

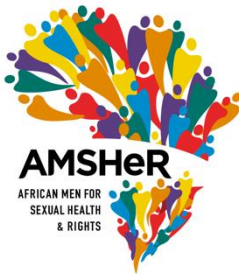
**Universal Periodic Review of The Gambia
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JOINT SUBMISSION



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Executive Summary

1. The Gambia received 12 recommendations relating to criminalisation of same-sex sexual orientation and gender identity and expression (SOGIE) during its second universal periodic review. The Gambia noted all of these recommendations, however, rather than implementing the recommendations, tougher laws were introduced with the introduction of Article 144a of the Criminal Code, making 'Aggravated homosexuality' a crime punishable by life imprisonment.
2. During the reign of former president Yahya Jammeh, The Gambia government subjected citizens to gross human rights violations. One particular group of people who were targeted by this government were LGBTI persons. Ex-president Jammeh denounced LGBTI persons in public on more than one occasion and The National Intelligence Agency (NIA) arrested suspected persons on suspicion of homosexual activities in November 2014 during "operation bulldozer"¹.
3. The Gambia is enjoying a new democratic dispensation for citizens and *The 2018 Gambia National Development Plan* promises to restore good governance, respect for human rights and the rule of law for all citizens including, freedom of expression, and the fundamental rights of all will be respected and upheld.
4. Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons continue to face discriminatory laws, stigma and harassment. And whilst 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sexual acts, which sharply contrasted with Jammeh's hate-filled rhetoric toward LGBTI persons, the government has not repealed laws that criminalize same-sex conduct, including an October 2014 law that imposes sentences of up to life imprisonment for "aggravated homosexuality" offenses.
5. In a recent discussion with LGBTI persons organized by OHCHR 2019 to prepare a stakeholder report for The Gambia's third UPR ('UPR SOGIE consultation'), participants reported the continuous stigma, harassment and arrest of LGBTI persons by the police. Participants reported incidents where police have arrived in their houses and arrested them on suspicion of engaging in homosexual behaviors. Some reported being held in detention for over 5 days without access to a legal representative.
6. This report provides information on the violation of human rights in the Gambia as a result of retrogressive laws and societal attitudes towards LGBTI. The report is not exhaustive in addressing the challenges and discriminations faced by LGBTI persons, however it highlights the lack of protection, fulfilment of the Gambia Government's obligations under international human rights law and respect of the human rights of LGBTI persons.

Legal and Policy framework

7. Consensual same-sex relationships are generally deemed to be 'against the order of nature' in The Gambia. Homosexuality is punishable by imprisonment for up to 14 years (Criminal Code Article 144, Unnatural Offences).
8. The Criminal Code (Amendment Act) was passed in 2014 inserting new articles in the criminal code relating to 'Aggravated homosexuality' a crime which could be punished by life imprisonment. Under this law, a person living with HIV or AIDS who engages in homosexual acts is deemed to have committed the offence of aggravated homosexuality regardless of whether consent is given. The 'offender' is liable to the increased sanction of life imprisonment merely due to his or her HIV status.
9. The Act further diminishes the standing of people living with HIV/AIDS in Gambian society and increases their vulnerability. "Serial offenders" are also liable to this increased sanction merely for maintaining their LGBTI identity.
10. Disabled persons who engage in homosexual acts are automatically deemed 'victims' regardless of whether they have consented, undermining disabled persons rights to bodily autonomy and sexual and reproductive rights. This increases the stigma and discrimination against disabled persons generally, and LGBTI disabled persons in particular.
11. The law is a violation of LGBTI persons rights to equality, non-discrimination, privacy, liberty and security of the person, among others, and stands in contradiction with the Gambian Constitution and The Gambia's international legal obligations.
12. The present Gambian government has not made their position towards the Gambian legislation on homosexuality clear.

Discrimination and Stigma

13. The Gambia has very strong conservative social, traditional and religious beliefs that people uphold. Children are raised either as boys or girls. The society has fixed rules on how boys and girls behave and this continues into adulthood. These behaviours and set of rules are strictly applied and reinforced in people's minds from a young age and they are strongly nurtured and guarded by the society. Any behaviour outside of these norms comes with serious consequences from the society. Hence failing to conform to heterosexual norms is seen as 'deviant', 'taboo' and fuels strong societal intolerance of LGBTI persons.
14. The media plays an important role in reinforcing the dominant and heteronormative and patriarchal ideas about gender and sexuality. Instead of playing a constructive role in human rights education, they often serve as a platform to social and political leaders – including their own journalists - to spread misinformation, reinforce harmful stereotypes and even incite violence. In January 2019, a radio talk show on Al-Falaah radio revealed the secret locations of safe houses for the LGBTI persons in The Gambia. The host of the programme asked the listeners to attack the places and destroy them.

15. The impact of the laws and social stigma creates a climate of fear that translates into persons being forced to stay in the closet, breeds a climate of extortion, corruption and further abuse of LGBTI persons.

Right to Health

16. Due to the legal and societal discrimination of LGBTI persons in the Gambia, access to sexual and reproductive health services and information is limited and there are no dedicated services for LGBTI persons.
17. Gay men and men who have sex with men (MSM) have been generally identified as a group with higher prevalence of HIV and other Sexually Transmitted Infections (Joint United Nations Programme on HIV/AIDS, 2017)
18. Furthermore, there is a lack of comprehensive sexual and reproductive health education among young people and people who identify as LGBTI in the country, due to lack of government's commitment and an established taboo around sexuality.
19. Additionally, the dissemination of health information does not include information pertaining to LGBTI persons. This has contributed to lack of awareness of available services and information.
20. Whilst the right to health is a universal human right, the Gambian constitution does not recognise health as a right.
21. In addition, budgetary allocation to health is below the internationally recommended standard, thus leaving the allocation to sexual and reproductive health services woefully inadequate.

LGBTI Refugees

22. The Gambia is both a source and destination country for persons seeking asylum on the grounds of SOGIE-based persecution.
23. During the violations (detentions, torture) of LGBTI persons in The Gambia, many Gambian LGBTI persons claimed asylum in Senegal. However, following the change of government in the Gambia, the Senegalese LGBTI community felt it would be safer to move to Gambia.
24. Presently over 50 Senegalese LGBTIs are seeking refuge in The Gambia. However, they continue to experience hostility in the country both from the authorities and at community level.
25. During the UPR SOGIE consultation, participants provided testimony about a group of refugees from Senegal who arrived in The Gambia in June 2018, and were subjected to ongoing stigma and discrimination with no financial or emotional support. The group reported that most of them have still not received their refugee cards and are homeless at present. A few of the individuals rented accommodation, but in November 2018, the police searched the property without showing any legal warrant. The police found items they considered feminine such as (make up, women's underwear) and as a result arrested the individuals, accusing them of engaging in homosexual behaviours. During their detention, the police seized their phones, didn't allow them food or water and they were not given access to a legal representative for 5 days.

Freedom of Expression, Association and Assembly

26. LGBTI persons in Gambia are not able to express themselves freely due to the stigma, discrimination, abuse and the laws against homosexuality in the Gambia. Furthermore, there are no openly known LGBT organizations in the country, leaving LGBTI persons without any support services or access to human rights information.
27. During the UPR SOGIE consultation, participants highlighted concerns for their safety and security when they try to express themselves. Participants also raised concerns about the lack of freedom of assembly. The LGBTI persons who attended the workshop lamented that whilst they have tried to organise collectively to advocate for the state to protect and recognise rights relating to sexual orientation and gender identity and expression, this has been received with hostility. They gave examples of when they tried to hold gatherings and were either threatened to be beaten up or arrested. Other instances from the past two years included:-
 - In 2017, a gay man was dancing with friends while wearing high-heel shoes. Someone at the party secretly videoed him and uploaded the video online. This was later published on a website called 'What's On Gambia' (the video was subsequently deleted). But due to the threats and abuse the young man was receiving he was forced to go into hiding.
 - Blackmail at the Youth Monument: In 2017, some members of the LGBT community were targeted at Westfield, downtown Sere Kunda the largest city in the Gambia while attending an event. They were blackmailed by three men who claimed to be security agents. The members of the LGBT community were threatened with arrest unless they paid the security agents.
 - Tanabirr: A LGBTI person was arrested during a drumming concert. While in detention he was sexually assaulted and raped by the security agents as a way of teaching him a lesson.
 - SOS Birthday Bash: The group also gave a scenario where at a birthday party, a young victim who is in high school attended a school party at SOS Herman Gmeiner High School was arrested by the Anti-Crime Unit. He was asked for sexual favours which he was forced to grant or go to jail.

Recommendations

28. Repeal all legislation that criminalizes sexual activities between consenting adults and take all necessary measures to prevent discrimination and violence on the basis of sexual orientation and/or gender identity or expression, in accordance with Resolution 275 of the ACHPR and in full compliance with articles 2, 17 and 26 of the International Covenant on Civil and Political Rights, as interpreted by the Human Rights Committee.

29. Amend legislation that infringes on freedom of expression and assembly of LGBTI persons. Remove all administrative and legislative barriers to the recognition and registration of organisations working on SOGIE related rights.
30. Allocate 15% of the annual budget to the health sector, in order to improve access to health services, in alignment with the Abuja Declaration 2001. Ensure that health services are AAAQ compliant and made accessible to all persons, irrespective of their sexual orientation and gender identity and expression.
31. Grant full refugee status, protection and support to members of the LGBTI community who have sought asylum in the Gambia, in compliance with UNHCR GUIDELINES ON INTERNATIONAL PROTECTION NO. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.
32. Introduce Comprehensive Sexuality Education, aligned with the updated UNESCO International Guidelines on Sexuality Education.

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