

THE ROLE OF THE INTERNET IN FUELING THE GROWTH OF HUMAN TRAFFICKING IN THE GAMBIA

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I. INTRODUCTION

THE ROLE OF THE INTERNET IN FUELING THE GROWTH OF HUMAN TRAFFICKING IN THE GAMBIA

Human trafficking or trafficking in person, is a transnational crime happening within and across borders all around the world with an estimated annual market value of \$150.2 billion in 2017¹. Human Trafficking is a grave human rights violation that is recognized and has garnered efforts globally to tackle it. The year 2000 saw the adoption of the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially women and children supplementing the United Nations Convention against Transnational Organized crime which provided for the first comprehensive definition of Trafficking in persons.

The Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children also commonly referred to as the Palermo Protocol is the first comprehensive universal international instrument to address trafficking in person despite there being other international instruments that contain articles and provisions that address the exploitation and trafficking of persons particularly women and children like the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

After the entry into force of the Palermo Protocol and the convention it supplements, regional organisations such as the African Union and the European Union started working to produce and adopt conventions, action plans and even create campaigns.

The African Union and the European Union entered into a partnership on Migration, Mobility and Employment and adopted the Ouagadougou Action Plan to Combat Trafficking in Human Beings Especially Women and Children. On the national level, many states enacted laws and formulated policies to address, prevent and combat human trafficking. In 2007, The Gambia enacted its first comprehensive legislation, Trafficking in Persons Act², to prevent, suppress, and punish those engaged in trafficking in persons and to rehabilitate and reintegrate victims of trafficking.

The Gambia is a source, transit and destination country for human trafficking victims and has fluctuated between Tier 3, Tier 2 Watchlist and Tier 2 of the US State Departments Trafficking in Persons annual reports over the years. The prevention, protection and general combatting of human trafficking efforts of the government of The Gambia are unimpressable thus the fluctuation between these ranks. Over the years, governments, civil society and the international community have worked and continue to work to combat human trafficking around the world yet this grave transnational crime is still being committed by perpetrators who have now taken up a different route of obtaining victims. The route that traffickers have used increasingly and heavily used in recent times to get potential victims is the internet with its many social and connectivity platforms.

¹Transnational Crime and the Developing World « Global Financial Integrity (gfindtegrity.org)

²Act NO. 11 of 2007

ACRONYMS

CEDAW	Convention on the Eradication of All Forms of Discrimination Against Women	UN	United Nations
CRC	Convention on the Rights of The Child	ILO	International Labour Organisation
NAATIP	National Agency Against Trafficking in Persons	UNODC	United Nations Office on Drugs and Crime
GID	Gambia Immigration Department	AU	African Union
GPF	Gambia Police Force	ECOWAS	Economic Committee of West African States
DSW	Department of Social Welfare	SIS	State Intelligence Services
WFF	Walk Freedom Foundation	IC ACT	Information Communications Act
IOM	International Organisation on Migration	GRA	Gambia Revenue Authority
NDLEA	National Drug Law Enforcement Agency		

CHAPTER 1 RESEARCH AND METHODOLOGY

1.1. RESEARCH

The Study on the Role of the Internet in fueling the growth of Human Trafficking in the Gambia is commissioned by the African Legal Think Tank on Women's Rights, through the generous support of The Collaboration on International ICT Policy in East and Southern Africa (CIPEA), as part of a broader investigation on the role played by the internet in human trafficking within the Gambia, Democratic Republic of Congo and Mauritania. The aim of this study is to assess and determine the role the internet plays in fueling the growth of human trafficking in the Gambia and to develop tailored recommendations through a gender sensitive lens. The scope of the study is not just limited to how the internet fuels the growth of human trafficking in the Gambia but it is also assessing:

The aim of this study is to assess and determine the role the internet plays in fueling the growth of human trafficking in the Gambia and to develop tailored recommendations through a gender sensitive lens. The scope of the study is not just limited to how the internet fuels the growth of human trafficking in the Gambia but it is also assessing:

1. How has the internet been used to ensure that residents and citizens of The Gambia are protected against human trafficking?;
2. The adequacy existing laws in The Gambia criminalising human trafficking;
3. The bodies established by law to combat human trafficking, the work they have done over the years and the challenges they face trying to combat human trafficking;
4. The work civil society organisations have done and continue to do to complement government's efforts to combat trafficking;

The study was prepared through in-depth stakeholder interviews and analysis of five (5) annual reports (2016 to 2020) produced by the US State Department regarding Trafficking in Persons in The Gambia, Trafficking in Persons Act 2007, Tourism Offences Act 2003, The Labour Act, The 2006 Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, The African Union Commission Initiative Against Trafficking, The ECOWAS Declaration Against Trafficking in Persons 2001, the Palermo Protocol, the recommendations made by the Committee for The Gambia on Article 6 of CEDAW in 2005 and the Committee's recommendations made in 2020.

³With respect of COVID-19 protocols and measures.

The analysis made it possible to prepare questions for the various stakeholders interviewed. The in-depth stakeholder interviews held online and in person provide in depth information and details on whether the internet plays a role in fueling the growth of human trafficking in the Gambia and the work they do in trying to combat human trafficking in The Gambia. The stakeholders interviewed in this research are:

1. The National Agency Against Trafficking in Person;
2. The Gambia Immigration Department;
3. The Bakoteh Shelter operated by the Department of Social Welfare.

It should be noted that survivors/victims of human trafficking could not be interviewed for this research. The few publicly known victims did not want to be interviewed for reasons best known to them and their privacy had to be respected.

1.2. METHODOLOGY

To assess the main research topic and the sub topics listed above, the study gathered information through:

1. A literature review;
2. Analysis of the laws of The Gambia addressing human trafficking, international conventions and protocols;
3. Stakeholder in depth interviews.

1.3. RESEARCH OVERVIEW

This section presents the methodology of the research and the in-depth interviews conducted with stakeholders from the government and civil society. The stakeholders interviewed are the executive director of NAATIP, the head of the migration unit at the GID and The Director of the Bakoteh Shelter operated by the Department of Social Welfare. As mentioned above, victims of trafficking were not interviewed despite being contacted.

It is important to note that due to stigmatisation and risk of re-victimisation by society and systems meant to protect, victims of human trafficking shy away from the public and interviews. It is also very important to note that this is the first research conducted to assess whether the internet plays a role in fueling the growth of human trafficking in The Gambia.

1.3.1. OVERVIEW OF DESK RESEARCH

A review of various sources was undertaken to obtain an up-to-date view of existing research on human trafficking in The Gambia. There is not any literature studying whether the internet plays a role in the growth of human trafficking in The Gambia. The document studied for the desk research are the US State Department's Trafficking in Persons annual reports on The Gambia from 2016 to 2020, The 2006 Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, The African Union Commission Initiative Against Trafficking, The ECOWAS Declaration Against Trafficking in Persons 2001, the recommendations of the CEDAW committee for The Gambia based on Article 6 of CEDAW in 2005 and the Committee's recommendations made in 2020.

The laws of The Gambia analysed are the Trafficking in Persons Act 2007, Tourism Offences Act 2003 and The Labour Act. International Conventions specifically addressing human trafficking like CEDAW, the UN Convention Against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children commonly known as the Palermo Protocol were analysed as The Gambia has signed and ratified these conventions. The questions for the in-depth stakeholder interviews were formulated from the analysis of the literature studied for the desk research.

1.3.2. OVERVIEW OF THE INTERVIEWS

The Gambia is a source, destination and transit country for human trafficking victims. In order to understand whether the internet plays any role in the growth of trafficking in persons and to understand how established agencies are working to combat trafficking, in-depth stakeholder interviews were selected as a means to collect information firsthand from the stakeholders working to combat trafficking in The Gambia. Interviewing these stakeholders and obtaining information directly from them are integral to the study. Each stakeholder was asked a set of questions different from the other stakeholders as each of them was established to execute functions different from the others. Thus, carrying out their individual functions in working to combat human trafficking in The Gambia, protect people against human trafficking.

The Executive Director of NAATIP, the head of the Irregular Migration Unit of the GID and the Director of the Bakoteh Shelter operated by the Department of Social Welfare under the Ministry of Women, Children and Social Welfare: these individuals were interviewed because they head these institutions and therefore can best discuss the work they do and the challenges they face in trying to combat trafficking in persons. Each person provided pertinent information for the study; however, GID could not answer all the intended question and often referred to NAATIP since it is the agency leading the government's effort to combat trafficking. GID works to combat trafficking and in an event where it apprehends a suspected trafficking or identifies a victim, it hands over the matter to GPF for further actions. The questions asked during the interviews are reproduced in the table below as well as the objectives of the questions which are useful for the purpose of the study.

STAKEHOLDER	AREAS COVERED BY THE QUESTIONS
NATIONAL AGENCY AGAINST TRAFFICKING IN PERSONS - EXECUTIVE DIRECTOR	<ol style="list-style-type: none"> 1. Did the agency start operating immediately after the TIP Act was enacted?; 2. How is the agency funded? How much was allocated for NAATIP in 2020? Does this affect the work the agency does?; 3. What projects are you working on currently?; 4. Why does the prosecution of TIP cases take such a long time and NAATIP ever took the initiative to prosecute TIP cases on its own with fiat from the Attorney General?; 5. Do you think the agency should be given prosecuting powers/fiat by the AG so that cases will be prosecuted quickly?;
	<ol style="list-style-type: none"> 6. One of the highlights of the US state Dept 2020 report is that no conviction of a trafficker has been done for the 3rd consecutive year: what do you have to say about it? What are the causes?; 7. Are there any projects the agency is working on at the moment, or in the future?; 8. Has the establishment of the National Task Force on Trafficking in Persons been of any help to NAATIP?; 9. The government previously operated a 24-hour trafficking-specific hotline in four languages, however, the hotline was suspended due to inadequate training and capacity. Are there any plans of having the hotline running again?; 10. Do you think the internet fuels the growth of human trafficking/child sex tourism in the Gambia?;
	<ol style="list-style-type: none"> 11. Do you think the internet helps in combatting human trafficking in The Gambia?; 12. What more do you think the government can do to aid NAATIP and fight human trafficking?; 13. What do you think civil society and INGOs can do together with NAATIP to fight human trafficking in the Gambia?;

STAKEHOLDER	AREAS COVERED BY THE QUESTIONS
THE GAMBIA IMMIGRATION DEPARTMENT	<ol style="list-style-type: none"> 1. What work has your institution done to combat human trafficking in The Gambia?; 2. What training programs does your institution do to enable personnel to work to combat trafficking, identify traffickers/smugglers, victims or potential victims at border posts and at the airport?; 3. How well does your institution monitor the movement of people, who may be trafficked, in and out of the country to make considering the porous nature of The Gambia's borders?; 4. How do you identify a victim at the airport after they have obtained all necessary documents and a boarding pass?; 5. What do you do when you identify a victim and stop them from crossing the border or boarding a flight?;
THE BAKOTEH SHELTER	<ol style="list-style-type: none"> 1. When did the shelter start accommodating victims of human trafficking?; 2. How long are victims allowed to stay before they have to leave the shelter?; 3. Apart from victims of human trafficking, what other groups of people do you accommodate in this shelter?; 4. Do victims of human trafficking have their own quarters within the shelter?; 5. Are there any psychosocial support services that the shelter renders to victims of human trafficking?; 6. Do you have any programs specifically designed for female victims?; 7. How much support does the shelter receive from the Department of Social Welfare and the government?; 8. Do you think that it is healthy for all these different groups of people to be accommodated in one shelter?; 9. During your engagements with the victims of trafficking accommodated in the shelter, have you seen or noticed any pattern when it comes to the victim recruitment? Does the internet play any part in their recruitment?; 10. Are there any services victims of human trafficking need and should obtain in this shelter but are not receiving?;

The next chapter will present an overview of how the internet has fueled the growth of human trafficking across the world, the way in which the internet has been used and continue to be used to exploit and recruit victims of trafficking and how the internet can be used to combat trafficking will also be explored. After which The Gambia's human trafficking profile will be presented along with the findings of the literature review.

CHAPTER 2

HUMAN TRAFFICKING & THE INTERNET

Human trafficking or trafficking in persons is defined by the Palermo Protocol as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. Human trafficking is a transnational crime happening around the world with an annual market value of \$150.2 billion according to the Global Financial Integrity’s 2017 report on Transnational Crime and the Developing World. In Africa, human trafficking is a \$13.1 billion annual enterprise.

The 2020 UNODC Global Report on Trafficking in Persons which is primarily based on identified trafficking cases between 2016 to 2019, reports that in 2018, 49,032 (forty-nine thousand and thirty-two) trafficking in persons cases were identified. For every 10 victims detected globally in 2018, five were adult women and two were girls. The 2017 Global Estimates of Modern Slavery produced by ILO and WWF in collaboration with IOM, estimated that at any given day in 2016, there were 40 million people in modern slavery. 25 million of them being in forced labour and the 15 million being in forced marriages. Human trafficking is a social crisis that has taken many forms nowadays. People are mainly trafficked for forced labour and sexual exploitation though there are other forms of exploitation such as the performance of criminal activity, begging, forced marriages, removal and selling of body organs, baby selling and other unknown forms of exploitation. In 2018, UNODC reported 50% of detected trafficking in persons cases were for sexual exploitation purposes. Women are the demographic that is trafficked for sexual exploitation more than any other group. Children, including both boys and girls, are also trafficked for sexual exploitation purposes. Sexual exploitation and sex trafficking have taken a different dimension which is enabled or made possible due to the advent of technology and the internet; as a result, the internet has immensely contributed to the growth of human trafficking around the world.

Since its establishment, the internet has easily facilitated almost all the transactions in the world and has connected individuals and organisations, while supported in building communities and relationships, and providing work and leisure activities. With all its advantages and ease of connectivity between individuals and organisations, the internet does come with some disadvantages; like how it has enabled the growth of human trafficking around the world. The internet is used, or rather it is misused, to recruit, control, exploit, buy, sell and groom victims of human trafficking in different parts of the world. In 2018, the UNODC released its Global Report on Trafficking in Persons which shows that perpetrators use social media to identify victims, engage them and establish trust, and then deceive them into entering situations they become trapped in and may never be able to leave. The Inter-agency Coordination Group Against Trafficking in Persons, which is a policy forum mandated by the UN General Assembly, released an issue brief in 2019 exploring how technology and human trafficking intersect. It listed four ways in which the internet fuels the growth of human trafficking and they are:

1. “Enabling perpetrators hide their identities and remain anonymous on the internet;
2. Facilitating recruitment and exploitation of victims;
3. Facilitating transactions, accessing new venues and expanding marketplaces;
4. Increasing the means by which victims of trafficking can be controlled and exploited.”

With social media platforms and other sites on the internet allowing encrypted communication between devices, perpetrators have the opportunity to remain anonymous on the internet. Every day, technology is improving and the internet is providing easier and faster connectivity. In the same vein, technology has created a new generation of criminals who can conduct their transactions across states, regions and continents using cryptocurrency to send and receive money made from illicit dealings, like trafficking in persons. This makes it difficult for law enforcement to trace and detect the illegal and atrocious transactions. Technology and the internet have changed the everyday means in which human trafficking is conducted and has increased its growth. Just like the internet plays a role in fueling the growth of human trafficking around the world, it has helped creating another form of trafficking in persons which is referred as online sexual exploitation. This is intended as the grooming, luring and consumption of sexual materials, often times being sexual abuse material.

Online sexual exploitation is more common with children, as perpetrators make contact with them online, and build relationships of trust which results in luring and grooming them into sharing images and or videos of a sexual nature of themselves. These images are then used to coerce victims into sharing more sexual content of themselves, which are then shared and marketed for profit and personal gain. This act is often referred to as child pornography, though pornography is supposed to be produced after consent has been granted; children cannot give consent, thus online child sexual abuse material or content must not be referred to as child pornography. The amount of child sexual abuse material on the internet is so much that it cannot be quantified. This the same for sexual abuse content of adults. The creation, distribution and retention of child sexual abuse material is illegal in many countries around the world. In The Gambia, the creation, distribution and publication of photographs or pseudo-photographs of children is outlawed by section 174 of the IC Act 2009 and it carries a punishment of life imprisonment upon conviction.

The Tourism Offences Act of 2003 addresses child pornography and it carries a punishment of five years imprisonment. Traditional trafficking in persons is also enabled by the internet as discussed above. One of the ways in which it does so is easy arrangement of travel logistics for potential victims of trafficking. In The Gambia, the National Agency for Trafficking in Persons has confirmed that through their investigations of identified cases, particularly that of Gambians trafficked in the Middle East, travel logistics are taken care of online. This is the only way the agency is aware of how the internet fuels the growth of human trafficking in The Gambia. Differently, the DSW operated shelter located in Bakoteh, which accommodates victims of trafficking who are either sourced from The Gambia, were in transit in The Gambia or whose destination is The Gambia, revealed that victims have never mentioned the internet as a channel or route in which they were deceived into being trafficked. All victims ever accommodated in the shelter were trafficked either knowingly or unknowingly through an agent they knew very well or met through a third party in their quest for employment in another country or area.

CHAPTER 3

THE GAMBIA HUMAN TRAFFICKING PROFILE

The Gambia is a source, transit and destination country for victims of human trafficking. Investigations by NAATIP have shown most victims of trafficking brought into The Gambia or from The Gambia are trafficked for domestic servitude, forced labour and or sexual exploitation purposes. The Gambia is currently on the US State Departments Tier 2 Watch list; it has previously been on the said Tier 2 watchlist in 2016. The country has been fluctuating between Tier 2, Tier 3 and the Tier 2 watchlist of the US State Department for the past five years. In 2016, it was on Tier 3 and in 2017, it moved to the Tier 2 watch list. In 2018, it maintained its previous rank on the Tier 2 watchlist; unfortunately, in 2019, it dropped to Tier 3 and in 2020, it moved back to the Tier 2 watchlist.

The Gambia enacted its first legislation addressing human trafficking in 2007. Prior to that, the only other legislation specifically addressing Trafficking in Persons and child pornography is the Tourism Offences Act enacted in 2003. This Act deals with the trafficking of children into or outside The Gambia. The buying and selling of children for purposes of labour or used for immoral purposes was also addressed by the Children's Act enacted in 2005. The Trafficking in Person Act 2007 established the National Agency Against Trafficking in Persons; however, NAATIP started its operations in 2013. On 29th July 1980, The Gambia signed CEDAW and ratified it on 16th April 1983. Article 6 of CEDAW states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." On 14th December 2000, The Gambia signed the CTOC and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (often referred to as the Palermo Protocol) and ratified them on 5th May 2003. Despite signing and ratifying CEDAW, CTOC and the Palermo Protocol, The Gambia only enacted legislation fully addressing trafficking in persons in 2007. In 2005, the CEDAW Committee on the Elimination of Discrimination against Women issued several recommendations for the Government of The Gambia including a recommendation on trafficking of women which states:

"The Committee requests the State party to introduce legislation on the prohibition of trafficking, to effectively implement legislation on the exploitation of the prostitution of women, and to prosecute offenders. It recommends that the State party put in place programmes for promoting women's economic independence so as to eliminate their vulnerability to exploitation, and measures for the rehabilitation and social reintegration of women and girls who are victims of exploitation and trafficking. The Committee calls upon the State party to ensure the implementation of the 2003 Tourism Offence Act, and to enhance cooperation with tourists' countries of origin aimed at preventing and combating sex tourism. The Committee requests the State party to provide, in its next report, comprehensive information and data on sexual exploitation and trafficking of women and girls, and on measures taken to prevent and combat such activities, including sex tourism." Human trafficking is a human rights issue fueled by existing socio-economic and cultural conditions in Africa and The Gambia. The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children which was adopted in 2006 by the AU-EU Ministerial Conference on Migration and Development recognized this. The Action Plan was adopted by all AU member states including The Gambia. The Gambia has made some efforts, though not much, into the implementation of the Action Plan which requires action to be taken in four key areas, namely 1) Prevention; 2) Protection; 3) Prosecution; 4) Partnership.

3.1. PREVENTION & PROSECUTION

Prevention of human trafficking requires active and continuous efforts. This is an area in which The Gambia puts in the least effort. Prevention methods or techniques require large amounts of funding which unfortunately the government does not prioritise. NAATIP receives its funding from the government through the Ministry of Justice and Attorney General Chambers. In 2020, the government allocated NAATIP 450,000 Dalasi (\$8,729) for salaries and administrative costs. It is from this small sum that the government expects NAATIP to use to implement the 2016 - 2020 anti-trafficking national action plan. This amount is clearly inadequate for NAATIP, but it is a significant increase from what NAATIP used to receive in the previous years; in 2017 it received 160,000 dalasi (\$3,636).

With support from the US Embassy and IOM, NAATIP is able to obtain funding to implement the national action plan and hold awareness raising programs across the country. Over the years, the agency has trained travel agencies and airlines on victim identification, and civil society organisations on reporting trafficking matters, particularly child sex trafficking. In the past, NAATIP had trained immigration officers at official border points on victim identification. It has also noted with concern that the borders of the country are porous, and GID has stated that it finds it difficult to monitor movement everywhere. NAATIP plans to implement more awareness raising programs with the little funding it receives from the government and hope to receive more funding from partners. It is planning to hold a knowledge sharing forum with members of the Judiciary on trafficking in persons issues. DSW has worked with individuals in TDAs to form neighbourhood watch groups to monitor and report child sexual exploitation cases. Eleven groups were formed, but only a couple of them are active. The groups lack proper knowledge and capacity to properly report or investigate matters. These groups have not yet reported any cases of child sexual exploitation matters.

It has been reported that child sex traffickers host child sex tourists in private residences outside the TDAs, making it difficult for the watch groups or law enforcement to detect. Child sex tourists from countries like Germany, Netherlands, Canada, UK and Scandinavia sexually exploit children whom are street vendors or meet them through organisations registered as charities, or by deceiving the children and their families pretending to sponsor or actually sponsoring the education of the children. The government had in the past operated a 24-hour hotline but never received any trafficking related reports. This hotline is currently not operating. However, NAATIP has put in an application for a toll number at PURA; it has not received approval for it but it remains hopeful. The toll-free number will make it easier for individuals to report trafficking in persons matters and it will enable victims to access assistance quicker. The Ministry of Basic and Secondary Education has been contributing in some ways to combat trafficking. It started a support program for about 17 Quranic schools around the country to encourage the teachers to not force the students to beg in the streets and to talk to them about human trafficking. The program was started in 2012 and so far, has benefited about 1500 children if not more. This is being done by the ministry with support from NGOs; the ministry provides the schools with food and money as an incentive. The ministry also encourages the Quranic schools to teach the children math, english, and science. There are many children that are enrolled into these Quranic schools across the country, some of them even outside The Gambia to countries like Senegal and Guinea Bissau.

Some of the teachers at these schools force the children into taking up work outside the school to make money for the teachers themselves or to beg in the streets. This makes the children more vulnerable and susceptible to trafficking. Foreign children from different West African countries, like Senegal, run away from Quranic schools into The Gambia. Some of them are accommodated at the Bakoteh shelter till their families are traced so that they can be repatriated. In 2018, the government of The Gambia announced that it was planning to sign an MoU with the Kingdom of Saudi Arabia to enable Gambians to obtain jobs in the hospitality industry in Saudi. This news was not welcomed by Gambians at all due to the deception of Gambians into taking jobs in the Middle East, just to end up being trafficked when they arrive at their destination. NAATIP was not consulted when the government planned to sign the MOU. To this day, it is clear to anyone whether the MoU has been signed or whether anyone has obtained a job in Saudi through its implementation. In 2019, the government signed an MoU with the United Arab Emirates to ensure the protection of Gambian workers there. However, that is not being properly implemented.

Efforts to prosecute perpetrators of trafficking in person matters are minimal. Currently, there are three cases at the courts to prosecute perpetrators. These cases have been going on for a couple of years now. Power to prosecute trafficking person matters rests in the Attorney General though fiat can be granted to NAATIP to prospect these cases, as have been done in the past. However, there is only one lawyer working at NAATIP and that is the Executive Director. NAATIP has noted that the prosecution and trial of accused persons in trafficking in persons matters have been taking a long time and has been working closely with the prosecutors. The delay in reaching a judgement in these cases is not within the powers of the Attorney General nor NAATIP. NAATIP hopes that after the knowledge sharing forum with judges and members of the judiciary, cases of trafficking will be dealt with with a sense of urgency. Both law enforcement and judicial officers need more resources and training to be able to investigate and prosecute trafficking in person offences adequately. The government has not funded any training programs for law enforcement and judicial officials on human trafficking. Any training received so far, has been funded by INGOs, the US Embassy or other partners.

3.2. PROTECTION & PARTNERSHIP

The government has made some efforts when it comes to the protection of identified victims of trafficking in the country. In 2005, it established a shelter to accommodate victims of trafficking who are found in the country or have been repatriated into the country. However, this shelter accommodates other groups of people like the elderly, street children, victims of sexual and gender-based violence and abandoned babies. The shelter barely manages to run itself with the amount of funding the government has been allocating to it. In 2020, the government allocated 600,000 Dalasi (\$11,639) for the whole year to the shelter. The shelter is able to provide enough food and other resources to the people it accommodates through the generous donations made by organisations and individuals that visit the shelter occasionally. The shelter has a policy that an individual cannot be accommodated there for more than six months, but there have been many instances where an individual has stayed for longer.

Victims of trafficking repatriated into the country do sometimes choose that they do not want to be accommodated at the shelter and choose to join their families as soon as they arrive into the country. In 2020, 38 Gambian women and 2 children were repatriated into the Gambia through the aid of an organisation called Action for Humanity, led by a Gambian activist living in Sweden, Lovette Jallow. She paid for the air tickets of these women from Beirut, Lebanon to Dakar, Senegal and transported them by bus from Senegal to The Gambia. Most of those women chose to be reunited with their families rather than staying at the shelter for a while. The shelter does not do much for trafficking in persons victims apart from the provisions of meals and other basic necessities. It does provide very basic psychosocial support but the staff providing these services do not have the prerequisite knowledge or skills to give these services. The staff of the shelter need training and capacity building to be able to provide support to victims. The Director of the shelter has stated that clinical psychologists and psychotherapists are urgently needed at the shelter to aid victims of trafficking.

The shelter also is not large enough to be able to accommodate many people. Between January 2017 and October 2018, about 3,500 Gambians were repatriated from Libya with the help of an international organisation, and many of them were at risk for trafficking. In the last few years, there has been an increase in irregular migration from The Gambia across the Mediterranean to Europe. These people migrating do so through illegal means oftentimes paying to be smuggled outside The Gambia and across several borders in order to cross the Mediterranean Sea by boat to get into Europe. Sometimes, the migrants board boats in Gambian waters, paying fishermen and boat owners to smuggle them outside the country. These migrants are very vulnerable and susceptible to being trafficked. There have been Gambians that travelled to countries like Libya in hopes of taking a boat from there to Europe, but ended up being trafficked when they got to Libya. Unfortunately, smuggling people across Gambian borders is not explicitly addressed by any law. However, the UNODC Gambia office is working with GID to draft a Bill explicitly addressing and criminalising the smuggling of people across Gambian borders.

CHAPTER 4

ANALYSIS OF LAWS

Human Trafficking or Trafficking in Persons refers to the process through which humans are placed and maintained in an exploitative situation for economic gain. Trafficking in person is a grave human rights violation that is recognized globally and has garnered efforts globally to tackle it. The year 2000 saw the adoption of the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially women and children supplementing the United Nations Convention against Transnational Organized crime which provided for the first comprehensive definition of Trafficking. The Protocol also highlighted state obligations to prevent trafficking in persons, adopting legislation to criminalize trafficking in person, protect and assist victims as well as promote cooperation of state parties. Despite this comprehensive legal framework, the amount of people getting trafficked globally continues to be on the rise across the globe.

The United Nations Human Rights Office developed the Recommended Principles and Guidelines on Human rights and Human Trafficking with an extensive summary aimed to assist in the integration of a human rights into anti-trafficking efforts with recommendations similar to that of the protocol, including i.e the importance of human rights, prevention, protection and assistance, criminalization, punishment, redress and implementation. The UN system also assists states to come up with legislation and strategies towards the fight to end trafficking in persons. With this aid, states have the opportunity to develop their capacity and develop cross-border cooperation in the pursuance of trafficking cases.

Following the adoption of Resolution 61/180 on Improving the coordination of efforts against trafficking in persons, the UN came up with more responses to tackle trafficking in persons with the Global Migration Group and the Inter-Agency Coordination Group against Trafficking in Persons. The UNODC with its strategies to combat trafficking have identified three steps to assist in the implementation of the protocols by research and raising awareness, promotion of the protocol and capacity building as well as strengthening of partnerships and coordination. Relevant to trafficking in persons is also the Protocol on smuggling of migrants due to their intersection. This protocol seeks to prevent the smuggling of migrants by focusing on a criminal justice response to acts of smuggling. It also highlights the need for cooperation including information exchange, border measures, return and treatment of migrants. In addition to the above, trafficking in persons is prohibited in numerous other UN human rights documents such as the UDHR and ICCPR which have been signed, ratified and in some cases domesticated. All these laws establish the fundamental rights of individuals including migrants and, by extension, provides for their protection from trafficking and smuggling. These instruments also oblige the government to speak up as advocates for any person going through degrading treatment such as trafficking while finding remedies to the situation following international strategy.

Because this atrocity is more likely to affect women and girls as proven by research, it is provided for in instruments focusing on that demographic such as CEDAW and the CRC. While CEDAW provides for the protection of the rights of women and generally the elimination of discrimination against women, the convention under Article 6 focuses specifically on state parties taking appropriate measures, including legislation to suppress trafficking and exploitation of women through prostitution. This provision makes it pertinent for states to take stringent steps in terms of law and its implementation to bring an end to trafficking. Articles 33 and 35 of the CRC also deal with preventing trafficking in person in relation to children by state actors.

The CRC and CEDAW are undoubtedly very progressive laws however, like all international treaties, they lack enforcement mechanisms that would put pressure on states and create the meaningful change needed. Despite no reservations ever being registered by a state on the provisions of Article 6, the lack of backing mechanism for it makes it impossible for the UN to ensure that states who have signed, ratified and even domesticated the treaty are creating a legislation that is in line with the provision and implementing it accordingly. Similarly, there is little to no repercussions for states who fail to reach this threshold. Bringing it down to the regional level, the legal framework on trafficking in persons includes instruments such as the African Charter on Human and Peoples' Rights (ACHPR) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (known as the Maputo Protocol). These rights include the rights to dignity, freedom from discrimination and protection from degrading treatment including slavery. It is important to note that Article 1 enshrines onto member states to recognize the rights and duties, as well as take up legislation to give them effect. The Maputo protocol is a body of work that encompasses the rights of women across Africa.

While the Protocol does not specifically mention trafficking in person, Article 4 expands on other rights that may be violated in the process of human trafficking. The Protocol also reiterates the need for state parties to take all necessary steps to ensure that the rights of women are protected which, by extension, would include the prevention of trafficking. Complementing the ACHPR is the ACRWC which guarantees the rights and welfare of all children including from trafficking for any exploitative reasons. At national level, the present laws are modeled after or inspired by international or regional instruments. This, to some extent, is indicative of The Gambia's compliance with international requirements of developing legislation to assist in anti-trafficking endeavors. The constitution is the highest law of The Gambia and is enshrined with rights that citizens and residents in the country are entitled to. Some of these rights include Protection of slavery and forced labour and protection from inhuman treatment . Both are aimed at preserving the dignity of persons while protecting them from servitude, torture and degrading treatment, basically everything that happens to trafficked persons.

⁴Constitution of The Gambia, 1997, Section 20

The Gambia also has the Trafficking in Persons Act which prohibits human trafficking and establishes the National Agency Against Trafficking in Persons (NAATIP) with the goal of raising awareness on the issue, recommending a national prohibition of trafficking plan as well as coordinating rehabilitation for victims of trafficking. Sadly, there hasn't been any progress on implementation of the Act apart from the creation of the Agency. Its presence is almost non-existent with the active trafficking of persons to Europe and middle eastern countries. The agency, despite being a governmental institution, is largely dysfunctional with little or no coordination with other stakeholder institutions, such as the police and the Ministry of Justice. To put this into perspective, there hasn't been a single case of trafficking or smuggling of migrants tried by The Gambia from the inception of the Agency, despite the number of cases in trafficking and the mandate to prosecute being extended to the Agency. It is also worth noting that the Trafficking in Persons Act does not make provisions for people that are being smuggled or take into account the use of the internet in recruiting and trafficking women and girls.

Drawing inspiration from the Maputo Protocol and CEDAW, the Gambia has ratified and domesticated both into the Women's Act. The Act, just like its inspiration, is geared towards the promotion, protection and fulfillment of the rights of women. It makes mention of specific rights of women such as the right to dignity, right to life, integrity and security of the person, and the protection from violence. The Act also sets out government's obligation to eliminate all forms of discrimination against women in The Gambia by putting up specific measures to audit laws and train government staff members on gender related issues. Despite the presence of this Act, there is still widespread violence against women with a rise in the number of women getting trafficked or smuggled to Europe and the Middle East. The Tourism Offences Act and Children's Act also make it an offence to engage in the trafficking of children for prostitution or other exploitative reasons.

There is still a gap in the implementation of these laws resulting in offenders getting away with their crimes. From reporting, to investigation and coordination for prosecution, The Gambia has failed for the most part. It is also clear that many people are not well aware of the regulations against trafficking in persons and what it truly entails. NAATIP being the institution vested with the responsibility to promote these legislations has little capacity and resources to carry out its mandate. It must also be noted that there seems to be very little political will to tackle trafficking in persons as evidenced in the Ministry of Tourism's advertisement for young Gambians to apply to jobs in the middle east knowing fully well that that transaction, more often than not, lands young Gambian women in the kafala trade system in which they are treated as slaves, trafficked and viciously abused.

⁵Constitution of The Gambia, 1997, Section 21

⁶Laws of The Gambia, Trafficking in Persons Act, Section 14

⁷Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa
https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf

⁸Convention on the Elimination of all forms of Discrimination Against Women
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

Due to inadequate training of law enforcement officials on how to identify cases of trafficking, it has been extremely difficult for law enforcement to point out and coordinate investigations much less prosecute which they have only succeeded in doing so once. Globally, there has been a rise in the number of trafficking cases that have been facilitated and organized on the internet. Sex crimes that would ordinarily have occurred on the streets have now been moved online. Even more now, during the uncertain times of COVID 19, there is a higher risk of individuals getting trafficked or smuggled for exploitative reasons due to economic struggles during this time.

Advertisements on social media have been used to lure people into situations they have not anticipated which would in turn lead to trafficking. While certain states around the world have adopted laws to tackle online sex crimes and trafficking, the Gambia has not gotten to that point. This is a major loophole in the fight against trafficking as Gambian laws are yet to reach the advancement of technology. As such, there are no provisions on cybersex trafficking, which then makes it impossible to prosecute cases in which the internet has been used to traffic individuals. The closest link to trafficking in the cyber laws of The Gambia is section 174 of the ICT Act and provides for the acquisition, retainment and distribution of child pornography which can be used to fuel child sex trafficking. A recommendation would be for The Gambia to incorporate comprehensive laws that address cybersex trafficking.

CHAPTER 5

RECOMMENDATIONS

1. Build the capacity of the Bakoteh shelter staff so that they can provide adequate psychosocial and counselling services for victims of trafficking. The shelter is currently underfunded and under resourced. Not only do they lack basic supplies to take care of their residents adequately, the shelter does not have enough staff and the little staff they have are not adequately trained to identify and provide the services needed by victims of trafficking. The shelter must be equipped to host and care for incoming victims ensuring that their wellbeing is upheld and that there is no risk of them getting harmed or running away.
2. Establish gender specific rehabilitation and reintegration programs for female victims of human trafficking.
3. Increase the scope and reach of sensitisation programs. As it stands, there is very little to no sensitization happening with regards to trafficking in persons. This includes formal training to law enforcement officials who also do not have specialized training to identify and respond to trafficking cases. There is an immediate need to sensitize the general public on the dangers of trafficking and smuggling as well as how to report suspected cases. The sensitizations and training shall be extended to law enforcement officials to enable them to identify, analyse, investigate and prosecute cases of trafficking.
4. Amendment of existing legislation addressing human trafficking to include the smuggling of persons into and outside of The Gambia. There is a very high amount of young Gambians that are smuggled out of the country by agents. Together they engage in irregular migration to get to Europe and the Middle East and mostly end up getting trapped in exploitative conditions. The Trafficking in Persons Act needs to be amended to provide for smuggling of individuals into and out of The Gambia.
5. Enactment of new laws addressing internet facilitated human trafficking, making it easier for law enforcement to bring online perpetrators to justice. The Gambia does not have any law that provides for the use of technology and the internet to traffick individuals in and outside The Gambia. As such, where someone uses the internet to organize and/or facilitate the trafficking of persons, they are likely to not be held liable due to the unavailability of laws to that effect.

6. Establishment of other shelters to accommodate victims of human trafficking across the Gambia. The Gambia, despite being a small country, needs to have more than one social welfare shelter. Due to bad road networks, it is extremely difficult to move victims of trafficking from remote regions of the country to the shelter. There is a need to have different shelters in the different regions which is more practical.
7. Creation of gender specific and victim centred awareness raising programs to ensure the full implementation of Article 6 of CEDAW. Trafficking in persons affects women and girls disproportionately requiring the need for more strategic protection. Article 6 of CEDAW requires States to take legal and practical steps towards preventing and protecting women and girls from trafficking. This includes gender specific advocacy and sensitization campaigns.
8. Increase research and data collection on trafficking in persons in The Gambia to obtain a better picture backed by statistics on the prevalence of trafficking.
9. Increased investigation, prosecution and implementation efforts. Enough training should be afforded to law enforcement officers to better equip them to investigate and prosecute potential trafficking cases. This will be in line with Gambia's legal obligations under CEDAW and other international treaties. It will also serve as a deterrent to potential traffickers that Gambia takes the issue of trafficking very seriously.

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THINK TANK JURIDIQUE AFRICAIN
AFRICAN LEGAL THINK TANK ON WOMEN'S RIGHTS

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