



REPUBLIC OF THE GAMBIA
National Assembly, New Assembly Building, Reg . Pye Lane
Banjul, The Gambia

REPORT OF THE

FINANCE AND PUBLIC
ACCOUNTS COMMITTEE (FPAC)
OF THE NATIONAL ASSEMBLY

ON

THE GAMBIA
ANTI-CORRUPTION BILL, 2019

2022

INTRODUCTION

Honourable Speaker, I rise to table before this august Assembly, for the consideration and adoption of the House, the report of the Finance and Public Accounts Committee (FPAC) of the National Assembly on the scrutiny of The Gambia Anti-Corruption Bill, 2019 which was referred to it by the plenary during the Fourth Ordinary Session of the 2019 Legislative Year.

During the process, FPAC had extensive consultations with relevant stakeholders and also made reference to The Gambia Anti-Corruption Act, 2012 as well as AU Convention on Preventing and Combatting Corruption. During consultations with stakeholders and internal deliberations, the Committee scrutinised each of the provisions and made the following recommendations as detailed below.

PART II - ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE GAMBIA ANTI-CORRUPTION COMMISSION

3. Establishment of The Gambia Anti-corruption Commission

(4) The members shall be appointed by the President after consultation with the Public Service Commission **[Page 8]**.

Recommendation: The appointment of the members by the President shall be subject to the approval of the National Assembly.

(6) The vetting committee shall comprise a representative of-

- (a) the Personnel Management Office;
- (b) the Bar Association;
- (c) the majority and minority parties of the National Assembly **[Page 8]**;
- (d) the Chamber of Commerce and Industry; and
- (e) two representatives from Civil Society organisations **[Page 9]**.

Recommendation: Replace (c) with Financial Intelligence Unit (FIU) and reduce representative of Civil Society Organisations to one.

PART III - FINANCIAL PROVISIONS

10. Expenditure of the Commission

(1) The Commission may apply its funds **[Page 13]** –

- (a) to the cost of administration of the Commission;
- (b) to payment of emoluments, allowances and benefits to members and other staff of the Commission;
- (c) for and in connection with any of its functions under this Act; and
- (d) for the development and maintenance of any property vested in or owned by the Commission.

Recommendation: Make the introductory statement Subsection (1) as shown above and insert Subsection (2) below to specify the authority that determines payment of emoluments, allowances and benefits.

(2) The emoluments, allowances, and benefits of the Commission shall be determined by the Minister in consultation with the Public Service Commission.

PART V - OFFENCES AND PENALTIES

20. Corrupt offers to Public Officers

(1) A person who –

(a) gives, confers or procures, directly or indirectly, any property or undue benefit of any kind to, on or for a public officer or any other person; or

(b) promises or offers to give, confers, procures or attempts to procure, directly or indirectly, any property or benefit of any kind to, on or for a public officer or any other person,

on account of any such act, omission, favour or disfavour to be done or shown by the public officer commits the offence of corruption and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment for seven years or to both **[Page 19]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

21. Corrupt demand by persons

A person who requests, receives or obtains property or benefits of any kind for himself or herself or any other person or agrees or attempts to receive or obtain any property or benefit of any kind for himself or herself or any other person on account of-

(a) anything already done or omitted to be done, or any favour or disfavour already shown to any person, by a public officer in the discharge of his or her official duties or in relation to any matter connected with the functions, affairs or business of a Government department or public body in which the public officer is serving as such; or

(b) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by a public officer in the discharge of his or her official duties or in relation to any such matter as aforesaid,

commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment for seven years or to both **[Page 19]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **5 years** and not exceeding **7 years**, or to both.

23. Conflict of interest

(3) A public officer who contravenes sub-section (1) or (2) commits an offence and is liable on conviction to the confiscation of the proceeds of his or her private or personal interest and a fine of two hundred thousand dalasis or imprisonment for five years or to both **[Page 20]**.

Recommendation: A fine of not less than ***D300,000*** and not exceeding ***D1,000,000*** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

24. Fraudulent receipt of property

A person who receives anything which has been obtained by means of a criminal act within or outside The Gambia, knowing the same to have been so obtained, commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment for three years or to both **[Page 20]**.

Recommendation: A fine of not less than ***D500,000*** and not exceeding ***D2,000,000*** or imprisonment for not less than **5 years** and not exceeding **7 years**, or to both.

26. Making false statements or returns

A person who is charged with the receipt, custody, use or management of any public revenue or property knowingly furnishes any false statement or return in respect of any money or property received by him or her or entrusted to his or her care, or of any balance of money or property in his or her possession or under his or her control, commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of two hundred thousand dalasis or imprisonment for five years or to both **[Page 21]**.

Recommendation: A fine of not less than ***D300,000*** and not exceeding ***D1,000,000*** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

27. Gratification by and through agents

(1) A person who -

(a) accepts or obtains, agrees to accept or obtain or attempts to accept or obtain from any person for himself or herself or for any other person, any gift or consideration as an inducement or reward for doing or having done or forbearing to do or having forborne to do any act or thing;

(b) gives, agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing, forbearing to do, having done or forborne to do, any act or thing in relation to his or her principal's affairs or business; and

(c) knowingly gives to any agent, or being an agent knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or Gambia Anti-Corruption Bill, 2019 defective in any material particular, and which, to his or her knowledge, is intended to mislead his or her principal or any other person,

commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of two hundred thousand dalasis or imprisonment for five years or to both [**Page 21**].

Recommendation: A fine of not less than ***D300,000*** and not exceeding ***D1,000,000*** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

28. Bribery of a Public Officer, a Foreign Public Official or an Official of Public International Organisations

A person who offers to any public officer, a foreign public official or an official of a public international organisation or being a public officer, a foreign public official or an official of a public international organization, solicits, counsels or accepts any gratification as an inducement or a reward for-

(a) voting or abstaining from voting at any meeting of a public body in favour or against any measure, resolution or question submitted to the public body;

(b) performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of any official act;

(c) aiding in procuring or preventing the passing of any vote or the granting of any contract, award, recognition or advantage in favour of any person; or

(d) showing or forbearing to show any favour or disfavour in his or her capacity as such officer,

notwithstanding that the public officer, foreign public official or the official of the public international organisation does not have the power, right or opportunity so to do, or that the inducement or reward is not in relation to the affairs of the public body, commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of two hundred thousand dalasis or imprisonment for five years or to both **[Page 22]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

29. Offence of using office or position for gratification

A public officer, a foreign public official or an official of public international organisation who uses his or her office or position to gratify or confer any corrupt or unfair advantage upon himself or herself or any of his or her relation or associate or any other person commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of two hundred thousand dalasis or imprisonment for five years or both **[Page 22]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

30. Bribery in relation to auctions

(3) A person who commits an offence under this section is liable on conviction to a fine of one hundred thousand dalasis or imprisonment of three years **[Page 22]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

31. Bribery with regard to contracts

(1) A person who without lawful authority or reasonable excuse, offers an undue advantage to a public officer as an inducement to, reward for, or otherwise on account of such public officer giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution, or procuring of-

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any sub-contract to perform any work, provide any article, materials or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid, commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment for three years or to both **[Page 23]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

(2) A public servant who without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to, reward for, or otherwise on account of him or her giving assistance, using influence in, having given assistance or used influence in-

(d) the promotion, execution or procuring;

(e) the payment of the price, consideration; or

(f) other moneys stipulated or otherwise provided for in, any contract or sub-contract as is referred to in sub-section (1)

commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment for three years or to both **[Page 23]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

(3) A public officer who in the course of his or her official duties, inflates the price of any goods or service above the prevailing market price commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment for five years or to both **[Page 24]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

(4) A public officer who in the discharge of his or her official duties, awards or signs any contract without budget provision, approval and cash backing, commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of fifty thousand dalasis or imprisonment for one year or to both **[Page 24]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

(5) A public officer who, without lawful authority, transfers or spends any sum allocated for a particular project, or service, on another project or service, commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of fifty thousand dalasis or imprisonment for one year or to both **[Page 24]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

32. Duty to report bribery transaction

(3) A person who fails, without reasonable excuse, to comply with sub-sections (1) and (2) commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of fifty thousand dalasis or imprisonment of one year or to both **[Page 24]**.

Recommendation: A fine of not less than **D300,000** and not exceeding **D1,000,000** or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

33. Making statement which is false or intended to mislead, etc.

(1) A person who makes or causes another person to make to an officer of the Commission or to any other public officer, in the due execution of his or her office, a statement which to the knowledge of the person making the statement or causing the statement to be made -

(a) is false, or intended to mislead or is untrue in any material particular; or

(b) is not consistent with any other statement previously made by such person to any person having authority or power under any law to receive, or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth,

commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment to two years or to both **[Page 25]**.

Recommendation: A fine of not less than *D300,000* and not exceeding *D1,000,000* or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

(2) A person who-

(a) has made a statement to an officer of the Commission or a public officer in the course of such officer exercising any power conferred by this Act; or

(b) makes any inconsistent statement to any person having authority or power under any other law to receive or require to be made such other statement, regardless of whether or not the person making the statement is under a legal or other obligations to tell the truth,

commits an offence and is liable on conviction to the confiscation of the proceeds of the crime and a fine of one hundred thousand dalasis or imprisonment of two years or to both **[Page 25]**.

Recommendation: A fine of not less than *D300,000* and not exceeding *D1,000,000* or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

PART VI - INVESTIGATION, SEARCH, SEIZURE AND ARREST

48. Service of process

Every summons under this Act shall be served by an officer of the Commission in the manner prescribed by the laws relating to the service of process, and the person effecting the service may exercise all the powers conferred by the law relating to the service of process **[Page 30]**.

49. Substituted service

Where the person summoned by the Commission is in the service of the Government, the Commission may deliver the summons in duplicate to the head of the department in which such person is employed to be served on that person **[Page 31]**.

Recommendation: The provision under *Section 48 - Service of Process*, should become *48 (1)*. The heading for *Section 49 - Substituted service* should be removed and the provision therein will become *48 (2)*.

54. Custody of seized property, etc.

(7) Where a movable property seized -

(a) is liable to decay or deterioration **[Page 34]**;

(b) cannot be maintained without difficulty; or

(c) is not practicable to maintain, and which cannot be dealt with under subsection (3),

an officer of the Commission may sell or cause such property to be sold at the prevailing market value and shall hold the proceeds of the sale, after deducting therefrom the costs and expenses of the maintenance and of the sale of the property, pending the conclusion of any proceedings under this Act **[Page 34]**.

Recommendation: Replace “liable” with “vulnerable” in (7) (a) and also “an officer of the Commission” with “the Commission” and subject the action of the Commission to a court order i.e. “the Commission may, subject to a court order, sell or cause such property to be sold...”

56. Legal obligation to give information

A person required to provide information to the Commission but fails to do so, commits an offence and is liable on conviction to a fine of fifty thousand dalasis or three months imprisonment or to both **[Page 34]**.

Recommendation: A fine of not less than *D100,000* and not exceeding *D300,000* or imprisonment for a term not less than *three months* and not exceeding *twelve months*, or to both.

58. Detention and bail [Page 36]

Recommendation: Add a Subsection (7) to establish a detention centre: (7) For the purposes of this Act, the Commission may establish a detention centre for detaining accused persons before trial.

PART VII – INVESTIGATIONS RELATING TO FINANCIAL DEALINGS AND PROPERTY

Recommendation: The last word should be “*PROPERTY*”.

59. Investigation of share accounts, etc.

(4) A person who wilfully fails or refuses to disclose any information or produce any account, document or article referred to in subsection (2) to any officer of the Commission authorised under subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dalasis or to imprisonment not exceeding one year or both **[Page 37]**.

Recommendation: A fine of not less than *D300,000* and not exceeding *D1,000,000* or imprisonment for not less than **3 years** and not exceeding **5 years**, or to both.

60. Chairperson’s power to obtain information [Page 37]

Recommendation: Replace “Chairperson” with “Commission”

PART IX - PROSECUTION AND TRIAL OF OFFENCES

76. Prosecution of offences

(1) Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption and other related offences shall be done with the consent of the Attorney-General **[Page 47]**.

Recommendation: Replace “*shall*” with “*may*” to allow the Commission to use its discretion. Also replace “with the consent of the Attorney General” with “in consultation with the Attorney General”.

79. Protection of whistleblowers and information

(3) A person who gives the information referred to in sub-section (1) knowing the information to be false commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for two years **[Page 48]**.

Recommendation: A fine of not less than *D100,000* and not exceeding *D300,000* or imprisonment for a term not less than *three months* and not exceeding *twelve months*, or to both.

PART X – MISCELLANEOUS

84. General penalty for other offences

A person convicted for an offence under this Act for which no penalty is specifically provided is liable to a fine of fifty thousand dalasis or to imprisonment not exceeding six months or both **[Page 49]**.

Recommendation: A fine of not less than *D300,000* and not exceeding *D1,000,000* or imprisonment for a term not less than *three months* and not exceeding *twelve months* or to both.

89. Duty of confidentiality and oath of secrecy

(1) Every member of the Commission, the Executive Secretary and every other staff of the Commission shall maintain confidentiality and secrecy of any compliant, document, report and other information relating to the implementation of this Act that becomes known to him or her or comes into his or her possession or his or her control.

(2) A member of the Commission and the Executive Secretary shall, take the Oath of Secrecy and Due Execution of Office.

Recommendation: Make provisions in Section 89 of the Bill to compel Commissioners and members of staff to take an Oath of Secrecy to guarantee confidentiality.

CONCLUSION

In view of the aforementioned observations and recommendations, the Finance and Public Accounts Committee (FPAC) hereby submits this comprehensive report for consideration and adoption by the august Assembly.

Honourable Speaker, I beg to move.

APPENDIX 1 - ATTENDANCE

Honourable Members:

1. Hon. Mariam Jack Denton - Chairperson
2. Hon. Sidia S. Jatta - Vice Chairperson
3. Hon. Kebba K. Barrow - Member
4. Hon. Samba Jallow - Member
5. Hon. Ya Kumba Jaiteh - Member
6. Hon. Alhagie Drammeh - Member
7. Hon. Alhagie Mbow - Member
8. Hon. Alhaji Sankung Jammeh - Member
9. Hon. Fatoumatta Njai - Member

Support Staff:

1. Mr. Momodou A. Sise - Clerk of the National Assembly
2. Mr. Buba M. E. Jatta - Deputy Clerk, Finance & Admin
3. Mr. Landing Jobe - Director of Committees
4. Mr. Marabi S. Hydera - Acting Director of Committees
5. Ms. Ndey Astou Joof - Committee Secretariat
6. Mr Lamin Bamba - Library & Research Unit
7. Mr Lamin E. Manneh - Hansard Unit

Subject Matter Specialist/Aides:

1. Dr. David Daroll Tommy - Subject Matter Specialist
2. Mr. Abdoulie B. Cham - Subject Matter Specialist
3. Mr. Karamba Touray - Auditor General

Witnesses:

1. Alagie Darboe - Financial Intelligence Unit
2. Alhagie Jammeh - Financial Intelligence Unit
3. Nuha Sanyang - Fraud Squad, Gambia Police Force
4. Buba Ceesay - Fraud Squad, Gambia Police Force
5. Lamin Trawally - Fraud Squad, Gambia Police Force
6. Buah Saidy - Central Bank of The Gambia
7. Momodou B. Mboge - Central Bank of The Gambia
8. Aji Amie Jagne - Central Bank of The Gambia
9. Saikou Touray - Central Bank of The Gambia
10. Amadou S. Kooto - Central Bank of The Gambia
11. Essa A. K. Drammeh - Central Bank of The Gambia
12. Lamin E. Bittteye - Central Bank of The Gambia

APPENDIX 2 – MINUTES OF MEETINGS

- a) Meeting on the Draft Work Plan [15 January 2021]
- b) Review of the Anti-Corruption Bill [18 January 2021]
- c) Continuation of the Review of the Anti-Corruption Bill [19 January 2021]
- d) Continuation of the Review of the Anti-Corruption Bill [20 January 2021]
- e) Consultations with CBG and FIU [21 January 2021]
- f) Consultations with Fraud Squad of GPF [22 January 2021]
- g) Continuation of Consultations with CBG and FIU [27 January 2021]
- h) Conclusion of the Review of the Anti-Corruption Bill [28 April 2021]
- i) Final Review of the Anti-Corruption Bill [18 June 2021]