



**SEXUAL
EXPLOITATION OF
BOYS**



THE GAMBIA REPORT

August, 2022

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Cover illustration:

The illustrations on the cover of this report depict environments and situations relevant to the sexual exploitation of boys in The Gambia. From top to bottom: there is a phenomenon of European women travelling to The Gambia and sexually exploiting boys; instances of sexual exploitation and abuse have been reported in unregulated and informal Quranic schools in The Gambia; sexual exploitation of boys is known to occur in the context of travel and tourism.

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BACKGROUND AND RATIONALE

Violence against children, including child sexual exploitation and abuse, is estimated to affect millions of children worldwide and no country or region is immune.¹ It has the potential to impact upon children in all socio-economic groups, of all educational levels, and across all ethnic and cultural groups.² While data about sexual exploitation of all children is generally lacking, this is even more so when looking at boys specifically. For example, in the rare cases that countries collect prevalence data on sexual exploitation and abuse of children, samples are often limited to adolescent girls, obscuring any understanding of the unique experiences and vulnerabilities of boys.³ In recent years, there has been an increasing awareness of the gap in the global understanding of how boys are impacted by sexual exploitation,⁴ and the limited evidence available suggests that in certain contexts, boys are just as heavily impacted as girls, and in some contexts, maybe even more.⁵ Boys – regardless of whether they are heterosexual or of diverse sexual orientation – may also face legal consequences in countries where homosexuality is criminalised, as is the case in The Gambia, if they disclose that they were victimised by an offender of the same sex.

A GLOBAL BOYS' INITIATIVE

As the programmatic responses to identify and meet the needs of boys are scarce, ECPAT International launched the *Global Boys' Initiative* to explore the sexual exploitation of boys, activating our worldwide network of member

organisations in a range of research and response activities focused on boys. To meet the initial challenge of such limited data, in 2020-21, the Global Boys' Initiative embarked on a series of research projects in ten countries around the world, to shed light on understanding sexual exploitation involving boys, what factors lead to their vulnerability and increased risk, and what their needs are in terms of prevention, protection and support services. Much of this initial research phase was generously funded by SIDA, which allowed primary research to be conducted through partnerships between the ECPAT International secretariat and national ECPAT member organisations.

This report

The organisation Child Protection Alliance has been at the forefront of actions to prevent and respond to sexual exploitation of children in The Gambia since 2001. The Child Protection Alliance and ECPAT International partnered to complete a legal analysis of Gambian legislation and how it applies to boys during 2021.

International instruments aimed at enshrining the rights of children provide comprehensive protection against sexual exploitation for all children irrespective of gender. It is important that all State parties endeavour to provide the same level of protection, through robust legislation and effective policy, which place the interests of the child at their forefront. Article 34 of the CRC requires State parties to protect children

- 1 Office of the Special Representative of the Secretary General on VAC. (2019, July). *Keeping the Promise: Ending Violence against Children by 2030*. New York: United Nations.
- 2 ECPAT International. (2020). *Summary paper: Sexual Exploitation of Children in Travel and Tourism*. ECPAT International: Bangkok.
- 3 The Economist Intelligence Unit. (2018). *Methodology paper Out of the Shadows: Shining light on the response to child sexual abuse and exploitation – a 40-country benchmarking index*. London: The Economist Intelligence Unit.
- 4 Josenhans, V., Kavenagh, M., Smith, S., & Wekerle, C. (2020). *Gender, rights and responsibilities: the need for a global analysis of the sexual exploitation of boys*. *Child Abuse and Neglect* 110 (1).
- 5 Davis, J. and Miles, G. (2015). "They didn't help me: They shamed me." *A Baseline Study on the Vulnerabilities of Street-Involved Boys to Sexual Exploitation in Manila, Philippines*. Manila: Love 146.

from “all forms of sexual exploitation”. It explicitly outlines that the State Parties must prevent: ‘1) the coercion of a child to engage in any unlawful sexual activity; 2) the exploitative use of children in prostitution or other unlawful sexual practices; and 3) the exploitive use of children in pornography.’⁶ This is compounded with Article 19 wherein it states that “the State Parties must undertake legislative, administrative, social and educational measures to protect the child from all forms of violence including exploitation and sexual abuse.”⁷

In this context, Child Protection Alliance and ECPAT International conducted a comprehensive analysis of the Gambian legal framework which addresses various crimes related to the sexual exploitation and abuse of children, with a focus on boys.

The legislative analysis used a standard checklist including approximately 120 points and sub-points that was created by ECPAT International for the Global Boys Initiative. Staff from Child Protection Alliance explored the national legislation and completed the checklist, followed by research staff from ECPAT International using this information to inform further analysis and compile a narrative.

6 United Nations. (1989). [UN Convention on the Rights of the Child](#). Article 34.

7 *Ibid.*, Article 19.

COUNTRY CONTEXT

The Gambia is situated on the coast of West Africa, with a population of 2.4 million people, with a very high proportion of young people - just over 50% of the population is under the age of 18.⁸ It is established globally that poverty⁹ and inaccessible education¹⁰ increase vulnerability to sexual exploitation of children, with both factors heavily affecting children in The Gambia. In 2021, 19% of boys and 10% of girls of primary school age were not enrolled in primary education, and only 33% of boys and 28% of girls of secondary school age completed upper secondary education.¹¹ In 2019, the UN World Food Programme estimated that 48% of the Gambian population lived in poverty and 10.3% of children suffered from acute malnutrition.¹²

Following her visit to The Gambia in 2019, the former UN Special Rapporteur on the sale and sexual exploitation of children highlighted that poverty, lack of awareness of laws and stigma and shame feeding into a culture of silence are all issues which impact the sexual exploitation of children within the country.¹³

There is a distinct lack of research and evidence available with regards to the scale and effects of sexual exploitation on children, and boys in particular in The Gambia. However, the little information that is available indicates the risk of boys' sexual exploitation through trafficking and in the context of travel and tourism.

The phenomenon of European women holidaying in The Gambia and starting sexual relationships with young Gambian men has drawn some attention in the media.¹⁴ While this phenomenon relates mostly to young adult men, cases were noted of boys being exploited by European women, exchanging sex for "clothing, food and house rents."¹⁵ It is important to note however that evidence of these occurrences are rare as little research has been done on this topic in The Gambia, particularly in regard to cases of women exploiting boys. The Tourism Development Area is a likely risk area for sexual exploitation of children.^{16,17} It is along the coastline of the country and has numerous hotels, beach restaurants and nightclubs. This area is also adjacent to impoverished populations and young people are encouraged into the tourism industry as it represents financial opportunities. However, children in these settings are vulnerable to exploitation by travelling offenders.¹⁸

Offenders are increasingly using private residences and areas outside the Tourist Development Area to evade detection.¹⁹ The Child Protection Alliance has worked alongside the Gambian Tourism Board in conducting awareness raising and training with tourism staff like guides and taxi drivers,²⁰ yet the growth of less regulated tourism like private home-stays, short and long term rentals and small hostels has made it increasingly difficult to monitor tourists.²¹

8 UNICEF. (2021). *The State of the World's Children 2021*. 189.

9 ECPAT International. (2016). *Power, Impunity and Anonymity*. 43.

10 London Metropolitan University. (2017). *Key messages from research on child sexual exploitation: Professionals in school settings*. 5.

11 UNICEF. (2021). *The State of the World's Children 2021*. 229.

12 UNWFP. (2019). *Gambia*.

13 OHCHR. (2019). *End of mission statement of the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, on her visit to The Gambia*.

14 ITV. (2019). *Gambia: The Romance Hot Spot for British Grans | This Morning*.

15 ECPAT Netherlands. (2013). *Commercial Sexual Exploitation of Children related to Tourism & Reporting mechanisms in The Gambia*.

16 OHCHR. (2019). *End of mission statement of the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, on her visit to The Gambia (21- 29 October 2019)*.

17 Al Jazeera. (2020). *How can The Gambia stop tourists exploiting children? | The Stream*.

18 OHCHR. (2019). *End of mission statement of the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, on her visit to The Gambia (21- 29 October 2019)*.

19 *Ibid*.

20 ECPAT. (2016). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism 2016*. 101. Bangkok: ECPAT International.

21 ECPAT International. (2020). *Summary Paper: Sexual Exploitation of Children in Travel and Tourism*. 4.

According to the Child Protection Alliance of Gambia, even when sexual exploitation cases are formally reported, little progress is noted by Gambian authorities in prosecuting offenders.

Previous global research has established that boys in out-of-home care are vulnerable to child sexual exploitation.²² The limited evidence in The Gambia suggests this vulnerability exists here too. In August 2020, a U.K. based charity called 'The Penny Appeal' which operated orphanages in The Gambia was shut down by the Gambian government after allegations of child sexual exploitation and abuse in their facilities. It was reported that poorly supervised older boys living in the orphanage were sexually abusing younger boys living there, and that the organisation was operating illegally.²³ The former UN Special Rapporteur on the sale and sexual exploitation of children also raised concerns about children, predominantly boys, living in unregulated and informal religious Quranic schools, where "instances of forced begging, exploitation, beating and other forms of abuses have been reported."²⁴ Not only are the boys in these schools outside of the remit of government child protection systems, but its reported that some run away from the schools which puts them at risk from street-situations.^{25,26}

Finally, sexual exploitation and abuse of boys in The Gambia is further impacted by stigmatisation surrounding this sensitive issue in the community. Family members may pressure young people to keep silent, or disclosures may be met with indifference from those hearing them, including police. Strong gender norms hold that boys are strong, brave and can defend themselves so a disbelief that boys may be victimised, particularly by women, is common.²⁷

22 Josenhans, V; Kavenagh, M; Smith, S; Wekerle, C. (2020). *Gender, rights and responsibilities: The need for a global analysis of the sexual exploitation of boys*. 6.

23 EyeAfrica TV. (2020). *UK Charity, Penny Appeal, Regrets Child Sexual Abuse Incident in The Gambia: TWT News*.

24 OHCHR. (2019). *End of mission statement of the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, on her visit to The Gambia (21- 29 October 2019)*.

25 *Ibid.*

26 US State Department. (2021). *2021 Trafficking in Persons Report: The Gambia*.

27 Child Protection Alliance. (2021). *Personal Communication*.

ANALYSIS OF LEGAL FRAMEWORK

INTERNATIONAL AND REGIONAL LEGAL COMMITMENTS

The Gambia has demonstrated its strong commitment to the protection of children's rights through ratifying several international and regional instruments to protect children against sexual exploitation. The main international instrument underpinning the protection and defence of children's rights is the United Nations Convention on the Rights of the Child (CRC Convention),²⁸ which was ratified by The Gambia in 1990. This convention is the primary international document that contains provisions to protect children from sexual abuse and exploitation.

In 2000, in response to the rising concern of trafficking of children for sexual exploitation as well as other forms of sexual abuse and exploitation, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)²⁹ was adopted. The OPSC was ratified by The Gambia in 2010, emphasising its continued engagement with the international response to the sexual exploitation of children.

The Gambia last reported to the CRC Committee regarding the implementation of the CRC and OPSC at country level in 2015. Whilst the Committee did not include any recommendations specifically related to boys within its observations, it did call on The Gambia to establish mechanisms, procedures and guidelines to ensure mandatory reporting of child sexual exploitation; to ensure that all legislation relating to sexual

exploitation of children was effectively enforced and to strengthen awareness raising activities on the topic.³⁰

The Gambia has yet to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which specifically recognises that children have the right to appeal to international mechanisms specific to them, when national mechanisms fail to address violations effectively.

Going further than the CRC Convention and its protocols, there are numerous instruments that have been adopted by the international community in its attempt to protect children from sexual exploitation and abuse. The International Labour Organisation Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182)³¹ was ratified by The Gambia in 2001, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN convention against Transnational Organized Crime (UN Trafficking Protocol)³² in 2003. Through ratifying these instruments and agreeing to ensure their effective implementation and enforcement, The Gambia has endeavoured to adopt legislative measures to effectively prohibit the forms of sexual exploitation of children prescribed within.

In terms of regional commitments, The Gambia ratified the African Charter on the Rights and Welfare of The Child³³ in 2001. This highlighted the country's willingness to act to prevent child sexual abuse and exploitation.

28 United Nations General Assembly. (1989). [Convention on the Rights of the Child](#).

29 United Nations General Assembly. (2000). [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#).

30 Committee on the Rights of the Child. (2015). [Concluding observations on the combined second and third periodic reports of the Gambia](#).

31 International Labour Organisation. (1999). [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#).

32 United Nations General Assembly. (2000). [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#).

33 African Union. (1990). [African Charter on the Rights and Welfare of the Child](#).

The Gambia also works with INTERPOL in collaborative efforts to combat sexual exploitation of children. Indeed, The Gambia forms part of the West Africa Police Information System Programme, set up by INTERPOL to facilitate criminal data sharing, promote collaborative efforts in criminal matters and better combat transnational organised crime.³⁴ The value of this partnership was evidenced by an operation in 2019, in which 35 minor trafficking victims were rescued.³⁵ It is not clear how many of these victims were boys or how many were being trafficked for sexual purposes.

Finally, The Gambia has also shown a dedicated response to the UN Sustainable Development Goals.³⁶ In 2020, the country submitted its Voluntary National Review, reporting on the progress it had made thus far on achieving each of the goals.³⁷ However, the review's only specific detail relating to the fight to end the sexual exploitation of children was that the country had enacted legislation to prevent child, early and force marriage.

CHILDREN'S RIGHTS UNDER THE GAMBIA'S LAWS

The Gambia has adopted and amended criminal provisions and procedural laws that help to protect children from sexual abuse and exploitation. In doing so, it can be said that the country has complied with some of its obligations under the international instruments discussed above, whilst it has fallen short in complying with others. It is evident that legislative gaps do exist and there is scope for further enhancing the legal protections afforded to children, and to boys in particular.

Under Gambian legislation a child is defined as anyone under 18 years old. This is consistent

across legal instruments that contain offences or procedural legislation relating to sexual exploitation of children, including the Children's Act,³⁸ Trafficking in Persons Act³⁹ and Tourism Offences Act.⁴⁰ The legislation does not use alternate terminology and both boys and girls are covered under the definition of child.

Despite the fact that 'child' is utilised as a gender-neutral term within Gambian legislation, there are certain gendered sexual offences that may result in lower levels of legal protection being offered to boys. Indeed, although Article 3 of the Sexual Offences Act states that engaging in sexual acts with all children under 16 will be considered rape,⁴¹ for older children the only legal protection provided is contained in Article 5 which punishes unlawfully having carnal knowledge of a girl between the ages of 16 and 18 with imprisonment up to 7 years.⁴² The Act does not clarify what would be considered "unlawfully having carnal knowledge". Therefore, although the age of consent is set at 16 for boys, Article 5 clearly provides added protection for girls over 16 and may leave boys of this age more vulnerable to sexual offences. It is also worth mentioning that the legislation does not contain a close-in-age exemption, nor provide criteria to determine whether the consent for sexual activities between peers under the age of 18 is voluntary, well-informed and mutual. This could result in a situation in which two adolescents are both punished for engaging in consensual sexual relations. Indeed, the application of Article 5 could result in the prosecution of boys for "unlawfully having carnal knowledge of a girl" when they engage in consensual sexual relationships with a girl aged 16-17. Although the Criminal Code states that boys under 12 are presumed to be incapable of having carnal knowledge,⁴³ the Sexual Offences Act provides that boys under 14 are capable of committing sexual crimes and that they should be treated as having full criminal capacity for such crimes.⁴⁴

34 INTERPOL. (n.d.). [WAPIS Programme](#).

35 INTERPOL. (2019). [West Africa border operation uncovers trafficking victims, gold bars and fake pharmaceuticals](#).

36 United Nations. (n.d.). [Sustainable Development Goals](#).

37 Government of Gambia. (2020). [National Voluntary Review](#).

38 Government of Gambia. (2005). [Children's Act](#). Article 2.

39 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 2.

40 Government of Gambia. (2003). [Tourism Offences Act](#). Article 2.

41 Government of Gambia. (2013) [Sexual Offences Act](#). Article 3.

42 *Ibid.*, Article 5.

43 Government of Gambia. (1965). [Criminal Code](#). Article 12.

44 Government of Gambia. (2013) [Sexual Offences Act](#). Article 6.

Therefore, according to these provisions, boys as young as 12 could be punished for engaging in consensual relations. Indeed, given that the Sexual Offences Act states that boys under 14 can have full criminal capacity for sexual crimes, without specifying a minimum age, it is possible that boys under 12 could also face prosecution. This is especially worrying given that anecdotal evidence suggests that boys have been arrested in the past for engaging in consensual sexual intercourse with girls under 18.⁴⁵

Under the Criminal Code, sexual relations between people of the same sex are criminalised.⁴⁶ Whilst these provisions originally applied only to males, the law was extended in 2005 to include females.⁴⁷ Further, in relation to children, the Criminal Amendment Act in 2014 created the offence of “aggravated homosexuality”, which includes, among other things, when an offence is committed against a person under 18.⁴⁸ These laws are discriminatory against people with diverse sexual orientation and could play a role in silencing boys from seeking help if they are exploited by males as the laws do not exempt children from the crime, thus a child might be treated as an offender instead of a victim in exploitative situations.

Further, these provisions could be used to prosecute same-age boys who engage in consensual homosexual relations. Whilst there have not yet been any prosecutions under these laws, adults were arrested in 2015 for engaging in homosexual activities.⁴⁹ Although those arrested in these instances were adults, boys may face prosecution, or at the least, fear disclosure for the risk of self-incrimination. It is established that the fear of being treated as an offender can discourage boys disclosing they have been victimised.⁵⁰

The law criminalising homosexuality is especially

troublesome when read in accordance with Article 6 of the Sexual Offences Act, which explicitly provides that boys under 14 are capable of committing sexual crimes and that they should be treated as having full criminal capacity for such crimes.⁵¹ This provision unfairly targets boys and could easily result in the prosecution of young boys who are victims of sexual crimes. Further, boys under 14 who have engaged in consensual sexual activities with another boy may, therefore, be prosecuted under the homosexuality provisions discussed above.

Additional gendered provisions can be found under Articles 126 and 146 of the Criminal Code, as amended by the Children’s Act. Article 126 states that it is a misdemeanour punishable with two years of imprisonment to unlawfully and indecently assault any woman or girl.⁵² Further, the provision states that it cannot be used as a defence, when this crime is committed against a girl under 18, to demonstrate that she ‘consented’ to this act of indecency.⁵³ Article 146 lists the same crime in relation to boys under 18, but states that it is a felony and punished with imprisonment for seven years.⁵⁴ Although a felony is considered a more serious crime than a misdemeanour, and thus the punishment is higher for crimes committed against boys, the provision excluding ‘consent’ as a defence is not applicable when the offence is committed against boys.

The Criminal Code states that “when a person intending to commit an offence puts his or her intention into execution by means adapted to its fulfilment, and manifests their intention by some overt act, but does not fulfil their intention to such an extent as to commit the offence, he or she is deemed to attempt to commit the offence.” Further, any person who attempts to commit a felony or misdemeanour, is guilty of an offence.⁵⁵ This is further compounded with provisions under

45 Child Protection Alliance. (2021). Personal Communication.

46 Government of Gambia. (1965). [Criminal Code](#). Articles 144 & 147.

47 Government of Gambia. (2014). [Criminal Code Amendment Act](#). Article 5.

48 *Ibid.*, Article 4.

49 Child Protection Alliance. (2021). Personal Communication.

50 Josenhans, V., Kavenagh, M., Smith, S., & Wekerle, C. (2020). [Gender, Rights and Responsibilities: The need for a global analysis of the sexual exploitation of boys](#). *Child Abuse and Neglect* 110 (1).

51 Government of Gambia. (2013). [Sexual Offences Act](#). Article 6.

52 Government of Gambia. (1965). [Criminal Code](#). Article 126.

53 *Ibid.*

54 *Ibid.*, Article 146.

55 *Ibid.*

the Children’s Act⁵⁶ and Trafficking in Persons Act⁵⁷ that state that offenders may be convicted of having attempted to commit an offence. Therefore, attempts at committing crimes relating to sexual exploitation of children are deemed punishable offences under Gambian law.

Turning to the question of whether an offender may plead ignorance of the age of the victim in relation to crimes of child sexual exploitation, it is notable that the Gambian legislation is not entirely consistent on this issue. Article 8 of the Criminal Code provides that an offender should not be held criminally responsible for acts committed due to a mistaken belief in circumstances, as long as this mistaken belief was honest and reasonable.⁵⁸ Therefore, this article could be invoked as a defence for an offender who claims they did not know the victim’s real age. In addition, it is explicitly stated under the Sexual Offences Act that it is a sufficient defence, to the crime of unlawfully having carnal knowledge of a girl between 16 and 18, that the accused had reasonable cause to believe the girl was over 18.⁵⁹ In contrast to this, the Tourism Offences Act states that if a tourist sexually abuses a child, it cannot be used as a defence that the tourist believed the child to be over 18.⁶⁰ Whilst this is a welcome addition, it should be one that is applied for all offenders who commit crimes of sexual exploitation.

Every child is guaranteed by law the right to free and compulsory education in The Gambia.⁶¹ Whilst the Children’s Act does not refer to a certain compulsory age of schooling, it does state that every parent or guardian shall ensure that their child attends and completes basic education.⁶² The Gambia’s minimum legal working age for children is set at 16 by the Children’s Act.⁶³ This allows a child over 16 to engage in ‘light work’ which means work not likely to be harmful to the health or development of the child and

will not affect the child’s school attendance and performance.⁶⁴ Further, no child is allowed to engage in any work between the hours of 8pm and 6am or engage in any work deemed to be hazardous.⁶⁵ Hazardous work includes work in places such as bars, hotels and places of entertainment where a child may be exposed to immoral behaviour.⁶⁶ This is especially important when linked with sexual exploitation as sex-work, or any work taking place within an establishment linked to prostitution.

The following sections analyse legislation relevant to each of the specific contexts in which sexual exploitation of children can occur and children’s ability to access justice in The Gambia. Where relevant, any particular provisions that may have special significance for boys are highlighted.

EXPLOITATION OF CHILDREN IN PROSTITUTION

Unfortunately, there is no comprehensive and disaggregated data on the extent of exploitation of children in prostitution within The Gambia. However, this is not to say that the problem does not exist, nor that it does not affect boys and so it is still of the utmost importance to provide full legislative protection to all children.

In The Gambia, selling sexual services and other acts associated with prostitution are illegal and prohibited by the Criminal Code. There are separate offences for males and females. Article 135 makes it an offence for a male to “knowingly live wholly or in part on the earnings of prostitution” or to persistently solicit or importune for immoral purposes in a public place.⁶⁷ Further, a male will be deemed to be knowingly living on the earnings of prostitution when he is proved to be living with or habitually

56 Government of Gambia. (2005). [Children’s Act](#). Article 64.
57 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 35.
58 Government of Gambia. (1965). [Criminal Code](#). Article 8.
59 Government of Gambia. (2013). [Sexual Offences Act](#). Article 5.
60 Government of Gambia. (2003). [Tourism Offences Act](#). Article 6.
61 Government of Gambia. (2005). [Children’s Act](#). Article 18.
62 *Ibid.*
63 *Ibid.*, Article 43.
64 *Ibid.*
65 *Ibid.*, Article 42.
66 *Ibid.*, Article 44.
67 Government of Gambia. (1965). [Criminal Code](#). Article 135.

in the company of a prostitute or is “proved to exercise control, direction or influence over the movements of a prostitute in such a manner as to show he is aiding, abetting or compelling her prostitution”.⁶⁸ Therefore, this provision criminalises those who are involved in the pimping of a female prostitute but who do not engage in prostitution themselves. It should be noted that these provisions cover “aiding, abetting or compelling her prostitution” and make no mention of cases in which the prostitute is a male. Therefore, it is not clear whether these acts would be considered as a crime if a male is compelled to engage in prostitution. Whilst the provision relating to females contains similar offences, it does not criminalise those who persistently solicit or importune for immoral purposes in a public place, as is the case with males.⁶⁹ All of these offences are considered to be misdemeanours and thus considered less serious offences than those classified as felonies. The Criminal Code does not specify whether these provisions would also apply to children.

However, Article 76 of the Children’s Act provides that any child who “is residing in a house used by any prostitute for the purpose of prostitution” or living in circumstances likely to cause, encourage or favour the seduction of prostitution or affect the morality of the child, will be considered a child in need of care and protection.⁷⁰ Further, any child that is found acting in a manner which makes it reasonable to suspect that they are “soliciting for immoral purposes” will also be provided this care and protection.⁷¹ Therefore, a child who is found to be offering sexual services would be considered in need of care and protection. Whilst the law does not explicitly state that children who are exploited in prostitution are exempt from prosecution for such conduct, the fact that they are considered in need of care and protection would suggest that this is the case.

In addition to the above, the Gambian Criminal legislation contains a number of offences that offer protection to children from being exploited in prostitution. Article 26 of the Children’s Act criminalises the import or export of a child with the intent, or knowledge that it is likely, for the child to be forced or seduced into prostitution.⁷² The punishment for such crimes amounts to life imprisonment.⁷³ Further, it is prohibited to induce a child by deception, coercion, debt bondage or any other means, to go from one place to another where they may be forced to have sexual intercourse.⁷⁴ It is also an offence to, in order to gratify the passions of another person, procure, entice, or lead away a child for an immoral purpose.⁷⁵ This will still be considered an offence even if the child has consented. These crimes all carry a punishment of ten years imprisonment.⁷⁶ Article 29 sets out a punishment of ten years imprisonment for those who encourage the prostitution of a child in their custody, charge or care.⁷⁷ Those who knowingly allow a child to consort with or to enter or continue in employment of a prostitute will be deemed to have committed this crime.⁷⁸

The Children’s Act also contains a number of offences that prohibit the procurement of a child. Article 30 punishes with imprisonment for ten years those who procure a child to have sexual intercourse or become a prostitute, either within The Gambia or abroad.⁷⁹ In relation to exploitation of children in prostitution, Article 38 of the Children’s Act acts as a ‘catch all’ provision. It punishes with ten years imprisonment those who cause or encourage the seduction or prostitution of a child, keep a brothel, permit the defilement of a child in their premises, allow a child to be in a brothel, trade in prostitution or procure a child into prostitution.⁸⁰ The Tourism Offences Act also makes it an offence, punishable with ten years imprisonment, for a tourist or any

68 *Ibid.*

69 *Ibid.*, Article 136.

70 Government of Gambia. (2005). *Children’s Act*. Article 76.

71 *Ibid.*

72 *Ibid.*, Article 26.

73 *Ibid.*

74 *Ibid.*, Article 27.

75 *Ibid.*

76 *Ibid.*

77 *Ibid.*, Article 29.

78 *Ibid.*

79 *Ibid.*, Article 30.

80 *Ibid.*, Article 38.

other person to procure a child for prostitution.⁸¹ However, in regards to procurement, inconsistencies in sentencing exist within the Gambian legislation. Although Article 30 and 38 of the Children’s Act and Article 7 of the Tourism Offences Act punish those who procure a child for prostitution with ten years imprisonment, Article 31 of the Children’s Act prescribes that those who procure, use or offer a child for prostitution will face a penalty of fourteen years imprisonment.⁸² There is no clear explanation as to the difference in severity of punishment for the same crimes under these Articles, and the choice of which Article to invoke at the prosecution stage will lie with the magistrate overseeing the trial proceedings.⁸³

Additionally, Article 11 of the Tourism Offences Act makes it an offence for owners, managers or occupiers to allow their premises or any premises they manage to be used for the sexual abuse or prostitution of a child.⁸⁴ Although not specifically related to children, the Trafficking in Persons Act also prohibits the transportation of another person within or across an international border for the purpose of exploiting that person in prostitution.⁸⁵

As evidenced by the above, The Gambia has extensive laws which aim to protect children from being exploited in prostitution. Finally, it should be mentioned that the original crime of procuring for the purposes of prostitution, contained under the Criminal Code, only covered girls and was only considered as a misdemeanour. The evolution of the Gambian provisions to ensure that boys too are protected from these crimes, as well as ensuring that their seriousness is reflected by their punishment, is a positive worth noting.

ONLINE CHILD SEXUAL EXPLOITATION

There is very limited information about online child sexual exploitation within The Gambia. Therefore, it is not possible to say with any degree of accuracy how boys are affected by such crimes. However, with the percentage of the population using the Internet rising from 0.92% in 2000 to 51% in 2019,⁸⁶ growing vulnerabilities from offenders misusing technology to access, groom and exploit children are likely. The anonymity of the Internet is used by offenders to disseminate child sexual abuse materials.⁸⁷ With this in mind, it is of the utmost important for The Gambia to have a robust legal framework in place to protect children from all forms of online sexual exploitation.

Although the Gambian legislation contains some offences which may offer children protection from sexual exploitation online, it is not fully in line with international law and major gaps remain. Article 144B of the Criminal Code Amendment Act makes it an offence to “produce, participate in the production, traffic, publish, broadcast, procure, import, export or in any way abet pornography depicting images of children”.⁸⁸ The punishment for such crimes amounts to a fine of at least twenty thousand dalasis (\$USD 378 as of January 2022), imprisonment of up to ten years or both.⁸⁹ It is worth mentioning that the punishment is the same when these conducts are carried out in relation to adult pornography, not involving children, thereby failing to recognise the seriousness of crimes involving child sexual abuse materials. Further, the Gambian legislation does not contain any definition of ‘child sexual abuse materials’. Therefore, it cannot be said that the law is in line with OPSC and it is unclear whether materials other than images or videos, such as audio material or digitally generated realistic images of non-existent children, would be covered. Lastly, this provision does not criminalise

81 Government of Gambia. (2003). [Tourism Offences Act](#). Article 7.

82 Government of Gambia. (2005). [Children’s Act](#). Article 31.

83 Child Protection Alliance. (2021). Personal Communication.

84 Government of Gambia. (2003). [Tourism Offences Act](#). Article 11.

85 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 28.

86 ITU. (2021). [Percentage of Individuals using the Internet](#).

87 ECPAT International. (2020). [Summary Paper on Online Child Sexual Exploitation](#). Bangkok: ECPAT International.

88 Government of Gambia. (2014). [Criminal Code Amendment Act](#). Article 144B.

89 *Ibid.*

the mere possession of child sexual abuse materials nor knowingly obtaining it.

Under the Children’s Act, it is an offence to “procure, use or offer a child for the production of pornography, or for pornographic performances”.⁹⁰ Whilst this effectively criminalises the use of children in pornographic performances, the law is silent on those who knowingly attend such performances. Further, a related offence can be found under the Tourism Offences Act, which makes it illegal for a tourist or any other person to take an indecent photograph of a child, distribute or show such photographs or to publish any advertisement conveying that the advertiser shows indecent photographs of children or intends to do so.⁹¹ The punishment for such crimes will be imprisonment for five years.⁹² However, there is no mention as to whether these provisions would cover those offences carried out in an online environment.

Currently, there are no provisions in the Gambian legislation that cover offences such as live streaming of child sexual abuse, online grooming, or offences relating to sexual extortion. In order to fully protect children in the online environment, it is extremely important that the law be amended and updated to fully criminalise these offences. In addition, there are no requirements for Internet service providers within the country to block, filter or report child sexual abuse materials encountered on their servers.

There are no provisions in the Gambian legislation which excludes a child’s criminal liability for self-generating sexual content that depicts them, including when they may be compelled to do so through coercion or because they are in an exploitative situation. However, it is a common law principle within the country that those who are compelled to commit crimes will not have legal liability.⁹³ Whilst this may prevent a child from being prosecuted when they have been compelled to produce or share such material, it will not preclude prosecution for producing

child sexual abuse materials for a child who has engaged in such practices voluntarily, for example in the course of a consensual relationship with a peer.

In 2018, The Gambia began consultations with the Council of Europe with the aim of drafting a modern legislation in line with the international standard of the Budapest Convention.⁹⁴ This resulted in the development of the Cybercrime Bill in 2019. This Bill has since passed through public consultation and as of January 2022 is pending parliamentary approval.⁹⁵ However, it is unclear whether any aspects of this Bill will relate to online child sexual exploitation.

SALE AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

It has been identified by the US Department of State’s 2021 Trafficking in Persons Report that children, are trafficked both within The Gambia and to foreign countries, and that boys are amongst those trafficked for sexual purposes.⁹⁶

Following the enactment of the Trafficking in Persons Act in 2007, The Gambia greatly enhanced the legal protection afforded to children from being trafficked for sexual purposes. Article 28 defines trafficking as the recruitment, provision, transportation, harbouring, receipt or trading of persons for the purpose of exploitation within or across national borders.⁹⁷ Further, 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” will also be considered trafficking.⁹⁸ In addition, the placement for sale, bonded or temporary placement or placement for service for the purposes of exploitation and the transportation of a person for the purpose of exploiting them in prostitution are all prohibited

90 Government of Gambia. (2005). [Children’s Act](#). Article 31.

91 Government of Gambia. (2003). [Tourism Offences Act](#). Article 8.

92 *Ibid.*

93 Child Protection Alliance. (2021). Personal Communication.

94 Council of Europe. (2018). [GLACY+: Gambia starts work on its cybercrime legislation](#).

95 Child Protection Alliance. (2021). Personal Communication.

96 US State Department. (2021). [2021 Trafficking in Persons Report: The Gambia](#).

97 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 28.

98 *Ibid.*

conducts under the trafficking legislation.⁹⁹ Exploitation is defined under the act as including, among other things, keeping a person in a state of sexual servitude and the prostitution or engaging of a person in sexual exploitation.¹⁰⁰ Sexual exploitation includes, but is not limited to, “pimping, pandering, procuring, profiting from prostitution, maintain a brothel, child prostitution and child pornography.”¹⁰¹ Moreover, in line with the UN Trafficking Protocol, the means of trafficking, e.g. force, threat, fraud etc. are not required to prove that the offence of trafficking a child has taken place.¹⁰² On another positive note, the Gambian provisions do not require that the movement or displacement of a victim has taken place in order to prove that an offence has been committed.¹⁰³

Lastly, The Trafficking in Persons (Amendment) Act of 2010 increased the penalties provided in Article 28 for trafficking, with offenders liable to the death penalty when the victim is a child.¹⁰⁴

The Trafficking in Persons Act also contains a number of additional offences related to trafficking. Article 32 prohibits the export or import of a person into or out of the country in order to force them into prostitution.¹⁰⁵ Further, Articles 29 and 30 criminalise those who act as intermediaries to the crime of trafficking¹⁰⁶ and those who use the services or employ a victim of trafficking.¹⁰⁷ Lastly, Article 11 of the Tourism Offences Act can be used to punish those who allow a child who has been trafficked to be sexually exploited on their property.¹⁰⁸

The provisions outlining trafficking crimes also include the “placement for sale” for the purposes of exploitation as a prohibited conduct.¹⁰⁹

However, the Children’s Act also criminalises the sale of children as a standalone provision, separate from offences relating to trafficking. Article 37 makes it illegal to sell, hire, let, obtain or otherwise obtain possession of a child with the intent or knowledge that the child will be used for immoral purposes.¹¹⁰ Although there is often significant overlap between the two crimes, the trafficking and sale of children are two separate offences and, in order to aid prosecution efforts, should always be treated as such in law.¹¹¹ Therefore, it is a positive that the Gambian legislation separates and criminalises the two offences effectively.

Despite entering into force in 2007, as of January 2022 there have been no convictions under the Trafficking in Persons Act.¹¹² This emphasises the need not only for strong legislation, but also effective law enforcement, implementation and prosecution procedures.

SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM

Limited indications are that travelling sex offenders operate within The Gambia. The US State Department reported in its 2021 Trafficking Report that offenders from Canada, the Netherlands, Germany, Scandinavia and the UK come to The Gambia in order to sexually exploit children.¹¹³ The former UN Special Rapporteur on the sale and sexual exploitation of children noted that these offenders establish relations with children through organisations registered as charities or approach children by offering to

99 Ibid.

100 Ibid., Article 2.

101 Ibid.

102 Ibid., Article 38.

103 Ibid., Article 28.

104 Government of Gambia. (2010). [Trafficking in Persons \(Amendment\) Act](#). Article 3.

105 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 32.

106 Ibid., Articles 29.

107 Ibid., Article 30.

108 Government of Gambia. (2003). [Tourism Offences Act](#). Article 11.

109 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 28.

110 Government of Gambia. (2005). [Children’s Act](#). Article 37.

111 ECPAT International. (2020). [Summary Paper Sale and Trafficking of Children for Sexual Purposes, Bangkok](#): ECPAT International.

112 Child Protection Alliance. (2021). Personal Communication.

113 US State Department. (2021). [2021 Trafficking in Persons Report: The Gambia](#).

sponsor their education.¹¹⁴ Whilst these reports refer to children generally, it is reasonable to assume that boys too are vulnerable and fall victim to such offences.

The legal framework in The Gambia is well equipped to provide protection to children from being sexually exploited in travel and tourism settings. Provisions creating related offences and regulating the tourism industry can be found in the Tourism Offences Act, Children's Act and the Trafficking in Person's Act.

Article 4 of the Tourism Offences Act makes it an offence for anyone involved in providing services to tourists to make sexual advances or offer any illegal service or product to a tourist.¹¹⁵ Further, Article 5 sets a punishment of a fine of twenty thousand dalasis (\$USD 378 as of January 2022) and/or imprisonment up to two years for any person who makes an unlawful sexual advance to a child.¹¹⁶ In addition, any tourist who sexually abuses a child will be punished with 14 years imprisonment, irrespective of whether the tourist believed the child to be over 18 years old, and 'consent' from the child is not acceptable as a defence.¹¹⁷ A tourist or any other person who procures a child for sexual intercourse, for prostitution, or to become an inmate of or frequent a brothel will face imprisonment of ten years.¹¹⁸ Further offences include touching a child or inviting a child to touch any part of the body for a sexual purpose and exposing genital organs to a child for a sexual purpose.¹¹⁹

Under the Trafficking in Persons Act duties are conferred on "commercial carriers"¹²⁰ to ensure that its means of transport are not used for any offence contained under the

Act and to comply with appropriate security measures at border and custom points.¹²¹ These measures include training personnel to identify suspicious persons, promotion of the integrity of their personnel, submission of passenger manifests in advance and reporting all suspicious circumstances relating to trafficking in persons.¹²² Any commercial carrier which is found to have flouted these duties will face a fine of between fifty thousand and five hundred thousand dalasis (\$USD945 - \$USD9450 as of January 2022).¹²³ In addition, Article 34 creates responsibilities for tour operators and travel agents.¹²⁴ These include, among other things, notifying their clients of their "obligation not to aid, abet, facilitate or promote child pornography and other forms of child sexual exploitation" and to refrain from facilitating contact between tourists and possible child sex exploiters or between tourists and children if they believe the tourist may have sexual exploitation as an objective.¹²⁵

In addition to the above offences, the Children's Act prohibits the organising, promoting or encouraging of foreign travel which promotes the exploitation of children in prostitution.¹²⁶ The punishment for this crime is set at a fine of at least two hundred thousand dalasis (\$USD 3780 as of January 2022), imprisonment up to ten years, or both.¹²⁷ Further, as mentioned in the sections above, Article 11 of the Tourism Offences Act makes it an offence for owners, managers or occupiers to allow their premises or any premises they manage to be used for the sexual abuse or prostitution of a child.¹²⁸

As a final point, it is worth mentioning that both the Children's Act and Trafficking in Persons Act contain provisions that state where any

114 OHCHR. (2019). [End of mission statement of the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, on her visit to The Gambia.](#)

115 Government of Gambia. (2003). [Tourism Offences Act](#). Article 4.

116 *Ibid.*, Article 5.

117 *Ibid.*, Article 6.

118 *Ibid.*, Article 7.

119 *Ibid.*, Articles 9 & 12.

120 A commercial carrier is defined as any person, or a public, private or other entity, engaged in transporting persons, goods or mails for remuneration, hire or any other benefits.

121 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 33.

122 *Ibid.*

123 *Ibid.*

124 *Ibid.*, Article 34.

125 *Ibid.*

126 Government of Gambia. (2005). [Children's Act](#). Article 32.

127 *Ibid.*

128 Government of Gambia. (2003). [Tourism Offences Act](#). Article 11.

offence under the acts has been committed by a corporate body, or has been committed due to instigation, or neglect of, a director, manager, secretary, or other officer of the business, both that person and the corporate body will be found guilty and punished accordingly.¹²⁹ Neither act specify what punishments a business may face under such circumstances. Unfortunately, the Tourism Offences Act does not contain similar provisions that ensure the liability of legal entities for committing crimes relating to sexual exploitation of children contained within its provisions.

CHILD, EARLY AND FORCED MARRIAGE

Although child, early and force marriage is an issue that disproportionately affect girls, it is important to stress that boys are also affected by the problem. It has been estimated that, globally, in 2019, 115 million boys and men were married before the age of 18, out of whom 23 million were married before they turned 15 years of age.¹³⁰ Although boys are not likely to face risks of sexual violence in the way that girls do, those who marry early face increased social pressure to play the role of the ‘breadwinner’ and take up responsibilities of the household which ultimately brings their childhood to an early end.¹³¹ This trend is reflected in the statistics relating to The Gambia, as UNICEF highlighted that between 2014 and 2020, amongst women aged 20-24, 7% were married before turning 15 and 26% were married before 18, compared with less than 1% of males of the same age being married before turning 18.¹³²

The Children’s Amendment Act defines child marriage as “a marriage contracted between a child and an adult or between a child and another child”.¹³³ Further, the act states that a child “shall not be capable of contracting a valid marriage and child marriage is prohibited.”¹³⁴ Given that the definition of a child contained under this act is set at 18, this prohibits child marriage without exceptions.¹³⁵ The original, unamended version of this provision contained the caveat “subject to the provisions of any personal law”. Given that “personal law” here would include Shariah law, which does not prohibit child marriage and allows a child to marry upon reaching physical maturity, this law does not comprehensively preclude child marriage.¹³⁶ The removal of this caveat is especially important when considering that around 95% of the Gambian population abides by Shariah law.¹³⁷

In addition to setting the minimum age at which a person can be married at 18, the Gambian legislation also contains a number of criminal offences relating to child, early and forced marriage. The Children’s Amendment Act punishes with imprisonment of twenty years any parent, guardian or adult who wilfully contracts a marriage on behalf of a child or causes or forces a child to contract a marriage.¹³⁸ Further, anyone who aids, abets or conspires to commit such an offence will be liable to the same punishment.¹³⁹ If anyone is aware that these crimes have been committed and fails to report it, they will also be liable to face ten years imprisonment.¹⁴⁰ Finally, children are offered further protection through the provision of the same act which criminalises those who “wilfully betroth a child to any person or make a child subject to a dowry transaction”.¹⁴¹ These crimes also carry a punishment of twenty years imprisonment.¹⁴²

129 Government of Gambia. (2005). [Children’s Act](#). Article 65; Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 41.

130 UN News. (2019). [Around 23 million boys have married before reaching 15; ‘we can end this violation’ says UNICEF chief](#).

131 ECPAT International. (2020). [Summary Paper on Child, Early and Forced Marriages as a Form of, or Pathway to Sexual Exploitation of Children](#). Bangkok: ECPAT International.

132 UNICEF. (2021). [The State of the World’s Children 2021](#). 189.

133 Government of Gambia. (2016). [Children’s Amendment Act](#). Article 3.

134 *Ibid.*, Article 5.

135 Government of Gambia. (2005). [Children’s Act](#). Article 2.

136 Centre for Human Rights, University of Pretoria. (2018). [A Report on Child Marriage in Africa](#).

137 *Ibid.*

138 Government of Gambia. (2016). [Children’s Amendment Act](#). Article 5.

139 *Ibid.*

140 *Ibid.*

141 *Ibid.*, Article 6

142 *Ibid.*

Under the Woman's Act, it is prohibited for a girl child to be withdrawn from school by any parent or guardian for the purpose of marriage.¹⁴³ Although, as mentioned, this issue disproportionately affects girls, the legislation should strive to be gender neutral and offer the same levels of protection to all children. As it stands, this provision does not apply to boys.

The Sexual Offences Act states that rape does not apply to those couples who are married.¹⁴⁴ Although rape is a crime that should be punishable irrespective of whether it occurs within or outside of a marriage, given that children cannot be legally married, this provision should not apply to children. Although there is no formal provision in law that allows for an offender to be exonerated if they marry their victim, anecdotal evidence suggests the existence of a societal norm whereby an offender may be let off and the family of the victim may withdraw the complaint if they subsequently marry the victim.¹⁴⁵

EXTRATERRITORIALITY AND EXTRADITION

With the growth in travel and tourism over the last few decades, it has become easier for individuals to travel abroad and commit crimes against children.¹⁴⁶ Therefore, extraterritorial jurisdiction becomes vitally important as it gives a State jurisdiction on crimes committed by its citizens or on their citizens outside their territory. To prevent countries from becoming safe havens for child sex offenders, it is important that the national legislation fully establishes extraterritorial jurisdiction over offences of child sexual exploitation in accordance with Article 4 of the OPSC.¹⁴⁷ Similarly, extradition is essential in order to aid prosecution efforts, given that key witnesses and evidence are likely to be located at

the place in which the crime was committed.¹⁴⁸

In regard to extraterritoriality, the Criminal Code states only that the Gambian courts will have jurisdiction over crimes which are committed partly within the country and partly abroad.¹⁴⁹ Whilst this may allow The Gambia to prosecute certain crimes with a cross-border element, it does not allow for extraterritorial jurisdiction over crimes that have been wholly committed abroad, by or against a Gambian citizen.

The Trafficking in Persons Act contains specific provisions relating to The Gambia's extraterritorial jurisdiction over trafficking crimes. Article 36 of the act states that The Gambia has jurisdiction to try an offence carried out anywhere, when it has been committed by a Gambian citizen or resident.¹⁵⁰ Therefore, this active territorial jurisdiction allows The Gambia to prosecute crimes, contained under the Trafficking in Persons Act, by their own citizens that have been carried out abroad. The trafficking legislation also goes further and applies passive extraterritorial jurisdiction.¹⁵¹ This means that The Gambia will also punish trafficking offences committed by foreign nationals abroad against a Gambian citizen or resident. Finally, the same provision states that Gambian courts will have jurisdiction where a trafficker is present in The Gambia and is not extradited.¹⁵² Whilst it is welcome that this act covers both active and passive extraterritorial jurisdiction, it applies only to trafficking crimes and, therefore, does not ensure extraterritorial jurisdiction over other crimes related to child sexual exploitation within different pieces of legislation.

In terms of extradition, The Gambia does not make extradition conditional on a treaty for all commonwealth countries listed under the Extradition Act. However, for any other foreign States, a treaty will be required for extradition. Currently, The Gambia only has a bilateral

143 Government of Gambia. (2010). [Woman's Act](#). Article 28.

144 Government of Gambia. (2013) [Sexual Offences Act](#). Article 3.

145 Child Protection Alliance. (2021). Personal Communication.

146 ECPAT International. (2020). [Summary paper on sexual exploitation of children in travel and tourism](#), 1.

147 [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#). (2000). Article 4.

148 ECPAT International. (2016). [Global Study on Sexual Exploitation of Children in Travel and Tourism](#).

149 Government of Gambia. (1965). [Criminal Code](#). Article 4.

150 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 36.

151 *Ibid.*

152 *Ibid.*

extradition agreement with Senegal. Extraditable offences include all offences with a punishment of at least one year of imprisonment in both The Gambia and the requesting State, that are covered within the Schedule to the act.¹⁵³ The Schedule contains crimes such as rape, unlawful sexual intercourse with a female and procuring or trafficking young people.¹⁵⁴ Therefore, while many are, it cannot be said that all crimes related to sexual exploitation of children would be considered extraditable. Furthermore, the principle of double criminality applies to extradition proceedings, meaning that in order for an offender to be extradited the offence committed must be punishable by a minimum of one year of imprisonment under both Gambian law and the law of the requesting State.¹⁵⁵ Although all offences related to child sexual exploitation contained under Gambian law exceed this minimum sentencing requirement, issues could arise when a requesting State has more lenient sentencing.

ACCESS TO JUSTICE AND REMEDIES

National complaint mechanisms and reporting

Under the Gambian legislation there is a duty to report any infringement upon a child's rights.¹⁵⁶ This is contained under the Children's Act and applies to any member of the public who has evidence that a child's right is being infringed.¹⁵⁷ Those who report should do so at the nearest office of the Department for Social Welfare, which will then summon the person against whom the report was made and make a decision in the best interests of the child.¹⁵⁸ Further, Article 75 of the same act creates an obligation for those with

information on child abuse or a child in need of care and protection to report it to the nearest office of the Department for Social Welfare or police station.¹⁵⁹ Children deemed in need of care and protection include, among others, those in circumstances that may cause them to be exploited in prostitution or affect their morality and those who have been a victim to an offence against morality.¹⁶⁰ There are no punishments for those who do not comply with these reporting obligations. In addition, further protection could be provided to children by expanding the law so as to make reporting obligatory for all crimes relating to their sexual exploitation.

According to the Children's Court Rules, in conjunction with the Criminal Procedure Code, any person may initiate criminal proceedings when they have reasonable and probable cause to believe an offence has been committed, by submitting a complaint to a magistrate.¹⁶¹ The law does not preclude children from making such complaints.

In terms of trafficking, the Trafficking in Persons Act contains provisions setting out the complaints procedure for all offences contained thereunder. Article 42 states that a victim of trafficking or any other person who has information about trafficking may file a complaint with the police or other security services at the place where: the offender or victim resides, the trafficking occurred or is occurring or where the victim is residing temporarily having left their normal place of residence.¹⁶² Further, a family member or any other person may file a complaint on behalf of a victim.¹⁶³ Lastly, social welfare officers, probation officers, health care providers or teachers may all file complaints if it is in the best interest of the victim to do so.¹⁶⁴

In addition to the above, suspected sexual exploitation of children may be reported through

153 Government of Gambia. (1996). The Extradition Act. Article 6.

154 *Ibid.*, Schedule.

155 *Ibid.*, Article 6.

156 Government of Gambia. (2005). [Children's Act](#). Article 67.

157 *Ibid.*

158 *Ibid.*

159 *Ibid.*, Article 75.

160 *Ibid.*, Article 76.

161 Government of Gambia. (2010). [Children's Court Rules](#). Article 3. Government of Gambia. (1933). [Criminal Procedure Code](#). Article 69.

162 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 42.

163 *Ibid.*

164 *Ibid.*

the country's National Helpline for Children, launched in 2020.¹⁶⁵ This free helpline is general, and is equipped to receive reports of child abuse, and can offer child protection information.¹⁶⁶ In addition, in 2019, the Internet Watch Foundation launched a reporting portal for The Gambia, through which child sexual abuse materials may be reported.¹⁶⁷ During the course of this research it has not been possible to access further information on these reporting mechanisms and so it is unclear whether they are widely used for child sexual exploitation.

The law in The Gambia is silent on whether or not an anonymous complaint is sufficient evidence to open an investigation. Further, there is no obligation under the law for public prosecutors to initiate proceedings *ex officio* (at their own initiative), based on information obtained by reliable sources, e.g. a police report. However, the Children's Act does confer a duty on the Department for Social Welfare to make enquires to decide whether to act to safeguard a child when they are informed that a child is suffering or likely to suffer harm.¹⁶⁸

On a positive note, there are no statutory limitation periods for crimes related to sexual exploitation of children in The Gambia. Where they exist, these periods designate the maximum amount of time after a crime has been committed in which legal proceedings may be initiated against an offender but when sexually exploited children disclose abuse, they frequently do after delay.¹⁶⁹ Therefore, it is extremely welcome that there is no statute of limitation period for these crimes in The Gambia.

As previously noted, The Gambia is yet to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which could hinder children in Gambia from appealing to international mechanisms when national

mechanisms have failed to address violations effectively.

At the end of her 2019 mission to The Gambia, the former UN Special Rapporteur on the sale and sexual exploitation of children remarked that complaints relating to sexual exploitation of children were rarely lodged and, when they were, they were not acted upon by the police. Further, her remarks stated that the gathering of evidence is often delayed and may result in the withdrawal of the victim's complaint.¹⁷⁰ In regard to The Gambia's complaints system, the Special Rapporteur added that improvements in reporting mechanisms and better resourcing for police services were required.¹⁷¹

Child-sensitive justice

In relation to child sensitive justice measures, the Children's Act contains provisions that establish children's courts in each of the country's administrative zones.¹⁷² The act also contains certain child sensitive justice measures to be applied in proceedings within these courts; these include *in camera* hearings, the right to legal representation and the right to have their privacy protected.¹⁷³ However, the act also states that the jurisdiction of these courts applies only to criminal charges against a child, civil matters concerning children and applications relating to childcare and protection.¹⁷⁴ The fact that cases involving child victims are not specified as being within the jurisdiction of the children's court is a key omission from the law.

Under the Sexual Offences Act, certain measures may be applied that could help protect sexually exploited children. Article 15 provides that for court proceedings for sexual offences, any person whose presence is not necessary may be excluded from proceedings.¹⁷⁵ Further, Article 16 provides that the identity of a victim or witness must

165 Child Helpline International. (n.d.). [Gambia](#).

166 The Digest News. (2020). [First Lady Barrow Launches National Helpline for Children](#).

167 Internet Watch Foundation. (2019). [IWF sets sights on tackling online child sexual abuse to mark 30th anniversary of the United Nations Convention on the Rights of the Child](#); Internet Watch Foundation. (n.d.). [The Gambia Reporting Portal](#).

168 Government of Gambia. (2005). [Children's Act](#). Article 99.

169 ECPAT International. (2017) "[Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation](#) ECPAT International". 58.

170 OHCHR. (2019). [The Gambia must step up prosecutions to boost progress on ending child sexual exploitation, says UN human rights expert](#).

171 *Ibid.*

172 Government of Gambia. (2005). [Children's Act](#). Article 68.

173 *Ibid.*, Article 72.

174 *Ibid.*, Article 70.

175 Government of Gambia. (2013) [Sexual Offences Act](#). Article 15.

not be published and sets punishment of up to one hundred thousand dalasi (\$USD 1890 as of January 2022), imprisonment for two years or both for those who contravene this provision.¹⁷⁶ These measures are applied in relation to victims of all sexual offences.

The Trafficking in Persons Act contains a number of provisions that seek to protect victims of trafficking crimes. Article 45 states that trafficking victims should not be denied a temporary residence visa during any period that legal action is pending and should have access to adequate health, legal, psychological and other social services during their period of temporary residence.¹⁷⁷ Further, the Act states that the safety, identity, privacy and integrity should be protected throughout any legal proceedings.¹⁷⁸ Lastly, the Act states that a victim of trafficking who is subjected to, or is a witness of, sexual violence may be permitted to present evidence *in camera*.¹⁷⁹ The use of the term 'sexual violence' here may exclude certain victims, who have not experienced sexual violence, from availing of this provision, for example those who are trafficked for the purpose of creating child sexual abuse materials. In addition, these provisions are not related specifically to children and will only apply to victims of trafficking crimes.

Access to recovery and reintegration

The Gambian legislation contains a number of provisions that could be invoked in order to ensure a child's access to recovery and reintegration. Article 12 of the Children's Act states that those who have responsibility for ensuring the care of a child in need of special protection measures should endeavour to "provide the child with such assistance and facilities which are necessary for his or her education, training, preparation for employment, rehabilitation, and recreational opportunities in a manner conducive to his or her achieving

the fullest possible social integration, individual development and his or her cultural and moral development."¹⁸⁰ It is also worth noting that, whilst this act does call for the establishment of a national rehabilitation centre, it provides rehabilitation and training only for children in conflict with the law. Unfortunately, the act does not detail any specific processes or measures which should be applied to child victims of sexual offences.

In addition to the above, the Trafficking in Persons Act provides that it is the responsibility of the Department of Social Welfare to provide "temporary basic material support for the care and protection of a rescued victim of trafficking."¹⁸¹ Further, they shall provide counselling services for trafficking victims to assist them with their rehabilitation and reintegration.¹⁸² The same governmental department also has responsibility for providing trafficking victims with employable skills and employment opportunities.¹⁸³

Finally, trafficking victims may receive financial assistance in order to aid their rehabilitation and reintegration.¹⁸⁴ Again, these provisions are applied to trafficking victims in general and not specifically child victims and will not cover other instances of sexual exploitation other than those related to trafficking. In the course of this research it has not been possible to access information detailing how many children had received such assistance.

The Trafficking in Persons Act establishes the Fund for Victims of Trafficking which designates money towards, among other things the material support of victims, constructing reception centres and providing rehabilitation, reintegration and repatriation for victims.¹⁸⁵ However, in the course of this research it has not been possible to identify whether any money from this fund has been put towards such objectives.

176 *Ibid.*, Article 16.

177 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 42.

178 *Ibid.*

179 *Ibid.*, Article 47.

180 Government of Gambia. (2005). [Children's Act](#). Article 12.

181 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 51

182 *Ibid.*

183 *Ibid.*, Article 53.

184 *Ibid.*

185 *Ibid.*, Articles 58 & 60.

Unfortunately, the former UN Special Rapporteur on the sale and sexual exploitation of children observed in 2019 that “services for recovery and reintegrating child victims are virtually non-existent in The Gambia.”¹⁸⁶ This highlights the work still to be done, not only to improve the legislative rights to recovery but also to adequately fund and implement the necessary support systems that help all child victims recover and reintegrate into society.

Access to compensation

The Gambian legislation does not contain any specific provisions relating to the access to compensation for children subjected to sexual exploitation. However, in the Criminal Procedure Act it is stated that a victim may make a claim for material loss or personal injury.¹⁸⁷ Rather than having to file a separate civil claim for such compensation, the court may order the convicted offender to pay the victim an amount that the court deems fair and reasonable.¹⁸⁸ These provisions are general and relate to all crimes.

In addition, the Trafficking in Persons Act states that an offender convicted of trafficking offences may be ordered by the court to pay compensation to the victim.¹⁸⁹ Similar to other provisions under this act, these will apply only to victims of trafficking and so are not a viable avenue to compensation for child victims of other crimes of sexual exploitation. Unfortunately, children subjected to sexual exploitation have not yet been successful in receiving compensation in The Gambia.¹⁹⁰

186 OHCHR. (2019). [The Gambia must step up prosecutions to boost progress on ending child sexual exploitation, says UN human rights expert.](#)

187 Government of Gambia. (1933). [Criminal Procedure Code](#). Article 145.

188 *Ibid.*

189 Government of Gambia. (2007). [Trafficking In Persons Act](#). Article 54.

190 Child Protection Alliance. (2021). Personal Communication.

CONCLUSION

Overall, The Gambia has shown commitment to improving its legislation in order to address the sexual exploitation of children. This is evident through the ratification of a plethora of international instruments and through improved national legislation that criminalises various crimes of child sexual exploitation. Further, their continued attempts to upgrade and fortify criminal provisions related to sexual offences is to be commended. However, the legislation still has numerous weaknesses and a lot of work remains to be done in order to ensure that children are adequately protected. In addition, it should be noted that having a strong legal framework is only one piece of the puzzle in fully protecting children from sexual exploitation - adequate resources must also be invested in effective implementation of investigation, prosecution and rehabilitation services using these laws.

As a starting point, the criminalisation of homosexual relations has the potential to be damaging for boys who may be prosecuted for homosexual relations despite having been subjected to abuse by an offender. Failing the outright repeal of these provisions, as a minimum they should be amended to exclude children from being prosecuted. Further, same-age peers who engage in consensual homosexual relations may be treated as offenders. Lastly, the continued existence of these laws reduces the likelihood of any boy victims reporting abuse or seeking help for fear of potential prosecution or stigmatisation. These circumstances increase impunity for offenders.

It is particularly important that The Gambia removes any gendered provisions relating to children at the earliest opportunity. The government should ensure that the age of sexual consent is set at the same age for children of all genders, and that any protections apply to all children, regardless of gender. For example, the provision under the Women's Act that protects only girls from being removed from school for the purposes of marriage should be amended to include all children. It is particularly urgent that

Article 6 of the Sexual Offences Act is removed, as it is discriminatory towards boys and may result in boys under 14 facing criminal charges in instances in which they have fallen victim to a sexual crime.

The Gambia effectively criminalises a number of crimes relating to the exploitation of children in prostitution. However, this protection could be further enhanced by amending the legislation to state unequivocally that children exploited in these circumstances will always be treated as a victim and never face prosecution.

Unfortunately, The Gambia's legislative provisions regarding online child sexual exploitation are quite weak and remain far from prohibiting all related offences. The provisions offer no definition of child sexual abuse materials, which may leave doubt as to whether all materials, including, for example, audio, written or digitally generated materials will be covered. Further, the mere possession of or knowingly obtaining access to child sexual abuse materials are not criminalised. The law is also silent on crimes such as live-streaming of child sexual abuse, online grooming and crimes relating to sexual extortion. It is vital that the government moves to address these legal shortcomings as the failure to criminalise such offences may allow offenders to act with impunity, thereby exposing children to added risk of sexual exploitation online. As a final point relating to legislation regulating the online environment, The Gambia does not have any provisions that require Internet service providers to block, filter or report instances of child sexual abuse materials that appear on their servers.

Whilst The Gambia should be commended for its efforts to criminalise sexual crimes committed within the context of travel and tourism, there are still a number of improvements which could be made. The obligations for commercial carriers and tour agencies contained under the Trafficking in Persons Act should be extended to cover all crimes relating to child sexual exploitation, not only trafficking offences. Further, the Tourism

Offences Act should be amended so as to explicitly state that corporate bodies may be held liable for all offences contained thereunder.

In order to ensure the effective investigation and prosecution of crimes, as well as allowing all child victims to access child justice measures, The Gambia must make significant improvements to its procedural legislation. In its current form, The Gambia's extraterritorial jurisdiction is only applied to offences committed under the Trafficking Act. This should be extended to cover active and passive extraterritorial jurisdiction for all crimes related to sexual exploitation of children, meaning that the State can prosecute Gambian citizens who commit such offences abroad and foreigners who commit such offences against Gambian children abroad. Further, given that it may act as a barrier to extradition proceedings, and therefore may prevent prosecution, the double criminality requirement should be removed from the extradition legislation for all sexual offences involving children. In addition, it is important that the Schedule containing extraditable crimes is updated in order to include all offences related to child sexual exploitation.

The Gambia's legislation relating to complaint mechanisms and reporting could be enhanced by including explicit provisions that state that an anonymous report of sexual exploitation will be sufficient in opening criminal proceedings. In a similar vein, provisions requiring public prosecutors to open investigations *ex officio* for such crimes could be included.

As it stands, The Gambia's provisions on child sensitive justice have a strong focus on protecting children in conflict with the law and do not guarantee the same rights for child victims and witnesses. Therefore, the legislation should be amended to guarantee measures such as in camera hearings, the right to legal aid, the right to access a psychologist throughout criminal proceedings and the right to full privacy and anonymity during criminal processes. It should be explicitly stated that all of these child sensitive measures should apply to victims of all crimes of sexual exploitation, not only trafficking. A similar problem exists with the country's legislation regarding rehabilitation and reintegration services for child victims, in that these services are currently only guaranteed by law for victims of trafficking crimes. Therefore, this should be extended to all victims of crimes related to sexual exploitation.

As a final point, the legislation allowing for children subjected to sexual exploitation to access compensation is currently inadequate. Therefore, the law should be updated to allow for specific and accessible mechanisms to access compensation for the physical and mental trauma that victims have had to endure.

RECOMMENDATIONS

LEARNING 1:

Repeal legal provision criminalising homosexual relations

- As a minimum, legislation criminalising homosexuality should be amended to exclude children from being prosecuted.

LEARNING 2:

Remove any gendered provisions relating to children

- Ensure that the age of sexual consent is set at the same age for children of all genders;
- Repeal Article 6 of the Sexual Offences Act;
- Extend the provision under the Women's Act to protect all children from being removed from school for the purposes of marriage.

LEARNING 3:

Enhance provisions to criminalise all forms of online child sexual exploitation

- Define 'child sexual abuse materials', including, but not limited to: audio, written or digitally generated materials;
- Criminalise the possession of or knowingly obtaining access to child sexual abuse materials;
- Criminalise the live-streaming of child sexual abuse, online grooming and crimes relating to sexual extortion;
- Introduce requirements for Internet service providers to block, filter or report instances of child sexual abuse materials that appear on their servers.

LEARNING 4:

Improve legislation relating to the sexual exploitation of children in the context of travel and tourism

- Extend obligations for commercial carriers and tour agencies contained under the Trafficking in Persons Act to cover all crimes relating to the sexual exploitation of children;
- Amend the Tourism Offences Act to explicitly state that corporate bodies may be held liable for all offences contained thereunder.

LEARNING 5:

Extend extraterritorial jurisdiction to cover all offences related to child sexual exploitation

- This should include extending jurisdiction to cover active and passive extraterritorial jurisdiction for all crimes of child sexual exploitation, meaning that the State can prosecute Gambian citizens who commit such offences abroad and foreigners who commit such offences against Gambian children abroad;
- Remove the double criminality requirement for all offences related to child sexual exploitation.

LEARNING 6:

Improve access to compensation and child sensitive justice for victims

- Update the law to allow for specific and accessible mechanisms to access compensation for the physical and mental trauma that child sexual exploitation victims have had to endure;
- Legislation should be amended to guarantee measures such as in camera hearings, the right to legal aid, the right to access a psychologist throughout criminal proceedings and the right to full privacy and anonymity during criminal processes for all victims of child sexual exploitation offences.



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