



Global  
Rights  
Compliance

# Gambian BIS – Needs Assessment

Results as of 19 June 2020

# Methodology

- As of 19 June 2020, thirteen needs assessments received from Prosecutors within The Gambian Ministry of Justice
- Not every survey answers each question
- Each of the following slides has a question from the needs assessment, and responses, if any, according to the needs assessment file name
- At the end of the project, can measure progress of respondents via additional surveys

# Potential Results Framework

1. USE NEEDS ASSESSMENT TO MEASURE CURRENT SHORTCOMINGS IN UNDERSTANDING AND PRACTICE

2. BIS / TRAINING INCREASES KNOWLEDGE AND ADVISES ON IMPLEMENTATION

3. PREDICTED OUTCOME: MORE KNOWLEDGEABLE PROSECUTORS THAT LEAD PROSECUTIONS WHICH ARE HUMAN-RIGHTS COMPLIANT AND MEET INTERNATIONAL BEST PRACTICES

APPLICABLE ACROSS ALL CASES, AND GENERALLY RAISES CAPACITY OF GAMBIAN PROSECUTORS

# General Questions

# What portion of your work involves the investigation and prosecution of “Offences Against the Person”?

- Participant #1 - My work does not involve investigating persons but I prosecute cases already investigated by the police.
- Participant #2 - Prosecution
- Participant #3 - The preparation of legal opinion and prosecution of accused persons.
- Participant #4 - The prosecution of criminal cases which range from serious offences such as murder to less serious ones such as robbery. Although we don't investigate (this is done by the police), we write legal opinion on the case and recommend for possible prosecution.
- Participant #5 - My duties as a state counsel does not involve investigations, i however prosecute cases investigated by the police. Quite a number of the cases are offences against the person
- Participant #6 - Majority of the criminal cases that as counsel in the DPPs office can be categorized as against the person. This range from rape and other sexual offence, to theft, robbery with violence, murder, assault. I write legal opinions and prosecute these cases in the different courts.
- Participant #7 - work greatly involves the prosecution of offences against person in the Magistrates and High Court of The Gambia.
- Participant #8 – Prosecution
- Participant #9 - prosecution and investigation of cases started at the opinion stage and the opinion will determined as to which matter to be taken to court and against which person.
- Participant #10 - half of the cases that I deal with involves the prosecution of “Offences Against the Person”.
- Participant #11 - As a Senior State Counsel am specifically attached to the criminal division of the Ministry of Justice and so I am directly involved in advising the police on matters relating to evidence gathering and culpability. I am also involved, on a daily basis, the prosecution of accused persons.
- Participant #12 - My job only involved prosecution of offences
- Participant #13 - I believe half of the cases that we deal with involves the prosecution of “Offences Against the Person”.

What portion of your work involves the investigation and prosecution of so-called “Offences Against Morality” (crimes involving acts of a sexual nature)?

- Participant #1 - A slight portion of my work involves the prosecution of rape cases.
- Participant #2 – Prosecution
- Participant #3 - The preparation of legal opinion and prosecution of accused persons.
- Participant #4 - I had prosecuted a few rape cases although I was yet to have conviction on any before they were transferred to the gender based violence unit of the ministry.
- Participant #5- a number of cases reported are sexual offences such as rape and defilement of minor girls
- Participant #6 - A good number of the criminal cases I handle are sexual offences; rape, defilement, etc
- Participant #7 - work in relation to prosecution deals with prosecution of the offence of Rape, defilement and adoption of child under 16 years.
- Participant #8 – not aware
- Participant #9 - not been involved in the prosecution of offences against morality.
- Participant #10 - the other half of the cases that I deal with involves the prosecution of “Offences Against the Person”.
- Participant #11 - I advise the police on matters relating to the gathering of evidence material to the establishment of the elements of Offences Against Morality especially sexual offences and I am directly involved in the prosecution of the aforementioned offences.
- Participant #12 - My job only involves prosecution of offences
- Participant #13 - I believe the other half of the cases that I deal with involves the prosecution of “Offences Against the Person”.

# How would you assess your knowledge of international criminal law?

- Participant #1 - I am not very knowledgeable when it comes in international criminal law but I am done few courses in University on the subject matter.
- Participant #2 – limited
- Participant #3 - limited
- Participant #4 - During my LLB degree at the University of The Gambia, I was keenly interested in international law. I did all the international law courses both mandatory and optional. These subjects included Public International Law, Private International Law, International Criminal Law etc. Although not in depth, I have basic knowledge in international law such as the concept of state responsibility, international treaties and diplomacy.
- Participant #5 - am conversant with international criminal law. I have taken the following courses on courseera (introduction to international criminal law offered by case western reserve university) (international law in action: a guide to the international courts in the hague by university of leiden)
- Participant #6 - I merely know some international crimes, both customary and treaty based. My knowledge of the procedure and evidential burden of proof could be improved.
- Participant #7 - have basic knowledge on the international criminal law. On a scale of 10, I rate myself at 4.
- Participant #9 – fairly
- Participant #10 - I have limited knowledge on international criminal law for the simple reason that I never took any courses during my university study.
- Participant #11 - I have a strong background of International Criminal law as I did the course during my LLB program and I had an A+ SCORE. I also attended the International Criminal Law Network Moot Court Competition in the ICC The Hague in 2010 where I was exposed to the doctrines, teachings and applicability of International Criminal Law.
- Participant #12 - Above Average
- Participant #13 - I believe I have limited knowledge on international criminal law for the simple reason that I never took any courses during my university study.

In terms of your skill and knowledge, what do you see as some of the practical challenges to your ability to eventually play a role in any prosecution of crimes which took place during the Jammeh regime?

- Participant #1 - The challenges that foresee is the willingness of witnesses and the lack of experience in prosecuting same.
- Participant #2 - Inadequate investigation especially forensic evidence.
- Participant #3 - Lack of tangible evidence over the years.
- Participant #4 - Maybe only the lack of experience in prosecuting crimes of such an international nature. I know that most of the alleged crimes committed during the jammeh regime are already covered under our criminal code so those ones will not be a problem.
- Participant #5 - Building up a case and gathering all the evidence. Having access to witnesses might also be a problem
- Participant #6 - Generally prosecutors in the gambia are involved only after the conclusion of criminal investigations whereafter we receive the files from investigators like the police and other law enforcement agencies with investigation powers and prosecute them where recommended. There there is a great need in building case, understanding and analyzing evidences, especially financial and other egregious crimes requiring expert evidence and presenting same to the court.
- Participant #7 - lack of research materials and lack of training on how to treat and proceed with forensic evidence.
- Participant #9 - The availability of witness; The denial by a section of a society as they thought that it is a hunt against jammeh; The stigma of that might be associated to victims coming out.
- Participant #10 - Considering the fact that I have been employed in private practice for the past 3 years and have only dealt with only civil cases, I lack the necessary experience to conduct criminal matters.
- Participant #11 - The challenges are in matters relating to proper investigations as most of the crimes happened a long time ago . Witness gathering will also be a problem.
- Participant #12 - May be challenges in the procurement of witnesses for prosecution
- Participant #13 - Considering the fact that I have been employed in private practice for the past 3 years and have only dealt with only civil cases, I lack the necessary experience to conduct criminal matters.

In what areas of international criminal, humanitarian or human rights law do you wish to receive additional resources or support?

- Participant #1 - Crimes against humanity, war crimes, evidence analysis and gathering.
- Participant #2 - Human Rights Law
- Participant #3 – Forensics
- Participant #4 - Evidence gathering; Witness handling; Questioning techniques; Dealing with complex financial transactions; And cases where the alleged crimes were perpetuated using a corporate vehicle such as companies and organizations
- Participant #5 - Prosecution of international crimes
- Participant #6 - Investigation techniques and evidence handling and presentation in those cases.
- Participant #7 - Evidence gathering, witness protection, leading evidence before the court especially forensic evidence.
- Participant #8 – how to get justice for victims
- Participant #9 - Support on the prosecution of human right offence.
- Participant #10 - I have not taken any university courses related to international criminal, humanitarian or human rights law as such would require any resources available.
- Participant #11 - In all areas as learning never stops but specifically in crimes against humanity and torture and inhuman and degrading treatment.
- Participant #12 - International Human Rights Law
- Participant #13 - I have not taken any university courses related to international criminal, humanitarian or human rights law as such would require any resources available.

Are there other areas of your trial practice where you would like to receive additional support? If so, please elaborate.

- Participant #1 - Same as previously provided.
- Participant #2 – legal materials for research purposes
- Participant #3 – advocacy skills
- Participant #4 – same as above
- Participant #5 - Advocacy skills; Preparation and drafting of indictments
- Participant #6 - Conducting investigations and strengthen effective and diligent prosecution.
- Participant #7 - presentation of forensic evidence in court.
- Participant #9 – database for cases
- Participant #10 - art of litigation is a fundamental skill that I deem necessary to perfect and receive additional support.
- Participant #11 - A general training in Trial practice ranging from evidence analysis and admissibility especially electronic evidence and closing of ones case.
- Participant #12 - Yes, International Trade and Investment Law
- Participant #13 - The art of litigation is a fundamental skill that I deem necessary to perfect and receive additional support.

# Modes of liability / Multiple Accused

Have you tried cases dealing with indirect or joint? If so, please provide details.

- Participant #1 - Yes, there is an ongoing trafficking in person case and the 2 accused persons were granted bail but the first accused person absconded and now that is seriously affecting the case.
- Participant #2 - yes currently prosecuting one on fraud and Economic Crimes. The 3 Accused Persons Police and Immigration Officers alleged to have issued fake driver's licenses to the Public.
- Participant #3 - Yes both as a magistrate with the Judiciary of The Gambia and as a prosecution with the Ministry of Justice.
- Participant #4 - No I am yet to deal with cases involving co-accused persons.
- Participant #5 – no
- Participant #6 - A fair majority of my cases involve joint offenders. in some of those cases one or more of the accused persons is absent.
- Participant #7 - Yes. I am currently prosecuting a murder trial that involves two accused persons.
- Participant #8 – in cases of multiple accused, we charge them together
- Participant #9 - prosecute cases dealing with multiple accused persons when they are all involved in committing an offence.
- Participant #10 - we deal with cases involving multiple accused, in particular and in most instances, Robbery cases.
- Participant #11 - I have dealt with cases involving multiple accused persons in cases involving murder, robbery, stealing and fraud among other things. These cases are sometimes committed in a joint criminal enterprise nature and so sometimes there is a bit of difficulty in establishing culpability. We have conspiracy laws as well and so one will find that in establishing conspiracy there is the need to have strong evidence.
- Participant #12 - No I am relatively new in the prosecution of cases
- Participant #13 - YES, we deal with cases involving multiple accused, in particular and in most instances, Robbery cases.

Have you tried  
conspiracy cases?  
If so, please  
provide details.

- Participant #1 - NO
- Participant #2 - yes, the case involved 2 Accused Persons who conspired to commit Robbery.
- Participant #3 - Yes both as a magistrate with the Judiciary of The Gambia and as a prosecution with the Ministry of Justice.
- Participant #4 – not yet
- Participant #5 – no
- Participant #6 - Most of my cases involving joint or multiple offenders contain a conspiracy charge. And so except where all the accused persons are present, proving conspiracy in the absence of one of the accused persons poses a challenge.
- Participant #7 - no
- Participant #8 – yes, when two or more accused it is a conspiracy
- Participant #9 - challenge arises when one of the co-conspirators was nowhere to be found
- Participant #10 – yes, one of the cases I am handling includes a charge of Robbery coupled with a conspiracy charge. In most Robbery cases involving two or accused, there is a provision in the Criminal Code which allows the Prosecution to include conspiracy charges.
- Participant #11 - Yes I have, there is almost always, an element of conspiracy wherein you have more than one accused in the commission of an offence, the law in the Gambia is such that you don't have to establish that there was actual communication between the perpetrators towards the commission of the offence rather it can be deduced from the facts surrounding their actions towards the commission of the offence.
- Participant #12 - No I am relatively new in the prosecution of cases
- Participant #13 - Yes, one of the cases I am handling includes a charge of Robbery coupled with a conspiracy charge. In most Robbery cases involving two or accused, there is a provision in the Criminal Code which allows the Prosecution to include conspiracy charges.

If you responded yes to either of the last two questions, please outline some of the specific challenges you faced in dealing with these cases.

- Participant #1 - The major challenges faced is the tracking down of the absconded accused person.
- Participant #2 - it is difficult to have witnesses to come to court and testify.
- Participant #3 - The challenges include the establishment of common intension and using the admission of one accused person against the other accused persons.
- Participant #7 - i. Poor investigation by the police. ii. Access to research materials especially on presentation of evidence; witness examination to deduce evidence. iii. Absence of judges for trials when witnesses are available to proceed. iv. Securing witnesses who are relatives to an accused person to testify in court.
- Participant #8 – securing attendance of witnesses
- Participant #10 - One of the challenges faced is getting witnesses to come to court.
- Participant #11 - Some of the specific challenges are the there are usually situations where the accused raises a defense of knowledge in that they were not aware that the other accused persons intended to commit an offence. This usually happens in situations where the accused persons know each other but the person raising the defense is usually someone that did not take part in the *actus reus* but rather was present in its commission.
- Participant #12 - Another would be the issue of admissibility of confessionary statements because sometimes one would confess to the police and the other(s) may not and by the time you start trial the person who confessed may deny every making such statements voluntarily because he may have been interfered with.
- Participant #13 - One of the challenges faced is getting witnesses to come to court.

# Other Training Opportunities

Have you previously used tools (for example, guides or handbooks) or participated in trainings concerning the investigation and prosecution of domestic or international crimes? This includes training on witness interviewing and evidence analysis. If so, please elaborate.

- Participant #1 - NO
- Participant #2 – crime scene management and forensic evidence
- Participant #3 - no
- Participant #4 - I had training on the investigation of international financial crimes but not on their prosecution and the training included witness handling, interviewing and evidence handling as well as dealing with cross border crimes.
- Participant #5 – no
- Participant #6 - no
- Participant #7 - Yes. In November 2019, I attended a course on the prosecution of Environmental Crimes at the International Law Enforcement Academy in Botswana. In that training, I was exposed to the techniques and methods of prosecuting crimes relating to the environment, evidence gathering and witness interviews.
- Participant #8 – no
- Participant #9 – no
- Participant #10 - No I have never, I started working with the Attorney General's Chamber's about a month ago.
- Participant #11 - Yes, just concluded a training in Ghana on Anti Corruption regarding its investigation.
- Participant #12 – no
- Participant #13 - No I have never, I started working with the Attorney General's Chamber's about a month ago.

Have you received any training on the elements of crimes against humanity (eg. contextual elements; acts of sexual violence; torture; extra-judicial killings and enforced disappearance)?

- Participant #1 - NO
- Participant #2 – no
- Participant #3 – no
- Participant #4 – no
- Participant #5 – no
- Participant #6 - no
- Participant #7 – no
- Participant #9 - no
- Participant #10 – no
- Participant #11 - Yes in addition to attending the ICC Moot, the Philip C Jessup Moot in Washington DC and the Inter American Moot in Washington DC, all of which are on the areas mentioned above, I attended survey course administered by Florida State University in Human Rights and Humanitarian Law.
- Participant #12 – no
- Participant #13 - No, I have never had any training on the elements of crimes against humanity in particular, contextual elements; acts of sexual violence; torture; extra-judicial killings and enforced disappearance

What knowledge would you like to build/bolster in order to be able to make an effective contribution in handling cases recommended for prosecution by TRRC?

- Participant #1 - I would like to learn more on witness interviewing and evidence analysis.
- Participant #2 - to the contextual elements in offences of sexual violence; torture; extra-judicial killings and enforced disappearance
- Participant #3 - Use of forensic evidence in prosecution of old cases.
- Participant #4 - How to deal with intimidating and annoying witnesses; Dealing with obsolete documentary evidence such as documents which are very old; Protecting oneself from threats from the families of accused persons. The Gambia is a small country and a closely-knit society and there are still people here who support Jammeh.
- Participant #5 – prosecution of international crimes, plea bargains
- Participant #6 – case building and management
- Participant #7 - I am generally interested in the handling of forensic evidence which is already obtained by the TRRC and which may be used in prosecution in the future. Protection of witnesses who may be used in prosecution of cases that are recommended by the TRRC for trial.
- Participant #9 - Training in prosecution offences relating to human rights.
- Participant #10 - Case file Management skills is essential for the simple fact that such prosecution will require dealing and interviewing a large number of witnesses.
- Participant #11 - The investigation and prosecution of high crimes
- Participant #12 - Knowledge in International Criminal Law
- Participant #13 - Case file Management skills is essential for the simple fact that such prosecution will require dealing and interviewing a large number of witnesses.

Have you had guidance/training in methodology for online legal research? If not, would that be useful to you, particularly for complex cases?

- Participant #1 - No I have not and I think it will be very useful to me
- Participant #2 - yes at my University level but having a training on it will be very useful.
- Participant #3 – no, but would be useful
- Participant #4 – No. I would like to have guidance in methodology for online legal research e.g. how similar cases were handled in other countries which have the same common law legal system like ours.
- Participant #5 – no, but will be useful
- Participant #6 – no, but would be very much
- Participant #7 – yes
- Participant #8 – no
- Participant #9 - I have no training for online legal research and it will be very useful if we can have training on that.
- Participant #10 – University level, in particular Nexis and Lexis
- Participant #11 - I have not and yes it will be useful in helping me make better use of the online search engines for an effective legal research.
- Participant #12 – Yes, would be useful
- Participant #13 - Yes at the University level, in particular NEXUS and LEXIS.

# Witnesses

Do you interview witnesses? If so, please describe when, how, where and at what point in an investigation or trial preparation this takes place. Do you follow any interview protocols? If so, please elaborate.

- Participant #1 - I do not necessarily interview witnesses but I call them over to the office to discuss their witness statements that they recorded with the police and prepare them before the trial. The interview protocols are usually meant to be followed by the police.
- Participant #2 - yes I do interview witnesses at trial stage when they are about to give their testimonies in court. No I do not follow any interview protocol.
- Participant #3 - The interview is done after the investigation before going to court. I make sure the witness is not taught what to say
- Participant #4 - Yes I interview witnesses at the office usually before their first court appearance. Its usually termed pre-trial witness interview. Usually, the time frame when the alleged crime was committed and when the cases goes to court is usually a long time sometimes several years. Memories fade with time so most witnesses find it difficult to recall events that happened some ten years ago. This is the most difficult part relating to witnesses.
- Participant #5 - Witnesses are interviewed during the investigation process and that is usually carried out by the police. We interview witnesses based on the written statements they've provided to the police.
- Participant #6 - I do not follow any interview protocols. However, I interview witness mostly a day or two before he/she appears in court.
- Participant #7 - I mostly interview my witnesses a week after filing the bill of indictment and a day before the trial. In the first part of the interview, I am brief the witness as to his participation in the investigation and the evidence he or she must have provided to the police during the investigation. He or she is asked to recount on what happened. This enables me to determine if the witness has good memory of the events. It also affords me the opportunity to show the witness how important his or her evidence is important in the case. The second stage of my interview is to conduct a moot trial with the witness. At this stage, the Witness is told what to expect in trial and some of the possible questions that the defence may likely raise during cross examination
- Participant #8 – usually have conferences with witnesses days or weeks before I leading them in court
- Participant #9 - I interview witness and this is done before the witness is being put on the stand to testify.
- Participant #10 - Yes, I do interview witnesses, in particular, before they are scheduled to give testimony and/or when the witness statement has inconsistencies that I need to clarify before filing of charges.
- Participant #11 - Yes I interview witnesses before they are called upon to testify this is very important as it helps in knowing what the witness has to say and how the evidence was obtained by the police. This particularly important because it helps in preparing and anticipating the areas the defense may rely upon.
- Participant #12 - Yes I do interview witnesses before putting him/her in the dock I do not follow any interview protocol
- Participant #13 - Yes, I do interview witnesses, in particular, before they are scheduled to give testimony and/or when the witness statement has inconsistencies that I need to clarify before filing of charges.

Many survivors of crimes committed under the former regime have given testimony under oath before the TRRC. Some have also provided sworn evidence to the ECOWAS Court of Justice, and some have given media interviews, all of which may contain evidence relevant to a domestic prosecution. How would use/present that evidence in a domestic trial in a way that guards against their re-traumatization? What steps would you recommend?

- Participant #1 - We can give their testimonies in camera or if we would have it, their testimonies already given can be deemed as admissible in court without having to recall them again.
- Participant #2 – no answer
- Participant #3 – don't know
- Participant #4 – need guidance
- Participant #14 - The evidence where acceptable to the rules of court can be admitted as documentary evidence.
- Participant #6 - Training on witness handling and psycho social support is highly necessary.
- Participant #7 - I would recommend for the evidence of those witnesses to be admitted in evidence without the need for them to testify in court. Since our Evidence Act allows for the admission of sworn testimonies before commissions, such evidence can be admitted without the need to call the person. Although he or she may be available for cross examination by the Defence, if the need be.
- Participant #9 - witness should be counselled and avoid traumatization.
- Participant #10 – in camera
- Participant #11 - While it is true that trial shall be conducted in public, in situations like that we have to address each situation as each may be uniquely different from the other, example ,one may involve a minor, victims of rape or sexually crimes and various matters which may require unique steps like witness protection in terms of having evidences taken in Chambers, witness protection programs establishment to deal with trauma and so on.
- Participant #12 - would recommend for the witnesses to go through some psychological training first become appearing in our domestic courts

# International Law

# What do you think makes international crimes different from domestic crimes?

- Participant #1 - Domestic crimes could be crimes against individuals but with international crimes, States are held accountable by international criminal justice systems
- Participant #3 - The difference in effective enforcement of court decisions.
- Participant #4 - Enforcement or executing judgments in international crimes is more difficult.
- Participant #14 severity and magnitude of the offences.
- Participant #6 - I believe the difference is in the extent of evidence required in each
- Participant #7 - Most international crimes can be tried by or in any country that has jurisdiction over the matter. No one country may have absolute jurisdiction, unlike domestic crimes, to try those matters as it is the responsibility of the States
- Participant #8 jurisdiction
- Participant #11 - The gravity and nature makes it different.
- Participant #12 - International crimes is more complex and expensive to prove than domestic ones

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# The difference between a crime against humanity and a war crime...

- Participant #1 - Crime against humanity is committed systemically and both during war times and peace whilst war crimes are committed during war times.
- Participant #4 – highly knowledgeable
- Participant #14 - difference between a crime against humanity and a war crime- crime against humanity can be committed both during peace times and during war. War crimes are special crimes codified under the Geneva Conventions
- Participant #6 - War crimes constitute violations of laws of war and are committed in only certain eventualities like armed conflicts. On the other hand certain systemic and widespread crimes that may not by their individual nature constitute 'a crime against humanity' however because they are widespread and systemic, they are referred to as crimes against humanity. Crimes against humanity are not war crimes so-called
- Participant #9 - War crime is an act which constitutes a serious violation of the laws of war and crimes against humanity are acts that are purposely committed as part of a widespread or systematic attack directed against civilians or particular individuals; War crimes can only be committed during the time of war unlike crime against humanity which can be committed at any time.
- Participant #10 - believe crimes against humanity can be committed at any point in time whereas war crimes can only be committed during war. Crime against humanity can also be perpetrated during war crimes
- Participant #11 - war crimes are crimes committed during war or armed conflict while crimes against humanity can be committed during peace times
- Participant #12 - War crimes can be committed during war and against humanity can be committed at any time
- Participant #13 - crimes against humanity can be committed at any point in time whereas war crimes can only be committed during war. Crime against humanity can also be perpetrated during war crimes.

## Contextual elements...

- Participant #4 – fairly knowledgeable
- Participant #6 - I understand this to mean the elements required to be proved in any given case.
- Participant #11 - means the specific element of every crime needed to be established

# Widespread and systematic...

- Participant #1 - Widespread is the huge amount on a particular type of violation whilst systematic is an organised type of violation
- Participant #4 – highly knowledgeable
- Participant #6 - This means that there is a series of the same offence or offence both organized and intended or systemically executed.
- Participant #9 - Widespread refers to the large scale attack whereas systematic refers to the organised nature of the act of violence.
- Participant #10 - Widespread refers to a large scale attack affecting many individuals whereas systematic refers to an organised and clearly planned attack
- Participant #11 - widespread means the gravity or scale and systemic means that it has been committed in an organised manner
- Participant #13 - Widespread refers to a large scale attack affecting many individuals whereas systematic refers to an organised and clearly planned attacks

# Command responsibility

- Participant #4 – highly knowledgeable
- Participant #14 - responsibility placed on a senior officer for offences committed by his juniors due to his failure to stop them or prevent them from doing such acts.
- Participant #6 - means ascribing the actions or omissions of an accused person to a superior officer or anybody directing and/or controlling such conduct by the accused or suspect.
- Participant #7 - the principle that a senior officer who gives command shall be held liable for crimes committed by junior officers in the course of the execution of the command or incidental to the command.
- Participant #9 – being responsible for orders given
- Participant #10 - often used to assign criminal responsibility to the highest ranking member of the military and regulate the behaviour of the military.
- Participant #11 - the concept of holding the commander responsible for the actions of the subordinates. The test for command responsibility is that the accused must be in a position of command so as to either be capable of punishing or preventing the commission of the offence by those he has effective control over
- Participant #13 - often used to assign criminal responsibility to the highest ranking member of the military and regulate the behaviour of the military.

The type of evidence needed to link a mid to high-level perpetrator to an international crime...

- Participant #4 – not knowledgeable
- Participant #6 - evidence must be able to support or meet the evidence and standard of proof required for an international crime.
- Participant #9 – primary evidence
- Participant #10 - Documentary, eyewitnesses, etc
- Participant #13 - Documentary, eyewitnesses, etc

## “Pattern” evidence?

- Participant #4 – not knowledgeable
- Participant #6 - series of evidence suggesting a particular mode of committing the same or similar crimes by the same accused persons at different times.
- Participant #9 - direction of which does not lead to one conclusion.

# The difference between torture and cruel and inhuman treatment...

- Participant #1 - Torture is Inflicting deliberate harm on someone. Inhumane treatment causing degrading and unspeakable acts on someone and it can physical, mental and emotion
- Participant #4 – fairly knowledgeable
- Participant #7 - Torture is a form of inhuman treatment.
- Participant #9 - difference between torture and inhumane treatment is the degree of severity and torture is deliberate and inhumane treatment may sometime not be deliberate.
- Participant #10 - Torture involve the physical abuse of the human body and it is form of inhuman treatment whereas inhumane treatment
- Participant #11 - severity is the difference.
- Participant #13 - Torture involve the physical abuse of the human body and it is form of inhuman treatment whereas inhumane treatment

## The crime of enforced disappearance...

- Participant #1 - The killing of persona and their bodies never to be found
- Participant #4 – not knowledgeable
- Participant #14 - detaining or killing people in a clandestine manner and without lawful authority
- Participant #9 - Enforced disappearance is when a person is secretly adopted by a state without authorisation.
- Participant #10 - Abduction and disappearance of individual against their will
- Participant #11 - includes the arrest, detention or abduction
- Participant #13 - Abduction and disappearance of individual against their will

# The crime of arbitrary detention...

- Participant #1 - Unlawful and unjustified detention in custody, infringing on a person's liberty
- Participant #4 - Fairly knowledgeable
- Participant #14 - unlawful detention without trial
- Participant #7 - Unlawful detention without a court order or without due process of law
- Participant #9 - illegal detention of an individual without going through the due process
- Participant #10 - Holding an individual against their will without any legal basis for doing so.
- Participant #11 - includes wrongful or prolonged detention
- Participant #13 - Holding an individual against their will without any legal basis for doing so.

How would you classify the crimes connected to the Jammeh era witchhunt or the aids “cure”?

- Participant #1 - It is form of cruel and degrading inhumane treatment to the victim, a violation of their human rights to dignity and privacy
- Participant #7 - Torture
- Participant #9 - will be clarify as crimes against humanity.
- Participant #10 - inhuman treatment
- Participant #11 - crimes against humanity
- Participant #13 - inhuman treatment

# Sexual and Gender- Based Crimes

What do you understand to be acts of sexual violence?

- Participant #2 - Rape, defilement and indecent assault
- Participant #3 - Violation involving the other sex.
- Participant #4 – crimes committed against person because of gender
- Participant #14 - Rape; Domestic violence; Emotional violence
- Participant #6 - crimes committed against a person based on their sexuality.
- Participant #7 - Rape, defilement, adoption
- Participant #9 - Illegally having sexual act with another without her consent.
- Participant #10 - acts like Rape, child sexual abuse
- Participant #11 - These includes sexual acts committed or administered against someone without their consent or a minor wherein consent not a defence.
- Participant #12 - Any act of sexual encounter against the opposite sex with consent
- Participant #13 - Sexual Violence includes acts like Rape, child sexual abuse, Acts against morality. It means victimless crimes

What do you perceive to be the most pervasive sexual violence crimes in The Gambia?

- Participant #1 - Rape and defilement
- Participant #2 – rape
- Participant #3 - Rape under the Sexual Offences Act
- Participant #4 – Rape
- Participant #14 – rape
- Participant #6 - Defilement of girls below the statutory age of majority.
- Participant #7 – Rape
- Participant #9 – rape
- Participant #10 – rape, sexual assault
- Participant #11 - Rape of minors
- Participant #12 - Rape
- Participant #13 - Rape and sexual exploitation are the most pervasive sexual violence crimes in The Gambia

Please describe  
what you  
understand to be  
“coercive  
circumstances”

- Participant #1 - It is use of force, threat on someone or in a situation where a person is vulnerable
- Participant #2 – force, duress, inducement
- Participant #3 - Any act against the will of the victim or a victim who is not capable of consenting
- Participant #4 - A deceit or threat of any kind (physical, emotional etc) metted against a sexual violence victim in other to get him or her to consent.
- Participant #14 - Using force, emotional blackmail or financial blackmail
- Participant #6 - Circumstance that intimidate or induce a person to do what ordinarily he or she would not have done by free will.
- Participant #7 - The use of violence, say a knife, to commit rape; Having sex with a girl who is below 16 years.
- Participant #9 – use of force
- Participant #10 - Illegal Methods used to force another person into having sexual intercourse.
- Participant #11 - using other tricky or inductive means to convince the victim
- Participant #12 - To force someone to do something against his or her will
- Participant #13 - Illegal Methods used to force another person into having sexual intercourse.

In your experience, in what circumstances have courts allowed questions in cross-examination about a victim's prior sexual conduct?

- Participant #1 - I am yet to have experience that
- Participant #2 – none
- Participant #3 - When the victim claims good conduct.
- Participant #4 - I have not yet had such experience
- Participant #14 - I am yet to experience this situation. Generally evidence of character is not admissible is not admissible unless under limited circumstances.
- Participant #6 - am not aware of any as such, however, there is no statutory restriction for the defense not to ask such questions if the court considers it relevant in accordance with the Gambian law of evidence.
- Participant #9 - not allowed to refer to the past sexual conduct of the victim.
- Participant #10 - I have never had any experience, however, the Sexual Offences Act does not allow for questioning of a victims prior sexual conduct
- Participant #11 - Where there is a question regarding the virginity or similar sexual crimes complaint by the victim.
- Participant #12 - have never come across any
- Participant #13 - never had any experience, however, the Sexual Offences Act does not allow for questioning of a victims prior sexual conduct

In practice, do domestic courts require corroboration in rape cases? If so, how do you deal with “he said/she said” cases?

- Participant #1 - Yes it requires corroboration. He said/ she said cases are actually not admissible as they can be termed as hearsay evidence.
- Participant #2 - Yes Corroboration is required. “ he said/She said are classified as Hearsay Evidence and thus inadmissible.
- Participant #3 - Yes and we comply with the provision under s179 of the Evidence Act.
- Participant #4 - Yes corroboration is required in rape cases in The Gambia and it's been the most daunting challenge we face. I propose that the requirement of corroboration be removed from our laws or at least it be relaxed in certain cases. It is usually very difficult in proving the elements of rape in The Gambia because most medical reports are not helpful in that there is a lapse of time between when the act took place and when the victim went to the hospital for medical check up
- Participant #14 - Yes corroboration is a legal requirement under the evidence act.
- Participant #6 - success of such cases depend on whether there is medical evidence. Otherwise, its difficulty to secure a conviction in those cases.
- Participant #7 - Yes corroboration is a requirement under the Evidence Act. In those cases, we mostly rely on the medical report showing the examination to show whether the victim had sex or was penetrated.
- Participant #9 – yes the courts require corroboration in rape cases
- Participant #10 - Yes domestic courts require corroboration in rape cases. In most cases, the medical report help corroboration.
- Participant #11 - Yes, in fact without corroboration there cannot be a conviction. We make sure we can establish corroboration either through eye witness testimony, real or documentary evidence.
- Participant #12 - Yes the law requires corroboration
- Participant #13 - Yes domestic courts require corroboration in rape cases. In most cases, the medical report help corroborate

Are there any other specific challenges you face/anticipate facing when prosecuting sexual violence in The Gambia?

- Participant #1 - On the issue of corroboration and detailed medical reports and the conducting of DNAs
- Participant #2 - conducting of DNA Examinations especially when the victim has a child
- Participant #3 - The challenge of minors being called as witnesses
- Participant #4 - Witnesses not co-operating
- Participant #14 - It is difficult to gather evidence because we do not have DNA testing facilities. It is always difficult to obtain corroborative medical evidence because victims are also reluctant to report rape matters.
- Participant #6 - As a result of the close knitted nature of the Gambian society, especially in cases where the victim and perpetrator living in the same community or household, witness, sometimes including the victims and sometimes her/his family opt out, requesting for withdrawal of the complaint or don't cooperate.
- Participant #7 - In most cases, there is always poor investigation by the Police. The investigation sometimes leaves out important details without which we cannot secure a conviction. Secondly, it is often difficult to secure the attendance of witnesses who are relatives of the accused or the victim. This happens when the victim and accused are relatives. Thirdly, there is lack of material resources to use in terms of books or case laws that we can rely on for research purposes.
- Participant #9 - stigma attached that the society attached to the people that claim to have been raped.
- Participant #10 – getting witnesses to attend court
- Participant #11 - the challenges are that sometimes the medical report is not helpful because some of these cases are reported to the police days or months after the incident and in other cases the victims may not be helpful because they are sometimes interfered with because most of the perpetrators are relatives to the victim one way or the other.
- Participant #12 - Yes the challenges are that witnesses usually are reluctant to testify
- Participant #13 - Yes, getting witnesses to attend court.

# Case development

Referring to crimes committed during the Jammeh regime, do you know what it means to map evidence of crimes in order to identify perpetrators and build cases? Please elaborate.

- Participant #1 - No
- Participant #2 - yes. Based on the police investigation and the TRRC reports. We look at evidence available and they are linked to the Accused Persons or the alleged perpetrators.
- Participant #14 – no
- Participant #6 - This should be a major focus on any training in respect of Jammeh era crimes.
- Participant #7 – no
- Participant #9 – no
- Participant #11 - --- this means trying to understand the specific elements of each crime in accordance with statute or jus cogens so as to know which specific act falls under which category of crimes.
- Participant #12 - no



# Trial tactics

What different types of evidence do you work with in practice? Do you have any experience using documentary, video, forensic or other expert evidence? If so, please elaborate.

- Participant #1 - I have only been involved in video evidence
- Participant #2 - witness statements, documentary evidence and expert evidence such as Age Determination reports and Medical Examination Report.
- Participant #4 – no
- Participant #14 - mostly rely on documentary evidence
- Participant #6 – no
- Participant #7 - Real evidence, documentary evidence and oral testimonies of witnesses. I use documentary and expert evidence in relation to medical doctors only.
- Participant #9 - Primary, secondary and circumstantial evidence and we also have the opportunity in using expert evidence.
- Participant #10 - I do have experience using different types of evidence, in particle and mostly documentary evidence. In terms of expert witness, the State uses Doctors as expert witnesses.
- Participant #11 - I work with real, documentary or oral evidence. I have experience in documentary, forensic and video evidence and mostly the issues with such evidence are the admissibility requirements.
- Participant #12 - We deal with all kinds of evidence depending on case by case basis
- Participant #13 - Yes, I do have experience using different types of evidence, in particle and mostly documentary evidence. In terms of expert witness, the State uses Doctors as expert witnesses.

Do you have any experience in plea bargains? Please elaborate.

- Participant #1 - NO
- Participant #2 – no
- Participant #4 – no
- Participant #14 – no
- Participant #6 – no
- Participant #7 Yes. I am currently prosecuting a murder case where I am closed my case but the Defence opted for plea bargain for manslaughter.
- Participant #9 – no
- Participant #10 – in Gambia, do not have plea bargains
- Participant #11 - plea bargain is not very common in Gambia but I engaged in one which was not fruitful because as a defence attorney then our clients refused to agree to the terms.
- Participant #12 – no
- Participant #15 - In the Gambia, we do not have Plea bargains.

What factors do you think should be taken into consideration in deciding whether to indict someone for crimes allegedly committed during the Jammeh regime?

- Participant #1 - When such person is unwilling to assist during the whole truth-seeking process
- Participant #4 – Persons who bear the greatest responsibility; Demeanour of person during TRRC testimony (whether the person showed great remorse and was cooperative throughout his/her TRRC testimony); Any person who killed someone should be indicted
- Participant #14 - level of participation and the position they held at the time the crime was committed. Matters such as command responsibility needs to be taken into consideration.
- Participant #6 - Willingness of the suspect to cooperate
- Participant #7 - The severity of the offence; The personal conduct of the suspect in the commission of the alleged offence; The role of the individual in assisting or procuring the commission of the of the offence
- Participant #10 - evidence available should dictate whether or not should be indicted for crimes allegedly committed during the Jammeh regime.
- Participant #11 - degree of involvement in the commission of the crime and whether the person is best used as a witness.
- Participant #12 - The tribal and cultural background
- Participant #15 - evidence available should dictate whether or not should be indicted for crimes allegedly committed during the Jammeh regime.

What factors would you consider important in making a decision as to whether an alleged perpetrator should be given amnesty?

- Participant #1 - When such person is willing to cooperate for the successful prosecution of the case
- Participant #4 - Demeanour of person during TRRC testimony (whether the person showed great remorse and was cooperative throughout his/her TRRC testimony)
- Participant #14 - gravity of the offence they committed, the value that their evidence will add to the case.
- Participant #6 - Whether the person is high level perpetrator and/or willing to cooperate.
- Participant #7 - The truthfulness of the person to appear before the TRRC to admit to the crimes that he or she has committed and seek for forgiveness from the victims. Grant of amnesty should consider the reactions of the victims in relation to the person who is a subject of the grant
- Participant #10 - degree of the crime. The perpetrators remorse (if any)
- Participant #11 - degree of cooperation, the information received and the nature and degree of the crimes he or she is accused of.
- Participant #12 - The nature of the crimes that he/she is accused of
- Participant #15 - The degree of the crime. The perpetrators remorse (if any)