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Transitional Justice as an opportunity for decriminalisation of sexual and gender minorities in The Gambia

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Transitional Justice as an opportunity for decriminalisation of sexual and gender minorities in The Gambia

Justiça de transição como uma oportunidade para a despenalização das minorias sexuais e de género na Gâmbia

Rui GARRIDO[1]

ABSTRACT: The aim of this study is to assess the opportunity offered by Transitional Justice mechanisms in The Gambia for the recognition of violence against LGBT people and to foster a path toward decriminalisation of same-sex intimacy. Under Yayah Jammeh rule, the violence against LGBT as a pattern of persecution and hatred. The State persecution policy placed the country as one of the most intolerant African nations against LGBT people. The outcome of the 2016 Gambian elections changed the course of politics in Gambia, and in 2018 a Truth and Reconciliation Commission was installed to deal with a past of violence and autocracy, in 2018. This article aims to map the developments regarding violence against LGBT people and highlights the importance to include all forms of violence as a healing strategy in transitional justice. Also, it aims to assess how effective may be these mechanisms to decriminalisation of same-sex acts in transitional societies.
KEYWORDS: Transitional Justice; Sexual and gender violence; Decriminalisation; Human Rights.

RESUMO: O objetivo deste estudo é avaliar a oportunidade oferecida pelos mecanismos de Justiça de Transição na Gâmbia para o reconhecimento da violência contra pessoas LGBT e promoção de um caminho para a despenalização dos atos sexuais consentidos entre adultos do mesmo sexo. Sob o governo de Yayah Jammeh, a violência contra LGBT como um padrão de perseguição e ódio. A política sistemática de perseguição do Estado colocou o país como uma das nações africanas mais intolerantes contra as pessoas LGBT. O resultado das eleições de 2016 na Gâmbia mudou o curso da política na Gâmbia e, em 2018, foi instalada uma Comissão da Verdade e de Reconciliação para lidar com um passado de violência e autocracia, em 2018. Este artigo tem como objetivo mapear os desenvolvimentos em relação à violência contra pessoas LGBT e destaca a importância de incluir todas as formas de violência como estratégia de cura na justiça transicional. Além disso, visa avaliar até que ponto estes mecanismos de descriminalização dos atos homossexuais podem ser eficazes nas sociedades em transição.
Palavras-chave: Justiça de transição; Violência sexual e de género; despenalização; Direitos humanos.

Introduction

The human rights are under constant threat in modern day societies. On the front line of this backlash are the sexual and reproductive rights. Moreover, sexual orientation and gender identity (SOGI), as an inner condition of humankind, occupy the

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top of the pyramid. These of hatred and violence is motivated by authoritarian regimes, political repression, radical and conservative views of societies, and misinformation.[2] Globally, there'sa degradation of the human rights of LGBT[3], even in the United States of America[4] and the European Union.[5] For the African continent, the situation is far more complex. The *Scramble for Africa* changed dramatically the social and cultural fabric of many societies and impacted greatly on the law and politics of the continent, also colonising the legal systems. The criminalisation of vagrancy or sodomy are two examples of colonial law that still active in some African countries. In 2020, the African continent gathered half of the countries that criminalised the same-sex activity between consenting adults.[6]

These criminalisations, an European colonial legacy, are rooted in prejudice, patterns of morality and racist views on African customs and sexuality. As John McAllister states "[t]he roots of contemporary African homophobia are nineteenth-century European prudery and racist fantasies of 'primitive' black sexuality".[7] And after decolonisation and independencies, most of African countries maintained these penal codes until nowadays, with some few exceptions,[8], resulting in a *africanisation* of homophobia.

Labelled as "unAfrican, unnatural and unbiblical", homosexuality is instrumentalised for political purpose it's increased by a narrative of native

[2] PETER TATCHELL FOUNDATION. *Why LGBT+ Rights Are Threatened Around the World in 2025* [online]. PTF, 2025 [consulted. 2025-08-12]. Available at https://www.petertatchellfoundation.org/why-lgbt-rights-are-threatened-around-the-world-in-2025/

[3] Meaning lesbian, gay, bisexual and transgender.

[4] KUBEAU, Delphne. *New FBI Data: Anti-LGBTQ+ Hate Crimes Continue to Spike, Even as Overall Crime Rate Declines* [online]. The Human Rights Campaign, 2024 [Consulted. 2025-07-25]. Available at https://www.hrc.org/press-releases/new-fbi-data-anti-lgbtq-hate-crimes-continue-to-spike-even-as-overall-crime-rate-declines

[5] EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. *LGBTIQ Equality at a crossroads – progress and challenges* [Online]. Vienna: FRA, 2024 [consulted. 2025-08-11]. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-lgbtiq-equality_en.pdf

[6] MENDOS, Lucas, et al. *State-Sponsored Homophobia 2020: Global Legislation Overview Update* [Online]. Geneva: ILGA World, 2020 [consulted. 2022-11-20]. Available at https://ilga.org/resources/state-sponsored-homophobia-report-2020-global-legislation-overview/

[7] MCALLISTER, John. LGBT activism and "traditional values": promoting dialogue through indigenous cultural values in Botswana. In: HIVOS (ed.) *Boldly queer: African perspectives on same-sex sexuality and gender diversity*. Den Haag: Hivos, 2014, pp. 46 - 53 [consulted. 2022-10-08]. Available at: https://hivos.org/document/boldly-queer-african-perspectives-on-same-sex-sexuality-and-gender-diversity/

[8] SANTOS, Gustavo, and WAITES, Matthew. Comparative colonialisms for queer analysis: comparing British and Portuguese colonial legacies for same-sex sexualities and gender diversity in Africa – setting a transnational research agenda. *International Review of Sociology* [Online]. 2019, *29*(2), 297–326 [consulted. 2023-01-12]. https://doi.org/10.1080/03906701.2019.1641277; GARRIDO, Rui. Patterns of discrimination based on sexual orientation in Africa: is there a Lusophone exception?. *African Human Rights Yearbook* [online]. 2019, 3, 93-118 [consulted. 2022-11-02]. Available at http://doi.org/10.29053/2523-1367/2019/v3a5

heterosexual Africa.[9] As Binta Bahjara observes,

It stands as a contradiction that African leaders who challenge neocolonialism, continue to use reformulated colonial laws and religion that historically oppressed Africans to tyrannise other Africans. The apparent contradiction presents a dilemma in comprehending the insistence of a 'sodomite-free,' 'pure' Africa.[10]

This gives traction to the political homophobia in post-independencies. It expresses a rejection of *white's* ways of living, seen as less masculine.[11] It reinforces belonging and national identity, rejecting and demonising what's perceived as *western*, degrading and immoral.[12] Homosexuality is perceived as an imposition from the West and part of a neo-colonial agenda for the continent.[13]

These patterns are visible across the whole continent, as homophobia and social intolerance are on rise in several African countries. Senegal, once a tolerant society, is nowadays a society in which homophobia is prevalent.[14] The influence of religious leaders feeds a hostile politics against LGBT.[15] These are perceived as "agents of imperialism and as responsible for the economic collapse of the country".[16] Targeted by the State agents and other members of the society, self-marginalisation becomes a survival strategy. In scenarios of armed conflict, social turmoil, or political violence, communities are often on the frontline of violence.

Having these background, it's important to assess the post-violence scenario and possible pathways of reparations for crimes committed against LGBT. Moreover,

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[9] NGWENA, Charles. *What is Africanness? Contesting nativism in race, culture and sexualities* [online]. Pretoria: Pretoria University Law Press, 2018 [consulted 2023-02-05]. Available at: https://www.pulp.up.ac.za/catalogue/monographs/what-is-africanness-contesting-nativism-in-race-culture-and-sexualities

[10] BAJAHA, Binta. Postcolonial Amnesia: The Construction of Homosexuality as 'un-African'. *LSE working paper series* [online]. 2015 [consulted 2022-11-05]. Available https://www.lse.ac.uk/gender/assets/documents/research/graduate-working-papers/Postcolonial-Amnesia.pdf

[11] CURRIER, Ashley. Political Homophobia in Postcolonial Namibia. *Gender & Society* [online]. 2010, 24(1), 110-129 [consulted. 2022-11-28]. Available at: https://doi.org/10.1177/0891243209354275

[12] REISS, Mariel, and TABENGWA, Monica. 'Tug-of-war: LGBTIQ+ rights in the African human rights architecture'. *African Human Rights Law Journal* [online]. 2024, 24, 472-501 [Consulted 2025-08-01]. Available at http://dx.doi.org/10.17159/1996-2096/2024/v24n2a4

[13] BERTOLT, Boris, and MASSÉ, Léa E. Mapping Political Homophobia in Senegal. *African Studies Quarterly* [online]. 2019, 18(4), 21 – 39 [consulted. 2022-11-17]. Available at https://journals.flvc.org/ASQ/article/view/136027/140447

[14] MENDOS, Lucas, et al. *State-Sponsored Homophobia 2020: Global Legislation Overview Update* [Online]. Geneva: ILGA World, 2020 [consulted. 2022-11-20]. Available at https://ilga.org/resources/state-sponsored-homophobia-report-2020-global-legislation-overview/

[15] BERTOLT, Boris, and MASSÉ, Léa E. Mapping Political Homophobia in Senegal. *African Studies Quarterly* [online]. 2019, 18(4), 21 – 39 [consulted. 2022-11-17]. Available at https://journals.flvc.org/ASQ/article/view/136027/140447

[16] BERTOLT, Boris, and MASSÉ, Léa E. Mapping Political Homophobia in Senegal. *African Studies Quarterly* [online]. 2019, 18(4), 21 – 39 [consulted. 2022-11-17]. Available at https://journals.flvc.org/ASQ/article/view/136027/140447

when dealing with past, the accountability for gender-based crimes is limited and strictly linked to crimes against women and not against sexual and gender minorities.

The present research focus on the Gambian Transitional Justice process and how sensitive and inclusive it is towards sexual and gender minorities. Widely chased under Yayah Jammeh dictatorship, these people have the right to truth and reparation for a whose society's reconciliation. This research starts by conducting a comparative literature review on the Transitional Justice and global marginalisation and exclusion of LGBT people from these processes. Then, it maps violence towards sexual minorities under Jammeh rule, following in the aftermath of the *Gambian Criminal Code Amendment Act, 2014*. In the third part, it explores the work of the Gambian Truth, Reconciliation and Reparation Commission regarding crimes against LGBT people and questions how effective these processes may be in changing society's prejudice and foster legal measures to protect marginalised groups. Finally, as the transitional process is not yet concluded, it maps the developments achieved so far, concluding with recommendation for policy makers and human rights activists.

1. Queering the transitional justice in Africa

Transitional justice defines a set of mechanisms to deal with past violence. It establishes a "comprehensive account of the past"[17] and is characterised by a full range of instruments that goes from trials, truth commissions, amnesties and reparations, and apologies. Then, transitional justice is "far more that criminal accountability and prosecutions".[18] It offers an opportunity to the society to heal from a traumatic past. This unique feature opens the possibility to go beyond the "narrative truth of the courtroom", offering a wide participatory process.[19] These must embrace all parts involved in past events – among victims and perpetrators – and allow each part to tell his or her story. Transitional mechanisms of justice may include criminal prosecutions, truth commissions, reparation programs, gender justice, security system

[17] SARKIN, Jeremy. Why the Theory and Practice of Transitional Justice Needs to Be Better Integrated in All Places around the World. *AlMuntaqa* [Online]. 2021, 4(1), 39–55 [consulted. 2023-12-06]. Available at https://www.jstor.org/stable/10.31430/almuntaqa.4.1.0039

[18] QUINN, Joanna R. The Development of transitional justice. In: LAWTHER, Cheryl, MOFFETT, Luke, and JACOBS, Dov (eds). *Research Handbook on Transitional Justice*. Cheltenham: Edward Elgar Publishing, 2017, 11–33. ISBN: 9781781955307.

[19] AMBOS, Kai. The Legal Framework of Transitional Justice: A Systematic Study with a Special Focus in the Role of the ICC. In: AMBOS, Kai, LARGE, Judith, and WIERDA, Marieke (eds). *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* [online]. Berlin: Springer, 2009, 19–103 [consulted. 2022-11-06]. Available at https://doi.org/10.1007/978-3-540-85754-9_4

reform and memorialisation, among others.[20] How effective are these mechanisms in addressing the violence against people based on their real or perceived sexual orientation or gender identity?

Transitional justice's first pillar is *criminal accountability*. It's the most visible of international justice, eg. the international tribunals since the beginning of the XX century. The International Criminal Court plays a central role, as well the hybrid courts, since the *Special Court for Sierra Leone*, in 2000. There's no case-law addressing the issue of SOGI, the ICC'sStatute may include crimes against LGBT people, for example under the elements of the Crime Against Humanity. These crimes means acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". LGBT people fall under the scope of article 7 as they are persecuted because of their real or perceived sexual orientation and gender identity.[21] [22] SOGI are not recognised as prohibited grounds of discrimination, but they may fall under the concept of "terms of inclusion",[23] as the establish a pattern of inclusion or exclusion in the human rights framework. These are contested criteria in international criminal law, as the ICC's statute defines gender as excluding non-conforming people. But demands from civil society want to Court to trial ISIS's persecutions of LGBT in Syria, which may change this understanding.[24]

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[20] INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE. *What is Transitional Justice?* [online]. 2009 [consulted 2022-10-28]. Available at https://www.ictj.org/what-transitional-justice

[21] DIROCHIE DE LEÓN, Anderson. La persecución por motivo de la orientación sexual como crimen de lesa humanidad: Una mirada desde el Estatuto de Roma de la corte penal internacional. In: Torres Moreno,José, and González Mauricio, José (coords). *Personas de la Diversidade Sexual y Derechos* Humanos *Parte II* [online]. Guadalajara: Comisión Estatal de Derechos Humanos Jalisco, Instituto de Derechos Humanos Francisco Tenamaxtli, 2022, 8 – 34. Available at http://historico.cedhj.org.mx/Colecci%C3%B3n%20de%20estudios%20en%20Derechos%20Humanos/Tomo%2017.pdf

[22] It's important to notice that the concepts of 'sexual orientation' and 'gender identity' are not consolidated yet in the International human rights law. The prohibition of discrimination based on sexual orientation and gender identity was not enshrined in any human rights treaty, but *soft law* and jurisprudence developed significantly in this regard. The Yogyakarta Principles (2006) offer some guidance, defining sexual orientation as referring to "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender", and gender identity as "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms". See *The Yogyakarta Principles. Principles on the application of international human rights law in relation to sexual orientation and gender identity* [online]. Yogyakarta: International Commission of Jurists / International Service for Human Rights, 2007 [consulted at 14-08-2025]. Available from: https://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

[23] PARK, Andrew. Defining Sexual Orientation: A Proposal for a New Definition. *Michigan Journal of Gender & Law* [online]. 2022, 29 (1), 1 – 61. Available at: https://repository.law.umich.edu/mjgl/vol29/iss1/2

[24] DIROCHIE DE LEÓN, Anderson. La persecución por motivo de la orientación sexual como crimen de lesa humanidad: Una mirada desde el Estatuto de Roma de la corte penal internacional. In: Torres Moreno,José, and González Mauricio, José (coords). *Personas de la Diversidade Sexual y Derechos* Humanos *Parte II* [online]. Guadalajara: Comisión Estatal de Derechos Humanos Jalisco, Instituto de Derechos Humanos Francisco Tenamaxtli, 2022, 8 – 34. Available at

Reparation is the second pillar of transitional justice and it's defined as "the provision of payment or other assistance to someone who has been wronged".[25] A different form of reparation may by the recognition and apology for the acts of violence. This is a "symbolic act of reparation"[26] and it may frustrate victims expectation of justice. *Amnesties* are the third, but controversial, pillar of the process. It allows setting up a platform for dialogue, they may be instrumentalised to exonerate perpetrator's accountably.[27] European politicians had publicly apologised for the introduction of *sodomy laws* abroad during colonisation. At the 2018 Commonwealth summit, the former UK Prime-Minister Theresa May regreted the UK's colonial legacy worldwide and stated that the "UK stands ready to support any Commonwealth nation wanting to reform outdated legislation that makes such discrimination possible".[28]

Finally, *truth-seeking* is the most important piece in transitional justice, as the "most important alternative to (pure) criminal prosecution".[29] Truth and Reconciliation Commissions are a key piece of truth-seeking and may be defined as follows:

[…] official, temporary, non-judicial factfinding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. These bodies take a victim-centred approach and conclude their work with a final report of findings of fact and recommendations. (…) Truth commissions have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms. They can also provide a public platform for victims to address the nation directly with their personal stories and can

http://historico.cedhj.org.mx/Colecci%C3%B3n%20de%20estudios%20en%20Derechos%20Humanos/Tomo%2017.pdf.

[25] QUINN, Joanna R. The Development of transitional justice. In: LAWTHER, Cheryl, MOFFETT, Luke, and JACOBS, Dov (eds). *Research Handbook on Transitional Justice*. Cheltenham: Edward Elgar Publishing, 2017, 11–33. ISBN: 9781781955307.

[26] QUINN, Joanna R. The Development of transitional justice. In: LAWTHER, Cheryl, MOFFETT, Luke, and JACOBS, Dov (eds). *Research Handbook on Transitional Justice*. Cheltenham: Edward Elgar Publishing, 2017, 11–33. ISBN: 9781781955307.

[27] AMBOS, Kai. The Legal Framework of Transitional Justice: A Systematic Study with a Special Focus in the Role of the ICC. In: AMBOS, Kai, LARGE, Judith, and WIERDA, Marieke (eds). *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* [online]. Berlin: Springer, 2009, 19–103 [consulted. 2022-11-06]. Available at https://doi.org/10.1007/978-3-540-85754-9_4.

[28] BBC. *Theresa May 'deeply regrets' UK's colonial anti-gay laws* [online]. *BBC,* 2018 [consulted. 2022-10-25]. Available at https://www.bbc.com/news/world-africa-43795440

[29] AMBOS, Kai. The Legal Framework of Transitional Justice: A Systematic Study with a Special Focus in the Role of the ICC. In: AMBOS, Kai, LARGE, Judith, and WIERDA, Marieke (eds). *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* [online]. Berlin: Springer, 2009, 19–103 [consulted. 2022-11-06]. Available at https://doi.org/10.1007/978-3-540-85754-9_4.

facilitate public debate about how to come to terms with the past.[30]

These commissions are entitled to hear the victims of violence, and their families, to produce a collective and historical memory. Their work is a vital step to allow a violent society to heal from traumatic past, but violence against LGBT people is mainly outside those processes. Stigma and fear from reprisal of LGBT are deeply rooted in victims' minds and hearts. Also, society's prejudice silence those people to have a voice.

2.1. SOGI and Transitional Justice

2.1.1 SOGI and the African Human Rights System

Within the African Human Rights System, the African Commission on Human and Peoples' Rights (hereafter African Commission) made the most important steps to the protection of sexual minorities in Africa. The 2011 Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2011) clarified that sexual orientation is a prohibited ground of discrimination under the African Charter on Human and Peoples' Rights and that LGBTI people should be understood as vulnerable and disadvantaged group.[31] In 2014, it was adopted a resolution specifically addressing the violence against people based on their real or perceived SOGI, condemning the "systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity".[32] In 2017, the African Commission adopted the Guidelines on Combating Sexual Violence and Its Consequences in Africa (Niamey Guidelines), which recognises that SOGI increases the risk of sexual violence and recommends States to protect LGBT people.[33] States show significant resistance to address this issue. In this regard, "the recognition and protection of sexual and gender

[30] UNITED NATIONS SECRETARY-GENERAL. *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616)*. New York: United Nations, 2004 [consulted. 2022-12-20]. Available at https://digitallibrary.un.org/record/527647?v=pdf

[31] AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS. *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* [online]. Banjul: African Commission on Human and Peoples' Rights, 2011 [consulted 2022-10-14]. Available at https://achpr.au.int/index.php/en/node/871

[32] AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. *275: Resolution on the Protection against Violence and other Human Rights Violation against Persons on the basis of their real or imputed Sexual Orientation or Gender identity* [online]. Banjul: African Commission on Human and Peoples' Rights, 2014 [consulted 2022-10-14]. Available at https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations

[33] AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. *Guidelines on Combating Sexual Violence and Its Consequences in Africa* [online]. Banjul: African Commission on Human and Peoples' Rights, 2017 [consulted 2022-10-14]. Available at https://achpr.au.int/en/node/848

minorities is one step towards dismantling hegemonic norms of patriarchy, racial hierarchy, inequality, sexism, and heterosexism whether brought on by colonization, state insecurity, or civil conflict".[34] Consequently, it's essential that international human rights law tackles structural invisibilities and protection people from authoritarian and homophobic societies. Moreover, global civil society initiatives, as the 2017 *Yogyakarta Principles*, imprinted a "right to truth", defined in the following terms:

Every victim of a human rights violation on the basis of sexual orientation, gender identity, gender expression or sex characteristics has the right to know the truth about the facts, circumstances and reasons why the violation occurred. The right to truth includes effective, independent and impartial investigation to establish the facts, and includes all forms of reparation recognised by international law. The right to truth is not subject to statute of limitations and its application must bear in mind its dual nature as an individual right and the right of the society at large to know the truth about past events.[35]

This proposal right embodies a dual nature – individual and collective – which is related to the transitional justice and the duty to deal with past violence. It recommends States to ensure the non-recurrence of violence, and to establish truth-seeking mechanisms.. Homophobia and other patterns of violence result in exclusion and invisibility from the transitional process, as they "not only ostracizes sexual and gender minorities [but] allows for further violence and violations against sexual and gender minorities to be committed in post-conflict periods".[36]

2.1.2 African experiencies with Transitional Justice

In 1974, it was installed the Ugandan Commission of Inquiry, to investigate the enforced disappearances in the events after 25 January 1971.[37] It worked for 6 months and documented 308 cases of missing persons. It recommended structural reforms in the security sector, but faces backlash, as President Idi Amin Dada order the

[34] FOBEAR, Katherine. Queering Truth Commissions. *Journal of Human Rights Practice* [online]. 6(1) 2014, 51–68 [consulted. 2023-02-20]. Available at https://doi.org/10.1093/jhuman/hut004 .
[35] *The Yogyakarta Principles plus 10 (YP+10) Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* [online]. Yogyakarta: International Commission of Jurists / International Service for Human Rights, 2017 [consulted. 2022-10-15]. Available at http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf
[36] FOBEAR, Katherine. Queering Truth Commissions. *Journal of Human Rights Practice* [online]. 6(1) 2014, 51–68 [consulted. 2023-02-20]. Available at https://doi.org/10.1093/jhuman/hut004
[37] HAYNER, Priscilla B. Fifteen Truth Commissions – 1974 to 1994: A Comparative Study. *Human Rights Quarterly* [online]. 1994, 16(4), 597–655. [consulted 2022-12-06]. Available at https://doi.org/10.2307/762562

persecution of the commission's members.[38] After this failure experience, many others followed in Zimbabwe (1985), Uganda (1986), Chad (1991), Rwanda and Ethiopia (1993), Burundi and South Africa (1995), Nigeria (1999), Sierra Leone and Côte d'Ivoire (2000), Algeria, Democratic Republic of Congo and Ghana (2003), Liberia (2006), Mauritius (2009), The Gambia (2018) and more recently South Sudan (2022).

In the South Africa transitional process, it fails to address the violence against people based on their SOGI. Persecution were a common practice by State agents as homosexuality was criminalised under the *Immorality Act, 1957*. In the *apartheid* regime soldiers perceived as were subjected to compulsory conversion therapies under the *aVersion Project*.[39] State's practice was filled of prejudice attitudes toward what was seen as a sexual deviant behaviour, and "attitude was simplistic, crude and stereotypical to an extreme: male homosexuals were perceived as effeminate and passive, inadequate males who wanted to be female; female homosexuals were the reverse - butch women who aspired to be male".[40] The work of the 1994 Truth Commission was crucial for the protective blanked consecrated in the new constitution.

A successful and inclusive transitional justice process is the Colombia's Truth Commission. After years of brutal and strategic violence against LGBT and *queer* people, often reported in media outlets,[41] activisms were included in the hearings and reminded the importance to include all forms of violence. Most cases reported took place in rural areas, which may pose a challenge to an effective representation of experiences of violence.[42] Scholars propose a "queer, intersectional and decolonial analytical lens"[43] of TJ to bring the sexual minorities experiences to the centre of a truth-seeking process. The data stressed the intersectional dimension of violence as "an Afro trans woman is much more likely to experience violence than a white gay

[38] HAYNER, Priscilla B. Fifteen Truth Commissions – 1974 to 1994: A Comparative Study. *Human Rights Quarterly* [online]. 1994, 16(4), 597–655. [consulted 2022-12-06]. Available at https://doi.org/10.2307/762562
[39] MBWANA, Thokozani. *Policy brief: Transitional Justice and the inclusion of LGBTQIA+ rights*. Johannesburg: Centre for the Study of Violence and Reconciliation, 2020 [consulted. 2022-10-28]. Avaliable at https://www.csvr.org.za/wp-content/uploads/2020/01/Transitional-Justice-and-Inclusion-of-LGBTQIAL-Rights-Policy-Brief-2020.pdf
[40] KAPLAN, Robert. The Aversion Project – Psychiatric abuses in the South African Defence Force during the Apartheid Era. *South African medical journal* [online]. 2001, 216-217 [consulted. 2022-10-25]. Available at https://pubmed.ncbi.nlm.nih.gov/11291415/
[41] RITHOLTZ, Samuel. Brutality on Display: Media Coverage and the Spectacle of Anti-LGBTQ Violence in the Colombian Civil War. *Third World Quarterly* [online]. 2024, 45 (5), 903–25 [consulted. 2025-08-19]. Available at https://doi.org/10.1080/01436597.2024.2315307
[42] MAIER, Nicole. Queering Colombia's peace process: a case study of LGBTI inclusion. *The International Journal of Human Rights* [online]. 2020, 24(4), 377-392 [consulted. 2023-01-17]. Available at https://doi.org/10.1080/13642987.2019.1619551
[43] BUENO-HANSEN, Pascha. The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America. *International Journal of Transitional Justice* [online]. 2018, 12(1), 126–145 [consulted. 2022-12-28]. Available at https://doi.org/10.1093/ijtj/ijx031

man".[44] Moreover, the UN Special Rapporteur on the promotion of Truth, Justice Reparations and Guarantees of Non-Recurrence issued a report on gender perspective in transitional justice processes stressing the need to include the LGBT people in all mechanisms of reparation.[45]

2.2. The African Union approach to Transitional Justice

The Constitutive treaty of the African Union (AU), brought a new paradigm for human rights. The AU's right to intervene in a member State in cases of severe human rights violations, such as genocide, crimes against humanity and war crimes,[46] as well as the inclusion of the sanctity of life as a core principle,[47] has placed human rights at the centre of African politics. Moreover, the emerging African Regional Jurisdiction for serious crimes has emerged in the 2010s as a response for what was perceived as a neo-colonial approach of International Justice.[48] A transformation of the African justice approach gives AU a more active role in fighting accountability. [49]

Regarding transitional justice, in 2013, the African Commission adopted the Resolution 235, dealing specifically with the issue in Africa.[50] In this resolution, it decided to conduct a study on transitional justice in Africa, identifying the diverse mechanisms, legal frameworks, and the establishment of special mechanisms, among others, summarised in three key aspects: 1) the need for fundamental human rights approaches in transitional processes, addressing past violence; 2) the close connection of transitional justice with the AU's human rights legal framework, and; 3) the importance of the Commission in the promotion and protection of human and peoples' rights as enshrined in the African Charter on Human and Peoples' Rights.[51] It

[44] MAIER, Nicole. Queering Colombia's peace process: a case study of LGBTI inclusion. *The International Journal of Human Rights* [online]. 2020, 24(4), 377-392 [consulted. 2023-01-17]. Available at https://doi.org/10.1080/13642987.2019.1619551

[45] SALVIOLI, Fabián, and UNITED NATIONS SECRETARY-GENERAL. *The gender perspective in transitional justice processes (A/75/174)*. New York: United Nations, 2021 [consulted. 2022-12-21]. Available at https://digitallibrary.un.org/record/3883379?v=pdf

[46] Article 4 h) of the Constitutive Act of the African Union (2000).

[47] Article 4 o) of the Constitutive Act of the African Union (2000).

[48] MUBIALA, Mutoy. *Regional v. Universal Jurisdiction in Africa: The Habré Case* [Online]. Florence: Torkel Opsahl Academic EPublisher, 2016, 1 – 4 [consulted. 2022-12-28]. Available at https://www.toaep.org/pbs-pdf/74-mubiala

[49] GARRIDO, Rui. African Regional Jurisdiction: How African Union is creating an innovative regional jurisdiction for international crimes. *Portuguese Law Review* [online]. 2020, 4, 113-140 [consulted. 202-10-25]. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3567754

[50] AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. *Resolution 235 on Transitional Justice in Africa (ACHPR/Res.235(LIII)2013)* [online]. Banjul: African Commission on Human and Peoples' Rights, 2014 [consulted 2022-08-21]. Available at https://achpr.au.int/en/adopted-resolutions/235-resolution-transitional-justice-africa-achprres235liii2013

[51] AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. *Study in Transitional Justice and Human and Peoples' Rights in Africa* [Online]. Banjul: African Commission on Human and Peoples' Rights, 2019 [2022-08-22]. Available at https://achpr.au.int/sites/default/files/files/2020-11/achprtransitionaljusticeeng.pdf

advocates for a gender sensitive approach, stressing the inequalities faced by women in patriarchal societies. No reference is made to sexual minorities, but a note is added in the case of sexual and gender-based violence in which it is said the "the latest development in this sphere addresses gender-based violation irrespective of whether they target women or men".[52] This challenges fixed images of men seen as perpetrators and never as victims. The rape of men during violent events, as armed conflicts, is a hidden phenomenon, and may happen irrespectively of the sexual orientation and gender identity of the victim.[53]

A Policy on Transitional Justice in Africa was adopted in 2019.[54] Unsurprisingly, sexual minorities were left outside the scope of the text, contrary to the recommendations advocating for an inclusion of LGBT experiences of marginalisation and violence. In this regard, Thokozani Mbwana stressed that the AU Transitional Justice Policy may and should address the issues of LGBT people as "marginalised and vulnerable groups".[55] Several points of the policy are broad enough to include other experiences of violence, and the African human rights law offers an important baseline for this protection. Moreover, the 2014 resolution 275 on the violence against people based on their real or imputed sexual orientation and/or gender identity, calls on member-States to give an effective response to the rampage homophobic violence in the continent.[56] Despite its limitation, resolution 275 represents a major achievement for the African human rights system giving "an internal imperative to protect LGBTIQ+ rights".[57] The AU Transitional Policy is part of the AU's human rights architecture, and a strong advocacy is needed to ensure its positive impact in addressing violence committed against LGBT citizens.

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[52] AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. *Study in Transitional Justice and Human and Peoples' Rights in Africa* [Online]. Banjul: African Commission on Human and Peoples' Rights, 2019 [2022-08-22]. Available at https://achpr.au.int/sites/default/files/files/2020-11/achprtransitionaljusticeeng.pdf

[53] GARRIDO, Rui. Mapping the Invisible Rape: Men and Boys as Victims of Sexual Violence in Armed Conflict. *Nação & Defesa* [online]. 2021, 159, 151-168 [2022-08-22]. Available at . https://www.idn.gov.pt/pt/publicacoes/nacao/Documents/NeD159/NeDef159_5_Rui%20Garrido.pdf

[55] MBWANA, Thokozani. *Policy brief: Transitional Justice and the inclusion of LGBTQIA+ rights*. Johannesburg: Centre for the Study of Violence and Reconciliation, 2020 [consulted. 2022-10-28]. Available at https://www.csvr.org.za/wp-content/uploads/2020/01/Transitional-Justice-and-Inclusion-of-LGBTQIAL-Rights-Policy-Brief-2020.pdf

[56] AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. *275: Resolution on the Protection against Violence and other Human Rights Violation against Persons on the basis of their real or imputed Sexual Orientation or Gender identity* [online]. Banjul: African Commission on Human and Peoples' Rights, 2014 [consulted 2022-10-14]. Available at https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations

[57] SOGUNRO, Ayo. *Resolution 275 and the realisation of LGBTIQ+ rights in Africa* [online]. African Legal Studies blog, 2022 [Consulted. 2023-02-24]. Available at https://africanlegalstudies.blog/2022/06/24/resolution-275-and-the-realisation-of-lgbtiq-rights-in-africa/

3. Mapping violence under Yayah Jammeh rule in the Gambia

The Gambia, a West Africa country, was a British colony until its independence in early 1960s. The fade of the small State was turbulent, also forming a confederation with Senegal, known as Senegambia from 1982 to 1989. As other former European colonies, inherited a legal and political legacy, in which the criminalisation of same-sex relations is an example.[58] These colonial relics "not only survived in an independent Gambia, but continue to evolve by way of amendments, or judicial interpretation".[59]

The human rights records in The Gambia degraded significantly under Jammeh's rule since he seized power. The 1994 *coup d'etat* was a major setback, but it was even worse for gay community.[60] The President was vocal against LGBT people and instrumentalised homophobia as a tool of "political contestation".[61] He mentioned that homosexuals had no place in The Gambia as "a Muslim dominated country and [he] will not and shall never accept such individuals".[62] He threatened to "cut off the head" [63] of any gay man he found in the country. This kind of hostile discourse was not new in the continent. Years before, Robert Mugabe, in Zimbabwe, said that homosexuals were worse than dogs and pigs[64] and a "scourge planted by the white man on a pure continent".[65]

Yayah Jammeh took several political and legal measures to persecute LGBT

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[58] GLOPPEN, Siri, and RAKNER, Lise. 'LGBT rights in Africa. In: ASHFORD, Chris. and MAINE, Alexander (ed) *Research Handbook on Gender, Sexuality and the Law* [online]. Cheltenham: Edward Elgar Publishing, 2020, 194–209 [consulted. 2022-09-20]. Available at https://doi.org/10.4337/9781788111157.00022

[59] NABENEH, Satang. From a 'crusade to root out homosexuality like malaria' to a 'non-issue': The absence of sexual minorities lawfare in The Gambia. In: *JJUUKO, Adrian, GLOPPEN, Siri, MSOSA, Alan and VILJOEN, Frans* (ed) *Queer Lawfare in Africa: Legal strategies in contexts of LGBTIQ+ criminalisation and politicisation* [online]. Pretoria: Pretoria University Law Press, 2022, 341-376 [consulted. 2022-09-25]. Available at https://www.pulp.up.ac.za/edited-collections/queer-lawfare-in-africa-legal-strategies-in-contexts-of-lgbtiq-criminalisation-and-politicisation

[60] PERFECT, David. The Gambia under Yahya Jammeh: An Assessment. *The Round Table: The Commonwealth Journal of International Affairs* [online]. 2010, 99(406) 53 – 63 [consulted. 2023-03-02]. Available at https://doi.org/10.1080/00358530903513681

[61] NABENEH, Satang. From a 'crusade to root out homosexuality like malaria' to a 'non-issue': The absence of sexual minorities lawfare in The Gambia. In: *JJUUKO, Adrian, GLOPPEN, Siri, MSOSA, Alan and VILJOEN, Frans* (ed) *Queer Lawfare in Africa: Legal strategies in contexts of LGBTIQ+ criminalisation and politicisation* [online]. Pretoria: Pretoria University Law Press, 2022, 341-376 [consulted. 2022-09-25]. Available at https://www.pulp.up.ac.za/edited-collections/queer-lawfare-in-africa-legal-strategies-in-contexts-of-lgbtiq-criminalisation-and-politicisation

[62] JOBE, Alhagie. *Gambia: No room for Gays* [online]. The Daily Observer / AllAfrica, 2008 [consulted. 2022-09-25]. Available at https://allafrica.com/stories/200805200016.html

[63] Hodes, Rebecca. Populist Hatred: Homophobia and Political Elites in Africa. *E-international Relations* [online]. 2021, 1-5 [consulted. 2022-11-25]. Available at https://www.e-ir.info/pdf/24429

[64] SHOKO, Tabona. 'Worse than Dogs and Pigs?' Attitudes Toward Homosexual Practice in Zimbabwe. *Journal of Homosexuality* [online]. 2010, 57(5), 634–449 [consulted. 2022-09-20]. Available at https://doi.org/10.1080/00918361003712087

[65] BAJAHA, Binta. Postcolonial Amnesia: The Construction of Homosexuality as 'un-African'. *LSE working paper series* [online]. 2015 [consulted 2022-11-05]. Available https://www.lse.ac.uk/gender/assets/documents/research/graduate-working-papers/Postcolonial-Amnesia.pdf

people and instil hatred. He politicised homosexuality in the country, fostering a picture of threat to society and panic among Gambians. This is a strategy used by other political leaders in African countries. Some authors highlight the politicisation of homosexuality as a tactic of social control, as a way to "to increase penalties of homosexual activity and activate dormant laws".[66] By politicisation it should be understood "the process by which a social phenomenon becomes the basis of mobilization by societal and political actors, who turn it into an issue of major political significance, as a subject of heated public argument, mobilization and conflict. Politicization of homosexuality is also referred to as (state-sponsored) homophobia, sexual panics and antiqueer animus".[67] This happened in 2012 when a group of men were detained while perming a cross dress for an event. The case was dismissed in court, but Jammeh took advantage of it, saying that foreign aid had an agenda of bringing gay marriage to Gambia.[68]

The country always criminalised same-sex conduct, as its penal code still enforced the colonial legacies of anti-sodomy provisions. 2014 was a turning point, as the country adopted an amendment to the criminal code, further criminalising these relations. It was inserted the criminalisation of *homosexuality* and *aggravated homosexuality* in the *Criminal Code (Amendment) Act, 2014*. The amendments were replicated from the Ugandan *The Anti-Homosexuality Act, 2014*, declared null and void in August 2014 by Uganda's High Court. The Criminal Code amendment was accompanied by a raise of Jammeh's hostile rhetoric towards LGBT, calling them "vermins" and their exterminate.[69] This discourse is violent and follows closely what may be understood, *in extremis*, as a genocidal intention of extermination of a group of people. Moreover, the Jammeh's paramilitary group, known as *Junglers*, which was, in practice, a *dead squad,* committed serious human rights violations under the President orders. This group represented a major threat, making the life of LGBT even

[66] GLOPPEN, Siri, and RAKNER, Lise. 'LGBT rights in Africa. In: ASHFORD, Chris. and MAINE, Alexander (ed) *Research Handbook on Gender, Sexuality and the Law* [online]. Cheltenham: Edward Elgar Publishing, 2020, 194–209 [consulted. 2022-09-20]. Available at https://doi.org/10.4337/9781788111157.00022

[67] GLOPPEN, Siri, and RAKNER, Lise. 'LGBT rights in Africa. In: ASHFORD, Chris. and MAINE, Alexander (ed) *Research Handbook on Gender, Sexuality and the Law* [online]. Cheltenham: Edward Elgar Publishing, 2020, 194–209 [consulted. 2022-09-20]. Available at https://doi.org/10.4337/9781788111157.00022

[68] NABENEH, Satang. From a 'crusade to root out homosexuality like malaria' to a 'non-issue': The absence of sexual minorities lawfare in The Gambia. In: *JJUUKO, Adrian, GLOPPEN, Siri, MSOSA, Alan and VILJOEN, Frans* (ed) *Queer Lawfare in Africa: Legal strategies in contexts of LGBTIQ+ criminalisation and politicisation* [online]. Pretoria: Pretoria University Law Press, 2022, 341-376 []. Available at https://www.pulp.up.ac.za/edited-collections/queer-lawfare-in-africa-legal-strategies-in-contexts-of-lgbtiq-criminalisation-and-politicisation

[69] REUTEURS. *Gambia's Jammeh called gays 'vermin', says to fight like mosquitoes* [online]. Reuters, 2014 [consulted. 2022-11-23]. Available at https://www.reuters.com/article/us-gambia-homosexuality-idUSBREA1H1S820140218

more precarious. In March 2021, German authorities detained Bai L., former *Jungler* member, who is charged with three counts of crimes against humanity, including against LGBT community members.[70] The trial and started in April 2021, was a major test to universal jurisdiction and a glimpse of hope for victims.[71]

After 2016 elections, some positive signs were sent by President Adam Barrow. According to Human Rights Watch "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".[72] However, ILGA International compiled some information about the country and found that persecution of LGBT people continued in the following years.[73]

4. The Gambian Truth and Reconciliation Comission: An opportunity to restore Justice?

The electoral defeat of Jammeh, on 1 December 2016, opened a window of change for The Gambia. The initial resistant of Jammeh to concede the victory to Adam Barrow raised concerns about potential repression and violence in the country, but soon Jammeh realised that he seriously faced the possibility to be forcibly removed from power.[74] On 21 January 2017, the elected president Barrow called for a Truth and Reconciliation Commission to investigate the human rights abuses and other crimes committed during Jammeh's rule.[75]

The Truth, Reconciliation and Reparations Commission Act, 2017 (TRRC Act) was passed in the National Assembly in December 2017, and official promulgated by the president on 13 January 2018. The TRRC Act states that the aim of the Act is "to

[70] TRIAL INTERNATIONAL. *First German Trial for Crimes in Gambia: Universal Jurisdiction Case Opens April 25* [online]. Geneva: Trial International, 2022 [consulted. 2022-08-23]. Available at https://trialinternational.org/wp-content/uploads/2022/04/QA-First-German-Trial-for-Crimes-in-Gambia-Universal-Jurisdiction-Case-Opens-April-25-2022-1.pdf

[71] ABOUELDAHAB, Susann, FREIXO, Inês, and GONZÁLEZ ESPINOSA, Rodolfo. First Trial for Crimes Against Humanity in The Gambia Comes to an End: Notes from Observing Universal Jurisdiction in Germany. *Völkerrechtsblog* [online]. 2023 [consulted 2025-08-17]. Available at: https://voelkerrechtsblog.org/first-trial-for-crimes-against-humanity-in-the-gambia-comes-to-an-end/

[72] HUMAN RIGHTS WATCH. *Gambia. Country Report* [online]. Human Rights Watch, 2018 [consulted. 2022-11-23]. Available at https://www.hrw.org/world-report/2018/country-chapters/gambia

[73] MENDOS, Lucas, et al. *State-Sponsored Homophobia 2020: Global Legislation Overview Update* [Online]. Geneva: ILGA World, 2020 [consulted. 2022-11-20]. Available at https://ilga.org/resources/state-sponsored-homophobia-report-2020-global-legislation-overview/

[74] PERFECT, David. The Gambian 2016 Presidential Election and its Aftermath. *The Round Table: The Commonwealth Journal of International Affairs* [online]. 2017, 106(3), 323 – 337 [consulted. 2023-03-02]. Available at https://doi.org/10.1080/00358533.2017.1326627

[75] AL JAZEERA. *Adama Barrow pledges truth commission over Yahya Jammeh* [online]. Al Jazeera, 2017 [consulted. 2022-07-12]. Available at https://www.aljazeera.com/news/2017/1/21/adama-barrow-pledges-truth-commission-over-yahya-jammeh

investigate and establish an impartial historical record of the nature, causes and extent of violations and abuses of human rights committed during the period July 1994 to January 2017". It aims to create a memory of the human rights abuses, promote healing, reconciliation, and guaranteed the non-repetition of such abuses (section 13). It must "adopt a child and gender sensitive approach in conducting its investigations in cases of children and women" (section 14), but no reference to sexual minorities was made in the TRRC Act, despite the Gambian Criminal Code (1933) criminalises the sodomy, in the form of *unnatural offences*, and it attempt to (sections 144 to 147), and the adoption of the *Criminal Code Amendment Act, 2014* and criminalisation of homosexuality. The Truth, Reconciliation and Reparation Commission (TRRC) was installed in October 2018, in a ceremony in which the later ICC Prosecutor Fatou Bensouda participated, in a clear demonstration of a rupture with the past and tense relations of The Gambia with The Hague-based Court.[76]

At the first, LGBT human rights abuses were not foreseen as part of the reconciliation process promised by the Gambian Truth Commission. But civil society called for an inclusion of sexual minorities experiences in work of the Gambian TRRC and its collective memory. Josh Scheinert stressed the hardship for LGBT people to have their experiences included, as the political landscape was so hostile for decades that it was very unlike to have someone that publicly expressed his or her experience without fear of reprisals.[77] A local news media outlet reported that, in January 2020, "Prof. Abdoulie Saine suggested for the inclusion of remedies in Gambia's future constitution against the discrimination of gays and lesbians in the country".[78]

In November 2021, the TRRC published its final report, compiled in 16 volumes. Volume 10 is dedicated to sexual and gender-based violence. In the first lines of the report, the TRRC found that the 22 years of Jammeh's presidency were marked by a strategy of sexual violence "often perpetrated either as the main objective of certain human rights violations or it was used as an instrument of repression, torture and

[76] BENSOUDA, Fatou. *Launch of the Truth, Reconciliation and Commission of the Gambia* [online]. International Criminal Court, 2018 [consulted. 2022-07-09]. Available at https://www.icc-cpi.int/sites/default/files/itemsDocuments/20181015-otp-stat-ENG.pdf
[77] SCHEINERT, Josh. *No truth for Gambia's queer people* [online]. Mail & Guardian,2019 [consulted. 2022-06-10]. Available at https://mg.co.za/article/2019-03-15-00-no-truth-for-gambias-queer-people/
[78] THE POINT. *TRRC witness calls for inclusion of gay, lesbian rights in new constitution* [online]. The Point, 2020 [consulted. 2022-06-10]. Available at https://thepoint.gm/africa/gambia/article/trrc-witness-calls-for-inclusion-of-gay-lesbian-rights-in-new-constitution

punishment".[79] Jammeh itself is accused of sexual violence of several people, including the rape of former beauty queen Fatou Jallow.[80] The TRRC report mentions sexual violence as "any non-consensual sexual act, a threat or attempt to perform such an act, or compelling someone else to perform such an act or with a third person".[81] In this regard, the TRRC adopted "an expansive view as to what acts may amount sexual violence", in which included rape and corrective rape – defining corrective rape in a footnote, as "the use of rape against women because of their real or alleged homosexuality supposedly in order to "cure" them of this sexual orientation"[82] – as well as "humiliating or mocking a person based on their perceived sexual orientation, gender identity, sexual performance, sexual reputation, sexual choices, sexual activity (or lack thereof), or sexual body parts".[83] It's remarkable the sensibility of the Commission to address all patterns of violence and discrimination, having in mind the homophobia instilled in society over the years.

The TRRC recognises the importance of an intersectional approach to sexual violence, including gender inequality, mentioning that:

The Commission recognizes that a person's gender is inextricably linked to other identifying characteristics or factors that affect their lives that can increase the vulnerability of individuals or groups to sexual violence. These may include ethnicity, profession, political or other opinions, health including HIV status, religion, culture, age, colour, illiteracy, socio-economic or matrimonial status, urban or rural location, or any other status, sexual orientation, identity or gender expression, being deprived of liberty.[84]

The volume 10 of the TRRC report mentions sexual orientation and gender identity five (5) times. The report does not mention a testimony from any victim based

[79] THE GOVERNMENT OF THE GAMBIA. *Report volume 10: Sexual and Gender-Based Violence*'. Banjul: Gambian Truth, Reconciliation and Reparation Commission, 2021 [Consulted. 2022-11-02]. Available at https://www.moj.gm/downloads

[80] AFRICANEWS. *Victims of Jammeh's sexcapades testify before Gambian Commission* [online]. Africanews, 2019 [consulted. 2022-06-10], Available at https://www.africanews.com/2019/11/01/victims-of-jammeh-s-sexcapades-testify-before-gambian-commission/

[81] THE GOVERNMENT OF THE GAMBIA. *Report volume 10: Sexual and Gender-Based Violence*'. Banjul: Gambian Truth, Reconciliation and Reparation Commission, 2021 [Consulted. 2022-11-02]. Available at https://www.moj.gm/downloads

[82] THE GOVERNMENT OF THE GAMBIA. *Report volume 10: Sexual and Gender-Based Violence*'. Banjul: Gambian Truth, Reconciliation and Reparation Commission, 2021 [Consulted. 2022-11-02]. Available at https://www.moj.gm/downloads

[83] THE GOVERNMENT OF THE GAMBIA. *Report volume 10: Sexual and Gender-Based Violence*'. Banjul: Gambian Truth, Reconciliation and Reparation Commission, 2021 [Consulted. 2022-11-02]. Available at https://www.moj.gm/downloads

[84] THE GOVERNMENT OF THE GAMBIA. *Report volume 10: Sexual and Gender-Based Violence*'. Banjul: Gambian Truth, Reconciliation and Reparation Commission, 2021 [Consulted. 2022-11-02]. Available at https://www.moj.gm/downloads

on SOGI violations, neither the issue is subject of recommendations. The Commission made several recommendations on women protection, in particular the enforcement of the *Women's Act 2010* and the *Sexual Offences Act 2013*, but no recommendation is made to protect LGBT people. It should have taken the opportunity to recommend the necessity to revoke the *Criminal Code (Amendment) Act, 2014*. Keeping both *sodomy laws* in Penal Code and the *2014 Act* constitutes a setback for LGBT, as they represent the maintenance of the tools of persecution and violence that prevailed during the Jammeh's rule.

5. The way forward: An Internationalised Court for Gambia

Jammeh rule was violent and authoritarian. This wound must heal to Gambian society achieve peace and an inclusive society for its sexual minorities. The main issue is to foresee the political leaders moves. TRRC report sets a baseline for possibilities to deal with the alleged crimes imputed to Jammeh. As the TRRC recommends Jammeh to be judged by the authorship of these alleged crimes, a court must be installed. The first possibility is a hybrid court, a judicial body that gather national and international judged and Law, to try the most serious crimes. The second option is Jammeh be set to court in a neighbour country but with relative Gambian influence in the persecution.[85]

On February 1, 2023, the Gambian Ministry of Justice said that an internationalised court is being planned to try those responsible of committing crimes during Jammeh's rule, including the former president, and searched for a special prosecutor for it.[86] As the Minister of Justice stated, whether "the MoJ [Ministry of Justice] ultimately decides to adopt the term 'Internationalised Court' or a Hybrid Court may be a matter of semantics. What is of essence is we establish some form of international court that has jurisdiction to try international crimes such as torture, enforced disappearances and crimes against humanity, crimes that cannot currently be prosecuted under existing Gambian laws because we do not have international

[85] DARBOA, Mustapha. *TRRC Final Report: Gambia Between Persecutions and Amnesties* [online]. Justice Info, 2022 [Consulted. 2023-02-02]. Available at https://www.justiceinfo.net/en/86069-trrc-final-report-gambia-between-prosecutions-and-amnesties.html

[86] CAMMARA, Sanna.*"Gambia to hire special prosecutor for Jammeh-era crimes* [online]. The Point, 2023 [consulted 2023-03-12], available at https://thepoint.gm/africa/gambia/headlines/gambia-to-hire-special-prosecutor-for-jammeh-era-crimes

crimes as part of our domestic criminal laws".[87] Despite this early discussions which pointed for a court within the Gambian judicial architecture, the political orientation later changed for a hybrid court backed by the ECOWAS. In the view of Owiso and Nakandha, this is more suitable option as is "would therefore enable The Gambia to mitigate certain political, legal, and security challenges"[88]. The question remains: Will this court be able to bring justice to LGBT people?

In this regard, the president of the Gambian Bar Association said that six years after the transition of power, the oppressive legal framework that supported the dictatorship still in place.[89] So far, the legal framework that criminalises consensual same-sex activities still in place. The sodomy laws in the Penal Code were not repealed, neither the *Criminal Code (Amendment) Act, 2014* was declared null and void. This is a continuity of the oppression on LGBT people in the country.

6. Final Remarks

The Gambian elections of 2016 brought some hope for a positive change in the country after 22 years of Yayah Jammeh's dictatorship. President Adama Barrow initiated his presidency with a hope for peace and reconciliation among Gambians. The installation of a Truth Commission represented a milestone for reconciliation, for which LGBT people should be part of. Despite some positive signs from the Commission's report in addressing violence against people based on their sexual orientation and gender identity, it fails to propose solutions for an inclusive society in Gambia. The final report highlights the vulnerability and marginalisation of LGBT people, which is not unique from Gambia, but the Commission's members refrained from a more assertive response to tackle discrimination and homophobia in the country. This happened despite some debate on the decriminalisation of same-sex acts in the Gambia, to a more inclusive society.

The report recommends the prosecution of former president and other high officials and military personnel, supported in strong evidence of their participation in

[87] CAMMARA, Sanna.*"Gambia to hire special prosecutor for Jammeh-era crimes* [online]. The Point, 2023 [consulted 2023-03-12], available at https://thepoint.gm/africa/gambia/headlines/gambia-to-hire-special-prosecutor-for-jammeh-era-crimes

[88] OWISO, Owiso. and NAKANDHA, Sharon. International Criminal Accountability for Yahya Jammeh's Administration: The Gambia-ECOWAS Court [Online]. Just Security, 2023 [consulted 2025-08-09]. Available at https://www.justsecurity.org/87511/international-criminal-accountability-for-yahya-jammehs-administration-the-gambia-ecowas-court/

[89] BUSINESS GHANA. *Gambia needs court for Jammeh-era crimes – president* [online]. Business Ghana, 2023 [consulted 2023-03-12]. Available at https://www.businessghana.com/site/news/politics/279555/Gambia-needs-court-for-Jammeh-era-crimes-president

massive human rights violations, especially in sexual violence, but no development happened after the publication of the report. There's still hope that lies on the criminal accountability. Truth commission failed to spot this issue, but a criminal court – irrespectively of its nature – may represent another opportunity for LGBT people to have their rights protected. So far, the Gambian Transitional Justice process fell far short of what it could have done to repair human rights violations and restore dignity of LGBT Gambians.

A special court, under the aegis of the ECOWAS, may be the best option to try those responsible for the crimes committed under Jammeh-era and bring some relief to the victims of violence. This is a major step to fight impunity and allow the Gambian society to heal, but doubts remain if the court will be able to tackle the concrete question of violence against LGBT people. Gambia needs to embrace its citizens, in their diversity, and include everyone in the process of healing. For a full democratic transition to be fulfilled in the country, discriminatory legislation must be repealed, and inclusion of diversity should be the guiding principle of this post-violent Gambia. This may allow the country to move away from its past of violence.

REFERENCES

ABOUELDAHAB, Susann, FREIXO, Inês, and GONZÁLEZ ESPINOSA, Rodolfo. First Trial for Crimes Against Humanity in The Gambia Comes to an End: Notes from Observing Universal Jurisdiction in Germany. Völkerrechtsblog [online]. 2023 [consulted 2025-08-17]. Available at: https://voelkerrechtsblog.org/first-trial-for-crimes-against-humanity-in-the-gambia-comes-to-an-end/

AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS. Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights [online]. Banjul: African Commission on Human and Peoples' Rights, 2011 [consulted 2022-10-14]. Available at https://achpr.au.int/index.php/en/node/871

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. Study in Transitional Justice and Human and Peoples' Rights in Africa [Online]. Banjul: African Commission on Human and Peoples' Rights, 2019 [2022-08-22]. Available at https://achpr.au.int/sites/default/files/files/2020-11/achprtransitionaljusticeeng.pdf

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. Study in Transitional Justice and Human and Peoples' Rights in Africa [Online]. Banjul: African Commission on Human and Peoples' Rights, 2019 [2022-08-22]. Available at https://achpr.au.int/sites/default/files/files/2020-11/achprtransitionaljusticeeng.pdf

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. 275: Resolution on the Protection against Violence and other Human Rights Violation against Persons on the basis of their real or imputed Sexual Orientation or Gender identity [online]. Banjul: African Commission on Human and Peoples' Rights, 2014 [consulted 2022-10-14]. Available at https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. 275: Resolution on the Protection against Violence and other Human Rights Violation against Persons on the basis of their real or imputed Sexual Orientation or Gender identity [online]. Banjul: African Commission on Human and Peoples' Rights, 2014 [consulted 2022-10-14]. Available at https://achpr.au.int/en/adopted-resolutions/275-resolution-protection-against-violence-and-other-human-rights-violations

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. Guidelines on Combating Sexual

Violence and Its Consequences in Africa [online]. Banjul: African Commission on Human and Peoples' Rights, 2017 [consulted 2022-10-14]. Available at https://achpr.au.int/en/node/848

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. Resolution 235 on Transitional Justice in Africa (ACHPR/Res.235(LIII)2013) [online]. Banjul: African Commission on Human and Peoples' Rights, 2014 [consulted 2022-08-21]. Available at https://achpr.au.int/en/adopted-resolutions/235-resolution-transitional-justice-africa-achprres235liii2013

AFRICAN UNION. Transitional Justice Policy [online]. Addis Abeba: African Union, 2019 [consulted 2022-08-21]. Available at https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf

AFRICANEWS. Victims of Jammeh's sexcapades testify before Gambian Commission [online]. Africanews, 2019 [consulted. 2022-06-10], Available at https://www.africanews.com/2019/11/01/victims-of-jammeh-s-sexcapades-testify-before-gambian-commission/

AL JAZEERA. Adama Barrow pledges truth commission over Yahya Jammeh [online]. Al Jazeera, 2017 [consulted. 2022-07-12]. Available at https://www.aljazeera.com/news/2017/1/21/adama-barrow-pledges-truth-commission-over-yahya-jammeh

AMBOS, Kai. The Legal Framework of Transitional Justice: A Systematic Study with a Special Focus in the Role of the ICC. In: AMBOS, Kai, LARGE, Judith, and WIERDA, Marieke (eds). Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development [online]. Berlin: Springer, 2009, 19–103 [consulted. 2022-11-06]. Available at https://doi.org/10.1007/978-3-540-85754-9_4

BAJAHA, Binta. Postcolonial Amnesia: The Construction of Homosexuality as 'un-African'. LSE working paper series [online]. 2015 [consulted 2022-11-05]. Available https://www.lse.ac.uk/gender/assets/documents/research/graduate-working-papers/Postcolonial-Amnesia.pdf

BBC. Theresa May 'deeply regrets' UK's colonial anti-gay laws [online]. BBC, 2018 [consulted. 2022-10-25]. Available at https://www.bbc.com/news/world-africa-43795440

BENSOUDA, Fatou. Launch of the Truth, Reconciliation and Commission of the Gambia [online]. International Criminal Court, 2018 [consulted. 2022-07-09]. Available at https://www.icc-cpi.int/sites/default/files/itemsDocuments/20181015-otp-stat-ENG.pdf

BERTOLT, Boris, and MASSÉ, Léa E. Mapping Political Homophobia in Senegal. African Studies Quarterly [online]. 2019, 18(4), 21 – 39 [consulted. 2022-11-17]. Available at https://journals.flvc.org/ASQ/article/view/136027/140447

BUENO-HANSEN, Pascha. The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America. International Journal of Transitional Justice [online]. 2018, 12(1), 126–145 [consulted. 2022-12-28]. Available at https://doi.org/10.1093/ijtj/ijx031

BUSINESS GHANA. Gambia needs court for Jammeh-era crimes – president [online]. Business Ghana, 2023 [consulted 2023-03-12]. Available at https://www.businessghana.com/site/news/politics/279555/Gambia-needs-court-for-Jammeh-era-crimes-president

CAMMARA, Sanna."Gambia to hire special prosecutor for Jammeh-era crimes [online]. The Point, 2023 [consulted 2023-03-12], available at https://thepoint.gm/africa/gambia/headlines/gambia-to-hire-special-prosecutor-for-jammeh-era-crimes

CURRIER, Ashley. Political Homophobia in Postcolonial Namibia. Gender & Society [online]. 2010, 24(1), 110-129 [consulted. 2022-11-28]. Available at: https://doi.org/10.1177/0891243209354275

DARBOA, Mustapha. TRRC Final Report: Gambia Between Persecutions and Amnesties [online]. Justice Info, 2022 [Consulted. 2023-02-02]. Available at https://www.justiceinfo.net/en/86069-trrc-final-report-gambia-between-prosecutions-and-amnesties.html

DIROCHIE DE LEÓN, Anderson. La persecución por motivo de la orientación sexual como crimen de lesa humanidad: Una mirada desde el Estatuto de Roma de la corte penal internacional. In: Torres Moreno,José, and González Mauricio, José (coords). Personas de la Diversidade Sexual y Derechos Humanos Parte II [online]. Guadalajara: Comisión Estatal de Derechos Humanos Jalisco, Instituto de Derechos Humanos Francisco Tenamaxtli, 2022, 8 – 34. Available at http://historico.cedhj.org.mx/Colecci%C3%B3n%20de%20estudios%20en%20Derechos%20Humanos/Tomo%2017.pdf

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. LGBTIQ Equality at a crossroads – progress and challenges [Online]. Vienna: FRA, 2024 [consulted. 2025-08-11]. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-lgbtiq-equality_en.pdf

FOBEAR, Katherine. Queering Truth Commissions. Journal of Human Rights Practice [online]. 6(1)

2014, 51–68 [consulted. 2023-02-20]. Available at https://doi.org/10.1093/jhuman/hut004
GARRIDO, Rui. African Regional Jurisdiction: How African Union is creating an innovative regional jurisdiction for international crimes. Portuguese Law Review [online]. 2020, 4, 113-140 [consulted. 202-10-25]. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3567754
GARRIDO, Rui. Mapping the Invisible Rape: Men and Boys as Victims of Sexual Violence in Armed Conflict. Nação & Defesa [online]. 2021, 159, 151-168 [2022-08-22]. Available at https://www.idn.gov.pt/pt/publicacoes/nacao/Documents/NeD159/NeDef159_5_Rui%20Garrido.pdf
GARRIDO, Rui. Patterns of discrimination based on sexual orientation in Africa: is there a Lusophone exception?. African Human Rights Yearbook [online]. 2019, 3, 93-118 [consulted. 2022-11-02]. Available at http://doi.org/10.29053/2523-1367/2019/v3a5
GLOPPEN, Siri, and RAKNER, Lise. 'LGBT rights in Africa. In: ASHFORD, Chris. and MAINE, Alexander (ed) Research Handbook on Gender, Sexuality and the Law [online]. Cheltenham: Edward Elgar Publishing, 2020, 194–209 [consulted. 2022-09-20]. Available at https://doi.org/10.4337/9781788111157.00022
HAYNER, Priscilla B. Fifteen Truth Commissions – 1974 to 1994: A Comparative Study. Human Rights Quarterly [online]. 1994, 16(4), 597–655. [consulted 2022-12-06]. Available at https://doi.org/10.2307/762562
HAYNER, Priscilla B. Fifteen Truth Commissions – 1974 to 1994: A Comparative Study. Human Rights Quarterly [online]. 1994, 16(4), 597–655. [consulted 2022-12-06]. Available at https://doi.org/10.2307/762562
HODES, Rebecca. Populist Hatred: Homophobia and Political Elites in Africa. E-international Relations [online]. 2021, 1-5 [consulted. 2022-11-25]. Available at https://www.e-ir.info/pdf/24429
HUMAN RIGHTS WATCH. Gambia. Country Report [online]. Human Rights Watch, 2018 [consulted. 2022-11-23]. Available at https://www.hrw.org/world-report/2018/country-chapters/gambia
INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE. What is Transitional Justice? [online]. 2009 [consulted 2022-10-28]. Available at https://www.ictj.org/what-transitional-justice
JOBE, Alhagie. Gambia: No room for Gays [online]. The Daily Observer / AllAfrica, 2008 [consulted. 2022-09-25]. Available at https://allafrica.com/stories/200805200016.html
KAPLAN, Robert. The Aversion Project – Psychiatric abuses in the South African Defence Force during the Apartheid Era. South African medical journal [online]. 2001, 216-217 [consulted. 2022-10-25]. Available at https://pubmed.ncbi.nlm.nih.gov/11291415/
KUBEAU, Delphne. New FBI Data: Anti-LGBTQ+ Hate Crimes Continue to Spike, Even as Overall Crime Rate Declines [online]. The Human Rights Campaign, 2024 [Consulted. 2025-07-25]. Available at https://www.hrc.org/press-releases/new-fbi-data-anti-lgbtq-hate-crimes-continue-to-spike-even-as-overall-crime-rate-declines
MAIER, Nicole. Queering Colombia's peace process: a case study of LGBTI inclusion. The International Journal of Human Rights [online]. 2020, 24(4), 377-392 [consulted. 2023-01-17]. Available at https://doi.org/10.1080/13642987.2019.1619551
MAIER, Nicole. Queering Colombia's peace process: a case study of LGBTI inclusion. The International Journal of Human Rights [online]. 2020, 24(4), 377-392 [consulted. 2023-01-17]. Available at https://doi.org/10.1080/13642987.2019.1619551
MBWANA, Thokozani. Policy brief: Transitional Justice and the inclusion of LGBTQIA+ rights. Johannesburg: Centre for the Study of Violence and Reconciliation, 2020 [consulted. 2022-10-28]. Avaliable at https://www.csvr.org.za/wp-content/uploads/2020/01/Transitional-Justice-and-Inclusion-of-LGBTQIAL-Rights-Policy-Brief-2020.pdf
MCALLISTER, John. LGBT activism and "traditional values": promoting dialogue through indigenous cultural values in Botswana. In: HIVOS (ed.) Boldly queer: African perspectives on same-sex sexuality and gender diversity. Den Haag: Hivos, 2014, pp. 46 - 53 [consulted. 2022-10-08]. Available at: https://hivos.org/document/boldly-queer-african-perspectives-on-same-sex-sexuality-and-gender-diversity/
MENDOS, Lucas, et al. State-Sponsored Homophobia 2020: Global Legislation Overview Update [Online]. Geneva: ILGA World, 2020 [consulted. 2022-11-20]. Available at https://ilga.org/resources/state-sponsored-homophobia-report-2020-global-legislation-overview/
MUBIALA, Mutoy. Regional v. Universal Jurisdiction in Africa: The Habré Case [Online]. Florence: Torkel Opsahl Academic EPublisher, 2016, 1 – 4 [consulted. 2022-12-28]. Available at https://www.toaep.org/pbs-pdf/74-mubiala
NABENEH, Satang. From a 'crusade to root out homosexuality like malaria' to a 'non-issue': The

absence of sexual minorities lawfare in The Gambia. In: JJUUKO, Adrian, GLOPPEN, Siri, MSOSA, Alan and VILJOEN, Frans (ed) Queer Lawfare in Africa: Legal strategies in contexts of LGBTIQ+ criminalisation and politicisation [online]. Pretoria: Pretoria University Law Press, 2022, 341-376 [consulted. 2022-09-25]. Available at https://www.pulp.up.ac.za/edited-collections/queer-lawfare-in-africa-legal-strategies-in-contexts-of-lgbtiq-criminalisation-and-politicisation

NGWENA, Charles. What is Africanness? Contesting nativism in race, culture and sexualities [online]. Pretoria: Pretoria University Law Press, 2018 [consulted 2023-02-05]. Available at: https://www.pulp.up.ac.za/catalogue/monographs/what-is-africanness-contesting-nativism-in-race-culture-and-sexualities

OWISO, Owiso. and NAKANDHA, Sharon. International Criminal Accountability for Yahya Jammeh's Administration: The Gambia-ECOWAS Court [Online]. Just Security, 2023 [consulted 2025-08-09]. Available at https://www.justsecurity.org/87511/international-criminal-accountability-for-yahya-jammehs-administration-the-gambia-ecowas-court/

PARK, Andrew. Defining Sexual Orientation: A Proposal for a New Definition. Michigan Journal of Gender & Law [online]. 2022, 29 (1), 1 – 61. Available at: https://repository.law.umich.edu/mjgl/vol29/iss1/2

PERFECT, David. The Gambia under Yahya Jammeh: An Assessment. The Round Table: The Commonwealth Journal of International Affairs [online]. 2010, 99(406) 53 – 63 [consulted. 2023-03-02]. Available at https://doi.org/10.1080/00358530903513681

PERFECT, David. The Gambian 2016 Presidential Election and its Aftermath. The Round Table: The Commonwealth Journal of International Affairs [online]. 2017, 106(3), 323 – 337 [consulted. 2023-03-02]. Available at https://doi.org/10.1080/00358533.2017.1326627

PETER TATCHELL FOUNDATION. Why LGBT+ Rights Are Threatened Around the World in 2025 [online]. PTF, 2025 [consulted. 2025-08-12]. Available at https://www.petertatchellfoundation.org/why-lgbt-rights-are-threatened-around-the-world-in-2025/

QUINN, Joanna R. The Development of transitional justice. In: LAWTHER, Cheryl, MOFFETT, Luke, and JACOBS, Dov (eds). Research Handbook on Transitional Justice. Cheltenham: Edward Elgar Publishing, 2017, 11–33. ISBN: 9781781955307.

REISS, Mariel, and TABENGWA, Monica. 'Tug-of-war: LGBTIQ+ rights in the African human rights architecture'. African Human Rights Law Journal [online]. 2024, 24, 472-501 [Consulted 2025-08-01]. Available at http://dx.doi.org/10.17159/1996-2096/2024/v24n2a4

REUTEURS. Gambia's Jammeh called gays 'vermin', says to fight like mosquitoes [online]. Reuters, 2014 [consulted. 2022-11-23]. Available at https://www.reuters.com/article/us-gambia-homosexuality-idUSBREA1H1S820140218

RITHOLTZ, Samuel. Brutality on Display: Media Coverage and the Spectacle of Anti-LGBTQ Violence in the Colombian Civil War. *Third World Quarterly* [online]. 2024, 45 (5), 903–25 [consulted. 2025-08-19]. Available at https://doi.org/10.1080/01436597.2024.2315307

SALVIOLI, Fabián, and UNITED NATIONS SECRETARY-GENERAL. The gender perspective in transitional justice processes (A/75/174). New York: United Nations, 2021 [consulted. 2022-12-21]. Available at https://digitallibrary.un.org/record/3883379?v=pdf

SANTOS, Gustavo, and WAITES, Matthew. Comparative colonialisms for queer analysis: comparing British and Portuguese colonial legacies for same-sex sexualities and gender diversity in Africa – setting a transnational research agenda. International Review of Sociology [Online]. 2019, 29(2), 297–326 [consulted. 2023-01-12]. https://doi.org/10.1080/03906701.2019.1641277

SARKIN, Jeremy. Why the Theory and Practice of Transitional Justice Needs to Be Better Integrated in All Places around the World. AlMuntaqa [Online]. 2021, 4(1), 39–55 [consulted. 2023-12-06]. Available at https://www.jstor.org/stable/10.31430/almuntaqa.4.1.0039

SCHEINERT, Josh. No truth for Gambia's queer people [online]. Mail & Guardian,2019 [consulted. 2022-06-10]. Available at https://mg.co.za/article/2019-03-15-00-no-truth-for-gambias-queer-people/

SHOKO, Tabona. 'Worse than Dogs and Pigs?' Attitudes Toward Homosexual Practice in Zimbabwe. Journal of Homosexuality [online]. 2010, 57(5), 634–449 [consulted. 2022-09-20]. Available at https://doi.org/10.1080/00918361003712087

SOGUNRO, Ayo. Resolution 275 and the realisation of LGBTIQ+ rights in Africa [online]. African Legal Studies blog, 2022 [Consulted. 2023-02-24]. Available at https://africanlegalstudies.blog/2022/06/24/resolution-275-and-the-realisation-of-lgbtiq-rights-in-africa/

THE GOVERNMENT OF THE GAMBIA. Report volume 10: Sexual and Gender-Based Violence'.

Banjul: Gambian Truth, Reconciliation and Reparation Commission, 2021 [Consulted. 2022-11-02]. Available at https://www.moj.gm/downloads

THE POINT. TRRC witness calls for inclusion of gay, lesbian rights in new constitution [online]. The Point, 2020 [consulted. 2022-06-10]. Available at https://thepoint.gm/africa/gambia/article/trrc-witness-calls-for-inclusion-of-gay-lesbian-rights-in-new-constitution

The Yogyakarta Principles plus 10 (YP+10) Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles [online]. Yogyakarta: International Commission of Jurists / International Service for Human Rights, 2017 [consulted. 2022-10-15]. Available at http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

The Yogyakarta Principles. Principles on the application of international human rights law in relation to sexual orientation and gender identity [online]. Yogyakarta: International Commission of Jurists / International Service for Human Rights, 2007 [consulted 2025-08-14]. Available from: https://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

TRIAL INTERNATIONAL. First German Trial for Crimes in Gambia: Universal Jurisdiction Case Opens April 25 [online]. Geneva: Trial International, 2022 [consulted. 2022-08-23]. Available at https://trialinternational.org/wp-content/uploads/2022/04/QA-First-German-Trial-for-Crimes-in-Gambia-Universal-Jurisdiction-Case-Opens-April-25-2022-1.pdf

UNITED NATIONS SECRETARY-GENERAL. The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616). New York: United Nations, 2004 [consulted. 2022-12-20]. Available at https://digitallibrary.un.org/record/527647?v=pdf

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