

REPORT



Advancing Justice for Women Victims Through Gender-Focused Litigation

A case of The Gambia

NOVEMBER 2024



ABOUT THE AFRICA TRANSITIONAL JUSTICE LEGACY FUND

Established in 2019, the Africa Transitional Justice Legacy Fund (ATJLF) is an intermediary grant-maker for transformative transitional justice interventions in Africa.

Following the adoption of the AU Transitional Justice Policy (AUTJP) in 2019, the Fund was established to foster resource mobilization for the goals and objectives of the Policy. The goals include advancing sustainable peace, justice, reconciliation, social cohesion, and healing in post-conflict African communities.

The ATJLF was established to support transformative and pioneering interventions in transitional justice processes in Africa. The Fund supports community-based, survivor-led transitional justice projects and processes in Cote D'Ivoire, The Gambia, Guinea, Liberia, Mali, North-eastern Nigeria, and Sierra Leone. Through the EU-AU supported Initiative for Transitional Justice in Africa, ATJLF also provides financial and technical support to organizations beyond West Africa.

ABOUT WOMEN'S ASSOCIATION FOR VICTIMS' EMPOWERMENT

A sub-grantee of the Africa Transitional Justice Legacy Fund, Women's Association for Victims' Empowerment (WAVE Gambia) is a women-led organization advocating for women's rights and supporting marginalized groups and victims of human rights violations in The Gambia.

Founded in 2019, WAVE focuses on empowering women, particularly in remote areas, by addressing their specific needs and promoting inclusivity in transitional justice and other processes. Its initiatives recognize the communal impact of human rights violations. This recognition informs its support to individuals and communities alike.

Key programs include capacity building, advocacy, access to justice, support services for survivors, entrepreneurial skills development, community outreach, and fostering accountability. WAVE Gambia is dedicated to advancing gender equity.



INTRODUCTION

Following the end of the 22-year dictatorship of The Gambia's former President Yahya Jammeh, which was marked by heinous human rights abuses and violations; including torture, enforced disappearances, illegal detention and sexual and gender-based violence (SGBV), The Gambia's transitional justice process saw the establishment of several institutions including a financial Commission of Inquiry on the financial dealings of former President Jammeh and his associates; Security Sector Reform mechanisms; a Constitutional Review Commission; and the Truth, Reconciliation and Reparations Commission (TRRC).

The TRRC received testimonies from 392 witnesses, most of whom were victims. It is widely acknowledged that the TRRC did a tremendous job in bringing out the truth of the past regime's atrocities and providing victims and survivors with financial and psychosocial support, however the limited participation of women in the TRRC process was quite evident. Out of the 392 witnesses that testified only 69 were women. It is therefore apparent that the experiences of women victims and survivors of the Jammeh regime have not been entirely brought to light or publicly acknowledged.¹

The TRRC concluded its work and submitted its final report and recommendations to the Government, who has since published a White Paper accepting most of the recommendations. Post-TRRC mechanisms will include victims who have not registered with the TRRC or shared their experiences of rights violation so long as they meet a certain criterion. This gives women victims who did not participate in the TRRC process a chance to access justice and/or reparations. Drawing on the Kenyan example, this report makes a case for gender-focused strategic litigation as a viable option for women victims to access justice and/or reparations.

What is Strategic Litigation?

Strategic litigation refers to litigation that is in the interests of the public with the aim of achieving protection and the enjoyment of human rights as well as obtaining justice and redress.²

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¹ www.ictj.org/publication/women%E2%80%99s-experiences-dictatorship-gambia

² <http://dx.doi.org/10.17159/1996-2096/2022/v22n1a9>



Strategic litigation refers to cases presented before judicial or quasi-judicial bodies aimed at creating lasting impacts beyond remedying the victims' harm. Claimants typically seek to achieve three potential outcomes through such cases:³

1. Individual impact on the victim, the complainant, his or her family and/or relatives: through the courts granting reparations such as compensation, medical/ psychosocial support.
2. Social impact: systematic or structural changes that prevent recurrence.
3. Institutional impact: holding the state accountable to its human rights obligations through legislative and policy developments.

Strategic litigation can be beneficial to women who have been victims of human rights violations and can result in structural changes that will benefit the society. These processes are a key tool for advancing equality for all, closing the inequality gap, and eradicating discrimination, impunity, and corruption⁴.

Pursuit of Domestic Accountability for Women Victims of Human Rights Violations (1994–2016) through Strategic Litigation

Strategic litigation is particularly well suited where there is a situation of social marginalization, and there is a need for deliberate and careful planning aimed at long term change that will improve the situation of marginalized groups⁵. Thus, strategic litigation has become an important tool for human rights advocates around the world seeking to ensure equal and fair treatment for all persons within society.

In Guatemala, the Sepur Zarco case is a key testament to the impact of strategic litigation. In 2011, 15 women survivors from the indigenous village of Sepur Zarco, who in 1982 were subjected to violent and abusive acts of rape, domestic slavery, and sexual slavery by members of the Guatemala army, took their case before Guatemala's high-risk court. On 2 March 2016, the court convicted two former military members of crimes against the duties of humanity (rape, murder, and enslavement) and awarded 18 reparation measures to the survivors and their communities. This was the first time that a court in Guatemala had prosecuted a case of conflict related sexual slavery using domestic and international criminal law.

Among the reparation measures in the judgment is a commitment by the court to reopen the land claim files, as well as orders to establish a Health Centre, improve the infrastructure of the primary school, open a new secondary school, and provide scholarships for women and children, all of which would lift them out of extreme poverty.

³ <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SL-LatinAmerica-EN.pdf>

⁴ Ibid

⁵ <https://africanfeminism.com/feminist-strategic-litigation-as-a-tool-for-confronting-%E2%80%8B%E2%80%8Bgendered-exclusion-and-silencing/>



This case is an example of strategic litigation's impact beyond the victims and their families but the wider impact it has on the society, ensuring structural and institutional changes, bringing to public attention both nationally and internationally issues of historical human rights violations and seeking reparations in its myriad forms.

A comparable case to the current situation of women victims in The Gambia is the 2007/2008 Kenyan post-election sexual violence case. Brought before the High Court through a constitutional petition by six women and two men survivors, this strategic litigation acknowledged the plight of the petitioners, influenced perceptions of domestic accountability, and provided a pathway to reparations⁸.

Notably, Kenya's transitional justice processes, also includes constitutional reforms and a Truth, Justice, and Reconciliation Commission. Like The Gambia's TRRC, Kenya's Truth Commission produced detailed reports on human rights violations, including sexual and gender-based violence, within a specific timeframe.

Although, the Kenyan case focuses on sexual and gender-based violence during the 2007/2008 election cycle and the systemic nature of sexual and gender-based violence in Kenya particularly post elections, it is not dissimilar to The Gambia's situation, from 1994-2016.

The sexual and gender-based violence strategic litigation sought, among other issues, to hold the Kenyan government accountable for its failure to prevent the violence and resulting sexual and gender-based violence; protect the general population, including the survivors from sexual assault; investigate and prosecute perpetrators of sexual and gender-based violence; and provide prompt, adequate, appropriate, and effective reparations to survivors⁹.

In a landmark judgment, on 10 December 2020 the High Court ruled in favour of four of the eight survivor-petitioners. The Court awarded each of the four survivor-petitioners Ksh 4 million (approximately US \$36,513) as general damages for the violation of their constitutional rights.

This case had three key elements of importance:

1. It ensured recognition and acknowledgement of the victims;
2. created a precedence for reparations
3. a positive impact for the pursuit of domestic accountability.

It is important to note that in the Kenyan case, CSOs gained the *locus standi* to join as petitioners as a result of the provisions of the new Constitution. The latter also recognized and included key human rights instruments such as the CEDAW, CAT, ICERD etc. as part of the laws of Kenya¹⁰. The Gambia has still not been able to complete its constitutional reform process and these provisions are not available in the current 1997 Constitution. This may affect the effectiveness of cases brought by CSOs and the application of international human rights instruments not domesticated by The Gambia.

⁸ <http://dx.doi.org/10.17159/1996-2096/2022/v22n1a9>

⁹ Ibid

¹⁰ Ibid



It is therefore imperative for CSOs and development partners to continue advocating towards ensuring transitional justice mechanisms initiated by the Government of The Gambia particularly legislative and institutional reforms are completed. This will enable victims to pursue accountability and redress without impediments.

Challenges for the Pursuit of Domestic Accountability through Strategic Litigation for Women Victims in The Gambia

1. The unavailability of the *actio popularis* principle within the courts. This means that CSOs and NGOs cannot take cases to the courts on behalf of victims.
2. The Gambia's dualist legal system requires international treaties to be both ratified and domesticated to become law. For instance, while The Gambia ratified the Convention Against Torture in 2018, torture remains uncriminalized domestically as the Prevention and Prohibition of Torture Bill 2020 is yet to be enacted.
3. The resistance, lack of will and/or technical expertise of justice actors to apply normative and evidentiary frameworks that include international standards and to adequately integrate a gender perspective in their cases¹¹.
4. The absence of a victim-centered approach, especially during the collection of testimonial evidence. Specifically, in relation to sexual violations where victims are expected to share intimate details and provide detailed accounts of events¹².
5. The silence culture has also diminished victims' voices and willingness to embark on litigation.

Recommendations for the Government of The Gambia

1. Ensure the implementation of legislative and institutional reforms from the transitional justice process, including the draft constitution and pending bills like the Prevention and Prohibition of Torture Bill.
2. Ensure the implementation of the Victims Reparations Bill which was passed into law into November 2023.
3. Create an enabling environment for strategic litigation by advancing human rights and access to justice for women and girls going beyond sufficiency of laws to social change and reconstruction.

Recommendations for Civil Society Organisations

1. Civil society organizations should partner, collaborate, and coordinate to develop a strategic roadmap for pursuing viable case theories with a strong likelihood of success at trial.
2. Work with development partners to create holistic support strategies, to respond to victims' legal, medical, psychosocial, economic and protection needs.
3. Continue to engage justice sector stakeholders; through capacity strengthening and creating spaces for conversations and dialogues.
4. Continue to advocate for the government to implement its transitional justice agenda particularly legislative and institutional reforms.

¹¹ <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SL-LatinAmerica-EN.pdf>

¹² Ibid



CONCLUSION

The deeply rooted structural and discriminatory gender stereotypes in Gambia's conservative and patriarchal society posed significant challenges to the full participation of women victims in the transitional justice process, particularly in the TRRC. This has negatively impacted the women's right to truth, justice and reparations for the violations and abuses they suffered. In this paper, we make a case for strategic litigation with a gender focused lens as an important tool used by human rights advocates to advance the rights of marginalized and vulnerable groups such as women.

Numerous case laws have indicated the success strategic litigation has had in the jurisdictions in which it has been implemented; beyond monetary compensation for victims, it has impacted institutional reforms and public recognition and acknowledgement of historic rights violations.

Through the use of gender-focused strategic litigation, The Gambia can bridge the gaps in the TRRC's work in ensuring truth, justice and reparations for women survivors of violations during the Jammeh regime.

Although, there are challenges to the use of strategic litigation, it is still a viable option of pursuing domestic accountability and obtaining justice and reparations for victims.



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