

# **SEXUAL OFFENCES ACT, 2013**

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**Sexual Offences Act, 2013**



**THE GAMBIA  
NO. 15 OF 2013  
Assented to by The President,**

**this 30<sup>th</sup> day of Dec, 2013**

**YAHYA A. J. J. JAMMEH  
President**



**AN ACT** to amend the law and procedure relating to the trial of rape and other sexual offences and for connected matters

[ ]

**ENACTED** by the President and National Assembly.

**1. Short title, commencement and application**

(1) This Act may be cited as the Sexual Offences Act, 2013, and shall come into force on such date as the Minister may appoint by order published in the gazette.

(2) The provisions of this Act shall apply to the trial of rape and other sexual offences under this Act and any other enactment.

## 2. Interpretation

In this act, unless the context otherwise requires -

“Complainant” in relation to an offence of a sexual or indecent nature, means a person towards or in connection with whom any such offence is alleged to have been committed, irrespective of whether or not that person has actually laid a complaint or gives evidence in the criminal proceedings in question,

“Constitution” means the 1997 Constitution of The Gambia

“Court” includes High Court, Magistrate Court and Children's Court;

“Sexual Act” means-

- (a) the insertion (to even the slightest degree) of the penis of a person into the vagina or anus or mouth of another person,
- (b) the insertion of any other part of the body of an animal or any object into the vagina or anus of another person, except where such insertion is consistent with sound medical practices, carried out for proper medical purposes, or
- (c) cunnilingus or any form of genital stimulation, and

“Vagina” includes any part of the female genital organ.

(2) Any reference in any other law to rape shall, subject to this Act, be construed as including a reference to rape under this Act.

### 3. Rape

- (1) A person who intentionally, under coercive circumstances-
- (a) engages in a sexual act with another person; or
  - (b) causes another person to engage in a sexual act with the perpetrator or with a third person,

commits the offences of rape

(2) for the purposes of sub-section (1) “coercive circumstances” includes—

- (a) the application of physical force to the complainant or to a person other than the complainant;
- (b) threats (whether verbally or through conduct) of the application of physical force to the complainant or to a person other than the complainant;
- (c) threats (whether verbally or through conduct) to cause harm (other than bodily harm) to the complainant or to a person other than the complainant, under circumstances where it is not reasonable for the complainant to disregard the threats,
- (d) circumstances where the complainant is under the age of sixteen years.
- (e) circumstances where the complainant is unlawfully detained;
- (f) circumstances where the complainant is affected by –
  - (I) Physical disability or helplessness, mental incapacity or other inability (whether permanent or temporary).

- (ii) Intoxicating liquor or any drug or other substance which mentally incapacitates the complainant, or
  - (iii) Sleep, to such an extent that the complainant is rendered incapable of understanding the nature of the sexual act or is deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;
- (g) circumstances where the complainant submits to or commits the sexual act by reason of having been induced (whether verbally or through conduct) by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed, is some other person;
- (h) circumstances where as a result of the fraudulent misrepresentation of some fact by, or any fraudulent conduct on the part of, the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator, the complainant is unaware that a sexual act is being committed with him or her;
- (l) circumstances where the presence of more than one person is used to intimidate the complainant.

(3) For the purposes of this section, rape shall not apply to married couples.

#### **4 Penalties.**

(1) A person who is convicted of rape under this act, subject to sub-section (2), (3) and (4), is liable –

- (a) In case of the first conviction-
  - (i) where the rape is committed under circumstances other the circumstances contemplated in sub-paragraphs (ii) and (iii), to imprisonment for not less than ten years;
  - (ii) Where the rape is committed under any of the coercive circumstances referred to in paragraphs (a), (b) or (e) of section 3(2), to imprisonment for not less than fifteen years;

(iii) Where –

- (aa) the complainant has suffered grievous bodily or mental harm as a result of the rape,
- (bb) the complainant is under the age of thirteen years or is by reason of age exceptionally vulnerable.
- (cc) the complainant is under the age of eighteen years and the perpetrator is the complainant's parent, guardian or caretaker or is otherwise in a position of trust or authority over the complainant,
- (dd) the convicted person is infected with any serious sexually transmitted disease and at the time of the commission of the rape knows that he or she is so infected,
- (ee) the convicted person uses a firearm or any other weapon for the purpose of or in connection with the commission of the rape,

to mandatory imprisonment for life;

- (b) In case of a second or subsequent conviction where the rape is committed under circumstances described in sub-section (1), to imprisonment for a period of not less than twenty years.

(2) If the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the applicable sentence prescribed in sub-section (1), it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.

(3) The minimum sentences prescribed in sub-section (1) shall not be applicable in respect of a convicted person who was under the age of eighteen years at the time of the commission of the rape and the court may such circumstances, impose an appropriate sentence.

**(5) Defilement of girl between the ages of sixteen and eighteen years**

(1) A person who unlawfully has carnal knowledge of a girl between the ages of sixteen and eighteen commits an offence

and is liable on conviction to imprisonment not exceeding seven years.

(2) It is a sufficient defence to a charge under this section if it is proved before the court that the accused person had reasonable cause to believe and did in fact believe that the girl was of or above the age of eighteen.

## **6. Incapability of boy under fourteen years**

(1) If in any legal proceedings, the question arises as to whether a male person has had sexual intercourse or has performed –

- (a) an act of a sexual nature with another person or is the father of any child, such question shall be determined as a question of fact; and
- (b) no presumption or rule of law to the effect that a boy under the age of fourteen years is incapable of sexual intercourse shall be applicable.

(2) The criminal capacity of an accused under the age of fourteen years who is charged with an offence of a sexual nature shall be determined in the same manner as the criminal capacity of an accused under the age of fourteen years who is charged with any other offence.

## **7. Abolition of cautionary rule**

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.

## **8. Evidence of previous consistent statements**

(1) Evidence relating to all previous consistent statements by a complainant shall be admissible in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature.

(2) An inference shall not be drawn only from the fact that no such previous statements have been made.

## **9. Evidence of period of delay**

In criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any inference only from the length of the delay between the

commission of the sexual or indecent act and the laying of a complaint.

## **10. Evidence of psychological effects of rape**

(1) Evidence of the psychological effects of rape shall be admissible in criminal proceedings at which an accused is charged with rape-

- (a) to show that the sexual act to which the charge relates is likely –
  - (i) to have been committed towards or in connection with the complainant concern,
  - (ii) to have been committed under coercive circumstances;
- (b) to prove, for the purpose of imposing an appropriate sentence, the extent of the mental harm suffered by the complainant.

(2) In estimating the weight to be attached to evidence admitted in terms of sub-section (1), the court shall have due regard to –

- (a) the qualifications and experience of the person who has given such evidence; and
- (b) all the other evidence given at the trial.

## **11. Special duties of prosecutor**

In criminal proceedings at which an accused is charged with an offence of a sexual nature, the prosecutor shall consult with the complainant in such proceedings in order –

- (a) to ensure that all information relevant to the trial has been obtained from the complainant, including information relevant to the question whether the accused maybe released on bail and the imposition of any conditions of bail; and
- (b) to provide all such information to the complainant as will be necessary to lessen the impact of the trial on the complainant.

## **12. Special duties of the Police in respect of bail applications**

In criminal proceedings at which an accused is charged with an



investigation shall-

- (a) forthwith inform the prosecutor in such proceedings of any reason to believe that the complainant would be at risk if the accused is released on bail and of any other investigations involving the accused; and
- (b) If bail has been granted to the accused, inform the prosecutor of any failure by the accused to comply with his or her conditions of bail as soon as he or she becomes aware of such.

### **13. Rights of complainant in bail application**

(1) A complainant of rape has the right –

- (a) to attend any proceedings where the question is considered whether an accused who is in custody on a charge of rape may be released on bail or, if bail has been granted to the accused, whether any further conditions of bail may be imposed or whether any such conditions of bail may be amended or supplemented; and
- (b) to request the prosecutor in proceedings referred to in paragraph (a), to present any information or evidence to the court that may be relevant to any question under consideration by the court in such proceedings.

(2) If an accused is in custody on charge of rape, the person in charge of the police station shall as soon as possible, inform the complainant concerned of –

- (a) the place, date and time of the first appearance of the accused in court; and
- (b) the rights of the complainant under sub-section (1).

(3) If an accused that is in custody on a charge of rape intends to apply to the court for bail and the complainant has not been informed, the accused or his or her legal representatives shall request the person referred to in subsection (2) to inform the complainant accordingly, where upon such person shall so inform the complainant.

(2) The person who informs or is required to inform the complainant under sub-section (2) or (3) shall prepare an affidavit stating –

- (a) Whether the provisions of sub-section (2) or (3) as the case may be have been duly complied with and, if they have not been so complied with, the reasons for not complying with those provisions;
- (b) The manner in which the complainant has been so informed; and
- (c) The date and time when the complainant has been so informed.

(5) An affidavit prepared under sub-section (4) shall be handed to judge or judicial officer presiding at the proceedings at which bail is considered, and such affidavit shall form part of the record of the proceedings.

(6) If a complainant is present at which bail is considered in respect of an accused who is in custody on a charge of rape, and such proceedings are postponed, the court shall inform the complainant of the date and time to which such proceedings have been postponed and of the complainant's right under sub-section (1).

(7) If the complainant is not present at proceedings referred to in sub-section (6), the court shall enquire into the question whether the complainant has had knowledge of such proceedings, and shall-

- (a) If it is satisfied that it is likely that the complainant has had knowledge of such proceedings, direct that the matter be dealt with in the absence of the complainant; or
- (b) If it is not so satisfied, postpone such proceedings in order to obtain the presence of the complainant.

(8) Notwithstanding sub-section (7), if it is in the interests of justice (with due regard to the interests of the complainant) that the matter may be dealt with in the absence of the complainant.

(9) If a complainant is not present as contemplated in sub-section

(8) The prosecutor in such proceedings shall inform the complainant –

- (a) Where bail has been granted to the accused, of the granting of bail and the conditions of bail imposed; and

- (b) Where such proceedings have been postponed, of the date and time to which such proceedings have been postponed and of the complainant's rights under sub-section (1).

(10) The provisions of sub-sections (4) and (5) shall apply in respect of a notification given under sub-section (9) (b) *mutatis mutandis*.

#### **14. Prohibition of contact with complainant**

If an accused who is in custody on a charge of rape is released on bail, the court shall add such further conditions of bail as will in the opinion of the court, ensure that the accused does not make contact with the complainant concerned.

#### **15. Exclusion of the public from court proceedings**

(1) Where a person is charged with the offence of committing or attempting to commit-

- (a) a sexual or indecent act towards or in connection with a complainant; or
- (b) an act for the purpose of procuring or furthering the commission of sexual or indecent act towards or in connection with a complainant,

the court before which such proceedings are pending shall, subject to the constitution, direct that any person whose presence is not necessary shall be excluded from such proceedings, unless the complainant or if he or she is a minor, his or her parent or guardian or a person in *loco parentis*, otherwise requests.

(2) A person whose presence is not necessary under sub-section (1) shall not be present when the complainant is giving evidence, unless such complainant or if he or she is a minor, his or her parent or guardian or a person in *loco parentis*, otherwise requests.

#### **16 Prohibition of publication of complainant's identity**

(1) Where pursuant to section 15 a court directs that a person or class of persons shall not be present at a proceeding, a person shall not publish in any manner, information which might reveal the identity of the complainant in the proceedings.

(2) Notwithstanding sub-section (1)-

- (a) the presiding judge or judicial officer may authorise the publication of such information if he or she is of the opinion that such publication would be just and equitable;
- (a) such information may be published with regard to any complainant in the proceedings if that complainant is eighteen years or older and has authorized the publication of such information.

(3) A person shall not at any stage, from the time of the alleged commission of an offence until the accused has pleaded to a charge under this Act, publish any information which might reveal to a charge under this Act, publish any information which might reveal the identity of the complainant.

(4) A person who-

- (a) Publishes any information in contravention of this section or contrary to any direction or authority under this section; or
- (b) In any manner reveals the identity of a witness in contravention of a direction under this section, Commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasi or imprisonment for two years or both the fine and imprisonment.

## **17. Evidence of similar offences by the accused**

(1) subject to sub-section (2), where an accused with rape or an offence of an indecent nature, evidence of the commission of similar offences by the accused shall, on application made to it, be admitted by the court at such proceedings and may be considered on any matter to which it is relevant.

(2) Such evidence shall only be admitted if its probative value is not substantially out-weighted by its potential for unfair prejudice to the accused.

(3) Evidence of previous similar offences by an accused shall not be admissible solely to prove the character of the accused.

(4) The court's reason for its decision to admit or refuse to admit evidence of previous similar offences shall be recorded and shall form part of the record of the proceedings.

## **18. Evidence of sexual conduct or experience of complainant**

(1) Evidence as to any previous sexual conduct or experience of a complainant in criminal proceedings at which an accused is charged with rape or an offence against morality shall not be adduced, and no

question regarding such sexual conduct or experience shall be put to the complainant or any other witness in such proceedings.

(2) Notwithstanding sub-section (1), the court may on application made to it, grant leave to adduce such evidence or to put such question if the court is satisfied that such evidence or question-

- (a) tends to rebut evidence that was previously adduced by the prosecution;
- (b) tends to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue; or
- (c) is so fundamental to the defense of the accused that to exclude it would violate the constitutional rights of the accused; and
- (d) has significant probative value that is not substantially out-weight by its potential prejudice to the complainant's personal dignity and right of privacy.

(3) Evidence as to the sexual reputation of a complainant in criminal proceedings at which an accused is charged with rape or an offence against morality shall not be admissible in such proceedings.

(4) Before an application for leave contemplated in sub-section

(1) is heard, the court may direct that the complainant in respect of whom such evidence is to be adduced or to whom any such question shall not be present at the hearing of such application.

(5) The court's reason for its decision to grant or refuse leave under sub-section (1) to adduce such evidence or to put such question shall be recorded, and shall form part of the record of the proceedings.

## **19. Modification of existing law**

(1) An enactment in existence at the commencement of this Act shall have effect with such modifications as may be necessary to give effect to this Act.

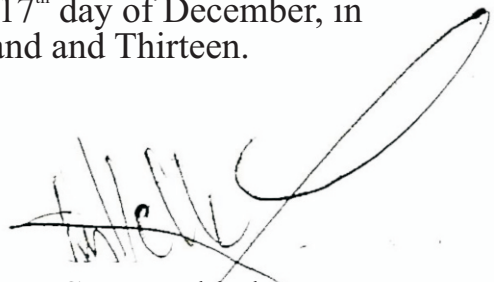
(2) Notwithstanding sub-section (1), the provisions of this Act shall supersede the provisions of all other laws, other than the constitution on any matter pertaining to the trial of rape and offences against morality, or of an indecent nature.

## 20. Repeal

Section 121, 122, 123, 127, 128 and 130 of the Criminal Code are deleted.

[cap. 10.01]

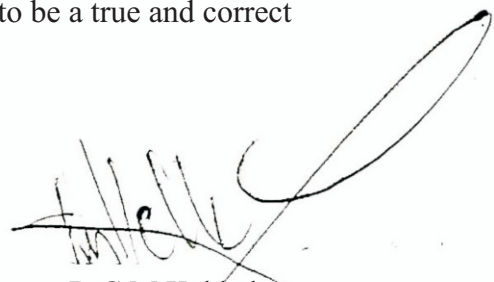
PASSED in the National Assembly this 17<sup>th</sup> day of December, in the year of our lord Two Thousand and Thirteen.



D.C.M. Kebbeh

*Clerk of the National Assembly*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.



D.C.M. Kebbeh

*Clerk of the National Assembly*