**The Gambia**

ECPAT International has developed [a legal checklist](https://ecpat.org/wp-content/uploads/2021/09/SECTT-Checklist_ENG-1.pdf) for governments providing guidance for legal interventions and measures to adopt in order to improve their national legal frameworks. This will help to effectively address the crime of sexual exploitation of children in travel and tourism, including its online elements.

The legal checklist was developed based on the recommendations of the first [Global Study](https://ecpat.org/wp-content/uploads/2021/08/Global-Report-Offenders-on-the-Move.pdf) on sexual exploitation of children in the context of travel and tourism. Following the development of this legal checklist, ECPAT International conducted country legal analysis for The Gambia and other countries in Africa, as well as Southeast Asia, Asia and the Americas.

The country analysis serves as a baseline to indicate and track the implementation status of the legal interventions within and across the four regions. It provides governments with clear directions for improving their actions with respect to child protection against sexual exploitation in the context of travel and tourism, including its online elements.

The table below allows easy assessment of existing legislation against the 24 measures of the legal checklist. It will be updated as the laws and policies change. An [explanatory note](https://ecpat.org/wp-content/uploads/2021/08/SECTT-Checklist_ENG_Explanatory-note.pdf) and an [assessment matrix](https://ecpat.org/wp-content/uploads/2021/09/Assesment-Matrix_2021SEP_ENG_v2.pdf) can be consulted for further reference.

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|  | **Recommendations** | **Implemented** | **Legislation** |
| 1. | Establish by law **extra-territorial jurisdiction**, within the parameters of Article 4 OPSC, for all offences of sexual exploitation of children, including those occurring in the online environment. | Partially | In regard to extraterritoriality, the Criminal Code  states only that the Gambian courts will have  jurisdiction over crimes which are committed  partly within the country and partly abroad. (Article 4) Whilst this may allow The Gambia to prosecute certain crimes with a cross-border element, it does not allow for extraterritorial jurisdiction over crimes that have been wholly committed abroad, by or against a Gambian citizen.  The Trafficking in Persons Act contains specific  provisions relating to The Gambia’s extraterritorial jurisdiction over trafficking crimes. Article 36 of the act states that The Gambia has jurisdiction to try an offence carried out anywhere, when it has been committed by a Gambian citizen or resident. Therefore, this active territorial jurisdiction allows The Gambia to prosecute crimes, contained under the Trafficking in Persons Act, by their own citizens that have been carried out abroad. The trafficking legislation also goes further and applies passive extraterritorial jurisdiction. This means that The Gambia will also punish trafficking offences committed by foreign nationals abroad against a Gambian citizen or resident. Finally, the same provision states that Gambian courts will have jurisdiction where a trafficker is present in The Gambia and  is not extradited. Whilst it is welcome that this  act covers both active and passive extraterritorial jurisdiction, it applies only to trafficking crimes and, therefore, does not ensure extraterritorial jurisdiction over other crimes related to child sexual exploitation within different pieces of legislation. |
| 2. | Include in extradition treaties the sexual exploitation of children as **extraditable offences** and apply when appropriate the rules of article 5 OPSC, regardless the nationality of the (alleged) offender. | Yes | Article 6 of the Extradition Act stipulates that the maximum penalty for an offence to be an extraditable offence is at least 12 months of imprisonment. In The Gambia, all the SEC-related offences are punishable with at least 12 months of imprisonment.  The Trafficking in Persons Act, article 55, specifies that the offences under the Act are extraditables.  The Information and Communication Bill states that the offence punished in the article 174 (mentioned in point no. 10) is an extraditable offence for which extradition may be granted or obtained. |
| 3. | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | Partially | The principle of double criminality doesn’t seem to apply in cases of extra-territorial jurisdiction.  The principle of double criminality applies in cases of extradition (article 6 of the Extradition Act). |
| 4. | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | Yes | No provisions have been found on statutory limitations for the prosecution of offences of sexual exploitation of children. |
| 5. | Set up **conditions for any travel** by persons convicted of sexual exploitation of children | No | The Immigration Act only prohibits “undesirable persons” from entering the territory. The Act defines an “undesirable person” as: “*a person or class or category of persons whose presence in The Gambia is, in the opinion of the Minister which shall not be called in question in any Court of law, likely to be detrimental to the peace, good order, good government or publics morals of The Gambia*”.  No provisions on the prohibition of persons convicted of sexual exploitation of children to leave the country have been found. |
| 6. | Ensure **consistency in the definition of a ‘child’** as anyone under the age of 18 for all crimes of sexual exploitation, regardless of the age of sexual consent. | Yes | Article 2 of the Children’s Act defines a “child” as a person under eighteen years old.  Article 2 of the Trafficking in Persons defines a “child” as a person under eighteen years old.  Article 2 of the Tourism Offences Act defines a “child” as a person under eighteen years old.  Article 31 of the Children Act criminalises the procurement of a child for prostitution or pornography.  Article 26 criminalises the exportation and importation from or into The Gambia of children for the purposes of prostitution.  Article 39 criminalises trafficking in children for the purposes of sexual exploitation.  Article 28 of the Trafficking in Persons Act, amended in 2010, criminalises the trafficking of children for the purposes of prostitution.  The Tourism Offences Act, article 5, criminalises whoever makes unlawful sexual advance to a child. Article 6 criminalises the tourist who sexually abuses a child. Article 7 criminalises the tourist or anyone who procures of a child to have sexual intercourse with any person either in the Gambia elsewhere or for prostitution. Article 8 criminalises a tourist or anyone who takes any indecent photograph of a child, distributes or shows an indecent photograph of a child or publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows indecent photographs of children or intends to do so. Article 13 criminalises the tourist who trafficks a child.  The Criminal Code Amendment Act 2014, article 144B, criminalises: “*a person who produces or participates in the production of, traffics, publishes, broadcasts, procures, imports, exports or in any way abets pornography depicting images of children”.*  The Information and Communications Bill 2008, article 174, penalises whoever distributes indecent photographs of a child. |
| 7. | Ensure that the **age of sexual consent** for both males and females is 18 and a close in age exemption (up to 3 years) is provided for consensual sexual relationships between adolescents in order to allow voluntary, well-informed and mutual sexual contact between close in age peers and to prevent criminalization of young people in willing sexual relationships. | Partially | Article 3 of the Sexual Offences Act states that engaging in sexual acts with all children under 16 will be considered rape (hence defining the age of sexual consent). The legislation does not contain a close-in-age exemption, nor provide criteria to determine whether the consent for sexual activities between peers under the age of 18 is voluntary, well-informed and mutual.  The fact that Article 5 of the Sexual Offences Act punishes unlawfully having carnal knowledge of a girl between the ages of 16 and 18 with imprisonment up to 7 years, could result in the prosecution of boys for “unlawfully having carnal knowledge of a girl” when they engage in consensual sexual relationships with a girl aged 16-17. |
| 8. | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | No |  |
| 9. | Establish **bail conditions** that prohibit individual accused of sexual offences against children from traveling outside of the country. | No | Article 99 of the Criminal Procedure Code establishes that a person, not accused of an offence punishable with death or imprisonment for life, can be released on bail with or without conditions.  Some SEC-related offences are punishable with death or imprisonment for life and therefore non-bailable (articles 26 and 39 of the Children Act, article 28 of the Trafficking in Persons Act and article 174 of the Information and Communications Bill 2008).  No indications are provided regarding the existence of conditions preventing travels. |
| 10. | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | Yes | Article 64 of the Children Act criminalises the attempt as prescribed for the commission of the offences included in this Act (including procurement of a child for prostitution or pornography and trafficking)  Article 35 of the Trafficking in Persons Act criminalises the attempt as prescribed for the commission of the offence of traffickijg of children for the purposes of prostitution.  Article 69 authorizes the Court to confiscate objects or material which have been used for the commission of an offence.  Article 14 of the Tourism Offences Act criminalises the attempt as prescribed for the commission of the offences included in this Act unlawful sexual advances to a child, sexual abuse of children by tourists, trafficking of children by tourists and offences related to child sexual abuse material by tourists.  Article 365 of the Criminal Code Amendment Act 2014 criminalises the attempt of the offence included in article 144B, criminalising “*a person who produces or participates in the production of, traffics, publishes, broadcasts, procures, imports, exports or in any way abets pornography depicting images of children”.* |
| 11. | Impose more severe sentences for **reoffending** in case of sexual exploitation against children, e.g. by defining reoffending as an aggravating circumstance, regardless of whether the crimes were perpetrated abroad or in-country. | No | No provisions on the national legislation have been found regarding recidivism. |
| 12. | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | No | Article 67 of the Children Act imposes a duty on any member of the public to report infringement of child’s rights. In addition, article 75 states that a person with information on child abuse, or a child in need of protection shall report it.  Article 31 of the Trafficking in Persons Act penalises a person who fails to inform the police about a situation of trafficking with a fine of not less than ten thousand dalasis (approx. US$193 as of October 2020) and not exceeding fifty thousand dalasis (approx. US$966 as of October 2020) or imprisonment for a term of not less than twelve months and not exceeding three years or to both.  However, there is not a mechanism nor an obligation for particular professions that have likelihood to have contact with kids who might disclose.. |
| 13. | Establish obligatory government-regulated child protection standards for the tourism industry for example, attach responsibility to an appropriate regulatory authority and/or implement industry specific **national codes for child protection** as a legal requirement for the travel and tourism industry to operate. | Yes | In May 2004, a multi-sectorial Taskforce under the aegis of the then Gambia Tourism Authority adapted the International Code of Conduct to a Gambian version: the ‘Code of Conduct for the Protection of Children from Sexual Exploitation in Tourism’. All the key players in tourism in the Gambia signed this Code. The aim of this adapted Code is to make travellers and travel staff more aware of the protection of children against sexual exploitation. Suppliers of tourism services adopting the Gambian Code of Conduct commit themselves to implement the following six criteria: 1. Inform and promote the awareness of employees, based on the folder compiled by Gambia Tourism Board together with CPA-ECPAT-Gambia; 2. Include clauses in contracts, and other suitable measures displaying a unanimous rejection of the sexual exploitation of children; 3. Promote the awareness of customers through the distribution of information leaflets; 4. Include child protection as a subject in training of employees; 5. Consider the Code of Conduct when laying down business principles; 6. Submit yearly reports to CPA-ECPAT Gambia on the steps taken concerning the Code of Conduct. It is obligatory to endorse the Code to be able to get the operating license as a tourism business (hotel).  The Gambia Tourism Board is the regulatory authority. |
| 14. | Ensure the liability of travel and tourism businesses (in operations and supply chains) for criminal conduct including:   * Organising travel arrangements or transportation that are explicitly or implicitly meant to create or facilitate opportunities to engage (involve) children in sexual activities; * Procuring, aiding or abetting the exploitative sexual conduct with a child; * Advertising or promoting sexual exploitation of children; * Benefitting, by any means, from any form of sexual exploitation of a child (or children) in the context of their travel and tourism business. | Yes | Article 32 of the Children Act penalises whoever encourage foreign travel which promotes exploitation of children in prostitution with a fine of not less than two hundred thousand dalasis (approx. US$3,680 as of August 2022) or imprisonment for a term not exceeding ten years, or both.  Article 34 of the Trafficking in Persons Act stipulates that it is the responsibility of the tour operators and travel agents to:   1. *“notify its clients of their obligation under the Act and not to aid, abet, facilitate or promote in any way trafficking in persons;* 2. *notify their clients of their obligation under the Act not to aid, abet, facilitate or promote in any way child pornography and other forms of child exploitation in tourism;* 3. *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;* 4. *ensure as much as possible that no contacts or encounters are made between tourists and exploiters and children within the framework of sexual exploitation;* 5. *insert in contracts with corresponding suppliers in destination countries clauses requiring them to comply the obligations stated in paragraphs(a) to (d);* 6. *refrain from utilising messages on printed material, video or the internet that could suggest or allude to behaviour incompatible with the objectives of this Act;* 7. *informe its staff of their obligations under this Act; and* 8. *include clauses regarding the obligations to its staff under this Act in new employment contracts.*”   Anyone who contravenes the above mentioned will be liable to a fine of not less than fifty thousand dalasis (approx. US$920 as of August 2022) and not exceeding five hundred thousand dalasis (approx. US$9,200 as of August 2022).  The Tourism Offences Act, article 11, criminalises with a fine of not less than fifty thousand dalasis (approx. US$920 as of August 2022) or imprisonment for a term of not less than five years or both: “*every owner, occupier or manager of premises or any other person who has control of premises or assists in the management or control of premises who knowingly permits a child to resort or to be in or on the premises for the purposes of engaging in any sexual activity prohibited under the Act*”. |
| 15. | Criminalise the **grooming of children for sexual purposes** (often called ‘solicitation’ in law) including through Internet and other communication technologies to facilitate either online or offline sexual exploitation. | No |  |
| 16. | Establish legislation requiring for a **criminal background check** for every person (national or non-national) applying for work with or for children or who is currently working with or for children. Introduce legislation prohibiting convicted sex offenders to hold positions involving or facilitating contact with children. | No |  |
| 17. | Regulate and monitor the use of volunteers (including in **‘voluntourism’**) in settings and activities that involve direct contact with children, particularly prohibiting visits to orphanages/residential care settings in favour of redirecting the industry towards solutions that support community-based care. | No |  |
| 18. | Ratify and implement relevant **regional and international instruments** related to child’s rights and sexual exploitation of children. | Partially | * Convention on the Rights of the Child - Ratified on 1990 * Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - Ratified on 2010 * Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure - Not ratified * ILO Convention on the Worst Forms of Child Labour (No. 182) - Ratified in 2001 * UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children - Ratified in 2003 * The United Nations’ World Tourism Organisation’s (UNWTO) Framework Convention on Tourism Ethics - Not ratified * Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) - Not Ratified * Council of Europe Convention on Cybercrime (Budapest Convention) - Not Ratified * African Union Charter on the Rights and Welfare of the Child - Ratified in 2000 * African Union Convention on Cyber Security and Personal Data Protection - Not ratified |
| 19. | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | Yes | The Trafficking in Persons Act establishes that the proceedings shall be conducted in a way to protect the rights of the victim and its physical and psychological safety.  Article 45 establishes that the law applies to nationals and non-nationals victims.  Article 56 specifies that the Trafficking in Persons Act shall be read as one with Children’s Act 2005. |
| 20. | Establish **child-friendly interviewing practices by professionally trained police.** | Partially | The Trafficking in Persons Act, article 46, specifies that the proceedings shall be conducted in such manner that will not be detrimental or prejudicial to the rights of the victim and be consistent with the psychological and physical safety of the victim. In addition, a victim of trafficking may be permitted to present evidence in camera (article 47).  Article 45 establishes that the law applies to nationals and non-nationals victims.  Article 72 of the Children’s Act states that the procedure of the Children’s Court shall respect a child's right to privacy and proceedings shall be held in camera or where necessary by video links. In addition, proceedings shall be as informal as possible and parents shall be present whenever possible. Finally, the child shall have the right to legal representation and to express its opinion. |
| 21. | Ensure that national legislation provides the **right for child victims to receive support in their recovery and rehabilitation**, including accessing re-integration services. | Yes | The Gambian legislation contains a number  of provisions that could be invoked in order  to ensure a child’s access to recovery and  reintegration. Article 12 of the Children’s Act  states that those who have responsibility for  ensuring the care of a child in need of special  protection measures should endeavour to  “provide the child with such assistance and  facilities which are necessary for his or her  education, training, preparation for employment, rehabilitation, and recreational opportunities in a manner conducive to his or her achieving the fullest possible social integration, individual development and his or her cultural and moral development.” It is also worth noting that, whilst this act does call for the establishment of a national rehabilitation centre, it provides rehabilitation and training only for children in conflict with the law. Unfortunately, the act does not detail any specific processes or measures which should be applied to child victims of sexual offences.  In addition to the above, the Trafficking in Persons Act, article 45, allows the victims to have access to NGOs and other authorized institutions that provide rehabilitation services or counselling as well as to have access to adequate health, legal, psychological and other social services.  Article 50 ensures to the victims their right to compensation, restitution and recovery for economic, physical and psychological damages. Article 51 provides tailored counselling services to the victims for rehabilitation and reintegration. Article 53 states that the Department of Social Welfare shall provide employment opportunities to the victims. These provisions are applied to trafficking victims in general and not specifically child victims and will not cover other instances of sexual exploitation other than those related to trafficking. However,  Article 56 specifies that the Trafficking in Persons Act shall be read as one with Children’s Act 2005. Hence provisions on the Trafficking in Persons Act would apply to victims of offences defined by the Children’s Act. |
| 22. | Establish a **national reporting mechanism (e.g. hotline)** that coordinates access to services, and helps to overcome reluctance to report sexual exploitation of children. | Partially | Suspected sexual exploitation of children may be reported through the country’s National Helpline for Children, launched in 2020. This free helpline is general, and is equipped to receive reports of child abuse, and can offer child protection information. |
| 23. | Create **data retention and** preservation laws, regulations and procedures, to ensure the retention and preservation of digital evidence and enable cooperation with law enforcement which applies to ISPs, mobile phone companies, digital social media and communication companies, cloud storage companies, based in/operating in national jurisdiction. | No |  |
| 24. | Ensure that national legislation provides the **right for all child victims of sexual exploitation to seek compensation** in national courts from convicted perpetrators who harmed them and/or through state-managed funds.. | Yes | The Gambian legislation does not contain any  specific provisions relating to the access to  compensation for children subjected to sexual  exploitation. However, in the Criminal Procedure  Act it is stated that a victim may make a claim  for material loss or personal injury. (Article 145) Rather than having to file a separate civil claim for such compensation, the court may order the convicted offender to pay the victim an amount that the court deems fair and reasonable. These  provisions are general and relate to all crimes.  In addition, the Trafficking in Persons Act states  that an offender convicted of trafficking offences may be ordered by the court to pay compensation to the victim. (Article 54)  Similar to other provisions under this act, these will apply only to victims of trafficking and so are not a viable avenue to compensation for child victims of other crimes of sexual exploitation. |

**The Gambia - Legislation**

[Children’s Act 2005](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Gambia/gambia_children_2005_en.pdf)

(<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90620/104569/F960858535/GMB90620%20Summary%20of%20Act.pdf>)

[Trafficking in Person Act 2007](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90622/114255/F-347615750/GMB90622.pdf)

[Trafficking in Person (amendment) Act 2010](https://sherloc.unodc.org/res/cld/document/trafficking-in-persons-amendment-act--2010_html/Amendment_to_TIP_Act_2010.pdf)

Tourism Offences Act: not available online

[Criminal Code](https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5f025f49fb7f38664f1ed2f3/1593991003326/Criminal+Code+%2C+Act+No.+25+of+1933.pdf)

[Criminal Code Amendment Act 2014](https://www.hrw.org/sites/default/files/related_material/Gambia%20Criminal%20Code%20Act%202014.pdf)

[Criminal Procedure Code](https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5f026035422753071298c64e/1593991246293/Criminal+Procedure+Code+%2C+Act+No.+26+of+1933.pdf)

[Sexual Offence Act 2013](https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5d1d654749d9a70001826156/1562207562046/Sexual+Offences+Act+2013.pdf)

[Information and Communications Bill 2008](http://www.pura.gm/wp-content/uploads/2018/01/IC-Info-Comms-Act-2009.pdf)