Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Gambia - 7th Session – 2010
10th February 2009, 9am to 12pm

National Report

8. The Gambian Constitution provides in Chapter 4 for the promotion and protection of human rights. Every person in The Gambia, whatever his or her race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest.

24. Other guarantees in the Constitution are protection from slavery and forced labour; protection from deprivation of property; right to fair trial; right to privacy; freedom of conscience; freedom of association; freedom of assembly; freedom of movement; political rights; right to marry; rights of women; rights of children; right to education; rights of the disabled; cultural rights; protection from discrimination.

29. In addition to the Constitution, other human rights legislation include the Children’s Act, 2005 – protection of the rights of the child and creation of a Children’s Court; the Tourism Offences Act, 2003 – protection of children from sex tourism; the Trafficking in Persons Act, 2007 – protection from human trafficking and protection of personal liberty; the Legal Aid Act, 2008 – right to fair trial and the provision of legal aid to children, persons charged with capital offences and indigent persons; the Alternative Dispute Resolution Act 2005 – promoting equal protection of the law and access to speedy and affordable justice by litigants, The Judges(Supplementary Code of Conduct) Act 2009 – Regulation of the conduct and behavior of judges in and outside of office, the Labour Act, 2007 – protection of the rights of workers; the Criminal Code and the Criminal Procedure Code and the amendments thereto; the Ombudsman Act – creating the Office of the Ombudsman; the National Commission on Small Arms and Light Weapons Act, 2007 – protection of the right to life; the Food Act – protection of the right to food by controlling the production, manufacture, sale, distribution, importation and exportation of foods; the Information and Communications Act, 2009 – protection of the right to information and the regulation on the communications sectors in The Gambia; Refugee Act, 2008 – protection of refugees; National Water Resources Act, 2004 – protection of the right to water, Public Health (Amendment Act), 2001 – protection of the right to health; Medicine and Related Products Act, 2006 – protection of the right to health; the National Disaster Management Act, 2008 – protection, among others, of the right to life through the provision on an integrated and coordinated disaster management system and the Elections (Amendment) Act, 2005 – protection of right to political participation.

(d) Rights of the child;
Convention on the Rights of the Child ratified on 9 August 1990
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ratified on 3 July 2001

(f) Employment and forced labour;
C138 Minimum Age Convention ratified on 4 September 2000
34. The Gambia is yet to sign orratify the following treaties:

(p) Convention against Discrimination in Education;

35. The National Assembly plays a very important role in the promotion and protection of human rights. The Constitution, for example, requires the National Assembly to review the desirability or otherwise of the total abolition of the death penalty in The Gambia. The Ombudsman is also required to report to the National Assembly annually on the performance of its functions. The President is required to attend a sitting of the National Assembly and address a session on the condition of The Gambia, the policies of the Government and the administration of the State. The National Assembly may also request the President to attend a sitting of the National Assembly to discuss an issue of national importance. It also exercises some oversight over the executive by holding Ministers accountable through urgent questions asked on the floor of National Assembly or through Committees of the National Assembly. The sub-committees of the National Assembly includes the select sub-committee on women and children, which considers the gender dimensions on issues, policies and Bills brought before it relating to women and children.

36. The superior courts of The Gambia consist of the Supreme Court, the Court of Appeal, the High Court and the Cadi Appeals Panel. The lower courts and tribunals include the Magistrates’ Court, the Cadi Court, Rent Tribunal, Children’s Court, Industrial Tribunals and District Tribunals.

48. The Social Welfare Department of The Gambia operates as a service provider and an enabler aimed at improving access to quality social welfare services at the local, institutional and national level. The Government’s Social Development Policy identifies management and administration, child care, adult care and the disabled as its four priority areas. The Department provides support and services to the disabled, the destitute, the poor and needy, victims of criminality, adults living with HIV/AIDS, and their families, victims of natural and social calamities, orphans and vulnerable children and child victims of abuse and trafficking.

50. To ensure compliance with these constitutional requirements and The Gambia’s international obligations, training programmes are continuously organized for members of the Gambia Police Force and other security agencies in the country. The Police also have Human Rights and Complaints Unit and a Child Welfare and Vulnerable Person’s Unit. The Human Rights and Complaints Unit is the internal investigation mechanism branch of the police dealing with general public complaints against the police, which include police corruption, human rights abuses and related matters. The Child Welfare and Vulnerable Person’s Unit also work very closely with NGOs in dealing with issues involving children and vulnerable persons.

51. Persons detained in prison retain their fundamental human rights, except those rights that have been lost as a result of the deprivation of liberty due to the crime committed. Consequently, all efforts are made to treat prisoners in a humane and dignified manner from the time of admission to the time of discharge. Prisoners are informed of the regulations governing them, their rights and obligations while in prison. Training, seminars and workshops are routinely conducted for members of the Gambia Police Force and Prison Services on juvenile justice administration and on international conventions such as the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the above-named instruments on the protection of prisoners.

52. As required by the Constitution and section 36 (2) (a) of the Prison Act, for example, prisoners awaiting trial are always separated from convicted criminal prisoners. Unlike persons awaiting trial, convicted prisoners are also required to wear prison suits. Section 36 (2) (e) of the Prisons Act further requires that first offenders be separated from offenders with one or more previous convictions. Children in conflict with the law are always separated from adults from the pre-trial to the trial stages as required by the Constitution and the Children’s Act. Children convicts are also separated from adult convicts. A separate Juvenile Justice Wing located at Old Jeshwang Prison Camp was built in March 2000 to cater for children in conflict with the law. A disciplinary system is also in place for prisoners. All disciplinary actions must be approved by the officer in charge of a prison.

54. The Gambia Prison Services has been taking practical steps to promote the reformation and social rehabilitation of prisoners, by education, vocational training and useful work. The State Central Prison, for example, has a multi-purpose workshop where prisoners are trained in different livelihood skills such as tailoring, carpentry, building construction. The other two prisons also have facilities built for educational purposes. A qualified teacher is provided by the Ministry of Basic Education to teach children detained at the Juvenile Wing at Old Jeshwang on a daily basis.

60. The Department of Social Welfare has recorded successes in awareness raising, capacity building, training of partners on the promotion and prevention of child abuse and exploitation, protection of vulnerable adults and elderly persons.

61. Despite resource constraints, the Department is currently providing education sponsorship for 1500 needy children. It is also providing 30 abandoned babies with foster care, 150 children with shelter and support, 400 street children (almudos) with skills training and basic needs, 14 elderly persons with residential care and 20 persons with home based care services, 5000 disabled persons with artificial limbs and walking sticks and frames. It has also set up a child protection base for vulnerable children, a steering committee on orphans and vulnerable children, a National Action Plan on Orphans and Vulnerable Children. The Department also operates a child/family hotline and trained 15 social workers on emergency preparedness. Social workers continue to provide the Children’s Court with home study reports on young offenders appearing before this court.

67. A directive principle of state policy also enjoins Government to ensure that women are fairly represented in the composition of the Government. In line with this policy the positions of Vice President of the Republic, Speaker of the National Assembly, Minister for
92. The Constitution and the Children’s Act 2005 are always applauded for having very bold and progressive provisions on the rights of children. However, gender disparities are also notable in that women generally have little decision-making power and are mainly valued for their reproductive roles. There is no legislation specifically criminalizing domestic violence, female genital mutilation (FGM) and forced marriages.

90. Domestic violence, female genital mutilation (FGM) and forced marriages also happen and seem to be one of the commonest human rights abuses against women in The Gambia. Beyond the said constitutional provisions and sections 24 and 25 of the Children’s Act that prohibit child marriage and betrothal, there is no legislation specifically criminalizing domestic violence, FGM and forced marriages. Gender disparities are also notable in that women generally have little decision-making power and are mainly valued for their reproductive roles. This is due to lack of awareness and traditional gender stereotyping.

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73. The Children’s Act 2005 domesticates the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. A child is defined under the Act as anyone below the age of 18 years. In addition to the fundamental rights guaranteed in the Constitution, the Act further provides for the right to survival and development of children; right to name; right to nationality; right to health and health services, etc; right to privacy; right to parental care, protection and maintenance; right to a child in need of special protection measures; right of the unborn child to protection against harm, etc; right to parental property; right to social activities; rights to social activities; contractual rights of the child; right to opinion; right to education; child’s right to stay with parents; protection from harmful social and customary practices; right of child to be maintained and the right of children to legal aid in all cases.

74. The Act also sets the age of criminal responsibility at 12 years and establishes a Children’s Court to deal with cases involving children. The Court is required to ensure that all proceedings involving a child are “conducive to the best interest of the child” and are conducted “in an atmosphere of understanding which allows the child to participate and express himself or herself freely”. The Act bars the imprisonment of children, the imposition of the death penalty and corporal punishment on a child. It further enjoins the Children’s Court to “consider the imposition of non-institutional sentence as an alternative measure to imprisonment” in dealing with an expectant mother.

75. In addition to the Children’s Act, the Trafficking in Persons Act 2007 and the Tourism Offences Act of 2003 create various offences dealing with child sex tourism, child trafficking and child sexual abuse and exploitation.

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79. Girls’ education in The Gambia is also given attention through such interventions as the establishment of the renowned Girls’ Scholarship Trust Fund to defray the cost of education for the girls and ensuring a safe environment for them in all schools. The President’s Empowerment of Girls’ Education Project (PEGEP), which provides financial support for girls at the upper basic and senior secondary levels, complements Government sponsorship of needy students. An important outcome of these interventions is that gender parity has now been attained at the basic level and enrolment for girls has soared at both the senior secondary and higher levels. This marks a reversal of previous trends.

80. The provision of education in The Gambia is anchored to a number of national and international constitutional and legal frameworks, such as the 1997 Constitution of The Gambia, the National Vision 2020, the National Education Policy 2000-2015, the Educational for All Goals, the Millennium Development Goals and the Poverty Reduction Strategy Paper (PRSP) II. Therefore, in accordance with the Constitution, which states that basic education shall be free and compulsory, the government of the Gambia seeks to attain universal basic education by 2015. In this direction, the expanded vision of basic education – encompassing early childhood development, lower basic education, upper basic education and non-formal education – forms the basis of education service delivery in the country.

81. Based on evaluations of various interventions, there is evidence indicating that significant successes have been registered within the education sector over the past fifteen years, thus demonstrating the positive impact that the educational reform in the country has precipitated. These include tremendous expanded access to education across all levels of the school system. The University of The Gambia (UTG), the only university on the country, has maintained also the policy of non-discrimination for access to university education and most of its students are sponsored by the Government.

82. The expanded vision of basic education (comprising early childhood education, adult and non-formal education and nine years of continuous formal schooling - i.e., from Grades 1 to 9) stands out as a successful model in Africa. The partnership and link between the conventional schools and the madrassa institutions, through the General Secretariat for Islamic/Arabic Education, continues to enhance access and, simultaneously, improvement of the quality of education provided in the school system. The teaching of English language in the grant-aided madrassas and the harmonization of the various syllabuses of the madrassas and their synchronization with the curriculum of the conventional schools have contributed to this success.

83. There is a more equitable distribution of qualified teachers, as shown by the impact reports from the Regional Directorates on the ‘hardship allowances’ currently paid to teachers. The textbook rental scheme has been abolished, and the student-textbook ratio is 1:1 for the core subjects at the lower basic level; that is, from Grades 1 to 6.

86. The constraints and challenges faced by The Gambia Police Force include the lack of resources to embark on a host of programs that include sensitization of both the officers and the community on issues bordering on policing and Human Rights and the lack of separate a separate holding facility for children in conflict with the law as well as women offenders.

90. Domestic violence, female genital mutilation (FGM) and forced marriages also happen and seem to be one of the commonest human rights abuses against women in The Gambia. Beyond the said constitutional provisions and sections 24 and 25 of the Children’s Act that prohibit child marriage and betrothal, there is no legislation specifically criminalizing domestic violence, FGM and forced marriages. Gender disparities are also notable in that women generally have little decision-making power and are mainly valued for their reproductive roles. This is due to lack of awareness and traditional gender stereotyping.

92. The Constitution and the Children’s Act 2005 are always applauded for having very bold and progressive provisions on the rights of
child. However, because of the high level of illiteracy, these rights are not always available to children. Forced and early marriages, for example continue to happen. Most cases relating to early or forced marriages are viewed as private and therefore not considered wrong or due to private reasons go unreported and therefore never get to the courts.

93. Although the health facility coverage is amongst the best in Africa (more than 80% of the population have access to health facilities), the staffing of these facilities is highly inadequate, and as a result the country has an unacceptably high maternal mortality rate (730/100,000 live births). It is important to note that 30 to 40% of the infant mortality in The Gambia is attributable to infant deaths perinatally. Malaria, ARI and malnutrition and diarrhoeal diseases are important causes of infant mortality in The Gambia.

95. In spite of the achievements made over the years, critical challenges still remain within the education sector. These embody matters of access, quality, resources and management. Prominent among these the issues are:

- The disparity between boys and girls in enrolment, retention and performance;
- Providing quality education for all;
- Training and retaining qualified teachers and staffing all schools with qualified teachers;
- Mobilising sufficient resources for both recurrent and development purposes;
- Curriculum gaps and shortcomings have been identified and need to be addressed;
- Results of a recent Early Grade Reading Assessment (EGRA) and the National Assessment Test (NAT) conducted in 2008 and 2009 suggest that the number of children at the lower basic level who are able to read and acquiring cognitive skills is low;
- The school age population is growing at a rapid rate in the country, and the demand for school places is greatest in urban and peri-urban areas. Therefore, additional places at both the lower and upper basic levels will have to be created at an accelerated pace; Crucially, in The Gambia, secondary education continues to be a challenge, as most of the schools are privately operated, thus rendering access difficult for children from poor families, particularly in the peri-urban areas.

102. The Police Act which outlines the duties and functions of the police is a colonial law. The Gambia Government is working towards the amendment of the Act to bring it in line with international standards and best practices on human rights and policing. Government also intends to address the human resources constraints faced by the Human Rights and Complaints Unit and the Child Welfare and Vulnerable Person’s Unit of the Police Force by training more police officers, especially on human rights issues, up to university level. The Training Manual for the Gambia Police Force will also be updated to include a section on human rights.

104. The human resource base of the health sector is still inadequate and needs to be developed. The Government is also working on making Reproductive and Child Health Services free. It also intends to create an incentive for all categories of health workers in Public Health facilities. Government is also working on uninterrupted Accelerated Training of Nurses and other health cadres to minimize the shortage of trained personnel Capacity building for middle level managers. It intends to increase government budgetary allocation to basic health service delivery to improve access and quality of health care to the Gambian populace. It also intends to reduce the infant mortality and revive the Primary Health Care system to ensure availability of and access to adequate and affordable health care for all and to make available all the vaccine antigens used in Government’s EPI system.

107. The priority areas for the Ministry of Basic and Secondary Education (MoBSE) as outlined in the Medium Term Plan (2009-2011), which is derived from the Education Sector Strategic Plan, are basically three: Equitable Access, Quality Education and Sector Management. Technical and Vocational Education and Training, Tertiary and Higher Education and Science and Technology are the priority areas for the Ministry of Higher Education, Research and Science and Technology.

UN Compilation

1. In 2001, the Committee on the Rights of the Child (CRC) noted that the Gambia had signed but not ratified the two Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, and encouraged it to ratify them. 12

5. UNICEF mentioned that with the integration of birth registration into the Reproductive and Child Health Services, birth registration rates for children under-five have significantly increased nationally from 32 per cent in 2000 to 55 per cent in 2005. The 2005 CCA highlighted that the Birth Registration Act established a decentralised Birth Registration system, which is plagued by inadequate resources. 18

6. UNICEF noted that the enactment of the 2005 Children’s Act, a comprehensive law regrouping and superseding all legislation relating to the rights and welfare of children, which addresses the administration of justice, harmonizes domestic laws with the Convention on the Rights of the Child, 19 following CRC’s recommendations made in 2001. 20 UNICEF also noted the adoption of the Child Trafficking Law, in October 2007, which prevents, suppresses and punishes those engaged in the trafficking in persons including child trafficking, and rehabilitates and reintegrates victims of trafficking. 21

7. As of 29 September 2009, Gambia does not have a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). 22 CRC encouraged the Gambia to expand the mandate of the Office of the Ombudsman or establish a separate mechanism to deal with complaints of violations of the rights of children. 23

13. CRC recommended that the Gambia pay particular attention to the implementation of article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children, especially economically and geographically disadvantaged groups. 29
18. CRC expressed concern that the principle of non-discrimination was not adequately implemented with respect to certain vulnerable groups of children, especially girls, children born out of wedlock and children with disabilities. It recommended that the Gambia establish a definition of the child in accordance with article 1 of the Convention; set the legal minimum age for marriage of girls and boys at 18 years; and establish legal minimum ages for compulsory education, employment and enlistment in the armed forces.

19. CRC further recommended, inter alia, implementing alternatives to the institutionalization of children with disabilities; establishing special education programmes for them and, where feasible, integrating them into mainstream schools and public life; undertaking awareness-raising campaigns to sensitize the public about children with disabilities as well as children with mental health concerns; increasing resources, both financial and human, and enhancing the support given to families of children with disabilities.

26. UNICEF noted that social and cultural norms hindered the execution of the 2005 Children’s Act, as harmful practices such as corporal punishment, female genital mutilation/cutting, early or forced marriage, domestic violence, were still widely practiced. CRC recommended taking 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.

27. The 2005 CCA noted that children are subjected to abuse, neglect, violence and exploitation, including children living and working in the street. Children are also subjected to sexual abuse and exploitation, trafficking, baby abandonment and corporal punishment in homes and institutions, as well as been orphaned or made vulnerable by HIV/AIDS. CRC was concerned about the increasing number of child victims of commercial sexual exploitation, especially among child labourers and street children.

31. UNICEF mentioned that the lack of administrative structures, such as regional children’s courts and rehabilitation facilities for juvenile offenders, hampers the enforcement of the Children’s Act of 2005. CRC was concerned at the absence of juvenile courts and juvenile judges, and the lack of social workers and teachers to work in this field.

44. CRC encouraged the Gambia to introduce monitoring mechanisms to ensure the enforcement of labour laws and protect children from economic exploitation, particularly in the informal sectors. It recommended establishing a clear legal minimum age for employment, and the introduction of programs to discourage and prevent child begging.

45. The 2007-2011 UNDAF indicated that access to quality health care, nutrition; education and sanitation services have been undermined by government budgetary crises. UNICEF noted that declining government expenditure on education and health has had an adverse effect on the quality of basic social services, especially for the poor.

46. The 2005 CCA observed that maternal malnutrition, caused by poverty, leads to low birth weight babies, which in turn are more likely to die in infancy, or before the age of five. Extreme poverty is most severe in rural areas. The most common childhood conditions related to childhood morbidity and mortality include malaria, acute respiratory infections, malnutrition and diarrhoea. Together these conditions contribute to 60-70 per cent of child mortality.

50. CRC recommended that the Gambia: allocate sufficient resources to reinforce its policies and programmes to improve health care for children; reduce the incidence of maternal, child and infant mortality; increase access to safe drinking water; improve sanitation; prevent and combat malnutrition; reduce the incidence of malaria and respiratory infections; strengthen adolescent health policies, including reproductive health education; and reinforce its efforts to provide support and material assistance to economically disadvantaged families.

52. The 2005 CCA noted that high drop out rates are an underlying cause of the high rates of illiteracy, especially for girl children. Many families are still unable to meet education costs and the value of schooling is still perceived differently for boys and girls in some communities. CEDAW urged the Gambia to take measures that reflect the importance of realizing women’s and girls’ right to education as a fundamental human right, and a means for the empowerment of women. The Committee also encouraged the use of temporary special measures in order to accelerate the improvement of women’s and girls’ education.

53. The ILO Committee of Experts asked the Gambia to indicate the measures taken, including their impact, to promote women's access to education and a wide variety of vocational training courses, including their participation in training courses primarily attended by men.

54. CRC recommended taking effective measures to make primary education free, train teachers, including female teachers, enhance the quality of education and improve the literacy rate. It further recommended increasing enrolment in schools by, inter alia, abolishing
57. CRC acknowledged that the economic and social difficulties had a negative impact on the situation of children. The coexistence of various ethnic groups and several legal systems (common law, customary law and the Sharia), and the effects of traditional practices not conducive to the rights of the child, were other elements which affected the full implementation of the Convention.

60. CRC recommended that the Gambia seek technical assistance: from, inter alia, UNICEF and UNDP related to its recommendations on abuse, violence and neglect; from UNICEF and WHO, to implement the recommendations on adolescent health; and from WHO and UNESCO, for the training of professional staff, including teachers, working with children with disabilities. CRC also recommended strengthening the educational system through closer cooperation with UNICEF and UNESCO, and continuing to cooperate with, among others, WHO and UNICEF, through the Integrated Management of Childhood Illnesses and other measures for child health improvement.

**Stakeholder Information**

21. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) reported that corporal punishment is lawful in the home and in schools and that there is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions and alternative care settings. GIEACPC recommended that the government introduce legislation as a matter of urgency to prohibit all corporal punishment of children in the home, schools, penal institutions and alternative care settings.

**Final Report and Conclusions – To Follow**