



## 人权理事会

## 第四十五届会议

2020年9月14日至10月2日

## 议程项目3

促进和保护所有人权——公民权利、政治权利、  
经济、社会及文化权利，包括发展权

## 对冈比亚的访问

## 寻求真相、正义、赔偿和保证不再发生问题特别报告员的报告\*

## 概要

寻求真相、正义、赔偿和保证不再发生问题特别报告员法比安·萨尔维奥利提交他2019年11月20日至27日访问冈比亚的报告，报告评估了政府为处理前总统叶海亚·贾梅22年独裁政权期间实施的严重侵犯人权行为而采取的措施。

在本报告中，特别报告员指出了在国际社会的支持和指导下，为处理过去的侵权行为并防止其再次发生而启动的国内进程，并说明了政权更迭后头三年这一进程的发展情况。他着重指出，该国设立了备受称赞的真相、和解与赔偿委员会，并建立了宪法审查委员会和国家和人权委员会。然而，特别报告员告诫称，在刑事起诉、纪念、体制改革和赔偿等一些领域存在缺陷。

报告最后向政府和国际社会提出了建议。

\* 报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文分发。



## Annex

### Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to the Gambia

#### Contents

	<i>Page</i>
I. Introduction .....	3
II. General background .....	3
A. Historical context.....	3
B. Legal framework.....	4
C. General impressions.....	5
III. Transitional justice initiatives .....	6
A. Truth-seeking initiatives .....	6
B. Search for and identification of disappeared persons .....	8
C. Accountability for past violations and abuses.....	9
D. Reconciliation .....	11
E. Access to and preservation of documentation and evidence.....	12
F. Reparations to victims .....	13
G. Memorialization in the Gambia .....	14
H. Guarantees of non-recurrence .....	15
IV. Engagement and consultation with victims .....	18
V. Conclusions .....	18
VI. Recommendations .....	19

## I. Introduction

1. From 20 to 27 November 2019, the Special Rapporteur conducted an official visit to the Gambia. He thanks the Government of the Gambia for extending the invitation to visit the country and for their cooperation during the visit. He also extends his gratitude to the United Nations country office in Gambia and in particular to the Regional Office for West Africa of the United Nations High Commissioner for Human Rights for its support in the preparation of and during the visit.
2. The objective of the visit was to assess the measures adopted by the authorities of the Gambia in the fields of truth, justice, reparation, memory and guarantees on non-recurrence to address the serious human rights violations committed during the authoritarian regime of former President Yahya Jammeh. The visit was aimed at developing a broad view of the initiatives adopted, identifying best practices, determining problems and challenges and providing recommendations.
3. The Special Rapporteur visited Banjul, Kotu, Kololi, Fajara, Kanifing, Jambur, Yundum and Kanilai. The visit provided an opportunity to meet with State officials, victims, civil society organizations, and religious and traditional leaders, as well as with representatives from United Nations agencies, international and regional organizations, and the diplomatic community.
4. He also carried out field visits to sites of mass graves, exhumation locations, and sites where torture, summary executions and enforced disappearances are believed to have occurred, such as the Yundum Barracks, the Kanilai Barracks and the former National Intelligence Agency headquarters, including the infamous torture chamber known as *bambadinka*.
5. Over the course of the visit, the Special Rapporteur met with the Vice-President of the Gambia; officials from the Ministry of Foreign Affairs, the Ministry of Interior and the Ministry of Finance; and with the Attorney General, the Minister of Justice, the Solicitor General, the Legal Secretary, the Chief Justice and other members of the judiciary. He also met with officials from the National Human Rights Commission; the Truth, Reconciliation and Reparations Commission; the Constitutional Review Commission; the Commission of Inquiry into the Financial Activities of Public Bodies, Enterprises and Offices; the National Assembly and its selected Committee on Human Rights and Constitutional Matters; the National Security Office; the State Intelligence Service and former National Intelligence Agency; the Armed Forces; the Police Force; the National Youth Council; and the Transitional Justice Technical Committee.
6. The Special Rapporteur also met with victims and the families of victims of torture, enforced disappearances, summary executions, sexual violence and arbitrary detention. In addition, he met with victims of the witch-hunt campaign and of the alternative HIV/AIDS treatment programme carried out under former President Jammeh.

## II. General background

### A. Historical context

7. Former President Yahya Jammeh ruled the country from 1994 until January 2017. During his 22-year tenure, the Government was characterized by disregard for the rule of law, rampant State-led violence, infringements of human rights and civil liberties, persecution of the media and critical voices, and the existence of a repressive State apparatus. Impunity for those violations was the norm. State institutions were weak and under the influence and control of the President, and there were no independent institutions or processes to channel alternative voices or social demands.<sup>1</sup>

<sup>1</sup> A/HRC/29/37/Add.2, para. 10.

8. The mass and egregious violations committed during the dictatorship included torture; enforced disappearances; extrajudicial executions and unlawful killings; sexual and gender-based violence; arbitrary detentions; poisoning; forced discontinuation of antiretroviral medical treatment for persons living with HIV/AIDS; and persecution of lesbian, gay, bisexual and transgender persons. These violations were most often associated with the National Intelligence Agency; the former President's paramilitary hit-squad, known as "the Junglers"; and an armed group known as "the Green Boys". Abuses were also reported, however, in the police force, the prison services and the armed forces. Human rights concerns at the time also included interference with the independence of the judiciary, denial of due process, prolonged pretrial detention, poor prison conditions, and tolerance of the practice of female genital mutilation.<sup>2</sup>

9. Some events have become sadly emblematic of this regime, including:

(a) The killing in 1994 in Yundum, Fajara and other military barracks of 11 soldiers suspected of planning a coup;

(b) The killing in 2000 of 13 student protestors;

(c) The killing in 2005 of 50 foreign nationals, including 44 nationals of Ghana, intercepted by security forces in the Gambia on suspicion of planning to overthrow the Government;

(d) The killing in 2004 of journalist Deyda Hydara and the disappearance in 2006 of journalist Ebrima Manneh;

(e) The disappearance in 2006 of five security officers suspected of planning a coup;

(f) The secret detention and poisoning in 2009 of over 1,000 residents of the Foni Kansala district as part of a witch-hunt campaign;

(g) The execution in 2012 of nine death row prisoners after a 27-year moratorium on the death penalty;

(h) The killing in 2013 of businessmen Alhagie Mamut Ceesay and Ebou Jobe, both dual nationals of the Gambia and the United States of America;

(i) The killing in 2014 of three individuals who were allegedly plotting a coup;

(j) The death in custody in 2016 of opposition activist Solo Sandeng.<sup>3</sup>

10. In December 2016, Adama Barrow was elected President in national elections. Then-President Jammeh conceded defeat at first, but soon after, he denounced the result of the elections. Following his attempt to hold on to power, extensive diplomatic negotiations took place with the Economic Community of West African States and the African Union. A military intervention by countries of the Economic Community of West African States eventually ensured the effective transfer of power to the newly elected president. On 21 January 2017, former President Jammeh was exiled in Equatorial Guinea, where he has remained, despite the calls of victims for him to face justice for the atrocities committed.

## B. Legal framework

11. The Constitution of the Gambia, approved by referendum during the past regime, entered into force on 16 January 1997. Chapter IV of the Constitution deals with the protection of a number of fundamental rights and freedoms which, if enforced in practice, would contribute to preventing gross human rights abuses such as the ones seen in the past regime. Specifically, it guarantees personal liberty, including freedom from arbitrary arrest or detention; protects the right to life; and prohibits torture and inhuman or degrading treatment or punishment.

12. The legal framework of the Gambia, however, does not provide effective legal protection against two of the most widespread crimes committed during the brutal regime of former President Jammeh: enforced disappearance and torture. The country's Constitution and Criminal Code do not specifically criminalize enforced or involuntary

<sup>2</sup> Ibid.

<sup>3</sup> Ibid., paras. 52–64.

disappearance. As noted by the Working Group on Enforced or Involuntary Disappearances, the lack of an autonomous crime of enforced disappearance creates a situation whereby enforced disappearance is instead investigated and prosecuted as a different crime, such as murder, abduction or arbitrary deprivation of liberty. As a result, suspected perpetrators of enforced disappearance can be acquitted if the standards of proof for those codified crimes are not met.<sup>4</sup> The crime of torture, although prohibited under the Constitution, is not criminalized under the Criminal Code. Other concerning elements in the Criminal Code include the retention of the death penalty and the criminalization of homosexuality and abortion.

13. As analysed below, a process has been initiated to reform the country's legal framework, including the Constitution, the Criminal Code and the Criminal Procedure Code, with support of the international community.

14. In the Gambia, as in other countries with dualist legal systems, international legal instruments on human rights must be codified in domestic law before they are considered legally binding. However, as noted by the Working Group on Enforced or Involuntary Disappearances in its 2017 country visit report, the rules for domestication of ratified international human rights treaties remain unclear. While international treaties are not included in the Constitution, in instances when international human rights treaties are in consonance with the country's constitutional provisions, direct domestic applicability has been invoked by the High Court and in official statements to regional human rights bodies.<sup>5</sup>

### C. General impressions

15. With support and guidance from the international community, the new administration has initiated a domestic process aimed at addressing past abuses and preventing their recurrence, including by releasing political prisoners, ending repression, initiating institutional reform and establishing transitional justice processes. Early in the process, the Government engaged with international organizations and donors to design a number of transitional justice measures. With the aim of assisting in the implementation of a transitional justice process tailored to the needs and characteristics of the Gambia, a series of assessments were undertaken to support the domestic process. In 2017, a national consultation process was organized by the Ministry of Justice in partnership with several stakeholders in the country. The views of the public were incorporated in the drafting of the Truth, Reconciliation and Reparations Commission Act and in the adoption of a national transitional justice strategy. To date, the establishment of the Commission has been the most interesting and successful initiative in this regard. Other relevant actions include creating the Constitutional Review Commission, establishing the National Human Rights Commission, and embarking on a mapping exercise to guide the adoption of a much-needed security sector and civil service reform aimed at preventing the recurrence of past State-led violence.

16. However, measures remain to be implemented in several other areas. Prosecutions have been initiated in only a handful of cases, and the release of the Junglers, who confessed serious human rights violations at the Truth, Reconciliation and Reparations Commission, caused a social uproar. While the Special Rapporteur recognizes the political will expressed by the Government to provide reparations, he is concerned that victims have not yet received them, especially rehabilitation for those suffering serious ill-effects, and that the reparations policy has not yet been adequately discussed in consultation with victims. Memorialization initiatives are virtually non-existent and institutional reforms are still at an embryonic stage.

17. International assistance has been key to the design and implementation of the incipient but significant transitional justice measures currently in progress in the country.

18. The present report is focused on the situation during the visit, although some references are made to subsequent developments. The report was sent to the Government of the Gambia for comments on 28 April 2020 and was finalized on 22 June 2020.

<sup>4</sup> A/HRC/39/46/Add.1, para. 30.

<sup>5</sup> *Ibid.*, para. 29.

### III. Transitional justice initiatives

#### A. Truth-seeking initiatives

19. President Barrow established two truth-seeking commissions to investigate economic crimes and human rights abuses committed during the regime of former President Jammeh: the Commission of Inquiry into the Financial Activities of Public Bodies, Enterprises and Offices (known as the Janneh Commission) and the Truth, Reconciliation and Reparations Commission.

20. The Janneh Commission was established in June 2017 and started hearing evidence in public sessions in August of that year. It submitted its final report to the Government in March 2019. Gambian society was looking forward to learning the outcomes of the report, but only a succinct version of it (the “white paper”) was released online. This caused dissatisfaction, as only certain recommendations, but not the findings, were included in the paper. The Special Rapporteur was informed by authorities that the full version of the report was available for purchase, but did not clarify if the general population had been made aware of that. In relation to the alleged abuses of public finances by the previous regime, the Government proceeded to freeze the assets suspected of belonging to former President Jammeh.

21. One of the first and most successful transitional justice processes initiated in the Gambia has been the creation of the Truth, Reconciliation and Reparations Commission. It is an independent institution established by an Act of the National Assembly in December 2017. It became operational when its 11 commissioners were sworn into office in October 2018. The Commission was set up to operate for two years with a possible extension.

22. The purpose of the Commission is to investigate all human rights violations that occurred from July 1994 to January 2017 and to prevent a recurrence of such violations. To fulfil its truth-seeking role, the Commission can undertake investigations, conduct research and collect testimonies. It was vested with strong investigative powers, including the ability to request documents, even compelling their production when necessary, and to gain access to relevant sites without prior notice.

23. In addition to truth-seeking, the Commission is mandated to:

- (a) Recommend individuals for prosecution;
- (b) Make recommendations with regard to the granting of amnesties;
- (c) Design individual or collective reparations;
- (d) Facilitate national and community reconciliation.

24. The Act establishes within the Commission a human rights violations committee; a child protection and sexual and gender-based violence committee; a reparations committee; and an amnesty recommendation committee. A national healing and reconciliation committee was created subsequently by the Commission.

25. On its home page, the Commission underscores the adoption of a victim-centred approach that prioritizes their dignity and well-being.<sup>6</sup> The Special Rapporteur welcomes the Commission’s stated focus on victims, an essential requirement in the work of all transitional justice mechanisms.

#### Collection of testimonies and witness protection

26. In July 2019, following the initial collection of testimonies and the conduct of investigations, the Commission started convening public hearings at which victims, witnesses and perpetrators were invited to testify. While only some individuals can testify at these hearings, everyone can provide testimony: to a member of the team of mobile statement-takers; at the Commission’s headquarters in Kotu; at the regional statement-taking offices; or with the regional focal points of the Gambia Center for Victims of Human

<sup>6</sup> [www.trrc.gm/](http://www.trrc.gm/).

Rights Violations. The Research and Investigation Unit carries out investigation, statement-taking and hearings in close collaboration with the Human Rights Violation Committee.

27. Official information indicates that the Commission has conducted 12 public hearings, received over 1,000 statements, and showcased over 219 witnesses since its establishment, 54 of whom are women. The hearings are broadcast on live television and radio, gaining immediate popularity in Gambian society. The Special Rapporteur was impressed by the vast number of Gambians of all trades and backgrounds that follow the hearings of the Commission and by the way in which the hearings have become a central aspect of Gambian social and political life, an element rarely seen in other transitional justice processes.

28. The public hearings have triggered widespread social discussions, and they have allowed Gambians to learn the truth about and understand the scope of the violations committed during the past regime. The hearings have shocked and moved a society that is waking up to the full extent of its violent past. As a result of the hearings, the Commission has become the most renowned transitional justice driver in the Gambia, especially in the Greater Banjul Area and in diaspora communities. The regional hearings conducted in late 2019 on the issue of witch-hunts contributed to enhancing national ownership of the Commission's work and further encouraged public participation. On the other hand, it has been brought to the Special Rapporteur's attention that the absence of translation into minority languages and unequal access to electricity impede wider dissemination of the Commission's hearings and processes.

29. The Commission's success, however, has also become its weakness. As Gambian society follows every development at the Commission, the victims fear that narrating their stories in front of the country and their own communities may expose them and their families to stigmatization and, in some instances, to reprisals. This is particularly true for victims of sexual and gender-based violence, people living with HIV/AIDS, persons accused of witchcraft, and military personnel. For others, it is simply too hard to share their suffering with such a large audience.

30. The Commission has set up pertinent mechanisms to ensure the safety and, where required, the privacy of victims and witnesses. The home page of its website contains clear information about the several procedures in place for testifying, which guarantee safety, anonymity and confidentiality. It is also noted that special precautions are taken to ensure the safety and well-being of survivors of sexual abuse and gender-based violence, as well as other vulnerable groups, including survivors of forced alternative HIV/AIDS treatments administered under the former President's regime.

31. During the visit, it became evident that these mechanisms were regrettably not clearly understood or perceived to be sufficient by the community of victims, too many of whom had decided not to testify owing to fear. The Special Rapporteur suggested to the authorities that the information reaching victims might be insufficient. He noted that it was imperative that the existing procedures be repeatedly explained, making use, for example, of the vast power of live Commission transmissions to provide outreach. Consultation with victims about the pertinence of the mechanisms should also be envisaged. Victim access to clear information about the mechanisms can help dissipate fears or misconceptions, facilitate informed decisions and encourage testimonies.

32. The Commission has also set up mechanisms to prevent intimidation of victims and witnesses. The Special Rapporteur would like to congratulate the Commission for the emphasis placed during the hearings on ensuring that victims and witnesses would not be vulnerable to reprisals or be intimidated for having provided testimony to the Commission. The Act sets out a witness protection system, which has been implemented in individual cases, including of victims of sexual and gender-based violence and high-profile victims, but has not led to the adoption of a comprehensive programme.

33. Regarding victims of sexual and gender-based violence – a crime that was widespread during the past regime and that is often underreported – the Special Rapporteur notes the focus that the Commission has placed on providing those victims with support and security, and in facilitating testimonies without fear of stigma, shaming or revictimization. He also takes note of the special session held by the Commission to address the violations they suffered.

34. The Special Rapporteur commends the Commission for the nuanced and sensitive procedures that have been put in place to address the geographical, personal and security difficulties facing witnesses and victims who wish to testify.

35. He commends the establishment and work of the Commission and the positive impact that its hearings have had in Gambian society and in the recognition of the plight of victims. During the visit and in other forums, some concerns have been raised regarding the work of the Commission, which need to be duly considered and redressed. The Special Rapporteur has received reports regarding the perceived conflict of interest of one of the members of the Commission's Research and Investigation Unit,<sup>7</sup> which unnecessarily affects the reputation of the institution. In addition, civil society has expressed concern that the cases being heard by the Commission are mostly high-profile cases or cases that bring publicity. While this could be explained by the fact that not all testimonies that are being recorded appear in public hearings, the perception of a lack of comprehensiveness in the Commission's approach and any possible bias must be urgently addressed.

## **B. Search for and identification of disappeared persons**

36. The web page of the Truth, Reconciliation and Reparations Commission indicates that its mandate includes establishing and making known the fate or whereabouts of disappeared victims. As part of this mandate, the Commission's Research and Investigation Unit conducts the mapping and excavation of alleged graves and the exhumation of remains. During his visit, the Special Rapporteur had the opportunity, for which he thanks the Commission staff, to visit some of the sites of alleged mass graves. He was able to observe that at some sites, the areas to be searched were vast and difficult to access owing to the geographical characteristics of the land. He was also informed about the lack of specialized and highly technical equipment required to support their forensic work, which is to be expected in a low-income country such as the Gambia. The search for and identification of disappeared persons has therefore proven very difficult, and progress has been slow. Nonetheless, the remains of three individuals suspected of plotting a coup attempt in 2014 were exhumed in Tintiba Forest in March 2017; the body of Solo Sandeng was exhumed near Tanji in April 2017; and more recently, the remains of seven individuals suspected of plotting a coup in 1994 were exhumed in Yundum Barracks in April 2019. The sites had been identified from testimonies received by the Commission, including from members of the Junglers who had participated in the commission of these crimes.

37. The Commission's team of investigators is comprised of four persons led by a police officer on secondment who has expertise on forensics and crime scene investigations. It is unclear whether the remaining members of the team have also received forensic training and certification, but information shared with the Special Rapporteur indicates that it may be insufficient. The Gambian Police Force has also been involved in exhumations, although their degree of expertise in the forensic investigation of human rights violations is unclear. The technical resources of the investigation team are also scarce. The team is in need of specialized equipment to map vast areas for exhumation, conduct excavations and undertake exhumations. In addition, it is worth noting that the Gambia does not possess a forensic lab, specialized forensic pathologists, DNA laboratories or DNA databanks. As a result, the forensic work conducted by the team faces numerous limitations. In response, the Government has sought international assistance to complement the work of the Commission's investigation team in the areas in which expertise and resources are lacking. A team of forensic scientists was deployed to the Gambia in 2018 with support from Justice Rapid Response, in order to assist in the conduct of forensic autopsies to identify the remains and the cause of death of Solo Sandeng and the three individuals suspected in a 2014 coup attempt.<sup>8</sup> Similarly, the DNA samples of their remains were taken to a laboratory in Senegal.<sup>9</sup> More recently, foreign experts were deployed to assist in mapping and

<sup>7</sup> [www.justiceinfo.net/en/truth-commissions/41641-who-are-the-key-players-at-gambia-s-truth-commission.html](http://www.justiceinfo.net/en/truth-commissions/41641-who-are-the-key-players-at-gambia-s-truth-commission.html).

<sup>8</sup> [www.justicerapidresponse.org/wp-content/uploads/2019/08/Annual\\_Report\\_2018.pdf](http://www.justicerapidresponse.org/wp-content/uploads/2019/08/Annual_Report_2018.pdf), p. 13.

<sup>9</sup> A/HRC/39/46/Add.1, para. 47.



planning the area of exhumation in Yundum Barracks,<sup>10</sup> and the United Nations has provided forensic equipment to accelerate the Commission's exhumation processes.

38. Some victims have expressed concern about the way in which the exhumations and the chain of custody of the evidence were carried out in some cases. In this regard, civil society representatives have expressed their preference to halt the forensic investigations, especially exhumations, until adequate resources are allocated for the conduct of investigations, in particular the allocation of equipment and the training of the staff conducting forensic work.

39. In addition to training and material resources, it is important that the forensic teams – not only those conducting exhumations but also those that may start performing autopsies and/or DNA analysis – are certified so that their work is not invalidated in a court of law. The lack of well-equipped, trained and certified forensic teams and laboratories represents a significant obstacle to criminal investigation and to the search for the disappeared in the Gambia. It is important for the national authorities to take on these tasks. Moreover, the foreign Governments and agencies providing international cooperation can play an important role by supplying technical collaboration, financial support, and training to build these highly complex capacities.

40. The Special Rapporteur welcomes the Government's initiative to request assistance from international experts to complement the forensic work carried out by the Commission; however, this should not distract from building the much-needed domestic expertise, keeping in mind that the above-mentioned cases are only the first of many still to come. He commends the international or foreign entities that have already provided such vital support and encourages them to continue doing so.

### C. Accountability for past violations and abuses

41. In accordance with article 15 (1) (h) (i) of the Truth, Reconciliation and Reparations Commission Act, the Commission has the power to identify and recommend for prosecution persons who bear the greatest responsibility for human rights violations and abuses.

42. It is unclear whether and how the Commission will share with prosecutors the information and evidence it is gathering, especially that information and evidence requiring a secured chain of custody, such as forensic evidence. In this regard, civil society has suggested the creation of a task force that specializes in preparing files for future prosecutions. In view of the vast and valuable information collected by the Commission, this task could become vital.

43. Numerous actors have pointed out that some individuals, who are close to those in political power and who were identified as perpetrators by victims, have not yet been called to testify. These allegations, if found to be true, have the power to be fatal to the transitional justice process in the Gambia, which, as in all countries, must have a foundation in a process that is, and is perceived to be, transparent, fair and respectful of the rule of law.

44. The Government has yet to establish a strategy or mechanism to prosecute perpetrators of human rights violations, and only a handful of proceedings have been initiated since the transition started in 2017. A case has been opened against nine former National Intelligence Agency agents accused of involvement in the killing of Solo Sandeng. Despite some progress, the prosecution team struggles with a lack of material resources to carry out its work, and the case has progressed at a slow pace. Moreover, the case has been recently stalled by the adoption of delaying tactics by the defence.

45. The authorities have not provided a timeline for further prosecutions of human rights abusers, noting that the justice system must be strengthened before further trials take place. Victims and civil society have expressed serious concerns about the lack of clarity and the delays in the country's accountability process. They also expressed concern that measures to preserve documentary and physical evidence of abuses, while prosecutions are pending,

<sup>10</sup> [www.freedomnewspaper.com/2019/04/07/gambia-your-exhumations-story-trrcs-executive-secretary-clarifies/](http://www.freedomnewspaper.com/2019/04/07/gambia-your-exhumations-story-trrcs-executive-secretary-clarifies/).

have so far been insufficient,<sup>11</sup> signalling an absence of strategic planning or, possibly, insufficient commitment to future prosecutions.

46. The Special Rapporteur received concerning reports that the Government had released or dropped charges against several alleged perpetrators. In August 2018, four of the Junglers were released from detention. On 28 October 2018, the Ministry of Justice announced the withdrawal of charges against several officials from the National Intelligence Agency. On 3 January 2019, a soldier accused of killing another soldier in 2011 was released from prison. On 8 January 2019, President Barrow announced that he would discontinue prosecution of police officers responsible for the death of demonstrators in Faraba Banta in June 2018.

47. The release of the Junglers after having confessed the commission of gross human rights violations before the Truth, Reconciliation and Reparations Commission shocked Gambian society and undermined its confidence in the transitional justice process. For victims, the release of the Junglers also represented a form of revictimization. In addition, their release triggered fear in society about having dangerous criminals walking the streets freely. Over the course of the Special Rapporteur's visit, virtually every person with whom he met strongly criticized and expressed concern about this decision. The Government justified the release, explaining that the Junglers had been detained for two years without charges. The explanation did not dissipate social doubts about the motivations for the decision or the perception that accountability had been circumvented in their case. In addition, it raised concerns about the serious impact of delayed accountability in the Gambia, including the risk of criminals absconding to elude justice.

48. The adoption of decisions of this nature, criticized by most local and international actors as illegitimate, can erode the Government's political capital and risk the country's incipient but thriving transitional justice process.

49. In his meetings with victims, civil society, international organizations, the diplomatic community and some government officials, the Special Rapporteur has heard repeated concerns about the lack of progress in the area of accountability for past abuses. Each of these actors has insisted on the important role that criminal prosecutions will serve in the healing and reconciliation of Gambians and in the transitional justice process as a whole. This is in line with the results of a survey, according to which 68 per cent of Gambians believe that perpetrators of crimes and human rights abuses during the regime of former President Jammeh should be tried in court.<sup>12</sup>

50. It is unclear if the lack of progress in this field is due to a lack of political will, or the result of a phased approach in which truth-seeking, through proceedings at the Truth, Reconciliation and Reparations Commission, will precede criminal investigations and prosecutions. To some extent, it could also be a consequence of an ineffective judicial system, which is highly inadequate for the challenge facing it (as described in paras. 90–92 below).

51. A comprehensive transitional justice process cannot be achieved if one of its vital components is not pursued. While an overhaul of the judicial system needs to be carried out in order for democratic and transitional justice processes to effectively take place in the Gambia, this cannot be used as an impediment to move forward with criminal investigations and prosecutions or to set up the conditions required for this undertaking. The prosecution and effective sanctioning of perpetrators of gross human rights violations is a State obligation of immediate effect and the Government needs to take urgent measures to initiate this long-awaited process, with the support of the international community.

52. The concerns regarding the absence of accountability for the serious abuses committed during the regime of former President Jammeh is compounded by the possibility of amnesties being granted to perpetrators. Article 19 of the Truth, Reconciliation and Reparations Commission Act affords power to the institution to recommend the granting of amnesties to individuals who have fully disclosed their involvement in human rights

<sup>11</sup> [www.hrw.org/world-report/2018/country-chapters/gambia](http://www.hrw.org/world-report/2018/country-chapters/gambia).

<sup>12</sup> Sait Matty Jaw, "Gambians expect Truth, Reconciliation and Reparations Commission to heal the nation but want human-rights violators prosecuted", Afrobarometer Dispatch No. 249, 31 October 2018, p. 2.

violations and expressed remorse. Article 19 (3) exempts from this provision those acts that qualify as crimes against humanity. The Commission's website justifies this amnesty provision on the basis of the difficulties facing the judicial system to prosecute all perpetrators, "given the long duration and complex realities of the previous regime".<sup>13</sup> The Amnesty Recommendation Committee is responsible for the investigations and victim consultations that may lead to a recommendation of amnesty. However, only the President can grant amnesties.

53. The Special Rapporteur would like to remind the Government that international human rights law impedes the use of amnesties not only for offences that reach the threshold of crimes against humanity, but also for all serious human rights violations. Among others, this includes acts of torture, murder, enforced disappearance and sexual violence, which owing to their scale and context may not amount to crimes against humanity. The Human Rights Committee has observed that the State may not relieve perpetrators of such violations from personal responsibility through amnesties and prior legal immunities.<sup>14</sup> The Truth, Reconciliation and Reparations Commission should in no case recommend – nor should the President grant – amnesties that contravene these well-established international standards.

54. The Special Rapporteur warns about the risk of entrenching impunity, with the concomitant danger of undermining non-recurrence efforts, if amnesties are granted for serious human rights violations. While prosecutorial prioritization strategies could – and should – be devised to respond to the complexities facing the country's criminal justice system by offering a strategic order in which cases and situations should be investigated and prosecuted, the granting of amnesties should not constitute a part of such strategies.

55. When the complexities of past violations are considered, the prospects for prosecution in the Gambia may be different from those in other countries in the region, which transitioned from different forms of violence, such as armed conflict. While the dictatorship and concomitant violations indeed lasted many years, the country's abusive past was characterized – as in other authoritarian regimes – by a unidirectional employment of violence led by the former president and his entourage. This made the number of perpetrators relatively small and the networks of power and responsibility clearer, which in turn can facilitate prosecutorial strategies and efforts. Criminal justice in these conditions, notwithstanding the difficulties mentioned above, should not be portrayed as unsurmountable or analogous to countries with a different set of circumstances.

56. The Special Rapporteur praises the criminal proceedings initiated in Switzerland against Ousmane Sonko, who was the Minister of Interior from 2006 until he fled the country in September 2016. Mr. Sonko is being investigated for alleged crimes against humanity committed during his time in office. The Special Rapporteur welcomes the collaboration of the Gambia with the process. The Special Rapporteur also welcomes the coalition formed in October 2017 by Gambian victims, civil society organizations and international human rights groups to campaign to bring former President Jammeh and his accomplices to justice. In relation to the latter, he also commends the Minister of Justice for his statement, in January 2020, indicating that there would be accountability of the highest order for the violations committed by the past regime, including for former President Jammeh if he comes back to the country, while assuring victims that it is a question of when, not if.<sup>15</sup> Statements of this kind provide a good indication to victims and Gambian society of the political will to prosecute these crimes.

## D. Reconciliation

57. The Truth, Reconciliation and Reparations Commission is mandated to promote healing and reconciliation by engaging in activities that encourage self-healing, forgiveness, dialogue and peacebuilding. A Reconciliation Unit and a Reconciliation Committee were

<sup>13</sup> [www.trrc.gm/trrc-special-committees/](http://www.trrc.gm/trrc-special-committees/).

<sup>14</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18.

<sup>15</sup> BBC News, "Yahya Jammeh faces arrest if he returns to Gambia – minister", 20 January 2020; and *Freedom Newspaper*, "Jammeh will be arrested and prosecuted if he comes to the Gambia – Justice Minister Tambadou declares", 19 January 2020.

established to fulfil this role. In addition to helping victims deal with their personal self-healing, the Commission has identified its role in facilitating individual reconciliation for victims and perpetrators where perpetrators have admitted to having committed human rights abuses and are willing and ready to apologize to victims, who have also accepted this request from the perpetrator.<sup>16</sup> It further focuses on peacebuilding and integration within divided communities and, ultimately, on the promotion of national healing and reconciliation.

58. In meetings with victims, civil society and the international community, concern was expressed at the perceived attempt by the Government, including through the work of the Commission, to force reconciliation and forgiveness – including upon victims – and to prioritize this aspect over accountability. Several social actors have indicated that they felt that Gambians are being pressured to do so despite their convictions – including their traditional and religious beliefs – to the contrary. In this regard, many interviewees, including victims, noted that reconciliation will not be possible insofar as there is impunity, and that justice would be essential for any reconciliation effort.

59. The Special Rapporteur would like to stress that forgiveness is a matter of personal conviction, which cannot, and should not, be imposed on victims or members of society. Whether a person has forgiven a crime or not, the State remains obliged to sanction it. Moreover, reconciliation is not equal to forgiveness, but rather the reconstruction of trust between the State – the guarantor of individual rights – and society, and consequently, among members of society. This trust can only be achieved when the State upholds its legal and institutional obligations. The enforcement of criminal sanctions is a vital tool for the reconciliation of society with the State, and it does not hinder the personal forgiveness of victims.

60. This holds particularly true for the Gambia, which, as underscored by a victim, “is a harmonious society, where only a few State-affiliated perpetrators attacked the rest of the society”.

61. The need to prioritize reconciliation over accountability has long been a political argument (usually intentionally misguided) in countries where the risk of recurrence of violence is believed, whether rightly or not, to be related to efforts to sanction perpetrators who still have a grip on armed or political power. Fortunately, the perpetrators in the Gambia do not seem to have a great deal of political or armed support, which makes any debate about the need to choose between reconciliation or justice futile and misleading.

62. The stated aims of the National Healing and Reconciliation Committee include to engage Gambians in a national discourse about their recent past and to promote unity and a common overarching national identity. The Special Rapporteur wishes to share a word of caution in this regard. While it is laudable and vital to engage society in a country-wide dialogue about its abusive past, it is often considerations of common identity and national discourse that create a breeding ground for future exclusions and associated violence.

63. The mandate of the Special Rapporteur and that of other United Nations experts, including the Special Rapporteur in the field of cultural rights, have previously underscored that processes of social debate, memorialization or history teaching about past events should not be aimed at unifying views nationwide in an homogenous, fixed discourse or identity. They should instead be aimed at providing those affected – notably victims but also the rest of society – with the spaces necessary to articulate narratives, share perspectives, and promote interaction and understanding between people and communities, where respect for human rights and the embracement of diversity constitute the cornerstone of shared identities.<sup>17</sup>

## **E. Access to and preservation of documentation and evidence**

64. Numerous reports indicate that the Government has made insufficient efforts to archive, secure and preserve documentary and on-site evidence and crime scenes of past violations, which could be used for criminal proceedings and future memorialization

<sup>16</sup> [www.trrc.gm/our-mandate/](http://www.trrc.gm/our-mandate/).

<sup>17</sup> A/HRC/25/49, para. 48; A/HRC/30/42, paras. 92–95.

processes. An alarming example of this is the National Security Agency, now informally called the State Intelligence Service, whose headquarters was refurbished in 2017, which could have led to the destruction of evidence. The Truth, Reconciliation and Reparations Commission visited the State Intelligence Service's headquarters in 2018, and ordered it to stop the renovation work. The Commission has also seized relevant documentation. The Special Rapporteur visited the agency's headquarters and observed that the installations had indeed been recently refurbished. A few days after his first visit, the Special Rapporteur was also allowed to inspect three detention cells located in the agency's premises, including the infamous *bambadinka*. The cells appeared not to have been recently refurbished, but it was not possible to assess whether its original conditions or evidence had been preserved. In addition, the archives of the former National Intelligence Agency have allegedly not yet been secured and archived.<sup>18</sup>

65. The Special Rapporteur is concerned about the continued secrecy surrounding the report of the 2009 fact-finding mission report by the Economic Community of West African States and the United Nations on the killing of 50 foreign nationals, including 44 nationals of Ghana, in 2005. He adds his support to the 2018 request by a group of special procedure mandate holders, urging the concerned entities and Governments to publicize it to facilitate access to truth and accountability for those violations.<sup>19</sup>

## F. Reparations to victims

66. The Truth, Reconciliation and Reparations Commission has the mandate to devise individual and collective reparations and to design a reparations policy. According to the Commission's website, it can grant reparations to victims when it is convinced that a person has been the victim of human rights violations. The Commission identifies rehabilitation, restitution, memorialization and compensation as forms of reparation.<sup>20</sup>

67. The Government reported the creation of a reparation trust fund, which victims can access if they register with the Commission. In October 2019, the Government reported that the trust fund had received \$1 million (50 million dalasis) to be distributed as reparations to victims. The sum was obtained from the sale of the assets of former President Jammeh.

68. The Commission can also grant reparations in the form of interim measures for victims, which include medical attention, livelihood support, and employment and educational opportunities. A Medical Board has been set up with support from the Ministry of Health to assess victims' needs in this regard, in order to decide on the provision of rehabilitation. The Commission reported that assistance had been provided to some victims, including for medical treatment overseas. However, the implementation of this scheme has been limited so far owing to financial constraints. The Victim Support Unit also offers medical and psychosocial care to several victims.

69. It is unclear how the Commission is made aware of cases requiring interim measures of persons who have not decided to give testimony. At this stage of the process, where a reparation policy has not yet been adopted and therefore a registry of victims has not been launched, access to the interim scheme seems to be subsumed under the provision of testimony, which is clearly problematic. An interim registry of persons requiring urgent rehabilitation should be developed to address this gap until a reparation policy is fully operational.

<sup>18</sup> Gambia Center for Victims of Human Rights Violations, submission for the universal periodic review 2019, p. 1. Available at [www.ohchr.org/EN/HRBodies/UPR/Pages/UPRGMStakeholdersInfoS34.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRGMStakeholdersInfoS34.aspx).

<sup>19</sup> See the following communications:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24138>;  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24141>;  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24106>;  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24109>;  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35057>.

<sup>20</sup> [www.trrc.gm/our-mandate/](http://www.trrc.gm/our-mandate/).

70. The Commission indicated that victims of sexual and gender-based violence who come in contact with them are referred to the Sexual and Gender-Based Violence Task Force to assess their cases and ensure that physical and psychosocial care, and protection, are available to them. This assistance has also facilitated their testimonies. The Child Protection and Sexual and Gender-Based Violence Committee has similar responsibilities but has been less functional.

71. Victims with whom the Special Rapporteur met indicated that they had not yet received support, rehabilitation or compensation from the State. During the visit, he heard the plight and observed the suffering of many of them. He was present at the Commission's witch-hunt hearings and was shocked to hear the violations perpetrated against persons who were forced to drink poisonous concoctions that killed some and left survivors with serious medical conditions and disabilities. He also received harrowing reports of the violations suffered by victims of the alternative HIV/AIDS treatment programme of former President Jammeh, which led to the death of many persons living with AIDS and caused irreversible damage to the health and recovery of the survivors.<sup>21</sup> He also heard the grieving testimonies of the relatives of persons who were disappeared or killed. These and other victims have been suffering mentally, emotionally and physically for years. Victims and their families have also been left stigmatized, isolated and without access to sources of livelihood and essential services for themselves and their children. The Special Rapporteur expresses his solidarity with all of them and underscores that it is imperative that the Government adopt a comprehensive reparations programme without delay.

72. The Commission has developed a reparations policy, which has not yet been finalized. During the Special Rapporteur's visit, victims and civil society expressed discontent about insufficient consultation in the development of the policy. They noted that they had not been able to see the draft policy, provide inputs on it or engage in its design in a meaningful way. The Special Rapporteur recalls that consultation with victims and with civil society is essential for the adoption of any transitional justice measure. Consultation must be effective and infuse the entire process of design and development of a reparations policy.

73. In addition to the existing collection of testimonies, a census and registry of victims is essential to ensure accuracy about the number of victims in the Gambia and the violations they have suffered, as well as for the adequate design of reparation policies. For a registry to be successful and to support a future reparations programme, it must be addressed to all victims; be geographically widespread, flexible and not time-bound, in order to receive applications wherever and whenever needed; require a low threshold of evidence of victimhood; and encompass procedures that are clearly communicated and easily accessible to victims. Reaching out to all victims must be central to the design and development of the country's reparation policy.

## **G. Memorialization in the Gambia**

74. During the visit, the Special Rapporteur did not become aware of official policies in the field of memorialization. He learned, however, about a few ad hoc initiatives, including the commemoration of the 10 April 2000 student massacre and the 11 November 1994 plotters' execution, spearheaded by the Truth, Reconciliation and Reparations Commission and civil society; and a private photo exhibition, entitled "Portraits for positive change", that is displayed in the Commission's headquarters and is used in its outreach activities.

75. The Commission indicated that memorialization processes would be included as part of the recommendations in its final report. Government officials provided information about the study trip conducted by officials and Commission staff to learn from the memorialization processes of Rwanda. Memorialization is a pillar of transitional justice processes. It is important that memorialization initiatives feature predominantly in the country's transitional justice process, in order to satisfy the needs of victims and to provide a guarantee of non-recurrence for Gambian society.

---

<sup>21</sup> Victims of the programme were also shown on television without consent.

## H. Guarantees of non-recurrence

76. A set of institutional, constitutional and legal reforms has been initiated by the current administration. The reforms are aimed at building the infrastructure required in a democratic State, in order to ensure that violations similar to those of the recent past do not recur.

### 1. Human rights framework

77. The National Human Rights Commission was established by an Act in December 2017, and Commission members took up their functions in February 2019. The Commission has a mandate to monitor, receive and investigate human rights violations committed by State and non-State officials after the date of the creation of the Commission. The mandate must include the enforced disappearances that were committed by the previous regime, but that remained unresolved after December 2017, since enforced disappearances are a continuous crime as long as the fate or whereabouts of the person remains unknown. The selected commissioners had the opportunity to receive training abroad and begin drafting foundational working documents to operationalize the Commission's work. The Government reported that the human rights policy framework will be strengthened with a Standing Human Rights and Constitutional Matters Committee, within the National Assembly, and a National Mechanism for Reporting and Follow-Up, to assist in the reporting to human rights mechanisms.

78. Since the change of regime, the Gambia has ratified several human rights treaties including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and the International Convention for the Protection of All Persons from Enforced Disappearance. The Gambia has yet to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others. It has also failed to domesticate the international treaties ratified, which has a negative impact on the effective realization of human rights in the country. In particular, the country has not yet criminalized enforced disappearance and torture, and it has not abolished the death penalty, despite having made an international commitment to do so.

79. The 2019 universal periodic review of the Gambia included numerous recommendations in the areas of truth, accountability and guarantees of non-recurrence,<sup>22</sup> which were accepted by the Government and should be implemented without delay.

80. The Special Rapporteur praises the Government's decision, which was formally communicated to the Secretary-General in February 2017, to reverse the withdrawal from the International Criminal Court by former President Jammeh. More recently, the Gambia received worldwide praise for filing a case before the International Court of Justice against Myanmar for violations of the Convention on the Prevention and Punishment of the Crime of Genocide committed against the Rohingya in Rakhine State, becoming the first time that a country without any direct connection to the alleged crimes has used its membership in the Convention to bring a case before the Court. Besides the clear merits of this action in terms of international accountability for the crime of genocide, the decision – while not directly related to the domestic human rights policies of the Gambia – shows the significance that the Government attributes to respecting international law and addressing serious human rights violations.

### 2. Security sector reform

81. In May 2017, President Barrow underscored the need for a comprehensive security sector reform. In collaboration with regional and international organizations, the Government initiated a mapping process for the design of such a reform. Following an assessment of the existing institutions conducted in 2017, the Office of National Security developed a national security policy, which was approved in June 2019.

<sup>22</sup> [www.ohchr.org/EN/HRBodies/UPR/Pages/GMindex.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/GMindex.aspx).

82. The national strategy document for transitional justice in the Gambia notes that vetting and ejecting the individuals responsible for abuses from public office is an integral part of the process of restoring the trust of the victims and the society as a whole in State institutions, and that this should involve using an individual, case-by-case approach rather than collectively dismissing people.

83. The Government initially replaced the heads of the police, prison service, intelligence service and the army.<sup>23</sup> However, by the time of the Special Rapporteur's visit, no wider vetting exercise had taken place in the affected institutions. Moreover, as noted by multiple stakeholders during the visit and in reports, individuals accused of perpetrating or enabling human rights abuses continued to work within civil and security services, including in high-ranking positions.<sup>24</sup>

84. In February 2017, the National Intelligence Agency was renamed the State Intelligence Service. However, this change was mainly nominal and has not been supported by a change in the agency's legal framework. The State Intelligence Service and its agents are still governed by the military decrees enacted in the prior regime. Officers of the Service have indicated that they refrain *de facto* from exercising some of the excessive powers granted by the dated decrees. A new Act governing the Service is being prepared. In addition, reports indicate that officials in the current management of the Service previously served in the National Intelligence Agency and in other high-level security sector positions under the government of former President Jammeh.<sup>25</sup>

85. Civil society has pressed for the dissolution of the State Intelligence Service. At the very least, they expect to see an institutional and legal overhaul of the agency and the vetting of its officials. Civil society has also demanded that the headquarters of the Service be moved to a new location, so as to preserve the material evidence in the current premises.<sup>26</sup> It could also be preserved as a memorial site.

86. Other security sector institutions are also still formally governed by the regulations of the previous regime. In the case of the security agencies ascribed to the Ministry of Interior, including police, prison, immigration and fire services, an informal general code of conduct and standard operational procedures has been drafted – on the basis of standards on the use of force – while awaiting the official reform of the governing legislation of the institutions. Aside from being informal, however, it is unclear if or how this code is used by officials in these institutions. The Ministry of Interior has reported that they are waiting for the outcomes of the Truth, Reconciliation and Reparations Commission to start the vetting process of the institutions ascribed to the Ministry.

87. Strong and independent civil oversight mechanisms – an essential element of a comprehensive security sector reform – are still lacking in the law enforcement, intelligence and defence services.

88. Civil society reported an insufficiency of human rights education in police training programmes. Law enforcement officers are also insufficiently trained in crime detection, interrogation and crowd control methods. Human rights awareness is low among law enforcement agencies and within the public service in general.<sup>27</sup> This training gap can lead, and in some cases has led, to reduced human rights protection and renewed abuses by security officers.<sup>28</sup> In a meeting at the Ministry of Interior, the Special Rapporteur was informed that the Ministry had requested and received international assistance to provide human rights training to police officers.

89. Several United Nations entities joined forces to support the security sector reform process in the Gambia at the outset of the transition, and a \$1.4 million package was provided to launch a comprehensive reform process. This resulted in the setting up of the

<sup>23</sup> See [www.hrw.org/world-report/2018/country-chapters/gambia](http://www.hrw.org/world-report/2018/country-chapters/gambia); and Human Rights Foundation, "Universal periodic review submission for the Gambia: NGO submission", 28 March 2019, para. 6.

<sup>24</sup> Gambia Center for Victims of Human Rights Violations, submission for the universal periodic review, p. 1.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Joint submission 7, UPR 2019, p. 6. Available at [www.ohchr.org/EN/HRBodies/UPR/Pages/UPRGMStakeholdersInfoS34.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRGMStakeholdersInfoS34.aspx).

<sup>28</sup> For example, during demonstrations in Faraba Banta in 2018.



Office of National Security, the development of a comprehensive assessment of key security institutions, and the launching of the National Security Policy in 2019.

### 3. Judicial reform

90. As noted by several stakeholders during the Special Rapporteur's visit, the country's judiciary requires rebuilding, owing to its perceived lack of independence, its alleged corrupt practices and its severe lack of adequate human and material resources. Members of the judiciary are scarce and insufficiently trained, basic technical equipment is lacking and the infrastructure is often inadequate. Regarding the perceived lack of independence and corrupt practices, the Government took some steps to improve the composition of the judiciary by appointing new judges and a new Chief Justice, who also heads the Supreme Court.<sup>29</sup>

91. The judiciary's shortcomings hinder its capacity to carry out criminal prosecutions and may jeopardize the achievement of justice for past abuses as well as the adjudication of present and future offences. The Special Rapporteur observed with concern the lack of attention given to the revamping of the judicial system to prepare it for a democratic transition founded on the rule of law. This should become a priority for the Government, as well as for the international community that wishes to support the country's transitional justice process.

92. The Special Rapporteur would like to restate nonetheless that the resource and capacity constraints do not excuse the judiciary or the Government from engaging in the much-needed and long-awaited accountability for abuses of the past regime.

### 4. Constitutional and legal reform

93. The Government has embarked on a process of reforming its legal framework to prevent a recurrence of past abuses. The National Assembly enacted the Constitutional Review Commission Act in December 2017 to draft a new constitution. It established a Constitutional Review Commission to undertake the review, for which it conducted extensive public consultations at the national level and with the diaspora. A draft new constitution was presented to the public in March 2020. Concerns have been raised about certain provisions in the draft that are not in line with international standards, for example, those in relation to restrictions to the right to life. In addition, the draft does not explicitly abolish or prohibit the death penalty and does not prohibit the crime of enforced disappearance. Furthermore, it grants only an interpretative role to international human rights treaties.

94. The Government also initiated a reform of the Criminal Code and the Criminal Procedure Code. The process is supported by the United Nations Office on Drugs and Crime. Two stakeholders' meetings were organized in November 2018 and October 2019 to coordinate and discuss a draft text. The meetings were attended by actors involved in the process, including representatives of the Government, the United Nations Office on Drugs and Crime, United Nations entities and the diplomatic community. The process has nonetheless been criticized by civil society for insufficiency of consultation. During the visit, civil society organizations reported that they had not received the draft codes circulated to other actors until they had requested them from the authorities.

95. Concerns have been expressed by stakeholders, including United Nations entities and civil society, that the revised codes have thus far not criminalized torture and enforced disappearance and have retained the criminalization of same-sex relations. The death penalty has been removed in the draft Criminal Code, which is a welcomed development. Reports received during the visit indicate that separate legislation is being planned to criminalize torture.

<sup>29</sup> [www.hrw.org/world-report/2018/country-chapters/gambia](http://www.hrw.org/world-report/2018/country-chapters/gambia).

#### **IV. Engagement and consultation with victims**

96. During his visit, the Special Rapporteur heard numerous concerns about insufficient engagement and consultation with victims, despite some efforts of the Government to involve victims. Some aspects of the transitional justice process have featured extensive consultation with civil society and victims, including the national consultations of 2017; the drafting of the Truth, Reconciliation and Reparations Commission Act; the design of a security sector reform; and the work of the Constitutional Review Commission. Victims have not sufficiently driven the transitional justice process, however, and they have been left out of developments and decisions that directly affect them, such as the design of a national reparations policy. For a transitional justice process to be legitimate and effective, it must, above all, be victim-led. Representatives from civil society noted that in the country's transitional justice process, victims appear to be an afterthought. This needs to be urgently remedied.

#### **V. Conclusions**

97. During his visit, the Special Rapporteur was shocked by the testimonies he heard from victims and their relatives. Their narratives provided a harrowing account of the violations perpetrated in campaigns aimed at repressing dissents, terrorizing the population, instilling a climate of fear, gaining political support and simply undertaking acts of gratuitous horror and inhumanity. They mostly, however, tell the story of the unsurmountable suffering of political opponents, persons who express dissenting voices or those who are perceived as a threat to the regime: media workers; women and girls; students; lesbian, gay, bisexual and transgender persons; persons living with HIV/AIDS; and persons accused of being witches. That suffering continues to haunt surviving victims and families, who today are affected by serious physical and mental health problems, as well as by stigma, fear and deprivation. The victims and their families are in urgent need of assistance from the State.

98. The Special Rapporteur recognizes the progress achieved thus far through the impressive work of the Truth, Reconciliation and Reparations Commission and the adoption of some institutional and legal reforms aimed at shaping a democratic and human rights-compliant State. In particular, he praises the comprehensive, cautious and victim-oriented work of the Commission's truth-seeking component, as well as the impact that it has had in giving recognition to victims and increasing social awareness about the country's abusive past. He recalls nonetheless the shortcomings in the reconciliation and reparations components of the work of the Commission.

99. The Special Rapporteur urges the authorities to make swifter progress in the pending aspects of the transitional justice agenda, including accountability, reparations, and institutional and security sector reform. Although he understands the need to organize some of these measures in phases, it is essential that the Government give an unequivocal sign to society of its commitment to a comprehensive and holistic transitional justice process aimed at addressing past abuses, preventing their recurrence, and establishing the foundations of a strong and stable democratic society that, as mentioned in the slogan of the Commission, will never again see the abuses of the past.

100. There is a long road ahead. It requires the pursuit of a comprehensive truth about past violations, the search for the disappeared, the strengthening of the judiciary, criminal sanctions against perpetrators, full reparations for the victims, the reform of the security and other public sectors moulded over 22 years of authoritarianism, and the recognition and recollection of a common historical memory. All of these elements will be critical in recovering confidence in the State and its institutions and trust among all members of society – the sign of a truly reconciled society on its path to healing, peace and development.

## VI. Recommendations

### Recommendations addressed to the State

101. The Special Rapporteur recommends that the State party:

(a) Harmonize and domesticate all ratified international legal instruments to make the rights therein justiciable and enforceable, including by criminalizing torture and enforced disappearances, abolishing the death penalty, and decriminalizing same-sex relations in its domestic legal framework;

(b) Ensure that the existing reviews of the Constitution, the Criminal Code and the Criminal Procedure Code are undertaken in full compliance with international human rights standards;

(c) Provide the judiciary with capacity-building and technical and human resources to undertake effective, prompt and adequate criminal investigations and prosecutions into the violations of the past regime, and consider developing a criminal accountability entity, such as a special court, to carry out criminal investigations and prosecution of those crimes;

(d) Investigate and prosecute officials and members of paramilitary groups implicated in human rights violations, in accordance with international standards, and consider adopting prosecutorial strategies that ensure the effective and timely prosecution of perpetrators;

(e) Refrain from recommending or granting amnesties or pardons for serious human rights violations, as prescribed by international law;

(f) Provide financial, material and human resources to accelerate the search for and identification of disappeared persons, including the required technological equipment, and engage with the international community to seek technical and financial assistance in this respect;

(g) Provide capacity-building and develop technical and human resources on forensic investigations, including the one currently placed within the Truth, Reconciliation and Reparations Commission. This capacity-building should include training and certification for personnel on forensic sciences, in accordance with international standards.<sup>30</sup> The possibility of establishing an internationally certified, autonomous and independent forensic science institute should be considered;

(h) Secure and preserve documentary and on-site material evidence of past violations, which could be used in criminal proceedings and future memorialization activities;

(i) Adopt a comprehensive reparations policy aimed at providing all categories of victims with effective and timely reparations, including compensation, rehabilitation, satisfaction, restitution and guarantees of non-recurrence, taking measures to ensure that the reparation programme is adopted in full consultation with victims, is fully compliant with international standards, and includes a gender and disabilities perspective; and provide immediate medical and psychosocial assistance to survivors;

(j) Take measures to ensure that the Truth, Reconciliation and Reparations Commission adopts all necessary measures to promote the universal registration of victims in order to know the full extent of victimhood in the country and to provide the victims with tailored reparations;

<sup>30</sup> See, in particular, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016); *The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (United Nations publication, Sales No. E.17.XIV.3); and *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (United Nations publication, Sales No. E.04.XIV.3).

(k) Ensure that registration procedures are clearly communicated and accessible to all victims, require a low threshold of evidence of victimhood, and are not time-bound; ensure also that registration continues beyond the conclusion of the work of the Truth, Reconciliation and Reparations Commission in order to ensure that all victims are part of the reparations programme, even if they decide to inscribe at a later stage; and consider establishing a standing body to manage reparations;

(l) Provide a safe environment for the testimonies of victims and witnesses and ensure ample dissemination of information regarding the anonymity and confidentiality mechanisms of the Truth, Reconciliation and Reparations Commission, in order to address victims' fears of reprisals or stigmatization, in particular among victims of sexual violence and witch-hunts, and consult with victims about the adequacy of the existing procedures;

(m) Develop witness and victim protection schemes for individuals at imminent risk of reprisals, stigma or revictimization;

(n) Adopt, in consultation with victims, comprehensive memorialization policies about past violations, such as the establishment of memory sites, museums and commemoration days, dissemination in the media, activities in the field of arts and inclusion in educational curricula;

(o) Reform the legal and procedural framework, including regulations, operational procedures and codes of conduct, of the security services, intelligence services and armed forces, in order to bring them into line with international standards, reinforce internal accountability mechanisms, and establish strong and independent civil oversight mechanisms;

(p) Publicly instruct security services and intelligence personnel to refrain from exercising excessive detention and intelligence powers, pending the reform of their governing regulations;

(q) Proceed without delay to vet the institutions involved in the violations of the past regime and suspend the personnel suspected of committing crimes, pending final decisions from the Truth, Reconciliation and Reparations Commission and courts of law;

(r) Train security personnel on conditions for the use of force, public order management, sexual and gender-based violence, investigative interviewing and forensic investigations;

(s) Train public officials, the judiciary and security personnel on human rights and historical memory, including an examination of the State's responsibility in the serious human rights violations of the past;

(t) Ensure that victims and civil society actively participate in the design and implementation of all aspects of transitional justice processes, including truth, justice, reparation, memorialization and guarantees of non-recurrence.

#### **Recommendations addressed to the international community**

102. The Special Rapporteur recommends that Governments and agencies providing international cooperation should:

(a) Aid the work of victims' organizations and other civil society groups working on transitional justice issues;

(b) Consider providing, or maintaining the provision of, technical collaboration and assistance to support the reform of the judicial and security sectors; help build technical capacities on forensic sciences, criminal investigations and prosecutions; and support reparation efforts.

103. The Special Rapporteur recommends that the United Nations, the Governments of the Gambia and Ghana, and the Economic Community of West African States urgently adopt appropriate measures to publicize the 2019 fact-finding mission on the 2005 killing of 50 foreign nationals.