

Report on Gambia **7th Round of the Universal Periodic Review – February 2010**

This report is submitted by the **Sexual Rights Initiative**¹. It was written by Gambian researcher and human rights defender **Jacques Lundja**². It starts by providing background information, to then focus on **Female Genital Mutilation; Domestic Violence; Rape; Equal Rights in Marriage** (polygamy, early and forced marriages, divorce, enjoyment of property); **Sexuality Education for Girls: HIV/AIDS** and **Sex Work**.

Background

1. Gambia is a multiparty, democratic republic with a population of 1.5 million. In 2006 President Alhaji Yahya Jammeh was reelected for a third five-years term in an election considered partially free and fair. President Jammeh's party, the Alliance for Patriotic Reorientation and Construction (APRC), continued to dominate after the National Assembly elections held in January 2007, which were also considered partially free and fair. In the local government elections held in January, the ruling APRC won the two contested mayoral seats as well as an overwhelming majority of the local council seats. The elections were considered free and fair but observers expressed concern over the low voter turnout. In 2006 a coup attempt was uncovered, and approximately 50 suspects were detained, one of whom remained in detention undergoing trial on charges of treason until this year's end. While civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted independently.
2. The Constitution of the Second Republic of The Gambia contains wide-ranging provisions on the "Protection of Fundamental Rights and Freedoms", including the right to equality and non-discrimination. However, the Constitution specifically exempts from these provisions laws relating to personal law, including marriage, divorce and inheritance. Initiatives to promote human rights and the rights of women in particular have been made in recent years as set out in the National Policy on the Advancement of Gambian Women, the National Population Policy, and other programmes and policies which address education, health, and reproductive rights.
3. In addition, The Gambia has ratified a range of international treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹ A coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others

² J. Lundja works at RFC for women (Right For Children and for women, a Gambia based Ngo). He has worked on a range of gender and development issues, focusing particularly on sexual and reproductive health and rights, HIV and AIDS, and men and masculinities. He has worked with community activists to implement progressive policies that improve the lives of women, children and men. In 2005, he received his Master of Arts Degree from Duquesne university, Pittsburgh, PA

4. There is however a very wide gap between The Gambia's international obligations, its stated policies and its reality. One of the main factors impeding the effective protection of human rights is the dominance of customary and religious law and a range of traditional, cultural and religious beliefs that perpetuate discriminatory and harmful practices. This stands as a violation of articles 2, nondiscrimination; 3, equal rights; and 26, equal protection of the law of the International Covenant on Civil and Political Rights (ICCPR). On 22 March 1979 the Gambia has acceded to the International Covenant on Civil and Political Rights⁵.

Female Genital Mutilation (FGM)

5. FGM is widely practiced in The Gambia. Estimates of circumcised women range from between 50% to 90%³ of the total female population and its prevalence takes place mostly in the countryside. Governmental policies have not been consistent. The broadcast of information against FGM on the state-controlled Radio Gambia and Gambia Television has been prohibited at various times in recent years. Although the President has recently said that he does not support FGM, in the past he is reported as having stated that although anti-FGM campaigners could continue to do their work among the villages "there's no guarantee that after they deliver their speeches, they will return to their homes". President Jammeh alleged that campaigners against female genital mutilation are receiving millions to undermine Islam and African culture. It "is part of our culture and we should not allow anyone to dictate to us how we should conduct ourselves," Jammeh said. In a veiled threat to the campaigners, Jammeh said they should be ready to face any consequences that may befall them. The government has also so far refused to introduce legislation to ban FGM⁴.
6. Recommendations:

The government must take social, educational and legal measures to eliminate the practice of FGM and to ensure that victims have access to medical assistance, reparations, and psychological support.

Domestic Violence:

7. Violence against women in the home is reported to be common and largely tolerated by society and government. Police regards this issue as a private matter. There is no specific legislation to protect victims of domestic violence. Few instances of prosecutions under general assault provisions have been noted. There are no refuges for battered women.
8. Recommendations:
The government must take social, educational and legal measures to effectively combat violence against women in the home and to ensure that victims have access to reparations, including medical assistance and psychological support.

³ Sources: The Gambia Committee on Traditional Practices (GAMCOTRAP), the African Centre for Democracy and Human Rights Studies, US State Department Report 2000.

⁴ Source: Guardian Unlimited, 24 October 1999

⁵ <http://www2.ohchr.org/english/law/ccpr-ratify.htm>

Rape:

9. Violence against Gambian women mostly affects girls and takes the form of rape, forced marriages, and sexual abuse.
10. Sexual abuse in the home is believed to be fairly common. Police tend to consider these incidents to be domestic issues outside of their ordinary jurisdiction. Rape and assault are crimes under the law. The law does not differentiate between married and unmarried women in this regard. Sexual harassment is believed to be widespread.
11. Recommendation
The government must implement social, educational and legal safeguards to protect women from rape, and to ensure women who have been raped receive the full protection of the law.

Equal Rights in Marriage**Polygamy:**

12. Polygamy is permitted in customary and Islamic law. Islam is the predominant religion. More than 40% of marriages are polygamous. In marriages carried out under these traditions, polygamy cannot be challenged in the civil courts.

Early and Forced Marriages:

13. Marriages are often arranged without the full consent of the woman, while men are normally allowed to choose their wives. Although under the Criminal Code “defilement” of girls under 16 is a criminal offence, under customary laws girls as young as 13 are often married off by their parents, especially in rural areas and when families are living in conditions of extreme poverty. Early marriage is one of the main causes of the high level of female illiteracy and is also associated with high rates of maternal mortality and morbidity.

Divorce:

14. In The Gambia marriages can take place under civil, customary, Christian or Islamic law. Under the predominant Islamic tradition, a man can divorce a woman at any time. Although in theory both parties can be made to pay penalties if the reasons for divorce are perceived to be insubstantial, in practice only women face exacting standards of proof of their reasons for divorce. Women often have to return gifts and any dowry paid by the man. Men can re-marry immediately but women have to wait for three months.

Enjoyment of property:

15. Although the Married Women's Property Act gives married women the right to their own property and an equal capacity to enter into contracts, customs and traditions continue to be a bar to the enjoyment of these rights by married women. The wife's duty is to assist the husband in farming or business, but the proceeds belong to the man. Land is usually administered by male family heads. Inheritance matters are usually settled on the basis of customary or Shari'a law, whereby women get a smaller proportion of the property. If the man dies, the property is customarily taken over by his male relatives, and the widow may be inherited by a brother of the deceased, or, if she refuses him or is rejected by him, she may have to

return to her family, or may become destitute.

16. Recommendations

The government must harmonize existing civil and religious laws and customary practices with The Gambia's obligations under the international treaties it has ratified.

The government must take legal, social and educational measures to eliminate the practice of forced and early marriages.

The government must take measures to ensure that the capacity of a woman to own property is not restricted on the basis of her marital status or other discriminatory grounds.

Sexuality education for girls

17. In the Gambia, there is gross lack of information on menstrual management among adolescent girls, a situation made worse by the secrecy and embarrassment with which discussions about menstruation are treated. Most girls seek information about menstruation from their peers who do not know any better. Adolescence being a time of tremendous opportunity, and at the same time also a time of heightened vulnerabilities, it is imperative to empower adolescent girls with adequate information and skills on crucial issues like menstrual management. Girls in the rural areas of the Gambia have inadequate information about how to manage their menstruation. Talking about menstruation is often not mentioned in some families and is often treated with great secrecy and embarrassment.

18. The majority of Gambian population is Muslim and under Islamic law, a menstruating woman is not allowed to pray or fast. In the schools, menstruating girls do not participate in prayer and they are often perceived as disturbing the prayer sessions because of their 'dirty state'. These are often very embarrassing periods in the lives of these adolescents and could result in poor school performance and lower self-esteem. Management of menstruation therefore should be a vital part of adolescent health education in schools.

19. Recommendations

The government must provide information on management of menstrual fluids, personal hygiene and provide materials to enhance utilization of available sanitary facilities in the schools. We hope that this will empower adolescent girls with knowledge of menstrual management and enhance their self-esteem and academic performance.

HIV/AIDS and Sex work

20. According to officials at the Gambian Department of State for Health, poverty has led to increased prostitution in The Gambia and also has contributed to the rise in HIV/AIDS infections. The average Gambian is hungry, is poor, and lacks a basic livelihood.

21. There is little information about prevalence rates amongst high risk groups such as sex workers, truck drivers, uniformed personnel and fishermen, which could distort the true extent of the prevalence of the disease in the country. Accurate information is key to design adequate programs for prevention and treatment.

22. Recommendations

The government must prioritize education for girls and women, to help improving their socio-economic status.

The government must provide support to groups at higher risk of contracting HIV like sex workers, truck drivers and fishermen for behavioral change and implement community development programs to reduce the stigmatization affecting sex workers and women in general.