences Act 2008;
xi. National Agency for Legal Aid Act 2008;
xii. The Refugees Act 2008;
xiii. Labour Act of 2007;
xiv. Trafficking in Persons Act 2007;
xv. The Children’s Act 2005;
xvi. The Food Act 2005;
xvii. Alternative Dispute Resolution Secretariat Act 2005;
xviii. The Mines and Quarries Act 2005;
xix. The Elections Act 2001;
xx. The Public Utilities Regulatory Act 2001;
xxi. The Ombudsman Act 1997;
xxii. The National Environment Management Act 1994; and

Policy and Institutional Measures Promoting Human Rights

12. The Commission commends the adoption of the following policies to guarantee human rights:

i. The National Development Plan (2018-2021);
ii. The National Social Protection Policy (2015-2025);
iii. The National Migration Policy (2017);
iv. The National Education Policy (2016-2030);
v. National Plan of Action Against Trafficking in Persons (2016 – 2020);
vi. The HIV and AIDS Policy (2014-2020);
vii. The Policy for Tertiary and Higher Education (2014-2023);
viii. The Science, Technology and Innovation Policy (2013-2022);
ix. National Plan of Action to Accelerate the Abandonment of FGM/C (2012 – 2017);
x. The National Policy for the Advancement of Gambian Women (2010-2020);
xi. The National Gender and Women’s Empowerment Policy (2010 – 2020);
xxii. The National Nutrition Policy (2010 – 2020);
xv. The National Health Policy and Master Plan (2007 -2020);
xvi. The National Information and Communications Infrastructure Policy (2005-2015); and

13. The Commission commends the following institutional measures in the promotion and protection of human rights:

ii. The National Social Protection Steering Committee (2012);
iii. The National Women’s Council (2010);
iv. The Gambia Commission for Refugees (2008);
v. The Alternative Dispute Resolution Secretariat (2008);
vi. The Public Utilities Regulatory Authority (2001); and

Civil and Political Rights

14. The Commission commends:

i. The ratification of key international human rights treaties during the transition period; and
ii. The steps taken to enhance compliance of its justice delivery system with international standards relating to fair trial notably through the enactment of a law to provide Legal Aid in both criminal and civil cases for poor and vulnerable members of society.

Death Penalty, Extrajudicial Killings and Enforced Disappearances

15. The Commission commends:

i. The concrete steps taken towards the abolition of the death penalty in the Gambia including the imposition of a moratorium on the application of the death penalty by the courts;
ii. The establishment of the Truth Reconciliation and Reparations Commission (TRRC) and other internal mechanisms to address past human rights violations including those that resulted in the death, missing and disappearance of persons; and
iii. The setting up of the Faraba Banta Commission of Enquiry into the Events of 18th June 2018 at Faraba Bantang.

Prohibition of Torture and Cruel, Inhuman and Degrading Treatments

16. The Commission commends:
i. The collaboration of Government with civil society organisations to develop a human rights training manual and a Gender Based Violence training manual for the Police;

ii. The collaboration of Government with civil society organisations to train law enforcement personnel of the Gambia Police Force, National Intelligence Agency and the Prisons Service on human rights; and

iii. The introduction of regular prison and detention centre visits by International and regional human rights organisations, and civil society organisations; all of which are aimed at preventing and combatting acts of torture, cruel, inhumane and degrading treatment, as well as addressing past human rights violations committed by law enforcement officers and security agents.

Due Process and Conditions of Detention

17. The Commission commends the:

i. Efforts made by the Government in rehabilitating the Mile II, Jeshwang and Jangjangbureh prisons;

ii. Measures put in place to curb overcrowding in prisons and detention centres including the construction of new prison facilities, the use of special hearings and fast track trials for prisoners awaiting trial and/or those with less serious offences as well as Presidential pardons to release 308 prisoners in 2017;

iii. Provision of certified skills training in Electrical Installation, Sewing, Carpentry and Information Technology in collaboration with a Local Training Institute at the State Central Prison;

iv. Access of prisoners to lawyers, consular and family visits as well as receipt of private correspondences in line with the established prison rules and regulations

v. Establishment of the National Legal Aid Agency to provide Legal Aid services to all poor and vulnerable persons in criminal matters; and

vi. Establishment of a functional Alternative Dispute Resolution system in the Greater Banjul Area, Upper River and North Bank Regions of the country to deal with disputes and reduce the backlog of cases in the conventional courts, resulting in the successful resolution of 946 cases out of 1129 registered cases since its inception.

Right to Freedom of Expression and Access to Information

18. The Commission commends the:

i. Creation of an environment for freedom of expression and access to the print, electronic and social media networks, as well as the operation of two
(2) private televisions, three (3) newspaper outfits and a number of private radio stations in the country;

ii. Commitment of the Government to honour ECOWAS Court judgments relating to compensation of 3 journalists for violation of their human rights; and

iii. Establishment of the National Media Law Review Committee to review all media laws with a view to bringing them in line with international standards.

Right to Freedom of Assembly and Association

19. The Commission takes note of the positive strides made in granting applications for peaceful assembly and protests under the Public Order Act in contrast to the past regime when such applications were on most occasions refused.

Economic, Social and Cultural Rights

20. The Commission welcomes the programmes implemented which are focused on health, education, employment, social security and culture for the population.

Right to Health

21. The Commission notes the following actions taken:

i. The National Programme for eliminating Infant and Maternal mortality, Malaria, Tuberculosis and Mental Health;

ii. The National Programme for combatting HIV/AIDS to strengthen the capacity and management of HIV and AIDS response at national level;

iii. The national awareness and sensitisation programmes for the prevention and control of Malaria, HIV, and Tuberculosis in collaboration with development partners;

iv. The provision of free maternal and child health care services in all public hospitals and health centres country wide to improve the maternal and infant mortality rate;

v. The programmes and policies initiated by the Government in the area of harmful traditional practices to eliminate gender based harmful practices such as FGM and Early Child Marriage;

vi. The training of health personnel and setting up of various treatment and diagnosis centres for HIV and Tuberculosis countrywide to improve the health delivery system;

vii. Provision of free treatment and drugs for HIV, Tuberculosis and Malaria countrywide;
viii. Ensuring that 85% and 97% of the population are within 3 km and 5 km of a basic health facility and primary health care post respectively; and
ix. Ensuring 96% of antenatal care coverage countrywide.

Right to Education

22. The Commission notes the following actions taken:

x. The meeting of the MDG Goal 4 with respect to free primary school enrolment and gender parity;
xi. Building schools within 3km to 5km from the community countrywide to bring schools closer to homes and providing safety and security for children especially the girls;

xii. The various policies and programmes adopted to promote access to basic education by children particularly the girl child, including the distribution of free school materials and school feeding programmes in regions 2 and 6, leading to the increase in the General Enrolment Rate country wide; and
xiii. The improvements registered in the area of secondary and higher education including capacity building training of educators.

Right to Employment

23. The Commission notes the following actions taken:

xiv. The right of women to 6 months maternity leave with pay; and
xv. The establishment of Industrial Tribunals to deal with employment related disputes and issues.

Right to Social Security

24. The Commission notes the adoption of the National Social Protection Policy and establishment of the National Social Protection Steering Committee in 2012.

Right to Adequate Standard of Life

25. The Commission notes the following actions taken:

xvi. The establishment of the Public Utilities Regulatory Authority to monitor, regulate and approve unit costs of public utilities in consultation with the general public; and
xvii. Ensuring that 72% of the population have access to safe and clean drinking water.
Right to Culture

26. The Commission notes the following actions taken:

xviii. The legislative measures provided in the Copyright Act to protect intellectual property rights including all forms of literally, artistic or musical works and cultural expressions;
xix. The establishment of the National Council for Arts and Culture (NCAC) which is a repository of Gambian cultural heritage; and
xx. The organisation of cultural festivals to showcase and promote Gambian culture.

Refugees, Migrants and Stateless Persons

27. The Commission commends:

i. The establishment of the Gambia Refugee Commission which collaborates with other Government agencies and the United Nation High Commissioner for Refugees (UNHCR) to protect the rights and wellbeing of Refugees in the Gambia; and

ii. The Government’s Refugee local integration programme in collaboration with the UNHCR.

Women and Children’s Rights

28. The Commission commends the:

i. Domestication of the Maputo Protocol and CEDAW through the enactment of the Women’s Act, the Domestic Violence Act and the Sexual Offences Act;

ii. Establishment of institutions such as the Women’s Bureau and the National Women’s Council to advise Government on policies and issues relating to the wellbeing of women and girls;

iii. Various legal frameworks put in place to protect the rights of women and children including the mandatory 6 month paid maternity leave for all working mothers and an additional 6-month unpaid leave upon request;

iv. Various measures taken in collaboration with partners and civil society organizations to facilitate women’s empowerment, safe motherhood and reproductive health rights at the national level as well as generation and utilization of disaggregated data and gender information to inform policy development;

v. Various measures taken to coordinate the efforts of different stakeholders in combating Gender Based Violence(GBV) and Child Abuse and Exploitation and in particular, adoption of the National Plan of Action against GBV (2013-2017), adoption of training manuals on GBV and Child Abuse and Exploitation for the Gambia Police Academy
and the Gambia Armed Forces Training School, sensitisation workshops for Law enforcement Officials and other key stakeholders aimed at deepening the holistic response to GBV and child abuse and exploitation in The Gambia;

vi. Gender mainstreaming strategies in the education sector to promote girls’ education including the President’s Empowerment of Girls Education Project and the Scholarship Trust Fund, which paid the fees of all girls from Grades 7 to 12 in Regions 1 and 2 and Regions 3 to 6 respectively;

vii. The legal framework and measures put in place to protect the rights of children including the establishment of Children’s Courts in 3 out of the 6 administrative regions, with exclusive jurisdiction over civil and criminal matters involving children;

viii. Appointment of 50% of female Judges in the Superior Courts and 52% of female Magistrates in the Lower Courts;

ix. Application of the Women’s Act by the High Court in the case of Matty Faye v Dawda Jawara in 2011 giving effect to the woman’s contribution to the development of the matrimonial property;

x. The right of the woman to give her nationality to her children;

xi. Joint parental responsibility to safeguard the interest of the family and provide the necessary protection and education for the children;

xii. Criminalisation of FGM and Child Marriage; and

xiii. Inclusion of life skills training in the curriculum for children in grades 4 and 5.

Rights of Persons with Disabilities

29. The Commission commends:

   i. The adoption of strategies to protect the rights of Persons with Disabilities in collaboration with stakeholders;

   ii. The provision of support to persons with disability notably in the form of mobility and hearing aids and counselling;

   iii. The provision of psycho-social therapy to about 6000 persons with disabilities; and

   iv. The recognition and establishment of specialized schools for persons with disabilities: St. John’s School for the Deaf, Methodist Special School for children with Learning Difficulties and GOVI Resource Centre which provides education services for the visually impaired.

Rights of Older Persons

30. The Commission commends:
i. The promotion of the Reciprocal Family Care Programme for the elderly in collaboration with its partners; by providing cash transfers to support the family and care givers of the elderly; and

ii. The provision of free residential care services for destitute elderly persons;

**Extractive Industries and the Environment**

31. The Commission commends:

i. The establishment of the National Environment Agency to protect the environment from degradation and exploitation of natural resources;

ii. The enactment of the Anti-Littering Regulation to regulate the indiscriminate dumping and littering of liquid and solid waste in public and the Environmental Impact Assessment Regulation to regulate and categorise impacts of development projects, both public and private respectively; and

iii. The enactment of the Environmental Discharge Permit Regulations setting out the guidelines for the acceptable procedures for the discharge of waste.

**Human Rights Institutions**

32. The Commission welcomes the:

i. Establishment of the new National Human Rights Commission of The Gambia; and

ii. Establishment of the Office of the Ombudsman to deal with civil complaints.

**III. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS AND THE MAPUTO PROTOCOL**

33. Despite the Government’s efforts to comply with the provisions of the African Charter and the Maputo Protocol, the limited resources at its disposal especially finances, human resources and infrastructure inhibit its ability to ensure that all its citizens enjoy the rights and fundamental freedoms enshrined in these human rights instruments.

34. The existence and continuous observance of deep rooted cultural and religious practices some of which are recognised by the Constitution and other laws of The Gambia.

35. The snail pace at which legislative and policy reforms are undertaken to meet its obligations under the African Charter and the Maputo Protocol.
36. The lack of strong institutional frameworks in key government institutions and agencies which therefore inhibit the effective delivery of goods and services, and democratic accountability to the citizens.

37. The African Charter is not widely disseminated to the public to enable them to know and hold duty bearers accountable for non-implementation of the provisions therein.

IV. AREAS OF CONCERN

Whilst acknowledging the efforts made by the Government of The Gambia to promote and protect human rights, the Commission is concerned about the following:

Ratification of Regional/International Human Rights Instruments

38. The Gambia has not ratified the following human rights instruments:

   i. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons;
   iii. African Charter on Values and Principles of Civil Service and Administration;
   v. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);
   vi. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
   vii. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;
   viii. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
   ix. Optional protocol to the Convention on the Rights of Persons with Disabilities; and

Prohibition of Torture and Ill-treatment

39. The Commission is concerned that there is:

   i. No specific legislation enacted to criminalise torture;
ii. No available national data on cases of torture; and
iii. No coordinated national mechanism to prevent torture.

Due Process and Conditions of Detention

40. The Commission is concerned about:

i. The lack of sentencing guidelines; alternative forms of sentences apart from fines in the criminal justice legislations; as well as non-implementation of the Principles on the decriminalisation of petty offences, leading to imposition of jail terms in many instances;
ii. The budgetary, logistical and staffing challenges of the National Legal Aid Agency which affects its ability to effectively provide the needed Legal Aid to indigents; and
iii. The inordinate delay in concluding the Faraba Banta Case involving civilians and security officers from the Gambia Police Force.

Right to Freedom of Expression and Access to Information

41. The Commission is concerned about:

i. The lack of an Access to Information Law;
ii. The lack of a specific law or policy protecting the right to access to internet services and social media platforms;
iii. The measures put in place to prevent the re-occurrence of internet shut down in the Gambia especially in the run up to the Presidential elections in 2021;
iv. The measures taken to repeal all laws on defamation and sedition, including publication of false information;
v. The attacks on journalist and media practitioners and in particular, the outcome of the Pa Modou Bojang case;
vi. The delay in the implementation of the ECOWAS judgments regarding the safety of journalists and freedom of the media as well as the monetary compensation in the Musa Saidykhan; and
vii. Reference to the Gambia Radio and Television Services (GRTS) as the State Broadcaster and not the Public Broadcaster in line with best practice.

Right to Freedom of Assembly and Association

42. The Commission is concerned about lack of:

i. Information regarding implementation of the recommendations of the United Nations Declarations, the Grand Bay and the Kigali Declarations on Human Rights Defenders;
ii. Information on Human Rights Defenders in the Gambia and legislative measures taken to protect their rights;

iii. Information on the implementation of the ACHPR Guidelines on Freedom of Assembly and Meetings and maintenance of the approval regime in the Public Order Act; and

iv. The delay in the conclusion of the criminal trial of the alleged perpetrators who were responsible for the arrest, torture and death of Solo Sandeng, for having led in a peaceful protest on election reforms in the exercise of his constitutional rights.

Economic, Social and Cultural Rights

43. The Commission is concerned about:

i. Lack of information in the Report on whether the Lunatic Detention Act has been repealed and replaced as recommended by the Commission in Communication 241/01- Purohit and Moore v The Gambia;

ii. Absence of a rights based Mental Health legislation, policy and dedicated resources to address the national mental health issues;

iii. Lack of information on access and affordability of life saving surgeries for the population;

iv. Inadequate measures in place to deal with the acute water shortage in the Greater Banjul Area;

v. Challenges regarding shortages of skilled and experienced health and social workers to meet the demands of the health sector;

vi. Inadequate information on measures in place to facilitate access to and affordability of tertiary education for children of low-income earners in society;

vii. Lack of information on measures taken to guarantee the right to education of young migrant returnees as part of the rehabilitation process;

viii. Challenges regarding unemployment especially among the youths and aggregate data on national poverty levels;

ix. Lack of information on measures taken to provide protection to workers in the hospitality, domestic and agricultural sectors in the Labour Act and Social Security and Housing and Finance Corporation Act;

x. Inadequate information on legislative measures in place to protect against hazardous labour for people in the transport and industrial sectors;

xi. The non-introduction of national minimum wage for workers;

xii. Lack of information on legislative and other measures in place to provide adequate social security, health care services and pension schemes for civil servants and the private sector workers;

xiii. Lack of information on measures taken to provide Universal Medical Coverage to all Gambians and, in particular the most disadvantaged;
xiv. Challenges associated with access to land and housing especially poor households and the rural population; and

xv. Absence of a comprehensive and inclusive legal framework and measures in place for the provision of adequate social security and social protection services to its citizens.

Refugees, Migrants and Stateless Persons

44. The Commission is concerned that the report does not provide information on:

i. The implementation of the Kampala Convention;
ii. The number of migrants in the Gambia and the regulatory framework in place to protect the rights of migrants and their families;
iii. The concrete measures taken to reduce the tide of unsafe migration to other countries as well as measures to rehabilitate returnees to prevent them from going back;
iv. The measures taken to domesticate and implement the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons;
v. The measures taken as well as budgetary and material resources put in place to enable the Refugee Commission effectively deal with the issues of refugees after the official closure of the UNHCR Office in The Gambia; and
vi. Whether, as part of the local integration process long term refugees can acquire Gambian citizenship and what is the process for doing so.

Women and Children’s Rights

45. The Commission is concerned about:

i. Low representation of women in the National Assembly and in other decision making positions;
ii. On-going traditional harmful cultural practice of Female Genital Mutilation (FGM) and early and forced marriage, in some communities contrary to the provisions of the National Laws, Maputo Protocol and other human rights legal instruments;
iii. The huge under reporting of gender based violence cases including rape, trafficking and FGM despite numerous sensitisation activities conducted as well as snail pace of prosecution and completion of the few reported cases due to insufficient evidence or non-cooperation by the victim and her family;
iv. Continuous high rates of Maternal, Infant and Child Mortality provided in the Report despite the interventions in the health sector;
v. Challenges regarding the sexual and reproductive rights of women including the prohibition of abortion except in cases of risk to mother or child’s health which has resulted in risky clandestine abortions;

vi. Challenges particularly rural women, in accessing affordable health care services due to poverty and physical distance of health facilities, as most health facilities are not easily accessible due to lack of good infrastructure and road networks from the villages and communities;

vii. Challenges in accessing suitable and affordable housing due to their low economic standing and high cost of available public and private housing schemes;

viii. Challenges in owning communal land in their own right due to existing cultural practices governing the customary land tenure system;

ix. Lack of sufficient knowledge and information of their personal law which govern issues of marriage, divorce and inheritance for the majority of the women in The Gambia;

x. The measures put in place to protect the rights of children in conflict with the law;

xi. Challenges relating to child labour, trafficking and sexual exploitation of women and girls; and

xii. Challenges regarding the effective implementation of the provisions of Women’s Act and other laws protecting the rights of women and girls due to existing deep rooted cultural practices and inadequate material, financial and other resources.

HIV/AIDS

46. The Commission is concerned that the Report does not indicate:

i. Measures put in place to provide assistance to victims of former President Yahya Jammeh’s HIV/AIDS Treatment Programme;

ii. Measures put in place to enable vulnerable groups such as children, sex workers and drug users have equal access to screening and treatment;

iii. The programmes available to support children orphaned or affected by HIV/AIDS; and

iv. Measures taken to combat denial of, discrimination and stigmatization on HIV/AIDS which still exists.

Persons with Disabilities

47. The Commission is concerned that:

i. There is no specific legislation to protect the rights of Persons with disabilities;

ii. The Report highlights key challenges faced by persons with disabilities including equal access to scholarships, training, facilities and equipment, employment, accessing public buildings and transportation, education materials and information;
iii. The Report does not indicate whether persons with disabilities are occupying positions in senior policy or decision-making bodies in the public and private sectors;
iv. The Report does not provide information on measures taken to combat discrimination and stigmatization for persons with disabilities; and
v. The Report does not indicate how the measures, policies and strategies put in place to protect the rights of persons with disabilities have been effectively implemented especially, in the rural areas bearing in mind their own realities.

**Older Persons**

48. The Commission is concerned that:

i. There is no specific legislation to protect the rights of Older Persons in The Gambia; and

ii. The Report does not indicate how the measures, policies and strategies put in place to protect the rights of older persons have been effectively implemented especially, in the rural areas bearing in mind their own realities as compared to their counterparts in the urban areas.

**Extractive Industries and Environment**

49. The Commission is concerned that the Report does not provide sufficient information on:

i. The legislative and other measures in place to adequately regulate the Extractive Industries of The Gambia, including implementation of the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment;

ii. The application of the Mining, Exploration and Production Laws, including amongst others, the process of negotiation and granting of mining/exploration licence; the body responsible and its membership; the number of licences granted to companies/businesses/individuals, artisanal and semi-artisanal miners; and the process of distribution of revenue generated from mining/exploration resources;

iii. The negative impact of the industrial, artisanal and semi-artisanal mining on the environment and the security and health of people living along mining communities and other related risks;

iv. The procedures for confiscating land for mining/exploration purposes and the laws regulating it;

v. Conservative measures put in place and how compliant are these measures with human rights standards;
vi. The process through which Sand Mining Licence was granted to a local Operator resulting in the unfortunate incident in the sand mining region of Faraba Banta in 2018;
vii. The role and functions of the National Environment Agency (NEA) and the level of participation of the population in their work;
viii. The adequacy of the budgetary allocation and human resource capacity of the NEA to effectively implement its mandate nationwide;
ix. The role and functions of the Central and Local Government in addressing the environmental concerns including provision of proper sanitation and waste management services of the population.

**Human Rights Institutions**

49. The Report does not provide sufficient information regarding the powers, functions, accessibility and impact of the work of the Office of the Ombudsman.

**V. Recommendations**

50. In view of the foregoing, the Commission makes the following recommendations to the Government of The Gambia:

**Ratification of Regional/International Human Rights Instruments**

51. Ratify the following human rights instruments:

i. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons;


iii. African Charter on Values and Principles of Civil Service and Administration;


v. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);

vi. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

vii. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;

viii. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

ix. Optional protocol to the Convention on the Rights of Persons with Disabilities; and

Prohibition of Torture and Ill-treatment

52. The Gambia should:

i. Adopt a specific law to criminalise Torture in conformity with the Convention Against Torture (CAT) and the Robben Island Guidelines;

ii. Establish a National Mechanism to prevent torture in Police Stations, detention centres and other private places as well as collect relevant statistical data on torture cases; and

iii. Ensure the dissemination and training of relevant stakeholders on the Robben Island Guidelines with a view to popularising them nationally.

Due Process and Conditions of Detention

53. The Gambia should:

i. Take appropriate measures to review the criminal laws to provide for alternative forms of sentences/ punishment in line with international best practices;

ii. Adopt appropriate sentencing guidelines in criminal matters for the effectively delivery of Criminal Justice according the international best practices;

iii. Utilise the Commission’s Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (the Luanda Guidelines) and General Comment No. 3 on the Right to Life, when conducting training to the Police, Correctional Service and other Security Outfits;

iv. Take appropriate measures to address budgetary, logistical and staffing challenges of the National Legal Aid Agency; and

v. Accelerate the conclusion of the Faraba Banta Case with a view to bringing the matter to a final close in line with due process procedures.

Right to Freedom of Expression and Access to Information

54. The Gambia should:

i. Accelerate the enactment of the Access to Information Bill and to repeal all laws on defamation and sedition, including publication of false information;

ii. Take appropriate measures to adequately protect the right to access to internet services and social media platforms and to prevent the re-occurrence of internet shut down in the Gambia especially in the run up to the Presidential elections in 2021;

iii. Provide information on measures taken regarding the safety of journalists and freedom of the media including the outcome of the Pa
Modou Bojang case and implementation of the ECOWAS judgment in respect of Journalist Musa Saidykhan; and

iv. Take appropriate measures to ensure that the Gambia Radio and Television Services (GRTS) is referred to as the Public Broadcaster in line with international best practice.

**Right to Freedom of Assembly and Association**

55. The Gambia should:

i. Take the necessary measures to protect and promote human rights in conformity with the African Charter, ACHPR Guidelines on Freedom of Assembly, UN Declaration on Human Rights Defenders, the Kigali Declaration on Human Rights Defenders and other regional and international human rights instruments that guarantee the right to freedom of association and assembly;

ii. Consider adopting a comprehensive law to protect the rights of human rights defenders;

iii. Accelerate the conclusion of the Solo Sandeng Criminal Trial so as to bring to justice the alleged perpetrators and provide redress to the family of the victim; and

iv. Envisage adopting a new Public Order Act that takes into account the ACHPR Guidelines on Freedom of Assembly.

**Economic, Social and Cultural Rights**

**Right to Health**

56. The Gambia should:

i. Provide information on the implementation of the recommendations to the Lunatic Detention Act by the Commission in Communication 241/01-Purohit and Moore V The Gambia;

ii. Review the legislative and policy framework to ensure a rights based approach to Mental Health legislation, policy formulation and implementation as well as provide adequate resources to address the national mental health issues;

iii. Take appropriate measures to provide access to safe and affordable lifesaving treatment/surgeries for the population in situations of emergency;

iv. Invest more in the training of quality doctors, nurses, social workers, other specialists to overcome the shortage of skilled health workers;

v. Provide attractive working conditions for qualified health workers in order to retain experienced and motivated workforce in health facilities countrywide;
vi. Increase the budget allocation to the health sector in line with the Abuja Declaration;

vii. Provide information and gender disaggregate data on the number of doctors, nurses and social workers in all the hospitals and health facilities countrywide and the ratio of a doctor to a patient;

viii. Provide information and data on concrete measures put in place to deal with the acute water shortage in the Greater Banjul Area; and

ix. Make use of the ACHPR Guidelines on the Right to Water in addressing the right to access and affordability of clean and portable water to its population.

**Right to Work**

57. The Gambia should:

x. Monitor and evaluate the legislative and policy framework to ensure the effective implementation of the right to employment, especially the women, youth, and persons with disability and to reduce poverty levels nationwide;

xi. Take appropriate measures to provide protection to workers in the hospitality, domestic, transport, industrial and agricultural sectors in the Labour Act and Social Security and Housing and Finance Corporation Act; and

xii. Accelerate the review of legislative and policy frameworks with a view to introducing a national minimum wage for workers in the public and private sectors.

**Right to Education**

58. The Gambia should:

xiii. Take appropriate measures to facilitate access to and affordability of tertiary education for children of low-income earners in society;

xiv. Guarantee the right to education of young migrant returnees as part of the rehabilitation process; and

xv. Monitor and evaluate the policy framework on the fight against gender based violence including FGM, early and forced marriage with a view to effectively addressing the problem and improving the level of enrolment and retention of girls in schools.

**Right to Property**

59. The Gambia should:

xvi. Review and evaluate the legislative framework and land tenure system with a view to putting in place comprehensive policies, plans and
programmes aimed at making acquisition of land and housing accessible to and affordable to all its citizens, particularly the poor and women in the rural areas; and

xvii. Take appropriate measures to reduce the high rate of land disputes and the snail pace at which they are settled within the judicial system.

Right to Social Protection

60. The Gambia should:

xviii. Provide information on the measures in place to provide adequate social security, health care services and pension schemes for civil servants and the private sector workers;

xix. Measures in place to provide Universal Medical Coverage to all Gambians and, in particular the most disadvantaged; and

xx. Accelerate the introduction of comprehensive and inclusive legal framework and measures for the provision of adequate social security and social protection services to its citizens.

Refugees, Migrants and Stateless Persons

61. The Gambia should:

i. Take measures to domesticate and implement the Kampala Convention and to report on its implementation to the ACHPR pursuant to Article 14 (4) of the Convention;

ii. Provide data on the number of migrants in the Gambia and put in place a comprehensive regulatory framework to protect their rights and their families;

iii. Adopt concrete measures and sustainable policies and programmes in collaboration with local and international partners to prevent unsafe/illegal migration as well as rehabilitate and re-integrate returnees back into their communities;

iv. Undertake concrete measures including the provision of budgetary and material resources to enable the Refugee Commission to effectively deal with the issues of refugees after the official closure of the UNHCR Office in The Gambia;

v. Provide information on the legislative and other measures taken to implement the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons; and

vi. Provide information on whether long term refugees can acquire Gambian citizenship as part of the local integration process and what is the process for doing so.

Women and Children’s Rights

62. The Gambia should:
i. Consider adoption of the law on quota system to guarantee equal opportunities for women in public office and other decision making bodies;

ii. Adopt proactive multi-faceted strategies at the national and community levels to end traditional practices of FGM, early and forced marriages such as including *inter alia*; empowering girls with information, skills and support networks; educate and rally parents and community members on the dangers of the practice and provide skills on alternative sources of income for practitioners;

iii. Review and evaluate the current protocols and approaches in dealing with gender based violence with a view to effectively address the challenges identified in line with international best practices and provide adequate resources to accelerate prosecution and completion of cases of gender based violence;

xxi. Strengthen and institutionalise a gender specific mandatory training course for all legal and law enforcement officials and health service personnel to enhance their capacity in responding to all forms of violence against women and children;

xxii. Conduct regular trainings for Legal Practitioners, Judicial and Law Enforcement Officials on the existing legislation relating to children and women rights with a view to enhance their knowledge, understanding and application of the provisions in the best interest of those concerned;

xxiii. Undertake comprehensive and sustainable measures to reduce the rate of maternal, infant and child mortality and improve accessibility to general health services especially for women and children in the rural areas;

xxiv. Develop effective Information, Education and Communication (IEC) tools to provide information and services to women on their reproduction rights and health;

iv. Continue its efforts with stakeholders and partners to combat child labour, trafficking and exploitation of women and children; and

v. Continue to provide adequate resources in collaboration with its partners to protect the rights of children in conflict with the law.

**HIV/AIDS**

63. The Gambia should:

i. Adopt appropriate policies and other measures to ensure access to screening and treatment on HIV/AIDS for PLHIV nationwide including vulnerable groups such as children, sex workers and drug users;
ii. Put in place adequate measures to provide assistance to victims of former
President Yahya Jammeh’s HIV/AIDS Treatment Programme;

iii. Adopt appropriate measures in line with international best practices to
combat denial of, discrimination and stigmatization on HIV/AIDS.

Persons with Disabilities

64. The Gambia should:

i. Accelerate the enactment of the Disability Bill into law and adopt
appropriate policies and support programmes to protect the rights
of Persons with Disabilities and ensure their effective
implementation nationwide;

ii. Ensure that qualified persons with disabilities are given the
opportunity to hold positions of responsibility in senior policy or
decision-making bodies both in the public and private sectors;

iii. Put in place adequate budgetary and material resources to address
the inequality and other challenges faced by persons with disabilities
which restrict the full enjoyment of their rights; and

iv. Adopt legislative and other measures to combat discrimination and
stigmatization for persons with disabilities.

Older Persons

65. The Gambia should enact laws and adopt appropriate policies and support
programmes to protect the rights of Older Persons and ensure their effective
implementation nationwide especially in the rural areas, having regard to their
own realities.

Extractive Industries and Environment

66. The Gambia should:

i. Comply with the State Reporting Guidelines and Principles on
Articles 21 and 24 of the African Charter relating to Extractive
Industries, Human Rights and the Environment;

ii. Put in place the necessary legislative and other measures to
adequately regulate the extractive industries and mitigate/eradicate
the negative impact of the industrial, artisanal and semi-artisanal
mining/exploration licences on the environment, the security and
health of people living along these communities and other related
risks;

iii. Provide sufficient information on
  • The application of the Mining, Exploration and Production
    Laws, including amongst others, the process of negotiation
and granting of mining/exploration licence; the body responsible and its membership; the number of licences granted to companies/businesses/individuals, artisanal and semi-artisanal miners; and the process of distribution of revenue generated from mining/exploration resources;

- The procedures for confiscating land for mining/exploration purposes and the laws regulating it;
- Conservative measures put in place and how compliant are these measures with human rights standards;
- The process through which Sand Mining Licence was granted to a local Operator resulting in the unfortunate incident in the sand mining region of Faraba Banta in 2018 and the concrete measures in place to avert such situations in the future;
- The role and functions of the National Environment Agency (NEA) and the level of participation of the population in their work;
- The adequacy of the budgetary allocation and human resource capacity of the NEA to effectively implement its mandate nationwide; and
- The role and functions of the Central and Local Governments in addressing the environmental concerns including provision of proper sanitation and waste management services for the population.

Human Rights Institutions

67. The Gambia should:

i. Provide information on the powers, functions and accessibility to the Office of the Ombudsman; and

ii. Highlight the impact of the work of Office of the Ombudsman in addressing alleged human rights violations.

Cooperation with the Commission

68. The Gambia should:

i. Translate the African Charter in the local languages and widely disseminate it to the general public for their use;

ii. Comply with its obligations under Article 62 of the African Charter and 26 of the Maputo Protocol by implementing the recommendations made herein;
iii. Implement the recommendations made in the 2017 Promotion Mission Report; and

iv. Inform the Commission, in its next periodic report of the measures taken to address all the above issues of concern and recommendations.

Adopted by the African Commission on Human and Peoples’ Rights at its 31st Extra-Ordinary Session held virtually from 19 to 25 February 2021