

In

**Information on The Gambia for Consideration
by the Committee on the Elimination of
Discrimination against Women at the 83rd
Sessions (10-28 October, 2022)**

A submission by Gambian Civil Society Organizations

12/09/2022

Contents

I. Information about the authors of this submission	3
II. Introduction and scope of this submission	4
III. Submission.....	5
A. Stereotypes.....	5
B. Need for Messaging strategy	6
C. No application of convention principles and related legislation despite capacity building	6
D. Legislative framework and Access	8
1. Section 180 Of the Evidence Act	8
20) Access to Justice The Committee asked the State party to indicate steps taken by the State party to ensure that women are not discriminated against by religious courts, and that they have effective access to justice and remedy. Most women, especially illiterate women, find it difficult to obtain legal representation, to fully access the courts. While there are provisions in the Legal Aid Act to provide free legal services in both criminal and civil matters, the legal aid currently offered by the National Legal Aid Agency is limited to criminal matters. Women who cannot afford legal services, have to seek assistance from CSOs such as the Female Lawyers Association (FLAG), members of the Gambia Bar Association (GBA), Network for Gender Based Violence (NGBV). These non-profit organisations mostly depend on member subscriptions and donor funds. CSOs do not receive any form of subvention from the government to provide legal aid to the public, to enable them to supplement the efforts of the Government. Where legal aid cannot be provided by the CSOs, due to financial or human capacity limitations, women will have to represent themselves in Court.	10
2. Protective measures for survivors of sexual violence.....	10
E. Coercive circumstances under the Sexual Offences Act.....	11
F. Women’s human rights defenders and civil society	12
G. Female genital mutilation (FGM)	13
IV. Recommendations.....	14

I. Information about the authors of this submission

- A. **Women In Liberation and Leadership – WILL**
- B. **FLAG**
- C. **Think Young Women (TYW)**
- D. **Fantanka**
- E. **African Network Against Extrajudicial Killings and Enforced Disappearance (ANEKED)**
- F. **Women’s Association for Victims’ Empowerment (WAVE)**
- G. **Equals Now**
- H. **The Girls’ Agenda**
- I. **The Gambia Center for Victims of Human Rights Violations**
- J. **The Gambia Chapter of The Forum for African Women Educationalist (FAWEGAM).**
- K. **The African Centre for Democracy and Human Rights Studies (ACDHRD)**

II. Introduction and scope of this submission

- 1) In their publicly available Final Report, The Gambia's Truth, Reconciliation and Reparations Commission ('TRRC') made a number of important findings related to sexual violence against women in their country:
 - a. *"That under the CEDAW Convention, the State party is obliged to take concrete steps to eliminate all forms of discrimination against women¹";*
 - b. *"That while offences of sexual violence are explicitly prohibited under The Gambia Sexual Offences Act, victims of these crimes have difficulty accessing justice for social, cultural, financial and institutional reasons. This, in turn, further entrenches a culture of impunity for sexual violence,²" and*
 - c. *The TRRC also acknowledged "... the reality that The Gambia is particularly afflicted by the widespread lack of knowledge and understanding of SGBV, which means that such violations and crimes are not properly identified, prevented, managed and/or subjected to effective accountability."³*
- 2) In 2015, this Committee found that violence against women in The Gambia was widespread.⁴ That remains the case today. Rape and other forms of sexual violence against women, such as female genital mutilation (FGM) are still prevalent without prosecution.⁵
- 3) Against this background, this submission supplements and provides additional information to those responses provided by the State party to the Committee's list of issues and questions in relation to The Gambia's sixth periodic report.⁶ Many of the issues raised in this submission are inter-related and overlap. This is because at their core, the failures of the State party are rooted in their non-compliance with their obligations under Articles 2 and 5(a) of the Convention. These failures also relate to The Gambia's obligations to effectively combat violence against women and provide access to justice for survivors of rape and other forms of sexual violence, set out in General Recommendation 19, 33 and 35.
- 4) While the State has, in May 2022 committed to "the enforcement of all laws and will strengthen national institutions to promote accountability,"⁷ this must now be operationalised, in order for The Gambia to comply with their human rights obligations. Suggestions as to how this may be achieved are provided below.

¹ TRRC Final Report, Volume 1, Compendium A, p.85.

² TRRC Final Report, Volume 1, Compendium A, p.85.

³ TRRC Final Report, Volume 1, Compendium A, p.85. *See also*, Government White Paper on the Report of the Truth, Reconciliation and Reparations Commission, 25 May 2022, para. 307.

⁴ CEDAW/C/GMB/CO/4-5, 28 July 2015, para. 8. *See also*, TRRC Final Report, Volume 1, Compendium A, p.82.

⁵<https://sahelnetwork.com/gambia-government-strengthen-legal-instruments-on-women-rights-as-cluster-of-communities-register-highest-case-of-fgm/>

⁶ *See* CEDAW/C/GMB/Q/6, 07 March 2022; CEDAW/C/GMB/RQ/6, 21 July 2022, and CEDAW/C/GMB/6, received 2 December 2020.

⁷ Government White Paper on the Report of the Truth, Reconciliation and Reparations Commission, 25 May 2022, paras. 327, 337.

III. Submission

A. Stereotypes

- 5) This Committee has stated that eliminating stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors.⁸ Indeed, the TRRC has identified numerous myths and misconceptions around sexual and gender-based violence in The Gambia, held not only by the general public, but also by law enforcement officials responsible for dealing with SGBV cases, as barriers to reporting and effectively dealing with sexual violence cases.⁹ These stereotypes, buttressed by patriarchal attitudes, lack of understanding and miseducation, are serious barriers to the ability of women who have been victims of rape, FGM, and other forms of sexual violence crimes to access justice.
- 6) Eliminating these stereotypes requires a “transformative, multi-sectoral and holistic approach that combines continuous and focused public sensitisation campaigns, training, and capacity-building of law enforcement. Discussions about SGBV should be part of the broader conversations in our communities, schools, and homes.” These were the words of the TRRC.¹⁰
- 7) Promulgating the legislation that *should* have ensured access to justice for women who have been victims of sexual violence crimes¹¹ is, in The Gambian context, not enough. Thus, transformation processes should include a sustained, public commitment and engagement by the State party to eliminate those stereotypes in the justice system, accompanied by concrete actions.¹²
- 8) Measures to eliminate stereotypes against women in The Gambia are primarily spearheaded by highly skilled women’s human rights defenders and civil society organisations¹³, and supported by international donor partners. Unfortunately, the State does not, in practice, partner substantively with civil society in these initiatives. This lack of engagement impacts negatively on the public’s confidence in the criminal justice sector and is a disincentive to reporting sexual violence crimes to State authorities. This, in turn reinforces Gambia’s culture of shame, stigma and silence around sexual violence against women, reinforces the subordination of women to men in Gambia’s patriarchal culture, and a climate of impunity.
- 9) The transformative approach, should, at a minimum, involve criminal justice actors working in effective partnership and with the advice and guidance of local civil society. In this way, they can inform, guide, and support one another in educational, empowerment and community engagement programmes in an inclusive, sustained and

⁸ CEDAW/C/GC/33, 3 August 2015, para. 28.

⁹ TRRC Final Report, Volume 1, Compendium A, pp.85-86.

¹⁰ TRRC Final Report, Volume 1, Compendium A, p.87. *See also*, Government White Paper on the Report of the Truth, Reconciliation and Reparations Commission, 25 May 2022, para. 335.

¹¹ Footnote to The Women’s Act 2010 and the Sexual Offence Acts 2013.

¹² Government White Paper on the Report of the Truth, Reconciliation and Reparations Commission, 25 May 2022, para. 334.

¹³ *See, for example*: WILL TRRC Shadow Report – Perspectives of Women, Girls and Marginalised Communities on SGBV, March 2022, pp.10-13.

holistic manner, as well as shaping policies and practices that will make a real contribution to ending harmful stereotypes.

B. Need for Messaging strategy

- 10) In their 4th and 5th periodic report, The Gambia recognised that without breaking the culture of silence it would be difficult to end impunity for sexual violence against women.¹⁴ This underscores the importance of the Committee's urging the government to develop and implement a messaging strategy aimed at, among other things, enhancing women's awareness of their rights and legal literacy in all areas of the Convention, to enable them to claim their rights.¹⁵ This is because the obvious failure to effectively implement the Women's Act and the Sexual Offences Act is born in part (and despite ongoing capacity building efforts) by a lack of understanding and/or conscious disregard by the criminal justice sector of Gambia's domestic, regional and international human rights obligations. Development and implementation of awareness building strategies should be done in partnership with Gambian civil society.¹⁶
- 11) Without a public, effective government commitment to implementing the principles of the Convention and clear, effective messaging of that intent, in language and through means accessible to all Gambian society, the rights guaranteed by the Convention will remain out of reach for Gambian women and girls.

C. No application of convention principles and related legislation despite capacity building

- 12) This Committee requested the State party to provide information on its capacity building efforts for judges, prosecutors, lawyers and other law enforcement professionals responsible for the implementation of the Convention.¹⁷ Within pandemic conditions, limited capacity building trainings were provided to local beneficiaries within the criminal justice sector which included segments on domestic laws and the application of international human rights principles, standards and best practices dealing with sexual violence cases.
- 13) While this was a positive first step, evidence shows that this capacity building needs to be sustained and improved¹⁸, and a functioning oversight mechanism established to monitor and ensure the effective local implementation of Convention obligations.
- 1) In particular, despite capacity building efforts, neither the provisions of CEDAW (which are domesticated in the Women's Act, 2010) nor the Sexual Offences Act 2013 are being effectively implemented and enforced despite the 2015 recommendations of

¹⁴ CEDAW/C/GMB/4-5, 1 October 2012, para. 37.

¹⁵ CEDAW/C/GMB/CO/4-5, 28 July 2015.

¹⁶ CEDAW/C/GMB/CO/4-5, 28 July 2015; CEDAW/C/GC/33, 3 August 2015, para. 15(h).

¹⁷ CEDAW/C/GMB/6, para. 1.

¹⁸ See, TRRC Final Report, Volume 1, Compendium A, p.86, which noted the lack of sufficiently trained personnel (psycho-social/ counselling officers, police officers, lawyers and judges for dealing with cases of sexual violence.

this Committee to the State party.¹⁹ These are major barriers preventing women's access to justice. In particular:

- a. The definition of rape as set out in Section 3 of the Sexual Offences Act 2013 (which defines rape as occurring under coercive circumstances and is capable of being interpreted in line with international standards), is not being applied in investigations, prosecution, or adjudication as rape cases.
- b. Discriminatory evidentiary rules continue to be applied in case-related assessments and decision-making in all arms of the criminal justice sector, including the requirement of corroboration (see below).
- c. There are also biases in the current law which does not protect a category of women from rape. For example, the Sexual offences Act, 2013 does not recognise marital rape. Married women are therefore not protected under the law from sexual offences including rape committed against them by their spouses.
- d. Despite CEDAW recommendations,²⁰ the criminal justice sector does not use a gender sensitive/victim-centred approach in investigations and interviewing, protection of victims or trial procedures.²¹ For example,
 - i. Police services are not equipped with safe spaces for women to report crimes of sexual violence.
 - ii. Interviewers are not adequately trained on gender sensitive and victim-centred approaches.
 - iii. criminal justice sector actors do not conduct context-based investigations or assessments of the evidence in sexual violence cases. This is not in line with international standards²²;
 - iv. Delays in investigations of sexual violence cases result in loss of key evidence required by law'
 - v. the protective measures available under the Sexual Offences Act, 2013 are not used²³.

¹⁹ CEDAW/C/GMB/CO/4-5, 28 July 2015.

²⁰ CEDAW/C/GC/35, 26 July 2017, para. 28.

²¹ See, TRRC Final Report, Volume 1, Compendium A, p.86, which noted a lack of gender-sensitive approach to caring, investigating and prosecuting such crimes at various levels of the legal process from the police station to the court-room.

²² [The Hague Principles on Sexual Violence](#), p. 6; [International Protocol on the Documentation and Investigation of Sexual Violence in Conflict](#), p. 44; Istanbul Convention, Article 36; Explanatory Report to the Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence, para. 192.

²³ See, for example, WILL TRRC Shadow Report – Perspectives of Women, Girls and Marginalised Communities on SGBV, March 2022, p.4, describing how women who had been victims of sexual violence and had the courage to testify before the TRRC were harassed, ridiculed and blamed following their testimony, which discouraged others from speaking up due to fear of their identity being exposed.

- vi. Victims or their families are not fully protected by the State from media abuses²⁴.
- e. Despite criminalisation by numerous legal instruments in The Gambia, including the Women's (Amendment) Act 2015,²⁵ the Children's Act 2005²⁶ and the Criminal Code,²⁷ female genital mutilation remains prevalent in the Gambia.²⁸

D. Legislative framework and Access

14) The Committee asked the State party to indicate which laws have been repealed or are liable to be repealed as they discriminate against women and girls, in line with Gambia's obligations under the Women's Act, 2010.²⁹ The response of the State party has made only passing reference to the criminal justice reform bills before the National Assembly, which have been pending since 2020. A bill to reform the operative Evidence Act has also been proposed. Importantly, none of these bills address the discriminatory laws and practices entrenched in the criminal justice sectors when it comes to dealing with cases of sexual violence against women. Two of these require urgent attention, and are discussed below:

1. Section 180 Of the Evidence Act

15) The corroboration rule is abolished in the sexual offenses act of 2013; however, Sections 180(2)(a) and (c) of the Gambian Evidence Act **strictly** require corroboration of the testimony of victims of rape and other forms of sexual violence, as well as the testimony of victims of 'sexual misconduct' in matrimonial cases. This 'cautionary rule' is based on the out-dated, unfounded, biased and stereotyped belief that the evidence of these victims – who are overwhelmingly women - is inherently unreliable. This provision on the Evidence Act is premised on the case *George Mattok v Elie Massad* (1943) 9 WACA 8), where the Judicial Committee of the Privy Council emphasised the danger of acting on the uncorroborated statement or evidence of girls in particular in sexual offences.

²⁴ See for example, Alleged rape case of The State v Bob Keita versus the State 2022

²⁵ Gambian Women's (Amendment) Act 2015, sections 32A and 32B.

²⁶ Gambian Children's Act 2005 (as amended), section 12(3).

²⁷ Gambian Criminal Code, sections 210 and 212.

²⁸ Approximately 75% of women between the ages of 15 and 49 have experienced FGM. This figure goes as high as 96.7% in the rural regions of the country. See, Thomson Reuters Foundation, 28 Too Many, 'The Gambia: The Law and FGM', (September 2018) ('[The Gambia: The Law and FGM](#)'), p. 1. See also, UN Population Fund, '[Female Genital Mutilation Dashboard \(FGM\) – Gambia](#)'; Canada: Immigration and Refugee Board of Canada 'The Gambia: The practice of female genital mutilation (FGM); treatment of people and NGOs who oppose the practice; state protection provided to victims and to people who oppose the practice (2016-May 2018)', GMB106103.FE (18 May 2018) ('[The Gambia: The Practice of female genital mutilation \(FGM\)](#)'); A Kaplan Marcusán *et al.*, 'Manual for the Management and Prevention of Female Genital Mutilation/Cutting for Health Professional, The Gambia' (2010) ('[Manual for Management and Prevention of FGM](#)'), p. 11; See the findings of the HRC, '[Concluding observations on the Gambia in the absence of its second periodic report](#)', 30 August 2018, CCPR/C/GMB/CO/2, para. 13; [Concluding Observations of The Gambia](#), para. 20. See also, [The Gambia: The Law and FGM](#), p. 5; [The Gambia: The Practice of female genital mutilation \(FGM\)](#).

²⁹ Women's Act, 2020, Section 7(4)(d).

- 16) As noted above, it is widely recognised that sexual violence against women in The Gambia is prevalent. It is a crime that, in most cases, is committed in private, isolated locations, in the absence of third parties who might be willing or able to provide corroborative evidence. Without corroborating evidence, those few cases of rape or other forms of sexual violence which are reported in the country are highly unlikely to ever be prosecuted. Consequently, the perception that the criminal justice system lacks resolve to bring perpetrators to justice, coupled with the fear of stigma and shame, discourages victims from reporting cases of rape and other forms of gender violence.
- 17) Sections 180(2)(a) and 180(2)(c) of the Evidence Act are discriminatory. They constitute major barriers to access to justice for women in Gambia, who have been victims of sexual violence.
- 18) This violation is made more serious by the fact that the strict corroboration rule, as applied to women who have been victims of rape and other forms of sexual violence **was abolished under Section 7 of the Sexual Offences Act 2013, yet continues to be enforced in the courts.** For ease of reference, this provision is reproduced below:

Section 7 reads:

A court shall not treat the evidence of any complainant in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature with special caution because the accused is charged with any such offence.

- 19) The CEDAW Committee has recommended that state parties ensure that women's equality before the law is given effect by "...taking steps to abolish (among others) any practices that directly or indirectly discriminate against women especially in their access to justice, and to abolish discriminatory barriers to access to justice," including: "Corroboration rules that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men in order to establish an offence or to seek a remedy."³⁰ As such, not only should 180(2)(a) and 180(2)(c) of the Evidence Act be repealed, but any *practice* strictly requiring corroboration of the evidence of women who have been victims of rape or other forms of sexual violence should be discontinued, as it violates international human rights standards.³¹

³⁰ CEDAW/C/GC/33, 25 July 2015, para. 25(a)(iii).

³¹ See e.g., CEDAW/C/GC/33, 25 July 2015, para. 25(a)(iii); Human Rights Council Res. 23/25, A/HRC/RES/23/25, 2013, para. 8 (emphasis added). See also: UN Women Handbook for Legislation on Violence Against Women, 2012, pp. 41-42; [ICC Rules of Procedure and Evidence](#), Rule 63(4); [Ntaganda Trial Judgment](#), para. 75. See also, [ICC, Policy Paper on Sexual and Gender-Based Crimes 2014](#), para. 93.

- 20) Access to Justice The Committee asked the State party to indicate steps taken by the State party to ensure that women are not discriminated against by religious courts, and that they have effective access to justice and remedy. Most women, especially illiterate women, find it difficult to obtain legal representation, to fully access the courts. While there are provisions in the Legal Aid Act ³² to provide free legal services in both criminal and civil matters, the legal aid currently offered by the National Legal Aid Agency is limited to criminal matters. Women who cannot afford legal services, have to seek assistance from CSOs such as the Female Lawyers Association (FLAG), members of the Gambia Bar Association (GBA), Network for Gender Based Violence (NGBV). These non-profit organisations mostly depend on member subscriptions and donor funds. CSOs do not receive any form of subvention from the government to provide legal aid to the public, to enable them to supplement the efforts of the Government. Where legal aid cannot be provided by the CSOs, due to financial or human capacity limitations, women will have to represent themselves in Court.
- 21) Divorce, Single and widowed women also find it difficult to maintain their families to single-handedly maintain their families. Women in cohabitation with men also have no legal rights after the end of relationships. The Department of Social Welfare has been making efforts as a facilitator for payment of child maintenance from men. There is also the Children's (Amendment) Act 2015, which has made provision for the establishment of the National Child Support Council, to assist in the payment of child maintenance. However, this Council is not yet functional.

2. Protective measures for survivors of sexual violence

- 22) The survivor-centred principle of 'do no harm', which is core to the investigation, prosecution and adjudication of cases of sexual violence, requires actors in the criminal justice sector to take steps to effectively mitigate against the **practical and psychological** risks associated with participating in criminal proceedings. This includes risks to a victim's privacy, mental health and safety. In Gambia's close-knit, yet highly patriarchal society, this will invariably also negatively impact her family and community.
- 23) With the limited exception of certain protective measures set out in Section 15 of the Sexual Offences Act 2013 which, in practice, *are not applied*, existing Gambian criminal laws are silent on victim and witness protection. Women who have been victims of sexual violence and choose to speak out are often re-victimised and re-traumatised. They are publicly harassed, intimidated, and humiliated, frequently subject to online attacks and credible threats of harm.³³ This actively discourages reporting of rape and other forms of sexual violence.

³² Section 30(2) and (4) Legal Aid Act Cap 6:07, 2008

³³ See, for example, The Gambia's 'Me Too' year breaks silence on rape, The New Humanitarian, 5 February 2020, <https://www.thenewhumanitarian.org/news-feature/2020/02/05/Gambia-SGBV-gender-Jammeh-MeToo>.

- 24) The protection of women and girls who have survived sexual violence is a human rights obligation.³⁴ This has been recognised by CEDAW.³⁵ It is therefore a legal imperative for The Gambia. In fact, Section 6 of the Women’s Act 2010 **requires** the state to guarantee protection to every woman from “any form of physical, sexual, psychological harm, suffering of violence, whether occurring in public or private life” (among others).³⁶
- 25) While it is noted that Section 177 of the Criminal Procedure Bill will allow for Gambian Courts to order protective measures in certain sexual violence cases (trials of cases of rape, defilement, incest, and unnatural or indecent offences against the person), this Bill has not yet passed the National Assembly.
- 26) Given that the obligation to protect victims of sexual violence who wish to access justice is part of the Women’s Act, and *additionally* derives from the Gambia’s constitutional and broader human rights obligations, it is clear that the State, through its actors in the criminal justice sector, has the authority and obligation to develop and apply adequate protection measures in these cases **now**, and not wait any further for broader legislative reform.

E. Coercive circumstances under the Sexual Offences Act

- 27) The Gambian Sexual Offences Act 2013 defines rape as occurring when a ‘sexual act’ is committed ‘under coercive circumstances’.³⁷ This definition of rape presumes consent to be lacking where there is evidence of coercive circumstances. Proving the lack of consent of the victim is therefore not a material element of the crime. This definition is fully in line with international standards.³⁸ It recognises that most

³⁴ See, Sections 19 and 24 of the Gambian Constitution; Article 9 of the International Covenant on Civil and Political Rights; Human Rights Committee General Comment No. 35, Article 9, which noted that the right to security of the person requires state parties to: “...respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists, retaliation against witnesses, violence against women, including domestic violence, the hazing of conscripts in the armed forces, violence against children, violence against persons on the basis of their sexual orientation or gender identity, and violence against persons with disabilities.”; African Union, ‘Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa’ (2003) Section A(2)(d), which states that the essential elements of a fair hearing include respect for the inherent dignity of a human person, especially of women who participate in legal proceedings as complainants, witnesses, and victims of accused;

³⁵ CEDAW, ‘General recommendation on women’s access to justice’ (23 July 2015) CEDAW/C/GC/33, para. 18(f) and (g). CEDAW/C/GC/35, para. 40 : “Adopt and implement effective measures to protect and assist women complainants and witnesses of gender-based violence before, during and after legal proceedings including through: a) protecting their privacy and safety, in line with recommendation No. 33, including through gender-sensitive court procedures and measures, bearing in mind the victim/survivors’, witnesses’ and defendant’s due process rights; b) providing appropriate and accessible protection mechanisms to prevent further or potential violence, without the precondition of victims/survivors to initiate legal actions...”

³⁶ Women’s Act, Section 6(1).

³⁷ Gambian Sexual Offences Act 2013, section 3(1). Since indecent assault/indecently annoying or insulting are also non-consensual crimes (section 126 of the Gambian Criminal Code) a best practice and rights-based approach would suggest that, in the absence of a definition of consent or coercive circumstances contained in the Gambian Criminal Code, prosecutors utilise the broad interpretation of coercive circumstances under the Gambian Sexual Offences Act 2013, in line with international standards.

³⁸ Rome Statute, Article 7(1)(g), 8(2)(b)(xxii), 82(e)(iv). [CEDAW General Recommendation 35](#), para. 33; [ACHPR Guidelines on Combating Sexual Violence](#), p. 14; [Istanbul Convention](#), article 36; [Istanbul Convention Explanatory Report](#), articles 189, 191-194; [Karen Tayag Vertido v. the Philippines](#), paras 8.7, 8.9.b(ii)(b.); [R.P.B. v. the Philippines](#), para. 8.10.

incidents of sexual violence do not involve physical force and do not necessarily result in physical injury or leave any visible traces on the body of a victim. The Gambian criminal justice sector, however, does not apply this definition.

- 28) International criminal, customary and human rights law state that free, voluntary and genuine consent to sexual contact cannot be given when it is imposed by actual or threatened force; coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power); by taking advantage of a coercive environment; or when committed against a person incapable of giving genuine consent.³⁹ The presence of at least one of these coercive circumstances is sufficient to establish the non-consensual nature of the sexual act.⁴⁰ Consequently, **proving a lack of consent or demonstrating the non-consent of the victim (i.e., by their words or deeds) is not required.**⁴¹ A victim is **not** required to physically resist or fight back to demonstrate lack of consent or the presence of coercive circumstances.⁴²
- 29) Applying Section 3(2) of the Sexual Offences Act would enable investigators, prosecutors and judges to take a flexible, best practice approach in dealing with rape cases, and to consider the full range of behaviours and environments that, on a case-by-case basis, may provide evidence of ‘coercive circumstances. Adopting a broad interpretation of coercive circumstances would bring Gambia into compliance with its international commitments and obligations by fully capturing the spectrum of harm suffered by victims of sexual violence; enable it to build better cases; and help to promote and protect the rights of women in The Gambia to live free from violence.⁴³

F. Women’s human rights defenders and civil society

- 30) In 2015, the Committee recommended that The Gambia creates an enabling environment for the participation in public life of women human rights defenders, including those working on sexual and reproductive health and rights, in accordance with international standards, and protect them from harassment, intimidation and violence.⁴⁴ Earlier this year, they asked the State party to indicate measures taken to protect women human rights defenders from harassment, attacks, threats and

³⁹ [ICC Elements of Crimes](#), articles 7(2)(g), 8(2)(b)(xxii) and 8(2)(e)(iv); [Ntaganda Trial Judgment](#), para. 934; [Bemba Trial Judgement](#), paras 105-106; [Katanga Trial Judgement](#), para. 965; [Prosecutor v. Katanga & Chui](#), ICC-01/04-01/07, Decision on the confirmation of charges, 30 September 2008 ([‘Katanga & Chui Decision on the Confirmation of Charges’](#)), para. 440. See also, [M.C. v. Bulgaria](#), para. 181; [ICC Rules of Procedure and Evidence](#), rule 70.

⁴⁰ [ICC Elements of Crimes](#), articles 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(iv); [Ntaganda Trial Judgment](#), para. 934; [Bemba Trial Judgment](#), paras 102, 105-106; [Katanga Trial Judgment](#), para. 965; [ICC Rules of Procedure and Evidence](#), rule 70. See also, [Istanbul Convention Explanatory Report](#), para. 191; [M.C. v. Bulgaria](#), para. 106; [E.B. v. Romania](#), para. 56; [Karen Tayag Vertido v. the Philippines](#), para. 8.9.b(ii)(b); [R.P.B. v. the Philippines](#), para. 8.10.

⁴¹ [Ntaganda Trial Judgment](#), para. 934; [Bemba Trial Judgment](#), para. 106; [ICC Rules of Procedure and Evidence](#), rule 70.

⁴² [ICC Rules of Procedure and Evidence](#), rule 70; [Prosecutor v. Gacumbitsi](#), ICTR-2001-64-A, Judgment, 17 June 2004 ([‘Gacumbitsi Trial Judgment’](#)), para. 325; [Prosecutor v. Kunarac et al.](#), IT-96-23-T& IT-96-23/1-T, Judgment, 22 February 2001 ([‘Kunarac et al. Trial Judgment’](#)), paras 644-646. See also, [Karen Tayag Vertido v. the Philippines](#), paras 8.7, 8.9.b(ii)(b); [R.P.B. v. the Philippines](#), para. 8.10; [Istanbul Convention](#), article 36; [Istanbul Convention Explanatory Report](#), para. 191; [M.C. v. Bulgaria](#), para. 165; [E.B. v. Romania](#), para. 56.

⁴³ See e.g., [Istanbul Convention](#), article 4; [M.C. v. Bulgaria](#), para. 166.

⁴⁴ CEDAW/C/GMB/CO/4-5, 28 July 2015.

intimidation, in particular those advocating sexual and reproductive health and rights, ensure their protection from violence and intimidation, and investigate, prosecute and sanction all abuses against them.

- 31) Crimes against women, human rights defenders and civil society are forms of gender-based violence.⁴⁵ The authors of this submission wish to point out that at present, numerous women's human rights defenders and civil society representatives from a wide range of backgrounds, some of whom have cooperated in preparing this submission, are subject to serious online and other threats, intimidation and harassment for their commitment to women's human rights. This too is a form of gender-based violence!⁴⁶ The State, however, has taken no measures whatsoever to ensure protection from these threats, nor have they taken steps to investigate the threatening behaviour.
- 32) This failure to act has a chilling effect on women's human rights in The Gambia, emboldens the perpetrators and ensures that a climate of impunity for violence against women remains embedded in Gambian society. In fact, the CEDAW Committee has pointed out that "The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations."⁴⁷

G. Female genital mutilation (FGM)

- 33) FGM is a form of violence against women,⁴⁸ and a discriminatory practice prohibited by international human rights law.⁴⁹ FGM is inherently coercive. The consent of the victim can therefore not be a defence to the crime of FGM.⁵⁰ Besides, victims of FGM are almost always minors, from whom consent cannot be sought. Anyone who directly

⁴⁵ CEDAW/C/GC/35, para. 14.

⁴⁶ CEDAW/C/GC/35, 26 July 2017, para. 20.

⁴⁷ CEDAW/C/GC/35, 26 July 2017, para. 24(b).

⁴⁸ UN Economic and Social Council, [Ninth report and final report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, prepared by Ms. Halima Embarek Warzazi](#), (11 July 2005) E/CN.4/Sub.2/2005/36, para. 35.

⁴⁹ [Declaration on the Elimination of Violence against Women](#), article 5; [Convention on the Rights of the Child](#) (adopted 20 November 1989, entered into force 2 September 1990 in accordance with article 49(1)) 1577 UNTS, article 24(3); [Maputo Protocol](#), article 5; [African Charter on the Rights and Welfare of the Child](#), article 21.1; [Istanbul Convention](#), article 38; [Istanbul Convention Explanatory Report](#), paras 198-202; [WHO World Health Assembly Resolution 61.16](#); UNGA, 'Intensifying global efforts for the elimination of Female Genital mutilation' (20 December 2012) [Resolution A/RES/67/146](#); CEDAW-CRC, 'Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices', (14 November 2014) [CEDAW/C/GC/31-CRC/C/GC/18](#); CEDAW, 'General Recommendation No. 24: article 12 of the Convention (women and health)' (1999) A/5438/Rev.1 ('[General Recommendation No. 24](#)'), paras 12, 15.

⁵⁰ The Gambian Women's (Amendment) Act 2015 does not recognise consent as a defence, in line with international best practice: UN, [Good Practices in Legislation on 'Harmful Practices' against Women](#), p. 16.

performs ~~the~~ FGM,⁵¹ or requests, incites, or promotes it,⁵² can be prosecuted under the laws of The Gambia. However, since the State banned FGM in 2015⁵³, only a single case of FGM has been brought before the courts. Deeply rooted in ethnic culture and tradition, the practice remains widespread.

- 34) While the legal ban is a great step on the part of the State to fulfil its obligations under international human rights law, it becomes ineffective when it has lacuna which impacts its full implementation. A major setback of the Women's (Amendment) Act 2015 is its lack of extra territorial effect. The law does not ban cross border cutting which gives practicing communities the opportunity to subject girls to FGM outside the jurisdiction of The Gambia with no legal consequences. In February 2021, more than 20 young women were transported to a village a few kilometers from The Gambian border and were cut. Although the issue was reported to the police, no action could be taken against the perpetrators because it was outside the jurisdiction of The Gambia.
- 35) While the legal ban is sufficient, its lack of enforcement may be linked to a concern that any aggressive move to investigate and prosecute these offences will drive this practice underground. The law, however, must be implemented, but in line with the activities mentioned in Paragraph 6, above. The State party needs to take further action to eliminate FGM in a holistic, coordinated, multi-sector way. It can be done!
- 36) Civil society in the Gambia has for years been dedicated to a range of education, advocacy, and empowerment programmes aimed at achieving a reduction in FGM and indeed its ultimate eradication. They work to mobilise policymakers, influencers, communities, and young people to speak up and act in unison against the practice. The time for the State to lend their sustained, effective support to these initiatives, and actively engage in these initiatives (as set out in Paragraph 9, above) is upon us. It will be an important indication of the government's commitment to protecting girls and women in Gambian society.

IV. Recommendations

- 37) The State party should end stereotypes in all sectors of Gambia's criminal justice system and improve access to justice for women who have been victims of rape, FGM and other forms of sexual violence by:
- a. Making a public commitment to action and acting on that commitment;

⁵¹ Gambian Women's (Amendment) Act 2015, section 32A (2). While FGM is traditionally carried out by older community women, trends towards the medicalisation of the practice have recently been reported. Although not specifically criminalised in the Gambian Women's (Amendment) Act 2015, the provision is broad enough to apply universally to anyone carrying out female circumcision including 'traditional circumcisers' and medical professionals. See also, [The Gambia: The Law and FGM](#), p. 4; [Good Practices in Legislation on 'Harmful Practices' against Women](#), p. 16.

⁵² Gambian Women's (Amendment) Act 2015, section 32B (1).

⁵³ Women's (Amendment) Bill 2015, adding Sections 32(a) and 32(b) to the Women's Act. See also TRRC Final Report, Volume 1, Compendium A, p.82. ([https://www.28toomany.org/media/uploads/Law%20Reports/gambia_law_report_v1_\(september_2018\).pdf](https://www.28toomany.org/media/uploads/Law%20Reports/gambia_law_report_v1_(september_2018).pdf))

- b. Partnering with and supporting local civil society in all aspects of education and community engagement programmes and initiatives;
- c. Providing subventions to CSO's to complement government activities.
- d. Establish safe spaces for women to report violations⁵⁴;
- e. In line with CEDAW General Recommendation 33, paragraph 29(f), *strengthen* multi-sector capacity-building programmes for judges, prosecutors, lawyers and law enforcement officials on Gambia's domestic and international human rights obligations and how they apply to criminal law and procedures.⁵⁵ With respect to the Ministry of Justice, this should include recruiting a Director and Deputy Director of Public Prosecutions.⁵⁶
- f. In line with CEDAW General Recommendation 33, paragraphs 16(d), and 20(a), implement and empower an independent, *effective* oversight mechanism to monitor the *effective* implementation of the Women's Act.

38) The State should ensure the prompt and **effective** implementation of their obligations in the Women's Act by, at a bare minimum and among other measures,

- a. repealing Sections 180(2)(a) and 180(2)(c) of the Evidence Act;
- b. ensuring within *all* arms of the criminal justice sector that that any practices, procedures and decision-making which *strictly* require corroboration of the evidence of complainants in sexual violence cases are ended;
- c. immediately engaging stakeholders from all arms of the criminal justice sector and appropriate international donors to develop and implement a dedicated, effective protective measures programme for women who have survived sexual violence and wish to access justice;⁵⁷
- d. ensuring all arms of the criminal justice sector implement the definition of rape set out in Section 3 of the Sexual Offences Act and ensure it is interpreted in line with international standards;
- e. in line with their international and regional human rights obligations, take steps to ensure that women human rights defenders are able to gain access to justice and receive protection from harassment from threats, retaliation and violence,
 - i. by reviewing or adopting legislation to combat digital violence, and expanding the definition of gender-based violence in local laws to

⁵⁴ TRRC Final Report, Volume 1, Compendium A, pp.85, 88-89.

⁵⁵ TRRC Final Report, Volume 1, Compendium A, p. 89; Government White Paper on the Report of the Truth, Reconciliation and Reparations Commission, 25 May 2022, para. 332.

⁵⁶ CSO White Paper on the TRRC Report and Recommendations, April 2022, p. 14.

⁵⁷ See, TRRC Final Report, Volume 1, Compendium A, p. 88.

include digital violence against women, including digital harassment, digital stalking, and sexist hate-speech (among others)⁵⁸;

- ii. including through reference in their public messaging which recognises the harmful nature of this online campaign to Gambian society as a whole and for the future, and
 - iii. indicating that those who post and share threatening and/or harassing messages online will be liable for investigation and prosecution under the Gambia Criminal Code, and by
 - iv. thoroughly and effectively investigates the allegations underlying this complaint in a diligent and timely manner, and
 - v. where supported by the evidence, prosecute those cases, and
 - vi. The National Child Support Council should be functional to support widowed, divorced and single women in child maintenance
 - vii. Government needs to make drastic provisions in the laws to allow women in the Rural areas to individually or collectively own land.
- f. Develop and deliver an educational programme for local media houses aimed at helping them understand women's human rights, discriminatory biases, and stereotypes common in The Gambia, and helping them recognise harmful reporting practices which encourage those stereotypes and put women at risk of violence. Courts should develop guidelines for appropriate coverage of cases of gender-based violence against women.⁵⁹ Recommendations:
- g. Reintroduce the Women's Bill in Parliament and put measures in place for affirmative actions through which to achieve women's equal participation and full representation in Parliament.
- h. Protection mechanisms must be extended to include acts of marital rape and other intimate partner violence.

⁵⁸ 522 Resolution on the Protection of Women Against Digital Violence in Africa – ACHPR/Res. 522 (LXXII) 2022.

⁵⁹ CEDAW/C/GC/33, 3 August 2015, paras. 30(d), 35.