



ADVISORY NOTE **SEXUAL HARASSMENT**

2020

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Foreword

The National Human Rights Commission (NHRC) was created by an Act of Parliament in 2017 to promote and protect human rights in the Gambia. Specifically, Section 12 (e) (ii) (iii) (v) empowers the NHRC to undertake studies on all matters concerning human rights, assist the Government in formulating appropriate policies to guarantee human rights, publish guidelines, manuals and other materials to explain the obligations of public officials in the protection of human rights and adopt best practice guidelines and policies on human rights.

This Advisory Note on Sexual Harassment (The Note) attempts to review the current laws and policies relevant to women and children's rights, and how they adequately or otherwise address the issue of sexual harassment in The Gambia, including their enforcement and implementation.

It also intends to make recommendations to the State to develop a national roadmap for implementation of anti-sexual harassment laws and policies in all places by drawing from regional and international benchmarks. The recommendations touch on the need to ratify the ILO Convention No. 190 on Violence and Sexual Harassment adopted at the ILO General Assembly in June 2019, provision of psychosocial support to victims and law reforms.

Sexual harassment, particularly against women poses a serious challenge to victims. It can affect the victim's self-esteem and dignity. Although sexual harassment often takes the form of men harassing women, it can also happen to men, women, boys and girls in different contexts. At present, there is no law that requires employers to adopt anti-sexual harassment policies in The Gambia. Therefore, employers largely rely on ordinary internal disciplinary proceedings in handling sexual harassment at workplaces which are not ideal lasting solution to sexual harassment as they usually do not focus on the victims.

In light of this gap, this note offers an opportunity for reflection on the need to collectively combat sexual harassment at workplaces, schools, universities and homes. Therefore, the NHRC counts on the support of the Government and relevant institutions to initiate a national dialogue on sexual harassment and to promote the adoption of policies that address sexual harassment in the workplace.

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Chairperson

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Introduction

1. Sexual harassment is a violation of human rights and a prohibited form of sexual violence. Its major consequence is that it compromises the dignity, liberty, security of person and freedom from discrimination of the victim. Studies have recently documented that sexual harassment is a major problem particularly for women all over the world and it affects women's mental and physical health as well as their social and economic statuses.¹
2. Sexual harassment is defined as unwanted, non-consensual sexual behavior, where one party imposes sexual attention on another unwilling party.² It includes physical, verbal and non-verbal harassment. All sexual advances of any kind that take place without consent, including cases where either party is bribed or coerced into engaging in sexual behavior, is deemed as sexual harassment. While sexual harassment against women and children remains pervasive at home, workplaces and schools, the phenomenon is tacitly tolerated thereby encouraging impunity. The incidents of sexual harassment remain equally underreported due to stigmatization and victim shaming.
3. Even though sexual harassment is prevalent in most countries and is regarded as a human rights violation, very few of them have comprehensive laws prohibiting sexual harassment in all places. National legal and policy frameworks are not only weak in defining and addressing sexual harassment but are also deficient in eliminating the phenomenon through the criminal justice system.

¹ WHO Report 'Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence' (2013).

²Section 2 of the Domestic Violence Act 2013.

The available policies, where they exist, suffer from major limitations in terms of their scope and enforcement.

4. This Advisory Note, therefore, attempts to review the current laws and policies (relevant to women and children's rights) and how they adequately or otherwise address the issue of sexual harassment in the Gambia, including their enforcement and implementation. It intends to advise the State to develop a national roadmap for implementation of anti-sexual harassment laws and policies. This review draws on international, and regional benchmarks in combating sexual harassment.

International Human Rights Law on Sexual Harassment

5. The obligations of States under international law to protect women and girls from all forms of violence and sexual harassment is expressed in various human rights treaties, declarations, decisions and resolutions at the global and regional levels.
6. The United Nations and regional human rights treaty systems have recognized sexual harassment as a form of discrimination and violence against women and girls in series of instruments. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1981 by the UN General Assembly requires States parties to take appropriate measures to eliminate discrimination against women by ensuring equality under the law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life. (Arts. 7-16).
7. Equally articles 19-36 of the UN Convention on the Rights of the Child protects children against sexual abuse particularly

in the context of educational settings. Similarly taking into account the vulnerability of children in the context of Africa, article 16 of the African Charter on the Rights and Welfare of the Child affords similar protection to children by requiring States to establish protective and effective measures for monitoring and reporting of child sexual abuse.

8. The General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women, 1993, defines violence against women to include sexual harassment. This Resolution encourages the development of penal, civil or other administrative sanctions to eliminate violence against women (Art. 4(d-f)). Equally, paragraph 178 of the Beijing Platform for Action, 1995, also recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on governments, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies in work places.
9. The International Labor Organization (ILO) has also confirmed in numerous legal instruments that sexual harassment is another form of sex discrimination.³ The ILO Convention No. 190, recently adopted at the International Labor Conference in 2019, underscores that harassment in the work place constitutes a human rights abuse, and that violence and harassment is a threat to equal opportunities, unacceptable and incompatible with decent work. The Convention also confirms that sexual harassment affects the quality of public and private services, and may prevent persons, particularly women, from accessing, and remaining and advancing in the labor market. States parties are required under article 4 of the Convention to adopt, in accordance with national law and in consultation with representative employers' and

³See *Discrimination (Employment and Occupation) Convention (No. 111) of 1958* and the *ILO's Indigenous and Tribal Peoples Convention (No. 169)*.

workers' organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of sexual harassment at workplaces.

10. At the regional level the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) obliges States Parties to take appropriate measures to eliminate all forms of discrimination against women, guarantee equal opportunity and access in the sphere of education and protect from all forms of abuse (including sexual harassment). The Protocol also requires States Parties to specifically combat and punish sexual harassment in educational institutions and the workplace. (See: Articles 12-13). In addition to this Protocol, the African Commission on Human and Peoples' Rights adopted the Guidelines on Combating Sexual Violence and its Consequences in Africa (the Guidelines) in 2017 to, among other things, guide and support member states of the African Union in effectively implementing their commitments and obligations to combat sexual violence and its consequences.
11. The Guidelines provides an elaborate definition of sexual violence and strategies to eliminate the phenomena. It requires states to conduct campaigns to raise awareness, by paying particular attention to the most vulnerable populations, about the causes of sexual violence, the different forms it takes and consequences. These campaigns must address the root causes of sexual violence, combat gender-based stereotypes, raise awareness of the unacceptable nature of this violence, and help people to understand that it represents a grave violation of the rights of victims, especially those of women and girls. Significantly, it also requires that States ensure protection of victims of sexual abuse or harassment through creation of reporting mechanisms with psychosocial support

and access to medical and reproductive health.

12. The UN Guiding Principles on Business and Human Rights are a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. Pillar 1 urges states to strengthen legal mechanisms to protect all people from violence and harassment, including in the world of work.
13. Under Pillar 2 of the Principles, businesses have a duty to respect human rights by for example ensuring a zero-tolerance policy towards all forms of violence at work, including verbal and/or physical abuse and sexual harassment. Businesses can conduct gender-specific due diligence based on the nature of the investment or activity, the sector, national/local context, working conditions and women's human rights.
14. In regard to Pillar 3 which concerns access to remedies, States are encouraged to work with women and other marginalised groups to establish effective and accessible grievance mechanism that would allow women to report sexual violence and harassment in the workplace. States should remove barriers for women to access effective remedy whether through judicial or non-judicial means. In this regard, companies should be required to eliminate the practice of including forced arbitration in employment contracts for sexual harassment claims.

Domestic Prohibition of Sexual Harassment in the Gambia

15. Even though the Gambia did not domesticate its international human rights obligations as a whole into Gambian law, their various parts have been enacted into statutory law.

For instance, in the implementation of its obligation under international law, the Gambia has domesticated both the provisions of the Maputo Protocol and the CEDAW into the Women's Act in 2010. The Women's Act remains the primary legislative framework for the protection of women's rights in The Gambia. Section 6 of the Women's Act provides:

(1) Every woman shall be protected against any form of physical, sexual, psychological or economic harm, suffering, or violence whether occurring in public or private life. (2) Any form of violence against women is hereby prohibited.

Moreover, section 26 (2)(c) of the Women's Act also protects the girl-child from sexual harassment in schools and other educational institution.

16. Even though the provisions of the Women's Act are enforceable in the same manner as is set out in Section 37 of the 1997 Constitution of the Republic of The Gambia, there is no record of attempts to enforce the provisions of the Women's Act in the courts in relation to sexual harassment. Equally, although the Women's Act is a progressive legislation in terms of safeguarding the rights and welfare of women, it is however not suited to combat sexual harassment due to its visible lack of mechanisms such as appropriate psychosocial support for victims of sexual abuse and the fact that it does not explicitly mention or address sexual harassment in the work place and other settings, and also subsumes sexual harassment as part of violence against women.
17. In addition to the Women's Act, the Gambia also enacted various legislation that draw upon its international obligations and constitutional provisions for the protection and preservation of the rights of individuals, including women. These include: The Children's Act 2005; The Refugees Act

2008; Trafficking in Persons Act 2007; The Sexual Offences Act 2013; Domestic Violence Act 2013; Tourism Offences Act 2003; and The Labour Act 2007.

18. The Sexual Offences Act 2013 provides protection against sexual crimes against all persons and, especially, sexual offences committed against vulnerable groups, including women, children and people with disabilities. There is no express provision prohibiting sexual harassment under the Sexual Offences Act.
19. The Domestic Violence Act 2013 criminalizes certain acts like sexual harassment, domestic violence and economic abuse against women. This Act defines sexual harassment as a sexual contact, excluding between husband and wife, without the consent of the person with whom the contact is made. The offence can be in the form of repeated loitering around the resident of the victim, repeated telephone calls and delivery of unwanted messages.⁵
20. Beyond criminal sanctions in the Domestic Violence Act, there are other remedies for victims of sexual harassment or Sexual and Gender based Violence (SGBV) such as occupation and protection orders.⁶ These orders are geared towards protecting complainants from further or imminent abuse. Section 16(1) (h) of the Act, read in tandem with S.15(c), protects house helps from sexual harassment. This is important because even the Labour Act 2007 does not accord domestic workers any help in terms of labour rights and sexual abuse.
21. Section 4 of the Domestic Violence Act also establishes an Advisory Committee to monitor and make recommendations to the Government on domestic and gender-based violence. The Committee is mandated to conduct research on international

⁴Section 2 of the Domestic Violence Act 2013.

⁵Section 2 of the Domestic Violence Act, 2013.

⁶Part VI of the Domestic Violence Act, 2013.

and regional standards and developments for dealing with matters of gender-based violence. In addition to the Advisory Committee, Part III of the Act establishes a fund for:

- a) Maintaining basic material wellbeing of victims of domestic violence;
- b) Supporting victim families and/or their supporters;
- c) Rehabilitating and reintegration of the victim;
- d) Constructing shelters for victims in all regions; and
- e) Sensitization and advocacy against SGBV.

22. Although the provision of these mechanisms are commendable, they have not been effective over the years in ensuring protection for victims of sexual violence or harassment.

23. Moreover, section 126 (3) of the Criminal Code of the Gambia can be interpreted to prohibit sexual harassment. It provides that

“A person who, intending to insult the modesty of a woman, utters any noise, makes any sound or gesture, or exhibits any object, intending that the word or sound shall be heard, or that the gesture or object shall be seen, by the woman, or intrudes upon the privacy of the woman commits a misdemeanour, and is liable on conviction to imprisonment for a term of one year.”

Despite the serious nature sexual harassment, it is classified as a minor offence (misdemeanour).

24. The Policy Guidelines and Regulations on Sexual Misconduct and Harassment of Ministry of Basic and Secondary Education (MoBSE) 2004, which is not being implemented or popularized, creates a mechanism and procedures for the protection of victims of sexual harassment in educational institutions. The core objective of the policy is to institute procedures and

mechanisms to eliminate sexual harassment and misconduct from within the education system and to curb the incidence of prostitution, child molestation and abuse in all educational settings. To that end, the Policy established Committees at various levels to handle complaints of sexual harassment and misconduct.

Limitations in the Laws

25. Sexual harassment reinforces inequality between men and women. The legal protection afforded to women against sexual harassment is important to ensure effective redress and support to victims and reduce impunity. However, a review of the laws in the Gambia highlights existing gaps in relation to sexual harassment.
26. The Domestic Violence Act is the only law in the Gambia that defines sexual harassment. However, the application of this Act is limited to the context of existing domestic relationships of husband and wife, parent and child or guardian and house helps.⁷ Therefore, the act of sexual harassment remains largely undefined beyond the domestic sphere leaving women and young girls in the work place (public and private sectors), educational establishments or working on the streets vulnerable to sexual harassment or without any form of protection or redress.
27. In addition to inadequate laws, the implementation and enforcement of available legislation on sexual violence remains a major challenge due to a number of factors including the “culture of silence”, toxic masculinity, lack of accountability, absence of data, codes of conduct, guidelines on how to report incidences of sexual harassment and inadequate psychosocial support to victims.

⁷Section 15 and 16 of the Domestic Violence Act 2013.

Conclusion

28. This Advisory Note is an attempt to review the relevant laws on sexual harassment in the Gambia in order to appreciate how they address the issue of sexual harassment, including their enforcement and implementation, and advise the State accordingly.
29. The penal laws of the Gambia have effectively prohibited rape, sexual assault and domestic violence against women. While anecdotal evidence shows that sexual harassment occurs in homes, schools, workplaces and communities, it is significantly underreported and prosecuted partly due to inadequate laws.
30. The fight against sexual harassment requires a comprehensive approach that centralizes the material and psychosocial well-being of the victim. Therefore, criminal sanction alone may not be of any significance to the victim without psychosocial support.
31. Moreover, there is absence of a law that requires employers to adopt anti-sexual harassment policies at workplace. Even though ordinary internal disciplinary proceedings into sexual harassment at workplaces may not be an ideal lasting solution to sexual harassment, its effective implementation can create a measure of accountability for victims.

In light of this review the NHRC should:

- a) Establish a taskforce to follow up the implementation of the recommendations in this Advisory Note;
- b) Create dialogue between relevant sectorial State institutions,

CSOs and the private sector for the implementation of the recommendations;

- c) Conduct further studies on the patterns and consequences of sexual harassment in selected sectors in the country;
- d) Organize training for CSOs and private sector on sexual harassment and prevention;
- e) Organize training for law enforcement agencies in the investigation of sexual harassment;
- f) Train school authorities and children on the different forms of sexual harassment, reporting procedures and the relevant legal framework; and
- g) Initiate the drafting of a national policy on sexual harassment;

Next Step for NHRC

- a) Submit this Advisory Note to relevant State institutions, Trade Unions, CSOs and GCCI;
- b) Organize a national forum on sexual harassment in the Gambia;
- c) Initiate research on sexual harassment in different sectors of the society;
- d) Initiate the development of a sexual harassment policy at workplaces in the Gambia;
- e) Create a task force to follow up on the recommendations; of any significance to the victim without psychosocial support; and

- f) Initiate collaboration and partnership with Dullah Omar Institute and UNDP to develop a policy on sexual harassment.

Recommendations to the State

i) Ratification

- a) Ratify ILO Convention No. 190 on Violence and Sexual Harassment adopted at the ILO General Assembly in June 2019 (and popularize as well);

ii) Sensitization

- a) In light of the recent campaigns by young people against sexual harassment, the State should seize the momentum to lead a national conversation on the need to ensure the effective prohibition of sexual harassment;
- b) Engage in sensitization and awareness creation on issues of sexual harassment of women and children directed at communities in selected vulnerable areas.

iii) Legal and Policy Development and Implementation

- a) Enact a comprehensive sexual harassment Act, effectively implemented and enforced
- b) Formulate and effectively implement sexual harassment policies in both the public and private sectors;
- c) Encourage the Ministry of Basic and Secondary Education to effectively popularize, enforce and implement its 'Policy Guidelines And Regulations on Sexual Misconduct and Harassment in Gambian Educational Institutions (2004);

- d) Encourage the private sector and worker's unions to formulate, adopt and implement anti-Sexual Harassment Codes of Conduct

iv) Access to Justice

- a) Effectively operationalize the victim support fund as stipulated in the Domestic Violence Act 2013; and
- b) Ensure the effective functioning of the Advisory Committee stipulated in the Domestic Violence Act 2013;
- c) Ensure effective access to justice including effective and timeous reparation for victims;

v) Research and Study

- a) Undertake research to determine the scope, magnitude, trends, pattern, prevalence and impact of sexual harassment in The Gambia;

vi) Psychosocial support

- a) Ensure adequate psychosocial support to victims;
- b) Ensure the effective administration of interim orders in sexual harassment cases;
- c) Establish emergency help lines for victims to report cases of sexual harassment;
- d) Facilitate access to medical care and support to victims.
- e) Create and maintain counselling centers for victims;

vii) Capacity building

- a) Attach specially trained social workers to major police stations to offer support to victims;
- b) Conduct capacity building for law enforcement and employers on the laws prohibiting sexual harassment;





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