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GAMBIA'S ANTI-CORRUPTION COMMITMENTS AND ITS EFFORT IN FULFILLING THEM

ANTI-CORRUPTION

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ACRONYMS

ACB	Anti-Corruption Bill
ACC	Anti-Corruption Commission
AML/CFT	Anti-Money Laundering and Combating of Terrorist Financing Act 2012
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
CBEMP	Capacity Building and Economic Management Program
COVID-19	Corona Virus Disease
CRC	Constitutional Review Commission
ECOWAS	Economic Community of West African States
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GIABA	Inter-Governmental Action Group Against Money Laundering in West Africa
GPPA	Gambia Public Procurement Authority
IEC	Independent Electoral Commission
IFES	International Foundation for Electoral Systems
JSC	Judicial Service Commission
MDI	Management Development Institute
NAO	National Audit Office
NDP	National Development Plan
OCCRP	Organized Crime and Corruption Reporting Project
PMO	Personnel Management Office
PSC	Public Service Commission
RFQ	Request for Quotation
TACOS	Terms and Condition Services
UN	United Nations
UNCAC	United Nations Conventions Against Corruption

A. BACKGROUND AND CONTEXT

Since Independence, Gambia has been facing corruption as a major problem. In some cases, it has attained levels of gross and egregious theft, for which no possible moral or historical justification can be advanced. The existence of widespread corruption, especially in societies beset by mass poverty and very high levels of unemployment, has a deeply corrosive effect on trust in government and contributes to crime and political disorder.

In the political realm, corruption undermines democracy and good governance by flouting or even subverting formal processes. Corruption in legislative bodies reduces accountability and distorts representation in policymaking; corruption in the judiciary compromises the rule of law; and corruption in public administration results to ineffective public service delivery and an unequal distribution of services.

In Gambia, corruption and embezzlement of public funds have often been cited among the reasons for the 1994 military takeover led by former President Yaya Jammeh. The Jammeh administration, however, turnout to be excessively corrupt during its 22 years rule. OCCRP, 2020¹ in March 2019, reported that Jammeh and his allies plundered nearly \$1 billion from the state revenue making institutions and enterprises. In 2016, Gambians ended the autocracy and kleptocracy regime of the Jammeh administration through democratic elections. In addition, a Commission of Inquiry was commissioned to investigate the financial dealings of former President Jammeh. The Commission discovered massive financial maladministration that the former president was engaged and recommended the forfeiture of properties that he has acquired through corruption proceeds. The Managing Director of Transparency International, Patricia Moreira described Jammeh's reign as a *"textbook case study of grand corruption at its most extreme"*.²

The Gambia is now considered as one of the emerging democracies in Africa with an opportunity to reform its legal and institutional settings to strengthen good governance. But while the country has signed and ratified the African Union Convention on Preventing and Combating Corruption (AUCPCC), the United Nations Convention Against Corruption (UNCAC), and other regional anti-corruption treaties, its fulfillment of these anti-corruption commitments are regarded as a work in progress. The U.S. Department of State (2018) describes them as "largely ineffective because the committees which are commissioned to enforce them are yet to be fully established."

Following the exit of former President Jammeh from office in January 2017, the transition government of President Adama Barrow had made significant progress in terms of legal reforms both in constitutional and statutory laws aimed at consolidating and strengthening The Gambia's nascent democracy, the rule of law and good governance. The blueprint for this ambitious vision is the National Development Plan 2018-2021 (NDP).³ A Constitutional Review Commission was set up following the passing of its Act in January 2018 to review and analyze the 1997 Constitution and draft

¹ The Great Gambia Heist - OCCRP March 2019, <https://www.occrp.org/en/greatgambiaheist/>

² Transparency International March 2019, <https://www.transparency.org/en/press/anti-corruption-reforms-in-the-gambia-must-move-forward>

³ The Gambia National Development Plan 2018 - 2021

a new one.⁴ The draft Constitution 2020 contains progressive provisions in expressly addressing the issue of corruption. The draft Constitution requires the establishment of independent institutions and offices such as the Anti-Corruption Commission. However, the rejection of the draft constitution at the National Assembly⁵ has cut short the country's effort to seriously address corruption in the public sector while reserving its hope on the Anti-Corruption Bill, 2019.

Due to the closed civic and media space under the Jammeh regime, the media and civil society fraternity have been very weak in playing a watchdog role. With the new found freedom for the media and civil society, there has been numerous corruption investigation and reports that are championed by civil society and journalists.

Jammeh might have leave office but corruption in the public sector still exist. In 2018, the then Minister of Health, Saffie Lowe Ceesay highlighted that development in her ministry is retarded by corruption⁶. On May 16th 2020, the Minister of Health, Dr. Samateh at the National Assembly explained how public officials in his ministry were planning to defraud the government's covid-19 emergency response fund worth \$10.2m⁷.

B. GAMBIA'S LEGAL FRAMEWORK FOR THE FIGHT AGAINST CORRUPTION

Gambia's legal framework for the fight against corruption cannot be discussed exhaustively without deliberating on international conventions and initiatives The Gambia is a party to. The Gambia has been a party to the United Nations Convention Against Corruption since 2015. It signed the United Nations Convention against Transnational Organized Crime in 2000 and ratified it in 2003. It signed the African Union Convention on Preventing and Combating Corruption in 2003 and ratified it in 2009.

The Gambia's domestic legal framework for preventing and combating corruption and its related practices had been largely ineffective during Yaya Jammeh's time in office. Even though his government signed and ratified numerous international, regional and sub-regional instruments, thereby ticking the checklist of appearing to be part of globalized efforts to combat corruption, in reality, corruption was rife in The Gambia across all sectors of society.⁸

President Barrow's transition government have launched the National Development Plan (NDP 2018-2021) in 2018 and integral to this ambitious development blueprint is good governance, respect for the rule of law, respect for human rights and economic prosperity.⁹ The transitional government, despite justifiable criticisms anchored on accusations meted against the government and public officials

⁴ Constitutional Review Commission (CRC) Act 2018

⁵ Draft Constitution rejected, over D116m wasted <https://thepoint.gm/africa/gambia/headlines/draft-constitution-rejected-over-d116m-wasted> The Point Sept. 2020

⁶ Corruption Hindering Health Sector <https://standard.gm/corruption-hindering-health-sector/> Standard, February 2018

⁷ Minister Samateh Exposes Corruption in Covid-19 Allowance, Standard May 18 2020, <https://standard.gm/minister-samateh-exposes-corruption-in-covid-19-allowances/>

⁸ www.transparency.org: Making the hyena pay

⁹ National Development Plan: www.mofea.gm

engaged in bribery and corruption and related practices,¹⁰ had also made considerable progress in the area of legal reforms in terms of anti-corruption and other relevant Bills presented before the National Assembly.¹¹

Under the Jammeh administration, the National Assembly passed the Gambia Anti-Corruption Commission Act in 2012. The Anti-Corruption Commission Act creates the establishment of an Anti-Corruption Commission as an independent agency with the powers to investigate, prosecute and punish corruption related practices. Despite the passing of this law in 2012, the previous government failed to set up an Anti-Corruption Commission. The Barrow government introduced the Gambia Anti-Corruption Bill 2019 before the National Assembly in December 2019 and it is currently at an advanced stage in the National Assembly. If enacted into law, it will repeal the existing 2012 Act. The establishment of the Anti-Corruption Commission, as mandated by section 3 of the Bill, builds on the requirements imposed by international treaties such as Article 6 of UNCAC with regards to ensuring the existence of an anti-corruption body or bodies responsible for preventing corruption through legal and policy mechanisms. The enactment of the Anti-Corruption Bill 2019 also largely complies with Article 5 of the AUCPCC which requires adopting legislative and other measures to establish and strengthen independent anti-corruption authorities or agencies.

Article 5 of UNCAC obliges States parties to employ preventive anti-corruption policies and practices, including developing and implementing or maintaining effective and coordinated anti-corruption policies and legal instruments. With the introduction of the 2019 Anti-Corruption Bill, it appears the government is complying with its obligations under these international Conventions. This is because the Bill prohibits and prescribes punishments for corrupt practices and other related offences. A thorough look into the Bill in its entirety shows a significant improvement in comparison with the Gambia Anti-Corruption Act 2012 Act in terms of Gambia's compliance with its obligations under the treaties it is a party to. Even though the 1997 constitution fails to make provision for the establishment of an Anti-Corruption Commission, it provides for a Code of Conduct for Public Officers in section 222¹² which by all accounts, is consistent with international standards and best practices in preventing and combating corruption and ensuring integrity in public life. The draft Constitution 2019 seeks to remedy this defect as it provides not only for the establishment of an Anti-Corruption Commission, but also vests it with investigative and prosecutorial powers under section 6. This is in compliance with Articles 15 and 16 of UNCAC in terms of criminalization and law enforcement of corruption.

Article 21 of UNCAC criminalizes corruption in the form of bribery in the private sector in terms of both promising, offering, giving or soliciting or accepting, either directly or indirectly, in the course of economic, financial and commercial activities. Section 38 of the Anti-Corruption Bill 2019 also criminalizes bribery in the private sector, in essence not only drawing inspiration from UNCAC but complying with it considerably in governing the private sector in the area of bribery. Similarly, Article

¹⁰ www.occrp.org: The Gambia Government Continues Controversial Contract

¹¹ www.statehouse.gm: Statement by H.E. Adama Barrow President of the Republic

¹² Section 222 of the 1997 Constitution

22 of UNCAC also criminalizes embezzlement in the private sector. Section 39 of the Anti-Corruption Bill, likewise, not only criminalizes embezzlement and related practices in the private sector, it goes further to also criminalize misappropriation of any property, private funds or securities.

The Anti-Money Laundering and Combating of Terrorism Financing Act 2012 makes provisions for the prevention of money laundering, financing of terrorism, anti-money laundering supervision, punishment of money laundering and other related offences. This derives from Article 6 of AUCPCC which criminalizes money laundering of proceeds of corruption through conversion, concealment and acquisition etc. Article 7 of AUCPCC also requires States parties, in combating corruption and related offences in respect of public officers in the public service, to declare their assets and for strong internal systems for monitoring conduct and implementation. Section 16 of AUCPCC, which relates to confiscation and seizure of the proceeds and instrumentalities of corruption, had also been complied with as sections 56-62 of the Anti-Money Laundering Act 2012 provide for the seizure, forfeiture and confiscation of assets in relation to money laundering and financing of terrorism.

The practice of standard procurement procedures in private, particularly for public sectors, is a significant imitative for combating corruption. It is against this background that the Gambia Public Procurement Authority Act 2014 was enacted. The Act provides for the establishment, functions and powers of the Gambia Public Procurement Authority and for the principles and procedures to be applied in the public procurement of goods, works and services, and for connected matters.

The Access to Information Bill 2019 is currently before the relevant standing committee of the National Assembly. When passed, this law will allow the citizenry and other stakeholders like the media and civil society organizations to access public information, thereby ensuring greater transparency and accountability in public affairs.¹³ This satisfies the requirement in Article 9 of AUCPCC which concerns State parties adopting legislative measures to give effect to the right to access to information to assist in the fight against corruption and related offences, as well as Article 12 of AUCPCC in terms of the role of civil society and media.

The Economic Crimes (Specified Offences) Act 1994 provide for trial of persons arrested and detained in connection with economic crimes and connected matters. The Act defines “Economic crime” to include any act or omission which results in financial loss, damage or injury, or economic loss, damage or injury to a public body. Pursuant to section 3(1), the Act must be read together with the Criminal code and the Criminal Procedure Code. The Criminal Code criminalizes, among other offences, official corruption, extortion by public officers, public officers receiving property to show favor, abuse of office, false assumption of authority, false certificates by public officers. These are all corruption related offences, fitting the broad definition of corruption under the Gambia Anti-Corruption Bill 2019.

¹³ African Freedom of Expression Exchange (AFEX); 8 July 2020

The fight against corruption in the Gambia also includes some oversight institutions, or otherwise institutional framework. The National Audit Office (NAO) created by section 158 of the Constitution, with the Auditor General as its head, is the main audit institution in the Gambia. While the Auditor General is appointed by the President after consultation with the Public Service Commission, the members of the NAO are appointed by the Auditor General after consultation with the Public Service Commission. The office of the Ombudsman is an independent public institution created by the Ombudsman Act 1997. It became operational in 1999. The office is headed by an Ombudsman with two deputy ombudsmen.

The Barrow administration set up a Commission of Inquiry to probe into the financial activities of public enterprises, bodies and offices and their dealings with former President Jammeh and his close associates, widely known as the Jammeh Commission.¹⁴ At the conclusion of the Commission's work, it made adverse findings against Jammeh and many officials both in the public and private sector as well as recommendations for prosecution, restitution, forfeiture and seizure of assets and prohibition from holding public office.¹⁵ However, many accuse the same Barrow government of double standards for ignoring adverse recommendations made against his chief of protocol, Minister of Finance and other key allies and suspected financial backers.¹⁶

The 1997 Constitution, by virtue of section 109, vests the National Assembly power to appoint various oversight committees, most of which exist to combat and prevent corruption and related matters. Notable among these committees is the Finance and Public Accounts Standing Committee. Furthermore, section 223 of the 1997 Constitution requires public officers to make written declaration of all property and assets including liabilities, but apparently, this provision is of little or no effect.¹⁷

It is also noteworthy that the Police and public prosecutors like the Director of Public Prosecutions have the mandate under the Criminal Code, Criminal Offences Bill 2019 when it becomes law, the Economic Crimes (Specified Offences) Act 1994, the Anti-Corruption Commission 2012 and the Anti-Corruption Bill 2019 (when it is law), the Anti-Money Laundering Act and other relevant laws prosecute alleged cases of corruption and related offences.

C. ANTI-CORRUPTION RECOMMENDATIONS

1. CRIMINALIZATION OF BRIBERY

A. SUMMARY

Corruption in both the public and private sectors remain prevalent and it directly and indirectly poses serious impediments to The Gambia's developmental initiatives. The country's penal laws, particularly

¹⁴ www.statehouse.gm: President Barrow Swears in commission of Inquiry Members

¹⁵ gm.usembassy.gov: U.S. Applauds Jammeh Commission Report Release, Pledges to Support Recovery

¹⁶ Foroyaa.net: Gambia Government Rejects Recommendations to Dismiss Protocol

¹⁷ M Jobarteh

the Criminal Code, criminalizes certain forms of corruption and corruption related practices such as bribery and gratification. The criminalization and punishment of corruption under the Criminal Code are specifically limited to the corrupt practices of public officials in public offices, primarily government officials.¹⁸ Consequentially, this oversight and lacuna in the penal laws of The Gambia means that there was no criminal sanction for corrupt practices in the private sector,¹⁹ in particular the corporate and commercial sectors where corruption, bribery and money-laundering are highly susceptible because of the inherent lucrative nature of those industries and the drive for maximization of profit and growth at all costs, even if achieved through corrupt and illicit practices.

Chapter X of the Criminal Code expressly addresses Corruption and the Abuse of office by punishing conducts and practices within the broader meaning of corruption such as extortion by public officers, bribery, false assumption of authority, abuse of office and public officers receiving property to show favor. Many of these are misdemeanors and not felonies in terms of the law's grading of the level of seriousness of these crimes committed against the administration of lawful authority, in other words, corruption and abuse of office.

Section 223(1) of the 1997 Constitution of The Gambia mandatorily obliges public officers, with the exception of officials of the public service, to submit to the Ombudsman written declaration of all property and assets owned, as well as liabilities owed. However, the absence of a substantive law in terms of statute passed by the National Assembly governing this process and its application and regulation means adherence and compliance to this requirement is almost non-existent.²⁰

In December 2019, The National Assembly debated the Anti-Corruption Bill, 2019 and it is currently before the House for scrutiny and third reading before it is passed into law. This Bill, when it becomes a legislation, aims at strengthening and reinforcing the fight against corruption in The Gambia and at the same time also penalizing those guilty of corrupt practices in the country.²¹ This new legislation, which repeals The Gambia Anti-Corruption Commission Act 2012, ambitiously seeks to prohibit and prescribe punishment for corruption and other related offences.²² Section 28 of The Gambia Anti-Corruption Bill, 2019 criminalizes bribery and a public officer found guilty of bribery is liable to five years imprisonment or a fine of D200,000 (\$4000) or in some cases, both penalties will apply to the person and the proceeds will be confiscated by the state. Section 31 of the bill also criminalizes bribery in awarding of public contracts. In addition, Section 38 of the Anti-Corruption Bill criminalizes bribery in the Private Sector and a person found guilty of promising or offering gifts in

¹⁸ Transparency International Corruption Helpdesk Answer; The Gambia: Overview of corruption and anti-corruption, page 14.

¹⁹ US Department of State 2017

²⁰ M Jobarteh 2017

²¹ The Gambia Anti-Corruption Bill 2019

²² The Gambia Anti-Corruption Bill 2019

breach of his/her duty is liable to a fine of D300,000 (\$3000) or seven years imprisonment or both.²³

The new law, as prescribed by the draft Constitution 2020, establishes the Anti-Corruption Commission and vests it with the statutory authority to investigate and prosecute corruption and related offences. Within the realms of the overriding legal framework, the Act will serve as guide in educating, preventing, fighting, and attempting to eradicate corruption and economic crimes in The Gambia. The Act adopts a number of strategies such as investigation, prosecution, prevention and recovering asset mechanisms. The Anti-Corruption Bill largely fulfills Gambia's commitments under Art. 6 of the UNCAC and Art. 5 of AUCPCC respectively which both require state parties to adopt legislative and other measures such as establishing independent national anti-corruption institutions.

Drawing inspiration from Art. 33 of the UN Convention Against Corruption²⁴ and Art. 5 of Paragraph 5 & 6 of the African Union Convention on Preventing and Combating Corruption²⁵, the new law also contains progressive and adequate provisions for the protection of persons who give information to the Anti-Corruption Commission in respect of corruption offences that had been committed or likely to be committed. This is seen by anti-corruption activists as significant and symbolic in the protection of whistleblowers, a gap which was previously highlighted as a serious flaw in the administration of the fight against corruption.²⁶

In June 2020, the National Assembly adopted The Access to Information Bill 2019 after it went through the various stages in the House. When it becomes law, the Act will allow citizens, journalists and civil society organizations etc. to easily access government data.²⁷ This is a huge step in promoting transparency, accountability and good governance.²⁸ It is envisaged that when the Bill becomes law, citizens will have access to the right government information and this will in turn bolster the fight against corruption and related crimes by holding government accountable.²⁹

NATIONAL AREAS OF STRENGTHS AND WEAKNESS

The Criminal Code criminalizes acts of both the supply and demand of corruption in terms of bribe offerors and offerees. Sections 86-90 punishes practices of offering and accepting bribe.³⁰ Sections 359-363 also punish corrupt practices. However, all these relevant laws are applicable only to public

²³ S38 Bribery in the private sector - Gambia Anti-Corruption Bill, 2019

²⁴ Each state party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this convention.

²⁵ Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities (para. 5 of Art. 5), and ensure citizens report instances of corruption without fear of consequential reprisals (para. 6 of Art.5)

²⁶ Freedom House 2018

²⁷ African Freedom of Expression Exchange (AFEX); 8 July 2020

²⁸ The Access to Information draft Bill 2019

²⁹ African Freedom of Expression Exchange (AFEX); 8 July 2020

³⁰ Criminal Code, Vol. III, Cap. 10, Revised Laws of The Gambia, 2009

officers or those that work in government. Section 5(g) of the Economic Crimes (Specified Offences) Act 1994 also criminalizes corruption in public office and abuse of office for private benefit.³¹

In 2019 however, the Attorney General presented the draft Criminal Offences Bill 2019³² and the Criminal Procedure Bill 2019³³ to the National Assembly. These two Bills are currently going through the various stages in the House and are expected to be passed soon, repealing and replacing the antiquated Criminal Code and Criminal Procedure Code.

Article 15 of the UN Convention Against Corruption criminalized bribery of national public officials, solicitation or acceptance of a bribe by national public officials, bribery of foreign public officials and officials of public international organizations, embezzlement, misappropriation or other diversion of property by a public official, laundering of proceeds of crime, and obstruction of justice (arts. 15, 16, para. 1, 17, 23 and 25).³⁴

The Criminal Offences Bill 2019, like the Criminal Code, also punishes bribery, corruption and abuse of office. Sections 80-85 of the draft Bill specifically punishes bribery and related practices by those in public office. However, the corresponding punishments for these crimes are considerably weak, especially if the intention is to eradicate bribery and corruption in public life. For example, section 80 of the draft Criminal Offences Bill 2019, the punishment for public officers accepting bribery is a maximum of three-years imprisonment.³⁵ Section 81, which is concerned with public officers receiving property to show favors to offerors, prescribes a maximum sentence of six-months imprisonment. Most of the bribery offences under the ‘Official Corruption’ part of the Bill are misdemeanors and hence attract maximum sentences of six-months imprisonment.³⁶ Whether heavier and more onerous punishments will serve as better deterrents is a moot point but some commentators say that more punitive sanctions ought to be in place to discourage bribery and corruption in the country’s public life.

It is important to state that although there are some weaknesses in some relevant provisions of the Criminal Offences Bill, however, overall, it is a significant improvement compared to the Criminal Code. The Bill and other laws such as the Anti-Corruption Bill 2019 are hailed as quite progressive and in line with international best practice both regionally and globally in terms of corruption and related crimes. Section 28 of the Anti-Corruption Bill 2019 for instance, punishes bribery, inducement and rewarding of a public officer, foreign public official or official of the public international organization and the acceptance of bribes by a public officer with the confiscation of the proceeds of

³¹ Economic Crimes (Specified Offences) Act 1994

³² Criminal Offences Bill 2019

³³ Criminal Procedure Bill 2019

³⁴ Legislative guide for the implementation of the United Nations Convention against Corruption Second revised edition 2012, at p. 58

³⁵ Criminal Offences Bill 2019

³⁶ Criminal Offences Bill, 2019 S79

the crime and a fine of two hundred thousand Dalasis or imprisonment for five years or both.³⁷ When juxtaposed with the Criminal Code and the Offences Bill 2019, the Anti-Corruption Bill 2019 is regarded as having sufficient provisions with corresponding penalties for corrupt practices to serve as serious deterrents.

A new phenomenon in the criminalization of bribery and corruption in The Gambia and one which is new and groundbreaking is the introduction of corporate criminal liability in the Criminal Offences Bill 2019. Section 31 of the 2019 Bill, in terms of offences by corporations, societies and the like, provides:

*“Where a body corporate is guilty of an offence against this Act the body corporate shall be liable to the penalties therefor so far as those penalties are capable of being imposed upon a body corporate, and any director manager or officer of the body corporate who knowingly directs authorizes or suffers the commission of the offence by the body corporate shall, without affecting the liability of the body corporate thereof, be severally guilty of an offence and liable to the penalty or punishment applicable thereto”.*³⁸

This new section, criminalizing corporate corruption, is both necessary and far reaching. There still remain questions as to how far this law goes and if indeed it goes far enough in criminalizing and punishing corruption in the corporate and commercial sectors in both the public and private.

Section 282 of the Offences Bill 2019, on Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts or falsifying books or accounts, provides that:

“A person who—

- (a) being a director or officer of a corporation or company, receives or possesses himself or herself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct the entry to be made therein; or
- (b) being a director, officer or member of a corporation or company, does any of the following acts with intent to defraud, that is to say—
 - (i) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in the book, document or account, or is privy to any such act; or
 - (ii) makes, or is privy to making, any false entry in the book, document or account; or

³⁷ Anti-Corruption Bill, 2019 S28

³⁸ *Criminal Offences Bill, S31*

- (iii) omits, or is privy to omitting, any material particular from the book, document or account,
Commits a felony, and is liable on conviction to imprisonment for a term of seven years”.

³⁹

It is anticipated that with the Offences Bill 2019 specifically targeting corporate criminal liability, progress will be made in this area in terms of using the criminal law to punish corporate corruption.

In the areas of private and commercial bribery, section 38 of the Anti-Corruption Bill 2019 criminalizes such practices that had previously only been punished when done in the public sector. In that context, this is an important addition to the new legislations that taken in their entirety, when applied with the right political will, make significant headways in combatting corruption and related crimes.⁴⁰

For bribery in the private sector, section 38 states:

“A person who in the course of economic, financial or commercial activities intentionally –

(a) promises, offers or gives, directly or indirectly, an undue advantage to any person who directs or works in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, acts or refrains from acting; and

(b) solicits or accepts, directly or indirectly, an undue advantage by any person who directs or works in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, acts or refrains from acting,

commits an offence and is liable on conviction to a fine of three hundred thousand Dalasis or to imprisonment for seven years or to both.”

This provision now empowers law enforcement and the Anti-Corruption Commission statutory powers to intervene and for the Courts to sanction corruption and related practices such as bribery and embezzlement in the private sector upon convictions, an important sector that was until now, almost disregarded and left to almost self-regulate which did nothing but perpetuate bribery and corruption in the private sector and this indiscipline directly affected the public sector in so many ways. This new provision is in line with Article 11 of AUCPCC in which The Gambia is a signatory to.

³⁹ *Criminal Offences Bill, S282*

⁴⁰ *The Gambia Anti-Corruption Bill 2019, S38*

Within the broader issue of corruption, both the Criminal Code and the Criminal Offences Bill 2019 contain provisions concerning legal conspiracy. Section 349 of the Criminal Offences Bill 2019 states that *“any person who conspires with another to commit a felony, or to do any act in any part of the world which if done in The Gambia would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, commits a felony.”* In effect, where two or more persons in joint enterprise, conspire or engage in corrupt practices such as bribery and embezzlement or any other related crime for that matter, may be prosecuted and punished under this law⁴¹. However, specific corruption and bribery related conspiracy laws with broader and more purposive legal definition may fill any gaps that the Offences Bill fails to remedy.

In terms of criminal and administrative penalties for failure to adhere to or comply with financial disclosure requirements, section 40 of the Anti-Corruption Bill 2019 criminalizes conduct such as concealment by a person or retaining property or assets of any kind and knowing that such property or assets are the result of corruption related offences and on conviction is liable to a fine of three hundred thousand Dalasis or to imprisonment for seven years or both.

Under section 44 of the ACB, any person who impedes an officer of the Anti-Corruption Commission investigating an offence under the Anti-Corruption [Bill] Act in terms of refusing to be examined, failing to produce books or documents or providing a statement when ordered, commits an offence and is liable on conviction to imprisonment for three months. The fact that there is criminal punishment for failure to disclose financial and other information when required is likely to enhance adherence and compliance.⁴² In the same bill, sections 55-60 makes mandatory requirements for disclosure of financial information and this obligation extends to legal practitioners in terms of their clients. Conventionally, legal practitioners, cannot be compelled to disclose information regarding their clients because such information is deemed confidential and privileged and should only be disclosed with the consent of a client. However, this provision now removes that privilege and legal practitioners are legally obliged to comply and disclose information about their clients when required to do so, in relation to an investigation into any offence under the Act or any other law prohibiting corruption regarding information available to them in respect of any transaction or dealing relating to any property which is liable to seizure under the Act. This further widens the enforcement scope and reach of the law insofar as disclosure is concerned.

In addition, sections 59 and 60 of the Anti-Corruption Bill 2019 gives the Commission powers to investigate matters relating to financial dealings and property and obtain information. This includes any bank or financial institution specified in the Act. Non-compliance could result in fines of D50, 000

⁴¹ Criminal Offences Bill, 2019 S349

⁴² The Gambia Anti-Corruption Bill 2019, S59(4)

(\$1000) and imprisonment for one year.⁴³

In terms of money laundering statutes and asset forfeiture, the National Assembly passed the Anti-Money Laundering and Combating of Terrorist Financing Act in 2012 and its objective is the prevention of money laundering, financing of terrorism, anti-money laundering supervision, punishment of money laundering and other related offences.⁴⁴

Section 3 of the Anti-Money Laundering Act paved the establishment of the Financial Intelligence Unit (FIU), and its objects are to assist in the identification of proceeds of criminal conduct and the combatting of money laundering, making information available to investigating authorities to facilitate the administration and enforcement of laws and exchanging information with similar bodies in other countries in combating money laundering, financing of terrorism and other criminal conduct.

The FIU works closely with the Financial Action Task Force (FATF) regional body called the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA) for the full implementation of the FATF requirements on prevention of money laundering and terrorism financing.⁴⁵

The FIU has powers to enforce compliance and impose sanctions in the event of non-compliance. In terms of measures to combat money laundering and financing terrorism, section 22 of the Anti-Money Laundering Act provides that – *“a person involved in money laundering commits an offence and is liable in the case of an individual, including a director, employee or agent to a minimum of ten-years imprisonment; and in the case of a corporate body, a fine of not less than Ten million Dalasis or an order for the revocation of the license of the corporate body or both.”*⁴⁶ The Act also attaches stringent punishments for any person who directly or indirectly engages in a terrorist act.

In terms of asset forfeiture, Part VIII of the Anti-Money Laundering Act 2012, specifically sections 56-62, amongst others, provides for the seizure and forfeiture of assets in relation to money laundering and financing of terrorism. The law also authorizes different processes such as restraint of property suspected of involvement in criminal activity in the form of money laundering and terrorist financing offences. Additionally, the law also allows the seizure of property subject to a restraining order and also forfeiture or confiscation of property in respect of a person convicted of criminal conduct, money laundering or financing of terrorism offence and where the court believes that the person derived, obtained or realized the said property directly or indirectly from the commission of such offence. Forfeiture or confiscation orders apply to the following:

⁴³ The Gambia Anti-Corruption Bill 2019, S59(4)

⁴⁴ Anti-Money Laundering and Combating of Terrorist Financing Act, 2012

⁴⁵ African Development Bank Group- EOI- Gambia

⁴⁶ Anti-Money Laundering and Combating of Terrorist Financing Act, 2012

- ❖ assets laundered or terrorist property
- ❖ proceeds, income, and gains from such
- ❖ assets used to facilitate or commit the criminal conduct
- ❖ instruments used or intended to be used in the commission of the offence, money laundering or financing of terrorism.

The Act also makes provisions for Mutual Legal Assistance for the purpose of investigating and prosecuting criminal conduct, money laundering or financing of terrorism offence. The Act further provides for property tracking for a foreign state, as well as freezing and forfeiture of property in international cooperation.

B. OUTSTANDING RECOMMENDATIONS

Recommendation	Source & Year	Reasons for non-implementation	Obstacles	Factors to Leverage (Solutions)
Administrative, operational and financial independence of anti-corruption commission	UNCAC 2004 AUCPCC 2003 Art. 5 ECOWAS Protocol on the fight Against Corruption 2001	Underfunding and lack of expertise	Political will	Donor Funding and capacity building
Expand the definition of a public official to explicitly include foreign public officials and officials of public international organizations.	Art. 15-16 of UNCAC 2004 Art. 4 ECOWAS Protocol on the fight Against Corruption 2001	Prolong delay in the amendment of the Criminal Code	Diverse political views at the National Assembly	The Gambia has huge opportunity to expand the definition of bribery in the Criminal Offences bill 2019 which is yet to be legislated
Higher grade of corruption offences	Art. 15-16 of UNCAC 2004	Fear of getting affected as executives	Conflicting interest from the political class	Strong civil society advocacy
Stricter penalties for offenders	Art. 15-16 of UNCAC 2004	Policy makers being the main culprits of corruption	Strongly rooted internal lack of interest/weakened system	Strengthen legislative oversight for better enforcement

<p>The Anti-Money Laundering Act should be revised to clearly provide for the operational independence of the FIU.</p>	<p>Art. 20 of AUCPCC 2003 Art. 6 & 36 of UNCAC 2004 Recommendation 29 of FATF</p>	<p>Political Will</p>	<p>The Executive fearing losing its executive autonomy to direct such entity or being investigated</p>	<p>Strong and diverse National Assembly that could sponsor private member bill to amend the Anti-Money Laundering Act</p>
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2. PUBLIC PROCUREMENT

A. SUMMARY

Although there is now a uniform and structured framework for public procurement, there remain a number of glaring weaknesses, including the limited capacity of public procurement practitioners, complexity in the use of Gambia Public Procurement Authority standard forms, lack of e-procurement, poor record keeping and inadequate funding⁴⁷. In addition, the president is permitted to “*exempt any procuring organization from requiring the approval of the authority with respect to any procurement*”⁴⁸.

One area in which corruption is becoming entrenched is the procurement of goods and services by Government. The Gambia Public Procurement Authority’s independence and impartiality have been compromised by the government through the awarding of contracts worth millions of dollars without going through proper bidding process as highlighted in the Gambia Public Procurement Act, 2001. Clear example of this is the \$35.6m “Banjul Rehabilitation Project” that was awarded to Gai Construction on February 2019 without subjecting the contract to bidding⁴⁹. The stringent tender process laid down by Government was not followed, but it was instead negotiated. This maladministration raised public outcry, but it fell on deaf ears.

Currently, the apex of the legal mechanism of public procurement in The Gambia is The Gambia Public Procurement Act (2001). It was The International Trade Center team of national and international consultants who developed the Act. The Act was passed by the National Assembly on December 24, 2001, assented to by the President on February 1, 2002 and published in The Gambia Gazette No. 3 of February 11, 2002 and amended in 2014.

The Gambia Public Procurement Act (2001, amended 2014) has outlined a number of objectives with regards to government procurement in The Gambia. The Act seeks to provide a system for ensuring:

(a) *Transparent, efficient and economic public procurement;*

⁴⁷ SaïdyJeng 2016.

⁴⁸ Sharife 2018

⁴⁹ Gambia’s D1.8 Billion Project Awarded Without Due Diligence, <http://www.kerr-fatou.com/gambias-d1-8-billion-project-awarded-without-due-diligence/> - Kerr Fatu October 2019

(b) Accountability in public procurement;

(c) A fair opportunity to all prospective suppliers of goods, works and consultancy services; the prevention of fraud, corruption and other malpractices in public procurement;

(d) the prevention of fraud, corruption and other malpractices in public procurement; and

*(e) Improvements in social and economic capacity in The Gambia, including providing opportunities for local small enterprises and individuals to participate in an economic manner as suppliers, contractors and subcontractors in public procurement*⁵⁰.

Law enforcement is applying effective investigative techniques for preventing corruption in public procurement; this is done through constant review of procurement transactions of procuring organizations.

NATIONAL AREA OF STRENGTH AND WEAKNESSES

Although The Gambia made significant progress in fulfilling Article 9 of the United Nation Convention Against Corruption (UNCAC), Article 5(b) of Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption and Article 5 (4) of AUCPCC, by legislating procurement laws that contains the principles and procedures to be applied in the public procurement of goods, works and services and by establishing a designated procurement body called the Gambia Public Procurement Authority (GPPA).⁵¹

Despite the legal framework codified in the Gambia Public Procurement Act, 2014 in regulating procurement processes to ensure transparent and accountable awarding of government contracts, however, these laws have in many occasions violated by the government without any accountability. Thus giving space for procurement fraud to continue in both the supply and the demand side. For example: The office of the President stands accused of procurement fraud over the period 1st January 2014 to 31st December 2016.⁵² The following observations were made by the internal audit directorate in a report published on 23rd August, 2017:

1. No Contract Committee for Procurement of Items Amounted to D 2,134,289,689.12

There was no contract committee set up as required by GPPA Act 2014. Items were being procured without any committee presiding over the procurement process as necessary.

2. Up-Keep of State Guards monthly Reimbursable Imprest Amounted to D51, 815,911.93

The audit team noted that a monthly reimbursable imprest of D 1.7 million and D270, 000 was issued for the up keep of state guards. The audit team also understood that the imprest was used to purchase basic commodities in huge quantities without not following procurement regulations and guidelines

3. No GPPA Approval for Request for No Objection to Single Source Transaction Amounted to D16,153,820

⁵⁰ Section 3 of GPPA Act 2014

⁵¹ Art. 9 of UNCAC, Article 5(b) of Protocol on the Fight against Corruption, and Article 5(4) of AUCPCC

⁵² Audit report, Internal Audit Directorate, August 2017

There were requests made for single sources to GPPA and such contracts were awarded without GPPA prior approval as required by the Public Procurement Law.

4. Arrears for Maintenance of Motor Vehicles Amount to D 37,290,231.80

The audit noted that there were unsettled maintenance debts which have no attached request for quotation neither do they have purchase order that put the garages into legally binding contract to facilitate the maintenance of vehicles.

5. Prices & Quantities of Procured goods on the high side

The audit team noted that goods procured through the maintenance of Motor Vehicles were on the high side in comparison to the market price

6. Invoices Received Before Raising Request for Quotation (RFQ) Amounted to D 600,412.50

The audit team observed that there were some invoices received months or weeks earlier before raising the RFQ to process payment which is not in line with the GPPA Act 2014.

7. Purchases of Motor Vehicles Amounted to D 268,401,876.65 without Procurement Procedures being followed

Given the huge amount involve in this procurement of motor vehicles, there was no evidence of executive directive in the purchasing of these motor vehicles nor was any right procedures followed accordingly.

Section 22 of the GPPA Act, 2014 set out the requirements for an entity to be qualified to bid for public contracts. The entity must have a legal status, free from bankruptcy, have the financial and technical means to enter into contract, fulfilled its obligations to pay taxes, its Directors of Shareholders “...*have not been convicted of any criminal offence relating to professional conduct...*” amongst others. In addition, section 24 of the GPPA Act, 2014 details the eligibility criteria for suppliers to be awarded a procurement contract. Suppliers are eligible to be awarded a procurement contract if they are registered with GPPA and where they are not registered with GPPA, the Supplier will have to meet the requirement set under section 24(2) of the GPPA Act ⁵³.

Though there are limited excessive tailored terms and conditions in request for bids, however, procurement procedures are not always respected especially during crisis; in certain tenders, contract conditions are not clearly defined. In some cases, bidders are not given “reasonable time” to prepare their bids. For example, on April 23rd 2020 the government of The Gambia called for bidders to bid for the supply of food items (Covid-19 relief package) worth \$14.68m setting the dateline of bids on the following day, noon of April 24th 2020 ⁵⁴as opposed to Article 9 (a) of UNCAC which states “...*public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*” ⁵⁵

⁵³ The Gambia Public Procurement Act 2013

⁵⁴ Ministry of Trade Regional Integration and Employment, The Gambia

⁵⁵ Article 9 (a) of UNCAC

The Internal Audit department discovered high level of risk surrounding single sourcing and the lack of competition in this procurement method. They observed that other methods of procurement could have been used to ensure competition and value for money in the procurement process. A detailed market research could also be conducted to obtain reasonable information on the price of goods and services before Single Sourcing/Direct Sourcing procurement method is used. The report also indicted the Ministry of Health's lack of due diligence in the evaluation and awarding of contracts to suppliers and further ensure contracts are awarded only to the most responsive bidders. In respond, the Ministry of Health acknowledges that this is the first of its kind at the Ministry and it was an oversight on their part.⁵⁶

The GPPA Act, 2014 allows for use of sole source contracts in public procurement only when conditions in section 44 – 45 of the GPPA Act are satisfied. In 2019 74.7% of approved procurements were “Single Source” while procurement contracts awarded through Open Tender records 13.2%. The percentage for procurement contracts awarded through sole sourcing has however dropped down to 9% in 2020.⁵⁷

According to the audit report of GPPA, there was “No Objection” and Approval of Single Source amounted to over D300 million. The report observed that there were numerous “no objection” issued and “single source” approvals made by GPPA without any proper assessment or basis. This has amounted to over D300 million for the period 1st January 2014 – 31st December, 2017⁵⁸. No Objections are issued on different basis; when there is an executive directive, national security and on judgmental basis but according to the audit report there was no documentary evidence to suggest that these were executive directives. The report also highlighted that there was no committee who sits and presides over such procurements and approvals and no objection are solely decided by one person.

According to an official at GPPA, there is no evidence of false or phantom competition, or collusion among bidders; he said that there are mechanisms for challenging public procurement awards, where aggrieved suppliers can challenge procurement awards through Complaints Review Board. “Part IX – Challenges, Reconsideration and Review” of the GPPA Act provides mechanisms for challenging public procurement through the Complaints Review Board which consist of seven members. The Complaint Review Board receive complains from bidders regarding the awarding of procurement contracts which bidders believe to be partial or against the GPPA Act. Section 55 of Part IX of the GPPA Act sets the procedures in challenging procurement decisions within ten working days after the decision is taken. The Complaints Review Board is mandated to receive complaints and make decision within ten working days.⁵⁹

The GPPA Act, 2014 also provides legislative framework for the GPPA to debar bidders or suppliers who are guilty of corruption “...for a minimum period of one year and a maximum period of five years...” The requirement for this condition is codified on section 28 (1)(e), which states that the GPPA shall exclude a bidder or supplier from bidding after – “*misconduct relating to the submission of bids, including, corruption, price fixing, a pattern of under-pricing of bids, and breach of*

⁵⁶ Internal Audit Report, July 2020

⁵⁷ GPPA website <https://www.gppa.gm/> 2020

⁵⁸ October 2018

⁵⁹ GPPA Act 2014 S55

confidentiality;”

Law enforcement is powered under section 67 “Investigation of procurement proceedings” to investigate procurement fraud which applies to the procurement organization, supplier, consultant, or contractor. Section 67(2)(a) in the GPPA Act further empowers the law enforcement agency to; “*at any time during normal office hours, enter the premises of the procuring organization tenderer, supplier, contractor, or consultant concerned with the procurement proceedings under investigation;*” The law enforcement agency also has the power to:

- “(b) require an officer, employee or agent of the procuring organisation or tenderer, supplier, contractor or consultant to produce any books, records, accounts or documents;
- (c) search premises for any books, records, accounts or documents;
- (d) examine and make extracts from and copies of books, records, accounts or documents of the procuring organisation, tenderer, supplier, contractor or consultant;

These provisions are inline with Article 9(1)(e) of UNCAC. A Procurement Officer however, posited that Law enforcement has inadequate capacity to investigate and prosecute procurement fraud. There are however lacuna in the GPPA Act where Whistleblower Right is not protected as opposed to Article 32 of UNCAC, Article 5 (5) of AUCPCC and Article 8 of Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption.⁶⁰

B. OUTSTANDING RECOMMENDATIONS

Recommendation	Source & Year	Reasons for non-implementation	Obstacles	Factors to Leverage (Solutions)
Transparency in the Procurement Process.	Art. 9 and 10 of UNCAC 2004 Art. 5 of AUCPCC 2003 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	The GPPA Act 2014 does not provide for the publication of contracts on its website	Weak administrative transparency	GPPA has a functioning website were which could be leveraged on to publish awarded contracts
Protection of Whistleblower	Art. 32 & 33 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the	Gambian law does not provide or directly address the	Political will	1. Parliament to Legislate of The Gambia Anti-Corruption Bill, 2019 which protects

⁶⁰ Art. 32 of UNCAC, Art. 5(5) of AUCPCC, Art. of 8 ECOWAS Protocol on the Fight against Corruption

	Fight Against Corruption 2001 Art. 5 of AUCPCC 2003	protection of witnesses, experts, victims or persons close to them.		the whistleblowers and informants under section 79 2. Expand Section 80 of the AC Bill 2019 to detail how witnesses will be protected, (e.g. how will their protection be funded?)
Sanctions	Art. 10 of ECOWAS Protocol on the Fight Against Corruption 2001 Art. 30 of UNCAC 2004	Sanctions for procurement officials and vendors for bypassing procurement procedures is not sufficiently catered for	Inadequate legislative measures on procurement sanction	Explicitly define sanctions in the GPPA Act 2014 by

3. JUDICIAL INTEGRITY AND INDEPENDENCE

A. SUMMARY

LEGAL AND INSTITUTIONAL/ADMINISTRATIVE FRAMEWORK

Article 11 of the United Nations Convention Against Corruption (UNCAC) imposes a mandatory obligation on States parties to take measures to strengthen the integrity and the overall independence of the judiciary in combating corruption by preventing opportunities for corruption among members of the judiciary, specifically in relation to their conduct.⁶¹

The independence of the national authorities fighting transnational crime and corruption was highlighted and recognized in the United Nations Convention against Transnational Organized Crime, hence requiring States parties to adopt measures in ensuring effective action in the prevention, detection and punishment of corruption by public officials, including adequate independence to avoid undue influences.⁶²

Article 11, paragraph 1, of the Convention against Corruption builds on such provisions, thus emphasizing the independence of the judiciary and its crucial role in combating corruption. It follows therefore that this provision specifically requires States parties to take measures, in accordance with the fundamental principles of their domestic legal system and without prejudice to judicial

⁶¹ United Nations Convention Against Corruption; Article 11

⁶² United Nations Convention against Transnational Organized Crime; Article 9, para. 2.

independence:

(a) To strengthen integrity; and

(b) To prevent opportunities for corruption among members of the judiciary.⁶³

In the context of The Gambia, the implementation of such measures will include reviewing and revising laws and rules with respect to the appointment and conduct of members of the judiciary. Section 120 of the Constitution of The Gambia 1997 guarantees the independence of the judiciary.⁶⁴ In terms of judicial independence, this is constitutionally provided for, at least on paper and in the theoretical context. More specifically, sections 120-148 of the Constitution provides for the structure, composition and jurisdiction of the courts in The Gambia and the Constitution vests judicial power in the courts.⁶⁵

Section 120(3) of Constitution provides that:

In the exercise of their judicial functions, the courts, the judges and other holders of judicial office shall be independent and shall be subject only to this Constitution and the law and, save as provided in this Chapter, shall not be subject to the control or direction of any other person or authority.

The above provision of the Constitution builds on and adopts the internationally recognized concepts and principles of judicial independence. This is also consistent with part of the requirement of Article 11 of UNCAC. In theoretical terms, this means that the courts shall not be subject to the control of any person or authority outside the judiciary. To illustrate this notion, section 120(4) further provides that:

the government and all departments and agencies of the government shall accord such assistance to the courts as the courts may reasonably require to protect their independence, dignity and effectiveness.

Some constitutional experts applaud this provision, at least theoretically, because of the belief that it imposes a positive duty on all organs of the state to accord such assistance as the courts may require to protect and safeguard their independence, dignity and effectiveness.⁶⁶

The Draft Constitution also provides progressive provisions on the independence of the Judiciary. The draft constitution provides section 173 specifically for “Independence of the Judiciary”. In order to establish deterrence mechanism that will prevent the interference of the Executive in judicial proceedings, section 173(3) states;

⁶³ UNCAC

⁶⁴ Constitution of The Republic of The Gambia [1997]

⁶⁵ Section 120(2) of the 1997 Constitution

⁶⁶ S Nabaneh ‘*Constitutional Review in The Gambia: Contemporary Discussions*’ Law Hub 14 December 2018

No organ of State shall, directly or indirectly, engage in any activity that has the effect of coercing, hindering, frustrating or impeding, the Judiciary in the discharge of its functions.

The African Union Convention on Preventing and Combating Corruption (AUCPCC) does not have an express and specific Article on strengthening the integrity and independence of the judiciary and office of prosecutors, unlike Article 11 of UNCAC. However, it can be said that this is impliedly provided for in the various Articles, for example, Art. 2(2), and Article 7 which are concerned with the fight against corruption and related offences in the public service.⁶⁷

Article 5 of the Economic Community of West African States Protocol on the Fight against Corruption, insofar as preventative measures are concerned, obliges each State Party to take measures to establish and consolidate:

- (a) National laws, ethical guidelines, regulations and codes of conduct that would eliminate conflicts of interest, emphasize methods of recruitment based on merit and provide thorough measures aimed at guaranteeing reasonable standards of living;⁶⁸

This provision is similar to Article 7(2) of AUCPCC which requires the creation of an internal committee or similar body with the mandate to establish a code of conduct for public officials and to monitor its implementation.

In order for The Gambia to fully domesticate these international, regional and sub-regional instruments and enhance its compliance in the discharge of its obligations, there should be enactment of specific legislations that take into account and context the country's recent authoritarian history, excessive executive interference in judicial matters, culture and tradition, laws and integrity of the bench and how the judiciary and prosecutors were some of the main casualties of the former President's dictatorship. For example, he (Yaya Jammeh) hired and fired Judges of the Supreme Court, Court of Appeal and High Court as well as Magistrates at will when he perceives certain judicial decisions to be against the state, without resorting to appropriate procedures and legal processes. Arrests, detention, prosecution and conviction of Judges and Magistrates were also not uncommon. This targeting of judicial officers and exposure to heightened risks of arrest and dismissal, inevitably, undermined the independence of the judiciary. Consequently, this eroded the public's faith and trust in the bench's traditionally held cardinal principles of independence, neutrality and impartiality.

In order to address these challenges, it may be prudent to necessitate revisiting the provisions of the Constitution and as well as assessing the rules and procedures under which judicial appointments are made, the mechanisms and procedures for accountability of the judiciary in order to more accurately

⁶⁷ African Union Convention on Preventing and Combating Corruption

⁶⁸ Economic Community of West African States Protocol on the Fight against Corruption

establish if they fulfill the requirements of Article 11 of UNCAC,⁶⁹ Article 7 of AUCPCC and 5 of the Economic Community of West African States Protocol on the Fight against Corruption.

In terms of judicial appointments and security of tenure of judges for instance, section 138 of the Constitution gives the President power to appoint the Chief Justice after consultation with the Judicial Service Commission (JSC).⁷⁰ For Judges of the superior courts, they are generally appointed by the President on the recommendation of the JSC. However, in the past, the former President had some degree of influence in the composition of the JSC and appointed certain individuals to the JSC purposely to serve his political interests. The consequence therefore is, the President may appoint judges who are more inclined to serve his agenda and political interests as opposed to upholding the values of justice, fairness, impartiality and judicial independence.

For Magistrates, the JSC has the power to appoint them and other members of the lower courts. The Commission is also the body mandated to appoint judges of the Special Criminal Court albeit subject to National Assembly approval. The President has complete control over the appointment of the Chief Justice with the JSC simply playing not more than a consultative role. This raises serious flaws, weaknesses and dangers in terms of potential influence and leverage the Presidential may have in the recruitment of judges of the superior courts.

In terms of dismissal, section 141(2)(c) of the Constitution provides that a judge's appointment may be terminated by the President in consultation with the JSC. The difference between 'in consultation with' and 'upon the recommendation of' of the JSC gives the impression that the President must follow the decision of the JSC, however, this was not what obtained during Jammeh's time, qualifying assumptions that he singlehandedly exercised the authority to appoint and terminate judges without the complying with the relevant constitutional requirements. For the President to be vested the power to appoint superior court judges and at the same time given the same constitutional powers to terminate the appointment of superior court judges is a serious cause for concern and in practical terms, fundamentally compromises and undermines the sanctity and principle of judicial independence and integrity. This is because when so much power is entrusted in the President and given the power to hire and fire, then, the perception that judges who want longevity on the bench must compromise their dignity and independence to suit the political interferences of the President or else risk dismissal. This is certainly inconsistent with Article 11 of UNCAC.

In terms of code of conduct as envisaged and or required by Article 11(1) of UNCAC,⁷¹ Article 7 of AUCPCC and Article 5 of the Economic Community of West African States Protocol on the Fight against Corruption, section 221 of the Constitution provides the application of code of conduct for

⁶⁹ Technical Guide To The United Nations Convention Against Torture; United Nations Office on Drugs and Crime Vienna: United Nations New York, 2009

⁷⁰ 1997 Constitution of The Gambia

⁷¹ Technical Guide To The United Nations Convention Against Torture; United Nations Office on Drugs and Crime Vienna: United Nations New York, 2009

anybody who holds public office or holds office in public service. Section 222 provides the framework for code of conduct and requires public officers to respect the rules and conduct themselves in a manner which promotes confidence in the integrity of public office.

In terms of laws in this regard, the Judges (Supplementary Code of Conduct) Act, Act No. 4 of 2009,⁷² which applies to all court and judicial officers, including Magistrates and *Qadis*, is in line with the constitutional requirement in section 221 which prescribes the application of code of conduct. The 2009 Act in sections 3, 4 and 5 emphasizes judicial independence, integrity and impartiality respectively. In terms of procedure for laying and investigating breaches and enforcing the Code of Conduct, section 20 creates the establishment of Ethics Committee. The Chief Justice, Hassan B. Jallow in the official opening of the 2019 Legal Year in February 2019, stated that he had revived and reconstituted the Judiciary Ethics Committee, chaired by a Justice of the Supreme Court and assisted by two Court of Appeal judges.⁷³ The role of the Committee, *inter alia*, is to monitor and investigate the conduct of judges, magistrates and *Qadis*, to ensure compliance with the Code of Conduct for judicial officers. The Chief Justice also revealed the establishment of a Human Resource and Monitoring Unit, designed to improve staff management and performance.⁷⁴ Even though the Act was passed in 2009, it took almost a decade for an Ethics Committee to be properly constituted, functional and operational. This gives credence to accusations that under the previous regime, the judiciary was coerced into subjugation and the independence and integrity of judicial officers were highly questionable and compromised.

However, under the current transition government, there appears to be significant improvement in the areas of judicial independence and integrity. Notable strides have been made in terms of appointments of Gambians on the bench in the superior courts, a move seen as ‘Gambianization’ of the bench,⁷⁵ which was conspicuously absent during most of Jammeh’s 22-year autocratic rule. Out of 25 judges, 17 are Gambians.⁷⁶ This had been manifestly demonstrated in two significant decisions of the Supreme Court and Court of Appeal on 28th January 2020 and 1st June 2020 respectively. The Supreme Court in the case of *Ya Kumba Jaiteh v Clerk of the National Assembly, The Attorney General and Others*,⁷⁷ declared the President’s attempted removal of a nominated member from the National Assembly as unconstitutional and null and void and ordered the President’s new nominee to vacate the House. In the case of *M.A. Kharafi and Sons Limited v Attorney General*,⁷⁸ the Court of Appeal in a ruling on an application for stay of execution of the Janneh Commission adverse findings,⁷⁹ decided that the State

⁷² Judges (Supplementary Code of Conduct) Act 2009

⁷³ Foroyaa Newspaper; Gambia: Chief Justice Presides Over Opening of 2019 Legal Year

⁷⁴ Foroyaa Newspaper; Gambia: Chief Justice Presides Over Opening of 2019 Legal Year

⁷⁵ www.statehouse.gm

⁷⁶ www.gambiadaily.gov.gm

⁷⁷ Civil Suit No. 001/2019

⁷⁸ Civil Appeal No.: GCA 046/2019

⁷⁹ www.foroyaa.net

did not have the legal power to execute the recommendations of adverse findings without resorting to court.

Many interpreted this ruling as a slight on the Ministry of Justice and the government in general and some observers say that the bench would not have made this kind of bold decision in the previous administration. This reinforces the public’s perception of the judiciary’s new found assertiveness, independence, neutrality and judicial activism, willing to intervene where and when appropriate to limit executive overreach and interference in judicial matters. There still remain endemic constraints and challenges that impede the progress of the judiciary in terms of strengthening its independence and integrity. Financially, the executive now places the budget of the Judiciary before the National Assembly without amendment.

A lack of specialized judicial anti-corruption training to all judicial staff, in particular, judges, magistrates and court support staff. The process in which cases are assigned in the subordinate courts may be susceptible to corruption. Legal proceedings are transparent and judges give reasons as to why they reach a judgment. The Plaintiff and Defendant are both served with the rulings and each has the right to challenge the decision at the court of appeal. The public upon written request could access legal proceedings or documents at the High Court of The Gambia. Even though there is transparency in legal proceedings, improvements are needed in this area. Section 223 of the 1997 Constitution and section 3 of the Judges (Supplementary Code of Conduct) Act, Act No. 4 of 2009 provides for the Judges to declare their assets to the Ombudsman.⁸⁰

Section 123 of the Constitution provides immunity for judicial officers from liability for any act or omission in good faith in the exercise of their judicial function. All superior court judges have police protection both at work and home. Magistrates only have protection during official hours while at work. However, the two major challenges are judicial remuneration and lack of adequate resources and incentives. There is a massive disparity in financial earnings between lawyers in private practice and judges on the bench and some argue that the remuneration of judicial officers, particularly Magistrates and those in the subordinate courts, are considerably low and as such is a potential source of corruption and related offences.

B. RECOMMENDATIONS

Recommendation	Source & Year	Reasons for non-implementation	Obstacles	Factors to Leverage (Solutions)
Specialized anti-corruption training for Judicial Officials	Art. 18 of AUCPCC 2003 Art. 36 & 60 of	Ineffective anti-corruption effort from the state	Resources	Leverage on the expertise of other countries and anti-

⁸⁰ Judges Supplementary Code of Conduct, S3 Act No. 4 of 2009

	UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001			corruption experts to provide specialized anti-corruption training for national level judges and staff
Increase remuneration of Judicial Officials (esp. judges)	Art. 7 of UNCAC 2003 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Grading scale of judges. Underfunding and lack of expertise	Resources Political Will	The judiciary's budget cannot be amended by the Executive, this gives the judiciary the opportunity to increase its fiscal budget that will adequately cater for its staff
Effective Disclosure of Assets	Art. 7 of AUCPCC 2003 Art. 8 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Unwillingness of public officials to disclose their assets	Weak law-enforcement body	Strengthen office of the Ombudsman in order to effectively enforce asset disclosure laws in the Gambia
Transparency in Legal Proceedings. (Publication of court rulings online)	Art. 13 of UNCAC 2004 Art. 9&12 of AUCPCC 2003 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Ineffective website	Political will	Increase the capacity of the Judiciary ICT department and frequently supply them with court rulings or documents that should be made public

4. PUBLIC SECTOR ETHICS

A. SUMMARY

The term ethics entails integrity, uprightness and honesty. For Government workers and agencies, maintaining ethical behavior involves more than simply avoiding dishonest conduct. It involves applying public sector values such as impartiality, accountability and transparency. Ethics is also considered as being incorruptible. However, ethics goes beyond the avoidance of being dishonest

because it is determined by intangibles like personal and societal values. Ensuring ethics in public sector activities is part of every public official's duty to adopt processes, practices and behavior that enhance and promote public sector values and interests.

The Public Service of the Government of The Gambia derives its authority from Chapter XI, sections 166-171 of the 1997 Constitution.⁸¹ The Public Service comprises the Civil Service, Local Government Authorities and Public Enterprises as well as executive agencies. The power to make appointments, removal from office, reappointment, reinstatements and the exercise of disciplinary control is vested in the Public Service Commission. The power to appoint the Head of the Civil Service, Chairman and members of the Public Service Commission is exercised by the President of the Republic.

Article 7-8 of the UNCAC, Article 7 of AUCPCC and Article 5 of ECOWAS Protocol on the Fight against Corruption clearly states what states party should do in preventing and strengthening anti-corruption efforts in the public sector. The Gambia has several domestic laws and regulations corresponding to Article 7-8 of UNCAC, Article 7 of AUCPCC and Article 5 of ECOWAS Protocol on the Fight against Corruption. Section 172 of the 1997 Constitution established the Public Service Commission, which is mandated “to make provision for the overall management and efficiency of the Public Service;” Chapter XXI of the 1997 Constitution also defines the Code of Conduct in the Public Service which corresponds to Article 8(2) of UNCAC, Article 7(2) of AUCPCC and Article 5(a) of ECOWAS Protocol on the Fight against Corruption.

NATIONAL AREAS OF STRENGTH AND WEAKNESSES

The Gambia’s public sector laws correspond to most regional and international anti-corruption commitments that the Gambia is a signatory to. *The Gambia Public Service Act, 1991, The Public Service Commission Regulations [revised edition, September 2013], The General Orders [revised edition, September 2013], The Code of Conduct for the Civil Service of The Gambia, Criminal Code, The Ombudsman Act, 1997, the 1997 Constitution* are the main current laws and regulations that governs the public service of the Gambia. The Gambia government in December 2019 tabled the Anti-Corruption Bill, 2019 and the Access to Information Bill, 2019 at the National Assembly;⁸² two laws that will further strengthen the anti-corruption efforts in the Gambia public service when enacted. Chapter V of the Draft 2020 Constitution also has progressive provisions that are meant to improve leadership and integrity in the public sector⁸³. Section 30 of the Draft 2020 Constitution made provision for the legislation on leadership where;

“an Act of the National Assembly shall make provision:

- (a) establishing procedures and mechanisms for strengthening the administration of this Chapter;
- (b) prescribing penalties, in addition to those specified in section 29, for contravention of this Chapter; and
- (c) for any other matter that will ensure the promotion of the principles of leadership and integrity referred to in this Chapter, including the effective enforcement of this Chapter.

⁸¹ 1997 Constitution of The Gambia, S166-171

⁸² Gambia Anti-Corruption Legislation Passes at National Assembly, December 2019, <https://www.gunjuronline.com/post/gambia-anti-corruption-legislation-passes-at-national-assembly>

⁸³ CRC Draft Constitution 2020, Chapter V

In the Public Service Regulations Section 14(b) and Section 5 of the Public Service Act, 1991 provides for the training of public servants⁸⁴. According to the Permanent Secretary of Personnel Management Office (PMO) part of the training modules include Financial Management, Ethics, Leadership etc., which is conducted yearly. Training of Civil Servants in management administration, financial management, development and gender issues continue to be conducted at the Management Development Institute (MDI). With the assistance of the Capacity Building and Economic Management Program (CBEMP), training of Civil Servants has been possible, especially for the revenue-generating institutions. However, there is no tailored course on anti-corruption that public servants are subject to in order to prevent or report corruption in the public service.

Each public servant, upon receiving their appointment letter are either given “The Code of Conduct for the Civil Service of The Gambia”, “The General Orders” and the “Public Service Commission Regulations” or referred to the website of the Public Service Commission or that of PMO. Staff are merely given the copies of this rules and regulations but they are not trained on them. The Code of Conduct applies to the civil service except that of the Military, which used its own Code of Conduct called “Terms and Condition Services (TACOS).

Section 222 of the 1997 Constitution provides legislative framework in identifying and preventing conflict of interest and in as well as addressing nepotism in the public sector⁸⁵. Section 88 of the Criminal Code (Cap 10:01) states that –

“A person who, being employed in the public service, receives any property or benefit of any kind for himself or herself, on the understanding, express or implied, that he or she shall favor the person is interested, in a transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he or she is interested, and any person employed in the public service, commits a misdemeanour, and is liable to imprisonment for a term of six months⁸⁶.”

In addition, Section 23 of The Gambia Anti Corruption Bill, 2019 specifically addressed conflict of interest in the public service. Although there are progressive laws in identifying and preventing conflict of interest and nepotism in the public sector, in practice conflict of interest and nepotism is an issue that will require the public service to introduce stringent administrative obstacles to address these menace as it continues to undermine the integrity of the public service. In order to promote the reporting of corruption in the public sector, the identity protection of whistleblowers should be guaranteed in law and in practice as stated in Article 5(5) of AUCPCC, Article 32 of UNCAC and Article 8 of ECOWAS Protocol on the Fight against Corruption.

The current laws of the Gambia do not protect the identity of whistleblowers. Public servants who wish to anonymously report public sector corruption are not adequately protected. If the Anti-Corruption Bill, 2019 is passed, Whistleblowers will be protected under Section 79-80 of Act.

⁸⁴ Public Service Act, 1991

⁸⁵ 1997 Constitution of The Gambia, S222

⁸⁶ Section 88 of the Criminal Code (Cap 10:01)

There is a degree of transparency in the recruitment, promotion and retirement of public servants. As it were before, only Ministries oversee the recruitment of staff in their respective departments', which in some cases give room for favoritism. According to the Permanent Secretary of PMO, since 2017 the Personnel Management Office now only does not serve Ministries with application files, but also participates in the recruitment process to ensure transparency and that appointment of staff follows due process⁸⁷.

Part III of the PSC Regulations (Appointments, Promotions and Transfers) outlines the procedures in appointments, promotion and transfers of public officers. All appointments and promotions are in writing in accordance with the PSC Act and Regulations⁸⁸. The minimum qualifications for appointment to any post in the public service are stipulated in the Scheme of Service applicable to that Cadre. Where there is a vacancy in the public sector that is to be advertised, the requirements for that position shall be published as stated under section 16 of the PSC regulations. In terms of promotion, the PSC Regulations under section 19 stipulates that officers are to be considered for promotion based on merit, ability, seniority, experience, and official qualifications⁸⁹.

The Statutory retirement age in the Gambia public sector is at 60. For voluntary retirement, a public officer will have to attain the age of 45. A public servant is entitled to gratuity pension after serving five years in the public service and he/she will receive a onetime pension allowance. To be eligible for lifetime pension, one must attain the retirement aged and serve at least 10 years in the public service. PMO annually serve Ministries list of public servants who are eligible for retirement in order to prevent "over stay"

According to the Permanent Secretary of PMO, the poor wages in the public is an "open secret". It is in this background that the government of Adama Barrow in November 2018, during the 'Budget Speech' at the National Assembly announced the increment of salaries in to 50% for public officials and 100% for pensioners effective January 2019⁹⁰.

The Gambia Ombudsman is mandated to receive complaints from public servants who are grieved with maladministration. The Ombudsman is given investigative powers under the Ombudsman Act, 1997. It serves as an external body that receives and investigates complaints in the public sector. PMO has been and still providing government institutions advices on administrative and ethical issues. The office also advises government institution on issues relating to dismissal and compensation of staff.

To ensure effective and efficient public sector ethics, there must be a system with an application of carefully developed rules and regulations to govern behavior, performance and standards. In the absence of the foregoing, organizations gradually decay and degenerate into sterile and ineffective organisms incapable of accomplishing their mission and objectives. When decay sets in within any institution or public body (as a result of the absence or non-observance/adherence or application of rules and regulations) a tendency towards individualism inevitably surfaces within the institution or public body. This phenomenon creates fertile ground for the growth and development of

⁸⁷ Public Service Act, Part III 1991

⁸⁸ Public Service Commission Regulations 2013, page 11

⁸⁹ Public Service Commission Regulations 2013, S19 page 13

⁹⁰ Budget Speech 2019, 136 page 36

characteristics, which are inimical to institutional revival and development. These characteristics manifest themselves in the following manner:

- The small group mentality or cronyism - a phenomenon that encourages the pursuit of group interest and agenda as opposed to those of institutional goals and objectives;
- The boss mentality – when allegiance and loyalty to ‘the boss’ take precedence over loyalty to the vision and values of the organization; and
- The hedonistic mentality—when the dominant preoccupation of the employee is the pursuit and acquisition of material and financial gain.

The non-adoption and application of rules and regulations in any institution or public body inevitably leads not only to the decay of the institution but to its ultimate death. The accomplishment of the mission of the Civil Service requires the maintenance of an appropriate governance and regulatory environment capable of instilling a work-ethic culture that stimulates productivity, proficiency, commitment, discipline and integrity.

The Gambia’s legislative and administrative framework corresponds to some regional and international anti-corruption commitments that it has ratified. It deals with issues of conflict of interest, disclosure of assets, acceptance of gifts, confidential information and involvement in political activities. In addition, the Local Government Act, 2002 outlines major legislative scrutiny, ethics and integrity guidelines. However, most of these provisions are not effectively enforced to seriously address corruption in the Gambia public sector, which has been undermining efficient public service delivery.

B. RECOMMENDATIONS

Recommendation	Source & Year	Reasons for non-implementation	Obstacles	Factors to Leverage (Solutions)
Specialized anti-corruption training for Civil Service	Art. 18 of AUCPCC 2003 Art. 36 & 60 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Ineffective anti-corruption effort from the state	Resources	Leverage on the expertise of other countries and anti-corruption experts to provide specialized anti-corruption training for national level judges and staff
Increase remuneration of	Art. 7 of UNCAC 2004 Art. 5 of ECOWAS	Current grading scale of the	Resources	The government of the Gambia could

Public Officials	Protocol on the Fight Against Corruption 2001	public service.	Political Will	reduce corruption in the public sector and increase public sector integrity if they further increase the payment scale of public officials. Especially junior staff
Protection of Whistleblower	Art. 32 & 33 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001 Art. 5 of AUCPCC 2003	Gambian law does not provide or directly address the protection of witnesses, experts, victims or persons close to them.	Political will	1. Parliament to Legislate of The Gambia Anti-Corruption Bill, 2019 which protects the whistleblowers and informants under section 79 2. Expand Section 80 of the AC Bill 2019 to detail how witnesses will be protected, (e.g. how will their protection be funded?)
Code of Conduct	Art. 7 of AUCPCC 2003 Art. 8 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Public officials or law enforcement body fear of being incriminated	Political and Administrative will Weak law enforcement or oversight body	The Ombudsman's office or the Anti-Corruption Commission should have a sub-body that will monitor and punish public officials that violates the Code of Conduct
Access to Information	Art. 13 of UNCAC 2004 Art. 9&12 of AUCPCC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Current Gambian laws does not adequately provide for access to public information	National Assembly refusal to pass the Access to Information Bill	The Access to Information Bill 2019, is already tabled at the National Assembly. The bill should be prioritize and legislated in order to improve

				transparency and public oversight in the government.
Effective Disclosure of Assets	Art. 7 of AUCPCC 2003 Art. 8 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Unwillingness of public officials to disclose there assets	Weak law-enforcement body	Strengthen office of the Ombudsman in order to effectively enforce asset disclosure laws in the Gambia
Transparency in the public sector	Art. 13 of UNCAC 2004 Art. 9&12 of AUCPCC 2003 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Ineffective website or unavailable website	Political will	Government institutions, public enterprises, and local government authorities should make their budget expenditures and audited accounts available on their website

5. LAW ENFORCEMENT

A. SUMMARY

CONCEPTUAL ISSUES OF CORRUPTION AND ITS CONSEQUENTIAL EFFECTS

Various interpretations of corruption exist around the world. This had led to a consistent understanding that there is no agreement on a conclusive definition of the term.⁹¹ It is not surprising therefore that The Gambia Anti-Corruption Bill, 2019 did not specifically define the term “corruption”, instead the Bill only states that “*corruption*” includes bribery, fraud, embezzlement, diversion of public funds, trafficking in influence, illicit enrichment, abuse of power and other related offences. This approach is commendable as it leaves no ambiguity for potential offenders relying on the definition to argue that their conduct or practice does not constitute corruption, assuming it had been defined in the Bill. Generally, the broad meaning of corruption, at least for the purposes of enforceability, widens the scope. Therefore, even if a conduct or practice does not fall under in one of the principal offences listed in the Bill, it could be qualified under “other related offences” as envisaged by the National Assembly, built on international norms and best practices to ensure broadening the meaning of corruption.

⁹¹ What do we talk about when we talk about corruption? Robert Klitgaard, Journal: SSRN Electronic Journal, 2007

The African Union Convention on Preventing and Combating Corruption defines a series of corruption linked offences in Article 4. Article 5 which is about ‘the legislative and other measures’ requires States parties to “*establish, maintain and strengthen independent national anti-corruption authorities or agencies.*” Other measures include the strengthening of internal accounting and auditing systems, especially in the public sector, the protection of witnesses and informers in corruption cases, denouncing corruption-promoting systems and educating the domestic populations on corruption.

Article 20(4) of the AU Convention sets out that ‘the national Authorities or Agencies’ responsible for combating corruption related offences should “*enjoy the necessary independence and autonomy enabling them to carry out their duties effectively.*”⁹² Corruption has a detrimental impact on the development of any country, for it affects the effective provision of public services, particularly services to the most vulnerable groups in society. Despite the plethora of efforts deployed to combat corruption, it remains an endemic problem in most countries, of which The Gambia is no exception.

Corruption in The Gambia’s public sector remains endemic. Whilst the media and civil society now, especially during the current transition period, often referred to as “New Gambia” to depict a free and democratic Gambia, away from the undemocratic and dictatorial regime of the past, expose corruption scandals and yet it seems corruption remains a serious cause for concern. The activism and revelations of the media and civil society have not seriously tackled corruption. This gives an impression of impunity in respect of corruption related offences by the powerful elite and political establishment. The Gambia Anti-Corruption Commission Act 2012, for example, are some of the laws that have been enacted to combat corruption but the lack of national institutions and policy framework remain perhaps the main reasons why there has been very little progress.

In 2003, member states came together to sign the United Nations Convention against Corruption (UNCAC), which came into force in 2005. Since The Gambia became a party to UNCAC in 2005; until now, its legal framework is yet to conform fully to international standards. The aim of the treaty is to tackle the growing threat that corruption poses to all nations. In spite of the existence and active implementation of UNCAC, the ECOWAS Protocol on the Fight against Corruption 2001 and many years after the entry into force of the African Union Convention on Preventing and Combating Corruption (AUCPCC), the problem of corruption continues to be pervasive and destructive to member states. To highlight this point, the African Union (AU) designated 2018 as the year for “winning the fight against corruption.”⁹³ In order to make an appraisal of our commitment to AUCPCC, it is pertinent to ask what the A.U had achieved as of 2020 in “winning the fight against corruption.”

⁹² Effectiveness of Anti-Corruption Agencies in East Africa Kenya, Tanzania and Uganda: A review by AfriMAP, 2015

⁹³ Sierra Leone National Anti-Corruption Strategy (2019-2023) “A PUBLIC-PRIVATE INITIATIVE AGAINST CORRUPTION” “...Confronting corruption as a threat to every sphere of national development and building an ethical and accountable republic that promotes zero tolerance for corruption to inspire integrity, transparency, accountability and the rule of law”

From the Gambian perspective, not much progress had been made in the fight against corruption apart from the enactment of The Gambia Anti-Corruption Commission Act 2012. The need to ensure adherence to treaty obligations necessitates The Gambia Anti-Corruption Bill 2019, which is at an advanced stage in the National Assembly. The Bill, if eventually enacted into law will set the needed foundation for accountability in public and private sectors of the country.

EXTENT TO WHICH GAMBIA ADOPTS INTERNATIONAL AND REGIONAL RECOMMENDATIONS ON ANTI-CORRUPTION

The Gambia, by its enactment of Gambia Anti-Corruption Commission Act, 2019 and its repealing Gambia Anti-Corruption Bill 2012, had complied with its obligations under Article 6 of UNCAC, Article 5 of AUCPCC and Article 5 of ECOWAS Protocol on the Fight Against Corruption, which requires each State party to establish a preventive anti-corruption body. These anti-corruption bodies (commissions, agencies, units, authorities, etc) may carry different names from country to country. Article 6 of UNCAC was inspired by a series of previous documents, notably Resolution (97) 24 “On the 20 Guiding Principles for the Fight against Corruption”, in which the need for appropriate institutional autonomy of those involved in the fight against corruption was highlighted (principle 3).

Article 40 of UNCAC obliges each state party to ensure that “*....in the case of domestic criminal investigations of offences there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws⁹⁴”*. The Gambia Anti-Corruption Bill 2019 aptly complies with this obligation. Pursuant to section 59(2), an officer of the Commission may inspect and take copies of any banker's book, bank accounts or any documents belonging to the bank or financial institution for the purpose of an investigation of a corruption offence. Furthermore, he/she may inspect the contents of any safe deposit box in the bank or even take possession of any books, documents, accounts, titles, securities or cash. However, an officer of the Commission who acts in this regard must have had authorization from the Chairman of the Commission who, in a similar vein, can only grant such authorization on obtaining a Court order. Section 59(5) of the Bill offers protection to the bank or financial institution to the effect that a person who discloses any information or produces any account, document or article to an authorized officer of the Commission shall not, on account of such disclosure or production, be liable to any prosecution. This serves as an exception to bank secrecy laws under which such disclosure would otherwise have been illegal.

In considering the implementation of Article 6, attention needs to be also paid to Article 36 of UNCAC, which foresees the need for establishment of a specialist investigative anti-corruption agency. In Article 6, the main focus of the body or bodies is on prevention, and specifically in relation to implementing the prevention policies of Article 5 of UNCAC. There is no universally accepted model but State parties may consider a number of structural features, which have been deemed useful

⁹⁴ UNCAC Art. 40

in contributing to the effectiveness of a preventive anti-corruption body or bodies.⁹⁵ A comparative overview of different types of specialized institutions encompasses a multitude of approaches and solutions. Various Models of Specialized Anti-Corruption Institutions can be summarized and analyzed according to their main functions, as follows:

- ❖ Multi-purpose agencies with law enforcement powers and preventive functions;
- ❖ Preventive, policy development and co-ordination institutions;
- ❖ Law enforcement agencies, departments and/or units.

The first model is possibly the only one that would – strictly speaking – live up to the name “anti-corruption agency” as it combines in one institution a multifaceted approach of prevention, investigation and education. The second model includes institutions that have one or more corruption prevention functions. The law enforcement model combines anti-corruption detection, investigation and prosecution in one body. Sometimes the law enforcement model also includes elements of prevention, co-ordination and research functions. This is perhaps the most common model applied in Western Europe.⁹⁶ The Anti-Corruption Commission under section 220 of the Draft Constitution 2019 is vested with investigative powers, as well as powers to “initiate and conduct prosecution for any act of corruption”. In pursuit of section 6(h) of the Gambia Anti-Corruption Bill 2019, the anti-corruption commission is vested, in like manner, with power to “investigate and prosecute any acts of corruption or other matters proscribed under this Act”. Thus, both legal documents of The Gambia seem to prefer the law enforcement model to the rest of the other approaches.

However section 76 of the same Gambia Anti-Corruption Bill 2019 limits the prosecution powers of the Commission as the Commission cannot initiate any prosecution without the consent of the Attorney General. The Attorney General is a political appointee who double as the Minister of Justice appointed by the President his/her security of tenure is not guaranteed in practice. The section reads:

(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.

Effective law enforcement is essential to deter grand corruption and break the cycle of impunity. High profile corruption cases have to be successfully investigated and prosecuted to ensure the credibility of anti-corruption efforts and restore the public confidence in certain levels of internal security and rule of law. As it is not possible to achieve high standards of accountability without a well-functioning judicial system of courts, law, police and prosecutors, many donors’ interventions have focused on strengthening the capacity and independence of law enforcement authorities and the criminal justice system to effectively combat corruption.⁹⁷ Article 30 of UNCAC deals with some of the most important aspects of enforcing the law and it encompasses provisions with regards to the investigation and prosecution of corruption cases. This Article devotes significant attention to sanctions (both

⁹⁵ Technical Guide to the United Nations Convention Against Corruption: United Nations, New York, 2009

⁹⁶ Specialized Anti-Corruption Institutions: Review of Models – ISBN-978-92-64-03979-7 © OECD 2008

⁹⁷ What do we talk about when we talk about corruption? Robert Klitgaard, Journal: SSRN Electronic Journal, 2007

criminal sanctions and “ancillary” sanctions), as well as provisions on disciplinary measures and sanctions relating to the gravity of the offence or linked to the nature of the offence, such as disqualification.

Article 33 of UNCAC directs each State party to “*consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith.....any facts concerning offences...*” of corruption. Even though this is a non-mandatory provision, the protection of whistleblowers cannot be overemphasized.

Effectively, the Anti-Money Laundering and Combating of Terrorist Financing Act 2012 and the Gambia Anti-Corruption Bill 2019, specifically sections 35 and 79 respectively, offer protection to whistleblowers of suspicious corrupt practice and or money laundering matters. Article 58 encourages States parties to establish financial intelligence units (FIUs) in order to increase the effectiveness of cooperation for asset recovery. In setting up FIUs, States parties may consider different models, according to their legal frameworks and economic characteristics, for example:

- The administrative model, which is either attached to a regulatory/supervisory authority, such as the central bank or the Ministry of Finance, or as an independent administrative authority;
 - ❖ The law enforcement model;
 - ❖ The judicial or prosecutorial model, where the agency is affiliated with a judicial authority or the prosecutor’s office; or
 - ❖ The hybrid model, which is some combination of the above.

In all cases, however, a core component is agency independence, which could be guaranteed in several ways. In the Gambia, the FIU is created under section 3 of the Anti-Money Laundering and Combating of Terrorist Financing (AML/CFT) Act 2012. The FIU under section 5 of AML/CFT derives its power to detect and prevent acts of money laundering and terrorist financing. Section 51 and 57 of AML/CFT 2012 gives the FIU powers to freeze, forfeit or confiscate proceeds of corruption.

The FIU under the AML/CFT can receive and investigate report of corruption. Although section 37 of the act protects reporting agencies/individuals against criminal and civil liability, however, there is insufficient provision(s) that encourages and protect whistleblowers. This provision could be expanded to comply with Article 5(5) of AUCPCC. It’s powers and functions, to be more in line with The Gambia’s international and regional obligations, need to be expanded and more focused and the capacity of the agency built to be able to fully carry out its mandate, effectively and efficiently.

Section 15 of AML/CFT grants immunity to the Director of the FIU, staff, officer, agent or any person acting under the directives of the Director of FIU and they shall not be subject to any legal proceedings or actions in lawfully conducting their duties and discharging their powers.

B. RECOMMENDATIONS

Recommendation	Source & Year	Reasons for non-implementation	Obstacles	Factors to Leverage (Solutions)
Independence of dedicated anti-corruption agencies	Art. 5 of AUCPCC 2003 Art. 6 & 36 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001 FATF Recommendation 29 2012	Prolong delay in the legislation of The Gambia ACB 2019	Politics	<ol style="list-style-type: none"> 1. The appointment and removal of AC Commissioners by the President should be subject to National Assembly approval. This could be done by amending section 3(4) of ACB 2019 2. The AC Bill should be specific in regards to the setting up of the “vetting committee” 3. Increase the number of AC Commissioners in section 3(3) to 5 to avoid remainder of 2 if one is conflicted or recuse him/herself 4. The Anti-Corruption Commission should have prosecution powers without seeking consent from the Attorney General. Thus section 76 of the AC Bill should be repealed 5. Reconstruct the board of AML/CFT Act 2012 to avoid executive autonomy
Specialized Anti-Corruption Training for Law Enforcement Agencies	Art. 18 of AUCPCC 2003 Art. 36 & 60 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption	Limited training on specialized anti-corruption courses	Resources	Law enforcement agencies should be provided with technical resources on anti-corruption law enforcement

	2001 FATF Recommendation 29(10) 2012			
Effective engagement of the Media and Civil Society Participation	Art. 13 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001 Art. 12 of AUCPCC 2003	Poor anti-corruption joint effort between anti-corruption bodies and civil society and the media	Lack of confidence between government and the civil society Political Will	1. Civil society and media should be effectively engaged by anti-corruption bodies and preventing and combating corruption in the public sector 2. Government should encourage CSOs and Media to conduct investigative journalism focusing on public and private sector corruption 3. Government should use credible corruption findings that are reported by Media and CSO
Law Enforcement Agency (Police)	Art. 5 of AUCPCC 2003 Art. 6 & 36 of UNCAC 2004 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001 FATF Recommendation 29 2012	Executive control over the police		The police should investigate audit findings submitted to it by the National Audit Office pursuant to section 160(5) of the 1997 Constitution
Transparency	Art. 13 of UNCAC 2004 Art. 9&12 of AUCPCC 2003 Art. 5 of ECOWAS Protocol on the Fight Against Corruption 2001	Current laws does not sufficiently provide for access to information	Government secrecy	The National Audit Office and government institutions and enterprises should publish timely audited report for public scrutiny

6. POLITICAL FINANCE

A. SUMMARY

Political finance has a positive role to play in democracies: it can help strengthen political parties and candidates, and provide opportunities to compete on more equal terms. Indeed, sufficient access to funding that is provided with no strings attached is crucial to the overall vibrancy of an electoral and democratic system—which helps citizens believe in (and trust) politics and politicians.

Unfortunately, under the surface political systems often work rather differently from the ideals of inclusiveness and fair play on which the idea of the democratic process is based. In extreme cases, elections become a mere sham, offering no real choice to the electorate. Such extremes can be caused by many factors, including elite dominance, electoral fraud and the threat (or use) of violence. One of the main factors preventing the political process in many countries from attaining democratic ideals is the influence of money. While money is necessary for democratic politics, it can also be a tool for some to unduly influence the political process by buying votes or influencing policy decisions. For example, interest groups may buy access to the corridors of power or issue outright bribes to decision makers. Foreign interests and criminal groups use money to manipulate politics in their favor, while government parties use state resources to maintain their grip on power.

The flows of money through the political sphere can threaten key democratic values. Politicians become less responsive and accountable to voters if they are too closely tied to financiers, and the equality of political competition is skewed if access to funds becomes a determining factor. The desire of various actors to hide how they raise and spend money on political activities can seriously hurt the transparency of the political process. Around the world, awareness has gradually been building that organizing well-administered elections does nothing for democracy if the outcome is decided by the banknote rather than the ballot.

The open and transparent funding of parties and candidates is crucial in the fight against corruption and to gain and maintain citizens' trust in politics. Among other things, transparency helps level the playing field by exposing and punishing undue influence over politicians, protects against the infiltration of illicit money into politics, and encourages parties and candidates to adhere to the rules. This need for transparency in the role of money in politics has been recognized internationally through the United Nations Convention against Corruption (UNCAC), which states that countries should 'consider taking appropriate legislative and administrative measures to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties'⁹⁸.

In the Gambia a significant gap in the legal framework is the absence of any meaningful regulation of campaign and political party finance. There are no ceilings on donations or expenditure, and there are no effective reporting requirements of campaign expenditure for political parties even though they are required in law.

⁹⁸ Article 7.3 of UNCAC

The Election Act (Cap 3:01, Volume 1 of The Laws of The Gambia, 2009) provides the legal framework that defines the funding of political parties⁹⁹, which are inline with Article 10 of AUCPCC and Article 7(3) of UNCAC. Section 104 of the Gambia Elections Act states:

(6) A political party shall –

(a) as occasion may require, declare to the Commission and the public its revenue and the source of its revenue and assets;

(b) publish annually, its audited accounts and lodge a copy with the Commission. (7) A political party shall not receive any contribution from any person who is not a citizen of The Gambia or from any corporate or incorporated body

These provisions are however not in practice. Political parties have not been serving the Independent Electoral Commission (IEC) with their annual audited accounts neither publishing them on their website. The IEC has not been enforcing these laws to political parties and thus unable to determine whether or not, political parties are receiving donations from non-Gambians, international and national corporate or incorporated bodies. The act does not specifically define the sanctions if political parties fail to comply with these provisions. This has given political parties the leverage to receive funding from non-disclosed sources to implement their political activities without serving the IEC with their annual audited accounts.

However, the Election Act (Sections 115-123) explicitly defines sanctions on political parties who conduct in illegal or corrupt practices, including bribery, treating, undue influence and personation is liable to a fine and/or imprisonment for up to 5 years. In the Election Bill 2020, section 126(1) the monetary “punishment for corrupt practices” is set at D25,000 (\$500) which is very low for punishing electoral fraud. Subsection 2 of 126 however has a more stringent sanction were one convicted of election corruption shall be disqualified to vote or be voted for, for a period of ten years from the date of conviction¹⁰⁰.

The Independent Electoral Commission (IEC) is the election regulatory body, which, in law, is mandated to regulate elections in the Gambia and political financing. The IEC has the political will but lack the resources to effectively regulate political financing in The Gambia. For example, the former President Yaya Jammeh has used state resources and institutions for his political campaigns without restriction from the IEC. This always gives him (Yaya Jammeh) the advantage against his opponents during elections. This is clearly in contradiction of the “prohibitions during election campaigns” in the Elections Act.

In law, section 44 of the 1997 constitution provides for the IEC to submit its annual estimates of expenditure to the president. The estimates are subsequently to be placed before the National Assembly by the Executive with comments but without amendments, which guarantees its financial independence. In practice, the IEC does not command its own budget. The Executive negotiates the annual budget with the IEC and disburses funds in tranches, often late. The 70% of IEC staff members are public servants. Temporary, staff are paid by the IEC after receiving the funds from the national treasury. According to the IEC, the estimated budget for the 2017 National Assembly elections was around €1 million.

⁹⁹ Elections Act S104 (Cap 3:01, Volume 1 of The Laws of The Gambia, 2009)

¹⁰⁰ Election Bill 2019, S126 (2)

Political parties are consulted by the IEC on electoral decisions and regulations. On September 23rd - 24th 2020, the IEC and the Ministry of Justice in partnership with the International Foundation for Electoral Systems (IFES) organized a two days Election Bill 2020 validation where political parties were fully represented with the exception of few, who were however invited by the IEC. Political parties were consulted and where necessary, consensus was reached on whether to add or omit provisions in the new Election Bill. The IEC also provide guidelines to political parties on campaign ethics for compliance.

Since December 2016, the IEC’s public confidence has increased when the commission refused to act on the directives of the then incumbent President, to tamper with the presidential election results¹⁰¹. The professionalism of the IEC Chairman and his commissioners to announce the actual winner of the 2016 presidential election increased the IEC’s credibility in the public eye.

Campaign finance is lightly regulated and the relevant political finance information is not readily available to the public. The election regulator does not have effective mechanism or system to closely monitor the financing of political activities and determine if their source of revenue is in compliance with section 104 of the Elections Act.

Current laws governing the political financing are at the advantage of the incumbent president or ruling party. Though the law applies to all political parties, its lack of enforcement gives the ruling party or President an edge over their oppositions. The candidate fee for the Presidential election is not also fair to all contestants. As political parties pay D1 million (\$20,000) deposit for presidential elections, candidates running on independent tickets pay higher. The fee for the Presidency should equally apply to all candidates that the IEC should consider.

B. RECOMMENDATION

Recommendation	Source & Year	Reasons for non-implementation	Obstacles	Factors to Leverage (Solutions)
Funding of Sources of Political Parties	Art. 7 of UNCAC 2004 Art.10 of AUCPCC 2003 Art. 12 of African Charter on Democracy, Elections, and Good Governance 2007	Lack of compliance from political parties	Weak law enforcement	The IEC should enforce section 107 of the Elections Act for political parties to disclose their source of funding in order to determine if their source of funding is in consistent with the Elections Act and other laws of The Gambia

¹⁰¹ IEC Chairman Alieu Momar Njie one Image Towers in Memory <https://fatunetwork.net/iec-chairman-alieu-momar-njie-one-image-towers-in-memory/> September 2018

Prohibition in the use of state resources during elections	Art. 7 of UNCAC 2004 Art.10 of AUCPCC 2003 Art. 12 of African Charter on Democracy, Elections, and Good Governance 2007	Advantage of the incumbent president	Political will	IEC should enforce section 91 of the Elections Act to ensure the incumbent president does not use state resources during election campaigns, which gives the incumbent an edge over other candidates.
Strengthening the Electoral Body	Art. 5 & 20 of AUCPCC 2003	Fear of the strength of the electoral regulation body	Inadequate budget allocation	1. The state should reinforce IEC with human and financial resources for it to effectively administer and enforce election laws. 2. The IEC should establish a “Compliance Department” that will monitor and ensure political parties and candidates adhere to the election laws and regulations
Access to Media	Art. 15 & 17 of African Charter on Democracy, Elections, and Good Governance 2007 Art. 7 of UNCAC 2004	Patronage to the incumbent or favorite political party chosen by the head of the state broadcaster	Insufficient control of the state broadcaster during elections	Political parties and candidates must be given equal access to the state-owned media and the Media Unit at IEC must closely monitor if the incumbent or a political party is not given preferences over their opposition.
Fair Elections	Art.10 of AUCPCC 2003 Art. 3 of African Charter on Democracy, Elections, and Good Governance 2007	Legal provisions	Frustrating independent candidates to contest for elections	Candidate fees should be fair to all candidates.

OUTSTANDING RECOMMENDATIONS

The followings are the other outstanding anti-corruption recommendations that The Gambia should work towards fulfilling:

Recommendation	Source & Year	Reasons for non-implementation	Obstacles	Solutions
Establishment of an Anti-Corruption Commission	Vision under the first priority of the “eight strategic priorities” of the Gambia National Development Plan [2018-2021]	Prolong delay in the legislation of the anti-corruption bill	Legislative Processes	The government must act with urgency to enact the currently stalled draft Anti-Corruption Bill.
Strengthening the capacity of parliaments and legally recognized political parties to perform their core functions;	Article 27 of African Charter on Democracy, Elections, and Good Governance 2007	Unhealthy opposition relationship and fear of losing power by the ruling party	Political will	The government irrespective of political difference must provide personal legal assistance to parliamentarians and as well support political parties to perform their civic duty at the best interest of the citizens
Income and asset disclosure regimes (Declarations to be made to the office of the Ombudsman)	Presidential and coalition’s campaign promise [December, 2016]	Conflict of interest (The fight against corruption is driven and spearheaded by government officials, most of whom are corrupt themselves)	Corrupt officials swiftly fight back against any form of implementation of anti-corruption policy	Strong and indissoluble political will, with even stronger anti-corruption institutions, independent and free of interference from government.

D. LIST OF RESOURCES

	Source	Title (with link, if possible)
International Mechanisms	United Nations Instruments	<i>United Nations Convention Against Corruption 2004</i>
	African Union	<i>African Union Convention Against Corruption 2003</i>
	Legislative Guide	Legislative guide for the implementation of the United Nations Convention Against Corruption Second revised edition 2012
	Technical Guide	Technical Guide to the United Nations Convention Against Corruption
Regional Mechanisms	Treaties	Economic Community of West African States Protocol on the Fight against Corruption 2001
	GIABA	Inter-Governmental Action Group Against Money Laundering in West Africa
	Treaties	African Union Convention on Preventing and Combating Corruption
	Sierra Leone's government anti-corruption policy	Sierra Leone National Anti-Corruption Strategy (2019-2023) "A PUBLIC-PRIVATE INITIATIVE AGAINST CORRUPTION" "...Confronting corruption as a threat to every sphere of national development and building an ethical and accountable republic that promotes zero tolerance for corruption to inspire integrity, transparency, accountability and the rule of law"
Government Policy, Plans, or Analysis	<i>National Development Plan</i>	Gambia National Development Plan [2018-2021] https://www.thegambiatimes.com/wp-content/uploads/2018/01/The-Gambia-National-Development-Plan-NDP-2018-2021-Popular-Version-Final.pdf
	Budget Speech 2019	FISCAL CONSOLIDATION - RESTORING MACROECONOMIC STABILITY FOR A PROSPEROUS GAMBIA
	<i>Local Legislations</i>	1997 Constitution of the Gambia Anti-Corruption Bill, 2019 CRC Draft Constitution 2020

		<p>Gambia Anti-Corruption Bill 2019</p> <p>Elections Act [CAP 3:01]</p> <p>Elections Bill 2019</p> <p>Anti Money Laundering and Terrorist Financing Act 2012</p> <p>Criminal Code Volume 3 of the Laws of the Gambia 2009</p> <p>Criminal Offences Bill, 2019</p> <p>Gambia Public Procurement Act, 2014</p> <p>Gambia Anti-Corruption Commission Act, 2012</p> <p>Access to Information Bill, 2019</p> <p>Public Service Act 1991</p> <p>Gambia Ombudsman Act 1997</p> <p>Public Finance Act, 2014</p>
Data Sets	<i>GPPA Website</i>	https://www.gppa.gm/
Non-Governmental Reports	<i>Environmental Investigation Agency</i>	Cashing in On Chaos
	<i>Transparency International</i>	Corruption Perception Index 2019
	<i>International Budget Partnership</i>	Open Budget Survey 2019
	<i>Report By: Myers, C. Bernard; Bajpai, Rajni. [2020]</i>	<p>Enhancing Government Effectiveness and Transparency: The Fight Against Corruption (English).</p> <p>Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/235541600116631094/Enhancing-Government-Effectiveness-and-Transparency-The-Fight-Against-Corruption</p>

