

**THE GAMBIA CSO COMPLEMENTARY  
REPORT ON THE CONVENTION ON THE  
RIGHTS OF THE CHILD**

**PURSUANT TO THE SUBMISSION OF THE  
GAMBIA COMBINED 1ST, 2ND AND 3RD  
PERIODIC REPORT BY THE GOVERNMENT  
OF THE GAMBIA**



**PREPARED BY:  
CHILD PROTECTION ALLIANCE-THE  
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Last and most importantly, CPA heartily congratulates and thanks all members of Voice of the Young and the children from other child-led organisations who participated in this report preparation process. CPA dedicates this Report to all the children of The Gambia.

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## **NAME OF PARTICIPATING ORGANISATIONS IN THE REPORTING PROCESS**

ActionAid The Gambia  
African Centre for Democracy and Human Rights Studies (ACDHRS)  
Centre for Street Children and Child Trafficking (CSCACTS)  
Children Advocacy Network (CAN)  
ChildFund-The Gambia  
Children from Children Organisation (CFCO)  
CPA Secretariat  
Education For All Network (EFA-Net)  
Forum for African Women Educationalist-Gambia Chapter (FAWE-Gam)  
Foundation for Legal Aid Research and Empowerment (FLARE)  
Gambia Family Planning Association (GFPA)  
Gambia Federation of the Disabled (GFD)  
Gambia Press Union (GPU)  
Gambia Teachers Union (GTU)  
Hope for Children-The Gambia  
Institute for Social Reformation and Action (ISRA)  
International Society for Human Rights (ISHR)  
Lend A Hand Society  
National Association of Youth and Children Organisations (NAYCO)  
National Union of Disabled Youth (NUDY)  
National Youth Council (NYC)  
Pro-Poor Advocacy Group (Pro-PAG)  
SOS Children's Villages-The Gambia  
The Association of Non-Governmental Organisations (TANGO)  
The Gambia Committee on Traditional Practices affecting the Health of Women and Children (GAMCOTRAP)  
Voice of the Young  
Young Men's Christian Association (YMCA)  
Young People in the Media (YPM)  
Youth Against AIDS Network (YAAN)  
Youth Ambassadors of Peace

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## **INTRODUCTION**

### **Child Protection Alliance**

The Child Protection Alliance is a child rights national network or alliance of organisations and institutions in The Gambia working for and with children. It was formed on 26th April 2001 and its focus is mainly on child rights promotion and protection. The Alliance raises awareness on issues affecting children; advocates and lobbies for appropriate legal reform in relation to child protection issues and monitors the follow-up process; plays a ‘watch dog’ role for children and the child sector; creates common understanding and commitment to the protection of children among its network members; promotes child participation and monitors the implementation of legal instruments ratified by the country. It is grounded on the principles of the CRC, ACRWC, the 1997 Constitution of The Gambia and the Children’s Act 2005 and draws inspirations from these.

In January 2001, The Association of Non-Governmental Organisations (TANGO) in The Gambia submitted a complementary report to the Initial Report on the CRC submitted by The Gambia in 1999. At that time, the Child Protection Alliance was not formed. However, since 2001 the Alliance has been engaged in child rights work in The Gambia and felt it proper to prepare and submit the CSO Complementary Report. This report is thus the second NGO report from The Gambia, pursuant to the mandate given under the CRC for NGO participation in the reporting process.

### **Methodology and process**

In May 2009, the members of the Alliance had a four-day intensive training workshop, facilitated by Save the Children Sweden, to understand the reporting and monitoring processes of the UN CRC and the ACRWC as well as their contents. The State’s combined Periodic Report on the CRC was also examined in depth. At the end of this training workshop, the participants unanimously agreed to prepare and submit a CSO Complementary Report. Twenty-five participants from CPA member organisations attended this training.

In December 2009, the member organisations of CPA and members of Voice of the Young met at a three day retreat in Bwiam to begin the process of drafting the CSO Complementary Report. In groups, the participants critically examined the various clusters of the State Report. The views from these group works were further examined in plenary. A small group was also formed to synchronise and edit the submissions of the groups and produce a draft report.

A number of children actively participated in the retreat held in Bwiam. Prior to this, a children’s workshop was also held to enhance their understanding of the reporting processes of the CRC. This was attended by children with disabilities. The children at this workshop equally examined the State’s report and agreed that a complementary report was necessary. The consensus among the children was that they should be actively involved in the preparation of the CSO report and their views and opinions be given due weight.

From 8-9 October 2010, members of the Alliance met to discuss, critique and validate the draft Report that was prepared in Bwiam and further worked on by the staff of the CPA Secretariat. This validation workshop was attended by representatives from 24 member organisations of CPA.

## **Limitations**

Except for a few areas such as education and health, data on several key areas of child rights and protection is either not available or grossly inadequate in The Gambia because the systems needed for collection, collation and analysis have not been instituted. What limited data is available does not also capture the information required for our areas of interest. This is reflected in the State report to the UN CRC, and the NGO report also suffers from the same shortcoming. The main sources of data and information for this CSO report are the State's periodic report, the Concluding Observations on the CRC initial report, the UNICEF-Banjul Multiple Indicators Cluster Survey IV 2010 Report (published in 2013), domestic legislations such as the Children's Act 2005 and the Women's Act 2010, media reports and the National Disability Study Report 2013.

## KEY FINDINGS

- 1. The State has put in place legislative and policy frameworks for the promotion and protection of the rights of children in The Gambia and has harmonized its legislations with child-related international legal instruments ratified.** Key achievements in this area include the enactment of a comprehensive Children's Act 2005, Tourism Offences Act 2003 and the Trafficking in Persons Act 2007. It has also amended key provisions in the Criminal Code (Cap. 10 Volume III) and raised all ages therein to 18 years. However, gaps still remain in the effective implementation and enforcement of these legal frameworks. **The laws are not well popularized or disseminated. There still remains legal ambiguity on child marriage and Female Genital Mutilation. The conspiracy of silence around child sexual abuse and exploitation remains a big challenge.** For The Gambia to fulfil its obligations under the international, regional and national legal instruments and the plethora of policies that abound, it is of the utmost importance that political will and commitment is demonstrated towards law enforcement and policy implementation in a focused and systematic manner. International cooperation should also be sought in order to effectively combat child trafficking and Child Sex Tourism.
- 2. The key Government institutions that have statutory responsibilities for the promotion and protection of the rights of children are seriously under-resourced, financially, technically, logistically and human resource wise.** The Department of Social Welfare, with its great efforts, has its services greatly centralized. The Gambia Police Force claims to have Police Child Welfare Units or Police Child Welfare officers in all Police Stations across the country but its effectiveness and efficiency is, to all intents and purposes, only felt at the Police headquarters where it is housed. Other State institutions relevant to specific areas of child rights implementation, such as the Attorney General's Chambers, schools and health facilities, etc also face many of these challenges. Without committing adequate and necessary resources to strengthening the capacity of these institutions, establishing a protective environment for children will be a massive challenge if not an illusion.
- 3. Lack of a data collection, collation and analysis system, relating to child rights and protection issues is another big area of challenge to the State.** Even the available data is often not adequately disaggregated. Where data is available, institutions and organizations are reluctant to share them. Without adequate and disaggregated data, advocacy and programmatic interventions will be difficult or haphazard. It is therefore urgent that the state institute a system which will make available required data or information for planning and intervention purposes.
- 4. It is difficult to gauge or measure the full impact of interventions- programmes, projects, policies and laws- undertaken in the area of child rights promotion and protection.** It is observed that the monitoring and evaluation mechanisms at the State level are either weak or inadequate. An effective monitoring and evaluation system will help to determine whether there is 'value for money' or track the efficiency and effectiveness of programmes, projects and measures in which the State is heavily investing in order to realize the rights of children. It is important that monitoring is in-built in all these investments and actually followed through at all stages, from planning to implementation. Civil Society Organisations can be useful partners in this endeavour.

5. While Government is trying its utmost to protect children from abuse and exploitation, the issue of children with disabilities and the promotion of their rights to non-discrimination, education, health and protection from abuse and exploitation remain low on the political agenda. **We commend the State for ratifying the Convention on the Rights of Persons with Disabilities in July 2013. However, it has not yet domesticated this instrument to make it enforceable. The instrument is also not well popularised and disseminated.** The necessary resources should be put in place to reinforce the effective implementation of this legislation once enacted. Efforts towards inclusive education should be expedited.
6. Poverty is inimical to the realisation of the rights of children, in particular the rights to survival and development, education and protection. It also places children and their families in very vulnerable situations. **The level of child poverty in The Gambia is unknown.** It is very important that the State undertakes child impact analysis and assessment of its policies, programmes and activities. Another key undertaking should be the assessment of the child-friendliness of the national budget. The Programme for Accelerated Growth and Employment (PAGE 2012-2015) should be taken through specific child and gender impact analysis whenever it has to be reviewed, in order to make them responsive to the rights and needs of children and women.

## 7. Key Recommendations

We recommend that the State:

- Legislate against harmful traditional practices, especially Female Genital Mutilation.
- Make 18 years as the minimum legal age for marriage.
- Popularize legislations and policies aimed at promoting the rights of children and to translate these in local languages for the benefit of all. State institutions charged with such efforts should be well resourced to be able to engage in mass sensitization.
- Encourage the active participation and involvement of children in all matters and decisions that affect their lives and to support the establishment of a children's parliament.
- Make basic education truly free, compulsory and universal for all children in accordance with the provisions of the Constitution, the Children's Act 2005 (Section 18.1) and the Education policy.
- Further reduce infant and maternal mortality and morbidity and improve access to healthcare and services.
- Integrate birth registration into maternal health service and issuance of a birth certificate on the first clinic day.
- Make extra-territorial legislation on child sex tourism and trafficking of children for sexual purposes and cooperate with other countries to ensure effective implementation of these measures.
- Double its efforts at protecting the rights of children with disabilities and support organizations working for children with disabilities.
- Improve and strengthen alternative care systems for children in difficult circumstances.
- Encourage and support the work of credible NGOs focusing on the rights of children, and forge closer collaboration with such.
- **Conduct research and studies on child rights and child protection in order to ensure the availability up-to-date data.**

**I. GENERAL MEASURES OF IMPLEMENTATION: ARTICLES 4, 42, AND 44**  
**PARA.6**

The Government is commended for harmonizing the child-related domestic legislations with the Convention on the Rights of the Child which have been domesticated in the Children's Act 2005. The promulgation of the Act is a giant step towards the protection of the rights of children in The Gambia. However, having a legal framework in place is not a guarantee for effective enforcement and implementation. The Child Rights Coalition in The Gambia remains worried about the inadequate enforcement and implementation of the Children's Act 2005. Currently, there is no government agency which is responsible for the coordination of the implementation of the Children's Act 2005. Thus, the Child Rights Coalition in The Gambia wish to raise the following concerns with respect to the State's Combined 1st, 2nd and 3rd Periodic Report under General Measures of Implementation of the CRC.

As recommended by the CRC Committee in its Concluding Observations to the State's Initial Report and highlighted in the Combined 1st, 2nd and 3rd Periodic Report, the State has not taken any 'effective measures to establish the National Commission on Children's Rights', although UNICEF, in 2001/2, initiated efforts towards that direction.

There is still inadequate and ineffective co-ordination of the implementation of the CRC at the national and local levels as well as efforts between state agencies mandated to ensure the realization of the rights of children. At the regional and district levels (local government), there are inadequate structures for the coordination of the implementation of the rights of children. The Multi-Disciplinary Facilitation Teams, Divisional Coordinating Committees, Ward Development Committees and Village Development Committees are rarely concerned with the implementation and coordination of the CRC at their various levels, even though the Local Government Act 2007 contained important child rights provisions.

The Department of Social Welfare (DSW) and the Ministry of Justice are perhaps the most critical of all the state agencies with a mandate to ensure and safeguards children's rights and protection, but currently these agencies are beset with institutional, financial and human resource capacity challenges. Their budgetary allocations are woefully inadequate. Most of the services of the Department of Social Welfare are found in the Greater Banjul Area, although it has opened offices in West Coast Region, Lower River Region and Upper River Region. The Child Rights Coalition also notes with concern that the DSW does not seem to have the prominence it deserves as it is part of the Ministry of Health and Social Welfare.

The 'sectoralisation' of children's issues and the overlapping mandates in issues affecting children are major concerns. An example is the jurisdictional issue of child adoption, issues of violence against children, paternity and maintenance-whether they lie with the Children's Court or the Department of Social Welfare or the Gambia Police Force.

Monitoring and evaluation of measures so far undertaken in many areas of child rights does not seem to exist, except perhaps in education and health sectors. No data exists at the national level to indicate how many training programs for professionals, meetings, publicity events, among others, have been held to popularize the CRC and the Children's Act 2005. No information exists regarding the evaluation of the effectiveness or the impact of the activities that have been held so far, either by state agencies or NGOs.

Availability of data is scarce because the necessary systems have not been set up to collect and collate such. Consequently it is hard to analyze trends, for example, whether child sex tourism, child trafficking and corporal punishment of children are on the increase or

awareness raising has contributed to higher reporting of cases to the police or Department of Social Welfare. Disaggregated data on sex, age, socio-economic circumstances, ethnicity, among others, is almost non-existent in areas such as Juvenile Justice, migration, child disability, child welfare, etc. The only available credible source of data regarding children is the UNICEF Multiple Indicator Cluster Survey (MICS IV 2010) which has data on child discipline, early marriage and FGM prevalence and published in 2013.

Even though The Gambia ratified the CRC in 1990, its popularization remains inadequate. Professional groups, children, parents and the public at large are still not sufficiently aware of the Convention and its rights-based approach. This situation accounts for the great resistance put up by parents and others to 'child rights' which is seen as Eurocentric and runs counter to Islam and Gambian culture. Child rights as contained in the Children's Act 2005 are not included in the education curriculum and thus children in schools do not know much about their rights and responsibilities. Even though the Ministry of Justice and the Department of Social have done much to popularise the Act amongst law enforcers, the Act is not well known among other professionals such as health workers and community development workers, religious leaders, children and members of the public.

The CRC Committee in the Concluding Observations to The Gambia's CRC Initial Report recommended that the State expanded 'the mandate of the Office of the Ombudsman or establish a separate monitoring mechanism to deal with complaints of violations of the rights of children and to provide remedies for such violations.' However, there still exists no Ombudsman for Children or a mechanism at the office of the Ombudsman which can receive and investigate complaints of violations of children's rights. The mandate of the Office of the Ombudsman remains largely for administrative complaints and violations and is accessible only to adults in the civil service or private sector. Thus, when a child feels that his or her rights are violated or infringed, the only available avenue may be the police, if the child is courageous enough to approach the police, or is supported by a concerned adult to file a case. The Government is commended for having a child helpline at the Children's Centre in Bakoteh. However, the existence of such a facility is not well known among children and adults. The facility is located in the Greater Banjul Area and it remains to be seen how the officers at the child helpline can render support to an aggrieved child who lives in a remote village in rural Gambia and has no access to telephone. Above all, the child helpline is not 24 hours and can be accessed toll free on only one GSM Operator, Africell.

Child Rights campaigns and advocacy do not get specific budgetary allocation and child budgeting analysis is not included in budgetary considerations at National Assembly, line ministry level or local government level.

The State Periodic Report has highlighted the numerous activities that NGOs and the media have conducted to raise awareness on the rights of children. However, it is worth noting that these awareness raising activities and programmes have generally been ad hoc and have not been financially supported by the State.

Many NGOs participated in the preparation of the State's Combined 1st, 2nd and 3rd Periodic report. However, the publicity that was given by the State to the Concluding Observations of the UN Committee in 2001 was very low. Even professionals working for children, NGOs and the media did not know much about these recommendations.

## **Recommendations for the State**

We recommend that the State:

- Creates a National Commission for Children or establish a Ministry for children's affairs for the effective implementation, monitoring and coordination of children related laws, policies and institutions and ensures adequate budgetary allocation for its operation.
- Reviews and updates the National Policy for Children 2004-2009.
- Implements the provisions of the Children's Act 2005, in particular set up Children's Courts in all regions and decentralize juvenile centres, and preferably establish them outside the main prisons.
- Popularizes and disseminates the CRC and the Children's Act 2005 through all available means and channels and to the wider public.
- Ensures a holistic approach and response to child issues and create child welfare units in all key Government agencies.
- Creates child-friendly policies and codes of conduct for institutions and organizations within the government itself, the private sector and civil society to ensure the protection of children from all forms of abuse and exploitation.
- Removes all the claw-back clauses in the Children's Act 2005, strengthens and harmonizes its legislative frameworks in accordance with international standards, and provides the requisite political commitment and action to enforce the Children's Act 2005 and implement the policies put in place to ensure greater protection for the rights of children.
- Signs and ratifies the 3rd Optional Protocol to the CRC on a communication procedure.
- Creates a body that is empowered to receive and investigate complaints of violations of child rights and which is accessible to children.
- Strengthens the human, technical and financial resources of the Department of Social Welfare (DSW) by allocating to it adequate budgetary resources at the national level and decentralizes its interventions and presence in all the regions.
- Strengthens and expands the capacity of the specialized units at the Ministry of Justice and the national security and law enforcement agencies with mandate to ensure protection of the rights and welfare of children.
- Reviews the status and mandate of the DSW and its role in child protection, and clarify its relation to other state agencies, particularly the Ministry of Justice.
- Develops systems for data collection, collation and analysis of child rights and protection issues as well as mechanisms for systematic monitoring and evaluation and appropriate disaggregated indicators for monitoring.
- Incorporate child budgeting and child budgeting analysis into the overall budgeting arrangements from national to decentralized levels and ensure the active participation of children in these processes.

- Forges closer collaboration with child rights NGOs, encourage them in their work, and support to critical work by NGOs in child protection that need expansion, replication or scaling up.

## **II. DEFINITION OF A CHILD: ARTICLE 1**

The CSOs agree with the State's Combined Periodic Report on CRC that "*the enactment of the Children's Act 2005 makes provision for a standard definition of the child in accordance with the CRC and other similar international instruments*" (Combined 1st, 2nd and 3rd Periodic Report, page 11). The Children's Act defines a child as, "*a person under the age of 18 years*". Furthermore the Tourism Offences Act 2003 also defines a child as any person below 18 years.

The Child Rights Coalition, however, notes that the definition of a child has not been captured in the Constitution of the Republic of The Gambia 1997. In the light of the State's Combined Periodic Report's reference to the constitutional provision on the right to vote at 18 years as indicative of the definition of a child, the Coalition holds that this particular provision does not necessarily define a child as any person under 18 years. The Coalition also notes that the Constitution harbours some inconsistencies with the CRC and Children's Act 2005; for instance in Sec. 29(2) of the Constitution where it states,

*"Children under the age of sixteen years are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or be harmful to the health or physical, mental, spiritual, moral or social development"*.

This provision provides protection from economic exploitation for only children under 16 years and gives the impression that the Constitution holds that a child is 16 years and below.

There is no specific and unambiguous minimum legal age for marriage, in spite of the definition of a child as any person under the age of eighteen years and age of sexual consent as eighteen years. The 1997 Constitution of The Gambia does not stipulate any minimum legal age for marriage for women and men. However, Section 27 of the 1997 Constitution states:

*"(1) Men and women of full age and capacity shall have the right to marry and found a family.*

*(2) Marriage shall be based on the free and full consent of the intended parties."*

Section 24 of the Children's Act 2005 stipulates:

*"Subject to the provisions of any applicable personal law, no child is capable of contracting a valid marriage, and a marriage so contracted is voidable"*.

While Section 24 of the Act seems, to all intents and purposes, to prohibit child marriage, the claw-back clause "*subject to the provisions of any applicable personal law*" lessens the effect of the aforesaid section. As a predominantly Muslim country, the personal law of majority of the people is the Shari'ah (Islamic Law) which permits marriage upon physical maturity. Thus, girls are married off at an age when they are not only incapable of offering their consent, but also not yet ready or prepared to take over the responsibilities of parenthood.

Early and forced marriages still happen in practice. About 8.6 per cent of women actually married before they were 15 years while 46.5 per cent were married before 18 years.<sup>1</sup> This trend is more prominent in rural areas. It is not uncommon to hear of stories of young girls being taken out of school and forced into marriage by their family even though the Women's Act 2010 prohibits such practice.<sup>2</sup>

### **Recommendations for the State**

We recommend that the State:

- Reviews Section. 29(2) of the Constitution, to protect all persons under 18 years from economic exploitation.
- Reviews and amends Section 27 of the Constitution and Section 24 of the Children's Act 2005 and categorically stipulates 18 years as the minimum legal age for marriage.
- **Rigorously enforces and implements Section 28 of the Women's Act 2010 which prohibits the withdrawal of girls from school for the purpose of marriage.**

### **III. GENERAL PRINCIPLES: ARTICLES 2, 3, 6 AND 12**

The State Report indicates many measures that have been undertaken to implement the general principles of the Convention. However, the Coalition observes that not much information or data is provided in the State Report regarding the practical implementation of articles 2, 3, 6 and 12 and the provisions of the Children's Act 2005 as quoted. The concerns of the Coalition are raised hereunder as thus:

#### **1. Non-Discrimination: Article 2**

We commend the Government of The Gambia for the giant strides made in the promotion of girls education and for achieving gender parity at the primary level.

Though, several programmes and initiatives have been put in place by Government and UNICEF such as the Girls Friendly Schools, retention of girls in schools remains a concern with gender parity being more significant in the urban areas. In the Education Gender Parity Index for Primary Schools, Greater Banjul Area indicates 1.09 while Upper River Region indicates 0.94 by 2006. In the State report it is mentioned that the aim of the Big Bang Education Campaign in 2002 was to 'reach the last 10% of children not in school and encouraging parents to enroll their daughters,' however, there is no report to show that this 10% of children were enrolled after the Campaign.

No information exists regarding systematic data collection on discriminatory actions against children by reasons of disability, HIV/AIDS status or belonging to a particular group.

Children with disabilities continue to face discrimination in the society and their access to structures and facilities, including schools, remain inadequate or limited.<sup>3</sup> Children with disabilities are openly seen begging in the streets or accompanying adult beggars even though the Children's Act 2005 regards such children as needing care and protection.

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<sup>1</sup> UNICEF-Gambia MICS IV Report 2010, published in 2013

<sup>2</sup> Section 28 of the Women's Act 2010

<sup>3</sup> National Disability Study Report 2013

The State's Combined Periodic Report did not capture the issues of children born out of wedlock and refugee children. The Children's Act does recognize every child's right to inheritance; however its provision is subject to personal law. Therefore, children born out of wedlock cannot inherit from the estate of their fathers as the personal law of Muslims (sharia) does not recognize the inheritance rights of such children.

While Section 21(2) of the Children's Act states that "it shall be the duty of any person having custody of a child to protect the child from discrimination, violence, abuse and neglect" there is no data indicating the application of this clause in schools, orphanages, homes and the community.

### **Recommendations for the State**

We recommends that the State:

- Speedily expedites the approval of the National Disability Policy and ensure its subsequent implementation.
- Implements the recommendations of the National Disability Study Report 2013, especially on the areas of awareness creation, accessibility of the learning environment and learning materials and child protection.
- Modifies the relevant personal laws to uphold the right to inheritance for children born out of wedlock.
- Puts in place enabling environment for children with disability in terms of access to education and health through provision of infrastructures and personnel.
- Accelerates gender parity at Upper Basic and Senior Secondary levels through retention of girls.
- **Effectively implements and enforces the Minimum Standards for Quality Care for residential child care institutions.**

### **2. Best Interest of the Child: Article 3**

It is the view of the Coalition that the State report did not adequately dilate on the many challenges faced in ensuring that the best interests of the child "shall be the paramount consideration by any court, institution, person or other body in determining any question concerning a child" (Children's Act Sec. 3). While State institutions such as the Children's Court, the Department of Social Welfare and the Police Child Welfare Unit use this principle to some extent in their interactions with children, its usage or observation is not systemic. It is rather dependent on the sensitivity of the officials of the particular institution concerned. Furthermore, it is difficult to gauge how parents, guardians or other persons having care of children apply the principle of best interest since children are largely expected to be seen and not heard.

Currently there are three Children's Courts, in Kanifing, Brikama and Basse, which hears matters or cases involving children. Police officials in the other regions without Children's Courts have to travel with children in conflict or contact with the law to these places which

have Children's Court Cases. In some instances these cases are heard in the ordinary courts where child victims face their adult abusers when they have to give evidence.

Many magistrates are not well sensitized on child rights. While the Children's Courts are generally child-friendly and sensitive, there is no legal requirement that child victims of abuse and exploitation should be thoroughly prepared for the court processes and procedures.

The Cadi Courts and District Tribunals also have jurisdiction for children's issues, in particular custody, access and maintenance. It is not clear how these courts utilize the best interest principle. Generally in the Cadi court, custody of a male child who is 7 years and above is given to the father while a female child remains with their mother.

In spite of the existence of the Minimum Standards for Quality Care, residential facilities for children in need of care and protection, such as foster homes and orphanages, are not monitored with any regularity, leaving room for abuse.

### **Recommendations for the State**

We recommend that the State:

- Trains and acquaints law enforcers, judicial officers, legal practitioners and professionals working with children on child rights and on the principle of the best interests of the child.
- Fast track the decentralisation process of the Department of Social Welfare so that all children in the country would benefit from its services.
- Strengthens the Department of Social Welfare and the Police in terms of capacity building, motivation, retention and greater resource allocation for rapid response to children's cases and effective service delivery to children.
- Set up a system for tracking and documenting child related cases and their outcomes in order to assess the application of the "best interests" principle in judicial institutions.
- Provides enough resources to the Department of Social Welfare so that it could effectively and regularly monitor orphanages and residential facilities for children.

### **3. Right to Life, Survival and Development: Article 6**

The State has made great progress in reducing child mortality and morbidity with an under-five mortality rate of 109 per 1000 and infant mortality of 81 per 1000.<sup>4</sup> Malaria and other child related diseases are on the decline due to the positive impact of several interventions in place. However, the Coalition is concerned that there is still high infant and under-five mortality among children of women with no education, in rural areas and poorer families. Thus, the impact in health service delivery is still not adequate though promotion of health and safety education is incorporated in the education and health policies.

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<sup>4</sup> UNICEF-Banjul MICS IV 2010 Report, published in 2013

## **Recommendations for the State**

We recommend that the State:

- Comes up with a clear policy banning corporal punishment as a form of disciplinary measure in schools and ensure that teachers are trained on alternative disciplinary methods.
- Intensifies efforts to further reduce the morbidity and mortality rate. In this vein, the Ministry of Health and Social Welfare, through its Reproductive and Child Health Programmes and Services, should work with stakeholders at all levels to improve the health delivery services to children.
- Makes Primary Health Care available in every part of the country.

### **4. Respect for the Views of the Child: Article 12**

The State is commended for putting in place legislative and policy frameworks for the active participation of children in national development efforts and for creating the enabling environment and space for children and youth groups and organizations to operate. At the national level, children are often involved in Government activities and programmes that affect children. The State is highly commended for ensuring children's active participation in the International Children's Day of Broadcasting.

We agree with the State Report that the opinions and views of children at home and in communities are still strongly dictated by traditional, cultural norms and religion. Children are rarely consulted on decisions / issues for or affecting them. Parents and communities have the belief that "children can be seen and not heard" and therefore cannot make decisions on their own. Nonetheless, due to the efforts of numerous child-led groups children in the urban areas are gaining more voice and recognition.

There is no Children's Parliament so children do not have a formal forum through which they could articulate their concerns and aspiration. The Coalition acknowledges the efforts of children's organizations to establish a Children's Parliament albeit without success.

While Section 17 of the Children's Act 2005 recognises children's right to express their opinions and to participate in decisions which affect their wellbeing, there is no much information or data on how children are actually expressing their views in custody and access cases, adoption, placement, administration of child justice and other forms of care. It is not known how such proceedings are monitored or tracked to ensure respect for this right.

## **Recommendations for the State**

We recommend that the State:

- Disseminates and popularises as widely as possible the Constitution, CRC and the Children's Act and encourage children's participating in decision making processes in homes and communities.
- The effective application and monitoring mechanism of the Children's Act should target law enforcement agencies, religious / community leaders, local government authorities and the general public.

- Makes budgetary allocation for the sustainability of various children's programmes such as the National Children's Assembly and media programmes run by children on both private and public media houses.
- Establishes the Children National Assembly of The Gambia (Children's Parliament) and a mechanism established to ensure linkage and synergy between this body and the National Assembly and for incorporation of the children's views into policy matters.

#### **IV. CIVIL RIGHTS AND FREEDOMS: ARTICLES 7, 8, 13-17 AND 37 (a)**

##### **1. Name and Nationality: Article 7**

We acknowledge the fact that there are progresses in terms of birth registration and the issuance of birth certificates, but the free automatic issuance of birth certificates on registration is not in place as recommended in the Concluding Observations. The process of acquiring a birth certificate is slow largely due lack of knowledge, economic and cultural considerations such as naming a child seven days after birth and the fees levied on the certificates respectively.

The State Report shows the contribution of UNICEF to the birth registration efforts of the Government; however, it does not show what specific budgetary allocation is made to the Birth and Death Registration Unit. No information is also given on how children born to refugees or asylum seekers are actually registered in accordance with the law.

The birth registration rate of children under 5 years has slightly fallen from 55 per cent in 2005 to 52.5 per cent in 2010.<sup>5</sup>

##### **Recommendations for the State**

We recommend that the State:

- Makes more progress in combining birth registration and the automatic issuance of free birth certificates, preferable at the first clinical day.
- Organizes, in collaboration with other NGOs, sensitization campaigns on the importance of birth registration and birth certificate and also popularize the Births and Deaths Registration Act.
- Commits more resources for the effective functioning of the Birth and Death Registration Unit.

##### **2. Preservation of Identity: Article 8**

The Children's Act 2005 recognizes the right of the child to preserve his/her identity. The birth certificate issued to children does not indicate the child's tribe, religious affiliation or marital status of the parents.

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<sup>5</sup> UNICEF-Banjul MICS III 2005/6 Report and MICS IV 2010 Report

### **3. Freedom of Expression, Thought, Conscience, Religion, Association and Peaceful Assembly: Articles 13, 14 &15**

The Children's Act-2005 guarantees children's right to freedom of expression, although Article 13 of the CRC is hindered by traditional beliefs which makes the full realization of this important right difficult. There are concerted efforts by NGOs and the Media in providing opportunities for children to express themselves. The children clubs and associations also provide platforms for peaceful gathering and opportunity for them to receive and impart information and ideas. This is, however, limited by financial and moral support from the government and NGOs.

#### **Recommendations for the State**

We recommend that the State:

- Takes the lead in providing opportunities and platforms for children to express themselves especially on issues affecting them.
- Collaborates with NGOs to support and strengthen children's clubs and associations.

### **4. Access to Appropriate Information: Article 17**

The Children's Act 2005 guarantees children's access to appropriate information but as earlier stated, children can be monitored at home by their parents and in school by the staff, but internet cafes are not monitored. There exists no guideline to regulate operations of internet cafés or video showrooms regarding online protection of children.

There is a very limited library across the country especially in the rural areas. The few structures found in the urban areas are outdated with old and out of date book collections.

Though efforts are being made by both the Gambia Radio and Televisions Services and other private print and electronic media to provide appropriate information to the children, however, some television programs that required viewer discretion are aired at prime time.

#### **Recommendations for the State**

We recommend that the State:

- Provides, in collaboration with development partners, more community libraries which are sensitive to children with special needs.
- Ensures films and soap operas aired on the national television are sufficiently censored to protect children

### **5. The Right not to be Subject to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, including Corporal Punishment (Article 37 (a))**

#### **Corporal Punishment**

In 2001, the CRC Committee expressed grave concern regarding the prevalence and acceptance of corporal punishment in schools, families, care and juvenile detention

institutions, and as a punishment in the penal system.<sup>6</sup> It recommended legislative measures to prohibit all forms of physical and mental violence, including corporal punishment as a penal sanction within the juvenile justice system, in schools and care institutions, as well as in families.<sup>7</sup>

In the Gambia, the Children's Act 2005 is the most comprehensive piece of legislation that enumerates the rights of children, harmonised with the CRC and the ACRWC. However, the Act does not expressly prohibit corporal punishment in all the settings. It only unambiguously prohibits the Children's Court from making an order subjecting a child to corporal punishment.<sup>8</sup>

Corporal punishment is not expressly prohibited in the homes. Parents are only to "ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child"<sup>9</sup>. Regarding corporal punishment in care institutions and work places, the Act only obligates a person who has custody of a child to protect him or her from discrimination, violence, abuse and neglect.<sup>10</sup> Similarly, in the education or school setting corporal punishment is not legally prohibited. Procedures mainly restrict corporal punishment, stipulating its administration only by or in the presence of the head teacher and logging the punishment in a designated book<sup>11</sup>. However, in its efforts to discourage corporal punishment in schools, the Ministry of Basic and Secondary Education has developed guidelines on positive discipline in schools. In the justice system, corporal punishment is not prohibited as a sentence for a crime or a disciplinary measure in juvenile detention facilities.

A 2010 UNICEF Study has shown that children continue to be subject to various forms of violence and abuse, especially in the homes. It reported that 90.3 per cent of the children aged 2-14 years were subjected to at least one form of psychological or physical punishment by their mothers/caregivers or other household members, while 38.9 per cent of parents/caregivers believe that in order to raise their children properly, they need to physically punish them.<sup>12</sup>

## **Recommendations for the State**

We recommend that the State:

- Ensure adherence to the provisions of the Children's Act in schools, security agencies, communities and care institutions.
- Amends the Children's Act 2005 and prohibit corporal punishment against children in all settings, and repeal the education regulations authorising corporal punishment in schools.
- Develops a comprehensive, adequately resourced, national strategy or national action plan on the prohibition of all forms of violence against, in consultation with children.

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<sup>6</sup> Concluding Observations of the Committee on the Rights of the Child: Gambia. 06/11/2001. CRC/C/15/Add.15

<sup>7</sup> As above.

<sup>8</sup> Sec. 220(9) of the Children's Act 2005

<sup>9</sup> Sec. 22 of the Children's Act 2005

<sup>10</sup> Sec. 21 of the Children's Act 2003

<sup>11</sup> Sec. 15 of the Education Regulations of Education Act Cap. 46 Law of The Gambia

<sup>12</sup> UNICEF -Banjul MICS IV 2010 Report, published in 2013

- Reinforces public awareness campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.<sup>13</sup>
- Trains teachers and parents on positive methods of disciplining children
- Incorporates positive methods of disciplining students and alternatives to corporal punishment in the curriculum of Gambia College.

### **Female Genital Mutilation**

FGM is not explicitly prohibited by the Children's Act although Section 19 of the said Act prohibits social and cultural practices that are prejudicial to the health and life of the child. The Government, through the Women's Bureau, is raising awareness on the harmful effects of FGM on women and children. It has also developed a comprehensive National Plan of Action to Accelerate the Abandonment of FGM/C. NGOs such as GAMCOTRAP and BAFROW are also engaging communities and circumcisers to abandon the practices. 'Dropping the knife' ceremonies have been held in communities which have pledged to abandon FGM.

In spite of these efforts, the prevalence of FGM is still very high in The Gambia. About 76.3 per cent of women aged 15-49 have some form of FGM.<sup>14</sup> 42.4 per cent of women reported that at least one of their living daughter aged 0-14 years has undergone FGM while 64.2 per cent approved FGM.<sup>15</sup> The practice of FGM appears more common in rural areas at 78.1 per cent than in urban areas, 74.6 per cent.<sup>16</sup> According to NGOs working to stop Female Genital Mutilation, children are being circumcised at a very early age (i.e. 1 week – 2 months old) in some communities to escape detection. This practice infringes on the child's right not to be subjected to any inhuman or degrading act. It is noteworthy that GAMCOTRAP have submitted recommendations on issues affecting girls including the effects of Female Genital Mutilation to the Law Reform Commission.

Women right NGOs that are working for the eradication of FGM now use the national television to sensitise the public and have sensitisation programmes on private radio stations. However, it seems there is very little political will towards the legal prohibition of FGM as the Government has not made its stance on this harmful practice publicly known. Some religious conservatives are actively encouraging the practice using the state radio.

### **Recommendations for the State**

We recommend that the State:

- Legislates against the practice of FGM and vigorously enforce any such prohibition.
- Supports and empowers the media to raise awareness on the harmful effects of FGM.

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<sup>13</sup> Concluding Observations of the Committee on the Rights of the Child : Gambia. 06/11/2001. CRC/C/15/Add.165.

<sup>14</sup> UNICEF-Banjul MICS IV 2010 Report, published in 2013

<sup>15</sup> UNICEF-Banjul MICS IV 2010 Report, published in 2013

<sup>16</sup> UNICEF-Banjul MICS IV 2010 Report, published in 2013

- Supports NGOs that are working on FGM prevention and ensure they have free access to the media, in particular the national radio and television.
- Intensifies the campaign against FGM, using all available media and the national women's machinery to reach communities that practise FGM.

**FAMILY ENVIRONMENT AND ALTERNATIVE CARE: ARTICLES: 5; 9-11; 18  
PARAS 1 & 2; 19-21; 25; 27 PARAGRAPH 4 & 39**

**1. Parental Guidance: Article 5**

Though the Gambia has adopted an integrated approach to holistic child development through parenting programme, this has not been implemented nationwide. Furthermore, the traditional settings and systems of child rearing through parental guidance needs to be supported.

The State Report does not give much information on the family and traditional structures in The Gambia, the changes they are undergoing as a result of poverty, urbanization, nucleation and the challenges they are facing to provide stable, warm and nurturing environment for children. Customary or traditional fostering is not regulated and there are reports of children being abused or maltreated by foster parents or guardians.

**Recommendations for the State**

We recommend that the State:

- Establishes more day care centres across the country.
- Institute and popularise parenting education programmes in collaboration with NGOs and the media.
- Establish social protection systems to support poor families in their child rearing and nurturing efforts

**2. Parental Responsibilities: Article 18 paragraph 1&2**

It is acknowledged that there are good policies and structures developed by the Government as mentioned in the report. However, the Department of Social Welfare should coordinate efforts and take necessary action to support parents not in position to take responsibilities for their children.

The Department of Social Welfare recorded 24 cases of baby abandonment in 2012.<sup>17</sup> The upsurge in baby abandonment would have high implication for government as a duty bearer and also for policy intervention.

While the Children's Act contains strictures against parents who fail to take care of their children, there are instances when recovery of maintenance from fathers has proved difficult and inconvenient for mothers. There is also concern that parents who fail to provide maintenance for their children are sometimes treated lightly or leniently by the Courts, in particular the Cadi Court.

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<sup>17</sup> Presentation on The Gambia's Child Protection Country Profile and System, at CPiE Training from 11-15 March 2013

## **Recommendations for the State**

We recommend that the State:

- Strengthens the capacity of the Department of Social Welfare so that it can effectively decentralise its functions to adequately take up emerging child protection issues.
- Provide adequate budget to the Department of Social Welfare so that it can conduct more sensitization programs on baby abandonment and neglect

### **3. Separation from Parents: Article 9**

As indicated in this complementary Report, it is difficult to know how the best interest and views of children are taken into consideration and monitored in cases of custody, access or separation before the courts. It is also not known if there is any consistent monitoring or follow-up by the Department of Social Welfare of children who have been separated from their parents or families because of abuse, neglect, violence or for other reasons.

The National Orphans and Vulnerable Children taskforce mentioned in the State's Report does not exist anymore.

## **Recommendations for the State**

We recommend that the State:

- The full coordination, implementation and monitoring of the recommendations of the Situational Analysis of OVC report.
- That support provided by Government and other institutions to OVCs needs to be expanded to address their holistic development.

### **4. Family Reunification: Article 10**

Despite the unavailability of data on child reunification, the Department of Social Welfare has in place measures or systems to facilitate the reunification of children with their families. Once a parent's consent is obtained, a child can travel based on the fulfillment of basic conditions. Similarly, children born to parents from other foreign countries are not restricted to travel to countries of their parent's choice or origin and most of them use holidays as a pretext.

## **Recommendation for the State**

We recommend that the State:

- conducts a survey to look into the issue of family reunification as a prelude to put in place facilities and a response mechanism.

### **Illicit Transfer and Non-Return- Article 11**

The Coalition appreciates the efforts of Government to combat illicit transfer and trafficking of children. The enactment of the Trafficking in Persons Act 2007 is a commendable effort.

The establishment of the National Agency Against Trafficking In Persons (NAATIP) is also a great step towards efforts at counteracting child trafficking.

### **Recommendation for the State**

We recommend that the State:

- Strengthens international cooperation with countries in the sub region and beyond for the purpose of effectively combating illicit transfer and trafficking of children.

### **Abuse and Neglect: Article 19**

The Government's efforts to fight against child sexual abuse, exploitation and neglect through the development of legislations, policies, programs and projects are commendable. Although vulnerable children were mentioned in the State Periodic Report, Almudos and Children with Special Needs were not. The Child Rights coalition is concern with the level of commitment towards and protection of the rights of these two very important vulnerable groups of children.

### **Recommendations for the State**

We recommend that the State:

- Endeavours to have disaggregated data on child abuse and neglect as well as on Almudos and children with special needs for more policy interventions
- Strengthens and financially and technically support the functional Community Child Protection Committees and establish similar structures in other regions of the country.
- Makes the helpline operational around the clock (24 hours) and popularise its services nationwide. The response mechanism should be quick and well coordinated.

### **Child deprived of a family environment: Article 20**

The Child Rights Coalition agrees with the submission indicated in the State Report.

### **Adoption: Article 21**

The Child Rights Coalition commends the State for its strict procedures on adoption, both intercountry and local.

### **Recommendation for the State**

We recommend that the State:

- Ratifies the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

### **Periodic review of placement: Article 25**

The Child Rights Coalition agrees with the State Report that there are presently inadequate reviews of the living conditions of children deprived of a family environment. The

Department of Social Welfare and other actors should be capacitated to overcome the daunting challenges.

### **Recovering of Maintenance for the Child: Article 27**

As stated earlier, there are challenges in recovering maintenance from parents, often fathers. The Children's Act 2005 provides that it is the responsibility of both parents to maintain their children, however this is difficult to enforce in case of divorce or separation. The Department of Social Welfare tries to serve as an 'honest broker' in maintenance recovery, however, it sometimes faces non-compliance by some parents. In such instances the Department refers the case to the Children's Court. While the Department puts into consideration many factors before it asks a parent to pay maintenance, the amount charged is usually considered inadequate to cater for the basic needs of a child.

One challenge the Department of Social Welfare faces is the fact that majority of the parents or adults work in the informal sector and it is difficult to recover maintenance from this largely unregulated sector. Also many people are not aware of the functions of the Department or do not know where to go to recover maintenance on behalf of their children.

### **Recommendations for the State**

We recommend that the State:

- Legally empowers the DSW to be able to recover maintenance from parents
- Strengthens its collaboration with foreign other embassies so that the DSW would find it easier to recover maintenance from parents who have moved out of The Gambia

### **Article 19: Abuse and Neglect, including Physical and Psychological Recovery and Social Integration- Articles 19 and 39**

The Government is commended for putting in place the requisite legal and policy frameworks for the protection of children from abuse, neglect and exploitation. We also recognize the great efforts of the Department of Social Welfare at establishing a national database on children as well as Community Child Protection Committees in the rural areas.

The Coalition is, however, concerned about the inadequacy of trained professionals, psychosocial support services and infrastructure for the recovery, rehabilitation and reintegration of victims of abuse and neglect. There is a near absence of these services and professionals in the rural areas.

## **V. BASIC HEALTH AND WELFARE: ARTICLES 6, 18, 23, 24, 26 and 27**

### **Child Survival and Development: Article 6**

The Government is commended for putting in place policies, strategies and programmes geared towards accelerating the reduction in infant mortality and morbidity. There has been significant decline in infant mortality. However, at the health delivery points, there are few trained health personnel and the points are poorly resourced. Most of these resources allocated are not recurrent resources and therefore they affect the delivery of services related to child health and survival.

## **Children with Disability: Article 23**

The Government is commended for integrating the education of children with disabilities into the mainstream education system and for giving opportunity to private organizations and individuals to participate in ensuring that the rights of children with disabilities are realized.

In spite of these efforts, children with disabilities in the Gambia continue to be challenged with various difficulties that affect their overall development and survival, particularly their education, protection, rehabilitation and participation. The access to education of children with disabilities only stops at the basic level. There are few schools especially for children with disabilities in the country and all of them are located within the urban areas. In the rural areas, some children with disabilities are denied right to education and protection as there are no specialized trained personnel to care for their protection issues. The integrated program has problems of equal attention and skills and knowledge required to effectively care for children with disabilities. The teachers are not adequately trained on special needs and most of the time there is little attention given to children with disabilities in the integrated school program.

The available data on person with disabilities is outdated and there is the need to put in place identification and assessment mechanisms for children with disabilities.

Access to health services is also a challenge due to the inclusive service provision at health service points within the country. Health personnel are not oriented on special needs of children with disabilities. They are treated the same as other children at service points. Access to service points is also impeded by mobility and infrastructural facilities constraints.

There exists no information in the State Report to show that there is regular monitoring and supervision of specialised schools and facilities for children with disabilities and therefore it is not known how these institutions are ensuring the best interests of the children are protected.

We commend the State for ratifying the International Convention on the Rights of Persons with Disabilities in July 2013. However, the instrument is not yet domesticated to make it enforceable..

### **Recommendations for the State**

We recommend that the State:

- Domesticates the UN Convention on the Rights of Persons with Disabilities and come up with a Disability Act.
- Update the data on person with disabilities.
- Ensures that all its institutions that provide services to children with disabilities particularly the teacher training college have specialists in special needs.
- Decentralizes education and welfare programs for children with disabilities and strengthen existing schools for children with disabilities.

- Takes all appropriate educational, legal and social measures to address discrimination against children with disabilities.
- Implements the recommendations of the Special Needs Education and Inclusive Policy Framework 2009-2015 and the National Disability Study Report 2013.

### **Health and Health Services- Article 24**

The State is commended for its efforts in health delivery. However, the Coalition is concerned that in spite of the fact that The Gambia, through the Abuja Declaration on Health, made a commitment to increase the national health budget to 15%, attaining health and accessing health services continues to be a challenge in the Gambia. The greater part of the national health budget goes to overhead cost while service delivery points continue to experience shortage of medications and materials needed for effective and efficient service delivery. Also the health system in the Gambia is faced with inadequate human resources to take care of the high influx of child related diseases.

The health delivery system is at three different points namely, primary, secondary and tertiary levels. At primary level there are still problems associated with delivery of service as only the communities and the people are given basic training in administering health. Most of the time, educated people are not given this responsibility. Therefore, the primary health care should be strengthened and supported with the requisite resources for effective health delivery service.

The NGOs also participate in the delivery of health services to the people but most of them attract cost which is difficult to meet by poor people.

The NGOs health service points are also located within the urban areas with few in the rural areas as well as Government services which are available but inadequate.

Referral services are also inadequate due to distance and there are few qualified personnel to deliver the services.

### **Adolescent Health**

The adolescent health program is integrated into the integrated health delivery system which limits access to health services by adolescents. Even where such services exist, they are not adolescent friendly. There is still no comprehensive study on adolescent health, and most of the activities and program related to adolescent health are implemented by United Nations Population Fund (UNFPA) and NGOs such as the Gambia Family Planning Association. These activities are mostly one-off programs while the health of adolescents continues to be a major challenge due to lack of available data. They are also limited by resource constraint and therefore cannot reach 60% of the population. Most of their services are based in the urban areas while the rural adolescents feel reluctant to use the integrated service delivery system for fear of stigmatization.

### **HIV/AIDS**

HIV/AIDS continued to be a major challenge particularly among adolescents. Most support programs for adolescents are advocacy and prevention while little attention is given to treatment. There are no well adequate adolescents' friendly service centers to provide comprehensive services to adolescents. Very few trained counselors and adolescent

reproductive health specialists are in the country. These situations could have increased the vulnerability of adolescents to sexual transmitted infections and HIV. There is also no adequate voluntary Testing and Counseling centers for adolescents in the provinces. We wish to commend government for making pronouncements to protect teachers and children infected or affected with HIV/AIDS.

### **Recommendations for the State**

We recommend that the State:

- Conducts a comprehensive study on adolescent health to serve as catalyst for increment in resource allocation for adolescent health and a comprehensive HIV/AIDS program for adolescents.
- Establish and support the effective functioning of adolescent friendly centers in all regions

### **Early Marriage**

The 1997 Constitution guarantees the rights to freely consent to marriage and to marry and found a family. These rights are accorded to men and women of full age and capacity and shall be based on the free and full consent of both parties.<sup>18</sup> Thus, only persons of full age and capacity can enter into a legally valid marriage. However, 'full age' and 'capacity' is not defined in the Constitution. This would mean forced and early marriages are unlawful and unconstitutional. However, this is not the case.

Similarly, under the section 127 of the Criminal Code which has been amended by the Children's Act, 2005, 'defilement' of unmarried girls under 18 is a criminal offence.<sup>19</sup> However, 'defilement' of married girls under 18 years is not an offence, making it acceptable under customary law for girls as young as 13 to be married off without committing a crime.

The Children's Act defines a 'child' as any person under the age of 18 years.<sup>20</sup> Section 24 of the Children's Act stipulates that no child is capable of contracting a valid marriage, and a marriage so contracted is voidable. This provision though is subject to any applicable personal law. This means, even though child marriage is not encouraged, its consummation will not be regarded as a crime.<sup>21</sup>

Section 28 of the Women's Act prohibits parents and guardians from withdrawing girls from school for the purpose of marriage. It states that 'a girl-child shall not be withdrawn from school by any parent or guardian for the purpose of marriage.'

Section 35 of the Women's Act provides that no marriage shall take place without the free and full consent of both parties to the marriage. This means that no person should be forced into marriage and where such a marriage is contracted the marriage will be voidable. The limitation of the provision is that it does not provide any penalty for the perpetrator of a forced marriage.

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<sup>18</sup> Section 27 of the 1997 Constitution of The Gambia

<sup>19</sup> See Schedule (section 241) of the Children's Act.

<sup>20</sup> Section 2 of the Children's Act 2005

<sup>21</sup> The Children's Act 2005 does not peg 18 years as the minimum legal age for marriage

There is no provision in the Women's Act which stipulates that the minimum age for marriage should be 18 years for both men and women.

Early and forced marriages still happen in practice. About 8.6 per cent of women actually married before they were 15 years while 46.5 per cent were married before 18 years.<sup>22</sup> This trend is more prominent in rural areas. It is not uncommon to hear of stories of young girls being taken out of school and forced into marriage by their family even though the Women's Act 2010 prohibits such practice.<sup>23</sup>

### **Recommendations for the State**

We recommend that the State:

- Establishes 18 years as the minimum legal age for marriage and bring all other laws in line with that
- Rigorously enforces and implements Section 28 of the Women's Act 2010 which prohibits the withdrawal of girls from school for the purpose of marriage.
- Amends Section 36 of the Women's Act that encourages the registration of marriages to make marriage registration compulsory in line with CEDAW and the African Women's Protocol.
- Embarks on large-scale communication campaigns that promote ending child marriage. These campaigns should be at both the local and national level.
- Mobilises men, parents, religious, traditional and political leaders and communities to change discriminatory gender norms, address root causes, and create alternative social, economic and civic opportunities for girls.
- Ensures that the girl child who has been 'married' gets the fullest protection of the law including the right to maintenance
- Empowers girls by providing them livelihood skills and sexual and reproductive health information and services.

### **Social Security, Child Care Services and Facilities: Article 26 & 18:**

Social security in The Gambia does not include children and their welfare. It is mostly provided to employees and pensioners. It creates housing estates for those who could afford it denying poor families and their children access to adequate housing as a right.

### **Recommendation for the State**

We recommend that the State:

- Amends the Social Security Act to incorporate children's welfare

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<sup>22</sup> UNICEF-Banjul MICS IV 2010 Report, published in 2013

<sup>23</sup> Section 28 of the Women's Act 2010

## **Standard of Living: Article 27**

The Government is committed to reducing poverty and improving the well-being of its population.<sup>24</sup> It is also committed to increasing the population's access to quality health care, safe drinking water and basic sanitation and to strengthening efforts in areas such as social protection, child protection and disability.<sup>25</sup> However, the Government also recognised inadequate social services and safety nets as one of the challenges or constraints.<sup>26</sup> Poverty eradication is one of the goals of the Government's development blueprint, Programme for Accelerated Growth and Employment 2012-2015. Nonetheless, it does not mention child poverty as an issue or the impact of poverty on children.

We commend the Government for developing the National Nutrition Policy 2010-2020 and strategic plan 2010-2015.

## **Recommendations for the State**

We recommend that the State:

- Gives priority to children's welfare and rights in its budgetary allocations, especially to the social sectors
- Adopts a child responsive version of the Programme for Accelerated Growth and Employment (PAGE) with its implementation mechanisms

## **EDUCATION, LEISURE AND CULTURAL ACTIVITIES- ARTICLES 28, 29 AND 31**

### **The Child's Right to Education**

The NGO community commends the government for presenting this informative report on the child's right to education, leisure and cultural activities, and for the remarkable principles and policies put in place to facilitate children's access to quality education. However, the CSO wishes to give the following comments below.

### **Articles 28, 29 & 31: Education, including vocational training and guidance**

#### **Free Education**

- Government as at 1997 put in place a constitutional pronouncement for free and compulsory basic education, expanding the basic education base to annex Early Childhood Centres in lower basic schools, and the Education Policy 2004 – 2015 for expanding educational opportunities into higher and tertiary education, vocational and special needs education. The NGO community notes with concern that free education refers to only tuition fees. Cost of education for school meals, stationery, exercise books and text books at secondary level are borne by parents which outweighs what government is paying in its "free education package". Parents' share in educating the child limits some children's right to access quality education for all, and to progress and reach their potentials.

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<sup>24</sup> Programme for Accelerated Growth and Employment 2012-2015

<sup>25</sup> Programme for Accelerated Growth and Employment 2012-2015

<sup>26</sup> Programme for Accelerated Growth and Employment 2012-2015

- The remarkable expansion in classroom construction ensures the child's right to access education. However, the report did not cover the sustainable utilization of classrooms. Evidence shows that some classrooms, like in Kudang and Ndemban Lower Basic Schools, remain unused due to the lack of furniture. The buildings are intact but lack of furniture warrants double-shift teaching in such schools, thus affecting access to quality of education.
- The combined Periodic Report made mention of Government's increase of the number of qualified teachers trained at Gambia College, 1,024 and 1,034 for PTC and HTC respectively, but fell short of the retention of the teacher in the system. The NGO community is aware of the high teacher attrition rate which is denying the child's right to quality education. Policies of increase access require matching policies to facilitate retention.
- The securing of US\$4 million through the EFA Fast Track Initiative mentioned on the report is as a result of the appropriate policies and practices put in place by government is commendable. However, the report never indicated government's budgetary allocation to the education sector which depicts government's commitments on the course of children. The NGO community is aware that in 2007, the Government recurrent budget allocation to the education sector was about **18%** which is less than the 20% international benchmark.

## **2. Inclusiveness of Education**

On the education policy, inclusive education caters for special needs education as an integral part of the basic education i.e. children with severe visual impairments, hearing impairments, speech disorders and learning difficulties. However, only three such schools run by philanthropic organizations with government subventions are available within the urban area of Greater Banjul. The lack of such facilities in the rural areas denies children with special needs the right to education on the basis of equal opportunities for all children.

We recognized and commend Government's efforts of putting in place a sexual harassment policy availing the girl child the right to re-enter education in events of pregnancy. The NGO community wants to see the legislation of the policy and bringing to book culprits, especially the "sugar-daddy" culprits.

## **3. Vocational Education**

The report indicates the establishment of the National Training Authority that coordinates training institutions, skills training and appropriate technology courses. The NGO community notes with concern that such opportunities are limited as they are non-existing in the rural areas denying the rural child the opportunity to develop his/her personality, talents and mental and physical abilities to their fullest potentials (Art 29 (a)).

## **4. Early Childhood Development**

The report acknowledges the low enrolment of children in this category of education despite the adopted integrated approach of incorporating it with nutrition, health, and education in a minimum package, such institutions are concentrated in the urban and semi-urban setting, this is a denial of availing equal opportunities to all Gambian children access to early education essential in children educational formative stage. However, the efforts of some NGOs such

as the Child Fund, The Gambia in the provision of ECD Centers and services to some communities in the rural areas. This can create imbalances for children in education in later years.

## 5. **Adult Literacy**

The combined Periodic Report enumerated the existence of 416 literacy classes and registering 25.7% increase. The NGO community is of the view that the quality of education for adult literacy is of low relevance to the functional needs of the adults. Thus, participants come out with little or no skills at all. Secondly, adult literacy classes are project based e.g. the Community Skills Improvement Project (CSIP), and projects end with the classes.

### **Rest, leisure, recreation and cultural and artistic activities: Article 31**

Despite government's efforts in making the school environment safe and conducive for learning, many schools, especially in the Greater Banjul Area, lack space and appropriate play grounds for recreation. Expansion in education is done at the expense of children's right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (Art 31 (1)).

It is evident that in schools where recreational facilities are available, the quality of physical education for the children is too limited to sharpen their capabilities and potentials. Trained teachers skilled to tutor children to help develop and harness their potentials to the fullest outside academics are absent in the system.

Overall the report recognizes government's constraints with financial and human resources, thus impeding progress in education e.g. low remuneration for teachers and managers makes teaching not attractive, in the opinion of the NGO community the education policy pronouncements are ambitious, and never took into consideration the UN Convention on the Rights of the Child that it signed.

### **Recommendations for the State**

We recommend that the State:

- Respects and fully implement free and compulsory basic education and increase budgetary allocations to education to the 20% benchmark to free parents from the costs they are incurring.
- Expands vocational education opportunities, and early childhood care and development into the rural regions.
- Reviews and updates the Culture Policy
- Review the Policy Guidelines and Regulations of Sexual Misconduct and Harassment in Gambian Educational Institutions of the Ministry of Basic and Secondary Education and enact a Sexual Harassment legislation
- Annex ECD Centers set up by NGOs to the Lower Basic Schools to facilitate easy transitioning of those children.

## **SPECIAL PROTECTION MEASURES-ARTICLES 22, 30, 34, 35,36, 37, 38, 39, 40**

### **Refugee Children: Article 22**

The efforts of the Government in responding to the needs of refugees are commendable. There are also institutional mechanisms to ensure that the rights of the refugee child are protected. However, as acknowledged in the State Report, there are no disaggregated data on the number of refugee children in The Gambia and those receiving assistance and no specific law on refugees. Furthermore, the State report does not have enough information on how the best interest of the refugee child is taken into consideration in the processes relating to one's refugee status.

### **Recommendations for the State**

We recommend that the State:

- Turns the existing Refugee Unit under the Gambia Immigration Department into of a Department of Refugee and Asylum Seekers under the auspices of the Ministry of Interior
- Enacts a Refugee Law which would clearly outline and harmonize the rights and all other dues to refugees in accordance with the Laws of The Gambia and all International Conventions and Protocols signed and ratified.
- Collects systematic data on the rights of refugee children in The Gambia as well as track and monitor children with refugee status, unaccompanied children and children of migrants for policy and programmatic purposes.

### **Children of Minorities or of Indigenous People: Article 30**

The State is highly commended for implementing this Article to the highest level possible. Minorities and Indigenous People enjoy their own culture and practice their own religion, language and intermarriages.

### **Child Labour: Article 32**

The Children's Act and the Labour Act 2007 contain comprehensive and progressive provisions that protect children from hazardous and exploitation labour. According to the MICS report 2007, there exist Child Labour in The Gambia which stands at 24.7% as at 2007.

### **Recommendation for the State**

We recommend that the State:

- Formulate a Child Labour Policy

### **Drug Abuse: Article 33**

Government has adequately put in place laws governing smoking and drugs from its production, marketing, sales, use etc in the protection of its citizenry from harmful drugs that destroy health. The laws are being implemented by law enforcement agencies; however, there

are gaps in its implementation. Evidence from a local NGO called RAID-The Gambia has shown that there is an increase in terms of children having access to drugs.

There appears to be inadequate coordinated approach embracing prevention and rehabilitation measures to address the issue of drug abuse by children. Much of the work in this area is undertaken by NGOs.

### **Recommendations for the State**

We recommend that the State:

- Gives specialised training to all relevant professionals and agencies on detecting, handling, rehabilitation and re-integration of victims of drugs and illegal substances.
- Strengthens drug and alcohol abuse prevention education in the school curriculum and institutions.
- Encourages interventions such as guidance and counseling and train teachers to be able to provide such information
- Implements and enforces laws concerning drugs that ensures that children do not access drugs.
- Establishes rehabilitation centres for child victims of drugs.

### **Sexual Abuse and Exploitation: Article 34**

There has been positive development in this area including enactment of laws and campaigns conducted by government and civil society organisations. We commend the State for enacting the Sexual Offences Act 2013 and the Domestic Violence Act 2013. The Network against Gender Based Violence, an NGO women's rights coalition, has in 2013 supported the development of two guidelines, namely Guidelines on Clinical Management of Gender Based Violence and Psychosocial Support Guidelines for Victims/Survivors of Gender Based Violence and conducted trainings for relevant professionals on them. However, the reporting mechanisms of abuse are not clear and concise. It is also evident that the culture of silence and lack of reporting still exist as well as the difficulty that parents face in relation to the issue of sexual abuse. There is also inadequate training of police officers in terms of investigation and interview in cases of sexual abuse. Rehabilitation centres for victims of abuse do not exist.

### **Recommendations for the State**

We recommend that the State:

- Clarifies, enhances and popularise the reporting mechanism for sexual abuse and exploitation.
- Provides specialised capacity building for all professionals concerned with sexual abuse and exploitation cases.

- Strengthens the DSW and Police Child Welfare Unit to be able to effectively respond to sexual abuse and exploitation cases.
- Commits more resources to coordinate responses to tackle child sexual abuse and child sex tourism.
- Rigorously enforces of the Children’s Act 2005, Tourism Offences Act 2003 and the provisions of the Criminal Code that deals with rape, defilement, incest, abduction, procurement, indecent assault, etc.
- Improves in the areas of data collection, compilation, analysis and accessibility.

### **Sale, Trafficking and Abduction: Article 35**

The enactment of the Trafficking in Persons Act, 2007 by the Government is commendable and timely. The Civil Society Organizations have also collaborated with government in tracking and prosecuting offenders, and reintegrating victims. However, there are few professionals to deal with victims, especially in providing their psycho-social needs.

### **Recommendations for the State**

We recommend that the State:

- Popularizes the Trafficking in Persons Act 2007.
- The State to establishes and strengthens rehabilitation and reintegration programs and facilities.
- Provides more training for personnel in child trafficking to update their knowledge and skills.
- Strengthens the networking between government and civil society in the mitigation of child trafficking is required.

### **Other forms of exploitation: Article 36**

**Street Children:** Children living or working in the streets have a different trend or pattern peculiar to The Gambia. According to the State Report, children do not live on the streets but sleep with families and come on the streets to work in the morning. However, there is evidence from a study conducted in 2007, that there are street children in The Gambia. Most of the children in the last survey conducted by UNICEF and Christian Children’s Fund (CCF) Inc now called ChildFund-The Gambia were from the neighboring countries and the rest from outside Banjul the capital, looking for work or education opportunities.

### **Recommendation for the State**

We recommend that the State:

- Conducts and updated survey nationwide to determine the increase or decrease of affected children and the way forward.

**Children under Traditional Islamic Education (“Almudus”):** “Almudus” (children under the guardianship of Islamic Religious Education Teachers called Marabouts) phenomenon still exist. The problem is that the children are compelled to contribute to their upkeep. They are often seen begging on the streets which is a child protection issue. Majority if not all are non citizens. They are vulnerable to sexual abuse and exploitation, police brutality and economic exploitation. The general public often perceives them as nuisance.

### **Recommendation for the State**

We recommend that the State:

- Develop intervention programs to create awareness and actively involve “marabouts” in these programs.

### **Torture and Deprivation of Liberty: Article 37**

Children enjoy full benefits of this Article which is provided for in the Children’s Act 2005. Arbitrary arrests, capital punishments or life imprisonments have not being committed on children. However, the Constitution does not prohibit the use of capital punishment even though Section 218 (1) (b) of the Children’s Act prohibits the imposition of the death penalty against a child.

Most of the Police Stations do not necessarily have separate cells or detention rooms for children. As such there are instances when children who end up in police custody get locked up in the same cells as adults. The training manual for police officers is not adequately followed to the book.

### **Recommendations for the State**

We recommend that the State:

- Reviews the provision of capital punishment in the 1997 Constitution of The Gambia and bring it in line with Section 218 (1) (b) of the Children’s Act 2005.
- Establishes separate institutions where children are kept from adults and by gender.
- Prohibit all forms of torture.

### **Armed Conflict: Article 38**

The Gambia is lucky indeed not to experience any armed conflict since independence. Furthermore, the recruitment policy into the Army or other Services ensures the exclusion of children under the age of 18 years.

### **Rehabilitative Care: Article 39**

There is inadequate training for professionals in the field of rehabilitative care as well as inadequate structures where rehabilitative care is given. However, there is room for improvement for the decentralization of services and resources for such victims.

## **Recommendation for the State**

We recommend that the State:

- Makes as a priority the trainings for professionals and establishment of rehabilitation centres.

## **Administration of Juvenile Justice: Article 40**

This Article is adequately catered for in terms of provisions of the laws and their implementation. Notwithstanding, there are challenges facing the State in the following areas:

- Inadequate qualified professionals and logistic support to cover the entire country for speedy hearings to alleged victims of offences.
- Inadequate infrastructure at the grassroots level for administration of juvenile justice in the country e.g. three Children's Courts situated in the Kanifing Municipal Area, West Coast Region and Upper River Region which results to movement of children from their environment and from parents and/or caregivers which is not in the best interest of the child.
- Inadequate cells in police stations across the country for children alone.
- No juvenile detention centres for children female offenders.

## **Recommendations for the State**

We recommend that the State:

- Creates one framework for coordination, monitoring and evaluation of all the training programs for security officers on child protection issues.
- Establish Children's Courts in all the regions and create separate cells and juvenile wings by gender for children.
- Establishes a Ministry for Children which is also adequately resourced and capacitated.
- Conducts a nationwide research on the juvenile system to collect data on the situational and circumstantial reasons on why the children are in the juvenile system.
- Establishes separate juvenile structures for both male and female children offenders.

## **CONCLUSION**

We, the CPA member organisations, members of Voice of the Young and all the other children who participated in the preparation of this Report, hope that the UN Committee on the Rights of the Child will find the information in this report useful as it examines The Gambia's combined 1st, 2nd and 3rd Periodic Report on the Convention on the Rights of The Gambia and how it is respecting, protecting and fulfilling the rights of children of The Gambia.