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From 'Economic Objectives' to Constitutional Protection: A Path to Entrenching the Right to Development in the Legal Framework of the Gambia

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From ‘Economic Objectives’ to Constitutional Protection: A path to entrenching the right to development in the legal framework of The Gambia

Basiru Bah & Maria Saine

Abstract

The 1997 Constitution of The Gambia offers minimal protection of economic rights that are essential in the realization of the right to development. The justiciable provisions of the bill of rights in Chapter IV of the Constitution are largely of civil and political rights in nature. Chapter XX of the Constitution outlines several objectives to guide State policy and law formulation as well as law enforcement. However, these principles are non-justiciable in nature, leaving the general population without judicially enforceable human rights despite years of economic deprivation.

The status of economic rights and the resultant neglect in investing towards realization of economic rights continues to influence the current state of poverty index in The Gambia. Women, who are faced with multidimensional vulnerabilities, are pushed further down the poverty line by this reality aggravating their economic status. Article 8(1) of the UN Declaration on the Right to Development calls on States to undertake, all necessary measures for the realization of the right to development and for States to take effective measures to ensure that women have an active role in the development process.

In this light, this paper will unpack the ‘economic objectives’ envisaged in section 215 of the 1997 Constitution of The Gambia and measure the content of this provision against already existing obligations of The Gambia at the regional and international level. The paper will highlight the need to elevate the economic objectives into justiciable human rights in the domestic legal framework of The Gambia to realize the right to development. The paper will also propose strategies to promulgate laws that will eventually make the realization of economic rights a possibility.

About the Authors

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Mr. Basiru Bah holds an LLM in Human Rights and Democratisation in Africa from the University of Pretoria, South Africa, and Bachelor’s Degree in law (LLB Hons) from the University of The Gambia. Mr. Bah is also a member of the Gambia Bar Association.

Currently, Mr. Bah works as a Senior Legal Officer-Research at the National Human Rights Commission of The Gambia. In his role, he provides research support to the Commission, drafts Advisory Notes on different thematic areas on human rights and prepares the annual state of Human Rights in The Gambia report. Mr. Bah also serves as Lecturer at the Faculty of Law University of The Gambia.

Mr. Bah has research experience on social protection, caste discrimination, Violence Against Women, amongst others.

Ms. Maria Saine

Ms. Maria Saine is a Legal Officer at the National Human Rights Commission (NHRC) of The Gambia. Before joining NHRC in 2023, Ms. Saine worked for the Institute for Human Rights and Development in Africa (IHRDA), and the American Bar Association | Rule of Law Initiative (ABA ROLI).

Ms. Saine has also worked as an Adjunct Lecturer at the Faculty of Law, University of The Gambia where she lectured Constitutional Law, International Human Rights Law, and Administrative Law. Ms. Saine contributes to research focused on Human Rights and Constitutional Law and practice through Law Hub Gambia and the Centre for Research and Policy Development.

Ms. Saine was called to the Gambian Bar in February 2022. She holds an LLM from Trinity College Dublin and LLB from the University of The Gambia.