



# THE GAMBIA

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law Customary Law	Written	Yes	Single State	Republic

## 1. INTRODUCTION

### 1.1. Modern Slavery and Human Trafficking

The Gambia is a Sovereign Republic.<sup>1</sup> Its President, who is head of state and of the government, upholds and defends the Constitution as the supreme law of The Gambia.<sup>2</sup> Executive power is vested in the President.<sup>3</sup>

The legislative powers are exercised through bills passed by its National Assembly and assented to by the President. Acts of the National Assembly are to be published in the Gazette within 30 days of assent, and no Act shall come into operation until it is published in the Gazette.<sup>4</sup>

The Gambia's approach to human trafficking is based on its Constitution, international treaties, and domestic law.

According to the U.S. Department of State, Trafficking in Persons Report 2022 (**2022 U.S. TIP Report**):

Human traffickers exploit domestic and foreign victims in The Gambia, and traffickers exploit victims from The Gambia abroad. Within The Gambia, traffickers subject women, girls, and boys to sex trafficking and forced labor in street vending and domestic work. ... An international organization reported organized sex trafficking networks use European and Gambian travel agencies to promote child sex tourism. Some families encourage their children to enter the tourism industry or seek relationships with tourists for financial gain. Observers have reported sex traffickers host child sex tourists in private residences outside the commercial tourist areas of Banjul, making the crime harder to detect. Gambian boys attend Quranic schools in The Gambia, Guinea-Bissau, and Senegal, and some boys from Guinea, Guinea-Bissau, Mali, and Senegal attend Quranic schools in The Gambia; some corrupt teachers exploit students in forced begging, street vending, and agricultural work. NGOs identified Gambian children in forced labor in neighboring West African countries and Mauritania. Individuals without birth registrations, especially children of single mothers and those in rural areas, are vulnerable to exploitation. Traffickers recruit women and girls from West African countries, especially Nigeria, and exploit them in sex trafficking in The Gambia.

<sup>1</sup> Constitution of the Republic of the Gambia, section 1, *available at*: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>2</sup> *Id.*, section 61.

<sup>3</sup> *Id.*, section 76.

<sup>4</sup> *Id.*, section 100.

Cuban nationals working in The Gambia may have been forced to work by the Cuban government.<sup>5</sup>

Traffickers exploit Gambians in forced labor abroad; authorities have identified Gambian male and female trafficking victims recruited by agents and exploited in Egypt, Kuwait, Lebanon, and the UAE in domestic work, hospitality, construction, and mining. Private, and often informal, recruitment agencies place many Gambian workers abroad, including in the Gulf and sometimes in coordination with agents in the destination countries. Informal agents recruit workers through social and family networks, or they pose as tourism or human resource agencies. Traffickers posing as labor recruiters fraudulently recruit Gambian workers for employment in Europe or the Gulf, and subsequently exploit them in domestic servitude or sex trafficking. Traffickers are increasingly recruiting victims using social media and messaging platforms for domestic servitude in the Middle East. Gambian authorities have identified Sierra Leonean victims en route to exploitation in the Middle East. Gambian migrants, particularly young men from impoverished backgrounds, attempting to travel to Europe through irregular routes, known as “the Backway,” are vulnerable to trafficking and abuse.<sup>6</sup>

The National Human Rights Commission in The Gambia promotes and protects human rights in The Gambia and monitors, receives, investigates, and considers complaints of human rights violations in The Gambia and communicates its decisions to the Government and all relevant institutions and takes necessary corrective action.<sup>7</sup> Additionally, the Trafficking in Persons Act, 2007 established the National Agency Against Trafficking in Persons (**National Agency**).<sup>8</sup> The National Agency has a number of functions, including to “receive and investigate reports of activities of trafficking from the public or otherwise coming to its notice or knowledge”; “initiate activities and promote strategies to combat trafficking”; “establish, maintain, and secure communication to facilitate the rapid exchange of information relating to offences and improved international co-operation in the prevention and suppression of trafficking in persons by road, sea, and air”; take charge of, supervise, control and co-ordinate the rehabilitation the victims of trafficking”; and “act as a database for all data relating to trafficking in persons.”<sup>9</sup>

## 1.2. The Gambia’s Policy and Legal Position

Chapter IV of the Constitution provides for the protection of fundamental human rights and freedoms.<sup>10</sup> In the case of human trafficking, these rights and freedoms are enforced through domestic law — the Trafficking in Persons Act, 2007.<sup>11</sup>

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<sup>5</sup> U.S. Dep’t of State, 2022 Trafficking in Persons Report: The Gambia, available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/gambia/>.

<sup>6</sup> *Id.*

<sup>7</sup> National Human Rights Commission Act 2017, section 12, available at: <https://www.lawhubgambia.com/national-human-rights-commission#:~:text=The%20National%20Human%20Rights%20Commission,human%20rights%20in%20The%20Gambia.>

<sup>8</sup> Trafficking in Persons Act, 2007, section 3, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>9</sup> *Id.*, section 14.

<sup>10</sup> Constitution of the Republic of the Gambia, chapter IV, available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>11</sup> Trafficking in Persons Act, 2007, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

The Gambia developed its National Plan of Action Against Trafficking in Persons 2021–2025 and has standard operating procedures and a national referral mechanism to identify and provide assistance to victims of trafficking.<sup>12</sup>

The Gambia has ratified a number of UN treaties and conventions and regional African treaties. Refer to Section 2.

## 2. OVERVIEW OF THE GAMBIA’S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

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### 2.1. The Gambia’s Regional and International Law Obligations

The Gambia is a member of the Economic Community of West African States (ECOWAS).<sup>13</sup> The main objective of ECOWAS is to promote economic cooperation among member states to improve standards of living and economic development; consequently, ECOWAS also seeks promote and protect human rights.<sup>14</sup>

#### 2.1.1. Fundamental human rights

The Gambia is a party to UN international conventions that deal with fundamental human rights. It has ratified, or acceded to, the International Covenant on Civil and Political Rights (1979)<sup>15</sup> and its Optional Protocol (1988)<sup>16</sup> and its Second Optional Protocol aiming to the abolition of the death penalty (2018),<sup>17</sup> the International Covenant on Economic, Social and Cultural Rights (1978),<sup>18</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (1978),<sup>19</sup> the Convention on the Elimination of All Forms of Discrimination against Women (1993),<sup>20</sup> the Convention on the Rights of the Child (1990)<sup>21</sup> and its

<sup>12</sup> Key Achievements IOM The Gambia, January 2017–June 2022; *available at*:

[https://gambia.iom.int/sites/g/files/tmzbd11631/files/documents/2023-05/iom-the-gambia-achievements\\_final.pdf](https://gambia.iom.int/sites/g/files/tmzbd11631/files/documents/2023-05/iom-the-gambia-achievements_final.pdf).

<sup>13</sup> Economic Community of Western African States, List of Member States, *available at*: <https://ecowas.int/member-states/>.

<sup>14</sup> Office of the United States Trade Representative, Regional Economic Communities, Economic Community of Western African States, *available at*: <https://ecowas.int/member-states/>.

<sup>15</sup> International Covenant on Civil and Political Rights: Signatories, United Nations Treaty Collection, *available at*:

[https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg\\_no=iv-4&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=en).

<sup>16</sup> Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-5&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-5&chapter=4&clang=en).

<sup>17</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>18</sup> International Covenant on Economic, Social and Cultural Rights: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4).

<sup>19</sup> International Convention on the Elimination of All Forms of Racial Discrimination: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en).

<sup>20</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8-b&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8-b&chapter=4&clang=en).

<sup>21</sup> United Nations Convention on the Rights of the Child: Signatories, United Nations Treaty Collection, *available at*:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4).

Optional Protocols on the Involvement of Children in Armed Conflict (2019)<sup>22</sup> and on the Sale of Children, Child Prostitution and Child Pornography (2010),<sup>23</sup> and the Convention on the Rights of Persons with Disabilities (2015).<sup>24</sup>

The Gambia has also ratified certain ILO Conventions, including the Minimum Age Convention (No. 138),<sup>25</sup> the Worst Forms of Child Labour Convention (No. 182),<sup>26</sup> the Forced Labour Convention, 1930 (No 29),<sup>27</sup> and the Abolition of Forced Labour Convention (No. 105).<sup>28</sup>

### 2.1.2. *Modern slavery and trafficking*

The Gambia has ratified the UN Convention against Transnational Organized Crime,<sup>29</sup> the related Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,<sup>30</sup> and the related Protocol Against the Smuggling of Migrants by Land, Sea and Air.<sup>31</sup>

### 2.1.3. *Effect under The Gambia's law*

The President is “responsible for the negotiation and, subject to ratification by the National Assembly, the conclusion of treaties and other international agreements.”<sup>32</sup> UN conventions once ratified are binding on The Gambia.

<sup>22</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=en).

<sup>23</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of children, Child Prostitution and Child Pornography: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en).

<sup>24</sup> Convention on the Rights of Persons with Disabilities: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=iv-15&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&clang=en).

<sup>25</sup> C138 – Minimum Age Convention, 1973 (No. 138), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ilo\\_code:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ilo_code:C138).

<sup>26</sup> C182 – Worst Forms of Child Labour Convention, 1999 (No. 182), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182).

<sup>27</sup> C029 – Forced Labour Convention, 1930 (No. 29) available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029/](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029/).

<sup>28</sup> C105 – Abolition of Forced Labour Convention, 1957 (No. 105), available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C105](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105).

<sup>29</sup> United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en).

<sup>30</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18).

<sup>31</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18).

<sup>32</sup> Constitution of the Republic of the Gambia, section 79(1)(c), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

## 2.2. Human Rights Protections Under The Gambia’s Law

Chapter IV of the Constitution protects fundamental human rights and freedoms of Gambians.<sup>33</sup> These rights and freedoms include the right to life, personal liberty, freedom from inhuman or degrading treatment, and freedom of movement.<sup>34</sup>

Section 20 of The Gambia Constitution provides:

1. No person shall be held in slavery or servitude.
2. No person shall be required to perform forced labour.
3. For the purposes of this section, the expression “forced labour” does not include:
  - a. any labour required in consequence of a sentence or order of a court;
  - b. labour required of any person while he or she is lawfully detained that, though not required in consequence of the sentence or order of the court, is reasonably necessary in the interests of hygiene for the maintenance of the place in which he or she is detained;
  - c. any labour required of a member of a defence force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service as a member of any naval, military or air force, any labour which that person is required by law to perform in place of such service;
  - d. any labour required during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purposes of dealing with that situation; or
  - e. any labour reasonably required as part of reasonable and normal communal or other civic obligations.<sup>35</sup>

Section 27 of The Gambia Constitution provides:

1. Men and women of full age and capacity shall have the right to marry and found a family.
2. Marriage shall be based on the free and full consent of the intended parties.<sup>36</sup>

Section 29(2) of The Gambia Constitution states, “Children under the age of sixteen years are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or be harmful to their health or physical, mental, spiritual, moral or social development.”<sup>37</sup>

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<sup>33</sup> *Id.*, chapter 4.

<sup>34</sup> *Id.*, sections 18, 19, 21, and 25(2).

<sup>35</sup> *Id.*, section 20.

<sup>36</sup> *Id.*, section 27.

<sup>37</sup> *Id.*, section 29(2).

Section 4 of The Gambia Constitution states that the “Constitution is the supreme law of The Gambia and any other law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency, be void.”<sup>38</sup>

Section 35 of The Gambia Constitution provides:

1. An Act of the National Assembly may authorise the taking, during any period of public emergency, of measures that are reasonably justifiable for dealing with the situation that exists in The Gambia.
2. Nothing contained in or done under the authority of such an Act shall be held to be inconsistent with or in contravention of sections 19, 23, 24 (other than subsections (5) to (8) thereof) or 25 of this Constitution to the extent that it is reasonably justifiable in the circumstances arising or existing during a period of public emergency for the purpose for dealing with the situation.<sup>39</sup>

Section 37 of The Gambia Constitution provides:

1. If any person alleges that any of the provisions of sections 18 to 33 or section 36(5) of this Chapter has been, is being, or is likely to be contravened in relation to himself or herself by any person he or she may apply to the High Court for redress.
2. An application may be made under this section in the case of a person who is detained by some other person acting on the detained person’s behalf.
3. An application under this section shall be without prejudice to any other action with respect to the same matter which is lawfully available.
4. If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of the said sections 18 to 33 or section 36(5), that court may, and shall if any party so requests, refer the question to the High Court, unless, in the opinion of the subordinate court, the raising of the question is merely frivolous or vexatious.
5. The High Court shall-
  - a. hear and determine any application made by any person pursuant to subsection (1) or (2);
  - b. determine any question arising in the case of any person which is referred to it in pursuance of subsection (4) and may, in addition to the powers conferred on it by section 5 (which relates to defence of the Constitution) make such order, issue such writ, and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions of the said sections 18 to 33 or section 36(5) to the protection of which the person concerned is entitled:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

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<sup>38</sup> *Id.*, section 4.

<sup>39</sup> *Id.*, section 35.

6. The High Court shall consider every application and reference referred to it in pursuance of this section and, having heard arguments by or on behalf of the parties, shall pronounce its decision on the question in open court as soon as may be, and in the case of a reference under subsection (4), not later than thirty days after the conclusion of the final addresses of the parties.<sup>40</sup>

The Women’s Act provides for certain human rights for women and female children, replicating parts of the Constitution and the provisions of that Act that are enforceable in the High Court in the same manner as is set out in section 37 of the Constitution.<sup>41</sup> The Bureau which administers the affairs of the National Women’s Council under that Act has the right and standing to institute an action in the name of the Council in the High Court to enforce any provisions of that Act on behalf of any woman or female child or group of women or female children.<sup>42</sup>

Section 12 of the National Human Rights Commission Act specifies the functions of the National Human Rights Commission in The Gambia.<sup>43</sup> Those functions include:

- (a) promote and protect human rights in The Gambia;
- (b) monitor, receive, investigate and consider complaints of human rights violations in The Gambia including violations by private persons and entities;
- (c) communicate its decisions in the form of written reports to the Government and all relevant institutions to take necessary corrective action;
- (d) recommend appropriate remedial action to the Government and seek appropriate redress on behalf of complainants;
- (e) promote awareness of and respect for human rights including through effective cooperation with non-governmental organisations and other public interest bodies engaged in the field of human rights, discrimination, economic and social development, protection of vulnerable groups, universities, faith based groups, youth advocacy groups and other civil society organisations;
- (f) encourage the Government to effectively implement international human rights instruments and other agreements to which The Gambia is a party including through independent commentary of periodic reports to be submitted by The Gambia; and
- (g) maintain a library, collect data and disseminate information and materials on human rights generally.<sup>44</sup>

Section 13 adds that:

[t]he Commission has the powers, rights and privileges vested in the High Court at a trial to hear any complainant; summon witnesses to testify at hearings; examine witnesses on oath, affirmation or otherwise; compel the production of documents; issue an order or request to

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<sup>40</sup> *Id.*, section 37.

<sup>41</sup> Women’s Act 2010, as amended, *available at*: <https://www.lawhubgambia.com/womens-act-2010>.

<sup>42</sup> *Id.*, sections 12 and 70.

<sup>43</sup> National Human Rights Commission Act 2017, section 12, *available at*: <https://www.lawhubgambia.com/national-human-rights-commission#:~:text=The%20National%20Human%20Rights%20Commission,human%20rights%20in%20The%20Gambia>.

<sup>44</sup> *Id.*

examine witnesses abroad; and enforce its decisions, including measures to protect the life and safety of an individual.<sup>45</sup>

The Commission is to report the results of an investigation in writing to the Government and to the complainant and the reasons for its conclusions. In publishing the report of an investigation, the Commission is to have due regard for the rights of those affected, including their right to privacy.<sup>46</sup>

In its report on an investigation, the Commission may recommend the appropriate redress for a complainant.<sup>47</sup> The Government is to respond within 30 days to the specific case and to the Commission's decisions as to the remedy for a human right.<sup>48</sup>

## 2.3. Criminalization of Modern Slavery

The laws criminalizing modern slavery are mainly set out in the Trafficking In Persons Act, 2007, as amended, (**TIP Act**).<sup>49</sup> Refer to Section 3.

## 2.4. Supply Chain Reporting

No legislation of The Gambia requires reporting of human trafficking in supply chains or obliges private businesses to control their supply chains to hinder human trafficking.

## 2.5. Investigation, Prosecution, and Enforcement

### 2.5.1. Investigation and prosecution of criminal offenses

Section 3 of the Criminal Procedure Code provides:

(1) All offences under the Criminal Code shall be inquired into, tried and otherwise dealt with in accordance with the provisions of this Code and of any other law.

(2) All offences under any other law shall be inquired into, tried and otherwise dealt with according to this Code, subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into, trying or otherwise dealing with such offences.<sup>50</sup>

The Trafficking in Persons Act is in this category.<sup>51</sup>

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<sup>45</sup> *Id.*, section 13.

<sup>46</sup> *Id.*, section 21.

<sup>47</sup> *Id.*, section 22.

<sup>48</sup> *Id.*, section 23.

<sup>49</sup> Trafficking in Persons Act, 2007, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf); Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>50</sup> Criminal Procedure Code Act 1933, section 3, available at: <https://www.lawhubgambia.com/s/Criminal-Procedure-Code-Act-No-26-of-1933.pdf>.

<sup>51</sup> See, e.g., Criminal Procedure Code Act 1933, section 3, available at: <https://www.lawhubgambia.com/s/Criminal-Procedure-Code-Act-No-26-of-1933.pdf>.



Section 85(1) of The Gambia Constitution states that the Director of Public Prosecutions, subject to the approval of the Attorney General, shall have the power:

- a. to initiate and undertake criminal proceedings against any person before any court for an offence against the law of The Gambia;
- b. to take over and continue any such criminal proceedings that have been instituted by any other person or authority;
- c. to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or herself or any other person or authority:<sup>52</sup>

Provided that the Director of Public Prosecutions shall not-

- (i) take over and continue any private prosecution without the consent of the private prosecutor and the court; or
- (ii) discontinue any private prosecution without the consent of the private prosecutor.<sup>53</sup>

Section 69(1) of the Criminal Procedure Code states:

Criminal proceedings may be instituted:

- a. by a police officer bringing a person arrested with or without a warrant before a magistrate upon a charge;
- b. by a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant or a summons; or
- c. by a person other than a public prosecutor or a police officer, making a complaint and applying for the issue of a warrant or summons.<sup>54</sup>

Sections 42 through 44 of the Criminal Procedure Code describe arrest, search, seizure, and investigation powers.<sup>55</sup> Part VIII of the Trafficking in Persons Act provides an additional complaint procedure and arrest powers for trafficking in persons cases.<sup>56</sup>

If a victim assists or participates in criminal proceedings against an alleged trafficker, the proceedings are to be conducted as not to be detrimental or prejudicial to the victim’s rights and consistent with their psychological and physical safety.<sup>57</sup> Evidence may be provided in camera<sup>58</sup> and the investigation, detection,

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<sup>52</sup> This power excludes proceedings “in relation to any appeal by a person convicted in any criminal proceedings or to any case stated at the instance of such a person.” Constitution of the Republic of the Gambia, section 85(2), *available at*: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>53</sup> *Id.*, section 85(1).

<sup>54</sup> Criminal Procedure Code Act 1933, section 69(1), *available at*: <https://www.lawhubgambia.com/criminal-law-database>.

<sup>55</sup> Criminal Procedure Code Act 1933, section 42-44, *available at*: <https://www.lawhubgambia.com/criminal-law-database>.

<sup>56</sup> Trafficking in Persons Act, 2007, part VIII, *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking in Persons Act 2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking%20in%20Persons%20Act%202007.pdf).

<sup>57</sup> *Id.*, section 46.

<sup>58</sup> *Id.*, section 47.

collection, and interpretation of evidence are to be conducted in such a way that minimizes intrusion into the victim’s personal history.<sup>59</sup>

The High Court and a Magistrate Court of the First Class are the courts with jurisdiction for offences under the Trafficking in Persons Act.<sup>60</sup> In the High Court, the Attorney General commences criminal proceedings by filing an Indictment and summary of evidence.<sup>61</sup>

### 2.5.2. *Mutual assistance/international cooperation*

The Gambia is involved in regional human rights initiatives through a number of voluntary pledges and commitments, including its participation in the African Charter on Humans and Peoples’ Rights,<sup>62</sup> the African Charter on the Rights and Welfare of the Child,<sup>63</sup> and the African Youth Charter.<sup>64</sup>

The Gambia has signed multilateral co-operation agreements with central African countries related to human trafficking and has signed several bilateral co-operation agreements with other countries, including Ghana and Taiwan, for the prevention of human trafficking.<sup>65</sup>

The EU Emergency Trust Fund for Africa funds the EU–International Organization for Migration (**IOM**) Joint Initiative for Migrant Protection and Reintegration (**Joint Initiative**) in The Gambia. The Joint Initiative is a regional initiative in 26 African countries that aims to facilitate the sustainable reintegration of returning migrants in The Gambia.<sup>66</sup>

The Gambia participates in the Joint Programme on the Elimination of Female Genital Mutilation Accelerating Change (**Joint Programme**). The UN Population Fund and the UN Children’s Fund lead the Joint Programme.<sup>67</sup>

The Gambia (through the Ministry of Trade, Industry, Regional Integration and Employment, the Ministry of Interior, and the Ministry of Gender, Children and Social Welfare) participates in a project with the International Trade Centre, the IOM, the United Nations Development Fund, and the United Nations Children’s Fund to address migration-related vulnerabilities along the Trans-Gambia transport corridor.<sup>68</sup>

<sup>59</sup> *Id.*, section 45(1)(f).

<sup>60</sup> *Id.*, section 2.

<sup>61</sup> *Id.*, section 175B.

<sup>62</sup> African Charter on Humans and Peoples’ Rights, *available at*: <https://au.int/en/treaties/african-charter-human-and-peoples-rights>.

<sup>63</sup> African Charter on the Rights and Welfare of the Child, *available at*: <https://www.ohchr.org/en/resources/educators/human-rights-education-training/2-african-charter-rights-and-welfare-child-1990>.

<sup>64</sup> African Youth Charter, *available at*: <https://au.int/en/treaties/african-youth-charter>.

<sup>65</sup> ECAPT International, 2012 Country Monitoring Report: The Gambia, *available at*: Trafficking in Persons Report: The Gambia, *available at*: [https://ecpat.org/wp-content/uploads/2021/08/Ex\\_Summary\\_The-Gambia\\_FINAL.pdf](https://ecpat.org/wp-content/uploads/2021/08/Ex_Summary_The-Gambia_FINAL.pdf).

<sup>66</sup> EU-IOM Joint Initiative for Migrant Protection and Reintegration, The Gambia, *available at*: <https://www.migrationjointinitiative.org/countries/sahel-and-lake-chad/gambia>.

<sup>67</sup> Eliminating Female Genital Mutilation, 2022 Global Annual Report, *available at*: <https://www.unicef.org/media/146696/file/Annual%20Report.pdf>.

<sup>68</sup> United Nations Development Programme, Addressing the drivers and causes of migration-related vulnerabilities among border communities along the Trans-Gambia transport corridor, September 2023, *available at*: <https://www.undp.org/gambia/publications/addressing-drivers-and-causes-vulnerability-migration-among-border-communities-along-trans-gambia-transport-corridor#:~:text=To%20address%20the%20drivers%20and,to%20support%20communities%20along%20the>.

The project was proposed in response to issues associated with trafficking in persons, migrant smuggling, and harassment of women and girls along the corridor.<sup>69</sup> The Multi-Partner Trust Fund for Safe, Orderly and Regular Migration is to fund the project through December 2024.<sup>70</sup>

### 3. THE GAMBIA’S CRIMINAL OFFENSES RELATING TO MODERN SLAVERY, MODERN SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

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#### 3.1. Overview of Criminal Offenses

The Trafficking in Persons Act, 2007, as amended, (**TIP Act**) makes trafficking in persons a criminal offence.<sup>71</sup>

Section 28 of the TIP Act states:

(1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).

(2) Trafficking in persons means-

(a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;

(b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or

(c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.

(3) Trafficking in persons also includes-

(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and

(b) transportation of another person within and across an international border for the purpose of exploiting that person’s prostitution.

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis

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<sup>69</sup> *Id.*

<sup>70</sup> International Trade Centre, United Nations landmark project addresses migrant related vulnerabilities in The Gambia, News, available at: <https://intracen.org/news-and-events/news/united-nations-landmark-project-addresses-migration-related-vulnerabilities-in>.

<sup>71</sup> Trafficking in Persons Act, 2007, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf); Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

[GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>72</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>73</sup> However, section 18(2) of the Constitution provides: “[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”<sup>74</sup> This provision may apply only in situations that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>75</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>76</sup>

Section 2 of the TIP Act defines a number of terms:

“child” means a person under the age of eighteen years;

“exploitation” includes—

- (a) keeping a person in a state of slavery;
- (b) subjecting a person to practices similar to slavery;
- (c) compelling or causing a person to provide forced labour or services;
- (d) keeping a person in a state of servitude;
- (e) the prostitution of a person or engaging in any other form of commercial sexual exploitation, including, but not limited to, pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child prostitution and child pornography;
- (f) illicit removal of human organs; and
- (g) exploitation during armed conflict.

“forced labour” means labour or services obtained or maintained through force, threat of force or other means of coercion or physical restraint.

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<sup>72</sup> Trafficking in Persons Act, 2007, section 28, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf); Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>73</sup> *Id.*

<sup>74</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>75</sup> Gambia suspends death penalty en route to abolition,” African News (February 19, 2018), available at: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>76</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

“practices similar to slavery” includes debt bondage, forced marriage and delivery of children for exploitation.

“servitude” means a condition of dependence in which the labour or services of a person are provided or obtained[:]

(a) by threats of serious harm to that person or another person; or

(b) through a scheme, plan or pattern intended to cause the person to believe that if the person did not perform the labour or services, the person or another person would suffer serious harm.

“slavery” means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.

“victim of trafficking” includes a person who has suffered harm, including physical or mental injury, emotional suffering and substantial impairment of his or her fundamental human rights, and who has been displaced, through trafficking.<sup>77</sup>

Section 29 of the TIP Act states:

(1) A person shall not act as an intermediary, for the purpose of trafficking.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>78</sup>

Section 30 of the TIP Act states:

(1) A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.

(2) In subsection (1), “use” includes employ and allow to work for.<sup>79</sup>

Section 38 of the TIP Act states that in a prosecution for trafficking under the TIP Act:

(a) the consent of a victim of trafficking to the intended or realized exploitation is irrelevant where any of the means specified in section 28(2) and (3) has been used;

(b) the past sexual behaviour of a victim of trafficking is irrelevant and inadmissible for the purpose of proving that he or she was engaged in other sexual behaviour or to prove his or her sexual predisposition;

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<sup>77</sup> Trafficking in Persons Act, 2007, section 2, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking in Persons Act 2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking%20in%20Persons%20Act%202007.pdf).

<sup>78</sup> *Id.*, section 29.

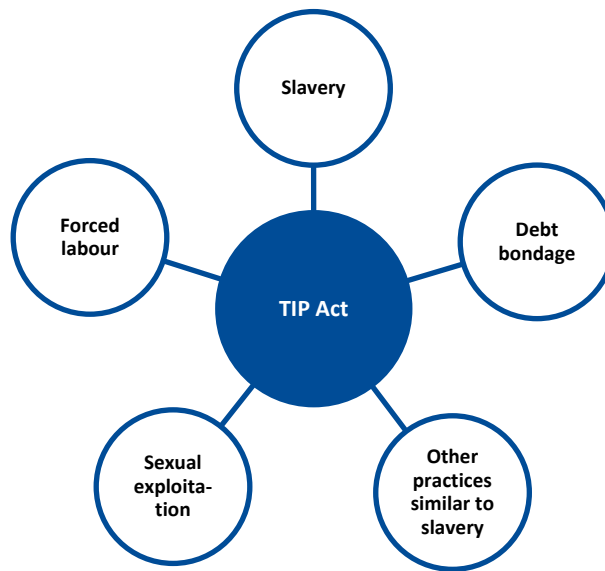
<sup>79</sup> *Id.*, section 30.

(c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be regarded as trafficking in persons even if it does not involve any of the means specified in section 28(2) or (3);

(d) the legal age of consent to sex, legal age of marriage or other discretionary age is not a defence to trafficking.<sup>80</sup>

Under section 56 of the TIP Act, if a provision of the TIP Act conflicts with a provision of the Children’s Act, the TIP Act provision prevails and the Children’s Act provision is void to the extent of the inconsistency.<sup>81</sup>

If an offence under the TIP Act is also an offence under the Criminal Code, an offender is to be tried and punished under the TIP Act.<sup>82</sup>



## 3.2. Modern Slavery Offenses Under the Criminal Code

### 3.2.1. General

Section 2 of the TIP Act defines slavery as “the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.”<sup>83</sup> Section 2 also defines exploitation as “keeping a person in a state of slavery.”<sup>84</sup>

Section 28 of the TIP Act provides:

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<sup>80</sup> *Id.*, section 38.

<sup>81</sup> *Id.*, section 56.

<sup>82</sup> *Id.*, section 57.

<sup>83</sup> *Id.*, section 2.

<sup>84</sup> *Id.*

(1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).

(2) Trafficking in persons means-

(a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;

(b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or

(c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.

(3) Trafficking in persons also includes-

(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and

(b) transportation of another person within and across an international border for the purpose of exploiting that person's prostitution.

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>85</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>86</sup> However, section 18(2) of the Constitution provides: "[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person."<sup>87</sup> This provision may apply only in situations that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>88</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>89</sup>

<sup>85</sup> *Id.*, section 28; Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>86</sup> *Id.*

<sup>87</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>88</sup> "Gambia suspends death penalty en route to abolition," African News (February 19, 2018), available at: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>89</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

Section 29 of the TIP Act provides:

- (1) A person shall not act as an intermediary, for the purpose of trafficking.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>90</sup>

Section 30 of the TIP Act provides:

- (1) A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.
- (2) In subsection (1), “use” includes employ and allow to work for.<sup>91</sup>

For additional information, refer to Section 3.1.

Dealing in slaves is an offence under section 230A of the Criminal Code and, on conviction, carries a penalty of imprisonment with or without hard labour for up to seven years.<sup>92</sup> Dealing in a child as a slave is also an offence under section 40 of the Children’s Act, 2005 and, on conviction, carries a penalty of imprisonment for life.<sup>93</sup> Under section 241 of the Criminal Code, a person who habitually deals in slaves commits a felony and, on conviction, is subject to imprisonment for ten years.<sup>94</sup> If a slavery offence under the TIP Act is also an offence under the Criminal Code or the Children’s Act, an offender is to be tried and punished under the TIP Act.<sup>95</sup>

Section 4(b) of the Women’s Act provides that no woman or female child shall be held in slavery.<sup>96</sup> A person who violates this provision commits an offence and is liable on conviction for a fine up to GMB 50,000, imprisonment for no more than six months, or both.<sup>97</sup>

### 3.2.2. Extraterritorial application

Under Section 36 of the TIP Act:

<sup>90</sup> Trafficking in Persons Act, 2007, section 29, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>91</sup> *Id.*, section 30.

<sup>92</sup> Criminal Code Act 1933, section 230A, available at: <https://www.lawhubgambia.com/criminal-law-database>.

<sup>93</sup> Children’s Act, 2005, section 40, available at: <https://citizenshiprightsafrika.org/wp-content/uploads/2016/01/Gambia-Childrens-Act-2005.pdf>.

<sup>94</sup> Criminal Code Act 1933, section 241, available at: <https://www.lawhubgambia.com/criminal-law-database>.

<sup>95</sup> Trafficking in Persons Act, 2007, sections 56 and 57, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>96</sup> Women’s Act 2010, section 4(b), available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=90619&p\\_country=GMB&p\\_count=52&p\\_classification=05&p\\_classcount=4](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90619&p_country=GMB&p_count=52&p_classification=05&p_classcount=4).

<sup>97</sup> *Id.*, section 74.



(1) A court in The Gambia has jurisdiction to try an offence under [the TIP] Act where the act constituting the offence has been carried out -

- (a) wholly or partly in The Gambia;
- (b) anywhere, by a citizen of The Gambia or by a person who is ordinarily resident in The Gambia;
- (c) by a person on board a vessel or aircraft registered in The Gambia.

(2) A court in The Gambia also has jurisdiction to try an offence under [the TIP] Act where

- (a) the victim of trafficking is a citizen of, or is ordinarily resident in, The Gambia; or
- (b) the trafficker is present in The Gambia and is not extradited.<sup>98</sup>

### 3.3. Modern Slavery-Like Offenses in The Gambia’s Legal Order

#### 3.3.1 *Servitude*

Section 2 of the TIP Act defines servitude as:

a condition of dependence in which the labour or services of a person are provided or obtained

- (a) by threats of serious harm to that person or another person; or
- (b) through a scheme, plan or pattern intended to cause the person to believe that if the person did not perform the labour or services, the person or another person would suffer serious harm.<sup>99</sup>

Section 2 also defines exploitation as “keeping a person in a state of servitude.”<sup>100</sup>

Section 28 of the TIP Act provides:

(1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).

(2) Trafficking in persons means-

- (a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;
- (b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or
- (c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

<sup>98</sup> Trafficking in Persons Act, 2007, section 36, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking in Persons Act 2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking%20in%20Persons%20Act%202007.pdf).

<sup>99</sup> *Id.*, section 2.

<sup>100</sup> *Id.*, section 2.

for the purpose of exploitation within or across national borders.

(3) Trafficking in persons also includes-

(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and

(b) transportation of another person within and across an international border for the purpose of exploiting that person's prostitution.

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>101</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>102</sup> However, section 18(2) of the Constitution provides: "[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person."<sup>103</sup> This provision may apply only in situations that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>104</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>105</sup>

Section 29 of the TIP Act provides:

(1) A person shall not act as an intermediary, for the purpose of trafficking.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>106</sup>

Section 30 of the TIP Act provides:

(1) A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand

<sup>101</sup> *Id.*, section 28; Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>102</sup> *Id.*

<sup>103</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>104</sup> Gambia suspends death penalty en route to abolition," African News (February 19, 2018), available at: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>105</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>106</sup> Trafficking in Persons Act, 2007, section 29, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.

(2) In subsection (1), “use” includes employ and allow to work for.<sup>107</sup>

For additional information, refer to Section 3.1.

Section 4(b) of the Women’s Act also provides that no woman or female child shall be held in servitude.<sup>108</sup> A person who violates this provision commits an offence and, on conviction, is liable for a fine up to GMB 50,000, imprisonment for no more six months, or both.<sup>109</sup>

### 3.3.2 *Forced labor*

Section 2 of the TIP Act defines forced labor as “labour or services obtained or maintained through force, threat of force or other means of coercion or physical restraint.”<sup>110</sup> Section 2 also defines exploitation as “compelling or causing a person to provide forced labour or services.”<sup>111</sup>

Section 28 of the TIP Act provides:

(1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).

(2) Trafficking in persons means-

(a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;

(b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or

(c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.

(3) Trafficking in persons also includes-

(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and

(b) transportation of another person within and across an international border for the purpose of exploiting that person’s prostitution.

<sup>107</sup> *Id.*, section 30.

<sup>108</sup> Women’s Act 2010, section 4(b), *available at*: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=90619&p\\_country=GMB&p\\_count=52&p\\_classification=05&p\\_classcount=4](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90619&p_country=GMB&p_count=52&p_classification=05&p_classcount=4).

<sup>109</sup> *Id.*, section 74.

<sup>110</sup> Trafficking in Persons Act, 2007, section 2, *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>111</sup> *Id.*

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>112</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>113</sup> However, section 18(2) of the Constitution provides: “[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”<sup>114</sup> This provision may apply only in situations that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>115</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>116</sup>

Section 29 of the TIP Act provides:

(1) A person shall not act as an intermediary, for the purpose of trafficking.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>117</sup>

Section 30 of the TIP Act provides:

(1) A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.

(2) In subsection (1), “use” includes employ and allow to work for.<sup>118</sup>

For additional information, refer to Section 3.1.

<sup>112</sup> *Id.*, section 28; Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>113</sup> *Id.*

<sup>114</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>115</sup> Gambia suspends death penalty en route to abolition,” African News (February 19, 2018), available at: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>116</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>117</sup> Trafficking in Persons Act, 2007, section 29, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>118</sup> *Id.*, section 30.

Under section 242 of the Criminal Code, a person who unlawfully compels another person to labour against that person's will commits a misdemeanour and, on conviction, is liable for a fine, imprisonment for no more than two years, or both.<sup>119</sup> If a forced labour offence under the TIP Act is also an offence under the Criminal Code, an offender is to be tried and punished under the TIP Act.<sup>120</sup>

Section 4(c) of the Women's Act provides that no woman or female child shall be required to perform forced or compulsory labour.<sup>121</sup> A person who violates this provision commits an offence and, on conviction, is liable for a fine up to GMB 50,000, imprisonment for no more than six months, or both.<sup>122</sup>

### 3.3.3 Deceptive recruiting for labor or services

Section 28(2) of the TIP Act defines "trafficking in persons" as:

(a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons; [or]

(b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability;

\* \* \*

for the purpose of exploitation within or across national borders.<sup>123</sup>

Section 28(3) of the TIP Act defines "trafficking in persons" to also include "(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and (b) transportation of another person within and across an international border for the purpose of exploiting that person's prostitution."<sup>124</sup>

Under section 28(1) of the TIP Act, deceptive recruiting for labor or services that falls within the definitions of "trafficking in persons" is an offence.<sup>125</sup> Sections 28(4) and 28(5) further provide the penalties for the offence.

A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

<sup>119</sup> Criminal Code Act 1933, section 34, available at: <https://www.lawhubgambia.com/criminal-law-database>.

<sup>120</sup> Trafficking in Persons Act, 2007, section 57, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking_in_Persons_Act_2007.pdf).

<sup>121</sup> Women's Act 2010, section 4(c), available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=90619&p\\_country=GMB&p\\_count=52&p\\_classification=05&p\\_classcount=4](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90619&p_country=GMB&p_count=52&p_classification=05&p_classcount=4).

<sup>122</sup> *Id.*, section 74.

<sup>123</sup> Trafficking in Persons Act, 2007, section 28(2), available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking_in_Persons_Act_2007.pdf).

<sup>124</sup> *Id.*, section 28(3).

<sup>125</sup> *Id.*, section 28(1).

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>126</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>127</sup> However, section 18(2) of the Constitution provides: “[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”<sup>128</sup> This provision may apply only in situations that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>129</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>130</sup>

Section 29 of the TIP Act provides:

- (1) A person shall not act as an intermediary, for the purpose of trafficking.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>131</sup>

Section 30 of the TIP Act provides:

- (1) A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.
- (2) In subsection (1), “use” includes employ and allow to work for.<sup>132</sup>

For additional information, refer to Section 3.1.

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<sup>126</sup> *Id.*, sections 28(4), 28(5).

<sup>127</sup> *Id.*; Trafficking in Persons (Amendment) Act, 2010, *available at*: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>128</sup> Constitution of the Republic of the Gambia, section 18(2), *available at*: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>129</sup> Gambia suspends death penalty en route to abolition,” African News (February 19, 2018), *available at*: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>130</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>131</sup> Trafficking in Persons Act, 2007, section 29, *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>132</sup> *Id.*, section 30.

### 3.3.4 Early and forced marriage

Section 2 of the TIP Act defines “practices similar to slavery” to include forced marriage.<sup>133</sup> Section 2 also defines exploitation as “subjecting a person to practices similar to slavery.”<sup>134</sup>

Section 28 of the TIP Act provides:

(1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).

(2) Trafficking in persons means-

(a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;

(b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or

(c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.

(3) Trafficking in persons also includes-

(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and

(b) transportation of another person within and across an international border for the purpose of exploiting that person’s prostitution.

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>135</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>136</sup> However, section 18(2) of the Constitution provides: “[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”<sup>137</sup> This provision may apply only in situations

<sup>133</sup> *Id.*, section 2.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*, section 28; Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>136</sup> *Id.*

<sup>137</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>138</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>139</sup>

Section 29 of the TIP Act states:

(1) A person shall not act as an intermediary, for the purpose of trafficking.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>140</sup>

Section 30(1) of the TIP Act provides:

A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>141</sup>

For additional information, refer to Section 3.1.

Under the Children’s Act, 2005, as amended, the minimum age for marriage is 18 years and child marriage is prohibited.<sup>142</sup> A person who is involved in a child marriage commits an offence and, on conviction, is liable to imprisonment for 20 years.

Under the Women’s Act, a marriage shall not take place without both parties’ free and full consent. A marriage without such consent is voidable.<sup>143</sup>

### 3.3.5 Debt bondage

Section 2 of the TIP Act defines “practices similar to slavery” to include debt bondage.<sup>144</sup> Section 2 also defines exploitation as “subjecting a person to practices similar to slavery.”<sup>145</sup>

Section 28 of the TIP Act states:

<sup>138</sup> Gambia suspends death penalty en route to abolition,” African News (February 19, 2018), available at: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>139</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>140</sup> Trafficking in Persons Act, 2007, section 29, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>141</sup> *Id.*, section 30(1).

<sup>142</sup> Children’s Act, 2005, available at: <https://citizenshiprightsafrika.org/wp-content/uploads/2016/01/Gambia-Childrens-Act-2005.pdf>.

<sup>143</sup> Women’s Act 2010, section 35, available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=90619&p\\_country=GMB&p\\_count=52&p\\_classification=05&p\\_classcount=4](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90619&p_country=GMB&p_count=52&p_classification=05&p_classcount=4).

<sup>144</sup> Trafficking in Persons Act, 2007, section 2, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>145</sup> *Id.*



(1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).

(2) Trafficking in persons means-

(a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;

(b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or

(c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.

(3) Trafficking in persons also includes-

(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and

(b) transportation of another person within and across an international border for the purpose of exploiting that person's prostitution.

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>146</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>147</sup> However, section 18(2) of the Constitution provides: "[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person."<sup>148</sup> This provision may apply only in situations that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>149</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>150</sup>

<sup>146</sup> Trafficking in Persons Act, 2007, section 28, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf); Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>147</sup> *Id.*

<sup>148</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>149</sup> Gambia suspends death penalty en route to abolition," African News (February 19, 2018), available at: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>150</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

Section 29 of the TIP Act states:

- (1) A person shall not act as an intermediary, for the purpose of trafficking.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>151</sup>

Section 30(1) of the TIP Act provides:

A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>152</sup>

For additional information, refer to Section 3.1.

### 3.3.6 *Any other relevant offenses*

Section 2 of the TIP Act defines “practices similar to slavery” to include “delivery of children for exploitation.”<sup>153</sup> Section 2 also defines exploitation as “subjecting a person to practices similar to slavery” and, under Section 28(2), delivery of children for exploitation can fall within the scope of the trafficking in persons offence.<sup>154</sup> Section 28(3) expands the “trafficking in persons” offence to include other types of conduct (see below) that is undertaken “for the purpose of exploiting that person’s prostitution.”<sup>155</sup>

Section 28 of the TIP Act states:

- (1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).
- (2) Trafficking in persons means-
  - (a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;
  - (b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or
  - (c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.

- (3) Trafficking in persons also includes-

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<sup>151</sup> Trafficking in Persons Act, 2007, section 29, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking in Persons Act 2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking%20in%20Persons%20Act%202007.pdf).

<sup>152</sup> *Id.*, section 30(1).

<sup>153</sup> *Id.*, section 2.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*, section 28(3).

(a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and

(b) transportation of another person within and across an international border for the purpose of exploiting that person's prostitution.

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifty years and a maximum term of life imprisonment.

(5) Notwithstanding the provisions of subsection (4), where the trafficking includes rape or death of a victim of trafficking or the victim of trafficking is a child, the offender is liable to the fine specified in subsection (4) in addition to the sentence of death.<sup>156</sup>

The Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death in section 28, subsection (5), of the TIP Act.<sup>157</sup> However, section 18(2) of the Constitution provides: "[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person."<sup>158</sup> This provision may apply only in situations that involve the death of a victim. In 2018, the President declared a moratorium on the use of the death sentence<sup>159</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>160</sup>

Section 29 of the TIP Act states:

(1) A person shall not act as an intermediary, for the purpose of trafficking.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>161</sup>

Section 30(1) of the TIP Act provides:

A person who uses a victim of trafficking commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand

<sup>156</sup> Trafficking in Persons Act, 2007, section 28, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf); Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>157</sup> *Id.*

<sup>158</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>159</sup> Gambia suspends death penalty en route to abolition," African News (February 19, 2018), available at: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>160</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>161</sup> Trafficking in Persons Act, 2007, section 29, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>162</sup>

For additional information, refer to Section 3.1.

### **3.3.7 Extraterritorial application of the offenses**

Refer to Section 3.2.2.

## **3.4. Human Trafficking/Smuggling-Related Criminal Offenses**

### **3.4.1. International and domestic trafficking/smuggling of people**

Refer to Section 3.1. for information regarding criminal offences of trafficking in persons.

Smuggling of persons is an offence under section 31 of the Immigration Act and, on conviction, is subject to a fine of not more than GMB 2,000, imprisonment for not more than one year, or both.<sup>163</sup>

### **3.4.2. International and domestic trafficking in children**

Trafficking in children within or across national borders is a trafficking in persons offence under section 28 of the TIP Act.<sup>164</sup> Under section 28(5) of the TIP Act, a person convicted of trafficking in children is subject to a fine of GMB 50,000 to GMB 500,000 and a sentence of death.<sup>165</sup> While the Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death,<sup>166</sup> section 18(2) of the Constitution provides: “[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”<sup>167</sup> In 2018, the President declared a moratorium on the use of the death sentence<sup>168</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>169</sup>

For additional information, refer to Section 3.1.

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<sup>162</sup> *Id.*, section 30(1).

<sup>163</sup> Immigration Act 1965, section 32, *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/gmb/1965/immigration\\_act\\_html/Immigration\\_Act.pdf](https://sherloc.unodc.org/cld/uploads/res/document/gmb/1965/immigration_act_html/Immigration_Act.pdf).

<sup>164</sup> Trafficking in Persons Act, 2007, section 28(1) and (2), *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act-2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act-2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>165</sup> *Id.*, section 28(5); Trafficking in Persons (Amendment) Act, 2010, *available at*: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>166</sup> *Id.*

<sup>167</sup> Constitution of the Republic of the Gambia, section 18(2), *available at*: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>168</sup> Gambia suspends death penalty en route to abolition,” African News (February 19, 2018), *available at*: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>169</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

Trafficking in children is also an offence under section 39 of the Children’s Act, 2005.<sup>170</sup> It provides:

(1) Notwithstanding any other provision of this Act, a person shall not engage in child trafficking; or recruit, transport, transfer, harbour or receive a child by means of threat, force or other form of coercion, abduction, fraud, deception, abuse of power or position or otherwise, for the purpose of sexual exploitation or any other form of exploitation.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for life.

(3) It is not a defence to a charge for an offence under subsection (2) that the child consented.<sup>171</sup>

Section 31(1)(c) of the Children’s Act provides that no person shall “traffick a child for the purpose of recruitment for use in armed conflict.”<sup>172</sup> A person who contravenes this provision “commits an offence and is liable on conviction to imprisonment for fourteen years without an option of fine.”<sup>173</sup>

The TIP Act provision prevails over the Children’s Act provisions to the extent of any inconsistency and to that extent the Children’s Act provisions are void.<sup>174</sup>

Child trafficking is also an offence under the Tourism Offences Act.<sup>175</sup> Section 13 of the Tourism Offences Act provides:

a tourist or any other person who buys, sells, procures or trafficks in or brings into or takes out of The Gambia for the purpose of trafficking, a child, commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to life imprisonment.<sup>176</sup>

Section 15 of the Tourism Offences Act also states, “Where a provision of this Act is inconsistent with a provision of any other law, the provision of this Act shall prevail.”<sup>177</sup>

### 3.4.3. *Victim harboring*

Section 29 of the TIP Act states:

(1) A person shall not act as an intermediary, for the purpose of trafficking.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred

<sup>170</sup> Children’s Act, 2005, section 39, available at: <https://citizenshiprightsafrika.org/wp-content/uploads/2016/01/Gambia-Childrens-Act-2005.pdf>.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*, section 31(1)(c).

<sup>173</sup> *Id.*, section 31(2).

<sup>174</sup> Trafficking in Persons Act, 2007, section 56, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking in Persons Act 2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking%20in%20Persons%20Act%202007.pdf).

<sup>175</sup> Tourism Offences Act 2003, available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=68571&p\\_country=GMB&p\\_classification=01.04](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=68571&p_country=GMB&p_classification=01.04).

<sup>176</sup> *Id.*, section 13.

<sup>177</sup> *Id.* Section 15.

thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>178</sup>

For additional information, refer to Section 3.1.

#### 3.4.4. *Extraterritorial application of human trafficking and smuggling offenses*

For TIP Act offences, refer to Section 3.2.2.

### 3.5. Online Exploitation of Children Offenses

Section 2(e) of the TIP Act defines “exploitation” as “the prostitution of a person or engaging in any other form of commercial sexual exploitation, including, but not limited to, ... child prostitution and child pornography....”<sup>179</sup>

Sections 28(1) and (2) of the TIP Act state:

- (1) It is an offence for a person to engage in the trafficking in persons as defined in subsection[]  
 (2) ....

(2) Trafficking in persons means-

- (a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;
- (b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or
- (c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.<sup>180</sup>

Under section 28(5) of the TIP Act, a person convicted of trafficking in children is subject to a fine of GMB 50,000 to GMB 500,000 and a sentence of death.<sup>181</sup> While the Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death,<sup>182</sup> section 18(2) of the Constitution provides: “[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”<sup>183</sup> In 2018, the President declared a

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<sup>178</sup> *Id.*, section 29.

<sup>179</sup> *Id.*, section 2.

<sup>180</sup> *Id.*, sections 28(1) and (2).

<sup>181</sup> *Id.*, section 28(5); Trafficking in Persons (Amendment) Act, 2010, available at: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>182</sup> *Id.*

<sup>183</sup> Constitution of the Republic of the Gambia, section 18(2), available at: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

moratorium on the use of the death sentence<sup>184</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>185</sup>

Section 29 of the TIP Act states:

- (1) A person shall not act as an intermediary, for the purpose of trafficking.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>186</sup>

For additional information, refer to Section 3.1.

The online exploitation of children through the distribution of indecent photographs of children by any person also is an offence under section 174 of the Information and Communications Act, 2009 and is punishable on conviction to imprisonment for life.<sup>187</sup>

### 3.6. Child Sex Tourism Offenses

Section 2(e) of the TIP Act defines “exploitation” as “the prostitution of a person or engaging in any other form of commercial sexual exploitation, including, but not limited to, ... child prostitution....”<sup>188</sup>

Sections 28(1), 28(2), and 28(3) of the TIP Act state:

- (1) It is an offence for a person to engage in the trafficking in persons as defined in subsections (2) and (3).
- (2) Trafficking in persons means-
  - (a) the recruitment of, provision of, transportation of, transfer of, harbouring of, receipt of, or trading in, persons;
  - (b) the use of threat, force or other forms of coercion, abduction, kidnapping, fraud, deception, the abuse of power, or a position of vulnerability; or
  - (c) the giving or receipt of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation within or across national borders.

- (3) Trafficking in persons also includes-

<sup>184</sup> Gambia suspends death penalty en route to abolition,” African News (February 19, 2018), *available at*: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>185</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>186</sup> Trafficking in Persons Act, 2007, section 29, *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>187</sup> Information and Communications Act 2009, section 174, *available at*: <https://www.dataguidance.com/jurisdiction/gambia>.

<sup>188</sup> Trafficking in Persons Act, 2007, section 2, *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

- (a) placement for sale, bonded placement, temporary placement, placement for service, where exploitation by another person is the motivating factor; and
- (b) transportation of another person within and across an international border for the purpose of exploiting that person’s prostitution.<sup>189</sup>

Under section 28(5) of the TIP Act, a person convicted of trafficking in children is subject to a fine of GMB 50,000 to GMB 500,000 and a sentence of death.<sup>190</sup> While the Trafficking in Persons (Amendment) Act, 2010 replaced the prior penalty of life imprisonment with the sentence of death,<sup>191</sup> section 18(2) of the Constitution provides: “[N]o court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.”<sup>192</sup> In 2018, the President declared a moratorium on the use of the death sentence<sup>193</sup> and The Gambia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.<sup>194</sup>

Section 29 of the TIP Act states:

- (1) A person shall not act as an intermediary, for the purpose of trafficking.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis [GMB] and not exceeding five hundred thousand dalasis [GMB] in addition to imprisonment for a minimum term of fifteen years and a maximum term of life imprisonment.<sup>195</sup>

For additional information, refer to Section 3.1.

The Children’s Act, 2005 also criminalizes child sex tourism. Section 32 states:

- (1) No person shall organize, promote or encourage foreign travel which promotes child prostitution.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than two hundred thousand dalasis [GMB] or imprisonment for a term not exceeding ten years, or to both the fine and imprisonment.<sup>196</sup>

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<sup>189</sup> *Id.*

<sup>190</sup> Trafficking in Persons Act, 2007, section 28(5), *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf); Trafficking in Persons (Amendment) Act, 2010, *available at*: [https://sherloc.unodc.org/cld/document/gmb/2010/trafficking\\_in\\_persons\\_amendment\\_act\\_2010.html?](https://sherloc.unodc.org/cld/document/gmb/2010/trafficking_in_persons_amendment_act_2010.html?)

<sup>191</sup> *Id.*

<sup>192</sup> Constitution of the Republic of the Gambia, section 18(2), *available at*: <https://www.wipo.int/wipolex/en/legislation/details/21167>.

<sup>193</sup> Gambia suspends death penalty en route to abolition,” African News (February 19, 2018), *available at*: <https://www.africanews.com/2018/02/19/gambia-suspends-death-penalty-en-route-to-abolition>.

<sup>194</sup> Second Optional Protocol to the International Covenant on the Civil and Political Rights: Signatories, United Nations Treaty Collection, *available at*: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en).

<sup>195</sup> Trafficking in Persons Act, 2007, section 29, *available at*: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>196</sup> Children’s Act, 2005, section 32, *available at*: <https://citizenshiprightsafrika.org/wp-content/uploads/2016/01/Gambia-Childrens-Act-2005.pdf>.



Under Section 56 of the TIP Act, if a provision of the TIP Act conflicts with a provision of the Children’s Act, the TIP Act provision prevails and the Children’s Act provision is void to the extent of the inconsistency.<sup>197</sup>

The Tourism Offences Act also has child sex tourism offences.<sup>198</sup> Procurement of a child for sex by a tourist or any other person is an offence under section 7 of the Tourism Offences Act.<sup>199</sup> On conviction, an offender is subject to imprisonment for 10 years.<sup>200</sup> A tourist or any other person distributing indecent photographs of a child commits an offence under section 8 of the Tourism Offences Act.<sup>201</sup> On conviction, such an offender is subject to imprisonment for five years.<sup>202</sup> “Where a provision of this Act [the Tourism Offences Act] is inconsistent with a provision of any other law, the provision of this Act [the Tourism Offences Act] shall prevail.”<sup>203</sup>

## 4. THE GAMBIA’S SUPPLY CHAIN REPORTING LEGISLATION

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No legislation of The Gambia requires reporting of human trafficking in supply chains or obliges private businesses to control their supply chains to hinder human trafficking.

## 5. FORCED LABOR: OVERVIEW OF THE GAMBIA’S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

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### 5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

The Labour Act, 2007 (**Labour Act**) is the main employment law of The Gambia.<sup>204</sup> No rights are available under the Labour Act for victims of human trafficking or forced labor.

### 5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

The Labour Act applies to all employment by any employer with certain exceptions such as domestic service and employment of a member of the employer’s household living in the employer’s house.<sup>205</sup> Section 2 of the Labour Act defines an employer as “any person that employs an employee.”<sup>206</sup> That section defines an “employee” as:

<sup>197</sup> Trafficking in Persons Act, 2007, section 56, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007.html/Trafficking_in_Persons_Act_2007.pdf).

<sup>198</sup> Tourism Offences Act 2003, available at: [https://security-legislation.gm/document/tourism-offences-act/?\\_sm\\_vck=gDTJgD2fBj70M2NmWSWn0RRgNtNrQ0s7S3ff62jD3jlgDPFtsOQ](https://security-legislation.gm/document/tourism-offences-act/?_sm_vck=gDTJgD2fBj70M2NmWSWn0RRgNtNrQ0s7S3ff62jD3jlgDPFtsOQ).

<sup>199</sup> *Id.*, section 7.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*, section 8.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*, section 15.

<sup>204</sup> Labour Act, 2007, available at: [https://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=79075&p\\_country=GMB&p\\_classification=01.02](https://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=79075&p_country=GMB&p_classification=01.02).

<sup>205</sup> *Id.*, section 3.

<sup>206</sup> *Id.*, section 2.

(a) a person who offers his or her services under an oral or written contract of employment, whether express or implied;

(b) any person, including a tenant share cropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person

(i) in a position of economic dependence on, and

(ii) under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor; or

(c) where the context requires, a former employee ....<sup>207</sup>

A victim of forced labor or trafficking cannot be characterised as an employee as defined because there is no contract of employment. Consequently, a victim does not expressly have any rights under the Labour Act that are available to employees.

### 5.3. Statutory Rights

The Gambia has no applicable laws.

#### 5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

The Gambia has no applicable laws.

#### 5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

The Gambia has no applicable laws.

#### 5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

The Gambia has no applicable laws.

#### 5.3.4. *Remedies*

The Gambia has no applicable laws.

### 5.4. Rights to a Safe Workplace and Compensation Associated with Injuries or Illness

The Gambia does not have a law imposing a duty on all employers to ensure the safety, health, and welfare at work of their employees or other persons at a place of work.

Under the Injuries Compensation Act 1990, a worker suffering an industrial injury is entitled to compensation.<sup>208</sup> However, a worker is defined as “a person who has entered into or works under a contract of service with an employer, whether the contract is express or implied, is oral or in writing.”<sup>209</sup> A

<sup>207</sup> *Id.*

<sup>208</sup> Injuries Compensation Act, 1990, section 3, available at: <https://wwwex.ilo.org/dyn/natlex2/natlex2/files/download/55934/GMB55934.pdf>.

<sup>209</sup> *Id.*, section 2.

victim is not a worker as defined because there is no contract of service and, as a result, this Act's protections are not available to trafficking victims.

## 5.5. Access to Justice and Practical Issues Associated with Enforcing Social Legislation

According to the 2022 U.S. TIP Report, The Gambia has education programs on trafficking and victim rights under the TIP Act.<sup>210</sup> However, victims of forced labor or trafficking do not have information about those rights and are not in a position to seek assistance to enforce their rights and potential claims.<sup>211</sup> Additionally, the 2022 U.S. TIP Report noted that the threat of prosecutions may not deter perpetrators in light of the relatively small number of prosecutions.<sup>212</sup> NGOs have provided the main assistance to trafficked victims.<sup>213</sup>

## 5.6. Interaction Between Employment Law and Migration

### 5.6.1. *Employment rights affected where employment is unlawful under migration law*

The Labour Act, and the protections within it, applies only to a person with a contract of service. Consequently, The Gambia has no applicable laws as no rights are available to victims as employees under employment law.

### 5.6.2. *Rights/remedies available under applicable migration law and regulations*

Migration laws do not provide any rights or remedies to trafficking victims. While victims of forced labor or trafficking could face criminal sanctions under migration law, section 49 of the TIP Act provides that a victim will not face criminal sanctions if the circumstances so justify.<sup>214</sup> Refer to Section 7.

Section 45(e) of the TIP Act states that relevant authorities shall ensure a victim is not denied a temporary residence visa during the pendency of a criminal, civil, or other legal proceeding.<sup>215</sup>

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<sup>210</sup> U.S. Dep't of State, 2022 Trafficking in Persons Report: The Gambia, available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/gambia/>.

<sup>211</sup> See Trafficking in Persons Act, 2007, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>212</sup> U.S. Dep't of State, 2022 Trafficking in Persons Report: The Gambia, available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/gambia/>.

<sup>213</sup> *Id.*

<sup>214</sup> Trafficking in Persons Act, 2007, section 49, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>215</sup> *Id.*, section 45(e).

## 5.7. Employment Laws and Child Labor

Part VII of the Labour Act<sup>216</sup> and the Children’s Act, 2005<sup>217</sup> address child labour. The TIP Act also addresses forced labour of children.<sup>218</sup> Refer to Sections 3.3.2. and 3.4.2. These Acts define a child as a person under the age of 18 years. Under section 56 of the TIP Act, if a provision of the TIP Act conflicts with a provision of the Children’s Act, the TIP Act provision prevails and the Children’s Act provision is void to the extent of the inconsistency.<sup>219</sup>

Section 45 of the Labour Act provides:

(1) Subject to subsection (2) and the Children’s Act, 2005, no person shall engage a child in any public or private agricultural, industrial or non-industrial undertaking or in any of their branches.

(2) Subsection (1) does not apply to work done in a vocational or technical school or other training institutions, if the work is –

(a) approved and supervised by a public authority; or

(b) an integral part of the educational or vocational training programme for which the school or institution is responsible.<sup>220</sup>

Section 46 (1) of the Labour Act states:

Subject to the Children’s Act, 2005, no person shall engage a child in any occupation or activity that is likely to be—

(a) harmful to the health, safety, education, morals or development of the child; or

(b) prejudicial to his or her attendance at school or any other vocational or training programme.<sup>221</sup>

Section 48 of the Labour Act states: “Subject to the Children’s Act, 2005, a person who contravenes any provision of this Part commits an offence and is liable on conviction to a fine of one hundred thousand dalasis [GMB] or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.”<sup>222</sup>

Under the Heading D – “Exploitative Labour,” the Children’s Act, 2005 states:

<sup>216</sup> Labour Act, 2007, available at:

[https://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=79075&p\\_country=GMB&p\\_classification=01.02](https://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=79075&p_country=GMB&p_classification=01.02).

<sup>217</sup> Children’s Act, 2005, section 32, available at: <https://citizenshiprightsafrika.org/wp-content/uploads/2016/01/Gambia-Childrens-Act-2005.pdf>.

<sup>218</sup> Trafficking in Persons Act, 2007, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

<sup>219</sup> *Id.*, section 56.

<sup>220</sup> Labour Act, 2007, section 45, available at:

[https://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=79075&p\\_country=GMB&p\\_classification=01.02](https://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=79075&p_country=GMB&p_classification=01.02).

<sup>221</sup> *Id.*, section 46.

<sup>222</sup> *Id.*, section 48.

41. (1) A person shall not engage a child in exploitative labour.
- (2) Labour is exploitative if it deprives the child of his or her health, education or development.<sup>223</sup>
42. (1) A person shall not engage a child in night work.
- (2) Night work means work between the hours of 8pm and 6am.<sup>224</sup>
43. (1) The minimum age for the engagement of a child in light work is sixteen years.
- (2) Light work means work, which is not likely to be harmful to the health or development of the child and does not affect the child’s attendance at school or the capacity of the child to benefit from school work.<sup>225</sup>
44. (1) A person shall not engage a child in hazardous work.
- (2) Work is hazardous when it poses a danger to the health, safety or morals of a child.
- (3) Hazardous work includes –
- (a) going to sea;
  - (b) mining and quarrying;
  - (c) carrying of heavy loads;
  - (d) work in manufacturing industries where chemicals are produced or used;
  - (e) work in places where machines are used, and
  - (f) work in places such as bars, hotels and places of entertainment where a child may be exposed to immoral behaviour.<sup>226</sup>

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47. A person who contravenes any provision of this Heading commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis [GMB] or imprisonment for a term not exceeding three years or to both the fine and imprisonment.<sup>227</sup>

## 6. GOVERNMENT PROCUREMENT RULES

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The Gambia Public Procurement Authority Act 2014 (**PP Law**) governs public procurement of goods, works, and services in The Gambia by any Ministry, department, agency, or organ of the State, public enterprise,

<sup>223</sup> Children’s Act, 2005, section 41(1), available at: <https://citizenshiprightsafrika.org/wp-content/uploads/2016/01/Gambia-Childrens-Act-2005.pdf>.

<sup>224</sup> *Id.*, section 42(1).

<sup>225</sup> *Id.*, section 43(1).

<sup>226</sup> *Id.*, section 44(1).

<sup>227</sup> *Id.*, section 47.

local government authority, or other arm or unit of government, or any subdivision thereof using public funds.<sup>228</sup>

The procuring organisation is required to award public procurement contracts by means of open tendering proceedings, which, depending on the circumstances, may be national tendering, international tendering, or request for proposals or quotations. Other procurement methods such as two-stage, single-source, and restricted tendering are permitted in limited circumstances. Refer to sections 38 to 44 of the PP Law.<sup>229</sup>

The successful bid will be the bid that achieves maximum value for public expenditure.<sup>230</sup>

Section 13 of the PP Law provides that to enter into a procurement contract, a bidder must demonstrate to the satisfaction of the procuring organization that it meets certain specified criteria in section 22.<sup>231</sup> That criteria requires that the bidder “possesses the necessary professional and technical qualifications and competence,” financial resources, managerial capability, and reputation; the bidder is not subject to any insolvency event; the bidder fulfils tax and social security contribution obligations; and the bidder or its directors or officers have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement proceedings.<sup>232</sup>

Section 28 of the PP Law provides that The Gambia Public Procurement Authority may, after notice to the potential bidder or supplier, and after providing an opportunity for that bidder or supplier to respond to the proposed action and consultation with the Complaints Review Board and the affected procuring organization, exclude a bidder or supplier from participation in public procurement for one to five years on various grounds including collusion, misconduct relating to the submission of bids, conviction of a criminal offence relating to, obtaining, or attempting to obtain a contract or sub-contract or conviction for an economic crime.<sup>233</sup>

A criminal offence relating to professional conduct referred to in section 13 of the PP Law and an economic crime referred to in section 28 of the PP Law may include the trafficking in persons offence.<sup>234</sup>

The PP Law contains no specific provision requiring bidders to covenant that their business does not use trafficked workers or that they do not use goods made by trafficked persons.

## 7. RESTITUTION AND VICTIM COMPENSATION

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The TIP Act provides certain rights to trafficked victims.<sup>235</sup> Section 50 of the TIP Act provides:

A victim of trafficking, irrespective of his immigration status —

<sup>228</sup> The Gambia Public Procurement Authority Act, 2014, section 20, available at: <https://nao.gm/wp-content/uploads/2020/11/GPPA-BILL-2014-Copy.pdf>.

<sup>229</sup> *Id.*, sections 38–44.

<sup>230</sup> *Id.*, section 29.

<sup>231</sup> *Id.*, section 13.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*, section 28.

<sup>234</sup> *Id.*, sections 13 and 28.

<sup>235</sup> Trafficking in Persons Act, 2007, available at: [https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007\\_html/Trafficking\\_in\\_Persons\\_Act\\_2007.pdf](https://sherloc.unodc.org/cld/uploads/res/document/trafficking-in-persons-act--2007_html/Trafficking_in_Persons_Act_2007.pdf).

(a) has the right to bring civil action [lawsuit] against a trafficker and any other person, including a public officer, who has exploited or abused him or her; or

(b) is entitled to compensation, restitution and recovery for economic, physical and psychological damages to be met from the assets of the convicted trafficker.<sup>236</sup>

Section 54 of the TIP Act provides:

(1) A person convicted of the offence of trafficking may be ordered by the court to pay compensation to the victim of trafficking.

(2) A person who, in pursuit of trafficking, causes injury to another person may be ordered to pay compensation to the injured person.

(3) The payment of compensation may be in addition to any other punishment.<sup>237</sup>

Section 49 of the TIP Act provides: “[w]here the circumstances so justify, a victim of trafficking shall not be detained, imprisoned or prosecuted for offences related to being a victim of trafficking, including non-possession of valid travel documents or use of false travel or other documents.”<sup>238</sup>

The Department of Social Welfare is required to provide temporary basic material support for the care and protection of a rescued victim and counselling services for the victim to assist them with rehabilitation and reintegration, and to assist in providing a rescued victim with employable skills and employment opportunities.<sup>239</sup>

A victim of trafficking may receive financial assistance from the Fund for Victims of Trafficking (section 58 of the TIP Act) (**Fund**) and other Departments of State and government agencies concerned with rehabilitation and reintegration of victims of trafficking.<sup>240</sup> The National Agency against Trafficking in Persons administers the Fund in The Gambia.<sup>241</sup>

## 8. THE GAMBIA’S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

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The TIP Act provides for a cooperative approach between the government and NGOs. It established the National Agency against Trafficking in Persons (**National Agency**) and a Board of Directors for the National Agency to carry out its functions and manage its affairs.<sup>242</sup>

The National Agency’s Board consists of nine representatives from various government departments and four representatives from the private sector including senior representatives of the Solicitor General, Department for Health and Social Welfare, Department for the Interior, Department for Foreign Affairs,

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<sup>236</sup> *Id.*, section 50.

<sup>237</sup> *Id.*, section 54.

<sup>238</sup> *Id.*, section 49.

<sup>239</sup> *Id.*, sections 51 and 53(1).

<sup>240</sup> *Id.*, section 53(2).

<sup>241</sup> *Id.*, section 14(a).

<sup>242</sup> *Id.*, sections 3 and 4(1).

Department for Trade, Industry, Regional Integration and Employment, police force, Immigration Department, National Intelligence Agency, and NGOs.<sup>243</sup>

The functions of the National Agency include administering the provisions of the TIP Act, adopting measures which include coordinated and preventative action against trafficking, cooperating with NGOs with an interest in the prevention and suppression of trafficking, and cooperating with governments of other countries in the investigation and prosecution of trafficking offences.<sup>244</sup>

The Gambia Human Rights Commission also has a number of obligations, etc., to facilitate interagency activities. Refer to Section 2.2.

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<sup>243</sup> *Id.*, section 4(2).

<sup>244</sup> *Id.*, section 14.