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**THE GAMBIA**

**Country information**

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## General information on the situation in The Gambia

The Gambia was under the oppressive regime of Yahya Jammeh for 20 years. Society was deeply divided due to political persecutions, racial hatred, impunity from State officials, extreme poverty ... Torture was commonly used, as much as sexual assault, enforced disappearance, or the death penalty. In 2016, Adama Barrow was elected as the new President of The Gambia and promised “significant reforms” in favor of human rights. However, laws from the previous regime remain and **incidents of human rights violations still occur**, despite the recent ratification of a number of international instruments. Barrow was reelected on **December 4 2021** for a second term, and his promise to protect human rights seems pushed back.

The **medical situation** has been reported as not enough. Indeed, compared to other medical care services around the world, the one provided by The Gambia is **below average**. Even Primary Health Care is no longer satisfying, due to the lack of some essential equipment, medical staff members and affordable health care for Gambians.

There is a **serious lack of consideration of mental health in The Gambia**. On the one hand by the government: the budget allocated to mental health services is very limited in The Gambia. **Only a few** medical members are trained to deal with mental health issues, and less than half of people with those issues have access to efficient medical care. On the other hand, most of the population, particularly believers, **consider mental illnesses as a demonic matter**. Even if some help was suggested, especially by the World Health Organization, The Gambia did not take it into consideration.

Islam is the main religion in The Gambia. The Muslim population of The Gambia is still under the Sharia law, and Qadis Courts still exist, even though it is no longer an “Islamic Republic”. Indeed, the current president announced that **The Gambia is now a secular State** and has become “The Republic” of The Gambia. However, the Constitution of The Gambia has not been amended yet, and the name did not officially change. Moreover, even if freedom of religion is guaranteed by the Constitution, **there is no information about the protection of atheists**.

The prohibition of discrimination is provided by The Gambian Constitution, and The Gambia ratified the United Nations *International Covenant on Civil and Political Rights* which expressly prohibits discrimination. Nevertheless, the problem of non-compliance with the international commitments still remains: **consensual same-sex activity is still criminalized**. Besides, the **new crime of “aggravated homosexuality”** for gay and lesbian “serial offenders” was introduced in 2014 and comes with the **punishment of a lifetime in prison**.

Under the regime of Jammeh, the persons accused of witchcraft were **kidnapped** by agents called “witch doctors” and **tortured**, sometimes to death. They were forced (beaten until they admit) to confess they were witches. Even if there is no more “witch hunt” under Barrow’s regime, the current president **has not complied with his promises yet** to prosecute the State agents who were under the commands of Jammeh. Moreover, Barrow's government has partnered with some of them; the civil society has reported that they feel “betrayed”.

I. The security situation: has security in The Gambia deteriorated since August 2021?

Even though Adama Barrow promised significant changes and reforms to improve the respect of human rights in The Gambia since his first election in 2016, some concerns still remain. First, the civil society complains about the non-compliance with international commitments (1). Then, human rights defenders are at risk in The Gambia (2).

1. Non-compliance with the international commitments

President Barrow was the only candidate during the last presidential election who refused to sign the seven-point manifesto on human rights drafted by Amnesty International in 2021. Some of the points were about the prohibition of death penalty (a), prohibition of torture (b), enforced disappearances (c) and immunities (d), which are still a problem in The Gambia. This reluctance to sign can be seen as a **step back in the willingness to strengthen human rights** in The Gambia, then a lack of security.

Source: Amnesty International, “*Gambia: Ending impunity of past crimes must be part of human rights priorities for President Adama Barrow's second term*”, December 7, 2021.

“We regret that President Barrow did not sign Amnesty International’s **seven-point human rights manifesto** contrary to several other presidential candidates” - Michèle Eken, Amnesty International West Africa researcher.

a) *Death penalty*

Some international conventions were recently ratified by The Gambia, particularly the second optional protocol to the UN *International Covenant on Civil and Political Rights* which prohibits death penalty, which were ratified by The Gambia in 2018. Despite its international commitment, in **October 2021**, another man was sentenced to the death penalty for murder. The Constitution of The Gambia **still** does not prohibit death penalty; furthermore, a draft that included this prohibition in the Constitution was submitted to the government of Adama Barrow, and rejected in 2020. The reelection in **December 2021** of a president whose government previously rejected a draft about prohibition of death penalty can show that **the regime remains oppressive**.

Source: Amnesty International, “*Gambia: Human rights must be a top priority for the next president*”, November 10, 2021.

“In February 2018, the government announced the establishment of an official moratorium on executions. In September 2018, Gambia ratified the *Second Optional Protocol to the International Covenant on Civil and Political Rights*, aiming at the abolition of the death penalty. **However, courts continue to hand down death sentences.**”

Source: Amnesty International, “*Everything you need to know about human rights in Gambia*”, March 29, 2022.

“On 14 July, the High Court in Banjul found Yankuba Touray, former junta member and ally of former president Yahya Jammeh, guilty of the murder of Ousman Koro Ceesay, former minister of finance. He was sentenced to death by hanging. Two other men – one in July and **one in October** – were sentenced to death for murder.”

Source: Amnesty International, “*Gambia. Nearly five years after Jammeh's regime ended, oppressive laws remain untouched*”, September 23, 2021.

“**The Gambia parliament rejected the draft Constitution bill** in September last year, **which would have abolished the death penalty**. Earlier this year, an ex-junta member closed to the former regime was sentenced to death for the murder of former finance minister. Amnesty International recalls that the authorities committed to abolish the death penalty and has ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty in 2018. Amnesty International calls on the government to fulfill its promise and abolish the death penalty in law and in practice.”

### ***b) Prohibition of torture***

The prohibition of torture is provided in The Gambian Constitution by the article 21. The Gambia ratified in 2018 the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment*. Yet, a report from Amnesty International declared on **November 10 2021** that **no provision, no definition and no incrimination in criminal law on torture were provided in national law of The Gambia**. The project of a bill on prevention and prohibition of torture was still pending at the National Assembly on **December 3 2021**, and still no provision was established by the end of the year.

However, in the context of the United Nations Committee on Enforced Disappearances, The Gambia planned to achieve legislative reforms on prohibition of torture before the end of 2021, which is currently not the case. The last amendment of The Gambian Criminal Code is from 2014. Then, it can be concluded that **no improvement was made on the criminalization of torture** at this day.

Source: Amnesty International, “*Gambia: Human rights must be a top priority for the next president*”, November 10, 2021.

“Although Gambia Constitution of 1997 prohibits torture, Amnesty International **calls on all political parties and candidates to ensure that torture and other ill-treatment is established as an offence in national law and adopt a definition of torture** that includes all the elements contained in article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ratified by Gambia in 2018. Such offences must be thoroughly, impartially and effectively investigated and made punishable by appropriate penalties which take into account their grave nature.”

Source: Amnesty International, “*Everything you need to know about human rights in Gambia*”, March 29, 2022.

“The Prevention and Prohibition of Torture bill was still pending at the National Assembly. As such, at the end of the year there were **no national laws defining torture and establishing it as an offence.**”

Source: Ismaila Sonko, “*NHRC chairman laments on would-be Torture Bill*”, *The Point*, June 8, 2022.

“The Gambia does not have a law that expressly criminalises torture, as such, prosecution of perpetrators remains a challenge - some alleged perpetrators of torture and their accomplices in the previous regime continue to hold senior positions in the government.”

Source: Committee on Enforced Disappearances, “*Report submitted by The Gambia under article 29 (1) of the Convention, due in 2021*”, CED/C/GMB/1, May 20, 2021, p.8, §37.

“On the legislative reform process [...] To complete the legislative reforms embarked on by the Government in 2017, the following Bills, amongst others, are expected to be enacted before the end of 2021[...] Prevention and Prohibition of Torture Bill 2020.”



### *c) Enforced disappearances*

The *Convention for the Protection of all Persons against Enforced Disappearance* was ratified by The Gambia on **September 23 2018**. By doing so, The Gambia committed to provide periodic reports on measures taken to prevent enforced disappearances. On **May 3 2022**, the UN Committee on Enforced Disappearances published the “*List of issues in relation to the report submitted by The Gambia*” highlighting the absence of “autonomous offense of enforced disappearance in domestic legislation”.

Source: Committee on Enforced Disappearances, “*Report submitted by The Gambia under article 29 (1) of the Convention, due in 2021*”, CED/C/GMB/Q/1, May 3, 2022, p.2, §2/§7.

§2 “Although the Government of The Gambia is yet to domesticate the Convention on Enforced Disappearances since its ratification in 2018”

§7 “Given that there is currently no autonomous offence of enforced disappearance in domestic legislation [...]”

### *d) Immunity*

The Manifesto promoted the abrogation of the Indemnity Act of 2001 which provides immunities. Once again, it is important to recall that the current president refused to sign the draft. **The current Constitution of The Gambia contains many provisions giving the president civil and criminal proceedings immunity during his office**, and for criminal proceedings immunity after the end of his office. Even more, members of the Armed Forces Ruling Council, members of the government, benefit from immunity.

Source: The Gambian Constitution, January 16, 1997.

“69. Immunity from civil criminal proceedings

(1) Except as provided in subsection (2), no civil or shall be instituted or continued against any and criminal proceedings person while holding or performing the functions of office of President in respect of anything done or omitted to be done by him or her whether in an official or a private Capacity.

(2) Nothing in subsection (1) applies to an action for a declaration under section 5 (enforcement of the Constitution), and any proceedings under that section against the President or a person performing the functions of that office shall be brought against him or her by his or her official title or style, and he or she shall appear, and be represented by, the Attorney General.

(3) After a President has vacated the office or President- (a) no court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President”.

“No member of the Armed Forces Provisional Ruling Council, any person appointed Minister by the Armed Forces Provisional Ruling Council, or other appointees of the Armed Forces Provisional Ruling Council shall be held liable or answerable before a Court or authority or under this Constitution or any other law, either jointly or severally, for an act or omission in the performance of his or her official duties.”

Source: Amnesty International, “*Gambia: Human rights must be a top priority for the next president*”, November 10, 2021.

“The Indemnity Act of 2001 gives the president the power to shield from prosecution any person for any act committed or any failure to act during an unlawful assembly or other emergency situations.”

## **2. Human rights defenders’ situations at risk**

The human rights defenders are at risk in some countries, and particularly in The Gambia, as is shown by the accusation of incitement of violence made against the pacifist human rights defender Madi Jobarteh by the current President, on **May 2 2022**. On **May 5 2022** some **concerns** were expressed about the **situation of censorship in The Gambia**.

Source: Amnesty International, “*Gambia. Nearly five years after Jammeh's regime ended, oppressive laws remain untouched*”, September 23, 2021.

“Presidents change, but the system is there.” - *Gambian Journalist*

Source: Amnesty International, “*Gambia: Human rights defender at risk in Gambia: Madi Jobarteh*”, May 5, 2022.

“President Adama Barrow accused human rights defender Madi Jobarteh of being a **“troublemaker” who wants to bring violence into the country**. It is believed that this assertion was made in relation to a recent social media post that Madi Jobarteh made calling for the removal of a government minister, due to alleged mismanagement of public lands. Such statements by the President put Madi Jobarteh’s safety at risk, and **fundamentally undermines the right to freedom of expression in Gambia**.”

“After President Adama Barrow assumed power following the election in 2016, he vowed to carry out critical reforms to reverse the repression which characterized the government of former President Yahya Jammeh. Nearly five years later, despite some improvements, **things have not changed so positively as expected, including The Gambia legislative landscape which has barely changed.**”

“This kind of statements, like the one against Madi Jobarteh, **are a worrying indicator that the President may question and threaten human rights defenders**, media and civil society activists for their legitimate work.”

## **II. The healthcare provision in The Gambia**

**Healthcare delivery is a key objective** of The Gambia. An important part of health policy is to improve and expand infrastructures and staffing (1), universal access and coverage of health services (2), and access to medical products (3). However, reports from NGOs and the Ministry of Health show that these goals are far from reality.

### **1. Poor infrastructures and medical technology**

In The Gambia, there are **three levels of health public infrastructures**: the lowest is the “**community health post**” which provides basic minimum health package for villages; then, the “**minor health center**” delivers basic health services; finally, the “**major health center**” is the regional hospital with bigger bed capacity and which offers other services, like emergencies and essential surgical services. There is also a **private sector health service** and traditional medicine. Even if there is some decentralization, NGO reports have shown the **poor infrastructure and lack of medical technology** to provide good care.

Source: World Health Organization — Country Cooperation Strategy at a glance, The Gambia, May 2017, “*Health Policies and systems*”.

“A Joint Assessment of National Strategies (JANS) in 2015 found that **45% of stakeholders are not satisfied with the implementation of health strategies.**”

“The distribution of health workers is hindered by **poor infrastructure and insufficient availability of health technology** for service delivery in the less well-developed rural regions.”

Source: WorldData.info, “*Healthcare in The Gambia*”, November 2022.

**“Medical care provided by doctors and hospitals in The Gambia is below average compared to the world population.** The country provides 1.1 hospital beds per 1000 inhabitants. The global mean here is 2.9 beds. Within the EU, 4.6 beds are available for every 1,000 residents. With about 268 physicians in The Gambia, there are about 0.11 doctors per 1000 inhabitants. Here again the comparison: worldwide this standard is 1.50 physicians per 1000 inhabitants and in the EU even 3.57.”

Source: The Gambia’s Department of State for Health and Social Welfare, “*Health is Wealth — Department for health and Social Welfare, Health Policy Framework 2007-2020*”, 2006, p.21-39.

“Another area of concern with the health centres is the **non-availability of some essential equipment for their functioning.**”

## **2. Universal access and coverage of health services: a goal far from being achieved**

Health policies aim for universal access and coverage of health services for all. However, despite some progress, NGO reports show that in **practice The Gambia is far from achieving this goal.**

Source: Ministry of Health, “*National Health Policy — 2021-2030*”, Republic of The Gambia, p.13.

“Mission: The Ministry of Health will create an enabling framework for full participation and provide leadership in the integrated **delivery of quality, effective and responsive health services, and prevention measures to improve the physical, mental, and social wellbeing of all the people** in The Gambia.”

Source: World Health Organization, Country Cooperation Strategy at a glance, *The Gambia, “Health Policies and systems”*, May 2017.

“**The Gambia is quite far from achieving universal health coverage as no sustained health financing reform** to ensure that the system can afford universal coverage of a defined health care package has been introduced. There is **no social health insurance scheme in The Gambia, nor any prepayment system** to ease out of pocket expenditure on health.”

Source: Health Policy Plus (HP+) and United States Agency International Development (USAID from the American people), “*Assessment of the Health system in The Gambia*”, November 2019, p.14-16.

“Three years into the current Gambia National Health Sector Strategic Plan, the **MOH states that there are large gaps between expected and actual performance against targets**. The most important contributing factor to this gap is said to be **insufficient resources**.”

Source: Ministry of Health, “*National Health Policy — 2021-2030*”, Republic of The Gambia, p.3-11.

“Although Gambia has registered significant achievements because of improved access to basic health services across the country, **Primary Health Care (PHC) has substantially deteriorated overtime and is no longer adequately serving the population**. The health sector still faces considerable increase in Non-Communicable Diseases (NCDs) [...] and inadequate skilled health personnel.”

“Weak decentralization and delegation of authority working mainly on a “push” system is affecting capacity of facilities to provide services. [...] **Service availability falls short of WHO’s standard**, particularly on, facility type, facility density, health workforce density, service utilization and regional disparities.”

### **3. Shortage of medical Drugs in The Gambia**

**The Gambia does not have a pharmaceutical industry**, so it has to import the necessary drugs. However, due to the increasing demand and the lack of increase in the government's budget, The Gambia is experiencing a **significant shortage of drugs**, affecting the quality of health care delivery.

Source: Health Policy Plus (HP+) and United States Agency International Development (USAID from the American people), “*Assessment of the Health system in The Gambia*”, November 2019, p.20.

“The (National Drug) policy [...] along with its strategic plan developed in 2009, laid the foundation to implement key reforms in The Gambian pharmaceutical sector. Key changes were considered **achievements and attributed to successive implementation of the two policies toward the improvement in the availability and accessibility of medicines**.”

“Furthermore, **chronic backlogs of product registration** applications seem to be exacerbated by the **absence of a computer-assisted drug registration system** (World Bank, 2018).”

“The country’s **drug policy needs** [...] **has not been updated in 10 years** and the update frequency recommended by WHO is five years.”

Source: The Gambia’s Department of State for Health and Social Welfare, “*Health is Wealth — Department for health and Social Welfare, Health Policy Framework 2007-2020*”, 2006, p.30.

“Government budgetary allocations for drugs and dressings in real terms have not been increased significantly. Also there has been a **major increase in demand due to the increased number of clientele and the rapid expansion of service delivery facilities**. These factors contribute to the **sporadic shortages of drugs and other medical supplies**. The procurement process also requires improvement.”

Source: Ministry of Health, “*National Health Policy — 2021-2030*”, Republic of The Gambia.

“In terms of readiness, **gaps were identified on availability of medicine, diagnostic services, and basic amenities**. Only 3% and 21% of health facilities had all tracer essential medicines and diagnostics during the 2019 service delivery survey. Only half of the health facilities have all the basic medical equipment, while this is just 29% for community clinics.”

### **III. Information on the mental health provision, especially regarding the recognition of mental health and the provision of support**

In The Gambia, the **main law dealing with mental health issues** was enacted in 1917 and **last amended in 1964**. Since then, **all action programs, national plans and draft laws have either been shelved before adoption or ignored during implementation**. Such an observation is not without context: in a country where the majority of people see mental illnesses as demonically caused or at least religiously motivated, **the government provides very little budget, material and human resources** to provide adapted care to people dealing with mental health issues.

#### **1. Definition of “mental health”**

Source: World Health Organization, “*Mental health: strengthening our response*”, June 17, 2022.

The World Health Organization defines mental health as “a state of mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well,

and contribute to their community. **It is an integral component of health and well-being** that underpins our individual and collective abilities to make decisions, build relationships and shape the world we live in. Mental health is a basic human right. And it is crucial to personal, community and socio-economic development.

**Mental health is more than the absence of mental disorders.** It exists on a complex continuum, which is experienced differently from one person to the next, with varying degrees of difficulty and distress and potentially very different social and clinical outcomes.

Mental health conditions include mental disorders and psychosocial disabilities as well as other mental states associated with significant distress, impairment in functioning, or risk of self-harm. People with mental health conditions are more likely to experience lower levels of mental well-being, but this is not always or necessarily the case.”

## **2. The Gambia’s approach to mental health**

In most families and communities, **mental illnesses are considered to be of a spiritual nature.** In this context, which is relatively alien to mental health issues, **The Gambian Government devotes only a very small part of its health budget to providing care for those affected by mental illnesses** (less than 1% in 2020). As a result, only a minority of people with mental health conditions receive the care they need. Although **various programs** to address this growing problem **have been proposed**, notably in collaboration with the World Health Organization, **none of them have been successful to date:** the **last law** on the subject, the **Lunatics Detention Act, dating from 1917**, was last amended in 1964.

Source: Manajan Girma, “*Mental Health in The Gambia, West Africa*”, April 4, 2020.

“Most of the communities and families in The Gambia, as well as traditional healers, **believe mental illnesses to be religiously spiritual and natural or caused by demons.**”

“A major issue is limited medical services generally but more so in mental health in The Gambia; **there are substantial gaps in capacity at the only mental health facility Tanka Tanka**, human resources, materials for care, medication, alternate medicine (such as meditation, yoga or massage) and outreach services. This generally stems from a **lack of mental health education and limited budget allocation (about 0.7% of the national health budget is spent on mental health services)**. The Government of The Gambia has a unit called the National Mental Health Unit under the Ministry of Health and Social Welfare. This unit was established less than a decade back but has had limited numbers of staff.”

Source: Basma Ikram, “*Mental Health in The Gambia*”, October 9, 2021.

“Despite the fact that a significant number of people in Gambia are affected by mental illness (some estimates are as high as 13%), **almost 90% of people with a severe mental illness do not have access to treatment.** [In 2003], **mental health services in Gambia were not integrated into general health services.** There was a clear lack of investment within mental health services. **The government budget had no specific allocation for mental health,** and the majority of the financing towards mental health comes from grants. [...] Furthermore, **lack of trained staff** was also a major issue. None of the major health centers in the nation had specifically trained mental health workers, and a few providers in minor healthcare facilities had the knowledge and skills to provide adequate care.”

“In 2004, the Department of State for Health and Social Welfare in The Gambia, in conjunction with the World Health Organization (WHO), detailed a **plan aimed at ensuring effective and humane mental health treatment and care for the nation’s citizens.**”

“In 2005, the WHO collaborated with the Department of State for Health and Social Welfare to arrange a technical workshop on mental health policy. [...] **The Gambia Mental Health Strategic Plan was implemented in January 2007 and planned to run until 2012.**”

“As part of this plan [...] **the Tanka-Tanka Psychiatric hospital has dedicated staff trained in providing cognitive behaviour therapy, psychotherapy, psycho education and individual counseling.**”

“[As to now], **the Lunatic Detentions Act has not yet been repealed or amended.** The draft Mental Health Bill that had been recommended by the Commission is still on hiatus at the National Assembly.”

“In 2012, the WHO summary Report on Mental Health in The Gambia stated: “[...] **Mental health services are very limited in The Gambia;** there are significant gaps in capacity, human resources, materials, medication and outreach services, most of which stem from very limited budget allocation (about 0.5% of the national health budget is spent on mental health services).”

Source: Cambridge University Press, by Imogen Kretzschman, Ousman Nyan, Ann Marie Mendy, Bamba Janneh, “*Mental Health in the Republic of The Gambia*”, May 2012.

“The mental health service consists of one community mental health team (CMHT) and an in-patient unit – the Tanka Tanka Psychiatric Hospital, run as part of the RVTH.”

“**Rural areas are served by general health centres, and traditional healers.** Culture dictates most patients will attend a traditional healer as the first point of call, and come to the attention of the CMHT on outreach often at a later stage of illness.”



“The World Health Organization’s Mental Improvement for Nations Development in 2007 estimated that **120 000 people in The Gambia had a mental illness, with about 3 000 receiving treatment per annum**”

“There are currently two **psychiatrists** working in The Gambia, or **0.08 per 100 000 population.**”

“The **Suspected Lunatic Detention Act 1964 is still in use in The Gambia.** In 2004 The Gambia’s Department of State for Health and Social Welfare recognised that the Act is outdated and fails to address the human rights of those with mental disorders. **A mental health policy and strategic action plan were drafted in 2006,** outlining how to narrow the gap in mental health services. **The official implementation of the policy is still awaited**”.

Source: African Commission on Human and People’s Rights, “*Purohit and Moore v. The Gambia*”, Communication No. 241/2001, May 15-29, 2003.

§§3-4: “The Complainants allege that legislation governing mental health in The Gambia is outdated. It is alleged that **within the Lunatics Detention Act** (the principal instrument governing mental health) **there is no definition of who a lunatic is**, and that there are no provisions and requirements establishing safeguards during the diagnosis, certification and detention of the patient.”

§27: “the **Lunatics Detention Act does not contain any provisions for the review or appeal against an order of detention** or any remedy for detention made in error or wrong diagnosis or treatment. Neither do the patients have the legal right to challenge the two separate Medical Certificates, which constitute the legal basis of their detention.”

§59: “**Under the LDA, persons with mental illness have been branded as "lunatics" and "idiots"**, terms, which without any doubt dehumanise and deny them any form of dignity in contravention of Article 5 of the African Charter.”

§67: “A "duly qualified medical practitioner" under the LDA has been defined as "every person possessed of a qualification entitling him to be registered and practice medicine in The Gambia".”

§68: “By these provisions, **the LDA authorises the detention of persons believed to be mentally ill or disabled on the basis of opinions of general medical practitioners.** [...]”

Measures: The Commission “strongly urges the Government of The Gambia to:

(a) **Repeal the Lunatics Detention Act and replace it with a new legislative regime for mental health in The Gambia** compatible with the African Charter on Human and Peoples' Rights and International Standards and Norms **for the protection of mentally ill or disabled persons as soon as possible;** [...]

(c) **Provide adequate medical and material care** for persons suffering from mental health problems in the territory of The Gambia.”

Source: Simon Sabally for *Law Hub Gambia*, “*The status of the findings of the African Commission on Purohit and Moore v. The Gambia: Seventeen Years of Nothingness*”, November 27, 2020.

**“The Lunatics Detention Act is still the extant law in The Gambia on mental health and no report or data is available on the creation of the review body [ordered by the Commission] and on its proceedings and recommendations on the cases of persons detained under the Lunatics Detention Act. Although the Campama Unit was closed and a better and more spacious detention facility was opened at Salagi Called Tanka Tanka, more mentally-ill persons are seen on the street more frequently now than before.”**

Since *Purohit and Moore v. The Gambia* in 2003, **“The Gambia has failed to implement the key recommendation of the African Commission.** The Lunatics Detention Act which was enacted in 1917 and last amended in 1964 is not repealed or amended to capture the concerns of the Commission and the changed circumstances in the country. **Equally, the draft Mental Health Bill as recommended by the Commission is on hiatus at the National Assembly.”**

**“The procedure in case of the lunacy or other incapacity of an accused person is still regulated by the Criminal Procedure Code and the Lunatics Detention Act.** The appearance, bail and detention of an Accused Person who is of unsound mind and incapable of making his or her defense **rest with the trial court and the minister responsible for health.”**

### 3. Prospects for development

Overall, mental health issues will unlikely be in the future political agenda in The Gambia. **As early as 2003, the African Commission on Human and Peoples' Rights warned of the need to make progress** in this area. But despite repeated interventions by the World Health Organization in this regard for over a decade, **all attempts at progress towards mental health issues seem to have been put on hold at some point** in the process of adopting a standard or implementing it. This shows a **certain lack of interest** in the issue by the government and legislative power of The Gambia.

Source: World Health Organization, “*Stakeholders in The Gambia Review Draft Mental Health Legislation*”, March 27, 2017.

**“Stakeholders representing different interest groups and institutions attended a day’s workshop held on 23 March 2017 to discuss draft zero of the new mental health legislation for The**

**Gambia.** This meeting was a joint initiative of the World Health Organization (WHO) Country Office and the Ministry of Health and Social Welfare (MoHSW)”

“The new draft legislation is therefore aligned with the WHO checklist for **developing a mental health legislation and international human rights instruments to safeguard the human rights of people with mental disability** and their families, as well as the care givers.”

Source: Simon Sabally for *Law Hub Gambia*, “*The status of the findings of the African Commission on Purohit and Moore v. The Gambia: Seventeen Years of Nothingness*”, November 27, 2020.

“An anatomy of the National Health Policy 2012 – 2020 provides a measure of **lack of progress for mental health in The Gambia.**”

“The formulated policy measures such as implementing the Mental Health Policy and Strategy; strengthening the capacity for the diagnosis, Management, prevention and control of mental and neurological disorder; providing quality, equitable and affordable mental health services; revise the Lunatics Detention Act; and develop Mental Health Bill, have not happened as planned. **These measures which were basically uplifted from the moribund Gambia Mental Health Strategic Plan 2007 – 2012 are either not fully implemented or not implemented at all.**”

Source: World Health Organization, “*Country Cooperation Strategy at a glance: The Gambia*”, May 2018.

WHO Country Cooperation Strategic Agenda (2016-2020): “Strengthen national capacity for the **development and implementation of mental health policy and legislation as well as the integration of mental health services into general health services**, including primary health care.”

#### **IV. Information on freedom of religion: tolerance for those who are atheist and do not subscribe to Muslim faith when living in a practicing Muslim community/family**

**Freedom of religion** occupies an important place in The Gambian society and is **guaranteed by both the constitution and the law** (1). Since President Adama Barrow came to power in December 2016, a new era has begun for The Gambia. Indeed, after 22 years of dictatorship by Lieutenant Yahya Jammeh, the newly elected president decided to give freedom of religion a rightful place by abolishing the former president's 2015 decree, which made The Gambia an Islamic Republic (2). Finally, the fact that it is both constitutionally and legally recognized excludes in principle any repression of a choice to believe or not to believe in a

religion (atheism). **However, the lack of information on the issue of atheism in The Gambia does not allow for confirmation of the exclusion or otherwise of any repression.**

### ***1. Protection of religious freedom***

Since 1997, freedom of religion has been enshrined in The Gambian Constitution (a), and in order to ensure its full implementation various laws have been passed in this regard (b).

#### ***a) Constitutionally protected freedom of religion***

It is noted that the fact that religious freedom is provided in The Gambian Constitution makes it possible both to guarantee its full effectiveness in the country and to prevent possible infringements.

Source: The Gambian Constitution, January 16, 1997.

Article 25: “Every person shall have the right to-

- a) [...]
- b) freedom of thought, conscience and belief, which shall include academic freedom;
- c) freedom to practise any religion and to manifest such practice”

Article 33:

“3. [...] **no person shall be treated in a discriminatory manner** by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

4. In this section, the expression "discrimination" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, language, **religion**, political or other opinion, national or social origin, property, birth or other status [...]"

Article 60§2.a: “**No association** shall be registered or remain registered as a political party if it is **formed or organised on an ethnic, sectional, religious or regional basis**”.

Source: *WorldAtlas*, “*Religious Beliefs in The Gambia*” by Oishimaya Sen Nag, April 11, 2018.

“The Gambia's constitution guarantees freedom of religion to its citizens, and also mentions that political parties cannot be formed on the basis of religion”

## *b) Different legislation allowing religious freedom in The Gambia*

The Gambia has several laws to protect religious freedom. There are legislative provisions regarding schools and laws that specifically address the Muslim community with the establishment of special courts (The Qadis).

Source: International Religious Freedom Report for 2018 United States Department of State “*Gambia 2018 International Religious Freedom Report*”.

“**The law does not require public or private schools throughout the country to include religious instruction in their curricula;** however, the majority of schools do so, and most students attend these classes. The government provides religious education teachers to schools that cannot recruit such teachers.”

“The courts are located in each of the country’s seven regions, and their jurisdiction applies only to marriage, divorce, child custody and inheritance where the involved parties are Muslims.”

Source: *WorldAtlas*, “*Religious Beliefs in The Gambia*” by Oishimaya Sen Nag, April 11, 2018.

“**The country has Qadi courts in different regions** that declare judgments based on the sharia law that applies only to Muslims living in the country or to the partners in an interfaith union in which one partner is Muslim.”

## **2. From the time of President Yahya Jammeh to the election of Adama Barrow**

During the period of **President Yahya Jammeh**, religious freedom has been undermined. Indeed, the president decided to **end the secular Republic of The Gambia** by turning it into an Islamic Republic (a). However, since the change of government in early 2017, **one of the first official statements by the new president Adama Barrow was that The Gambia was no longer an Islamic Republic**, and that the constitution would be amended (b). Nevertheless, although The Gambia was first an Islamic Republic and then a Republic (the constitution has not been amended yet), there is **no information on whether atheists are persecuted to date**.

### *a) President Yahya Jammeh's mandate*

In 2015, President Yaha Jammeh decided to make The Gambia an Islamic Republic. This announcement had two consequences: the first was a questioning of religious freedom and the second was a concern among the population.

Source: African Arguments, “*What does Jammeh have to gain by The Gambia an Islamic Republic*”, January 28, 2016.

“In a surprise announcement last month, President Yahya Jammeh declared The Gambia an Islamic Republic”.

“In his address, the president also insisted that the rights of all citizens – regardless of religion – would be safeguarded and that there would not be a dress code for women. **But it was not long before the latter promise was broken and a presidential directive was issued requiring female public sector employees to cover their hair during work hours.** Another U-turn followed close behind though, with the decision rescinded in a press release explaining that:

Source: International Religious Freedom Report for 2016 United States Department of State “*The Gambia 2016 International Religious Freedom Report*”.

“This went against the constitution, which defines The Gambia as a secular state.”

### *b) President Adama Barrow's mandate*

In his first speech as President of the Republic of The Gambia, Adama Barrow announced that The Gambia would **once again become a secular republic**. However, it should be noted that the constitution has **not been revised yet**.

Source: ACN International, “*Liberté religieuse dans le monde rapport 2021 Gambie*”, April 20, 2021.

“After the presidential elections in December 2016, the country underwent a peaceful transition of power, a first since independence in 1965. After his inauguration, the new President, **Adama Barrow, declared that the country would return to being a simple "Republic"**, by removing the word "Islamic" which had been added by Yahya Jammeh”<sup>1</sup>.

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<sup>1</sup> Original version: « Après les élections présidentielles de décembre 2016, le pays a connu une transition pacifique du pouvoir, une première depuis son indépendance en 1965. Après son investiture, le nouveau Président, Adama

Source: La Tribune Afrique, “*Gambie Adama Barrow annonce le retour à la laïcité*”, January 30, 2017.

“The Gambia will no longer be an "Islamic state" as intended by Yahya Jammeh. It will now be a secular state called "Republic of Gambia". Adama Barrow announced this measure at a press conference held Saturday in his private villa in Brufut (15 km from Banjul). "*The Gambia will now be called the Republic of The Gambia and not the Islamic Republic of The Gambia*", he said”<sup>2</sup>.

Source: European Asylum Support Office, “*Country of Origin Information Report: The Gambia Country Focus*”, December 2017.

“The Gambia was no longer an Islamic Republic, and that the constitution would be amended. The term ‘Third Republic’ has been used colloquially since President Adama Barrow took office. **This term is not legally binding as the constitution has not yet been amended.**”

## V. Information on LGBT+ rights in The Gambia

Generally speaking, it is safe to say that **the situation of LGBT+ people is far from favourable** in The Gambia. Indeed, the government is hostile or even aggressive towards this community, the **law increasingly criminalises** this practice considered as anti-natural. Furthermore, **The Gambia's position is more than unfavourable towards the United Nations' acts in favour of the inclusion of LGBT+ persons**. Thus, it can easily be said that the state of the legislation (1) reflects a **firm position of the government without much hope of improvement in the near future** (2).

### 1. State of legislation

At present, the legislation concerning the LGBT community in The Gambia is **one of the strictest in the world**, not only because **same-sex relationships are criminalised** ('culprits' face up to 14 years in prison). Indeed, in **2014**, an amendment to the Criminal Code introduced the

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Barrow, a déclaré que le pays allait redevenir une simple « République », par la suppression du mot « islamique » qui avait été ajouté par Yahya Jammeh. »

<sup>2</sup> Original version: « La Gambie ne sera plus un « Etat islamique » comme voulu par Yahya Jammeh. Elle sera désormais un Etat laïc dénommé « République de Gambie ». Adama Barrow a annoncé cette mesure lors d'une conférence de presse donnée samedi dans sa villa privée à Brufut (15 km de Banjul). « *La Gambie va désormais s'appeler République de la Gambie et non plus République islamique de Gambie* », a-t-il dit. »

notion of “**aggravated homosexuality**”, for which certain categories of **LGBT people can be sentenced to life imprisonment**.

Source: International Gay and Lesbian Human Rights Commission (IGLHRC), “*Submission to the Universal Periodic Review: The Gambia*”, 2010.

“In The Gambia, **homosexual conduct has been criminalized since the enactment of its 1965 Criminal Code**. Article 144 of the Code states that homosexual acts between men or women are “*unnatural offense(s)*””

**Reminder: The Gambia has acceded to the UN *International Covenant on Civil and Political Rights***. “In *Toonen v. Australia*, the UN Human Rights Committee in March 1994 confirmed that laws criminalizing consensual same-sex activity violate both the right to privacy and the right to equality before the law without any discrimination, contrary to articles 17(1) and 2 of the ICCPR.” Therefore, **The Gambia has the obligation to bring its legislation into conformity with the Covenant by repealing provisions which criminalize consensual same-sex activity**.

Source: Human Rights Watch, “*Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity*”, The Gambia section, World report 2022.

“**Consensual same-sex sexual activity for both men and women is illegal in Gambia** and carries a sentence of between 5 and 14 years in prison. In October 2014, then-President Yahya Jammeh signed into law an amendment to the Criminal Code that introduced a new offense of “*aggravated homosexuality*” punishable by life imprisonment.”

Source: Human Rights First, “*Gambia’s Nations Assembly passes anti-gay bill*”, September 9, 2014.

“[The] passage of a discriminatory bill by Gambia’s National Assembly represents an **alarming trend threatening the human rights of lesbian, gay, bisexual, and transgender (LGBT) Africans**. The bill [...] calls for life sentences for some homosexual acts determined to be “*aggravated homosexuality*.” The bill is similar in language and penalty to the egregious Anti-Homosexuality Act that was recently struck down in Uganda.”

Source: Amnesty International, “*Everything you need to know about human rights in Gambia*”, March 29, 2022.

“**LGBTI people still lived under the threat of oppressive laws, which created an unsafe environment**. Section 144 of the Criminal Code provided for a 14-year prison sentence for anyone who has “*carnal knowledge of any person against the order of nature [...] or permits any person to have carnal knowledge of him or her against the natural order.*” Section 147



criminalized an “*act of gross indecency*” between two people of the same sex with five years in prison. Section 144A created the crime of “*aggravated homosexuality*” for “*serial offenders*” and those living with HIV, punishable by life imprisonment.”

Source: Amnesty International UK, “*Gambia’s latest anti-gay Bill*”, January 12, 2018.

“The **Criminal Code (Amendment) Act 2014** introduced the new crime of ‘aggravated homosexuality’ for ‘serial offenders’ and gay or lesbian people which comes with the **punishment of a lifetime in prison.**” This life-long punishment only concerns certain categories of gays and lesbians, which are all listed in the September 10, 2014 amendment,<sup>3</sup> otherwise ‘common’ gays and lesbians still risk up to 14 years of prison.

“Gambia's national Criminal Code, which punishes anyone who identifies as - or is accused of identifying as – gay or lesbian **violates Gambia’s own constitution, which says that all people must be equal and free from discrimination** before the law. It also stipulates that national laws must not embed or encourage discrimination. **The law also violates international human rights standards that Gambia claims to abide by, including the African Charter on Human and People’s Rights.**”

## **2. Government position and prospects for development**

During the time of President Jammeh, **The Gambia displayed a clear anti-LGBT climate**, from virulent and threatening comments by the President to the passing of a new law punishing certain categories of LGBT people with life imprisonment. In **2017**, President Barrow's accession to power marked the **beginning of a less aggressive, but still hostile, atmosphere towards the LGBT community**. A key indication of this antipathy is that in 2022, **when the UN Human Rights Council passed four resolutions in favour of, among other things, the inclusion of LGBT people, The Gambia voted 'no'**.

### ***a) From 2010 to today: a new amendment that worsens the situation***

**Homosexuality has long been criminalised in The Gambia.** To make matters worse, in **2014** President Jammeh amended the Criminal Code to add the offence of “**aggravated homosexuality**”, for which offenders face life imprisonment.

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<sup>3</sup> International Labor Organization, September 10, 2014 amendment of The Gambian Criminal Code. [Available online.](#)

Source: International Gay and Lesbian Human Rights Commission (IGLHRC), “*Submission to the Universal Periodic Review: The Gambia*”, 2010.

**“The President of The Gambia has also contributed to the unsafe and discriminatory environment** in The Gambia with several homophobic and extreme statements calling for violence and discrimination against homosexuals, with a particular focus on forcing them from their homes.”

- May 15, 2008: “President Jammeh ordered security services to “*seek out and arrest any person who is gay,*” close down any motel “*harboring gays,*” and expel “*suspected gays*” from dwellings. He also vowed to “*cut off the head*” of any homosexual.”
- May 23, 2009: “President Jammeh urged [...] the majority party in the country’s National Assembly, to not entertain homosexuals in their compounds and also to not allow them to transfer money.”

Source: Human Rights First, “*Gambia’s Nations Assembly passes anti-gay bill*”, September 9, 2014.

“Gambian President Jammeh has made it clear in public statements that he would likely support anti-gay legislation, calling homosexuality one of the “*biggest threats to human existence*”. During a recent speech marking Gambia’s Independence Day, **President Jammeh stated, “We will fight these vermins called homosexuals or gays the same way we are fighting malaria-causing mosquitoes, if not more aggressively.”**”

Source: Human Rights Campaign, “*Political Leaders in The Gambia Support Repeal of Anti-LGBTQ Law*”, May 18, 2017.

**“Political leaders in The Gambia have expressed interest in repealing the horrific anti-LGBTQ legislation** that was signed into law by former President Yahya Jammeh in 2014.”

“Gambia’s Foreign Secretary Ousainou Darboe explained [...] “*Homosexuality was perhaps something Jammeh imagined in order to bamboozle the clerics that were surrounding him...He used gay as a propaganda tool in order for him to continue to repress people.*””

“Darboe is the party leader of the United Democratic Party (UDP), which is the country’s largest political group and was the main opposition party under the rule of Jammeh.”

## *b) Nowadays*

While **President Barrow has promised not to prosecute same-sex couples**, the climate in The Gambia towards the LGBT+ community is still very hostile. Indeed, **homosexuality is**

**still heavily criminalised** and the new instruments do not count on government support for the cause: the 2018-2021 development plan does not even address the issue, and **at the United Nations, The Gambia continues to vote against acts in favour of LGBT+ inclusion.**

Source: Ebrima G. Sankareh, The Gambia Government Spokesperson's speech, June 23, 2020, Banjul, The Gambia.

“Neither President Barrow Himself nor any member of his government, its envoy, agent or representative has ever signed, consented to, participated in or even pretended to support any deal, package, programme or agenda for the promotion of LGBT rights.”

Source: Human Rights Watch, “*Gambia, Events of 2017*”, 2017.

“**President Barrow's government has promised not to prosecute same-sex couples for consensual sexual acts**, which sharply contrasted with Jammeh's hate-filled rhetoric toward lesbian, gay, bisexual, and transgender (LGBT) persons. **However, the government has not repealed laws that criminalize same-sex conduct**, including an October 2014 law that imposes sentences of up to life in prison for “*aggravated homosexuality*” offenses.”

Source: Government of The Gambia, “*The Gambia National Development Plan (2018-2021)*”.

“*The Gambia National Development Plan (2018-2021)*” runs for over **400 pages with an agenda for development**, including human rights, access to health care, health facilities, education, social protection and economic recovery, **without a single mention of the rights of the LGBTQI+ community. This silence is indicative of the taboo that hangs over the subject, and of the lack of will of The Gambia to change its legislation.**

Source: United Nations Human Rights, Office of the High Commissioner, “*Human Rights Council Adopts Four Resolutions - Extends Mandate of the Independent Expert on Protection from Violence and Discrimination Related to Sexual Orientation and Gender Identity*”, July 7, 2022.

Recently, The Gambia's unwillingness to move forward on this issue was felt at **the United Nations Human Rights Council, which passed four resolutions supporting, among other things, the inclusion of LGBTQ+ people in society: The Gambia voted against** the adoption of this resolution.

“The Human Rights Council this afternoon adopted four resolutions, in which it, among other things, extended the mandate of the Independent Expert on protection from violence and discrimination related to sexual orientation and gender identity for a period of three year.”

“The results of the vote were as follows: [...] **Against** (17): Cameroon, China, Cote d’Ivoire, Eritrea, Gabon, **Gambia**, Indonesia, Libya, Malawi, Malaysia, Mauritania, Pakistan, Qatar, Senegal, Somalia, Sudan and United Arab Emirates.”

### 3. Summary of LGBT legislation in The Gambia

Source: Equaldex, “*LBGT Rights in Gambia*”, undated.

| LGBT Rights in Gambia  |                         |                           |  |                               |                                       |
|---|-------------------------|---------------------------|--|-------------------------------|---------------------------------------|
| HOMOSEXUALITY          |                         |                           | GAY MARRIAGE  |                               |                                       |
| <b>✗ Illegal (up to life in prison as punishment)</b>   |                         |                           | <b>✗ Not legal</b>   |                               |                                       |
| CENSORSHIP  | <b>✓ No censorship</b>  | CHANGING GENDER           | <b>✗ Illegal</b>   | NON-BINARY GENDER RECOGNITION | N/A                                   |
| DISCRIMINATION  | <b>✗ No protections</b> | EMPLOYMENT DISCRIMINATION | <b>✗ No protections</b>  | HOUSING DISCRIMINATION        | <b>✗ No protections</b>               |
| ADOPTION  | <b>✗ Single only</b>    | MILITARY                  | <b>✗ Illegal</b>   | DONATING BLOOD                | <b>✗ Banned (indefinite deferral)</b> |
| CONVERSION THERAPY  | <b>✗ Not banned</b>     | AGE OF CONSENT            | N/A  |                               |                                       |

## VI. Information on the practice of sorcery in The Gambia

During Yahya Jammeh's presidency, a massive "witch-hunt" campaign happened. Indeed, President Jammeh decided to put an end to the use of presumed witchcraft in The Gambian society, by sending “witch doctors” to arrest the persons accused of witchcraft and sending them to detention centers. The arrests were violent, and sometimes appeared more as kidnapping than arrests. In detention, presumed witches were forced to drink substances supposed to heal them, but those substances caused them severe hallucinations. However, upon the election of the new President Adama Barrow, he decided to set up a commission (the Truth, Reconciliation and Reparations Commission) to investigate the atrocities perpetrated on The Gambian population during the regime of the former dictator Yahya Jammeh. (1)

Even if there is no more witch hunt in The Gambia, recently the government of the actual President made a covenant with some advocates of the previous President Jammeh. The promises made by Adama Barrow to prosecute the hunters seems compromised (2).

## 1. Witch hunt under the regime of Jammeh

Jammeh sent to unknown detention centers persons he assumed were witches. Paramilitary police kidnapped them, and discouraged those who wanted to escape by threatening them with guns. Once arrived in detention, people under arrest were **forced to confess they were witches, otherwise they were beaten to death.**

Source: Amnesty International, “*Hundreds accused of 'witchcraft' persecuted in The Gambia*” - Amnesty International, March 18, 2009.

“Amnesty International today revealed that up to 1,000 people in The Gambia have been **kidnapped** from their villages by “witch doctors”, taken to **secret detention centres** and forced to drink hallucinogenic concoctions. The incidents are occurring in the context of a “witch-hunting campaign”

“At the secret detention centres, where some have been held for up to five days, they are **forced to drink unknown substances** that cause them to **hallucinate and behave erratically**. Many are then forced to confess to being a witch. In some cases, they are also **severely beaten**, almost **to the point of death.**”

“**The most recent incident took place on 9 March** in Sintet village in the Foni Jarrol district. Up to 300 people were forced to go to the President’s farm in Kanilai. According to one witness:

“At 5am the paramilitary police armed with guns and shovels surrounded our village and threatened the villagers that anyone who tries to escape **will be buried six feet under**. Fear gripped the village; children were crying and **traumatised**. They randomly identified over 300 men and women who were forced at gunpoint into waiting buses and ferried to the President’s hometown.”

## 2. The prosecution of the hunters compromised

When President Barrow was elected, he promised to prosecute agents who tortured and kidnapped The Gambian under the oppressive regime of Jammeh. But **Barrow’s government has recently sympathized with some of those Jammeh’s agents**, which is a concrete example of the **non-commitment with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *Convention for the Protection of all Persons against Enforced Disappearance*** ratified by The Gambia in 2018.

Source: MSN, Maria Gerth-Niculescu, “*Gambie, vers une justice pour les victimes de Jammeh ?*”, November 23, 2022.

“Witch hunts, but also torture, arbitrary detention and exactions appear in the long list of crimes committed under Yahya Jammeh’s regime. 6 months ago, the government accepted the recommendations of a specialized inquiry commission, to start reconciling.

**But several victims report seeing too few concrete results, even more when the government allied with some previous advocates of Yahya Jammeh - an act qualified as betrayal.”<sup>4</sup>**

Source: BBC News, “*Gambia under Yahya Jammeh: Witch hunts, PTSD and veiled faces*”, June 12, 2022.

“Many Gambians did not testify before the Truth, Reconciliation and Reparations Commission (TRRC), which heard witness testimony between January 2019 and mid-2021 about life under Mr Jammeh. [...] **because they were frightened of possible repercussions.** Mr Jammeh is in exile in Equatorial Guinea - **but some of his henchmen remain in positions of authority in villages, in government, in the army and in the national intelligence service.**”

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<sup>4</sup> Original version: « Chasse aux sorcières, mais aussi torture, détentions arbitraires et exactions figurent dans la longue liste des crimes commis sous le régime de Yahya Jammeh. Il y a six mois, le gouvernement a accepté les recommandations d'une commission d'enquête spécialisée, pour débiter le processus de réconciliation. Mais de nombreuses victimes disent voir trop peu de résultats concrets, d'autant plus que le gouvernement s'est allié avec certains anciens soutiens de Yahya Jammeh – un acte que certains qualifient de trahison. »

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