

# Report of the ACERWC's Mission to The Republic of the Gambia on Reporting under the African Charter on the Rights and Welfare of the Child

September 2023

## **Background**

1. Article 43 of the African Charter on the Rights and Welfare of the Child (Charter/ACRWC) stipulates that State Parties shall submit their initial report two years after ratification and their periodic reports every three years thereafter. The Republic of The Gambia ratified the Charter on 30 March 2001; however, it has not yet submitted any report to the Committee. Building on its prior engagement with the Republic of Gambia for the submission of its report, the Committee conducted an advocacy mission to the Gambia to further engage in dialogue with the concerned Ministries of the State Party.
2. The Advocacy mission was held on 29 August – 01 September 2023. The Committee expresses appreciation to the Government of The Gambia for authorizing and ensuring the smooth undertaking of the mission.

## **Objective of the Mission**

3. The Advocacy Mission aimed at conducting constructive dialogue with the various Ministries tasked with the compilation and submission of State Party Reports, engaging children's representatives and stakeholders such as the National Human Rights Commission, UN Agencies, and CSOs. The various engagements were geared towards identifying the main challenges the State Party is encountering in submitting its report; assessing the mechanisms and institutional set-ups available for the compilation and submission of the State Party report; providing guidance on the process, form, and content of State Party reports; and encouraging the Republic of The Gambia to express firm commitment and a clear timeline on the submission of its initial report to the Committee.

## **Composition of the Delegation**

4. The Delegation of the Committee was composed of:
  - Hon. Hermine Kembo Takam Gatsing, Head of the Delegation, Country Rapporteur of the Republic of Gambia
  - Hon. Theophane Nikyema, Member of the ACERWC
  - Dr Ayalew Getachew- Senior Child Protection Officer at the ACERWC
  - Ms Adiam Zemenfes – Legal Researcher at the ACERWC

## **Methodology and mission activities**

5. The Mission was conducted with various bilateral dialogues, technical-level consultations, and a Workshop. The Delegation held high-level dialogues with:
  - Minister of Gender, Children, and Social Welfare, H.E Fatou Kinteh;
  - The Permanent Secretary of the Ministry of Foreign Affairs, Ambassador Lang Yabou;
  - The Solicitor General of the Republic of the Gambia, Mr. Hussein Thomasi

6. Furthermore, the Delegation had the opportunity to hold trilateral consultations with technical officials from the Ministry of Foreign Affairs, the Ministry of Justice, and the Ministry of Gender, Children and Social Welfare.
7. In addition, during the Mission, the Delegation held discussions with the National Human Rights Commission, Children's Representatives, UNICEF, and the child rights CSO coalition in The Gambia.
8. The Delegation also had the opportunity to conduct a workshop where multisectoral stakeholders convened to discuss the challenges and next steps in the submission of the State Party Report of The Gambia. Various remarks were made during the opening of the workshop, including remarks from the Permanent Secretary of the Ministry of Gender, Children and Social Welfare, Mr Saikou K. Sanyang, the Country Representative ad-interim of UNICEF, Ms Mariavittoria Ballotta, and the Head of the Delegation, Hon. Hermine Kembo Takam Gatsing. During the workshop, presentations were made on the African Charter on the Rights and Welfare of the Child and the mandate of the African Committee of Experts on the Rights and Welfare of the Child; State Party Reporting Guidelines, Progress and Challenges on Reporting under the Charter; and the Role of Stakeholders on the State Party reporting procedure.

## **Major Findings of the Mission**

### ***Brief overview of findings on child rights protection***

9. In addition to the issues of reporting, the Delegation received an insight about some child rights protection issues, as discussed below:
  - In terms of institutions, the Ministry of Gender, Children, and Social Welfare was established in 2019, and its Directorate on Children's Affairs was set up in 2020. In addition to this line Ministry, there is a National Child Protection Committee which is composed of all child rights actors in The Gambia. The National Human Rights Commission was established in 2019 and has a Special Focal Point on Children's Issues.
  - The main governing law for child rights is the Children's Act of 2005, and the Delegation was informed that it is currently being reviewed to harmonize it with the Charter and the UN Convention on the Rights of the Child.
  - Child participation is ensured through the Children's National Assembly, which also has structures at the regional level.
  - The Delegation received information that the Government of the Gambia is making remarkable progress in terms of legislative measures, including laws that ban child marriage and Female Genital Mutilation (FGM), immunization coverage, education enrolment and completion, addressing malnutrition and stunting, and access to drinking water. The Delegation noted that after 8 years

of outlawing FGM, the first conviction on perpetrators was passed in August 2023. The Delegation also received information regarding some of the challenges that persist such as child marriage and FGM, commercial sexual exploitation including sex tourism, teenage pregnancy, child labor, children in street situations, and neonatal and infant mortality. Challenges in relation to the lack of diversion programs, separate detention facilities, rehabilitation services, and protection of the right to privacy was brought to the attention of the Committee, among others.

10. While commending the various steps undertaken by the State Party, the Delegation notes that these issues and other aspects of children's rights need to be reported to the Committee formally through the State Party report, which paves the way for constructive engagement of the Committee and the Republic of the Gambia on the progress achieved and the challenges mentioned above. Accordingly, the Delegation encourages the State Party to include these issues in its initial report on the implementation of the Charter.

### ***Key findings on the State Party Report under the ACRWC***

11. During its various deliberations, the Delegation has identified critical issues that are impeding the submission of the State Party Report. These factors include:

*i. Lack of national mechanism to coordinate the reporting procedure*

12. The Delegation is cognizant of the importance of establishing a national mechanism for reporting and follow-up for State Party reports under treaties, particularly the Charter. In the absence of such institution, the Delegation recognizes the importance of having a legally designated Ministry or Organ to compile the State Party report under the Charter. During the mission, the Delegation was informed that there is a lack of a national mechanism for reporting and follow-up. In the absence of this, the Delegation noted that, in practice, the Ministry of Justice assumes the general obligation of initiating and compiling State Party Reports. The Delegation noted that there is a Human Rights Unit being set up within the Ministry of Justice which will take the lead in State Party Reports. However, there is a lack of human resource capacity at the Ministry of Justice to take the lead in all treaty body reports. The Delegation also learned that previously an adhoc inter-ministerial Committee used to be set up to compile reports; nevertheless, such mechanism is inexistence currently. Considering this challenge, the Delegation noted that in some instances, the line ministries coordinate the drafting process. Accordingly, the Ministry of Gender, Children, and Social Welfare (MGCSW) took the lead in drafting and compiling the reports to the UN Committee on the Rights of the Child and the Committee on Elimination of Discrimination Against Women.

*ii. Lack of dedicated budget*

13. The process of compilation and submission of State Party reports to the Committee entails budget for the drafting of the report, undertaking consultations, and conducting validation of the draft report, among others. The budget allocation for the development of State Party reports should be integrated in the budget line of the Ministry tasked with compiling the report on the implementation of the Charter and should not be ad hoc. The Delegation noted that there is no line of budget allocated for State Party Reporting under the Charter within the MGCSW. The Committee was informed that the budget allocated for the Ministry of Justice is dedicated to all reporting obligations under the treaties ratified by The Gambia and is very low compared to the various reporting obligations. The Delegation also observed that there is gap in terms of resource allocation by stakeholders to support the submission the State Party report under the Charter, while the compilation of the Report to the UNCRC is regularly supported by UNICEF.

iii. Gaps in human resources

14. The drafting of State Party reports on the implementation of the Charter requires data analysis and translating the information gathered into the context of the provisions of the Charter and the Committee's Guidelines for State Party Reporting. Hence, knowledge and understanding of the obligation of States and the elements of the rights of children under each provision of the Charter is essential in the process of compiling State Party reports. The Mission informed the Delegation the knowledge gap that exists in the State Party concerning the obligation and timeline for reporting under the Charter. The Delegation was also informed that there is a lack of technical capacity to draft and compile State Party Reports. This is exacerbated by a high staff turnover whereby those trained in report drafting leave Government offices or move to other Ministries. The Delegation learned that staff turnover affects institutional memory and keeping track of progress on the drafting of the report. This is evidenced by the fact that in 2017 the Ministry of Justice had drafted the State Party Report on the Charter; however, it could not be located and is now outdated. Such lack of documentation also relates to the fact that the reporting process is not institutionalized as indicated above.

iv. Lack of data and information

15. The Delegation amplifies the importance of updated and disaggregated data in compiling the State Party report. The State Party's reflection regarding the progress achieved and challenges faced in the implementation of the Charter should be reinforced by credible data and information. Such evidence based State Party report facilitates the constructive dialogue the Committee will hold with the State Party and inform the concluding observations and recommendations of the Committee which ultimately enables the State Party to receive feasible recommendations on the measures it should undertake to enhance the implementation of the Charter. Despite this, the Delegation observed the lack of data and information to inform the State Party

report under the Charter as one of the critical challenges in the Republic of The Gambia. There is a lack of generated disaggregated data on child rights indicators in the various Ministries. Beyond the lack of data, the Delegation was also informed about the challenges in accessing the already existing data due to a lack of knowledge about the State Party reporting process by various Ministries and Government Offices that deal with children's issues.

## **Way forward and Recommendations**

16. The Delegation notes with great appreciation the firm Commitment made by the Republic of the Gambia to submit its initial report in the first semester of 2024. The Minister of Gender, Children, and Social Welfare reassured the Delegation that the Ministry will take the lead to initiate and compile the report on the Charter. The Delegation was further informed that a taskforce for the drafting of the report has been set up by the Ministry following the deliberations with the Minister. It was also agreed with the Government of the Gambia that the MGCSW assumes the main obligation of compiling State Party reports on the Charter while the Ministry of Justice retains general mandate to coordinate treaty body reports.
17. During the Mission, the Delegation learned that the State Party has recently drafted its report to the UN Committee on the Rights of the Child and it is awaiting clearance for submission.
18. On its part, the Delegation encouraged the State Party to make use of the data in the existing report to the UNCRC and adapt it to the context of the Charter to fast-track the submission of the report and address the challenges of resources. Moving forward, based on the findings of the Delegation, the Committee encourages the State Party to:
  - a. Establish a National Mechanism for Reporting and Follow-up (NMRF) through legislation to ensure legitimacy and clarity of mandate as well as timely and continuous reporting on the Charter. As an interim measure, the Committee recalls the agreement during the deliberations of the Delegation and the Government that the MGCSW leads process of reporting to the Committee. In this regard, the Committee recommends that the duty of compiling report on the Charter is reflected in the job description of officials tasked to lead the process and that the MGCSW in collaboration with the Ministry of Justice and Ministry of Foreign Affairs develops Guidelines and Reporting templates to document the process and status of reporting to the Committee and leave the legacy to incoming staff.
  - b. Allocate sufficient budget for reporting under the Charter: Until a NMRF is established, the State Party is encouraged to allocate funds through the Ministry leading the drafting process, which is the MGCSW. The Government of Gambia is further encouraged to mobilize resource to develop its initial State Party

Report. The Committee, in this regard, draws the attention of the Government towards the steady commitment expressed by UNICEF during the Workshop to provide technical assistance, capacity-building, and resources to support the reporting process.

- c. Undertake continuous capacity building training to officials who are tasked with coordinating the drafting of the Government's Report under the Charter: Moreover, the Committee recommends that the State Party raises awareness about reporting under the Charter among the various Ministries dealing with child rights. Such engagement facilitates and eases coordination in the drafting process. The Committee recommends the State Party to utilise its State Party Reporting Guidelines in undertaking capacity building activities.<sup>1</sup>
- d. Strengthen child rights data management system: The Committee notes that disaggregated and up to date data is cornerstone in preparing State Party Reports as such data are the main indicators to assess progress and identify gaps in the implementing of the Charter. Accordingly, the Committee recommends the State Party to invest in real time data and systematically manage such data to ensure onetime update and increased utilization by relevant Ministries and Stakeholders. The Committee further recommends that the State Party, in adapting its already draft report to the UN CRC, to update the data on the various indicators within the scope of reporting under the Charter.
- e. Conduct consultation with children and various stakeholders in compiling the report to the Committee: Child participation is one of the fundamental principles of the Charter which needs to be translated into practice in all legal and administrative processes involving children's issues. The Committee, hence, strongly recommends the State Party to undertake consultation with child in developing its report to under the Charter and reflect children's views in the report. The Committee further encourages the State Party to consider including children's representatives in its Delegation that will present the State Party report before the Committee once it is submitted. The Committee would like to encourage the State Party to consult its Child Participation Guidelines for further guidance.<sup>2</sup> Moreover, the Committee recommends that the State Party undertakes consultation with other stakeholders such as the National Human Rights Commission, UN Agencies CSOs, among others.
- f. Widely disseminate the State Party report under the Charter following its preparation and submitted.

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<sup>1</sup> The Guidelines on the Form, Content and Consideration of Initial and Periodic State Party Reports can be accessed at [https://www.acerwc.africa/sites/default/files/2022-09/Guidelines-on-the-Form-Content-and-Consideration-of-Initial-and-Periodic-Reports\\_Eng.pdf](https://www.acerwc.africa/sites/default/files/2022-09/Guidelines-on-the-Form-Content-and-Consideration-of-Initial-and-Periodic-Reports_Eng.pdf)

<sup>2</sup> The Child Participation Guidelines can be accessed at [https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation\\_English.pdf](https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation_English.pdf)