

# **TRAFFICKING IN PERSONS ACT, 2007**

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Trafficking in Persons Act, 2007



THE GAMBIA

NO. 11 OF 2007

Assented to by The President,

this 5th day of October, 2007

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YAHYA A. J. J. JAMMEH  
*President*

**AN ACT** to prevent, suppress, and punish those engaged in, the trafficking in persons, and to rehabilitate and reintegrate victims of trafficking and for other matters connected therewith.

[ 5th October, 2007 ]

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

**PAR I – PRELIMINARY**

Short title

1. This Act may be cited as the Trafficking in Persons Act, 2007.



## Interpretation

2. In this Act, unless the context otherwise requires-

“abduction” means a person who takes another person, or detains the person against his or her will;

“authorized officer” means an immigration officer, a police officer or a public officer authorized by the Department of State to implement any provision of this Act;

“basic material support” includes education, health care, shelter, counselling and nutritional requirements;

“Board” means the Board of Directors appointed for the Agency under section 4;

“bonded placement” includes-

- (a) placement of a person by a trafficker for exploitative purposes with a promise of subsequent payment to the trafficker for the placement of the victim of trafficking by the user of the victim of trafficking; and
- (b) the placement of a victim of trafficking to offset a debt already owed by the trafficker or another person;

“care and protection” has the same meaning as “basic material support”;

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

“coercion” means force or some form of non-violent psychological force and includes –

- (a) restraint against a person;
- (b) a threat of serious injury to, or physical restraint against, a person;
- (c) a scheme, plan or pattern intended to cause a person to believe that failure to perform an act will result in serious injury to, or physical restraint of, a person; and
- (d) the abuse or threatened abuse of the legal process;

“commercial carrier” means a person, or a public, private or other entity, engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;

“court” means a High Court or a Magistrate Court of the First Class;

“debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services, as reasonably assessed, is not applied toward the liquidation of the debt or length, and the nature of those services are not respectively limited and defined;

“Department of State” means the Department of State for Justice;

“Economic Community” means the Economic Community of West African States;



“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, including sexual 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 conflicts;

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

“foreign authority” means a person designated by a foreign Government for the purposes of this Act;

“Government” means the Government of The Gambia;

“human organ” includes a part of the human body which can be removed and used to sustain life for any purpose;

“illicit removal of organs” means the unlawful removal of a human organ without following the legitimate medical procedures for which proper consent has been obtained;

“injury” includes physical, mental, emotional and psychological hurt;

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“Non-Governmental Organization” means Non-Governmental Organization registered under the Non-Governmental Organizations Decree, 1996 and includes an international non-governmental organization;

“place of safety” means premises where the welfare of a victim of trafficking is assured;

“placement for service” means the placement of a person by a trafficker for exploitative purposes where the service of that person is not remunerated;

“police officer” includes an officer from another security service;

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

“private sector” means the part of the economy which is not funded by the Government or from moneys provided by the National Assembly;

“Secretary of State” means the Secretary of State for Justice;



"security services" includes the Police, Customs and Excise, the Immigration Department, National Drug Enforcement Agency, Armed Forces and National Intelligence Agency;

"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;

"social welfare officer" includes a probation officer;

"temporary placement" means the transfer of a victim of trafficking for a limited period for exploitative purposes;

"trafficker" means a person engaged in trafficking;

"trafficking" means trafficking in persons;

"trafficking in persons" has the meaning given to it under section 28;

"transportation", in relation to trafficking, includes use of public transport and other forms of transport such as transportation by land, water or air, within and across international borders;

“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.

## **PART II - ESTABLISHMENT OF THE NATIONAL AGENCY AGAINST TRAFFICKING IN PERSONS AND ITS BOARD OF DIRECTORS**

Establishment  
of the National  
Agency against  
Trafficking in  
Persons

3. (1) There is hereby established a body to be known as the National Agency against Trafficking in Persons.

(2) The Agency is a body corporate with perpetual succession and a common seal and may-

(a) sue or be sued in its corporate name;

(b) enter into contracts, and acquire, hold and dispose of property; and

(c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The application of the common seal of the Agency shall be authenticated by the signature of the Executive Director or such other person as may be authorized by the Agency to sign on its behalf.

(4) A document bearing the imprint of the common seal of the Agency is deemed to be properly sealed, unless the contrary is proved.



Establishment  
and composition of the  
Board of  
Directors

4. (1) There is hereby established for the Agency a Board of Directors, which shall, subject to the provisions of this Act, carry out the functions and manage the affairs of the Agency.

(2) The Board consists of-

- (a) a Chairperson;
- (b) the Solicitor General and Legal Secretary or his or her designated representative not below the rank of Deputy Solicitor General and Legal Secretary;
- (c) the Permanent Secretary of the Department of State for Health and Social Welfare or his or her designated representative not below the rank of Deputy Permanent Secretary;
- (d) the Permanent Secretary of the Department of State for the Interior or his or her designated representative not below the rank of a Deputy Permanent Secretary;
- (e) the Permanent Secretary of the Department of State for Foreign Affairs or his or her designated representative not below the rank of a Deputy Permanent Secretary;
- (f) the Permanent Secretary of the Department of State for Trade, Industry and Employment or his or her designated representative not below the rank of a Deputy Permanent Secretary;

- (g) a representative of the Police Force not below the rank of Deputy Inspector General of Police;
- (h) a representative of the Immigration Department not below the rank of Deputy Director;
- (i) a representative of the National Intelligence Agency not below the rank of Deputy Director;
- (j) four other persons from the private sector, two of whom shall be selected from Non-Governmental Organizations with keen interest in the prevention and suppression of trafficking, especially in women and children.

(3) The members of the Board, other than *ex-officio* members, shall be appointed by the President after consultation with the Public Service Commission.

(4) The members shall appoint one of their number to be the Vice-Chairperson of the Board.

Tenure of office  
of members of  
the Board

5. (1) The members of the Board, other than *ex-officio* members, shall hold office for a term of three years and may be re-appointed for one further term.

(2) A person is not qualified to be a member or to continue to be a member of the Board if –

- (a) he or she is adjudged to be a person of unsound mind;



- (b) he or she has been convicted of an offence involving dishonesty or fraud and has not been granted a free pardon; or
- (c) in the case of a person who has professional qualifications, he or she is disqualified or suspended, otherwise than at his or her request, from practicing his or her profession by the order of a competent authority made in respect of him or her personally.

(3) A member of the Board may resign his or her appointment by notice in writing addressed to the President.

General  
powers of the  
Board

6. The Board may give general directions as to the management of the property, business and funds of the Agency and other matters relating to the Agency.

Delegation of  
powers of the  
Board

7. For the purpose of discharging its functions under this Act, the Board may delegate to the Executive Director, the power to –

- (a) acquire or authorize the acquisition of any movable or immovable property and transfer or allocate any funds of the Agency for that purpose;
- (b) authorize the disposal of securities of any kind belonging to the Agency;
- (c) open and operate current, deposit or credit account on behalf of the Agency at any bank or financial institution; and

- (d) negotiate and obtain loans on behalf of Agency and determine the nature and conditions of the loans.

Meetings of the Board

8. (1) The Board shall meet for the discharge of its business at least once in every three months at such time and place as the Chairperson shall appoint.

(2) The Chairperson shall, at the written request of the Executive Director or not less than five members of the Board, convene a special meeting of the Board to transact any extra-ordinary business on a date specified in the request.

(3) A written notice of a special meeting of the Board shall -

- (a) be sent to each member not later than forty-eight hours before the meeting; and
- (b) specify the business for which the meeting is being convened.

(4) The quorum of the Board at any meeting shall be seven, including the Chairperson or the Executive Director.

(5) The Board shall take decisions by a simple majority of the votes of members present and, where there is an equality of votes, the person presiding shall have a casting vote.



(6) The Chairperson shall preside at every meeting of the Board, at which he or she is present, and in his or her absence, the Vice-Chairperson shall preside and, where both the Chairperson and Vice-Chairperson are absent, the members of the Board present shall appoint one of their number to preside at the meeting.

(7) The minutes of every meeting of the Board shall be recorded by the Secretary, and signed by the Chairperson or the person who presided at the meeting, after confirmation by the Board.

(8) The Board may at any time co-opt a person to be an adviser at any of its meetings, but a person so co-opted is not entitled to vote at any meeting of the Board.

(9) The Board may appoint such committees as it considers necessary to carry out, on its behalf, such of its functions as it may determine, but a decision of a committee so appointed has no effect unless it is confirmed by the Board.

(10) The validity of the proceeding of the Board is not affected by-

- (a) a vacancy in its membership;
- (b) a defect in the appointment of any of its members; or
- (c) reason that a person not entitled to do so, took part in the proceedings.

(11) Subject to this section, the Board may regulate its own procedure.

Absence of the  
Executive  
Director from  
meetings

9. If the office of Executive Director is vacant or the Executive Director is for any reason unable to attend a meeting of the Board, the person for the time being carrying out the duties of the Executive Director shall attend the meeting and may participate in its deliberations.

Disclosure of  
interest

10. (1) A member of the Board who has an interest in a company or an undertaking with which the Agency proposes to enter into a contract shall –

- (a) disclose to the Board the nature of his or her interest; and
- (b) not participate in any deliberation and voting of the Board in respect of the contract.

(2) The President may, on the recommendation of the Secretary of State, remove from the Board a member who contravenes the provisions of subsection (1).

Transaction  
of business  
without  
meeting

11. A resolution is a valid resolution of the Board if-

- (a) it is signed or assented to by a majority of the members; and
- (b) notice of the proposed resolution was given to each member and to the Executive Director,

notwithstanding that it was not passed at a meeting of the Board.

Protection of  
members

12. No action, suit, prosecution or other proceeding shall be brought or instituted against a member of the Board personally in respect of any thing done by him or her in good faith in pursuance, execution or intended execution of any of the provisions of this Act.



Allowances to  
members

13. A member of the Board and a person co-opted to the Board shall be paid such allowances as the Secretary of State may approve.

### PART III – FUNCTIONS

Functions of  
the Agency

14. Subject to the provisions of this Act and, in addition to any other functions expressly conferred on it by the other provisions of this Act, the Agency shall-

- (a) administer the provisions of this Act;
- (b) initiate measures to inform and educate the public, including potential victims, about the causes and consequences of trafficking;
- (c) adopt measures to reduce the demand for commercial sex acts and for participation in international sex tourism by Gambians;
- (d) adopt measures to ensure that Gambians deployed abroad on peacekeeping or other similar mission do not engage in or facilitate trafficking in persons or exploit victims of trafficking;
- (e) monitor the immigration and emigration patterns of The Gambia and secure the prompt response of the police and other law enforcement agencies where necessary;
- (f) make recommendations for a national plan of action against trafficking in persons, monitor and report on the progress of the national plan of action to the Economic Community or any other relevant organisation, through the Secretary of State;

- (g) adopt measures which include co-ordinated and preventive action against trafficking;
- (h) cooperate with Non-Governmental Organisations with keen interest in the prevention and suppression of trafficking;
- (i) initiate activities and promote strategies to combat trafficking;
- (j) receive and investigate reports of activities of trafficking from the public or otherwise coming to its notice or knowledge;
- (k) cooperate with Governments of other States in the investigation and prosecution of trafficking offences;
- (l) facilitate rapid exchange of information and the conduct of research geared towards eradication of trafficking;
- (m) establish, maintain and secure communication to facilitate the rapid exchange of information relating to offences and improved international cooperation in the prevention and suppression of trafficking in persons by road, sea and air;
- (n) act as database for all data relating to trafficking in persons;
- (o) take such measures that will ensure the elimination and prevention of the root causes and consequences of trafficking in persons, particularly women and children;



- (p) strengthen and enhance effective legal means for international cooperation in criminal matters for suppressing the international activities in trafficking in persons;
- (q) strengthen cooperation between the office of the Attorney General, Police Force, Immigration Department, Customs and Excise Department, Prisons Department, social welfare officers and other law enforcement agencies in the eradication of trafficking in persons; and
- (r) take charge of, supervise, control and co-ordinate the rehabilitation of victims of trafficking.

#### **PART IV – MANAGEMENT AND STAFF**

Executive  
Director of the  
Agency

**15. (1)** There shall be for the Agency an Executive Director who shall be appointed by the President, after consultation with the Board and Public Service Commission.

(2) The Executive Director shall be a person with knowledge and experience relevant to trafficking in persons, especially in matters relating to migration of persons.

(3) The Executive Director shall be appointed on such terms and conditions as may be specified in his or her letter of appointment.

(4) The Executive Director shall be –

- (a) the chief executive of the Agency; and

(b) responsible for the execution and implementation of the policy of the Board and the transaction of the day-to-day business of Agency.

(5) The Board may delegate to the Executive Director such of its functions as are necessary to enable him or her to transact efficiently the day-to-day business of the Agency, and for that purpose, the Board may, from time to time, issue written instructions.

Appointment of  
Secretary to  
the Board

**16. (1)** The Board shall appoint an officer from amongst the staff of the Agency to be Secretary to the Board.

(2) The Secretary shall-

- (a) keep the books and records and conduct the correspondence of the Board;
- (b) prepare the agenda and record the minutes of meeting of the Board; and
- (c) perform such other functions as may be assigned to him or her by the Board or Executive Director.

Secretariat and  
other staff of  
the Agency

**17. (1)** There shall be a Secretariat of the Agency.

(2) The Executive Director shall be the head of the Secretariat.

(3) The Agency shall appoint such employees as it considers necessary for the due discharge of the functions of the Agency, on such terms as to remuneration and otherwise as it may, in consultation with Public Service Commission, determine.

(4) The Board is responsible for the discipline and removal of employees of the Agency.

(5) The Board shall, with the approval of the Secretary of State, make regulations establishing schemes for pensions, gratuities and other retirement benefits in respect of employees of the Agency.

(6) The Agency shall, for the purpose of achieving maximum efficiency in the discharge of its functions under this Act, institute schemes for the training of its employees in administrative, management and other skills, with a view to securing the benefit of their knowledge, experience and expertise in the conduct of the operations of the Agency.

## PART V - FINANCIAL PROVISIONS

Fund of the  
Agency

**18.** The Agency shall maintain a fund into which shall be paid –

- (a) sums appropriated to it, from time to time, by the National Assembly;
- (b) loans granted to the Agency;
- (c) grants and gifts, provided that the terms and conditions attached to any grant or gift are not inconsistent with the functions of the Agency or the Board; and
- (d) such other sums as may accrue to the Agency from any other source.



Expenses of  
the Agency

19. The Agency may, from time to time, apply the proceeds of the fund established in pursuance of section 18 to –

- (a) the cost of administration of the Agency;
- (a) the reimbursement to members of the Board or any committee appointed by the Board for such expenses as may be authorized by the Board, in accordance with the rates approved by the Secretary of State;
- (c) the payments of salaries, fees and other remuneration, allowances, pensions and gratuities payable to members of the Board, employees of the Agency or experts, professionals or agents appointed by the Agency;
- (e) the maintenance of any property acquired or vested in the Agency; and
- (f) meeting such other expenses as may be approved by the Board.

Estimates,  
accounts and  
audit

20. (1) The Agency shall, not later than three months before the end of each financial year, prepare and submit to the Secretary of State for approval, estimates of the income and expenditure of the Agency for the ensuing year.

(2) The Agency shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Agency shall prepare, in respect of each financial year a statement of accounts.

(4) The Agency shall, within three months of the end of each financial year, submit its statement of accounts to the Auditor General for audit.

(5) The audited accounts of the Agency and the Auditor General's report on those accounts shall form part of the Auditor General's overall report to the National Assembly.

Annual report

**21.** (1) The Agency shall, not later than two months after the end of each financial year, submit to the Secretary of State, in respect of the financial year, an annual report on the financial position and performance of the Agency.

(2) The report under subsection (1) shall include-

(a) a statement on the income, source of income and application of the moneys of the Agency.

(b) information with regard to the operation and performance of the Agency; and

(c) such other information as the Secretary of State may require.

(3) The Secretary of State shall, not later than three months after the end of the financial year, cause the report to be laid before the National Assembly.

(4) The Executive Director shall also, from time to time, provide the Secretary of State with such information relating to the affairs of the Agency as the Secretary of State may request.

Exemption  
from duties

**22.** The Agency shall be exempted from such duties as the Secretary of State responsible for finance may approve.

## **PART VI – LEGAL PROCEEDING**

Notice of legal  
action

**23. (1)** No action may be brought against the Agency unless at least one month's written notice of the intention to bring the action has been served on the Agency by the intending plaintiff or his or her agent.

(2) The notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief, which he or she claims.

Service of  
process

**24.** The notice referred to in section 23 and any summons, notice or other document required or authorized to be served on the Agency in connection with a suit by or against the Agency, may be served by delivering it or sending it by registered post addressed to the Executive Director.

Execution of  
judgment

**25.** In an action or suit against the Agency, no-

- (a) execution or attachment or process in the nature of an execution or attachment shall be issued against the Agency; or
- (b) sums of money which may by judgment of the court be awarded against the Agency, shall be paid by the Agency from its funds,

before the expiration of at least three months from the date of judgment of the court.



## Representation

26. In a suit against the Agency, the Agency may be represented in court at any stage of the proceedings by an officer or any other employee of the Agency duly authorized in writing by the Agency in that behalf.

## Immunity

27. An officer of the Agency or any acting on the direction of an officer of the Agency shall not be personally liable in respect of any matter or thing done by him or her in good faith for the purposes of this Act.

## PART VII - PROHIBITION OF TRAFFICKING AND RELATED OFFENCES

## Prohibition of trafficking

28. (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 and not exceeding five hundred thousand dalasis in addition to imprisonment for a minimum term of fifteen years and 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 life imprisonment.

Acting as intermediary for the purpose of trafficking

29. (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 and not exceeding five hundred thousand dalasis in addition to imprisonment for a minimum term of fifteen years and maximum term of life imprisonment.

(3) For purposes of this section, "an intermediary" is a person who-



(a) participates in, or is concerned with, any aspect of trafficking under this Act; and

(b) may or may not be known to the family of the victim of trafficking.

(4) A person is concerned with an aspect of trafficking under this Act, if he or she-

(a) sends to, takes to, consents to the taking to, or receives at, any place any other person for the purposes of trafficking; or

(b) enters into an agreement, whether written or oral, to subject any party to the agreement, or subject any other person, to trafficking.

Prohibition of  
use of victims  
of trafficking

**30. (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 and not exceeding five hundred thousand dalasis in addition to imprisonment for a minimum term of fifteen years and maximum term of life imprisonment.

(2) In subsection (1), "use" includes employ and allow to work for.

Concealment  
of trafficking

**31. (1)** A person who has information concerning trafficking shall inform the police.

(2) A person who fails to inform the police commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis and not exceeding fifty thousand dalasis or imprisonment for a term of not less than twelve months and not exceeding three years, or to both the fine and imprisonment.

Exportation  
and importation  
of persons  
from, and into  
The Gambia

**32.** Notwithstanding the provisions of section 28, a person who-

- (a) exports, from The Gambia to a place outside The Gambia, a person with intent that he or she may be, or knowing it to be likely that he or she will be, forced or seduced into prostitution in that place; or
- (b) imports into The Gambia from any place outside The Gambia, a person with intent that he or she may be, or knowing it to be likely that he or she will be, forced into prostitution any where in The Gambia,

commits an offence and is liable on conviction to fine of not less than fifty thousand dalasis and not exceeding five hundred thousand dalasis in addition to imprisonment for a minimum term of fifteen years and maximum term of life imprisonment.

Commercial  
carriers

**33. (1)** It is the duty of every commercial carrier to take reasonable precaution to-

- (a) ensure that its means of transport are not used in the commission of an offence under this Act;
- (b) comply with appropriate security measures at points of entry and exit in The Gambia and other border control points and customs control areas to prevent trafficking in persons by its means of transportation.

(2) The precautions referred to in subsection (1) include-



- (a) the training of personnel to identify suspicious persons;
- (b) promotion of integrity of their personnel;
- (c) submission of passengers manifests in advance;
- (d) reporting to the Agency, at the earliest opportunity, all suspicious circumstances relating to trafficking in persons.

(3) A commercial carrier which contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis and not exceeding five hundred thousand dalasis.

Responsibility  
of tour operators  
and travel  
agents

**34. (1)** It is the duty of every tour operator and travel agent to-

- (a) notify its clients of their obligation under this Act and not to aid, abet, facilitate or promote in any way trafficking in persons;
- (b) notify their clients of their obligation under this Act not to aid, abet, facilitate or promote in any way child pornography and other forms of child exploitation in tourism;
- (c) refrain from facilitating in any way, contact between tourists and possible child sex exploiters and direct contact between tourists and children having as an objective sexual exploitation;

- (d) ensure, as much as possible, that no contacts or encounters are made between tourists and exploiters and children within the frame work of sexual exploitation;
- (e) insert in contracts with corresponding suppliers in destination countries clauses requiring them to comply with the obligations stated in paragraphs (a) to (d);
- (f) refrain from utilising messages on printed material, video or the internet that could suggest or allude to behavior incompatible with the objectives of this Act;
- (g) inform its staff of their obligations under this Act; and
- (h) include clauses regarding the obligations to its staff under this Act in new employment contracts.

(2) A tour operator, travel agent or any other person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis and not exceeding five hundred thousand dalasis.

#### Attempts

**35. (1)** Where a person is charged with an offence under this Act and the evidence establishes an attempt to commit that offence, he or she may be convicted of having attempted to commit that offence although the attempt is not separately charged and the person shall be punished as prescribed for the offence under this Act.



(2) Where a person is charged with an attempt to commit an offence under this Act, but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted of the offence and punished as provided under this Act.

Jurisdiction,  
etc.

36. (1) A court in The Gambia has jurisdiction to try an offence under this 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 this 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.

Consideration  
of pecuniary  
resources and  
property not  
accounted for

37. In a trial of an offence under this Act, the fact that an accused person-

- (a) is in possession of pecuniary resources or property for which he or she cannot satisfactorily account and which is disproportionate to his or her known sources of income; or

- (b) had at or about the time of the alleged offence obtained an accretion to his or her pecuniary resources or property for which he or she cannot satisfactorily account,

may be proved and taken into consideration by the court as corroborating the testimony of any witness in the trial.

Consent, etc.  
of victim of  
trafficking  
irrelevant

**38. In a prosecution for trafficking under this 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;
- (c) the recruitment, transportation, transfer, harbouring or receipt of a child for 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.



Offences committed outside The Gambia

39. (1) When an offence under this Act is committed in a place outside The Gambia by a citizen of, or by a person granted permanent residence in, The Gambia, he or she shall be dealt with in respect of the offence as if it was committed at a place within The Gambia.

(2) The Agency has the power to engage the service of any local or international institution, body or person possessing special knowledge or skill on the detection of trafficking across international borders and the tracing of properties connected with trafficking.

Protection of informant and of information

40. Where a person volunteers to the Agency, or an official of the Agency, or police, any information which may be-

- (a) useful in the investigation of an offence under this Act; or
- (b) helpful in tracing the proceeds of trafficking in persons and the other offences under this Act,

the Agency, official or police shall take all reasonable measures to protect the identity of that person, and the information so volunteered shall be treated as confidential.

Offences by bodies corporate

41. Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or to be attributable to any neglect on the part of -

- (a) a director, a manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in that capacity,

he or she, as well as the body corporate, where practicable, is deemed to have committed that offence and is liable to be prosecuted and punished accordingly.

## **PART VIII – COMPLAINTS PROCEDURE AND ARREST**

Filing of complaint to police  
Cap. 12:01

**42.** (1) Without prejudice to the power of the police under this Act or the Criminal Procedure Act, 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-

- (a) the offender resides;
- (b) the victim resides;
- (c) the trafficking occurred or is occurring; or
- (d) the victim is residing temporarily, if the victim has left his or her normal place of residence.

(2) Where a victim of trafficking is, for any reason, unable to file a complaint personally, a member of his or her family or any person with knowledge of the offence may file a complaint on behalf of the victim.



(3) Notwithstanding subsection (1), a social welfare officer, probation officer, health care provider, teacher or any other person may file a complaint under this section if it is in the best interest of the victim of trafficking to do so.

(4) Where a person who could have been a complainant under this Act has died, the complaint may be made by a person with knowledge of the offence.

Arrest by police

43. (1) A police officer may arrest a person for trafficking with a warrant issued in pursuance of this Act or without a warrant.

(2) A police officer may arrest a person for trafficking without a warrant where-

- (a) an act of trafficking is committed in the presence of the officer;
- (b) the police officer is obstructed by the person in the execution of police duties; or
- (c) the person has escaped or attempts to escape from lawful custody.

(3) A police officer may arrest without warrant on reasonable grounds of suspicion where a person-

- (a) has committed an offence of trafficking; or
- (b) is about to commit an offence of trafficking and there is no other way to prevent the commission of the offence; or
- (c) is willfully obstructing the police officer in the execution of police duties.

Arrest by  
private person  
without warrant

44. (1) A private person may arrest a person without warrant-

- (a) if the person commits the offence of trafficking in the presence of the private person; or
- (b) where the private person has reasonable suspicion that the person has committed the offence of trafficking.

(2) A private person who arrests a person shall, without unnecessary delay, immediately hand over the person to a police officer or, where a police officer is not available, take the person to the nearest police station.

## **PART IX – TREATMENT OF VICTIMS OF TRAFFICKING**

Treatment of  
victims of  
trafficking

45. (1) The Agency, police and other authority, involved with the care and protection of victims of trafficking, shall ensure that-

- (a) a victim of trafficking is not subjected to discriminatory treatment in practice on account of race, colour, gender, sexual orientation, age, language, religion, political or other opinion, cultural beliefs or practices, national, ethnic or social origin, property, birth or other status, including his or her status as a victim of trafficking or having worked in the sex industry;
- (b) a victim of trafficking has access to adequate health, legal, psychological and other social services during the period of temporary residence;



- (c) a victim of trafficking has access to the embassy or consulate of the country of which he or she is a citizen or, if there is no embassy or consulate, ensure that the person has access to the diplomatic representative of the State that takes charge of the country's interest or any national or international authority whose task is to protect him or her;
- (d) a victim of trafficking is able to return home safely, if he or she so wishes and when he or she is able to do so;
- (e) a victim of trafficking is not denied temporary residence visa during the period the criminal, civil or other legal action is pending;
- (f) investigation, detection, gathering and interpretation of evidence are conducted in such a manner as to minimize intrusion into the personal history of a victim of trafficking;
- (g) the name of a victim of trafficking is not disclosed recklessly where the person is trafficked into the sex industry;
- (h) the use by a person, of another person's history of being trafficked to discriminate or cause harm to a victim of trafficking or his or her friends in any way whatsoever, particularly with regard to the right to freedom of movement, marriage or search for gainful employment, is not encouraged;

- (i) a victim of trafficking has access to Non-Governmental Organizations and other authorized institutions that provide rehabilitation services or counseling to victims of trafficking;
- (j) the safety, identity, privacy and integrity of a victim of trafficking and witnesses are protected and not subordinated to the interests of the prosecution, including before, during, and after all criminal, civil or other legal proceedings; and
- (k) a victim of trafficking is protected from intimidation, reprisals or threats of reprisals from traffickers and their associates, including reprisals from persons in position of authority.

(2) The Department of State, the Department of Social Welfare, the Department of Immigration and other relevant Departments and agencies shall cooperate to ensure the smooth and voluntary repatriation of victims of trafficking.

Conduct of trial proceedings

**46.** Proceedings conducted pursuant to this Act shall be conducted in such manner that will not be detrimental or prejudicial to the rights of the victim of trafficking and are consistent with the psychological and physical safety of a victim of trafficking and witnesses.

Evidence to be taken *in camera* in certain circumstances

**47.** A victim of trafficking who is subjected to, and is a witness of, sexual violence may be permitted to present evidence *in camera* after taking into consideration all the circumstances of the case.



Exclusion of  
personal his-  
tory of traffick-  
ed persons

48. The accused or a defendant, as the case may be, shall not introduce as a defence evidence of the personal history or the current or previous occupation of a victim of trafficking.

Non-detention  
or imprison-  
ment of traffick-  
ed persons in  
certain circum-  
stances

49. Where 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 a false travel or other documents.

Right to  
institute civil  
action

50. A victim of trafficking, irrespective of his or her immigration status-

- (a) has the right to bring civil action against a trafficker and any other person, including a public officer, who have exploited or abused him or her; and
- (b) is entitled to compensation, restitution and recovery for economic, physical and psychological damages to be met from the assets of the convicted trafficker.

Temporary  
care and  
counselling of  
victims of  
trafficking

51. The Department of Social Welfare shall provide-

- (a) temporary basic material support for the care and protection of a rescued victim of trafficking; and
- (b) counseling services for the victim of trafficking to assist him or her with the rehabilitation and reintegration.

Tracing of  
families of  
victims of  
trafficking

52. (1) The Department of Social Welfare shall be assisted by the police, and any other person, to trace the family of a victim of trafficking.

(2) The views of the victim of trafficking shall be taken into consideration in connection with family reunification.

(3) A person who has information which may assist with the tracing of the family of a victim of trafficking shall provide the information to the Department of Social Welfare or the police.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis and not exceeding fifty thousand dalasis or imprisonment for a term of not less than twelve months and not exceeding three years.

Rehabilitation  
of victims of  
trafficking

**53.** (1) The Department of Social Welfare shall assist in providing a rescued victim of trafficking with employable skills and employment opportunities.

(2) A victim of trafficking may receive financial assistance from the Trafficking in Persons Fund and other Departments of State, and government agencies concerned with rehabilitation and reintegration of victims of trafficking.

Compensation

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



**PART X – APPLICATION OF CERTAIN ENACTMENTS**

Application of  
the Extradition  
Act  
Cap. 13

55. The offences under this Act shall, for the purposes of the Extradition Act, be regarded as extraditable offences under that Act, and accordingly, a request for the extradition for an offender is subject to the Extradition Act.

Application of  
the Children's  
Act  
No. 5 of 2005

56. (1) This Act shall be read as one with the Children's Act, 2005.

(2) Notwithstanding section 269 of the Children's Act, 2005, where a provision of this Act conflicts with that of the Children's Act, the provision of this Act shall prevail and that other provision shall, to the extent of the inconsistency, be void.

(3) Notwithstanding subsection (2), a matter concerning the care and protection of a trafficked child or any other matter for which the Children's Court has jurisdiction shall be referred to the Children's Court established under the Children's Act, 2005 to be dealt with under that Act.

Application of  
the Criminal  
Code  
Cap. 10

57. Where an offence created under this Act is also an offence under the Criminal Code, an offender shall be tried and punished under the provisions of this Act.

**PART XI – FUND FOR VICTIMS OF TRAFFICKING**

Establishment  
of the Fund for  
Victims of  
Trafficking

58. There is hereby established a fund to be known as the Fund for Victims of Trafficking, the management and control of which is, subject to the provisions of this Act, vested in the Agency.

Sources of  
money for the  
Fund for  
Victims of  
Trafficking

**59.** The moneys for the Fund for Victims of Trafficking shall consist of-

- (a) moneys appropriated by the National Assembly for payment into the Fund;
- (b) voluntary contributions to the Fund from individuals and organisations;
- (c) donations, gifts and grants from bilateral and multilateral sources;
- (d) proceeds from the confiscation of property connected with trafficking; and
- (e) such other moneys as may accrue to the Fund from other sources.

Application of  
money in the  
Fund for  
Victims of  
Trafficking

**60.** The money in the Fund for Victims of Trafficking shall be applied as follows -

- (a) towards the basic material support of victims of trafficking;
- (b) for the training of victims of trafficking in skills;
- (c) for tracing the families of victims of trafficking;
- (d) towards the construction of reception shelters for victims of trafficking;
- (e) for any matter connected with the rescue, rehabilitation, reintegration and repatriation, of victims of trafficking; and



- (f) for training and capacity building of persons connected with the rescue, rehabilitation and reintegration of victims of trafficking.

Restriction on  
expenditure  
from the  
Trafficking in  
Persons Fund

**61.** (1) No expenditure shall be made from the Trafficking in Persons Fund unless the Board approves it.

(2) The Board shall not approve expenditure for purposes other than those specified in section 60.

Special report

**62.** A report of every exercise of the Agency's power under this Part of this Act shall be included in the annual report which the Agency is required to submit to the Secretary of State.

Accounts and  
audit

**63.** (1) The Agency shall cause proper books of accounts and other records to be kept in connection with the Trafficking in Persons Fund.

(2) The Auditor General shall audit the accounts of the Trafficking in Persons Fund.

Investment of  
money

**64.** The Agency may-

- (a) invest any money of the Trafficking in Persons Fund in such manner as the Board may determine; and
- (b) vary and diversify investments as the Board may also determine.

## **PART XII – MISCELLANEOUS PROVISIONS**

Obstruction of  
the Agency or  
authorized  
officers

**65.** A person who-

- (a) willfully obstructs the Agency or any authorized officer of the Agency in the exercise of any of the powers conferred on the Agency by this Act; or

- (b) fails to comply with any lawful direction or requirement made by the Agency or an authorized officer of the Agency under the provisions of this Act,

commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis and not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

Power of the Secretary of State to give directives to the Agency

**66.** (1) The Secretary of State may, from time to time, give general policy guidelines to the Agency.

(2) Without prejudice to the generality of the provisions of subsection (1), the Secretary of State may give to the Agency directives of a general nature or specific directive relating generally to a particular matter or case, as the case may be.

(3) The Agency shall comply with any policy guideline or directive given by the Secretary of State under subsection (1) or (2).

Protection of officers of the Agency

**67.** No legal proceedings, civil or criminal, shall be instituted against an officer of the Agency or any other person assisting an officer of the Agency for any act which is done in good faith or for any omission made in good faith by the officer or other person.

Unlawful withholding of identification

**68.** (1) A person who, in acting or purporting to act, as another person's employer, manager, supervisor, contractor, employment agent, or solicitor of clients (such as a pimp), knowingly procures, destroys, conceals, removes, confiscates, or possesses, any passport, immigration document or



other Government identification document, whether actual or purported belonging to another person, for any purpose connected with Act, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis and not exceeding one hundred thousand dalasis or to imprisonment term of not exceeding five years, or to both the fine and imprisonment.

Confiscation of  
property of  
traffickers

**69. (1)** Where there is evidence that movable or immovable property has been acquired by a trafficker as a result of gains from trafficking activity, the court shall order the confiscation of the property.

(2) The court may make such order as it considers appropriate in connection with the confiscated property and may direct that the proceeds of the confiscated property be paid into the Trafficking in Persons Fund.

(3) In this section, "property" includes property within and outside The Gambia.

Regulations

**70. (1)** The Secretary of State may, on the recommendation of the Agency, make regulations for the proper implementation of the provisions of this Act.

(2) Without prejudice to subsection (1), the Secretary of State may make regulations for-

- (a) the training of the personnel needed to combat trafficking;

- (b) the skills training, care and protection of victims of trafficking;
- (c) the collection of data and exchange of information on trafficking in persons;
- (d) the rescue, rehabilitation, reintegration and voluntary repatriation of victims of trafficking; and
- (e) skills training to include formal education for child victims.



PASSED in the National Assembly this Sixth day of September  
in the year of Our Lord Two Thousand and Seven

D. C. M. Kebbeh  
*Clerk of the National Assembly.*

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

D. C. M. Kebbeh  
*Clerk of the National Assembly.*